



House of Representatives

File No. 788

General Assembly

January Session, 2023

(Reprint of File No. 639)

Substitute House Bill No. 6918
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
May 18, 2023

**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2 repealed and the following is substituted in lieu thereof (*Effective July 1,*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;

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.] Any conviction for a
56 violation of section 14-227a within the preceding ten years of any arrest
57 for the violation of section 14-227a.

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

62 (A) Has completed serving any period of incarceration, parole,
63 special parole, medical parole, compassionate parole or transitional
64 supervision associated with any sentence for such offense and any other
65 offense for which the defendant has been convicted on or after January
66 1, 2000, in this state;

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

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

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

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

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

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

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

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

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] criminal
112 history record information, as defined in section 54-142g, referencing
113 more than one count [(1)] of the criminal case or, in the case of a police
114 record, referencing more than one defendant (A) while the criminal case
115 is pending, or [(2)] (B) when the criminal case is disposed of unless and
116 until all counts on such criminal case and, in the case of a police record,
117 on the relevant criminal cases for all referenced defendants are entitled
118 to erasure in accordance with the provisions of this section. [, except that
119 when the]

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

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

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

136 Sec. 3. Subsection (l) of section 54-142a of the general statutes is
137 repealed and the following is substituted in lieu thereof (*Effective July 1,*
138 *2023*):

139 (l) For the purposes of this section, "court records" shall not include a

140 record or transcript of the proceedings made or prepared by an official
141 court reporter, assistant court reporter or monitor or any audio or video
142 recording of any court proceeding.

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

145 (a) Notwithstanding the provisions of subsection (g) of section 54-
146 142a and section 54-142c, with respect to any person, including, but not
147 limited to, a consumer reporting agency as defined in subsection (i) of
148 section 31-51i, or a background screening provider or similar data-based
149 service or company, that purchases records of or files mass requests
150 under the provisions of chapter 14 for information pertaining to
151 criminal matters of public record, as defined in said subsection (i), from
152 the Judicial Department or any criminal justice agency pursuant to
153 subsection (b) of section 54-142g, the department or such criminal justice
154 agency shall make available to such person information concerning such
155 criminal matters of public record that have been erased pursuant to
156 section 54-142a, as amended by this act. Such information may include
157 docket numbers or other information that permits the person to identify
158 and permanently delete records that have been erased pursuant to
159 section 54-142a, as amended by this act.

160 (b) Each person, including, but not limited to, a consumer reporting
161 agency or background screening provider or similar data-based service
162 or company, that has purchased records of or filed a mass request under
163 the provisions of chapter 14 for information pertaining to criminal
164 matters of public record from the Judicial Department or any criminal
165 justice agency shall, prior to disclosing such records, (1) purchase from
166 the Judicial Department or such criminal justice agency, on a monthly
167 basis or on such other schedule as the Judicial Department or such
168 criminal justice agency may establish, any updated criminal matters of
169 public record or information available for the purpose of complying
170 with this section, and (2) update its records of criminal matters of public
171 record to permanently delete such erased records not later than thirty
172 calendar days after receipt of information on the erasure of criminal

173 records pursuant to section 54-142a, as amended by this act. Such person
174 shall not further disclose such erased records, except to the subject of
175 the records as required under 15 USC 1681g, as amended from time to
176 time, or as otherwise required by applicable law. This subsection shall
177 not apply to persons or entities filing a mass request under the
178 provisions of chapter 14 for information pertaining to criminal matters
179 of public record if the person or entity making the request is only
180 obtaining information that does not personally identify the subjects of
181 the criminal matters of public records and is not using the information
182 for commercial purposes.

183 (c) If any consumer reporting agency, background screening provider
184 or similar data-based service or company discloses an erased record in
185 violation of subsection (b) of this section after thirty calendar days from
186 the date such agency, provider, service or company received notice
187 pursuant to subsection (a) of this section that such record had been
188 erased, the Attorney General may send notice ordering such agency,
189 provider, service or company to remove such erased record from any
190 such disclosure not later than five business days following receipt of
191 such order.

192 (d) For purposes of this section, "mass request" means a request
193 concerning fifty or more criminal matters of public record.

