

HOUSE No. 4703

The Commonwealth of Massachusetts

By Mr. Murphy of Burlington, for the committee on Ways and Means, that the Senate Bill relative to reforming the administrative procedures relative to criminal offender record information and pre- and post- trial supervised released (Senate, No. 2220) ought to pass with an amendment striking out all after the enacting clause and inserting in place thereof the text out House document numbered 4703. May 25, 2010.

FOR THE COMMITTEE

NAME:

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The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

The Committee on Ways and Means recommends that the bill be amended by striking out all after the enacting clause and inserting in place thereof the following:

SECTION 1. Section 116C of chapter 6 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out, in lines 16 and 31, the words “criminal history systems board” and inserting in place thereof the following words:- department of criminal justice information services.

SECTION 2. Section 167 of said chapter 6, as so appearing, is hereby amended by striking out, in line 2, the words “one hundred and sixty eight to one hundred seventy eight” and inserting in place thereof the following words:- 168 to 178L.

SECTION 3. Said section 167 of said chapter 6, as so appearing, is hereby further amended by inserting before the definition of “Criminal justice agencies” the following 3 definitions:-

“All available criminal offender record information”, adult and youthful offender convictions, nonconvictions and pending criminal court appearances, but excluding criminal records sealed under section 34 of chapter 94C or sections 100A to 100C, inclusive, of chapter 276 or the existence of such records.

“Board”, the criminal record review board established pursuant to section 168.

“Commissioner”, the commissioner of the department of criminal justice information services established pursuant to section 167A.

SECTION 4. Said section 167 of said chapter 6, as so appearing, is hereby further amended by inserting after the definition of “Evaluative information” the following new definition:-

“Executive office”, the executive office of public safety and security.

SECTION 5. Said section 167 of said chapter 6, as so appearing, is hereby further amended by inserting after the definition of “Criminal offender record information” the following definition:-

“Department”, the department of criminal justice information services established pursuant to section 167A.

SECTION 6. Said section 167 of said chapter 6, as so appearing, is hereby further amended by inserting after the definition of “Interstate systems” the following definition:-

“Person”, a natural person, corporation, association, partnership or other legal entity.

SECTION 7. Said section 167 of said chapter 6, as so appearing, is hereby further amended by inserting after the definition of “Purge” the following 3 definitions:-

“Requestor”, a person, other than a criminal justice agency, submitting a request for criminal offender record information to the department.

“Secretary”, the secretary of the executive office of public safety and security.

“Self-audit”, an inquiry made by a subject or his legally authorized designee to obtain a log of all queries to the department by any requestor for the subject’s criminal offender record information; provided, however, that a self-audit shall not include information relative to a query conducted by a criminal justice agency.

“Subject”, an individual for whom a request for criminal offender record information is submitted.

SECTION 8. Said chapter 6 is hereby further amended by inserting after section 167 the following section:-

Section 167A. (a) There shall be within the executive office a department of criminal justice information services which shall be under the supervision and control of a commissioner. The commissioner shall be appointed by the secretary and shall be a person of skill and experience in

the field of criminal justice. The commissioner shall be the executive and administrative head of the department and shall be responsible for administering and enforcing the provisions of law relative to the department and to each administrative unit thereof. The commissioner shall serve at the pleasure of the secretary, shall receive such salary as may be determined by law, and shall devote his full time to the duties of his office. In the case of an absence or vacancy in the office of the commissioner, or in the case of disability as determined by the secretary, the secretary may designate an acting commissioner to serve as commissioner until the vacancy is filled or the absence or disability ceases. The acting commissioner shall have all the powers and duties of the commissioner and shall have similar qualifications as the commissioner. The commissioner shall not be subject to the provisions of chapter 31 or section 9A of chapter 30.

(b) The commissioner may appoint such persons as he shall deem necessary to perform the functions of the department, provided that the provisions of chapter 31 and section 9A of chapter 30 shall not apply to any person holding any such appointment. Every person so appointed to any position in the department shall have experience and skill in the field of such position. So far as practicable in the judgment of the commissioner, appointments to such positions in the department shall be made by promoting or transferring employees of the commonwealth serving in positions which are classified under chapter 31, and such appointments shall at all times reflect the professional needs of the administrative unit affected. If an employee serving in a position which is classified under chapter 31 or in which an employee has tenure by reason of said section 9A of said chapter 30 shall be appointed to a position within the department which is not subject to the provisions of said chapter 31, the employee shall upon termination of his service in such position be restored to the position which he held immediately prior to such appointment; provided, however, that his service in such position shall be determined by the civil service commission in accordance with the standards applied by said commission in administering said chapter 31. Such restoration shall be made without impairment of his civil service status or tenure under said section 9A of said chapter 30 and without loss of seniority, retirement or other rights to which uninterrupted service in such prior position would have entitled him. During the period of such appointment, each person so appointed from a position in the classified civil service shall be eligible to take any competitive promotional examination for which he would otherwise have been eligible.

73

74 (c) The department shall provide for and exercise control over the installation, operation
75 and maintenance of data processing and data communication systems, hereinafter called the
76 public safety information system, which shall include, but shall not be limited to, the criminal
77 justice information system. The system shall be designed to ensure the prompt collection,
78 exchange, dissemination and distribution of such public safety information as may be necessary
79 for the efficient administration and operation of criminal justice agencies, and to connect such
80 systems directly or indirectly with similar systems in this or other states. The department shall be
81 responsible for all data processing, management of the public safety information system,
82 supervision of all personnel associated with the system and the appointment of all such
83 personnel.

84 (d) The department shall provide access to the public safety information system to
85 criminal justice agencies. The department may, subject to chapter 30A, hear and investigate
86 complaints pertaining to misuse of the public safety information system and issue sanctions and
87 penalties for misuse. The commissioner may refer complaints for further review to the criminal
88 record review board, any state or federal agency or prosecuting authority.

89 (e) The department may promulgate rules and regulations for: (i) the implementation,
90 administration and enforcement of this section; (ii) the control, installation and operation of the
91 public safety information system accessed and utilized by criminal justice agencies; and the
92 collection, storage, access, dissemination, content, organization and use of criminal offender
93 record information by noncriminal justice agencies.

94 SECTION 9. Section 168 of said chapter 6, as appearing in the 2008 Official Edition, is hereby
95 amended by striking out the first paragraph and inserting in place thereof the following
96 paragraph:-

97 There shall be a criminal history systems board, hereinafter called the board, consisting
98 of the following persons: the secretary of public safety and security, who shall serve as chair, the
99 secretary of labor and workforce development, the attorney general, the chair of the
100 Massachusetts sentencing commission, the chief counsel for the committee for public counsel

101 services, the chair of the parole board, the commissioner of the department of correction, the
102 commissioner of probation, the commissioner of the department of youth services and the
103 colonel of state police, or their designees, all of whom shall serve ex officio, and 10 persons to
104 be appointed by the governor for a term of 3 years, 1 of whom shall represent the Massachusetts
105 District Attorneys Association, 1 of whom shall represent the Massachusetts Sheriffs'
106 Association, 1 of whom shall represent the Massachusetts Chiefs of Police Association, 1 of
107 whom shall represent private users of criminal offender record information, 1 of whom shall be a
108 victim of crime, 1 of whom shall be a provider of victim services, 2 of whom shall have
109 experience in the areas of workforce development, ex-offender rehabilitation or economic
110 development and 2 of whom shall be persons who have experience in issues relating to personal
111 privacy.

112 SECTION 10. Said section 168 of said chapter 6, as so appearing, is hereby further amended by
113 striking out, in lines 50 and 51, the words "five hundred dollars for each willful violation
114 thereof, after notice and hearing as provided by applicable law" and inserting in place thereof the
115 following words:- \$5,000 for each knowing violation thereof, after notice and hearing as
116 provided by applicable law; provided, however, that the board shall not issue any orders,
117 sanctions or fines against a law enforcement officer who, in good faith, obtains or seeks to obtain
118 or communicates or seeks to communicate criminal offender record information in the
119 furtherance of the officer's official duties.

120 SECTION 11. Said section 168 of said chapter 6, as so appearing, is hereby further amended by
121 striking out the fourth and sixth paragraphs.

122 SECTION 12. Said chapter 6 is hereby further amended by striking out section 168, as so
123 appearing, and inserting in place thereof the following section:

124 Section 168. (a) There shall be a criminal record review board within the Massachusetts
125 department of criminal justice information services consisting of the following persons: the
126 secretary of public safety and security, who shall serve as chair, the attorney general, the
127 secretary of labor and workforce development, the chair of the Massachusetts sentencing
128 commission, the chief counsel for the committee for public counsel services, the chair of the

129 parole board, the commissioner of the department of correction, the commissioner of probation,
130 the commissioner of the department of youth services, the colonel of state police and the
131 presidents of the Massachusetts District Attorneys Association, the Massachusetts Sheriffs'
132 Association and the Massachusetts Chiefs of Police Association, or their designees, all of whom
133 shall serve ex officio, and 5 persons to be appointed by the governor, 1 of whom shall represent
134 private users of criminal offender record information, 1 of whom shall be a victim of crime, 1 of
135 whom shall have experience in the areas of workforce development or exoffender rehabilitation
136 and 2 of whom shall be persons who have experience in issues relating to personal privacy. Upon
137 the expiration of the term of any appointive member, his successor shall be appointed in a like
138 manner for a term of 3 years

139 The chair shall hold regular meetings, 1 of which shall be an annual meeting, and shall
140 notify all board members of the time and place of all meetings. Special meetings may be called at
141 any time by a majority of the board members and shall be called by the chair upon written
142 application of 9 or more members. Members of the board shall serve without compensation but
143 shall be reimbursed for their expenses actually and necessarily incurred in the discharge of their
144 official duties.

