

Massachusetts Coalition for Juvenile Justice Reform

Action for Boston Community Development
ACLU of Massachusetts
Bethel Institute for Social Justice/Generation Excel
Black and Pink
Black Lives Matter- Worcester
Boston Bar Association
Boston Teachers Union
Bridge Over Troubled Waters
Center for Public Representation
Center for Teen Empowerment
Charles Hamilton Houston Institute, Harvard Law School
Children's Law Center of Massachusetts
Children's League of Massachusetts
Children's Mental Health Campaign
Citizens for Juvenile Justice
City Mission Society
The City School
Coalition for Effective Public Safety
Committee for Public Counsel Services
Criminal Justice Policy Coalition
Dorchester Youth Collaborative
Ending Mass Incarceration Together
Fair Sentencing of Youth
Families for Justice As Healing
Friends of Children
GLBTQ Legal Advocates & Defenders
Greater Boston Legal Services, CORI & Re-entry Project
The Home for Little Wanderers
High Risk Youth Network
I Have a Future/Youth Jobs Coalition
InnerCity Weightlifting
Jobs Not Jails
Justice Resource Institute
Juvenile Rights Advocacy Program, Boston College Law School
The Key Program
Lawyers Committee for Civil Rights
League of Women Voters of Massachusetts
Louis D. Brown Peace Institute
Mass Mentoring Partnership
Massachusetts Commission on LGBTQ Youth
Massachusetts Society for the Prevention of Cruelty to Children
Mental Health Legal Advisors Committee
MissionSAFE
More Than Words
Mothers for Justice & Equality
My Life My Choice
Nat'l Alliance on Mental Illness - MA
Nat'l Assoc. of Social Workers - MA chapter
North American Family Institute
Parents/Professional Advocacy League
Prisoners' Legal Services
Project RIGHT
RFK Children's Action Corp
Real Costs of Prison
Roca, Inc.
Roxbury Youthworks
Sociedad Latina
Spectrum Health Services
Strategies for Youth
UTEC
Unitarian Universalist Mass Action Network
Violence in Boston
Vital Village Network
Year Up
Youth Build Boston
YW Boston

Testimony to the Joint Committee on the Judiciary in Support of:

“An Act relative to expungement” (S.900)

“An Act relative to expungement, sealing & criminal records provisions” (H.1386)

October 8, 2019

Dear Chairwoman Cronin, Chairman Eldridge, and members of the Joint Committee on the Judiciary,

Last year, the legislature passed landmark criminal justice reform, creating the state's first expungement statute. The advocacy to create an expungement statute was largely driven and led by young people who saw expungement as a path to their own future, opening opportunities to be full members of society.

Since passage of the law however, very few individuals have been able to take advantage of the expungement provision for charges on a record prior to an individual's 21st birthday due to the restrictive eligibility criteria set forth in the law. **H.1386/S.900 propose revisions to the eligibility criteria for expungement to ensure that young people are able to access the protections of this law.**

This bill recognizes that young people are distinct from older adults in that as they age and mature, they will desist from offending by the nature of their development. Additionally, by the early to mid-20s, the risk of young people re-offending becomes equal to similarly aged young people with no prior arrest history (*see figure 1*).

Expungement is never automatic. The bill does not propose changing the current law's

requirement giving prosecutors a chance to object to an expungement petition and a judge’s review of the request and enter written findings of fact explaining why expungement is in the interests of justice.

- The bill replaces the “one court appearance” eligibility requirement with a waiting period after case disposition or end of sentence. Cases ending with an adjudication or conviction would require a waiting period after the end of the sentence, while cases with a non-adjudication/non-conviction would be eligible at the time of case disposition. The bill allows for the expungement of convictions or adjudications of misdemeanors after three years and felonies after five years as long as there was no other conviction or adjudication within that time period.
- This bill reduces the categories of offenses that are categorically ineligible for expungement, giving people a chance to make their case in court for expungement. This bill does not propose changing the ineligibility of expunging sexual offenses that are presently not eligible for sealing.

JUVENILE RECORDS ARE NOT A GOOD MEASURE OF PUBLIC SAFETY RISK.

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 (*see Figure 1*).

