

SENATE No. 2417

The Commonwealth of Massachusetts

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

SENATE, Friday, July 08, 2016

The committee on Ways and Means to whom was referred the petition (accompanied by bill, Senate, No. 905) of Karen E. Spilka, Ruth B. Balsler, Michael J. Barrett, Cynthia S. Creem and other members of the General Court for legislation to promote transparency, best practices, and better outcomes for children and communities,- reports the accompanying bill (Senate, No. 2417).

For the committee,
Karen E. Spilka

SENATE No. 2417

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. Section 23 of chapter 90 of the General Laws, as appearing in the 2014
2 Official Edition, is hereby amended by inserting after the figure “\$500”, in line 53, the following
3 words:- ; provided, however, that notwithstanding any general or special law to the contrary, a
4 finding of delinquency shall not be entered against a person against whom such a complaint has
5 been issued.

6 SECTION 2. Section 34J of said chapter 90, as so appearing, is hereby amended by
7 inserting after the figure “\$500” in line 59, the following words:- ; provided, however, that
8 notwithstanding any general or special law to the contrary, any person who violates this section
9 who has not been previously determined responsible for or convicted of a violation of this
10 section, or against whom a finding of delinquency or a finding of sufficient facts to support a
11 conviction has not been previously rendered, shall not have a finding of delinquency entered
12 against such person.

13 SECTION 3. Section 52 of chapter 119 of the General Laws, as so appearing, is hereby
14 amended by striking out the definitions of “Court” and “Delinquent child” and inserting in place
15 thereof the following 3 definitions:-

16 “Civil infraction”, a violation for which a civil proceeding is allowed and for which the
17 court shall neither sentence a violator to a term of incarceration nor appoint counsel pursuant to
18 chapter 211D.

19 “Court,” a division of the juvenile court department of the trial court.

20 “Delinquent child”, a child between 11 and 18 years of age who commits an offense
21 against a law of the commonwealth; provided, however, that such offense shall not include a
22 civil infraction or a violation of a municipal ordinance or by-law.

23 SECTION 4. Section 54 of said chapter 119, as so appearing, is hereby amended by
24 striking out, in line 2, the word “seven” and inserting in place thereof the following figure:- 11.

25 SECTION 5. Section 67 of said chapter 119, as so appearing, is hereby amended by
26 striking out, in line 2, the word “seven” and inserting in place thereof the following figure:- 11.

27 SECTION 6. Section 68 of said chapter 119, as so appearing, is hereby amended by
28 striking out, in lines 1 and 34, the word “seven” and inserting in place thereof, in each instance,
29 the following figure:- 11.

30 SECTION 7. Section 68A of said chapter 119, as so appearing, is hereby amended by
31 striking out, in line 1, the word “seven” and inserting in place thereof the following figure:- 11.

32 SECTION 8. Section 84 of said chapter 119, as so appearing, is hereby amended by
33 striking out, in line 12, the word “seven” and inserting in place thereof the following figure:- 11.

34 SECTION 9. Said chapter 119 is hereby further amended by adding the following 2
35 sections:-

36 Section 86. (a) For the purposes of this section and section 87, the following words shall
37 have the following meanings unless the context clearly requires otherwise:

38 “Juvenile”, a person appearing before a division of the juvenile court department who is
39 under the age of 18 in a delinquency, child requiring assistance or care and protection case or
40 under the age of 21 in a youthful offender case.

41 “Restraints”, devices that limit voluntary physical movement of an individual, including
42 leg irons and shackles that have been approved by the trial court department.

43 (b) A juvenile shall not be placed in restraints during court proceedings and shall be
44 removed prior to the appearance of a juvenile before the court at any stage of any proceeding
45 unless the justice presiding in the courtroom issues an order and makes specific findings on the
46 record that: (i) restraints are necessary because there is reason to believe that a juvenile presents
47 an immediate and credible risk of escape that cannot be curtailed by other means; (ii) a juvenile
48 poses a threat to the juvenile’s own safety or to the safety of others; or (iii) restraints are
49 reasonably necessary to maintain order in the courtroom.

50 (c) In making the specific findings under subsection (b), the presiding justice shall
51 consider any of the following factors prior to issuance of an order:

52 (i) the seriousness of the present charge, including if the charge supports a
53 concern that the juvenile has an incentive to attempt to escape;

54 (ii) the prior offense history of the juvenile;

55 (iii) any past disruptive courtroom behavior by the juvenile;

56 (iv) any past behavior by the juvenile that presented a threat to the juvenile's own
57 safety or the safety of others;

58 (v) any present behavior that indicates a current threat to the juvenile's own safety
59 or the safety of others;

60 (vi) any previous or attempted escapes;

61 (vii) if the juvenile poses a risk of flight from the courtroom;

62 (viii) any threats of harm to others or threats to cause a disturbance; and

63 (ix) any ongoing security concerns in the courtroom and courthouse.

