

SENATE No. 777

The Commonwealth of Massachusetts

PRESENTED BY:

William N. Brownsberger

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 to reduce the criminalization of poverty.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>	
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	<i>1/27/2017</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>	<i>1/27/2017</i>
<i>Jack Lewis</i>	<i>7th Middlesex</i>	<i>1/27/2017</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>1/27/2017</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>1/27/2017</i>
<i>Jay R. Kaufman</i>	<i>15th Middlesex</i>	<i>1/27/2017</i>
<i>Cynthia Stone Creem</i>	<i>First Middlesex and Norfolk</i>	<i>1/27/2017</i>
<i>Linda Dorcena Forry</i>	<i>First Suffolk</i>	<i>1/27/2017</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>1/27/2017</i>
<i>Dylan Fernandes</i>	<i>Barnstable, Dukes and Nantucket</i>	<i>1/27/2017</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>	<i>1/27/2017</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>1/27/2017</i>
<i>Sonia Chang-Diaz</i>	<i>Second Suffolk</i>	<i>1/27/2017</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>1/30/2017</i>
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>	<i>1/30/2017</i>
<i>Michael F. Rush</i>	<i>Norfolk and Suffolk</i>	<i>1/31/2017</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>	<i>1/31/2017</i>

<i>José F. Tosado</i>	<i>9th Hampden</i>	<i>1/31/2017</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>1/31/2017</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>	<i>1/31/2017</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>	<i>1/31/2017</i>
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>	<i>1/31/2017</i>
<i>Joseph A. Boncore</i>	<i>First Suffolk and Middlesex</i>	<i>2/1/2017</i>
<i>Carmine L. Gentile</i>	<i>13th Middlesex</i>	<i>2/1/2017</i>
<i>Kate Hogan</i>	<i>3rd Middlesex</i>	<i>2/1/2017</i>
<i>Solomon Goldstein-Rose</i>	<i>3rd Hampshire</i>	<i>2/1/2017</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	<i>2/2/2017</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>2/2/2017</i>
<i>Edward F. Coppinger</i>	<i>10th Suffolk</i>	<i>2/2/2017</i>
<i>Kenneth J. Donnelly</i>	<i>Fourth Middlesex</i>	<i>2/2/2017</i>
<i>Byron Rushing</i>	<i>9th Suffolk</i>	<i>2/2/2017</i>
<i>Russell E. Holmes</i>	<i>6th Suffolk</i>	<i>2/2/2017</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>	<i>2/3/2017</i>
<i>Chynah Tyler</i>	<i>7th Suffolk</i>	<i>2/3/2017</i>
<i>Daniel Cullinane</i>	<i>12th Suffolk</i>	<i>2/3/2017</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>	<i>2/3/2017</i>
<i>Adrian Madaro</i>	<i>1st Suffolk</i>	<i>2/3/2017</i>
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>	<i>2/3/2017</i>
<i>Natalie Higgins</i>	<i>4th Worcester</i>	<i>2/3/2017</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>	<i>2/3/2017</i>
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>	<i>2/3/2017</i>

SENATE No. 777

By Mr. Brownsberger, a petition (accompanied by bill, Senate, No. 777) of William N. Brownsberger, Michael J. Barrett, Marjorie C. Decker, Jack Lewis and other members of the General Court for legislation to reduce the criminalization of poverty. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act to reduce the criminalization of poverty.

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 368 of chapter 26 of the acts of 2003 is hereby repealed.

2 SECTION 2. Section 167 of chapter 6 of the General Laws, as appearing in the 2014
3 Official Edition, is hereby amended by striking out, in the definition of "Criminal offender
4 record information," the second sentence and inserting in place thereof the following sentence:-
5 Such information shall be restricted to information recorded in criminal proceedings that are not
6 dismissed before arraignment.

7 SECTION 3. Section 167 of chapter 6 of the General Laws, as so appearing, is hereby
8 further amended by striking out, in lines 41 to 42, the words "is adjudicated as an adult" and
9 inserting in place thereof the words:- was tried as an adult in superior court or tried as an adult
10 after transfer of a case from a juvenile session to another trial court department.

11 SECTION 4. Section 172B of chapter 6 of the General Laws, as appearing in the 2014
12 Official Edition, is hereby amended by inserting, in line 8, after the words “conviction data” the
13 words “but not sealed juvenile data”

14 SECTION 5. Section 172F of chapter 6 of the General Laws, as so appearing, is hereby
15 amended by inserting, in line 8, after the words “conviction data” the words “but not sealed
16 juvenile data.”