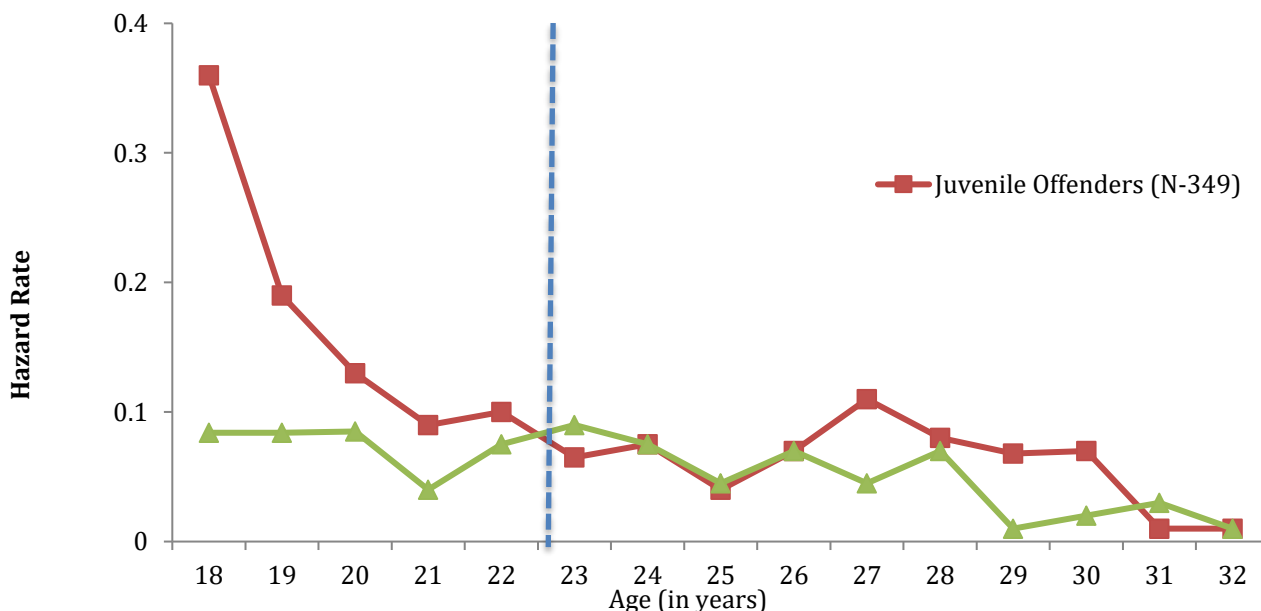


Figure 1. Contact Hazard Rates Through Age 32¹

¹ Megan C. Kurlychek, Robert Brame, and Shawn D. Bushway, "Enduring Risk? Old Criminal Records and Short-Term Predictions of Criminal Involvement", *Crime & Delinquency* 53, no. 1 (2007): 64-83

MISSED OPPORTUNITY TO REDUCE RECIDIVISM AND INCREASE PUBLIC SAFETY

The bill is carefully tailored to address public safety concerns, as those with recent adjudications or open cases are not eligible for sealing or expungement. Records of serious offenses would not be eligible for sealing until the sentence is over and expungement for these offenses would require court review before approval. If a person commits another crime later, it would stop the “clock” on sealing and expungement. Once a record has reached the time limit eligibility – with no subsequent conviction or adjudication – the court would have the discretion to expunge or not expunge an offense based on the seriousness of the offense and review for “good cause”.

It is important to recognize that opening opportunities to young people, particularly where they are engaged in risky behavior, actually improves public safety. **States where there are minimal administrative barriers² 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.³**

Summer jobs for teens have been tied to a 43% reduction in juvenile arrest⁴, yet youth with juvenile court records, including non-adjudication information, often find their records are accessible to teen employers. A three-year wait for sealing hinders a young person’s access to summer jobs.

When K. was 14 years old, she was with friends. She stole three candy bars. One friend threw a hard object at someone (but missed) and another kicked a computer worth \$250. Because the friends didn’t want to disclose who did what all three were charged with property destruction, assault and battery with a dangerous weapon and shoplifting of \$3. All cases were eventually dismissed and she was informed that her record would not impact her in the future. However, a couple of years ago, as an 18 year old, she applied to join the military, and she was denied from joining the military and was informed that her juvenile record was the reason.

