

BOOKLET 2

HOW TO SEAL OLD CRIMINAL CASES

STEP ONE. Get a copy of your criminal record which is called Criminal Record Offender Information (CORI). See Booklet 1 if you do not have a copy of your CORI report.

STEP TWO. Look at your CORI report and figure out if you have old convictions or other cases which might be sealed by mail.

IMPORTANT. If you are not a United States citizen or have immigration issues, or are living here without legal documents, you should not seal your record without some advice from an immigration attorney.

Most misdemeanor or felony convictions from a Massachusetts state court can be sealed by filling in a form and mailing a Petition to Seal to the Commissioner of Probation after a waiting period.

A misdemeanor is a crime punishable by a maximum term of 2.5 years of incarceration even if you do not go to jail or serve the maximum sentence.

A felony is a crime punishable by more than 2.5 years of incarceration even if you do not go to jail or serve the maximum sentence. Your CORI should list whether each charge is a misdemeanor or felony. A list of common offenses is included in this booklet to help you figure out which cases on your CORI might be sealed if your CORI does not say what type of case it is.

Basic rule. You are eligible to seal a conviction after a waiting period of 3 years if it is a misdemeanor conviction, and after 7 years if it is a felony conviction provided that:

- You have no new conviction(s) (except motor vehicle convictions with a fine not greater than \$50) during the same period in or outside Massachusetts; **AND**
- you did not serve a jail sentence during the same period in or outside Massachusetts, **AND**
- you are not now required to register as a sex offender for the offense.

Convictions. For any conviction, the waiting period starts from the date you were found guilty **OR** released from incarceration—**whichever is later**. For example:

- Jae was found guilty of a misdemeanor on May 4, 2017, was on probation for a year, and his case was closed on May 15, 2018. He can seal it by mail on May 4, 2020 – 3 years after he was found guilty.

Every time you are convicted or incarcerated, the clock re-starts to add another 3 years for a misdemeanor, and 7 years for a felony.

For example:

- Pat was found guilty of misdemeanors on May 1, 2015 and on May 1, 2016, but did not go to jail. She cannot seal either case until May 17, 2019 – 3 years from the last conviction.

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

- Jack was found guilty of a misdemeanor and given a 1 year jail sentence on May 4, 2015. He was released from jail on June 4, 2016. He can seal his record by mail on June 4, 2019 – 3 years from his release from incarceration.

Non-convictions. If you were found “not guilty” or your case was dismissed, or the District Attorney dropped the case (a “nolle prosequi”), the 3 or 7 year waiting period runs from the date of this “disposition.” For example:

- Joe’s misdemeanor case was dismissed on May 4, 2016. He can seal it by mail on May 4, 2019. If he does not want to wait that long, he can ask a judge to seal the case. Courts can seal dismissed cases or cases that ended in a nolle prosequi (a prosecutor dropped the case) or a not guilty finding without a waiting period. See Booklet 3 in this series.

Exception for a CWOFF (Continuance without a Finding). If your case was dismissed after a CWOFF, the waiting period starts on the date of the CWOFF, not the later date of dismissal. You still use the same waiting periods depending on whether the case was for a felony (10 years) or a misdemeanor (5 years). For example:

- A judge entered a CWOFF in Conrad’s felony case on May 10, 2017, and his case was dismissed on May 10, 2018. He can seal it by mail on May 10, 2024. If he does not want to wait that long, he can ask a judge to seal the case. Courts can seal a dismissed case without a waiting period. See Booklet 3 in this series.

Exceptions with Longer Waiting Periods.

Restraining order violation convictions. A conviction for violation of an abuse prevention or harassment prevention order is treated as a felony for purposes of sealing records. It has a 7 year waiting period.

Sex offense conviction. The waiting period for sealing of sex offense *convictions* that are sealable is longer than for other types of convictions. Any *conviction* for a sex offense that required registering with the Sex Offender Registry is not eligible for sealing until 15 years after the very last event in the case, including the end of supervision, probation, or release from incarceration.

