

**HOUSE . . . . . No. 1324**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Cheryl A. Coakley-Rivera**

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act accelerating the sealing of non conviction criminal offender record information.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Cheryl A. Coakley-Rivera	10th Hampden
Elizabeth A. Malia	11th Suffolk

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 1359 OF 2007-2008.]

## The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine

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### AN ACT ACCELERATING THE SEALING OF NON CONVICTION CRIMINAL OFFENDER RECORD INFORMATION.

*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 (1) The current system of maintaining and disseminating Criminal Offender Record Information (known  
3 as CORI) has become an all-but-impossible barrier for most ex-offenders and other individuals with CORI with  
4 respect to their securing employment, housing, education, training, credit and other necessities of mainstream  
5 society, so that they may become productive and tax-paying citizens or residents of the Commonwealth;

6 (2) While the Commonwealth and the Federal Government spend millions of dollars to train and assist  
7 unemployed persons to enter the workforce, these efforts are unacceptably frustrated by the current CORI system, so  
8 that the Commonwealth is spending the taxpayers' money to fund governmental efforts which are often in  
9 contradiction to each other; and

10 (3) In addition to the state interest in safeguarding the reputations and privacy of the Commonwealth's  
11 residents, there is, collectively, a compelling state interest to seal stale or otherwise unpredictable criminal records,  
12 which state interest may, in particular cases, be ruled by a judge to overcome what the federal courts have found to  
13 be a First Amendment interest in favor of keeping these governmental records available to the more than ten  
14 thousand organizations which now have access to CORI.

15 SECTION 2. Within six months after this law takes effect, the clerk and the probation officers of each court with  
16 criminal jurisdiction shall seal their records of all non-conviction criminal cases whose final dispositions were six  
17 years or more before the date on which this law takes effect. As such records are sealed, the probation officers of  
18 such courts shall notify the commissioner of probation, who shall seal the appropriate case records in the probation  
19 central file.

20 A "non-conviction criminal case," as the term is used in this and other sections of this Act, is one in which  
21 a no bill was returned by the grand jury; or the defendant was found not guilty by the court or jury; or a finding of no  
22 probable cause was made by the court; or a nolle prosequi was entered; or a dismissal was entered by the court,  
23 except where (whether or not such dismissal was preceded by a continuance without a finding) such dismissal was  
24 preceded by a term of active probation as to which the court ordered the assignment of a probation officer to whom  
25 the defendant was required periodically to report.

26 SECTION 3. Within the twelve months after this law takes effect the clerk of any court with criminal jurisdiction  
27 shall select and process for prospective sealing, as nearly as possible in chronological order by date of final  
28 disposition, appropriate batches of non-conviction criminal cases in which the final dispositions were less than six  
29 years before, but more than six months after, the date on which this law takes effect.

30 On at least a monthly basis, but more frequently if feasible, the clerk shall prepare and post, in a prominent  
31 place in the court house to which the public has access, a list of non-conviction criminal cases which will be  
32 considered for sealing in one or more sessions of the court on or after a stated date which is at least a month after the  
33 list is posted. The list shall be organized in alphabetical order by last name of the individuals whose record or  
34 records will be considered and shall contain each individual's full name, the title of the crime or crimes charged and  
35 the date or dates of their final disposition. The list shall also contain a fourth column where any written objection to  
36 the sealing, stating a reason or reasons and filed with the clerk's office at least two weeks before the scheduled  
37 hearing date, may be briefly noted.

38 Each court is encouraged to issue a press release to local newspapers generally received by or available to  
39 persons residing within the jurisdiction of the court. Such release should announce the forthcoming sealing session  
40 and describe in general terms the notice posted in the court house and the range of final disposition dates of the cases  
41 to be considered. The release should also explain that anyone who objects to the sealing of a particular case may  
42 file, at least two weeks before the session, a written objection explaining the reason or reasons for the objection.

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

49 If the court concludes that sealing the record would be in the interests of substantial justice and that there  
50 is a compelling state interest to seal the record which overcomes the general public safety or public access interests,  
51 the court shall order that the clerk and the probation officers in the courts in which the proceedings occurred or were  
52 initiated seal the records of the proceedings in their files and send notice thereof to the commissioner of probation,  
53 who shall seal the case record in the probation central file.

54 SECTION 4. Chapter 276 of the General Laws is hereby amended by inserting after section 100C a new  
55 section as follows:

56 Section 100D. Notwithstanding, but in addition to, the provisions of section 100C, on the first business  
57 day of each month the clerk of each court having criminal jurisdiction shall have prepared and shall post, in a  
58 prominent place in the court house to which the public has access, a list of non-conviction criminal cases which will  
59 be considered for sealing in one or more sessions of the court on the first business day of the following month.

60 A "non-conviction criminal case," as used in this section, is one in which a no bill was returned by the  
61 grand jury, or the defendant was found not guilty by the court or jury, or a finding of no probable cause was made by  
62 the court, or a nolle prosequi was entered, or a dismissal was entered by the court except where (whether or not  
63 such dismissal was preceded by a continuance without a finding) such dismissal was preceded by a term of active  
64 probation as to which the court ordered the assignment of a probation officer to whom the defendant was required  
65 periodically to report.

66 The posted list shall be organized in alphabetical order by last name of the individuals whose records will  
67 be considered and contain each individual's full name, the title of the crime or crimes charged and the date or dates  
68 of their final dispositions. The list shall also contain a fourth column where any written objection to the sealing,  
69 stating a reason and filed with the clerk's office at least two weeks before the scheduled hearing date, may be  
70 briefly noted.

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75 file, at least two weeks before the session, a written objection explaining the reason or reasons for the objection.

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

82 If the court concludes that sealing the record would be in the interests of substantial justice and that there  
83 is a compelling state interest to seal the record which overcomes the general public safety or public access interest,  
84 the court shall order that the clerk and the probation officers in the courts in which the proceedings occurred or were

85 initiated seal the records of the proceedings in their files and send notice thereof to the commissioner of probation,  
86 who shall seal the case record in the probation central file.  
87 SECTION 5. SECTIONS 1, 2, and 3 of this Act shall take effect on the first business day of the month which is six  
88 months after the Act is approved. SECTION 4 shall take effect on the first business day of the month which is  
89 eighteen months after the Act is approved.