



Senate

General Assembly

File No. 635

February Session, 2016

Substitute Senate Bill No. 454

Senate, April 14, 2016

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

AN ACT CONCERNING AUTOMATIC ERASURE OF CRIMINAL RECORDS AND BAIL FOR PERSONS CHARGED WITH MISDEMEANOR DRUG POSSESSION.

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 Section 54-142a of the general statutes is repealed and the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, 2016*):

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, or the charge is dropped prior to arraignment or
6 the accused is released without being charged due to a false arrest on
7 account of mistaken identity, all police and court records and records
8 of any state's attorney pertaining to such charge shall be automatically
9 erased (1) immediately upon the dismissal of the charge, upon the
10 charge being dropped prior to arraignment or if the accused is released
11 without being charged due to a false arrest on account of mistaken
12 identity, (2) upon the expiration of the time to file a writ of error or
13 take an appeal, if an appeal is not taken, or (3) upon final

14 determination of the appeal sustaining a finding of not guilty or a
15 dismissal, if an appeal is taken, as applicable. Nothing in this
16 subsection shall require the erasure of any record pertaining to a
17 charge for which the defendant was found not guilty by reason of
18 mental disease or defect or guilty but not criminally responsible by
19 reason of mental disease or defect.

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

38 (c) (1) Whenever any charge in a criminal case has been nolle in the
39 Superior Court, or in the Court of Common Pleas, if at least thirteen
40 months have elapsed since such nolle, all police and court records and
41 records of the state's or prosecuting attorney or the prosecuting grand
42 juror pertaining to such charge shall be automatically erased, except
43 that in cases of nolle entered in the Superior Court, Court of Common
44 Pleas, Circuit Court, municipal court or by a justice of the peace prior
45 to April 1, 1972, such records shall be deemed erased by operation of
46 law and the clerk or the person charged with the retention and control
47 of such records shall not disclose to anyone their existence or any

48 information pertaining to any charge so erased, provided nothing in
49 this subsection shall prohibit the arrested person or any one of his
50 heirs from filing a petition to the court or to the records center of the
51 Judicial Department, as the case may be, to have such records erased,
52 in which case such records shall be erased.

53 (2) Whenever any charge in a criminal case has been continued at
54 the request of the prosecuting attorney, and a period of thirteen
55 months has elapsed since the granting of such continuance during
56 which period there has been no prosecution or other disposition of the
57 matter, the charge shall be nolle upon motion of the arrested person
58 and [such erasure may thereafter be effected or a petition filed
59 therefor, as the case may be, as provided in this subsection for nolle
60 cases] all police and court records and records of any state's attorney
61 pertaining to such charge shall be automatically erased.

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

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

76 (e) (1) The clerk of the court or any person charged with retention
77 and control of such records in the records center of the Judicial
78 Department or any law enforcement agency having information
79 contained in such erased records shall (A) not later than sixty days
80 after such records are erased, notify the subject of the erased records of

81 such erasure and, if such erasure was due to the subject's false arrest or
82 dismissal of charges due to a lack of a finding of probable cause, such
83 person charged with retention and control of such records shall
84 destroy any records of fingerprints, photographs or physical
85 description of the subject of the records or similar records created at
86 the time of such arrest, and (B) not disclose to anyone, except the
87 subject of the record, upon submission pursuant to guidelines
88 prescribed by the Office of the Chief Court Administrator of
89 satisfactory proof of the subject's identity, information pertaining to
90 any charge erased under any provision of this section. [and such] Such
91 clerk or person charged with the retention and control of such records
92 shall forward a notice of such erasure to any [law enforcement agency]
93 state or federal agency or any municipality to which he knows
94 information concerning the arrest has been disseminated and [such
95 disseminated information shall be erased from the records of such law
96 enforcement agency] any such state agency or municipality shall
97 immediately erase such records. Such clerk or such person, as the case
98 may be, shall provide adequate security measures to safeguard against
99 unauthorized access to or dissemination of such records or upon the
100 request of the accused cause the actual physical destruction of such
101 records, except that such clerk or such person shall not cause the actual
102 physical destruction of such records until three years have elapsed
103 from the date of the final disposition of the criminal case to which such
104 records pertain.