17 SECTION 6. Section 21D of chapter 40 of the General Laws, as appearing in the 2014
18 Official Edition, is hereby amended by striking out the first and second paragraphs and inserting
19 in place thereof the following 3 paragraphs:-

20 Any city or town may by ordinance or by-law not inconsistent with this section provide
21 for non-criminal disposition of misdemeanors not ineligible for decriminalization under section
22 70C of chapter 277, any matters deemed civil infractions by any general or special law, and any
23 violations of any ordinance, by-law, rule or regulation of any municipal officer, board or
24 department which is subject to a specific penalty.

25 A police officer who has witnessed a person commit such a violation may request the
26 person to state his name and address. Whoever, upon such request, refuses to state his name and
27 address, or states a false name and address or a name and address which is not his name and
28 address in ordinary use, shall be punished by a fine of not less than twenty nor more than fifty
29 dollars. Any such offender who refuses upon such request to state his name and address or states
30 a false name and address or a name and address which is not his name and address in ordinary
31 use may be arrested without a warrant.

32 Any ordinance or by-law shall provide that any person taking cognizance of a
33 misdemeanor, civil infraction, violation of a specific ordinance, by-law, rule or regulation which
34 that person is authorized to enforce may, as an alternative to initiating criminal proceedings, give
35 to the offender a written notice to appear before the clerk of the district court having jurisdiction
36 thereof at any time during office hours, not later than 21 days after the date of the notice. The
37 notice shall be produced in triplicate and shall contain the offender's name, address if known, the
38 specific offense charged and the time and place of the offender's required appearance. The notice
39 shall be signed by the enforcing person and shall be signed by the offender whenever practicable
40 as an acknowledgement that the notice has been received.

41 SECTION 7. Section 22 of chapter 90 of the General Laws, as appearing in the 2014
42 Official Edition, is hereby amended by striking out subsection (i).

43 SECTION 8. Section 24(1)(a)(1) of chapter 90 of the General Laws, as appearing in the
44 2014 Official Edition, is hereby amended by striking out the third sentence and inserting in place
45 thereof the following sentence:-

46 The assessment shall be waived or reduced if it will cause a substantial financial hardship
47 upon the person or the person's family or dependents.

48 SECTION 9. Section 24(1)(a)(1) of chapter 90 of the General Laws, as appearing in the
49 2014 Official Edition, is hereby further amended by striking out the fifth sentence and inserting
50 in place thereof the following sentence:-

51 The assessment shall be waived or reduced if it will cause a substantial financial hardship
52 upon the person or the person's family or dependents.

53 SECTION 10. Section 24(2)(a) of chapter 90 of the General Laws, as appearing in the
54 2014 Official Edition, is hereby amended by striking out the fourth sentence and inserting in
55 place thereof the following sentence:-The assessment shall be waived or reduced if it will cause a
56 substantial financial hardship upon the person or the person’s family or dependents.

57 SECTION 11. Section 24D of chapter 90 of the General Laws, as appearing in the 2014
58 Official Edition, is hereby amended by striking out, in lines 173 and 174, the words “cause a
59 grave and serious hardship to such individual or to the family thereof,” and inserting in place
60 thereof the following words:- cause a substantial financial hardship upon the individual or the
61 family or dependents thereof

62 SECTION 12. Paragraph (36) of section 33 of chapter 90 of the General Laws is hereby
63 amended by striking out the third sentence and inserting in place thereof the following 2
64 sentences:- The fee for reinstatement for suspensions and revocation under subsection (c) of
65 section 22 shall be commensurate with the fee established for the corresponding Massachusetts
66 offense resulting in the suspension or revocation under law. In all other cases, there shall be no
67 fee for reinstatement.

68 SECTION 13. The first paragraph of section 34J of chapter 90 of the General Laws is
69 hereby amended by striking out the first sentence and inserting in place thereof the following 2
70 sentences:- Whoever operates or permits to be operated or permits to remain on a public or
71 private way a motor vehicle which is subject to the provisions of section 1A during such time as
72 the motor vehicle liability policy or bond or deposit required by the provisions of this chapter has
73 not been provided and maintained as required shall be subject to a civil penalty of \$100;
74 provided, however, that any municipality that enforces the provisions of this section shall retain

75 such civil penalty; provided, further, that for a second offense within 6 years the offender shall
76 pay a civil penalty of \$500.

77 SECTION 14. Said section 34J of said chapter 90 is hereby amended by striking out the
78 last paragraph.

79 SECTION 15. The thirty-second paragraph of section 8 of chapter 90B of the General
80 Laws, as appearing in the 2014 Official Edition, is hereby amended by striking out the last
81 sentence and inserting in place thereof the following sentence:- The assessment shall be waived
82 or reduced if it will cause a substantial financial hardship upon the person or the family or
83 dependents thereof.