Convictions That Can Never Be Sealed.

Sex Offense by Level 2 and 3 Sex Offender Status. The law states that if a person is or was ever registered as a Level 2 or Level 3 sex offender, he or she can NEVER seal *convictions* for certain sex offenses (i.e. rape of a child, assault with intent to rape, drugging a person for sex and other offenses as defined by Section 178C of Chapter 6 of the Mass. General Laws). But the law says a person can seal other types of cases that are eligible for sealing.

Important. Please note that the Supreme Judicial Court found this restriction unconstitutional *as applied* to a person who was no longer required to register as a sex offender.¹ This means if the 15 year waiting period has passed, a person who is no longer in the sex offender registry can ask to seal the sex offense convictions through the Commissioner of Probation’s office at One Ashburton Place in Boston.

¹ *Koe v. Comm'r of Probation*, 478 Mass. 12 (2017).

Public Justice Crimes and Other Exceptions. Other convictions which can never be sealed include:

- Some firearms **convictions**, including but not limited to selling ammunition or a gun without a firearm license, or buying a gun from an unlicensed dealer (G.L. 140, §§ 121-131 H:); or
- State ethics related **convictions** such as bribes to public officials (G.L. c. 268A); or
- “Crimes against the Public” **convictions** including but not limited to perjury, witness intimidation, or aiding escape from jail (G.L. c. 268:).

In 2018, legislation was finally passed to make resisting arrest convictions sealable.

IMPORTANT. Even if you have a *conviction* that can never be sealed, you can still seal other types of cases that are eligible for sealing. Also, if your case for one of these never sealable crimes was dismissed or there was a “not guilty” finding or a nolle prosequi (dropping of the case), the case can be sealed. Only **convictions** for these charges can never be sealed.

Tips that might help you:

- If you have a conviction for an offense that is no longer a crime such as possession of two ounces or less of marijuana, it can be sealed immediately using the same form under Box 4 unless the elements of the charged offense are a crime under a different designation. You can also ask a judge to **expunge** the records (meaning all records would be destroyed not just sealed), but that is a more complicated process. See our booklet on expungement.
- If you have old non-convictions such as dismissed cases or cases that ended in a “nolle prosequi” (a dropped case) or a “not guilty” finding that are at least 3 years old if the cases are misdemeanors, or at least 7 years old if the cases are felonies, these cases can be sealed at the same time as a conviction using the same form if you have had no other new convictions during the same time period.
- Juvenile records can be sealed using the same form if all juvenile cases closed at least 3 years ago, AND:
 - You have no new juvenile adjudications or convictions (except motor vehicle convictions with a fine not greater than \$50) during the last 3 years, and
 - No juvenile commitments or imprisonment in the last 3 years in or outside Massachusetts, and
 - You are not required to register as a sex offender for the offense. (G.L. c. 6, § 178G).
- These “aged out” juvenile cases can be sealed by checking off the first box on the same form used to seal adult convictions. You also may be able to ask a judge to **expunge** the records (meaning all records would be destroyed not just sealed), but that is a more complicated process. See our booklet on juvenile expungement.

STEP THREE.

It is a good idea to get certified copies of the records before sending in the form to seal your records. You might need copies of the criminal record you seal 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 often has a record of the fact that a criminal case was filed without information about the outcome. You can use the certified copies to explain what happened in your case without going back to each court to unseal each case that you sealed.

STEP FOUR.

Fill out the PETITION TO SEAL form and mail or deliver it to the Commissioner of Probation, One Ashburton Place, Rm 405, Boston MA 02108. A model form is attached. Fill out your address, including an apartment number neatly so it is readable because a reply letter will be mailed back to you.

STEP FIVE.

You will get a reply by mail from the Commissioner of Probation usually within a few weeks telling you whether your request to seal was approved. If the petition is denied, seek legal advice about your rights.

