

HOUSE No. 3079

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>1/20/2017</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>1/25/2017</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>	<i>2/3/2017</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>1/26/2017</i>
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>	<i>1/30/2017</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>	<i>1/31/2017</i>
<i>Linda Dean Campbell</i>	<i>15th Essex</i>	<i>2/2/2017</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>1/31/2017</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>	<i>2/3/2017</i>
<i>Daniel M. Donahue</i>	<i>16th Worcester</i>	<i>1/27/2017</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>	<i>2/1/2017</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>	<i>2/2/2017</i>
<i>Linda Dorcena Forry</i>	<i>First Suffolk</i>	<i>2/3/2017</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	<i>2/3/2017</i>
<i>Carlos González</i>	<i>10th Hampden</i>	<i>2/3/2017</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>	<i>2/1/2017</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>	<i>2/3/2017</i>

<i>Natalie Higgins</i>	<i>4th Worcester</i>	<i>2/3/2017</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>2/2/2017</i>
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>	<i>2/3/2017</i>
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>	<i>2/3/2017</i>
<i>Jack Lewis</i>	<i>7th Middlesex</i>	<i>1/27/2017</i>
<i>Rady Mom</i>	<i>18th Middlesex</i>	<i>2/2/2017</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>	<i>2/3/2017</i>
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>	<i>2/2/2017</i>
<i>José F. Tosado</i>	<i>9th Hampden</i>	<i>2/3/2017</i>
<i>Bud Williams</i>	<i>11th Hampden</i>	<i>2/2/2017</i>

HOUSE No. 3079

By Ms. Khan of Newton, a petition (accompanied by bill, House, No. 3079) of Kay Khan and others relative to the treatment and interaction of juveniles within the state justice system and the collection and reporting of statistical data regarding such juveniles by certain state agencies. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

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 2014 Official Edition, are hereby
2 amended by inserting, after Chapter 18C the following chapter:-

3 Chapter 18D: Collection of race and ethnicity data

4 Section 1. Definitions.

5 The following words and phrases as used in this chapter shall, unless the context clearly
6 requires otherwise, have the following meanings:-

7 "Contact", any action or decision by law enforcement personnel or by any other official
8 of the commonwealth or private service provider under contract or other agreement with the
9 commonwealth, in dealing with a juvenile at any stage of the juvenile justice system including,
10 but not limited to, the points of contact listed below in sections 4(a) –(i), which causes such

11 juvenile to enter or exit the juvenile justice system or which will change his custodial status,
12 liberty, case processing, or status within the system.

13

14 “Juvenile”, a youth between the age of 7 and 18 and up to the age of 22 if the individual
15 remains within the jurisdiction of the juvenile court or juvenile justice system, and children aged
16 14 to 18 who are charged with first or second degree murder pursuant to section 74 of chapter
17 119.

18 “Alternative lock-up program” means a facility and/or program that provides for the
19 physical care and custody of a youth being held by the police after an arrest and before an
20 arraignment, and includes programs provided by the police, municipal, county or state
21 government, as well as any contractor, vendor or service-provider working with such
22 government entities.

23 “Racial/ethnic category”, the socio-cultural racial and ethnic category of an individual as
24 categorized in a manner that is consistent with the categories established and utilized by the
25 federal Office of Juvenile Justice and Delinquency Prevention.

26

27 “Type of crime”, the category of crime into which the alleged or proven offense a youth
28 has committed falls as categorized in a manner that is consistent with the categories established
29 and utilized by the National Incident-Based Reporting System.

30 Section 2. The Child Advocate shall create and update as may be appropriate an
31 instrument to record aggregate statistical data at each point of contact identified in sections 4(a)-

32 (i). This instrument shall, at minimum, include age, gender, race/ethnicity category, and type of
33 crime. The Child Advocate shall give due regard to the census of juveniles when setting forth the
34 race/ethnicity categories in the instrument. The Child Advocate shall consider providing
35 guidance about the manner in which the race/ethnicity information is designated and collected,
36 with consideration of the juveniles' self-reporting of such categories. All offices and departments
37 subject to this law shall use this instrument to record contacts.