84 SECTION 16. Paragraph (6) of subsection (A) of section 3 of chapter 90C of the General
85 Laws, as appearing in the 2014 Official Edition, is hereby amended by inserting the following
86 paragraph:—

87 (d) In any case where a violator owes an assessment, such violator may request a
88 payment plan. If said violator so requests, the registrar shall determine a monthly payment plan,
89 taking into consideration the ability of the violator to pay, of not less than \$25 each month to be
90 paid by the violator to the registrar or the registrar's authorized agents. The payment plan shall
91 be sufficient to discharge the violator of all reinstatement fees and underlying fines assessed to
92 the violator. A payment plan granted under this section shall not exceed 12 months. During the
93 period of the payment plan, the registrar shall defer any suspension otherwise mandated by this
94 section.

95 If a violator signs a payment plan approved by the registrar and fails to make payments
96 on the plan, the registrar may suspend the violator's license, learners permit or right to operate

97 without further notice or hearing. The registrar shall promulgate regulations governing the
98 determination and use of payment plans.

99 SECTION 17. Section 34 of chapter 94C of the General Laws, as appearing in the 2014
100 Official Edition, is hereby amended, in lines 42 to 44, by striking out the words “; provided,
101 however, that departmental records which are not public records, maintained by police and other
102 law enforcement agencies, shall not be sealed;”

103 SECTION 18. Section 44 of chapter 94C of the General Laws, as appearing in the 2014
104 Official Edition, is hereby amended, in lines 42 to 44, by striking out the words “; provided,
105 however, that departmental records maintained by police and other law enforcement agencies
106 which are not public records shall not be sealed.”

107 SECTION 19. Section 16 of chapter 119A of the General Laws, as appearing in the 2014
108 Official Edition, is hereby amended by inserting, in line 44, after the word “obligor” the
109 following words:- ;provided, that the IV-D agency has no evidence of the obligor residing at an
110 address other than the address last known by the IV-D agency. In no instance shall the IV-D
111 agency notify a licensing authority unless the child support arrearage exceeds an amount equal to
112 8 weeks obligation or \$500, whichever is greater.

113 SECTION 20. Section 130 of chapter 127 of the General Laws, as appearing in the 2014
114 Edition, is hereby amended by inserting after the words “terms and conditions”, in line 103, the
115 following words:- ; provided, however, that in no instance shall such terms and conditions
116 include payment of a supervision fee.

117 SECTION 21. Section 144 of chapter 127 of the General Laws, as appearing in the 2014
118 Official Edition, is hereby amended by striking out, in line 3, the word “thirty”, and inserting in
119 place thereof the following figure: \$90.

120 SECTION 22. Chapter 127 of the General Laws is hereby amended by striking out
121 section 145, as so appearing, and inserting in place thereof the following section:-

122 Section 145. (a) A justice of a trial court shall not commit a person to a prison or place of
123 confinement solely for non-payment of monies owed if such person has shown by a
124 preponderance of the evidence that the person is not able to pay without causing substantial
125 financial hardship to such person or the family or dependents thereof. A court shall determine if
126 a substantial financial hardship exists at a hearing where it shall consider the person’s
127 employment status, earning ability, financial resources, living expenses, and any special
128 circumstances that may have bearing on the person’s ability to pay.

129 (b) A justice of trial court shall not commit a person to a prison or place of confinement
130 solely for non-payment of monies owed if the person was not offered counsel for the
131 commitment portion of the case. A person determined to be indigent for the purpose of the offer
132 of counsel shall not be assessed a fee for the assistance of counsel.

133 (c) A justice of the trial court shall consider alternatives to incarceration before
134 committing a person to a prison or place of confinement solely for non-payment of a fine or a
135 fine and expenses.

136 (d) A justice of the trial court shall not commit a juvenile to prison, place of confinement
137 or the Department of Youth Services for nonpayment of monies.

138 SECTION 23. Section 10 of chapter 209A of the General Laws, as appearing in the 2014
139 Official Edition, is hereby amended by striking out, in lines 6 to 8, the words “when the court
140 finds that the person is indigent or that payment of the assessment would cause the person, or the
141 dependents of such person, severe financial hardship”, and inserting in place thereof the
142 following words:- when the court finds that the person is indigent or that payment of the
143 assessment would cause substantial financial hardship to the person or the person’s family or
144 dependents.

