

The Future is Automatic: Necessary Changes to Massachusetts' CORI Sealing Process

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INTRODUCTION

Criminal records and the laws surrounding them are more relevant now than ever, as today, one in three Americans has a criminal record.¹ While the United States has committed itself to providing equal housing and employment opportunities to *all citizens* countless times throughout its history,² those with criminal records continue to struggle securing access and stability for both.³ Laws regulating access to criminal records and the ways in which employers and landlords may consider them vary from state to state, with Massachusetts widely considered more progressive than most.⁴ The protections that Massachusetts law affords to

* J.D., New England Law | Boston (2023). This Note was inspired by my experience with the New England Law CORI Sealing Initiative and by all those affected by inadequate criminal justice laws. I want to thank Anna Hagg, Nicole Barrett, Benito Zappia, and the entire New England Law Review staff for their contributions to this Note. Finally, I want to thank my wife, Rachel Tucker Bobbitt, for supporting and encouraging me in everything that I do.

¹ Chidi Umez & Rebecca Pirius, *Improving Access to Licensed Occupations for Individuals with Criminal Records*, NCSL: NAT'L CONF. OF ST. LEGISLATURES (July 17, 2018), <https://perma.cc/ZU5W-5SFY>.

² See *No Second Chance: People with Criminal Records Denied Access to Public Housing*, HUMAN RIGHTS WATCH § 3 (Nov. 18, 2004), <https://perma.cc/JM8U-L77P> (mentioning several acts throughout America's history that call for equal opportunities for all) [hereinafter *No Second Chance*].

³ See *generally Collateral Consequences*, PRISON POL'Y INITIATIVE, <https://perma.cc/KP52-ANH4> (last visited Nov. 25, 2022) (emphasizing the millions of people dealing with collateral consequences).

⁴ Lisa Guerin, *Massachusetts Law on Employer Use of Arrest and Conviction Records*, NOLO, <https://perma.cc/G44Z-JPQF> (last visited Nov. 25, 2022) (describing Massachusetts as having "among the strongest protections for applicants with criminal records").

those with criminal records aim to reduce the accompanying collateral consequences—adverse effects in housing, employment, and other social and economic aspects of life—but they simply do not go far enough.⁵ Recent changes in Massachusetts’ criminal record system brought greater protection than previously enjoyed under Massachusetts law, but landlords and employers still maintain broad access to applicants’ criminal records.⁶

Several states, including Massachusetts, have recognized the need for change in recent years by proposing and passing laws that advance or automate the criminal record sealing process.⁷ Some have passed more far-reaching legislation than others, but none have enacted a system with an adequate balance of both eligibility for and access to criminal record sealing.⁸ Simply put, it is difficult, if not impossible, for criminal record sealing reform to be effective without ensuring at least three things: (1) eligibility requirements must be reasonable; (2) the sealing process must be accessible and navigable; and (3) those with criminal records must be adequately informed of how the process works.⁹

This Note discusses the current criminal record sealing process in Massachusetts and calls for changes such as “no action” automatic record sealing and adequate community outreach aimed at reducing the collateral consequences of criminal records. Specifically, Part I describes the current protections afforded to those with criminal records and how criminal records can be accessed or sealed. Part II explains the impact that landlord and employer access to criminal records has on individuals, particularly focusing on discrimination in housing and employment applications. Part III argues that the Massachusetts legislature must act immediately to capitalize on the widespread, bipartisan support for automatic sealing and other criminal record reforms. Part IV proposes several changes to Massachusetts’ criminal record sealing system including automatic sealing of qualified charges, discretionary early sealing, and effective community

⁵ See generally AM. BAR ASS’N, COLLATERAL CONSEQUENCES OF CRIM. CONVICTIONS (2018), <https://perma.cc/6RMN-UKGX> (defining collateral consequences of criminal records).

⁶ See generally GREATER BOS. LEGAL SERVS., KNOW YOUR CORI RIGHTS: APPLYING FOR JOBS, HOUSING OR OTHER OPPORTUNITIES AFTER SEALING CRIMINAL RECORDS 5 (2019), <https://perma.cc/9SY6-UU24> [hereinafter KNOW YOUR CORI RIGHTS] (describing the state of criminal record sealing following the 2018 reforms).

⁷ See, e.g., CCRC Staff, *After a Haul of Record Relief Reforms in 2020, More States Launch Clean Slate Campaigns*, COLLATERAL CONSEQUENCES RES. CTR. (Feb. 17, 2021), <https://perma.cc/228N-Q4H6> [hereinafter *More Clean Slate*].

⁸ Compare 18 PA. CONS. STAT. ANN. § 9122.2(a), (c) (West 2022) (calling for automatic sealing of eligible charges), with UTAH CODE ANN. § 77-40a-203(1), (2) (West 2022) (calling for automatic expungement of eligible charges).

⁹ See generally CCRC Staff, *From Reentry to Reintegration: Criminal Record Reforms in 2021*, COLLATERAL CONSEQUENCES RES. CTR. (Jan. 24, 2022), <https://perma.cc/SQ89-TZ43> [hereinafter *Reentry to Reintegration*] (calling for increased access to criminal record sealing and providing information on the availability of sealing).

outreach programs to ensure the sealing process is accessible and successful.

I. Background

Massachusetts has a prominent history as a leader in criminal justice reform, replete with far-reaching changes in policing, sentencing, and criminal records.¹⁰ In 2010, Massachusetts overhauled its laws on criminal record access, with a focus toward providing greater protections in employment and housing for those with criminal records.¹¹ In 2018, the Commonwealth passed further amendments to these laws, including changes to what appears on a criminal record requested by an employer or landlord.¹² Today, Massachusetts' Criminal Offender Record Information ("CORI") is a "[n]ame-based court arraignment record" that keeps track of each arraignment and its respective outcome, even if that outcome is not a conviction.¹³ Law enforcement and the courts can request a CORI as part of their law enforcement duties, and individuals can request their own CORI for a fee.¹⁴ Otherwise, private individuals (including landlords and employers) must get written permission to request access to an individual's CORI.¹⁵ While this permission requirement is intended to protect the privacy of individuals with records, it fails to provide much protection in the area of employment or housing because the individual lacks choice; nine out of ten employers and four out of five landlords make that request of all applicants.¹⁶

A. Current Protections in Housing and Employment

Applicants with criminal records are afforded some protection in both housing and employment but are better protected when applying for employment, particularly in how their criminal record can be requested and

¹⁰ See, e.g., Michael Crowley, *Massachusetts Sets an Example for Bipartisan Criminal Justice Reform*, BRENNAN CTR. FOR JUST. (May 1, 2018), <https://perma.cc/KY4W-UJ9L>.

¹¹ GABRIELLA PRIEST ET AL., THE CONTINUING CHALLENGE OF CORI REFORM: IMPLEMENTING THE GROUNDBREAKING 2010 MASSACHUSETTS LAW 5 (2012), <https://perma.cc/A74R-2HKP>.

¹² *Massachusetts Restoration of Rights & Record Relief*, COLLATERAL CONSEQUENCES RES. CTR. §§ III–IV, <https://perma.cc/5EA6-BZ7T> (last updated Nov. 19, 2022).

¹³ See *Massachusetts Criminal Offender Record Information (CORI)*, MASS.GOV, <https://perma.cc/UR4Q-945M> (last visited Nov. 25, 2022).

¹⁴ Greater Bos. Legal Servs., *Who Can See My CORI?*, MASSLEGALHELP, <https://perma.cc/ED4A-PKSY> (last updated Oct. 2015) [hereinafter *Who Can See My CORI?*]; see also GREATER BOS. LEGAL SERVS., BOOKLET 1: HOW TO GET A COPY OF YOUR CRIMINAL RECORD (CORI) (2016), <https://perma.cc/38WX-P3RM> (explaining that individuals receiving certain public assistance automatically qualify for a fee waiver).

¹⁵ *Who Can See My CORI?*, *supra* note 14.

¹⁶ Rebecca Vallas et al., *A Criminal Record Shouldn't Be a Life Sentence to Poverty*, CTR. FOR AM. PROGRESS (May 28, 2021), <https://perma.cc/3TKA-ALR9>.

considered.¹⁷ For instance, both employers and landlords are prohibited from requesting that applicants provide a copy of their own CORI and instead must procure it through their own means after gaining permission from the applicant.¹⁸ However, employers are prohibited from asking applicants about their criminal records on initial applications, while landlords are not restricted by these “Ban the Box” laws.¹⁹ Beyond controlling how a landlord or employer may obtain an applicant’s criminal record, the breadth of information contained in a CORI tempers the protections provided by Massachusetts law.²⁰

Under Massachusetts law, an employer or private landlord generally has access to an applicant’s “standard” CORI.²¹ This access allows the employer or landlord to see all pending criminal charges (including continuations without findings), misdemeanor convictions within the past five years, felony convictions within the past ten years, and all convictions for murder, manslaughter, or sexual crimes, regardless of how long ago the conviction occurred.²² The time for convictions to be excluded from a CORI is measured from the date of the final disposition or release from incarceration, whichever is later.²³ Hypothetically, someone convicted for marijuana distribution that served ten years would still have the conviction on their CORI for an additional ten years (at least) after leaving prison unless sealed by the state.²⁴ However, even if enough time has passed for a charge to be excluded from the individual’s CORI, the employer or landlord may still see the charge if it has not been sealed and the individual has been convicted of another misdemeanor in the last five years or a felony in the last ten.²⁵

Further, the law affords individuals certain protections that only apply in employment.²⁶ First, Massachusetts’ “Ban the Box” law states that employers may not ask about criminal records on initial applications.²⁷ Once

¹⁷ *Guide to Criminal Records in Employment and Housing*, MASS.GOV, <https://perma.cc/7HVC-9D9Q> (last visited Nov. 25, 2022) [hereinafter *Guide to Criminal Records*].

¹⁸ *Id.* (explaining that the “Ban the Box” law only applies to employers and prohibits them from asking applicants about their criminal record on initial applications).

¹⁹ *Id.*; Guerin, *supra* note 4.

²⁰ See Osborne Jackson & Bo Zhao, *The Effect of Changing Employers’ Access to Criminal Histories on Ex-Offenders’ Labor Market Outcomes: Evidence from the 2010-2012 Massachusetts CORI Reform* 5, 8–9 (Fed. Rsrv. Bank of Bos., Working Paper No. 16-30, 2017), <https://perma.cc/T44C-2CPS>.

²¹ Mass. Dep’t of Crim. Just. Info. Servs., *iCORI Policy for Organizations*, MASS.GOV 6, <https://perma.cc/8WJ9-CQEC> (last visited Nov. 25, 2022).

²² *Id.*

²³ *Id.*

²⁴ See *id.*

²⁵ Jackson & Zhao, *supra* note 20, at 8–9.

²⁶ Laura Franks, Mark W. Batten & Samantha Regenbogen Manelin, *Massachusetts Modifies “Ban the Box” Law*, PROSKAUER (May 2, 2018), <https://perma.cc/K6GH-P57Y>.

²⁷ MASS. GEN. LAWS ch. 151B § 4(9.5) (2022).

an individual advances past the application stage, employers may access the individual's CORI (with permission), but employers still may not *ask* about non-convictions, certain first convictions, or misdemeanor convictions from over three years ago.²⁸ The employer also must provide all criminal record information it finds to the applicant before the employer may ask about the record or make a decision based on it.²⁹ Finally, any employer that uses criminal record information must give notice to an applicant that they may answer "no record" for anything sealed or expunged.³⁰

There are relatively fewer protections in housing for those with criminal records than in employment.³¹ For instance, a landlord may not make a blanket rule that rejects any applicant that has a criminal record, but so long as that landlord claims to have done an "individualized assessment" of the applicant, they are free to reject that application based solely on the criminal record.³² Further, while private landlords only have access to an applicant's standard CORI, public housing and multi-family, subsidized housing landlords have access to an individual's CORI at a "required 1" level which includes all convictions, regardless of when they occurred, unless sealed or expunged by the state.³³ However, for both private and public housing, if a landlord denies the application based on information in the CORI, the landlord must show the applicant which part of the CORI is objectionable and give the applicant a chance to dispute that information.³⁴ A landlord is also legally permitted to ask about an individual's sealed records, but that individual is free to answer that they have no record, just as they are with employers.³⁵ After an individual successfully petitions the Commissioner of Probation to seal their record, any charges sealed will not appear on the CORI pulled by landlords or employers (although courts and law enforcement will still have access to the sealed information).³⁶

B. *The State of Record Sealing in Massachusetts*

A full CORI—the type only accessible by law enforcement—contains all of an individual's arraignments, including sealed convictions and most

²⁸ *Guide to Criminal Records*, *supra* note 17 (explaining that employers may not *ask* about some offenses they nonetheless see).

²⁹ *Guide to Criminal Records*, *supra* note 17.

³⁰ *Guide to Criminal Records*, *supra* note 17.

³¹ See generally Vallas et al., *supra* note 16 (discussing the bipartisan momentum for clean slate and fair chance licensing policies which are designed to help remove economic and employment barriers from those with criminal records).

³² See *Guide to Criminal Records*, *supra* note 17.

³³ ANNETTE R. DUKE, LEGAL TACTICS: TENANTS' RIGHTS IN MASSACHUSETTS 31 (8th ed. 2017), <https://perma.cc/2SDY-RBUP>.

³⁴ *Id.*

³⁵ See KNOW YOUR CORI RIGHTS, *supra* note 6, at 5.

³⁶ KNOW YOUR CORI RIGHTS, *supra* note 6, at 5–6.

other dispositions, unless expunged by the state.³⁷ When a record is expunged by the state, it is effectively destroyed and no longer accessible by anyone, including law enforcement and the courts.³⁸ Sealing is similar to expungement in that the record is no longer accessible by the general public (including landlords and employers), but differs significantly in that the record still exists and is accessible by law enforcement and the courts.³⁹ The process and requirements to seal a charge depend on whether the individual was convicted and how long it has been since the final disposition of the charge.⁴⁰ Conviction or not, the record sealing process is complex and sometimes unnavigable absent assistance of counsel.⁴¹

The Massachusetts administrative sealing process (“100A process”) is commonly referred to as “automatic” sealing because, if the individual meets the eligibility requirements to seal a charge, the Commissioner of Probation must approve a petition to seal without discretion.⁴² An individual can elect the 100A process for any charge on the individual’s record that meets the statutory requirements, conviction or not, but all convictions must go through this process to be sealed.⁴³ A misdemeanor charge may be sealed through the 100A process three years after the date of the final disposition of the charge.⁴⁴ Similarly, a felony charge is eligible to be sealed after seven years from the date of the final disposition.⁴⁵ No convictions qualify for sealing under the 100A process if the individual has been convicted of another misdemeanor or felony in the past three or seven years respectively.⁴⁶ Both “time out” periods are measured from the date of the final disposition of the charge, whether that be conviction, release from prison, or some other non-conviction outcome.⁴⁷ There are several exceptions to these rules, including: (1) 100A does not apply to most firearms charges or crimes against public justice (as defined in Mass. Gen. Laws ch.

³⁷ MASS. GEN. LAWS ch. 276, § 100C (including charges that ended in a not guilty verdict from a judge or jury, a no bill returned from a grand jury, or a finding of no probable cause on an individual’s CORI); see *Who Can See My CORI?*, *supra* note 14.

³⁸ *Find Out if You Can Expunge Your Criminal Record*, MASS.GOV, <https://perma.cc/NV53-SRBB> (last visited Nov. 25, 2022).

³⁹ KNOW YOUR CORI RIGHTS, *supra* note 6, at 5.

⁴⁰ *Find Out if You Can Seal Your Criminal Record*, MASS.GOV, <https://perma.cc/Z69Q-P93P> (last visited Nov. 25, 2022).

⁴¹ See generally David Russcol, *How to Seal Records of State Criminal Charges in Massachusetts*, BOS. LAW. BLOG (Sept. 11, 2015), <https://perma.cc/T4E5-JTNC> (describing the legal intricacies of both processes of sealing).

⁴² MASS. GEN. LAWS ch. 276, § 100A (2022).

⁴³ *Id.*

⁴⁴ *Id.* (defining final disposition as “court appearances and court disposition records, including any period of incarceration or custody”).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ See *id.*

268, §§ 1-40); (2) sex offense convictions require an individual to wait fifteen years; and (3) decriminalized offenses are automatically eligible without a waiting period.⁴⁸ The Commissioner of Probation will automatically approve an individual's petition to seal their record if all charges meet the 100A requirements (at no cost to the petitioner).⁴⁹ However, absent a petition to the Commissioner, charges that meet these eligibility requirements remain on an individual's CORI and are accessible by landlords and employers—a feature of the system indicating that the colloquial reference to the 100A process as “automatic” is a bit of a misnomer.⁵⁰

For charges that did not end in convictions and have not met the time-out requirement, individuals must petition the court and appear before a judge in a process commonly referred to as 100C sealing.⁵¹ With the petition, individuals submit an affidavit describing how they have been affected by their record and provide reasons why their record should be sealed.⁵² At the hearing, the judge considers this affidavit, along with potential testimony from the individual petitioning the court and anyone involved in the incident that led to the charges in the first place.⁵³ Under the standards set forth in *Commonwealth v. Pon*, an individual must show “good cause” to have their record sealed.⁵⁴ *Pon* set forth a non-exhaustive list of discretionary factors that favor record sealing and should be considered by the judge, including: the Commonwealth's compelling interest in reducing recidivism by promoting housing and employment opportunities; the barriers a criminal record presents to the individual; credible and foreseeable disadvantages from the CORI; and the nature and reason of a particular disposition.⁵⁵ *Pon* also reiterated that judges are not to consider the value to law enforcement in keeping the record open to the public, as law enforcement maintains *full access* to all sealed records.⁵⁶

Similar to the housing and employment protections afforded under Massachusetts statutory law, wherein the legislature tells landlords and employers how they should consider criminal records, the *Pon* standard tells judges how to evaluate sealing petitions but leaves the ultimate decision in

⁴⁸ MASS. GEN. LAWS ch. 276, § 100A.

⁴⁹ *Id.*; see also *Request to Seal Your Criminal Record*, MASS.GOV, <https://perma.cc/Z7J9-YMCY> (stating “there is no fee to seal your criminal record”) (last visited Nov. 25, 2022).

⁵⁰ See MASS. GEN. LAWS ch. 276, § 100A (providing no mechanism for automatic sealing).

⁵¹ *Id.* § 100C.

⁵² *Commonwealth v. Pon*, 469 Mass. 296, 316–17 (2014) (explaining that the affidavit should point out specific hardships caused by the individual's CORI and positive changes the individual has made in their life that support sealing their record).

⁵³ *Id.* at 318–19.

⁵⁴ *Id.* at 322.

⁵⁵ *Id.* at 316–19.

⁵⁶ *Id.* at 319.

the hands of the individual judge.⁵⁷ Unfortunately, those with criminal records face the harsh reality that one judge may deny a petition to seal for lack of “good cause” where another would have found the requirement satisfied.⁵⁸ This inconsistency is another factor leading to harsh, inequitable collateral consequences that affect a large portion of Massachusetts citizens.⁵⁹

II. Collateral Consequences of Criminal Records

While expungement is a powerful tool for reducing or even eliminating some collateral consequences, sealing legislation is more easily expanded because it ensures that law enforcement maintains access to these records while still greatly alleviating the impact of the record on the individual.⁶⁰ The Supreme Judicial Court of Massachusetts acknowledged the need for easier access to sealing when it instructed Massachusetts judges to consider the real-life impact of criminal records when ruling on 100C petitions to seal.⁶¹ The effects of criminal records are hard to accurately quantify because it is impossible to account for all situations.⁶² For example, a study aiming to quantify the effect that criminal records have on housing application approval ratings cannot accurately account for those with records that choose not to apply at all for fear of rejection under the current system.⁶³ However, even without mathematical certainty, it is clear that employer and landlord access to criminal records can and does produce substantial collateral consequences.⁶⁴

A. Collateral Consequences in Housing

Studies indicate that formerly incarcerated individuals are ten times more likely to experience homelessness than those without a record.⁶⁵ While many factors outside of a criminal record contribute to homelessness—such as cost of housing, lack of available housing, and unemployment—an individual’s inability to gain housing due to their CORI often serves as an

⁵⁷ *Id.* (“providing guidance to the lower courts on how to apply the *balancing test*”) (emphasis added).

⁵⁸ *See Pon*, 469 Mass. at 315–20.

⁵⁹ *See* Chris Skall, *Journey Out of Neverland: CORI Reform, Commonwealth v. Pon, and Massachusetts’s Emergence as a National Exemplar for Criminal Record Sealing*, 57 B.C. L. REV. 337, 376 (2016).

⁶⁰ *See generally* *Massachusetts Restoration of Rights & Record Relief*, *supra* note 12, § III (distinguishing the effects of sealing from those of expungement).

⁶¹ *See Pon*, 469 Mass. at 319.

⁶² *No Second Chance*, *supra* note 2, § V.

⁶³ *No Second Chance*, *supra* note 2, § V.

⁶⁴ *See* Lucius Couloute, *Nowhere to Go: Homelessness Among Formerly Incarcerated People*, PRISON POL’Y INITIATIVE (Aug. 2018), <https://perma.cc/MPH3-R2QC>.

⁶⁵ *Id.*

insurmountable barrier.⁶⁶ While Massachusetts has done an admirable job in limiting the number of offenses that warrant automatic denial of housing, the level of criminal record access that landlords currently enjoy results in troubling consequences.⁶⁷ Many landlords deny housing to those with criminal records, not because they are required to by law, but because they are simply unwilling to rent to anyone with a criminal record under any circumstance.⁶⁸ A study of private landlords consisting of mostly older white men (the most common landlord demographic in America) showed that as little as 43% of landlords are willing to even *consider* applications of those with felony convictions, and 67% are willing to consider those with misdemeanor convictions.⁶⁹ Under Massachusetts' current system, if an applicant has a single conviction that qualifies to be included on their CORI, and is applying for public housing generally, the landlord can access all of the applicant's convictions (unless sealed), further decreasing the individual's chance of obtaining housing.⁷⁰

The lack of available housing runs counter to the goals of rehabilitation as it inhibits an individual from fully reintegrating into society after fulfilling their court-ordered punishments.⁷¹ Many individuals with a criminal record that struggle to secure housing are faced with rampant discrimination based on both their record and housing status.⁷² Many additional collateral consequences exacerbate this inability to reintegrate into society and often lead to recidivism.⁷³ Those experiencing homelessness or unstable housing are more likely to "reoffend" as many individuals report being arrested for activities that they would not otherwise be involved in absent their living conditions.⁷⁴ In fact, in 2019, homeless individuals made up almost 13% of all arrests in Boston.⁷⁵ Most arrests of homeless individuals result from small

⁶⁶ Lynn M. Clark, Research Study, *Landlords Attitudes Toward Renting to Released Offenders*, 71 FED. PROBATION, June 2007, at 1–3.

