DISSEMINATION AND MAINTENANCE OF CRIMINAL RECORDS

STATE OF CONNECTICUT
DIVISION OF CRIMINAL JUSTICE
OFFICE OF THE CHIEF STATE'S ATTORNEY

Richard J. Colangelo, Jr., Chief State's Attorney

Prepared By: **Timothy J. Sugrue**
Assistant State's Attorney
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I. THE FREEDOM OF INFORMATION ACT

The Freedom of Information Act (FOIA) is codified at **General Statutes § 1-200** through **241.** Only pertinent portions are discussed herein.

A. General Provisions

General Statutes § 1-200 provides in pertinent part that for purposes of the FOIA:

> (1) "Public agency" or "agency" means:
>
> (A) Any executive, administrative or legislative office of the state or any political subdivision of the state and any state or town agency, any department, institution, bureau, board, commission, authority or official of the state or of any city, town, borough, municipal corporation, school district, regional district or other district or other political subdivision of the state, including any committee of, or created by, any such office, subdivision, agency, department, institution, bureau, board, commission, authority or official, and also includes any judicial office, official, or body or committee thereof but only with respect to its or their administrative functions, and for purposes of this subparagraph, 'judicial office' includes, but is not limited to, the Division of Public Defender Services; …
>
> (5) "Public records or files" means any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a public agency, or to which a public agency is entitled to receive a copy by law or contract under section 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

The FOIA provides, as a general matter, for the disclosure of public records. As will be discussed, it carves out a number of exemptions from and exceptions to this general rule. These exemptions and exceptions are narrowly construed by the court in light of the underlying purpose of the act, and the burden of proving the applicability of an exemption or exception rests with the agency claiming it. Wilson v. FOIC, 181 Conn. 324, 329 (1980).

General Statutes § 1-210 (a) provides that:

> (a) Except as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to (1) inspect such records promptly during regular office or business hours, (2) copy such records in accordance with subsection (g) of section 1-212, or (3) receive a copy of such records in accordance with section 1-212. Any agency rule or regulation, or

> part thereof, that conflicts with the provisions of this subsection or diminishes or curtails in any way the rights granted by this subsection shall be void. Each such agency shall keep and maintain all public records in its custody at its regular office or place of business in an accessible place and, if there is no such office or place of business, the public records pertaining to such agency shall be kept in the office of the clerk of the political subdivision in which such public agency is located or of the Secretary of the State, as the case may be. Any certified record hereunder attested as a true copy by the clerk, chief or deputy of such agency or by such other person designated or empowered by law to so act, shall be competent evidence in any court of this state of the facts contained therein.

(Emphasis added.)

The "except as otherwise provided" language constitutes a general exception to public disclosure under the FOIA. See Commissioner of Correction v. FOIC, 307 Conn. 53, 57-83 (2012). This provision refers to federal and state laws that, "by their terms, provide for confidentiality of records or some other similar shield from public disclosure." Chief of Police v. FOIC, 252 Conn. 377, 399 (2000). Therefore, if a federal or state statute provides that a record is confidential, not subject to disclosure, or limits what may be copied or disclosed, that law or statute applies over the general provisions of § 1-210 (a).

General Statutes § 1-206 (a) requires that denials of requests to copy or inspect public records be made, in writing, within either *four or ten business days*, depending upon the type of record requested.

General Statutes § 1-212 provides in pertinent part:

> (a) Any person applying in writing shall receive, *promptly upon request*, a plain, facsimile, electronic or certified copy of any public record. *The type of copy provided shall be within the discretion of the public agency*, except (1) the agency shall provide a certified copy whenever requested, and (2) if the applicant does not have access to a computer or facsimile machine, the public agency shall not send the applicant an electronic or facsimile copy.

(Emphasis added.) General Statutes § 1-212 further provides for the fees that may be charged for complying with a request. Note section (g), which permits a person to copy a public record using a *hand-held scanner*, and the fee associated with such use.

B. Record of Arrest

General Statutes § 1-215, which is a part of the greater FOIA, provides that:

> (a) For the purposes of this section, “record of the arrest” means (1) the name, race and address of the person arrested, the date, time and place of

the arrest and the offense for which the person was arrested, and (2) in addition, in a case in which (A) the arrest has been by warrant, the arrest warrant application, including any affidavit in support of such warrant, or (B) the arrest has been made without a warrant, the official arrest, incident or similar report, provided if a judicial authority has ordered any such affidavit or report sealed from public inspection or disclosure, in whole or in part, the portion of the affidavit or report that has not been sealed, if applicable, as well as a report setting forth a summary of the circumstances that led to the arrest of the person in a manner that does not violate such order. "*Record of the arrest" does not include any record of arrest of a juvenile, a record erased pursuant to chapter 961a1 or any investigative file of a law enforcement agency compiled in connection with the investigation of a crime resulting in an arrest.*

(b) *Notwithstanding any provision of the general statutes, and except as otherwise provided in this section, any record of the arrest of any person shall be a public record from the time of such arrest and shall be disclosed* in accordance with the provisions of section 1-212 and subsection (a) of section 1-210. *No law enforcement agency shall redact any record of the arrest of any person, except for* (1) the identity of witnesses, (2) the name, address or other identifying information of any victim of sexual assault under section 53a-70, 53a-70a, 53a-71, 53a-72a, 53a-72b or 53a-73a, voyeurism under section 53a-189a, injury or risk of injury, or impairing of morals under section 53-21 or family violence, as defined in section 46b-38a, or of an attempt thereof, (3) specific information about the commission of a crime, the disclosure of which the law enforcement agency reasonably believes may prejudice a pending prosecution or a prospective law enforcement action, or (4) any information that a judicial authority has ordered to be sealed from public inspection or disclosure. *Any personal possessions or effects found on a person at the time of such person's arrest shall not be disclosed unless such possessions or effects are relevant to the crime for which such person was arrested*.

(c) In addition, *any other public record of a law enforcement agency that documents or depicts the arrest or custody of a person during the period in which the prosecution of such person is pending shall be disclosed* in accordance with the provisions of subsection (a) of section 1-210 and section 1-212, unless such record is subject to any applicable exemption from disclosure contained in any provision of the general statutes.

(d) *Any law enforcement agency receiving a request for a record described in subsection (c) of this section shall promptly provide written notice of such request to the office of the state's attorney* for the appropriate judicial district where the arrest occurred. The state's attorney for such district shall be

afforded the opportunity to intervene in any proceeding before the Freedom of Information Commission concerning such request.

(e) *The provisions of this section shall only be applicable to any record described in this section during the period in which a prosecution is pending against the person who is the subject of such record*. At all other times, the applicable provisions of the Freedom of Information Act concerning the disclosure of such record shall govern.

(Emphasis added.)

Section 1-215 provides "the *exclusive disclosure obligation* under the [FOIA] for law enforcement agencies with respect to documents relating to a pending criminal prosecution." (Emphasis added.) Commissioner of Public Safety v. FOIC, 312 Conn. 513 (2014); Gifford v. FOIC, 227 Conn. 641, 651 (1993).

Important Points

●The provision "**notwithstanding any other provision of the general statutes**" is important because that phrase, as opposed to the phrase, "except as otherwise provided," means that the disclosure requirements of § 1-215 trump other provisions of the law regarding the same records;

●The "record of arrest" becomes a public record, and is "promptly" disclosable, from the time of the arrest;

●The record of arrest does not include the arrest record of a juvenile, an erased arrest record, or "any investigative file of a law enforcement agency compiled in connection with the investigation of a crime resulting in an arrest."

●Redaction is permitted only as provided in the statute;

●Information regarding personal possessions or effects found on the person at the time of arrest are not disclosable unless they relate to the crime of arrest;

●Note subsection (c), which also makes disclosable public records that are *limited to* those of a law enforcement agency that "document[ ] or depict[ ] the arrest or custody of a person during the period in which the prosecution of such person is pending[,]" unless the record "is subject to any applicable exemption from disclosure contained in any provision of the general statutes."

Written notice of a request under subsection (c) must be provided to the appropriate state's attorney's office;

●The “record of arrest” statute applies only during the pendency of a prosecution. Requests for information that predate an arrest, or occur after the pendency of the prosecution, are governed by the general provisions of the FOIA.

General Statutes § 29-11a provides that:

> "Any state police officer who makes an arrest of a person shall, without delay, report the record of such arrest to the State Police Bureau of Identification. For the purposes of this provision, 'record of arrest' means the name and address of the person arrested, the date, time and place of the arrest and the offense for which the person was arrested."

C. Data And Records Seized Pursuant To A Search Warrant

In DESPP v. FOIC, 330 Conn. 372 (2018), the court concluded that recorded data or information obtained by a law enforcement agency via a search and seizure warrant is a public record for purposes of the Freedom of Information Act and, therefore, available to the public pursuant to the provisions of the FOIA.

This ruling does not mean that all the fruits of the execution of a search warrant are subject to the FOIA. First, per the definition of “public records or files” in § 1-200 (5), the public is entitled to access to “recorded data or information … whether such data or information be handwritten, typed, tape-recorded, printed, photographed, or recorded by any other method.” This definition does not include tangible items of evidence that are seized pursuant to a search warrant.

Second, recorded data or information obtained by a law enforcement agency via a search and seizure warrant is not part of the “record of arrest” pursuant to General Statutes § 1-215 because that record does not include the “investigative file of a law enforcement agency compiled in connection with the investigation of a crime resulting in an arrest.”

D. NCIC Database Information

In Commissioner of Public Safety v. FOIC, 144 Conn. App. 821, 833 (2013), the court concluded that information that is obtained from the NCIC database is exempt from disclosure under §1-210 (a), and dissemination of such information is governed by the terms of the NCIC compact, of which Connecticut is a member pursuant to C.G.S. § 29-164f.

E. Law Enforcement Related Exceptions To The FOIA

In accordance with General Statutes § 1-210 (b), "[n]othing in the Freedom of Information Act shall be construed to require disclosure of:"

1. Preliminary Drafts

General Statutes § 1-210 (b) (1) exempts:

> Preliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure[.]

Note, however, that § 1-210 (e) provides a caveat that, notwithstanding the above-quoted exemption contained in § 1-210 (b)(1), disclosure "*shall be required of*:"

> Interagency or intra-agency memoranda or letters, advisory opinions, recommendations or any report comprising part of the process by which governmental decisions and policies are formulated, *except disclosure shall not be required of a preliminary draft of a memorandum, prepared by a member of the staff of a public agency, which is subject to revision prior to submission to or discussion among the members of such agency*[.]"

(Emphasis added.)

The term "preliminary drafts or notes" is not defined in the act. In Wilson v. FOIC, 181 Conn. 324, 332-33 (2008), the court concluded that such preliminary drafts or notes

> relate to advisory opinions, recommendations and deliberations comprising part of the process by which government decisions and policies are formulated. Such notes are predecisional. They do not in and of themselves affect agency policy, structure or function. They do not require particular conduct or forbearance on the part of the public. Instead, preliminary drafts or notes reflect that aspect of the agency's function that precedes formal and informed decisionmaking. We believe that the legislature sought to protect the free and candid exchange of ideas, the uninhibited proposition and criticism of options that often precedes, and usually improves the quality of, governmental decisions. It is records of this preliminary, deliberative and predecisional process that we conclude the exemption was meant to encompass.

In determining whether the public interest in withholding the documents clearly outweighs the public interest in disclosure, the reasons offered for nondisclosure "must not be frivolous or patently unfounded[,]" and generalized and unsupported reasons will not suffice**.** Wilson, 181 Conn. at 338-40.

This exemption includes documents prepared by persons, such as attorneys, who "are hired on a contractual basis to perform tasks that are, for all relevant purposes, indistinguishable from those which may be performed by agency personnel." Shew v. FOIC, 245 Conn. 149, 167 (1998).

2. Law enforcement exemption

General Statutes § 1-210 (b) exempts:

> (3) Records of law enforcement agencies not otherwise available to the public which records were compiled in connection with the detection or investigation of crime, if the disclosure of such records would not be in the public interest because it would result in the disclosure of (A) the identity of informants not otherwise known or the identity of witnesses not otherwise known whose safety would be endangered or who would be subject to threat or intimidation if their identity was made known, (B) the identity of minor witnesses, (C) signed statements of witnesses, (D) information to be used in a prospective law enforcement action if prejudicial to such action, (E) investigatory techniques not otherwise known to the general public, (F) arrest records of a juvenile, which shall also include any investigatory files, concerning the arrest of such juvenile, compiled for law enforcement purposes, (G) the name and address of the victim of a sexual assault under section 53a-70, 53a-70a, 53a-71, 53a-72a, 53a-72b or 53a-73a, voyeurism under section 53a-189a, injury or risk of injury, or impairing of morals under section 53-21 or family violence, as defined in section 46b-38a, or of an attempt thereof, or (H) uncorroborated allegations subject to destruction pursuant to section 1-216[.]

3. Images of a homicide victim

General Statutes § 1-210 (b) exempts:

> (27) Any record created by a law enforcement agency or other federal, state, or municipal governmental agency consisting of a photograph, film, video or digital or other visual image depicting the victim of a homicide, to the extent that such record could reasonably be expected to constitute an unwarranted invasion of the personal privacy of the victim or the victim's surviving family members[.]

F. Uncorroborated Allegations

General Statutes § 1-216 provides that:

> Except for records the retention of which is otherwise controlled by law or regulation, records of law enforcement agencies consisting of uncorroborated allegations that an individual has engaged in criminal activity shall be reviewed by the law enforcement agency one year after the creation of such records. *If the existence of the alleged criminal activity cannot be corroborated within ninety days of the commencement of such review, the law enforcement agency shall destroy such records*."

(Emphasis added.)

In **Bona v. FOIC, 44 Conn. App. 622, 632-40 (1997)**, the court concluded that records consisting of uncorroborated allegations are not to be disclosed during the fifteen month period in which corroboration of the allegation is sought.

Bona also concluded that § 1-216 embodies a legislative determination that the disclosure of records consisting of uncorroborated allegations is not in the public interest. Consequently, it is a blanket rule, and no case-by-case determinations need be made.

