

HOUSE No. 1436

The Commonwealth of Massachusetts

PRESENTED BY:

Kay Khan

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to promote transparency, best practices and better outcomes for children and communities.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | DATE ADDED: |
|---------------------------|--------------------------------|------------------|
| <i>Kay Khan</i> | <i>11th Middlesex</i> | <i>1/16/2015</i> |
| <i>James Arciero</i> | <i>2nd Middlesex</i> | <i>2/3/2015</i> |
| <i>Ruth B. Balsler</i> | <i>12th Middlesex</i> | <i>1/26/2015</i> |
| <i>Jennifer E. Benson</i> | <i>37th Middlesex</i> | <i>2/2/2015</i> |
| <i>Marjorie C. Decker</i> | <i>25th Middlesex</i> | <i>1/30/2015</i> |
| <i>Marcos A. Devers</i> | <i>16th Essex</i> | <i>2/1/2015</i> |
| <i>Daniel M. Donahue</i> | <i>16th Worcester</i> | <i>2/2/2015</i> |
| <i>James B. Eldridge</i> | <i>Middlesex and Worcester</i> | <i>1/27/2015</i> |
| <i>Kenneth I. Gordon</i> | <i>21st Middlesex</i> | <i>2/1/2015</i> |
| <i>Jonathan Hecht</i> | <i>29th Middlesex</i> | <i>2/3/2015</i> |
| <i>Paul R. Heroux</i> | <i>2nd Bristol</i> | <i>2/4/2015</i> |
| <i>Patricia D. Jehlen</i> | <i>Second Middlesex</i> | <i>2/2/2015</i> |
| <i>Mary S. Keefe</i> | <i>15th Worcester</i> | <i>1/26/2015</i> |
| <i>John J. Lawn, Jr.</i> | <i>10th Middlesex</i> | <i>1/29/2015</i> |
| <i>David Paul Linsky</i> | <i>5th Middlesex</i> | <i>1/29/2015</i> |
| <i>Paul McMurtry</i> | <i>11th Norfolk</i> | <i>2/4/2015</i> |
| <i>Rady Mom</i> | <i>18th Middlesex</i> | <i>2/4/2015</i> |

| | | |
|------------------------|-----------------------|------------------|
| <i>James J. O'Day</i> | <i>14th Worcester</i> | <i>1/29/2015</i> |
| <i>Denise Provost</i> | <i>27th Middlesex</i> | <i>1/29/2015</i> |
| <i>David M. Rogers</i> | <i>24th Middlesex</i> | <i>1/26/2015</i> |
| <i>Tom Sannicandro</i> | <i>7th Middlesex</i> | <i>2/4/2015</i> |
| <i>Frank I. Smizik</i> | <i>15th Norfolk</i> | <i>2/4/2015</i> |
| <i>Benjamin Swan</i> | <i>11th Hampden</i> | <i>1/29/2015</i> |
| <i>RoseLee Vincent</i> | <i>16th Suffolk</i> | <i>1/29/2015</i> |
| <i>Chris Walsh</i> | <i>6th Middlesex</i> | <i>2/3/2015</i> |
| <i>Ellen Story</i> | <i>3rd Hampshire</i> | <i>1/28/2015</i> |

HOUSE No. 1436

By Ms. Khan of Newton, a petition (accompanied by bill, House, No. 1436) of Kay Khan and others relative to the evaluation of the frequency and outcome of contacts between juveniles of various racial and ethnic categories and law enforcement personnel, court personnel and other Commonwealth officials. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

An Act to promote transparency, best practices and better outcomes for children and communities.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The General Laws, as appearing in the 2012 Official Edition, are hereby
2 amended by adding the following chapter:-

3 Chapter 18D: Collection of juvenile justice contact data

4 Section 1: Definitions

5 As used in this Chapter the following words shall have the following meanings, -

6 “Contact” any action, order, practice, or procedure by law enforcement personnel, court
7 personnel, or any official of the commonwealth in interacting with a juvenile in response to any
8 type of offense.