145 SECTION 24. Section 2A of Chapter 211D, as appearing in the 2014 Official Edition, is
146 hereby amended by striking out subsection (f),(g), (h) and (i) in their entirety and inserting in
147 place thereof the following subsection:-

148 (f) The office of the commissioner of probation shall submit quarterly reports to the
149 house and senate committees on ways and means that shall include, but not be limited to: (i) the
150 number of individuals claiming indigency who are determined to be indigent; (ii) the number of
151 individuals claiming indigency who are determined not to be indigent; (iii) the number of
152 individuals found to have misrepresented wage, tax or asset information; (iv) the number of
153 individuals found to no longer qualify for appointment of counsel upon any re-assessment of
154 indigency required by this section; (v) the total number of times an indigent misrepresentation
155 fee was collected and the aggregate amount of indigent misrepresentation fees collected; (vi) the
156 total number of times indigent but able to contribute counsel fees were collected and waived and
157 the aggregate amount of indigent but able to contribute counsel fees collected and waived; (vii)
158 the average indigent but able to contribute counsel fee that each court division collects; (viii) the
159 total number of times an indigent but able to contribute fee was collected and waived and the
160 aggregate amount of indigent but able to contribute fees collected and waived; (ix) the highest

161 and lowest indigent but able to contribute fee collected in each court division; and (x) other
162 pertinent information to ascertain the effectiveness of indigency verification procedures. The
163 information within such reports shall be delineated by court division, and delineated further by
164 month.

165 SECTION 25. Section 8 of chapter 258B of the General Laws, as appearing in the 2014
166 Official Edition, is hereby amended by striking out, in lines 38 to 40, the words “would impose a
167 severe financial hardship upon the person against whom the assessment is imposed,” and
168 inserting in place thereof the following words:- would impose a substantial financial hardship
169 upon the person against whom the assessment is imposed, or the person’s family or dependents.

170 SECTION 26. Section 47 of chapter 265 of the General Laws, as so appearing, is hereby
171 amended by striking out the seventh sentence and inserting in place thereof the following
172 sentence:- If an offender establishes that the fees would cause a substantial financial hardship
173 upon the offender or the offender’s family or dependents, the court may waive them.

174 SECTION 27. Section 30 of chapter 266 of the General Laws, as so appearing, is hereby
175 amended by striking out, in lines 9, 13 to 14, 77 and 82, the words “two hundred and fifty
176 dollars” and inserting in place thereof, in each instance, the following figure:- \$1,500.

177 SECTION 28. Said section 30 of said chapter 266, as appearing in the 2014 Official
178 Edition, is hereby further amended by striking out, in lines 15 to 23, after the word “dollars,” the
179 words “; or, if the property was stolen from the conveyance of a common carrier or of a person
180 carrying on an express business, shall be punished for the first offence by imprisonment for not
181 less than six months nor more than two and one half years, or by a fine of not less than fifty nor
182 more than six hundred dollars, or both, and for a subsequent offence, by imprisonment for not

183 less than eighteen months nor more than two and one half years, or by a fine of not less than one
184 hundred and fifty nor more than six hundred dollars, or both” and inserting in place thereof the
185 following words:- ; or, if the value of the property stolen exceeds \$250 but is less than \$500,
186 shall be punished by imprisonment in a jail or house of correction for not more than 1 year or by
187 a fine of not more than \$500; or, if the value of the property stolen exceeds \$500 but is less than
188 \$1,000, shall be punished by imprisonment in a jail or house of correction for not more than 1
189 year or by a fine of not more than \$1,000; or, if the value of the property stolen exceeds \$1,000
190 but is less than \$1,500, shall be punished by imprisonment in a jail or house of correction for not
191 more than 1 year or by a fine of not more than \$2,500.

192 SECTION 29. Said section 30 of said chapter 266, as appearing in the 2014 Official
193 Edition, is hereby further amended by adding the following paragraph:-

194 (6) Law enforcement officers may arrest without warrant any person an officer has
195 probable cause to believe has committed the offense of larceny, as defined in this section, where
196 the value of the property stolen exceeds \$250.

197 SECTION 30. Section 30A of said chapter 266, as appearing in the 2014 Official Edition,
198 is hereby amended by striking out, in lines 35, 42, and 46 to 47, the words “one hundred dollars”
199 and inserting in place thereof, in each instance, the following figure:- \$250.

200 SECTION 31. Section 37A of said chapter 266, as appearing in the 2014 Official Edition,
201 is hereby amended by striking out, in lines 6 to 9, the definition of “credit card” and inserting in
202 place thereof the following definition:-

203 “Credit card”, any instrument or device, whether known as a credit card, credit plate or
204 by any other name or the code of number used to identify that instrument or device or an account

205 of credit or cash accessed by that instrument or device, issued with or without fee by an issuer
206 for the use of the cardholder in obtaining money, goods, services or anything else of value on
207 credit or by debit from a cash account.

208 SECTION 32. Section 37B of said chapter 266, as appearing in the 2014 Official Edition,
209 is hereby amended by striking out, in lines 24 to 25, 29 to 30, 37 to 38, and 45 to 46, the words
210 “two hundred and fifty dollars” and inserting in place thereof, in each instance, the following
211 figure:- \$1,500.

