

SENATE No. 957

The Commonwealth of Massachusetts

PRESENTED BY:

Joanne M. Comerford

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 empowering individuals affected by substance abuse to rebuild their lives.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	
<i>Susan L. Moran</i>	<i>Plymouth and Barnstable</i>	<i>3/15/2021</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>	<i>3/16/2021</i>
<i>Adam G. Hinds</i>	<i>Berkshire, Hampshire, Franklin and Hampden</i>	<i>4/20/2021</i>

SENATE No. 957

By Ms. Comerford, a petition (accompanied by bill, Senate, No. 957) of Joanne M. Comerford, Susan L. Moran and Elizabeth A. Malia for legislation to empower individuals affected by substance abuse to rebuild their lives. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act empowering individuals affected by substance abuse to rebuild their lives.

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 34 of chapter 94C of the General Laws is hereby amended by
2 inserting after the first paragraph the following three paragraphs:-

3 If any charge for violation of certain offenses related to controlled substances, as listed in
4 the third paragraph of this section, is dismissed, or a nolle prosequi or not guilty finding is
5 entered, the court shall, upon entry of such a disposition, order that all official records relating to
6 the arrest, indictment, conviction, probation, continuance or discharge, shall be sealed, unless the
7 defendant objects.

8 Notwithstanding the provisions of this section and section 100A of chapter 276, unless
9 the defendant objects, the commissioner of probation shall also seal, within 90 days, records of
10 criminal court appearances and dispositions in the commonwealth on file with the commissioner
11 of probation for any offense involving controlled substances, as defined in chapter 94C,
12 regardless of any fines or fees owed to the court or commonwealth, provided that: (1) the person

13 successfully completed a drug treatment program approved by the court or licensed by the
14 commonwealth; or (2) the person's court appearance and court disposition records, including any
15 period of incarceration or custody for any misdemeanor record to be sealed occurred not less
16 than 1 year before sealing date; or (3) the person's court appearance and court disposition
17 records, including any period of incarceration or custody for any felony record to be sealed
18 occurred not less than 3 years before the sealing date; and (4) the offense involving any
19 controlled substance was for:

20 (i) Any offense defined in sections 32, 32A, 32B, 32C, 32D, subsections (b) and (c) of
21 section 32E, 32F, 32G, subsections (a) and (b) of section 32I, 32K, 33, 34, and 37 of chapter
22 94C, with the exception of any offenses involving controlled substances defined in paragraph (d)
23 of class A of section 31 of chapter 94C.

24 (ii) Violations of section 32J of chapter 94C with regard to any of the provisions of
25 sections 32, 32A, 32B, 32C, 32D, 32E, 32F or 32I of chapter 94C, with the exception of
26 violations of provisions of subsection (a) of section 32E and subsection (c) of section 32I of
27 chapter 94C; and any offenses involving controlled substances defined in paragraph (d) of class
28 A of section 31 of chapter 94C.

29 (iii) Conspiracy to commit any of the offenses defined in sections 32, 32A, 32B, 32C,
30 32D, 32E, 32F or 32I of chapter 94C, with the exception of offenses defined in subsection (a) of
31 section 32E and subsection (c) of section 32I of chapter 94C; and any offenses involving
32 controlled substances defined in paragraph (d) of class A of section 31 of chapter 94C, as defined
33 by section 40 of chapter 94C.

34 Multiple offenses arising out of the same incident shall be considered a single offense for
35 the purposes of this section and shall be sealed along with the drug related offense, provided that
36 the other offense or offenses arising out of the same incident as the eligible drug offense or
37 offenses resulted in the same or a lesser period of incarceration, if any, than the eligible drug
38 offense.

39 SECTION 2. Section 44 of chapter 94C of the General Laws is hereby amended by
40 striking out the first paragraph and inserting in place thereof the following four paragraphs:-

41 Records that are sealed under section 34 shall not operate to disqualify a person in any
42 examination, appointment or application for public service in the service of the commonwealth
43 or of any political subdivision thereof; nor shall such sealed records be admissible in evidence or
44 used in any way in any court proceedings or hearings before any boards or commissions, except
45 in imposing sentence in subsequent criminal proceedings; provided however, that in any
46 proceedings under sections 1 to 39I, inclusive, of chapter 119, sections 2 to 5, inclusive, of
47 chapter 201, chapters 208, 209, 209A, 209B, 209C, or sections 1 to 11A, inclusive, of chapter
48 210, a party having reasonable cause to believe that information in a sealed criminal record of
49 another party may be relevant to (1) an issue of custody or visitation of a child, (2) abuse, as
50 defined in section 1 of chapter 209A or (3) the safety of any person may upon motion seek to
51 introduce the sealed record into evidence. The judge shall first review such records in camera
52 and determine those records that are potentially relevant and admissible. The judge shall then
53 conduct a closed hearing on the admissibility of those records determined to be potentially
54 admissible; provided, however, that such records shall not be discussed in open court and, if
55 admitted, shall be impounded and made available only to the parties, their attorneys and court
56 personnel who have a demonstrated need to receive them.