Bona further concluded that, although an agency should as a matter of duty timely and adequately review records falling under § 1-216, that is not a pertinent inquiry under the statute and does not affect its application.

G. Residential Addresses

General Statutes § 1-217 provides that:

> (a) **No public agency may disclose, under the Freedom of Information Act, from its personnel, medical or similar files, the residential address of any of the following persons employed by such public agency**:
>
> (1) A federal court judge, federal court magistrate, judge of the Superior Court, Appellate Court or Supreme Court of the state, or family support magistrate;
>
> (2) A sworn member of a municipal police department, a sworn member of the Division of State Police within the Department of Emergency Services and Public Protection or a sworn law enforcement officer within the Department of Energy and Environmental Protection;
>
> (3) An employee of the Department of Correction;
>
> (4) An attorney-at-law who represents or has represented the state in a criminal prosecution;
>
> (5) An attorney-at-law who is or has been employed by the Division of Public Defender Services or a social worker who is employed by the Division of Public Defender Services;
>
> (6) An inspector employed by the Division of Criminal Justice;
>
> (7) A firefighter;
>
> (8) An employee of the Department of Children and Families;
>
> (9) A member or employee of the Board of Pardons and Paroles;
>
> (10) An employee of the judicial branch;

(11) An employee of the Department of Mental Health and Addiction Services who provides direct care to patients; or

(12) A member or employee of the Commission on Human Rights and Opportunities.

(b) **The business address of any person described in this section shall be subject to disclosure** under section 1-210. The provisions of this section shall not apply to Department of Motor Vehicles records described in section 14-10.

(c) (1) **Except as provided in subsections (a) and (d) of this section, no public agency may disclose the residential address of any person listed in subsection (a) of this section from any record described in subdivision (2) of this subsection that is requested in accordance with the provisions of said subdivision, regardless of whether such person is an employee of the public agency, provided such person has (A) submitted a written request for the nondisclosure of the person's residential address to the public agency, and (B) furnished his or her business address to the public agency**.

(2) Any public agency that receives a request for a record subject to disclosure under this chapter where such request (A) specifically names a person who has requested that his or her address be kept confidential under subdivision (1) of this subsection, shall make a copy of the record requested to be disclosed and shall redact the copy to remove such person's residential address prior to disclosing such record, (B) is for an existing list that is derived from a readily accessible electronic database, shall make a reasonable effort to redact the residential address of any person who has requested that his or her address be kept confidential under subdivision (1) of this subsection prior to the release of such list, or (C) is for any list that the public agency voluntarily creates in response to a request for disclosure, shall make a reasonable effort to redact the residential address of any person who has requested that his or her address be kept confidential under subdivision (1) of this subsection prior to the release of such list.

(3) **Except as provided in subsection (a) of this section**, an agency shall not be prohibited from disclosing the residential address of any person listed in subsection (a) of this section from any record other than the records described in subparagraphs (A) to (C), inclusive, of subdivision (2) of this subsection.

(d) The provisions of this section shall not be construed to prohibit the disclosure without redaction of any document, as defined in section 7-35bb, any list prepared under title 9, or any list published under section 12-55.

(e) No public agency or public official or employee of a public agency shall be penalized for violating a provision of this section, unless such violation is wilful and knowing. Any complaint of such a violation shall be made to the Freedom of Information Commission. Upon receipt of such a complaint, the commission shall serve upon the public agency, official or employee, as the case may be, by certified or registered mail, a copy of the complaint. The commission shall provide the public agency, official or employee with an opportunity to be heard at a hearing conducted in accordance with the provisions of chapter 54,[2] unless the commission, upon motion of the public agency, official or employee or upon motion of the commission, dismisses the complaint without a hearing if it finds, after examining the complaint and construing all allegations most favorably to the complainant, that the public agency, official or employee has not wilfully and knowingly violated a provision of this section. If the commission finds that the public agency, official or employee wilfully and knowingly violated a provision of this section, the commission may impose against such public agency, official or employee a civil penalty of not less than twenty dollars nor more than one thousand dollars. Nothing in this section shall be construed to allow a private right of action against a public agency, public official or employee of a public agency.

(Emphasis added.)

II. SPECIFIC STATUTES RELATING TO CRIMINAL RECORDS

A. Pistol Permit Information

General Statutes § 29-28 provides as follows:

(d) **Notwithstanding the provisions of sections 1-210 and 1-211**, the name and address of a person issued a permit to sell at retail pistols and revolvers pursuant to subsection (a) of this section or a state or a temporary state permit to carry a pistol or revolver pursuant to subsection (b) of this section, or a local permit to carry pistols and revolvers issued by local authorities prior to October 1, 2001, **shall be confidential and shall not be disclosed, except** (1) such information may be disclosed to law enforcement officials acting in the performance of their duties, including, but not limited to, employees of the United States Probation Office acting in the performance of their duties and parole officers within the Department of Correction acting in the performance of their duties, (2) the issuing authority may disclose such information to the extent necessary to comply with a request made pursuant to section 29-33, 29-37a or 29-38m for verification that such state or temporary state permit is still valid and has not been suspended or revoked, and the local authority may disclose such information to the extent necessary to comply with a request made pursuant to section 29-33, 29-37a or 29-38m for verification that a local permit is still valid and has not been suspended or revoked, and (3) such information may be disclosed to the

Commissioner of Mental Health and Addiction Services to carry out the provisions of subsection (c) of section 17a-500.

(Emphasis added.)

B. Body-Worn Camera Data

General Statutes § 29-6d governs the use of police body-worn cameras and the retention and disclosure of images created thereby. For purposes of this manual, the following provisions are pertinent:

> [§ 29-6d (f)] (2) **If a request is made for public disclosure of a recording from body-worn recording equipment or a dashboard camera of an incident about which** (A) a police officer has not been asked to give a formal statement about the alleged use of force, or (B) a disciplinary investigation has not been initiated, any police officer whose image or voice is captured on the recording shall have the right to review such recording in the presence of the officer's attorney or labor representative. **Not later than forty-eight hours following an officer's review of a recording under this subdivision, or if the officer does not review the recording, not later than ninety-six hours following the request for disclosure, whichever is earlier, such recording shall be disclosed to the public, subject to the provisions of subsection (g) of this section.**
>
> (g) (1) Except as otherwise provided by any agreement between a law enforcement agency and the federal government, **no police officer shall use body-worn recording equipment to intentionally record** (A) a communication with other law enforcement agency personnel, except that which may be recorded as the officer performs his or her duties, (B) an encounter with an undercover officer or informant, (C) when an officer is on break or is otherwise engaged in a personal activity, (D) a person undergoing a medical or psychological evaluation, procedure or treatment, (E) any person other than a suspect to a crime if an officer is wearing such equipment in a hospital or other medical facility setting, or (F) in a mental health facility, unless responding to a call involving a suspect to a crime who is thought to be present in the facility.
>
> (2) **No record created using body-worn recording equipment of (A) an occurrence or situation described in subparagraphs (A) to (F), inclusive, of subdivision (1) of this subsection, (B) a scene of an incident that involves (i) a victim of domestic or sexual abuse, (ii) a victim of homicide or suicide, or (iii) a deceased victim of an accident, if disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy in the case of any such victim described in this subparagraph, or (C) a minor, shall be subject to disclosure under the Freedom of Information Act, as defined in section 1-200, and any**

such record shall be confidential, *except* that a record of a minor shall be disclosed if (i) the minor and the parent or guardian of such minor consent to the disclosure of such record, (ii) a police officer is the subject of an allegation of misconduct made by such minor or the parent or guardian of such minor, and the person representing such officer in an investigation of such alleged misconduct requests disclosure of such record for the sole purpose of preparing a defense to such allegation, or (iii) a person is charged with a crime and defense counsel for such person requests disclosure of such record for the sole purpose of assisting in such person's defense and the discovery of such record as evidence is otherwise discoverable.

(Emphasis added.)

Note that subsection (f) regulates the timing of disclosure for body-worn camera data that is encompassed within its parameters, while subsection (g), with some exceptions, precludes the disclosure of such data encompassed within its parameters.

C. Electronic Recordings of Custodial Interrogations

General Statutes § 54-1o governs the electronic recording of certain custodial interrogations. It provides in pertinent part as follows:

(a) For the purposes of this section:

(1) "Custody" means the circumstance when (A) a person has been placed under formal arrest, or (B) there is a restraint on a person's freedom of movement of the degree associated with a formal arrest and a reasonable person, in view of all the circumstances, would have believed that he or she was not free to leave;

(2) "Interrogation" means questioning initiated by a law enforcement official or any words or actions on the part of a law enforcement official, other than those normally attendant to arrest and custody, that such official should know are reasonably likely to elicit an incriminating response from the person;

(3) "Custodial interrogation" means any interrogation of a person while such person is in custody;

(4) "Place of detention" means a police station or barracks, courthouse, correctional facility, community correctional center or detention facility; and

(5) "Electronic recording" means an audiovisual recording made by use of an electronic or digital audiovisual device. …

(c) Every electronic recording required under this section *shall be preserved* until such time as the person's conviction for any offense relating to the

statement is final and all direct and habeas corpus appeals are exhausted or the prosecution is barred by law. …

(i) **Any electronic recording of any statement made by a person at a custodial interrogation that is made by any law enforcement agency under this section shall be confidential and not subject to disclosure under the Freedom of Information Act, as defined in section 1-200, and the information shall not be transmitted to any person except as needed to comply with this section**.

D. Confidentiality of Identities of Certain Victims

General Statutes § 54-86e provides that:

The name and address of the victim of a sexual assault under section 53a-70b of the general statutes, revision of 1958, revised to January 1, 2019, or section 53a-70, 53a-70a, 53a-70c, 53a-71, 53a-72a, 53a-72b or 53a-73a, voyeurism under section 53a-189a, or injury or risk of injury, or impairing of morals under section 53-21, or of an attempt thereof, or family violence, as defined in section 46b-38a **and such other identifying information pertaining to such victim as determined by the court, shall be confidential and shall be disclosed only upon order of the Superior Court, except** that (1) such information shall be available to the accused in the same manner and time as such information is available to persons accused of other criminal offenses, and (2) if a protective order is issued in a prosecution under any of said sections, the name and address of the victim, in addition to the information contained in and concerning the issuance of such order, shall be entered in the registry of protective orders pursuant to section 51-5c.

(Emphasis added).

E. Accident Records

General Statutes § 7-282 provides:

The **police department of any city, town or borough** having or receiving any memoranda, sketches, charts, written statements, reports or photographs made in the investigation of any accident wherein any person has been injured or property damaged **shall preserve and retain** the same for a period of **at least ten years** from the date of such accident. **Subsequent** to the final disposition of any criminal action arising out of an accident, the records hereinbefore specified and the information contained therein shall be open to public inspection, **except that such records shall be available to any**

person involved in the accident subsequent to the issuance of a warrant or summons in such action.

(Emphasis added.)

General Statutes § 29-10c provides:

> Any memorandum, sketch, chart, written statement, report or photograph obtained, prepared or created by the **Division of State Police within the Department of Emergency Services and Public Protection** in the investigation of any accident wherein any person has been injured or property damaged **shall be preserved and retained** for a period of **at least ten years** from the date of such accident. **Subsequent** to the final disposition of any criminal action arising out of an accident, the records specified in this section and the information contained in such records shall be open to public inspection, **except that such records shall be available to any person involved in the accident subsequent to the issuance of a warrant or summons in such action or not later than thirty days after such accident, whichever is earlier. The Department of Emergency Services and Public Protection may deny access to such records for a period longer than thirty days if such access would compromise an ongoing criminal investigation.**

F. DUI Records

General Statutes § 14-227i provides that:

> (a) **Notwithstanding any provision of the general statutes**, the investigating police department **shall maintain any record of a defendant concerning the operation of a motor vehicle by such defendant while under the influence of, or impaired by the consumption of, intoxicating liquor or drugs for a period of not less than two years from the date such defendant was charged with a violation of** section 14-227a or 14-227m or subdivision (1) or (2) of subsection (a) of section 14-227n.
>
> (b) (1) **Notwithstanding any other provision of the general statutes**, by making a **written request** to the investigating police department, **a person injured in an accident** caused by the alleged violation of section 14-227a or 14-227m or subdivision (1) or (2) of subsection (a) of section 14-227n by any such defendant, any party to a civil claim or proceeding arising out of such accident, or the legal representative of any such person or party **may review and obtain regular or certified copies of any record concerning** the operation of a motor vehicle by such defendant while under the influence of, or impaired by the consumption of, intoxicating liquor or drugs.

(2) The investigating police department **shall furnish regular or certified copies of any such record to any person or the legal representative of such person, or to such party, not later than fifteen days following receipt of such request. The investigating police department shall charge a fee for such copies that shall not exceed the cost to such police department for providing such copies, but not more than fifty cents per page in accordance with** section 1-212.

(Emphasis added.)

G. Accelerated Rehabilitation

General Statues § 54-56e (a) provides that, "[u]pon application by any such person for participation in the program, **the court shall, but only as to the public, order the court file sealed**." (Emphasis added.)

General Statutes § 54-56e (f) provides that an offender who successfully completes a pretrial program for accelerated rehabilitation may apply for dismissal of the charges against him or the court may dismiss the charges on its own. It further provides that, "[u]pon dismissal, all records of such charges **shall be erased** pursuant to section 54-142a." (Emphasis added.)

H. Alcohol Education Program

General Statutes § 54-56g provides for an alcohol education program for persons who are charged with certain offenses. Pursuant to subsection (a) of the statute, upon application, "**the court shall, but only as to the public, order the court file sealed**." (Emphasis added.)

General Statutes § 54-56g (b) provides that an offender who successfully completes the program may apply for dismissal of the charges against or the court may dismiss the charges on its own. While the statute makes no reference to erasure, the entry of a dismissal triggers erasure under § 54-142a (a).

I. Drug Education Program

General Statutes § 54-56i provides for a pretrial drug education program for persons who are charged with certain offenders. Pursuant to subsection (b) of the statute, upon application, **"the court shall, but only as to the public, order the court file sealed."** (Emphasis added.)