212 SECTION 33. Said section 37B of said chapter 266, as appearing in the 2014 Official
213 Edition, is hereby further amended by striking out, in lines 49 and 50, the words “five hundred
214 dollars” and inserting in place thereof the following figure:- \$3,000.

215 SECTION 34. Section 37C of said chapter 266, as appearing in the 2014 Official Edition,
216 is hereby amended by striking out, in lines 12, 17,23 and 31 to 32, the words “two hundred and
217 fifty dollars” and inserting in place thereof, in each instance, the following figure:- \$1,500.

218 SECTION 35. Said section 37C of said chapter 266, as appearing in the 2014 Official
219 Edition, is hereby further amended by striking out, in lines 39 to 40, the words “two thousand
220 dollars” and inserting in place thereof the following figure:- \$5,000.

221 SECTION 36. Section 60 of said chapter 266, as appearing in the 2014 Official Edition,
222 is hereby amended by striking out, in line 13, the figure “\$250” and inserting in place thereof the
223 following figure:- \$1,500.

224 SECTION 37. Said section 60 of said chapter 266, as so appearing, is hereby further
225 amended by striking out, in line 15, the figure “\$1,000” and inserting in place thereof the
226 following figure:- \$2,500.

227 SECTION 38. Said section 60 of said chapter 266, as so appearing, is hereby further
228 amended by striking out, in lines 16 and 20, the figure “\$250” and inserting in place thereof, in
229 each instance, the following figure:- \$1,500.

230 SECTION 39. Section 126A of chapter 266 of the General Laws, as appearing in the
231 2014 Official Edition, is hereby amended by striking out the second paragraph.

232 SECTION 40. Section 126B of chapter 266 of the General Laws, as appearing in the
233 2014 Official Edition, is hereby amended by striking out the second paragraph.

234 SECTION 41. Section 127 of said chapter 266, as appearing in the 2014 Official Edition,
235 is hereby amended by striking out, in line 13, the words “two hundred and fifty dollars” and
236 inserting in place thereof the following figure:- \$1,500.

237 SECTION 42. Section 23A of chapter 276 of the General Laws, as appearing in the 2014
238 Official Edition, is hereby amended, in lines 24 to 25, by striking out the words “and the registry
239 of motor vehicles”.

240 SECTION 43. Section 30 of chapter 276 of the General Laws, as appearing in the 2014
241 Official Edition, is hereby amended by striking out, in lines 5 and 6, the words “except that upon
242 a finding of good cause by the court the fee may be waived,” and inserting in place thereof the
243 following words:- except that the court may waive the fee upon a finding of good cause or a

244 finding that such a fee would cause a substantial financial hardship to the person or the person's
245 family or dependents.

246 SECTION 44. Said section 30 of said chapter 276 is hereby further amended by striking
247 out, in line 11, the words "unless the judge finds that such person is indigent," and inserting in
248 place thereof the following words:-

249 unless the judge finds that the fee would cause a substantial financial hardship to the
250 person or the person's family or dependents.

251 SECTION 45. Section 87A of chapter 276 of the General Laws, as appearing in the 2014
252 Official Edition, is hereby amended by striking out the second, third, fourth, fifth, sixth, seventh
253 and eighth paragraphs and inserting in place thereof the following 6 paragraphs:-

254 The court shall assess upon each person placed on probation, including any person placed
255 on probation for offenses under section 24 of chapter 90, but not including any person placed on
256 probation after release from prison or a house of correction, a monthly probation supervision fee
257 in the amount of \$45 each month, which for the purposes of this section shall be referred to as
258 the "probation fee.". A person shall pay the probation fee once each month for the duration of the
259 time the person remains on probation. Said person may pay a partial or full payment of future
260 scheduled payments in advance. Notwithstanding this section, said fees shall not be assessed
261 upon any person accused or convicted of a violation of sections 1 or 15 of chapter 273 where
262 compliance with an order of support for a spouse or minor child is a condition of probation.

263 The court may waive payment of the fee if it determines after a hearing that such
264 payment would constitute a substantial financial hardship to the person or the person's family.
265 Following the hearing and upon a finding of hardship the court may require said person to

266 perform unpaid community service work at a public or nonprofit agency or facility, as approved
267 and monitored by the probation department, for no more than 4 hours per month in lieu of
268 payment of a probation fee. A waiver shall be in effect only during the period of time that a
269 person is unable to pay the monthly probation fee.

270 The court may waive payment of the fee in whole or in part if the person is assessed
271 payment of restitution. In those cases, fees may be waived only to the extent and during the
272 period that restitution is paid in an amount equivalent to the fee.

273 The probation fee shall be collected by the probation offices of the trial court and
274 transmitted to the state treasurer for deposit into the General Fund. The state treasurer shall
275 account for all fees received and report the fees annually, itemized by court division, to the house
276 and senate committees on ways and means.