9 “Juvenile” a youth between the age of seven and eighteen and up to the age of 22 if the
10 individual remains within the jurisdiction of the juvenile court, and children aged fourteen to

11 eighteen who are charged with first or second degree murder pursuant to section 74 of chapter
12 119;

13 “Racial and ethnic category” the socio-cultural racial and ethnic category of an individual
14 as determined in a manner that is consistent with the categories established by the United States
15 Department of Justice Office of Juvenile Justice and Delinquency Prevention.

16 “Type of offense” category of offense that is consistent with the categories established
17 and utilized by the National Incident-Based Reporting System published by the Uniform Crime
18 Reporting Program of the Federal Bureau of Investigation.

19 Section 2. (a). The child advocate shall identify information to be collected by the
20 attorney general, the chief justice for administration and management of the trial court, the
21 commissioner of probation, the secretary of public safety and security, and the secretary of health
22 and human services in order to evaluate the frequency and outcome of contacts between
23 juveniles of each racial and ethnic category and law enforcement personnel, court personnel, and
24 other Commonwealth officials. Information shall include, but not be limited to, the type of
25 offense which resulted in the contact and the age, gender, and racial and ethnic category of the
26 juvenile. The child advocate may provide guidance regarding the manner in which racial and
27 ethnic category data is collected, with consideration of the juvenile’s self-reporting of such
28 categories. In identifying information to be collected, the child advocate shall include
29 information the Commonwealth is required to report under the United States Juvenile Justice &
30 Delinquency Prevention Act, including without limitation the requirements for applications and
31 reporting for formula grants under 28 CFR 31.

32 (b). The attorney general, the chief justice for administration and management
33 of the trial court, the commissioner of probation, the secretary of public safety and security, and
34 the secretary of health and human services shall collaborate to establish procedures for the
35 collection of the information identified under paragraph (a).

36 Section 3. (a). The commissioner of the department of correction, the sheriffs of each
37 county, the parole board and law enforcement officials including the department of state police,
38 municipal police departments, Massachusetts Bay Transportation Authority police, any school-
39 based police from a local education authority, shall collect the information identified in section 2
40 for each juvenile with whom they have contact and transmit the information to the secretary of
41 public safety and security on a quarterly basis. The secretary shall study and analyze the
42 information collected and file a report with the clerks of the house of representatives and senate
43 each year on January 15. A copy of the report and the information collected shall be provided to
44 the office of the child advocate and made available to the public on the website of the executive
45 office of public safety and security.

46 (b). Judicial officials including clerk magistrates, the commissioner and
47 personnel of the department of probation, and personnel and justices of the trial court shall
48 collect the information identified in section 2 for each juvenile with whom they have contact and
49 transmit the information to the trial court's chief justice for administration and management on a
50 quarterly basis. The chief justice shall study and analyze the information collected and file a
51 report with the supreme judicial court and the clerks of the house of representatives and senate
52 each year on January 15. A copy of the report and the information collected shall be provided to
53 the office of the child advocate and made available to the public on the websites of the trial court
54 and the department of probation.

55 (c). District attorneys shall collect the information identified in section 2 for each
56 juvenile with whom they have contact and transmit the information to the attorney general on a
57 quarterly basis. The attorney general shall study and analyze the information collected and file a
58 report with the clerks of the house of representatives and senate each year on January 15. A
59 copy of the report and the information collected shall be provided to the office of the child
60 advocate and made available to the public on the website of the attorney general.

61 (d). The department of youth services shall collect the information identified in
62 section 2 for each juvenile with whom they have contact and transmit the information to the
63 secretary of health and human services on a quarterly basis. The secretary shall study and
64 analyze the information collected and file a report with the clerks of the house of representatives
65 and senate each year on January 15. A copy of the report and the information collected shall be
66 provided to the office of the child advocate and made available to the public on the website of
67 the executive office of health and human services.

68 Section 4. The information acquired under the provisions of this chapter shall be used
69 only for statistical purposes. Data concerning the identity of an individual who had contact with
70 the juvenile justice system shall be removed from information made available to the public.