⁶⁷ See Mass. Law Reform Inst., *Reasons for Denial*, MASSLEGALHELP, <https://perma.cc/NC32-YGCP> (last updated Dec. 2009) (explaining that Massachusetts law allows more discretion for state-funded housing than federally funded housing).

⁶⁸ See Clark, *supra* note 66, at 5.

⁶⁹ Clark, *supra* note 66, at 4–6.

⁷⁰ See *Guide to Criminal Records*, *supra* note 17.

⁷¹ Skall, *supra* note 59, at 344–45 (discussing the effects criminal records have in housing applications).

⁷² Sarah Golabek-Goldman, *Op-Ed: Homeless Shouldn't Face Job Discrimination Just Because They Lack an Address*, L.A. TIMES (Oct. 10, 2016, 4:00 AM PT), <https://perma.cc/VL97-NCAC> (finding that, "70.4% of homeless respondents felt that they had been discriminated against . . . based on housing status.").

⁷³ See *Homelessness - What We Know*, REENTRY & HOUSING COAL., <https://perma.cc/Z7EC-CGLG> (last visited Nov. 25, 2022).

⁷⁴ *Id.* (finding that 25% of those experiencing homelessness surveyed recounted being arrested for actions incident to homelessness).

⁷⁵ Nick McCool et al., *For the Homeless in Boston and Beyond, Laws Can Criminalize Life Itself*,

“nuisance crimes,” but those incidents and arrests beget more encounters with law enforcement in adversarial situations and more opportunities for things to go wrong.⁷⁶

B. *Collateral Consequences in Employment*

Today, nearly half of all unemployed men in America have a criminal conviction that hinders their ability to secure employment.⁷⁷ While criminal records are not the only barrier to employment, 92% of all employers perform background checks on some or all of their applicants, indicating that criminal records are an extremely prevalent factor in employment decisions.⁷⁸ Not only do employers frequently check criminal records, many of them hold strong biases against anyone with a criminal record, erroneously believing that the record itself categorically indicates danger or unreliability.⁷⁹ Surveys of employers show that the stigma against criminal records can sometimes lead to denial of employment or promotion opportunities that the individual would receive if the employer found out about the situation that led to the criminal record in a different way.⁸⁰ Overall, these surveys indicate that 60% of employers would likely not be willing to hire an individual that they know has a criminal record.⁸¹ No matter how an employer is instructed by law to consider an applicant with a criminal record, if the employer can see the record, they can hold their misplaced biases against the applicant.⁸²

The effects of employer bias are most prominent in the disparity in unemployment rates between those with a criminal record and those without.⁸³ At times, the unemployment rate among those with criminal

BOS. GLOBE, <https://perma.cc/K4KA-NCWH> (last updated June 28, 2020, 5:32 PM).

⁷⁶ See M. Price, *New Insights on Homelessness and Violence*, AM. PSYCH. ASS'N. (Dec. 2009), <https://perma.cc/PF85-38L9>.

⁷⁷ Rodrigo Pérez Ortega, ‘Staggering’ Study Reveals Nearly Half of Unemployed U.S. Men Have Criminal Convictions, SCIENCE, <https://perma.cc/W38H-LAF9> (last updated Feb. 18, 2022, 3:10 PM).

⁷⁸ See Guerin, *supra* note 4.

⁷⁹ See Dylan Minor et al., *Criminal Background and Job Performance*, SPRINGER OPEN (Sept. 12, 2018), <https://perma.cc/4U7T-RRQ5> (finding that employees with records stay employed for longer on average than those without); see generally *Criminal Conviction Discrimination in Employment*, JUSTIA, <https://perma.cc/8HZS-K3VT> (last updated Oct. 2021).

⁸⁰ E.g., DALLAS AUGUSTINE ET AL., WHY DO EMPLOYERS DISCRIMINATE AGAINST PEOPLE WITH RECORDS? STIGMA AND THE CASE FOR BAN THE BOX 4-5 (July 2020), <https://perma.cc/7F8U-2CFK> (finding that some employers would hire someone with signs of past drug addiction on their Facebook but not someone with a criminal record including possession).

⁸¹ *Employment Discrimination Against Women with Criminal Convictions*, ACLU, <https://perma.cc/JZ26-4VWX> (last visited Nov. 25, 2022).

⁸² See DALLAS AUGUSTINE ET AL., *supra* note 80, at 4.

⁸³ Lucius Couloute & Daniel Kopf, *Out of Prison & Out of Work: Unemployment Among Formerly Incarcerated People*, PRISON POL'Y INITIATIVE (July 2018), <https://perma.cc/3JK6-UXKK>.

records is four to five times higher than that of individuals without records.⁸⁴ Many advocates of criminal record screening believe that fear of negligent hiring suits against employers likely causes such disparity.⁸⁵ However, employer bias against criminal records is not specific to one particular field and is evident even in office jobs where negligent hiring litigation risk is at its lowest.⁸⁶ Communities of color and women feel the effects of such biases the most, as white men with criminal records secure employment post-incarceration more regularly and in higher-paying positions than anyone else with a record.⁸⁷ Employers' reluctance or refusal to hire and promote those with criminal records leads to additional collateral consequences such as poverty and recidivism.⁸⁸

ANALYSIS

Despite the protections Massachusetts affords to people with criminal records, the collateral consequences of those records continue today, in part because of the level of access to CORIs that landlords and employers currently enjoy.⁸⁹ Unlike laws that instruct how landlords and employers may consider applicants' criminal records, laws that expand sealing take the records out of the landlords' and employers' hands completely, but ensure that law enforcement maintains access.⁹⁰ A large portion of both citizens and lawmakers support changes to the sealing and access of criminal records, but consensus on how to resolve these issues appears distant.⁹¹ Laws such as Pennsylvania's Clean Slate Act and several bills currently pending in Massachusetts' legislature provide innovative ideas for the future of criminal record access laws and should serve as a base model for more consequential changes to the CORI system in Massachusetts.⁹² If laws like

⁸⁴ *Id.* (finding that in 2008, "[t]he unemployment rate of formerly incarcerated [individuals] . . . was 27.3% (compared to 5.8% [for] the general public).").

⁸⁵ See, e.g., DALLAS AUGUSTINE ET AL., *supra* note 80, at 7.

⁸⁶ See DALLAS AUGUSTINE ET AL., *supra* note 80, at 7 (noting that there is less risk of negligent hiring suits in office jobs because employees are generally barred from suit by worker's compensation laws).

⁸⁷ Couloute & Kopf, *supra* note 83.

⁸⁸ See Tianyin Yu, *Employment and Recidivism*, EVIDENCE-BASED PRO. SOC'Y (Jan. 30, 2018), <https://perma.cc/U68U-2LB6> (finding that holding a "higher occupational level" is related to a lower risk of recidivism).