277 The court shall also assess upon every person placed on probation, including all persons
278 placed on probation for offenses under section 24 of chapter 90, a monthly probationers' victim
279 services surcharge which, for purposes of this section, shall be referred to as "victim services
280 surcharge", in the amount of \$5 per month. The person on probation shall pay said victim
281 services surcharge once each month for the duration of the time the person remains on probation.
282 Notwithstanding the foregoing, the fees shall not be assessed upon any person accused or
283 convicted of a violation of sections 1 or 15 of chapter 273, where compliance with an order of
284 support for a spouse or minor child is a condition of probation.

285 The court may waive payment of the fee if it has determined, after a hearing, that the
286 payment would constitute a substantial financial hardship to the person or the person's family.. A

287 waiver shall be in effect only for the duration of the period of time that the person is unable to
288 pay the monthly probation fee.

289 SECTION 46. Chapter 276 of the General Laws, as appearing in the 2014 Official
290 Edition, is hereby amended by striking out section 92 and inserting in place thereof the following
291 section:

292 Section 92. (a) When the court orders a defendant to make financial restitution to the
293 victim of a crime for which the defendant has been convicted or to which the defendant has
294 entered a plea of guilty or nolo contendere, a civil judgment shall automatically be entered by the
295 trial court against the defendant on behalf of the victim for that amount. If the restitution ordered
296 by the court is not made within the specified time period, the civil judgment for the amount of
297 the restitution ordered, minus the amount already paid, may be enforced by the state or by a
298 victim named in the order to receive the restitution, in the same manner as a judgment in a civil
299 action.

300 (b) An order of restitution enforced pursuant to this section is also an order that the
301 defendant owes all reasonable and necessary attorney's fees and costs incurred in collecting the
302 restitution order due to the defendant's nonpayment.

303 (c) The conviction, guilty plea or plea of nolo contendere of a defendant for an offense
304 involving the act giving rise to restitution shall prevent the defendant from denying the essential
305 allegations of that offense in any subsequent civil proceeding.

306 (d) An order of restitution hereunder shall not bar any subsequent civil remedy or
307 recovery, but the amount of such restitution shall be set off against any subsequent independent
308 civil recovery.

309 (e) The civil judgment allowed under this section shall be dischargeable in bankruptcy.

310

311 SECTION 47. Section 100A of chapter 276 of the General Laws, as appearing in the
312 2014 Official Edition, is amended by striking, in line 83, the words “for employment used by an
313 employer” between the words “application” and “which” and inserting in place thereof, the
314 following words:- used to screen applicants for employment, housing or an occupational or
315 professional license”

316 SECTION 48. Section 100A of chapter 276 of the General Laws, as appearing in the
317 2014 Official Edition, is amended by inserting, in line 85 to 86, the words “or for housing or an
318 occupational or professional license” between the words “employment” and “with”

319 SECTION 49. Section 100A of chapter 276 of the General Laws, as appearing in the
320 2014 Official Edition, is amended by inserting, in line 89, the words “or for housing or an
321 occupational or professional license” between the words “employment” and “with”

322 SECTION 50. Section 100A of chapter 276 of the General Laws, as appearing in the
323 2014 Official Edition, is amended by inserting, in line 92, the words “or for housing or an
324 occupational or professional license” between the words “employment” and “may”

325 SECTION 51. Section 100C of Chapter 276 of the General Laws, as appearing in the
326 2014 Official Edition, is amended by striking, in line 23, the words “for employment used by an
327 employer” between the words “application” and “which” and inserting in place thereof, the
328 following words:- used to screen applicants for employment, housing or an occupational or
329 professional license”

330 SECTION 52. Section 100C of Chapter 276 of the General Laws, as appearing in the
331 2014 Official Edition, is amended by inserting, in line 26 through 27, the words “or for housing
332 or an occupational or professional license” between the words “employer” and “with”

333 SECTION 53. Section 100A of chapter 276 of the General Laws, as appearing in the
334 2014 Official Edition, is amended by inserting, in line 28, between the number “268A” and the
335 period at the end of the sentence, the words- “,except for convictions for resisting arrest”

336 SECTION 54. Section 100A of chapter 276 of the General Laws, as appearing in the
337 2014 Official Edition, is hereby amended by striking out, in lines 9, 14, and 21, the figure “5”
338 and inserting in place thereof, in each instance, the following figure:- 3

339 SECTION 55. Section 100A of chapter 276 of the General Laws, as appearing in the
340 2014 Official Edition, is hereby amended by striking out, in lines 12, 15, and 22, the figure “10”
341 and inserting in place thereof, in each instance, the following figure:- 7

