

GREATER BOSTON LEGAL SERVICES EXPUNGEMENT PACKET

EXPUNGING UNDER MASS. GEN. LAWS CHAPTER 276, § 100K

SPECIAL CONSIDERATIONS

- If you are not a citizen, do NOT expunge any records and talk to an immigration lawyer about your criminal cases and record expungement.
- If your records are destroyed and there are no records, you may be unable to prove to immigration officials how your case ended, or that the case ended in your favor.
- There may be other situations where destruction of the records will interfere with exercise of other legal rights, such as getting reimbursed for fees you paid in a case dismissed due to the Dookhan or Farak drug scandals, or bringing a police brutality lawsuit.

1. What is the difference between sealing and expungement?

Sealing of a criminal case only limits who has access to the records.
Expungement destroys all the records of the case and the records are no longer available to anyone.

You should always get certified copies of the docket sheets before you expunge or seal records.

2. Should expunge a criminal case if I am NOT a citizen?

If you are not a citizen, do NOT expunge your records until you get legal advice from an immigration lawyer about whether to expunge your records. Your criminal record history is reviewed when you apply for a “green card,” citizenship or try to change your immigration status. A criminal record can be grounds for exclusion or deportation. The FBI often has records of a criminal case even if the state court record was sealed or expunged, but the records often do not include the final outcome of a case. This means you may not be able to show how your case ended, or prove to Immigration Customs & Enforcement (ICE) that the case was dismissed or ended in your favor if you expunge your records.

3. Who is eligible to expunge records under section 100K of Chapter 276?

After a case has closed, a judge can order expungement of juvenile or criminal records without a waiting period based on “what is in the best interests of justice” if there is “clear and convincing evidence” that the case was the result of:

- ✓ identity theft, false or unauthorized use of identity (e.g. somebody impersonated you or misused your name);
- ✓ a decriminalized offense (e.g. marijuana possession under 2 ounces; being in the presence of heroin; disrupting assembly or disorderly conduct at an elementary or high school when you were a student there; a juvenile case filed against a child under 12 because these cases can no longer be prosecuted);
- ✓ errors by law enforcement (e.g., misidentification of a defendant; errors related to failed perception or other impairment, misconduct or racial bias that resulted in filing a complaint in error or without probable cause);
- ✓ errors by witnesses (civilian or expert) (e.g. cases dismissed due to the Annie Dookhan or Sonia Farak drug lab scandals; mistakes based on failed memory or perception, or other impairment; errors related to misconduct or racial bias; lack of scientific basis for expert opinion);
- ✓ errors by court employees (e.g. complaint issued due to clerical error, or docket entry mistake that carries a stigma or causes adverse consequences); or
- ✓ demonstrable fraud perpetrated on the court (bribery of a judge or other fraud involving the court system itself).

4. How can I expunge?

Expungement is available for both adult and juvenile cases under section 100K of Chapter 267 if you qualify as explained above. The process is free. It is often better to have a lawyer represent in court, but the law permits you to represent yourself.

Step 1. To expunge your records, look at the attached sample **PETITION TO EXPUNGE** and fill in the blank form. Makes copies of it for yourself and the District Attorney's office.

Practice note. The law provides that a hearing is held if either you or the District Attorney request a hearing. The law is still very new and we have been requesting hearings in case a judge has questions. Otherwise, if the petition gets denied on the papers, it may be hard to know why the judge denied the petition.

Step 2. A petition form must be filed in the court that handled the case and you must mail or deliver a copy of the petition to the District Attorney's office that covers that court. The court usually gives you a future hearing date when you file the petition or within a week or so. If you do not get a date, you should call the court to find out what happened.

Step 3. Show up for any hearing date. Bring copies of the paperwork you filed in case the judge asks something about it. Be ready to explain why your case should be expunged. If your petition is denied, you should seek legal advice.

4. What are my rights after sealing or expungement?

The "Ban the Box" law prohibits most employers from asking about convictions and other cases on an initial job application whether or not the record is sealed or expunged.