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

107 (3) Any person who shall have been the subject of such an erasure
108 shall be deemed to have never been arrested within the meaning of the
109 general statutes with respect to the proceedings so erased and may so
110 swear under oath or otherwise deny the occurrence of such arrest for
111 any purpose, including, but not limited to, an application for
112 employment or for a firearm or ammunition permit or certificate
113 pursuant to title 29 or for the lawful purchase of a firearm or
114 ammunition.

115 (f) Upon motion properly brought, the court or a judge thereof, if
116 such court is not in session, may order disclosure of such records (1) to
117 a defendant in an action for false arrest arising out of the proceedings
118 so erased, or (2) to the prosecuting attorney and defense counsel in
119 connection with any perjury charges which the prosecutor alleges may
120 have arisen from the testimony elicited during the trial. Such
121 disclosure of such records is subject also to any records destruction
122 program pursuant to which the records may have been destroyed. The
123 jury charge in connection with erased offenses may be ordered by the
124 judge for use by the judiciary, provided the names of the accused and
125 the witnesses are omitted therefrom.

126 (g) The provisions of this section shall not apply to any police or
127 court records or the records of any state's attorney or prosecuting
128 attorney with respect to any information or indictment containing
129 more than one count (1) while the criminal case is pending, or (2) when
130 the criminal case is disposed of unless and until all counts are entitled
131 to erasure in accordance with the provisions of this section, except that
132 when the criminal case is disposed of, electronic records or portions of
133 electronic records released to the public that reference a charge that
134 would otherwise be entitled to erasure under this section shall be
135 erased in accordance with the provisions of this section. Nothing in
136 this section shall require the erasure of any information contained in
137 the registry of protective orders established pursuant to section 51-5c.
138 For the purposes of this subsection, "electronic record" means any
139 police or court record or the record of any state's attorney or
140 prosecuting attorney that is an electronic record, as defined in section
141 1-267, or a computer printout.

142 (h) Any records taken at the time of arrest that include a DNA
143 (deoxyribonucleic acid) sample or any DNA profile created from such
144 sample that are subject to erasure pursuant to this section, shall be
145 destroyed and expunged and purged from any system in accordance
146 with the provisions of section 54-102l.

147 (i) The Court Support Services Division of the Judicial Branch shall

148 maintain a listing of any persons convicted of a misdemeanor violation
149 of section 21a-279. If any such person has no other arrests during the
150 five-year period following such a conviction and is not known to have
151 illegally sold or possessed controlled substances during said period,
152 the records of such conviction shall be erased and the person charged
153 with retention and control of such records in the records center of the
154 Judicial Department or any law enforcement agency having
155 information contained in such erased records shall notify the person
156 who is the subject of such records of such erasure.

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

160 Sec. 2. Subsection (a) of section 54-64a of the general statutes is
161 repealed and the following is substituted in lieu thereof (*Effective*
162 *October 1, 2016*):

163 (a) (1) Except as provided in subdivision (3) of this subsection and
164 subsection (b) of this section, when any arrested person is presented
165 before the Superior Court, said court shall, in bailable offenses,
166 promptly order the release of such person upon the first of the
167 following conditions of release found sufficient to reasonably ensure
168 the appearance of the arrested person in court: (A) Upon his execution
169 of a written promise to appear without special conditions, (B) upon his
170 execution of a written promise to appear with nonfinancial conditions,
171 (C) upon his execution of a bond without surety in no greater amount
172 than necessary, (D) upon his execution of a bond with surety in no
173 greater amount than necessary. In addition to or in conjunction with
174 any of the conditions enumerated in subparagraphs (A) to (D),
175 inclusive, of this subdivision the court may, when it has reason to
176 believe that the person is drug-dependent and where necessary,
177 reasonable and appropriate, order the person to submit to a urinalysis
178 drug test and to participate in a program of periodic drug testing and
179 treatment. The results of any such drug test shall not be admissible in
180 any criminal proceeding concerning such person.

