

HOUSE No. 1416

The Commonwealth of Massachusetts

PETITION OF:

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In the Year Two Thousand and Seven.

AN ACT IMPROVING PUBLIC SAFETY IN THE COMMONWEALTH.

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 General Court hereby finds and declares that:

(A) The current system of maintaining and disseminating Criminal Offender Record Information (known as CORI) has become an all-but-impossible barrier for most ex-offenders and other individuals with CORI as to their securing employment, housing, education, training, credit, and other necessities of mainstream living, thereby keeping them from becoming productive and tax-paying citizens or residents of the Commonwealth and often driving them back into the world of crime.

(B) While the Commonwealth and the Federal Government spend millions of dollars to train and assist unemployed persons to enter the workforce, these efforts are unacceptably frustrated by the current CORI system, as well as by the imposition of minimum mandatory sentences and other provisions which cause the Commonwealth to spend the taxpayers' money to fund governmental efforts which are often in contradiction to each other, with a

resulting diminution of public safety.

(C) In addition to the state interest in safeguarding the reputations and privacy of the Commonwealth's residents, there is, collectively, a compelling state interest to seal or otherwise mitigate the harm caused by stale or otherwise misleading or unpredictable criminal records, which state interest may, in particular instances, be ruled by a judge to overcome what the federal courts have found to be a First Amendment interest in favor of keeping these governmental records available to the more than ten thousand organizations which now have access to CORI.

SECTION 2. Section 168A of Chapter 6 is hereby amended by inserting after the first sentence the following new sentence: – Said records shall include, where applicable, regularly updated certifications of commitment to rehabilitation, as defined in Section 168D.

SECTION 3. Chapter 6 of the General Laws is hereby amended by inserting after section 168C the following section: –

Section 168D. Probation officers, parole officers, the heads of county jails or houses of correction, or their delegates, and the superintendents of state correctional institutions, or their delegates (hereinafter collectively referred to as "supervisory officials"), shall, where appropriate, on a regular basis but at least every six months, issue a certification of commitment to rehabilitation with respect to each person under supervision, if the person has substantially complied with the behavioral requirements established by the supervisory official, including reasonable participation in treatment or other rehabilitative programs that are available to the person; but lack of reasonable access to such treatment or rehabilitative programming due to circumstances beyond the control of the supervised individual shall not compromise the eligibility of the individual for certification.

At the beginning of each period for which the individual is potentially eligible, the supervisory official shall clearly describe to the person the requirements for certification, including advance warning of an adverse recommendation and its basis, where such recommendation is subject to reversal upon correction of the deficient behavior by the person. The certification shall be dated and indicate the time period covered. Supervisory officials, upon issuing such a certification, shall inform the criminal history systems board, pursuant to section 168A, so that appropriate data will be made part of a so-called "CORI report."

SECTION 4. Section 172 of chapter 6 of the General Laws is hereby amended by inserting after the first paragraph, as appearing in the 2004 Official Edition, a new paragraph as follows: –

Agencies, other entities or persons granted access under clause (c) of the first sentence of the first paragraph, as appearing in the 2004 Official Edition, of this section, including local or regional housing authorities, as provided in the third sentence of the third paragraph of section 168, shall

receive criminal offender record information limited to cases which are either open or contain convictions, except as otherwise specifically provided by a separate statute relating to a particular agency, entity or class of entities.

Any such agency, housing authority, entity or person receiving a criminal offender record information report and, as a result thereof, is inclined to make an adverse decision as to the individual who is the subject of the report, shall, before making the decision, give the individual a photocopy of the report and afford him an opportunity, in a private discussion, to dispute the accuracy or relevance of the report, after which the agency, housing authority, entity or person shall consider all the information before making a final decision and shall advise the individual of the decision and the reasons for it.

SECTION 5. Section 172 of chapter 6 of the General Laws is hereby amended by adding the following sentences at the end of the third paragraph, as appearing in the 2004 Official Edition: – The board shall not certify or re-certify for access under clause (c) any individual or entity unless the individual or “CORI-cleared person” of such entity has received training from, and passed an examination administered by, the board, in how to read and understand a CORI report. The board shall charge a fee of not greater than twenty-five dollars for each person trained and adopt regulations to implement a training program so that, by two years after this SECTION takes effect, all such individuals or CORI-cleared persons of such entities shall have passed such exam, or the board shall have revoked the applicable certification for access to CORI. The board shall keep money from training fees in a separate fund which may be drawn on to pay the costs of such training.