145 (b) The board may hear complaints and investigate any allegation against a person that
146 has requested or received criminal offender record information has failed to provide the subject
147 with the criminal offender record information in the individual or agency's possession prior to
148 questioning the subject about his criminal history in connection with a decision regarding
149 employment, volunteer opportunities, housing or professional licensing or in connection with an
150 adverse decision on such an application on the basis of the criminal offender record information.
151 The board shall also have the authority to hear complaints and investigate any incidents alleging
152 any other violation of sections 168 to 178A, inclusive, or board rules and regulations. The board
153 may charge and collect a fee, established by the secretary of public safety and security, as a
154 condition for filing a complaint, which fee may be waived upon a finding of indigency. A
155 complaint filed with the board shall be supported by a written declaration by the complainant
156 that it is made under the penalties of perjury. An answer filed by a responding party shall be
157 signed under the penalties of perjury by an individual with personal knowledge of its contents. In
158 conducting investigations or hearings the board or department, staff designated by the board shall

159 have the power to summons witnesses, compel their attendance and testimony, require the
160 production of books, records and documents, administer oaths and have access to all criminal
161 offender record information. The chair of the board may appoint a member, panel of 3 board
162 members or a hearing officer to conduct adjudicatory proceedings in accordance with chapter
163 30A or other rules that the board may promulgate. Following review of a complaint by a board
164 member, panel or hearing officer, the board, by a vote of two-thirds of the members present and
165 voting, shall issue a ruling as to the findings of the board. In accordance with its findings the
166 board may issue orders and sanctions including, but not limited to, a remand for additional fact
167 finding, the imposition of civil fines payable to the commonwealth not to exceed \$5,000 for each
168 knowing violation or, conditions on continued access to criminal offender record information or
169 revocation of access; provided, however, that the board shall not issue any orders, sanctions or
170 fines against a law enforcement officer who, in good faith, obtains or seeks to obtain, or
171 communicates or seeks to communicate criminal offender record information in the furtherance
172 of the officer's official duties. The board may at any time refer a complaint for criminal
173 prosecution under section 178.

174 The board shall make an annual report of the volume and disposition of complaints,
175 without identifying data on any complainant or other information that would include criminal
176 offender record information relative to any person reviewed by the board, to the governor and
177 file a copy thereof with the state secretary, the attorney general, the clerk of the house of
178 representatives and the clerk of the senate. The annual report shall also be available to the public
179 upon request.

180 SECTION 13. Section 168A of said chapter 6, as so appearing, is hereby amended by striking
181 out, in lines 3 and 4, the words "criminal history systems board" and inserting in place thereof
182 the following words:- department.

183 SECTION 14. Section 168B of said chapter 6, as so appearing, is hereby amended by striking
184 out, in lines 1 and 2, the words "criminal history systems board" and inserting in place thereof
185 the following words:- department.

186 SECTION 15. Section 168C of said chapter 6, as so appearing, is hereby amended by striking
187 out, in lines 4 and 5, the words “criminal history systems board” and inserting in place thereof
188 the following words:- department.

189 SECTION 16. Section 171 of said chapter 6, as so appearing, is hereby amended by striking out,
190 in lines 1 and 10, the word “board” and inserting in place thereof, in each instance, the following
191 word:- department.

192 SECTION 17. Said section 171 of said chapter 6, as so appearing, is hereby further amended by
193 striking out, in lines 3 to 7, inclusive, the words “(b) assuring the prompt and complete purging
194 of criminal offender record information, insofar as such purging is required by any statute or
195 administrative regulation, by the order of any court of competent jurisdiction, or to correct any
196 errors shown to exist in such information; and (c) ” and inserting in place thereof the following:-
197 “ ; and (b).”

198 SECTION 18. Said section 171 of said chapter 6, as so appearing, is hereby further amended by
199 striking out, in lines 35 to 48, inclusive, the words “Any individual aggrieved by an agency’s
200 decision denying access to evaluative information may appeal the denial in writing within thirty
201 days thereafter to the board or to a three member panel thereof, as the board may determine, and
202 the board or such panel or any court under section one hundred and seventy-seven shall have
203 access to any certificate. The adoption of such regulations by each criminal justice agency shall
204 be subject to the approval of the board, and shall be promulgated within time limits set by the
205 board. If any criminal justice agency holding evaluative information fails to promulgate such
206 regulations, then the board shall promulgate such regulations with respect to that criminal justice
207 agency. Evaluative information shall be subject to the provisions of sections 172 and 178, as if
208 such information was criminal offender record information.”.

209 SECTION 19. Said chapter 6 is hereby further amended by inserting after section 171 the
210 following section:-

211 Section 171A. In connection with any decision regarding employment, volunteer
212 opportunities, housing or professional licensing, a person in possession of an applicant’s criminal
213 offender record information shall provide the applicant with the criminal history record in the

person's possession, whether obtained from the department or any other source, prior to questioning the applicant about his criminal history. If the person makes a decision adverse to the applicant on the basis of his criminal history, the person shall also provide the applicant with the criminal history record in the person's possession, whether obtained from the department or any other source; provided, however, that if the person has provided the applicant with a copy of his criminal offender record information prior to questioning, the person shall not be required to provide the information a second time in connection with an adverse decision based on this information. Failure to provide such criminal history information to the applicant pursuant to this section may subject the offending person to investigation, hearing and sanctions by the board. Nothing in this section shall be construed to: (i) prohibit a person from making an adverse decision on the basis of an applicant's criminal history; or (ii) to provide or permit a claim of an unlawful practice under chapter 151B or an independent cause of action in a court of civil jurisdiction for a claim arising out of an adverse decision based on criminal history except as otherwise provided under chapter 151B.

A person who annually conducts 5 or more criminal background investigations, whether criminal offender record information is obtained from the department or any other source, shall maintain a written criminal offender record information policy providing that, in addition to any obligations required by the commissioner by regulation, it will: (i) notify the applicant of the potential adverse decision based on the criminal offender record information; (ii) provide a copy of the criminal offender record information and the policy to the subject; and (iii) provide information concerning the process for correcting a criminal record.

SECTION 20. Section 172 of said chapter 6, as appearing in the 2008 Official Edition, is hereby amended by inserting after the word "privacy", in lines 14 and 40, the following words:- and the importance and value of successful reintegration of ex-offenders.

SECTION 21. Said chapter 6 is hereby further amended by striking out section 172, as so appearing, and inserting in its place thereof the following section:-

240 Section 172. (a) The department shall maintain criminal offender record information in a
241 database, which shall exist in an electronic format and be accessible via the internet. Except as
242 otherwise provided in this chapter, access to the database shall be limited as follows:

243 (1) Criminal justice agencies may obtain all criminal offender record information,
244 including sealed records, for the actual performance of their criminal justice duties. Licensing
245 authorities, as defined in section 121 of chapter 140, may obtain all criminal offender record
246 information, including sealed records, for the purpose of firearms licensing in accordance with
247 sections 121 to 131P, inclusive, of said chapter 140. The board may obtain all criminal offender
248 record information, including sealed records, for the actual performance of its duties.

249 (2) Requestors authorized or required to obtain criminal record information other than
250 that available under paragraph (3) to comply with a statutory, regulatory or accreditation
251 requirement may obtain such information to the extent and for the purposes authorized to comply
252 with said statute, regulation or accreditation requirement.

253 (3) Requestors or their legally designated representatives may obtain criminal offender
254 record information for the following purposes: (a) to evaluate current and prospective employees
255 including full-time, part-time, contract, internship employees or volunteers; (b) to evaluate
256 applicants for rental or lease of housing; (c) to evaluate volunteers for services; and (d) to
257 evaluate applicants for a professional or occupational license. Criminal offender record
258 information made available under this section shall be limited to the following: (i) felony
259 convictions for 10 years following their disposition, including termination of any period of
260 incarceration or custody; (ii) misdemeanor convictions for 5 years following their disposition,
261 including termination of any period of incarceration or custody; and (iii) pending criminal
262 charges, which shall include cases that have been continued without a finding until such time as
263 the case is dismissed pursuant to section 18 of chapter 278; provided, however, that criminal
264 offender record information shall contain prior misdemeanor and felony conviction records that
265 have been sealed pursuant to clauses (i) and (ii) if the subject is convicted of a misdemeanor or
266 felony after the records are sealed under this section; and provided further that a violation of
267 section 7 of chapter 209A and a violation of section 9 of chapter 258E shall be treated as a felony
268 for purposes of this section.

(4) A member of the general public may, upon written request to the department and in accordance with regulations established by the department, obtain the following criminal offender record information on a subject: (i) convictions for any felony punishable by a term of imprisonment of 5 years or more; (ii) information indicating custody status and placement within the correction system for an individual who has been convicted of any crime and sentenced to any term of imprisonment, and at the time of the request is serving a sentence of probation or incarceration, or is under the custody of the parole board; (iii) felony convictions for 2 years following their disposition, including any period of incarceration or custody ; and (iv) misdemeanor convictions for 1 year following their disposition, including any period of incarceration or custody.

