



SUFFOLK COUNTY DISTRICT ATTORNEY'S OFFICE DISTRICT ATTORNEY RACHAEL ROLLINS

EXPUNGEMENT

District Attorney Rachael Rollins recognizes the stigmatizing impact of having a conviction on your record and is committed to ensuring residents of Suffolk County can move on from their pasts. This is especially true in cases involving low-level offenders who pose no threat to public safety or have long-settled convictions. As just one example of her commitment, D.A. Rollins wants to share the following resources about Massachusetts' expungement process with Suffolk County residents.

As a result of the 2018 Criminal Justice Reform Law (G.L. c. 276), the Commonwealth broadened access to expungement for state-level offenses. Expungement means that your criminal records are destroyed and no longer available. **BEFORE EXPUNGING**, get multiple certified copies of docket sheets, complaints and other records you may need later. If you are not a citizen, do not expunge any records and talk to an immigration lawyer about your criminal cases and record expungement. There also may be other situations (e.g. pending civil litigation regarding your criminal record), where destruction of your records will interfere with exercise of your other legal rights.

WHAT IS THE PROCESS?

You must fill out, sign and mail (or deliver) a petition to expunge to the Commissioner of Probation, One Ashburton Place, Boston, MA 02118. The process is free.

After you file the petition to expunge your records, it is processed as follows:

- The Commissioner has 60 days to review your petition and it appears you may be eligible to seal your records, a copy of the petition is sent to the District Attorney (D.A.) who has 60 days to object.
- Within 65 days of the objection or no response from the D.A., the petition is sent to the court that handled your case.
- If there is an objection from the D.A, the court holds a hearing within 21 days. If there is no objection, the court can allow your petition on the papers.
- A judge can allow or deny your petition based on the "best interests of justice" and has to make written findings of fact.

The new law does not define when it is in "the best interest of justice" to expunge records. However, it is likely that the judge will consider the Commonwealth's need to retain the records because unlike sealing, expungement destroys the records and local law enforcement no longer have access to the records.

Note: Some of the language above was taken from Greater Boston Legal Services CORI & Re-entry Project's *Know Your CORI Rights* booklet: <https://www.gbls.org/our-work/cori-and-re-entry-project>. Find more information about the expungement process here: <https://www.mass.gov/how-to/request-a-time-based-expungement-of-your-criminal-record>.

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 if you want to try to 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);
 - ✓ a decriminalized offense (e.g. marijuana possession under 2 ounces, 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 617-603-1700. You can read booklets on our website at:

<https://www.gbls.org/what-we-do/cori-and-reentry>

PETITION FOR EXPUNGEMENT
G.L. c. 276, § 100K

DOCKET NO.

**Trial Court of
Massachusetts**



YOUR NAME AND ADDRESS

COURT DEPARTMENT

- Boston Municipal Court Juvenile Court
 District Court Superior Court

COURT DIVISION

I request the assistance of an interpreter for the following language: _____
(There is no charge to you for interpreter or translation services)

I request that this Court order that the records of the following charges be expunged (list charges):

I make this request because the records were created as a result of:

- False use of my identification
 Unauthorized use of my identity
 Theft of my identity
 The offense(s) described above is/are no longer a crime
 Errors by law enforcement
 Errors by civilian or expert witness(es)
 Errors by Court employees
 Fraud perpetrated upon the Court

Specifically (provide as much detail as possible explaining the reasons for your request):

- I request that the Court hold a hearing on my petition.
 If you need more space to explain, check this box and continue in the space provided on the back of this sheet. You may also attach additional pages if necessary.
 If you have documents that support your petition, check this box and attach them to this petition.

I provided this petition and supporting documents to the District Attorney's Office of the county that prosecuted the case

by delivering a copy in hand **OR** by mailing a copy via first class mail to the District Attorney's Office on

_____ date

I swear under the pains and penalty of perjury that all information I provided in this Petition is true to the best of my knowledge and belief.

DATE:

PETITIONER'S SIGNATURE

Please see reverse side for instructions and space for additional information.

INSTRUCTIONS TO PETITIONER:

Reasons for Expunging a Record Under G.L. c. 276, § 100K

Under chapter 276, § 100K, you can directly ask a judge to permanently destroy, or “expunge”, the official court records that were created because of one of the following reasons: (i) false use of your identification; (ii) unauthorized use of your identity; (iii) theft of your identity; (iv) an offense that is no longer a crime; (v) demonstrable errors by law enforcement; (vi) demonstrable errors by civilian or expert witnesses; (vii) errors by a court employee; or (viii) demonstrable fraud perpetrated upon the court.

Under this law, the judge can order expungement of the court record only if he or she determines on clear and convincing evidence that the record was created because of one of the reasons above and that expungement of the record would be in the interests of justice.

Expungement may also be available in circumstances other than those listed above. If you want to seek expungement under one of these other circumstances, you must fill out a different petition and submit it to the Office of the Commissioner of Probation. You can find information about these other provisions, including eligibility requirements, at www.mass.gov.

What You Must Show

You must demonstrate to the judge that the court record was created because of one of the reasons above and that expunging the record would be in the interests of justice. When you fill out this petition, you should provide as much detail as possible. You may give the judge copies of documents that support your reasons for asking for expungement. On the petition, there is a box to check for a hearing. At a hearing, you can tell the judge why your petition fits under one of the reasons above, and why granting the petition would be in the interests of justice.

Multiple Charges

On this petition, you should include all of the charges connected to the case that you are asking the judge to expunge. If you would like to ask a judge to expunge records in different cases, you should file separate petitions for each case.

Where to File the Petition

You should file this petition in the clerk's office in the court where the case was heard.

Providing a Copy of the Petition to the District Attorney's Office

You must provide a copy of this petition and any documents that you file with the petition to the District Attorney's Office that prosecuted the case on or before the day that this petition is filed in the court. You can do this by bringing a copy to the District Attorney's Office or by mailing a copy to the District Attorney's Office by first class mail.

Records will be Permanently Destroyed

An order of expungement requires the clerk of the court where the record was created to destroy/permanently erase the trial court records within the care, custody or control of the clerk's office, probation, and the Department of Criminal Justice Information, except for information contained in the domestic violence record keeping system. It also requires criminal justice agencies to destroy/permanently erase the record from all publicly available police logs maintained pursuant to G.L. c. 41, § 98F within their care, custody or control. Further, criminal justice agencies are required to respond to inquiries from any party, including criminal justice agencies, a county agency, a municipal agency or state agency that no record exists.

While the clerk will provide you with a copy of the expungement order, if you want copies of the records, any documents that you filed, or the petition, you must make copies *before* the court orders expungement. Once the record is destroyed, you will not be able to get a copy from the court.

Additional Information:
