

# HOUSE . . . . . No. 4107

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## The Commonwealth of Massachusetts

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In the Year Two Thousand Nine  
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An Act relative to enhancing public safety and reducing recidivism by increasing employment opportunities.

*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. WHEREAS, the Commonwealth has compelling interests in ensuring  
2 public safety, protecting vulnerable populations, providing employers with a motivated and  
3 qualified workforce, and empowering individuals to obtain gainful employment and housing;

4           WHEREAS, the existence of a criminal record should not be an automatic and permanent  
5 disqualification for employment;

6           WHEREAS, more than 750,000 criminal records are eligible for immediate sealing under  
7 the current laws of the Commonwealth;

8           WHEREAS, many employers and landlords are currently paying private vendors to  
9 obtain criminal records, rather than obtaining such records from the official state repository, and  
10 are therefore not subject to existing state regulations giving the subject of the record check the  
11 right to challenge the accuracy and relevancy of the record;

12 WHEREAS, the laws governing access to criminal offender record information should  
13 assure that employers have relevant, accurate, and timely information that will allow them to  
14 protect customers, clients, and employees; and

15 WHEREAS, gainful employment for rehabilitated offenders reduces recidivism and  
16 increases the likelihood of successful re-integration into society, and maintaining accurate  
17 criminal offender record information is necessary to ensure that individuals are not unfairly  
18 denied access to employment and housing opportunities.

19 SECTION 2. Section 167 of chapter 6 of the General Laws, as appearing in the 2006  
20 Official Edition, is hereby amended by inserting at the end the following words:-

21 “All available criminal offender record information”, adult and youthful offender  
22 convictions, non-convictions and pending criminal court appearances, but not criminal records  
23 under section 34 of chapter 94C or sections 100A through 100C of chapter 276 or the existence  
24 of such records.

25 “Board”, the criminal record review board established under section 168.

26 “Commissioner”, the commissioner of the Massachusetts department of criminal justice  
27 information services.

28 “Department”, the Massachusetts department of criminal justice information services  
29 established under section 167A.

30 “Requestor”, any entity or individual, other than a criminal justice agency, submitting a  
31 request for criminal offender record information to the department.

32 “Self-audit”, an inquiry made by a subject or an advocate or agent designated by the  
33 subject to obtain a log of all queries to the department by any requestor for the subject’s criminal  
34 offender record information, but it shall not contain any queries conducted by criminal justice  
35 agencies.

36 “Subject”, an individual for whom a request for criminal offender record information is  
37 submitted.

38 “Relevance of criminal history to a decision”, factors that a decision-maker reviewing an  
39 individual’s criminal history may consider, including, but not limited to, the passage of time  
40 since the conviction, age of the individual at the time of the offense, nature and specific  
41 circumstances of the offense, sentence imposed and length of incarceration, relationship of the  
42 criminal act to the nature of the work to be performed, number of offenses, any relevant evidence  
43 of rehabilitation or lack thereof, and any information provided by the individual to demonstrate  
44 that criminal history is not relevant to the decision.

45 SECTION 3. Chapter 6 of the General Laws, as so appearing, is hereby amended by  
46 inserting after section 167 the following section:-

47 Section 167A. There shall be within the executive office of public safety and security a  
48 Massachusetts department of criminal justice information services. The department shall provide  
49 for and exercise control over the installation, operation and maintenance of data processing and  
50 data communication systems, hereinafter called the public safety information system including,  
51 but not limited to, the criminal justice information system. Said system shall be designed to  
52 ensure the prompt collection, exchange, dissemination and distribution of such public safety  
53 information as may be necessary for the efficient administration and operation of criminal justice

54 agencies, and to connect such systems directly or indirectly with similar systems in this or other  
55 states. The secretary of public safety and security shall appoint a commissioner who shall be  
56 classified in accordance with section 45 of chapter 30 and the salary shall be determined in  
57 accordance with section 46C of said chapter 30. Such commissioner shall not be subject to the  
58 provisions of chapter 31 or section 9A of chapter 30. The commissioner shall be responsible for  
59 all data processing, management of the public safety information system, supervision of all  
60 personnel associated with said system and the appointment of all such personnel. The  
61 commissioner may appoint such other employees, including experts and consultants, as he deems  
62 necessary to carry out the department's responsibilities, none of whom shall be subject to the  
63 provisions of chapter 31 or of section 9A of chapter 30.

64         The commissioner is authorized to grant and provide access to the public safety  
65 information system to criminal justice agencies as defined in section 167. The commissioner  
66 may promulgate rules and regulations for the control, installation, and operation of the public  
67 safety information system accessed and utilized by criminal justice agencies. The commissioner  
68 or his designee shall have the authority to hear and investigate complaints pertaining to misuse of  
69 the public safety information system and to issue sanctions and penalties for misuse. The  
70 commissioner may refer complaints for further review to the criminal record review board or any  
71 state or federal agency or prosecuting authority.

72         The commissioner, upon the advice of the board, may promulgate regulations regarding  
73 the collection, storage, access, dissemination, content, organization and use of criminal offender  
74 record information by non-criminal justice agencies.

