

SENATE, No. 2194

AN ACT ACCELERATING THE SEALING OF NON-CONVICTION CRIMINAL OFFENDER RECORD INFORMATION

*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 General Court hereby finds and declares that:

2 (1) The current system of maintaining and disseminating Criminal Offender Record Information
3 (known as CORI) has become an all-but-impossible barrier for most ex-offenders and other
4 individuals with CORI with respect to their securing employment, housing, education, training,
5 credit and other necessities of mainstream society, so that they may become productive and tax-
6 paying citizens or residents of the Commonwealth;

7 (2) While the Commonwealth and the Federal Government spend millions of dollars to train and
8 assist unemployed persons to enter the workforce, these efforts are unacceptably frustrated by the
9 current CORI system, so that the Commonwealth is spending the taxpayers' money to fund
10 governmental efforts which are often in contradiction to each other; and

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

17 SECTION 2. Within six months after this law takes effect, the clerk and the probation
18 officers of each court with criminal jurisdiction shall seal their records of all non-
19 conviction criminal cases whose final dispositions were six years or more before the date
20 on which this law takes effect. As such records are sealed, the probation officers of such
21 courts shall notify the commissioner of probation, who shall seal the appropriate case
22 records in the probation central file.

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

31 SECTION 3. Within the twelve months after this law takes effect the clerk of any court
32 with criminal jurisdiction shall select and process for prospective sealing, as nearly as
33 possible in chronological order by date of final disposition, appropriate batches of non-
34 conviction criminal cases in which the final dispositions were less than six years before,
35 but more than six months after, the date on which this law takes effect.
36 On at least a monthly basis, but more frequently if feasible, the clerk shall prepare and
37 post, in a prominent place in the court house to which the public has access, a list of non-
38 conviction criminal cases which will be considered for sealing in one or more sessions of
39 the court on or after a stated date which is at least a month after the list is posted. The list

40 shall be organized in alphabetical order by last name of the individuals whose record or
41 records will be considered and shall contain each individual's full name, the title of the
42 crime or crimes charged and the date or dates of their final disposition. The list shall also
43 contain a fourth column where any written objection to the sealing, stating a reason or
44 reasons and filed with the clerk's office at least two weeks before the scheduled hearing
45 date, may be briefly noted.

46 Each court is encouraged to issue a press release to local newspapers generally received
47 by or available to persons residing within the jurisdiction of the court. Such release
48 should announce the forthcoming sealing session and describe in general terms the notice
49 posted in the court house and the range of final disposition dates of the cases to be
50 considered. The release should also explain that anyone who objects to the sealing of a
51 particular case may file, at least two weeks before the session, a written objection
52 explaining the reason or reasons for the objection.

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

60 If the court concludes that sealing the record would be in the interests of substantial
61 justice and that there is a compelling state interest to seal the record which overcomes the
62 general public safety or public access interests, the court shall order that the clerk and the

63 probation officers in the courts in which the proceedings occurred or were initiated seal
64 the records of the proceedings in their files and send notice thereof to the commissioner
65 of probation, who shall seal the case record in the probation central file.

66 SECTION 4. Chapter 276 of the General Laws is hereby amended by inserting after
67 section 100C a new section as follows:

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

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

80 The posted list shall be organized in alphabetical order by last name of the individuals
81 whose records will be considered and contain each individual’s full name, the title of the
82 crime or crimes charged and the date or dates of their final dispositions. The list shall
83 also contain a fourth column where any written objection to the sealing, stating a reason
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97 the general public interest in access to governmental records, as fostered by the First
98 Amendment of the U.S. Constitution; and (c) the findings and declaration of the General
99 Court as set forth in SECTION 1 of this Act.

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101 justice and that there is a compelling state interest to seal the record which overcomes the
102 general public safety or public access interest, the court shall order that the clerk and the
103 probation officers in the courts in which the proceedings occurred or were initiated seal
104 the records of the proceedings in their files and send notice thereof to the commissioner
105 of probation, who shall seal the case record in the probation central file.

106 SECTION 5. SECTIONS 1, 2, and 3 of this Act shall take effect on the first business
107 day of the month which is six months after the Act is approved. SECTION 4 shall take
108 effect on the first business day of the month which is eighteen months after the Act is

109 approved.