



House of Representatives

General Assembly

File No. 639

January Session, 2023

Substitute House Bill No. 6918

House of Representatives, April 17, 2023

The Committee on Judiciary reported through REP. STAFSTROM of the 129th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING ERASURE OF CRIMINAL HISTORY RECORDS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (e) of section 54-142a of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective July 1,*
3 *2023*):

4 (e) (1) (A) Except as provided in [subdivision (2) and subdivision]
5 subdivisions (2) and (3) of this subsection, whenever any person has
6 been convicted in any court of this state of a classified or unclassified
7 misdemeanor offense or a motor vehicle violation for which a maximum
8 term of imprisonment of not more than one year could have been
9 imposed, or a class D or E felony or an unclassified felony offense
10 [carrying a] for which a maximum term of imprisonment of not more
11 than five years could have been imposed or a motor vehicle violation
12 for which a maximum term of imprisonment greater than one year and
13 not more than five years could have been imposed, any police or court
14 record and record of the state's or prosecuting attorney or the

15 prosecuting grand juror pertaining to such conviction, or any record
16 pertaining to court obligations arising from such conviction held by the
17 Board of Pardons and Paroles shall be erased as follows: [(A)] (i) For any
18 classified or unclassified misdemeanor offense or a motor vehicle
19 violation for which a maximum term of imprisonment of not more than
20 one year could have been imposed, such records shall be erased seven
21 years from the date on which the court entered the convicted person's
22 most recent judgment of conviction [(i)] (I) by operation of law, if such
23 offense occurred on or after January 1, 2000, or [(ii)] (II) upon the filing
24 of a petition on a form prescribed by the Office of the Chief Court
25 Administrator, if such offense occurred prior to January 1, 2000; and
26 [(B)] (ii) for any class D or E felony, [or an] unclassified felony offense
27 [carrying a] for which a maximum term of imprisonment of not more
28 than five years could have been imposed or a motor vehicle violation
29 for which a maximum term of imprisonment in excess of one year and
30 not more than five years could have been imposed, such records shall
31 be erased ten years from the date on which the court entered the
32 convicted person's most recent judgment of conviction [(i)] (I) by
33 operation of law, if such offense occurred on or after January 1, 2000, or
34 [(ii)] (II) upon the filing of a petition on a form prescribed by the Office
35 of the Chief Court Administrator, if such offense occurred prior to
36 January 1, 2000.

37 (B) For purposes of subparagraph (A) of this subdivision, the
38 classification of the offense, and the maximum sentence that could have
39 been imposed for a conviction of such offense, shall be determined
40 based on the law that was in effect at the time the offense was
41 committed.

42 (2) Convictions for the following offenses shall not be eligible for
43 erasure pursuant to this subsection:

44 (A) Any conviction, on or after January 1, 2000, designated as a family
45 violence crime, as defined in section 46b-38a;

46 (B) Any conviction for an offense that is a nonviolent sexual offense
47 or a sexually violent offense, each as defined in section 54-250; or

48 (C) Any conviction for [a class D felony offense that is] a violation of
49 section 29-33, 53a-60a, 53a-60b, 53a-60c, 53a-61a, 53a-64bb, 53a-64cc, 53a-
50 72a, 53a-90a, 53a-103a, 53a-181c, 53a-191, 53a-196, 53a-196d, 53a-196f,
51 53a-211, 53a-212, 53a-216, 53a-217, 53a-217a, 53a-217c, 53a-322, 53a-323,
52 54-251, 54-252, 54-253 or 54-254 or subdivision (1) of subsection (a) of
53 section 53a-189a. [; or

54 (D) Any conviction for a class A misdemeanor offense that is a
55 violation of section 53a-61a, 53a-64cc or 53a-323.]

56 (3) The provisions of subdivision (1) of this subsection shall not apply
57 to any conviction for any offense until the defendant: [has completed
58 serving the sentence imposed for any offense or offenses for which the
59 defendant has been convicted.]

60 (A) Has completed serving any period of incarceration, parole,
61 special parole, medical parole, compassionate parole or transitional
62 supervision associated with any sentence for such offense and any other
63 offense for which the defendant has been convicted on or after January
64 1, 2000, in this state;

65 (B) Has completed serving any period of probation for any sentence
66 for any crime or crimes for which the defendant has been convicted on
67 or after January 1, 2000, in this state; and

68 (C) Is not the subject of any pending state criminal charge in this state.