(5) Subjects who seek to obtain their own criminal offender record information, or their legally designated representative , may obtain all criminal offender record information pertaining to the subject pursuant to section 175.

(6) The commissioner may provide access to criminal offender record information to persons other than those entitled to obtain access pursuant to this section if the commissioner finds that such dissemination to such requestor serves the public interest. Upon such a finding, the commissioner shall also determine the extent of access to criminal offender record information necessary to sustain the public interest. The commissioner shall make an annual report to the governor and file a copy thereof with the state secretary, the attorney general, the clerk of the house of representatives and the clerk of the senate documenting access provided under this paragraph, without inclusion of identifying data on a subject. The annual report shall be available to the public upon request.

(7) Housing authorities operating pursuant to chapter 121B may obtain from the department conviction and pending criminal offender record information for the sole purpose of evaluating applications for housing owned by such housing authority, in order to further the protection and well-being of tenants of such housing authorities.

(8) The department public utilities established pursuant to chapter 25 may obtain from the department all available criminal offender record information for the purpose of screening

297 applicants for motor bus driver certificates and applicants who regularly transport school age
298 children or students under chapter 71B in the course of their job duties. The department of public
299 utilities shall not disseminate such information for any purpose other than to further the
300 protection of children.

301 (9) The department of children and families and the department of youth services may
302 obtain from the department data permitted under section 172B.

303 (10) A person providing services in a home or community-based setting for any elderly
304 person or disabled person or who will have direct or indirect contact with such elderly or
305 disabled persons or access to such persons' files may obtain from the department data permitted
306 under section 172C.

307 (11) The IV-D agency as set forth in chapter 119A may obtain from the department data
308 permitted under section 172D and section 14 of chapter 119A.

309 (12) A long term care facility, as defined in section 72W of chapter 111, an assisted
310 living residence as defined in section 1 of chapter 19D, and to any continuing care facility as
311 defined in section 1 of chapter 40D may obtain from the department data permitted under section
312 172E.

313 (13) The department of early education and care may obtain from the department data
314 permitted under section 172F.

315 (14) Operators of camps for children may obtain from the department data permitted
316 under section 172G.

317 (15) An entity or organization primarily engaged in providing activities or programs to
318 children 18 years of age or less that accepts volunteers may obtain from the department data
319 permitted under section 172H.

320 (16) School committees or superintendents that have contracted with taxicab companies
321 to provide transportation of pupils pursuant to section 7A of chapter 71 may obtain from the
322 department data permitted under section 172I.

(17) The commissioner of banks may obtain from the department data permitted under section 172J, section 3 of chapter 255E and section 3 of chapter 255F.

(18) A children's camp or school that plans to employ or accept as a volunteer for a climbing wall or challenge course program may obtain from the department data permitted under section 172K.

(20) A victim of crime, witness or family member of a homicide victim, as defined by section 1 of chapter 258B, may obtain from the department data permitted under section 178A.

(21) The motor vehicle insurance merit rating board may obtain from the department data permitted under section 183.

(22) The department of early education and care, or its designee, may obtain from the department data permitted under section 6 and section 8 of chapter 15D.

(23) The district attorney may obtain from the department data permitted under section 2A of chapter 38.

(24) A school committee and superintendent of any city, town or regional school district and the principal, by whatever title the position be known, of a public or accredited private school of any city, town or regional school district may obtain from the department data permitted under section 38R of chapter 71.

(25) The Massachusetts port authority may obtain from the department data permitted under section 61 of chapter 90.

(26) The department of social services may obtain from the department data permitted under section 26A of chapter 119, section 3B of chapter 210 and item 4800-8940 of section 2A of chapter 493 of the acts of 1993 as amended by section 7 of chapter 96 of the acts of 1995.

(27) The state racing commission may obtain from the department data permitted under section 9A of chapter 128A.

347 (28) A court, office of jury commissioner, and the clerk of court or assistant clerk may
348 obtain from the department data permitted under section 33 of chapter 234A.

349 (29) The pension fraud unit within the public employee retirement administration
350 commission may obtain from the department data permitted under section 10 of chapter 427 of
351 the acts of 1996.

352 (b) Notwithstanding the foregoing, convictions for murder, voluntary manslaughter,
353 involuntary manslaughter, and sex offenses as defined in section 178C that are punishable by a
354 term of incarceration in state prison shall remain in the database permanently and shall be
355 available to all requestors listed in paragraphs (1) to (3), inclusive of subsection (a) unless sealed
356 under section 100A of chapter 276.

357 (c) The department shall specify the information that requestors must provide to query
358 the database, including, but not limited to, the subject's name, date of birth and the last 4 digits
359 of the subject's social security number; provided, however, that a member of the public
360 accessing information under paragraph (4) of subsection (a) shall not be required to provide the
361 last 4 digits of the subject's social security number. Requestors seeking to obtain criminal
362 offender record information concerning a subject pursuant to paragraph (2) or (3) of subsection
363 (a), shall certify under the pains and penalties of perjury that the person requesting the criminal
364 offender record information is authorized by the requestor to receive such information, that the
365 request is for a purpose authorized under paragraph (2) or (3) of subsection (a) and that the
366 subject has signed an acknowledgement form authorizing the requestor to obtain the subject's
367 criminal offender record information. The requestor shall also certify that he has verified the
368 identity of the subject by reviewing a form of government-issued identification. Each requestor
369 shall maintain acknowledgement forms for a period of 1 year from the date the request is
370 submitted. Such forms shall be subject to audit by the department. The department may establish
371 rules or regulations imposing other requirements or affirmative obligations upon requestors as a
372 condition of obtaining access to the database.

(d) Except as authorized herein, it shall be unlawful to request or require a person to provide a copy of his criminal offender record information. Violation of this subsection is punishable by the penalties set forth in section 178.

(e) No employer or person relying on volunteers shall be liable for negligent hiring practices by reason of relying solely on criminal offender record information received from the department and not performing additional criminal history background checks on the volunteer, unless required to do so by law; provided, however, that the employer made an employment decision within 90 days of obtaining the criminal offender record information and maintained and followed policies and procedures for verification of the subject's identifying information consistent with the requirements set forth in this section and in the department's regulations.

No employer shall be liable for discriminatory employment practices for the failure to hire a person on the basis of criminal offender record information that contains erroneous information requested and received from the department if the employer would not have been liable if the information had been accurate; provided, however, that the employer made an employment decision within 90 days of obtaining the criminal offender record information and maintained and followed policies and procedures for verification of the subject's information consistent with the requirements set forth in this section and the department's regulations.

Neither the board nor the department shall be liable in any civil or criminal action by reason of any criminal offender record information or self-audit log that is disseminated by the board, including any information that is false, inaccurate or incorrect because it was erroneously entered by the court or the office of the commissioner of probation.

(f) Requestors shall not disseminate criminal offender record information except: (i) upon request by a subject; (ii) to individuals within the requesting entity that need to know the contents of the criminal offender record information to serve the purpose for which the information was obtained; and (iii) upon request by government entities charged with overseeing, supervising, or regulating them.

Requestors shall maintain a secondary dissemination log for a period of 1 year following the dissemination of a subject's criminal offender record information. The log shall include the

401 following information: (i) name of subject; (ii) date of birth of the subject; (iii) date of the
402 dissemination; (iv) name of person to whom it was disseminated; and (v) the purpose for the
403 dissemination. The secondary dissemination log shall be subject to audit by the department.

404 Unless otherwise provided by law or court order, no requestor shall maintain a copy,
405 electronic or otherwise, of requested criminal offender record information obtained from the
406 department for more than 7 years from the last date of employment, volunteer service or
407 residency or from the date of the final decision of the requestor regarding the subject.

408 (g) The department shall maintain a log of all queries that shall indicate the name of the
409 requestor, the name of the subject, the date of the query and the certified purpose of the query.
410 Upon request, the commissioner may transmit the self-audit electronically. Further, if funding is
411 available and technology reasonably allows, the department shall establish a mechanism that will
412 notify a subject, or an advocate or agent designated by the subject, by electronic mail or other
413 communication mechanism whenever a query is made regarding the subject. The self-audit log
414 and query log shall not be considered a public record.

415 (h) Notwithstanding the provisions of this section to the contrary, the motor vehicle
416 insurance merit rating board may disseminate information concerning convictions of automobile
417 law violations as defined in section 1 of chapter 90C or information concerning a charge of
418 operating a motor vehicle while under the influence of intoxicating liquor that results in
419 assignment to a driver alcohol program as described in section 24D of chapter 90, directly or
420 indirectly, to an insurance company doing motor vehicle insurance business within the
421 commonwealth, or to such insurance company's agents, independent contractors or policyholders
422 to be used exclusively for motor vehicle insurance purposes.

423 (i) Notwithstanding the provisions of this section to the contrary, information indicating
424 custody status and placement within the correction system shall be available to any person upon
425 request; provided, however that no information shall be disclosed that identifies family members,
426 friends, medical or psychological history, or any other personal information unless such
427 information is directly relevant to such release or custody placement decision, and no

information shall be provided if its release would violate any other provisions of state or federal law.

(j) The parole board, subject to sections 130 and 154 of chapter 127, the department of correction, a county correctional authority or a probation officer with the approval of a justice of the appropriate division of the trial court may, in its discretion, make available a summary, which may include references to criminal offender record information or evaluative information, concerning a decision to release an individual on a permanent or temporary basis, to deny such release, or to change the individual's custody status.

