



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

Lead Sponsors: Rep. O'Day/Rep. Cruz (H.1710) and Sen. Crighton (S.942)

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.



WHAT MAKES THE JUVENILE JUSTICE SYSTEM DIFFERENT?

IT IS BETTER AT REDUCING LEGAL SYSTEM INVOLVEMENT



DIVERSION

Juvenile system has greater opportunities for formal diversion and alternatives to arrest for low-level arrest

IT PROVIDES LEGAL PROTECTIONS UNIQUE TO YOUTH

DISPARITIES

Federal and state mandates to reduce racial/ethnic disparities. Model regulations to protect LGBTQ youth in confinement.



POLICING INTERACTIONS

Special protections during arrest and confinement.

ITS PRIMARY EMPHASIS IS ON REHABILITATION

EDUCATION & PROGRAMMING

Youth in the juvenile system must attend school, family engagement and have more access to mental and behavioral health services



SOLITARY CONFINEMENT

DYS has banned the use of solitary confinement since 2013. Young people in adult prisons disproportionately end up in solitary

IT HAS FEWER COLLATERAL CONSEQUENCES

CONFIDENTIALITY

Juvenile proceedings are confidential and juvenile records do not appear on a CORI.



ADJUDICATION VS CONVICTION

A juvenile "adjudication" does not carry the collateral consequences and repercussions of a conviction.

BETTER OUTCOMES FOR YOUTH, PUBLIC SAFETY AND TAX PAYERS

LOWER RECIDIVISM

Young people incarcerated in the adult system recidivate at more than DOUBLE the rate of similar youth exiting DYS.



IMPROVED PUBLIC SAFETY

MA has seen a 51% reduction in juvenile crime rates since raising the age to include 17 year-olds.

An Act Promoting Diversion of Juveniles to Community Supervision and Services (H.1495/S.940)

(Lead Sponsors: Senator Creem and Representative Fluker-Oakley)

Judicial pre-arraignment diversion, passed in 2018, allows judges to divert young people to community-based interventions 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. More troubling, **children in DCF custody (care and protection and CRA) make up 0.6% of the Massachusetts child population, but represent over 50% of youth detained by DYS and 30% of youth committed to DYS. Girls in DYS are twice as likely as boys to be DCF-involved.**

The law currently excludes several offenses, including low-level conduct as ineligible for diversion. Allowing judges the discretion to divert cases to community-based alternatives allows the courts to hold young people accountable in through interventions that are more effective in reducing future 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.

Expanding list of offenses that are eligible for judicial consideration allows an individualized hearing, while maintaining the discretion of a judge to allow or reject diversion for a youth. 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.

Bill Summary

Judicial Diversion is statutorily prohibited if a youth is (1) indicted as a youthful offender; (2) charged with an offense that an adult would be sentenced to a greater than five-year state prison sentence; (3) charged with an offense ineligible for a Continued Without a Finding disposition; and (4) an offense ineligible for conversion to a civil infraction.

- Certain offenses in the (adult) criminal justice system have concurrent District and Superior Court jurisdiction. In those cases there is discretion if the same charge will have a state prison sentence or a county house of correction sentence of less than 2½ years. The Youthful Offender statute in the juvenile court operates similarly to this discretion in the adult system. This bill allows cases with concurrent jurisdiction to be eligible for diversion unless the youth is indicted on those charges.
- Certain offenses that are ineligible for civil infraction diversion, may still be considered low-level offenses where a community-based intervention would be more effective in addressing the behavior than court processing, particularly those that involve a wide range of severity:
 - Assault (& battery) with a dangerous weapon (Ch. 265 §15A(b) and §15B(b)): These tend to be cases where the “dangerous weapon” technically meets the requirements under the law but do not involve injury or are just plain ridiculous (such as chips, dirt from a flower pot, etc.).
 - Assault and battery on a public servant (Ch. 265 §13D): That is the most prevalent charge tacked onto charges, particularly with youth of color.
 - First offense of assault on a family/household member (Ch. 265 §13M (a))
 - Negligent Operation of a MV and use without authority (Ch. 90 §24(2)(a))
 - The 2018 law already allows violations of Ch.268 §13A and §13C to be eligible for judicial diversion

An Act Relative to Expungement – H.1451 and S.936

(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 cases eligible for expungement from one to two (passed 2020)

Unfinished Business | While this is a tremendous step forward, this bill 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.** This bill would:

- ❑ **limit offenses with a lifetime ban on expungement to those resulting in serious bodily injury and sex-based offenses resulting in sex offender registration** | 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).
- ❑ **allow eligibility for non-convictions and non-adjudications** | 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** | Many young people may need multiple chances to exit the criminal justice system and the overwhelming majority do and pose no risk to public safety. This bill [incentivizes](#)² young people to get back on the right track and not give up with an adjudication on their record.
- ❑ **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.

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

An Act to prevent the imposition of mandatory minimum sentences based on juvenile adjudications
(Give Youth a Future)

Senate Sponsor: State Senator Jamie Eldridge
House Sponsor: State Representative Frank Moran



SUMMARY

This bill promotes **fair sentencing for youth** who find themselves involved in the juvenile justice system. It gives youth a future. Specifically, it prevents courts from **lengthening certain mandatory-minimum sentences** based on a person's actions as a child (i.e. juvenile court adjudications).

HISTORY OF JUVENILE SENTENCING

The late Chief Justice Gants, in a **concurring opinion** joined by current Chief Justice Budd, urged "the Legislature to consider the wisdom and fairness of the mandatory-minimum aspect of those enhanced sentences, especially where the predicate offenses were committed when the defendant was a juvenile." Id. at 332. **Passing this bill would honor the memory of Justice Gants and his commitment to justice for all.**

WHY THIS BILL MATTERS

Black and Latinx youth are more likely than white youth to be advanced through the juvenile justice system – rather than being diverted at most decision points through formal or informal resolutions of their cases. **Black and Latinx youth are 1.526 and 2.46 times, respectively, more likely than white youth to have a delinquency petition.** Then, those juvenile adjudications follow them into adulthood, leading to more severe punishment for Black and Latinx adults.

It's time to right this wrong. A diverse group of organizations support this criminal justice reform bill.