

## BOOKLET 8

### AVOIDING GUILTY PLEAS AND CRIMINAL CASE DISPOSITIONS THAT GIVE YOU LIFE-TIME CRIMINAL RECORDS

Criminal cases can make it hard to get a job, housing, or to get ahead. It is important to know that if you are **CONVICTED** of certain types of offenses, you can **NEVER** seal your case. G.L. c. 276, § 100A. Cases that can NEVER be sealed after a guilty finding include:

- “Crimes against the Public” *convictions* including but not limited to resisting arrest, giving a false name to police, perjury, witness intimidation, or aiding escape from jail (G.L. c. 268); or
- Some firearms *convictions*, including but not limited to having a gun in a vehicle, selling ammunition or a gun without a firearms license, or buying a gun from an unlicensed dealer (G.L. 140, §§ 121-131 H); or
- State ethics *convictions* such as bribes to public officials (G.L. c. 268A); or
- Certain sex offense *convictions*. If a person was ever registered as a Level 2 or Level 3 sex offender, the law (G.L. c. 276, § 100A) states that the person can NEVER seal *convictions* for certain sex offenses (i.e. rape of a child, assault with intent to rape, drugging a person for sex and other offenses as defined by Section 178C of Chapter 6 of the Mass. General Laws).<sup>1</sup>

However, if your case for one of these offenses ended in a dismissal, a nolle prosequi (the prosecutor dropped the case), or a “not guilty” finding, the case is eligible to be sealed.

#### **STEP ONE. Get a copy of your criminal record report (known as “CORI” or “CARI”).**

If you are a defendant in a case that is still going on, you should ask your lawyer if your case will be sealable later on, and ask for a copy of your CARI (a criminal record summary report). The CARI will list your criminal cases. If your case is closed, see Booklet 1 in this series of booklets for information about how to get a copy of your own criminal record report.

**IMPORTANT: If you are not a citizen, you should get advice on the effect of your criminal case on your immigration status. If you are not a citizen or are living here without legal documents, a conviction or a continuance without a finding (CWOFF) can be grounds for exclusion or deportation.**

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<sup>1</sup> However, in September 2017, the Supreme Judicial Court found this law unconstitutional as applied to a person who was no longer required to register as a sex offender. *Koe v. Comm'r of Prob.*, 478 Mass. 12 (2017). This means if the 15 year waiting period has passed, a person who is no longer in the sex offender registry can ask to seal the sex offense convictions through the Commissioner of Probation at One Ashburton Place in Boston.

**STEP TWO.** Check the attached list of public justice crimes and other never sealable offenses to figure out if you are charged with or were convicted of one of these crimes.

**STEP THREE.** If your case is still going on, ask your lawyer if your case will be sealable in the future if you are found guilty or you plead guilty. You should carefully consider whether your case may become a never sealable case if it ends in a conviction BEFORE you make a decision about going to trial or pleading guilty. If your case is closed, you might ask your prior attorney or another lawyer to try to re-open it. However, it is often very hard to re-open a closed case.

**IMPORTANT.** If you are not a citizen, remember that immigration policies are changing under a new administration and may keep changing. Getting convicted of a crime or agreeing to a “continuance without a finding” (CWOFF) often has serious immigration consequences. If you are not a citizen and were convicted of a crime, including but not limited to a never sealable crime, talk to an immigration attorney about the effect of the case on your immigration status.

### **BEFORE SEALING YOUR CRIMINAL RECORD**

Once your criminal case is sealed, you can no longer look at or get copies of your court file at the courthouse. Before you seal cases, it is a good idea to get certified copies of the criminal complaint and dockets sheets in case you need them in the future. Otherwise, you will have to file a motion to unseal the case to get copies of documents, or request help from the Office of the Commissioner of Probation at One Ashburton Place in Boston to unseal your records.

### **LEGAL RESOURCES FOR LOW INCOME PEOPLE**

If you live in the Boston area and need help sealing criminal records, you can call 617-603-1700 or Greater Boston Legal Services (GBLS) at 617-371-1234. If you live in the Boston area, you’ll be screened for eligibility for an intake for GBLS.