69 (4) If a person has been convicted of a violation of subsection (c) of
70 section 21a-279 prior to October 1, 2015, such conviction shall not be
71 considered as a most recent offense when evaluating whether a
72 sufficient period of time has elapsed for an offense to qualify for erasure
73 pursuant to this subsection.

74 (5) Nothing in this subsection shall limit any other procedure for
75 erasure of criminal history record information, as defined in section 54-
76 142g, or prohibit a person from participating in any such procedure,
77 even if such person's criminal history record information has been
78 erased pursuant to this section.

79 (6) Nothing in this subsection shall be construed to require the
80 Department of Motor Vehicles to erase criminal history record
81 information on an operator's driving record. When applicable, the
82 Department of Motor Vehicles shall make such criminal history record
83 information available through the Commercial Driver's License
84 Information System.

85 (7) Nothing in this subsection shall terminate a defendant's obligation
86 to register as a person convicted of an offense committed with a deadly
87 weapon pursuant to section 54-280a, a felony for a sexual purpose
88 pursuant to section 54-254 or a criminal offense against a victim who is
89 a minor pursuant to section 54-251.

90 (8) No erasure under this subsection shall be construed to terminate
91 a defendant's obligation to abide by a standing criminal protective order
92 imposed under section 53a-40e or terminate a defendant's obligation to
93 pay any unremitted fine imposed as part of the court's sentence.

94 (9) Notwithstanding any provision of this section and the provisions
95 of section 54-142c, any record required to substantiate any defendant's
96 conviction shall be available to law enforcement, the court and the
97 state's attorney for the purpose of (A) verifying such defendant's
98 obligation to register pursuant to section 54-251, 54-254 or 54-280a and
99 prosecuting any such defendant for violating any provision of such
100 sections until the expiration of such registration requirement, and (B)
101 verifying such defendant's obligation to abide by any standing criminal
102 protective order imposed under section 53a-40e and prosecuting any
103 such defendant for a violation of section 53a-223a until the expiration of
104 any such standing criminal protective order.

105 Sec. 2. Subsection (i) of section 54-142a of the general statutes is
106 repealed and the following is substituted in lieu thereof (*Effective July 1,*
107 *2023*):

108 (i) [The] (1) Except as provided in subdivision (2) of this subsection,
109 the provisions of this section shall not apply to any police or court
110 records or the records of any state's attorney or prosecuting attorney

111 [with respect to any information or indictment containing] referencing
112 more than one count [(1)] of the criminal case or, in the case of a police
113 record, referencing more than one defendant (A) while the criminal case
114 is pending, or [(2)] (B) when the criminal case is disposed of unless and
115 until all counts on such criminal case and, in the case of a police record,
116 on the relevant criminal cases for all referenced defendants are entitled
117 to erasure in accordance with the provisions of this section. [, except that
118 when the]

119 (2) When a criminal case is disposed of, qualified electronic records
120 or portions of qualified electronic records released to the public that
121 reference a charge that would otherwise be entitled to erasure under this
122 section shall be erased in accordance with the provisions of this section.

123 (3) Nothing in this section shall require the erasure of any information
124 contained in the registry of protective orders established pursuant to
125 section 51-5c, published memoranda of decision of the Superior Court
126 or any records of the Appellate Court or Supreme Court related to
127 matters considered by such courts.

128 (4) For the purposes of this subsection, ["electronic record"] "qualified
129 electronic record" means any police or court record or the record of any
130 state's attorney or prosecuting attorney that is an electronic record, as
131 defined in section 1-267, or a [computer] printout of any such electronic
132 record, but does not include any portion of a police record that is a
133 narrative description, including, but not limited to, any such description
134 contained in an investigative report.

135 Sec. 3. Subsection (l) of section 54-142a of the general statutes is
136 repealed and the following is substituted in lieu thereof (*Effective July 1,*
137 *2023*):

138 (l) For the purposes of this section, "court records" shall not include a
139 record or transcript of the proceedings made or prepared by an official
140 court reporter, assistant court reporter or monitor or any audio or video
141 recording of any court proceeding.

142 Sec. 4. Section 54-142e of the general statutes is repealed and the
143 following is substituted in lieu thereof (*Effective July 1, 2023*):

144 (a) Notwithstanding the provisions of subsection (g) of section 54-
145 142a and section 54-142c, with respect to any person, including, but not
146 limited to, a consumer reporting agency as defined in subsection (i) of
147 section 31-51i, or a background screening provider or similar data-based
148 service or company, that purchases criminal matters of public record, as
149 defined in said subsection (i), from the Judicial Department or any
150 criminal justice agency pursuant to subsection (b) of section 54-142g, the
151 department or such criminal justice agency shall make available to such
152 person information concerning such criminal matters of public record
153 that have been erased pursuant to section 54-142a, as amended by this
154 act. Such information may include docket numbers or other information
155 that permits the person to identify and permanently delete records that
156 have been erased pursuant to section 54-142a, as amended by this act.

