



Expungement

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

PLEASE CO-SPONSOR S.944 and H.2309

Lead Sponsors – Senator Karen Spilka and Representatives Kay Khan and Carolyn Dykema

"Criminal records can make it difficult for young offenders to find a job, get into college, or borrow money. An expungement bill would create a process by which certain nonviolent juvenile offenses could be removed from a criminal record. It's a way to reduce the likelihood that a teen who makes bad choices will become a career criminal."

The Boston Globe Editorial Board

Permanent Juvenile Court Records are Barriers to Success and Re-Entry

Most youth with juvenile court records will not offend as adults. The mere presence of a juvenile court record is not an indication of guilt nor an indication of public safety risk. In Massachusetts, less than 24% of young people who were arrested were eventually placed on Probation or committed to DYS, yet their juvenile record will persist as a barrier for many yearsⁱ.

However, juvenile court records follow youth for the rest of their lives. Students can be expelled from school based on a juvenile court record.ⁱⁱ A juvenile record is a barrier to accessing higher education, employment, maintaining housing, or pursuing a career in the military. Even decades later, a juvenile court record can prevent an individual from becoming a foster parentⁱⁱⁱ or obtaining certain types of employment.^{iv} Juvenile records are also available to local law enforcement agents, courts, and the armed forces. **Juvenile court records cannot be expunged even if the case was dismissed.** A permanent court record that interferes with individuals' access to education and employment decades later undermines the rehabilitative purpose of juvenile court proceedings by attaching precisely the stigma that our juvenile court system is intended to avoid.

Sealing does not provide adequate protection against the harmful impact of a permanent juvenile court record. Summer jobs for teens have been tied to a 43% reduction in juvenile arrest^v, yet juvenile court records, including non-conviction information, are accessible to certain teen employers and a three year wait for sealing non-convictions hinders a young person's access to summer jobs. While Massachusetts allows juvenile court records to



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be sealed under certain circumstances, sealed records are not destroyed, and still may be accessed in some situations.^{vi} Furthermore, sealed records are reported to police and court agencies as “sealed delinquency record over three years old.”^{vii} Because this indicates nothing about the nature or disposition of the case, individuals learning of a sealed record may assume that the child was adjudicated delinquent for a serious offense. For this reason, attorneys often advise clients against sealing a juvenile record that contains minor offenses or charges that were dismissed. Sealing therefore provides little protection against the harms of a permanent juvenile court record.

Juvenile “rap sheets” are inaccurate. Sealed juvenile records of individuals will appear in national FBI fingerprint based criminal history checks. Because less than half of disposition data is submitted by police departments to the FBI, the arrest “rap sheets” rarely reflect the disposition of an arrest. Most federal agencies access FBI records on prospective and current employees.

Improving Sealing

- Teens are currently not eligible to seal their record for at least three years, even if the case is dismissed or not prosecuted. This bill would reduce the period of sealing to one year (with no new adjudications or convictions). This bill would also allow for the immediate sealing of juvenile records of cases that are dismissed or not prosecuted.
- Sealing orders would be communicated to police to ensure the sealing of FBI arrest records as well.
- This bill would also ensure that juvenile court records can no longer be accessed through the Registry of Motor Vehicles

Allowing for Expungement

The bill is carefully tailored to address public safety concerns, as those with recent offenses are not eligible for sealing or expungement.

- Juvenile records sealed for at least three years would be eligible for expungement. Records of felony offenses can only be expunged with a petition to the court.
- Expungement orders would be communicated to police to ensure the expungement of FBI arrest records.

Impact of Expungement on Reducing Recidivism

- States where there are minimal administrative barriers^{viii} to sealing and/or expungement of juvenile records have significantly reduced re-arrest/recidivism rates and increased college graduation and incomes as these young people transition to adulthood.^{ix}

ⁱ Massachusetts Juvenile Justice Advisory Committee, Statewide Disproportionate Minority Contact Data Report, 2015 (on file with EOPPS)

ⁱⁱ M.C.L. ch. 71, § 37H ½

ⁱⁱⁱ M.G.L. ch. 6 §172B

^{iv} M.G.L. ch. 6 §172F and §172G

^v Washington Post, “Chicago gave hundreds of high-risk kids a summer job. Violent crime arrests plummeted.” Dec 8, 2014.

^{vi} M.G.L. ch. 6 §172B&F

^{vii} M.G.L. ch. 276 § 100B

^{viii} Automatic sealing of records has been ruled unconstitutional by the SJC, however, S905 addresses the constitutional concern by requiring the filing of a petition for expungement

^{ix} Daniel Litwok, “Have You Ever Been Convicted of a Crime? The Effects of Juvenile Expungement on Crime, Educational, and Labor Market Outcomes”. Available at <http://econ.msu.edu/seminars/docs/Expungement%20112014.pdf>