(k) Members of the public who are in fear of an offender may obtain from the department advance notification of the temporary or permanent release of an offender from custody, including but not limited to expiration of a sentence, furlough, parole, work release or educational release. An individual seeking access to advance notification shall verify by a written declaration under the penalties of perjury that the individual is in fear of the offender and that advance notification is warranted for physical safety reasons.

(l) A person that receives or obtains criminal offender record information from any source in violation of sections 168 to 175, inclusive, whether directly or through an intermediary, shall not collect, store, disseminate or use such criminal offender record information in any manner or for any purpose.

(m) Notwithstanding this section or chapter 66A, the following shall be public records: (1) police daily logs, arrest registers or other similar records compiled chronologically; (2) chronologically maintained court records of public judicial proceedings; (3) published records of public court or administrative proceedings, and of public judicial administrative or legislative proceedings; and (4) decisions of the parole board as provided in section 130 of chapter 127.

(n) The commissioner, upon the advice of the board, shall promulgate rules and regulations to carry out the provisions of this section.

SECTION 22. Said chapter 6 is hereby further amended by striking out section 172A, as so appearing, and inserting in place thereof the following section:-

Section 172A. The commissioner shall assess a fee for each request for criminal offender record information or self-audit, according to a fee structure established by the secretary of public safety and security; provided, however, that a self-audit may be requested for no fee once every 90 days; and provided, further, that the commissioner may impose a fee for self-audit requests made more than once every 90 days. No fee shall be assessed for a request made by a victim of crime, a witness or a family member of a homicide victim, as defined in section 1 of chapter 258B, or for a request made by any local, state or federal government entity. The commissioner may waive the fee or a portion of the fee from such other persons as provided in the department's rules and regulations. The department may enter into contracts and agreements for reduced or bulk fees for requestors who make extensive use of the database. All fees collected pursuant to this section shall be deposited into the Criminal Justice Information Services Fund established by section 2BBBB of chapter 29.

SECTION 23. Section 172C of said chapter 6, as so appearing, is hereby amended by striking out, in lines 30 and 31, the words "criminal history systems board" and inserting in place thereof the following words:- department.

SECTION 24. Said chapter 6 is hereby further amended by striking out section 172E, as so appearing, and inserting in place thereof the following section:-

Section 172E. Notwithstanding any provision of section 172 to the contrary, criminal offender record information shall be available to a long term care facility, as defined in section 72W of chapter 111, an assisted living residence as defined in section 1 of chapter 19D, and to any continuing care facility as defined in section 1 of chapter 40D, for the purpose of evaluating applicants under final consideration as, or an individual currently working as, an employee, a volunteer or a provider of care, treatment, education, training, transportation, delivery of meals, instruction, counseling, supervision, recreation or other services for an elderly or disabled person or for the purpose of evaluating applicants under final consideration for, or an individual currently working in, a position involving direct or indirect contact with such elderly or disabled persons or access to such persons' personal information. A long-term care facility, assisted living residence or continuing care facility shall obtain all available criminal offender record information from the department on such applicant or current staff member. A long-term care

facility, assisted living residence or continuing care facility which obtains information under this section shall prohibit the dissemination of such information for any purpose other than to further the protection of the elderly or the disabled; provided further that dissemination among and between long term care facilities, assisted living residences or continuing care facilities shall be permitted.

SECTION 25. Section 172G of said chapter 6, as so appearing, is hereby amended by striking out, in line 5, the words “criminal history systems board” and inserting in place thereof the following word:- department.

SECTION 26. Section 172H of said chapter 6, as so appearing, is hereby amended by striking out, in line 4, the words “that accepts volunteers,”.

SECTION 27. Said section 172H of said chapter 6, as so appearing, is hereby further amended by striking out, in line 5, the words “criminal history systems board” and inserting in place thereof the following word:- department.

SECTION 28. Said section 172H of said chapter 6, as so appearing, is hereby further amended by striking out, in line 6, the words “a volunteer” and inserting in place thereof the following words:- an employee, volunteer, vendor or contractor.

SECTION 29. Section 172I of said chapter 6, as so appearing, is hereby amended by striking out, in lines 8 and 9, the words “criminal history systems board” and inserting in place thereof the following word:- department.

SECTION 30. Section 172J of said chapter 6, as so appearing, is hereby amended by striking out, in line 4, the words “criminal history systems board,” and inserting in place thereof the following word:- department.

SECTION 31. Section 172K of said chapter 6 of the General Laws, as inserted by section 1 of chapter 43 of the acts of 2009, is hereby amended by striking out, each time it appears, the words “criminal history systems board” and inserting in place thereof the following words:- department.

SECTION 32. Section 173 of chapter 6 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out, in line 1, the words “The board”, and inserting in place thereof the following words:- The commissioner may approve research programs to obtain criminal offender record information, provided that said research programs shall not publish any information that either identifies or tends to identify the subject of the criminal offender record information, and the commissioner

SECTION 33. Said section 173 of said chapter 6, as so appearing, is hereby further amended by striking out, in lines 7, 9 and 10 the word “board”, and inserting in place thereof, in each instance, the following word:- commissioner.

SECTION 34. Said chapter 6 is hereby further amended by striking out section 175, as so appearing, and inserting in place thereof the following section:-

Section 175. A subject shall have the right to inspect and obtain a copy of all criminal offender record information that refers to the subject. The commissioner shall publish and furnish, upon request, guidelines for individuals on how to correct inaccurate or incomplete information. Subject to appropriation, the department shall provide assistance to individuals that have requested assistance to correct inaccurate or incomplete criminal offender record information. Such assistance shall include, but shall not be limited to, cooperation with appropriate entities to correct, modify or appropriately supplement criminal offender record information that has been determined to be inaccurate or incomplete. If criminal offender record information is corrected by the office of the commissioner of probation or the courts, any corrections made by such commissioner or court shall be transmitted forthwith to the department and the department’s database shall reflect the corrected criminal offender record information.

Requestors shall prescribe reasonable hours and places for subjects to inspect their criminal offender record information under paragraph (1) of subsection (f) of section 172 and shall impose such additional restrictions as are reasonably necessary to ensure the record’s security and to verify the identities of those who seek to inspect them.

SECTION 35. Said chapter 6 is hereby further amended by striking out section 178, as so appearing, and inserting in place thereof the following 2 sections:-

538 Section 178. Any person who knowingly requests, obtains or attempts to obtain criminal
539 offender record information or a self-audit from the department under false pretenses, knowingly
540 communicates or attempts to communicate criminal offender record information to any person
541 except in accordance with the provisions of sections 168 to 175, inclusive, or who knowingly
542 falsifies criminal offender record information, or any records relating thereto, or who requests or
543 requires a person to provide a copy of his criminal offender record information except as
544 authorized pursuant to section 172, shall for each offense be punished by imprisonment in a jail
545 or house of correction for not more than 1 year or by a fine of not more than \$5,000, or both
546 such fine and imprisonment, and in the case of a person that is not a natural person, the amount
547 of the fine shall not be more than \$50,000 for each violation.

548 Any person who knowingly requests, obtains or attempts to obtain juvenile criminal
549 records from the department under false pretenses, knowingly communicates or seeks to
550 communicate juvenile criminal records to any person except in accordance with the provisions of
551 sections 168 to 175, inclusive, or knowingly falsifies juvenile criminal records, shall for each
552 offense be punished by imprisonment in a jail or house of correction for not more than 1 year or
553 by a fine of not more than \$7,500, or by both such fine and imprisonment, and in the case of a
554 person that is not a natural person, the amount of the fine may not be more than \$75,000 for
555 each violation.

556 Section 178½. Whoever uses criminal offender record information to commit a crime
557 against the subject of the criminal offender record information or to engage in harassment of the
558 subject shall be punished by imprisonment in a jail or house of correction for not more than 1
559 year, a fine of not more than \$5,000 or by both such fine and imprisonment. For purposes of this
560 section, "harassment" shall mean willfully and maliciously engaging in a knowing pattern of
561 conduct or series of acts over a period of time directed at a specific person, which seriously
562 alarms that person and would cause a reasonable person to suffer emotional distress.

563 SECTION 36. Said chapter 6 is hereby further amended by striking out section 178A, as so
564 appearing, and inserting in place thereof the following section:-

Section 178A. A victim of crime, witness or family member of a homicide victim, all as defined by section 1 of chapter 258B, may obtain all available criminal offender record information of the person accused or convicted of said crime. Criminal justice agencies may also disclose to such persons such additional information, including, but not limited to, evaluative information, as such agencies determine is reasonably necessary for the security and well being of such persons.

SECTION 37. Section 178C of said chapter 6, as so appearing, is hereby amended by striking out, in lines 12 and 13 and in line 51, the words “criminal history systems board” and inserting in place thereof , in each instance, the following words:- department.

SECTION 38. Section 178D of said chapter 6 of the General Laws, as so appearing, is hereby amended by striking out, in line 2, the words “criminal history systems board” and inserting in place thereof the following words:- department.

SECTION 39. Section 178K of said chapter 6, as so appearing, is hereby amended by striking out, in lines 1 and 2, the words “the criminal history systems board, but not subject to its jurisdiction”, and inserting in place thereof the following words:- the executive office of public safety and security.