⁸⁹ See generally *Massachusetts Restoration of Rights & Record Relief*, *supra* note 12, § III (distinguishing the effects of sealing from those of expungement).

⁹⁰ See KNOW YOUR CORI RIGHTS, *supra* note 6, at 5.

⁹¹ E.g., Editorial, *Search for a 'Clean Slate' Remains Elusive*, BOS. GLOBE, <https://perma.cc/KK2L-2T3G> (last updated Jan. 18, 2022, 4:00 AM).

⁹² See Margaret Potter, *Expanding and Fine-Tuning Pennsylvania's Clean Slate Law*, JURIS MAG. (Aug. 20, 2020), <https://perma.cc/2XJM-GLMZ> (describing Pennsylvania's Clean Slate Act as a "national model").

these are implemented—with some adjustments and effective dissemination of information to the community—Massachusetts can reduce or even eliminate some of the collateral consequences that result from living with a criminal record.⁹³

III. Massachusetts Must Capitalize on the Momentum for Record Sealing Reform

Bipartisan support for criminal record reform continues to grow as the general public becomes more aware of the collateral consequences of criminal records.⁹⁴ Several interest groups across the country have found recent success in lobbying state legislatures to enact changes to criminal record access by way of the Clean Slate Initiative (“CSI”) and automatic sealing.⁹⁵ Massachusetts is among the many state legislatures showing recent support for criminal record reform with several proposed bills that aspire to make criminal record sealing more equitable, accessible, and even *automatic*.⁹⁶ With support for criminal record reform growing both in the Commonwealth and nationwide, Massachusetts must capitalize on the momentum by further expanding access to CORI sealing.⁹⁷

A. Nationwide Support for Criminal Record Sealing Reforms Continues to Grow

Today, a vast majority of Americans support removing the economic and social barriers caused by the criminal justice system, making now the most opportune time for state legislatures to pass changes to criminal record access laws.⁹⁸ Widespread support for expanded criminal record sealing stands in sharp contrast with the “tough-on-crime” stance utilized by many successful politicians throughout our history, but most Americans now realize that such policies do more harm than good.⁹⁹ This change of heart

⁹³ See, e.g., Aaron Moselle, *Pa. Residents with Court Debt Could Have Their Records Automatically Sealed Under New Bill*, WHYY (Oct. 22, 2020), <https://perma.cc/R9SR-6HJY> (emphasizing that the Clean Slate Act in Pennsylvania is effective).

⁹⁴ Reintegration Team, *National Survey Shows Strong Bipartisan Support for Reducing Barriers for People with Criminal Records*, ARNOLD VENTURES (Apr. 15, 2021), <https://perma.cc/9GXU-M96K>.

⁹⁵ See *More Clean Slate*, *supra* note 7.

⁹⁶ See, e.g., An Act to Remove Collateral Consequences and Protect the Presumption of Innocence, H.R. 1568, 192d. Gen. Court (Mass. 2021); An Act Providing Easier and Greater Access to Record Sealing, S. 1037, 192d. Gen. Court (Mass. 2021).

⁹⁷ See generally Reintegration Team, *supra* note 94.

⁹⁸ See Vera Staff, *Overwhelming Majority of Americans Support Criminal Justice Reform, New Poll Finds*, VERA INST. OF JUST. (Jan. 25, 2018), <https://perma.cc/P93D-C7DL> (finding that among Americans “90 percent believe that barriers to employment . . . should be removed”).

⁹⁹ See generally Lauren-Brooke Eisen, *Criminal Justice Reform in 2015: Year End Review*, BRENNAN CTR. FOR JUST. (Dec. 28, 2015), <https://perma.cc/83LA-WUHS> (describing the nationwide shift away from “tough-on-crime” stances).

toward more lenient criminal record systems makes sense in light of the general public's increasing desire to undo the negative effects of past criminal justice failures like the Violent Crime Control and Law Enforcement Act of 1994 ("Crime Bill"), a law widely considered to be the cornerstone of mass incarceration.¹⁰⁰ Public support for criminal justice reform is not new,¹⁰¹ but tragic events in 2020, such as the murders of George Floyd and Breonna Taylor, intensified calls for widespread changes in the criminal justice system across the nation.¹⁰² As more citizens joined this call for change in criminal justice, legislatures across the country became more amenable to reconsidering many aspects of criminal justice, such as how we treat those with criminal records.¹⁰³

Many legislatures responded to increased public pressure for criminal justice reform by proposing and passing laws aimed at expanding access to criminal record sealing.¹⁰⁴ Just months after public support led to the passage of Pennsylvania's historic Clean Slate Law in 2018, large bipartisan interest groups like the CSI formed with an eye toward increasing access to criminal record sealing across the country.¹⁰⁵ In the three years following CSI's formation, Utah, Michigan, Connecticut, and Delaware enacted their own versions of Clean Slate laws, and several more states, including Texas, Missouri, and North Carolina, advanced legislation to further criminal record clearance in some way.¹⁰⁶ These bills were passed by legislatures in states on all parts of the political spectrum¹⁰⁷ and are likely a reflection of the support for criminal record reforms within their constituencies.¹⁰⁸ Although

¹⁰⁰ See Ed Chung et al., *The 1994 Crime Bill Continues to Undercut Justice Reform—Here's How to Stop It*, CTR. FOR AM. PROGRESS (Mar. 26, 2019), <https://perma.cc/QDR2-ZL3C> (criticizing the Crime Bill for wasting taxpayer dollars, over-incarcerating citizens, and delaying inmates' release, all while having a "marginal effect" on public safety).

¹⁰¹ See *Public Opinion on Sentencing and Corrections Policy in America*, PEW CHARITABLE TRS. (Mar. 30, 2012), <https://perma.cc/8GHV-95EE> (finding widespread support for sentencing and correction reforms in 2012).

¹⁰² See generally *A Decade of Watching Black People Die*, NPR (May 31, 2020, 11:15 AM ET), <https://perma.cc/7VXA-DYR4> (discussing the many wrongful killings by police that led to increased calls for criminal justice reform).

¹⁰³ See generally Daniel Nichanian, *Criminal Justice Reform in the States: Spotlight on Legislatures*, THE APPEAL, <https://perma.cc/9VMF-UC9W> (last updated June 2021) (listing criminal justice developments by state from 2019 to 2021).

¹⁰⁴ See *More Clean Slate*, *supra* note 7.

¹⁰⁵ Julia Cusick, *CAP and More than 25 Partners Launch National Bipartisan 'Clean Slate' Initiative to Automate Clearing of Criminal Records*, CTR. FOR AM. PROGRESS (Nov. 15, 2018), <https://perma.cc/4F38-25XR>.

¹⁰⁶ *Delaware Becomes Fifth State in the Nation to Offer Clean Slate, Reducing Barriers for People with Arrest and Conviction Records*, CLEAN SLATE INITIATIVE (Nov. 9, 2021), <https://perma.cc/T4DB-FDNH> [hereinafter *Delaware Becomes Fifth State*].

¹⁰⁷ See generally *Political Ideology by State*, PEW RES. CTR., <https://perma.cc/H5XR-QJS3> (last visited Nov. 25, 2022) (showing political ideologies by state).

