



Center for Law and  
Social Responsibility

## THE CORI INITIATIVE

### 2015-2016 REPORT

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#### Overview

The CORI Initiative of the Center for Law and Social Responsibility (CORI-CLSR) has assisted indigent individuals in preparing documents to seal their criminal records for five academic years. CORI-CLSR's first year (2011-2012) predated implementation of most CORI reforms in Massachusetts, but subsequent years followed implementation of most CORI reforms.<sup>1</sup>

Assistance is provided for both administrative sealing (of convictions) and discretionary sealing (of non-convictions). Administrative sealing requires completion of the one-page 100A Petition form, which involves simply checking a few boxes, providing personal identifying information, and mailing the form to the Department of Probation. Discretionary sealing, by contrast, requires a more extensive document, that includes an individualized affidavit and a list of charges.

In August of 2014, the SJC announced a new standard in *Commonwealth v. Pon*<sup>2</sup> for discretionary sealing under G.L. c. 276 §100C. The previous standard for sealing non-convictions required a defendant to show a “compelling interest” that outweighed the public’s First Amendment interest in access to court records, and a court had to find that “substantial justice would be served” by sealing the record.<sup>3</sup> In *Pon* the Court re-examined the sealing of non-convictions and determined that, unlike convictions, these records carried no

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\* JD, CORI-CLSR Student Manager (2015-16). Substantial portions of this report were prepared by Benjamin Jones, (Student Manager 2012-13), Andrew Higley (Student Manager 2013-14) and Katherine Howells (Student Manager 2014-15) particularly the “Overview” and the “CORI Sealing Process” sections, and those portions pertaining to first four years of the CORI Initiative (2011-15). I wish to thank and acknowledge Ben and Andrew for their outstanding efforts in establishing the template for this report. I would also like to thank Katherine for her thoughtful overview and updating to the CORI sealing standard that we now abide by in Massachusetts.

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<sup>1</sup> Most reforms became effective May 4, 2012, M.G.L. c.6, §§ 167-178B. Some, like “ban the box,” took effect in November of 2010.

<sup>2</sup> See *Commonwealth v. Pon*, 469 Mass. 296 (2014).

<sup>3</sup> *Globe Newspaper Co. v. Pokaski*, 868 F.2d 497 (1<sup>st</sup> Cir. 1989); *Commonwealth v. Doe*, 420 Mass. 142 (1995).

constitutionally-based presumptive right of access but only one based on common law. Recognizing that the legislature’s 2010 CORI reforms were intended to reduce the negative impacts of a criminal record on individuals’ reintegration to society, it found similar considerations supported a more defendant-favorable standard for sealing non-convictions, and so adopted “good cause.”

Since August 15, 2014, courts have also had greater direction in determining whether there is “good cause” to seal criminal cases that resulted in a nolle prosequi or a dismissal under G.L. c. 276 § 100C.<sup>4</sup> They must now balance the compelling governmental interests in reducing recidivism, facilitating reintegration, and ensuring self-sufficiency by promoting employment and housing opportunities for former criminal defendants.<sup>5</sup> They may consider the “particular disadvantages identified by the defendant arising from the availability of the criminal record; evidence of rehabilitation suggesting that the defendant could overcome these advantages if the record were sealed; and any other evidence that sealing would alleviate the identified disadvantages; including relevant circumstances of the defendant at the time of the offense that suggest a likelihood of recidivism or success; the passage of time since the offense and since the dismissal or nolle prosequi; and the nature of and reasons for the particular disposition.”<sup>6</sup>

CORI-CLSR is a form of limited legal assistance for pro-se petitioners.<sup>7</sup> Law student volunteers of CORI-CLSR provide guidance on completing administrative sealing forms, evaluate the availability of discretionary sealing, and prepare discretionary sealing petitions for clients. Although CORI-CLSR provides clients instructions for sealing along with petitions, it does not accompany clients to court or act as their advocates. CORI-CLSR does not charge for any services.