SECTION 40. Section 183 of said chapter 6, as so appearing, is hereby amended by striking out, in lines 27 and 32, the words “criminal history systems board” and inserting in place thereof the following words:- department of criminal justice information services.

SECTION 41. Chapter 6A of the General Laws is hereby amended by striking out section 18, as so appearing, and inserting in place thereof the following section:-

Section 18. The following state agencies are hereby declared to be within the executive office of public safety and security: the department of public safety; the department of fire services; the office of grants and research and the highway safety division; the municipal police training committee; the Massachusetts department of criminal justice information services; the state 911 department; the department of state police; the office of the chief medical examiner; the Massachusetts emergency management agency; the military department; the department of

592 correction, including the parole board; the sex offender registry board; and all other agencies and
593 boards within said departments, committees and boards.

594 SECTION 42. Section 18 ½ of said chapter 6A, as so appearing, is hereby amended by striking
595 out, in line 10, the words “criminal history systems board” and inserting in place thereof the
596 following words:- department of criminal justice information services.

597 SECTION 43. Section 18 ¾ of said chapter 6A, as so appearing, is hereby amended by striking
598 out, in lines 2 and 3, the words “criminal history systems board” and inserting in place thereof
599 the following words:- department of criminal justice information services.

600 SECTION 44. Section 4 of chapter 18C of the General Laws, as so appearing, is hereby
601 amended by striking out, in lines 22 and 23, the words “ executive director of the criminal
602 history systems board” and inserting in place thereof the following words:- commissioner of the
603 department of criminal justice information services.

604 SECTION 45. Section 1 of chapter 22A of the General Laws, as so appearing , is hereby
605 amended by striking out the definition of “Board”.

606 SECTION 46. Said section 1 of said chapter 22A, as so appearing, is hereby further amended by
607 inserting, after the definition of “Central register”, the following definition:-

608 “Department”, the department of criminal justice information services.

609 SECTION 47. Section 3 of said chapter 22A, as so appearing, is hereby amended by striking
610 out, in line 10, the word “board” and inserting in place thereof the following word:- department.

611 SECTION 48. Section 32 of chapter 22C of the General Laws, as so appearing, is hereby
612 amended by striking out, in line 4, the words “criminal history systems board” and inserting in
613 place thereof the following words:- department of criminal justice information services.

614 SECTION 49. Section 36 of said chapter 22C, as so appearing, is hereby amended by striking
615 out, in line 17, the words “criminal history systems board” and inserting in place thereof the
616 following words:- department of criminal justice information services.

SECTION 50. Section 38 of said chapter 22C, as so appearing, is hereby amended by striking out, in line 25, the words “criminal history systems board” and inserting in place thereof the following words:- department of criminal justice information services.

SECTION 51. Section 9 of chapter 22E of the General Laws, as so appearing, is hereby amended by striking out, in line 5, the words “criminal history systems board” and inserting in place thereof the following words:- department of criminal justice information services.

SECTION 52. Chapter 29 of the General Laws is hereby amended by inserting after section 2AAAA the following new section:-

Section 2BBBB. (a) There shall be established and set up on the books of the commonwealth a separate fund to be known as the Criminal Justice Information Services Fund, hereinafter in this section known as the fund. The fund shall consist of all fees for a criminal offender record information request or self-audit collected and administered by the commissioner of the department of criminal justice information services under section 172A of chapter 6, gifts, grants, contributions and bequests of funds from any department, agency or subdivision of federal, state, county or municipal government and any individual, foundation, corporation, association or public authority. Funds shall be used for the purpose of (i) providing or receiving services, facilities or staff assistance in connection with its work; (ii) assisting ex-offenders in obtaining and maintaining employment, including but not limited to, workforce development training and other applicable training programs; (iii) training and auditing requestors, as defined in section 167 of chapter 6, regarding requests for criminal offender record information under subsection (a) of section 172 of said chapter 6; (iv) providing education and assistance regarding the correction of criminal records, including but not limited to, training judges, providing the necessary information to employers and other applicable persons in possession of an applicant’s criminal offender record information; and (v) operating and maintaining the public safety information system and the criminal records review board, as defined in said section 167 of said chapter 6. Such funds shall be deposited with the state treasurer and may be expended by the department of criminal justice information services in accordance with the conditions of the gift, grant, contribution or bequest subject to appropriation.

645 SECTION 53. Chapter 30A of the General Laws is hereby amended by inserting after section 1C
646 the following section:-

647 Section 1D. The criminal record review board shall be subject to sections 1 to 8,
648 inclusive, and shall not otherwise be subject to this chapter.

649 SECTION 54. Section 36A of chapter 40 of the General Laws, as appearing in the 2008 Official
650 Edition, is hereby amended by striking out, in line 25, the words “criminal history systems
651 board” and inserting in place thereof the following words:- department of criminal justice
652 information services.

653 SECTION 55. Section 10 of chapter 66 of the General Laws, as so appearing, is hereby
654 amended by striking out, in line 50, the words “executive director of the criminal history systems
655 board” and inserting in place thereof the following words:- commissioner of the department of
656 criminal justice information services.

657 SECTION 56. Said section 10 of said chapter 66, as so appearing, is hereby further amended by
658 striking out, in lines 50 and 51, the words “criminal history systems board” and inserting in place
659 thereof the following words:- department of criminal justice information services.

660 SECTION 57. Section 38R of chapter 71 of the General Laws, as so appearing, is hereby
661 amended, in lines 5, 6, 11 and 12, by striking out the words “criminal history systems board,”
662 and inserting in place thereof the following words:- department of criminal justice information
663 services.

664 SECTION 58. Section 24 of chapter 90 of the General Laws, as so appearing, is hereby
665 amended by striking out, in line 705, the words “criminal history systems board” and inserting in
666 place thereof the following words:- department of criminal justice information services.

667 SECTION 59. Section 24N of said chapter 90, as so appearing, is hereby amended by striking
668 out, in lines 31, 44 and 83, the words “criminal history systems board” and inserting in place
669 thereof the following words:- department of criminal justice information services.

670 SECTION 60. Section 52 of chapter 93 of the General Laws, as so appearing, is hereby
671 amended by inserting after the word “more;”, in line 21, the following word:- or.

672 SECTION 61. Said section 52 of said chapter 93, as so appearing, is hereby further amended by
673 striking out paragraph (3) of subsection (b).

674 SECTION 62. Section 34 of chapter 101 of the General Laws, as appearing in the 2008 Official
675 Edition, is hereby amended by striking out, in line 91, 96 and 97 the words “criminal history
676 systems board” and inserting in place thereof the following words:- department of criminal
677 justice information services.

678 SECTION 63. Section 71 of chapter 111 of the General Laws, as appearing in the 2008 Official
679 Edition, is hereby amended by striking out, in lines 43 and 44, the words “criminal history
680 systems board” and inserting in place thereof the following words:- department of criminal
681 justice information services.

682 SECTION 64. Section 12A ½ of chapter 112 of the General Laws, as appearing in the 2008
683 Official Edition, is hereby amended by striking out, in line 5, the words “criminal history
684 systems board” and inserting in place thereof the following words:- department of criminal
685 justice information services.

686 SECTION 65. Section 9 of chapter 123A of the General Laws, as appearing in the 2008 Official
687 Edition, is hereby amended by striking out, in line 51, the words “criminal history systems
688 board” and inserting in place thereof the following words:- department of criminal justice
689 information services.

690 SECTION 66. Section 1 of chapter 125 of the General Laws, as so appearing, is hereby
691 amended by inserting after subsection (f) the following subsection:-

692 (f ½) “custody”, physical or constructive control of an inmate in a state or county correctional
693 facility;

694 SECTION 67. Section 16 of chapter 126 of the General Laws, as so appearing, is hereby
695 amended by striking out the first sentence and inserting in place thereof the following sentence:-

The sheriff shall have custody and control of the jails in his county, and except in Suffolk county, of the houses of correction therein, and shall have custody and physical or constructive control of all prisoners committed thereto, and shall keep the same himself or by his deputy as jailer, superintendent or keeper, and shall be responsible for them.

SECTION 68. Section 2 of chapter 127 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out, in lines 5 and 6, the words “criminal history systems board” and inserting in place thereof the following words:- department of criminal justice information services.

SECTION 69. Chapter 127 of the General Laws, as so appearing, is hereby amended by inserting after section 20A the following 2 sections:-

Section 20B. The sheriff of any county may establish a day reporting program under which persons sentenced to the house of correction may be classified to constructive confinement; provided, however, that persons convicted of the following crimes and sentenced to the house of correction shall not be eligible for the day reporting program: murder; any offense that carries the possibility of a life sentence; a violation of section 13, 14, 15, 15A, 15B, 16, 17, 18, 18A, 19, 20, 21, 22, 22A, 23, 24, 24B, 25, 26, 26A or 26B of chapter 265; section 17, 34 or 35 of chapter 272; or if he is detained under subsection (3) of section 58A of chapter 276; provided, further that persons designated as a sex offender, a sexually dangerous person as defined in section 1 of chapter 123A, or convicted of committing a sexual offense as defined in said section 1 of said chapter 123A shall be prohibited from participating in the day reporting program. Such program shall include electronic monitoring of prisoners classified to the day reporting program. Placement of an individual in a day reporting program shall require victim notification as required under subsection (t) of section 3 of chapter 258B. An inmate sentenced to a day reporting program shall agree in writing to conditions set by the sheriff, who shall retain the right to revoke or alter such classification at will.

