

HOUSE No. 1416

By Mr. Festa of Melrose, petition of Michael E. Festa and others relative to improving public safety in the Commonwealth. The Judiciary.

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:

1 SECTION 1. The General Court hereby finds and declares that:

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

10 (B) While the Commonwealth and the Federal Government
11 spend millions of dollars to train and assist unemployed persons
12 to enter the workforce, these efforts are unacceptably frustrated by
13 the current CORI system, as well as by the imposition of min-

14 imum mandatory sentences and other provisions which cause the
15 Commonwealth to spend the taxpayers' money to fund govern-
16 mental efforts which are often in contradiction to each other, with
17 a resulting diminution of public safety.

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

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

1 SECTION 3. Chapter 6 of the General Laws is hereby
2 amended by inserting after section 168C the following section:—
3 *Section 168D.* Probation officers, parole officers, the heads of
4 county jails or houses of correction, or their delegates, and the
5 superintendents of state correctional institutions, or their delegates
6 (hereinafter collectively referred to as "supervisory officials"),
7 shall, where appropriate, on a regular basis but at least every six
8 months, issue a certification of commitment to rehabilitation with
9 respect to each person under supervision, if the person has sub-
10 stantially complied with the behavioral requirements established
11 by the supervisory official, including reasonable participation in
12 treatment or other rehabilitative programs that are available to the
13 person; but lack of reasonable access to such treatment or rehabil-
14 itative programming due to circumstances beyond the control of
15 the supervised individual shall not compromise the eligibility of
16 the individual for certification.

17 At the beginning of each period for which the individual is
18 potentially eligible, the supervisory official shall clearly describe
19 to the person the requirements for certification, including advance

20 warning of an adverse recommendation and its basis, where such
21 recommendation is subject to reversal upon correction of the defi-
22 cient behavior by the person. The certification shall be dated and
23 indicate the time period covered. Supervisory officials, upon
24 issuing such a certification, shall inform the criminal history
25 systems board, pursuant to section 168A, so that appropriate data
26 will be made part of a so-called “CORI report.”

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

5 Agencies, other entities or persons granted access under
6 clause (c) of the first sentence of the first paragraph, as appearing
7 in the 2004 Official Edition, of this section, including local or
8 regional housing authorities, as provided in the third sentence of
9 the third paragraph of section 168, shall receive criminal offender
10 record information limited to cases which are either open or con-
11 tain convictions, except as otherwise specifically provided by a
12 separate statute relating to a particular agency, entity or class of
13 entities.

14 Any such agency, housing authority, entity or person receiving
15 a criminal offender record information report and, as a result
16 thereof, is inclined to make an adverse decision as to the indi-
17 vidual who is the subject of the report, shall, before making the
18 decision, give the individual a photocopy of the report and afford
19 him an opportunity, in a private discussion, to dispute the accu-
20 racy or relevance of the report, after which the agency, housing
21 authority, entity or person shall consider all the information before
22 making a final decision and shall advise the individual of the
23 decision and the reasons for it.

1 SECTION 5. Section 172 of chapter 6 of the General Laws is
2 hereby amended by adding the following sentences at the end of
3 the third paragraph, as appearing in the 2004 Official Edition:—
4 The board shall not certify or re-certify for access under clause (c)
5 any individual or entity unless the individual or “CORI-cleared
6 person” of such entity has received training from, and passed an
7 examination administered by, the board, in how to read and under-

8 stand a CORI report. The board shall charge a fee of not greater
9 than twenty-five dollars for each person trained and adopt regula-
10 tions to implement a training program so that, by two years after
11 this SECTION takes effect, all such individuals or CORI-cleared
12 persons of such entities shall have passed such exam, or the board
13 shall have revoked the applicable certification for access to CORI.
14 The board shall keep money from training fees in a separate fund
15 which may be drawn on to pay the costs of such training.