After a record is **expunged**, the law provides that no person whose record was expunged shall be held guilty of perjury or giving a false statement by reason of the person's failure to acknowledge such record, or portion thereof, in response to any inquiry made of him or her for any purpose. You also can say "I have no record" after expungement. G. L. c. 276, § 100M-N.

A new law also requires that the FBI and Dept. of Justice (DOJ) be notified of sealing and expungement orders and that our state request that they seal or expunge their corresponding records. G.L. c. 276, § 100T.

RESOURCES

To find legal help for low income people in your community, go to this website: <https://www.masslegalhelp.org/>

For more information about sealing and expungement, read our other booklet, KNOW YOUR CORI RIGHTS available at https://www.gbls.org/cori_record_sealing_booklets

You also can read our other booklets on our website at: <https://www.gbls.org/what-we-do/cori-and-reentry>

IMPORTANT. This information is provided as a public service by Greater Boston Legal Services and does not constitute legal advice which can only be given to you after a consultation with your own attorney. September 21, 2019

Greater Boston Legal Services, 197 Friend Street, Boston, MA 02114

PETITION FOR EXPUNGEMENT
G.L. c. 276, § 100K

DOCKET NO.

**Trial Court of
Massachusetts**

**P
SEP**



YOUR NAME AND ADDRESS

COURT DEPARTMENT

☐ Boston Municipal Court
☐ District Court

☐ Juvenile Court
☐ Superior Court

COURT DIVISION

☐ I request the assistance of an interpreter for the following language: _____
(There is no charge to you for interpreter or translation services)

I request that this Court order that the records of the following charges be expunged (list charges):

I make this request because the records were created as a result of:

- ☐ False use of my identification
☐ Unauthorized use of my identity
☐ Theft of my identity
☐ The offense(s) described above is/are no longer a crime
☐ Errors by law enforcement
☐ Errors by civilian or expert witness(es)
☐ Errors by Court employees
☐ Fraud perpetrated upon the Court

Specifically (provide as much detail as possible explaining the reasons for your request):

- ☐ I request that the Court hold a hearing on my petition.
☐ If you need more space to explain, check this box and continue in the space provided on the back of this sheet. You may also attach additional pages if necessary.
☐ If you have documents that support your petition, check this box and attach them to this petition.

I provided this petition and supporting documents to the District Attorney's Office of the county that prosecuted the case
☐ by delivering a copy in hand **OR** ☐ by mailing a copy via first class mail to the District Attorney's Office on

date

I swear under the pains and penalty of perjury that all information I provided in this Petition is true to the best of my knowledge and belief.

DATE:

PETITIONER'S SIGNATURE

Please see reverse side for instructions and space for additional information.

INSTRUCTIONS TO PETITIONER:

Reasons for Expunging a Record Under G.L. c. 276, § 100K

Under chapter 276, § 100K, you can directly ask a judge to permanently destroy, or “expunge”, the official court records that were created because of one of the following reasons: (i) false use of your identification; (ii) unauthorized use of your identity; (iii) theft of your identity; (iv) an offense that is no longer a crime; (v) demonstrable errors by law enforcement; (vi) demonstrable errors by civilian or expert witnesses; (vii) errors by a court employee; or (viii) demonstrable fraud perpetrated upon the court.

Under this law, the judge can order expungement of the court record only if he or she determines on clear and convincing evidence that the record was created because of one of the reasons above and that expungement of the record would be in the interests of justice.

Expungement may also be available in circumstances other than those listed above. If you want to seek expungement under one of these other circumstances, you must fill out a different petition and submit it to the Office of the Commissioner of Probation. You can find information about these other provisions, including eligibility requirements, at www.mass.gov.

What You Must Show

You must demonstrate to the judge that the court record was created because of one of the reasons above and that expunging the record would be in the interests of justice. When you fill out this petition, you should provide as much detail as possible. You may give the judge copies of documents that support your reasons for asking for expungement. On the petition, there is a box to check for a hearing. At a hearing, you can tell the judge why your petition fits under one of the reasons above, and why granting the petition would be in the interests of justice.