No prisoner shall be classified to a day reporting program under this section until he has served the longest minimum mandatory sentence for any offense for which the prisoner is serving within the house of correction to which he is committed.

724 A prisoner classified to the day reporting program as set forth in this section and who
725 abides by the conditions of that classification shall be credited time toward the serving of his
726 sentence in the same manner as though he had served such time within the facility.

727 Section 20C. The sheriff of any county and in the case of women who are committed as
728 pretrial detainees to the Massachusetts Correctional Institution at Framingham, the commissioner
729 of correction, subject to rules and regulations established in accordance with the provisions of
730 this section, may permit a detainee who is committed to a jail awaiting disposition of any
731 criminal matter, except those being held for offenses listed in this section, to be classified to a
732 pretrial diversion program operated by the sheriff's office in the county where the court that
733 committed the detainee is sitting.

734 The sheriff may extend the limits of the place of confinement of a detainee for the
735 purpose of participation in this program and shall establish a classification system to determine
736 the suitability of detainees who may be potential participants in this program. A person permitted
737 to be away from the jail due to participation in this program may be accompanied by an
738 employee of the sheriff's office in the discretion of the sheriff or his designee.

739 For the duration of a detainee's participation in the program, the detainee shall be deemed
740 to be in custody as a pretrial detainee for the purpose of receiving credit pursuant to section 129B
741 of chapter 127 and section 33A of chapter 279 toward any sentence he may receive, and may be
742 charged with escape pursuant to section 16 of chapter 268 should he leave the place to which he
743 is classified pursuant to his participation in the program without authorization or should he
744 escape from custody while he is being transported pursuant to his participation in the program.
745 For the duration of his participation in this program only, the detainee may receive additional
746 deductions from any sentence that may be imposed in the case for which he was committed, for
747 participation in work, education, or treatment programs designated by the sheriff pursuant to
748 section 129D of chapter 127.

749 A detainee shall not be eligible to participate in this program if he is charged with:
750 murder; any offense that carries the possibility of a life sentence; a violation of section 13, 14,
751 15, 15A, 15B, 16, 17, 18, 18A, 19, 20, 21, 22, 22A, 23, 24, 24B, 25, 26, 26A or 26B of chapter

265; section 17, 34 or 35 of chapter 272; or an attempt to commit any crime referred to in these sections; or if he is detained under subsection (3) of section 58A of chapter 276. A detainee shall not be eligible to participate in this program if he is a sex offender, a sexually dangerous person as defined in section 1 of chapter 123A, charged with committing a sexual offense as defined in said section 1 of said chapter 123A or is charged with violating section 24B of chapter 265. Placement of an individual in such program shall require victim notification as required under subsection (t) of section 3 of chapter 258B.

SECTION 70. Section 21 of said chapter 127, as so appearing, is hereby amended by inserting after the word “correction” in line 3 the following words:- by physical or constructive confinement.

SECTION 71. Section 28 of said chapter 127 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out, in line 9, the words “criminal history systems board” and inserting in place thereof the following words:- department of criminal justice information services.

SECTION 72. Section 29 of said chapter 127 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out, in line 13, the words “criminal history systems board” and inserting in place thereof the following words:- department of criminal justice information services.

SECTION 73. Section 133E of said chapter 127 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out, in line 3, the words “criminal history systems board” and inserting in place thereof the following words:- department of criminal justice information services.

SECTION 74. Section 122 of chapter 140 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out, in lines 21 and 22, the words “ executive director of the criminal history systems board” and inserting in place thereof the following words:- commissioner of the department of criminal justice information services.

778 SECTION 75. Section 122A of said chapter 140 of the General Laws, as appearing in the 2008
779 Official Edition, is hereby amended by striking out, in line 5, the words “criminal history
780 systems board” and inserting in place thereof the following words:- department of criminal
781 justice information services.

782 SECTION 76. Said section 122A of said chapter 140, as so appearing, is hereby amended by
783 striking out, in lines 5,6, 9 and 10, the words “executive director of the criminal history systems
784 board” and inserting in place thereof the following words:- commissioner of the department of
785 criminal justice information services.

786 SECTION 77. Section 122B of said chapter 140, as so appearing, is hereby amended by striking
787 out, in lines 14, 15, 24 and 25, the words “executive director of the criminal history systems
788 board” and inserting in place thereof the following words:- commissioner of the department of
789 criminal justice information services.

790 SECTION 78. Section 123 of said chapter 140, as so appearing, is hereby amended by striking
791 out, in lines 7, 8 27, 106 and 107, the words “executive director of the criminal history systems
792 board” and inserting in place thereof the following words:- commissioner of the department of
793 criminal justice information services.

794 SECTION 79. Section 125 of said chapter 140, as so appearing, is hereby amended by striking
795 out, in lines 11 and 12, the words “executive director of the criminal history systems board” and
796 inserting in place thereof the following words:- commissioner of the department of criminal
797 justice information services.

798 SECTION 80. Section 127 of said chapter 140, as so appearing, is hereby amended by striking
799 out, in line 6, the words “executive director of the criminal history systems board” and inserting
800 in place thereof the following words:- commissioner of the department of criminal justice
801 information services.

802 SECTION 81. Section 128A of said chapter 140, as so appearing, is hereby amended by striking
803 out, in lines 27 and 28, the words “executive director of the criminal history systems board” and

804 inserting in place thereof the following words:- commissioner of the department of criminal
805 justice information services.

806 SECTION 82. Section 128B of said chapter 140, as so appearing, is hereby amended by striking
807 out, in lines 11 and 12, the words “executive director of the criminal history systems board” and
808 inserting in place thereof the following words:- commissioner of the department of criminal
809 justice information services.

810 SECTION 83. Section 129B of said chapter 140, as so appearing, is hereby amended by striking
811 out, in lines 112, 148 and 159, the words “executive director of the criminal history systems
812 board” and inserting in place thereof the following words:- commissioner of the department of
813 criminal justice information services.

814 SECTION 84. Section 129C of said chapter 140, as so appearing, is hereby amended by striking
815 out, in lines 12, 13, 16 and 17, the words “executive director of the criminal history systems
816 board” and inserting in place thereof the following words:- commissioner of the department of
817 criminal justice information services.

818 SECTION 85. Section 130B of said chapter 140, as so appearing, is hereby amended by striking
819 out, in line 2, the words “criminal history systems board” and inserting in place thereof the
820 following words:- department of criminal justice information services.

821 SECTION 86. Said Section 130B of said chapter 140, as so appearing, is hereby amended by
822 striking out, in line 4, the words “criminal history systems board appointed by the executive
823 director” and inserting in place thereof the following words:- department of criminal justice
824 information services appointed by the commissioner.

825 SECTION 87. Section 131 of said chapter 140, as so appearing, is hereby amended, in lines 55,
826 56, 162, 192 and 193, by striking out the words “criminal history systems board,” and inserting
827 in place thereof the following words:- department of criminal justice information services.

828 SECTION 88. Section 131½ of said chapter 140, as so appearing, is hereby amended, in lines 6
829 and 7, by striking out the words “criminal history systems board,” and inserting in place thereof
830 the following words:- department of criminal justice information services.

831 SECTION 89. Section 131A of said chapter 140, as so appearing, is hereby amended, in line 13,
832 by striking out the words “criminal history systems board,” and inserting in place thereof the
833 following words:- department of criminal justice information services.

834 SECTION 90. Section 25 of chapter 151A of the General Laws, as so appearing, is hereby
835 amended, in lines 251, 252 and 254, by striking out the words “criminal history systems board,”
836 and inserting in place thereof the following words:- department of criminal justice information
837 services.

838 SECTION 91. Section 4 of chapter 151B of the General Laws, as so appearing, is hereby
839 amended by inserting, after subsection 9, the following subsection:-
840 9½. For an employer to request on its initial written application form criminal offender record
841 information; provided, however, that except as otherwise prohibited by subsection 9, an
842 employer may inquire about any criminal convictions on an applicant’s application form if: (i)
843 the applicant is applying for a position for which any federal or state law or regulation creates
844 mandatory or presumptive disqualification based on a conviction for 1 or more types of criminal
845 offenses; or (ii) the employer or an affiliate of such employer is subject to an obligation imposed
846 by any federal or state law or regulation not to employ persons, in either 1 or more positions,
847 who have been convicted of 1 or more types of criminal offenses

848 SECTION 92. Section 7 of chapter 152 of the General Laws, as so appearing, is hereby
849 amended, in lines 42, 44 and 45, by striking out the words “criminal history systems board,” and
850 inserting in place thereof the following words:- department of criminal justice information
851 services.

852 SECTION 93. Section 6 of chapter 209A of the General Laws, as so appearing, is hereby
853 amended, in line 97, by striking out the words “criminal history systems board,” and inserting in
854 place thereof the following words:- department of criminal justice information services.

855 SECTION 94. Section 34A of chapter 215 of the General Laws, as so appearing, is hereby
856 amended, in lines 47 and 48, by striking out the words “criminal history systems board,” and
857 inserting in place thereof the following words:- department of criminal justice information
858 services.

859 SECTION 95. Section 21 of chapter 233 of the General Laws, as so appearing, is hereby
860 amended by adding the following paragraph:-

861 Upon order of the court, a party may obtain a witness’s criminal offender record
862 information from the department of criminal justice information services.