71 SECTION 2. The first sentence of the second paragraph of Section 23 of chapter 90 of
72 the General Laws, as appearing in the 2012 Official Edition, is hereby amended by inserting after
73 the words, “not more than \$500”, the following:-

74 ; provided further, that notwithstanding any general or special law to the contrary, a
75 finding of delinquency shall not be entered against any person against whom such a complaint
76 has been issued.

77 SECTION 3: The fourth paragraph of section 34J of said chapter 90 of the General Laws,
78 as so appearing, is hereby amended by adding at the end thereof the following:-

79 ; provided further, that notwithstanding any general or special law to the contrary, any
80 person who violates this section and has not been previously determined responsible for or
81 convicted therefor, or against whom a finding of delinquency or a finding of sufficient facts to
82 support a conviction has not previously been rendered, shall not have a finding of delinquency
83 entered against him.

84 SECTION 4: Section 52 of chapter 119 of the General Laws, as most recently amended
85 by section 7 of chapter 84 of the Acts of 2013, is hereby further amended by striking out the
86 definition of “Delinquent Child” in the second paragraph and inserting in place thereof the
87 following new definition:-

88 “Delinquent Child”, a child between eleven and eighteen who commits any offense
89 against a law of the commonwealth, provided however, that such offense shall not include a civil
90 infraction or a violation of any municipal ordinance or town by-law.

91 SECTION 5. Said section 52 of said chapter 119 is hereby further amended by inserting
92 at the end thereof the following new definition:-

93 “Civil Infraction”, a violation for which a civil proceeding is allowed, and for which the
94 court may not sentence any term of incarceration and therefore not appoint counsel.

95 SECTION 6: Section 54 of said chapter 119, as so appearing, is hereby amended by
96 striking out in the definition of “Delinquent child” the word “seven” and inserting in place
97 thereof the following word:- eleven

98 SECTION 7: Section 67 of said chapter 119, as so appearing, is hereby amended by
99 striking out in the definition of “Delinquent child” the word “seven” and inserting in place
100 thereof the following word:- eleven

101 SECTION 8: Section 68 of said Chapter 119, as so appearing, is hereby amended by
102 striking out the word “seven” and inserting in place thereof the following word:- eleven

103 SECTION 9: Section 68A of said chapter 119, as so appearing, is hereby amended by
104 striking out the word “seven” and inserting in place thereof the following word:- eleven

105 SECTION 10: Section 84 of said chapter 119, as so appearing, is hereby amended by
106 striking out the word “seven” and inserting in place thereof the following:- eleven

107 SECTION 11. Chapter 119 of the General Laws, as so appearing, is hereby amended by
108 inserting after section 85 the following new sections:-

109 Section 86. The following words, as used in the following sections, except as otherwise
110 provided, shall have the following meanings:—

111 “Assessment”, a thorough and complete measurement of the needs of a child in, but not
112 limited to, the following areas: education, vocational training, job readiness, housing, behavioral
113 and physical health, family and social services, and an analysis of a child’s willingness to
114 participate in a community program.

115 “Director”, the person in charge of the operation of a community or other service
116 program.

117 “Official designee”, a representative of a community program who has been approved by
118 the presiding justice of a juvenile court to work in conjunction with that court’s probation office
119 to screen children who may be eligible for diversion.

120 “Program”, any program of community supervision and services certified or approved by
121 the commissioner of probation under the provisions of section ninety-three, including, but not
122 limited to, medical, educational, vocational, social and psychological services, corrective and
123 preventive guidance, training, performance of community service work, counseling, and other
124 rehabilitative services designed to protect the public and benefit the individual.

125 Section 87. When a child is brought before the juvenile court as the result of a police
126 referral or a complaint or indictment under section 54 the court may, prior to arraignment, (i)
127 allow a motion to dismiss or order dismissal on its own motion if it concludes that dismissal is in
128 both the best interests of the child and the interests of justice, or (ii) issue an order to divert the
129 child from court processing.

130 Section 88. The probation officer of a juvenile court shall, after the appointment of
131 counsel and upon the request of counsel, and prior to arraignment, assess each child complained
132 of as a potential delinquent child or youthful offender for the purpose of enabling the judge to
133 consider the suitability of the child for diversion to the community or a program prior to
134 arraignment. The probation officer shall conduct an assessment using an assessment tool
135 developed by the commissioner of probation in consultation with the commissioner’s advisory
136 board. The assessment tool shall be scientifically validated, research-based and aligned with best
137 practices in the field.