Multiple Charges

On this petition, you should include all of the charges connected to the case that you are asking the judge to expunge. If you would like to ask a judge to expunge records in different cases, you should file separate petitions for each case.

Where to File the Petition

You should file this petition in the clerk's office in the court where the case was heard.

Providing a Copy of the Petition to the District Attorney's Office

You must provide a copy of this petition and any documents that you file with the petition to the District Attorney's Office that prosecuted the case on or before the day that this petition is filed in the court. You can do this by bringing a copy to the District Attorney's Office or by mailing a copy to the District Attorney's Office by first class mail.

Records will be Permanently Destroyed

An order of expungement requires the clerk of the court where the record was created to destroy/permanently erase the trial court records within the care, custody or control of the clerk's office, probation, and the Department of Criminal Justice Information, except for information contained in the domestic violence record keeping system. It also requires criminal justice agencies to destroy/permanently erase the record from all publicly available police logs maintained pursuant to G.L. c. 41, § 98F within their care, custody or control. Further, criminal justice agencies are required to respond to inquiries from any party, including criminal justice agencies, a county agency, a municipal agency or state agency that no record exists.

While the clerk will provide you with a copy of the expungement order, if you want copies of the records, any documents that you filed, or the petition, you must make copies *before* the court orders expungement. Once the record is destroyed, you will not be able to get a copy from the court.

Additional Information:

GREATER BOSTON LEGAL SERVICES EXPUNGEMENT PACKET

Examples of Completed Expungement Forms under Mass. Gen. Laws Chapter 276, § 100k

1. Decriminalized marijuana offense. Possession of 2 ounces or less is no longer a criminal offense.
2. Dismissed juvenile offense based on dismissal because the minimum age for Juvenile Court jurisdiction is age 12. Example where you were under 12 when the juvenile case was filed against you.
3. Identity fraud. Example where another person said he or she was you and a criminal case was filed against you.
4. Law enforcement error. Example where police listed you as the defendant by mistake.
5. Annie Dookhan or other drug lab scandal. Example where your conviction or other disposition was vacated due to Annie Dookhan drug scandal.

Decriminalized marijuana offense

PETITION FOR EXPUNGEMENT G.L. c. 27B, § 100K	DOCKET NO. 0902CR123456	Trial Court of Massachusetts
YOUR NAME AND ADDRESS John Q. Public 1234 Main St. Everyplace, MA 01234 617-123-4567	COURT DEPARTMENT <input checked="" type="checkbox"/> Boston Municipal Court <input type="checkbox"/> Juvenile Court <input type="checkbox"/> District Court <input type="checkbox"/> Superior Court COURT DIVISION Roxbury	
<input type="checkbox"/> I request the assistance of an interpreter for the following language: _____ (There is no charge to you for interpreter or translation services)		
I request that this Court order that the records of the following charges be expunged (list charges): Poss. Class D Cont. Substance (marijuana)		
Note: The amount was not more than 2 ounces and possession of such an amount is now decriminalized. G.L. c. 94G, §13(c).		
I make this request because the records were created as a result of:		
<input type="checkbox"/> False use of my identification <input type="checkbox"/> Unauthorized use of my identity <input type="checkbox"/> Theft of my identity <input checked="" type="checkbox"/> The offense(s) described above is/are no longer a crime <input type="checkbox"/> Errors by law enforcement <input type="checkbox"/> Errors by civilian or expert witness(es) <input type="checkbox"/> Errors by Court employees <input type="checkbox"/> Fraud perpetrated upon the Court		
Specifically (provide as much detail as possible explaining the reasons for your request): It is unjust that charge is part of my CORI when the alleged offense is no longer a crime. A "cloud of prosecution" will remain even I seal my records because police and some employers have access to sealed records. Police Com'r of Bos. v. Mun. Court of Dorchester Dist., 374 Mass. 640, 659 (1978). See, e.g., G.L. c. 27B, §100D (police access to sealed records); G.L. c. 6, § 172F (Dept. of Early Education & Care access to sealed records).		
<input checked="" type="checkbox"/> I request that the Court hold a hearing on my petition.		
<input type="checkbox"/> If you need more space to explain, check this box and continue in the space provided on the back of this sheet. You may also attach additional pages if necessary.		
<input type="checkbox"/> If you have documents that support your petition, check this box and attach them to this petition.		
I provided this petition and supporting documents to the District Attorney's Office of the county that prosecuted the case <input checked="" type="checkbox"/> by delivering a copy in hand OR <input type="checkbox"/> by mailing a copy via first class mail to the District Attorney's Office on Oct 22 2019		
I swear under the pains and penalty of perjury that all information I provided in this Petition is true to the best of my knowledge and belief.		
DATE: 10-22-19	PETITIONER'S SIGNATURE 	


