



General Assembly

January Session, 2007

Raised Bill No. 1347

LCO No. 4681

04681_____JUD

Referred to Committee on Judiciary

Introduced by:
(JUD)

**AN ACT CONCERNING ERASURE OF RECORDS IN CERTAIN
CRIMINAL CASES.**

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

1 Section 1. Section 54-142a of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2007*):

3 (a) (1) Whenever in any criminal case, on or after October 1, 1969,
4 the accused, by a final judgment, is found not guilty of the charge or
5 the charge is dismissed, all police and court records and records of any
6 state's attorney pertaining to such charge shall be erased upon the
7 expiration of the time to file a writ of error or take an appeal, if an
8 appeal is not taken, or upon final determination of the appeal
9 sustaining a finding of not guilty or a dismissal, if an appeal is taken.

10 (2) Whenever in any criminal case, prior to, on or after October 1,
11 2007, the accused, by a final judgment, is found not guilty of the charge
12 or the charge is dismissed, all Department of Correction records
13 pertaining to such charge shall be erased upon the expiration of the
14 time to file a writ of error or take an appeal, if an appeal is not taken,
15 or upon final determination of the appeal sustaining a finding of not

16 guilty or a dismissal, if an appeal is taken.

17 (3) Nothing in this subsection shall require the erasure of any record
18 pertaining to a charge for which the defendant was found not guilty by
19 reason of mental disease or defect or guilty but not criminally
20 responsible by reason of mental disease or defect.

21 (b) Whenever in any criminal case prior to October 1, 1969, the
22 accused, by a final judgment, was found not guilty of the charge or the
23 charge was dismissed, all police and court records and records of the
24 state's or prosecuting attorney or the prosecuting grand juror
25 pertaining to such charge shall be erased by operation of law and the
26 clerk or any person charged with the retention and control of such
27 records shall not disclose to anyone their existence or any information
28 pertaining to any charge so erased; provided nothing in this subsection
29 shall prohibit the arrested person or any one of his heirs from filing a
30 petition for erasure with the court granting such not guilty judgment
31 or dismissal, or, where the matter had been before a municipal court, a
32 trial justice, the Circuit Court or the Court of Common Pleas with the
33 records center of the Judicial Department and thereupon all police and
34 court records and records of the state's attorney, prosecuting attorney
35 or prosecuting grand juror pertaining to such charge shall be erased.
36 Nothing in this subsection shall require the erasure of any record
37 pertaining to a charge for which the defendant was found not guilty by
38 reason of mental disease or defect.

39 (c) (1) Whenever any charge in a criminal case has been nolle in the
40 Superior Court, or in the Court of Common Pleas, if at least thirteen
41 months have elapsed since such nolle, (A) all police and court records
42 and records of the state's or prosecuting attorney or the prosecuting
43 grand juror pertaining to such charge shall be erased, and (B) all
44 Department of Correction records pertaining to such charge shall be
45 erased regardless of whether such nolle was entered prior to, on or
46 after October 1, 2007.

47 [However, in] (2) In cases of nolle entered in the Superior Court,

48 Court of Common Pleas, Circuit Court, municipal court or by a justice
49 of the peace prior to April 1, 1972, such records shall be deemed erased
50 by operation of law and the clerk or the person charged with the
51 retention and control of such records shall not disclose to anyone their
52 existence or any information pertaining to any charge so erased,
53 provided nothing in this subsection shall prohibit the arrested person
54 or any one of his heirs from filing a petition to the court or to the
55 records center of the Judicial Department, as the case may be, to have
56 such records erased, in which case such records shall be erased.

57 (3) Whenever any charge in a criminal case has been continued at
58 the request of the prosecuting attorney, and a period of thirteen
59 months has elapsed since the granting of such continuance during
60 which period there has been no prosecution or other disposition of the
61 matter, the charge shall be construed to have been nolleed as of the date
62 of termination of such thirteen-month period and such erasure may
63 thereafter be effected or a petition filed therefor, as the case may be, as
64 provided in this subsection for nolleed cases.

65 (d) (1) Whenever prior to October 1, 1974, any person who has been
66 convicted of an offense in any court of this state has received an
67 absolute pardon for such offense, such person or any one of his heirs
68 may, at any time subsequent to such pardon, file a petition with the
69 superior court at the location in which such conviction was effected, or
70 with the superior court at the location having custody of the records of
71 such conviction or with the records center of the Judicial Department if
72 such conviction was in the Court of Common Pleas, Circuit Court,
73 municipal court or by a trial justice court, for an order of erasure, and
74 the Superior Court or records center of the Judicial Department shall
75 direct all police and court records and records of the state's or
76 prosecuting attorney pertaining to such case to be erased.

77 (2) Whenever such absolute pardon was received on or after
78 October 1, 1974, such records shall be erased.

79 (e) (1) The clerk of the court or any person charged with retention

80 and control of such records in the records center of the Judicial
81 Department or any law enforcement agency having information
82 contained in such erased records shall not disclose to anyone, except
83 the subject of the record, upon submission pursuant to guidelines
84 prescribed by the Office of the Chief Court Administrator of
85 satisfactory proof of the subject's identity, information pertaining to
86 any charge erased under any provision of this section and such clerk or
87 person charged with the retention and control of such records shall
88 forward a notice of such erasure to any law enforcement agency and
89 the Department of Correction to which [he] such clerk or such person
90 knows information concerning the arrest has been disseminated and
91 such disseminated information shall be erased from the records of
92 such law enforcement agency and the Department of Correction. Such
93 clerk or such person, as the case may be, shall provide adequate
94 security measures to safeguard against unauthorized access to or
95 dissemination of such records or upon the request of the accused cause
96 the actual physical destruction of such records, except that such clerk
97 or such person shall not cause the actual physical destruction of such
98 records until three years have elapsed from the date of the final
99 disposition of the criminal case to which such records pertain.

