

SENATE No. 1608

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act to reform CORI, restore economic opportunity and improve public safety..

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. Section 172 of chapter 6 of the General Laws is hereby amended by
2 inserting after the first paragraph the following paragraphs:—

3 Agencies, other entities or persons granted access under clause (b) or clause (c) of this
4 section, and local or regional housing authorities, as provided in the third sentence of the third
5 paragraph of section 168, shall receive criminal offender record information limited to charges
6 which are either open or ended in conviction, except as otherwise specifically provided by a
7 separate statute relating to a particular agency, entity or class of entities.

8 Any such housing authority, agency, entity or other person shall, before making any
9 adverse decision based on an individual’s criminal offender record information report, give the
10 individual a photocopy of the report, inform the individual which part of the report would prompt
11 an adverse decision, and afford him an opportunity, in a private discussion, to dispute the
12 accuracy or relevance of the report’s contents. The housing authority, agency, entity or person
13 shall then consider all the information before making a final decision and shall advise the
14 individual of the decision and the reasons for it.

15 SECTION 2. Said Section 172 is hereby further amended by inserting after the last
16 paragraph the following paragraph:—

17 Notwithstanding the provisions of any general or special law, the board shall adopt
18 regulations providing that agencies or individuals granted access under clause (b) or clause (c)
19 shall not be given access to criminal offender record information that the commissioner of
20 probation has the authority to seal under Section 100A of Chapter 276. These regulations shall in
21 no way restrict access to criminal offender record information by criminal justice agencies.

22 SECTION 3. Section 4 of chapter 151B of the General Laws is hereby amended in
23 subdivision 9 by striking the first paragraph and inserting in place thereof the following
24 paragraphs:—

25 For an employer, employment agency, job training provider, or licensing agency,
26 by himself or itself or through an agent, notwithstanding any general or special state law to the
27 contrary, in connection with an application for employment, job training, or licensing, or in
28 connection with the terms, conditions, or privileges of employment, job training, or licensing, or
29 the transfer, bonding, promotion, demotion, or discharge of any person, or in any other matter
30 relating to the employment of any person, to request from the person, orally, in writing, or on
31 any form of application or application blank, any information which consists of or relates to
32 criminal offender record information, including arrest data or any information concerning
33 criminal offenses or acts of delinquency committed by any person before he attained the age of
34 seventeen.

35 It shall further be an unlawful practice for any covered entity to:

36 exclude, limit or otherwise discriminate against any person on account of his failure to
37 furnish such information;

38 request or obtain criminal offender record information from any source, unless the
39 subject has been deemed otherwise qualified and has been conditionally offered the position or
40 license subject to consideration of any criminal record;

41 exclude, limit or otherwise discriminate against any person because his criminal offender
42 record information consists of (i) an arrest, detention, or disposition regarding any violation of
43 law in which no conviction resulted, or (ii) a first conviction for any of the following
44 misdemeanors: drunkenness, simple assault, speeding, minor traffic violations, affray, or
45 disturbance of the peace, or (iii) any conviction of a misdemeanor where the date of such
46 conviction or the completion of any period of incarceration resulting therefrom, whichever date
47 is later, occurred three or more years prior to the employer's request for such criminal offender
48 record information; or

49 exclude, limit or otherwise discriminate against any person on account of the person's
50 merely having a criminal record, provided however, that it shall not be a violation of this
51 subsection if the person has a criminal record containing one or more convictions which
52 substantially relate to the circumstances of a particular employment or job training position or
53 licensed activity, and the decision against the person was not unreasonable based on the totality
54 of the circumstances

55 SECTION 4. Section 2 of Chapter 93A is hereby amended by inserting after subsection
56 (c) the following subsection: –

57 (d) If any person engaged in trade or commerce in the Commonwealth is inclined to
58 make an adverse decision as to an individual regarding actual or prospective employment,
59 housing, a license, admission to an educational program, or any other position based in whole or
60 in part on criminal record information received from a credit reporting agency, as defined in the
61 Federal Trade Commission Act (15 U.S.C 45 (a) (1)), that person shall first provide the record
62 subject a photocopy of the report from the credit reporting agency, inform the individual which
63 part of the report would prompt an adverse decision, and afford him an opportunity, in a private
64 discussion, to dispute the accuracy or relevancy of the contents of said report, after which the
65 person shall consider all the information before making a final decision and shall advise the
66 record subject of the decision and the reasons for it. Any adverse decision based on criminal
67 record information received from a credit reporting agency must be reasonable in view of the
68 content of the criminal record and the duties and qualifications of the position. Failure to follow
69 the procedures of this subsection shall constitute an unfair or deceptive act or practice in the
70 conduct of trade or commerce.