75           The department is authorized to enter into contracts and agreements with, and accept  
76   gifts, grants, contributions, and bequests of funds from, any department, agency, or subdivision  
77   of federal, state, county, or municipal government and any individual, foundation, corporation,  
78   association, or public authority for the purpose of providing or receiving services, facilities or  
79   staff assistance in connection with its work. Such funds shall be deposited with the state treasurer  
80   and may be expended by the department in accordance with the conditions of the gift, grant,  
81   contribution, or bequest, without specific appropriation.

82           SECTION 4. References in any general or special law to the criminal history systems  
83   board or the executive director thereof, except for the references in sections 171, 172, 172A,  
84   172C, 172E, 172G, 172H, 172I, 172J, 173, 175, 176 and 178A of chapter 6 and in section 38R of  
85   chapter 71, shall be deemed to refer to the Massachusetts department of criminal justice  
86   information services or its commissioner.

87           SECTION 5. Section 167A of the General Laws, as inserted by this act, is hereby further  
88   amended by inserting at the end the following paragraph:-

89           References in any general or special law to the criminal history systems board or its  
90   executive director shall be deemed to refer to the Massachusetts department of criminal justice  
91   information services or its commissioner.

92           SECTION 6. Section 168 of chapter 6 of the General Laws, as appearing in the 2006  
93   Official Edition, is hereby amended by striking out the first paragraph and inserting in place  
94   thereof the following paragraph:-

95           There shall be a criminal history systems board, hereinafter called the board, consisting  
96   of the following persons: the secretary of public safety and security, who shall serve as chairman,

the secretary of labor and workforce development, the attorney general, the chairperson of the Massachusetts sentencing commission, the chief counsel for the committee for public counsel services, the chairman of the parole board, the commissioner of the department of correction, the commissioner of probation and commissioner of the department of youth services and the colonel of state police, or their designees, all of whom shall serve ex officio, and 10 persons to be appointed by the governor for a term of 3 years, 1 of whom shall represent the Massachusetts District Attorneys Association, 1 of whom shall represent the Massachusetts Sheriffs Association, and 1 of whom shall represent the Massachusetts Chiefs of Police Association, 1 of whom shall represent private users of criminal offender record information, 1 of whom shall be a victim of crime, 1 of whom shall be a provider of victim services, 2 of whom shall have experience in the areas of workforce development, ex-offender rehabilitation, or economic development, and 2 of whom shall be persons who have experience in issues relating to personal privacy. Upon the expiration of the term of any appointive member, his successor shall be appointed in a like manner for a term of 3 years.

SECTION 7. Said section 168 is hereby further amended by striking out, in line 50, the word “hundred” and inserting in place thereof the following word:- thousand.

SECTION 8. Said section 168 is hereby further amended by striking out, in line 50, the word “willful” and inserting in place thereof the following word:- knowing.

SECTION 9. Section 168 of chapter 6 of the General Laws, as so appearing, is hereby amended by striking out the fourth and sixth paragraphs.

SECTION 10. Said chapter 6 is hereby further amended by striking out section 168 and inserting in place thereof the following section:-

Section 168. There shall be a criminal record review board within the Massachusetts department of criminal justice information services, consisting of the following persons: the secretary of public safety and security, who shall serve as chairperson, the attorney general, the secretary of labor and workforce development, the chairperson of the Massachusetts sentencing commission, the chief counsel for the committee for public counsel services, the chairperson of the parole board, the commissioner of the department of correction, the commissioner of probation, the commissioner of the department of youth services, the colonel of state police and the presidents of the Massachusetts District Attorneys Association, the Massachusetts Sheriffs' Association and the Massachusetts Chiefs of Police Association, or their designees, all of whom shall serve ex officio, and 5 persons to be appointed by the governor, 1 of whom shall represent private users of criminal offender record information, 1 of whom shall be a victim of crime, 1 of whom shall have experience in the areas of workforce development or ex-offender rehabilitation and 2 of whom shall be persons who have experience in issues relating to personal privacy. Each appointed member shall serve for a term of 3 years or until a successor is appointed and qualified, whichever is longer.

The chairperson shall hold regular meetings, 1 of which shall be an annual meeting and shall notify all board members of the time and place of all meetings. Special meetings may be called at any time by a majority of the board members and shall be called by the chairman upon written application of 9 or more members. Members of the board shall receive no compensation, but shall receive their expenses actually and necessarily incurred in the discharge of their duties.

The board shall have the authority to hear complaints and to investigate any incidents alleging that an individual or agency that has requested or received criminal offender record information has failed to provide the subject with an opportunity to dispute the accuracy and

142 relevance prior to making an adverse decision on the basis of the criminal offender record  
143 information. The board shall also have the authority to hear complaints and investigate any  
144 incidents alleging any other violation of sections 168 through 178A of this chapter or board rules  
145 and regulations. Any complaint filed with the board shall be supported by a written declaration  
146 by the complainant that it is made under the penalties of perjury. Any answer filed by a  
147 responding party shall be signed under the penalties of perjury by an individual with personal  
148 knowledge of its contents. In conducting investigations or hearings the board or department staff  
149 designated by the board shall have the power to summons witnesses, compel their attendance and  
150 testimony, require the production of books, records and documents, administer oaths and have  
151 access to all criminal offender record information. The chairperson of the board may appoint a  
152 member, panel of 3 board members or a hearing officer to conduct hearings, according to the  
153 standard rules of adjudicatory procedure or other rules which the department may promulgate,  
154 upon advice of the board. Following review of a complaint by a member, panel or hearing  
155 officer, the board, by a vote of two-thirds of the members present and voting, shall issue a ruling  
156 as to the findings of the board. In accordance with its findings the board may issue orders and  
157 sanctions enforcing its rules and regulations and the General Laws, including but not limited to a  
158 remand for additional fact finding, the imposition of civil fines payable to the commonwealth not  
159 to exceed \$5,000 for each violation, conditions on continued access to criminal offender record  
160 information or revocation of access. The board may at any time refer a complaint for criminal  
161 prosecution under section 178 of this chapter.