157 (b) Each person, including, but not limited to, a consumer reporting
158 agency or background screening provider or similar data-based service
159 or company, that has purchased records of criminal matters of public
160 record from the Judicial Department or any criminal justice agency
161 shall, prior to disclosing such records, (1) purchase from the Judicial
162 Department or such criminal justice agency, on a monthly basis or on
163 such other schedule as the Judicial Department or such criminal justice
164 agency may establish, any updated criminal matters of public record or
165 information available for the purpose of complying with this section,
166 and (2) update its records of criminal matters of public record to
167 permanently delete such erased records not later than thirty calendar
168 days after receipt of information on the erasure of criminal records
169 pursuant to section 54-142a, as amended by this act. Such person shall
170 not further disclose such erased records.

171 (c) If any consumer reporting agency, background screening provider
172 or similar data-based service or company discloses an erased record
173 after thirty calendar days from the date such agency, provider, service
174 or company received notice pursuant to subsection (a) of this section

175 that such record had been erased, the Attorney General may send notice
176 ordering such agency, provider, service or company to remove such
177 erased record from any such disclosure not later than five business days
178 following receipt of such order. If such agency, provider, service or
179 company further fails to remove such erased record from any such
180 disclosure, an action for damages may be brought under chapter 735a.

181 Sec. 5. (NEW) (*Effective from passage*) If the automated processes
182 required to be developed under section 54-142t of the general statutes,
183 as amended by this act, have not marked a police or court record or the
184 record of any state's attorney or prosecuting attorney erased, or no
185 petition has been filed seeking to have such record erased, as of July 1,
186 2023, the provisions of section 54-142a of the general statutes, as
187 amended by this act, shall determine (1) whether such record is eligible
188 or not eligible for erasure, and (2) the eligibility of defendants who must
189 file a petition for the erasure of records, and not the provisions of section
190 54-142a of the general statutes, revision of 1958, revised to January 1,
191 2023.

192 Sec. 6. Section 54-142t of the general statutes is repealed and the
193 following is substituted in lieu thereof (*Effective from passage*):

194 (a) The Department of Emergency Services and Public Protection, in
195 consultation with the Judicial Branch and the Criminal Justice
196 Information System Governing Board established pursuant to section
197 54-142q, shall develop and implement automated processes for erasure
198 pursuant to section 54-142a, as amended by this act.

199 (b) The [department may, within available appropriations,
200 disseminate information, including posting] Commissioner of
201 Emergency Services and Public Protection shall, not later than January
202 1, 2024, post information on [its] an Internet web site operated by the
203 department, regarding records that are subject to erasure under the
204 provisions of this section, including a list of any section of the general
205 statutes for which a violation of such section may be subject to erasure
206 pursuant to subsection (e) of section 54-142a, as amended by this act.
207 The commissioner shall annually review, and if necessary, update such

208 list.

209 (c) Nothing in this section shall be construed to require the
210 destruction of paper records.

211 (d) Nothing in the provisions of sections 46a-80a to 46a-80m,
212 inclusive, or sections 8-265c, 8-315, 10a-6, 31-51i, 38a-358, 38a-447, 46a-
213 51, 46a-74, 46a-79, 46a-80 and 46a-81 of the general statutes, revision of
214 1958, revised to January 1, 2023, shall be construed to make the state,
215 any state agency, any municipality or any person liable for any action
216 taken on the basis of criminal history record information required to be
217 erased or deemed erased by operation of law if:

218 (1) Such action is taken in good faith reliance on such criminal history
219 record information;

220 (2) Such criminal history record information has not yet been marked
221 as erased by the automated system required under this section, or, in the
222 case of a municipality or other person, such erasure marking has not
223 been communicated to such municipality or other person; and

224 (3) Such action is taken before January 1, 2024.

225 (e) No person, prior to January 1, 2024, shall have any claim against
226 the state or any state agency for compensation or payment for failure to
227 erase a record pursuant to the provisions of this section and section 54-
228 142a of the general statutes, revision of 1958, revised to January 1, 2023.

