

HOUSE No. 4363

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, June 2, 2016.

The committee on the Judiciary to whom were referred the joint petition (accompanied by bill, House, No. 1248) of Claire D. Cronin and others for legislation to expunge the records of persons falsely accused and juveniles, the petition (accompanied by bill, House, No. 1254) of Josh S. Cutler relative to the expunging of criminal history records of certain youthful offenders, the petition (accompanied by bill, House, No. 1270) of Carolyn C. Dykema and others for legislation to expunge the records of persons falsely accused and juveniles, the petition (accompanied by bill, House, No. 1297) of Gloria L. Fox and others for legislation to permit the purging of juveniles delinquency records, the petition (accompanied by bill, House, No. 1299) of Gloria L. Fox and Carlos Gonzalez relative to the sealing of youthful offender records and the expungement of juvenile records and the petition (accompanied by bill, House, No. 1433) of Kay Khan and others relative to the expungement of criminal records of juveniles, reports recommending that the accompanying bill (House, No. 4363) ought to pass.

For the committee,

JOHN V. FERNANDES.

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**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

An Act relative to the expungement of records.

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. Chapter 258D of the General Laws, as appearing in the 2012 Official
2 Edition, is hereby amended after section 7 by adding the following new section:-

3 Section 7A.

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5 When it appears to the court that substantial justice would best be served, the court may
6 enter an order directing the expungement of records maintained by the department of criminal
7 justice information services, the probation department, and the sex offender registry upon a
8 finding that a factually inaccurate complaint has been issued, charging an innocent party with
9 committing a crime. Such finding and subsequent order may be made for any person falsely
10 accused because of an error in identification, because of intentionally false statements that
11 caused fraud on the court, or because of negligence on the part of the police and court staff in
12 initiating a complaint which is determined to be factually inaccurate.

13 The court may also order the expungement of records that directly pertain to a factually
14 inaccurate complaint that are in the care, custody, and control of any other state, municipal or
15 local departments, agencies, commissions, or committees, including law enforcement agencies.
16 Such records shall include, but not be limited to, arrest records and district attorneys' files.

17 Any order to expunge entered by the court shall provide that, in any employment
18 application, the person may answer "no record" as to any charges expunged pursuant to this
19 section in response to an inquiry regarding prior felony arrests, court appearances or criminal
20 convictions.

21 The charges and convictions expunged shall not operate to disqualify a person in any
22 examination, appointment or application for public employment in the service of the
23 commonwealth or any other political subdivision thereof, nor shall such charges and convictions
24 be used against a person in any way in any court proceedings or hearings before any court, board
25 or commission to which he is a party to the proceedings.

26 For the purpose of this chapter the words, expunge, expunged, or expungement, shall be
27 mean permanent erasure or destruction.

28 SECTION 2. Chapter 265 of the General Laws is hereby amended by inserting after
29 section 58 the following section:-

30 Section 59.

31 (a) At any time after the entry of a judgment of disposition on an indictment or criminal
32 or delinquency complaint for an offense under section 8, section 26, section 53(a), or section
33 53A of chapter 272 or under section 53(b) of chapter 272 or under section 34 of chapter 94C for

34 simple possession of a Class A, Class B, Class C or Class D controlled substance as defined in
35 section 31 of chapter 94C, the court in which it was entered shall, upon motion of the defendant,
36 vacate any conviction, adjudication of delinquency, or continuance without a finding and permit
37 the defendant to withdraw any plea of guilty, plea of nolo contendere, plea of delinquent, or
38 factual admission tendered in association therewith upon a finding by the court of a reasonable
39 probability that the defendant's participation in the offense was a result of having been a victim
40 of human trafficking as defined by section 20M of chapter 233 or a victim of trafficking in
41 persons under the Trafficking Victims Protection Act (United States Code, title 22, chapter 78),
42 provided that:

43

44 (1) Except as provided in (a)(2) and (a)(3) of this Section 59, the defendant shall have the
45 burden to establish a reasonable probability that the defendant's participation in the offense was
46 the result of having been a victim of human trafficking;

47

48 (2) Where a child under the age of eighteen was adjudicated delinquent for an offense
49 under section 8, section 26, section 53(a), or section 53A of chapter 272, based on allegations of
50 prostitution, there shall be a rebuttable presumption that the child's participation in the offense
51 was a result of having been a victim of human trafficking or trafficking in persons;