194 (e) Any violation of any provision of this section shall be deemed an
195 unfair or deceptive trade practice under subsection (a) of section 42-
196 110b.

197 Sec. 5. (NEW) (*Effective from passage*) If the automated processes
198 required to be developed under section 54-142t of the general statutes,
199 as amended by this act, have not marked a police or court record or the
200 record of any state's attorney or prosecuting attorney erased, or no
201 petition has been filed seeking to have such record erased, as of July 1,
202 2023, the provisions of section 54-142a of the general statutes, as
203 amended by this act, shall determine (1) whether such record is eligible
204 or not eligible for erasure, and (2) the eligibility of defendants who must

205 file a petition for the erasure of records, and not the provisions of section
206 54-142a of the general statutes, revision of 1958, revised to January 1,
207 2023.

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

210 (a) The Department of Emergency Services and Public Protection, in
211 consultation with the Judicial Branch and the Criminal Justice
212 Information System Governing Board established pursuant to section
213 54-142q, shall develop and implement automated processes for erasure
214 pursuant to section 54-142a, as amended by this act.

215 (b) The [department may, within available appropriations,
216 disseminate information, including posting] Commissioner of
217 Emergency Services and Public Protection shall, not later than January
218 1, 2024, post information on [its] an Internet web site operated by the
219 department, regarding records that are subject to erasure under the
220 provisions of this section, including a list of any section of the general
221 statutes for which a violation of such section may be subject to erasure
222 pursuant to subsection (e) of section 54-142a, as amended by this act.
223 The commissioner shall annually review, and if necessary, update such
224 list.

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

227 (d) Nothing in the provisions of sections 46a-80a to 46a-80m,
228 inclusive, or sections 8-265c, 8-315, 10a-6, 31-51i, 38a-358, 38a-447, 46a-
229 51, 46a-74, 46a-79, 46a-80 and 46a-81 of the general statutes, revision of
230 1958, revised to January 1, 2023, shall be construed to make the state,
231 any state agency, any municipality or any person liable for any action
232 taken on the basis of criminal history record information required to be
233 erased or deemed erased by operation of law if:

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

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

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

241 (e) No person, prior to January 1, 2024, shall have any claim against
242 the state or any state agency for failure to erase a record pursuant to the
243 provisions of this section and subsection (e) of section 54-142a of the
244 general statutes, revision of 1958, revised to January 1, 2023.

245 (f) On and after January 1, 2024, nothing in the provisions of sections
246 46a-80a to 46a-80m, inclusive, or sections 8-265c, 8-315, 10a-6, 31-51i,
247 38a-358, 38a-447, 46a-51, 46a-74, 46a-79, 46a-80 and 46a-81 shall be
248 construed to make the state, any state agency, any municipality or any
249 person liable for any action taken on the basis of criminal history record
250 information required to be erased or deemed erased by operation of law
251 if within the immediate thirty-day period after such records should have
252 been marked as erased:

253 (1) Such action is taken in good faith reliance on such criminal history
254 record information; and

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

259 (g) On and after January 1, 2024, if a person (1) believes any of such
260 person's criminal history record information was required to be deemed
261 erased by operation of law pursuant to the provisions of subsection (e)
262 of section 54-142a, as amended by this act, and (2) submits a copy of
263 such person's criminal history record information search demonstrating
264 that such criminal history record information has not been marked as
265 erased to the Department of Emergency Services and Public Protection
266 in a form and manner determined by the department, the department

267 shall, following a contested hearing, make a determination on whether
268 such criminal history information should be deemed erased by
269 operation of law. Such determination shall constitute a final decision for
270 the purposes of the provisions of chapter 54.

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

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

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill makes various changes to the statutes concerning the erasure of criminal history records, most of which do not result in a fiscal impact to the state. However, there is a cost to the Office of the Attorney General as described below.

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 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

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.

agency or provider to make this determination.

House "A" removes language from the underlying bill allowing individuals to have claims against the state or any state agency for compensation, therefore removing the potential cost to the Office of the State Comptroller - Adjudicated Claims Account in the underlying bill.

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 (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 charges.

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

<i>Brief Description (Citation)</i>	<i>Classification</i>
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)