138 If the child or the probation officer requests it, the court may order a continuance of up to
139 fourteen-days and additional assessment by the department of probation or, where the judge
140 determines it is appropriate, the personnel of a program to determine if the child would benefit
141 from diversion to such program.

142 If a case is continued under this section, the child shall not be arraigned and no entry will
143 be made into the criminal offender information system until such time as the court so orders for
144 the purposes of resuming the ordinary processing of a delinquency or youthful offender
145 proceeding.

146 Section 89. After the completion of the assessment, or upon the expiration of a
147 continuance granted pursuant to section 88, the probation officer or the director of a program to
148 which the child has been referred shall submit to the court a recommendation as to whether the
149 child would benefit from diversion to the community or a program.

150 The judge, upon receipt of the recommendation, shall provide an opportunity for a
151 recommendation by the prosecution regarding the diversion of the child. After receiving the
152 report and having provided an opportunity for the prosecution to make its recommendation, the
153 judge shall make a final determination as to the eligibility of the child for diversion and may
154 order the child to be diverted from court proceedings. There shall be a rebuttable presumption
155 that a child who is charged with a misdemeanor for which the punishment is a fine,
156 imprisonment in a jail or house of correction for not more than six months, or both such fine and
157 imprisonment, and who does not have any outstanding warrants, continuances, appeals or
158 juvenile court cases pending, shall be found eligible for diversion.

159 If the court orders the child to be diverted then the proceedings shall be stayed for a
160 period of ninety days, unless the court, in its discretion, finds that the interests of justice would
161 best be served by a lesser period of time.

162 In no event shall a stay of proceedings be granted pursuant to this section unless the child
163 consents in writing to the terms and conditions of the stay of proceedings and knowingly
164 executes a waiver of his right to a speedy trial on a form approved by the chief justice of the
165 juvenile court. Such consent shall be with the advice of the child's counsel. Any request for
166 assessment, or a decision by the child not to enter a program, or a determination by probation or
167 by a program that the child would not benefit from diversion, or any statement made by the child
168 during the course of assessment, shall not be admissible against the child in any proceedings; nor
169 shall any consent by the child to the stay of proceedings or any act done or statement made in
170 fulfillment of the terms and conditions of such stay of proceedings be admissible as an
171 admission, implied or otherwise, against the child, should the stay of proceedings be terminated
172 and proceedings resumed on the original complaint or indictment. No statement or other
173 disclosure or records thereof made by a child during the course of assessment or during the stay
174 of proceedings shall be disclosed at any time to a prosecutor or other law enforcement officer in
175 connection with the investigation, or prosecution of any charge or charges against said child or
176 any co-defendant.

177 If a child has been found eligible and placed into diversion under this section, the child
178 shall not be arraigned and no entry will be made into the criminal offender information system
179 until such time as a court so orders for the purposes of resuming the ordinary processing of a
180 delinquency or youthful offender proceeding.

181 Section 90. A district attorney may, in his discretion, divert any child to the community
182 or a program either before or after the assessment procedure set forth in section 88, with or
183 without the permission of the court. A district attorney who diverts a case pursuant to this
184 section may request a report from a program regarding the child's status in and completion of
185 such program. Any request for dissemination of information requires notification and production
186 to child's counsel.

187 Section 91. During a stay of proceedings, as provided in section 89, the juvenile
188 probation officer for the court shall submit periodic reports to the court relative to the progress of
189 the child and shall report subsequent arrests immediately upon notice thereof.

190 If, during the stay of proceedings, the child is charged with a subsequent offense, the
191 court that entered the stay may issue such process as is necessary to bring the child before the
192 court. When the child is brought before the court, the child shall have an opportunity to be heard.
193 If the court finds probable cause to believe that the child has committed a subsequent offense, the
194 court may order that the stay of proceedings be terminated and that the Commonwealth be
195 permitted to proceed on the original complaint or indictment.