52 (3) Where the conviction, adjudication of delinquency, or continuance without a finding
53 was for an offense under section 8, section 26, section 53(a), or section 53A of chapter 272
54 committed when the defendant was 18 years of age or older, official documentation from any
55 local, state, or federal government agency of the defendant's status as a victim of human

56 trafficking or trafficking in persons at the time of the offense shall create a rebuttable
57 presumption that the defendant’s participation in the offense was a result of having been a victim
58 of human trafficking or trafficking in persons, but shall not be required for granting a motion
59 under this paragraph;

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61 (4) For purposes of subsection (a)(3) of this Section 59, “official documentation” shall
62 be defined as any document issued by a local, state, or federal government agency in the
63 agency’s official capacity;

64

65 (5) The rules concerning the admissibility of evidence at criminal trials shall not apply to
66 the presentation and consideration of information at a hearing conducted pursuant to this section,
67 and the court shall consider hearsay contained in official documentation from any local, state, or
68 federal government agency of the defendant’s status as a victim of human trafficking or
69 trafficking in persons offered in support of a motion pursuant to this section; and

70

71 (6) A motion pursuant to this section may be heard by any sitting justice of a court of
72 competent jurisdiction.

73 (b) Upon vacatur of a conviction, adjudication of delinquency, or continuance without a
74 finding, the court shall enter a plea of not guilty, except if the vacated conviction, adjudication of
75 delinquency, or continuance without a finding was for an offense under section 8, section 26,

76 section 53(a), or section 53A of chapter 272, in which case the court shall dismiss the indictment
77 or criminal or delinquency complaint.

78 (c) Upon vacatur of a conviction, adjudication of delinquency, or continuance without a
79 finding and the entrance of a plea of not guilty pursuant to this section 59, it shall be an
80 affirmative defense to the charges against the defendant that, while a human trafficking victim,
81 such person was under duress or coerced into committing the offenses for which such person is
82 being prosecuted or against whom juvenile delinquency proceedings have commenced.

83 (d) The administrative justices of the superior court, district court, juvenile court and the
84 Boston municipal court departments shall jointly promulgate a motion form for use under this
85 section.

86 SECTION 3. Section 57 of chapter 265 of the General Laws, as added by section 23 of
87 chapter 178 of the acts of 2011, is hereby further amended by:- Striking out, before the words
88 “section 53A of said chapter 272” the words “a violation of” and inserting the words “charges of
89 a violation of section 8, section 26 and,”-

90 SECTION 4. Chapter 276 of the General Laws is hereby amended by inserting after
91 section 100D the following section:-

92 Section 100E.

93 In any case wherein a plea of not guilty has been entered by a court pursuant to section
94 59 of chapter 265 and the criminal complaint is subsequently dismissed; the defendant is found
95 not guilty by a judge or a jury; a finding of no probable cause is made by the court; or a nolle
96 prosequi has been entered, and when it appears to the court that substantial justice would best be

97 served, the commissioner of probation may expunge said court appearance and disposition
98 recorded in his files and the clerk and the probation officers of the courts in which the
99 proceedings occurred or were initiated shall, if said records have been expunged by the
100 commissioner of probation, likewise expunge the records of the proceedings in their files. The
101 provisions of this paragraph shall not apply if the defendant makes a written request to the
102 commissioner not to expunge the records of the proceedings.

103 Such expunged records shall not operate to disqualify a person in any examination,
104 appointment or application for public employment in the service of the commonwealth or of any
105 political subdivision thereof.

106 An application for employment used by an employer which seeks information concerning
107 prior arrests or convictions or adjudications of delinquency of the applicant shall include in
108 addition to the statement required under section one hundred A the following statement: "An
109 applicant for employment with a sealed record on file with the commissioner of probation may
110 answer 'no record' with respect to an inquiry herein relative to prior arrests or criminal court
111 appearances." The attorney general may enforce the provisions of this section by a suit in equity
112 commenced in the superior court.

113 The commissioner or the clerk of courts in any district or superior court or juvenile court
114 or the Boston municipal court, in response to inquiries by authorized persons other than any law
115 enforcement agency or any court, shall in the case of an expunged record report that no record
116 exists.