162         The board shall make an annual report of the volume and disposition of complaints  
163 reviewed by the board to the governor and file a copy thereof with the state secretary, the



attorney general, the clerk of the house of representatives and the clerk of the senate. The annual report shall also be available to the public upon request.

SECTION 11. Section 171 of chapter 6 of the General Laws, as so appearing, is hereby amended by striking out, in lines 3-7, the words “(b) assuring the prompt and complete purging of criminal offender record information, insofar as such purging is required by any statute or administrative regulation, by the order of any court of competent jurisdiction, or to correct any errors shown to exist in such information;”

SECTION 12. Section 171 is hereby further amended by striking out, in lines 35-48, the words “Any individual aggrieved by an agency’s decision denying access to evaluative information may appeal the denial in writing within thirty days thereafter to the board or to a three member panel thereof, as the board may determine, and the board or such panel or any court under section one hundred and seventy-seven shall have access to any certificate. The adoption of such regulations by each criminal justice agency shall be subject to the approval of the board, and shall be promulgated within time limits set by the board. If any criminal justice agency holding evaluative information fails to promulgate such regulations, then the board shall promulgate such regulations with respect to that criminal justice agency. Evaluative information shall be subject to the provisions of section one hundred and seventy-two and section one hundred and seventy-eight, as if such information was criminal offender record information.”

SECTION 13. Chapter 6 of the General Laws, as so appearing, is hereby further amended by inserting after section 171 the following section:-

Section 171A. Before making any decision adverse to an individual on the basis of the criminal history, a person, including, but not limited to, an employer, housing provider or

186 licensing authority, shall provide the individual with the opportunity to dispute the accuracy of  
187 criminal history, whether obtained from the department or any other source, and the relevance of  
188 criminal history to the decision. Failure to provide the individual with an opportunity to dispute  
189 the accuracy and relevance of the criminal history may subject the offending person to  
190 investigation, hearing and sanctions by the board. Nothing in this section shall be construed to  
191 prohibit a person from making an adverse decision on the basis of an individual's criminal  
192 history or to provide or permit an independent cause of action in a court of civil jurisdiction for a  
193 claim arising out of an adverse decision based on criminal history other than as otherwise  
194 provided under chapter 151B.

195         A person who annually conducts 5 or more criminal background investigations, whether  
196 criminal offender record information is obtained from the department or any other source, shall  
197 maintain a written criminal offender record information policy providing that, in addition to any  
198 obligations required by the commissioner by regulation, it will: (i) notify the individual of the  
199 potential adverse decision based on the criminal offender record information; (ii) provide a copy  
200 of the criminal offender record information and the policy to the individual ; (iii) provide  
201 information concerning the process for correcting a criminal record; and (iv) provide the  
202 individual with an opportunity to dispute the accuracy of the criminal offender record  
203 information and the relevance of the criminal offender record information to the decision.

204         SECTION 14. Section 172 of chapter 6 of the General Laws, as so appearing, is hereby  
205 amended by inserting after the word "privacy", in line 14 and in line 40, the following words:-  
206 and the importance and value of successful reintegration of ex-offenders.

SECTION 15. Said chapter 6 is hereby further amended by striking out section 172 and inserting in its place thereof the following section:-

Section 172. (a) The department shall maintain criminal offender record information in a database, which shall exist in an electronic format and be accessible via the world wide web, provided sufficient funding and technology exist. Except as provided otherwise in this chapter, access to the database shall be limited as follows:

(1) Criminal justice agencies may obtain all criminal offender record information for the actual performance of their criminal justice duties. Licensing authorities, as defined in section 121 of chapter 140, may obtain all criminal offender record information for the purpose of firearms licensing in accordance with sections 121-131P of chapter 140. The criminal record review board may obtain all criminal offender record information for the actual performance of its duties.

(2) Requestors authorized or required by statute, regulation or accreditation requirement to obtain criminal offender record information other than that available under subsection (a)(3) may obtain such information to the extent and for the purposes authorized by said statute, regulation or accreditation requirement, provided, however, that such requestors must obtain such criminal offender record information directly from the department and not through any other source or intermediary.

