Massachusetts Coalition for Juvenile Justice Reform

An Act to Promote Public Safety and Better Outcomes for Young Adults – S.825/H.3420

(Senator Boncore and Representatives O’Day & Khan)

Massachusetts currently spends the most money on young adults in the justice system and gets the worst outcomes

Shifting 18- to 20-year-olds into the juvenile system, where they must attend school and participate in rehabilitative programming, would lower recidivism. The young adult brain is still developing making them highly amenable to rehabilitation. This development is influenced – positively or negatively – by their environment.

An overly punitive approach can actually cause more offending: Most young people "age out" of offending by their mid-twenties, particularly with developmentally appropriate interventions. Exposure to toxic environments, like adult jails and prisons, entrenches young people in problematic behaviors, increasing probability of recidivism.

Recidivism among young people incarcerated in the adult corrections is more than double similar youth released from department of youth services commitment

Teens and young adults incarcerated in Massachusetts’ adult correctional facilities have a 55% re-conviction rate, compared to a similar profile of teens whose re-conviction rate is 22%. DYS has been successful in reducing its recidivism rate following almost four decades of reforms building in an emphasis on providing treatment and imposing policies whose primary goal is to ensure young people’s healthy and positive development into adulthood.

Emerging adults make up 10% of the state population, but represent more than 29% of arrests, 23% of Houses of Correction commitments (HOC), and 20% of Department of Correction commitments. The Council on State Governments’ final report identified emerging adults as a key priority for reform, with the highest recidivism rate in MA (in 2011, 76% of emerging adults released from HOC were re-arraigned within 3 years).

Massachusetts already serves “transition age youth” through child- and adolescent-serving agencies and divisions recognizing that those services are more appropriate and effective than adult services for young people: child welfare, healthcare, K-12 education, mental health, developmental disabilities, labor and other state
agencies have created dedicated policies and programs to support young adults’ transition to independent adulthood.

In 2017, DYS served 357 young people 18-years and older who were either committed to DYS until age 21 or through their voluntary services through age 22. Eighty percent of new commitments to DYS are for young people age 16 to 20.

Massachusetts’ juvenile justice system has the capacity to handle the entry of 18- to 20-year-olds.

In 2013, Massachusetts policy makers ended the practice of automatically prosecuting 17-year-olds as adults. Since then, juvenile crime has declined by 38%, and has seen faster declines in violent and property crime rates than the national average. With juvenile crime at historic lows, the system – including courts and DYS – now has the capacity to absorb 18 – 20 year-olds:

- The total number of juvenile court cases has steadily declined over the last decade: Since 2009, all juvenile court case filings decreased by 56%. Juvenile arraignments fell by 81%
- Since 17-year-olds were introduced into the juvenile justice system, there has been a 16% decrease from 19,712 cases in the juvenile courts to 16,627 in FY2018 (prior to implementation of the Criminal Justice Reform Act of 2018.)

Massachusetts’ juvenile justice system has the specialized skills to handle 18- to 20-year-olds.

The juvenile system already effectively handles the cases of young people under the age of 21 who are indicted on serious offenses. Young people charged with serious offenses can be indicted in Juvenile Court as a “Youthful Offender” where they are eligible for juvenile and/or adult sentences. Over 80% of young people over the age of 18 that are committed to the Department of Youth Services are adjudicated as a Youthful Offender and committed until age 21. Young people who are charged with murder will continue to be automatically tried in Superior Court.

This bill would move emerging adults into a developmentally appropriate justice system to reduce recidivism and prevent deeper criminal involvement

Raise the upper age in delinquency and youthful offender (Y.O.) cases to gradually include 18, 19 and 20 year olds over three years. Our juvenile justice system is designed to provide individualized, developmentally appropriate services for young people. Young adults with serious offenses would still be eligible for adult sentencing in murder and Y.O. cases as is currently law.

Expand the upper age of commitment to DYS for emerging adults (18-20) to ensure there is an adequate opportunity to rehabilitate older youth entering the system. DYS already serves Y.O.s up to age 21; this legislation would allow for extended Y.O. commitment up to age 23.

For more information, please contact Sana Fadel at
Citizens for Juvenile Justice, sanafadel@cfjj.org, 617.338.1050
Raise the Age FAQs
An Act to Promote Public Safety and Better Outcomes for Young Adults – S.825/H.3420

What does this bill do?
• This legislation will gradually raise the age of juvenile jurisdiction to include 18-20 year olds. Raising the age to 21 refers to the age at which an individual is subject to the (adult) criminal justice system.