196 Section 92. Upon the expiration of the initial ninety-day stay of proceedings, the
197 probation officer shall submit to the court a report indicating whether or not diversion was
198 successful for the child or recommending an extension of the stay of proceedings for an
199 additional ninety days, so that the child may complete the diversion program successfully.

200 If the report indicates the successful completion of diversion by a child, the judge may
201 dismiss the original complaint or indictment pending against the child. If the report recommends
202 an extension of the stay of proceedings, the judge may, on the basis of the report and any other

203 relevant evidence, take such action as he deems appropriate, including the dismissal of the
204 complaint or indictment, the granting of an extension of the stay of proceedings or the
205 resumption of proceedings. In the event that an extension of the stay of proceedings is granted,
206 the probation officer shall submit a final report upon the expiration of such stay of proceedings.

207 If the judge dismisses a complaint or indictment under this section, the court shall enter
208 an order directing expungement of any records of the complaint or indictment and related
209 proceedings maintained by the clerk, the court, the department of criminal justice information
210 services, the court activity record index and the probation department that directly pertain to the
211 complaint or indictment.

212 Section 93. The office of the commissioner of probation shall, in its discretion, certify,
213 monitor and aid all programs to which children may be diverted pursuant to this chapter. The
214 office of the commissioner of probation shall:

215 (a) issue for a term of two years, and may renew for like terms, a certification, subject to
216 revocation for cause, to any person, partnership, corporation, society, association or other agency
217 or entity of any kind, other than a licensed general hospital or a department, agency or institution
218 of the federal government, the commonwealth or any political subdivision thereof, deemed to be
219 responsible and suitable to establish and maintain such a program and to meet applicable
220 certification standards and requirements; and in the case of a department, agency or institution of
221 the Commonwealth or any political subdivision thereof, grant approval to establish and maintain
222 a program for a term of two years, and may renew such approval for like terms, subject to
223 revocation for cause;

- 224 (b) promulgate, in consultation with the advisory board established in section 94, rules
225 and regulations establishing certification and approval standards and requirements;
- 226 (c) establish limits for caseloads and enrollment so that programs are able to provide high
227 quality intensive individualized service to those children participating in such programs;
- 228 (d) procure, where appropriate, by contract, the personnel, facilities, services, and
229 materials necessary to carry out the purposes of this act, subject to all applicable laws and
230 regulations;
- 231 (e) prepare reports for said advisory board showing the progress of all programs in
232 fulfilling the purposes set forth;
- 233 (f) notify the appropriate presiding justice of the individual court that adequate facilities
234 and personnel are available to fulfill an appropriate array of programs and services for that court;
- 235 (g) provide technical assistance to such program as may be certified hereunder;
- 236 (h) provide for the audit of any funds expended by the office for the support of programs
237 certified hereunder;
- 238 (i) promote the cooperation of all agencies which provide education, training, counseling,
239 legal, employment, or other services to assure that eligible individuals diverted to programs may
240 benefit to the maximum extent practicable;
- 241 (j) prepare and submit an annual report to the chief justices of the supreme judicial,
242 appeals, and trial courts and to all justices in the juvenile court system evaluating the
243 performance of all programs.

244 Section 94. There shall be an advisory board to the office of the commissioner of
245 probation. The members of the advisory board shall be the commissioners of elementary and
246 secondary education, mental health, children and families, and youth services, the chief justice of
247 the juvenile court, the child advocate, the president of the Massachusetts District Attorney's
248 Association, the chief counsel of the committee for public counsel services, or their respective
249 designees, and five experts in the area of human services to the sociologically and economically
250 disadvantaged through community based programs to be appointed by the governor for terms of
251 two years, one of whom shall be an individual between the ages of 18 and 24 who has previously
252 been subject to the jurisdiction of the juvenile court. The members of the advisory board shall
253 serve without compensation but shall be reimbursed for their expenses actually and necessarily
254 incurred in the discharge of their duties. The advisory board shall annually select its chairman
255 from among its members.

