

An Act Promoting Diversion of Juveniles to Community Supervision and Services (S.2942)

Judicial pre-arraignment diversion, passed in 2018, allows judges to divert young people prior to arraignment at which time a juvenile record is created. Judicial diversion allows for a neutral party to decide if both the youth and public safety are better served through alternatives to the juvenile justice system. Despite progress since 2018, Black and Latinx youth are still over-represented at every decision point of the juvenile justice system.

The 2018 statute excluded several offenses, including low-level conduct as ineligible for diversion. Allowing judges the discretion to divert cases allows a hearing to differentiate between childish behavior and serious offending. The collateral consequences of court processing are harsh and long term. Through diversion the courts can still hold young people accountable without the risk of detention or an adjudication.

The bill slightly expands the list of offenses that are eligible for judicial consideration. The law allows victims and prosecutors a chance at rebuttal in the 14 days of the hearing prior to a judge moving forward with diversion. Examples of cases ineligible for judicial diversion:

A foster youth placed in group home who had a history of trauma from placement in multiple non-LGBTQ affirming foster and congregate care, and DCF not being thoughtful about identifying affirming homes for LGBTQ youth. While in crisis, her placement called 911 rather than a mental health crisis team. She was restrained and ambulance driver was taunting her on her learning disability, and she spit at the driver and was charged with assault and battery on a public servant.

Objects from Massachusetts cases qualifying as a "dangerous weapon" and ineligible for judicial diversion: lotion, cell phone, eggs, sneakers, slurpy, backpack, soda can, snow ball, food, water balloon, plastic water bottle, spraying fire extinguisher foam on another child's boots.

According to a Harvard Law study of racial disparities in Massachusetts' courts, "[one factor—racial and ethnic differences in the type and severity of initial charge—accounts for over 70 percent of the disparities in sentence length.](#)" These charging disparities also impact Black and Latinx youth's access to judicial diversion.

Additionally, the law prohibits judicial diversion for offenses, for which adults would be subject to a mandatory incarceration of five years or more. Some of these offenses have concurrent district and superior court jurisdiction, where the same offense tried in a district court would not be subject to the five year or more mandatory minimum sentence. However, in the juvenile court, if a youth is not indicted for these offenses, they would still be ineligible for diversion. The statute already excludes Youthful Offender indictments from diversion, which meets the legislative intent of this exclusion.

Support Amendment #4 to Allow Students to Remain in School

The period prior to arraignment is an opportunity for the youth, the youth's attorney and the district attorney to also look at whether there may be diversion opportunities as an alternative to court processing. Diversion allows a youth to meet conditions set by a prosecutor or judge to avoid having their case proceed to an arraignment. Community-based diversion programming providers identified school suspension due to an open court case as a barrier to helping young people meet their conditions and succeed in diversion. These conditions typically include "stay in school" as a condition to avoid further prosecution, yet current law (Ch. 71 §37H½) authorizes principals to suspend students from school "upon the issuance of a criminal complaint." This means, that a child can be potentially removed from school without the opportunity for any due process, finding of probable cause or allowing a youth to proceed through the diversion process. It is wholly contradictory to allow for a student to be suspended from school for felony charges in a case where the charges were diverted after the issuance of the complaint.

The CJRA of 2018 tried to address this by creating an exception to the suspension law if a young person's juvenile case is diverted by a judge by stating that the case shall retroactively not be considered an issuance of a complaint for school suspension purposes. Though this was an attempt to address this limitation, nothing in the statute allows students to remain in school if they are diverted by the District Attorney's office or by the clerk magistrate – both diversion opportunities that do not require legislative authority, and therefore not addressed in the CJRA.

Principals would typically suspend a student stipulating that the student may return to school once their legal case is resolved. Ironically, students who are considered presenting the least public safety threat are the ones who end up with longer suspensions due to delays in court proceedings. The juvenile court typically prioritizes the cases of youth held in DYS detention to speed up a resolution to their detention. The result is that youth who remain at home while their court case is processed have longer wait times between cases to allow the detained youth earlier opportunities for release (or commitment). Ironically, those same youth are the ones who end up suspended for longer periods of time because the judge decided they can remain in the community while their case is processed.