### **The CORI Sealing Process<sup>8</sup>**

*Several features of the CORI sealing process considerably lengthen the time required to seal records which persons have an absolute right to seal and even those involving non-convictions.*

- To begin the CORI sealing process, a person must have a copy of his or her CORI obtained from the Department of Criminal Justice Information Systems (DCJIS). Although a key reform of CORI was the development of an online system for access to CORI (iCORI), this system was inaccessible to indigent petitioners until April of 2015.<sup>9</sup> To request a copy of one’s own CORI, individuals were previously required to submit a notarized form and a bank

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<sup>4</sup> See Commonwealth v. Pon, 469 Mass. 296, 308-313 (2014).

<sup>5</sup> *Id.* at 315-316.

<sup>6</sup> *Id.* at 316.

<sup>7</sup> Massachusetts District Court Standing Order 1-11, *Limited Assistance Representation and Substitute Counsel*, Part A, Section 14 “ ‘Ghostwriting;’ Document Preparation.” (Jan. 25, 2011).

<sup>8</sup> These steps are shown graphically on Figure 1.

<sup>9</sup> Department of Criminal Justice Information Systems (DCJIS) – iCORI Frequently Asked Questions.

**WHAT SHOULD I DO IF I CANNOT AFFORD THE \$25 FEE TO OBTAIN A COPY OF MY CORI?** Indigent individuals seeking to obtain a copy of their own Massachusetts CORI may apply for a waiver of the \$25 fee. To apply for a fee waiver, you must complete the CORI Personal Request Form and the DCJIS Affidavit of Indigency and mail both to the DCJIS at the address listed on the Form.

Available at: <http://www.mass.gov/eopss/crime-prev-personal-sfty/bkgd-check/cori/>.

check or money order for \$25. Indigent requestors can seek a fee waiver by filing a notarized affidavit of indigence, which is a one page form, in addition to the CORI Personal Request Form. Individuals, as well as advocates and attorneys may now submit CORI requests and Affidavits of Indigency through the iCORI system. There are now fee waiver forms available for submission online through the “iCORI” system. “Organizations” can register on iCORI to obtain CORI’s for their volunteers, employees, housing applicants or licensees, and non-profit organizations that serve children, the elderly or disabled persons can obtain organizational fee waivers for such access.

- State law requires DCJIS to provide individuals a free copy of their CORIs for “self-audits” every 90 days, which requires submission of a notarized form.<sup>10</sup>
- Once clients obtain their own CORI,<sup>11</sup> CORI-CLSR law students assess, under supervision of an attorney, their sealing eligibility. Convictions that satisfy the time and type requirements for sealing can be administratively sealed through completing a 100A petition. This can generally be done the same day the client presents his or her CORI. Once the Administrative Sealing form is completed and signed by the client, nothing further is required of the client. [See Box 5 on Figure 1].
- Sealing of non-convictions requires a discretionary determination by the court where the CORI notation arose (i.e., the jurisdiction in which the charge was brought<sup>12</sup>) that good cause has been shown to seal the record. This individualized decision requires an individualized petition, explaining the impact of a CORI notation on the client’s life and its atypical or no longer relevant reflection of the client’s conduct, which includes an affidavit. These documents are then provided to the client, along with instructions concerning filing with the clerk’s office in the appropriate court(s). [See Box 6 on Figure 1].
- The client then takes the documents to the appropriate court, files the petition with the clerk’s office. The court will review the petition, and determine if a hearing is needed. If a hearing is needed, the court will schedule a hearing and notify the client by mail. The client must then return to court when the matter is scheduled. These steps must be repeated for each court where the client has records they are trying to seal.