General Statutes § 54-56i (f) provides that an offender who successfully completes the program may apply for dismissal of the charges against him or that the court may dismiss the charges. While the statute makes no reference to erasure, the entry of a dismissal triggers erasure under § 54-142a (a).

J. Pretrial School Violence Prevention Program

General Statutes § 54-56j provides for a pretrial school violence program for students who are charged with certain offenses. Pursuant to subsection (a) of the statute, upon application, **"the court shall, but only as to the public, order the court file sealed."** (Emphasis added.)

General Statutes § 54-56j (e) provides that an offender who successfully completes the program may apply for dismissal of the charges against him or the court may the charges on its own. While the statute makes no reference to erasure, the entry of a dismissal triggers erasure under § 54-142a (a).

K. Family Violence Education Program

General Statutes § 46b-38c (h) provides for a pretrial family violence education program for persons who are charged with certain offenses. It further provides for a dismissal of the charges upon successful completion of the program and erasure pursuant to section 5-142a.

L. Office Of Victim Services

General Statutes § 54-203 (b) authorizes the Office of Victim Services:

"(2) **To obtain from the office of the state's attorney, state police, local police departments or any law enforcement agency** such investigation and data as will enable the Office of Victim Services to determine if in fact the applicant was a victim of a crime or attempted crime and the extent, if any, to which the victim or claimant was responsible for his own injury, including, but not limited to, a request for information form promulgated by the Office of Victim Services[.]"

(Emphasis added.)

M. Victim Advocates

General Statutes § 54-220 provides that

> (a) Victim advocates shall have the following responsibilities and duties: (1) To provide initial screening of each personal injury case; (2) to assist victims in the preparation of victim impact statements; (3) to notify victims of their rights and request that each victim so notified attest to the fact of such notification of rights on a form developed by the Office of the Chief Court Administrator, which form shall be signed by the victim advocate and the victim and be placed in court files and a copy of which form shall be provided to the victim; (4) to provide information and advice to victims in order to assist such victims in exercising their rights throughout the criminal justice process;

(5) to direct victims to public and private agencies for service; (6) to coordinate victim applications to the Office of Victim Services; and (7) to assist victims in the processing of claims for restitution.

(b) **Notwithstanding any provision of the general statutes, upon request, a victim advocate shall be provided with a copy of any police report in the possession of the state's attorney, the Division of State Police within the Department of Emergency Services and Public Protection, any municipal police department or any other law enforcement agency that the victim advocate requires to perform the responsibilities and duties set forth in subsection (a) of this section.**

(c) Within available appropriations, the Office of Victim Services may contract with any public or private agency for victim advocate services in geographical area courts."

(Emphasis added.)

III. The Erasure Statute

General Statutes §§ 54-142a through 142d provide for the erasure of certain criminal records pertaining to charges that have resulted in a dismissal, finding of not guilty, nolle, or a pardon.

These statutes neither define the term "erasure" nor specify what exactly is meant by erasure. The Supreme Court of Connecticut has ruled that

> [e]rasure does not mean physical destruction of the records. Rather, it involves sealing the files and segregating them from materials which have not been erased and protecting them from disclosure, except that disclosure is permitted in a few very limited circumstances described in the statutes.

(Internal quotation marks omitted.) State v. Anonymous, 237 Conn. 501, 513 (1996); see State v. West, 192 Conn. 488, 495 (1984); and Doe v. Manson, 183 Conn. 183 (1981); see also Lechner v. Holmberg, 165 Conn. 152, 161 n.5 (1973) ("erasure means at the very least nondisclosure.") Physical destruction may, however, is called for by the statute in certain circumstances later discussed.

In accordance with § 54-142a (e), an agency **“shall provide adequate security measures to safeguard against unauthorized access to or dissemination of” erased**

records. Practically speaking, this may be accomplished by physically removing erased records from the main file and securely storing them remotely or by segregating and sealing erased records within the main file. Electronic records must, of course, be adequately protected from disclosure with appropriate security software.

A. General Statutes § 54-142a

General Statutes § 54-142a provides that:

> (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.

Important points:

●Applies only to criminal cases in which the accused, by final judgment, is found not guilty or the charge is dismissed **on or after** October 1, 1969;

●Does not require the erasure of records pertaining to a charge for the defendant was found not guilty for reasons relating to 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.

Important points:

●Applies only to criminal cases in which the accused, by final judgment, is found not guilty of the charge is dismissed **prior to** October 1, 1969;

●Provides that the record keeper shall not disclose to anyone the existence of the records, or any information therein pertaining to an erased charge;

●Permits arrested person or heir from filing a petition for erasure;

●Does not require the erasure of records pertaining to a charge for the defendant was found not guilty for reasons relating to mental disease or defect.

(c) (1) Whenever any charge in a criminal case has been **nolled 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 nolles 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.

Important points:

●Applies only to criminal cases in which a nolle has been entered in the Superior Court or the Court of Common Pleas and thirteen months has elapsed therefrom;

●In cases in which the nolle was entered **prior to April 1, 1972**, the records are nolled by operation law and the record keeper shall not disclose to anyone the existence of the records, or any information therein pertaining to an erased charge. The arrested person or an heir may file a petition for erasure.

(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 nolled 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 nolled cases.

Important points:

●Permits an arrested person to move for a nolle in a criminal case which was continued at the state's request and thirteen months has elapsed since the granting of the continuance without any action or disposition. The nolle triggers erasure.

> (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.

Important points:

●Automatic erasure for an offense of conviction for which an absolute pardon was received **on or after October 1, 1974**. The pardoned person or an heir may petition for an order of erasure for an offense of conviction for which an absolute pardon was received **prior to October 1, 1974**.

> (e) (1) 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 any provision of this section 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 to which he knows information concerning the arrest has been disseminated and such disseminated information shall be erased from the records of such law enforcement agency. Such clerk or such person, as the case may be, shall provide adequate security measures to safeguard against unauthorized access to or dissemination of such records or upon the request of the accused cause the actual physical destruction of such records, except that such clerk or such person shall not cause the actual physical destruction of such records until three years have elapsed from the date of the final disposition of the criminal case to which such records pertain.

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

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

Important points:

●Prohibits the record keeper from disclosing to anyone, except the subject of the record upon satisfactory proof of identification, information pertaining to any charge that is erased pursuant to § 54-142a;

●Requires the record keeper to (1) provide a notice of erasure to any law enforcement agency he or she knows received information concerning the arrest, and (2) adequately protect against unauthorized access to, or dissemination of, the erased records, or (3) upon the request of the accused, but not prior to the passage of **three years from the date of the final disposition of the criminal case**, physically destroy the records.

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

Important points:

●Permits a judge upon a proper motion to order the disclosure of erased records to persons listed as provided;

●Permits the judiciary to make use of the jury charge in an erased case as provided.

At least one court has interpreted subsection (f) to apply to malicious prosecution actions as well. **State v. Cutler, 33 Conn. Supp. 158 (1976)**. Also, in **State v. Anonymous, 237 Conn. 501 (1996)**, the Court held that where the subject of erased criminal records files notice of his intent to bring a civil action for false arrest, he is deemed to have waived the nondisclosure and physical destruction provisions of § 54-142a (e). The subject's waiver is limited to the extent necessary to permit sufficient disclosure to the party to be sued so that it can take all reasonable steps necessary to defend itself against the threatened lawsuit.

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

Important points:

●Makes erasure inapplicable in cases in which the information contains more than one count (1) while the criminal case is pending, and (2) when the criminal case is disposed of unless and until all of the counts are entitled to erasure, **except for electronic records, or portions thereof, released to the public** that references a charge that would otherwise be entitled to erasure – e.g., a count or counts charging an offense or offenses that was nolled, was dismissed, or resulted in a finding of not guilty.

●Exempts from mandatory information that is contained in the registry of protective orders that exists pursuant to § 51-5c.

> (h) For the purposes of this section, **"court records" shall not include a record or transcript of the proceedings** made or prepared by an official court reporter, assistant court reporter or monitor.

(Emphasis added.) In State v. Apt, 319 Conn. 494, 520 (2015), the court took note of subsection (h) and endorsed the evidentiary use of court transcripts relating to an erased charge in proceedings relating to other charges.

B. Convictions Under General Statutes § 17-379

General Statutes § 54-142b provides that:

> Any person who has been found guilty under section 17-379 or any statute predecessor thereto, if she has been convicted of no other offense prior to her twenty-first birthday, may file a petition with the court by which she was found guilty, or, if such finding was by a trial justice or municipal court or the circuit court, to the Office of the Chief Court Administrator for an order of erasure, and such court shall thereupon order all police and court records and records of the state's or prosecuting attorney pertaining to such case to be erased.

General Statutes § 17-379, which provided for the commitment of girls found guilty of being in manifest danger, was repealed in 1972 by Public Act 72-28, § 2. Consequently, requests for erasure under § 54-142b will likely be rare.

C. Decriminalized Offenses

Prior to January 1, 2023, **General Statutes § 54-142d** provides that:

> Whenever any person has been convicted of an offense in any court in this state and such offense has been **decriminalized** subsequent to the date of such conviction, such person may **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, **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 physically destroyed**.

(Emphasis added.)

In State v. Menditto, 315 Conn. 861 (2015), the court concluded that Public Act 11-71, which changed the penalty for possessing one-half ounce of marijuana or less from a potential term of imprisonment and/or a large fine to merely a fine of $150 for a first offense, and a fine of between $250 and $500 for subsequent offense decriminalized such conduct for purposes of § 54-142d.

D. Records Subject To Erasure

As it relates to nolles, dismissal and acquittals, erasure encompasses *"***all police and court records and records of any state's attorney pertaining to such charge**...." (Emphasis added.) As it relates to absolute pardons and decriminalized offense, erasure encompasses "all police and court records and records of the state's or prosecuting attorney pertaining to such **case**...." (Emphasis added.) Neither the term "charge" nor the term "case" is statutorily defined. "Charge" is a general legal term that refers to a formal complaint, information or indictment. "Case" is a general legal term that refers to an action, cause, suit or controversy at law. Black's Law Dictionary, 5th Ed. (1979).

Connecticut case law does not specify exactly which law enforcement records "pertain[ ] to such **charge**" and which do not, for purposes of the erasure statute. Absent such guidance, a fair rule of thumb is that the records which pertain to the charge, and are thus subject to erasure, are those which fall into the definition of "criminal history information" that is found in § 54-142g (a), which is part of the related Security and Privacy of Criminal Records Act (discussed later in this manual): That section provides that:

> "Criminal history record information" means court records and information compiled by criminal justice agencies for purposes of identifying criminal offenders and of maintaining as to each such offender notations of arrests, releases, detentions, indictments, informations, or other formal criminal charges or any events and outcomes arising from those arrests, releases, detentions, including pleas, trials, sentences, appeals, incarcerations, correctional supervision, paroles and releases; **but does not include intelligence, presentence investigation, investigative information** or any information which may be disclosed pursuant to subsection (f) of section 54-63d [information provided to the bail commissioner].

(Emphasis added.)

Section 54-142g of the Security and Privacy of Criminal Records Act further defines the following:

> (c) "Conviction information" means criminal history record information which has not been erased, as provided in section 54-142a, and which discloses that a person has pleaded guilty or nolo contendere to, or was convicted of, any criminal offense, and the terms of the sentence. …
>
> (e) "Nonconviction information" means (1) criminal history record information **that has been "erased"** pursuant to section 54-142a; (2) information relating to persons granted youthful offender status; (3) continuances which are more than thirteen months old. Nonconviction information does not mean conviction information or current offender information.

(Emphasis added.)

In expressly exempting intelligence and investigative information from the definition of criminal history record information and, therefore, the definition of "nonconviction information," the legislature has signaled that this material is not subject to the restrictions imposed upon erased materials. Penfield v. Venuti, 93 F.R.D. 364, 368 (D. Conn. 1981). "If the General Assembly had intended to 'erase,' under [§ 54-142a], the 'intelligence' and 'investigatory information' gathered and recorded by criminal justice agencies, it is doubtful that it would have permitted their disclosure under a companion statute." Id.

The above rule of thumb is consistent with State v. West, 192 Conn. 488, 496 (1984), in which the court stated that only information describing an arrest or prosecution is subject to erasure. It is also consistent with the legislative history attending the enactment of the erasure statute, which makes clear that "the purpose of the erasure statute ... is to protect innocent persons from the harmful consequences of a *criminal charge* [that] is subsequently dismissed.... The statute does not and cannot insulate [such person] from the consequences of his prior *actions*." (Citations omitted; emphasis in original; internal quotation marks omitted.) State v. Apt, 319 Conn. 494, 512 (2015); emphasis in original.); accord State v. Morowitz, 200 Conn. 440, 451 (1986); Lechner v. Holmberg, 165 Conn.

152, 160 (1973); State v. Anonymous, 237 Conn. at 516; see also Penfield v. Venuti, 93 F.R.D. at 367-68 (erasure statute is "intended to remove the stigma of arrest or other formal charges from those who were never found to have committed any crime.") "Prohibiting the [disclosure and] subsequent use of records of the prior arrest and court proceedings adequately fulfills th[e] purpose [of erasure] by insulating such person from the consequences of the prior *prosecution*." (Emphasis in original.) State v. Morowitz, 200 Conn. at 451; see Boyles v. Preston, 68 Conn. App. 596, 610, cert. denied, 261 Conn. 901 (2002) (videotape seized as evidence of crime during a criminal investigation not a police or court record that was subject to erasure); see also Penfield v. Venuti, 93 F.R.D. at 367-68 (erasure statute does not encompass "all records pertaining to a criminal investigation[,]" such as those generated prior to initiation of formal criminal charge or which are investigative in nature); see also Messier v. Southbury Training School, No. 3:94-CV-1706, October 27, 1997 (D. Conn., Burns, J.) (erasure statute does not apply to pre-arrest records).