What about public safety?
• This reform will improve public safety and decrease crime. Since Massachusetts raised the age to include 17-year-olds in the juvenile system in 2013, juvenile crime has declined by 34% in the Commonwealth – outperforming national trends in property and violent crime reductions.

• What we’re doing now does not work: Massachusetts spends the most money on justice-involved young adults and gets the worst outcomes. The Council on State Governments identified emerging adults as a key priority for reform, with the highest recidivism rate in MA (76% re-arraignment rate within 3 years).

• We’re making things worse. Most young people can be held accountable and be on track for rehabilitation, particularly with developmentally appropriate interventions. However, exposure to toxic environments like adult jails and prisons can actually increase offending.

• This reform will decrease crime. Keeping 18-year-olds (many of whom are still in high school) in the juvenile system, where they are required to attend school and participate in vocational and rehabilitative programming, will lower recidivism.

• CDC research has shown that similar adolescents had a 34 percent lower felony re-arrest rate when they were in the juvenile v. adult system.

• Young people discharged from DYS commitment have lower recidivism rates that young adults formerly incarcerated in the adult system (46% of formerly DYS committed youth were re-arraigned compared to 76% of 18-24 year-old’s discharged from HOCs; and 26% compared to 55% reconviction rate).

• DYS supports students through the process of applying for and attending post-secondary education institutions, and accessing federal Pell Grant funding for higher education. In the adult system, young people cannot access Pell Grants.

• Massachusetts already recognizes emerging adults as a distinct population and serves “transition age youth” through child- and adolescent-serving agencies and divisions: DCF, healthcare, DESE, DMH, DDS, labor and other state agencies have
created dedicated policies and programs to support young adults’ transition to independent adulthood.

**What about violent crime?**

- **Young people will be held accountable.** The most serious crimes will continue to be eligible for adult sentences. Prosecutors can seek a “Youthful Offender” indictment if the youth has committed a felony offense AND has at least one of the following: (1) previously committed to DYS, (2) committed a certain firearms offense; (3) committed an offense which involves the infliction or threat of serious bodily harm. If adjudicated a Youthful Offender, the Judge has the power to impose (1) a juvenile sentence (until age 21); (2) an adult sentence; or (3) a combination of juvenile and adult sentencing past their 21st birthday. Young people, as young as 14, charged with murder are automatically tried as adults in Superior Court.

- The **juvenile system typically imposes more supervision and intensive programming** while in confinement than the adult criminal justice system. Educational, counseling and independent living programming are **difficult-to-impossible to access on the adult side.** The adult system yields predictably bad outcomes for young adults.

- Many victims’ groups support restorative justice that holds offenders accountable; this is more available in the juvenile system.

**What about intermingling with younger teens?**

- **DYS has a strong history of preventing the mixing of older and younger youth.** DYS has been handling youth up to their 21st birthday for over two decades. In 2017, DYS served 357 youth ages 18 and over. Slightly over half were young people serving Youthful Offender sentences in DYS until their 21st birthday. The other half are youth receiving one year of voluntary services through DYS after the end of their commitment, which could be up to their 22nd birthday.

- **DYS does not generally mix 20-year-olds with younger teens today.** The department has a thorough evaluation process to ensure that placement is appropriate. It is not one-size fits all. DYS has many small programs that range from locked facilities to community-based programs, creating many options to separate older and younger individuals.

**Will we violate federal requirements requiring the separation of juveniles and adults?**

- **Raising the age of Juvenile Jurisdiction will not violate federal core requirements under the Prison Rape Elimination Act (PREA) and the Juvenile Justice and Delinquency Prevention Act (JJDPA).** Federal law defines a “juvenile” as someone who is charged in court as a “juvenile” and therefore a young adult charged as a “juvenile” would not be considered an adult for PREA and JJDPA purposes.
Slippery slope/At what age would you consider adulthood (fear about raising age even higher)?
- We have 4 years’ worth of data from the implementation of the 2013 Raise the Age to document success in terms of reductions in crime and recidivism.

- We are grateful that there is a consideration of including 18- to 20-year-olds in the juvenile system. Our goal is that young adults 21 years and older would be better served with developmentally appropriate services in the adult system and do not belong in the juvenile system. Separate legislation (S.940 & H.1486) is filed that would infuse developmentally-appropriate, evidence-informed policies modeled after Massachusetts’ juvenile justice system into the adult criminal justice system.

No other state has done this
- Vermont passed a law raising the age to include 18-year-olds by July 2020 and to include 19-year-olds by July 2022.