1 SECTION 6. Section 32H of chapter 94C, as appearing in the
2 2004 Official Edition, is hereby amended by striking out, in
3 line 13, the word “parole,” and is hereby further amended by
4 inserting at the end of said section the following paragraph:—

5 Notwithstanding any general or special law to the contrary, a
6 person convicted of violating any provisions of sections 32, 32A,
7 32B, 32E, 32F, and 32J of chapter 94C of the General Laws, who
8 is serving a sentence where two-thirds of the maximum term of
9 imprisonment imposed is less than the mandatory minimum
10 sentence required under that section shall be eligible for parole
11 after serving two-thirds of the maximum term of imprisonment
12 imposed.

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

4 For an employer, employment agency, employment training
5 provider, or licensing agency, by himself or itself or through an
6 agent, in connection with an application for employment, employ-
7 ment training or licensing or in connection with the terms, condi-
8 tions, or privileges of employment, licensing or job training or the
9 transfer, bonding, promotion, demotion, or discharge of any
10 person or in any other matter relating to the employment of any
11 person:

12 (a) to request from the person, orally or in writing, any infor-
13 mation which consists of or relates to criminal offender record
14 information, which shall be obtained, if at all, from the criminal
15 history systems board, pursuant to section 172, or other applicable
16 sections of chapter 6 of the General Laws, and all applicable regu-
17 lations and certifications thereunder, or

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

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

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

19 This section shall take effect one year after this Act is approved
20 and shall be complied with as expeditiously as possible, starting

21 with case records showing the earliest final dispositions occurring
22 on or after January 1, 1970.

1 SECTION 9. Notwithstanding, but in addition to, the provisions
2 of section 100C, the clerk and the probation officers of each court
3 with criminal jurisdiction shall seal their records of all non-
4 conviction criminal cases whose final dispositions were six years
5 or more before the date on which this Act takes effect. As such
6 records are sealed, the clerk and probation officers of such courts
7 shall notify the commissioner of probation, who shall seal the
8 appropriate case records in the probation central file.

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

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

8 On at least a monthly basis, but more frequently if feasible, the
9 clerk shall prepare and make accessible for public viewing a list
10 of non-conviction criminal cases which will be considered for
11 sealing in one or more sessions of the court on or after a stated
12 date which is at least a month after the list is posted. The list shall
13 be organized in alphabetical order by last name of the individuals
14 whose case record or records will be considered and shall contain
15 each individual’s full name, the title of the crime or crimes

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

24 Each court is encouraged to issue a press release to local news-
25 papers generally received by or available to persons residing
26 within the jurisdiction of the court. Such release should announce
27 the forthcoming sealing session and describe the means by which
28 the list of individuals whose records will be considered for sealing
29 may be viewed by the public and the range of final disposition
30 dates of the cases to be considered; but the release shall not men-
31 tion the identities of any of the persons whose cases are to be con-
32 sidered. The release should also explain that anyone who objects
33 to the sealing of a particular case may file, at least two weeks
34 before the session, a written objection stating the reason or rea-
35 sons for the objection.

36 At each court session, in making its decision in each case, the
37 court shall consider (a) the facts and arguments presented by the
38 petitioner in favor of sealing, if any; (b) the facts and arguments
39 presented by an objector, if any, who timely filed an objection
40 with a reason or reasons for the objection relating to the interests
41 of public safety or in favor of the general public interest in access
42 to governmental records, as fostered by the First Amendment of
43 the U.S. Constitution; and (c) the findings and declaration of the
44 General Court, as set forth in SECTION 1 of this Act, that there is
45 collectively, a compelling state interest to seal or otherwise
46 mitigate the harm caused by stale or otherwise misleading or
47 unpredictable criminal records. If the court concludes that sealing
48 the record would be in the interests of substantial justice and that
49 there is a compelling state interest, which may include a public
50 safety interest, to seal the record, which interest overcomes any
51 objector's assertion of contrary public safety or public access
52 interests, the court shall order that the clerk and the probation
53 officers in the courts in which the proceedings occurred or were
54 initiated seal the records of the proceedings in their files and send

55 notice thereof to the commissioner of probation, who shall seal
56 the case records in the probation central file. This SECTION shall
57 take effect on the first business day of the month that is six
58 months after this Act is approved.

