

HOUSE No. 2309

The Commonwealth of Massachusetts

PRESENTED BY:

Kay Khan and Carolyn C. Dykema

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 adoption of the accompanying bill:

An Act relative to sealing of juvenile records and expungement of court records.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>
<i>Byron Rushing</i>	<i>9th Suffolk</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>
<i>Jay R. Kaufman</i>	<i>15th Middlesex</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>
<i>Aaron Vega</i>	<i>5th Hampden</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Linda Dorcena Forry</i>	<i>First Suffolk</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>Cory Atkins</i>	<i>14th Middlesex</i>
<i>Ruth B. Balser</i>	<i>12th Middlesex</i>

<i>Christine P. Barber</i>	<i>34th Middlesex</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>
<i>Evandro C. Carvalho</i>	<i>5th Suffolk</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>
<i>Brendan P. Crighton</i>	<i>11th Essex</i>
<i>Josh S. Cutler</i>	<i>6th Plymouth</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>
<i>Daniel M. Donahue</i>	<i>16th Worcester</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>
<i>Dylan Fernandes</i>	<i>Barnstable, Dukes and Nantucket</i>
<i>Carole A. Fiola</i>	<i>6th Bristol</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>
<i>Carmine L. Gentile</i>	<i>13th Middlesex</i>
<i>Solomon Goldstein-Rose</i>	<i>3rd Hampshire</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>
<i>Danielle W. Gregoire</i>	<i>4th Middlesex</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>
<i>Natalie Higgins</i>	<i>4th Worcester</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Jack Lewis</i>	<i>7th Middlesex</i>
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>
<i>Adrian Madaro</i>	<i>1st Suffolk</i>
<i>John J. Mahoney</i>	<i>13th Worcester</i>
<i>Juana Matias</i>	<i>16th Essex</i>
<i>Paul McMurtry</i>	<i>11th Norfolk</i>
<i>Leonard Mirra</i>	<i>2nd Essex</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>
<i>Frank A. Moran</i>	<i>17th Essex</i>
<i>Brian Murray</i>	<i>10th Worcester</i>
<i>Alice Hanlon Peisch</i>	<i>14th Norfolk</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>Jeffrey N. Roy</i>	<i>10th Norfolk</i>
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>
<i>Alan Silvia</i>	<i>7th Bristol</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>

Chris Walsh
Bud Williams

6th Middlesex
11th Hampden

HOUSE No. 2309

By Representatives Khan of Newton and Dykema of Holliston, a petition (accompanied by bill, House, No. 2309) of Kay Khan and others relative to the sealing and court record expunging of juvenile records . The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act relative to sealing of juvenile records and expungement of court records.

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. Section 100B of chapter 276 of the General Laws, as appearing in the 2014
2 Official Edition, is hereby amended by striking out said section in its entirety and inserting in
3 place thereof the following new section:-

4 Section 100B.

5 (a) Any person having a record of entries of a court appearance in any proceeding
6 pursuant to section 52 to 62 of chapter 119, inclusive, in the commonwealth on file in the office
7 of the commissioner of probation may, on a form furnished by the commissioner, signed under
8 the penalties of perjury, request that the commissioner seal such file. The commissioner shall
9 comply with such request provided (1) that any court appearance or disposition including court
10 supervision, probation, commitment or parole, the records for which are to be sealed, terminated
11 not less than one year prior to said request; (2) that said person has not been adjudicated
12 delinquent or found guilty of any criminal offense within the commonwealth in the one year

13 preceding such request, except motor vehicle offenses in which the penalty does not exceed a
14 fine of five-hundred and fifty dollars nor been imprisoned under sentence or committed as a
15 delinquent within the commonwealth within the preceding one year; and (3) said form includes a
16 statement by the petitioner that he has not been adjudicated delinquent or found guilty of any
17 criminal offense in any other state, United States possession or in a court of federal jurisdiction,
18 except such motor vehicle offenses as aforesaid, and has not been imprisoned under sentence or
19 committed as a delinquent in any state or county within the preceding one year.

20 (b) At the time of dismissal of a case, nolle prosequi, non-adjudication or when
21 imposing any sentence, period of commitment or probation, or other disposition under section 58
22 of said chapter 119, the court shall inform all juveniles in writing of their right to seek sealing
23 under this section, and that if the case ended in a dismissal, nolle prosequi, or without an
24 adjudication, the court shall order sealing of the record at the time of the disposition unless the
25 person charged with the offense objects. The court shall also notify said juvenile that the record
26 will be expunged three years after it is sealed unless the person charged with the offense objects.

27 (c) When records of delinquency and youthful offender appearances and dispositions
28 are sealed by the commissioner in his files, the commissioner shall notify forthwith the clerk and
29 the probation officer of the courts in which the adjudications or dispositions have occurred, or
30 other entries have been made, police department from where the charges originated and the
31 department of youth services of such sealing, and said clerks, probation officers, police
32 department and department of youth services likewise shall seal records of the same proceedings
33 in their files. Sealing of records under this section shall not preclude expungement of police
34 records. The commissioner of probation also shall notify the State Police of such sealing and the

35 State Police shall notify the Federal Bureau of Investigation of the sealing order and request that
36 the FBI note that the record was sealed in its records if it has a record of the case.