100 (2) No fee shall be charged in any court with respect to any petition
101 under this section.

102 (3) Any person who shall have been the subject of such an erasure
103 shall be deemed to have never been arrested within the meaning of the
104 general statutes with respect to the proceedings so erased and may so
105 swear under oath.

106 (f) Upon motion properly brought, the court or a judge thereof, if
107 such court is not in session, may order disclosure of such records (1) to
108 a defendant in an action for false arrest arising out of the proceedings
109 so erased, or (2) to the prosecuting attorney and defense counsel in
110 connection with any perjury charges which the prosecutor alleges may
111 have arisen from the testimony elicited during the trial. Such

112 disclosure of such records is subject also to any records destruction
113 program pursuant to which the records may have been destroyed. The
114 jury charge in connection with erased offenses may be ordered by the
115 judge for use by the judiciary, provided the names of the accused and
116 the witnesses are omitted therefrom.

117 (g) The provisions of this section shall not apply to any police or
118 court records, [or the] records of any state's attorney or prosecuting
119 attorney or records of the Department of Correction with respect to
120 any information or indictment containing more than one count (1)
121 while the criminal case is pending, or (2) when the criminal case is
122 disposed unless and until all counts are entitled to erasure in
123 accordance with the provisions of this section. Nothing in this section
124 shall require the erasure of any information contained in the registry of
125 protective orders established pursuant to section 51-5c.

126 (h) For the purposes of this section, "court records" [shall] does not
127 include a record or transcript of the proceedings made or prepared by
128 an official court reporter, assistant court reporter or monitor.

129 Sec. 2. Subsection (m) of section 54-56d of the general statutes is
130 repealed and the following is substituted in lieu thereof (*Effective*
131 *October 1, 2007*):

132 (m) If at any time the court determines that there is not a substantial
133 probability that the defendant will attain competency within the
134 period of treatment allowed by this section, or if at the end of such
135 period the court finds that the defendant is still not competent, the
136 court shall either release the defendant from custody or order the
137 defendant placed in the custody of the Commissioner of Mental Health
138 and Addiction Services, the Commissioner of Children and Families or
139 the Commissioner of Mental Retardation. The commissioner given
140 custody, or the commissioner's designee, shall then apply for civil
141 commitment according to sections 17a-75 to 17a-83, inclusive, 17a-270
142 to 17a-282, inclusive, and 17a-495 to 17a-528, inclusive. The court shall
143 hear arguments as to whether the defendant should be released or

144 should be placed in the custody of the Commissioner of Mental Health
145 and Addiction Services, the Commissioner of Children and Families or
146 the Commissioner of Mental Retardation. If the court orders the release
147 of a defendant charged with the commission of a crime that resulted in
148 the death or serious physical injury, as defined in section 53a-3, of
149 another person, or orders the placement of such defendant in the
150 custody of the Commissioner of Mental Health and Addiction
151 Services, the court may, on its own motion or on motion of the
152 prosecuting authority, order, as a condition of such release or
153 placement, periodic examinations of the defendant as to the
154 defendant's competency. Such an examination shall be conducted in
155 accordance with subsection (d) of this section. Upon receipt of the
156 written report as provided in subsection (d) of this section, the court
157 shall, upon the request of either party filed not later than thirty days
158 after the court receives such report, conduct a hearing as provided in
159 subsection (e) of this section. Such hearing shall be held not later than
160 ninety days after the court receives such report. If the court finds that
161 the defendant has attained competency, the defendant shall be
162 returned to the custody of the Commissioner of Correction or released,
163 if the defendant has met the conditions for release, and the court shall
164 continue with the criminal proceedings. Periodic examinations ordered
165 by the court under this subsection shall continue until the court finds
166 that the defendant has attained competency or until the time within
167 which the defendant may be prosecuted for the crime with which the
168 defendant is charged, as provided in section 54-193 or 54-193a, has
169 expired, whichever occurs first. The court shall dismiss, with or
170 without prejudice, any charges for which a nolle prosequi is not
171 entered when the time within which the defendant may be prosecuted
172 for the crime with which the defendant is charged, as provided in
173 section 54-193 or 54-193a, has expired. Notwithstanding the erasure
174 provisions of section 54-142a, as amended by this act, police and court
175 records, [and] records of any state's attorney and records of the
176 Department of Correction pertaining to a charge which is nolleed or
177 dismissed without prejudice while the defendant is not competent

178 shall not be erased until the time for the prosecution of the defendant
179 expires under section 54-193 or 54-193a. A defendant who is not civilly
180 committed as a result of an application made by the Commissioner of
181 Mental Health and Addiction Services, the Commissioner of Children
182 and Families or the Commissioner of Mental Retardation pursuant to
183 this section shall be released. A defendant who is civilly committed
184 pursuant to such an application shall be treated in the same manner as
185 any other civilly committed person.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2007</i>	54-142a
Sec. 2	<i>October 1, 2007</i>	54-56d(m)

Statement of Purpose:

To provide that records of the Department of Correction shall be erased, in the same manner as police, court and state's attorney records are erased, after a person is found not guilty of a charge or a charge is dismissed, or thirteen months after a nolle, and to make such erasure applicable to final judgments, final determinations and nolles entered prior to, on or after October 1, 2007.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]