(3) Requestors and their agents may obtain criminal offender record information for any of the following purposes: (a) to evaluate current and prospective employees including full-time, part-time, contract, internship employees or volunteers; (b) to evaluate applicants for rental or lease of housing; (c) to evaluate volunteers for services; and (d) to evaluate applicants for

professional licensure issued by a state or municipal entity. Criminal offender record information made available under this section shall be limited to the following: (i) felony convictions for 10 years following their disposition, including termination of court supervision, probation, or any period of incarceration, (ii) misdemeanor convictions for 5 years following their disposition, including termination of court supervision, probation, or any period of incarceration, and (iii) pending criminal charges, which shall not include cases that have been continued without a finding; provided, however, that prior misdemeanor and felony conviction records shall be available for the entire period that the subject's last available conviction record is available under this section 172; and provided further that a violation of section 7 of chapter 209A or of section 9 of chapter 209A½ shall be treated as a felony for purposes of this section.

(4) Any member of the general public may obtain the following publicly-accessible criminal offender record information: (i) felony convictions for 5 years following their disposition, including termination of court supervision, probation, or any period of incarceration; and (ii) misdemeanor convictions for 2 years following their disposition, including termination of court supervision, probation, or any period of incarceration.

(5) Subjects who seek to obtain their own criminal offender record information, or an advocate or agent designated by the subject, may obtain all criminal offender record information pertaining to the subject under section 175 of this chapter.

(6) The commissioner may provide access to criminal offender record information to persons other than those entitled to obtain access under subsections (1) through (5) above if the commissioner finds that such access serves the public interest. Upon such a finding, the commissioner shall also determine the extent of access to criminal offender record information

necessary to sustain the public interest. The commissioner shall make an annual report to the governor and file a copy thereof with the state secretary, the attorney general, the clerk of the house of representatives and the clerk of the senate documenting access provided under this subsection. The annual report shall be available to the public upon request.

(b) Notwithstanding the foregoing, convictions for murder, voluntary manslaughter, involuntary manslaughter, and sex offenses as defined in section 178C of chapter 6 that are punishable by a term of incarceration in state prison will remain in the database permanently and shall be available to all requestors listed in subsections (a)(1) through (a)(3) unless sealed under section 100A of chapter 276.

(c) The department shall specify the information that requestors must provide to query the database, including, but not limited to, a biometric identifying characteristic of the subject or the subject's name, date of birth and the last four digits of the subject's social security number. To obtain criminal offender record information concerning a subject under subsection (a)(2) or (a)(3), the requestor must certify under the penalties of perjury that the requestor is an authorized designee of a qualifying entity, that the request is for a purpose authorized under subsection (a)(2) or (a)(3), and that the subject has signed an acknowledgement form authorizing the requestor to obtain the subject's criminal offender record information. The requestor must also certify that he or she has verified the identity of the subject by reviewing a form of government-issued identification. Each requestor shall maintain acknowledgement forms for a period of one year from the date the request is submitted. Such forms shall be subject to audit by the department. The department may establish rules or regulations imposing other requirements or affirmative obligations upon requestors as a condition of obtaining access to the database.

Prior to making any decision adverse to a subject on the basis of criminal offender record information, the requestor shall provide the subject with the opportunity to dispute the accuracy of the criminal offender record information and relevance of the criminal offender record information to the decision. Failure to provide an opportunity to dispute the accuracy and relevance of the criminal offender record information may subject the requestor to investigation and hearing before the board as provided in section 168 of this chapter.

Except as authorized by this section, it shall be unlawful to request or require a person to provide a copy of his or her criminal offender record information. Violation of this subsection is punishable by the penalties set forth in section 178.

Neither the board nor the department shall be liable in any civil or criminal action by reason of any criminal offender record information or self-audit log that is disseminated by the board, including any information that is false, inaccurate or incorrect because it was erroneously entered by the court or the office of the commissioner of probation.

(d) Requestors shall not disseminate criminal offender record information except (1) upon request by a subject, a requestor shall provide criminal offender record information received from the department to the subject to whom it pertains; (2) requestors may share criminal offender record information with individuals within the requesting entity that have a need to know the contents of the criminal offender record information to serve the purpose for which the information was obtained; and (3) upon request, requestors shall share criminal offender record information with the government entities charged with overseeing, supervising, or regulating them. Requestors shall maintain a secondary dissemination log for a period of one year following the dissemination of a subject's criminal offender record information. The log

shall include the following information: (i) name of subject; (ii) date of birth of the subject; (iii) date of the dissemination; (iv) name of person to whom it was disseminated; and (v) the purpose for the dissemination. The secondary dissemination log shall be subject to audit by the department.

Unless otherwise provided by law or court order, no requestor shall maintain a copy, electronic or otherwise, of requested criminal offender record information obtained from the department for more than 3 years from the last date of employment, volunteer service or residency or from the date of the final decision of the requestor regarding the subject.

(e) The department shall maintain a log of all queries that shall indicate the name of the requestor, the name of the subject, the date of the query, and the certified purpose of the query. A self-audit may be requested for no fee once every 90 days. The commissioner may impose a fee in an amount as determined by the secretary of public safety and security, for self-audit requests made more than once every 90 days. Upon request, the commissioner may transmit the self-audit electronically. Further, if funding is available and technology reasonably allows, the department shall establish a mechanism that will notify a subject, or an advocate or agent designated by the subject, by electronic mail or other communication mechanism whenever a query is made regarding the subject. The self-audit log shall not be considered a public record.

