

**Judiciary Committee Public Hearing  
March 5, 2007**

**Written Testimony of Theresa C. Lantz  
Commissioner of Correction**

**Raised Bill No. 1347, AAC ERASURE OF RECORDS IN CERTAIN CRIMINAL CASES**

**The Department of Correction strongly opposes Raised Bill No. 1347, An Act Concerning Erasure of Records in Certain Criminal Cases.** This proposed bill would unreasonably jeopardize the safety and security of staff, inmates and the state's correctional facilities, by causing the erasure of critical correctional records necessary for the proper classification and assignment of security levels for inmates committed to my custody.

Each year, the Department of Correction has more than 30,000 inmates who are admitted to correctional facilities and 30,000 or more inmates who are released each year. Many thousands of those criminal cases are dismissed for a myriad of reasons, a missing witness, a lack of evidence, or the inability of a prosecutor to prove a case beyond a reasonable doubt. This amendment to the erasure statute is overly broad in that it would require the erasure of "all Department of Correction records pertaining to such (dismissed) charge..."

For each of those many thousands of inmates, whose criminal cases are dismissed each year, there are hundreds of pages of records generated by the Department of Correction. These include medical and mental health records, dental records, substance abuse records, classification records, and inmate master file records containing disciplinary reports, inmate work assignment reports, and a variety of other types of records. These records are critical to providing safe, humane, and appropriate care and custody for offenders, who may be admitted to my custody in the future. It would be entirely inefficient and extremely costly to recreate these records every time an offender enters my custody.

Critical security information about inmates that my agency has gathered also should not be erased based upon what happens in court, as the nature of the charges, the institutional behavior, the medical and mental health condition of the offender are all crucial information necessary for the safe management of inmates who are and or who will be re-incarcerated. Very often inmates will have significant security risk issues, such as gang affiliations or violent disciplinary histories, all of which may occur during a period of incarceration. The fact that an

inmate may be a pretrial detainee at the time does not make that inmate any less a gang member or any less a threat to the safety of other inmates and staff. If his or her criminal charges are dismissed in court it does not change the past behavior of the inmate while confined in a correctional facility. This information is necessary to identify those inmates who pose security risks to the safety of my staff, other inmates and the public, and to identify those who may pose a threat to their own health and safety.

The level of evidence required to obtain a criminal conviction is beyond a reasonable doubt. The same evidence concerning criminal activity, which may result in a dismissal, may nevertheless be credible and reliable, and is crucial to managing inmates safely in a correctional facility. The United States Supreme Court and our own Connecticut Supreme Court have held that the level of evidence required to discipline an inmate is very meager, requiring just "some evidence" in the record. Thus, while the evidence may not have been enough to give rise to a criminal conviction, and the charge was dismissed, that does not mean that the evidence should not be relied upon for the internal management of inmates in the custody of the Department of Correction.

It is also important to consider that managing a person's loss of liberty, it can often times bring conflict which results in litigation down the road. If records were destroyed, there would be no record upon which to properly litigate those claims.

Another point to address is that the Department of Correction currently houses inmates sentenced under Youthful Offender status, as well as on occasion we will assist in managing inmates under the oversight of DCF at either the Manson Youth Institution or York Correctional Institution. In both of these instances we create and maintain records regarding these individuals, however, the information is protected under various other statutes that exempt disclosure and essentially seal the records of these individuals which are used for internal management purposes only. It would certainly seem that this is a more reasonable approach for the proponent of this bill to achieve the same result.

Lastly, what this bill proposes would ultimately be administratively impossible to accomplish. All inmates' files are and have been, since the inception of the Department of Correction in 1968, consolidated and contain both conviction and non-conviction information. This proposed amendment to the erasure statute would be retroactive and would impact hundreds of thousands of files for crimes committed "prior to, on or after October 1, 2007,..." The only way the task could be accomplished would be to conduct a manual file review of literally

millions of pages of documents, and attempt to identify records which are associated with dismissed criminal charges. Since more than ninety percent of inmates' convictions result from plea bargains, there is an extremely high likelihood that most of these plea bargains resulted in a plea of guilty to certain charges, while at the same time, nolle or dismissals of other charges. Thus, this proposed amendment to the erasure statute would have an immediate impact on the files of more than twenty three thousand currently supervised offenders, and hundreds of thousands of files of offenders not presently in custody who have prior convictions, and many tens of thousands who will enter the Department of Correction in the future. This task could not be accomplished even if the legislature were to appropriate budgetary funds for a massive influx of new records staff. It is simply too large an undertaking, with too broad a sweep.

This proposal would create an environment contrary to sound correctional practice with the net effect being that crucial health, safety, and security information necessary to keep offenders safe, would be erased, a result that is clearly contrary to common sense and the mission of the Department of Correction.