

HOUSE No. 1386

The Commonwealth of Massachusetts

PRESENTED BY:

Marjorie C. Decker and Kay Khan

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 expungement, sealing and criminal records provisions.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Maria Duaiame Robinson</i>	<i>6th Middlesex</i>
<i>Bud L. Williams</i>	<i>11th Hampden</i>
<i>Carlos González</i>	<i>10th Hampden</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>
<i>Joseph A. Boncore</i>	<i>First Suffolk and Middlesex</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>
<i>Peter Capano</i>	<i>11th Essex</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>
<i>Brendan P. Crighton</i>	<i>Third Essex</i>
<i>Daniel R. Cullinane</i>	<i>12th Suffolk</i>
<i>Mindy Domb</i>	<i>3rd Hampshire</i>
<i>Daniel M. Donahue</i>	<i>16th Worcester</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>

<i>Nika C. Elugardo</i>	<i>15th Suffolk</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>
<i>Dylan A. Fernandes</i>	<i>Barnstable, Dukes and Nantucket</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>
<i>Tami L. Gouveia</i>	<i>14th Middlesex</i>
<i>James K. Hawkins</i>	<i>2nd Bristol</i>
<i>Stephan Hay</i>	<i>3rd Worcester</i>
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>
<i>Daniel J. Hunt</i>	<i>13th Suffolk</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>
<i>Adrian C. Madaro</i>	<i>1st Suffolk</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>
<i>Christina A. Minicucci</i>	<i>14th Essex</i>
<i>Liz Miranda</i>	<i>5th Suffolk</i>
<i>Lenny Mirra</i>	<i>2nd Essex</i>
<i>Rady Mom</i>	<i>18th Middlesex</i>
<i>Frank A. Moran</i>	<i>17th Essex</i>
<i>Tram T. Nguyen</i>	<i>18th Essex</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Rebecca L. Rausch</i>	<i>Norfolk, Bristol and Middlesex</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>
<i>Paul A. Schmid, III</i>	<i>8th Bristol</i>
<i>José F. Tosado</i>	<i>9th Hampden</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>
<i>Andres X. Vargas</i>	<i>3rd Essex</i>
<i>Aaron Vega</i>	<i>5th Hampden</i>
<i>Tommy Vitolo</i>	<i>15th Norfolk</i>

HOUSE No. 1386

By Representatives Decker of Cambridge and Khan of Newton, a petition (accompanied by bill, House, No. 1386) of Marjorie C. Decker, Kay Khan and others relative to expungement of past criminal or juvenile court records. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act relative to expungement, sealing and criminal records provisions.

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. The first paragraph of Section 60A of chapter 119 of the General Laws, as
2 appearing in the 2016 Official Edition, is hereby amended by striking out the first sentence.

3 SECTION 2. The first paragraph of Section 60A of chapter 119 of the General Laws, as
4 appearing in the 2016 Official Edition, is hereby amended by striking out in line 4 of the second
5 sentence the word “other” and by inserting between the words ”delinquency” and “arising” in
6 lines 4 and 5, the following words:-

7 and youthful offender proceedings

8 SECTION 3. The second paragraph of section 21 of chapter 120 of the General Laws, as
9 appearing in the 2016 Official Edition, is hereby amended by striking out the first sentence and
10 inserting in place thereof the following two sentences: -

11 Whenever a person who was either not committed or committed to the department by a
12 court upon adjudication of a crime, is discharged from its control, such discharge or the
13 termination of the case after an adjudication without a commitment to the department shall, when
14 so ordered, restore such person to all civil rights and shall have the effect of vacating the
15 adjudication. The court records of the case and records of the commissioner of probation and
16 probation office at the court where the proceedings arose shall indicate the adjudication was
17 vacated.

18 SECTION 4. The second paragraph of section 21 of chapter 120 of the General Laws, as
19 appearing in the 2016 Official Edition, is hereby amended by striking out, in line 10, the word
20 “conviction” and inserting in place thereof the word:-adjudication.

21 SECTION 5. The second paragraph of section 21 of chapter 120 of the General Laws, as
22 appearing in the 2016 Official Edition, is hereby amended by striking out, in line 10, the word
23 “him” and inserting in place thereof the words:-the person.

24 SECTION 6. Section 21 of chapter 120 of the General Laws, as appearing in the 2016
25 Official Edition, is hereby amended by inserting after the third paragraph, the following new
26 paragraph:-

27 A juvenile court adjudication shall not be used as a predicate offense that triggers a
28 mandatory minimum sentence.

29 SECTION 7. Section 100B of Chapter 276 of the General Laws, as appearing in the 2016
30 Official Edition is hereby amended by inserting after the last sentence in the first paragraph, the
31 following sentence: -

32 Notwithstanding this provision for filing of a request to seal juvenile records or any other
33 provision to the contrary, the commissioner of probation shall seal any juvenile court records that
34 are eligible for sealing within ninety days of the time that they become eligible for sealing after
35 the applicable waiting period if the records are not already sealed.