(f) Notwithstanding the provisions of this section, the motor vehicle insurance merit rating board may disseminate information concerning convictions of automobile law violations as defined in section 1 of chapter 90C, or information concerning a charge of operating a motor vehicle while under the influence of intoxicating liquor that results in assignment to a driver alcohol program as described in section 24D of chapter 90, directly or indirectly, to an insurance

company doing motor vehicle insurance business within the commonwealth, or to such insurance company's agents, independent contractors or policyholders to be used exclusively for motor vehicle insurance purposes.

(g) Notwithstanding any other provisions of this section, information indicating custody status and placement within the correction system shall be available to any person upon request; provided, however that no information shall be disclosed that identifies family members, friends, medical or psychological history, or any other personal information unless such information is directly relevant to such release or custody placement decision, and no information shall be provided if its release would violate any other provisions of state or federal law.

(h) The parole board, subject to sections 130 and 154 of chapter 127, the department of correction, a county correctional authority or a probation officer with the approval of a justice of the appropriate division of the trial court may, in its discretion, make available a summary, which may include references to criminal offender record information or evaluative information, concerning a decision to release an individual on a permanent or temporary basis, to deny such release, or to change the individual's custody status.

(i) Notwithstanding any other provision of this section or any other general or special law to the contrary, members of the public who are in fear of an offender may obtain from the department advance notification of the temporary or permanent release of an offender from custody, including but not limited to expiration of a sentence, furlough, parole, work release or educational release. An individual seeking access to advance notification shall verify by a written declaration under the penalties of perjury that the individual is in fear of the offender and that advance notification is warranted for physical safety reasons.



(j) Any individual or agency, public or private, that receives or obtains criminal offender record information from any source in violation of sections 168 through 175 of this chapter, whether directly or through any intermediary, shall not collect, store, disseminate, or use such criminal offender record information in any manner or for any purpose.

(k) Notwithstanding the provisions of this section or chapter 66A, the following shall be public records: (1) police daily logs, arrest registers, or other similar records compiled chronologically; (2) chronologically maintained court records of public judicial proceedings; (3) published records of public court or administrative proceedings, and of public judicial administrative or legislative proceedings; and (4) decisions of the parole board as provided in section 130 of chapter 127.

(l) The commissioner, upon the advice of the board, may promulgate rules and regulations to carry out the provisions of this section.

SECTION 16. Said chapter 6 is hereby further amended by striking out section 172A and inserting in place thereof the following section:- Section 172A. The commissioner shall assess a fee for each request for criminal offender record information or self-audit, according to a fee structure established by the secretary of public safety and security. No fee shall be assessed for a request made by a victim of crime or a witness or a family member of a homicide victim, all as defined in section 1 of chapter 258B, or for a request made by any local, state or federal government entity. The commissioner shall waive the fee or a portion of the fee from such other persons as provided in the department's rules and regulations, including, but not limited to, requestors that inquire into the criminal history of an applicant for employment only following a determination that the applicant is otherwise qualified for the position. The department is

authorized to enter into contracts and agreements for reduced or bulk fees for requestors who make extensive use of the database.

There is hereby established and set up on the books of the commonwealth a separate fund to be known as the CORI Education and Reentry Fund. One third of the fees collected under this section shall be credited to the fund. The fund shall be administered by the department, upon advice of the board, for the purpose of funding programs designed to assist ex-offenders in obtaining and maintaining employment, training and assisting requestors described in subsection (a) of section 172 and providing education and assistance regarding the correction of criminal records. One third of the fees collected under this section shall be deposited into a retained revenue account, which shall be directed to the department to use for the operation and maintenance of the public safety information system. The remainder of the fees collected will be deposited in the general fund.

SECTION 17. Section 172E of said chapter 6 of the General Laws, as so appearing, is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph:-

Notwithstanding any provision of section 172, criminal offender record information shall be available to any long term care facility, as defined in section 72W of chapter 111, for the purpose of evaluating applicants under final consideration for, or an individual currently working as, an employee, volunteer or provider of care, treatment, education, training, transportation, delivery of meals, instruction, counseling, supervision, recreation or other services for an elderly or disabled person or who will have any direct or indirect contact with such elderly or disabled persons or access to such persons' personal information. Any such long term care facility shall

383 obtain all available criminal offender record information from the department on such applicant  
384 or current staff member. A long term care facility which obtains information under this section  
385 shall prohibit the dissemination of such information of such information for any purpose other  
386 than to further the protection of the elderly or the disabled, including, but not limited to,  
387 dissemination among and between long term care facilities.

388 SECTION 18. Section 172E is hereby further amended by striking out, in lines 16-18.  
389 the words “for a position that involves the provision of direct personal care or treatment to  
390 residents of such facility.”

391 SECTION 19. Section 172H of chapter 6 of the General Laws, as so appearing, is hereby  
392 amended by striking out, in line 4, the words “that accepts volunteers,”.

393 SECTION 20. Section 172H is hereby further amended by striking out, in line 6, the  
394 words “a volunteer” and inserting in place thereof the following words:- an employee, volunteer,  
395 vendor or contractor.

396 SECTION 21. Chapter 6 of the General Laws, as so appearing, is hereby amended by  
397 inserting after section 172J the following two sections:-

398 Section 172K. Notwithstanding section 172 or any other general or special law to the  
399 contrary, housing authorities operating pursuant to chapter 121B may obtain from the department  
400 conviction and pending criminal offender record information for the sole purpose of evaluating  
401 applications for housing owned by such housing authority, in order to further the protection and  
402 well-being of tenants of such housing authorities.