¹⁰⁸ See Cusick, *supra* note 105 (finding as much as seventy percent of Americans support clean

support for criminal record reforms existed well before 2020, it grew substantially within legislatures in 2021, as thirty-six states enacted laws that supplement or limit public access to criminal records.¹⁰⁹ If Massachusetts is to remain a leader in criminal justice reform, the Commonwealth must capitalize on this nationwide momentum for meaningful change.¹¹⁰

B. *Massachusetts Legislature is Headed in the Right Direction*

Massachusetts received high praise for its 2010 overhaul of the CORI system, but many criminal justice advocates called for immediate improvements, some even before the law went into effect in 2012.¹¹¹ In response to this call for change, Massachusetts restructured the CORI system again in 2018 by changing the requirements for sealing and further reducing barriers for those with criminal records.¹¹² Today, like the majority of states passing laws that increase access to criminal record sealing, Massachusetts has several bills pending in its legislature that should serve as a blueprint for sealing laws that will cement the Commonwealth's reputation as a leader in criminal justice reform.¹¹³

First, Senate Bill Number 1037, introduced in 2021 by Massachusetts Senator Cindy F. Friedman, calls for automatic sealing of all charges that do not result in prosecution and, most notably, a ninety-day time limit for the Commissioner of Probation to automatically seal charges that become eligible.¹¹⁴ This bill calls for an automatic sealing system similar to that of Pennsylvania's 2018 Clean Slate Act, and effectively replaces the current 100C discretionary sealing process.¹¹⁵ Similarly, Massachusetts Representative Brandy Fluker Oakley introduced House Bill Number 1568 in 2021 which calls for automatic sealing of any charge that did not end in a guilty verdict, although it stops short of calling for widespread automatic sealing.¹¹⁶ Both of these bills call for some form of automatic criminal record sealing and evince the support that CORI reform has in the Massachusetts legislature.¹¹⁷ However, with such widespread support nationwide and in the Commonwealth, Massachusetts should take this opportunity not only to pass these popular bills, but to supplement them with more far reaching

slate policies).

¹⁰⁹ See *Reentry to Reintegration*, *supra* note 9.

¹¹⁰ See generally *Reentry to Reintegration*, *supra* note 9.

¹¹¹ See, e.g., GABRIELLA PRIEST ET AL., *supra* note 11, at 17.

¹¹² See *Massachusetts Restoration of Rights & Record Relief*, *supra* note 12, § III.

¹¹³ See, e.g., An Act to Remove Collateral Consequences and Protect the Presumption of Innocence, H.R. 1568, 192d. Gen. Court (Mass. 2021); An Act Providing Easier and Greater Access to Record Sealing, S. 1037, 192d. Gen. Court (Mass. 2021).

¹¹⁴ Mass. S. 1037, §§ 2, 5.

¹¹⁵ *Id.* § 5.

¹¹⁶ Compare Mass. H.R. 1568, § 5, with Mass. S. 1037, §§ 2, 5.

¹¹⁷ Mass. H.R. 1568, § 5; Mass. S. 1037, § 5.

changes to CORI sealing.¹¹⁸

IV. Restructure, Automate, and Supplement the CORI Sealing Process

If Massachusetts hopes to maintain its long-held reputation as a leader in criminal justice, it must pass additional measures that increase eligibility for and automation of CORI sealing.¹¹⁹ Additionally, Massachusetts must ensure the efficacy of the new program by maintaining effective, state-funded outreach and post-incarceration counseling programs that focus on ensuring individuals know the CORI system and how their CORI can be viewed or sealed.¹²⁰ The bills currently pending in Massachusetts' legislature provide expanded eligibility for CORI sealing and call for automation of the process.¹²¹ Pennsylvania's Clean Slate Act provides a viable and proven system for such automation.¹²² If Massachusetts considers, passes, and builds on these laws, the CORI system can finally work to reduce the collateral consequences of criminal records.¹²³

A. Repurposing the 100C Petition Process

House Bill Number 1568 calls for automatic sealing of any charge that does not end in a guilty verdict, effectively abolishing the current 100C discretionary sealing process for non-convictions.¹²⁴ This bill is a vital step toward automatic CORI sealing that leaves open the possibility of a different system of discretionary sealing—one that considers sealing convictions on a case-by-case basis before the statutorily required waiting period has lapsed.¹²⁵ While Massachusetts decreased the waiting period for both misdemeanors and felonies to three and seven years respectively in 2018,¹²⁶ it still broadly categorizes crimes as felonies and misdemeanors when determining the waiting period under the 100A sealing process.¹²⁷ This often means that one felony, such as a violation of an abuse prevention order issued in response to a domestic violence allegation, is treated the same as

¹¹⁸ See generally Cusick, *supra* note 105 (referencing widespread support for criminal record reform).

¹¹⁹ See generally Shira Schoenberg, *Gov. Charlie Baker Signs Landmark Massachusetts Criminal Justice Overhaul, Despite Concerns*, MASSLIVE (Apr. 13, 2018, 8:32 PM), <https://perma.cc/4B36-V5DL> (describing the 2018 CORI reforms as landmark legislation).

¹²⁰ See GABRIELLA PRIEST ET AL., *supra* note 11, at 15.

¹²¹ An Act to Remove Collateral Consequences and Protect the Presumption of Innocence, H.R. 1568, 192d. Gen. Court § 5 (Mass. 2021); An Act Providing Easier and Greater Access to Record Sealing, S. 1037, 192d. Gen. Court (Mass. 2021).

¹²² See Moselle, *supra* note 93.

¹²³ See Vallas et al., *supra* note 16 (pointing to the benefits of increased access to sealing).

¹²⁴ Mass. H.R. 1568, § 5.

¹²⁵ See generally *id.*

¹²⁶ See *Massachusetts Restoration of Rights & Record Relief*, *supra* note 12, § III.

¹²⁷ See MASS. GEN. LAWS ch. 276, § 100A (2022).

other felonies, such as possession with intent to distribute.¹²⁸ While these acts are both illegal and present some danger to society, they are fundamentally different crimes and should be treated as such.¹²⁹ Massachusetts has already shown that it is amenable to an offense-based eligibility system by recognizing that felony convictions for firearms crimes, sexual crimes, and crimes against the public, should be treated more seriously than less dangerous felony convictions.¹³⁰

Some scholars suggest that a more equitable system for sealing convictions must consider the degree of the offense and the circumstances surrounding it.¹³¹ Of course, any system that allows for discretion has the potential for inequitable results in the future, indicating that discretion should be avoided as much as possible.¹³² Trusting judges to make an individualized assessment of what convictions should qualify for a decreased waiting period is not ideal, but neither is a blanket mandate for how long each felony and misdemeanor should remain unsealed without regard to the specific facts of the conviction.¹³³ In order to quell the fear of unfettered discretion by judges and still avoid treating all felonies (or misdemeanors) the same as others, the legislature should provide factors that indicate whether an individual should be eligible to seal their conviction before the end of the waiting period.¹³⁴ This system should be a combination of simple factors such as whether the crime was a violent offense or a first offense, and more complex factors such as a requirement to consider the facts of the individual conviction, similar to the *Pon* standard.¹³⁵ This system would maintain the maximum three- and seven-year requirements for eligibility for automatic sealing, but would give some individuals the opportunity to seal their less serious convictions earlier.¹³⁶ This approach is imperative because not all crimes are equal, but the mere existence of a criminal record can categorically disqualify an individual in the eyes of some landlords and employers.¹³⁷ Additionally, Massachusetts can avoid harm from potential abuses of discretion by lower courts (whether that abuse is intentional or not) by making the denial of sealing applications reviewable

¹²⁸ See generally *id.*

¹²⁹ Compare MASS. GEN. LAWS ch. 209A, § 7 (2022) (describing violation of abuse prevention orders), with MASS. GEN. LAWS ch. 94C, § 32A (2022) (describing distribution of narcotics).

