
OLR Bill Analysis

sSB 1093 (File 593, as amended by Senate "A")*

AN ACT CONCERNING CIVILIAN POLICE REVIEW BOARDS, SECURITY GUARDS, BODY-WORN RECORDING EQUIPMENT AND SEARCHES BY POLICE.

SUMMARY

This bill makes various changes to the laws regarding (1) police procedures, (2) juvenile criminal matters, (3) security guards, and (4) criminal record erasure under sSB 1019. Specifically, the bill:

1. provides a process for a person to object to a civilian police review board's subpoena and allows the court to order compliance with a board's subpoena;
2. allows a police officer whose image or voice is captured on certain recordings (e.g., body camera) to review the recordings before they are disclosed in certain instances where there is a request for public disclosure;
3. allows a trier of fact (e.g., judge or jury) to draw an unfavorable inference from the deliberate failure of a police officer who wears a body camera to record their use of force or other relevant incidents in civil cases involving depriving someone's equal protection or privileges and immunities;
4. prohibits former police officers who were decertified in other states from being licensed as security guards and other related jobs;
5. prohibits law enforcement from using no-knock warrants;
6. expands the reasons a police officer's certification may be canceled or revoked by specifying that undermining public confidence in law enforcement includes issuing unlawful orders;

7. establishes the crime of “enticing a juvenile to commit a criminal act”; and
8. requires the judicial branch to conduct a study to determine the feasibility of (a) decreasing the time between a child’s arrest and initial court appearance and (b) establishing a diversionary program for certain children who are arrested.

The bill also expands the list of convictions ineligible for erasure under sSB 1019 to include (1) specified class D felonies and class A misdemeanors, such as several assault crimes, and (2) any offense for which the person has not completed serving the sentence, including probation or parole. (sSB 1019, as amended by Senate “A” and passed by the Senate, establishes a new process for erasure of certain criminal records.)

Under certain circumstances, the bill also requires prosecutors, before the court accepts a plea agreement, to notify the victim whether the defendant’s conviction may be eligible for erasure under sSB 1019.

*Senate Amendment “A” eliminates the underlying bill’s provision on motor vehicle consent searches and identification (§ 7) and adds the provisions on (1) crimes ineligible for erasure under sSB 1019, (2) police certification revocation or suspension, (3) enticing a juvenile to commit a criminal act, (4) judicial branch feasibility study, and (5) crime victim notification.

EFFECTIVE DATE: October 1, 2021, except that a conforming change is effective July 1, 2022, and the provisions on (1) the judicial branch study are effective upon passage; (2) crimes ineligible for erasure and victim notification are effective January 1, 2023; and (3) unfavorable inferences for failure to record for (a) use of force is effective July 1, 2021, and (b) civil cases is effective January 1, 2022.

§ 1 — CIVILIAN POLICE REVIEW BOARD SUBPOENAS

The bill provides a process for a person to object to a subpoena issued by a civilian police review board and allows the court to order compliance with a board’s subpoena.

It allows the person issued such a subpoena to, within specified timeframes, (1) serve the board with a written objection to the subpoena and (2) file the objection in the Superior Court, which must adjudicate the objection under court rules. A person who wishes to object must do so within 15 days after the subpoena was served or on or before the time the subpoena specifies for compliance, if the time is less than 15 days after service.

Under the bill, if the person issued a subpoena fails to appear or refuses to testify or produce the evidence the subpoena requires after appearing, the Superior Court, upon the board's application, may order the person to appear, give testimony, or produce the evidence, as the case may be.

§§ 2, 3, 9 & 10 — BODY-WORN AND DASHBOARD CAMERA REVIEW AND UNFAVORABLE INFERENCE IF CAMERA IS OFF

Right to Review (§§ 2 & 3)

Under existing law, police officers have a right to review recordings, with their labor representative or attorney present, when they are (1) giving a formal statement about the use of force or (2) the subject of a disciplinary investigation where a body-worn recording equipment (e.g., body camera) or dashboard camera recording is part of the review. In these instances, the recordings are disclosable to the public, upon request, by the earlier of (1) 48 hours after an officer has reviewed it or (2) 96 hours after the recorded incident if the officer does not review the recording. The bill changes the latter to 96 hours after the initiation of a disciplinary investigation, thus potentially increasing the timeframe before public disclosure.

The bill also extends this right to review to instances when a police officer's image or voice is captured on a recording for which a public disclosure request has been made and (1) the officer has not been asked to give a formal statement or (2) a disciplinary investigation has not been initiated. The bill requires public disclosure by the earlier of (1) 48 hours after an officer has reviewed the recording or (2) 96 hours after the disclosure request, if the officer does not review it.

As under existing law, certain scenarios are, generally, not disclosable, including the following:

1. communications with other law enforcement personnel, unless within the performance of duties;
2. encounters with undercover officers or informants;
3. officers on break or engaged in personal activity;
4. people undergoing medical or psychological evaluations, procedures, or treatment;
5. people, other than suspects, in a hospital or medical facility;
6. activities in mental health facilities, unless responding to a call involving a suspect in the facilities; or
7. certain crime victims if it would be an invasion of personal privacy (e.g., domestic or sexual abuse).