YOUNG PEOPLE ARE IN A UNIQUE POSITION TO MERIT A SECOND CHANCE

The legislature recognized that young people under age 21 are in a unique developmental stage – they are more likely to take risks and get in trouble with the law, but they are highly amenable to change – through developmentally appropriate interventions or due to maturity. These traits are not tied to the frequency of offending or the type of offending. A

² Automatic sealing of records has been ruled unconstitutional by the SJC, however, S905 addresses the constitutional concern by requiring the filing of a petition for expungement

³ 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>

⁴ Washington Post, “Chicago gave hundreds of high-risk kids a summer job. Violent crime arrests plummeted.” Dec 8, 2014.

seven-year longitudinal study of 1,354 young people with serious offending examined the factors that led these young people to desist or persist from further offending⁵.

Neither the severity nor the frequency of offending during adolescence were linked to future offending. The factors that were directly tied to desistance from crime related to their meeting developmental milestones (impulse control, personal responsibility, empathy, considering the consequences of their actions).

Give Adolescents the Time and Skills to Mature, and Most Offenders Will Stop.⁶

“Pathways to Desistance, a major, long-term study of serious juvenile offenders, has shown that:

- Adolescents, including serious juvenile offenders, naturally mature—psychologically, socially, and cognitively—over time.
- The trend among serious adolescent offenders is toward reduced offending; relatively few consistently engage in serious adult crime.
- Some people have wondered whether we can predict future offending based on the severity or frequency of offending during adolescence. The answer is, no. However, patterns of maturing do mirror patterns of future offending.”

YOUNG PEOPLE FACE BARRIERS TO SUCCESS BECAUSE JUVENILE RECORDS – WHICH ARE SUPPOSED TO BE CONFIDENTIAL – CAN FOLLOW THEM FOR A LIFETIME.

Despite the rehabilitative purpose of the juvenile justice system⁷, juvenile records present barriers to young people, even decades later as adults. A juvenile court record can prevent an individual from becoming a foster parent or obtaining certain types of employment. Sealed juvenile records are accessible to law enforcement agencies; the military; the Department of Children and Families, Early Education and Care, Department of Youth Services and their contractors; and certain federal agencies or contractors of these agencies.

ⁱ *ibid.*

⁶ Laurence Steinberg (2014) “Give Adolescents the Time and Skills to Mature, and Most Offenders Will Stop. Chicago, IL: MacArthur Foundation.” Available at <https://www.pathwaysstudy.pitt.edu/documents/MacArthur%20Brief%20Give%20Adolescents%20Time.pdf>

⁷ The Massachusetts juvenile justice system is designed in recognition of the fact that youth who commit offenses should receive developmentally appropriate care. “[T]he care, custody and discipline of the children brought before the [juvenile] court shall approximate as nearly as possible that which they should receive from their parents, and that, as far as practicable, they shall be treated, not as criminals, but as children in need of aid, encouragement and guidance.” M.G.L. ch. 119 §53.

The Department of Children and Families revised its background check regulations (110 CMR 18) for employees of DCF and contract agencies, volunteers, foster and pre-adoptive parents. DCF's regulations subject any person 15 years or older in the household to the same background check. DCF's current regulations are:

- Disqualify based on an arrest and a charge of a crime, even if there was no conviction. Federal and state law, as well as national best practices, indicate that rejections should be based on convictions of certain felonies;
- Despite the fact that kinship placement increases a child's stability, children of color are least likely to be placed with family, as the disparities in justice-involvement result in more families being disqualified from serving as placement for these children;
- Children of color placed in more unstable placements are put at increased risk of justice involvement and having up a juvenile record themselves.

In 2018, the Department of Early Education and Care's (EEC) background check regulations became as restrictive as DCF's, but more far reaching. EEC can see juvenile records, even if sealed, of staff and job applicants to child care and other child-serving agencies, including sealed records. Massachusetts expanded the power of EEC, through statute and regulation, to ban both prospective and current employees of EEC-licensed child care and (non-child care) agencies that provide foster, adoption and residential care services based on decades old juvenile records. EEC required all current and prospective employees undergo the new background check, resulting in many employees – including those working successfully for decades in that organization – being prohibited from continuing their employment or risking the agency losing its EEC license. In 2020, the law takes full effect, with even greater restrictions.

