

Massachusetts Coalition for Juvenile Justice Reform

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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

¹ Daniel Litwok, “Have You Ever Been Convicted of a Crime? The Effects of Juvenile Expungement on Crime, Educational, and Labor Market Outcomes”. Available at <http://econ.msu.edu/seminars/docs/Expungement%20112014.pdf>

² Rick Ruddell and Thomas Winfree, Jr. “Setting Aside Criminal Convictions in Canada: A Successful Approach to Offender Reintegration”. *The Prison Journal* 2006 86: 452