SENATE DOCKET, NO. 1908 FILED ON: 1/18/2019

SENATE . . . . . No. 900

The Commonwealth of Massachusetts

PRESENTED BY:

Cynthia Stone Creem

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.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
Cynthia Stone Creem	*First Middlesex and Norfolk*	
Carlos González	*10th Hampden*	*1/23/2019*
Jason M. Lewis	*Fifth Middlesex*	*1/24/2019*
Mike Connolly	*26th Middlesex*	*1/28/2019*
James B. Eldridge	*Middlesex and Worcester*	*1/29/2019*
Joseph A. Boncore	*First Suffolk and Middlesex*	*1/29/2019*
Antonio F. D. Cabral	*13th Bristol*	*1/30/2019*
Mary S. Keefe	*15th Worcester*	*1/30/2019*
Marcos A. Devers	*16th Essex*	*1/30/2019*
Adam G. Hinds	*Berkshire, Hampshire, Franklin and Hampden*	*1/30/2019*
Cindy F. Friedman	*Fourth Middlesex*	*1/30/2019*
Daniel J. Hunt	*13th Suffolk*	*1/30/2019*
Patricia D. Jehlen	*Second Middlesex*	*1/31/2019*
Brendan P. Crighton	*Third Essex*	*1/31/2019*
Sal N. DiDomenico	*Middlesex and Suffolk*	*2/1/2019*
Sean Garballey	*23rd Middlesex*	*2/1/2019*
Michael D. Brady	*Second Plymouth and Bristol*	*2/1/2019*

Kay Khan	*11th Middlesex*	*2/1/2019*
Julian Cyr	*Cape and Islands*	*2/1/2019*
Edward J. Kennedy	*First Middlesex*	*2/7/2019*
Christopher Hendricks	*11th Bristol*	*3/5/2019*

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SENATE . . . . . No. 900

By Ms. Creem, a petition (accompanied by bill, Senate, No. 900) of Cynthia Stone Creem, Carlos Gonzalez, Jason M. Lewis, Mike Connolly and other members of the General Court for legislation relative to the expungement of records. The Judiciary.

The Commonwealth of Massachusetts

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

An Act relative to expungement.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. The first paragraph of Section 60A of chapter 119 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by striking out the first sentence.

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

and youthful offender proceedings

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

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

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

adjudication.

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

the person.

SECTION 6. Section 21 of chapter 120 of the General Laws, as so appearing, is hereby amended by inserting after the third paragraph, the following new paragraph:-

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

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

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

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

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

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

SECTION 9. Section 100B of chapter 276 of the General Laws, as so appearing, is hereby amended by adding the following sentence to the end thereof: -

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

SECTION 10. Section 100I of chapter 276 of the General Laws, as appearing in section 195 of chapter 69 of the acts of 2018, is hereby amended by striking out, in lines 2600 to 2604, the words "The commissioner shall certify that a record that is the subject of the petition filed pursuant to section 100F, section 100G or section 100H is eligible for expungement provided that: (1) the offense resulting in the record that is the subject of the petition is not a criminal offense included in section 100J;" and inserting in place thereof the following:-

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

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

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

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

(4) other than motor vehicle offenses in which the penalty does not exceed a fine of $50 and the offenses that are the subject of the petition to expunge, the petitioner has no record of being found guilty, and no record as an adjudicated delinquent or adjudicated youthful offender for any felony within five years or any misdemeanor within three years on file with the commissioner;

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

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

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

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

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

SECTION 100V. Notwithstanding any other provision to the contrary, after an arrest of a person under the age of criminal majority, law enforcement and criminal justice agencies shall no longer transmit fingerprints and any records related to the arrest or filing of a court case against the person to the Federal Bureau of Investigation or the Department of Justice for any offense that occurred before the age of criminal majority, except for purposes of requesting that the Federal Bureau of Investigation or the Department of Justice seal or expunge its records as required by section 100T of this chapter and section 36 of chapter 22C of the General Laws.