

**SENATE . . . . . No. 725**

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The Commonwealth of Massachusetts

PRESENTED BY:

*James B. Eldridge*

*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:

An Act relative to the expungement of records of persons falsely accused and juveniles.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>
<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>
<i>Denise Andrews</i>	<i>2nd Franklin</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>
<i>Karen E. Spilka</i>	<i>Second Middlesex and Norfolk</i>

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By Mr. Eldridge, a petition (accompanied by bill, Senate, No. 725) of James B. Eldridge, Michael O. Moore, William N. Brownsberger, Denise Andrews and other members of the General Court for legislation to expunge the records of persons falsely accused and juveniles. The Judiciary.

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**The Commonwealth of Massachusetts**

An Act relative to the expungement of records of persons falsely accused and juveniles.

*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 258D of the General Laws, as appearing in the 2010 Official  
2 Edition, is hereby amended after section 7 by adding the following new section:-

3 Section 7A. The court, upon finding that a person has been falsely accused, shall enter  
4 immediately an order directing the expungement of records maintained by the department of  
5 criminal justice information services, the probation department, and the sex offender registry.  
6 Such finding and subsequent order shall be made for any person falsely accused because of an  
7 error in identification, because of intentionally false statements that caused fraud on the court, or  
8 because of negligence on the part of the police and court staff in initiating a complaint.

9 The court shall also order the expungement of records that directly pertain to a false  
10 accusation that are in the care, custody, and control of any other state, municipal or local  
11 departments, agencies, commissions, or committees, including law enforcement agencies. Such  
12 records shall include, but not be limited to, arrest records and district attorneys' files.

13 Any order to expunge entered by the court shall provide that, in any employment  
14 application, the person may answer "no record" as to any charges expunged pursuant to this  
15 section in response to an inquiry regarding prior felony arrests, court appearances or criminal  
16 convictions.

17 The charges and convictions expunged shall not operate to disqualify a person in any  
18 examination, appointment or application for public employment in the service of the  
19 commonwealth or any other political subdivision thereof, nor shall such charges and convictions  
20 be used against a person in any way in any court proceedings or hearings before any court, board  
21 or commission to which he is a party to the proceedings.

22 For the purpose of this chapter the words, expunge, expunged, or expungement, shall be  
23 mean permanent erasure or destruction.

24 SECTION 2. Section 100B of chapter 276 of the General Laws, as so appearing, is  
25 hereby amended by adding at the end thereof the following:-

26 Notwithstanding the provisions of section 100A, any person having been adjudicated a  
27 youthful offender as prescribed by section 58 of chapter 119 and having a record of criminal  
28 court appearances and dispositions in the commonwealth on file with the office of the  
29 commissioner of probation may, on a form furnished by the commissioner and signed under the  
30 penalties of perjury, request that the commissioner seal such record.

31 The commissioner shall comply with such request provided: 1.) that said person's court  
32 appearance and court disposition records, including termination of court supervision, probation,  
33 parole, or sentence, the records for which are to be sealed, terminated not less than five years  
34 preceding such request; 2.) that said person has not been adjudicated delinquent or found guilty  
35 of any criminal offense within the commonwealth within five years preceding such request,  
36 except for a motor vehicle offense in which the penalty does not exceed a fine of fifty dollars;  
37 and 3.) said form includes a statement by the petitioner that he has not been adjudicated  
38 delinquent or found guilty of any criminal offense in any other state, U.S. possession, or in a  
39 court of federal jurisdiction, except motor vehicle offenses as aforesaid, within the preceding five  
40 years.

41 When records of youthful offender appearances and dispositions are sealed by the  
42 commissioner in his files, he shall notify forthwith the clerk and the probation officer of the  
43 courts in which the convictions or dispositions have occurred, or other entries have been made,  
44 and the department of youth services, if necessary, of such sealing, and said clerks, probation  
45 officers, and department of youth services shall each seal records of the same proceedings in  
46 their files.

47 Such sealed records of a person shall not operate to disqualify a person in any future  
48 examination, appointment, or application for public service under the government of the  
49 commonwealth or of any political subdivision thereof; nor shall such sealed records be  
50 admissible in evidence or used in any way in any court proceedings or hearings before any  
51 boards of commissioners, except in imposing sentence for subsequent offenses in delinquency or  
52 criminal proceedings.

53 Notwithstanding any other provision to the contrary, the commissioner shall report such  
54 sealed record to inquiring police and court agencies only as "sealed youthful offender record  
55 over five years old" and to other authorized persons who may inquire as "no record." The  
56 information contained in said sealed youthful offender record shall be made available to a judge  
57 or probation officer who affirms that such person, whose record has been sealed, has been  
58 adjudicated a delinquent or has pleaded guilty or has been found guilty of and is awaiting

59 sentence for a crime committed subsequent to sealing of such record. Said information shall be  
60 used only for the purpose of consideration in imposing sentence.

61 An applicant for employment with a sealed record on file with the commissioner of  
62 probation may answer “no record” to an inquiry herein relative to prior arrests or criminal court  
63 appearances.

64 SECTION 3. Said chapter 276, as so appearing, is hereby further amended by inserting  
65 after section 100C the following new section:-

66 Section 100D. A record sealed by the commissioner of probation pursuant to section  
67 100B of this chapter shall be expunged by the commissioner five years from the date of such  
68 sealing. The record of any person who has not petitioned to seal his record, but whose record is  
69 determined by said commissioner to be eligible for sealing shall be expunged 10 years from the  
70 date of such person’s eighteenth birthday.

71 Once the commissioner expunges the records within his possession, he shall forthwith  
72 notify the clerk and probation officer of the courts in which the adjudications or dispositions  
73 occurred, or other entries have been made, and the department of youth services of such  
74 expungement, and said clerks, probation officers, and department of youth services shall each  
75 expunge such records from their files.

76 In any application for employment, a person whose records have been expunged pursuant  
77 to this section may answer “no record” in response to any inquiry regarding prior arrests,  
78 delinquency appearances, delinquency adjudications, or delinquency dispositions that were  
79 contained in such expunged record.

80 The charges, adjudications, and dispositions expunged shall not operate to disqualify  
81 such person in any examination, appointment, or application for public employment in the  
82 service of the commonwealth or any other subdivision thereof, nor shall such charges,  
83 adjudications, or dispositions be used against such person in anyway in any court proceeding or  
84 hearing before any court, board, or commission to which the person is a party to the proceeding.

85 For the purpose of this chapter the words, expunge, expunged, or expungement, shall  
86 mean permanent erasure or destruction.