



House of Representatives

File No. 919

General Assembly

January Session, 2015

(Reprint of File Nos. 676 and 760)

Substitute House Bill No. 6750
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
May 30, 2015

**AN ACT CONCERNING THE DISCLOSURE OF ARREST RECORDS
DURING A PENDING PROSECUTION UNDER THE FREEDOM OF
INFORMATION ACT.**

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

1 Section 1. Section 1-215 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2015*):

3 (a) For the purposes of this section, "record of the arrest" means (1)
4 the name, race and address of the person arrested, the date, time and
5 place of the arrest and the offense for which the person was arrested,
6 and (2) in addition, in a case in which (A) the arrest has been by
7 warrant, the arrest warrant application, including any affidavit in
8 support of such warrant, or (B) the arrest has been made without a
9 warrant, the official arrest, incident or similar report, provided if a
10 judicial authority has ordered any such affidavit or report sealed from
11 public inspection or disclosure, in whole or in part, the portion of the
12 affidavit or report that has not been sealed, if applicable, as well as a
13 report setting forth a summary of the circumstances that led to the
14 arrest of the person in a manner that does not violate such order.

15 "Record of the arrest" does not include any record of arrest of a
16 juvenile, a record erased pursuant to chapter 961a or any investigative
17 file of a law enforcement agency compiled in connection with the
18 investigation of a crime resulting in an arrest.

19 [(a)] (b) Notwithstanding any provision of the general statutes, [to
20 the contrary,] and except as otherwise provided in this section, any
21 record of the arrest of any person [, other than a juvenile, except a
22 record erased pursuant to chapter 961a,] shall be a public record from
23 the time of such arrest and shall be disclosed in accordance with the
24 provisions of section 1-212 and subsection (a) of section 1-210. [, except
25 that disclosure of data or information other than that set forth in
26 subdivision (1) of subsection (b) of this section shall be subject to the
27 provisions of subdivision (3) of subsection (b) of section 1-210.] No law
28 enforcement agency shall redact any record of the arrest of any person,
29 except for (1) the identity of witnesses, (2) specific information about
30 the commission of a crime, the disclosure of which the law
31 enforcement agency reasonably believes may prejudice a pending
32 prosecution or a prospective law enforcement action, or (3) any
33 information that a judicial authority has ordered to be sealed from
34 public inspection or disclosure. Any personal possessions or effects
35 found on a person at the time of such person's arrest shall not be
36 disclosed unless such possessions or effects are relevant to the crime
37 for which such person was arrested.

38 [(b) For the purposes of this section, "record of the arrest" means (1)
39 the name and address of the person arrested, the date, time and place
40 of the arrest and the offense for which the person was arrested, and (2)
41 at least one of the following, designated by the law enforcement
42 agency: The arrest report, incident report, news release or other similar
43 report of the arrest of a person.]

44 (c) In addition, any other public record of a law enforcement agency
45 that documents or depicts the arrest or custody of a person during the
46 period in which the prosecution of such person is pending shall be
47 disclosed in accordance with the provisions of subsection (a) of section

48 1-210 and section 1-212, unless such record is subject to any applicable
49 exemption from disclosure contained in any provision of the general
50 statutes.

51 (d) Any law enforcement agency receiving a request for a record
52 described in subsection (c) of this section shall promptly provide
53 written notice of such request to the office of the state's attorney for the
54 appropriate judicial district where the arrest occurred. The state's
55 attorney for such district shall be afforded the opportunity to intervene
56 in any proceeding before the Freedom of Information Commission
57 concerning such request.

58 (e) The provisions of this section shall only be applicable to any
59 record described in this section during the period in which a
60 prosecution is pending against the person who is the subject of such
61 record. At all other times, the applicable provisions of the Freedom of
62 Information Act concerning the disclosure of such record shall govern.

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|---|-----------------|-------|
| This act shall take effect as follows and shall amend the following sections: | | |
| Section 1 | October 1, 2015 | 1-215 |

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: None

Municipal Impact: None

Explanation

The bill modifies the treatment of certain records under the Freedom of Information Act and has no fiscal impact.