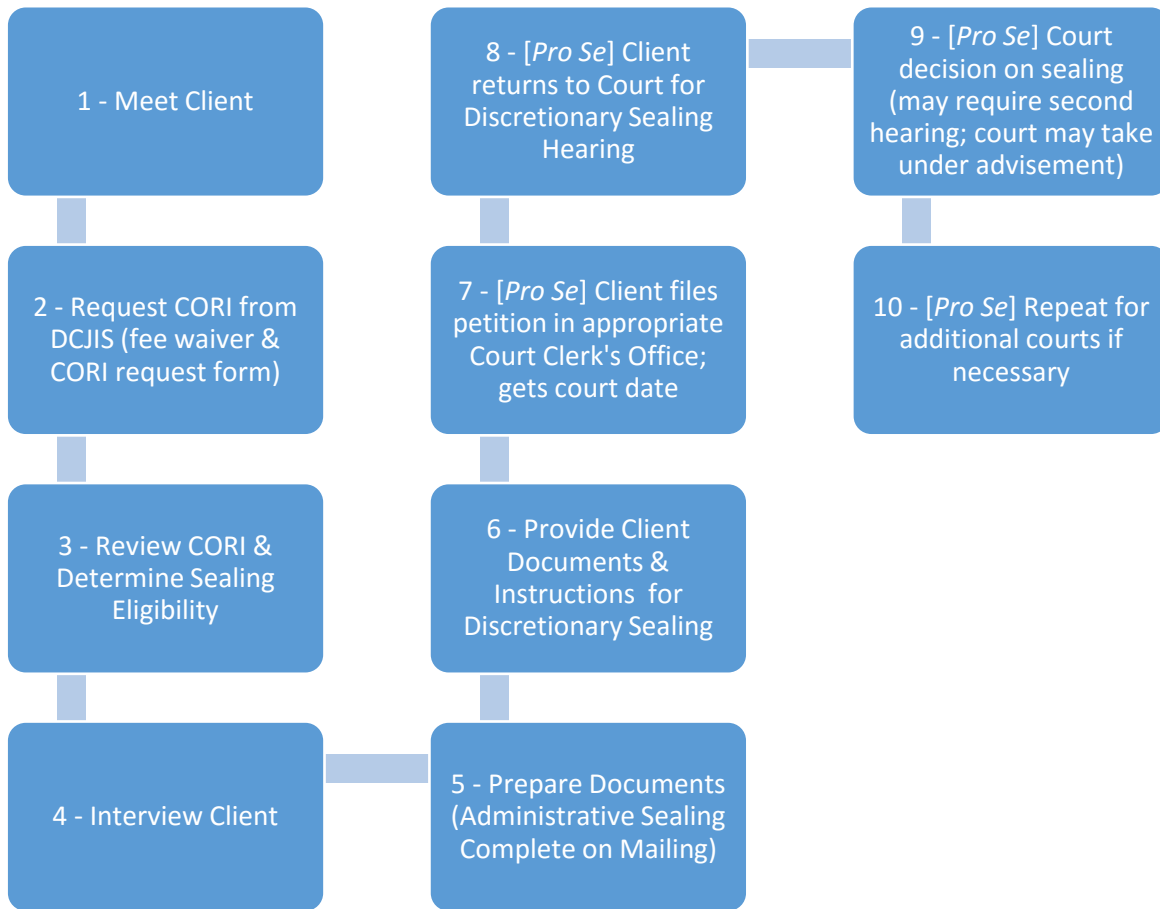
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<sup>10</sup> Although online access to the “iCORI” system was established on May 7, 2012 for organizations and individuals conducting CORI searches, individuals seeking their own CORI - or seeking to conduct a CORI “self-audit” to determine what requestors will see - this did not extend to individuals requesting a self-audit.)

<sup>11</sup> CORI-CLSR did identify several clients who had difficulty obtaining their CORI’s due to incorrect entry of names or misspelling of names in various records.

<sup>12</sup> Boston Municipal Court (BMC) Standing Order 1-09 allows petitioners with three or more non-convictions under a court of the BMC to combine them into one petition and submit to the BMC court of their current jurisdiction (or the court of the most recent BMC case if they live outside of Boston). Boston Municipal Court Standing Order 1-09 (Amended) *For the Sealing of Three or More Dismissals and Non-Conviction Criminal Records* (5/9/2012).

