



STATE OF CONNECTICUT

SENTENCING COMMISSION

Testimony of Alex Tsarkov and Honorable Judge Robert Devlin before the Judiciary Committee on SB 691, An Act Concerning the Recommendations of the Connecticut Sentencing Commission with Respect to Misdemeanor Sentences

Senator Winfield, Representative Stafstrom, Senator Kissel, Representative Rebimbas, and members of the Judiciary Committee. For the record, my name is Alex Tsarkov and I am the Executive Director of the Connecticut Sentencing Commission. With me is Judge Robert Devlin Jr., a superior court judge and chair of the Sentencing Commission. We are here to testify in favor on SB 691, *An Act Concerning Erasure of Criminal Records*.

We would first like to give you some brief background about the Sentencing Commission. We are a permanent statutory commission created seven years ago, consisting of all the stakeholders in Connecticut's criminal justice system. Our membership includes four judges; the Chief State's Attorney; the Chief Public Defender; the Victim Advocate; the commissioners of Correction and Emergency Services and Public Protection; community activists interested in the criminal justice system; the chair of the Board of Pardons and Paroles; municipal police chiefs; the undersecretary of the Office of Policy and Management's Criminal Justice Policy and Planning Division; as well as others vitally engaged in the criminal justice system. Our work is informed by all the major stakeholders of the criminal justice system and aims to adhere to the best legal and evidence-based research and practices.

The Commission takes no position on the underlying bill, but would like to suggest JFS language not as a replacement for the current language of SB 691, but as an addition to it. Our proposed language attached to this testimony would ensure that most adult convictions for misdemeanor offenses committed by 16- and 17-year-olds prior to the effective dates of the Raise the Age legislation would automatically be erased by state entities. Prior to Raise the Age, 16- and 17-year-olds charged with offenses in Connecticut were treated as adults—their cases simply proceeded in adult court and they never appeared in juvenile court. Raise the Age legislation extended the jurisdiction of the juvenile court to include 16- and 17-year-olds. Following Raise the Age, which was fully implemented by 2012, children under the age of 18 charged with offenses begin their cases in juvenile court. Children charged with certain felony offenses may (or in some cases must) be transferred to adult court. However, those children under 18 charged with misdemeanor offense may not be transferred to the adult court (with the exception of motor vehicle cases, which proceed in adult court).

After much research, study, and deliberation, the General Assembly enacted this public policy regarding juvenile justice. The Commission's proposal – to erase the misdemeanor records of

those who were 16 or 17 years old at the time of their offense – is consistent with the provisions of Raise the Age. It is fair and just that the benefits of that legislation should be extended to those youths who committed their offense prior to that law’s passage.

The proposal provides for an automatic erasure for misdemeanor convictions that occurred on or after January 1, 1999 and before July 1, 2012. Representatives from the Judicial Branch working with the Commission have indicated that it would be extremely difficult if not impossible for them to accomplish erasure of misdemeanor convictions for offenses that occurred before January 1, 1999 because the Branch’s electronic database is not complete for pre-1999 offenses. For that reason, the proposal includes a petitioning process for people whose misdemeanor records relate to offenses that occurred prior to January 1, 1999. The Chief State’s Attorney, the Chief Public Defender, the Judicial Branch, community advocates and other stakeholders on the Sentencing Commission have reached consensus on this proposal and draft language.

We urge the Judiciary Committee to incorporate this proposal in the JFS language.

An Act Concerning Automatic Erasure of Certain Records

Section 1. Section 54-142a of the general statutes is repealed and the following is substituted in lieu thereof (Effective October 1, 2019):

(a) Whenever in any criminal case, on or after October 1, 1969, the accused, by a final judgment, is found not guilty of the charge or the charge is dismissed, all police and court records and records of any state's attorney pertaining to such charge shall be erased upon the expiration of the time to file a writ of error or take an appeal, if an appeal is not taken, or upon final determination of the appeal sustaining a finding of not guilty or a dismissal, if an appeal is taken. Nothing in this subsection shall require the erasure of any record pertaining to a charge for which the defendant was found not guilty by reason of mental disease or defect or guilty but not criminally responsible by reason of mental disease or defect.

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

(c) (1) Whenever any charge in a criminal case has been nolle in the Superior Court, or in the Court of Common Pleas, if at least thirteen months have elapsed since such nolle, all police and court records and records of the state's or prosecuting attorney or the prosecuting grand juror pertaining to such charge shall be erased, except that in cases of nolle entered in the Superior Court, Court of Common Pleas, Circuit Court, municipal court or by a justice of the peace prior to April 1, 1972, such records shall be deemed erased by operation of law and the clerk or the person charged with the retention and control of such records shall not disclose to anyone their existence or any information pertaining to any charge so erased, provided nothing in this subsection shall prohibit the arrested person or any one of his heirs from filing a petition to the court or to the records center of the Judicial Department, as the case may be, to have such records erased, in which case such records shall be erased.

(2) Whenever any charge in a criminal case has been continued at the request of the prosecuting attorney, and a period of thirteen months has elapsed since the granting of such continuance during which period there has been no prosecution or other disposition of the matter, the charge shall be nolle upon motion of the arrested person and such erasure may thereafter be effected or a petition filed therefor, as the case may be, as provided in this subsection for nolle cases.

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

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

(e) (1) Whenever a person was convicted of one or more misdemeanors committed while such person was under eighteen years of age, and the offense or offenses occurred on or after January 1, 1999 and before July 1, 2012, all police and court records and records of the state's or prosecuting attorney shall be deemed erased by operation of law. This subdivision shall not apply to a motor vehicle offense, a violation under title 14, or a violation of section 51-164r. The clerk of the court or any person charged with retention and control of such records in the records center of the Judicial Department or any law enforcement agency having information contained in such erased records shall not disclose to anyone, except the subject of the record, upon submission pursuant to guidelines prescribed by the Office of the Chief Court Administrator of satisfactory proof of the subject's identity, information pertaining to any charge erased under this subdivision and such clerk or person charged with the retention and control of such records shall forward a notice of such erasure to any law enforcement agency and the state's or prosecuting attorney to which he knows information concerning the arrest has been disseminated direct that all law enforcement and records of the state's or prosecuting attorney pertaining to such case to be erased.

(2) Whenever a person was convicted of one or more misdemeanors committed while such person was under eighteen years of age, and the offense or offenses occurred before January 1, 1999, such person may file a petition with the superior court at the location in which such conviction was effected for an

order of erasure, and the superior court shall direct all police and court records and records of the state's or prosecuting attorney pertaining to such case to be erased.

(3) Notwithstanding subsection (h) of this section, the provisions of this subsection shall not apply in cases in which there has been conviction of any charge for which erasure would not apply arising from the same information as the misdemeanor charge or charges.