

OFFICE OF LEGISLATIVE RESEARCH
PUBLIC ACT SUMMARY



PA 23-134—sHB 6918

Judiciary Committee

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 (see **BACKGROUND**). (The process is not yet fully operational.)

This act 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;
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; and
4. starting in 2024, allowing 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), which the department must make following a hearing.

(PA 23-169, § 2, and PA 23-204, § 119, make certain changes to when driving under the influence (DUI) is eligible for erasure under these provisions.)

The act 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 a violation of the Connecticut Unfair Trade Practices Act (CUTPA, see **BACKGROUND**) for data reporting companies and others to fail to remove erased records from their disclosures under specified circumstances; and
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.

EFFECTIVE DATE: July 1, 2023, except as otherwise noted below.

CRIMINAL RECORD ERASURE AFTER SPECIFIED PERIOD POST-CONVICTION

By law, eligible convictions are generally subject to erasure seven years (for misdemeanors) or 10 years (for felonies) after the person's most recent conviction. Subject to various exclusions, the law applies to misdemeanors; class D and E felonies; and unclassified felonies with up to five-year maximum prison terms.

OLR PUBLIC ACT SUMMARY

Depending on the offense date, once the system is operational, erasure will occur automatically or upon the person's petition.

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

Motor Vehicle Violations (§ 1)

The act 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. (Some motor vehicle violations include criminal penalties, but these violations are not always classified as felonies or misdemeanors.)

Under the act, 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 generally eligible for erasure 10 years from the date the court entered the person's most recent conviction (i.e., the same as eligible felonies).

(PA 23-169, § 2, and PA 23-204, § 119, create an exception for DUI, making it ineligible for erasure until 10 years after the person's most recent conviction in all cases; see below for other provisions on DUI.)

By law, unchanged by the act, 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 convictions for misdemeanors committed between January 1, 2000, and June 30, 2012, by people under age 18 at the time of the offense (CGS § 54-142a(f)). The law, unchanged by the act, excludes motor vehicle violations (and other Title 14 offenses) from these procedures.

Unclassified Felonies (§ 1)

Under existing law, unclassified felonies with up to five-year prison terms are generally subject to the law's erasure provisions. The act 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 were not eligible for erasure under prior law until the defendant had finished serving the sentence for any convictions (not just those subject to erasure). The act 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,

OLR PUBLIC ACT SUMMARY

- 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 (§ 1)

Classifications of Certain Ineligible Crimes. Prior law had a specific list of 20 class D felonies and three class A misdemeanors that were ineligible for record erasure. The act 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 made some older convictions eligible for erasure under prior law. This includes the following crimes, which were ineligible for erasure under prior law only when classified as class D felonies or higher:

1. enticing a minor (before July 1, 2004, a first offense was a class A misdemeanor);
2. obscenity as to minors (before October 1, 1985, this crime was a class A misdemeanor); and
3. voyeurism under certain circumstances (before October 1, 2003, this crime was a class A misdemeanor).

Additions to List of Ineligible Crimes. The act makes five additional crimes ineligible for erasure in all cases. Although these crimes are currently classified as class C or B felonies (and thus ineligible for those convictions), they were previously classified in a way that made some older convictions eligible for erasure under prior law.

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)	Existing law: 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)	Existing law: a class B felony, with a mandatory minimum Before October 1, 2004: a class D felony

OLR PUBLIC ACT SUMMARY

<i>Brief Description (Citation)</i>	<i>Classification</i>
	(there were not separate degrees of the crime at that time)
Stealing a firearm (CGS § 53a-212)	Existing law: 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)	Existing law: 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)	Existing law: a class C felony, with a mandatory minimum Before October 1, 2013: a class D felony

DUI. The act makes DUI convictions ineligible for erasure if the conviction occurred within 10 years before any additional DUI arrest. (PA 23-169, § 2, and PA 23-204, § 119, replace this provision, instead making a DUI conviction ineligible for erasure if the defendant has a second DUI conviction within the following 10 years.)

Family Violence Crimes. Under prior law, all family violence crimes were ineligible for erasure under these provisions. The act 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 act 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 act, sexually violent offenses and nonviolent sex offenses (both of which also require sex offender registration) are ineligible for erasure.

Additionally, the act specifies that these record erasure provisions do not end a defendant’s obligation to (1) comply with a standing criminal protective order or

OLR PUBLIC ACT SUMMARY

(2) pay any unremitted fine that the court imposed in its sentence.

Records Access for Police, the Court, and Prosecutors (§ 1)

The act 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 act 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 act 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 act, 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.

EFFECTIVE DATE: Upon passage

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

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

The act 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.

EFFECTIVE DATE: Upon passage

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

Through December 31, 2023, the act protects the state and state agencies from claims for failure to erase records as required by prior law. Starting on January 1, 2024, the act provides a process for someone to challenge the non-erasure of their records under the law's provisions on automatic erasure following a specified period post-conviction.

OLR PUBLIC ACT SUMMARY

Specifically, the act allows someone who believes that their records should have been automatically erased under these provisions to give DESPP a copy of their criminal history record information search, showing that the records were not marked erased. DESPP must set 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 under 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).

EFFECTIVE DATE: Upon passage

CRIMINAL RECORD ERASURE GENERALLY

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

The act 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. Prior law applied these provisions to police, court, and prosecutor records referencing more than one count. The act expands this to cover any criminal history record information referencing more than one count in the case.

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, among others, the Department of Correction, Board of Pardons and Paroles, Office of the Victim Advocate, and other governmental agencies that principally engage in criminal justice administration activities (CGS § 54-142g).

Under existing law, 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. The act 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 act 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.

OLR PUBLIC ACT SUMMARY

Data Companies and Mass Freedom of Information Act (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 (hereinafter, “data company”). The act also requires the judicial branch and other criminal justice agencies to make this information available to anyone who files mass requests under 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 person or data 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. Prior law prohibited further disclosure of the records in all cases. The act 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 act also extends these requirements to anyone who makes a mass request under FOIA, unless they are only obtaining information that does not personally identify the records’ subjects and are not using the information for commercial purposes.

Under the act, 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 the disclosure within five business days after receiving the order.

The act makes any violation of these provisions a CUTPA violation.

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 act 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 act, 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 on this

OLR PUBLIC ACT SUMMARY

basis applies only during the immediate 30-day window after the records should have been marked as erased.

EFFECTIVE DATE: Upon passage

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.

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.