AFTER THE RECORD IS SEALED

The “Ban the Box” law prohibits most employers from asking about criminal cases on an initial job application whether or not the record is sealed. Once your record is sealed, you can say “I have no record” when you apply for jobs, housing and occupational licenses. G.L. c. 276 §§ 100A-B.

IF YOUR PETITION IS DENIED

If your petition is denied. You should seek legal advice without delay.

Important. The felony larceny threshold has increased from \$250 to \$1200 which means larceny cases up to \$1200 now should be sealable after a new 3 year waiting period instead of a felony waiting period. G.L. c. 276, §100A. Probation reads the new law to not apply to sealing of larceny cases that ended before the new law took effect on April 13, 2018. If your petition to seal it was denied for a larceny case involving an amount that was up to \$1200 that was treated as a felony for purposes of sealing because the case ended before the new law took effect, you can call Greater Boston Legal Services (GBLS) for help at 617-371-1234.

RESOURCES FOR LOW INCOME PEOPLE

- If you live in the Boston area, call 617-603-1700 or 617-371-1234 for an intake with Greater Boston Legal Services (GBLS).
- If you live outside of Boston, you can find another legal aid program near you at: www.masslegalhelp.org
- To request your CORI report online and get more information from the Department of Criminal Justice Information Services, go to: <http://www.mass.gov/eopss/agencies/dcjis/>

- To read more of our booklets go to: www.gbls.org/cori_record_sealing_booklets or www.masslegalhelp.org

Know Your CORI Rights—Sealing and Expungement of Criminal Offender Record Information
(This booklet is the most detailed, contains all the forms and discusses most topics below)

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 Convictions

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: What You Should Know about Drivers' Licenses and Drug 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

COMMON MISDEMEANOR AND FELONY OFFENSES
By Greater Boston Legal Services, 197 Friend St., Boston, MA 02114

Armed assault in dwelling house: c. 265, s. 18A
(felony)

Assault with intent to rape: c. 265, s.24 (felony)

Armed robbery: c. 265, s. 17 (felony)
Unarmed robbery: c. 265, s. 19 (felony)

Assault with intent to rob or murder (armed): c.
265, s. 18 (felony)

Arson: c. 266, s. 1 (felony)

Assault with intent to rob or murder
(Unarmed): c.265, s 20 (felony)

Assault: c. 265, s. 13 (misdemeanor)

Breaking & Entering building: 266 s. 16 (felony)

Assault & battery: c. 265, s. 13A (misdemeanor,
but an A & B while Ch. 209A order in effect is a
felony; indecent A & B is a felony)

Burglary, unarmed: c. 266, s. 15 (felony)
Burglary, armed assault: c. 266, s. 14 (felony)
Burglary tools possession: c. 266, s. 49 (felony)

Assault & battery on elder or disabled: c. 265, s.
13k (felony)

Carjacking: c. 265, s. 21A (felony)

Assault or assault & battery on an EMT: c. 265,
S 131 (misdemeanor)

Common night walker: c. 272, s. 53
(misdemeanor)

Assault & battery on public employee: c. 265, s.
13D (misdemeanor)

Criminal harassment: c. 265, s. 43 A
(misdemeanor)

Assault and battery with a dangerous weapon:
c. 265, s. 15A (felony)

Uninsured motor vehicle second offense c. 90,
s. 34J (misdemeanor)

Assault with a dangerous weapon on elder: c.
265, s. 15B (felony)

Criminal harassment: c. 265, s. 43A
(misdemeanor)

Assault on child less than 16 with intent to
rape: c. 265, s. 24B (felony)

Dangerous weapon, carrying or unlawful
possession: c. 269, s. (10(b) & 10(d))

Assault-indecent assault (felony)
*on child less than 14: c. 265, s. 13B
*aggravated on child less than 14
*subsequent offense on child less than 14
*on mentally retarded
*on elder or disabled

