

## BOOKLET 3

### SEALING CRIMINAL CASES THAT ENDED WITHOUT A CONVICTION AND DRUG POSSESSION CONVICTIONS

If your case ended in a finding of “not guilty” or “nolle prosequi” (the District Attorney dropped the case), or ended in a dismissal, the Criminal Offender Record Information (CORI) law allows you to ask a judge to seal the case without a waiting period. First time convictions for possession of marijuana and other controlled substances can also be sealed in court by a judge without a waiting period.

The sealing process for these cases and first-time drug possession offenses involves filing papers in court and one or two court hearings. It is advisable to have a lawyer represent you, but you have a right to represent yourself.

**IMPORTANT. If you are not a citizen, have immigration issues, or are living here without legal documents, you should not file papers to seal your records without the advice of an immigration attorney.**

#### EXPUNGEMENT

A new law passed in 2018 permits people to seek expungement of their records in some very limited situations. Expungement goes beyond sealing and means destruction of criminal records. See booklets 7 and 9 on expungement for more information.

#### WHAT TO FILE IN COURT TO SEAL CASES

To seal your cases, you need to file a Petition to Seal. The form is included in this booklet. To increase your chance of success in court, it may help to file other documents such as:

- An Affidavit (a statement sworn to be true “under penalties of perjury”) explaining how your criminal record may hurt you now or in the future and why the judge should seal your case. For example: you got rejected for jobs, internships, and/or housing, are unemployed, on public assistance or cannot get accepted into a training program because of your criminal record.
- Support letters from professionals or others saying positive things about you and/or explaining how your criminal record hurts you. For example, after your last case, you got a GED, finished job training or drug treatments, and are working hard to get your life on track, but you get rejected for jobs or other opportunities because of your CORI.
- Certificates and other papers showing you finished a treatment, training or education program, or did something else related to self-improvement or getting more job skills.
- Rejection letters from employers and housing programs denying you a job or housing after review of your criminal record.

## WHERE TO FILE

If you want to seal cases in more than one court, you have to file paperwork in each court. The only exception is Boston Municipal Court (BMC) which permits a person trying to seal 3 or more BMC charges to file a petition to seal all the BMC cases or charges in one division of the BMC. See Booklet 5.

To make sure you know about all your cases that might be sealed, get a copy of your CORI report. If you do not have a copy of it, see Booklet 1 for information on how to get a copy of your CORI report.

## WHEN TO FILE

There is no waiting period to file a petition to seal a non-conviction. However, if you are in jail or have criminal cases still open in court, your case for sealing of non-convictions is very weak. The more time that has passed since your last conviction and/or last court date, the easier it may be easier to convince a judge that you're not likely to get in trouble with the law in the future and there is no need to keep your record open. You have the right to look at your criminal case files at the courthouse. This might be helpful if you have trouble remembering what happened in your cases or the CORI report is unclear.

## LEGAL STANDARD TO SEAL A CRIMINAL CASE

To seal your records, the judge must find that there is "good cause" to seal your records. In a case called Commonwealth v. Pon, 496 Mass. 296 (2014), the SJC, our highest state court, made it easier to seal cases. The SJC said judges may take "judicial notice" that the existence of any criminal record, *regardless of what it contains*, can present barriers to housing and employment opportunities. To meet the new burden of proof, you only need to show there is a present or a possible future "disadvantage" that stems from your criminal records. Some factors a judge may consider are:

- Your CORI puts you at a disadvantage in applying for jobs or housing;
- Your CORI puts you at risk of job rejections, unemployment or underemployment;
- You have trouble getting housing, or are homeless, or at risk of homelessness related to CORI;
- Employers use CORI in your present occupation or an occupation you'd like to have;
- The CORI reduces chances for promotion, internships, and/or better or higher paying jobs;
- You and/or your family are on public assistance despite your efforts to get a job;
- You cannot go on your child's school trips or do community activities because of your CORI;
- A lot of time has passed since the case was filed against you;
- You are sober and have made efforts to rehabilitate yourself;
- You have made efforts toward self-improvement (classes, programs, GED, diploma, college degree, certificates, etc.);
- You do volunteer work and/or other work to help in your community;
- You successfully completed probation in your case(s);
- You have had no further contact with the criminal justice system;
- You have other evidence of rehabilitation from the date of the offense or dismissal;
- Your situation at the time of the offense should be considered (*e.g.* you were a teenager);
- There is stigma or stereotypes related to the case that hurt your chances to get a job, etc.;

The judge will also consider the reason for dismissal or nolle prosequi (dropping of a case) and any other information relevant to sealing your case(s). For example, if you were found not guilty or were identified by mistake by the police, etc.

**Important.** Even if your case was continued without a finding (CWOFF), this by itself, is not grounds to deny your petition to seal records. The judge has to look at all the facts including what has happened since the case was filed against you.

Example: A judge might order sealing of your records because you are unemployed, homeless, and have no income because your CORI prevents you from getting a job even though you've stayed out of trouble and have worked hard to get your life back on track.