181 (2) The court may, in determining what conditions of release will
 182 reasonably ensure the appearance of the arrested person in court,
 183 consider the following factors: (A) The nature and circumstances of the
 184 offense, (B) such person's record of previous convictions, (C) such
 185 person's past record of appearance in court after being admitted to
 186 bail, (D) such person's family ties, (E) such person's employment
 187 record, (F) such person's financial resources, character and mental
 188 condition, and (G) such person's community ties.

189 (3) The court shall release a person charged with no crime other
 190 than a misdemeanor violation of section 21a-279 upon such person's
 191 execution of a written promise to appear without special conditions, or
 192 upon such person's execution of a written promise to appear with
 193 nonfinancial conditions.

| | | |
|---|-----------------|-----------|
| This act shall take effect as follows and shall amend the following sections: | | |
| Section 1 | October 1, 2016 | 54-142a |
| Sec. 2 | October 1, 2016 | 54-64a(a) |

Statement of Legislative Commissioners:

In Section 1(a)(1), changes were made for internal consistency, in Section 1(c)(2), "if such motion is granted," was deleted for accuracy and in Section 1(i), "used illegal drugs" was replaced with "illegally sold or possessed controlled substances" for consistency with the general statutes.

JUD *Joint Favorable Subst.*

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 17 \$ | FY 18 \$ |
|-----------------|-------------|----------|----------|
| Judicial Dept. | GF - Cost | 14,300 | 10,000 |

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill, which requires notice of erased records to the subject of record, would result in a cost of approximately \$10,000 (\$7,500 for 9 months in FY 17) for mailing notifications and a one-time cost of \$6,800 to require a computer program consultant to reprogram the system.

The bill requires the court to release individuals charged with misdemeanor violations of statutes pertaining to possession of drugs with only a promise to appear. There are currently 27 offenders incarcerated before their trial due to unpaid bail. To the extent that future offenders would not be incarcerated pretrial, a savings would result to the Department of Correction. On average, it costs the state \$61,320 (including benefits) to incarcerate an offender.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sSB 454*****AN ACT CONCERNING AUTOMATIC ERASURE OF CRIMINAL RECORDS AND BAIL FOR PERSONS CHARGED WITH MISDEMEANOR DRUG POSSESSION.*****SUMMARY:**

This bill requires erasing records of a person's misdemeanor drug possession conviction if during the five years since the conviction, the person (1) has no other arrests and (2) is not known to have illegally sold or possessed controlled substances (the bill does not specify any procedures or amount of evidence required to show the person sold or possessed drugs). The Judicial Branch's Court Support Services Division must keep a list of all people convicted of these crimes for this purpose. Judicial Branch records personnel and law enforcement agencies with erased records must notify the subject of the records of their erasure.

The bill makes a number of other changes to criminal record erasure provisions including:

1. requiring record erasure when a charge is dropped before arraignment or a person is released without being charged due to mistaken identity;
2. specifying that someone whose arrest record is erased can deny the arrest's occurrence on applications for employment, firearm or ammunition permits or certificates, and purchasing a firearm or ammunition; and
3. various procedural changes.

Finally, the bill requires the court to release someone charged only with misdemeanor drug possession on a written promise to appear,

either without special conditions or with nonfinancial conditions, while awaiting trial on the charge. Currently, the court must release such a person after imposing one of these options or requiring a bond with or without surety, whichever is sufficient to reasonably ensure the person's appearance in court.

