
OLR Bill Analysis

sHB 6918

AN ACT CONCERNING ERASURE OF CRIMINAL HISTORY RECORDS.

SUMMARY

Existing law has a process to erase records of most misdemeanor convictions and certain felony convictions after a specified period following the person's most recent conviction. (The process is not yet fully operational.)

This bill makes various changes to this law, such as:

1. specifying that for purposes of erasure eligibility for a particular offense, its classification or maximum sentence is determined based on the law in effect when the offense was committed (§ 1);
2. specifying that motor vehicle violations are generally covered by the law in the same way as misdemeanors or felonies; and
3. prohibiting record erasure under these provisions while someone has any pending criminal charges and, in most cases, while the person is on parole, transitional supervision, or probation.

The bill makes other changes affecting criminal record erasure under these procedures and in some other circumstances (e.g., following a dismissal, not guilty finding, or pardon). For example, it:

1. allows for lawsuits against data reporting companies who fail to remove erased records from their disclosures after the attorney general orders them to do so;
2. establishes certain liability protections for actions taken based on erased records, if the actions were taken in good faith reliance on

the erased information; and

3. starting in 2024, allows for claims against the state or state agencies, under certain conditions, for failure to erase records as required.

It also makes technical and conforming changes.

EFFECTIVE DATE: July 1, 2023, except upon passage for provisions (1) specifying that the bill is the controlling law for purposes of determining erasure eligibility, (2) requiring the Department of Emergency Services and Public Protection (DESPP) to post a list of eligible crimes, and (3) addressing potential liability if the state fails to erase records or any party takes actions based on erased records.

CRIMINAL RECORD ERASURE AFTER SPECIFIED PERIOD POST-CONVICTION

Under this law, eligible convictions are generally subject to erasure seven years (for misdemeanors) or 10 years (for felonies) after the person's most recent conviction. Depending on the offense date, erasure occurs automatically or upon the person's petition (see BACKGROUND).

The bill makes various changes to this process, as described below.

Motor Vehicle Violations (§ 1)

The bill specifies that motor vehicle violations with maximum prison terms of up to five years are generally covered by the law's erasure provisions, in a comparable way to felonies and misdemeanors under the law. (Some motor vehicle violations include criminal penalties, but these violations are not always classified as felonies or misdemeanors.)

Under the bill, motor vehicle violations are subject to erasure after a period based on their maximum prison terms, as follows:

1. violations with up to one-year maximum prison terms are generally eligible for erasure seven years from the date the court entered the person's most recent conviction (i.e., the same as eligible misdemeanors); and

2. violations with over one-year and up to five-year maximum terms are subject to erasure 10 years from the date the court entered the person's most recent conviction (i.e., the same as eligible felonies).

By law, unchanged by the bill, these record erasure provisions do not require the Department of Motor Vehicles to erase criminal history record information from driving records.

Existing law has a separate process for the erasure of misdemeanor convictions for crimes committed between January 1, 2000, and July 1, 2012, by people under age 18 at the time of the offense (CGS § 54-142a(f)). The law, unchanged by the bill, excludes motor vehicle violations (and other Title 14 offenses) from these procedures.

Unclassified Felonies (§ 1)

Under current law, unclassified felonies with up to five-year prison terms are generally subject to the law's erasure provisions. The bill clarifies that the five-year limit is based on the maximum prison term of the crime, rather than the term imposed for a particular person.

Calculation of Eligibility Determination (§ 1)

In addition to the eligibility waiting period, convictions are not eligible for erasure under current law until the defendant has finished serving the sentence for any convictions (not just those subject to erasure). The bill generally retains and expands this requirement, prohibiting record erasure until the defendant meets the following conditions:

1. has completed serving any period of (a) incarceration; (b) standard, special, medical, or compassionate parole; or (c) transitional supervision associated with any sentence for the offense subject to erasure, and for any other in-state convictions since January 1, 2000;
2. has completed serving any period of probation for any in-state convictions since January 1, 2000; and

3. does not have any pending state criminal changes.

Convictions That Are Ineligible for Erasure

Classifications of Certain Currently Ineligible Crimes. Current law has a specific list of 20 class D felonies and three class A misdemeanors that are ineligible for record erasure. The bill makes convictions for these 23 crimes ineligible for erasure in all cases, not just when they are classified as class D felonies or class A misdemeanors, respectively.