Section 172L. Notwithstanding section 172 or any other general or special law to the contrary, the Massachusetts department of telecommunications and energy may obtain from the department all available criminal offender record information for the purpose of screening applicants for motor bus driver certificates and applicants who regularly transport school age children in the course of their job duties. The Massachusetts department of telecommunications and energy shall not disseminate such information for any purpose other than to further the protection of children.

SECTION 22. Section 173 of chapter 6 of the General Laws, as so appearing, is hereby amended by striking out, in line 1, the words “The board”, and inserting in place thereof the following words:- The commissioner may approve research programs to obtain criminal offender record information, provided that research programs shall not publish any information that either identifies or tends to identify the subject of the criminal offender record information, and the commissioner

SECTION 23. Section 173 is hereby further amended by striking out, in lines 7, 9, and 10, each occurrence of the word “board”, and inserting in place thereof the following word:- commissioner

SECTION 24. Said chapter 6 of the General Laws, as so appearing, is hereby amended by striking out section 175 and inserting in place thereof the following section:-

Section 175. A subject shall have the right to inspect, and if practicable, obtain a copy of all criminal offender record information that refers to the subject. The commissioner shall publish and furnish, upon request, guidelines for individuals on how to correct inaccurate or

incomplete information. Subject to appropriation, the department shall provide assistance to individuals that have requested assistance to correct inaccurate or incomplete criminal offender record information. Such assistance shall include but not be limited to cooperation with appropriate entities to correct, modify or appropriately supplement criminal offender record information that has been determined to be inaccurate or incomplete. If criminal offender record information is corrected by the office of the commissioner of probation or the courts, the department's database shall reflect the corrected criminal offender record information.

Requestors shall prescribe reasonable hours and places for subjects to inspect their criminal offender record information under subsection (d)(1) of section 172 and shall impose such additional restrictions, including fingerprinting, as are reasonably necessary both to ensure the record's security and to verify the identities of those who seek to inspect them.

SECTION 25. Said chapter 6 is hereby further amended by striking out section 178 and inserting in place thereof the following two sections:-

Section 178. Any person who knowingly requests, obtains or seeks to obtain criminal offender record information or a self-audit from the department under false pretenses, knowingly communicates or seeks to communicate criminal offender record information to any person except in accordance with the provisions of sections 168 through 175, or knowingly falsifies criminal offender record information, or any records relating thereto, or who requests or requires a person to provide a copy of his or her criminal offender record information except as authorized under section 172, shall for each offense be imprisoned in a jail or house of correction for not more than one year or fined not more than \$5,000 or both, and in the case of a person that is not a natural person, the amount of the fine may be not more than \$50,000 for each violation.

Any person who knowingly requests, obtains or seeks to obtain juvenile criminal records from the department under false pretenses, knowingly communicates or seeks to communicate juvenile criminal records to any person except in accordance with the provisions of sections 168 through 175, or knowingly falsifies juvenile criminal records, shall for each offense be imprisoned in a jail or house of correction for not more than one year or fined not more than \$7,500, or both, and in the case of a person that is not a natural person entity, the amount of the fine may be not more than \$75,000 for each violation.

Section 178 ½. Whoever uses criminal offender record information to commit a crime against the subject of the criminal offender record information or to engage in harassment of the subject, as defined in section 1 of chapter 209A½, shall be punished by not more than \$5,000 or imprisoned in a jail or house of correction for not more than one year, or both.

SECTION 26. Said chapter 6 is hereby further amended by striking out section 178A and inserting in place thereof the following section:-

Section 178A. A victim of crime, witness, or family member of a homicide victim, all as defined by section 1 of chapter 258B, may obtain all available criminal offender record information of the offender. Criminal justice agencies may also disclose to such persons such additional information, including but not limited to evaluative information, as such agencies determine is necessary.

SECTION 27. Section 178K of chapter 6 of the General Laws, as so appearing, is hereby amended by striking out, in lines 1-2, the words “in the criminal history systems board, but not subject to its jurisdiction”, and inserting in place thereof the following words:- in the executive office of public safety and security.

469           SECTION 28. Chapter 6A of the General Laws, as so appearing, is hereby amended by  
470 striking out section 18 and inserting in place thereof the following section:-

471           Section 18. The following state agencies are hereby declared to be within the executive  
472 office of public safety and security: the department of public safety; the department of fire  
473 services; the office of grants and research and the highway safety division; the municipal police  
474 training committee; the Massachusetts department of criminal justice information services; the  
475 state 911 department; the department of state police; the office of the chief medical examiner; the  
476 Massachusetts emergency management agency; the military department; the department of  
477 correction, including the parole board; the sex offender registry board; and all other agencies and  
478 boards within said departments, committees, and boards.

479           SECTION 29. Section 52 is hereby further amended by inserting after the word “more;”,  
480 in line 21, the following word:- or

481           SECTION 30. Section 52 is hereby further amended by striking out, in lines 24-27, the  
482 words “; or (3) the employment of any individual at annual salary which equals or which may  
483 reasonably be expected to equal twenty thousand dollars or more”

484           SECTION 31. Chapter 30A of the General Laws, as so appearing, is hereby amended by  
485 inserting after section 1C the following section:-

486           Section 1D. The criminal record review board shall be subject to sections 1 through 8,  
487 inclusive, and shall not otherwise be subject to this chapter.