Unfavorable Inference (§§ 9 & 10)

Use of Force. Under the bill, beginning January 1, 2022, in determining whether the use of force by a police officer who wears a body camera (see BACKGROUND) is justified, the trier of fact (e.g., judge or jury) may draw an unfavorable inference from a police officer's deliberate failure, in violation of the police body camera law, to record the use of physical force.

Governmental Immunity. PA 20-1, July Special Session (JSS), § 41, established a civil cause of action, beginning July 1, 2021, against a police officer who deprives an individual or class of individuals of state law's equal protection or privileges and immunities. In creating a cause of action against police officers in statute, the act, in certain circumstances, eliminates the possibility of claiming governmental immunity (i.e., common law protection from civil suit) as a defense to these suits.

Under the bill, in these civil actions, the trier of fact may draw an

adverse inference from a police officer's deliberate failure, in violation of the police body camera law, to record any event that is relevant to the action.

§§ 4 & 5 — DECERTIFIED POLICE OFFICERS IN OTHER STATES SERVING AS SECURITY GUARDS

The bill adds decertification as a police officer in other states, including cancelation, revocation, or refusal to renew a certification, to the list of criteria that make a person ineligible for (1) a security service license, (2) a security officer license, and (3) employment with a security service to perform security officer duties while his or her security officer license application is pending. Existing law already makes police officers decertified in Connecticut ineligible.

§ 6 — CONSENT SEARCHES ON THE PERSON

Under current law, an individual's consent to conduct a search of his or her body is not justification for a law enforcement official to conduct the search, unless there is probable cause. The bill instead allows a law enforcement officer to ask a person if he or she may conduct a search of their person, if the officer has reasonable and articulable suspicion that (1) weapons, contraband, or other evidence of a crime is contained on the person or (2) the search is reasonably necessary to further an ongoing law enforcement investigation.

Under the bill, officers who ask to search a person, whether or not the consent is granted, must complete a police report documenting the reasonable and articulable suspicion for soliciting consent or the facts and circumstances that support the search being reasonably necessary to further an ongoing law enforcement investigation.

§ 8 — NO-KNOCK WARRANTS PROHIBITED

The bill prohibits police officers of a regularly organized police department, state police officers, Division of Criminal Justice inspectors, conservation officers, special conservation officers or patrolpersons, or sworn motor vehicle inspectors from seeking, executing, or participating in the execution of a no-knock warrant. The bill requires that search warrants require an officer to provide notice of

the officer’s identity, authority, and purpose before entering the place to be searched under the search warrant.

The bill requires the executing officer, before searching or seizing anything, to read and give a copy of the search warrant to the person to be searched or the owner of the place to be searched or, if the owner is not present, to any occupant of the place to be searched. If the place is unoccupied, the officer must leave a copy of the search warrant suitably affixed to the place being searched.

Under the bill, a “no-knock warrant” means a warrant allowing police officers to enter certain premises without first knocking and announcing their presence or purpose before entering the property.

§ 501 — CONVICTION ERASURE INELIGIBILITY

Under sSB 1019, eligible (1) misdemeanors are subject to erasure seven years after the person’s most recent conviction and (2) felonies are subject to erasure 10 years after the most recent conviction. The periods are calculated from the date the court entered the person’s most recent conviction for any crime (with an exception for certain drug possession crimes).

Under sSB 1019, these erasure provisions generally apply to (1) classified or unclassified misdemeanors; (2) class D or E felonies; or (3) unclassified felonies with up to five-year prison terms. However, sSB 1019 excludes (1) family violence crimes and (2) nonviolent or violent sexual offenses requiring sex offender registration.

This bill makes the following additional crimes ineligible for this erasure, as shown in Table 1 below.

Table 1: Bill’s Additions to List of Criminal Convictions Ineligible for sSB 1019’s Erasure Process

<p>The following Class D Felonies:</p> <ul style="list-style-type: none">• Assault 2nd degree with a firearm (not resulting in serious physical injury; other cases are class C felonies) (CGS § 53a-60a)
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- Assault of an elderly, blind, disabled, or pregnant person or person with intellectual disability 2nd degree, with or without a firearm (CGS §§ 53a-60b & -60c)
- Strangulation or suffocation 2nd degree (CGS § 53a-64bb)
- Sexual assault 3rd degree (victim age 16 or older; other cases are class C felonies) (CGS § 53a-72a)
- Enticing a minor (1st offense, victim age 13 or older; other cases are class B or C felonies) (CGS § 53a-90a)
- Burglary 3rd degree with a firearm (CGS § 53a-103a)
- Stalking 1st degree (CGS § 53a-181c)
- Voyeurism (cases not covered by the sexual offender registration law; 2nd offenses and certain other cases are class C felonies) (CGS § 53a-189(a)(1))
- Incest (CGS § 53a-191)
- Obscenity as to minors (CGS § 53a-196)
- Possession of child pornography 3rd degree (CGS § 53a-196f)
- Possession of sawed-off shotgun or silencer (CGS § 53a-211)
- Criminal use of firearm or electronic defense weapon (CGS § 53a-216)
- Criminally negligent storage of a firearm (CGS § 53a-217a)
- Abuse of an elderly, blind, or disabled person or person with intellectual disability 2nd degree (CGS § 53a-322)
- Failure to register as a sexual offender when required (CGS §§ 54-251 to -254)