SECTION 6. Section 32H of chapter 94C, as appearing in the 2004 Official Edition, is hereby amended by striking out, in line 13, the word “parole,” and is hereby further amended by inserting at the end of said section the following paragraph:-

Notwithstanding any general or special law to the contrary, a person convicted of violating any provisions of sections 32, 32A, 32B, 32E, 32F, and 32J of chapter 94C of the General Laws, who is serving a sentence where two-thirds of the maximum term of imprisonment imposed is less than the mandatory minimum sentence required under that section shall be eligible for parole after serving two-thirds of the maximum term of imprisonment imposed.

SECTION 7. Section 4 of chapter 151B of the General Laws is hereby amended in subdivision 9 by striking the first paragraph and inserting in place thereof the following paragraph: --

For an employer, employment agency, employment training provider, or licensing agency, by himself or itself or through an agent, in connection with an application for employment, employment training or licensing or in connection with the terms, conditions, or privileges of employment, licensing or job training or the transfer, bonding, promotion, demotion, or discharge of any person or in any other matter relating to the employment of any person:

(a) to request from the person, orally or in writing, any information which consists of or relates to criminal offender record information, which shall be obtained, if at all, from the criminal history systems board, pursuant to section 172, or other applicable sections of chapter 6 of the General Laws, and all applicable regulations and certifications thereunder, or

(b) to exclude, limit or otherwise discriminate against any person (1) by reason of his failure to furnish such information orally or in writing, or (2) because his criminal offender record information consists of (i) an arrest, detention, or disposition regarding any violation of law in which no conviction resulted, or (ii) a first conviction for any of the following misdemeanors: drunkenness, simple assault, speeding, minor traffic violations, affray, or disturbance of the peace, or (iii) any conviction of a misdemeanor where the date of such conviction or the completion of any period of incarceration resulting therefrom, whichever date is later, occurred five or more years prior to the date of the person's application or the employer's request for such criminal offender record information, or (3) on account of the person's merely having a criminal record, *provided however*, that it shall not be a violation of this subsection if the person has a criminal record containing one or more convictions which substantially relate to the circumstances of a particular employment or job training position or licensed activity.

SECTION 8. Notwithstanding, but in addition to, the provisions of section 100A of chapter 276 of the General Laws, the clerk and the probation officers of each court with criminal jurisdiction shall seal every unsealed case record, as directed in the next paragraph, in which there is either a conviction or the record is otherwise not sealable as a non-conviction record under the provisions of section 100C of this chapter; and the clerk and probation officers shall report, electronically or otherwise, such sealings to the commissioner of probation, who shall insure that such records are duly sealed in the probation central file.

Each such clerk, probation officer and the commissioner shall seal every such case with a final disposition, including any term of probation, incarceration or parole, so that a record of a misdemeanor is sealed three years after its final disposition, and a record of a felony is sealed seven years after its final disposition, *provided, however*, that in the three years which precede any such sealing the person was not convicted of any crime for which he was sentenced to three months or more of incarceration .

This section shall take effect one year after this Act is approved and shall be complied with as expeditiously as possible, starting with case records showing the earliest final dispositions occurring on or after January 1, 1970.

SECTION 9. Notwithstanding, but in addition to, the provisions of section 100C, the clerk and the probation officers of each court with criminal

jurisdiction shall seal their records of all non-conviction criminal cases whose final dispositions were six years or more before the date on which this Act takes effect. As such records are sealed, the clerk and probation officers of such courts shall notify the commissioner of probation, who shall seal the appropriate case records in the probation central file.

As used in this SECTION and SECTIONS 10 and 11, a “non-conviction criminal case,” is one in which a “no bill” was returned by the grand jury; or the defendant was found not guilty by the court or jury; or a finding of “no probable cause” was made by the court; or a *nolle prosequi* was entered; or a dismissal was entered by the court, except where (whether or not such dismissal was preceded by a continuance without a finding) such dismissal was preceded by a term of active probation as to which the court ordered the assignment of a probation officer to whom the defendant was required periodically to report. This SECTION shall take effect on the first business day of the month that is six months after this Act is approved.

SECTION 10. In the first twelve months after this Act takes effect each clerk of any court with criminal jurisdiction shall select and process for prospective sealing, as nearly as possible in chronological order by date of final disposition, appropriate batches of non-conviction criminal cases in which the final dispositions were less than six years before, but not more than six months after, the date on which this Act is approved.