SECTION 32. Section 4 of chapter 151B of the General Laws, as so appearing, is hereby amended by striking out the ninth section and inserting in place thereof the following paragraphs:-

9. (a) For an employer; himself or through his agent, in connection with an application for employment, or the terms, conditions, or privileges of employment, or the transfer, promotion, bonding, or discharge of any person, or in any other matter relating to the employment of any person, to request any information, to make or keep a record of such information, to use any form of application or application blank which requests such information, or to exclude, limit or otherwise discriminate against any person by reason of his or her failure to furnish such information through a written application or oral inquiry or otherwise regarding: (i) an arrest, detention, or disposition regarding any violation of law in which no conviction resulted, including a continuance without a finding of guilt; (ii) felony convictions more than 10 years following their disposition, including termination of court supervision, probation or any period of incarceration; (iii) misdemeanor convictions more than 5 years following their disposition, including termination of court supervision, probation or any period of incarceration; and (iv) criminal records that have been sealed under section 34 of chapter 94C or sections 100A through 100C of chapter 276. Nothing contained herein shall be construed to prohibit an employer from seeking or obtaining criminal history that it is otherwise authorized to obtain or that is considered a public record, or to prohibit an employer from considering and discussing such information with an employee or applicant. No person shall be held under any provision of law to be guilty of perjury or of otherwise giving a false statement by reason of his failure to recite or acknowledge such information as he has a right to withhold by this subsection.



(b) Prior to questioning an applicant or employee about his or her criminal history or making an adverse decision based upon criminal history, an employer must disclose to the applicant or employee the content of the criminal history it possesses and the source from which it was obtained. No employer, himself or through his agent shall make a final adverse decision on the basis of criminal history, regardless of the sources from where it was obtained, unless the employer or agent has provided the person with the opportunity to dispute the accuracy of the criminal history and relevance of the criminal history to the decision.

SECTION 33. Section 4 is hereby further amended by inserting, after subsection (b) of the ninth section, the following paragraphs:-

(c) No employer shall be liable for negligent hiring practices for relying on criminal offender record information received from the department of criminal justice information services, provided that the employer made an employment decision within 30 days of obtaining the criminal offender record information and maintained and followed policies and procedures for verification of the subject's identifying information consistent with the requirements set forth in section 172 of chapter 6 and the department of criminal justice information services' regulations.

(d) No employer shall be liable for discriminatory employment practices for the failure to hire a person on the basis of criminal offender record information that contains erroneous information requested and received from the department of criminal justice information services, provided that the employer made an employment decision within 30 days of obtaining the criminal offender record information and maintained and followed policies and procedures for

531 verification of the individual's information consistent with the requirements set forth in section  
532 172 of chapter 6 and the department of criminal justice information services' regulations.

533 SECTION 34. Section 21 of chapter 233 of the General Laws, as so appearing, is hereby  
534 amended by inserting, at the end, the following paragraph:-

535 Upon order of the court, a party may obtain a witness's criminal offender record  
536 information from the department of criminal justice information services.

537 SECTION 35. Section 120F of chapter 266 of the General Laws, as so appearing, is  
538 hereby amended by striking out, in lines 4-6, the words "imprisonment in the house of correction  
539 for not more than thirty days or by a fine of not more than one thousand dollars, or both", and  
540 inserting in place thereof the following words:- imprisonment in the house of correction for not  
541 more than 2½ years or by a fine of not more than \$5,000, or both

542 SECTION 36. Section 100A of chapter 276 of the General Laws, as so appearing, is  
543 hereby amended by inserting after the word "misdemeanor," in line 8, the following words:-  
544 record to be sealed.

545 SECTION 37. Said section 100A is hereby further amended by striking out, in line 8,  
546 the word "ten" and inserting in place thereof the following word:- five.

547 SECTION 38. Said section 100A is hereby further amended by inserting after the word  
548 "felony," in line 11, the following words:- record to be sealed.

549 SECTION 39. Said section 100A is hereby further amended by striking out, in line 11,  
550 the word "fifteen" and inserting in place thereof the following word:- ten.

551           SECTION 40. Said section 100A is hereby further amended by striking out, in line 13,  
552 the words “ten years preceding such request” and inserting in place thereof the following words:-  
553 in the case of a misdemeanor, five years preceding such request, and in the case of a felony, ten  
554 years preceding such request.

555           SECTION 41. Said section 100A is hereby further amended by striking out, in line 19,  
556 the words “within the preceding ten years” and inserting in place thereof the following words:-  
557 in the case of a misdemeanor, within the preceding five years, and in the case of a felony, within  
558 the preceding ten years.

559           SECTION 42. Said section 100A is hereby further amended by inserting, after line 40,  
560 the following words:-

561           5. For purposes of this section, any violation of section 7 of chapter 209A or of section 9  
562 of chapter 209A ½ shall be treated as a felony.