Figure 1: CORI-CLSR Sealing Process (note boxes 7-10 are *pro se*)



### **Client Sources:**

CORI-CLSR clients have come from a range of sources. CORI-CLSR began taking referrals of indigent persons seeking sealing assistance from Greater Boston Legal Services (GBLS) in Fall 2011. Because CORI-CLSR operates outside a formal clinic structure, all student participants accomplish this volunteer work outside of class time and other obligations during a four-hour meeting time once per week. The meeting time is during business hours, resulting in a limited opportunity to meet with clients. In our second year of operation, 2012-13, the total number of clients increased significantly, due in part to a new source of clients from a partnership created with Rosie's Place in January 2013. In 2013-14, we continued to grow our partnership with both GBLS and Rosie's Place, and our number of total referrals remained about the same as 2012-13. For the first time, we were also referred cases from the Committee for Public Counsel Services (CPCS), Somerville Homeless Coalition, and JobNet. In 2014-2015, we established a new, stronger partnership with Rosie's Place and their new location, Norfolk House. During the summer of 2015, CORI-CLSR began collaborating with Boston Career Link. This work expanded in 2015-16 to include informational trainings for case workers (7/10/15, 1/15/16) and two clinics for clients (3/11/16, 3/25/16). CORI-CLSR also provided an informational training for City of Boston Streetworkers (4/15/16).

### **The Data:<sup>13</sup>**

#### ***The need for assistance during the sealing process is substantial.***

In 2011-2012, CORI-CLSR was a fledgling program with fewer established internal processes and fewer participating students. As a result, the retention of clients was low: of the 44 initial clients, 12 (27%) were unable to be reached. Of the remaining 32 clients, 23 had sealing petitions prepared (52% of initial clients). In 2011-2012, CORI-CLSR did not track outcomes of sealing petitions.

For 2012-2013, the increased number of student volunteers and a dedicated manager allowed CORI-CLSR to take on more clients and increased their retention. Greater student organization and persistence improved client retention from point of initial contact to completed preparation of discretionary sealing petitions from 64% to 94%. In absolute terms, this was the preparation of 111 discretionary sealing petitions for 51 clients in the 2012-2013 term.

For 2013-2014, the number of student volunteers and overall client referrals remained steady from the previous year.

For 2014-2015, both the number of student volunteers and the overall client referrals decreased. This year was historically one of the worst winters in the country and therefore, many volunteers were unable to attend CORI on a consistent basis due to make up classes. Further, due to the weather and the transient nature of our clients, many of our clients were unable to be reached, or if initial contact was made, we were unable to follow up with them.

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<sup>13</sup> The data for this report were collected by the student manager and volunteers of CORI-CLSR through telephone contact. Clients were called over a seven month period (August- December and January-April) to obtain this data. Between two and six calls were placed and/or messages left for each client.

For 2015-2016, the number of student volunteers was high in the beginning, but tapered off towards the end of the year. That contrasted with the number of clients we had for referrals. This past year, our new partnership with CareerLink included several on-site information sessions as well as sealing workshops. Through these interactions we received a large amount of interest and gained a fair amount of new clients. This new venture helped to garner interest from several new volunteers and cemented a new possible long term relationship for referral resources.

| <b>Academic Year</b> | <b>Total Clients</b> | <b>% Change</b> |
|----------------------|----------------------|-----------------|
| 2011-2012            | 44                   | N/A             |
| 2012-2013            | 63                   | +43%            |
| 2013-2014            | 61                   | -3%             |
| 2014- 2015           | 53                   | -16%            |
| 2015- 2016           | 68                   | +28%            |

***The discretionary sealing process presents considerable barriers to unrepresented litigants – especially indigent litigants.***

In 2015-2016, CORI-CLSR continued to keep track of outcomes for 100C discretionary sealing outcomes.<sup>14</sup> One critical feature of the existing CORI sealing process is that a single client may need to go to multiple jurisdictions (i.e., different courts) to seal his or her CORI. Unless a client’s CORI notations were covered by the Boston Municipal Court’s (BMC) Standing Order, multiple petitions (and multiple trips to multiple courts) are required. This option was not utilized over this past year, however. Between 80% of the clients required paperwork for multiple courts since he or she had a CORI notation arising in different jurisdictions (e.g., a dismissed case in one court and another dismissed case in a different court, not covered by the BMC Standing Order). As a result, CORI-CLSR prepared 110 court-specific petitions for 38 clients. CORI-CLSR prepared documentation (100C Petition to Seal and Affidavit) for 37 different courts in Massachusetts including seven divisions of the BMC.

