

STATE OF CONNECTICUT  
Criminal Justice Information System (CJIS-CT) Governing Board  
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Honorable Gary Winfield  
State Senator, 10th District  
Legislative Office Building, Room 2500  
Hartford, CT 06106-1591

Honorable Steve Stafstrom  
State Representative, 129<sup>th</sup> District  
Legislative Office Building, Room 2502  
Hartford, CT 06106-1591

Dear Senator Winfield and Representative Stafstrom:

**I. Introduction**

The Clean Slate statutes (PA 21-32 as amended by PA 21-33 and PA 22-26) require the Department of Emergency Services and Public Protection (DESPP), in consultation with the Judicial Branch and the Criminal Justice Information System (CJIS) Governing Board, to develop and implement automated processes for erasure of certain criminal records.

The CJIS Governing Board's statutory role includes the development of plans, maintenance of policies, and provision of direction for the efficient operation and integration of criminal justice information systems. Consistent with the CJIS Governing Board's charge and the Clean Slate requirements listed under the above public acts, CJIS staff have provided to impacted agencies intensive technical assistance, project management, and inter-branch coordination through the planning and implementation process.

The State of Connecticut has made a \$5.0 million investment thus far in supporting improvements to information-technology systems to implement the Clean Slate statutes. The FY2022 and FY2023 biennial budget appropriated \$1.2 million to DESPP and to the Judicial Branch, and the State Bond Commission allocated a total of \$3.8 million to DESPP, the Judicial Branch, CJIS, the Department of Correction, and the Division of Criminal Justice. Staff in the Judicial Branch, Executive Branch state agencies and divisions, and criminal justice system stakeholders have worked intensively to make IT improvements to implement the automated erasure system required by the Clean State statutes.

Along with the complexity and intensive effort to make the necessary IT upgrades, the implementation process has surfaced substantial questions regarding the best interpretation of the statute. While seeking input from staff with IT, legal, and policy expertise, stakeholders have raised good-faith arguments proposing divergent statutory interpretations. On behalf of the CJIS Governing Board, we submit five questions, listed below, for your attention. The CJIS Governing Board believes that the General Assembly should be involved in resolving the substantial legal and policy questions in these areas. So that implementation efforts continue prior to the end of the coming legislative session, working assumptions based on the current statute are listed for each question.

## II. Clean Slate legal and policy questions

### A. Person-level sentence completion, and paper records

Section 3(e)(3) of Public Act 21-32 as amended by Public Act 21-33 and Public Act 22-26 § 34 includes the following language:

(3) The provisions of subdivision (1) of this subsection shall not apply to any conviction for any offense until the defendant has completed serving the sentence imposed for any offense or offenses for which the defendant has been convicted.

This language raises the question of whether paper records must be examined for each potential erasure, as a person could possibly have outstanding sentence components not contained in available electronic records. To that point, the Judicial Branch's electronic case management system, a critical component of developing the Clean Slate automated erasure system, went live on approximately January 1, 2000. Thus, there are no pre-2000 records available in this system. Although there are electronic records available for defendants who are still incarcerated or on parole or probation, other sentence components, such as unpaid criminal fines, are not available electronically.

**Working assumption for current technical scope:** Pre-2000 records will not be reviewed for outstanding sentence components. Legislation will be needed to clarify that it is not necessary to check pre-2000 records to determine eligibility for Clean Slate erasure.

### B. Scope of sentence completion

Additionally, the sentence-completion language in the public acts does not define the consequences of a criminal conviction that must be completed before eligibility to receive Clean Slate erasure occurs. A non-exhaustive list of elements that could be considered part of sentence completion appears below under items i–vii. The precise definition of sentence completion significantly impacts Clean Slate's technical scope. Clarification in legislation explicitly enumerating the sentence components that must be completed before eligibility for Clean Slate erasure is needed to complete implementation.

- i. *Incarceration, probation, and DOC community supervision (including, but not limited to, transitional supervision, parole, and special parole),*
- ii. *Criminal fines imposed as part of a sentence, and*
- iii. *Standing criminal protective orders imposed under § 53a-40e.*

**Working assumption for current technical scope:** Items i–iii above are currently understood to be components of a sentence that must be completed before eligibility for Clean Slate erasure occurs.

- iv. *Order of restitution imposed under § 53a-28(c) and enforced under § 53a-28a.*

**Working assumption for current technical scope:** PA 22-26 § 35 included a provision in General Statutes § 54-142c enabling victims or their representatives to obtain erased criminal case information to pursue, or to contemplate pursuing, a civil action to enforce a restitution order as a civil judgment. Therefore, based on the General Assembly's granting of such access to facilitate pursuit of a civil judgment to enforce restitution orders, an individual's completion of a restitution order is currently understood not be part of

sentence completion for purposes of Clean Slate eligibility. Accordingly, defendants with outstanding, unpaid restitution orders will be eligible for Clean Slate erasure.