342 SECTION 56. Section 100B of chapter 276 of the General Laws, as appearing in the
343 2014 Official Edition, is hereby amended by striking out said section in its entirety and inserting
344 in place thereof the following new section:-

345 Section 100B.

346 (a) Any person having a record of entries of a court appearance in any proceeding
347 pursuant to section 52 to 62 of chapter 119, inclusive, in the commonwealth on file in the office
348 of the commissioner of probation may, on a form furnished by the commissioner, signed under
349 the penalties of perjury, request that the commissioner seal such file. The commissioner shall
350 comply with such request provided (1) that any court appearance or disposition including court

351 supervision, probation, commitment or parole, the records for which are to be sealed, terminated
352 not less than one year prior to said request; (2) that said person has not been adjudicated
353 delinquent or found guilty of any criminal offense within the commonwealth in the one year
354 preceding such request, except motor vehicle offenses in which the penalty does not exceed a
355 fine of five-hundred and fifty dollars nor been imprisoned under sentence or committed as a
356 delinquent within the commonwealth within the preceding one year; and (3) said form includes a
357 statement by the petitioner that he has not been adjudicated delinquent or found guilty of any
358 criminal offense in any other state, United States possession or in a court of federal jurisdiction,
359 except such motor vehicle offenses as aforesaid, and has not been imprisoned under sentence or
360 committed as a delinquent in any state or county within the preceding one year.

361 (b) At the time of dismissal of a case, nolle prosequi, non-adjudication or when
362 imposing any sentence, period of commitment or probation, or other disposition under section 58
363 of said chapter 119, the court shall inform all juveniles in writing of their right to seek sealing
364 under this section, and that if the case ended in a dismissal, nolle prosequi, or without an
365 adjudication, the court shall order sealing of the record at the time of the disposition unless the
366 person charged with the offense objects.

367 (c) When records of delinquency and youthful offender appearances and dispositions
368 are sealed by the commissioner in his files, the commissioner shall notify forthwith the clerk and
369 the probation officer of the courts in which the adjudications or dispositions have occurred, or
370 other entries have been made, police department from where the charges originated and the
371 department of youth services of such sealing, and said clerks, probation officers, police
372 department and department of youth services likewise shall seal records of the same proceedings
373 in their files. Sealing of records under this section shall not preclude expungement of police

374 records. The commissioner of probation also shall notify the State Police of such sealing and the
375 State Police shall notify the Federal Bureau of Investigation of the sealing order and request that
376 the FBI note that the record was sealed in its records if it has a record of the case.

377 Such sealed records of a person shall not operate to disqualify a person in any future
378 examination, appointment or application for public service under the government of the
379 commonwealth or of any political subdivision thereof; nor shall such sealed records be
380 admissible in evidence or used in any way in any court proceedings or hearings before any
381 boards of commissioners, except in imposing sentence for subsequent offenses in juvenile or
382 criminal proceedings.

383 Notwithstanding any other provision to the contrary, the commissioner shall report such
384 sealed juvenile record to inquiring police and court agencies only as "sealed juvenile record over
385 one year old" and to other authorized persons who may inquire as "no record". The information
386 contained in said sealed juvenile record shall be made available to a judge or probation officer
387 who affirms that such person, whose record has been sealed, has been adjudicated a delinquent
388 or has pleaded guilty or has been found guilty of and is awaiting sentence for a crime committed
389 subsequent to sealing of such record. Said information shall be used only for the purpose of
390 consideration in imposing sentence.

391 SECTION 57. Chapter 276 of the General Laws, as appearing in the 2014 Official
392 Edition, is hereby amended by inserting, after section 100D, the following sections:-

393 Section 100E. After records of a criminal or juvenile appearance or disposition are sealed
394 by the commissioner pursuant to section 100A, 100B, or 100C, the defendant may request
395 sealing of police records related the charge or charges. Upon receipt of such a request from the

396 defendant, the commissioner of probation shall inform, as applicable, the police department or
397 Massachusetts state police that arrested or initiated the complaint against the defendant of the
398 request for sealing of police records. The police department or Massachusetts State Police, as
399 applicable, shall then seal the records related to the charge or charges including, but not limited
400 to, arrest logs. Notwithstanding this provision, criminal justice agencies as defined in section 167
401 of chapter 6, shall have access to police records sealed under this section as necessary for the
402 performance of their criminal justice duties. For purposes of this section, “sealing” shall mean to
403 remove from public access all information that is available to or can otherwise be provided to the
404 public upon request. Sealing of records under this section shall not preclude expungement of
405 police records.

406 Section 100F. Whenever the commissioner seals records pursuant to sections 100A,
407 100B or 100C, he shall forthwith notify the state police and the state police shall take action to
408 assure that any arrest records maintained in state police, federal or interstate databases, related to
409 the sealed criminal or delinquency appearances and dispositions are also sealed for all purposes
410 other than criminal justice, weapons-related background checks and national security.