64 (e) The court officer charged with custody of a juvenile shall report any security concerns
65 to the presiding justice. On the issue of courtroom or courthouse security, the presiding justice
66 may receive information from the court officer charged with custody of a juvenile, a probation
67 officer or any source determined by the court to be credible.

68 The authority to use restraints shall reside solely within the discretion of the presiding
69 justice at the time that a juvenile appears before the court. A juvenile court justice shall not
70 impose a blanket policy to maintain restraints on all juveniles or a specific category of juveniles
71 who appear before the court.

72 Section 87. Notwithstanding any general or special law to the contrary, in any proceeding
73 involving a juvenile, there shall be a rebuttable presumption that youth status was a distinct
74 mitigating factor. If the commonwealth fails to rebut that presumption by clear and convincing

75 evidence, then issues of intent, knowledge, premeditation and purpose or the reasonableness of
76 the juvenile's belief that the juvenile faced an imminent threat of death or serious bodily injury
77 or the reasonableness of the juvenile's perception of the amount of force that was necessary to
78 combat the perceived threat shall be considered in light of the juvenile's diminished capacities.

79 In cases where youth status has been found to be a mitigating factor, the court, at the time
80 of sentencing, shall apply a modified sentence not to exceed 1/3 of the adult prescribed penalty
81 or shall provide early release options based on the completion of educational, vocational,
82 substance abuse or other rehabilitative programs.

83 The department of correction and the sheriffs' offices shall provide workforce
84 development, educational and substance abuse treatment programs for all persons committed to
85 their custody who were under the age of 26 at the time of commission of the offense for which
86 they were committed to such custody and shall apply accelerated good time credits for
87 completion of such programs.

88 SECTION 10. Section 21 of chapter 120 of the General Laws, as so appearing, is hereby
89 amended by striking out, in line 17, the word "seven" and inserting in place thereof the following
90 figure:- 11.

91 SECTION 11. Section 133A of chapter 127 of the General Laws, as so appearing, is
92 hereby amended by adding the following paragraph:-

93 If a prisoner is serving a life sentence for a conviction of murder as defined in section 1
94 of chapter 265 which was committed before the prisoner's eighteenth birthday, the prisoner shall
95 have the right to have appointed counsel at the parole hearing if the prisoner is deemed to be
96 indigent and the right to funds for experts as determined by the standards in chapter 211D.

97 SECTION 12. Section 20 of chapter 233 of the General Laws, as so appearing, is hereby
98 amended by striking out the clause Fourth and inserting in place thereof the following clause:-

99 Fourth, Except in a proceeding before an inquest, grand jury, trial of an indictment or
100 complaint or any other criminal, delinquency or youthful offender proceeding where the victim
101 in the proceeding is not a family member and does not reside in the family household, neither the
102 parent nor minor child shall be compelled to testify against the other; provided, however, that for
103 the purpose of this clause, “parent” shall mean the biological or adoptive parent, stepparent,
104 foster parent, legal guardian or any other person who has the right to act in loco parentis for the
105 child; and provided further, that in cases where the victim is a family member and resides in the
106 family household, the parent shall not testify as to any communication with the child that was for
107 the purpose of seeking advice regarding the child’s legal rights and decision making.

108 SECTION 13. Section 53 of chapter 272 of the General Laws is hereby amended by
109 adding the following clause:-

110 (c) Notwithstanding any general or special law to the contrary, no person who violates
111 this section shall have a finding of delinquency entered against that person.

112 SECTION 14. Chapter 276 of the General Laws is hereby amended by inserting after
113 section 100D the following section:-

114 Section 100E. (a) For the purpose of this section, the words “expunge”, “expunged” and
115 “expungement” shall mean permanent erasure or destruction of information so that it is not
116 maintained in any file or record.

117 (b) Notwithstanding section 100A or any other general or special law to the contrary, a
118 person of any age who has a record of juvenile or criminal court appearances and dispositions on
119 file with the office of the commissioner of probation may have convictions or adjudications
120 expunged from that person's criminal and court records if the offense was committed before the
121 person turned 18 years of age and upon the filing of a petition with a judge in the court in which
122 the appearance or disposition occurred. The form of the petition shall be furnished by the
123 commissioner of probation. Before a petition is filed, the person shall have completed a sentence
124 or disposition imposed by the court or, where applicable, a period of commitment or probation
125 imposed pursuant to section 58 of chapter 119 and the person shall not have been adjudicated
126 delinquent or found guilty of any new criminal offense in the commonwealth before the
127 completion of that person's juvenile sentence. The court shall, upon motion of that person,
128 expunge the appearance or disposition recorded for a misdemeanor conviction or adjudication if
129 the offense was committed before the person turned 18 years of age. The court may, in the
130 discretion of the court, upon motion of that person, expunge the appearance or disposition
131 recorded for a felony conviction or adjudication if the offense was committed before the person
132 turned 18 years of age.