37 Such sealed records of a person shall not operate to disqualify a person in any future
38 examination, appointment or application for public service under the government of the
39 commonwealth or of any political subdivision thereof; nor shall such sealed records be
40 admissible in evidence or used in any way in any court proceedings or hearings before any
41 boards of commissioners, except in imposing sentence for subsequent offenses in juvenile or
42 criminal proceedings.

43 Notwithstanding any other provision to the contrary, the commissioner shall report such
44 sealed juvenile record to inquiring police and court agencies only as "sealed juvenile record over
45 one year old" and to other authorized persons who may inquire as "no record". The information
46 contained in said sealed juvenile record shall be made available to a judge or probation officer
47 who affirms that such person, whose record has been sealed, has been adjudicated a delinquent
48 or has pleaded guilty or has been found guilty of and is awaiting sentence for a crime committed
49 subsequent to sealing of such record. Said information shall be used only for the purpose of
50 consideration in imposing sentence.

51 SECTION 2. Said chapter 276, as so, is hereby further amended adding, after section
52 100D, the following new section:-

53 Section 100E. Expungement of a court record.

54 (a) For the purpose of this section, the words expunge, expunged and expungement
55 shall mean permanent erasure or destruction of information so that the information is no longer
56 maintained in any file or record in an electronic, paper or other physical form.

57 (b) Notwithstanding section 100B, a person with a record of court appearances and
58 dispositions in any proceeding pursuant to section 52 to 62 of chapter 119, inclusive, shall have
59 the records of such a proceeding expunged upon the filing of a petition to expunge records with
60 the commissioner of probation provided that:

61 (1) any juvenile court appearance or disposition including court supervision, probation,
62 commitment or parole, the sealed records of misdemeanor offenses for which are to be expunged
63 terminated not less than three years prior to said request; other sealed records may be expunged
64 upon the filing of a petition with the court in which the appearance or disposition occurred if
65 there is good cause to expunge the record, which shall include a determination of whether there
66 is a foreseeable disadvantage related to employment, housing or access to other opportunities if
67 the records are not expunged.

68 (2) that said person had no juvenile adjudication, was not found guilty of any criminal
69 offense within the commonwealth in the three years preceding such request, except motor
70 vehicle offenses in which the penalty does not exceed a fine of five hundred and fifty dollars, and
71 was not imprisoned under sentence or committed to the Department of Youth Services within the
72 commonwealth within the preceding three years; and

73 (3) said form includes a statement by the petitioner that during the preceding three years,
74 the petitioner had no juvenile adjudication , was not found guilty of a criminal offense in any
75 other state, United States possession or in a court of federal jurisdiction, except such motor
76 vehicle offenses as aforesaid, and was not imprisoned under sentence or committed as a juvenile
77 in any state or county within the preceding three years.

78 (c) The court shall also allow a petitioner to expunge the record if a case ended in a
79 dismissal, nolle prosequi, or without an adjudication because: (1) the person charged with an
80 offense was misidentified or mistakenly charged with an offense due to an error by law
81 enforcement or court employees, or the person arrested or accused of committing the offense
82 provided a false name; or (2) fraud was perpetrated on the court related to offense.

83 (d) The form of the petition to expunge shall be furnished by the commissioner of
84 probation.

85 (e) For any petition to expunge granted under this section, the clerks and probation
86 officers of the courts in which the proceedings occurred or were initiated shall expunge all the
87 records of the proceedings in their files in their paper, electronic, and any other form.

88 (f) Notwithstanding any other general or special law to the contrary, in the case of an
89 expunged record, the commissioner of probation and the clerk of courts in a district court,
90 superior court, juvenile court and the Boston municipal court, shall report that no record exists in
91 response to inquiries.

92 An applicant for employment, housing or an occupational license with an expunged
93 record may answer no record to any inquiry regarding prior arrests, adjudications or other
94 dispositions that were contained in an expunged record.

95 The expunged record shall not operate to disqualify any person in an examination,
96 appointment or application for public employment in the service of the commonwealth or a
97 subdivision thereof and no such appearances or dispositions shall be used against a person in any
98 way in any court proceeding or hearing before a court, board or commission to which that person
99 is a party to the proceeding.

100 (g) Notwithstanding any General or Special Laws to the contrary, once the
101 commissioner of probation expunges the records within the commissioner’s possession, the
102 commissioner shall notify the department of youth services of the expungement and the
103 department shall expunge such records from the department’s files. Any records subject to an
104 expungement order shall be expunged in their paper, electronic and any other physical form.

105 (h) The commissioner of probation shall also notify the State Police of such
106 expungement and the State Police shall notify the Federal Bureau of Investigation of the
107 expungement order and request that the FBI expunge its fingerprint and other records related to
108 the case.

109 SECTION 3. Notwithstanding any general or special law to the contrary, juvenile
110 records, including, but not limited to, juvenile conviction data, juvenile arrest data, or juvenile
111 sealed record data, shall not be shared with the Registry of Motor Vehicles by the court,
112 probation, district attorney, law enforcement agencies, the department of criminal justice
113 information services, or any other agency or entity that lawfully possesses such records.