38 Section 3. (a) The department of state police, municipal police departments,
39 Massachusetts Bay Transportation Authority police, any school-based police from a local
40 education authority, and any contractor, vendor or service-provider working with such police
41 including any alternative lock-up programs, shall collect the necessary information to complete
42 the instrument identified in Section 3 for each juvenile subjected to the following contacts for
43 each fiscal year:

44 (1) referral to and/or use of diversion programming; and,

45 (2) arrest

46

47 (b) Clerk magistrates shall collect the necessary information to complete the instrument
48 identified in Section 3 for each juvenile subjected to the following contacts for each fiscal year:

49 (1) criminal complaint filed

50 (2) finding of probable cause;

51 (3) complaint issued;

52 (4) appeal to judge of the finding by the clerk magistrate; and,

53 (5) complaint issued after appeal.

54 (c) The district attorneys shall collect the necessary information to complete the
55 instrument identified in Section 3 for each juvenile subjected to the following contacts for each
56 fiscal year:

57 (1) referral to and/or use of diversion programming;

58 (2) indictment as a youthful offender;

59 (3) dismissal of indictment/dismissal of indictment in exchange for other action; and,

60 (4) prosecution in criminal court under section 74 of chapter 119.

61 (d) The juvenile court department shall collect the necessary information to complete the
62 instrument identified in Section 3 for each juvenile subjected to the following contacts for each
63 fiscal year:

64 (1) arraignment as a delinquent

65 (2) arraignment as a youthful offender;

66 (3) referral to and/or use of diversion programming;

67 (4) imposition of bail or order to hold without bail;

68 (5) pre-trial probation pursuant to section 87 of chapter 276;

69 (6) cases which are continued without a finding, section 18 of chapter 278 and section 58
70 of chapter 119;

- 71 (7) adjudication as a delinquent;
- 72 (8) adjudication as a youthful offender;
- 73 (9) imposition of an adult sentence pursuant to section 58 of chapter 119;
- 74 (10) sentence to probation;
- 75 (11) commitment to the department of youth services pursuant to section 58 of chapter
76 119;
- 77 (12) commitment to the department of youth services pursuant to section 2 of chapter 279
78 that are suspended;
- 79 (13) voluntary extensions of commitments to the department of youth services;
- 80 (14) juvenile brought before the court on criminal and non-criminal violations of
81 probation;
- 82 (15) commitments to department of youth services following a probation violation; and,
- 83 (16) revocation of a continuation without a finding pursuant to section 18 of chapter 278
84 and section 58 of chapter 119.
- 85 (e) The office of the commissioner of probation shall collect the necessary information to
86 complete the instrument identified in Section 3 for each juvenile subject to the following contacts
87 for each fiscal year:
- 88 (1) referral to and/or use of diversion programming;
- 89 (2) supervision of pre-trial probation;

90 (3) supervision of continuances without a finding;

91 (4) supervision of youth on probation; and,

92 (5) referral to the court for a probation violation.

93 (f) The department of youth services and any contractor, vendor or service provider
94 working with said department including alternative lock-up programs shall collect the necessary
95 information to complete the instrument identified in Section 3 for each juvenile subjected to the
96 following contacts for each fiscal year

97 (1) pre-arraignment detention;

98 (2) pre-trial detention;

99 (3) commitment;

100 (4) level of care including, but not limited to,

101 a. "hardware," secure;

102 b. staff secure;

103 c. residential; and

104 d. community placement;

105 (5) notice of revocation of grants of conditional liberty;

106 (6) hearing on grants of conditional liberty; and

107 (7) revocation of grants of conditional liberty for violation of conditions of liberty; and

108 (8) voluntary extensions of commitments with the department of youth services.

