

## SEALING RECORDS AT A GLANCE

Most criminal records can be sealed through an administrative process by mail after a waiting period, or by a judge without a waiting period. Get certified copies of docket sheets before you seal cases in case you need these later. If you are not a citizen, get advice from an immigration lawyer before sealing your records.



**ADMINISTRATIVE PROCESS.** (G.L. c. 276, § 100A). Most closed cases can be sealed after a waiting period by mailing (or hand delivering) a form to the Commissioner of Probation.



**COURT PROCESS TO SEAL.** Some closed cases may be sealed by the court that handled the cases without a waiting period. (G. L. c. 276, §100C; c. 94C, §§ 34, 44).

- **All cases must be closed** and the waiting period for sealing each misdemeanor is 3 years, and 7 years for each felony. A new conviction or incarceration re-starts the clock on all cases until the waiting period on each case is also completed.
- Conviction can only be sealed through this administrative process, except for a 1st time drug possession conviction which can also be sealed by a judge.
- Cases that ended in a “not guilty” finding, a dismissal or a nolle prosequi (D.A. dropped the case) can be sealed by this same process after the same waiting periods, **OR** by a judge in court without a waiting period.
- Juvenile cases can be sealed after a 3 year waiting period.
- Decriminalized cases (e.g., possession of 2 ounces or less cannabis; being in presence of heroin) can be sealed without any waiting period.

Convictions for Certain Offenses (But Not Dismissals or Non-Convictions) Have Longer Waiting Periods or Can Never Be Sealed. (G.L. c. 276, § 100A; c. 268-268A; c. 140, § 121-131H).

- Misdemeanor convictions for violations of abuse prevention and harassment prevention orders have a felony waiting period (7 years).
- Sex offense convictions requiring registering with the Sex Offender Registry are not eligible to seal until 15 years after the last event in the case such as probation or jail release. Level 2 or 3 status bars sealing of most cases.
- Public justice crime **convictions** (e.g. witness intimidation, escape from jail) and certain **convictions** for violations of firearms laws, ethics laws and conflicts of interest laws (e.g. bribery of an elected official) can NEVER be sealed. **The law has changed in 2018 and resisting arrest convictions are now sealable.**

A judge can seal records after a hearing for:

- a case where you were found “**not guilty**,” or where the case was **dismissed** or ended in a **nolle prosequi**, or
- a first time drug **possession** conviction where you did not violate court orders or conditions connected to being on probation such as drug treatment or community service.

The court process to seal cases is free and involves filing a petition and going to one or two hearings.

- Notice of the final hearing must be posted at the courthouse for at least 7 days.
- The legal standard to seal records is “good cause” because of a recent SJC ruling in *Commonwealth v. Pon*, 469 Mass. 296 (2014).
- You do not need to “risk of specific harm” and only need to show a credible “disadvantage” now or “likely to exist in the foreseeable future” due to your CORI.
- Judges may take “judicial notice that the existence of a criminal record, *regardless of what it contains*, can present barriers to housing and employment opportunities.”
- After you seal your record, you can say “I have no record” when interviewing for jobs, housing, trade licenses. G.L. c. 276, § 100A.

**Important.** The felony larceny threshold has increased from \$250 to \$1200 which means larceny up to \$1200 now should be sealable after a 3 year waiting period using the mail-in process. G.L. c. 276, §100A. The Commissioner of Probation does not check whether a felony larceny case should be treated as a misdemeanor because the law changed. If your larceny case up to \$1200 is denied sealing and treated as a felony for purposes of sealing and you need help with sealing, you can call Greater Boston Legal Services (GBLS) for an intake and help at 617-603-1797 or email us at [cori@gbls.org](mailto:cori@gbls.org)

## EXPUNGING RECORDS AT A GLANCE

New expungement laws are in effect. Sealing limits who has access to records. Expungement means records are destroyed and no longer available. **Do NOT expunge your records and talk to an immigration lawyer if you are not a citizen.**