Evidence of "rehabilitation" or positive achievements such as completing a job training program; getting a GED or a diploma, degree, or training certificate; doing community volunteer work; or graduating from a substance abuse or other treatment program are examples of things that may help persuade a judge to seal your records.

## MODEL FORMS

Model forms are attached that might be helpful to you in filling out your own forms. Make copies of everything you file in court.

**IMPORTANT.** If you are not a citizen or you want is to work in law enforcement or a job with a high security clearance, you will likely need certified copies of the docket sheets.

See Booklet 4 for information and tips on presenting your case to a judge at court hearings held to seal your criminal cases.

It is often useful to have copies of the criminal records you wish to seal so get certified copies of the docket sheets at the courthouse BEFORE filing a request to seal your records. To get certified copies, ask the clerk in the clerk's office at the courthouse(s) where you have charges to make you certified copies. You may need these in the future. For example, if you are not a citizen, you will likely need certified copies to apply for citizenship at a later time. If you apply for a job with the federal government (U.S. Census, Social Security Administration, IRS, etc.), the FBI usually has records that will show a criminal case was filed against you even if it was sealed in the state court. You can use the certified copies to explain what happened in your case without having to go back to court to unseal your record.

Keep these copies of your criminal record in a safe place. Once your record is sealed you will not be able to see the court files without unsealing them, even though they are for your cases.

## THE COURT PROCESS



After you file your paperwork in court, you will have one or two hearings. If the court uses a one step process, the clerk's office will post notice of the hearing in or near the clerk's office and you must appear at the hearing which will be your final hearing. Make sure you know and do not miss your court date.

If the court uses a two hearing process, the judge enters an order at the first hearing deciding whether it is likely your case(s) will be sealed based on the facts of your case and your present situation. If the judge rules in your favor, a second hearing will be scheduled where a judge will make a decision about whether to seal your record(s). You must attend the second hearing and notice of the second hearing will be posted near the clerk's office.

See Booklet 4 for tips about representing yourself at the hearings. As with any court hearing, it is advisable that you get an attorney to represent you. If you lose at any hearing, you should seek legal advice from an attorney immediately.

## JOB APPLICATIONS AFTER YOU SEAL YOUR RECORD

If you interview for a job or apply for housing or an occupational license, you may say you have "no record" as to the sealed record. G.L. c. 276 §§ 100A, 100C; G.L. c. 94C, §§ 34, 44.

## LEGAL HELP FOR LOW INCOME PEOPLE

- Call the ERLI helpline at 617-603-1700 if you live in the Boston area and you'll be screened for eligibility for an intake for Greater Boston Legal Services (GBLS). GBLS is not able to take every case, but ERLI or GBLS may be able to offer advice or refer you to other programs or resources.
- To find a legal aid program near you, go to: [www.masslegalhelp.org](http://www.masslegalhelp.org)
- Read other booklets in this series:
  - Booklet 1: How to Get a Copy of Your Criminal Record (CORI)
  - Booklet 2: How to Seal Old Criminal Cases
  - Booklet 3: Sealing Cases that Ended without a Conviction or First Time Drug Offenses
  - Booklet 4: Representing Yourself in Court After Filing a Petition to Seal Criminal Cases
  - Booklet 5: One Stop CORI Sealing in Boston Municipal Court
  - Booklet 6: Loss of Drivers' Licenses for Drug Convictions, Court Defaults, Warrants, and Tagging or Vandalism Convictions
  - Booklet 7: How to Seal Decriminalized Marijuana Cases
  - Booklet 8: Avoiding Guilty Pleas and Criminal Case Dispositions that Give You Life-Time Criminal Records
  - Booklet 9: How to Expunge Records

# SAMPLE FORM AND BLANK FORM YOU CAN FILL IN AND USE

**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 by your own attorney. This booklet relates to criminal records located in Massachusetts and to the laws, forms, and practices in effect as of October 15, 2018. This booklet is made available through funding in part from the Gardiner Howland Shaw Foundation. You can share this booklet which is also available online at [https://www.gbls.org/cori\\_record\\_sealing\\_booklets](https://www.gbls.org/cori_record_sealing_booklets) or at masslegalhelp.org**

# PETITION TO SEAL RECORD(S) UNDER G. L. c. 276, § 100C

# TRIAL COURT OF MASSACHUSETTS

PETITIONER'S NAME (please print)

John P. Doe

PETITIONER'S ADDRESS (please print)

5 Jump Street  
Boston, MA 02214

TELEPHONE #

123-456-7890

PCF #

DOCKET NUMBER	OFFENSE/CHARGE (please list each one on a separate line)	DISPOSITION DATE	DISPOSITION	COURT USE ONLY
1002 XY26	Possession Class E	12-5-2010	Dismissed	<input type="checkbox"/> seal
1002 XY22	Assault & Battery	1-5-2010	Dismissed	<input type="checkbox"/> seal
				<input type="checkbox"/> seal
				<input type="checkbox"/> seal
				<input type="checkbox"/> seal
				<input type="checkbox"/> seal

☐ Please see the attached continuation sheet listing additional case(s).