71 SECTION 5. Section 100A of Chapter 276 of the General Laws is hereby amended by
72 striking out the first paragraph through clause (3) and inserting in place thereof the following:—

73 Any person having a record of a criminal charge, including any criminal court
74 appearance and disposition in the commonwealth on file with the commissioner of probation,
75 may, on a form furnished by the commissioner and signed under the penalties of perjury, request
76 that the commissioner seal such record. The commissioner shall comply with such request
77 provided that:

78 any such record of a misdemeanor charge shall only be eligible for sealing three years
79 after the person is discharged from incarceration, or upon termination of court supervision,
80 probation, or parole, whichever condition is met later;

81 any such record of a felony charge shall only be eligible for sealing seven years after the
82 person is discharged from incarceration, or upon termination of court supervision, probation, or
83 parole whichever condition is met later, provided, however, that if the person was sentenced
84 under a statute which allowed for a possible sentence of life imprisonment, the request for
85 sealing shall be referred for adjudication to a judge of the superior court where the sentencing
86 occurred;

87 said person was not found guilty of any criminal offense for which he was sentenced to
88 three months or more of incarceration within the three years preceding such request;

89 SECTION 6. Section 100C of Chapter 276 is hereby amended by striking out the first
90 two paragraphs and inserting in place thereof the following paragraphs:—

91 As to any criminal charge wherein a no bill has been returned by the grand jury, the
92 commissioner of probation shall seal said court appearance and disposition recorded in his files,
93 and the files of the clerk and the probation officers of the courts in which the proceedings
94 occurred or were initiated shall likewise seal the charge in the records of the proceedings in their
95 files. The provisions of this section shall not apply if the defendant makes a written request to
96 the commissioner not to seal the records of the proceedings.

97 As to any criminal charge which results in non-conviction, the record of such criminal
98 charge shall be considered for sealing according to the following procedure:

99 On the first business day of each month the clerk of each court having criminal
100 jurisdiction shall post in the courthouse for public access a list of non-conviction criminal
101 charges from the previous month which may be considered for sealing.

102 On or before the tenth day of each month, the clerk shall provide notice by mail to any
103 individual whose charges are listed. Such notice shall consist of the following: the date and title
104 of each criminal charge; the date of final disposition of each charge; one copy for each charge of
105 the form prescribed by the Commissioner of Probation for petitioning the court to seal the record
106 of a criminal charge; and the date, time, and location of the hearing session where sealing shall
107 be considered, which date shall be the first business day of the following month.

108 Any person may object to the sealing of a particular charge by filing with the clerk's
109 office at least two weeks before the scheduled hearing date a written objection stating the reason
110 or reasons for the objection. The objection shall be available upon request to the person whose
111 charges are posted for prospective sealing or to his or her attorney.

112 As used in this section, a "non-conviction criminal charge" is one in which the defendant
113 was found not guilty by the court or a jury, or a finding of no probable cause was made by the
114 court, or a nolle prosequi was entered, or a dismissal was entered by the court, whether or not
115 said dismissal was preceded by a continuance without a finding. The term "non-conviction
116 criminal charge" shall not include any charge the dismissal of which was preceded by a term of
117 active probation wherein the defendant was required to report to an assigned probation officer on
118 a periodic basis.

119 At any court session at which criminal charges are considered for sealing, the court shall
120 consider as to each charge: (a) the facts and arguments presented by the petitioner in favor of

121 sealing; (b) the facts and arguments presented by any objector who timely filed an objection; and
122 (c) the general public interest in access to governmental records, as protected by the First and
123 Fourteenth Amendments to the United States Constitution.

124 If the court concludes that the petitioner has been unable to secure employment, housing,
125 a license, or admission to an educational program, or has been otherwise excluded from the
126 mainstream of secure living because of his criminal offender record information, the court may
127 find that a compelling governmental interest exists to seal the charge or charges under
128 consideration, which interest overcomes the public interest in access to governmental records. If
129 the court so decides, the court shall direct the clerk to seal the relevant charge or charges in his
130 files, and the probation department shall forthwith notify the office of the commissioner of
131 probation and the probation officers of the courts in which the proceedings occurred or were
132 initiated, who shall likewise seal the charges of the proceedings in their files.

133 SECTION 7. Said Section 100C of Chapter 276 is hereby further amended by
134 inserting after the last paragraph the following paragraph:—

135 Failure of the court to seal a given charge shall not act as a bar to later sealing petitions
136 regarding the same charge.

137 SECTION 8. No provision of this act shall be interpreted to restrict access by criminal
138 justice agencies to criminal offender record information.