



Senate

General Assembly

File No. 832

January Session, 2019

Substitute Senate Bill No. 691

Senate, April 29, 2019

The Committee on Judiciary reported through SEN. WINFIELD of the 10th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING ERASURE OF CERTAIN MISDEMEANOR CRIMINAL RECORDS AND EXPEDITED PARDONS REVIEW FOR CERTAIN FELONY OFFENSES.

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 Section 54-142a of the general statutes is repealed and the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, 2019*):

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 nolle upon motion of the arrested person
52 and such erasure may thereafter be effected or a petition filed therefor,
53 as the case may be, as provided in this subsection for nolle cases.

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

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

68 (e) (1) For any individual who has ever been convicted of a
69 misdemeanor in any court of this state, except any misdemeanor that is
70 a family violence crime, as defined in section 46b-38a, or that is a
71 nonviolent sexual offense or a sexually violent offense, each as defined
72 in section 54-250:

73 (A) Such individual's criminal history record information, as
74 defined in subsection (a) of section 54-142g, concerning such
75 misdemeanor conviction or convictions shall be erased by operation of
76 law three years following the completion of any sentence imposed as a
77 result of such individual's most recent conviction for a misdemeanor
78 or felony offense;

79 (B) Notice of the erasure shall immediately be sent to all persons,

80 agencies, officials or institutions known to have information pertaining
81 to the criminal history record information. Reasonable efforts shall be
82 made to send notice of the erasure to the individual whose records
83 have been erased not later than thirty calendar days after such erasure;

84 (C) If an individual has been convicted of an offense in any court in
85 this state and such offense has been decriminalized subsequent to the
86 date of such conviction, such conviction shall not be considered when
87 evaluating such individual's criminal history record information for
88 the purposes of this subsection; and

89 (D) Erasure under this subsection shall not occur in the case of any
90 individual who has pending charges or an open criminal case in any
91 jurisdiction.

92 (2) Nothing in this subsection shall limit any other procedure for
93 erasure of criminal history record information or prohibit an
94 individual from participating in any such procedure, even if such
95 individual's criminal history record information has been erased under
96 this subsection.

97 (3) No fee shall be charged with respect to any erasure under this
98 subsection.

99 [(e)] (f) (1) The clerk of the court or any person charged with
100 retention and control of such records in the records center of the
101 Judicial Department or any law enforcement agency having
102 information contained in such erased records shall not disclose to
103 anyone, except the subject of the record, upon submission pursuant to
104 guidelines prescribed by the Office of the Chief Court Administrator of
105 satisfactory proof of the subject's identity, information pertaining to
106 any charge erased under any provision of this section and such clerk or
107 person charged with the retention and control of such records shall
108 forward a notice of such erasure to any law enforcement agency to
109 which he knows information concerning the arrest has been
110 disseminated and such disseminated information shall be erased from
111 the records of such law enforcement agency. Such clerk or such person,

112 as the case may be, shall provide adequate security measures to
113 safeguard against unauthorized access to or dissemination of such
114 records or upon the request of the accused cause the actual physical
115 destruction of such records, except that such clerk or such person shall
116 not cause the actual physical destruction of such records until three
117 years have elapsed from the date of the final disposition of the criminal
118 case to which such records pertain.

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

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

125 [(f)] (g) Upon motion properly brought, the court or a judge of such
126 court, if such court is not in session, shall order disclosure of such
127 records (1) to a defendant in an action for false arrest arising out of the
128 proceedings so erased, or (2) to the prosecuting attorney and defense
129 counsel in connection with any perjury charges which the prosecutor
130 alleges may have arisen from the testimony elicited during the trial, or
131 any false statement charges, or any proceeding held pursuant to
132 section 53a-40b, or (3) counsel for the petitioner and the respondent in
133 connection with any habeas corpus or other collateral civil action in
134 which evidence pertaining to a nolle or dismissed criminal charge
135 may become relevant. Such disclosure of such records is subject also to
136 any records destruction program pursuant to which the records may
137 have been destroyed. The jury charge in connection with erased
138 offenses may be ordered by the judge for use by the judiciary,
139 provided the names of the accused and the witnesses are omitted
140 therefrom.