- To find a legal aid program if you live outside Boston or get more information about record sealing and related issues, go to: [www.masslegalhelp.org](http://www.masslegalhelp.org)
- To request your CORI report online, go to: <http://www.mass.gov/eopss/agencies/dcjis/>
- Read other booklets in this series: [https://www.gbls.org/cori\\_record\\_sealing\\_booklets](https://www.gbls.org/cori_record_sealing_booklets)

Booklet 1: How to Get a Copy of Your Criminal Record (CORI)

Booklet 2: How to Seal Old Criminal Cases

Booklet 3: Sealing Cases that Ended without a Conviction or First Time Drug Convictions

Booklet 4: Representing Yourself in Court after Filing a Petition to Seal Criminal Cases

Booklet 5: One Stop CORI Sealing in Boston Municipal Court

Booklet 6: What You Should Know about Drivers' Licenses and Drug Convictions

Booklet 7: How to Seal Decriminalized Marijuana Cases

## NEVER SEALABLE CRIMES IF YOU ARE CONVICTED

### **G.L. c. 268: “Crimes against Public Justice”**

§ 1 Perjury

§ 1A Statements containing declaration relative to penalties of perjury; verification; false statements

§ 2 Subornation of perjury

§ 3 Attempt to procure another to commit perjury

§ 4 Testimony creating presumption of perjury: commitment; recognizance; witnesses bound over; notice

§ 5 Presumption of perjury: papers, books and documents detained for prosecution

§ 6 False reports or testimony before state departments, board of commissioner; false entries in company books or statements; aiders or abettors

§ 6A False written reports by public officers or employees

§ 6B Process servers; false statements; penalty

§ 8B Compulsion or coercion to refuse appointment or promotion

§ 9A Public officers or employees; solicitations regarding testimonial dinners

§ 13 Corrupting or attempting to corrupt masters, auditors, jurors, arbitrators, umpires or referees

§ 13A Picketing court, judge, juror, witness or court officer

§ 13B Intimidation of witnesses, jurors and persons furnishing information in connection with criminal proceedings

§ 13C Disruption of court proceedings

§ 13D Distributing transcript or description of grand jury testimony with intent to interfere with criminal proceedings

§ 13E Tampering with record, document or other object for use in an official proceeding

§ 14 Receipt of gift by juror, arbitrator, umpire, referee, master or auditor

§ 14A Juror discharged from employment

§ 14B Witnesses in criminal actions; discharge, etc. from employment

§ 15 Aiding escape from a correctional institution or jail; rescue

### **§ 15A Escapes from jail**

§ 16 Escape or attempt to escape, or failure to return from temporary release or furlough

§ 17 Aiding escape from officer or person having custody

§ 18 Jailer or officer suffering prisoner to escape

§ 19 Suffering or consenting to an escape from a penal institution

§ 20 Negligently suffering prisoner to escape; refusal to receive prisoner

§ 21 Suffering convict to be at large, visited, relieved or comforted

§ 21A Officer or other employee of penal or correctional institution; sexual relations with inmate; punishment

§ 22 Delay of service of warrants

§ 23 Refusal or delay to execute process resulting in escape

§ 24 Neglect or refusal to assist officer or watchman

§ 25 Refusal or neglect to obey order of justice of the peace to apprehend offender

§ 26 Delivering alcoholic beverages to prisoners; possession

§ 27 Delivering alcoholic beverages to patients of public institutions; possession

§ 28 Delivering drugs or articles to prisoners in correctional institutions or jails; possession

§ 29 Delivery, or permission of delivery, by officers, of alcoholic beverages, to prisoners; keeping together prisoners of different sexes or classes

§ 30 Disturbing correctional institutions or jail; attracting attention of, or communicating with, inmates

§ 31 Delivery or receipt of articles to or from inmates

§ 32 Interference or tampering with police or fire signal systems, or motorist highway emergency aid call boxes; false alarms or calls

§ 32A Interference with fire fighting operations

**§ 32B Resisting arrest**

**Important.** Please note that legislation was filed in 2017 to change the law so as to permit sealing of convictions for resisting arrest.

§ 33 Falsely assuming to be justice of the peace or other officers

§ 33A Engaging in lead paint inspection without a license

§ 34 Disguises to obstruct execution of law, performance of duties, or exercise of rights

§ 34A **Furnishing false name** or Social Security number **to law enforcement officer** or official; penalty; restitution<sup>2</sup>

§ 35 Unauthorized use of town seal; making or possessing badge of town officer

§ 36 Compounding or concealing felonies

§ 39 Perjury; statements alleging motor vehicle theft; penalty; subsequent offenses

§ 40 Reports of crimes to law enforcement officials

**G.L. c. 268A: “Crimes Against Ethics”**

§ 2 Corrupt gifts, offers or promises to influence official acts; corruption of witnesses

§ 3 Gifts, offers or promises for acts performed or to be performed; corruption of witnesses; solicitation of gifts; witness fees; regulations

§ 4 Other compensation; offer, gift, receipt or request; acting as agent or attorney for other than state; legislators; special state employees

§ 5 Former state employees; acting as agent or attorney or receiving compensation; partners of state employees or legislators

§ 6 Financial interest of state employee, relative or associates; disclosure

§ 6A Conflict of interest of public official; reporting requirement

§ 6B Candidates for employment as state employee; disclosure of relation to state employee