109 (g) The superior court shall collect the necessary information to complete the instrument
110 identified in Section 3 for each juvenile subject to the following contacts for each fiscal year:

111 (1) arraignment for murder in the first degree and murder in the second degree; and

112 (2) convictions.

113 (h) The department of correction and each sheriff's department shall collect the necessary
114 information to complete the instrument identified in Section 3 for each juvenile subjected to the
115 following contacts for each fiscal year:

116 (1) pre-arraignment detention;

117 (2) pre-trial detention;

118 (3) post-disposition confinement of youthful offenders; and

119 (4) post-conviction confinement for murder.

120 (i) The parole board shall collect the necessary information to complete the instrument
121 identified in Section 3 for each juvenile subject to the following contacts for each fiscal year:

122

123 (1) grant of parole;

124 (2) supervision of parole; and

125 (3) revocation of parole.

126 Section 4. (a) The Executive Office of Public Safety and Security shall be responsible for
127 assembling the data collected by the below offices and departments on an annual basis. The
128 collected data for each fiscal year shall be published on the Executive Office of Public Safety
129 and Security Website, filed with the clerks of the Massachusetts House and Senate and provided
130 to the Office of the Child Advocate no later than 90 days after the end of that fiscal year. The
131 first such report shall be submitted by January 2, 2018.

132 a. The Commissioner of the Department of Correction

133 b. Sheriffs of each County;

134 c. The Parole Board;

135 d. The Department of the State Police;

136 e. Municipal police departments;

137 f. The Massachusetts Bay Transportation Authority Police;

138 g. School based police from any local education authority;

139 h. Alternative Lock-up Programs; and,

140 i. any other contractor, vendor or service provider working with school based or other
141 police officers.

142 (b) The Attorney General shall be responsible for assembling data collected by District
143 Attorney's Offices on an annual basis. The collected data for each fiscal year shall be published
144 on the Attorney General's website, filed with the clerks of the Massachusetts House and Senate

145 and provided to the Office of the Child Advocate no later than 90 days after the end of that fiscal
146 year. The first such report shall be submitted by January 2, 2018.

147 (c) The Chief Justice for Administration and Management shall be responsible for
148 assembling data collected by judicial officers and court personnel including the Commissioner of
149 Probation, judicial officers and court personnel, and the Executive Director of Community
150 Correction. The data shall be collected on an annual basis. The collected data for each fiscal year
151 shall be published on the Supreme Judicial Court's website, filed with the clerks of the
152 Massachusetts House and Senate and provided to the Office of the Child Advocate no later than
153 90 days after the end of that fiscal year. The first such report shall be submitted by January 2,
154 2018.

155 d) The Executive Office for Human Services shall be responsible for assembling data
156 collected by the Commissioner of the Department of Youth Services and all department
157 personnel, contractors or vendors working with the Department. The data shall be collected on an
158 annual basis. The collected data for each fiscal year shall be published on the Office's website,
159 filed with the clerks of the Massachusetts House and Senate and provided to the Office of the
160 Child Advocate no later than 90 days after the end of that fiscal year. The first such report shall
161 be submitted by January 2, 2018.

162 Section 5. Any individual data described or acquired under the provisions of this chapter
163 shall be used only for statistical purposes and may not be disseminated if it contains data that
164 reveal the identity of an individual who had contact with the juvenile justice system within the
165 meaning of this chapter.

166 Section 6. The annual Juvenile Justice Contact Data Reports from the Executive Offices
167 of Public Safety and Security, Attorney General, Chief Justice for Administration and
168 Management and Executive of Office of Human Services shall be public records.

169 SECTION 2. The first sentence of the second paragraph of section 23 of chapter 90 of the
170 General Laws, as appearing in the 2014 Official Edition, is hereby amended by inserting after the
171 words, “not more than \$500”, the following:-

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

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

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

182 SECTION 4. Section 52 of chapter 119 of the General Laws, as appearing in the 2014
183 Official Edition, is hereby amended by striking out the definition of “Delinquent Child” in the
184 second paragraph and inserting in place thereof the following definition:-

185 “Delinquent Child”, a child between 12 and 18 who commits any offense against a law of
186 the commonwealth, provided however, that such offense shall not include a civil infraction, a

187 violation of any municipal ordinance or town by-law, or a misdemeanor for which the
188 punishment is a fine, imprisonment in a jail or house of correction for not more than six months,
189 or both such fine and imprisonment.

