SENATE DOCKET, NO. 1344 FILED ON: 1/14/2009

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:

SECTION 1. Section 172 of chapter 6 of the General Laws is hereby amended by inserting after the first paragraph the following paragraphs:—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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