563           6. Sex offenses, as defined in section 178C of chapter 6, shall not be eligible for sealing  
564 for 10 years following their disposition, including termination of supervision, probation or any  
565 period of incarceration, or for so long as the offender is under a duty to register in the  
566 commonwealth or in any other state where the offender resides or would be under such a duty if  
567 residing in the commonwealth, whichever is longer.

568           SECTION 43. Said section 100A is hereby further amended by inserting after the word  
569 “proceedings”, in line 52, the following words:- , and except that in any proceedings under  
570 sections 1 to 39I, inclusive, of chapter 119, sections 2 to 5, inclusive, of chapter 201, chapters  
571 208, 209, 209A, 209A½, 209B, 209C, or sections 1 to 11A, inclusive, of chapter 210, a party  
572 may, upon motion for good cause shown, inspect in camera the sealed records of another party

573 and may introduce such sealed records into evidence, provided that the court determines the  
574 records are otherwise relevant and admissible, and, provided further, that such records are not  
575 discussed in open court and, if admitted, are impounded and made available only to the parties,  
576 their attorneys, and court personnel who have a demonstrated need to receive them.

577 SECTION 44. Section 100C of chapter 276 of the General Laws, as so appearing, is  
578 hereby amended by striking out, in lines 11-12, the words “except in cases in which an order of  
579 probation has been terminated,”.

580 SECTION 45. Section 100C is hereby further amended by inserting after the word  
581 “commissioner”, in line 29, the following words:- or the clerk of courts in any district, superior,  
582 or the Boston municipal court,

583 SECTION 46. Chapter 276 of the General Laws, as so appearing, is hereby amended by  
584 inserting after section 100C the following section:-

585 Section 100D. Notwithstanding any provision of section 100A, 100B, or 100C of this  
586 chapter, criminal justice agencies as defined in section 167 of chapter 6 shall have immediate  
587 access to, and be permitted to use as necessary for the performance of their criminal justice  
588 duties, any sealed criminal offender record information as defined in section 167 of chapter 6 and  
589 any sealed information concerning criminal offenses or acts of delinquency committed by any  
590 person before he attained the age of 17.

591 SECTION 47. The department of criminal justice information services shall study the  
592 feasibility and cost of implementing a statewide fingerprint-based public safety information  
593 system, and report on such findings within 18 months of the effective date of this act.

SECTION 48. Notwithstanding any general or special law to the contrary, this section shall facilitate the orderly transfer of the employees, proceedings, rules and regulations, property and legal obligations of the criminal history systems board, as the transferor agency, to the department of criminal justice information services, as the transferee agency, as follows:

(a) Subject to appropriation, the employees of the criminal history systems board, including those who immediately before the effective date of this act hold permanent appointment in positions classified under chapter 31 of the General Laws or have tenure in their positions as provided by section 9A of chapter 30 of the General Laws or do not hold such tenure, or hold confidential positions, are hereby transferred to the department of criminal justice information services, without interruption of service within the meaning of said section 9A of said chapter 31, without impairment of seniority, retirement or other rights of the employee, and without reduction in compensation or salary grade, notwithstanding any change in title or duties resulting from such reorganization, and without loss of accrued rights to holidays, sick leave, vacation and benefits, and without change in union representation or certified collective bargaining unit as certified by the state labor relations commission or in local union representation or affiliation. Any collective bargaining agreement in effect immediately before the transfer date shall continue in effect and the terms and conditions of employment therein shall continue as if the employees had not been so transferred. The reorganization shall not impair the civil service status of any such reassigned employee who immediately before the effective date of this act either holds a permanent appointment in a position classified under chapter 31 of the General Laws or has tenure in a position by reason of section 9A of chapter 30 of the General Laws.

Notwithstanding any general or special law to the contrary, all such employees shall continue to retain their right to collectively bargain pursuant to chapter 150E of the General Laws and shall be considered employees for the purposes of said chapter 150E.

Nothing in this section shall be construed to confer upon any employee any right not held immediately before the date of said transfer, or to prohibit any reduction of salary grade, transfer, reassignment, suspension discharge layoff or abolition of position not prohibited before such date.

(b) All petitions, requests, investigations and other proceedings appropriately and duly brought before or referred to the executive director of the criminal history systems board by the transferor agency and pending before the executive director before the effective date of this act, shall continue unabated and remain in force, but shall be assumed and completed by the department of criminal justice information services.

(c) All orders, rules and regulations duly made and all approvals duly granted by the criminal history systems board, which are in force immediately before the effective date of this act, shall continue in force and shall thereafter be enforced by the department of criminal justice information systems, until superseded, revised, rescinded or canceled, in accordance with law.

(d) All books, papers, records, documents, equipment, buildings, facilities, cash and other property, both personal and real, including all such property held in trust, which immediately before the effective date of this act are in the custody of the criminal history systems board shall be transferred to the department of criminal justice information services.

(e) All duly existing contracts, leases and obligations of the criminal history systems board shall continue in effect but shall be assumed by the department of criminal justice

638 information services. No existing right or remedy of any character shall be lost, impaired or  
639 affected by this act.

640 SECTION 49. Section 4 of this act is hereby repealed.

641 SECTION 50. Sections 2, 5, 10, 13, 15, 24, 31-33, and 49 of this act shall become  
642 effective 18 months after the act is approved by the Governor.