36 SECTION 8. Section 100B of Chapter 276 of the General Laws, as appearing in the
37 2016 Official Edition, is hereby amended by inserting after the last sentence in the second
38 paragraph in line 28, the following two paragraphs:-

39 At the time of dismissal, a nolle prosequi, a not guilty finding, or when imposing a
40 sentence, period of commitment or probation, or other disposition under section 58 of said
41 chapter 119 in any juvenile court case, the court shall provide the juvenile with information in
42 writing about sealing records under this section and expungement under sections 100F, 100G,
43 100H and 100K of this chapter.

44 In any juvenile court case wherein a nolle prosequi has been entered, or a dismissal or a
45 not guilty finding has been entered by the court and it appears to the court that substantial justice
46 would best be served by sealing the records, the court shall upon request for sealing of the
47 record, direct the clerk to seal the records of the proceedings in his or her files. The clerk shall
48 forthwith notify the commissioner of probation and the probation officer of the courts in which
49 the proceedings occurred or were initiated who shall likewise seal the records of the proceedings
50 in their files.

51 SECTION 9. Section 100B of chapter 276 of the General Laws, as appearing in the 2016
52 Official Edition, is hereby amended by adding the following sentence to the end thereof: -

53 Notwithstanding any other provision to the contrary, a juvenile court adjudication shall
54 not be used as a predicate offense that triggers a mandatory minimum sentence.

55 SECTION 10. Section 100I of chapter 276 of the General Laws, is hereby amended by
56 striking out in paragraph (a) the words that appear between between “(a)” in the first line and
57 subparagraph “(2)” by inserting in place thereof the following sentence and subparagraph: -

58 The petitioner may seek expungement of past criminal or juvenile court records and the
59 commissioner shall certify that the records related to any charge, charges, case or cases that are
60 the subject of the petition filed pursuant to section 100F, section 100G or section 100H are
61 eligible for expungement provided that:

62 (1) the charge, charges, case or cases that are the subject of the petition either did not end
63 in conviction or adjudication, or if there was any adjudication or conviction for a felony, the
64 disposition was at least five years prior to filing of the petition for a felony, or at least three years
65 prior to filing of the petition for an adjudication or conviction for a misdemeanor.

66 SECTION 11. Section 100I of chapter 276 of the General Laws, is hereby amended by
67 striking it out subparagraphs (3), (4) and (5) of paragraph (a) and inserting in place thereof the
68 following subparagraphs: -

69 (3) the offense is not a sex offense that can never be sealed under section 1178G of
70 Chapter 6 of the General Laws;

71 (4) other than motor vehicle offenses in which the penalty does not exceed a fine of \$50
72 and the offenses that are the subject of the petition to expunge, the petitioner has no record of
73 being found guilty, and no record as an adjudicated delinquent or adjudicated youthful offender

74 for any felony within five years or any misdemeanor within three years on file with the
75 commissioner;

76 (5) other than motor vehicle offenses in which the penalty does not exceed a fine of \$50,
77 the petitioner has no record of being found guilty and no record as an adjudicated delinquent or
78 adjudicated youthful offender for a felony within five years, or as an adjudicated delinquent or
79 adjudicated youthful offender for a misdemeanor within three years on file in any other state,
80 United States possession or in a court of federal jurisdiction; and

81 SECTION 12. Section 100J of chapter 276 of the General Laws, is hereby amended, by
82 striking out subparagraphs (1) through (20) in paragraph (a) and inserting thereof the following
83 subparagraphs: -

84 (1) a sex offense that can never be sealed under section 100B of Chapter 276 of the
85 General Laws; or

86 (2) a sex offense that can never be sealed under section 178G of Chapter 6 of the
87 General Laws.

88 SECTION 13. Chapter 276 of the General Laws is hereby amended by inserting after
89 section 100U, the following section:-

90 SECTION 100V. Notwithstanding any other provision to the contrary, after an arrest of a
91 person under the age of criminal majority, law enforcement and criminal justice agencies shall
92 no longer transmit fingerprints and any records related to the arrest or filing of a court case
93 against the person to the Federal Bureau of Investigation or the Department of Justice for any
94 offense that occurred before the age of criminal majority, except for purposes of requesting that

95 the Federal Bureau of Investigation or the Department of Justice seal or expunge its records as
96 required by section 100T of this chapter and section 36 of chapter 22C of the General laws.