EFFECTIVE DATE: October 1, 2016

ERASED RECORDS

Dismissed Charges

Current law requires erasing police, prosecutorial, and court records of a dismissed charge when the period to file an appeal expires or an appeal upholds the determination. The bill allows record erasure immediately upon dismissal if there is no applicable appeals period.

Dropped Charges and Mistaken Identity

The bill requires record erasure if a charge is dropped before arraignment or the accused is released without being charged due to a false arrest because of mistaken identity (1) immediately or (2) if there is an applicable appeals period, when the period to file an appeal expires or an appeal upholds the determination.

Nolle

The law allows a person to make a motion for and the court to grant a nolle (an official indication that a prosecutor declines to prosecute a case) if a prosecutor requested a continuance of the case and there has been no prosecution or disposition for 13 months. Current law erases the records of the charge either when the nolle is granted or after another petition. The bill requires automatically erasing the records when the court grants the nolle request.

Notice and Record Destruction

The bill requires court clerks, Judicial Branch records personnel, and law enforcement agencies to:

1. provide notice of the erasure to the subject of the erased records within 60 days of erasure and

2. destroy records of the subject's fingerprints, photographs, physical description, and similar records created at the time of arrest if erasure is because of false arrest or a dismissal because of a lack of probable cause for the charge.

The bill expands the agencies that clerks and Judicial Branch records personnel must notify of record erasure. Currently, they must notify law enforcement agencies known to have records about a case that is the subject of the erased records. The bill requires notification to any state, municipal, and federal agencies known to have these records. As under current law, notified agencies must erase their records of the case.

Effect of Erasure

By law, a person whose records are erased is deemed to have never been arrested for the charge and can swear to it under oath. The bill additionally allows the person to deny the arrest's occurrence for any purpose including on applications for (1) employment, (2) a firearm or ammunition permit or certificate, or (3) the purchase of a firearm or ammunition.

DNA Records

The bill specifies that arrest records subject to erasure that include a DNA sample or DNA profile derived from one must be destroyed, expunged, and purged from any system under the law that governs expunging DNA profiles from the DNA databank. By law:

1. a DNA profile is expunged when the (a) criminal conviction or finding of not guilty by reason of mental disease or defect that led to collecting the DNA is reversed and the case dismissed or (b) charge that led to taking the DNA on arrest is dismissed or nolle or the person is acquitted and
2. the Department of Emergency Services and Public Protection purges records and identifiable information and destroys DNA samples when it receives a court order (a) reversing and dismissing the conviction or finding of not guilty by reason of

mental disease or defect or (b) dismissing, nolling, or acquitting the person of the charge (CGS § 54-102l).

BACKGROUND

Misdemeanor Drug Possession Crimes (CGS § 21a-279)

By law, since October 1, 2015, possessing half an ounce or more of marijuana or any amount of another illegal drug is a class A misdemeanor (punishable by up to a year in prison, a fine of up to \$2,000, or both), but the court can:

1. suspend prosecution for a second offense if the person is drug dependent and order substance abuse treatment and
2. sentence a third-time or subsequent offender as a persistent controlled substance possession offender, which is punishable by a class E felony prison sentence (up to three years in prison).

Prior to October 1, 2015, most drug possession crimes were felonies. The only drug possession crime punishable as a misdemeanor was a first offense of possessing (1) between .5 and four ounces of marijuana or (2) any amount of a controlled substance other than a narcotic or hallucinogen.

Related Bills

sHB 5527, File 533, expands the circumstances when courts must disclose erased criminal records.

sSB 18, favorably reported by the Judiciary Committee, among other provisions, (1) requires a court that orders a bond with surety for certain defendants to give them the option to instead deposit cash bail; (2) prohibits the court from requiring a defendant to post a bond with surety if he or she is charged only with a misdemeanor, unless he or she is charged with a family violence crime or 2nd degree failure to appear or he or she poses a risk to another person's safety if released; and (3) requires arrestees to receive a notice about the process of release after an arrest.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 30 Nay 12 (03/28/2016)