Personal Observations and Knowledge, and Historical Facts

Personal knowledge and memories which are not refreshed by reviewing an erased record are never "erased" by the Erasure Act. Rado v. Board of Education, 216 Conn. 541, 549-51 (1990); State v. Morowitz, 200 Conn. 440 (1986). Rado involved a civil action that stemmed from the plaintiff's arrest, and later acquittal, of criminal charges. The court held that the erasure statute did not prevent testimony in the civil action regarding the criminal investigation by an investigator who refreshed his recollection by reviewing his personal notebook of the investigation. Similarly, in Moskowitz, the court held that the erasure statute does not “erase” personal knowledge of events and does not preclude testimony or other forms of communication based on independent personal knowledge. *See also* State v. Apt, 319 Conn. at 520; State v. Herring, 209 Conn. 52 (1988) (personal and independent observations never erased) *accord* Hampton v. Mason, 5 Conn. App. 343, 344-46 (1985). Included within this category are records that were obtained prior to erasure by a private party and disclosed to others by that party. State v. Morowitz, 200 Conn. at 450.

"In short, the Erasure Statute requires the state to erase certain official records of an arrest and grants the defendant the *legal status* of one who has not been arrested. But the Erasure Statute's effect ends there. The statute creates legal fictions, but it does not and cannot undo historical facts or convert once-true facts into falsehoods." (Emphasis in original.) Martin v. Hearst Corporation, 777 F.3d 546, 551 (2d. Cir. 2015).

E. Types of Charges To Which Erasure Applies

As discussed above, the erasure statutes apply either to “criminal cases” or “offenses.” General Statutes § 53a-24 (a) provides that

> the term “offense” means any crime or violation which constitutes a breach of any law of this state or of federal law or local law or ordinance of a political subdivision of this state, for which a sentence to a term of imprisonment or to

> a fine, or both, may be imposed, except one that defines a motor vehicle violation or is deemed to be an infraction. The term “crime” comprises felonies and misdemeanors. Every offense which is not a “crime” is a “violation.” Conviction of a violation shall not give rise to any disability or legal disadvantage based on conviction of a criminal offense."

In all likelihood, erasure does not apply to records pertaining to infractions because infractions are, for all intents and purposes, minor administrative violations, not "offenses" as defined by our law, and not "criminal cases." See State v. Menditto, 315 Conn. 861, 873-74 (2015) (act which made possession of less than one-half ounce of marijuana an infraction "decriminalized" that offense).

Records relating to non-infraction motor vehicle violations, on the other hand, present a closer question because “’[w]hat may or may not be a criminal offense for purposes of a particular statutory categorization is not necessarily determinative of whether it is a criminal offense for [other] purposes. ‘” State v. Guckian, 226 Conn. 191, 198 (1993). In State v. Kluttz, 9 Conn. App. 686 (1987), for example, the court ruled that motor vehicle violations are not "crimes" for purposes of the penal code. No court, however, has addressed the question of whether and to what extent a motor vehicle violation is a "criminal case" for purposes of the erasure statutes. It certainly is logical to argue that the last sentence of sec. 53a-24 effectively removes any stigma of being convicted of, and thus being charged with, any motor vehicle violation, thereby eliminating the concern underlying erasure. A social stigma may, however, result from being charged with a violation that is punishable with time in prison and, a more cautious approach, at least until a court has spoken, may be to assume that erasure applies to records pertaining to those motor vehicle violations which expose the offender to a prison term.

F. Specific Limitations on Erasure

(1) Records of defendant who is not competent

General Statutes § 54-56d (m) provides in pertinent part that:

> (5) ... **Notwithstanding the record erasure provisions** of section 54-142a, police and court records and records of any state's attorney pertaining to a charge which is nolled or dismissed without prejudice while the defendant is not competent **shall not be erased** until the time for the prosecution of the defendant expires under section 54-193 or 54-193a [statutes of limitations].

(Emphasis added.) Sections 54-193 and 193 are statutes of limitations.

(2) Court orders

Erased records must be disclosed in accordance with a lawful court order. See State v. Hayes, 20 Conn. App. 737 (1990).

(3) Victim of a crime or victim's legal representative

General Statutes § 54-142c provides that:

> (a) The clerk of the court or any person charged with retention and control of erased records by the Chief Court Administrator or any criminal justice agency having information contained in such erased records *shall not disclose to anyone* the existence of such erased records or information pertaining to any charge erased under any provision of this part, *except as otherwise provided in this chapter*.
>
> (b) **Notwithstanding any other provisions of this chapter,** within two years from the date of disposition of any case, the clerk of the court or any person charged with retention and control of erased records by the Chief Court Administrator or any criminal justice agency having information contained in such erased records may disclose to the victim of a crime or the victim's legal representative the fact that the case was dismissed. If such disclosure contains information from erased records, the identity of the defendant or defendants shall not be released, except that any information contained in such records, including the identity of the person charged may be released to the victim of the crime or the victim's representative upon written application by such victim or representative to the court stating (1) that a civil action has been commenced for loss or damage resulting from such act, or (2) the intent to bring a civil action for such loss or damage. Any person who obtains criminal history record information by falsely representing to be the victim of a crime or the victim's representative shall be guilty of a class D felony.

(Emphasis added.)

General Statutes § 1-1k provides that:

> Except as otherwise provided by the general statutes, "victim of crime" or "crime victim" means an individual who suffers direct or threatened physical, emotional or financial harm as a result of a crime and includes immediate family members of a minor, incompetent individual or homicide victim and a person designated by a homicide victim in accordance with section 1-56r.

Important Points

●Within two years of the date of disposition of any erased case, the record keeper may disclose to the victim of a crime, or the victim's legal representative, that the case was dismissed. The identity of the defendant or defendants shall not be released;

●Erased information, including the identity of the defendant may be released to the victim or the victim's representative upon written application to court as provided.

IV. FINGERPRINTS AND MUGSHOTS

General Statutes § 29-12 provides that:

> (a) All persons arrested for crime as described in section 29-11 shall submit to the taking of their fingerprints, photograph and physical description and **all constables and chiefs of police of organized police departments and the commanding officers of state police stations shall immediately furnish to the State Police Bureau of Identification two copies of a standard identification card on which shall be imprinted fingerprints of each person so arrested, together with the physical description of, and such information as said bureau may require with respect to, such arrested person**. In the event fingerprint or photographic images of arrested persons are captured by electronic means, **the captured electronic images shall be immediately transmitted to said bureau**. Any electronic imaging equipment used to capture such fingerprint or photographic images shall be approved by the Commissioner of Emergency Services and Public Protection or said commissioner's designee.
>
> (b) All wardens of correctional institutions and the Community Correctional Center Administrator shall furnish to the State Police Bureau of Identification such information with respect to prisoners as said bureau requires.
>
> (c) The Commissioner of Emergency Services and Public Protection may adopt regulations, in accordance with chapter 54 [§ 4-166, et seq.] for the submission to and the taking of fingerprints as required under this section which will promote efficiency and be consistent with advances in automation and technology.

(Emphasis added.)

General Statutes § 29-12a provides that:

> (a) The State Police Bureau of Identification may maintain the fingerprints of arrested persons received pursuant to section 29-12 and of persons who have submitted fingerprints in connection with a criminal history records check pursuant to section 29-17a in an electronic format in lieu of a paper format.
>
> (b) Whenever the bureau converts fingerprints contained in its files from a paper format to an electronic format, it may destroy the paper copy of such fingerprints.
>
> (c) On and after January 1, 2014, **any organized local police department that has the capability to electronically capture the fingerprints of**

arrested persons under section 29-12 and the fingerprints of persons requesting a criminal history records check under section 29-17a shall submit such fingerprints electronically to the State Police Bureau of Identification.

(Emphasis added.)

General Statutes § 29-15 provides as follows:

> (a) (1) Except as provided in subdivision (2) of this subsection, whenever any person, having no record of prior criminal conviction, whose fingerprints, photograph and physical description are filed with the State Police Bureau of Identification in accordance with section 29-12 has been found not guilty of the offense charged, or has had such charge dismissed or nolled, such person's fingerprints, photograph and physical description and other identification data, and all copies and duplicates thereof, shall be returned to such person not later than sixty days after the finding of not guilty or after such dismissal or in the case of a nolle within sixty days after thirteen months of such nolle.
>
> (2) Whenever any person, having no record of prior criminal conviction, whose fingerprints, photograph and physical description and other identification data have been filed and stored in an electronic format, has been found not guilty of the offense charged, or has had such charge dismissed or nolled, such electronically stored images and data shall be permanently deleted and any paper copy of such fingerprints, photograph and physical description and other identification data, and all copies and duplicates thereof, shall be destroyed not later than sixty days after the finding of not guilty or after such dismissal or in the case of a nolle within sixty days after thirteen months of such nolle.
>
> (b) Any person having no record of prior criminal conviction whose fingerprints and pictures are so filed, who has been found not guilty of the offense charged or has had such charge dismissed or nolled prior to October 1, 1974, may, upon application to the person charged with the retention and control of such identification data at the State Police Bureau of Identification, have his fingerprints, pictures and description and other identification data and all copies and duplicates thereof, returned to him not later than sixty days after the filing of such application provided in the case of a nolle, such nolle shall have occurred thirteen months prior to filing of such application.

Important Points

●Subsection (a) (1) provides for the return of fingerprints and identification data of arrested person with **no record of a prior criminal conviction** in a case in which there has been a nolle, dismissal, or finding of not guilty, while subsection (a) (2) mandates the permanent deletion of such data in electronic format;

●Subsection (b) provides for the return of fingerprints and identification data upon the application of a person with **no record of a prior criminal conviction** in a cases in which the nolle, dismissal, or finding of not guilty occurred prior to **October 1, 1974**.

General Statutes § 29-16 provides that:

> **Conviction information**, as defined in subsection (c) of section 54-142g, contained in the files of the State Police Bureau of Identification, **shall be available to the public in accordance with the provisions of section 54-142k**. **All information contained in the files of the State Police Bureau of Identification relative to criminal records and personal history of persons convicted of crime shall be available at all times to all peace officers engaged in the detection of crime, to all prosecuting officials and probation officers for the purpose of furthering the ends of public justice** and to the State Bar Examining Committee for the purpose of ensuring that those individuals admitted to the practice of law are of the highest quality.

(Emphasis added.) General Statutes § 54-142k is set forth below in Section VIII relating to the Security and Privacy of Criminal Records Act.

In **State v. West, 192 Conn. 488 (1984)**, the court addressed the relationship between § 29-15 and the erasure statute and ruled that **identification data, including fingerprints, physical descriptions and pictures, are not among the records that fall within the ambit of the erasure statute**. Consequently, identification data retained in accordance with § 29-15 are not erased.

V. JUVENILE RECORDS

General Statutes § 46b-120 defines the various principal terms that are used in the juvenile delinquency statutes:

> (1) "Child" means any person under eighteen years of age who has not been legally emancipated, except that (A) for purposes of delinquency matters and proceedings, "child" means any person who (i) is at least ten years of age at the time of the alleged commission of a delinquent act and who is (I) under eighteen years of age and has not been legally emancipated, or (II) eighteen years of age or older and committed a delinquent act prior to attaining eighteen years of age, or (ii) is subsequent to attaining eighteen years of age, (I) violates any order of the Superior Court or any condition of probation ordered by the Superior Court with respect to a delinquency proceeding, or (II) wilfully fails to appear in response to a summons under section 46b-133 or at any other court hearing in a delinquency proceeding of which the child had notice, and (B) for purposes of family with service needs matters and

proceedings, child means a person who is at least seven years of age and is under eighteen years of age;

(2) (A) A child may be adjudicated as "delinquent" who has, while under sixteen years of age, (i) violated any federal or state law, except a first or second offense under subdivision (1) of subsection (b) of section 21a-279a, or except section 53a-172, 53a-173, 53a-222, 53a-222a, 53a-223 or 53a-223a, or violated a municipal or local ordinance, except an ordinance regulating behavior of a child in a family with service needs, (ii) wilfully failed to appear in response to a summons under section 46b-133 or at any other court hearing in a delinquency proceeding of which the child had notice, (iii) violated any order of the Superior Court in a delinquency proceeding, except as provided in section 46b-148, or (iv) violated conditions of probation supervision or probation supervision with residential placement in a delinquency proceeding as ordered by the court;

(B) A child may be adjudicated as "delinquent" who has (i) while sixteen or seventeen years of age, violated any federal or state law, other than (I) an infraction, (II) a violation, (III) a motor vehicle offense or violation under title 14, (IV) a violation of a municipal or local ordinance, (V) a violation of section 51-164r, 53a-172, 53a-173, 53a-222, 53a-222a, 53a-223 or 53a-223a, or (VI) a first or second offense under subdivision (1) of subsection (b) of section 21a-279a, (ii) while sixteen years of age or older, wilfully failed to appear in response to a summons under section 46b-133 or at any other court hearing in a delinquency proceeding of which the child had notice, (iii) while sixteen years of age or older, violated any order of the Superior Court in a delinquency proceeding, except as provided in section 46b-148, or (iv) while sixteen years of age or older, violated conditions of probation supervision or probation supervision with residential placement in a delinquency proceeding as ordered by the court;

(3) "Family with service needs" means a family that includes a child who is at least seven years of age and is under eighteen years of age who, according to a petition lawfully filed on or before June 30, 2020, (A) has without just cause run away from the parental home or other properly authorized and lawful place of abode, (B) is beyond the control of the child's parent, parents, guardian or other custodian, (C) has engaged in indecent or immoral conduct, or (D) is thirteen years of age or older and has engaged in sexual intercourse with another person and such other person is thirteen years of age or older and not more than two years older or younger than such child;

(4) A child may be found "neglected" who, for reasons other than being impoverished, (A) has been abandoned, (B) is being denied proper care and attention, physically, educationally, emotionally or morally, or (C) is being

permitted to live under conditions, circumstances or associations injurious to the well-being of the child;

(5) A child may be found "abused" who (A) has been inflicted with physical injury or injuries other than by accidental means, (B) has injuries that are at variance with the history given of them, or (C) is in a condition that is the result of maltreatment, including, but not limited to, malnutrition, sexual molestation or exploitation, deprivation of necessities, emotional maltreatment or cruel punishment;

(6) A child may be found "uncared for" (A) who is homeless, (B) whose home cannot provide the specialized care that the physical, emotional or mental condition of the child requires, or (C) who has been identified as a victim of trafficking, as defined in section 46a-170. For the purposes of this section, the treatment of any child by an accredited Christian Science practitioner, in lieu of treatment by a licensed practitioner of the healing arts, shall not of itself constitute neglect or maltreatment;

