



Senate

General Assembly

File No. 668

January Session, 2011

Senate Bill No. 1228

Senate, April 28, 2011

The Committee on Judiciary reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

AN ACT CONCERNING THE ERASURE OF CRIMINAL CHARGES THAT HAVE BEEN NOLLED OR DISMISSED OR FOR WHICH THE DEFENDANT HAS BEEN FOUND NOT GUILTY.

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 Section 54-142a of the general statutes is repealed and the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, 2011*):

3 (a) Whenever in any criminal case, on or after October 1, 1969, the
4 accused, by a final judgment, is found not guilty of the charge or the
5 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 Nothing in this subsection shall require the erasure of any record
11 pertaining to a charge for which the defendant was found not guilty by
12 reason of mental disease or defect or guilty but not criminally
13 responsible by reason of mental disease or defect.

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

32 (c) (1) Whenever any charge in a criminal case has been nolle in the
33 Superior Court, or in the Court of Common Pleas, if at least thirteen
34 months have elapsed since such nolle, all police and court records and
35 records of the state's or prosecuting attorney or the prosecuting grand
36 juror pertaining to such charge shall be erased, except that in cases of
37 nolles entered in the Superior Court, Court of Common Pleas, Circuit
38 Court, municipal court or by a justice of the peace prior to April 1,
39 1972, such records shall be deemed erased by operation of law and the
40 clerk or the person charged with the retention and control of such
41 records shall not disclose to anyone their existence or any information
42 pertaining to any charge so erased, provided nothing in this subsection
43 shall prohibit the arrested person or any one of his heirs from filing a
44 petition to the court or to the records center of the Judicial Department,
45 as the case may be, to have such records erased, in which case such
46 records shall be erased.

47 (2) Whenever any charge in a criminal case has been continued at

48 the request of the prosecuting attorney, and a period of thirteen
49 months has elapsed since the granting of such continuance during
50 which period there has been no prosecution or other disposition of the
51 matter, the charge shall be construed to have been nolleed as of the date
52 of termination of such thirteen-month period and such erasure may
53 thereafter be effected or a petition filed therefor, as the case may be, as
54 provided in this subsection for nolleed cases.

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

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

69 (e) (1) The clerk of the court or any person charged with retention
70 and control of such records in the records center of the Judicial
71 Department or any law enforcement agency having information
72 contained in such erased records shall not disclose to anyone, except
73 the subject of the record, upon submission pursuant to guidelines
74 prescribed by the Office of the Chief Court Administrator of
75 satisfactory proof of the subject's identity, information pertaining to
76 any charge erased under any provision of this section and such clerk or
77 person charged with the retention and control of such records shall
78 forward a notice of such erasure to any law enforcement agency to
79 which he knows information concerning the arrest has been
80 disseminated and such disseminated information shall be erased from

81 the records of such law enforcement agency. Such clerk or such person,
82 as the case may be, shall provide adequate security measures to
83 safeguard against unauthorized access to or dissemination of such
84 records or upon the request of the accused cause the actual physical
85 destruction of such records, except that such clerk or such person shall
86 not cause the actual physical destruction of such records until three
87 years have elapsed from the date of the final disposition of the criminal
88 case to which such records pertain.

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

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

95 (f) Upon motion properly brought, the court or a judge thereof, if
96 such court is not in session, may order disclosure of such records (1) to
97 a defendant in an action for false arrest arising out of the proceedings
98 so erased, or (2) to the prosecuting attorney and defense counsel in
99 connection with any perjury charges which the prosecutor alleges may
100 have arisen from the testimony elicited during the trial. Such
101 disclosure of such records is subject also to any records destruction
102 program pursuant to which the records may have been destroyed. The
103 jury charge in connection with erased offenses may be ordered by the
104 judge for use by the judiciary, provided the names of the accused and
105 the witnesses are omitted therefrom.