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

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

6 *Section 100D.* Notwithstanding, but in addition to, the provi-
7 sions of section 100C, on the first business day of each month the
8 clerk of each court having criminal jurisdiction shall have pre-
9 pared and shall maintain for public access a list of non-conviction
10 criminal cases which will be considered for sealing in one or more
11 sessions of the court on the first business day of the following
12 month.

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

22 The list shall be organized in alphabetical order by last name of
23 the individuals whose record or records will be considered and
24 shall contain each individual’s full name, the title of the crime or
25 crimes charged and the date or dates of their final dispositions.
26 The list shall also contain, when applicable, a brief notation that
27 an objection has been filed as to the sealing of a particular case, if
28 the objector has, at least two weeks before the scheduled hearing
29 date, filed with the clerk’s office a written objection, stating a
30 reason or reasons, which writing shall be made available upon
31 request to the person whose record is posted for possible sealing,
32 or to his or her attorney.

33 Each court is encouraged to issue a press release to local news-
34 papers generally received by or available to persons residing

35 within the jurisdiction of the court. Such release should announce
36 the forthcoming sealing session and describe the means by which
37 the list of individuals whose case records will be considered may
38 be accessed by the public and the range of final disposition dates
39 of the cases to be considered. The release should also explain that
40 anyone who objects to the sealing of a particular case may file
41 with the clerk's office, at least two weeks before the session, a
42 written objection stating the reason or reasons for the objection.

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

52 If the court concludes that sealing the record would be in the
53 interests of substantial justice and that there is a compelling state
54 interest, which may include a public safety interest, to seal the
55 record which overcomes the general public safety or public access
56 interests asserted by an objector, the court shall order that the
57 clerk and the probation officers in the courts in which the pro-
58 ceedings occurred or were initiated seal the records of the
59 proceedings in their files and send notice thereof to the commis-
60 sioner of probation, who shall seal the case record in the probation
61 central file.

1 SECTION 12. This SECTION shall take effect on the first busi-
2 ness day of the month that is six months after the month in which
3 this Act is approved.

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

6 Section 100E. Notwithstanding but in addition to the provi-
7 sions of section 100B of chapter 276, upon final disposition of a
8 person's juvenile delinquency proceeding, and completion of any
9 court-ordered disposition, the person may petition the court for an
10 order directing purging of all law enforcement, court activity and
11 probation records leading and related to the person's proceedings

12 in juvenile court. Records shall be considered purged when they
13 are removed and destroyed and leave no trace of a person's identi-
14 fying information. Any person on his own behalf or by his
15 attorney may seek to have his delinquency record or records
16 purged by the juvenile court by filing a petition upon the comple-
17 tion of, or otherwise after the delinquency proceedings and/or
18 when the requirements of the court's disposition for the juvenile
19 has been met, whichever is later.

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

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

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

51 analysis of the agency holding such records. All agencies shall
52 purge records within 30 days of receipt of the Court order.

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

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

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

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

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

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

- 25 (1) whether there has been a mistaken identity;
26 (2) any specific public safety need to maintain, or to purge, the
27 record;
28 (3) where the court takes judicial notice that the person was
29 arrested without probable cause or for constitutionally protected
30 conduct;
31 (4) any actual or probable adverse consequences to the person
32 as a result of maintenance of the record even if sealed under the
33 provisions of section 100B;
34 (5) the person's personal history and behavior before, during
35 and after the criminal proceedings took place.
36 A person whose record had been purged may consider the
37 purged case never to have occurred and may so reply upon any
38 inquiry. In any situation where a clerk or other court or criminal
39 justice official is asked whether, as to a particular individual, a
40 purged record exists, and the official knows that the case has been
41 purged, the official shall respond that no such record exists.