- Connecticut and Illinois have legislation pending to raise the age to include 18- to 20-year-olds in their juvenile systems. Colorado’s pending legislation would study the feasibility of raising the age.
An Act Relative to Expungement

H.1386/S.900

(Lead Sponsors: Senator Creem and Representatives Decker and Khan)

“Criminal records can make it difficult for young offenders to find a job, get into college, or borrow money. An expungement bill would create a process by which certain nonviolent juvenile offenses could be removed from a criminal record. It’s a way to reduce the likelihood that a teen who makes bad choices will become a career criminal.”

Boston Globe Editorial Board

An Opportunity Out of Reach for Many

In 2018, Massachusetts passed legislation that created an opportunity to expunge juvenile and adult criminal records for folks whose offense was charged prior to their 21st birthday. While this is a tremendous step forward, the law created a significant limit: there can only be one court case on the record. In effect, anyone who has a second or subsequent court case would be ineligible for expungement ever. This is a missed opportunity to tackle recidivism.

This bill would:

- remove the only one court case restriction and instead would limit eligibility by how long ago the individual had their last court case – allowing individuals to expunge their records if their last offense was three years (for misdemeanors) or five years (for felonies) ago and they have no subsequent court case since;

- reduce the number of offenses which are categorically ineligible for expungement to those currently ineligible for sealing (while keeping prosecutorial discretion on the review of all expungement requests)

- reduce the time to seal juvenile records for non-adjudications and allow for automatic sealing of eligible records.

The bill does not change the public safety goals in the current law, as those with recent offenses are not eligible for expungement.

The risk of young people – who have not re-offended in the subsequent FOUR years – is equal to the risk of the
general population, regardless of number or type of prior offenses.

Criminal records are primarily a tool to measure future risk. Yet there is a point where these records have no predictive value. The assumption is that individuals with a criminal record are at a higher risk of future criminal activity. However, research that followed a large cohort of individuals over more than three decades found that the predictive value of a record diminished over time. Individuals whose last arrest was as a juvenile, had little to no difference in risk of future offending compared to those with no prior record after four years. The mere presence of a juvenile court record is neither an indication of guilt nor an indication of public safety risk. In 2009, the most recent data available, fewer than 12% of the cases arraigned in juvenile court resulted in an adjudication of delinquency.

Impact of Expungement on Reducing Recidivism

- States where there are minimal administrative barriers to sealing and/or expungement of juvenile records have significantly reduced re-arrest/recidivism rates and increased college graduation and incomes as these young people transition to adulthood.¹
- Criminal convictions (for adults) in Canada are routinely “set aside” through expungement or pardons. A review of the recidivism rate of people whose convictions were set aside found that “the ability to grant offenders a pardon may be an important step in restoring a person’s self-perceptions as a non-offender and, in turn, may actually increase public safety in Canada by reducing recidivism within this population.”²

Permanent Juvenile and Criminal Court Records are Barriers to Success and Re-Entry

Students can be expelled from school based on a juvenile court record. A juvenile record is a barrier to accessing higher education, employment, maintaining housing, or pursuing a career in the military. Even decades later, a juvenile court record can prevent an individual from becoming a foster parent or obtaining certain types of employment. Juvenile records are also available to local law enforcement agents, courts, and the armed forces. A permanent court record that interferes with individuals' access to education and employment decades later undermines the rehabilitative purpose of juvenile court proceedings by attaching precisely the stigma that our juvenile court system is intended to avoid.

For more information, please contact Sana Fadel at Citizens for Juvenile Justice, sanafadel@cfjj.org, 617.338.1050

Sound juvenile justice policy must be based on comprehensive, uniform, reliable and publicly accessible data. Effective public policy cannot be based on instinct or anecdote; rather, it must be based on solid information that enables policy-makers and practitioners to identify and quantify problems in the system, propose and implement solutions and then evaluate whether the solutions are, in fact, effective.

Massachusetts currently fails to collect crucial data at most of the significant decision points in the juvenile justice system. As a result, taxpayers are blindly funding a system without adequate metrics to assess its fairness or effectiveness, a system that has a profound effect on kids, families and communities.

Massachusetts also has one of the worst racial disparities in the country – having the 4th worst racial inequity in juvenile incarceration. National research has found that these disparities cannot be adequately explained by differences in offending, but are more likely driven by differences in enforcement and processing.¹

Disparities not only cause the worst burdens of the juvenile justice system to fall disproportionately on children of color, they can actually increase recidivism on their own. Young people “may be more likely to accept responsibility for less serious offenses early in the process if they perceive delinquency proceedings to be fair and transparent and any sanctions imposed to be proportionate to their offenses”²

Using data – at both the system and individual level – can have a large impact. Data allows system leaders to see disparities where they occur and to identify and to evaluate policies or practices that may inadvertently drive children deeper into the system.
The Missing Facts

How many minority youth are formally charged with committing a crime in Massachusetts?
We don’t know. Aggregate data is available to the Court but not shared, despite the fact that arraignments are considered to be one of the best measurements of juvenile delinquency.