106 (g) The provisions of this section shall not apply to any police or
107 court records or the records of any state's attorney or prosecuting
108 attorney with respect to any information or indictment containing
109 more than one count [(1)] while the criminal case is pending. [, or (2)
110 when the criminal case is disposed of unless and until all counts are
111 entitled to erasure in accordance with the provisions of this section,
112 except that when] When the criminal case is disposed of, electronic
113 records or portions of electronic records released to the public that

114 reference a charge that would otherwise be entitled to erasure under
115 this section shall be erased in accordance with the provisions of this
116 section. Nothing in this section shall require the erasure of any
117 information contained in the registry of protective orders established
118 pursuant to section 51-5c. For the purposes of this subsection,
119 "electronic record" means any police or court record or the record of
120 any state's attorney or prosecuting attorney that is an electronic record,
121 as defined in section 1-267, or a computer printout.

122 (h) For the purposes of this section, "court records" shall not include
123 a record or transcript of the proceedings made or prepared by an
124 official court reporter, assistant court reporter or monitor.

This act shall take effect as follows and shall amend the following sections:		
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Section 1	<i>October 1, 2011</i>	54-142a
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JUD *Joint Favorable*

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 12 \$	FY 13 \$
Judicial Dept.	GF - Cost	267,750	357,000
Criminal Justice, Div.	GF - Cost	150,000	200,000
Comptroller Misc. Accounts (Fringe Benefits) ¹	GF - Cost	99,200	132,300

Note: GF=General Fund

Municipal Impact:

Municipalities	Effect	FY 12 \$	FY 13 \$
Municipal Police Departments	Cost	Potential	Potential

Explanation

The bill expands criminal records that must be erased. Specifically, it requires that records be erased upon a dismissal, nolle or not guilty verdict with respect to a criminal count that is one of multiple criminal counts. It is estimated that tens of thousands of digital and paper records would need to be erased over a two year period under the bill.

The Judicial Department would require an additional six deputy clerk positions at a cost of \$357,000 and the Division of Criminal Justice would require an additional four investigator positions at a cost of \$200,000 in order to comply with the provisions of the bill. This would include resources to modify certain information technology systems (e.g., Offender-Based Tracking System; Criminal Motor Vehicle System) and to modify paper records, dating back to October 1, 1969,

¹ The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated non-pension fringe benefit cost associated with personnel changes is 23.76% of payroll in FY 12 and FY 13. In addition, there could be an impact to potential liability for the applicable state pension funds.

of the Judicial Department and Division of Criminal Justice.

The Department of Public Safety (DPS) Division of State Police would be able to accommodate the in-house reprogramming of the DPS records retention program with existing staff at no additional cost.

A potential cost exists to various municipal police departments that may require additional Records Office staff assistance in order to comply with the bill.

The Out Years

There is no fiscal impact in the out years.

Sources: Department of Administrative Services website

OLR Bill Analysis**SB 1228*****AN ACT CONCERNING THE ERASURE OF CRIMINAL CHARGES THAT HAVE BEEN NOLLED OR DISMISSED OR FOR WHICH THE DEFENDANT HAS BEEN FOUND NOT GUILTY.*****SUMMARY:**

By law, courts, police, and prosecutors must erase the records of a criminal defendant when (1) he or she is found not guilty of the charge or the charge is dismissed; (2) at least 13 months have elapsed since any charge has been nolle; or (3) he or she received an absolute pardon.

Under current law, this erasure requirement does not apply to completed cases where defendants have multiple charges (counts) in a single information or indictment (charging document) and all charges are not entitled to erasure, except for electronic records or portions of electronic records released to the public that reference a charge entitled to erasure. This bill requires the erasure of all records (paper or electronic) in such completed cases pertaining to charges that are entitled to erasure, not just electronic records released to the public.

By law, records in pending cases (involving one or multiple counts) cannot be erased.

EFFECTIVE DATE: October 1, 2011

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 45 Nay 0 (04/15/2011)