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<sup>14</sup> Tracking data collection was done by the student manager and volunteers of CORI-CLSR through telephone contact. Clients were called throughout the year. At least two phone calls or voice mail messages were left with each client.

Comparison of Discretionary Sealing Results for Previous Three Years:

| <b>Stage:</b>                                     | <b>Clients:<br/>2012 - 2013</b> | <b>Clients:<br/>2013 - 2014</b> | <b>Clients:<br/>2014- 2015</b> | <b>Clients:<br/>2015-2016</b> |
|---|---------------------------------|---------------------------------|--------------------------------|-------------------------------|
| Initial Clients                                   | 63                              | 61                              | 53                             | 68 <sup>15</sup>              |
| Clients Able to be Reached                        | 59                              | 52                              | 47                             | 62                            |
| Clients with Pro Se Packets Prepared              | 51                              | 35                              | 38                             | 29                            |
| Clients Able to be Reached After Packet Prepared  | 34                              | 22                              | 22                             | 15                            |
| Clients Who Went to Court to Petition for Sealing | 15                              | 13                              | 11                             | 4                             |
| Clients With at Least One Petition Sealed         | 11                              | 10                              | 8                              | 2                             |
| Clients With All Petitions Sealed                 | 7                               | 4                               | 5                              | 2                             |

Of the 69 initial clients, CORI-CLSR completed discretionary sealing petitions for 29 clients (42%). Of the 29 clients with paperwork ready (i.e., who were provided discretionary sealing petitions), we were able to subsequently reach 25 (51%) of them for follow-up. Of the 15 clients we were in contact with, 4 (27%) of them went to court to submit the petition. Of the 4 who requested sealing, 4 (100%) were granted at least one petition for sealing by one court. And of those 4 who had some sealing granted, 2 (50%) had all of their petitions granted or courts sealed all of their notations. Thus, only about 13% (4/29) of clients for whom CORI-CLSR prepared pro se paperwork were able to completely seal their non-conviction record. About 4% (4/29) of all clients who received paperwork were able to seal in at least one court.

There are numerous reasons why only 29 out of 62 referrals received paperwork to go to court. Five clients only required 100A automatic sealing petitions, for instance, and did not require a hearing to seal their cases. Others had open cases remaining on their CORI, and it was advisable to wait and seal once all their cases had closed. Some clients were referred to our clinic, but we were either unable to reach them or they did not attend our onsite clinic days that we held at

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<sup>15</sup> This number reflects all clients we spoke to including those clients who asked us to check if they had CORIs or not. We were unable to locate CORI's for nine ten individuals. For a few of those clients we had to make several follow up calls to make them aware. We also e-mailed three clients copies of the ICori's we received reflecting the no record status

CareerLink , where we conducted three separate sealing sessions and two information sessions for their guests. For other clients, we were able to make initial contact, but were unable to complete the process before losing contact with that client. Due to the surge in new clients and the limited resources follow up was a major priority and we did our best to get a hold of all clients past and present to make sure they were all being given equal opportunities to speak with us and get the appropriate paperwork sent out to them.

These numbers demonstrate that there remain major hurdles to getting to court. Of the clients who had documentation prepared for them by CORI-CLSR, only 25% (4 out of 16) went to court to submit the paperwork and successfully filed it. Getting a discretionary sealing decision is clearly a major hurdle as well. Of the 11 clients who reached the point of a discretionary sealing decision, 27% (4/15) had something sealed, but fewer than half, about 7% (2/29) were able to seal their entire non-conviction record.

There are several possible reasons why the majority of the clients who received paperwork never reached a judge. When we spoke to clients during our data collection, those who had not yet attended court cited transportation difficulties, money problems, personal issues, and the discomfort of going into court without a lawyer/advocate as keeping them from court.

One potentially troubling result is 64% of clients (7/11) who are unable to have their entire non-conviction record sealed. All of these clients are indigent and none of them could plausibly be described as “public figures.” Given these characteristics, and the deleterious consequences of even a non-conviction record, it is difficult to understand how there is not good cause to sealing all of a client’s non-conviction record.