The General Assembly may wish to clarify further.

v. *Offenses requiring individuals to register for the Sex Offender Registry or the Deadly Weapon Offender Registry.*

Although § 54-142a(e)(2)(B), as amended by PA 21-32, excludes from Clean Slate erasure any conviction for an offense that is a nonviolent sexual offense or a sexually violent offense, there are offenses that nevertheless require sex offender and deadly weapon offender registration but are eligible for Clean Slate erasure. These offenses include a criminal offense against a victim who is a minor (§ 54-251), and a felony for a sexual purpose (§ 54-254). Additionally, some of the offenses committed with a deadly weapon that require registration on the Deadly Weapon Offender Registry (§ 54-280a) are also eligible for Clean Slate erasure.

For convictions that are eligible for Clean Slate while also carrying a registration requirement, erasing the convictions requiring registration may mean that the registration requirement would also be terminated. Under § 54-142a(e)(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.” The Connecticut Supreme Court has repeatedly stated, most recently in *Goguen v. Comm’r of Correction*, 341 Conn. 508, 531 (2021), that “the requirement that [a defendant] register as a sex offender is a collateral consequence of his . . . conviction, not part of the sentence.” (Emphasis added.) One possible conclusion is that, since registration is “not part of the sentence,” the fact that a defendant is subject to a registration requirement would not block that person from receiving Clean Slate erasure while the registration period continues. If the legal effect of erasure is to terminate any associated registration requirements, then an entire class of defendants may thus have registration requirements terminated early due to Clean Slate.

**Working assumption for current technical scope:** The two registries are not currently included in technical plans for the automated Clean Slate erasure system being developed. Therefore, regardless of registration status, defendants with eligible convictions are currently expected to receive Clean Slate erasure.

Legislation is necessary to either clarify the implications of Clean Slate erasure for registry obligations, expand the list of excluded convictions to include all convictions with registry requirements, or specify that registry requirements are among the components of a sentence that must be completed before a defendant is eligible for Clean Slate erasure.

vi. *Submission of DNA sample under § 54-102g.*

Submitting a DNA sample for certain convictions (including all felonies) is statutorily required to be “a condition of [the] sentence” for any defendant who is not sentenced to a term of confinement per § 54-102g(c). If it is statutorily a part of the sentence, then failing to submit a sample would render a defendant ineligible for Clean Slate erasure under the current statutory language. However, § 54-102j does not allow use of information from the DNA Data Bank for the purpose of verifying whether a person is eligible for Clean Slate, creating a contradiction for the program’s implementation.

In addition, allowing Clean Slate eligibility despite a failure to submit a required DNA sample has policy implications. Namely, defendants who can avoid submitting a DNA sample until Clean Slate erasure of

their conviction would no longer be able to be prosecuted for failing to submit that sample and would never have their DNA in the DNA Databank. Defendants who comply with the DNA sample requirement before Clean Slate erasure, however, would continue to have their DNA in the Databank, as there is no provision in § 54-102j for the expungement of DNA samples upon Clean Slate erasure.

**Working assumption for current technical scope:** Current technical plans do not include connection of the DNA Data Bank with the automated erasure system being developed. Further, the electronic case management systems being connected lack comprehensive tracking of submission of DNA evidence

Since DNA submission is statutorily required to be a condition of the sentence for certain convictions (including all felonies), Clean Slate erasure of those sentences cannot occur unless or until the legislature amends § 54-102j to allow for disclosure of DNA Databank information to the automated erasure system or explicitly excludes the submission of a DNA sample pursuant to § 54-102g from the components of a sentence that must be completed before a defendant is eligible for Clean Slate erasure. The legislature may also wish to clarify the effect of erasure on presence of data in the DNA Data Bank.

vii. *Court fees, such as those associated with probation supervision (§ 53a-29(c)).*

**Working assumption for current technical scope:** The payment of court fees is currently understood not to be an element of a sentence that must be completed before eligibility for Clean Slate erasure occurs, although the General Assembly may wish to reinforce this understanding of the Clean Slate statutes.

### C. Current and historical classification of offenses

The statutory parameters for automated erasure specify eligible offenses — misdemeanors, certain felonies, and certain unclassified felonies or misdemeanors — for erasure. Pertinent for Clean Slate implementation purposes; it is not explicitly noted whether the offenses' classifications apply to current classification or classification at the time of conviction. As the legislature has changed the classification of certain offenses over time, some offenses that used to be eligible are now ineligible, and vice versa.