141 [(g)] (h) The provisions of this section shall not apply to any police
142 or court records or the records of any state's attorney or prosecuting
143 attorney with respect to any information or indictment containing
144 more than one count (1) while the criminal case is pending, or (2) when

145 the criminal case is disposed of unless and until all counts are entitled
146 to erasure in accordance with the provisions of this section, except that
147 when the criminal case is disposed of, electronic records or portions of
148 electronic records released to the public that reference a charge that
149 would otherwise be entitled to erasure under this section shall be
150 erased in accordance with the provisions of this section. Nothing in
151 this section shall require the erasure of any information contained in
152 the registry of protective orders established pursuant to section 51-5c.
153 For the purposes of this subsection, "electronic record" means any
154 police or court record or the record of any state's attorney or
155 prosecuting attorney that is an electronic record, as defined in section
156 1-267, or a computer printout.

157 [(h)] (i) 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. Section 54-142d of the general statutes is repealed and the
161 following is substituted in lieu thereof (*Effective October 1, 2019*):

162 Whenever any person has been convicted of an offense in any court
163 in this state and such offense has been decriminalized subsequent to
164 the date of such conviction [, such person may file a petition with the
165 superior court at the location in which such conviction was effected, or
166 with the superior court at the location having custody of the records of
167 such conviction or with the records center of the Judicial Department if
168 such conviction was in the Court of Common Pleas, Circuit Court,
169 municipal court or by a trial justice, for an order of erasure, and] the
170 Superior Court or records center of the Judicial Department shall
171 immediately direct all police and court records and records of the
172 state's or prosecuting attorney pertaining to such case to be physically
173 destroyed.

174 Sec. 3. Section 54-142e of the general statutes is repealed and the
175 following is substituted in lieu thereof (*Effective October 1, 2019*):

176 (a) Notwithstanding the provisions of subsection [(e)] (f) of section

177 54-142a, as amended by this act, and section 54-142c, with respect to
178 any person, including, but not limited to, a consumer reporting agency
179 as defined in subsection (i) of section 31-51i, that purchases criminal
180 matters of public record, as defined in said subsection (i), from the
181 Judicial Department, the department shall make available to such
182 person information concerning such criminal matters of public record
183 that have been erased pursuant to section 54-142a, as amended by this
184 act. Such information may include docket numbers or other
185 information that permits the person to identify and permanently delete
186 records that have been erased pursuant to section 54-142a, as amended
187 by this act.

188 (b) Each person, including, but not limited to, a consumer reporting
189 agency or a background screening provider or similar data-based
190 service or company, that has purchased records of criminal matters of
191 public record from the Judicial Department shall, prior to disclosing
192 such records, (1) purchase from the Judicial Department, on a monthly
193 basis, [or on such other schedule as the Judicial Department may
194 establish,] any updated criminal matters of public record or
195 information available for the purpose of complying with this section
196 and section 54-142a, as amended by this act, and (2) update its records
197 of criminal matters of public record to permanently delete such erased
198 records not later than thirty calendar days after receipt of information
199 on the erasure of criminal records pursuant to section 54-142a, as
200 amended by this act. Such person shall not further disclose such erased
201 records.

202 Sec. 4. Subsection (d) of section 54-142k of the general statutes is
203 repealed and the following is substituted in lieu thereof (*Effective*
204 *October 1, 2019*):

205 (d) Nonconviction information shall be available to the subject of
206 the information and to the subject's attorney pursuant to this
207 subsection and subsection (e) of this section. Any person shall, upon
208 satisfactory proof of the person's identity, be entitled to inspect, for
209 purposes of verification and correction, any nonconviction information

210 relating to the person and upon the person's request shall be given a
211 computer printout or photocopy of such information for which a
212 reasonable fee may be charged, provided no erased record may be
213 released except as provided in subsection [(f)] (g) of section 54-142a, as
214 amended by this act. Before releasing any exact reproductions of
215 nonconviction information to the subject of the information, the agency
216 holding such information may remove all personal identifying
217 information from such reproductions.