While the data gathered herein is only anecdotal, the results do suggest that transportation to and from court proves to be a monstrous hurdle for our clients. For those clients who were able to get hearings, the majority of them were successful in getting their cases sealed. The difficulty remains, in providing means of transportation to the courts for indigent individuals seeking to seal their criminal records. Especially during the winter months, transportation outside of the Boston area can prove to be difficult.

***Administrative sealing involves just one entity (the Probation Department), while discretionary sealing can involve many entities, depending upon the number of courts in whose jurisdiction a sealing client has had legal charges.***

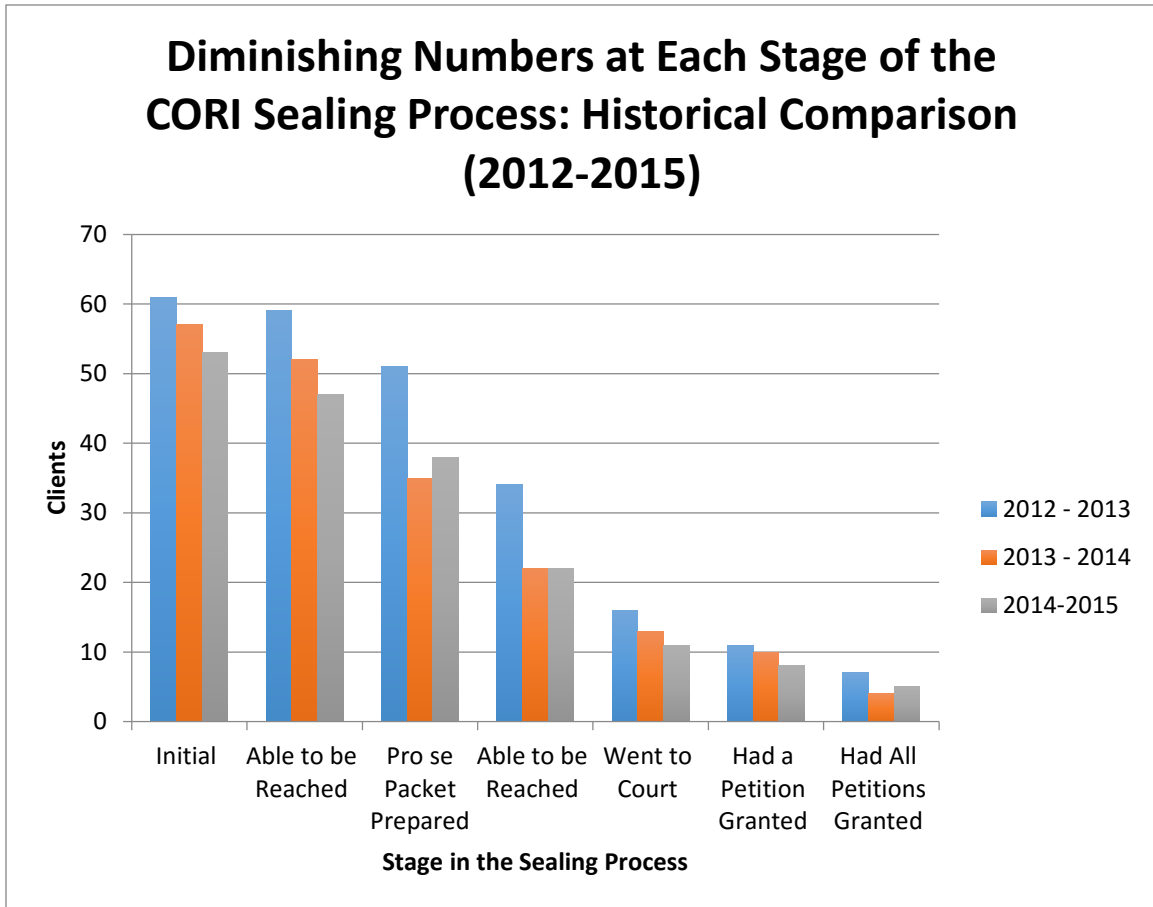
Some clients also requested sealing administratively through the 100A petition. Five clients *only* required 100A sealing because all of their cases had met the statutory period for administrative sealing (all cases were “aged out”). Currently, a person can expect to wait about 90 days for a response from the Commissioner of Probation. While we have no data on the sealing rates of the 100A administrative sealing process as of yet, it imposes far fewer burdens on persons to reach the sealing decision point. If the discretionary process for sealing non-convictions were closer to the 100A administrative sealing procedure, with reduced, less-individualized, paperwork, more automatic or even on-line filing, a presumption in favor of sealing and clearer or narrowed bases on which to refuse sealing, it is likely that far more of those who initially sought to seal their non-conviction records would be able to successfully do so.