Lawsuit Claims New State Background Checks Discriminate Against Childcare Workers

"[A] lawsuit was filed on behalf of Tara Gregory, who was forced to leave her job with New Beginnings Academy in Hyde Park this spring. The lawsuit claims the Massachusetts Department of Early Education and Care told Gregory she was disqualified because of her juvenile record. Thirty-three years ago, when Gregory was 16, she got into a fight with a group of girls and allegedly kicked someone. She entered plea for the charge of assault and battery with a dangerous weapon and spent two years on probation."⁸

UNDER CURRENT LAW, RESTRICTIONS ON EXPUNGEMENT ELIGIBILITY ARE TRUE EVEN IF A CASE IS DISMISSED OR A CHILD IS FOUND TO HAVE NOT COMMITTED THE OFFENSE.

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. Unlike

⁸ "Lawsuit Claims New State Background Checks Discriminate Against Childcare Workers", WBUR 8.29.2019, available at <https://www.wbur.org/edify/2019/08/29/childcare-worker-background-check-lawsuit>

criminal records, juvenile non-adjudication records cannot be sealed upon disposition and there is no mechanism to expunge these records, even if the record provides no relevant information.

EXPUNGEMENT CAN HELP RIGHT THE PERVASIVE RACIAL AND ETHNIC DISPARITIES IN MASSACHUSETTS' JUVENILE AND CRIMINAL JUSTICE SYSTEMS.

Massachusetts has one of the worst rates of racial inequity in the juvenile justice system in the U.S.⁹ While youth of color make up roughly 33% of the youth population in Massachusetts, they are just under 40% of those arrested, 60% of those arraigned, 66% of those detained pre-trial or because of a probation violation, and 68% of those committed to the Department of Youth Services (DYS).

National research has found that these disparities cannot be adequately explained by differential offending (i.e. white youth and youth of color offend at roughly the same rates). In some cases, they relate to policing practices in communities of color (“differential enforcement”), as well as “differential processing.” Allowing for expungement of certain records is one mechanism to mitigate some of this inequity.

The Obama administration recognized this and issued a directive in 2013 stating, “Policies that exclude people from employment based on the mere existence of a criminal history record and that do not take into account the age and nature of an offense, for example, are likely to unjustifiably restrict the employment opportunities of individuals with conviction histories. Due to racial and ethnic disparities in the criminal justice system, such policies are likely to violate federal antidiscrimination law.”¹⁰

OTHER PROVISIONS IN THE BILL

- Juvenile records would no longer be used to trigger mandatory minimums or be used in (adult) criminal justice proceedings. This is in response to a recent SJC ruling (*Baez*), in which Chief Justice Gants in his concurring response, stated “I write separately to encourage 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.”¹¹
- Amends sealing of juvenile records to be similar to adult CORI sealing provisions, making the record eligible as soon as a case is dismissed, not guilty or no probable cause decision, or, in the interests of justice, the result of a *nulle proesse que*.
- Maintains the three-year waiting period for records of juvenile adjudications, and makes sealing of these records automatic 90 days after a record is eligible for sealing.
- Juvenile arrests will not be reported to the FBI.

⁹ US News and World Report Best States Rankings. Despite Massachusetts ranking #1 overall, Massachusetts ranked 46th in the area of “Equity in Juvenile Jailing” <https://www.usnews.com/news/best-states/rankings/crime-and-corrections/corrections>

¹⁰ US Department of Labor, “Complying with Nondiscrimination Provisions: Criminal Record Restrictions and Discrimination Based on Race and National Origin.” 9/16/2013. Available at <https://www.dol.gov/ofccp/regs/compliance/directives/dir306.htm>

¹¹ *Commonwealth v. Baez*, 480 Mass. 328 (2018), SJC-12394

- Removes Youthful Offender juvenile court records from public inspection to be consistent with the privacy of delinquency case records as provided by the Criminal Justice Reform Law of 2018.

We thank you for your consideration of our testimony. Please feel free to contact Sana Fadel, Citizens for Juvenile Justice at 617-338-1050 or sanafadel@cfjj.org if we can be of assistance.

Respectfully,

Members of the Massachusetts Juvenile Justice Reform Coalition

The Massachusetts Coalition for Juvenile Justice Reform is a statewide coalition, convened by Citizens for Juvenile Justice, advocating for the improvement of the Commonwealth's juvenile justice system. Our coalition is comprised of almost 60 organizations representing academia, child advocates, mental health clinicians, and service providers, and other organizations working with and on behalf of at-risk children. We believe that both youth and public safety are best served by a juvenile justice system that is fair and effective