256 The advisory board shall assist the commissioner in the creation of an assessment tool to
257 evaluate an individual for diversion under section 89 and in coordinating the efforts of all public
258 agencies and private organizations and individuals within the Commonwealth concerned with the
259 providing of services to defendants by programs under section 93.

260 SECTION TWELVE: Chapter 119 of the General Laws, as so appearing, is hereby
261 further amended by inserting at the end thereof the following new section:

262 Section 95. (a) For purposes of this section, the following terms shall have the following
263 meanings:

264 “Juveniles” – Persons appearing before the juvenile court under the age of eighteen in
265 delinquency, children requiring assistance cases, and care and protection cases, and under the age
266 of twenty-one in youthful offender cases.

267 “Restraints” – Devices that limit voluntary physical movement of an individual, including
268 leg irons and shackles approved by the trial court security department.

269 (b) There shall be a presumption that restraints shall be removed from
270 juveniles while appearing in a courtroom before a justice of the Juvenile Court.

271 (c) Restraints may not be used on juveniles during court proceedings and
272 must be removed prior to the appearance of juveniles before the court at any stage of any
273 proceedings, unless the justice presiding in the courtroom issues an order and makes specific
274 findings on the record that restraints are necessary because there is reason to believe that a
275 juvenile may try to escape, or that a juvenile may pose a threat to his or her own safety, or to the
276 safety of other people in the courtroom, or restraints are reasonably necessary to maintain order
277 in the courtroom.

278

279 (d) The justice presiding in the courtroom shall consider one or more of the
280 following factors prior to issuance of any order and findings:

281 1) The seriousness of the present charge (supporting a concern that the juvenile has
282 an incentive to attempt to escape);

283 2) The prior offense history of the juvenile;

284 3) Any past disruptive courtroom behavior by the juvenile;

285 4) Any past behavior by the juvenile that presented a threat to his or her own safety,
286 or the safety of other people;

287 5) Any present behavior that the juveniles represents a current threat to his or her
288 own safety, or the safety of other people in the courtroom;

289 6) Any past escapes, or attempted escapes;

290 7) Risk of flight from the courtroom;

291 8) Any threats of harm to others, or threats to cause a disturbance; and

292 9) Security situation in the courtroom and courthouse, including risk of gang
293 violence, or attempted revenge by others.

294 (e) The court officer charged with custody of a juvenile shall report any
295 security concerns with said juvenile to the justice presiding in the courtroom. The justice
296 presiding in the courtroom may attach significance to the report and recommendation of the court
297 officer charged with custody of the juvenile, but shall not cede responsibility for determining the
298 use of restraints in the courtroom to the court officer. The justice presiding in the courtroom may
299 receive information from the court officer charged with custody of the juvenile, a probation
300 officer, or any source which the court determines in its discretion to be credible on the issue of
301 courtroom or courthouse security.

302 The decision to use restrains shall be the sole determination of the juvenile court justice
303 who is presiding in the courtroom at the time that a juvenile appears before the court. No juvenile
304 court justice shall impose a blanket policy to maintain restraints on all juveniles, or a specific
305 category of juveniles, who appear before the court.

306 SECTION 13: Section 21 of said chapter 120, as so appearing, is hereby amended by
307 striking out the word “seven” and inserting in place thereof the following word:- eleven

308 SECTION 14. Section 20 of chapter 233 of the General Laws, as appearing in the 2012
309 Official Edition, is hereby amended by striking out the Fourth clause, and inserting in place
310 thereof the following:-

311 Fourth, in a proceeding before an inquest, grand jury, trial of indictment or complaint, or
312 any other criminal, delinquency or youthful offender proceeding where the victim in such
313 proceeding is not a family member and does not reside in the family household, neither the
314 parent nor minor child shall testify against the other without the other’s permission. For the
315 purpose of this clause the term, “parent”, shall mean the biological or adoptive parent,
316 stepparent, foster parent, or legal guardian of a child. In cases where the victim is a family
317 member and resides in said household, the parent shall not testify as to any communication with
318 such child that was for the purpose of seeking advice regarding the child’s legal rights and
319 decision making.