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

192 "Civil Infraction", a violation for which a civil proceeding is allowed, and for which the
193 court shall not sentence any term of incarceration and therefore not appoint counsel.

194 SECTION 6. Section 54 of said chapter 119, as so appearing, is hereby amended by
195 striking out in the definition of "Delinquent child" the word "seven" and inserting in place
196 thereof the following number:- twelve

197 SECTION 7. Section 67 of said chapter 119, as so appearing, is hereby amended by
198 striking out in the definition of "Delinquent child" the word "seven" and inserting in place
199 thereof the following number:- 12

200 SECTION 8. Section 68 of said Chapter 119, as so appearing, is hereby amended by
201 striking out the word "seven" and inserting in place thereof the following number:- 12

202 SECTION 9. Section 68A of said chapter 119, as so appearing, is hereby amended by
203 striking out the word "seven" and inserting in place thereof the following number:- 12

204 SECTION 10. Section 84 of said chapter 119, as so appearing, is hereby amended by
205 striking out the word "seven" and inserting in place thereof the following number:- 12

206 SECTION 11. Chapter 119 of the General Laws, as appearing in the 2014 Official
207 Edition, is hereby amended by inserting at the end thereof the following section:

208 Section 95. (a) For purposes of this section, the following terms shall have the following
209 meanings:-

210 “Juveniles”, persons appearing before the juvenile court under the age of 18 in
211 delinquency, children requiring assistance cases, and care and protection cases, and under the age
212 of 21 in youthful offender cases.

213 “Restraints”, devices that limit voluntary physical movement of an individual, including
214 leg irons and shackles approved by the trial court security department.

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

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

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

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

228 2) The prior offense history of the juvenile;

- 229 3) Any past disruptive courtroom behavior by the juvenile;
- 230 4) Any past behavior by the juvenile that presented a threat to his or her own safety,
231 or the safety of other people;
- 232 5) Any present behavior that the juveniles represents a current threat to his or her
233 own safety, or the safety of other people in the courtroom;
- 234 6) Any past escapes, or attempted escapes;
- 235 7) Risk of flight from the courtroom;
- 236 8) Any threats of harm to others, or threats to cause a disturbance; and,
- 237 9) Security situation in the courtroom and courthouse, including risk of gang
238 violence, or attempted revenge by others.

239 (e) The court officer charged with custody of a juvenile shall report any security concerns
240 with said juvenile to the justice presiding in the courtroom. The justice presiding in the
241 courtroom may attach significance to the report and recommendation of the court officer charged
242 with custody of the juvenile, but shall not cede responsibility for determining the use of restraints
243 in the courtroom to the court officer. The justice presiding in the courtroom may receive
244 information from the court officer charged with custody of the juvenile, a probation officer, or
245 any source which the court determines in its discretion to be credible on the issue of courtroom
246 or courthouse security.

247 The decision to use restrains shall be the sole determination of the juvenile court justice
248 who is presiding in the courtroom at the time that a juvenile appears before the court. No juvenile

249 court justice shall impose a blanket policy to maintain restraints on all juveniles, or a specific
250 category of juveniles, who appear before the court.

251 SECTION 12. Chapter 120 of the General Laws, as appearing in the 2014 Official
252 Edition, is hereby amended by inserting after section 10 the following section:-

253 Section 10B. No person under 18 years of age and committed to the department of youth
254 services shall be placed in involuntary room confinement as a consequence for noncompliance,
255 punishment or harassment or in retaliation for any conduct.