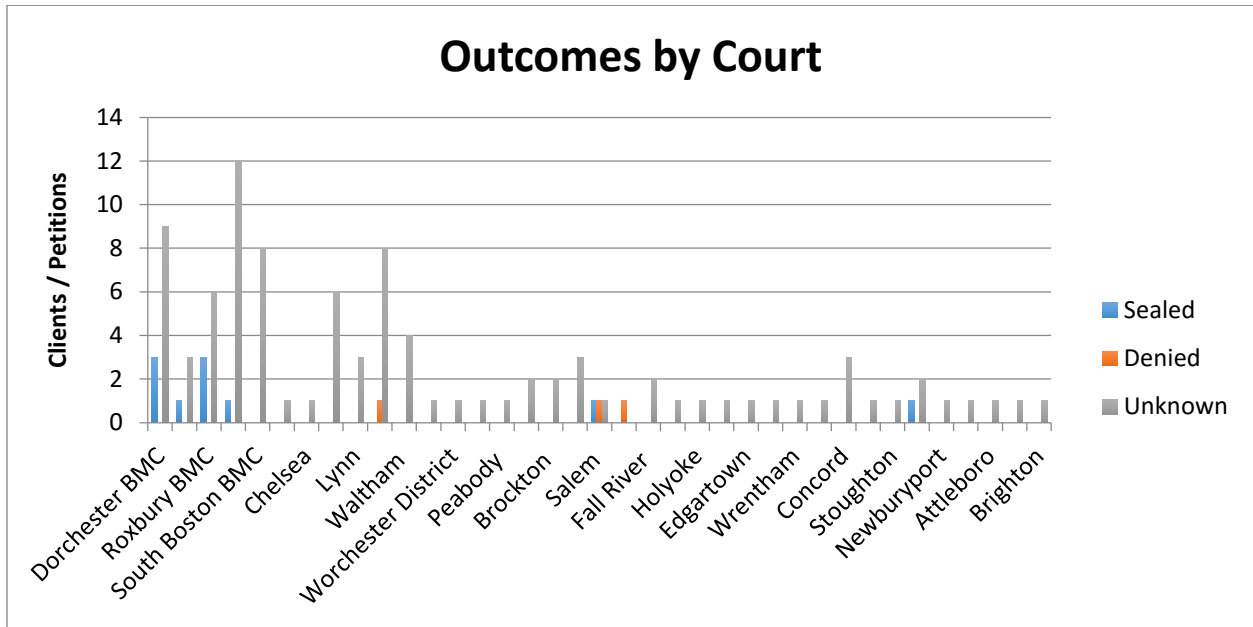
## Appendices

- Appendix 1 – Diminishing Numbers of Clients at each Stage of Sealing
- Appendix 2 – Sealing Outcomes by Court
- Appendix 3 – List of Student Volunteers (2015-2016)

Appendix 1:



Appendix 2:



Appendix 3:

**List of Student Volunteers (2015 – 2016)**

Alexander, Brigitte

Alison-McIntosh, Chevelle

Carrington, Candice

Filban, Erin

Geraci, Emily

Howlette, Jordan

Jagdeo, Kara

Johnson, Ashley

Lopez, Johnise

Mansaray, Yusuf

Martin, Michael

McCauley, Melanie

Mintier, Travis

Naranjo, Stephanie

Nasrabadi, Medya A

Roberts, Mallory

Rubin, Jennifer H.

Sayej, Sama

Scholefield, Kellie

Salbashian, Rafi

Terasi, Laura

Velardi, Kaleigh

Westerman, Jordana

Williams, Nikia

Yaffe, Dara

Zubcenic, Rubi