Please see reverse side for instructions and space for additional information

Decriminalized and dismissed juvenile offense for child under 12

PETITION FOR EXPUNGEMENT G.L. c. 276, § 100K	DOCKET NO. 01D x 42	Trial Court of Massachusetts
YOUR NAME AND ADDRESS John Doe Roe 99999 Warren St Roxbury MA 02119 617-123-4567	COURT DEPARTMENT <input type="checkbox"/> Boston Municipal Court <input checked="" type="checkbox"/> Juvenile Court <input type="checkbox"/> District Court <input type="checkbox"/> Superior Court COURT DIVISION Suffolk County Juvenile Court	
<input type="checkbox"/> I request the assistance of an interpreter for the following language: _____ (There is no charge to you for interpreter or translation services)		
I request that this Court order that the records of the following charges be expunged (list charges): 		
Note: I was under age 12 when the above charges were filed against me. In 2018, the law changed and children under age 12 can longer be prosecuted for offenses in the Juvenile Court. G. L. c. 119, §§ 52, 54 (amended by St. 2018, c. 69, §§ 72-73). See Lazio L. v. Commonwealth, 482 Mass. 325, 326 (2019) (Legislature's goal is to avoid the effects of juvenile court involvement).		
I make this request because the records were created as a result of: <input type="checkbox"/> False use of my identification <input type="checkbox"/> Unauthorized use of my identity <input type="checkbox"/> Theft of my identity <input checked="" type="checkbox"/> The offense(s) described above is/are no longer a crime <input type="checkbox"/> Errors by law enforcement <input type="checkbox"/> Errors by civilian or expert witness(es) <input type="checkbox"/> Errors by Court employees <input type="checkbox"/> Fraud perpetrated upon the Court		
Specifically (provide as much detail as possible explaining the reasons for your request): I was under age 12 when these charges were filed. Children under age 12 can no longer be prosecuted for such offenses. G.L. c119, §§ 52, 54. It is unjust that these charges remain on my record when the same alleged conduct is no longer a chargeable offense. A "cloud of prosecution" will remain even if my records are sealed because police and some employers have access to sealed records. Police Com'r of Bos. v. Mun. Court of Dorchester Dist., 374 Mass. 640, 659 (1978). See, e.g., G.L. c. 276, § 100 § 100D (police access to sealed records); G.L. c. 6, § 172F (Dept. of Early Education & Care access to sealed records).		
<input checked="" type="checkbox"/> I request that the Court hold a hearing on my petition. <input type="checkbox"/> If you need more space to explain, check this box and continue in the space provided on the back of this sheet. You may also attach additional pages if necessary. <input type="checkbox"/> If you have documents that support your petition, check this box and attach them to this petition.		
I provided this petition and supporting documents to the District Attorney's Office of the county that prosecuted the case <input type="checkbox"/> by delivering a copy in hand OR <input checked="" type="checkbox"/> by mailing a copy via first class mail to the District Attorney's Office on 9-1-19 <small style="margin-left: 100px;">date</small>		
I swear under the pains and penalty of perjury that all information I provided in this Petition is true to the best of my knowledge and belief.		
DATE: 9-1-19	PETITIONER'S SIGNATURE 	

Please see reverse side for instructions and space for additional information.