256 SECTION 13. Section 20 of chapter 233 of the General Laws, as appearing in the 2014
257 Official Edition, is hereby amended by striking out the Fourth clause, and inserting in place
258 thereof the following:-

259 Fourth, in a proceeding before an inquest, grand jury, trial of indictment or complaint, or
260 any other criminal, delinquency or youthful offender proceeding where the victim in such
261 proceeding is not a family member and does not reside in the family household, neither the
262 parent nor minor child shall testify against the other without the other's permission. For the
263 purpose of this clause the term, "parent", shall mean the biological or adoptive parent,
264 stepparent, foster parent, or legal guardian of a child. In cases where the victim is a family
265 member and resides in said household, the parent shall not testify as to any communication with
266 such child that was for the purpose of seeking advice regarding the child's legal rights and
267 decision making.

268 SECTION 14. Section 53 of chapter 272 of the General Laws, as appearing in the 2014
269 Official Edition, is hereby amended by inserting at the end thereof the following clause:-

270 (c) Notwithstanding any general or special law to the contrary, any person who violates
271 clause (b) of this section shall not have a finding of delinquency entered against him for a first
272 offense.

273 SECTION 15. Section 100B of chapter 276 of the General Laws, as appearing in the
274 2014 Official Edition, is hereby amended by striking out said section in its entirety and inserting
275 in place thereof the following section:-

276 Section 100B.

277 (a) Any person having a record of entries of a court appearance in any proceeding
278 pursuant to sections 52 to 62 of chapter 119, inclusive, in the commonwealth on file in the office
279 of the commissioner of probation may, on a form furnished by the commissioner, signed under
280 the penalties of perjury, request that the commissioner seal such file. The commissioner shall
281 comply with such request provided (1) that any court appearance or disposition including court
282 supervision, probation, commitment or parole, the records for which are to be sealed, terminated
283 not less than one year prior to said request; (2) that said person has not been adjudicated
284 delinquent or found guilty of any criminal offense within the commonwealth in the one year
285 preceding such request, except motor vehicle offenses in which the penalty does not exceed a
286 fine of five-hundred and fifty dollars nor been imprisoned under sentence or committed as a
287 delinquent within the commonwealth within the preceding one year; and (3) said form includes a
288 statement by the petitioner that he has not been adjudicated delinquent or found guilty of any
289 criminal offense in any other state, United States possession or in a court of federal jurisdiction,
290 except such motor vehicle offenses as aforesaid, and has not been imprisoned under sentence or
291 committed as a delinquent in any state or county within the preceding one year.

292 (b) At the time of dismissal of a case, nolle prosequi, non-adjudication or when
293 imposing any sentence, period of commitment or probation, or other disposition under section 58
294 of said chapter 119, the court shall inform all juveniles in writing of their right to seek sealing
295 under this section, and that if the case ended in a dismissal, nolle prosequi, or without an
296 adjudication, the court shall order sealing of the record at the time of the disposition unless the
297 person charged with the offense objects. The court shall also notify said juvenile that the record
298 will be expunged three years after it is sealed unless the person charged with the offense objects.

299 (c) When records of delinquency and youthful offender appearances and dispositions
300 are sealed by the commissioner in his files, the commissioner shall notify forthwith the clerk and
301 the probation officer of the courts in which the adjudications or dispositions have occurred, or
302 other entries have been made, police department from where the charges originated and the
303 department of youth services of such sealing, and said clerks, probation officers, police
304 department and department of youth services likewise shall seal records of the same proceedings
305 in their files. Sealing of records under this section shall not preclude expungement of police
306 records. The commissioner of probation also shall notify the State Police of such sealing and the
307 State Police shall notify the Federal Bureau of Investigation of the sealing order and request that
308 the FBI note that the record was sealed in its records if it has a record of the case.

309 Such sealed records of a person shall not operate to disqualify a person in any future
310 examination, appointment or application for public service under the government of the
311 commonwealth or of any political subdivision thereof; nor shall such sealed records be
312 admissible in evidence or used in any way in any court proceedings or hearings before any
313 boards of commissioners, except in imposing sentence for subsequent offenses in juvenile or
314 criminal proceedings.

