

Accompanying the third recommendation of the Commissioner of Probation (House, No. 246). The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy-Five.

AN ACT RELATIVE TO THE SEALING OF CRIMINAL FILES.

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. Chapter 276 of the General Laws is hereby
2 amended by striking out Section 100A, as amended by Chapter
3 525 of the Acts of 1974, and inserting in place thereof the
4 following section:—

5 *Section 100A.* Any person having a record of criminal court
6 appearances and dispositions in the Commonwealth on file with
7 the office of the commissioner of probation may, on a form
8 furnished by the commissioner and signed under the penalties of
9 perjury, request that the commissioner seal such file. The
10 commissioner shall comply with such request provided (1) that
11 said person's court appearance and court disposition records,
12 including termination of court supervision, probation or
13 sentence for any misdemeanor occurred not less than ten years
14 prior to said request; (2) that said person's court appearance and
15 court disposition records, including termination of court
16 supervision, probation or sentence for any felony occurred not
17 less than ten years prior to said request; (3) that said person had
18 not been *found guilty* of any criminal offense within the
19 commonwealth in the ten years preceding such request, except
20 motor vehicle offenses in which the penalty does not exceed a
21 fine of fifty dollars; (4) said form includes a statement by the
22 petitioner that he has not been convicted of any criminal offense
23 in any other state, United States possession or in a court of
24 federal jurisdiction, except such motor vehicle offenses, as

25 aforesaid, and has not been imprisoned in any state or county
26 within the preceding ten years; and (5) said person's record does
27 not include convictions of offenses other than those to which
28 this section applies. This section shall apply to court
29 appearances and dispositions of all offenses provided, however,
30 that this section shall not apply in case of convictions for
31 violations of sections one hundred and twenty-one to one
32 hundred and thirty-one H, inclusive, of chapter one hundred
33 and forty or for violations of chapter two hundred and sixty-
34 eight or chapter two hundred and sixty-eight A.

35 In carrying out the provisions of this section, notwithstanding
36 any laws to the contrary:

37 (1) Any recorded offense which was a felony when committed
38 and has since become a misdemeanor shall be treated as a
39 misdemeanor.

40 (2) Any recorded offense which is no longer a crime shall be
41 eligible for sealing forthwith, except in cases where the elements
42 of the offense continue to be a crime under a different
43 designation.

44 (3) In determining the period for eligibility, any subsequently
45 recorded offenses for which the dispositions are "not guilty",
46 "dismissed for want of prosecution", dismissed at request of
47 complainant", "nol prossed", or "no bill" shall not be held to
48 interrupt the running of the required period for eligibility.

49 (4) If it cannot be ascertained that a recorded offense was a
50 felony when committed said offense shall be treated as a
51 misdemeanor.

52 When records of criminal appearances and criminal dis-
53 positions are sealed by the commissioner in his files, he shall
54 notify forthwith the clerk and the probation officer of the courts
55 in which the convictions or dispositions have occurred, or other
56 entries have been made, of such sealing, and said clerks and
57 probation officers likewise shall seal records of the same
58 proceedings in their files.

59 Such sealed records shall not operate to disqualify a person in
60 any examination, appointment or application for public service
61 of the commonwealth or any political subdivision thereof; nor
62 shall such sealed records be admissible in evidence or used in

63 any way in any court proceedings or hearings before any boards
64 or commissions; except in imposing sentence in subsequent
65 criminal proceedings.

66 The commissioner, in response to inquiries by authorized
67 persons other than any law enforcement agency or any court,
68 shall in the case of a sealed record report that no record exists.
69 The commissioner, in response to inquiries by courts and law
70 enforcement agencies, shall in the case of a sealed record report
71 "sealed record".

72 Furthermore, such sealed record shall be opened to the chief
73 of police of a city, town or district, the commissioner for the
74 department of public safety, and the commissioner of correc-
75 tions, who, by affidavit, states that such a person is being
76 considered for appointment with his department as a police
77 officer, inspector of the department of public safety, position in
78 the department of corrections which involves personal and direct
79 contact with prisoners, and further that such affidavit shall
80 include a statement that information requested shall be of felony
81 conviction(s) to determine qualifications for said positions, only.

82 An application for employment used by an employer which
83 seeks information concerning prior arrests or convictions of the
84 applicant shall include the following statement: "An applicant
85 for employment with a sealed record of entries ten years old or
86 over on file with the commissioner of probation may answer "no
87 record" with respect to an inquiry herein relative to said sealed
88 record of entries of prior arrests, criminal court appearances or
89 convictions. An applicant for employment with a sealed record
90 on file in the office of the commissioner of probation may
91 answer "no record" to an inquiry herein relative to said sealed
92 record of prior arrests or criminal court appearances". The
93 attorney general may enforce the provisions of this paragraph by
94 a suit in equity commenced in the superior court.

1 SECTION 2. Section 100C of Chapter 276 is hereby further
2 amended by deleting the second paragraph and substituting the
3 following paragraph:—In any criminal case wherein the nolle
4 prosequi has been entered, or a dismissal or discharge has been
5 entered by the court, and in any juvenile case wherein a

6 dismissal or a discharge has been entered by the court, except in
7 cases, adult or juvenile, in which an order of probation has been
8 terminated, and it appears to the court that substantial justice
9 would best be served, the court shall direct the clerk to seal the
10 records of the proceedings in his files. The clerk shall forthwith
11 notify the commissioner of probation and the probation officer
12 of the courts in which the proceedings occurred or were initiated
13 who shall likewise seal the records of the proceedings in their
14 files.

1 SECTION 3. Section 100C of Chapter 276 is hereby further
2 amended by adding at the end of the section the following
3 paragraph:—The commissioner of probation may appoint a
4 head administrative clerk and four senior clerk typists to assist
5 him in the performance of his duties as set forth in Chapter 276,
6 Sections 100A, 100B, 100C, and in Chapter 94C Sections 34 and
7 44.