Disorderly person, c. 272, s. 53 (misdemeanor)
(Disorderly by a elementary or secondary
school student at a school is no longer a crime)

Destruction of property-see malicious
destruction

Assault with intent to commit felony: c. 265, s.
29 (felony)

Drug possession-
Possession of controlled substance: c. 94C, s. 34:

*misdemeanor for class A, B, C, D, or E

*misdemeanor for heroin

*2nd offense heroin: felony

*Two ounce or less of marijuana in public: no longer a crime, but more than 2 ounces of marijuana is a misdemeanor

Drug possession-controlled substance with intent to distribute: c. 94C, s. 32-32D

Class A, B, C (felony)

Drug Possession of controlled substance with intent to distribute: Class D & E: misdemeanor

Drug: Possession of drug paraphernalia, c. 94c, s. 32I (misdemeanor)

Drug sale in school zone: c. 94C, s. 32J (felony)

Engaging in sex for a fee, c. 272, s. 53A (misdemeanor)

Extortion (attempted): c. 265, s. 25 (felony)

False representations to procure welfare: see Welfare fraud (misdemeanor)

Failure to stop (vehicle) after causing personal injury or property damage: c. 90, s. 24 (misdemeanor)

Firearms: see unlawful carrying/possession

Forgery and counterfeiting certificate, other writings: c. 267, s.1 (felony)

Home invasion: c. 265, s. 18C (felony)

Indecent Exposure: c. 272, s. 53a (misdemeanor)

Intimidating witness, juror: c. 268, s. 13B (felony)(if convicted, not sealable)

Kidnapping: c. 265, s. 25 (felony)

Kidnapping of minor by relative: c. 265, s. 26A (misdemeanor if by relative, but felony if child removed from Commonwealth)

Larceny: c. 265, s. 30 (misdemeanor if \$1200 or less; felony if over \$1200)

Larceny of firearm: c. 266, s. 30 (felony if stolen property is firearm)

Larceny of vehicle: c. 266, s. 28 (felony)

Larceny from the person: c. 266, s. 25 (felony)

Larceny by check: c. 266, s. 30 ((misdemeanor if \$1200 or less; felony if over \$1200)

Malicious destruction of property: c. 266, s. 127 (felony if willful and malicious; misdemeanor if wanton)

Manslaughter: c. 265, s. 13 (felony)

Motor vehicle theft: c. 266, s. 28 (felony)

Open & gross lewdness: c. 272, s. 16 (felony)

Operating to endanger: c. 90, s. 24(2)(a)

Perjury: c. 268, s. 1 (misdemeanor) (if convicted, not sealable)

Possession-see drug possession

Prostitution/solicitation: c. 272, s. 53A (misdemeanor)

Rape: c. 265, s. 22 (felony)

Rape of child under 16, including statutory rape (felony): c. 265, s. 22A, 22B, 23, 23A, 23B, 23C

Receiving stolen property: c. 266, s. 60 (felony if over \$1200)

Resisting arrest: c. 268, s. 32B (misdemeanor)(can be sealed effective 10-13-2018)

Robbery (armed): c. 265, s. 17 (felony)

Robbery (unarmed): c. 265, s. 19 (felony)

Shoplifting: c. 266, s. 30A (misdemeanor)	Unlawful possession of firearm or ammunition, c. 269, s. 10(h)(1): misdemeanor)
Stalking: c. 265, s. 43 (felony)	Unnatural and lascivious acts: c. 272, s. 5 (felony)
Threats: c. 275, s. 2, 4 (misdemeanor)	Uttering or fraudulent checks: c. 266, s. 37 (same as larceny)
Trafficking in marijuana, cocaine, heroin, opium, etc.: c. 94C, s. 32E (felony)	Uttering false, forged or counterfeit note: c. 267, s. 10 (felony)
Trespass: c. 266, s. 120 (misdemeanor)	
Unlawful carrying firearm: c. 269, s. 10(a)(d) (felony)	Welfare fraud: c. 18, s. 5B (misdemeanor)

For a complete list of crimes, see the Master Crime List found on the Executive Office of Public Safety website: <https://www.mass.gov/files/documents/2016/08/my/mastercrimelist.pdf>

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 or at masslegalhelp.org

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

PETITION TO SEAL

To: Commissioner of Probation, One Ashburton Place, Rm. 405, Boston, MA 02108

SELECT appropriate box(es). If 1, 2, or 3 are selected, you must sign the corresponding numbered affidavit below.