320 SECTION 15. Chapter 265 of the General Laws, as appearing in the 2012 Official
321 Edition, is hereby amended by striking out section 13B and inserting in place thereof the
322 following:-

323 Section 13B. Whoever commits an indecent assault and battery on a minor under the age
324 of 14 shall be punished by imprisonment in the state prison for not more than 10 years, or by
325 imprisonment in the house of correction for not more than 2½ years. A prosecution commenced
326 under this section shall neither be continued without a finding nor placed on file. In a prosecution
327 under this section, a minor under the age of 15 years shall be deemed incapable of consenting to

328 any conduct of the defendant for which such defendant is being prosecuted unless: (a) the
329 defendant is no more than 3 years older than the minor; or, (b) the defendant is no more than 2
330 years older than the minor if the minor is under 12 years of age.

331 Notwithstanding the provisions of section 54 of Chapter 119 or any other general or
332 special law to the contrary, in a prosecution under this section in which the defendant is under 18
333 years of age at the time of the offense, the Commonwealth shall only proceed by complaint in
334 juvenile court or in a juvenile session of a district court.

335 SECTION 16. Said chapter 265, as so appearing, is hereby amended by striking out
336 section 23 and inserting in place thereof the following:-

337 Section 23. Whoever has sexual intercourse or unnatural sexual intercourse with a minor
338 under 16 years of age and: (a) the defendant is more than 4 years older than the minor, or, (b) the
339 minor is under 15 years of age and the defendant is more than 3 years older than the minor; or,
340 (c) the minor is under 12 years of age and the defendant is more than 2 years older than the
341 minor, shall be punished by imprisonment in the state prison for life or for any term of years, or,
342 except as otherwise provided, for any term in a jail or house of correction, provided, however,
343 that a prosecution commenced under this section shall not be placed on file or continued without
344 a finding.

345 Notwithstanding the provisions of section 54 of Chapter 119 or any other general or
346 special law to the contrary, in a prosecution under this section in which the defendant is under 18
347 years of age at the time of the offense, the commonwealth shall only proceed by complaint in
348 juvenile court or in a juvenile session of a district court.

349 SECTION 17. Section 4 of chapter 272 of the General Laws, as appearing in the 2012
350 Official Edition, is hereby repealed.

351 SECTION 18. Chapter 272 of the General Laws is amended by striking out section 40, as
352 appearing in the 2012 Official Edition, and inserting in place thereof the following section:-

353 Section 40. Disturbance of assemblies.

354 Whoever willfully interrupts or disturbs an assembly of people meeting for a lawful
355 purpose shall be punished by imprisonment for not more than one month or by a fine of not more
356 than fifty dollars; provided, however, that an elementary or secondary school student shall not be
357 charged, adjudicated, or convicted for alleged violation of this provision due to conduct within
358 school buildings or grounds or in the course of school-related events. Whoever, within one year
359 after being twice convicted of a violation of this section, again violates the provisions of this
360 section shall be punished by imprisonment for one month, and the sentence imposing such
361 imprisonment shall not be suspended.

362 SECTION 19. Chapter 272 is hereby further amended by striking out subsection (b) of
363 section 53, as appearing in the 2012 Official Edition, and inserting in place thereof the following
364 subsection:-

365 (b) Disorderly persons and disturbers of the peace, for the first offense, shall
366 be punished by a fine of not more than \$150. On a second or subsequent offense, such person
367 shall be punished by imprisonment in a jail or house of correction for not more than 6 months, or
368 by a fine of not more than \$200, or by both such fine and imprisonment, provided, however, that
369 an elementary or secondary school student shall not be charged, adjudicated, or convicted for

370 alleged violation of this provision due to conduct within school buildings or grounds or in the
371 course of school-related events.

372 SECTION 20. Chapter 272, Section 53, is hereby further amended by inserting at the end
373 thereof the following new clause:-

374 (c) Notwithstanding any general or special law to the contrary, any person who
375 violates clause (a) or (b) of this section shall not have a finding of delinquency entered against
376 him.