(7) "Delinquent act" means (A) the violation by a child under the age of sixteen of any federal or state law, except a first or second offense under subdivision (1) of subsection (b) of section 21a-279a, the violation of section 53a-172, 53a-173, 53a-222, 53a-222a, 53a-223 or 53a-223a, or the violation of a municipal or local ordinance, except an ordinance regulating behavior of a child in a family with service needs, (B) the violation by a child sixteen or seventeen years of age of any federal or state law, other than (i) an infraction, (ii) a violation, (iii) a motor vehicle offense or violation under title 14, (iv) the violation of a municipal or local ordinance, (v) the violation of section 51-164r, 53a-172, 53a-173, 53a-222, 53a-222a, 53a-223 or 53a-223a, or (vi) a first or second offense under subdivision (1) of subsection (b) of section 21a-279a, (C) the wilful failure of a child, including a child who has attained the age of eighteen, to appear in response to a summons under section 46b-133 or at any other court hearing in a delinquency proceeding of which the child has notice, (D) the violation of any order of the Superior Court in a delinquency proceeding by a child, including a child who has attained the age of eighteen, except as provided in section 46b-148, or (E) the violation of conditions of probation supervision or probation supervision with residential placement in a delinquency proceeding by a child, including a child who has attained the age of eighteen, as ordered by the court;

(8) "Serious juvenile offense" means (A) the violation of, including attempt or conspiracy to violate, section 21a-277, 21a-278, 29-33, 29-34, 29-35, subdivision (2) or (3) of subsection (a) of section 53-21, 53-80a, 53-202b, 53-202c, 53-390 to 53-392, inclusive, 53a-54a to 53a-57, inclusive, 53a-59 to 53a-60c, inclusive, 53a-64aa, 53a-64bb, 53a-70 to 53a-71, inclusive, 53a-72b, 53a-

86, 53a-92 to 53a-94a, inclusive, 53a-95, 53a-100aa, 53a-101, 53a-102a, 53a-103a or 53a-111 to 53a-113, inclusive, subdivision (1) of subsection (a) of section 53a-122, subdivision (3) of subsection (a) of section 53a-123, section 53a-134, 53a-135, 53a-136a or 53a-167c, subsection (a) of section 53a-174, or section 53a-196a, 53a-211, 53a-212, 53a-216 or 53a-217b, or (B) absconding, escaping or running away, without just cause, from any secure residential facility in which the child has been placed by the court as a delinquent child;

(9) "Serious juvenile offender" means any child adjudicated as delinquent for the commission of a serious juvenile offense;

(10) "Serious juvenile repeat offender" means any child charged with the commission of any felony if such child has previously been adjudicated as delinquent or otherwise adjudicated at any age for two violations of any provision of title 21a, 29, 53 or 53a that is designated as a felony;

General Statutes § 46b-121 provides in pertinent part:

(a) (1) Juvenile matters in **the civil session** include all proceedings concerning uncared-for, neglected or abused children within this state, termination of parental rights of children committed to a state agency, adoption proceedings pursuant to section 46b-129b, matters concerning families with service needs, contested matters involving termination of parental rights or removal of guardian transferred from the Probate Court and the emancipation of minors, but does not include matters of guardianship and adoption or matters affecting property rights of any child over which the Probate Court has jurisdiction, except that appeals from probate concerning adoption, termination of parental rights and removal of a parent as guardian shall be included.

(2) (A) Juvenile matters **in the criminal session** include all proceedings concerning delinquent children within this state and persons eighteen years of age and older who are under the supervision of a juvenile probation officer while on probation supervision or probation supervision with residential placement, for purposes of enforcing any court orders entered as part of such probation.

(Emphasis added.) *Effective January 1, 2022, § 46b-121 will be amended in a manner that does not implicate the above provisions*.

A. General Rules

General Statutes § 46b-124 provides as follows:

(a) For the purposes of this section, **"records of cases of juvenile matters" includes, but is not limited to**, court records, records regarding juveniles maintained by the Court Support Services Division, records regarding juveniles maintained by an organization or agency that has contracted with the Judicial Branch to provide services to juveniles, **records of law enforcement agencies including fingerprints, photographs and physical descriptions**, and medical, psychological, psychiatric and social welfare studies and reports by juvenile probation officers, public or private institutions, social agencies and clinics.

(b) All records of cases of juvenile matters, as provided in section 46b-121, **except delinquency proceedings**, or any part thereof, and all records of appeals from probate brought to the superior court for juvenile matters pursuant to section 45a-186, **shall be confidential** and for the use of the court in juvenile matters, and open to inspection or disclosure to any third party, including bona fide researchers commissioned by a state agency, only upon order of the Superior Court, **except that**: (1) **Such records shall be available to** (A) the attorney representing the child, including the Division of Public Defender Services, in any proceeding in which such records are relevant, (B) the parents or guardian of the child until such time as the child reaches the age of majority or becomes emancipated, (C) an adult adopted person in accordance with the provisions of sections 45a-736, 45a-737 and 45a-743 to 45a-757, inclusive, (D) employees of the Division of Criminal Justice who, in the performance of their duties, require access to such records, (E) employees of the Judicial Branch who, in the performance of their duties, require access to such records, (F) another court under the provisions of subsection (d) of section 46b-115j, (G) the subject of the record, upon submission of satisfactory proof of the subject's identity, pursuant to guidelines prescribed by the Office of the Chief Court Administrator, provided the subject has reached the age of majority or has been emancipated, (H) the Department of Children and Families, (I) the employees of the Division of Public Defender Services who, in the performance of their duties related to Division of Public Defender Services assigned counsel, require access to such records, (J) judges and employees of the Probate Court who, in the performance of their duties, require access to such records, and (K) members and employees of the Judicial Review Council who, in the performance of their duties related to said council, require access to such records *[this specific provision becomes effective on January 1, 2022]*; and (2) all or part of the records concerning a youth in crisis with respect to whom a court order was issued prior to January 1, 2010, may be made available to the Department of Motor Vehicles, provided such records are relevant to such order. Any records of cases of juvenile matters, or any part thereof, provided to any persons, governmental or private agencies, or institutions pursuant to this section shall not be disclosed, directly or indirectly, to any third party not

specified in subsection (d) of this section, except as provided by court order, in the report required under section 54-76d or 54-91a or as otherwise provided by law.

(c) **All records of cases of juvenile matters involving delinquency proceedings, or any part thereof, shall be confidential and for the use of the court in juvenile matters and shall not be disclosed except as provided in this section and section 46b-124a.**

(d) Records of cases of juvenile matters **involving delinquency proceedings shall be available to** (1) Judicial Branch employees who, in the performance of their duties, require access to such records, (2) judges and employees of the Probate Court who, in the performance of their duties, require access to such records, and (3) employees and authorized agents of state or federal agencies involved in (A) the delinquency proceedings, (B) the provision of services directly to the child, or (C) the delivery of court diversionary programs. Such employees and authorized agents include, but are not limited to, law enforcement officials, community-based youth service bureau officials, state and federal prosecutorial officials, school officials in accordance with section 10-233h, court officials including officials of both the regular criminal docket and the docket for juvenile matters and officials of the Division of Criminal Justice, the Division of Public Defender Services, the Department of Children and Families, if the child is committed pursuant to section 46b-129, provided such disclosure shall be limited to (i) information that identifies the child as the subject of the delinquency petition, or (ii) the records of the delinquency proceedings, when the juvenile court orders the department to provide services to said child, the Court Support Services Division and agencies under contract with the Judicial Branch. Such records shall also be available to (I) the attorney representing the child, including the Division of Public Defender Services, in any proceeding in which such records are relevant, (II) the parents or guardian of the child, until such time as the subject of the record reaches the age of majority, (III) the subject of the record, upon submission of satisfactory proof of the subject's identity, pursuant to guidelines prescribed by the Office of the Chief Court Administrator, provided the subject has reached the age of majority, (IV) law enforcement officials and prosecutorial officials conducting legitimate criminal investigations, (V) a state or federal agency providing services related to the collection of moneys due or funding to support the service needs of eligible juveniles, provided such disclosure shall be limited to that information necessary for the collection of and application for such moneys, (VI) members and employees of the Board of Pardons and Paroles and employees of the Department of Correction who, in the performance of their duties, require access to such records, provided the subject of the record has been convicted of a crime in the regular criminal docket of the Superior Court and such records are relevant to the performance of a risk and needs assessment

of such person while such person is incarcerated, the determination of such person's suitability for release from incarceration or for a pardon, or the determination of the supervision and treatment needs of such person while on parole or other supervised release, and (VII) members and employees of the Judicial Review Council who, in the performance of their duties related to said council, require access to such records [*this specific provision becomes effective on January 1, 2022*]. **Records disclosed pursuant to this subsection shall not be further disclosed, except** that information contained in such records may be disclosed in connection with bail or sentencing reports in open court during criminal proceedings involving the subject of such information, or as otherwise provided by law.

(e) Records of cases of juvenile matters **involving delinquency proceedings**, or any part thereof, **may be disclosed upon order of the court to** any person who has a legitimate interest in the information and is identified in such order. Records disclosed pursuant to this subsection shall not be further disclosed, except as specifically authorized by a subsequent order of the court.

(f) **Information concerning** a child who is the subject of an order to take such child into custody or other process that has been entered into a central computer system pursuant to subsection (i) of section 46b-133 **may be disclosed to** employees and authorized agents of the Judicial Branch, law enforcement agencies and the Department of Children and Families, provided the information is limited to a child who has been committed pursuant to section 46b-129, in accordance with policies and procedures established by the Chief Court Administrator.

(g) **Information concerning** a child who has absconded, escaped or run away from, or failed to return from an authorized leave to, a juvenile residential center or a residential treatment facility in which the child has been placed by a court order in a delinquency case, or for whom an arrest warrant has been issued with respect to the commission of a felony **may be disclosed by law enforcement officials**.

(h) Nothing in this section shall be construed to prohibit **any person employed by the Judicial Branch from disclosing** any records, information or files in such employee's possession to any person employed by the Division of Criminal Justice as a prosecutorial official, inspector or investigator who, in the performance of his or her duties, requests such records, information or files, or to prohibit any such employee of said division from disclosing any records, information or files in such employee's possession to any such employee of the Judicial Branch who, in the performance of his or her duties, requests such records, information or files.

(i) Nothing in this section shall be construed to prohibit a party from making a timely objection to the admissibility of evidence consisting of records of cases of juvenile matters, or any part thereof, in any Superior Court or Probate Court proceeding, or from making a timely motion to seal any such record pursuant to the rules of the Superior Court or the rules of procedure adopted under section 45a-78.

(j) A **state's attorney shall disclose** to the defendant or such defendant's counsel in a criminal prosecution, without the necessity of a court order, exculpatory information and material contained in any record disclosed to such state's attorney pursuant to this section and may disclose, without a court order, information and material contained in any such record which could be the subject of a disclosure order.

(k) (1) **Notwithstanding the provisions of subsection (d) of this section, any information concerning a child that is obtained during any mental health screening or assessment of such child**, shall be used solely for planning and treatment purposes and shall otherwise be confidential and retained in the files of the entity performing such screening or assessment. Such information may be further disclosed only for the purposes of any court-ordered evaluation or treatment of the child or provision of services to the child, or pursuant to sections 17a-101 to 17a-101e, inclusive, 17b-450, 17b-451 or 51-36a, *or to the Court Support Services Division and its contracted quality assurance providers, for program evaluation purposes* [this highlighted provision becomes effective on January 1, 2022]. **Such information shall not be subject to subpoena or other court process for use in any other proceeding or for any other purpose**.

(2) **Notwithstanding the provisions of subsection (d) of this section, any information concerning a child that is obtained during any detention risk screening of such child** shall be used solely for determining the child's risk to public safety as required by subsection (e) of section 46b-133. The information obtained and results of the detention risk screening shall be used for the purpose of making a recommendation to the court regarding the detention of the child and shall otherwise be confidential and retained in the files of the person performing such screening, but shall be disclosed to any attorney of record upon motion and order of the court. Any information and results disclosed upon such motion and order shall be available to any attorney of record for such case. Such information and results shall otherwise not be subject to subpoena or other court process for use in any other proceeding or for any other purpose.

(l) Records of cases of juvenile matters **involving delinquency proceedings**, or any part thereof, **containing information that a child has been adjudicated as delinquent for a violation of** subsection (e) of section

1-1h, subsection (c) of section 14-147, subsection (a) of section 14-215, section 14-222, subsection (b) of section 14-223, subsection (a), (b) or (c) of section 14-224, section 14-227a, section 14-227g, subsection (d) of section 21a-267, section 21a-279a, section 30-88a or subsection (b) of section 30-89, **shall be disclosed to** the Department of Motor Vehicles for administrative use in determining whether administrative sanctions regarding such child's motor vehicle operator's license are warranted. Records disclosed pursuant to this subsection shall not be further disclosed.

(m) Records of cases of juvenile matters **involving adoption proceedings**, or any part thereof, **shall be confidential and may only be disclosed pursuant to** sections 45a-743 to 45a-757, inclusive.

(n) Records of cases of juvenile matters **involving delinquency proceedings shall be available to a victim of the delinquent act in accordance with the provisions of section 46b-124a.**

(Emphasis added.)

B. Victim Access

General Statutes § 46b-124a provides:

(a) **Notwithstanding any provision of the general statutes concerning the confidentiality of records of cases of juvenile matters, as defined in section 46b-124**, whether in a matter designated by the court for a nonjudicial disposition pursuant to section 46b-128 or otherwise, **any victim of a delinquent act committed by a child shall, without a court order, have access to**: (1) The name and address of the child; (2) the name and address of the child's parents or guardian; (3) any charges pending against the child at the time that the victim requests such information that relate to such delinquent act; (4) information pertaining to the disposition of the matter that relates to such delinquent act; and (5) any order entered by the court pertaining to the victim, including, but not limited to, any order of no contact between the child and the victim. Any information received by a victim of a delinquent act pursuant to this subsection may be utilized by the victim in a subsequent civil action for damages related to an act of delinquency committed by the child, but such information shall not be further disclosed except as specifically authorized by an order of the court. **For the purposes of this section "victim" means a person who is the victim of a delinquent act, the legal representative of such person, a parent or guardian of such person, if such person is a minor, or a victim advocate for such person under section 54-220**.