House "A" strikes the underlying bill and associated fiscal impact resulting in the fiscal impact identified above.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sHB 6750 (as amended by House "A")******AN ACT CONCERNING THE REQUIREMENT FOR DISCLOSURE OF ARREST RECORDS UNDER THE FREEDOM OF INFORMATION ACT.*****SUMMARY:**

This bill modifies law enforcement agencies' disclosure obligations under the Freedom of Information Act (FOIA) for records relating to a person's arrest. By law, when a person is arrested, a law enforcement agency must disclose the "record of the arrest" under FOIA unless it pertains to the arrest of a juvenile or has been erased in accordance with the law. Under current law, the "record of the arrest" consists of (1) the arrestee's name and address; the date, time, and place of the arrest; and the offense for which the person was arrested (i.e., "blotter information") and (2) at least one additional report designated by the agency. The additional report may be the arrest report, incident report, news release, or other similar report of the arrest.

The bill modifies both components of the record of the arrest. It (1) requires that the "blotter information" also include the arrestee's race and (2) eliminates the requirement to disclose the one additional report and instead requires the law enforcement agency to disclose certain other records describing the arrest. Under the bill, the agency must disclose the (1) arrest warrant application and supporting affidavits, if the arrest was made by warrant, or (2) official arrest, incident, or similar report, if the arrest was made without a warrant. If a judicial authority orders the affidavits or report sealed, in whole or in part, then the agency must disclose (1) the unsealed portion, if applicable, and (2) a report summarizing the circumstances that led to the arrest, without violating the judicial authority's order. The bill specifies that

the “record of the arrest” does not include any investigative files a law enforcement agency compiles in connection with investigating a crime that results in an arrest.

The bill prohibits law enforcement agencies from redacting the record of the arrest except for (1) witnesses’ identities; (2) specific information about the commission of a crime, if the agency reasonably believes it may prejudice a pending prosecution or a prospective law enforcement action; or (3) information ordered sealed by a judicial authority. Under current law, the law enforcement agency may redact information from the additional report (but not the blotter information) in accordance with FOIA's eight law enforcement records exemptions (see BACKGROUND).

The bill also requires that, during the period in which a person’s prosecution is pending, law enforcement agencies disclose under FOIA any public record that documents or depicts a person’s arrest or custody, unless there is an applicable statutory exemption from disclosure. A law enforcement agency that receives a FOIA request for such a record must notify the state’s attorney for the judicial district where the arrest occurred. The bill allows the state’s attorney to intervene in any proceeding before the Freedom of Information Commission concerning the requested record.

Lastly, the bill specifies that it applies only when a prosecution is pending against the person who is the subject of the record (see BACKGROUND). At all other times, the applicable provisions of FOIA govern disclosure of the record (i.e., the record must be disclosed unless there is a statutory exemption from disclosure). It also makes technical changes.

*House Amendment “A” replaces the previous file (File 760), which required law enforcement agencies to disclose the arrest warrant application or a report summarizing the arrest, as appropriate.

EFFECTIVE DATE: October 1, 2015.

BACKGROUND

Law Enforcement Records Exemption

FOIA exempts law enforcement records from disclosure if they were compiled in connection with the detection or investigation of crime and disclosure would not be in the public interest because it would reveal:

1. the identity of informants or witnesses not otherwise known whose safety would be endangered or who would be subject to threat or intimidation if their identity was made known;
2. the identity of witnesses who are minors;
3. witnesses' signed statements;
4. information to be used in a prospective law enforcement action if prejudicial to the action;
5. investigatory techniques not otherwise known to the general public;
6. juvenile arrest records, including any associated investigatory files;
7. the name and address of the victim of (a) sexual assault or (b) risk of injury to a minor, or of an attempt thereof; or
8. uncorroborated allegations subject to destruction (CGS § 1-210(b)(3)).

Pending Prosecution

In *Commissioner of Public Safety v. Freedom of Information Commission*, 312 Conn. 513 (2014), the Connecticut Supreme Court held that, during a pending prosecution, only the "record of the arrest" (see above) is subject to disclosure by law enforcement agencies under FOIA.

Legislative History

The House referred the bill (File 676) to the Judiciary Committee,

which reported a substitute that replaced the original file. The original file required that other records pertaining to a person's arrest (beyond the "record of the arrest") be disclosed under FOIA, regardless of any pending prosecution, unless they are exempt from disclosure under one of FOIA's law enforcement records exemptions.

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 10 Nay 5 (03/30/2015)

Judiciary Committee

Joint Favorable Substitute

Yea 39 Nay 0 (04/27/2015)