133 For any petition granted by the court under this section, the clerks and probation officers
134 of the courts in which the proceedings occurred or were initiated shall expunge the records of the
135 proceedings in their files.

136 The court shall, at the time of imposing any sentence, disposition or period of
137 commitment or probation pursuant to said section 58 of said chapter 119, inform, in writing, all
138 eligible individuals of their right to seek expungement under this section.

139 (c) Notwithstanding any other general or special law to the contrary, in the case of an
140 expunged record, the commissioner of probation or the clerk of courts in a district court, superior
141 court, juvenile court or the Boston municipal court, shall report that no record exists in response
142 to inquiries by authorized persons. An applicant for employment with an expunged record on file
143 with the commissioner of probation may answer “no record” to any inquiry regarding prior
144 arrests, delinquency appearances, delinquency adjudications or delinquency dispositions that
145 were contained in an expunged record.

146 Once the commissioner expunges a record within the commissioner’s possession, the
147 commissioner shall notify the department of youth services of the expungement and the
148 department shall expunge the records from the department’s files. Any records subject to an
149 expungement order shall be expunged both in their electronic form and their physical form.

150 The appearances and dispositions expunged shall not operate to disqualify any person in
151 an examination, appointment or application for public employment in the service of the
152 commonwealth or a subdivision thereof and no such appearances or dispositions shall be used
153 against a person in any way in any court proceeding or hearing before a court, board or
154 commission to which that person is a party to the proceeding.

155 SECTION 15. Section 70C of chapter 277 of the General Laws, as appearing in the 2014
156 Official Edition, is hereby amended by striking out, in line 8, the words “, chapter 119”.

157 SECTION 16. There shall be a juvenile justice data task force to make recommendations
158 on coordinating and modernizing the juvenile justice data systems and reports that are developed
159 and maintained by state agencies and the courts. The task force shall consist of the following
160 members or their designees: the chief justice of the trial court; the chief justice of the juvenile

161 court; the secretary of health and human services; the commissioner of probation; the
162 commissioner of youth services; the commissioner of children and families; the commissioner of
163 mental health; the commissioner of transitional assistance; the executive director of Citizens for
164 Juvenile Justice, Inc.; the president of the Massachusetts Society for the Prevention of Cruelty to
165 Children; and 2 members to be appointed by the governor, each of whom shall have experience
166 or expertise related to the juvenile justice system or the design and implementation of juvenile
167 justice data systems or both.

168 The task force shall analyze the capacities and limitations of the data systems and
169 networks used to collect and report state and local juvenile caseload and outcome data. The
170 analysis shall include all of the following:

171 (i) a review of the relevant data systems, studies and models from the commonwealth and
172 other states;

173 (ii) identification of changes or upgrades to current data collection processes to remove
174 inefficiencies, track and monitor state agency and court-involved juveniles and facilitate the
175 coordination of information sharing between relevant agencies and the courts;

176 (iii) identify racial and ethnic disparities apparent within the juvenile justice system and
177 ways to reduce such disparities; and

178 (iv) any other matters which the task force determines may improve the collection of and
179 interagency coordination of juvenile justice data.

180 The task force shall file a report on the options for improving interagency coordination,
181 modernization and upgrading of state and local juvenile justice data and information systems.

182 The report shall include, but not be limited to: (i) recommended additional collection and
183 reporting responsibilities for agencies, departments or providers; (ii) recommendations for the
184 creation of a web-based statewide clearinghouse or information center that would make relevant
185 juvenile justice information on operations, caseloads, dispositions and outcomes available in a
186 user-friendly, query-based format for stakeholders and members of the public, including a
187 feasibility assessment of implementing such a system; and (iii) a plan for improving the current
188 juvenile justice reporting requirements, including streamlining and consolidating current
189 requirements without sacrificing meaningful data collection and including a detailed analysis of
190 the information technology and other resources necessary to implement improved data
191 collection. The report shall be filed with the clerks of the senate and house of representatives
192 not later than January 1, 2017 and the clerks shall forward the same to the senate and house
193 chairs of the joint committee on the judiciary and the senate and house chairs of the joint
194 committee on children, families and persons with disabilities.