315 Notwithstanding any other provision to the contrary, the commissioner shall report such
316 sealed juvenile record to inquiring police and court agencies only as "sealed juvenile record over
317 one year old" and to other authorized persons who may inquire as "no record". The information
318 contained in said sealed juvenile record shall be made available to a judge or probation officer
319 who affirms that such person, whose record has been sealed, has been adjudicated a delinquent
320 or has pleaded guilty or has been found guilty of and is awaiting sentence for a crime committed
321 subsequent to sealing of such record. Said information shall be used only for the purpose of
322 consideration in imposing sentence.

323 SECTION 16. Said chapter 276, as so appearing, is hereby further amended inserting,
324 after section 100D, the following section:-

325 Section 100E. Expungement of a court record.

326 (a) For the purpose of this section, the words expunge, expunged and expungement
327 shall mean permanent erasure or destruction of information so that the information is no longer
328 maintained in any file or record in an electronic, paper or other physical form.

329 (b) Notwithstanding section 100B, a person with a record of court appearances and
330 dispositions in any proceeding pursuant to section 52 to 62 of chapter 119, inclusive, shall have
331 the records of such a proceeding expunged upon the filing of a petition to expunge records with
332 the commissioner of probation provided that:

333 (1) any juvenile court appearance or disposition including court supervision, probation,
334 commitment or parole, the sealed records of misdemeanor offenses for which are to be expunged
335 terminated not less than three years prior to said request; other sealed records may be expunged
336 upon the filing of a petition with the court in which the appearance or disposition occurred if

337 there is good cause to expunge the record, which shall include a determination of whether there
338 is a foreseeable disadvantage related to employment, housing or access to other opportunities if
339 the records are not expunged.

340 (2) that said person had no juvenile adjudication, was not found guilty of any criminal
341 offense within the commonwealth in the three years preceding such request, except motor
342 vehicle offenses in which the penalty does not exceed a fine of five hundred and fifty dollars, and
343 was not imprisoned under sentence or committed to the Department of Youth Services within the
344 commonwealth within the preceding three years; and

345 (3) said form includes a statement by the petitioner that during the preceding three years,
346 the petitioner had no juvenile adjudication, was not found guilty of a criminal offense in any
347 other state, United States possession or in a court of federal jurisdiction, except such motor
348 vehicle offenses as aforesaid, and was not imprisoned under sentence or committed as a juvenile
349 in any state or county within the preceding three years.

350 (c) The court shall also allow a petitioner to expunge the record if a case ended in a
351 dismissal, nolle prosequi, or without an adjudication because: (1) the person charged with an
352 offense was misidentified or mistakenly charged with an offense due to an error by law
353 enforcement or court employees, or the person arrested or accused of committing the offense
354 provided a false name; or (2) fraud was perpetrated on the court related to offense.

355 (d) The form of the petition to expunge shall be furnished by the commissioner of
356 probation.

357 (e) For any petition to expunge granted under this section, the clerks and probation
358 officers of the courts in which the proceedings occurred or were initiated shall expunge all the
359 records of the proceedings in their files in their paper, electronic, and any other form.

360 (f) Notwithstanding any other general or special law to the contrary, in the case of an
361 expunged record, the commissioner of probation and the clerk of courts in a district court,
362 superior court, juvenile court and the Boston municipal court, shall report that no record exists in
363 response to inquiries.

364 An applicant for employment, housing or an occupational license with an expunged
365 record may answer no record to any inquiry regarding prior arrests, adjudications or other
366 dispositions that were contained in an expunged record.

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

372 (g) Notwithstanding any General or Special Laws to the contrary, once the
373 commissioner of probation expunges the records within the commissioner's possession, the
374 commissioner shall notify the department of youth services of the expungement and the
375 department shall expunge such records from the department's files. Any records subject to an
376 expungement order shall be expunged in their paper, electronic and any other physical form.