§ 7 Financial interest in contracts of state agency; application of section

§ 8 Public building or construction contracts

§ 8A Members of state commissions or boards; prohibited appointments to other positions

§ 8B Members of commonwealth utilities commission; prohibited lobbying activities

§ 9 Avoiding, rescinding or canceling state agency actions resulting from violations of chapter; restitution and damages

§ 10 Opinions of state ethics commission

§ 11 County employees; receiving or requesting compensation from, or acting as agent or attorney for other than county agency

§ 12 Former county employees; acting as attorney or receiving compensation from other than county; partners of employees or former employees or legislators

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<sup>2</sup> Providing a false name to a police officer is also an offense under G.L. c. 90, §25, but a conviction under this other statute does not result in never sealable offense.

§ 13 Financial interest of county employee, relatives or associates; disclosure  
§ 14 County employees; financial interest in contracts of county agency  
§ 15 Avoiding, rescinding or canceling county agency actions resulting from violations of chapter; restitution and damages  
§ 15A Members of county commission or board; restrictions on appointments to certain positions  
§ 17 Municipal employees; gift or receipt of compensation from other than municipality; acting as agent or attorney  
§ 18 Former municipal employee; acting as attorney or receiving compensation; from other than municipality; partners  
§ 19 Municipal employees, relatives or associates; financial interest in particular matter  
§ 20 Municipal employees; financial interests in contracts; holding one or more elected positions  
§ 21 Avoiding, rescinding or canceling municipal action resulting from violations of chapter; restitution and damages  
§ 21A Members of municipal commission or board; restrictions on appointments to certain positions  
§ 21B Prospective municipal appointees; demanding undated resignations prohibited  
§ 26 Penalty for violations of clause (b)(2) or (b)(4) of Sec. 23

### **G.L. c. 140 “Sale of Firearms”**

§ 121 Firearm sales; definitions; antique firearms; application of law; exceptions  
§ 121A Identification of firearms; certificate by ballistics expert as prima facie evidence  
§ 122 Licenses; contents; fingerprints of applicants; procedure on refusal of license; fees; punishment for improper issuance  
§ 122A Record of licenses; notice to department of criminal justice information services; sales record books  
§ 122B Sale of ammunition; license; fees; rules and regulations; refusal, suspension or revocation of license; judicial review; penalties  
§ 122C Illegal sale or possession of self-defense spray; penalty for violation  
§ 122D Persons prohibited from purchase or possession of self-defense spray; penalty for violation  
§ 123 Conditions of licenses  
§ 124 Terms of licenses  
§ 125 Forfeiture or suspension of licenses; notice  
§ 126 Placards, signs or advertisements; prima facie evidence  
§ 127 Transfer of licenses  
§ 128 Penalty for violation of statute on selling, renting or leasing weapons; evidence on sale of machine gun  
§ 128A Application of Sec. 128  
§ 128B Unauthorized purchase of firearms; report to commissioner; penalties  
§ 129 Fictitious name or address and other false information; penalties  
§ 129B Firearm identification cards; conditions and restrictions  
§ 129C Application of Sec. 129B; ownership or possession of firearms or ammunition; transfers; report to commissioner; exemptions; exhibiting license to carry, etc. on demand  
§ 129D Surrender of firearms and ammunition to licensing authority upon denial of application for, or revocation of, identification card or license; right to transfer; sale by colonel of state police; rules and regulations  
§ 130 Sale or furnishing weapons or ammunition to aliens or minors; penalty

§ 131 Licenses to carry firearms; conditions and restrictions

§ 131A Permits to purchase, rent or lease firearms, or to purchase ammunition; fee; penalties

§ 131B Penalty for loan of money secured by weapons

**§ 131C Carrying of firearms in a vehicle**

§ 131E Purchase by residents; licenses; firearm identification cards; purchase for use of another; penalties; revocation of licenses or cards; reissuance

§ 131F Nonresidents or aliens; temporary license to carry firearms or ammunition

§ 131F1/2 Theatrical productions; carrying firearms and blank ammunition

§ 131G Carrying of firearms by non-residents; conditions

§ 131H Ownership or possession of firearms by aliens; penalties; seizure and disposition

**Important.** This information is provided as a public service by Greater Boston Legal Services and does not constitute legal advice which can only be given to you by your own attorney. This booklet was last updated on January 7, 2018. This booklet may be copied and is available online at: [https://www.gbls.org/cori\\_record\\_sealing\\_booklets](https://www.gbls.org/cori_record_sealing_booklets) and [MassLegalHelp.org/cori/never-sealable-crimes-booklet8.pdf](https://www.masslegalhelp.org/cori/never-sealable-crimes-booklet8.pdf)