The following Class A Misdemeanors:

- Assault of an elderly, blind, disabled, or pregnant person or person with intellectual disability 3rd degree (CGS § 53a-61a)
- Strangulation or suffocation 3rd degree (CGS § 53a-64cc)
- Abuse of an elderly, blind, or disabled person or person with intellectual disability 3rd degree (CGS § 53a-323)

Any offense for which the defendant has not served or completed serving the sentence, including any period of incarceration, special parole, parole, or probation, until the required seven- or 10-year period has elapsed and the defendant has completed the sentence.

§ 502 — CANCELLATION OR REVOCATION OF CERTIFICATION

Existing law sets various grounds upon which the Police Officer Standard Training Council (POST) may cancel or revoke a police officer's certification, including for undermining public confidence in law enforcement. The bill expands these grounds by specifying that undermining public confidence includes issuing orders that are not lawful.

For this provision, a lawful order is an order that is (1) issued by a police officer who is in uniform or has identified him or herself as an officer to the person the order is issued to at the time the order is issued and (2) reasonably related to fulfilling the officer's duties and does not violate any state or federal law. The order must only be issued to (1) prevent, detect, investigate or stop a crime; (2) protect a person or property from harm; (3) apprehend a suspect of a crime; (4) enforce a law; (5) regulate traffic; or (6) assist in emergency relief, including administering first aid.

As under existing law, the law enforcement unit, under its procedures, must have found that the officer engaged in this conduct before cancelling or revoking an officer's certification.

As with other actions for undermining public confidence, POST

must (1) give the officer notice and an adequate opportunity for a hearing and (2) make a finding of the improper conduct by clear and convincing evidence.

§ 503 — ENTICING A JUVENILE TO COMMIT A CRIMINAL ACT

The bill establishes the crime of “enticing a juvenile to commit a criminal act” and makes (1) a first violation a class A misdemeanor, which is punishable by up to one year imprisonment, up to a \$2,000 fine, or both, and (2) subsequent offenses a class D felony, which is punishable by up to a \$5,000 fine, up to five years in prison, or both.

Under the bill, a person is guilty of this crime if he or she is at least age 23 and knowingly causes, encourages, solicits, recruits, intimidates, or coerces a person under age 18 to commit or participate in the commission of a criminal act.

The bill defines a “criminal act” as conduct constituting a felony or a misdemeanor but does not include recruiting a member of a criminal gang.

§ 504 — FEASIBILITY STUDY ON REDUCING CHILD RECIDIVISM

The bill requires the judicial branch to conduct a study to determine the feasibility of:

1. decreasing the time between a child’s arrest and initial court appearance, in order to increase the likelihood the child will attend the appearance and reduce the likelihood of the child's recidivism, and
2. establishing a diversionary program for arrested children, where the participants must report to a judge, juvenile probation officer, or licensed clinical social worker, on a weekly basis from arrest until the matter’s adjudication, to reduce the likelihood of recidivism.

The bill requires the judicial branch to report its findings to the Judiciary and Children committees by January 1, 2022.

§ 505 — VICTIM NOTIFICATION

By law, before the court accepts a proposed plea agreement, prosecutors must provide crime victims with written terms of the plea agreement upon request, except in juvenile matters or youthful offender cases.

Under the bill, if the proposed agreement would include a definite or total effective prison term of more than two years, the prosecutor must indicate to the victim whether the defendant's conviction may be eligible for automatic erasure under sSB 1019.

For these purposes, a "victim" includes a crime victim, his or her legal representative, a member of a deceased victim's immediate family, or a person the deceased victim designated to make certain decisions on his or her behalf.

BACKGROUND

Body Camera Requirement

Current law generally requires police officers to use body cameras while interacting with the public in their law enforcement capacity if they are sworn members of (1) the State Police, (2) a municipal police department that has received reimbursement for body camera purchases under the state's grant program, or (3) a public university or college special police force. Current law allows sworn members of all other municipal police departments to use body cameras as directed by their departments and in accordance with state law. Beginning July 1, 2022, all sworn members of law enforcement units and members of those units who perform police duties must wear body cameras, among other requirements (PA 20-1, JSS, § 19).

Related Bills

sSB 1019 (File 613, § 3), as amended by Senate "A" and passed by the Senate, establishes a process to erase records of certain criminal convictions after a specified period following the person's most recent conviction.

sHB 6669 (File 600), favorably reported by the Judiciary Committee,

has a similar provision establishing the crime of “enticing a juvenile to commit a criminal act.”

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 32 Nay 6 (04/06/2021)