PART A

- 1 [] Section 100B - Chapter 276. Delinquency (juvenile) cases, all sentence elements of which, and of any subsequent court appearances, were completed 3 years prior to this request.
1 - 4
2 [] Section 100A - Chapter 276. Misdemeanor cases, all sentence elements of which, and any subsequent court appearances, were completed 5 years prior to this request (or, which was a felony when committed, and is presently a misdemeanor).
3 [] Section 100A - Chapter 276. Felony cases, all sentence elements of which, and of any subsequent court appearances, were completed 10 years prior to this request. For eligible sex offenses 15 years prior to this request.
4 [] Section 100A - Chapter 276. Recorded offense which is no longer a crime, except where the elements of the offense continue to be a crime under a different designation.

Print Last name First name Middle name Date of Birth:
Alias/Maiden/Previous name
Mailing Address City State Zip
Occupation Social Security # Place of Birth
Father's Name Mother's Maiden Name Husband/ Wife's Name
Petitioner's Signature

In accord with the provision of Chapter 276, Sections 100A and 100B, as established by Chapter 686 of the Acts of 1971, Chapter 404 of the Acts of 1972, Chapter 322 of the Acts of 1973 and Chapter 256 of the Acts of 2010, respectively, I hereby request that my record of adult criminal and/or juvenile Massachusetts court appearances and dispositions be sealed forthwith.

To the best of my knowledge:

- 1. [] a) My delinquency court appearances or dispositions including court supervision, probation, commitment or parole, the records for which are to be sealed, terminated not less than three years prior to said request; b) I have not been adjudicated delinquent or found guilty of any criminal offense within the commonwealth in the three years preceeding such request, except motor vehicle offenses in which the penalty does not exceed a fine of fifty dollars nor been imprisoned under sentence or committed as a delinquent within the commonwealth within the preceeding three years; and c) I have not been adjudicated delinquent or found guilty of any criminal offenses in any other state, United States possession or in a court of federal jurisdiction, except such motor vehicle offenses as aforesaid, and have not been imprisoned under sentence or committed as a delinquent in any other state or county within the preceeding three years.

Signed under penalties of perjury,

Signature of Petitioner

To the best of my knowledge:

- 2. [] a) All of my court appearance and court disposition records, including any period of incarceration or custody for any misdemeanor occurred not less than five years prior to this request; b) that my court appearance and court disposition records, including any period of incarceration or custody for any felony occurred not less than ten years prior to this request; c) that I have not been found guilty of any criminal offense within the commonwealth in the case of a misdemeanor, five years before such request, and in the case of a felony, ten years before such request, except motor vehicle offenses in which the penalty does not exceed a fine of fifty dollars; d) I have not been convicted of any criminal offense in any other state, United States possession or in a court of federal jurisdiction, except such motor vehicle offenses as aforesaid, and have not been imprisoned in any other state or county in the case of a misdemeanor within the preceeding five years and in the case of a felony the preceeding ten years; and e) my record does not include convictions of offenses other than those to which the section applies, or convictions for violations of sections 121 to 131 H, inclusive, of chapter 140 or for violations of chapter 268 or chapter 268 A.

Signed under penalties of perjury,

Signature of Petitioner

PETITIONER NOT TO WRITE BELOW THIS LINE

Petition Allowed/Disallowed 01 02 03 04
Allowed (Copy to Clerk and Probation Office)
Reason for Disallowance (Copy to petitioner only)