57 The commissioner or the clerk of courts in any district or superior court or the Boston
58 municipal court, in response to inquiries by authorized persons other than any law enforcement
59 agency or any court, shall in the case of a sealed record report that no record exists.

60 An applicant with a sealed record on file with the commissioner of probation may answer
61 ‘no record’ to an inquiry herein relative to prior arrests or criminal court appearances. No person
62 as to whom such sealing has been ordered shall be held thereafter under any provision of any law
63 to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or
64 acknowledge such arrest, indictment, conviction, dismissal, continuance, sealing, or any other
65 related court proceeding, in response to any inquiry made of him for any purpose.

66 A sealing pursuant to this section will not preclude the court’s jurisdiction over any
67 subsequently filed motion to amend the record, post-conviction relief motion or petition, or any
68 other future collateral attack on a sealed conviction.

69 SECTION 3. Section 100B of chapter 276 of the General Laws is hereby amended by
70 inserting after the first paragraph the following two paragraphs:-

71 Notwithstanding the provisions of this section, unless the defendant objects, the juvenile
72 court shall enter an order that the commissioner of probation shall seal records of juvenile court
73 appearances and dispositions on file with the commissioner of probation within 90 days of a
74 dismissal, nolle prosequi, or other non-adjudication for certain offenses related to controlled
75 substances, as defined in chapter 94C, or if such an offense ends in an adjudication, at the time of
76 the adjudication if the person successfully completed a drug treatment program approved by the
77 court or licensed by the commonwealth, or after the adjudication upon documentation of the
78 person’s successful completion of such a program to the court unless the records have already

79 been sealed, or after the adjudication after a period of 1 year, provided that said person has not
80 been adjudicated delinquent or found guilty of any criminal offense within the commonwealth in
81 the past year. Multiple offenses arising out of the same incident shall be considered a single
82 offense for the purposes of this section and shall be sealed along with the drug related offense,
83 provided that the other offense or offenses arising out of the same incident as the eligible drug
84 offense or offenses resulted in the same or a lesser period of incarceration, if any, than the
85 eligible drug offense.

86 Offenses eligible for sealing for the purposes of this section shall be:

87 (i) Any offense defined in sections 32, 32A, 32B, 32C, 32D, subsections (b) and (c) of
88 section 32E, 32F, 32G, subsections (a) and (b) of section 32I, 32K, 33, 34, and 37 of chapter
89 94C, with the exception of any offenses involving controlled substances defined in paragraph (d)
90 of class A of section 31 of chapter 94C.

91 (ii) Violations of section 32J of chapter 94C with regard to any of the provisions of
92 sections 32, 32A, 32B, 32C, 32D, 32E, 32F or 32I of chapter 94C, with the exception of
93 violations of provisions of subsection (a) of section 32E and subsection (c) of section 32I of
94 chapter 94C; and any offenses involving controlled substances defined in paragraph (d) of class
95 A of section 31 of chapter 94C.

96 (iii) Conspiracy to commit any of the offenses defined in sections 32, 32A, 32B, 32C,
97 32D, 32E, 32F or 32I of chapter 94C, with the exception of offenses defined in subsection (a) of
98 section 32E and subsection (c) of section 32I of chapter 94C; and any offenses involving
99 controlled substances defined in paragraph (d) of class A of section 31 of chapter 94C, as defined
100 by section 40 of chapter 94C.

101 SECTION 4. The first paragraph of section 100C of chapter 276 of the General Laws is
102 hereby amended by inserting after the first sentence the following sentence:- The offense or
103 offenses shall be sealed forthwith without the defendant having to file a petition or other request
104 with the court.

105 SECTION 5. Chapter 276 of the General Laws is hereby amended by striking out section
106 100O and inserting in place thereof the following section:-

107 Section 100O. (a) A petition for an expungement, any records related to a petition for an
108 expungement, records related to judicial proceedings required to hear the petition for an
109 expungement or an order of expungement pursuant to section 100F, section 100G, section 100H,
110 section 100K, or subsections (b) to (e), inclusive, of this section shall not be a public record. Any
111 information obtained by a county, municipal or state employee acting in their official capacity
112 and related to a petition for or order for an expungement shall not be a public record as defined
113 by clause twenty-sixth of section 7 of chapter 4 and shall be confidential information. Within 60
114 days of ordering an expungement pursuant to section 100F, section 100G, section 100H, section
115 100K or subsections (b) to (e), inclusive, of this section the court and the commissioner shall
116 expunge all records of the petition, the order and any related proceedings within their care,
117 custody or control.