In most respects, this change is technical, because these crimes are only punishable as class D felonies or class A misdemeanors, or in certain cases are higher-level felonies that are categorically ineligible for erasure. But in a few cases, these crimes were previously classified differently, and in a way that makes some older convictions that may be currently eligible for erasure ineligible under the bill. This includes the following crimes:

1. enticing a minor (before July 1, 2004, a first offense was a class A misdemeanor); and
2. obscenity as to minors (before October 1, 1985, this crime was a class A misdemeanor).

Additions to List of Ineligible Crimes. The bill makes five crimes that are currently eligible for erasure for certain older convictions instead ineligible in all cases. Although these crimes are currently ineligible for erasure (because they are class C or B felonies), they were previously classified in a way that makes some older convictions eligible for erasure under current law.

Table: Additions to List of Ineligible Crimes

Brief Description (Citation)	Classification
Selling or transferring a handgun in violation of required procedures, without a trigger lock (except at wholesale), or to someone prohibited by law from possessing it, or buying or obtaining a handgun without valid credentials (CGS § 29-33)	Currently: a class C felony (or in some cases, a class B felony), with a mandatory minimum Before October 1, 2013: a class D felony in most cases

Brief Description (Citation)	Classification
Possessing child pornography 1st degree (CGS § 53a-196d)	Currently: a class B felony, with a mandatory minimum Before October 1, 2004: a class D felony (there were not separate degrees of the crime at the time)
Stealing a firearm (CGS § 53a-212)	Currently: a class C felony, with a mandatory minimum Before October 1, 2013: a class D felony
Criminally possessing a firearm, ammunition, or an electronic defense weapon (CGS § 53a-217)	Currently: a class C felony, with a mandatory minimum Before October 1, 2013: a class D felony, with a mandatory minimum
Criminally possessing a handgun (CGS § 53a-217c)	Currently: a class C felony, with a mandatory minimum Before October 1, 2013: a class D felony

Family Violence Crimes. Under current law, all family violence crimes are ineligible for erasure under these provisions. The bill limits this ineligibility to convictions on or after January 1, 2000. This makes family violence crimes committed before then eligible for erasure, unless they would otherwise be ineligible (for example, class A, B, or C felonies).

Continued Obligations Despite Erasure (§ 1)

The bill specifies that these record erasure provisions do not end a defendant's obligation to register on the:

1. deadly weapon offender registry when applicable; or
2. sex offender registry, under provisions requiring registration for a (a) criminal offense against a victim who is a minor or (b) felony committed for a sexual purpose.

Crimes in the former category of sex offenses would rarely be eligible for erasure. (In certain cases, older convictions would be.) Certain crimes in the latter category may be eligible, depending on the classification. (This category does not list specific crimes, but gives the court discretion to impose registration for any felony the court finds was committed for a sexual purpose meeting certain criteria.)

By law, unchanged by the bill, sexually violent offenses and nonviolent sex offenses (which also require sex offender registration) are ineligible for erasure.

Additionally, the bill specifies that these record erasure provisions do not end a defendant's obligation to (1) comply with a standing criminal protective order or (2) pay any unremitted fine that the court imposed in its sentence.

Records Access for Legal Enforcement (§ 1)

The bill gives law enforcement, the court, and the state's attorney access to any record required to substantiate a defendant's conviction, for the following purposes:

1. to verify a defendant's obligation to register as a deadly weapon offender or sex offender under specified provisions, or to comply with a standing criminal protective order; and
2. to prosecute someone for failing to register as required or comply with the protective order.

This applies despite provisions under existing law and the bill that limit the disclosure of erased records.

Controlling Law (§ 5)

Existing law requires DESPP, in consultation with the judicial branch and the Criminal Justice Information System Governing Board, to develop and implement automated processes for criminal record erasure. The bill specifies the controlling law if (1) these automated processes have not marked a police, court, or prosecutor record as erased or (2) the person has not filed a petition seeking the record's erasure. In these situations, as of July 1, 2023, the controlling law is the relevant law as amended by the bill, rather than the law in effect on January 1, 2023. This applies to determining (1) whether a record is eligible for erasure and (2) the eligibility of defendants who must file a petition to erase their records.

DESPP Posting of Eligible Offenses (§ 6(b))

Current law requires DESPP, within available appropriations, to post information on its website or otherwise disseminate information about criminal records that are subject to erasure generally.