377 SECTION 21. Chapter 276 of the General Laws, as so appearing, is hereby amended by
378 inserting after section 100D the following new section:-

379 Section 100E. Notwithstanding the provisions of section 100A, any person at any age
380 having a record of juvenile or criminal court appearances and dispositions in the commonwealth
381 on file with the office of the commissioner of probation may have convictions or adjudications
382 expunged from their criminal and court records if they committed such offense prior to the age of
383 21 years old. Any sentence or disposition imposed by the court must be terminated prior to the
384 expungement of any such records.

385 Misdemeanor offenses shall be expunged automatically upon the termination of the
386 individual's sentence or, where applicable, period of commitment or probation imposed pursuant
387 to Chapter 119 Section 58. In a form furnished by the commissioner of probation, an individual
388 may file a petition to a judge in the court in which such adjudication or disposition occurred to
389 expunge a felony offense. The court shall comply with such request provided the offender has
390 completed their sentence or disposition or, where applicable, period of commitment or probation
391 imposed pursuant to Chapter 119 Section 58, and said person has not been adjudicated

392 delinquent or found guilty of any new criminal offense within the Commonwealth prior to the
393 completion of their sentence. A motor vehicle offense in which the penalty does not exceed a
394 fine of fifty dollars shall not be treated as a new criminal offense under this section.

395 The court shall, at the time of imposing any sentence or disposition or, where applicable,
396 period of commitment or probation pursuant to Chapter 119 Section 58, inform all eligible
397 individuals of their right to seek expungement under this section.

398 Notwithstanding any other provision to the contrary, the commissioner of probation shall
399 report such expunged record to inquiring police, court agencies, and other authorized persons
400 only as “no record.” An applicant for employment with an expunged record on file with the
401 commissioner of probation may answer “no record” to any inquiry regarding prior arrests,
402 delinquency appearances, delinquency adjudications, or delinquency dispositions that were
403 contained in such expunged record.

404

405 Once the commissioner expunges the records within his possession, he shall forthwith
406 notify the clerk and probation officer of the courts in which the adjudications or dispositions
407 occurred, or other entries have been made, and the Department of Youth Services of such
408 expungement, and said clerks, probation officers, and Department of Youth Services shall each
409 expunge such records from their files. Records shall be expunged both in their electronic form
410 as well as their physical form.

411

412 The charges, adjudications, and dispositions expunged shall not operate to disqualify
413 such person in any examination, appointment, or application for public employment in the
414 service of the Commonwealth or any other subdivision thereof, nor shall such charges,
415 adjudications, or dispositions be used against such person in anyway in any court proceeding or
416 hearing before any court, board, or commission to which the person is a party to the proceeding.

417 For the purpose of this chapter the words, expunge, expunged, or expungement, shall
418 mean permanent erasure or destruction.

419 SECTION 22. Paragraph 1 of section 70C of chapter 277 of the General Laws, as
420 appearing in the 2012 Official Edition, is hereby amended by striking out in the second sentence
421 the words:- “chapter 119,”

422 SECTION 23. Notwithstanding any general or special laws to the contrary, there shall be
423 a rebuttable presumption that youth status is a distinct mitigating factor. When the
424 commonwealth has failed to rebut the presumption by clear and convincing evidence, issues of
425 intent, knowledge, premeditation and purpose, or the reasonableness of the defendant’s belief
426 that he is in imminent threat of death or serious bodily injury, or the reasonableness of a
427 defendant’s perception of the amount of force necessary to combat the perceived threat, shall be
428 considered in light of the young adult’s diminished capacities.

429 In cases where youth status is a mitigating factor, the court, at the time of sentencing shall
430 apply a sentencing discount, not to exceed one third of the “adult” prescribed penalty, or provide
431 early release options based on the completion of educational, vocational, or substance abuse
432 programs.

433 The department of correction and the houses of correction shall provide workforce
434 development, educational, and substance abuse treatment programming for all individuals under
435 the age of 26 at the time of the offense; and accelerated good time credits for completion of said
436 programing.

437 Youth status shall be based on the scientific literature on brain maturation, which
438 documents that young adults under age 26 are developmentally more like juveniles than they are
439 like fully mature adults and are therefore less culpable and more amendable to change.