377 (h) The commissioner of probation shall also notify the State Police of such
378 expungement and the State Police shall notify the Federal Bureau of Investigation of the

379 expungement order and request that the FBI expunge its fingerprint and other records related to
380 the case.

381 SECTION 17. Paragraph 1 of section 70C of chapter 277 of the General Laws, as
382 appearing in the 2014 Official Edition, is hereby amended by striking out in the second sentence
383 the words:- “chapter 119,”

384 SECTION 18. Notwithstanding any general or special law to the contrary, juvenile
385 records, including, but not limited to, juvenile conviction data, juvenile arrest data, or juvenile
386 sealed record data, shall not be shared with the Registry of Motor Vehicles by the court,
387 probation, district attorney, law enforcement agencies, the department of criminal justice
388 information services, or any other agency or entity that lawfully possesses such records.

389 SECTION 19. There shall be a Juvenile Justice Policy and Data Commission convened
390 by the Child Advocate for Massachusetts. The Commission shall evaluate policies related to the
391 juvenile justice system, oversee the collection and dissemination of aggregate data regarding the
392 system, and study the implementation of any major statutory changes to the juvenile justice
393 system, including but not limited to the expansion of juvenile jurisdiction to include persons 18,
394 19 and 20 years of age.

395 The Commission shall consist of the following members or their designees: Two
396 members of the General Court, one of whom shall be appointed by the Speaker of the House of
397 Representatives, and one of whom shall be appointed by the President of the Senate; the Child
398 Advocate; the chief justice of the juvenile court; the commissioner of probation; the
399 commissioner of youth services; the commissioner of children and families; the commissioner of
400 mental health; the commissioner of public health; the Secretary of Education; the chief counsel

401 of the Committee for Public Counsel Services; the executive director of the Massachusetts
402 District Attorneys' Association; the chair of the Massachusetts Juvenile Justice Advisory
403 Committee; the executive director of Citizens for Juvenile Justice, Inc.; the executive director of
404 the Children's League of Massachusetts; a representative of the Massachusetts Chiefs of Police
405 Association; 2 parents whose children have been subject to Juvenile Court jurisdiction; and 1
406 member to be appointed by the governor who shall have experience or expertise related to the
407 design and implementation of state administrative data systems. All appointments to the
408 Commission shall be made not less than 30 days after the enactment of this legislation.

409 The Commission shall have an Executive Director who shall convene the Commission,
410 prepare reports as called for herein; and identify academic research partners in Massachusetts or
411 elsewhere to assist in the analysis and reporting.

412 Not later than January 1, 2019, and no later than each January 1 following, the
413 Commission shall report to the Clerks of the Senate and the House of Representatives, the Chief
414 Judge of the Trial Court, and the Governor, regarding the following:

415 (a) Any statutory changes concerning the juvenile justice system that the committee
416 recommends to (A) improve public safety, (B) promote the best interests of children and youths
417 who are under the jurisdiction, supervision, care or custody of the Juvenile Court, the
418 Commissioner of Youth Services, or the Commissioner of Child Welfare; (C) improve
419 transparency and accountability with respect to state-funded services for children and youths in
420 the juvenile justice system with an emphasis on goals identified by the committee for
421 community-based programs and facility-based interventions; and (D) promote the efficient
422 sharing of information between the Executive Branch and the Judicial Branch to ensure the

423 regular collection and reporting of recidivism data and promote public welfare and public safety
424 outcomes related to the juvenile justice system.

