

SENATE No. 944

The Commonwealth of Massachusetts

PRESENTED BY:

Karen E. Spilka

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 sealing of juvenile records and expungement of court records.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Karen E. Spilka</i>	<i>Second Middlesex and Norfolk</i>	
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>	<i>1/24/2017</i>
<i>Carmine L. Gentile</i>	<i>13th Middlesex</i>	<i>1/25/2017</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>1/25/2017</i>
<i>Jay R. Kaufman</i>	<i>15th Middlesex</i>	<i>1/27/2017</i>
<i>Jack Lewis</i>	<i>7th Middlesex</i>	<i>1/27/2017</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>1/27/2017</i>
<i>Byron Rushing</i>	<i>9th Suffolk</i>	<i>1/30/2017</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>1/30/2017</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>	<i>1/31/2017</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>	<i>1/31/2017</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>	<i>1/31/2017</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	<i>2/1/2017</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>2/1/2017</i>
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>	<i>2/1/2017</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>2/2/2017</i>
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>	<i>2/2/2017</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>2/2/2017</i>

<i>Thomas M. McGee</i>	<i>Third Essex</i>	<i>2/2/2017</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>	<i>2/2/2017</i>
<i>Kenneth J. Donnelly</i>	<i>Fourth Middlesex</i>	<i>2/2/2017</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>2/3/2017</i>
<i>Eileen M. Donoghue</i>	<i>First Middlesex</i>	<i>2/3/2017</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>	<i>2/3/2017</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>	<i>2/3/2017</i>
<i>Cynthia Stone Creem</i>	<i>First Middlesex and Norfolk</i>	<i>2/3/2017</i>
<i>Jennifer L. Flanagan</i>	<i>Worcester and Middlesex</i>	<i>2/3/2017</i>
<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>	<i>2/3/2017</i>
<i>Linda Dorcena Forry</i>	<i>First Suffolk</i>	<i>2/3/2017</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>	<i>2/3/2017</i>
<i>Joseph A. Boncore</i>	<i>First Suffolk and Middlesex</i>	<i>2/3/2017</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>	<i>2/6/2017</i>

SENATE No. 944

By Ms. Spilka, a petition (accompanied by bill, Senate, No. 944) of Karen E. Spilka, Marjorie C. Decker, Carmine L. Gentile, James B. Eldridge and other members of the General Court for legislation relative to sealing of juvenile records and expungement of court records. The Judiciary.

The Commonwealth of Massachusetts

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

An Act relative to sealing of juvenile records and expungement of court 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 276 of the General Laws, as appearing in the 2014 Official
2 Edition, is hereby amended by striking out section 100B and inserting in place thereof the
3 following section:-

4 Section 100B. (a) Any person having a record of entries of a court appearance in any
5 proceeding pursuant to sections 52 to 62 of chapter 119, inclusive, in the commonwealth on file
6 in the office of the commissioner of probation may, on a form furnished by the commissioner,
7 signed under the penalties of perjury, request that the commissioner seal the file. The
8 commissioner shall comply with such request provided that: (i) any court appearance or
9 disposition including court supervision, probation, commitment or parole, the records for which
10 are to be sealed, terminated not less than 1 year prior to said request; (2) said person has not been
11 adjudicated delinquent or found guilty of any criminal offense within the commonwealth in the 1
12 year preceding such request, except motor vehicle offenses in which the penalty does not exceed

13 a fine of \$550 nor been imprisoned under sentence or committed as a delinquent within the
14 commonwealth within the preceding 1 year; and (iii) said form includes a statement by the
15 petitioner that they have not been adjudicated delinquent or found guilty of any criminal offense
16 in any other state, territory or district of the United States or in a court of federal jurisdiction,
17 except such motor vehicle offenses in which the penalty does not exceed a fine of \$550 and has
18 not been imprisoned under sentence or committed as a delinquent in any state or county within
19 the preceding 1 year.

20 (b) At the time of dismissal of a case, nolle prosequi, non-adjudication or when imposing
21 any sentence, period of commitment or probation or other disposition pursuant to section 58 of
22 chapter 119, the court shall inform all juveniles in writing of their right to seek sealing under this
23 section and that if the case ended in a dismissal, nolle prosequi, or without an adjudication, the
24 court shall order sealing of the record at the time of the disposition unless the person charged
25 with the offense objects. The court shall also notify said juvenile that the record shall be
26 expunged 3 years after the record is sealed unless the person charged with the offense objects.

27 (c) Upon the sealing of records of delinquency and youthful offender appearances and
28 dispositions by the commissioner, the commissioner shall notify the clerks and the probation
29 officers of the courts in which the adjudications or dispositions have occurred, or other entries
30 have been made, the police departments from where the charges originated and the department of
31 youth services of such sealing, and said clerks, probation officers, police departments and the
32 department of youth services shall seal the records of the same proceedings. Sealing of records
33 under this section shall not preclude expungement of the records, including but not limited to
34 police records. The commissioner of probation also shall notify the state police of such sealing

35 and the state police shall notify the Federal Bureau of Investigation of the sealing order and
36 request that the FBI note that the record was sealed in its records if it has a record of the case.