Identity fraud example where another person said he or she was you

PETITION FOR EXPUNGEMENT G.L. c. 276, § 100K		DOCKET NO. 1931CK 012375	Trial Court of Massachusetts 
YOUR NAME AND ADDRESS Mary Marie Maria 1 Jump St. Taunton, MA 02718 857-123-4567		COURT DEPARTMENT <input type="checkbox"/> Boston Municipal Court <input type="checkbox"/> Juvenile Court <input checked="" type="checkbox"/> District Court <input type="checkbox"/> Superior Court COURT DIVISION Taunton	
<input type="checkbox"/> I request the assistance of an interpreter for the following language: (There is no charge to you for interpreter or translation services)			
I request that this Court order that the records of the following charges be expunged (list charges): Assault & battery with a deadly weapon Resisting arrest			
I make this request because the records were created as a result of: <input checked="" type="checkbox"/> False use of my identification <input checked="" type="checkbox"/> Unauthorized use of my identity <input checked="" type="checkbox"/> Theft of my identity <input type="checkbox"/> The offense(s) described above is/are no longer a crime <input type="checkbox"/> Errors by law enforcement <input type="checkbox"/> Errors by civilian or expert witness(es) <input type="checkbox"/> Errors by Court employees <input type="checkbox"/> Fraud perpetrated upon the Court			
Specifically (provide as much detail as possible explaining the reasons for your request): The person who committed the offense(s) used my name without my permission. I did not commit this offense and it is unfair that this offense appears on my criminal record. A "cloud of prosecution" will remain even if my records are sealed because police and some employers have access to sealed records. Police Com'r of Bos. v. Mun. Court of Dorchester Dist., 374 Mass. 640, 659 (1978). See, e.g., G.L. c. 276, § 100D (police access to sealed records); G.L. c. 6, § 172F (Dept. of Early Education & Care).			
<input checked="" type="checkbox"/> I request that the Court hold a hearing on my petition. <input type="checkbox"/> If you need more space to explain, check this box and continue in the space provided on the back of this sheet. You may also attach additional pages if necessary. <input type="checkbox"/> If you have documents that support your petition, check this box and attach them to this petition.			
I provided this petition and supporting documents to the District Attorney's Office of the county that prosecuted the case <input checked="" type="checkbox"/> by delivering a copy in hand OR <input type="checkbox"/> by mailing a copy via first class mail to the District Attorney's Office on 10-22-19 date			
I swear under the pains and penalty of perjury that all information I provided in this Petition is true to the best of my knowledge and belief.			
DATE: 10-22-19		PETITIONER'S SIGNATURE: Mary Marie	

Please see reverse side for instructions and space for additional information.

Law enforcement error example- police listed person as the defendant by mistake

PETITION FOR EXPUNGEMENT G.L. c. 27B, § 100K	DOCKET NO. 1933 CR0123456	Trial Court of Massachusetts
YOUR NAME AND ADDRESS Thomas Everyman 1234 Unity Highway Boston MA 02114 617-987-6541	COURT DEPARTMENT <input type="checkbox"/> Boston Municipal Court <input type="checkbox"/> Juvenile Court <input checked="" type="checkbox"/> District Court <input type="checkbox"/> Superior Court COURT DIVISION Springfield	
<input type="checkbox"/> I request the assistance of an interpreter for the following language: _____ (There is no charge to you for interpreter or translation services)		
I request that this Court order that the records of the following charges be expunged (list charges): Larceny Receiving stolen goods		
I make this request because the records were created as a result of: <input type="checkbox"/> False use of my identification <input type="checkbox"/> Unauthorized use of my identity <input type="checkbox"/> Theft of my identity <input type="checkbox"/> The offense(s) described above is/are no longer a crime <input checked="" type="checkbox"/> Errors by law enforcement <input type="checkbox"/> Errors by civilian or expert witness(es) <input type="checkbox"/> Errors by Court employees <input type="checkbox"/> Fraud perpetrated upon the Court		
Specifically (provide as much detail as possible explaining the reasons for your request): I mistakenly identified as the defendant in this case by the police and the case was "noll prossed." I have same first and last name as the real defendant, but I was not involved in the incident that gave rise to this case. There was no probable cause to arrest me. It is unjust that the charges are on my record. A "cloud of prosecution" will remain even if my records are sealed. Police Com'r of Bos. v. Mun. Court of Dorchester Dist., 374 Mass. 640, 659 (1978). Police and some employers have access to sealed records. See G.L. c. 276, § 100D (police access to sealed records); G.L. c. 6, § 172F (Dept. of Early Education & Care).		
<input checked="" type="checkbox"/> I request that the Court hold a hearing on my petition. <input type="checkbox"/> If you need more space to explain, check this box and continue in the space provided on the back of this sheet. You may also attach additional pages if necessary. <input type="checkbox"/> If you have documents that support your petition, check this box and attach them to this petition.		
I provided this petition and supporting documents to the District Attorney's Office of the county that prosecuted the case <input type="checkbox"/> by delivering a copy in hand OR <input checked="" type="checkbox"/> by mailing a copy via first class mail to the District Attorney's Office on 9-10-18		
I swear under the pains and penalty of perjury that all information I provided in this Petition is true to the best of my knowledge and belief.		
DATE: 9-10-18	PETITIONER'S SIGNATURE Thomas Everyman	