(b) **Records of cases of juvenile matters, as defined in subsection (a) of section 46b-124, other than those enumerated in subsection (a) of this section, including, but not limited to, police reports, arrest warrants, search warrants and any affidavits associated with such warrants** that involve the victim **may be disclosed to the victim upon order of the court for good cause shown**. Information disclosed to the victim pursuant to this subsection shall not be further disclosed, except as specifically authorized by an order of the court.

(c) In determining whether good cause exists for the granting or denial of access to records pursuant to subsection (b) of this section, **the court shall** consider: (1) The age of the child; (2) the degree of injury to the victim or damage to property caused by the child's delinquent act; (3) whether a compelling reason exists for disclosure or nondisclosure of the information contained in such records; and (4) whether the release of such information would jeopardize an ongoing criminal investigation. When making a good cause determination, the court may not consider as a factor whether the victim has an alternate means of ascertaining the information delineated in subsection (b) of this section.

(d) If the release of information available to a victim pursuant to subsection (a) of this section may result in jeopardizing (1) the safety of the child, a witness or another person; or (2) an ongoing criminal investigation, the prosecutorial official or an attorney representing the child, including an attorney from the Division of Public Defender Services, may file an objection with the court requesting that such information not be disclosed. The court shall articulate on the record the specific reason for sustaining any objection made pursuant to this subsection.

(Emphasis added).

C. Transferred Cases

General Statutes § 46b-127 provides a detailed and comprehensive scheme for the transfer of cases to and from the juvenile docket to the regular criminal docket of the Superior Court for particular offenders charged with particular offenses. These provisions do not, themselves, implicate record keepers. Note, however, the following provisions:

(c) (1) (A) Any proceeding of any case transferred to the regular criminal docket pursuant to this section shall be (i) private, except that any victim and the victim's next of kin shall not be excluded from such proceeding, and (ii) conducted in such parts of the courthouse or the building in which the court is located that are separate and apart from the other parts of the court which are then being used for proceedings pertaining to adults charged with crimes. **Any records of such proceedings shall be confidential in the same**

manner as records of cases of juvenile matters are confidential in accordance with the provisions of section 46b-124, except as provided in subparagraph (B) of this subdivision, unless and until the court or jury renders a verdict or a guilty plea is entered in such case on the regular criminal docket. For the purposes of this subparagraph, (I) "victim" means the victim of the crime, a parent or guardian of such person, the legal representative of such person, or a victim advocate for such person under section 54-220, or a person designated by a victim in accordance with section 1-56r, and (II) "next of kin" means a spouse, an adult child, a parent, an adult sibling, an aunt, an uncle or a grandparent.

(B) **Records of any child whose case is transferred to the regular criminal docket under this section, or any part of such records, shall be available to the victim of the crime committed by the child to the same extent as the records of the case of a defendant in a criminal proceeding in the regular criminal docket of the Superior Court is available to a victim of the crime committed by such defendant. The court shall designate an official from whom the victim may request such records**. Records disclosed pursuant to this subparagraph shall not be further disclosed. ….

D. Child Arrested For Capital Or Class A Felony

General Statutes § 46b-133 (a) provides in pertinent that:

(a) … Whenever a child is arrested and charged with a delinquent act, such child may be required to submit to the taking of his photograph, physical description and fingerprints. **Notwithstanding the provisions of section 46b-124, the name, photograph and custody status of any child arrested for the commission of a capital felony under the provisions of section 53a-54b in effect prior to April 25, 2012, or class A felony may be disclosed to the public**.

(Emphasis added.)

E. Erasure Of Police And Court Records

General Statutes § 46b-133a (a) provides that a nolle may entered as to any count of delinquency and that:

(b) Whenever a nolle prosequi has been entered as to any count of delinquency, or whenever any count of delinquency has been dismissed without prejudice, **if at least thirteen months have elapsed since such nolle or dismissal without prejudice, all police and court records**

pertaining to such count shall be erased. Whenever any such count has been continued at the request of the prosecutorial official 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 count shall be construed to have been nolled as of the date of termination of such thirteen-month period and such erasure may thereafter be effected as provided in this subsection for nolled cases.

General Statutes § 46b-146 provides that:

Whenever any child has been convicted as delinquent, has been adjudicated a member of a family with service needs or has signed a statement of responsibility admitting to having committed a delinquent act, and has subsequently been discharged from the supervision of the Superior Court or from the custody of the Department of Children and Families or from the care of any other institution or agency to whom the child has been committed by the court, such child, or the child's parent or guardian, **may file a petition with the Superior Court**. The Court Support Services Division shall provide written notice concerning the erasure of certain records to any such child and the child's parent or guardian when (1) such child is so discharged, and (2) upon such child's eighteenth birthday if such child was younger than eighteen years of age when so discharged. Such notice shall provide that such child, parent or guardian may petition the Superior Court for such erasure pursuant to this section. **If, upon the filing of such petition**, such court finds (A) (i) that at least two years or, in the case of a child convicted as delinquent for the commission of a serious juvenile offense, four years have elapsed from the date of such discharge, (ii) that no subsequent juvenile proceeding or adult criminal proceeding is pending against such child, (iii) that such child has not been convicted of a delinquent act that would constitute a felony or misdemeanor if committed by an adult during such two-year or four-year period, (iv) that such child has not been convicted as an adult of a felony or misdemeanor during such two-year or four-year period, and (v) that such child has reached eighteen years of age, or (B) that such child has a criminal record as a result of being a victim of conduct by another person that constitutes a violation of section 53a-192a or a criminal violation of 18 USC Chapter 77, **the court shall order all police and court records pertaining to such child to be erased. Upon the entry of such an erasure order, all references including arrest, complaint, referrals, petitions, reports and orders, shall be removed from all agency, official and institutional files, and a finding of delinquency or that the child was a member of a family with service needs shall be deemed never to have occurred. The persons in charge of such records shall not disclose to any person information pertaining to the record so erased, except that the fact of such erasure may be substantiated where, in the opinion of the court, it**

is in the best interests of such child to do so. No child who has been the subject of such an erasure order shall be deemed to have been arrested ab initio, within the meaning of the general statutes, with respect to proceedings so erased. Copies of the erasure order shall be sent to all persons, agencies, officials or institutions known to have information pertaining to the delinquency or family with service needs proceedings affecting such child. Whenever a child is dismissed as not delinquent or as not being a member of a family with service needs, all police and court records pertaining to such charge shall be ordered erased immediately, without the filing of a petition. Nothing in this section shall prohibit the court from granting a petition to erase a child's records on a showing of good cause, after a hearing, before the time when such records could be erased.

(Emphasis added.)

VI. YOUTHFUL OFFENDER RECORDS

General Statutes § 54-76b provides in pertinent part that:

(a) For the purposes of **sections 54-76b** to 54-76n, inclusive:

(1) **"Youth" means** (A) a minor who has reached the age of sixteen years but has not reached the age of eighteen years at the time of the alleged offense, or (B) a child who has been transferred to the regular criminal docket of the Superior Court pursuant to section 46b-127; and

(2) **"Youthful offender" means** a youth who (A) is charged with the commission of a crime which is not a class A felony or a violation of section 53a-70b of the general statutes, revision of 1958, revised to January 1, 2019, or section 14-222a, subsection (a) or subdivision (1) of subsection (b) of section 14-224, section 14-227a, 14-227g or 14-227m, subdivision (1) or (2) of subsection (a) of section 14-227n, subdivision (2) of subsection (a) of section 53-21 or section 53a-70, 53a-70a, 53a-71, 53a-72a or 53a-72b, **except** a violation involving consensual sexual intercourse or sexual contact between the youth and another person who is thirteen years of age or older but under sixteen years of age, and (B) has not previously been convicted of a felony in the regular criminal docket of the Superior Court or been previously adjudged a serious juvenile offender or serious juvenile repeat offender, as defined in section 46b-120.

(Emphasis added.)

General Statutes § 54-76c provides in pertinent part that:

(a) In any case where an information or complaint has been laid charging a defendant with the commission of a crime, and where **it appears that the defendant is a youth, such defendant shall be presumed to be eligible to be adjudged a youthful offender and the court having jurisdiction shall, but only as to the public, order the court file sealed, unless such defendant** (1) is charged with the commission of a crime which is a class A felony or a violation of section 53a-70b of the general statutes, revision of 1958, revised to January 1, 2019, or section 14-222a, subsection (a) or subdivision (1) of subsection (b) of section 14-224, section 14-227a, 14-227g or 14-227m, subdivision (1) or (2) of subsection (a) of section 14-227n, subdivision (2) of subsection (a) of section 53-21 or section 53a-70, 53a-70a, 53a-71, 53a-72a or 53a-72b, **except** a violation involving consensual sexual intercourse or sexual contact between the youth and another person who is thirteen years of age or older but under sixteen years of age, or (2) has been previously convicted of a felony in the regular criminal docket of the Superior Court or been previously adjudged a serious juvenile offender or serious juvenile repeat offender, as defined in section 46b-120. Except as provided in subsection (b) of this section, upon motion of the prosecuting official, the court may order that an investigation be made of such defendant under section 54-76d, for the purpose of determining whether such defendant is ineligible to be adjudged a youthful offender, provided the court file shall remain sealed, but only as to the public, during such investigation.

(b) (1) **Upon motion of the prosecuting official and order of the court**, the case of any defendant who is a youth and is charged with the commission of a felony, other than a felony set forth in subsection (a) of this section, shall be transferred from the youthful offender docket to the regular criminal docket of the Superior Court, provided the court finds that there is probable cause to believe the defendant has committed the act for which he or she is charged. The defendant shall be arraigned in the regular criminal docket of the Superior Court by the next court business day following such transfer, provided any proceedings held prior to the finalization of such transfer shall be private and shall be conducted in such parts of the courthouse or the building wherein court is located as shall be separate and apart from the other parts of the court which are then being held for proceedings pertaining to adults charged with crimes. **The file of any case so transferred shall remain sealed until the end of the tenth working day following such arraignment, unless the prosecuting official has filed a motion pursuant to subdivision (2) of this subsection, in which case such file shall remain sealed until the court makes a decision on the motion.**

(2) A prosecuting official may, not later than ten working days after such arraignment, file a motion to transfer the case of any defendant who is a youth and is charged with the commission of a felony, other than a felony set

forth in subsection (a) of this section, from the regular criminal docket of the Superior Court to the youthful offender docket for proceedings in accordance with the provisions of sections 54-76b to 54-76n, inclusive. The court sitting for the regular criminal docket of the Superior Court shall, after hearing and not later than ten working days after the filing of such motion, decide such motion.

(Emphasis added.)

General Statutes § 54-76l provides that:

(a) **The records or other information of a youth, other than** a youth arrested for or charged with the commission of a crime which is a class A felony or a violation of section 53a-70b of the general statutes, revision of 1958, revised to January 1, 2019, or section 14-222a, subsection (a) or subdivision (1) of subsection (b) of section 14-224, section 14-227a, 14-227g or 14-227m, subdivision (1) or (2) of subsection (a) of section 14-227n, subdivision (2) of subsection (a) of section 53-21 or section 53a-70, 53a-70a, 53a-71, 53a-72a or 53a-72b, except a violation involving consensual sexual intercourse or sexual contact between the youth and another person who is thirteen years of age or older but under sixteen years of age, including fingerprints, photographs and physical descriptions, **shall be confidential and shall not be open to public inspection or be disclosed except as provided in this section, but such fingerprints, photographs and physical descriptions submitted to the State Police Bureau of Identification of the Division of State Police within the Department of Emergency Services and Public Protection at the time of the arrest of a person subsequently adjudged, or subsequently presumed or determined to be eligible to be adjudged, a youthful offender shall be retained as confidential matter in the files of the bureau and be opened to inspection only as provided in this section**. Other data ordinarily received by the bureau, with regard to persons arrested for a crime, shall be forwarded to the bureau to be filed, in addition to such fingerprints, photographs and physical descriptions, and be retained in the division as confidential information, open to inspection only as provided in this section.

(b) **The records of any such youth, or any part thereof, may be disclosed to** and between individuals and agencies, and employees of such agencies, providing services directly to the youth, including law enforcement officials, state and federal prosecutorial officials, school officials in accordance with section 10-233h, court officials, the Division of Criminal Justice, the Court Support Services Division and a victim advocate under section 54-220 for a victim of a crime committed by the youth. **Such records shall also be available to** the attorney representing the youth, in any proceedings in which such records are relevant, to the parents or guardian of such youth, until such

time as the youth reaches the age of majority or is emancipated, and to the youth upon his or her emancipation or attainment of the age of majority, provided proof of the identity of such youth is submitted in accordance with guidelines prescribed by the Chief Court Administrator. **Such records shall also be available to** members and employees of the Board of Pardons and Paroles and employees of the Department of Correction who, in the performance of their duties, require access to such records, **provided** the subject of the record has been adjudged a youthful offender and sentenced to a term of imprisonment or been convicted of a crime in the regular criminal docket of the Superior Court, **and** such records are relevant to the performance of a risk and needs assessment of such person while such person is incarcerated, the determination of such person's suitability for release from incarceration or for a pardon, or the determination of the supervision and treatment needs of such person while on parole or other supervised release. **Such records shall also be available to law enforcement officials and prosecutorial officials conducting legitimate criminal investigations**. **Such records shall also be available to** members and employees of the Judicial Review Council who, in the performance of their duties, require access to such records. Records disclosed pursuant to this subsection shall not be further disclosed.

(c) The records of any such youth, or any part thereof, **may be disclosed upon order of the court to any person who has a legitimate interest** in the information and is identified in such order. Records or information disclosed pursuant to this subsection shall not be further disclosed.

(d) The records of any such youth, or any part thereof, **shall be available to the victim of the crime committed by such youth to the same extent as the record of the case of a defendant in a criminal proceeding in the regular criminal docket of the Superior Court is available to a victim of the crime committed by such defendant. The court shall designate an official from whom such victim may request such information**. Information disclosed pursuant to this subsection shall not be further disclosed.

