



House of Representatives

General Assembly

File No. 533

February Session, 2016

Substitute House Bill No. 5527

House of Representatives, April 7, 2016

The Committee on Judiciary reported through REP. TONG of the 147th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING CRIMES COMMITTED WHILE ON PRETRIAL RELEASE.

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

1 Section 1. Subsection (f) of section 54-142a of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective*
3 *October 1, 2016*):

4 (f) Upon motion properly brought, the court or a judge thereof, if
5 such court is not in session, [may] shall order disclosure of such
6 records (1) to a defendant in an action for false arrest arising out of the
7 proceedings so erased, [or] (2) to the prosecuting attorney, [and
8 defense counsel] defendant and court in connection with any perjury
9 or false statement charges which the prosecutor alleges may have
10 arisen from the testimony elicited [during the trial] from a defendant
11 or witness in court, or (3) to the prosecuting attorney, defendant and
12 court in connection with the prosecution of a person for committing a
13 crime while on release or for violating the conditions of release in a
14 case that was subsequently nolleed or dismissed. Such disclosure of

15 such records is subject also to any records destruction program
 16 pursuant to which the records may have been destroyed. The jury
 17 charge in connection with erased offenses may be ordered by the judge
 18 for use by the judiciary, provided the names of the accused and the
 19 witnesses are omitted therefrom.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2016	54-142a(f)

Statement of Legislative Commissioners:

In Section 1(f)(3), "for the prosecution" was changed to "in connection with the prosecution" for consistency with existing statute.

JUD *Joint Favorable Subst. -LCO*

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, which expands the circumstances when courts disclose erased criminal records, does not result in a fiscal impact to the state or municipalities.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sHB 5527****AN ACT CONCERNING CRIMES COMMITTED WHILE ON PRETRIAL RELEASE.****SUMMARY:**

This bill expands the circumstances when courts must disclose erased criminal records.

The bill requires the court to disclose erased records to a prosecutor, defendant, and court when they are related to a person's prosecution for (1) committing a crime while on release (see *Related Case*) or (2) violating a condition of release, in a case that was subsequently dismissed or nolle (a prosecutor's official action declining to prosecute a charge).

It requires, rather than allows, the court to disclose erased records to a defendant in an action for false arrest arising out of the erased proceeding.

Currently, the court can disclose erased records to a prosecutor and defense counsel when they are connected to a perjury charge the prosecutor alleges to have arisen from testimony at trial. The bill (1) expands this provision to also cover false statement charges; (2) requires the court to order disclosure; (3) provides disclosure to the defendant, instead of defense counsel, and the court, in addition to the prosecutor as currently required; and (4) allows the charge to be based on a defendant's or witness' testimony in court at any time, and not just at trial.

EFFECTIVE DATE: October 1, 2016

BACKGROUND***Erased Records***

The law requires erasing police, prosecutorial, and court records when a person:

1. is found not guilty or has his or her charges dismissed and the period to file an appeal expires or an appeal upholds the determination;
2. has a charge nolle and 13 months pass;
3. makes a motion for a nolle, if the charge was continued at the prosecutor's request and there has been no prosecution or disposition for 13 months; or
4. receives a pardon.

The person charged is deemed to have never been arrested for the erased charges.

The erasure provisions do not apply to an information or indictment with more than one count while the case is pending or until all counts are entitled to erasure. But after the case is disposed of, electronic records or portions of them containing a charge entitled to erasure must be erased (CGS § 54-142a).

Related Case

In *State v. Apt*, the Connecticut Supreme Court considered the case of a defendant who was arrested for committing a crime, released on bond, and later arrested and convicted of another crime. On the later crime, the state sought to enhance the defendant's sentence because the later crime was committed while the defendant was released on bond for the original charge (see CGS § 53a-40b). Before the hearing on the sentence enhancement, the original charge on which he was released on bond was dismissed and the records of it erased.

The court ruled that the state could not use the erased records to prove that the defendant was on release when he committed the later crime and therefore eligible for the sentence enhancement. But the court also ruled that the state could seek to prove eligibility for the

sentence enhancement using other evidence (319 Conn. 494 (2015)).

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 32 Nay 8 (03/21/2016)