Please see reverse side for instructions and space for additional information.

Example of Annie Dookhan or other drug lab scandal petition

PETITION FOR EXPUNGEMENT G.L. c. 276, § 100K	DOCKET NO. 0907CR01234567 <div style="text-align: right;"> Trial Court of Massachusetts </div>
YOUR NAME AND ADDRESS Robert Joseph Jones 1234 Jump St Dorchester MA 02125	COURT DEPARTMENT <input checked="" type="checkbox"/> Boston Municipal Court <input type="checkbox"/> Juvenile Court <input type="checkbox"/> District Court <input type="checkbox"/> Superior Court COURT DIVISION Dorchester
<input type="checkbox"/> I request the assistance of an interpreter for the following language: (There is no charge to you for interpreter or translation services)	
I request that this Court order that the records of the following charges be expunged (list charges): <div style="text-align: center; font-family: cursive;"> Class A Distribution Class A Possession </div>	
I make this request because the records were created as a result of: <input type="checkbox"/> False use of my identification <input type="checkbox"/> Unauthorized use of my identity <input type="checkbox"/> Theft of my identity <input type="checkbox"/> The offense(s) described above is/are no longer a crime <input type="checkbox"/> Errors by law enforcement <input checked="" type="checkbox"/> Errors by civilian or expert witness(es) <input type="checkbox"/> Errors by Court employees <input type="checkbox"/> Fraud perpetrated upon the Court	
Specifically (provide as much detail as possible explaining the reasons for your request): The disposition in my case was vacated due to the drug lab scandal. The stigma of a guilty finding or any sentence of incarceration or other disposition remains on my CORI report even if the same report indicates that the court vacated the disposition and later dismissed the charge(s). Expungement is the only way to wipe the slate clean and to address collateral consequences that may result from the misconduct of the drug lab chemist. Expungement of the records is in the best interests of justice.	
<input checked="" type="checkbox"/> I request that the Court hold a hearing on my petition. <input type="checkbox"/> If you need more space to explain, check this box and continue in the space provided on the back of this sheet. You may also attach additional pages if necessary. <input type="checkbox"/> If you have documents that support your petition, check this box and attach them to this petition.	
I provided this petition and supporting documents to the District Attorney's Office of the county that prosecuted the case <input type="checkbox"/> by delivering a copy in hand OR <input checked="" type="checkbox"/> by mailing a copy via first class mail to the District Attorney's Office on <div style="text-align: center;">10-1-19</div> <div style="text-align: center; font-size: small;">date</div>	
I swear under the pains and penalty of perjury that all information I provided in this Petition is true to the best of my knowledge and belief.	
DATE: <div style="text-align: center;">10-1-19</div>	PETITIONER'S SIGNATURE <div style="text-align: center; font-family: cursive;">Robert Jones</div>

Please see reverse side for instructions and space for additional information.