How do district attorneys use their discretion to divert or indict youth?
We don’t know. Diversion is a useful tool for sifting out less serious cases that can be resolved informally, while indictment is intended for the most serious cases with the most serious consequences. Aggregate data about whether both of these critical decisions are being made consistently or fairly is not reported or shared publicly.

How many youth who are charged in court are actually found to be delinquent?
We don’t know. While the Court’s data system is capable of producing this data, it is not routinely aggregated or made public. The one year that this data was publicly available (in 2009) indicated only 11% of cases charged in court ended in a delinquency adjudication.

How many youth are given “adult” sentences?
We don’t know. Sentencing children as if they were adults is a profoundly serious decision with potentially devastating consequences, but there is no way to know how often this is happening, or whether it is happening fairly or appropriately. While the Court system is capable of producing this data, they choose not to do so or to share it if they do.

Are young people and public safety better off through young people’s system involvement?
We don’t know. National research shows that system involvement tends to worsen outcomes. Massachusetts does not track education, housing, health and recidivism data for the 93% of youth who enter our Juvenile Court system but are never formally committed to DYS custody.

While 39 other states have been able to comply with federal law requiring the collection of data on race and ethnicity at each decision point in the juvenile justice system, Massachusetts is failing to collect this data risking the loss of federal grants which can fund important prevention and intervention programs.

For more information, please contact
Sana Fadel, sanafadel@cfjj.org
Citizens for Juvenile Justice, 44 School Street, Suite 400, Boston MA 02108

Revised 1/22/19
Massachusetts is one of only three states that criminalizes consensual sexual activity between two adolescents. Most states have “Romeo and Juliet” laws to ensure that these relationships are handled by parents, not judges. This bill would revise Massachusetts’ antiquated and harmful statutory rape law to protect teens from criminal prosecution for consensual sexual activity with peers. The bill would provide a sensible and limited exception to criminal prosecution for youth who engage in consensual conduct with other young people who are similarly aged. The bill does not change the laws that criminalize non-consensual or forcible sexual assaults by youth or consensual activity with a significantly older individual.

Why the current statutory rape law needs to be amended:

- **The current law criminalizes common teen behavior.** 38% of Massachusetts’ high school students report having had sexual intercourse.\(^1\)

- **It encroaches on the role of parents and faith communities.** The current law is not designed to protect anyone but to set a moral standard. That is not the state’s function.

- **It undermines good public health policy.** The current law discourages youth from asking for guidance about sexual behavior because many trusted adults – doctors, nurses and guidance counselors – are obligated to report such behavior as abuse to the Department of Children and Families. As a result, youth are less likely to obtain information about such important subjects as contraception, STDs and pregnancy.

- **Statutory rape convictions ruin lives.** The current statute provides for a sentence of “any term of years” in prison, including life. Furthermore, a conviction may require registration as a sex offender, limiting the ability to obtain a job and housing. It also creates a host of troubling consequences for youth who study or work in other states.

- **The current law is used in a selective and arbitrary fashion.** Prosecutions are often driven by parental pressure or other outside forces rather than public safety concerns. Although the law applies equally to both genders, it is used almost exclusively to prosecute boys (even when both youth are under the age of consent).

The bill would provide a sensible and very limited exception to criminal prosecution for youth who engage in consensual conduct with other youth who are similarly aged:

- The age of consent for sexual activity is age 14. The bill would create an exception for 13 year olds, if the other child is no older than 15 years.

- The age of consent for sexual intercourse is age 16. The bill would create an exception for 13 to 15 year olds, if the other child is no more than 2 years older.

---

For more information, please contact Sana Fadel at Citizens for Juvenile Justice sanafadel@cfjj.org or 617-338-1050

---

\(^1\) “Health and Risk Behaviors of Massachusetts Youth, 2013”, MA Department of Elementary and Secondary Education. Available at http://www.doe.mass.edu/cnp/hprograms/yrbs/
Although Massachusetts is often celebrated for having the best public schools in the nation, our state also has one of the worst racial inequities for school achievement, school exclusion, and juvenile justice system involvement. In Massachusetts, Black students are three times more likely and Latinx students are over two times more likely to be suspended than their White peers for the same or similar behaviors. Children of color, those living with disabilities, and child-welfare involved children are overrepresented in the child welfare, juvenile justice, and later, adult criminal legal systems. When students get what they need to succeed and remain in school they enter adulthood with a much brighter future.