863 SECTION 96. Section 3 of chapter 255E of the General Laws, as so appearing, is hereby
864 amended, in line 12, by striking out the words “criminal history systems board,” and inserting in
865 place thereof the following words:- department of criminal justice information services.

866 SECTION 97. Section 1 of chapter 258C of the General Laws, as so appearing, is hereby
867 amended by inserting after the definition of “Crime” the following definition:-

868 “Crime scene cleanup”, the removal of, or the attempted removal of, blood or other stains that
869 are the direct result of the commission of a crime or other dirt and debris caused by the
870 processing of the crime scene; provided, however, that crime scene cleanup shall not include the
871 replacement or repair of property damaged during the commission of the crime, in accordance
872 with section 4.

873 SECTION 98. Section 1 of chapter 258C of the General Laws, as so appearing, is hereby
874 amended by inserting after the definition of “Out-of-pocket loss” the following definition:-

875 “Security measures”, the replacement, repair or installation of locks, windows or other security
876 devices deemed to be reasonably necessary for the promotion of the victim’s safety by the
877 program director after taking into consideration the nature of the crime in accordance with
878 section 4.

879 SECTION 99. Subsection (f) of section 2 of chapter 258C of the General Laws is hereby
880 repealed.

SECTION 100. Subsection (b) of section 3 of said chapter 258C, as appearing in the 2008 Official Edition, is hereby amended by striking out paragraph (1) and inserting in place thereof the following 2 paragraphs:-

(1)(A) The maximum award or compensation for funeral and burial expenses shall be \$6,500. A legal guardian, dependent or other family member of the victim or a person who actually incurs funeral and burial expenses directly related to the death of a victim shall be eligible for compensation for such funeral and burial expenses.

(B) The maximum award or compensation for expenses other than funeral and burial expenses associated with the interment of a victim whose death is the direct result of a crime shall be \$800. For purposes of this subsection compensable expenses shall include, but not be limited to, transportation of the victim to the location of interment, travel of a legal guardian or family member to accompany the victim to the location of interment, memorial markers at the location of interment or other associated expenses as determined by the program director in accordance with section 4.

SECTION 101. Said section 3 of said chapter 258C, as so appearing, is hereby further amended, in lines 22 and 25, by striking out the words “one hundred and eighteen F,” and inserting in place thereof the following word:- 118G.

SECTION 102. Said section 3 of said chapter 258C, as so appearing, is hereby further amended by inserting after the word “victim” , in line 40, the following words:- , parent or legal guardian of a victim who is a minor in accordance with section 4.

SECTION 103. Said section 3 of said chapter 258C, as so appearing, is hereby further amended by adding the following 3 sub-paragraphs:-

(G) Expenses incurred for professional crime scene cleanup services necessary as the direct result of the commission of a crime at a private residence or in a motor vehicle that is owned or leased by a victim, family member or other dependent shall be compensable in accordance with this chapter; provided, however, that the maximum amount of compensation shall not exceed \$1,500.

908 (H) A victim shall be eligible for compensation for the reasonable replacement costs of clothing
909 and bedding seized as evidence or rendered unusable as the result of a criminal investigation that
910 is the direct result of a crime; provided, however, that the maximum compensable amount shall
911 not exceed \$250.

912 (I) A victim or a family member residing with the victim at the time a crime is committed, shall
913 be eligible for compensation for the costs associated with the implementation of security
914 measures; provided, however, that the maximum compensable amount shall not exceed \$500.

915 SECTION 104. Section 8 of said chapter 258C, as so appearing, is hereby amended by striking
916 out the word “fifteen”, in line 1, and inserting in place thereof the following number:- 20.

917 SECTION 105. Said section 8 of said chapter 258C, as so appearing, is hereby further amended
918 by striking out the word “twenty”, in line 12, and inserting in place thereof the following
919 number:- 30.

920 SECTION 106. Section 9 of said chapter 258C, as so appearing, is hereby amended by striking
921 out the word “twenty”, in line 7, and inserting in place thereof the following number:- 30.

922 SECTION 107. Section 10 of said chapter 258C, as so appearing, is hereby amended by
923 inserting after the word “insurance,” in line 6, the following words:- including, but not limited
924 to, homeowner’s insurance, renter’s insurance, automobile insurance.

925 SECTION 108. Section 7 of chapter 258D of the General Laws, as so appearing in the 2008
926 Official Edition, is hereby amended, in lines 4 and 5, by striking out the words “criminal history
927 systems board,” and inserting in place thereof the following words:- department of criminal
928 justice information services.

929 SECTION 109. Section 13B of chapter 268 of the General Laws, as appearing so in the 2008
930 Official Edition, is hereby amended by striking out clauses (iv) and (v) and inserting in place
931 thereof the following 2 clauses:-

932 (iv) a person who is furthering a civil or criminal proceeding, including criminal
933 investigation, grand jury proceeding, trial, other criminal proceeding of any type, probate and

934 family proceeding, juvenile proceeding, housing proceeding, land proceeding, clerk's hearing,
935 court ordered mediation, any other civil proceeding of any type; or

936 (v) a person who is or was attending or had made known his intention to attend a civil
937 or criminal proceeding, including criminal investigation, grand jury proceeding, trial, other
938 criminal proceeding of any type, probate and family proceeding, juvenile proceeding, housing
939 proceeding, land proceeding, clerk's hearing, court-ordered mediation, any other civil proceeding
940 of any type with the intent to impede, obstruct, delay, harm, punish or otherwise interfere
941 thereby, or do so with reckless disregard, with such a proceeding shall be punished by
942 imprisonment in a jail or house of correction for not more than 2 and one-half years or by
943 imprisonment in a state prison for not more than 10 years, or by a fine of not less than \$1,000 nor
944 more than \$5,000, or by both such fine and imprisonment.

945 SECTION 110. Section 13C of said chapter 268 of the General Laws, as so appearing, is hereby
946 amended by striking out the first sentence and inserting in place thereof the following sentence:-
947 Whoever causes or actively participates in disruption on any court property of the
948 commonwealth or in disruption of any proceedings of any court of the commonwealth shall be
949 punished by imprisonment in a jail or house of correction for not more than 2 and one-half years
950 or by imprisonment in a state prison for not more than 10 years, or by a fine of not less than
951 \$1,000 nor more than \$5,000, or by both such fine and imprisonment. Court property shall
952 include any property leased or used by the commonwealth for any court.

953 SECTION 111. Section 23A of chapter 276 of the General Laws, as so appearing, is hereby
954 amended, in lines 8, 12 and 22, by striking out the words "criminal history systems board," and
955 inserting in place thereof the following words:- department of criminal justice information
956 services.

957 SECTION 112. Section 23B of said chapter 276, as so appearing, is hereby amended, in lines 9,
958 10, 11, and 12, by striking out the words "criminal history systems board," and inserting in place
959 thereof the following words:- department of criminal justice information services.

960 SECTION 113. Section 58A of said chapter 276, as so appearing, is hereby amended by striking
961 out subsection (1) and inserting in place thereof the following subsection:-

(1) The commonwealth may move, based on dangerousness, for an order of pretrial detention or release on conditions for a felony offense that has as an element of the offense the use, attempted use or threatened use of physical force against the person of another or any other felony that, by its nature, involves a substantial risk that physical force against the person of another may result, including the crimes of burglary and arson whether or not a person has been placed at risk thereof, or a violation of an order pursuant to section 18, 34B or 34C of chapter 208, section 32 of chapter 209, section 3, 4 or 5 of chapter 209A or section 15 or 20 of chapter 209C, or arrested and charged with a misdemeanor or felony involving abuse as defined in section 1 of said chapter 209A or while an order of protection issued under said chapter 209A was in effect against such person, an offense for which a mandatory minimum term of 3 years or more is prescribed in chapter 94C, arrested and charged with a violation of section 13B of chapter 268 or a third or subsequent conviction for a violation of section 24 of chapter 90, or arrested and charged with a violation of paragraph (a), (c) or (m) of section 10 of chapter 269; provided, however, that the commonwealth may not move for an order of detention under this section based on possession of a large capacity feeding device without simultaneous possession of a large capacity weapon; or arrested and charged with a violation of section 10G of said chapter 269.

SECTION 114. Section 100 of said chapter 276, as so appearing, is hereby amended, in line 30, by striking out the words “criminal history systems board,” and inserting in place thereof the following words:- department of criminal justice information services.

SECTION 115. Said section 100 of said chapter 276, as so appearing, is hereby further amended, in line 33, by striking out the words “board,” and inserting in place thereof the following words:- department.