I request this Court to order that the record(s) of the criminal charge(s) listed above be sealed for the following specific reasons: (Please print and attach documents as necessary)

*My Criminal records create foreseeable disadvantages related to jobs, housing and other opportunities.*

DATE:

October 5, 2015

**SIGNED UNDER THE PENALTIES OF PERJURY**

PETITIONER'S SIGNATURE:

*John P. Doe*

## ORDER OF COURT

☐ A hearing on the merits of petition to seal is scheduled on \_\_\_\_\_, at \_\_\_\_\_ ☐ AM ☐ PM (no sooner than 7 days). The clerk-magistrate shall ensure that notice of the hearing is given to the probation department and the prosecutor's office, and shall post a copy of the petition on a public bulletin board until the scheduled hearing. The prosecutor's office is advised to give notice to the victim(s), if any, and to inform the victim(s) she/he/they may appear and be heard.

☐ After review of the petition and any attachments and/or the preliminary hearing, the Court finds that no prima facie case in favor of sealing has been shown, and the petition to seal is **DENIED**.

DATE:

JUDGE'S SIGNATURE:

PCF #

5 Jump Street  
Boston, MA 02214

SAMPLE  
AFFIDAVIT OF John P. Doe  
(Print Full Name)

I ask this Honorable Court to seal my cases which are not convictions for these reasons:

1. Justice is not served by leaving my criminal record(s) open. The charge(s) I asked to be sealed ended favorably without conviction, but can inflict punishment much like a conviction because criminal background checks are so common. There is "good cause" to seal these charges due to a credible present disadvantage and/or foreseeable future disadvantage as follows:

2. CHECK ALL THAT APPLY:

- ☒ My record puts me at a disadvantage in applying for jobs or advancing professionally.
- ☒ I have applied for jobs and have been rejected and/or not called back after review of my CORI.
- ☒ I am unemployed or underemployed.
- ☒ I work in or will be seeking a job in a field(s) where CORI checks are required.
- ☒ I have no income due to my unemployment.
- ☐ My criminal record puts me at disadvantage in applying for housing.
- ☐ I am homeless or risk of losing my housing because I have little or no income.
- ☐ I was rejected for housing because of my criminal record.
- ☐ The charge(s) affects my ability to get internships, training, or other opportunities.
- ☒ I receive Masshealth and/or other public assistance.
- ☒ I have 1 or more children to support, but cannot provide adequate financial support.
- ☐ I am not able to be involved in my child or children's school trips or school activities because of my CORI; my involvement is important to and would help my child or children.
- ☐ One or more charges carry a heavy stigma or contribute to negative stereotypes that affect me.

3. Other facts that support sealing my record are: CHECK ALL THAT APPLY:

- ☒ I am not a public figure and the public and/or press have no interest in my cases.
- ☒ My situation has changed since the time I was involved in the case or cases in this court.
- ☒ Sealing my record(s) would enable me to get off public assistance and move toward self-sufficiency.
- ☒ I completed a treatment program since the time I was involved in a case or cases in this court.
- ☒ I have tried to rehabilitate and/or improve myself (school, training, volunteering, etc.) by:



Anger Management and drug treatment.

4. Provide details related to above factors and/or other reasons to seal your cases:

I go to Jobnet almost daily looking for work. I was previously a plumber for 18 years. I have applied for many jobs. I have also taken job training courses and I still get rejected for jobs. CORI checks are routine in all the types of work I have applied to since being laid off.

I completed a drug treatment program and my counselor has written a support letter. I also completed anger management. I no longer use drugs.

I volunteer at my church and I have turned my life around. My three children suffer because I am unemployed and we are on public assistance to make ends meet. I want to be a good role model for them.

Date: 10-5-2015

Signed under penalties of perjury,

John P. Doe

Signature

Phone #: 123-456-7890

Print name: John P. Doe

**PETITION TO SEAL RECORD(S)  
UNDER G. L. c. 276, § 100C**

**TRIAL COURT OF MASSACHUSETTS**

PETITIONER'S NAME *(please print)*

PETITIONER'S ADDRESS *(please print)*

TELEPHONE #

PCF #

**DOCKET NUMBER**

**OFFENSE/CHARGE**

*(please list each one on a separate line)*

**DISPOSITION  
DATE**

**DISPOSITION**

**COURT  
USE ONLY**

☐ seal

☐ seal

☐ seal

☐ seal

☐ seal

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DATE:

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**DISPOSITION**

**DATE**

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**COURT**

**USE ONLY**

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**AFFIDAVIT OF**

\_\_\_\_\_  
(Print Full Name)

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- ☐ I have tried to rehabilitate and/or improve myself (school, training, volunteering, etc.) by:

4. Provide details related to above factors and/or other reasons to seal your cases:

Signed under penalties of perjury,

Date: \_\_\_\_\_

Signature \_\_\_\_\_

Phone #: \_\_\_\_\_

Print name: \_\_\_\_\_