

SENATE No. 810

The Commonwealth of Massachusetts

PRESENTED BY:

James B. Eldridge

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the expungement of records of persons falsely accused and juveniles.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	
<i>Jonathan D. Zlotnik</i>	<i>2nd Worcester</i>	
<i>Michael O. Moore</i>	<i>Second Worcester</i>	
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>	
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	
<i>Leonard Mirra</i>	<i>2nd Essex</i>	
<i>Joseph W. McGonagle, Jr.</i>	<i>28th Middlesex</i>	
<i>Carmine L. Gentile</i>	<i>13th Middlesex</i>	
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>	
<i>Byron Rushing</i>	<i>9th Suffolk</i>	
<i>James Arciero</i>	<i>2nd Middlesex</i>	
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>	
<i>Chris Walsh</i>	<i>6th Middlesex</i>	
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>	<i>12/23/2015</i>

SENATE No. 810

By Mr. Eldridge, a petition (accompanied by bill, Senate, No. 810) of James B. Eldridge, Jonathan D. Zlotnik, Michael O. Moore, Sean Garballey and other members of the General Court for legislation to expunge the records of persons falsely accused and juveniles. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 725 OF 2013-2014.]

The Commonwealth of Massachusetts

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

An Act relative to the expungement of records of persons falsely accused and juveniles.

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. The court, upon finding that a person has been falsely accused, shall enter
4 immediately an order directing the expungement of records maintained by the department of
5 criminal justice information services, the probation department, and the sex offender registry.
6 Such finding and subsequent order shall be made for any person falsely accused because of an
7 error in identification, because of intentionally false statements that caused fraud on the court, or
8 because of negligence on the part of the police and court staff in initiating a complaint.

9 The court shall also order the expungement of records that directly pertain to a false
10 accusation that are in the care, custody, and control of any other state, municipal or local
11 departments, agencies, commissions, or committees, including law enforcement agencies. Such
12 records shall include, but not be limited to, arrest records and district attorneys' files.

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

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

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

24 SECTION 2. Section 100B of chapter 276 of the General Laws, as so appearing, is
25 hereby amended by adding at the end thereof the following:-

26 Notwithstanding the provisions of section 100A, any person having been adjudicated a
27 youthful offender as prescribed by section 58 of chapter 119 and having a record of criminal
28 court appearances and dispositions in the commonwealth on file with the office of the
29 commissioner of probation may, on a form furnished by the commissioner and signed under the
30 penalties of perjury, request that the commissioner seal such record.

31 The commissioner shall comply with such request provided: 1.) that said person's court
32 appearance and court disposition records, including termination of court supervision, probation,
33 parole, or sentence, the records for which are to be sealed, terminated not less than five years
34 preceding such request; 2.) that said person has not been adjudicated delinquent or found guilty
35 of any criminal offense within the commonwealth within five years preceding such request,
36 except for a motor vehicle offense in which the penalty does not exceed a fine of fifty dollars;
37 and 3.) said form includes a statement by the petitioner that he has not been adjudicated
38 delinquent or found guilty of any criminal offense in any other state, U.S. possession, or in a
39 court of federal jurisdiction, except motor vehicle offenses as aforesaid, within the preceding five
40 years.

41 When records of youthful offender appearances and dispositions are sealed by the
42 commissioner in his files, he shall notify forthwith the clerk and the probation officer of the
43 courts in which the convictions or dispositions have occurred, or other entries have been made,
44 and the department of youth services, if necessary, of such sealing, and said clerks, probation
45 officers, and department of youth services shall each seal records of the same proceedings in
46 their files.

47 Such sealed records of a person shall not operate to disqualify a person in any future
48 examination, appointment, or application for public service under the government of the
49 commonwealth or of any political subdivision thereof; nor shall such sealed records be
50 admissible in evidence or used in any way in any court proceedings or hearings before any
51 boards of commissioners, except in imposing sentence for subsequent offenses in delinquency or
52 criminal proceedings.

53 Notwithstanding any other provision to the contrary, the commissioner shall report such
54 sealed record to inquiring police and court agencies only as “sealed youthful offender record
55 over five years old” and to other authorized persons who may inquire as “no record.” The
56 information contained in said sealed youthful offender record shall be made available to a judge
57 or probation officer who affirms that such person, whose record has been sealed, has been
58 adjudicated a delinquent or has pleaded guilty or has been found guilty of and is awaiting
59 sentence for a crime committed subsequent to sealing of such record. Said information shall be
60 used only for the purpose of consideration in imposing sentence.

61 An applicant for employment with a sealed record on file with the commissioner of
62 probation may answer “no record” to an inquiry herein relative to prior arrests or criminal court
63 appearances.

64 SECTION 3. Said chapter 276, as so appearing, is hereby further amended by inserting
65 after section 100D the following new section:-

66 Section 100E. A record sealed by the commissioner of probation pursuant to section
67 100B of this chapter shall be expunged by the commissioner five years from the date of such
68 sealing. The record of any person who has not petitioned to seal his record, but whose record is
69 determined by said commissioner to be eligible for sealing shall be expunged 10 years from the
70 date of such person’s eighteenth birthday.

71 Once the commissioner expunges the records within his possession, he shall forthwith
72 notify the clerk and probation officer of the courts in which the adjudications or dispositions
73 occurred, or other entries have been made, and the department of youth services of such

74 expungement, and said clerks, probation officers, and department of youth services shall each
75 expunge such records from their files.

76 In any application for employment, a person whose records have been expunged pursuant
77 to this section may answer “no record” in response to any inquiry regarding prior arrests,
78 delinquency appearances, delinquency adjudications, or delinquency dispositions that were
79 contained in such expunged record.

80 The charges, adjudications, and dispositions expunged shall not operate to disqualify
81 such person in any examination, appointment, or application for public employment in the
82 service of the commonwealth or any other subdivision thereof, nor shall such charges,
83 adjudications, or dispositions be used against such person in anyway in any court proceeding or
84 hearing before any court, board, or commission to which the person is a party to the proceeding.

85 For the purpose of this chapter the words, expunge, expunged, or expungement, shall
86 mean permanent erasure or destruction.