SECTION 116. Section 100A of said chapter 276, as so appearing, is hereby amended by striking the first paragraph and inserting in place thereof the following paragraph:-

Any person having a record of criminal court appearances and dispositions in the commonwealth on file with the office of the commissioner of probation may, on a form furnished by the commissioner and signed under the penalties of perjury, request that the

commissioner seal the file. The commissioner shall comply with the request provided that: (1) the person's court appearance and court disposition records, including any period of incarceration or custody as defined in section 1 of chapter 125 for any misdemeanor record to be sealed occurred not less than 5 years before the request; (2) the person's court appearance and court disposition records, including any period of incarceration or custody as defined in section 1 of chapter 125 for any felony record to be sealed occurred not less than 10 years before the request; (3) the person had not been found guilty of any criminal offense within the commonwealth in the case of a misdemeanor, 5 years before the request, and in the case of a felony, 10 years before request, except motor vehicle offenses in which the penalty does not exceed a fine of \$50; (4) the form includes a statement by the petitioner that the petitioner has not been convicted of any criminal offense in any other state, United States possession or in a court of federal jurisdiction, except such motor vehicle offenses, as aforesaid, and has not been imprisoned in any state or county in the case of a misdemeanor, within the preceding 5 years, and in the case of a felony, within the preceding 10 years; and (5) the person's record does not include convictions of offenses other than those to which this section applies. This section shall apply to court appearances and dispositions of all offenses; provided, however, that this section shall not apply in case of convictions for violations of sections 121 to 131H, inclusive, of chapter 140 or for violations of chapter 268 or chapter 268A.

SECTION 117. Said section 100A of said chapter 276, as so appearing, is hereby further amended by inserting, after line 40, the following words:-

5. Any violation of section 7 of chapter 209A shall be treated as a felony.

6. Sex offenses, as defined in section 178C of chapter 6, shall not be eligible for sealing.

SECTION 118. Said section 100A of said chapter 276, as so appearing, is hereby further amended by inserting after the word "proceedings", in line 52, the following words:- "; provided, however, that in any proceedings under sections 1 to 39I, inclusive, of chapter 119, sections 2 to 5, inclusive, of chapter 201, chapters 208, 209, 209A, 209B, 209C, or sections 1 to 11A, inclusive, of chapter 210, a party having reasonable cause to believe that information in a sealed criminal record of another party may be relevant to (1) an issue of custody or visitation of a

child, (2) abuse, as defined in section 1 of chapter 209A or (3) the safety of any person may upon motion seek to introduce the sealed record into evidence. The judge shall first review such records in camera and determine those records that are potentially relevant and admissible. The judge shall then conduct a closed hearing on the admissibility of those records determined to be potentially admissible; provided, however, that such records shall not be discussed in open court and, if admitted, shall be impounded and made available only to the parties, their attorneys and court personnel who have a demonstrated need to receive them.

SECTION 119. Section 100C of said chapter 276, as so appearing, is hereby amended by striking out, in lines 11-12, the words “except in cases in which an order of probation has been terminated,”.

SECTION 120. Said section 100C of said chapter 276, as so appearing, is hereby further amended by inserting after the word “commissioner”, in line 29, the following words:- or the clerk of courts in any district or superior court or the Boston municipal court.

SECTION 121. Chapter 276 of the General Laws, as so appearing, is hereby amended by inserting after section 100C the following section:-

Section 100D. Notwithstanding the provisions of section 100A, 100B, or 100C to the contrary, criminal justice agencies as defined in section 167 of chapter 6 shall have immediate access to, and be permitted to use as necessary for the performance of their criminal justice duties, any sealed criminal offender record information as defined in said section 167 of said chapter 6 and any sealed information concerning criminal offenses or acts of delinquency committed by a person before the person attained the age of 17.

SECTION 122. Section 1 of chapter 279 of the General Laws, as so appearing, is hereby amended, in lines 42 and 43, by striking out the words “criminal history systems board,” and inserting in place thereof the following words:- department of criminal justice information services.

1043 SECTION 123. Section 34 of said chapter 279, as so appearing, is hereby amended by inserting
1044 after the word “accordingly”, in line 5, the following words:- for the duration of the sentence
1045 and within classification guidelines of the facility to which the convict is committed.

1046 SECTION 124. Notwithstanding any general or special law to the contrary, this section shall
1047 facilitate the orderly transfer of the employees, proceedings, rules and regulations, property and
1048 legal obligations of the criminal history systems board, as the transferor agency, to the
1049 department of criminal justice information services, as the transferee agency, as follows:

1050 (a) Subject to appropriation, the employees of the criminal history systems board,
1051 including those who immediately before the effective date of this act hold permanent
1052 appointment in positions classified under chapter 31 of the General Laws or have tenure in their
1053 positions as provided by section 9A of chapter 30 of the General Laws or do not hold such
1054 tenure, or hold confidential positions, are hereby transferred to the department of criminal justice
1055 information services, without interruption of service within the meaning of said section 9A of
1056 said chapter 31, without impairment of seniority, retirement or other rights of the employee, and
1057 without reduction in compensation or salary grade, notwithstanding any change in title or duties
1058 resulting from such reorganization, and without loss of accrued rights to holidays, sick leave,
1059 vacation and benefits and without change in union representation or certified collective
1060 bargaining unit as certified by the state labor relations commission or in local union
1061 representation or affiliation. Any collective bargaining agreement in effect immediately before
1062 the transfer date shall continue in effect and the terms and conditions of employment therein
1063 shall continue as if the employees had not been so transferred. The reorganization shall not
1064 impair the civil service status of any such reassigned employee who immediately before the
1065 effective date of this act either holds a permanent appointment in a position classified under
1066 chapter 31 of the General Laws or has tenure in a position by reason of section 9A of chapter 30
1067 of the General Laws.

1068 Notwithstanding any general or special law to the contrary, all such employees shall
1069 continue to retain their right to collectively bargain pursuant to chapter 150E of the General
1070 Laws and shall be considered employees for the purposes of said chapter 150E.

Nothing in this section shall be construed to confer upon any employee any right not held immediately before the date of said transfer, or to prohibit any reduction of salary grade, transfer, reassignment, suspension discharge layoff or abolition of position not prohibited before such date.

(b) All petitions, requests, investigations and other proceedings appropriately and duly brought before or referred to the executive director of the criminal history systems board by the transferor agency and pending before the executive director before the effective date of this act, shall continue unabated and remain in force, but shall be assumed and completed by the department of criminal justice information services.

(c) All orders, rules and regulations duly made and all approvals duly granted by the criminal history systems board, which are in force immediately before the effective date of this act, shall continue in force and shall thereafter be enforced by the department of criminal justice information systems until superseded, revised, rescinded or canceled, in accordance with law.

(d) All books, papers, records, documents, equipment, buildings, facilities, cash and other property, both personal and real, including all such property held in trust, which immediately before the effective date of this act are in the custody of the criminal history systems board, shall be transferred to the department of criminal justice information services.

(e) All duly existing contracts, leases and obligations of the criminal history systems board shall continue in effect but shall be assumed by the department of criminal justice information services. No existing right or remedy of any character shall be lost, impaired or affected by this act.

SECTION 125. Notwithstanding any general or special law to the contrary, the term of any member appointed to the criminal record review board, established by section 168 of chapter 6 of the General Laws, shall expire; provided, however, that any appointed board member whose term has expired pursuant to this section shall be eligible for reappointment to the board. Such appointments shall be made in accordance with said section 168 of said chapter 6.

Notwithstanding any general or special law to the contrary, in making initial appointments to the criminal record review board established pursuant to section 168 of chapter 6 of the General Laws, amended by section 12 of this act, the governor shall appoint 1 member to serve for a term of 1 year, 2 members to serve for a term of 2 years and 2 members to serve for a term of 3 years.

SECTION 126. The Massachusetts department of criminal justice information systems, in consultation with the information technology division, shall regularly report on its progress in building the information technology system necessary to fulfill the requirements established in subsection (a) of section 172 of chapter 6 of the General Laws, as amended by section 21 of this act. The department shall file such reports with the joint committee on the judiciary, the joint committee on public safety and homeland security, the house and senate committees on bonding, capital expenditures and state assets and the house and senate committees on ways and means and shall post such reports on the department's publicly-accessible website. The department shall file such reports 6, 12, 15 and 18 months after the effective date of this act, and at 3-month intervals thereafter, if necessary, until the project is complete. Each report shall include a description of the progress made in the planning, design and construction of the system since the preceding report, and shall include a comparison of actual expenditures to budgeted expenditures and of budgeted timelines to actual timelines. Each report shall also include a certification as to whether the department expects the complete information technology system to be fully operational 18 months after the effective date of this act.

SECTION 127. The executive office of public safety and security, the criminal systems history board, or its successor, and the department of state police shall request the cooperation of the administrative office of the trial court and the office of the commissioner of probation in conducting a pilot program or programs in selected district courts to evaluate the feasibility and cost of biometric identification of all defendants arraigned in criminal cases in the courts of the commonwealth in order to create a biometric index for criminal records. The pilot program shall be implemented on or before December 31, 2010 and shall expire on June 30, 2012. The secretary of public safety and security in consultation with the criminal history systems board, or its successor, and the department of state police, shall issue a final report, which shall include the results of its review and analysis, to the joint committee on judiciary, the joint committee on

1127 public safety and homeland security and the house and senate committees on ways and means on
1128 or before November 1, 2012.

1129 SECTION 128. Sections 1 to 8, inclusive, 12 to 19, inclusive, 21 to 25, inclusive, 27, 29 to 38,
1130 inclusive, 40 to 65, inclusive, 68, 71 to 90, inclusive, 92 to 96, inclusive, 108, 111, 112, 114 to
1131 122, inclusive, 124 and 125 shall take effect 18 months from the effective date of this act:

1132 and by striking out the title and inserting in place thereof the following title: An Act Reforming
1133 the Administrative Procedures Relative to Criminal Offender Record Information.

1134 ; and by striking out the title and inserting in place thereof the following title: “An Act reforming
1135 the administrative procedures relative to criminal offender record information.”.