**BEFORE EXPUNGING, get multiple certified copies of docket sheets, complaints and other records you may need later.**

- Do **NOT** expunge records, and talk to an immigration lawyer about your records if you are not a citizen.
- Do **NOT** expunge a drug case dismissed due to a drug lab scandal (Annie Dookan, etc.) and talk to a lawyer because lawsuits are pending that may let you get money back for fees, fines and expenses you paid in such a case.
- Once your Mass. records are expunged, you may be unable to get copies of court, police, probation, or other records that were destroyed that you need.
- The FBI may have records related to your cases even if you seal or expunge your records. FBI records are often incomplete and often lack final outcomes for cases. If records are expunged, you may be unable to show how your case ended, or that it ended in your favor.
- Criminal cases are grounds for deportation or exclusion.
- Certified copies of various court and criminal justice agency records may also be needed, for example, if you apply for a job or other position requiring an FBI check.

**JUVENILE OR UNDER AGE 21 record expungement (G.L. c. 276, §§100 F-H)**

- Closed first-time juvenile cases or adult criminal cases involving an offense before age 21 can be expunged if the case and any incarceration or probation, was not less than 7 years earlier for a felony, and not less than 3 years earlier for a misdemeanor.
- There is no fee and petition is filed with the Comm. of Probation, One Ashburton Place, Boston.
- The juvenile or criminal case to be expunged must be your only case, except for motor vehicle charges with a penalty not over \$50; and you are not eligible to expunge if you are under active criminal investigation.
- There may be a court hearing; the judge can grant or deny a petition based on “the best interests of justice.”
- The juvenile and under 21 expungement law is very complicated and excludes many charges.
- Excluded, for example, are ch. 265 felonies such as assault & battery with a dangerous weapon; crimes against the elderly or disabled; sex offenses involving children or violence; OUI’s; firearms offenses or while armed with a dangerous weapon; assault & battery on family/household member; robbery; restraining order violations; offenses resulting in death or serious injury.
- Examples of cases that may be expunged: disorderly conduct, larceny, trespass, tagging, drug possession or distribution, prostitution, misdemeanor assault or assault and battery (not on family or household member under c. 265, § 13M); indecent exposure.

**SECTION 100K EXPUNGEMENT of both juvenile records and adult criminal records (G.L. c. 276, §100K)**

- Section 100K permits additional expungement and the petition is filed in the court that handled the case.
- No fee is charged and the law states that a hearing is held if the petitioner or District Attorney asks for it.
- The court has discretion to expunge any closed adult OR juvenile record without a waiting period based on “what is in the best interests of justice” if the court determines based on “clear and convincing evidence” that the record was created as a result of:
  - false identification or the unauthorized use or theft of person’s identity (e.g. somebody used your name);
  - decriminalized offense (e.g. marijuana possession of 2 ounces or less, being in the presence of heroin, etc.);
  - demonstrable errors by law enforcement (e.g., lack of probable cause, misidentification, errors related to failed perception, other impairment, misconduct or racial bias);
  - demonstrable errors by witnesses (civilian or expert) (e.g. convictions 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);
  - demonstrable 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).

**NOTE.** There is no case law interpreting the new law so the examples above are our best guesses of what might qualify.

**AFTER an expungement order.** (G. L. c. 276, §§ 100 M, N, T).

- After a record is expunged, Massachusetts law now provides that no person whose record was expunged shall be held guilty of perjury or giving a false statement due to a failure to acknowledge the record in response to any inquiry made for any purpose.
- You can say you have “no record” after expungement.
- The law provides that the order is sent to the FBI and DOJ with a request they expunge records of the same case, but it is not known how they will respond.

**DENIALS of petitions.** If your petition is denied, seek legal advice without delay.

- **FOR LEGAL HELP.** You can us at 617-371-1234 or 617-603-1797. You can join a Zoom or read booklets on our website at: <https://www.gbls.org/what-we-do/cori-and-reentry>