On at least a monthly basis, but more frequently if feasible, the clerk shall prepare and make accessible for public viewing a list of non-conviction criminal cases which will be considered for sealing in one or more sessions of the court on or after a stated date which is at least a month after the list is posted. The list shall be organized in alphabetical order by last name of the individuals whose case record or records will be considered and shall contain each individual’s full name, the title of the crime or crimes charged and the date or dates of their final dispositions. The list shall also contain, when applicable, a brief notation that an objection has been filed as to the sealing of a particular case, if the objector has filed with the clerk’s office, at least two weeks before the scheduled hearing date, a written objection stating a reason or reasons, which writing shall be made available upon request to the person whose record is posted for possible sealing, or to his or her attorney.

Each court is encouraged to issue a press release to local newspapers generally received by or available to persons residing within the jurisdiction of the court. Such release should announce the forthcoming sealing session and describe the means by which the list of individuals whose records will be considered for sealing may be viewed by the public and the range of final disposition dates of the cases to be considered; but the release shall not mention the identities of any of the persons whose cases are to be considered. The release should also explain that anyone who objects to the sealing of a particular case may file, at least two weeks before the session, a written objection stating

the reason or reasons for the objection.

At each court session, in making its decision in each case, the court shall consider (a) the facts and arguments presented by the petitioner in favor of sealing, if any; (b) the facts and arguments presented by an objector, if any, who timely filed an objection with a reason or reasons for the objection relating to the interests of public safety or in favor of the general public interest in access to governmental records, as fostered by the First Amendment of the U.S. Constitution; and (c) the findings and declaration of the General Court, as set forth in SECTION 1 of this Act, that there is collectively, a compelling state interest to seal or otherwise mitigate the harm caused by stale or otherwise misleading or unpredictable criminal records. If the court concludes that sealing the record would be in the interests of substantial justice and that there is a compelling state interest, which may include a public safety interest, to seal the record, which interest overcomes any objector's assertion of contrary public safety or public access interests, the court shall order that the clerk and the probation officers in the courts in which the proceedings occurred or were initiated seal the records of the proceedings in their files and send notice thereof to the commissioner of probation, who shall seal the case records in the probation central file. This SECTION shall take effect on the first business day of the month that is six months after this Act is approved.

SECTION 11. This SECTION shall take effect on the first business day of the month that is eighteen months after the month in which this Act is approved.

Chapter 276 of the General Laws is hereby amended by inserting after section 100C a new section as follows:

Section 100D. Notwithstanding, but in addition to, the provisions of section 100C, on the first business day of each month the clerk of each court having criminal jurisdiction shall have prepared and shall maintain for public access a list of non-conviction criminal cases which will be considered for sealing in one or more sessions of the court on the first business day of the following month.

A “non-conviction criminal case,” as used in this section, is one in which a no bill was returned by the grand jury, or the defendant was found not guilty by the court or jury, or a finding of no probable cause was made by the court, or a *nolle prosequi* was entered, or a dismissal was entered by the court except where (whether or not such dismissal was preceded by a continuance without a finding) such dismissal was preceded by a term of active probation as to which the court ordered the assignment of a probation officer to whom the defendant was required periodically to report.

The list shall be organized in alphabetical order by last name of the individuals whose record or records will be considered and shall contain each individual's full name, the title of the crime or crimes charged and the date or

dates of their final dispositions. The list shall also contain, when applicable, a brief notation that an objection has been filed as to the sealing of a particular case, if the objector has, at least two weeks before the scheduled hearing date, filed with the clerk's office a written objection, stating a reason or reasons, which writing shall be made available upon request to the person whose record is posted for possible sealing, or to his or her attorney.

Each court is encouraged to issue a press release to local newspapers generally received by or available to persons residing within the jurisdiction of the court. Such release should announce the forthcoming sealing session and describe the means by which the list of individuals whose case records will be considered may be accessed by the public and the range of final disposition dates of the cases to be considered. The release should also explain that anyone who objects to the sealing of a particular case may file with the clerk's office, at least two weeks before the session, a written objection stating the reason or reasons for the objection.

At each court session, in making its decision in each case, the court shall consider (a) the facts and arguments presented by the petitioner in favor of sealing, if any; (b) the facts and arguments presented by an objector, if any, who timely filed an objection with a reason or reasons for the objection relating to the interests of public safety or in favor of the general public interest in access to governmental records, as fostered by the First Amendment of the U.S. Constitution; and (c) the findings and declaration of the General Court as set forth in SECTION 1 of this Act.

If the court concludes that sealing the record would be in the interests of substantial justice and that there is a compelling state interest, which may include a public safety interest, to seal the record which overcomes the general public safety or public access interests asserted by an objector, the court shall order that the clerk and the probation officers in the courts in which the proceedings occurred or were initiated seal the records of the proceedings in their files and send notice thereof to the commissioner of probation, who shall seal the case record in the probation central file.