Additionally, this amendment aligns the law with DESE guidance on the implementation of the 1993 education reform statute, which recommended that principals reserve this exclusion to "serious violent felonies."

While the S.2942 is trying to address the racial bias in who is eligible for diversion, racial bias is also evident in application of the suspension law for court-involved youth and has been highlighted most recently in [Falmouth](#) and in [Sandwich](#).



Ending the Automatic Prosecution of 18- to 20-Year-Old Adolescents as Adults

Lead Sponsors: Rep. O'Day/Rep. Khan and Sen. Crighton (H.1826; S.920)

MA spends the most money with worst outcomes for older teens

- This age group has the highest recidivism rate of any in the adult system, and **double** the recidivism of similar teens in the juvenile system.
- We're making things worse: Exposure to punitive environments like adult jails and prisons and more severe collateral consequences can actually **increase** offending.

Young men of color bear the harshest brunt of these policies

- Nationally, Black teenage boys are 12.4 times more likely to be incarcerated in adult corrections than their white counterparts, worse than any other age group (20's and older).
- This racial disparity in adult system involvement further exacerbates the disparity by leading to lower educational and economic opportunities for young people of color.

This reform will decrease crime

- Adolescents are highly amenable to rehabilitation: programs that require kids to develop positive decision-making and concrete skills, further their education and engage with their families and other positive adult role models are far more likely to result in increased public safety, particularly compared with policies that push young people into the adult system, increasing their likelihood of recidivism and even escalation into serious, violent crime.
- Keeping 18 – 20 year-olds in the juvenile system where they will have increased access to diversion, record protections, educational and rehabilitative programming, will lower recidivism.
- Similar adolescents had a 34 percent lower recidivism rate when they were in the juvenile system.
- MA has seen a 51% reduction in juvenile crime rates since raising the age to include 17 year-olds, outperforming national reductions in both property and violent crime

Young people will be held accountable, including for violent crimes

- Juvenile system is well-suited to, and currently does, process young people accused of, and adjudicated for serious, violent crimes. DYS has been working with 18-20 year-olds since the 1990's.
- The juvenile system typically imposes more supervision and intensive programming while in confinement, with an emphasis on positive youth development, which is strongly tied to desistance from re-offending.
- The most serious crimes will continue to be eligible for enhanced sentencing, including adult sentences.

Massachusetts' economy will benefit

- An educated workforce is one of the state's best economic assets.
- Adult system involvement is tied to increased high school dropout, reduced college graduation, decreased employment income, and adult criminal records further reduce educational, housing and employment opportunities.

Massachusetts Coalition for Juvenile Justice Reform

An Act Relative to Expungement – S.2837

Judiciary Committee Re-draft of H.1531 and S.980

Lead Sponsors: Senator Creem and Representatives Decker and Khan

Expungement is an important tool to allow individuals to completely and fully re-integrate into society without the burden of a criminal record, particularly when the record has no predictive value of future offending. **More importantly, expungement is an important tool to rectify the documented systemic racism at every point of the criminal legal system.** 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

Progress | The legislature has advanced expungement of juvenile and adult criminal records as a component of criminal justice and police accountability reforms:

- ✓ multiple charges from one incident shall count as one charge; (passed 2020)
- ✓ requires a minimum of 3 or 7 years without re-offending to demonstrate reduced risk and judicial oversight and final decision power; (passed 2018)
- ✓ increases number of charges eligible for expungement (passed 2020)

Unfinished Business | While this is a tremendous step forward, H1531/S980 would bring the law a step closer to the principles of youth justice and goals race equity: 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. H1531/S980 would:

- **limit offenses with a lifetime ban on expungement to those resulting in serious bodily injury and sex-based offenses** | The waiting period automatically excludes offenses with lengthy and life-long sentences. Sex-based offenses which are ineligible for sealing should also not be eligible for expungement. The list of offenses NEVER eligible for expungement is too broad and doesn't take into account young people's histories of trauma (with a significant number of children dually-involved with the Department of Children and Families and the legal system), nor the circumstances behind a certain offense (fear of violence in their communities or in their own homes).
- **exclude non-convictions and non-adjudications from the eligibility restrictions based on number of charges or cases** | The current law limits eligibility to cases with no more than two non-convictions/non-adjudications. However, if the legal system declares a young person is not guilty of an offense, expungement of such records should not be limited with a record following them for their lifetime.
- **create an incentive to desistance from re-offending by removing barriers to expunging cases with juvenile adjudications from the eligibility restrictions based on number of charges or cases** | Some young people may need multiple chances to exit the criminal justice system and the overwhelming majority do and pose no risk to public safety.

Limiting eligibility to cases prior to age 21 incentivizes² young people to get back on the right track.

- ❑ **prohibit dissemination of finger print juvenile arrests to the FBI, unless it is to submit a sealing or expungement order** | While Massachusetts law protects juvenile records from public dissemination, arrest records submitted to the FBI are available to the public circumventing Massachusetts confidentiality laws.
- ❑ **evaluate impact and implementation of the expungement law** | The bill would require Massachusetts Probation Services to annually report on expungement petitions, outcomes and reasons for denials to allow policy makers to evaluate the impact of the legislation.

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 in their youth, 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. Massachusetts' juvenile court data show that 10%-13% of the cases 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.
- ✓ 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."

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

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An Act Updating Bail Procedures for Justice-Involved Youth (S.2943)

Summary

This bill eliminates the \$40 administrative bail fee imposed on justice-involved youth. The bill also requires the Bail Magistrate, rather than the Officer on Call at a police station, to make the decision about whether an arrested youth should be released or held on bail. These changes were recommended by consensus in 2019 by the state [Juvenile Justice Policy and Data](#) (JJPAD) Board as proposed by a working group examining juvenile arrest procedures and included the MA Chiefs of Police Association, the Trial Court, the Committee for Public Counsel Services, Citizens for Juvenile Justice and other legal system stakeholders.

- **Eliminates the requirement that youth pay an \$40 administrative bail fee as a condition of being released on bail** when they are called by police to make a determination regarding bail outside of court hours. Bail fees for youth who are arrested are typically paid by their families, as youth often do not have access to their own funds. The Commonwealth previously acknowledged all youth should be considered indigent ([Mass. Sup. Ct. R. 3:10, §6A](#)) and these legislative changes are made in similar spirit.
- **Gives the responsibility of bail determinations to a neutral party—the Bail Magistrate:** Under current law, the Officer in Charge at the police station is given the authority to release a youth or call the Bail Magistrate to make a bail determination. This has led to confusion and inconsistent practices across the state. S.2943 would require that the Bail Magistrate – a neutral party – is consulted whenever a youth is arrested and brought to a station when court is not in session.
- **Allows the bail process to be conducted virtually and for monies to be collected through virtual or mobile payment options:** This part of the bill codifies the standing order issued by the Executive Office of the Trial Court during the COVID-19 pandemic, giving Bail Magistrates the authority to administer any oath or required affirmations while taking bail through telephone or virtual options, in addition to the traditional in-person measures. It would also permit bail to be paid through a virtual or mobile payment option.

Fiscal Impact

Youth are only charged the statutorily required \$40 administrative fee if it is after court hours and a bail magistrate was called. This bill does not change the option to release the child on personal recognizance/to their parents or to require a cash bail on a juvenile. In FY2020, 1,908 youth were held in police custody. Using an estimate that 65% of custodial arrests result in a call to the bail magistrate, we assume this proposal would cost \$50,000.

For more information:

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