229 (f) On and after January 1, 2024, nothing in the provisions of sections
230 46a-80a to 46a-80m, inclusive, or sections 8-265c, 8-315, 10a-6, 31-51i,
231 38a-358, 38a-447, 46a-51, 46a-74, 46a-79, 46a-80 and 46a-81 shall be
232 construed to make the state, any state agency, any municipality or any
233 person liable for any action taken on the basis of criminal history record
234 information required to be erased or deemed erased by operation of law
235 if within the immediate thirty-day period after such records should have
236 been marked as erased:

237 (1) Such action is taken in good faith reliance on such criminal history

238 record information; and

239 (2) Such criminal history record information has not yet been marked
240 as erased by the automated system required under this section, or, in the
241 case of a municipality or other person, such erasure marking has not
242 been communicated to such municipality or other person.

243 (g) On and after January 1, 2024, if (1) a person subject to such record
244 information described in subdivision (2) of subsection (f) of this section
245 notifies the Commissioner of Emergency Services and Public Protection
246 at least thirty days after such marking should have been made or so
247 communicated that such marking has not been made or so
248 communicated, and (2) after ninety days following such notification,
249 such marking has not been made or so communicated, such person may
250 have a claim against the state or any state agency for compensation or
251 payment for failure to erase a record pursuant to the provisions of this
252 section and section 54-142a, as amended by this act.

| | | |
|---|--------------|-------------|
| This act shall take effect as follows and shall amend the following sections: | | |
| Section 1 | July 1, 2023 | 54-142a(e) |
| Sec. 2 | July 1, 2023 | 54-142a(i) |
| Sec. 3 | July 1, 2023 | 54-142a(l) |
| Sec. 4 | July 1, 2023 | 54-142e |
| Sec. 5 | from passage | New section |
| Sec. 6 | from passage | 54-142t |

Statement of Legislative Commissioners:

In Section 6, references to amendments made by public acts were changed to language referencing the general statutes, revision of 1958, revised to January 1, 2023, for conformity with drafting conventions.

JUD *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

| Agency Affected | Fund-Effect | FY 24 \$ | FY 25 \$ |
|--|---------------------|-----------|-----------|
| Attorney General | GF - Cost | 45,000 | 46,125 |
| State Comptroller - Fringe Benefits ¹ | GF - Cost | 19,269 | 19,751 |
| Comptroller - Adjudicated Claims Account | GF - Potential Cost | See Below | See Below |

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill makes various changes to the statutes concerning the erasure of criminal history records. Many of the changes are not expected to have a fiscal impact to the state, however there is a cost to the Office of the Attorney General as described below and a potential cost to the Office of the State Comptroller. The bill may result in potential future costs to the adjudicated claims account to the extent that claims against the state are made and are successful.

Section 4 results in costs to the Office of the Attorney General (OAG) of \$45,000 in FY 24 and \$46,125 in FY 25, plus fringe benefits of \$19,269 in FY 24, and \$19,751 in FY 25, as it requires OAG to hire a part-time legal investigator to work with other entities to gather information about criminal history records.

This is a new enforcement action for the agency; OAG currently is not

¹The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 42.82% of payroll in FY 24.

involved with criminal history records. Under the bill, the agency would have to substantiate that data was improperly disclosed by a company, and it is unclear if the agency is allowed to access records from the agency or provider to make this determination.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to any changes to employee wages and benefits.

OLR Bill Analysis**sHB 6918****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. allows for lawsuits against data reporting companies who fail to remove erased records from their disclosures after the attorney general orders them to do so;

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 for claims against the state or state agencies, under certain conditions, for failure to erase records as required.

It also makes technical and conforming changes.

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 Department of Emergency Services and Public Protection (DESPP) to post a list of eligible crimes, and (3) addressing potential liability if the state fails to erase records or any party takes actions based on erased 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).

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

| Brief Description (Citation) | Classification |
|---|--|
| 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 |

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 under 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)

Under current law, if a case contains multiple charges, the 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. 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. Therefore, 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.

Lawsuits Against Data Companies (§ 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”). 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.

Under the bill, if a data company discloses an erased record after this 30-day period, 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. If the company does not comply with the order, the bill allows an action for damages under the Connecticut Unfair Trade Practices Act.

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.

State Liability for Failure to Erase Records (§ 6(e) & (g))

The bill protects the state and state agencies from claims for compensation or payment for failure to erase records as required by current law until January 1, 2024. After that date, the bill allows a person to bring a claim, under the following conditions:

1. the person's records have not been marked as erased by the automated system as required, or the erasure has not been communicated to a municipality or someone else;
2. the person notifies the DESPP commissioner at least 30 days after the erasure should have been made or communicated; and
3. the erasure still has not been made or communicated 90 days after the person notified DESPP.

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.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 31 Nay 5 (03/28/2023)