This bill prevents students who have been merely accused of a crime from being excluded from school without any real due process, and clarifies the type of student behavior that would rise to the level of being a danger in the school to justify expulsion and suspension. This bill does not limit a school’s ability to suspend students for any behavior banned in their school code of conduct handbook. It will also not change the legislative intent of allowing principals to exclude students long-term or permanently who present a safety risk to the school.

**Problem:** Students facing felony allegations are subject to suspension when a complaint has issued from the juvenile court, prior to any due process.

**Solution:** Such students would be subject to school exclusion after prosecutors and the courts formally arraign a child.

Currently, a student can be suspended from school “upon the issuance of a criminal complaint.” This means, that a child can be potentially removed from school and denied basic right to education without the opportunity for any due process in the juvenile court. The formal arraignment is an opportunity for the courts to determine “probable cause”. Further, the arraignment is an opportunity for the youth, the youth’s attorney and the district attorney and the judge to also look at whether there may be diversion opportunities. It is contradictory to allow for a student to be suspended from school for felony charges in a case where the charges were dismissed or diverted after the issuance of the complaint.

**Problem:** Currently students can be suspended or expelled for behavior outside of school resulting in a felony charge, whether or not it poses safety concerns to the school.

**Solution:** The statute should codify DESE’s guidance on suspension and expulsion due to serious behavior to ensure that the offense represents a realistic threat to school safety.

The law allows student exclusion due to any pending felony charge or conviction based on the principal’s discretion resulting in the exclusion of students for minor, non-violent behavior. Because a “felony” can range from being a passenger in a stolen car to manslaughter, the law is being used to exclude students charged with felonies that do not
present a danger. This bill would align the law with the DESE guidance, on “serious violent felonies” and defining it as an offense causing or threatening serious bodily harm, or any charge involving a gun.

**Problem:** Current law allows the expulsion of students for possession of weapons, drugs, and assault on school staff, however these factors are too broadly defined resulting in students losing their education for minor infractions.

**Solution:** The statute should be amended to bring the definitions in line with the federal and legal definition of a “dangerous weapon”.

The law allows principals to exclude students possessing a “weapon”. Without an explicit definition, the definition of “weapon” is too broad such as a case in which a student was excluded under this provision for possessing a paperclip. This bill would define a “weapon” to match the federal definition of “dangerous weapon” under 18 U.S.C. § 930.

Similarly, “assault” which also is not defined in the law, has sometimes been applied to include a “menacing” look from a student, unintentional contact with a teacher, or contact made with a teacher by a kindergartener during a tantrum. This bill would clarify that an “assault” must include specific intent and imminent harm before imposing exclusions.

**Problem:** Currently there are no statutes or regulations that clearly spell out the due process protections available to students facing serious charges. Regulations do exist for students facing non-serious offenses. The result is that often students facing long-term suspension or expulsion are not given the required level of due process established through case law involving serious offenses.

**Solution:** The law should be amended to reflect the due process entitlements.

Under the current law, students who are being disciplined for allegations of non-serious behaviors have more robust protections delineated than students who are facing more serious allegations involving weapons, drugs, assault on educational staff, and any felony charges or convictions. The result in practice is that students facing the serious allegations are often not afforded the appropriate educational due process because it is not specifically delineated in the statute, although it is supported by the case law. Requiring additional procedural protections ensures that schools take steps to confirm that (1) the offense did in fact occur; (2) that it was committed by the student being disciplined, and (3) to hear the whole story including mitigating circumstances before imposing very serious and potentially life altering consequences. This does not prevent schools from implementing serious disciplinary consequences if the principal determines such consequences are warranted.

---

For more information, please contact:
Lisa Hewitt • Committee for Public Counsel Services • lhewitt@publiccounsel.net • 617-910-5841
Sana Fadel • Citizens for Juvenile Justice • sanafadel@cfjj.org • 617-338-1050

---

1 [http://www.doe.mass.edu/lawsregs/advisory/discipline/AOSD1.html](http://www.doe.mass.edu/lawsregs/advisory/discipline/AOSD1.html)

2 The definition aligns with the Youthful Offender statute, M.G.L. c. 119 §54, which allows prosecutors to indict a child as a youthful offender, subjecting them to treatment as an adult.