

HOUSE No. 1324

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act accelerating the sealing of non conviction criminal offender record information..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The General Court hereby finds and declares that:

2 (1) The current system of maintaining and disseminating Criminal Offender
3 Record Information (known as CORI) has become an all-but-impossible barrier for most ex-
4 offenders and other individuals with CORI with respect to their securing employment, housing,
5 education, training, credit and other necessities of mainstream society, so that they may become
6 productive and tax-paying citizens or residents of the Commonwealth;

7 (2) While the Commonwealth and the Federal Government spend millions of
8 dollars to train and assist unemployed persons to enter the workforce, these efforts are
9 unacceptably frustrated by the current CORI system, so that the Commonwealth is spending the
10 taxpayers' money to fund governmental efforts which are often in contradiction to each other;
11 and

12 (3) In addition to the state interest in safeguarding the reputations and privacy
13 of the Commonwealth's residents, there is, collectively, a compelling state interest to seal stale

14 or otherwise unpredictable criminal records, which state interest may, in particular cases, be ruled
15 by a judge to overcome what the federal courts have found to be a First Amendment interest in
16 favor of keeping these governmental records available to the more than ten thousand
17 organizations which now have access to CORI.

18 SECTION 2. Within six months after this law takes effect, the clerk and the probation
19 officers of each court with criminal jurisdiction shall seal their records of all non-conviction
20 criminal cases whose final dispositions were six years or more before the date on which this law
21 takes effect. As such records are sealed, the probation officers of such courts shall notify the
22 commissioner of probation, who shall seal the appropriate case records in the probation central
23 file.

24 A “non-conviction criminal case,” as the term is used in this and other sections
25 of this Act, is one in which a no bill was returned by the grand jury; or the defendant was found
26 not guilty by the court or jury; or a finding of no probable cause was made by the court; or a
27 nolle prosequi was entered; or a dismissal was entered by the court, except where (whether or
28 not such dismissal was preceded by a continuance without a finding) such dismissal was
29 preceded by a term of active probation as to which the court ordered the assignment of a
30 probation officer to whom the defendant was required periodically to report.

31 SECTION 3. Within the twelve months after this law takes effect the clerk of any court
32 with criminal jurisdiction shall select and process for prospective sealing, as nearly as possible in
33 chronological order by date of final disposition, appropriate batches of non-conviction criminal
34 cases in which the final dispositions were less than six years before, but more than six months
35 after, the date on which this law takes effect.

36 On at least a monthly basis, but more frequently if feasible, the clerk shall
37 prepare and post, in a prominent place in the court house to which the public has access, a list of
38 non-conviction criminal cases which will be considered for sealing in one or more sessions of the
39 court on or after a stated date which is at least a month after the list is posted. The list shall be
40 organized in alphabetical order by last name of the individuals whose record or records will be
41 considered and shall contain each individual's full name, the title of the crime or crimes charged
42 and the date or dates of their final disposition. The list shall also contain a fourth column where
43 any written objection to the sealing, stating a reason or reasons and filed with the clerk's office at
44 least two weeks before the scheduled hearing date, may be briefly noted.

45 Each court is encouraged to issue a press release to local newspapers generally
46 received by or available to persons residing within the jurisdiction of the court. Such release
47 should announce the forthcoming sealing session and describe in general terms the notice posted
48 in the court house and the range of final disposition dates of the cases to be considered. The
49 release should also explain that anyone who objects to the sealing of a particular case may file, at
50 least two weeks before the session, a written objection explaining the reason or reasons for the
51 objection.

52 At each court session, in making its decision in each case, the court shall
53 consider (a) the facts and arguments presented by the petitioner in favor of sealing, if any; (b)
54 the facts and arguments presented by an objector, if any, who timely filed an objection with a
55 reason or reasons for the objection relating to the interests of public safety or in favor of the
56 general public interest in access to governmental records, as fostered by the First Amendment of
57 the U.S. Constitution; and (c) the findings and declaration of the General Court as set forth in
58 SECTION 1 of this Act.

59 If the court concludes that sealing the record would be in the interests of
60 substantial justice and that there is a compelling state interest to seal the record which overcomes
61 the general public safety or public access interests, the court shall order that the clerk and the
62 probation officers in the courts in which the proceedings occurred or were initiated seal the
63 records of the proceedings in their files and send notice thereof to the commissioner of probation,
64 who shall seal the case record in the probation central file.

65 SECTION 4. Chapter 276 of the General Laws is hereby amended by inserting
66 after section 100C a new section as follows:

67 Section 100D. Notwithstanding, but in addition to, the provisions of section
68 100C, on the first business day of each month the clerk of each court having criminal jurisdiction
69 shall have prepared and shall post, in a prominent place in the court house to which the public
70 has access, a list of non-conviction criminal cases which will be considered for sealing in one or
71 more sessions of the court on the first business day of the following month.

72 A “non-conviction criminal case,” as used in this section, is one in which a no
73 bill was returned by the grand jury, or the defendant was found not guilty by the court or jury, or
74 a finding of no probable cause was made by the court, or a nolle prosequi was entered, or a
75 dismissal was entered by the court except where (whether or not such dismissal was preceded
76 by a continuance without a finding) such dismissal was preceded by a term of active probation as
77 to which the court ordered the assignment of a probation officer to whom the defendant was
78 required periodically to report.

79 The posted list shall be organized in alphabetical order by last name of the
80 individuals whose records will be considered and contain each individual’s full name, the title of

81 the crime or crimes charged and the date or dates of their final dispositions. The list shall also
82 contain a fourth column where any written objection to the sealing, stating a reason and filed
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96 general public interest in access to governmental records, as fostered by the First Amendment of
97 the U.S. Constitution; and (c) the findings and declaration of the General Court as set forth in
98 SECTION 1 of this Act.

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100 substantial justice and that there is a compelling state interest to seal the record which overcomes
101 the general public safety or public access interest, the court shall order that the clerk and the
102 probation officers in the courts in which the proceedings occurred or were initiated seal the

103 records of the proceedings in their files and send notice thereof to the commissioner of probation,
104 who shall seal the case record in the probation central file.

105 SECTION 5. SECTIONS 1, 2, and 3 of this Act shall take effect on the first business day
106 of the month which is six months after the Act is approved. SECTION 4 shall take effect on the
107 first business day of the month which is eighteen months after the Act is approved.