(e) Any reports and files held by the Court Support Services Division regarding any such youth who served a period of probation may be accessed and disclosed by employees of the division for the purpose of performing the duties contained in section 54-63b.

(f) **Information concerning any such youth who has escaped from an institution to which such youth has been committed or for whom an arrest warrant has been issued may be disclosed by law enforcement officials**.

(g) Information concerning any such youth in the custody of the Department of Correction may be disclosed by the department to the parents or guardian of such youth.

(h) **The information contained in and concerning the issuance of any protective order** issued in a case in which a person is presumed or determined to be eligible to be adjudged a youthful offender shall be entered in the registry of protective orders pursuant to section 51-5c and may be further disclosed as specified in said section.

(i) The records of any youth adjudged a youthful offender for a violation of section 14-215 or 14-222, subsection (b) of section 14-223 or subdivision (2) or (3) of subsection (b) or subsection (c) of section 14-224 **shall be disclosed to the Department of Motor Vehicles** for administrative use in determining whether suspension of such person's motor vehicle operator's license is warranted. Such records disclosed pursuant to this subsection shall not be further disclosed.

(j) The provisions of this section, as amended by public act 05-232, apply to offenses committed after January 1, 2006, and do not affect any cases pending on said date or any investigations involving offenses committed prior to said date.

(Emphasis added.)

General Statutes § 54-76o provides that:

Whenever any person has been adjudicated a youthful offender and has subsequently been discharged from the supervision of the court or from the care of any institution or agency to whom he has been committed by the court, **all police and court records pertaining to such youthful offender shall be automatically erased when such person attains twenty-one years of age, provided** such person has not subsequent to being adjudged a youthful offender been convicted of a felony, as defined in section 53a-25, prior to attaining such age. Youthful offender status shall not be deemed conviction of a crime for the purposes of this section. **Upon the entry of such an erasure order, all references including arrest, complaint, referrals, petitions, reports and orders, shall be removed from all agency, official and institutional files. The persons in charge of such records shall not disclose to any person, except the subject of the record, upon submission of satisfactory proof of the subject's identity in accordance with guidelines prescribed by the Chief Court Administrator, information pertaining to the record so erased. No youth who has been the subject of such an erasure order shall be deemed to have been arrested ab initio, within the meaning of the general statutes, with respect to**

proceedings so erased. Copies of the erasure order shall be sent to all persons, agencies, officials or institutions known to have information pertaining to the proceedings affecting such youth.

(Emphasis added.)

VII. ARRESTED STUDENTS

General Statutes § 10-233h provides that:

If any person who is **at least seven years of age but less than twenty-one years of age and an enrolled student is arrested for a violation of section 53-206c[*], a class A misdemeanor or a felony**, the municipal police department or Division of State Police within the Department of Emergency Services and Public Protection that made such arrest shall, **not later than the end of the weekday following such arrest, orally notify** the superintendent of schools of the school district in which such person resides or attends school of the identity of such person and the offense or offenses for which he was arrested and shall, **within seventy-two hours of such arrest, provide written notification of such arrest, containing a brief description of the incident, to such superintendent**. The superintendent shall maintain such written report in a secure location and the information in such report shall be maintained as confidential in accordance with section 46b-124. The superintendent may disclose such information only to the principal of the school in which such person is a student or to the principal or supervisory agent of any other school in which the superintendent knows such person is a student. The principal or supervisory agent may disclose such information only to special services staff or a consultant, such as a psychiatrist, psychologist or social worker, for the purposes of assessing the risk of danger posed by such person to himself, other students, school employees or school property and effectuating an appropriate modification of such person's educational plan or placement, and for disciplinary purposes. If the arrest occurred during the school year, such assessment shall be completed not later than the end of the next school day. **If an expulsion hearing is held pursuant to section 10-233d, a representative of the municipal police department or the Division of State Police, as appropriate, may testify and provide reports and information on the arrest at such hearing, provided such police participation is requested by any of the following**: The local or regional board of education, the impartial hearing board, the principal of the school or the student or his parent or guardian. Such information with respect to a child under eighteen years of age shall be confidential in accordance with sections 46b-124 and 54-76*l*, and shall only be disclosed as provided in this section and shall not be further disclosed.

(Emphasis added.)

***** Sale, carrying or brandishing of facsimile firearm.

VIII. THE SECURITY AND PRIVACY OF CRIMINAL RECORDS ACT

The Security and Privacy of criminal records is governed by General Statutes § 54-142g through 142q.

A. General Provisions

General Statutes § 54-142g provides that:

For purposes of this part and sections 29-11 and 54-142c, the following definitions shall apply:

(a) "**Criminal history record information**" means court records and information compiled by criminal justice agencies for purposes of identifying criminal offenders and of maintaining as to each such offender notations of arrests, releases, detentions, indictments, informations, or other formal criminal charges or any events and outcomes arising from those arrests, releases, detentions, including pleas, trials, sentences, appeals, incarcerations, correctional supervision, paroles and releases; but does not include intelligence, presentence investigation, investigative information or any information which may be disclosed pursuant to subsection (f) of section 54-63d.

(b) "**Criminal justice agency**" means any court with criminal jurisdiction, the Department of Motor Vehicles or any other governmental agency created by statute which is authorized by law and engages, in fact, as its principal function in activities constituting the administration of criminal justice, including, but not limited to, organized municipal police departments, the Division of State Police, the Department of Correction, the Court Support Services Division, the Office of Policy and Management, the state's attorneys, assistant state's attorneys and deputy assistant state's attorneys, the Board of Pardons and Paroles, the Chief Medical Examiner and the Office of the Victim Advocate. "Criminal justice agency" includes any component of a public, noncriminal justice agency if such component is created by statute and is authorized by law and, in fact, engages in activities constituting the administration of criminal justice as its principal function.

(c) "**Conviction information**" means criminal history record information which has not been erased, as provided in section 54-142a, and which discloses that a person has pleaded guilty or nolo contendere to, or was convicted of, any criminal offense, and the terms of the sentence.

(d) "**Current offender information**" means information on the current status and location of all persons who (1) are arrested or summoned to appear in court; (2) are being prosecuted for any criminal offense in Superior Court; (3) have an appeal pending from any criminal conviction; (4) are detained or incarcerated in any correctional facility in this state; or (5) are subject to the jurisdiction or supervision of any probation, parole or correctional agency in this state, including persons transferred to other states for incarceration or supervision.

(e) **"Nonconviction information"** means (1) criminal history record information that has been "erased" pursuant to section 54-142a; (2) information relating to persons granted youthful offender status; (3) continuances which are more than thirteen months old. **Nonconviction information does not mean conviction information or current offender information**.

(f) "**Disclosure**" means the communication of information to any person by any means.

(g) "**Dismissal**" means (1) prosecution of the charge against the accused was declined pursuant to rules of court or statute; or (2) the judicial authority granted a motion to dismiss pursuant to rules of court or statute; or (3) the judicial authority found that prosecution is no longer possible due to the limitations imposed by section 54-193 [statute of limitations].

(Emphasis added.)

B. Data Collection, Storage, and Maintenance

General Statutes § 54-142h provides that:

(a) **All criminal justice agencies** that collect, store or disseminate criminal history record information **shall institute a process of** data collection, entry, storage and systematic audit that will minimize the possibility of recording and storing inaccurate criminal history record information, **and shall notify, upon the discovery of any such inaccuracy, all criminal justice agencies known to have received such information**. The Division of Criminal Justice may give advice to criminal justice agencies concerning the collection, storage and dissemination of criminal history record information, provided the giving of such advice shall not interfere with the duties or supersede the authority of the state librarian or public records administrator with respect to public records.

(b) For the purpose of verifying the completeness and accuracy of criminal history record information collected and maintained by criminal justice

information agencies subject to Title 28, Chapter 1, Part 20 of the Code of Federal Regulations, the Division of Criminal Justice shall conduct an annual audit of the records maintained by such agencies. Said division shall provide for a random sample of criminal justice agencies to be audited each year.

(c) **Criminal justice agencies subject to such audits shall maintain and retain records** that will facilitate such audits, including, but not limited to, the keeping of a log which chronologically records the date nonconviction record information was disclosed, the information disclosed, how or where the information was obtained and the person or criminal justice agency to whom the information was disseminated. **Such log shall be maintained for a minimum period of twelve months. It shall not be necessary to log the disclosure of nonconviction record information to any authorized officer or employee within such agency**.

(Emphasis added.)

General Statutes § 54-142i provides that:

All criminal justice agencies which collect, store or disseminate criminal history record information shall:

(1) Screen and have the right to reject for employment, based on good cause, all personnel to be authorized to have direct access to criminal history record information;

(2) Initiate or cause to be initiated administrative action that could result in the transfer or removal of personnel authorized to have direct access to such information when such personnel violate the provisions of these regulations or other security requirements established for the collection, storage or dissemination of criminal history record information;

(3) Provide that direct access to computerized criminal history record information shall be available only to authorized officers or employees of a criminal justice agency, and, as necessary, other authorized personnel essential to the proper operation of a criminal history record information system, except that the Judicial Branch may provide disclosable information from its combined criminal and motor vehicle information systems or from its central computer system containing issued warrants and other criminal process as provided in section 54-2a to the public electronically, including through the Internet, in accordance with guidelines established by the Chief Court Administrator;

(4) Provide that each employee working with or having access to criminal history record information shall be made familiar with the substance and intent of the provisions in this section;

(5) Whether manual or computer processing is utilized, institute procedures to assure that an individual or agency authorized to have direct access is responsible for the physical security of criminal history record information under its control or in its custody, and for the protection of such information from unauthorized access, disclosure or dissemination. The State Police Bureau of Identification shall institute procedures to protect both its manual and computerized criminal history record information from unauthorized access, theft, sabotage, fire, flood, wind or other natural or man-made disasters;

(6) Where computerized data processing is employed, institute effective and technologically advanced software and hardware designs to prevent unauthorized access to such information and restrict to authorized organizations and personnel only, access to criminal history record information system facilities, systems operating environments, systems documentation, and data file contents while in use or when stored in a media library; and

(7) Develop procedures for computer operations which support criminal justice information systems, whether dedicated or shared, to assure that: (A) Criminal history record information is stored by the computer in such a manner that it cannot be modified, destroyed, accessed, changed purged, or overlaid in any fashion by noncriminal justice terminals; (B) operation programs are used that will prohibit inquiry, record updates, or destruction of records, from any terminal other than criminal justice system terminals which are so designated; (C) the destruction of records is limited to designated terminals under the direct control of the criminal justice agency responsible for creating or storing the criminal history record information; (D) operational programs are used to detect and store for the output of designated criminal justice agency employees all unauthorized attempts to penetrate any criminal history record information system, program or file; (E) the programs specified in subparagraphs (B) and (D) of this subdivision are known only to criminal justice agency employees responsible for criminal history record information system control or individuals or agencies pursuant to a specific agreement with the criminal justice agency to provide such programs and the programs are kept continuously under maximum security conditions.

(Emphasis added.)

General Statutes § 54-142j provides that:

The Commissioner of Emergency Services and Public Protection shall adopt regulations to establish procedures for criminal justice agencies to query the central repository prior to dissemination of any criminal history disposition information to assure that the most up to date disposition data is being used.

Inquiries to the State Police Bureau of Identification shall be made prior to any dissemination except in those cases where time is of the essence and the repository is technically incapable of responding within the necessary time period.

C. Disclosure

General Statutes § 54-142k provides that:

(a) Each person or agency holding **conviction information or nonconviction information** shall establish reasonable hours and places of inspection of such information.

(b) **Each person or agency holding conviction information or nonconviction information shall** (1) update such information promptly whenever related criminal history record information is erased, modified or corrected or when a pardon is granted; and (2) post on any conviction information or nonconviction information available to the public a notice that the criminal history record information may change daily due to erasures, corrections, pardons and other modifications to individual criminal history record information and that the person or agency cannot guarantee the accuracy of the information except with respect to the date the information is disclosed or obtained.

(c) **Conviction information shall be available to the public for any purpose.**

(d) **Nonconviction information shall be available to the subject of the information and to the subject's attorney pursuant to this subsection and subsection (e) of this section**. Any person shall, upon satisfactory proof of the person's identity, be entitled to inspect, for purposes of verification and correction, any nonconviction information relating to the person and upon the person's request **shall be given** a computer printout or photocopy of such information for which a reasonable fee may be charged, **provided no erased record may be released except as provided in subsection (f) of section 54-142a**. Before releasing any exact reproductions of nonconviction information to the subject of the information, the agency holding such information **may remove** all personal identifying information from such reproductions.

(e) **Any person may authorize, in writing, an agency holding nonconviction information pertaining directly to the person to disclose such information to the person's attorney**. The holding agency shall permit such attorney to inspect and obtain a copy of such information if both the attorney's identity and that of the attorney's client are satisfactorily established, provided no erased record may be released unless the attorney

attests to such attorney's client's intention to challenge the accuracy of such record.

(f) Any person who obtains nonconviction information by falsely representing to be the subject of the information shall be guilty of a class D felony.

General Statutes § 54-142m provides that:

(a) A criminal justice agency holding **nonconviction information may disclose it to persons or agencies not otherwise authorized** (1) for the purposes of research, evaluation or statistical analysis, or (2) if there is a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to such agreement. The Judicial Branch may disclose nonconviction information to a state agency pursuant to an agreement to provide services related to the collection of moneys due. Any such disclosure of information shall be limited to that information necessary for the collection of moneys due. Pursuant to an agreement, the Judicial Branch may disclose nonconviction information to the Department of Mental Health and Addiction Services for the administration of court-ordered evaluations and the provision of programs and services to persons with psychiatric disabilities and substance abuse treatment needs. Pursuant to an agreement, the Judicial Branch may disclose nonconviction information to advocates for victims of family violence to allow such advocates to develop plans to provide for the safety of victims and victims' minor children, provided such agreement prohibits such advocates from disclosing such nonconviction information to any person, including, but not limited to, a victim of family violence.