425 (b) Short-term goals to be met within 12 months, medium-term goals to be met within
426 18 months and long-term goals to be met within 36 months, for the Commission and state
427 agencies with responsibilities with respect to the juvenile justice system to meet, after
428 considering existing relevant reports related to the juvenile justice system and any related agency
429 or entity strategic plans;

430

431 (c) By no later than January 1, 2018, the capacities and limitations of the data
432 systems and networks used to collect and report state and local juvenile caseload and outcome
433 data. The analysis shall include all of the following:

434 i. a review of the relevant data systems, studies and models from the commonwealth
435 and other states;

436 ii. identification of changes or upgrades to current data collection processes to
437 remove inefficiencies, track and monitor state agency and court-involved juveniles and facilitate
438 the coordination of information sharing between relevant agencies and the courts, including
439 without limitation data that is required to be reported under federal law or for purposes of
440 securing federal funding;

441 iii. the identification and evaluation of any racial and ethnic disparities within the
442 juvenile justice system and recommendations regarding ways to reduce such disparities;

443 iv. recommendations for the creation of a web-based statewide clearinghouse or
444 information center that would make relevant juvenile justice information on operations,
445 caseloads, dispositions and outcomes available in a user-friendly, query-based format for
446 stakeholders and members of the public, including a feasibility assessment of implementing such
447 a system;

448 v. a plan for improving the current juvenile justice reporting requirements, including
449 streamlining and consolidating current requirements without sacrificing meaningful data
450 collection and including a detailed analysis of the information technology and other resources
451 necessary to implement improved data collection; and,

452 vi. any other matters which the task force determines may improve the collection of,
453 and interagency coordination of, juvenile justice data.

454 (d) The impact of any legislation that expands or alters the jurisdiction or functioning
455 of the juvenile court, including but not limited to legislation to include persons 18, 19 and 20
456 years of age within the jurisdiction of the juvenile system, as measured by the following: (A)
457 Any change in the average age of children and youths involved in the juvenile justice system; (B)
458 The types of services used by designated age groups and the outcomes of those services; (C) The
459 types of delinquent acts or criminal offenses that children and youths have been charged with
460 since the enactment and implementation of such legislation; and (D) The gaps in services
461 identified by the committee with respect to children and youths involved in the juvenile justice
462 system, including, but not limited to, children and youths who have attained the age of 18 after
463 being involved in the juvenile justice system, and recommendations to address such gaps in
464 services; and (5) Strengths and barriers identified by the committee that support or impede the

465 educational needs of children and youths in the juvenile justice system, with specific
466 recommendations for reforms.

467 (e) The quality and accessibility of diversionary programs available to children and
468 youths in this state;

469 (f) An assessment of the system of community-based services for children and
470 youths who are under the supervision, care or custody of the Department of Youth Services or
471 the Juvenile Court;

472 (g) An assessment of the number of children and youths who, after being or while
473 under the supervision or custody of the Department of Children and Families, are adjudicated
474 delinquent or as a youthful offender; and,

475 (h) An assessment of the overlap between the juvenile justice system and the mental
476 health care system for children in Massachusetts, and,

477 (i) Any appropriations necessary to accomplish any goals or suggested policy
478 changes identified by the Commission.

479 The Commission shall establish a timeframe for review and reporting regarding the
480 responsibilities outlined in this section. Each report submitted by the Commission shall include
481 specific recommendations to improve outcomes and a timeline by which specific tasks or
482 outcomes must be achieved.

483 SECTION 20. Notwithstanding any general or special laws to the contrary, it shall be a
484 rebuttable presumption that youth status is a distinct mitigating factor. When the commonwealth
485 has failed to rebut the presumption by clear and convincing evidence, issues of intent,

486 knowledge, premeditation and purpose, or the reasonableness of the defendant's belief that he is
487 in imminent threat of death or serious bodily injury, or the reasonableness of a defendant's
488 perception of the amount of force necessary to combat the perceived threat, shall be considered
489 in light of the young adult's diminished capacities.

490 In cases where youth status is a mitigating factor, the Court, at the time of sentencing
491 shall apply a sentencing discount, not to exceed one third of the "adult" prescribed penalty, or
492 provide early release options based on the completion of educational, vocational, or substance
493 abuse programs.

494 The department of corrections and the houses of correction shall provide workforce
495 development, educational, and substance abuse treatment programming for all individuals under
496 the age of 26 at the time of the offense; and accelerated good time credits for completion of said
497 programing.

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