SECTION 12. This SECTION shall take effect on the first business day of the month that is six months after the month in which this Act is approved.

Chapter 276 of the General Laws is hereby amended by inserting after section 100D, a new section as follows --

Section 100E. Notwithstanding but in addition to the provisions of section 100B of chapter 276, upon final disposition of a person's juvenile delinquency proceeding, and completion of any court-ordered disposition, the person may petition the court for an order directing purging of all law enforcement, court activity and probation records leading and related to the person's proceedings in juvenile court. Records shall be considered purged when they are removed and destroyed and leave no trace of a person's

identifying information. Any person on his own behalf or by his attorney may seek to have his delinquency record or records purged by the juvenile court by filing a petition upon the completion of, or otherwise after the delinquency proceedings and/or when the requirements of the court's disposition for the juvenile has been met, whichever is later.

A person whose records have been purged may consider the purged case never to have occurred and may so reply upon any inquiry. In any situation where a clerk is asked whether a purged record exists, the clerk shall respond that no such record exists.

There shall be a rebuttable presumption in favor of purging records of juveniles who have been exonerated, whose cases have been dismissed with prejudice, a *nolle prosequi* entered, terminated due to absence of evidence, or when the court takes judicial notice that the person's arrest has been made without probable cause or for constitutionally protected conduct. In making its determination whether a person's law enforcement and juvenile court activity records should be purged, the court shall consider the following factors: severity of the offense, probable adverse consequences to the person as a result of maintenance of the record, any specific public safety need to maintain such a record, the person's personal history and behavior since the juvenile proceedings were commenced and/or disposed of that provides indicia of rehabilitation.

If the Court orders that a record be purged, it shall circulate its order to purge all personal, identifying information from the person's record, which may include police booking reports or records, fingerprint records, photographs, and all court activity records, probation records, electronically stored records of any nature or description relating to the person's juvenile court proceeding, to local, public housing, public school, college or University police agencies, the MBTA police, the state police, the office of the Commissioner of Probation, the Criminal History Systems Board, as well as state and federal agencies, officials or institutions known to collect and have information pertaining to delinquency or youthful offender charges. Data from such records may be kept solely for the purpose of statistical and administrative analysis of the agency holding such records. All agencies shall purge records within 30 days of receipt of the Court order.

Persons prosecuted as Youthful Offenders pursuant to Section 54 of Chapter 119 of the General Laws, may similarly petition the Court for purging records containing their identity from court, police and probation agencies, as well as indictments not resulting in a youthful offender trial, where there has been a finding of not delinquent and/or not guilty and the person has been declared not a youthful offender.

The juvenile court shall inform a juvenile of his right to petition for purging or sealing his records as provided for by law. The clerk of the juvenile court shall provide juveniles with a packet providing information on sealing and purging juvenile records written in plain language which shall include a sample

petition.

SECTION 13. This SECTION shall take effect on the first business day of the month that is eighteen months after the month in which this Act is approved.

Notwithstanding but in addition to section 100C of chapter 276 of the General Laws and SECTIONS 9, 10 and 11 of this Act, said chapter 276 is hereby amended by inserting the following section: --

Section 100F. Upon a criminal court's final disposition of a case in which a "no bill" was returned by the grand jury, or the defendant was found not guilty by the court or jury or a finding of "no probable cause" was made by the court, the court or probation officer shall advise the defendant that he has the opportunity to obtain, fill out and file with the clerk's office a petition to have the case purged, which, as defined in section 167 of chapter 6, means to have all information about the case removed from the criminal offender record information system, such that there is no trace of the information removed and no indication that said information was removed.

When a petition for purging comes on for hearing before the court, the judge shall hear whatever competent and relevant evidence or argument that may be presented by the petitioner, his attorney, the district attorney or other persons reasonably involved. The judge shall then make his decision after careful consideration of at least the following factors:

- (1) whether there has been a mistaken identity;
- (2) any specific public safety need to maintain, or to purge, the record;
- (3) where the court takes judicial notice that the person was arrested without probable cause or for constitutionally protected conduct;
- (4) any actual or probable adverse consequences to the person as a result of maintenance of the record even if sealed under the provisions of section 100B;
- (5) the person's personal history and behavior before, during and after the criminal proceedings took place.

A person whose record had been purged may consider the purged case never to have occurred and may so reply upon any inquiry. In any situation where a clerk or other court or criminal justice official is asked whether, as to a particular individual, a purged record exists, and the official knows that the case has been purged, the official shall respond that no such record exists.