218 Sec. 5. Subsection (a) of section 54-142s of the general statutes is
219 repealed and the following is substituted in lieu thereof (*Effective*
220 *October 1, 2019*):

221 (a) The Criminal Justice Information System Governing Board shall
222 design and implement a comprehensive, state-wide information
223 technology system to facilitate the immediate, seamless and
224 comprehensive sharing and erasure of information between all state
225 agencies, departments, boards and commissions having any
226 cognizance over matters relating to law enforcement and criminal
227 justice, and organized local police departments and law enforcement
228 officials.

229 Sec. 6. Subsection (j) of section 54-124a of the general statutes is
230 repealed and the following is substituted in lieu thereof (*Effective*
231 *October 1, 2019*):

232 (j) The chairperson, in consultation with the executive director, shall
233 adopt regulations, in accordance with chapter 54, concerning:

234 (1) Parole revocation and rescission hearings that include
235 implementing due process requirements;

236 (2) An expedited pardons review that allows an applicant convicted
237 of a crime that is a C, D or E felony offense, except a family violence
238 crime, as defined in section 46b-38a, or a nonviolent sexual offense or
239 sexually violent offense, each as defined in section 54-250, to be
240 granted a pardon with respect to such crime without a hearing, based

241 on the presumption that the pardon shall be granted, unless the board
 242 requires a hearing in order to further evaluate whether the pardon
 243 should be granted or a victim of such crime requests such a hearing, [if
 244 such applicant was convicted of a nonviolent crime] in which cases, as
 245 part of such hearing process, the burden of proving that the person is
 246 not eligible for a pardon shall be upon the state;

247 (3) Requiring board members to issue written statements containing
 248 the reasons for rejecting any application for a pardon.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2019	54-142a
Sec. 2	October 1, 2019	54-142d
Sec. 3	October 1, 2019	54-142e
Sec. 4	October 1, 2019	54-142k(d)
Sec. 5	October 1, 2019	54-142s(a)
Sec. 6	October 1, 2019	54-124a(j)

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 20 \$	FY 21 \$
Judicial Dept.	GF - Cost	2.3 million	1.9 million
Criminal Justice, Div.	GF - Cost	680,000	956,000
State Comptroller - Fringe Benefits ¹	GF - Cost	1.2 million	1.2 million

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill requires automatic erasure of criminal records for specified misdemeanors and decriminalized offenses and results in a cost of \$3.3 million in FY 20 and \$2.8 million in FY 21 to the Judicial Department (JUD) and Office of the State Comptroller (OSC) for salary and fringe benefits and \$1 million in FY 20 and \$1.4 million in FY 21 to the Division of Criminal Justice (DCJ) and OSC.

There are currently over 1 million past convictions (approximately 350,000 defendants) that would meet provisions of the bill for erasure. In addition, there are over 400,000 current/pending convictions (approximately 130,000 defendants) that will require monitoring and erasure annually.

It is anticipated that both JUD and DCJ will require additional staff to carry out the provisions of the bill. As the bill requires automatic

¹The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 41.19% of payroll in FY 20 and FY 21.

erasure upon sentence completion, the estimated cost assumes all past criminal conviction erasure will be completed within 12 months of bill's effective date.

JUD will require approximately 30 temporary positions to comply with past convictions and both JUD and DCJ will require an additional 20 positions (one for each courthouse location) for ongoing erasure.

In addition, JUD will require monitoring of all current/pending cases by five court planners to ensure, when specific conditions are met, staff at JUD and DCJ are notified for erasure.