411 Section 100G. The commissioner shall notify the state police to update the disposition of
412 a case upon any change in its disposition and the state police shall take action to ensure that the
413 disposition of each case is attached and included with any arrest records maintained in state
414 police, federal or interstate databases related to the criminal or delinquency appearances and
415 dispositions resulting from that arrest.

416 SECTION 58. Chapter 276 of the General Laws, as appearing in the 2014 Official
417 Edition, is hereby further amended by adding the following section:-

418 Section 104: After a court appearance has reached its final disposition including
419 termination of court supervision, probation, commitment or parole, upon motion of the defendant
420 and after notice to the district attorney who shall be given the opportunity to be heard, a court
421 may order expungement of all records related to the court appearance if the court determines that
422 expungement is in the interest of justice because: (i) the complaint issued against the named
423 defendant because of misidentification or other errors by law enforcement or court employees;
424 (ii) the named defendant was determined to have no connection to the alleged criminal activity;
425 (iii) the named defendant was prosecuted because another person impersonated him or her, or
426 used his or her name when arrested by police; (iv) there was fraud on the court related to the
427 claim that the defendant committed the offense; or (v) there was lack of probable cause for
428 initiation of the complaint or violation of a constitutional right related to initiation of the
429 complaint. The court shall enter written findings of fact when it orders expungement of records
430 under this section and shall immediately provide a certified copy of the order and findings of fact
431 to the named defendant and the commissioner of probation. The commissioner of probation
432 shall expunge said court appearance and disposition recorded in the commissioner's files and the
433 clerk and the probation officers of the courts in which the proceedings occurred or were initiated
434 shall expunge the records of the proceedings from their files. No individual or other entity,
435 including but not limited to criminal justice agencies as defined under section 167 of chapter 6,
436 shall have access to expunged criminal offender record information related to the expunged
437 charge or charges. The court on request of the defendant shall order the expungement of records
438 that directly pertain to expunged case that are in the care, custody, and control of any other
439 agencies, departments, commissions, or entities, including but not limited to law enforcement

440 agencies. Such expunged records shall include, but not be limited to, arrest and other police
441 records and district attorney files.

442 If the court orders expungement of the records, the person, when applying for
443 employment, housing, or occupational licensing application, may answer “no record” as to any
444 charge expunged pursuant to this section in response to an inquiry regarding prior arrests, court
445 appearances or criminal cases. A charge that is expunged shall not operate to disqualify a person
446 in any examination, appointment or application for public employment in the service of the
447 commonwealth or any other political subdivision thereof, nor shall such charges and convictions
448 be used against a person in any way in any court proceedings or hearings before any court, board
449 or commission to which the person is a party to the proceedings. For the purpose of this chapter,
450 the words, expunge, expunged, or expungement, shall mean permanent erasure and destruction
451 of records.

452 Upon receipt of an expungement order, the state police shall submit such order to the
453 Interstate Identification Index and, upon confirmation that the case or cases have been expunged
454 from said index, shall also expunge said cases from any records in its custody.

455 SECTION 59. Section 1 of chapter 279 of the General Laws, as appearing in the 2014
456 Official Edition, is hereby amended by inserting after the fourth sentence, the following
457 sentence:- When a person is sentenced to pay a fine of any amount, or is assessed fines, fees,
458 costs, civil penalties, or other expenses at disposition of a case, the court shall inform that person
459 that: (i) nonpayment of the fines, fees, costs, civil penalties, or expenses may result in
460 commitment to a prison or place of confinement; (ii) payment must be made by a date certain;
461 (iii) failure to appear at such date certain or failure to make the payment may result in the

462 issuance of a default; and (iv) if an inability to pay exists as the result of a change in financial
463 circumstances or for any other reason, the person has a right to address the court on inability to
464 pay. Under no circumstances may a person be committed on a delinquency or youthful offender
465 case for failure to pay a fee, fine, or costs.

466 SECTION 60. Section 6A of chapter 280 of the General Laws, as appearing in the 2014
467 Official Edition, is hereby amended by striking out the fourth sentence and inserting in place
468 thereof the following sentence:-

469 The court or justice may in his discretion waive all or any part of the cost assessment, the
470 payment of which would cause a substantial financial hardship to the person convicted or the
471 person's family.

472 SECTION 61. Section 16 shall be effective on September 1, 2018.

473 SECTION 62. The last sentence in subsection (c) of section 56 shall be effective January
474 1, 2019.

475 SECTION 63. Section 57 shall be effective July 1, 2019.

476 SECTION 64. The last paragraph of Section 58 shall be effective January 1, 2019.