118 (b) Notwithstanding the provisions in this chapter for filing a petition for expungement,
119 or any other provision to the contrary, a person with a record of criminal court appearances,
120 dispositions, or convictions on file with the commissioner of probation shall be eligible to
121 expunge such record for certain offenses involving controlled substances, as defined in chapter
122 94C, with the court that handled the petitioner's original case related to certain offenses

123 involving controlled substances regardless of any fines or fees owed to the court or the
124 commonwealth, provided that (1) 5 or more years has passed since the date of final disposition of
125 criminal proceedings against such person, including the termination of any period of custody or
126 incarceration, whichever is later; (2) the person has not been convicted of a crime arising out of a
127 new incident since the original appearance, disposition, or conviction; and (3) the record is the
128 result of any of the following offenses involving controlled substances:

129 (i) Any offense defined in sections 32, 32A, 32B, 32C, 32D, subsections (b) and (c) of
130 section 32E, 32F, 32G, subsections (a) and (b) of section 32I, 32K, 33, 34, and 37 of chapter
131 94C, with the exception of any offenses involving controlled substances defined in paragraph (d)
132 of class A of section 31 of chapter 94C.

133 (ii) Violations of section 32J of chapter 94C with regard to any of the provisions of
134 sections 32, 32A, 32B, 32C, 32D, 32E, 32F or 32I of chapter 94C, with the exception of
135 violations of provisions of subsection (a) of section 32E and subsection (c) of section 32I of
136 chapter 94C; and any offenses involving controlled substances defined in paragraph (d) of class
137 A of section 31 of chapter 94C.

138 (iii) Conspiracy to commit any of the offenses defined in sections 32, 32A, 32B, 32C,
139 32D, 32E, 32F or 32I of chapter 94C, with the exception of offenses defined in subsection (a) of
140 section 32E and subsection (c) of section 32I of chapter 94C; and any offenses involving
141 controlled substances defined in paragraph (d) of class A of section 31 of chapter 94C, as defined
142 by section 40 of chapter 94C.

143 (c) Multiple offenses arising out of the same incident shall be considered a single offense
144 for the purposes of this section and shall be eligible for expungement along with the drug related

145 offense, provided that the other offense or offenses arising out of the same incident as the
146 eligible drug offense or offenses resulted in the same or a lesser period of incarceration, if any,
147 than the eligible drug offense.

148 (d) In making a determination regarding a person's petition for expungement pursuant to
149 this provision, a rebuttable presumption shall apply that expungement is in the interests of justice
150 and that the record should be expunged if the person's petition meets the statutory criteria for
151 expungement pursuant to this section. Prior to entering an order of expungement pursuant to this
152 provision, the court shall hold a hearing if requested by the petitioner or the district attorney.
153 Upon an order of expungement, the court shall enter written findings of fact.

154 (e) The court shall immediately forward an order for expungement pursuant to this
155 provision to the clerk of the court where the record was created, to the commissioner of
156 probation and to the commissioner of criminal justice information services appointed pursuant to
157 section 167A of chapter 6.

158 (f) An expungement pursuant to this section will not preclude the court's jurisdiction over
159 any subsequently filed motion to amend the record, post-conviction relief motion or petition, or
160 any other future collateral attack on a sealed conviction.

161 SECTION 6. Chapter 276 of the General Laws is hereby amended by striking out section
162 100Q and inserting in place thereof the following section:-

163 Section 100Q. No person shall make records sealed pursuant to section 100A or section
164 100B or expunged pursuant to section 100C, 100F, section 100G, section 100H, section 100K or
165 subsections (a) to (e), inclusive of section 100O available for inspection in any form by any
166 person.

167 SECTION 7. The department of public health shall compile a report on the number of
168 licensed drug treatment programs within each county and within each city and town in the
169 commonwealth. For each program, the report shall include the services provided by each
170 program, the total number of treatment beds and non-residential treatment positions, the average
171 number of available beds and non-residential treatment openings during the past year, and an
172 analysis of the demand and the capacity of the commonwealth's drug treatment infrastructure,
173 and a plan to address any shortfalls. The report shall be compiled and submitted to the clerks of
174 the senate and house of representatives, the joint committee on public health, and the joint
175 committee on mental health, substance abuse, and recovery not later than January 1, 2022.