The bill instead requires the DESPP commissioner, by January 1, 2024, to post information on a DESPP-operated website about criminal records that are subject to erasure, including a list of statutes that are subject to erasure under the provisions described above. The commissioner must annually review the list and update it as necessary.

CRIMINAL RECORD ERASURE GENERALLY

Scope of Court Records Subject to Erasure (§§ 2 & 3)

The bill specifies that audio or video recordings of court proceedings are not defined as “court records” under the record erasure laws, and so are not subject to erasure.

It also specifies that the law does not require the erasure of the Superior Court’s published memoranda of decisions or any Appellate or Supreme Court records related to cases they considered.

Cases Containing Multiple Counts or Defendants (§ 2)

Under current law, if a case contains multiple charges, the records for any charges cannot be erased while the case is still pending. After the case is over, if only some records are entitled to erasure, electronic records released to the public must be erased to the extent they reference those charges. For these electronic records, the bill excludes from this erasure requirement any portion of a police record that is a narrative description, including this sort of description in an investigative report.

The bill also applies these same provisions to police records referencing more than one defendant. Therefore, it prohibits these records from being erased while the case is still pending. For cases that are completed, it prohibits these records from being erased until records for all relevant cases for all defendants are entitled to erasure, except for certain electronic records released to the public as described above.

Lawsuits Against Data Companies (§ 4)

By law, the judicial branch and other criminal justice agencies must make information on erased records available to people or companies that buy public criminal records, to allow them to identify and permanently delete these records. These provisions specifically apply to consumer reporting agencies, background screening providers, and similar data-based services or companies (“data company”). Before disclosing the records, the company must (1) purchase from the branch or agency any updated public criminal records or information available to comply with the law and (2) within 30 days after receiving notice that a record was erased, update its records to reflect that.

Under the bill, if a data company discloses an erased record after this 30-day period, the attorney general may send notice ordering them to remove the record from any such disclosure, no later than five business days following the order’s receipt. If the company does not comply with the order, the bill allows an action for damages under the Connecticut Unfair Trade Practices Act.

Liability for Acting Based on Erased Records (§ 6(d) & (f))

Starting on January 1, 2023, existing law prohibits discrimination in various contexts based on someone’s erased criminal history record information, such as in employment, public accommodations, the sale or rental of housing, the granting of credit, and state services and benefits.

The bill establishes certain liability protections for the state or any state agency, any municipality, or anyone else who took an action based on criminal history record information required to be erased or deemed erased by operation of law, despite the law’s anti-discrimination provisions.

Under the bill, there is no liability for taking these actions before January 1, 2024, if:

1. the action is taken in good faith reliance on the criminal history record information and
2. that information has not yet been marked as erased by the

required automated system, or, in the case of a municipality or other person, the erasure marking has not been communicated to them.

Starting in 2024, this same liability protection for good faith actions based on information not marked or communicated as erased applies only during the immediate 30-day window after the records should have been marked as erased.

State Liability for Failure to Erase Records (§ 6(e) & (g))

The bill protects the state and state agencies from claims for compensation or payment for failure to erase records as required by current law until January 1, 2024. After that date, the bill allows a person to bring a claim, under the following conditions:

1. the person's records have not been marked as erased by the automated system as required, or the erasure has not been communicated to a municipality or someone else;
2. the person notifies the DESPP commissioner at least 30 days after the erasure should have been made or communicated; and
3. the erasure still has not been made or communicated 90 days after the person notified DESPP.

BACKGROUND

Automatic or Petition Process for Criminal Record Erasure

PA 21-32, as amended by PA 21-33 and PA 22-26, established the process described above to erase records of most misdemeanor convictions and certain felony convictions after a specified period following the person's most recent conviction. The erasure generally applies to (1) related police, court, and prosecutor records (including those from any prosecuting grand jury) and (2) records held by the Board of Pardons and Paroles regarding court obligations arising from the conviction. Subject to various exclusions as described above, the law applies to misdemeanors; class D and E felonies; and unclassified felonies with up to five-year maximum prison terms.

Generally, the law provides for (1) automatic erasure for eligible offenses that occurred on or after January 1, 2000, or (2) erasure upon the person's filing of a petition for offenses occurring before then.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 31 Nay 5 (03/28/2023)