The Out Years

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

OLR Bill Analysis**sSB 691*****AN ACT CONCERNING ERASURE OF CRIMINAL RECORDS.*****SUMMARY**

This bill establishes a process to automatically erase (1) certain misdemeanor criminal records and (2) convictions for decriminalized offenses. The bill excludes individuals who have pending charges or an open criminal case in any jurisdiction.

Under the bill, misdemeanor criminal convictions must be automatically erased from an individual's criminal history record at no cost three years after the individual completed his or most recent sentence for a misdemeanor or felony conviction. (Presumably, the bill requires misdemeanor records be immediately erased upon passage if more than three years have elapsed since the most recent completed sentence.) Notice of the erasure must immediately be sent to all persons, agencies, officials, or institutions known to have information about the person's criminal history record and reasonable efforts must be made to send notice of the erasure to the individual within 30 days after the erasure. (The bill does not specify who is responsible for providing the notice.) Misdemeanors that are family violence crimes, nonviolent sexual offenses, or sexually violent offenses are not eligible for automatic erasure.

Existing law, unchanged by the bill, requires a misdemeanor criminal record to be erased if the individual applies for and receives an absolute pardon from the Board of Pardons and Parole (BOPP).

For decriminalized offenses, the bill requires the court or judicial department records center, depending on the conviction, to immediately direct the physical destruction of the police, court, and prosecutor's records of the case. Currently, a person who has a

conviction on his or her criminal record for an offense that has since been decriminalized must petition the court or judicial department records center, depending on the conviction, for an order of erasure.

The bill also modifies the:

1. requirements for the expedited pardon process for which BOPP must adopt regulations under current law and
2. actions that consumer reporting agencies and other entities that purchase public records of criminal matters from the judicial department must take before disclosing the records.

Lastly, existing law requires the criminal justice information system governing board to design and implement a system to facilitate information sharing between various entities with cognizance over law enforcement and criminal justice and local police departments and law enforcement officials. The bill additionally requires the system to facilitate information erasure between these entities.

EFFECTIVE DATE: October 1, 2019

EXPEDITED PARDON PROCESS

Current law requires the BOPP chairperson, in consultation with the executive director, to adopt regulations for an expedited pardons review process that allows an applicant convicted of a non-violent crime to be granted a pardon without a hearing. The bill instead requires the regulations to create an expedited pardon review process for applicants convicted of certain class C, D, or E felonies to get a pardon without hearing, based on the presumption that the pardon should be granted.

Currently, the expedited process may not be used if a victim requests a hearing. Under the bill, the process may also not be used if the board requires a hearing to further evaluate whether the pardon should be granted, in which case the state has the burden of proving that the person is ineligible for an expedited pardon. The bill also

specifies that a person is ineligible for such a pardon if the offense was a family violence crime, a nonviolent sexual offense, or a sexually violent offense.

DISCLOSING RECORDS

The bill modifies the actions that persons that purchased public criminal records from the judicial department must take before disclosing the records. It also specifies that “persons” for these purposes includes background screening providers and similar data-based services or companies, in addition to consumer reporting agencies as under current law.

Currently, before disclosing the records, the person must purchase any updated criminal matters of public record or information available to comply with the law, either on a monthly basis or on another schedule the judicial department may establish. The bill eliminates the option for an alternate schedule. Current law also requires the person to update its records to permanently delete any erased records. The bill requires this be completed within 30 days after receiving information on automatically erased records. As under current law, the person may not further disclose erased records.

It also specifies that “persons” for these purposes includes background screening providers and similar data-based services or companies, in addition to consumer reporting agencies as under current law.

BACKGROUND

Family Violence Crime

By law, “family violence crime” means a crime, other than a delinquent act, that involves an act of family violence to a family or household member. It does not include acts by parents or guardians disciplining minor children unless such acts constitute abuse. (By law, “family violence” is, among other things, physical harm or the threat of violence between family or household members, excluding verbal abuse unless there is present danger and likelihood of physical

violence). (CGS § 46b-38a).

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 21 Nay 19 (04/09/2019)