For example, § 53a-196d, possession of child pornography in the first degree, was classified as a D felony until 2004, when the section was modified to be a B felony with the same name but different elements. A conviction under that section from between 2000 and 2004 would be eligible for Clean Slate erasure if the automated system uses the historical classification, but it would be ineligible if the automated system uses the current classification. Using the current classification, however, would present the additional challenge that the elements of the crime have changed.

As an additional complication, the list of exemptions was structured in the text of the law by including the classification of the offense. So one group of exemptions is listed as "(C) Any conviction for a class D felony offense that is a violation of section 53a-60a, 53a-60b, 53a-60c, 53a-64bb, 53a-72a, 53a-90a, 53a-103a, 53a-181c, 53a-191, 53a-196, 53a-196f, 53a-211, 53a-216, 53a-217a, 53a-322, 54-251, 54-252, 54-253 or 54-254 or subdivision (1) of subsection (a) of section 53a-189a." However, § 53a-90a, enticing a minor by computer, was classified as an A misdemeanor until 2004, and so it is unclear whether pre-2004 misdemeanor convictions under § 53a-90a should be exempted from erasure.

**Working assumption for current technical scope:** The automated system will rely on historical classification recorded at the time of conviction and will not exclude offenses from erasure if the historical classification is different from what is currently listed in statutes. Because criminal record information in

electronic databases contains an individual's conviction at the time of conviction, reviewing and updating all historical conviction information would require manual review across several databases.

Legislation could clarify historical vs. current classification and make necessary changes to the exemption list. The General Assembly may also wish to review the list of exempted statutes to ensure intended historical statutes are included.

#### D. In "X" type statutes

Pursuant to the Clean Slate statute, automated erasure is granted for "a classified or unclassified misdemeanor offense, or a class D or E felony or an unclassified felony offense carrying a term of imprisonment of not more than five years." However, the definitions of "felony" and "misdemeanor" in §§ 53a-25 and 53a-26 refer to the definition of "offense" in § 53a-24, which explicitly excludes any "motor vehicle violation." Although the legislature has expressly designated some provisions of Title 14 of the General Statutes (the motor vehicle code) as "felonies" or "misdemeanors," many provisions in Title 14 are simply enforced by a potential term of imprisonment (most with a maximum sentence of less than 5 years). These Title 14 provisions seem to be similar to the felonies and misdemeanors eligible for Clean Slate erasure. For example, § 14-222a, negligent homicide with a motor vehicle, is punishable by up to three years' imprisonment, but is not expressly designated as a particular level of felony. If that provision were located in any other Title of the General Statutes, and was, therefore, not a "motor vehicle violation" excepted from the definition of "offense" in § 53a-24, it would qualify as an "unclassified misdemeanor" according to § 53a-35 (b)(5) that would be eligible for Clean Slate erasure.

**Working assumption for current technical scope:** Title 14 convictions not expressly designated as a felony or misdemeanor are not eligible for Clean Slate erasure.

The General Assembly may wish to consider including violations of Title 14 provisions that are punishable by up to five years' imprisonment in the list of offenses that are eligible for Clean Slate erasure.

#### E. Pending charges

The lack of a provision in the Clean Slate statute to block erasure for a person facing pending charges who has otherwise completed their sentence and the minimum waiting period may result in certain potentially unintended scenarios. Specifically, a pending charge does not block or restart the erasure clock, based on the current language of the Clean Slate statute. Therefore, a person in jail or released on bond pending adjudication of a new charge could receive Clean Slate erasure of earlier charges if they complete the minimum waiting period while awaiting trial. That erasure could then change bond requirements or the possible sentencing consequences if, for example, a second offense has now become a first offense.

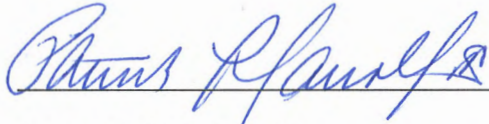
**Working assumption for current technical scope:** Allow defendants with pending charges to receive automated erasure on previous charges.

A legislative change could include either pausing erasures on the prior convictions of a person with a pending charge, if technically feasible. Or reducing Clean Slate erasure's effect, such as consideration of prior convictions on the setting of bonds or the consideration of prior convictions in sentencing, for someone with a pending charge. The implementing agencies will prepare for adjustment in technical scope based on potential scenarios following a change in legislation.

### III. Conclusion

The entities that have been involved in Clean Slate implementation stand ready to assist the General Assembly with the development of legislative changes and related policy to address the above legal and policy questions that have been raised during implementation of the Clean Slate statutes.

Sincerely,



Judge Patrick L. Carroll  
Co-Chair  
CJIS-CT Governing Board



Marc Pelka  
Co-Chair  
CJIS-CT Governing Board