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

43 Notwithstanding any other general or special law to the contrary, the commissioner shall
44 report such sealed juvenile record to inquiring police and court agencies only as "sealed juvenile
45 record over 1 year old" and to other authorized persons who may inquire as "no record". The
46 information contained in a sealed juvenile record shall be made available to a judge or probation
47 officer who affirms that such person, whose record has been sealed, has been adjudicated a
48 delinquent or has pleaded guilty or has been found guilty of and is awaiting sentence for a crime
49 committed subsequent to sealing of such record. Said information shall be used only for the
50 purpose of consideration in imposing sentence.

51 SECTION 2. Said chapter 276 of the General Laws, as so appearing, is hereby further
52 amended by inserting after section 100D the following section:-

53 Section 100E. (a) For the purpose of this section, the words expunge, expunged and
54 expungement shall mean permanent erasure or destruction of information so that the information
55 is no longer maintained in any file or record in an electronic, paper or other physical form.

56 (b) Notwithstanding section 100B or any other general or special law to the contrary, in a
57 form furnished by the commissioner of probation, a person with a record of court appearances
58 and dispositions in any proceeding pursuant to section 52 to 62 of chapter 119, inclusive, shall
59 have the records of such a proceeding expunged upon the filing of a petition to expunge records
60 with the commissioner of probation provided that: (i) for misdemeanor offenses, the juvenile
61 court appearance or disposition, including court supervision, probation, commitment or parole,
62 terminated not less than 3 years prior to said request; or for non-misdemeanor offenses, the
63 juvenile court appearance or disposition, including court supervision, probation, commitment or
64 parole, terminated not less than 3 years prior to said request and there is good cause to expunge
65 the record, which shall include a determination of whether there is a foreseeable disadvantage
66 related to employment, housing or access to other opportunities if the records are not expunged;
67 (ii) that said person had no juvenile adjudication, was not found guilty of any criminal offense
68 within the commonwealth in the 3 years preceding such request, except motor vehicle offenses in
69 which the penalty does not exceed a fine of \$550 and was not imprisoned under sentence or
70 committed to the Department of Youth Services within the commonwealth within the preceding
71 3 years; and (iii) said form includes a statement by the petitioner that during the preceding 3
72 years, the petitioner had no juvenile adjudication, was not found guilty of a criminal offense in
73 any other state, territory or district of the United States or in a court of federal jurisdiction,
74 except such motor vehicle offenses in which the penalty does not exceed a fine of \$550, and was
75 not imprisoned under sentence or committed as a juvenile in any state or county within the
76 preceding 3 years.

77 (c) The court shall permit the expungement of a record at any time if a case ended in a
78 dismissal, nolle prosequi or without an adjudication because: (i) the person charged with an

79 offense was misidentified or mistakenly charged with an offense due to an error by law
80 enforcement or court employees, (ii) the person arrested or accused of committing the offense
81 provided a false name; or (iii) fraud was perpetrated on the court related to the offense.

82 (d) The court shall, at the time of imposing any sentence or disposition or, where
83 applicable, period of commitment or probation, pursuant to section 58 of chapter 119, inform all
84 eligible individuals of their right to seek expungement under this section

85 (e) For any petition to expunge granted under this section, the clerks and probation
86 officers of the courts in which the proceedings occurred or were initiated shall expunge all the
87 records of the proceedings in their files in their paper, electronic and any other form.

88 (f) Notwithstanding any other general or special law to the contrary, in the case of an
89 expunged record, the commissioner of probation and the clerk of courts in a district court,
90 superior court, juvenile court and the Boston municipal court, shall report that “no record” exists
91 in response to inquiries.

92 An applicant for employment, housing or an occupational license with an expunged
93 record may answer “no record” to any inquiry regarding prior arrests, adjudications or other
94 dispositions that were contained in an expunged record.

95 The expunged record shall not operate to disqualify any person in an examination,
96 appointment or application for public employment in the service of the commonwealth or a
97 subdivision thereof and no such appearances or dispositions shall be used against a person in any
98 way in any court proceeding or hearing before a court, board or commission to which that person
99 is a party to the proceeding.

100 Notwithstanding any general or special law to the contrary, upon the expungement of
101 records within the commissioner's possession, the commissioner shall notify the department of
102 youth services of the expungement and the department shall expunge such records from the
103 department's files. Any records subject to an expungement order shall be expunged in their
104 paper, electronic and any other physical form. The commissioner of probation shall also notify
105 the State Police of such expungement and the State Police shall notify the Federal Bureau of
106 Investigation of the expungement order and request that the FBI expunge its fingerprint and other
107 records related to the case.

108 SECTION 3. Notwithstanding any general or special law to the contrary, juvenile
109 records, including, but not limited to, juvenile conviction data, juvenile arrest data, or juvenile
110 sealed record data, shall not be shared with the Registry of Motor Vehicles by the court,
111 probation, district attorney, law enforcement agencies, the department of criminal justice
112 information services or any other agency or entity that lawfully possesses such records.