¹³⁰ See MASS. GEN. LAWS ch. 276, § 100A.

¹³¹ E.g., Skall, *supra* note 59, at 375.

¹³² See *Race and Discretion in the Criminal Legal System*, NYU SCH. OF L., <https://perma.cc/23DM-KWUL> (last visited Nov. 25, 2022).

¹³³ See Skall, *supra* note 59, at 375.

¹³⁴ See Skall, *supra* note 59, at 375.

¹³⁵ See Skall, *supra* note 59, at 375.

¹³⁶ See Skall, *supra* note 59, at 375.

¹³⁷ See Clark, *supra* note 66, at 4.

by an appeals court.¹³⁸ In sum, this new system should adopt automatic sealing of charges that do not end in a guilty verdict—as proposed in House Bill 1568—and should retain a discretionary sealing approach similar to that employed under 100C, but re-deploy it as a method of allowing early sealing of convictions that satisfy discretionary factors chosen by the legislature.¹³⁹

B. *The Future of CORI Sealing Must Be Automatic*

Once an individual's CORI meets all requirements for sealing, actual sealing should naturally follow, yet Massachusetts law requires further action on the part of the individual seeking to seal their CORI.¹⁴⁰ Today, less than seven percent of criminal records are sealed within five years of becoming eligible, in part because of the intricate requirements of a petition-based sealing system.¹⁴¹ This contributes to additional and unnecessary hurdles in a number of situations, including where a recent conviction reinstates an old, timed-out conviction onto an individual's CORI because the individual failed to petition the Commissioner when eligible.¹⁴² There is little, if any, justification for requiring further action from an individual once their CORI is eligible for sealing, and continuing to require such action only weakens Massachusetts' standing as a leader among states in criminal justice reform.¹⁴³ Recently, several states automated their criminal record sealing system with a specific objective to make criminal record sealing more accessible, understandable, and equitable.¹⁴⁴ Both chambers of Massachusetts' legislature have bills calling for no-action automatic sealing of eligible charges but neither chamber presents a workable system to effectuate that change.¹⁴⁵ Pennsylvania has sealed a record number of cases in the few years since implementing automatic sealing, offering a proven model of success that Massachusetts should consider as it automates its criminal record sealing system.¹⁴⁶

¹³⁸ See generally Legal Info. Inst., *Abuse of Discretion*, CORNELL L. SCH., <https://perma.cc/ZZ39-R8X3> (last visited Nov. 25, 2022) (describing the process for review of lower court decisions for abuse of discretion).

¹³⁹ See An Act to Remove Collateral Consequences and Protect the Presumption of Innocence, H. R. 1568, 192d. Gen. Court (Mass. 2021).

¹⁴⁰ See MASS. GEN. LAWS ch. 276, § 100A (2022).

¹⁴¹ See Vallas et al., *supra* note 16.

¹⁴² See generally Jackson & Zhao, *supra* note 20, at 8–9.

¹⁴³ See generally MASS. GEN. LAWS ch. 276, § 100A (requiring a petition to seal charges once all eligibility requirements are met).

¹⁴⁴ *Delaware Becomes Fifth State*, *supra* note 106.

¹⁴⁵ See, e.g., An Act to Remove Collateral Consequences and Protect the Presumption of Innocence, H.R. 1568, 192d. Gen. Court (Mass. 2021); An Act Providing Easier and Greater Access to Record Sealing, S. 1037, 192d. Gen. Court (Mass. 2021).

¹⁴⁶ Aaron Moselle, *Historic Pennsylvania Law to Seal Million of Criminal Charges Automatically*, NPR (June 28, 2019, 8:23 AM ET), <https://perma.cc/94ML-8QRW>.

Pennsylvania's sealing process is the first sealing process that is truly automatic for individuals with a record, requiring no action from the individual, not even a petition.¹⁴⁷ Under this system, the Administrative Office of Pennsylvania Courts transmits the record of any charge that did not end in a conviction to the State Police repository within thirty days of the final disposition to validate that the charge is eligible for sealing.¹⁴⁸ In addition, every thirty days the Administrative Office reviews its files and transmits all records of convictions that have timed out and are now eligible for sealing.¹⁴⁹ Once received, the repository has thirty days to confirm eligibility of the charges, after which each court of common pleas issues an order to seal eligible charges.¹⁵⁰ Once the order is issued, members of the general public (including landlords and employers) lose all access to the records, still with no action required from the individual whose record is sealed.¹⁵¹ Finally, under this system the records are *sealed*, not *expunged*, so law enforcement maintains access to them.¹⁵²

This program offers a workable solution to calls for automatic record sealing in Massachusetts and translates well to the CORI system, as the Commonwealth already has the offices, resources, and support needed to implement it.¹⁵³ Massachusetts' Department of Criminal Justice Information Services (DCJIS) can take the place of the Administrative Office of Pennsylvania Courts, and Massachusetts' Commissioner of Probation is a natural corollary to Pennsylvania's State Police repository in this record sealing process.¹⁵⁴ The system could be nearly identical; the county clerks' offices send records of any charges that did not end in a conviction to the Commissioner of Probation for sealing within thirty days of the final disposition, and every month DCJIS reviews its files for charges that have become eligible for sealing.¹⁵⁵ This automatic system would naturally negate those inequitable situations wherein an employer or landlord can see timed-out charges on an applicant's criminal record if the applicant is convicted of

¹⁴⁷ *Id.*

¹⁴⁸ 18 PA. CONS. STAT. § 9122.2(b) (2022).

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ See 18 PA. CONS. STAT. § 9122.2(c).

¹⁵² See *About Pennsylvania's New Clean Slate Law*, RECORD ERASER (Feb. 26, 2019), <https://perma.cc/33BS-KQ4J>.

¹⁵³ See MASS. GEN. LAWS ch. 6, § 167A(e) (2022) (tasking the Department of Criminal Justice Information Services to adopt rules for "the collection, storage, access, [and] dissemination" of criminal record information requested); see also An Act Providing Easier and Greater Access to Record Sealing, S. 1037, 192d. Gen. Court (Mass. 2021) (showing support for automatic sealing legislation).

¹⁵⁴ See generally MASS. GEN. LAWS ch. 6, § 167A(a) (2022) (mandating that the Commissioner of Probation oversee the Department of Criminal Justice Information Services).

¹⁵⁵ Compare 18 PA. CONS. STAT. § 9122.2(b) (2022), with MASS. GEN. LAWS ch. 6, § 167A (2022) (describing the duties of state offices that handle criminal record information).

another offense.¹⁵⁶ Additionally, a no-action, automatic sealing system would finally effectuate the provision in § 100A that calls for immediate sealing of decriminalized marijuana charges, a protection that is tragically underutilized by those with criminal records.¹⁵⁷

C. Supplement the System with State-Funded Outreach

Regardless of which eligibility and automation provisions Massachusetts enacts, the ultimate goal of expanded criminal record sealing will fail without adequate community outreach and post-incarceration counseling.¹⁵⁸ While many organizations in the Commonwealth provide information to individuals about their eligibility for sealing and the process behind it pro bono, Massachusetts does not offer a widely available, state-funded program to inform individuals on the CORI sealing process.¹⁵⁹ The result is that even when a charge is eligible for sealing, many individuals do not realize it and fail to petition the Commissioner to seal their record.¹⁶⁰ Even if Massachusetts adopts a no-action, automatic sealing process, continued lack of outreach to eligible individuals will render the program ineffective, because many with sealed records will disclose those records to employers and landlords, not realizing they are no longer required to do so.¹⁶¹ Some Massachusetts cities have initiated programs like Project Opportunity, a largely volunteer-based Boston initiative that offers information, consultation, and training on the CORI system.¹⁶² Funding programs like Project Opportunity and expanding them across all of Massachusetts could achieve the outreach necessary to ensure an expanded CORI sealing program is effective.¹⁶³

One objective of programs like Project Opportunity is helping residents navigate the petition process for sealing their CORI, a valuable function that will be greatly reduced if Massachusetts adopts a no-action, automatic sealing (although still immensely helpful should Massachusetts adopt the

¹⁵⁶ See Jackson & Zhao, *supra* note 20, at 9.