(b) **No nonconviction information may be disclosed to such persons or agencies except pursuant to a written agreement** between the agency holding it and the persons to whom it is to be disclosed.

(c) **The agreement shall specify** the information to be disclosed, the persons to whom it is to be disclosed, the purposes for which it is to be used, the precautions to be taken to insure the security and confidentiality of the information and the sanctions for improper disclosure or use.

(d) Persons to whom information is disclosed under the provisions of this section shall not without the subject's prior written consent disclose or publish such information in such manner that it will reveal the identity of such subject.

(Emphasis added.)

General Statutes § 54-142n provides that:

Nonconviction information other than erased information may be disclosed only to: (1) Criminal justice agencies in this and other states and the federal government; (2) agencies and persons which require such information to implement a statute or executive order that expressly refers to criminal conduct; (3) agencies or persons authorized by a court order, statute or decisional law to receive criminal history record information. **Whenever a person or agency receiving a request for nonconviction information is in doubt about the authority of the requesting agency to receive such information, the request shall be referred to the State Police Bureau of Investigation**.

(Emphasis added.)

General Statutes § 54-142o provides that:

(a) **Nonconviction information disseminated to noncriminal justice agencies shall** be used by such agencies only for the purpose for which it was given and shall not be redisseminated.

(b) **No agency or individual shall confirm the existence or nonexistence of nonconviction information to any person or agency that would not be eligible to receive the information itself**.

(Emphasis added.)

General Statutes § 54-142p provides that:

(a) Any criminal justice agency may furnish **criminal history record information** or a **no criminal record letter** to an individual in conjunction with an application to enter the United States or any foreign nation when the subject of the record (1) certified that the information is needed to complete an application to enter the United States or a foreign nation, and (2) provides proof that he is the subject of the record.

(b) The disseminating agency shall certify that the information released is accurate as of ninety days prior to release and is being disclosed only for the purpose of assisting the subject of the record in gaining entry into the United States or a foreign nation.

(Emphasis added.)

D. Challenging Completeness and Accuracy

General Statutes § 54-142l provides that:

(a) A person may challenge the completeness and accuracy of such information by giving written notice of his challenge to the State Bureau of Identification and to the agency at which he inspected the information, if other than the State Police Bureau of Identification. The notice shall contain a sworn statement that the information in or supporting the challenge is accurate and that the challenge is made in good faith.

(b) Upon receipt of the notice, the State Police Bureau of Identification shall conduct an audit of the part of such person's criminal history record information which is necessary to determine the accuracy of the challenge, and may require any criminal justice agency which was the source of the challenged information to verify such information. Within sixty days after the notice is received, the State Bureau of Identification shall notify the person in writing of the results of the audit, and of his right to appeal if the challenge is rejected.

E. Governing Board

General Statutes § 54-142q provides that:

(a) As used in this section, (1) "governing board" means the Criminal Justice Information System Governing Board established in this section, (2) "offender-based tracking system" means an information system that enables, as determined by the governing board and subject to this chapter, criminal justice agencies, as defined in subsection (b) of section 54-142g, the Division of Public Defender Services and the Office of the Federal Public Defender to share criminal history record information, as defined in subsection (a) of section 54-142g, and to access electronically maintained offender and case data involving felonies, misdemeanors, violations, motor vehicle violations, motor vehicle offenses for which a sentence to a term of imprisonment may be imposed, and infractions, and (3) "criminal justice information systems" means the information systems designed and implemented pursuant to section 54-142s.

(b) There shall be a Criminal Justice Information System Governing Board which shall be within the Department of Emergency Services and Public Protection for administrative purposes only and shall oversee criminal justice information systems.

(c) The governing board shall be composed of the Chief Court Administrator, the Commissioner of Emergency Services and Public Protection, the Secretary of the Office of Policy and Management, the Commissioner of Correction, the chairperson of the Board of Pardons and Paroles, the Chief State's Attorney, the Chief Public Defender, the Commissioner of Administrative Services, the Victim Advocate, the Commissioner of Motor

Vehicles, the chairpersons and ranking members of the joint standing committee of the General Assembly on judiciary and the president of the Connecticut Police Chiefs Association. The Chief Court Administrator and a person appointed by the Governor from among the membership shall serve as cochairpersons. Each member of the governing board may appoint a designee who shall have the same powers as such member.

(d) The governing board shall meet at least once during each calendar quarter and at such other times as the chairperson deems necessary. A majority of the members shall constitute a quorum for the transaction of business.

(e) The governing board shall hire an executive director of the board who shall not be a member of the board and who shall serve at the pleasure of the board. The executive director shall be qualified by education, training or experience to oversee the design and implementation of a comprehensive, state-wide information technology system for the sharing of criminal justice information as provided in section 54-142s. The Department of Emergency Services and Public Protection shall provide office space and such staff, supplies and services as necessary for the executive director to properly carry out his or her duties under this subsection.

(f) The governing board shall develop plans, maintain policies and provide direction for the efficient operation and integration of criminal justice information systems, whether such systems service a single agency or multiple agencies. The governing board shall establish standards and procedures for use by agencies to assure the interoperability of such systems, authorized access to such systems and the security of such systems.

(g) In addition to the requirements of subsection (f) of this section, the duties and responsibilities of the governing board shall be to: (1) Oversee the operations and administration of criminal justice information systems; (2) establish such permanent and ad hoc committees as it deems necessary, with appointments to such committees not restricted to criminal justice agencies; (3) recommend any legislation necessary for implementation, operation and maintenance of criminal justice information systems; (4) establish and implement policies and procedures to meet the system-wide objectives, including the provision of appropriate controls for data access and security; and (5) perform all necessary functions to facilitate the coordination and integration of criminal justice information systems.

(h) A member of the governing board, a member of a permanent or an ad hoc committee established by the governing board, and any person operating and administering the criminal justice information system shall be deemed to be

"state officers and employees" for the purposes of chapter 53 and section 5-141d.

(i) Information that may be accessed by the Division of Public Defender Services or the Office of the Federal Public Defender pursuant to subsection (a) of this section shall be limited to: (1) Conviction information, as defined in subsection (c) of section 54-142g, (2) information that is otherwise available to the public, and (3) information, including nonconviction information, concerning a client whom the division has been appointed by the court to represent and is representing at the time of the request for access to such information.

General Statutes § 54-142r provides that:

(a) Any data in a criminal justice information system, as defined in section 54-142q, shall be available to the Commissioner of Administrative Services and the executive director of a division of or unit within the Judicial Department that oversees information technology, or to such persons' designees, for the purpose of maintaining and administering said system.

(b) Any data in said system from an information system of a criminal justice agency, as defined in subsection (b) of section 54-142g, that is available to the public under the provisions of the Freedom of Information Act, as defined in section 1-200, shall be obtained from the agency from which such data originated. The Commissioner of Emergency Services and Public Protection shall provide to any person who submits a request for such data to the Criminal Justice Information System Governing Board, pursuant to said act, the name and address of the agency from which such data originated.

General Statutes § 54-142s provides that:

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

(b) Such information technology system shall include, without limitation, a central tracking and information database, a central electronic document repository and centralized analytical tools, as provided in subsections (c) to (e), inclusive, of this section, all of which shall be developed with state-of-the-art technology, as provided in subsection (f) of this section, and such other components or elements as are determined to be appropriate or necessary by

the board after development of a plan for the design and implementation of such system.

(c) Such information technology system shall include a central, integrated criminal justice tracking and information database that provides:

(1) Complete biographical information and vital statistics for all offenders and former offenders still living; and

(2) Tracking information for all offenders in the criminal justice system, from investigation through incarceration and release, and seamless integration with any electronic monitoring systems, global positioning systems (GPS) and any offender registries.

(d) Such information technology system shall include a central, integrated electronic repository of criminal justice records and documents that provides:

(1) Access to all state and local police reports, presentence investigations and reports, psychological and medical reports, criminal records, incarceration and parole records, and court records and transcripts, whether such records and documents normally exist in electronic or hard copy form; and

(2) Access to scanning and processing facilities to ensure that such records and documents are integrated into the system and updated immediately.

(e) Such information technology system shall include centralized analytical tools, bundled together in a custom-designed enterprise system that includes:

(1) Analytical tools that empower and enhance criminal case assessment, sentencing and plea agreement analysis and pardon, parole, probation and release decisions;

(2) Analytical tools that empower and enhance forecasting concerning recidivism and future offenses for each individual offender; and

(3) Collaborative functionality that enables seamless cross-department communication, information exchange, central note-taking and comment capabilities for each offender.

(f) Such information technology system shall be developed with state-of-the-art relational database technology and other appropriate software applications and hardware, and shall be:

(1) Completely accessible by any authorized criminal justice official through the Internet;

(2) Completely integrated with the state police, organized local police departments, law enforcement agencies and such other agencies and organizations as the governing board deems necessary and appropriate, and their information systems and database applications;

(3) Indexed and cross-referenced by offender name, residence, community, criminal offense and any other data points necessary for the effective administration of the state's criminal justice system;

(4) Fully text searchable for all records;

(5) Secure and protected by high-level security and controls;

(6) Accessible to the public subject to appropriate privacy protections and controls; and

(7) Monitored and administered by the Criminal Justice Information Systems Governing Board, with the assistance of the Department of Administrative Services, provided major software and hardware needs may be provided and serviced by private, third-party vendors.

(g) Not later than July 1, 2008, the Criminal Justice Information Systems Governing Board shall issue a request for proposals for the design and implementation of such information technology system and hire a consultant to develop a plan for such design and implementation.

(h) Not later than July 1, 2008, and not later than January first and July first of each year thereafter, the Criminal Justice Information System Governing Board shall submit a report, in accordance with section 11-4a, to the joint standing committees of the General Assembly having cognizance of matters relating to criminal justice and appropriations and the budgets of state agencies concerning the status of the design and implementation of such information technology system. In conjunction with the report submitted not later than January first of each year, the board shall also make a presentation to said committees during the ensuing regular session concerning the status of the design and implementation of such information technology system and a specific itemization of the additional resources, if any, that are needed to achieve such design and implementation.

IX. INFORMATION RELATING TO CHILD ABUSE

General Statutes § 17a-101k provides in pertinent part as follows:

(a) **The Commissioner of Children and Families shall maintain a registry of the commissioner's findings of abuse or neglect of children** pursuant to section 17a-101g that conforms to the requirements of this section. The

> regulations adopted pursuant to subsection (i) of this section shall provide for the use of the registry on a twenty-four-hour daily basis to prevent or discover abuse of children and the establishment of a hearing process for any appeal by a person of the commissioner's determination that such person is responsible for the abuse or neglect of a child pursuant to subsection (b) of section 17a-101g. **The information contained in the registry and any other information relative to child abuse, wherever located, shall be confidential, subject to such statutes and regulations governing their use and access as shall conform to the requirements of federal law or regulations**. Any violation of this section or the regulations adopted by the commissioner under this section shall be punishable by a fine of not more

(Emphasis added.)

For purposes of the above statute, in accordance with § 17a-93 (a) (1)

> "Child" means any person under eighteen years of age, except as otherwise specified, or any person under twenty-one years of age who is in full-time attendance in a secondary school, a technical school, a college or a state-accredited job training program[.]

The law does not define the term "relative to child abuse" and, therefore, it possesses its ordinary meaning.

In accordance with § 17a-101k, "[a]ny information that is gathered concerning the reports of suspected child abuse ... is prohibited from public disclosure." **Ward v. Greene**, **267 Conn. 539, 553-54 (2004); Groton Police Dept., 104 Conn. App. 150, 164-65 (2007).** The public includes a parent who seeks information relative to child abuse from police departments under the Freedom of Information Act (FOIA). This occurred in **Groton Police Dept. v. FOIC, 104 Conn. App. at 158-60**, a case in which the Appellate Court ruled that records relating to an allegation of the sexual abuse of a child that were in the possession of the police department fell within the scope of § 17a-101k (a) and, therefore, were confidential and not subject to disclosure to the child's parent under the FOIA.

Recall that § 1-201 (a) of the FOIA provides that public records are disclosable "except as otherwise provided by any federal or state statute." The court in **Groton Police Dept.** concluded that § 17a-101k (a) was a state statute that "otherwise provided" for full confidentiality of records relating to child abuse. The Court further concluded that by seeking the records under the FOIA, the child's parent was effectively a member of the public and her status as a parent was irrelevant. The court further concluded that a parent, in any event, cannot waive the confidentiality protection of § 17a-101k (a), which protects not only the child, but others who may be identified in the records. **See 104 Conn. App. at 165-67**.

Consistent with police officers' duties as mandated reporters of child abuse; §§ 17a-101 (a) and 17a-101d; and with the state's important public policy of protecting at-risk children; § 17a-100 (a); police records custodians may disclose information relating to child abuse to other law enforcement agencies and governmental entities, such as Department of Children and Families, which need such information in order to carry out their responsibilities under the law to protect children from abuse and neglect.

X. MISCELLANEOUS

A. Records Sealed By A Court

Courts possess the power to seal records and prohibit or limit their public disclosure. Notwithstanding any statutory provision to the contrary, a court order prohibiting disclosure of government records must be obeyed. **See Hartford v. Chase, 942 F.2d 130 (2d Cir. 1991)**. To prevent inadvertent disclosure, records which have been ordered sealed should be clearly marked as such or segregated.

B. Federal Law

Criminal records which may be disclosable under state law could conceivably be non-disclosable under federal law because of the Supremacy Clause of the United States Constitution, which provides that "[t]his Constitution and the Laws of the United States which shall be made in pursuance thereof. . . shall be the supreme Law of the Land; and the Judges in every state shall be bound thereby, anything in the Constitution or Laws of any state to the Contrary notwithstanding." U.S. Const. Art. VI, Clause 2.

While a conflict between Connecticut law and federal law in matters of criminal records disclosure may be rare, it is prudent to recognize the possibility. In the event of a conflict between state and federal law, the latter will prevail under the authority of the supremacy clause and, therefore, must be followed. **See Hartford v. Chase, 942 F.2d 130 (2d Cir. 1991); United States v. Thorne, 467 F. Supp. 938 (D. Conn 1979)**.