¹⁵⁷ See generally Dan Adams, 'An Utter Failure': Law Meant to Clear Old Convictions, Including for Marijuana Possession, Helps Few, BOS. GLOBE, <https://perma.cc/ZC74-ACHM> (last updated Nov. 28, 2021, 4:49 PM).

¹⁵⁸ See PRIEST ET AL., *supra* note 11, at 15.

¹⁵⁹ See, e.g., *Criminal Record Sealing Pilot Project*, BOS. BAR ASS'N, <https://bostonbar.org/in-the-community/public-service/cori-sealing-project> (last visited Nov. 25, 2022) (explaining the Boston Bar Association's program to help individuals seal their CORI).

¹⁶⁰ Vallas et al., *supra* note 16.

¹⁶¹ See PRIEST ET AL., *supra* note 11, at 13–15.

¹⁶² Workforce Development, *Project Opportunity to Help Residents Gain Access to Jobs, Housing, Education*, CITY OF BOS. (July 14, 2020), <https://perma.cc/99V2-EBCK> (describing Project Opportunity, a Boston based CORI outreach program).

¹⁶³ See PRIEST ET AL., *supra* note 11, at 15.

new discretionary sealing process proposed above).¹⁶⁴ However, the program also offers training for city employees who interact with individuals who have criminal records, referrals to CORI-friendly employment and housing opportunities, and information about how sealing eligibility works.¹⁶⁵ These outreach efforts are essential to a more effective CORI system.¹⁶⁶ Unfortunately, many of these initiatives rely on grants, pro bono work, and organizational fundraisers to stay afloat; this may result in inconsistent budgets, staffing, and programming.¹⁶⁷ In a perfect world, state funding would be unnecessary because every lawyer in America would give the fifty hours of pro bono work per year, as suggested by the American Bar Association;¹⁶⁸ in reality, almost fifty percent of lawyers give no pro bono hours at all, and only twenty percent meet or exceed the fifty-hour goal.¹⁶⁹ This reality often leaves organizations that rely on pro bono services understaffed and under-resourced, which leads to more accessibility issues for those seeking to seal their criminal records (among many other unmet needs for legal services).¹⁷⁰ While relying on the goodness of lawyers to consistently dedicate their services is noble, it is unrealistic, and a modest state-funded fee could substantially increase participation in these initiatives.¹⁷¹

In addition to funding outreach programs generally, special emphasis should be placed on CORI sealing in post-incarceration counseling (also commonly called inmate reentry programs) to assist the most vulnerable among those with criminal records.¹⁷² While Massachusetts has a number of programs aimed at helping formerly incarcerated individuals reenter society, none directly mention counseling on how CORI works and the protection provided by the Commonwealth.¹⁷³ Although recently released individuals are not eligible for sealing for several years after release, there is still value in ensuring all are aware of the protections from landlord and employer discrimination afforded under Massachusetts law.¹⁷⁴ Further, if

¹⁶⁴ See Workforce Development, *supra* note 162.

¹⁶⁵ Workforce Development, *supra* note 162.

¹⁶⁶ See PRIEST ET AL., *supra* note 11, at 15.

¹⁶⁷ See, e.g., *Frequently Asked Questions*, LAWS. CLEARINGHOUSE, <https://perma.cc/4VNP-YTXL> (last visited Nov. 25, 2022).

¹⁶⁸ MODEL RULES OF PRO. CONDUCT 6.1 (A.B.A. 2019).

¹⁶⁹ *Pro Bono*, A.B.A., <https://perma.cc/SRQ4-K8K7> (last visited Nov. 25, 2022).

¹⁷⁰ *New Findings: 68% of Nonprofit Professionals Report Not Having Enough Financial Resources to Do the Work They Do*, JUST MEANS (Oct. 19, 2017, 10:45 AM ET), <https://perma.cc/ZJZ2-2D7Q>.

¹⁷¹ See generally *Pro Bono*, *supra* note 169 (finding that lawyers do not fulfill the ABA suggested hours of pro bono work).

¹⁷² See EBONY N. RUSS ET AL., PRISON & JAIL REENTRY & HEALTH 1–3, 5–7 (2021), <https://perma.cc/8VLL-GTK5>.

¹⁷³ See *Inmate Reentry Programs*, MASS.GOV, <https://perma.cc/4JCM-2G4P> (last visited Nov. 25, 2022).

¹⁷⁴ See generally ANDREA TAYLOR, COMING HOME: A GUIDE TO RE-ENTRY PLANNING FOR

Massachusetts adopts no-action automatic sealing or a discretionary early sealing system, this post-incarceration counseling would ensure that former inmates know when their CORI is eligible for sealing, how to ensure their CORI becomes eligible for sealing, and when landlords and employers can no longer ask about charges.¹⁷⁵ If the CORI sealing system sees no other change, it must see an increase in outreach and counseling or it will fail its only purpose—giving those with criminal records a second chance.¹⁷⁶ Project Opportunity and similar programs like the CORI Sealing Initiative offer valuable resources for a more equitable criminal record system in Massachusetts, and state funding and expansion of such programs is the only way to ensure their continued success.¹⁷⁷

CONCLUSION

Massachusetts' history of success in criminal justice reform, both in the legislature and the courts, is admirable and should not be understated. The relief from collateral consequences afforded by those successes is incalculable. However, more progress is needed. Those with criminal records are still underhoused and underemployed at rates that far exceed those without criminal records, and there is much the Commonwealth can do. While there are many admirable criminal record reforms to pursue, expanded criminal record sealing is unique in that it greatly reduces collateral consequences without interfering with law enforcement's access to information. This, along with a shift in general public sentiment toward the current American criminal justice system, has led to widespread support and momentum for expanded sealing access. Massachusetts should capitalize on this momentum by installing a sealing system that finally gives those with criminal records the second chance they were promised when CORI was first established in 2010. The system must reconsider eligibility, automate the sealing process, and provide adequate outreach to those with criminal records. Without these changes, the long-repeated promise of equal opportunity in housing and employment for *all citizens* rings hollow for those with a criminal record.

PRISONERS LIVING WITH MENTAL ILLNESSES (2013), <https://perma.cc/M8XH-THMX> (discussing post-incarceration counseling).

¹⁷⁵ See *id.* at 7 (counseling formerly incarcerated people to consult state laws on what charges employers may ask about).

¹⁷⁶ See Dan Ring, *Massachusetts Gov. Deval Patrick Signs Law Changing CORI System*, MASSLIVE MEDIA, <https://perma.cc/N9EH-A9B7> (last updated Mar. 25, 2019, 5:42 AM) (“This legislation . . . helps people get back to work . . .”).

¹⁷⁷ See PRIEST ET AL., *supra* note 11, at 15.