

Massachusetts Coalition for Juvenile Justice Reform

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

Recommendations to Promote Racial Equity in Youth Justice

The Honorable Robert DeLeo
via email: Robert.DeLeo@mahouse.gov

Dear Speaker DeLeo,

We have all spent the last few months concerned about the state of emergency created by COVID-19, and have seen a disproportionate health and economic harm falling Massachusetts' residents of color. The past few weeks' protests and uprisings standing up for the life and dignity of Black residents is a culmination of decades and decades of modern day racial oppression – both overt and subtle. The murders of George Floyd, Ahmaud Arbery and Breonna Taylor at the hands of active and retired law enforcement officers is the ultimate injustice on the hands of public officials sworn to “serve and protect”. As advocates for youth justice we are also keenly aware that the killing of Black children – Cornelius Frederick, Jayson Negron, Kwame Jones and Tamir Rice – was protected by our legal systems.

It is a tremendous time to see a wave of understanding and commitment to address the racial injustices our society has sanctioned against its residents of color and to hold our law enforcement officers and agencies accountable to their duty to serve and protect. We extend our appreciation that Massachusetts' legislative leaders are committed to seeing an agenda towards racial equity, and with that we share our recommendations towards reaching that goal.

While a racially motivated killing is the ultimate harm, it is important to recognize that racial indignities permeate all stages of interactions with legal system agencies. Studies show that young people reporting police contact, particularly more intrusive contact, also display higher levels of anxiety, trauma and even post-traumatic stress disorder associated with these experiences and it is evident that racism is fundamentally damaging not just Black adults, but Black youth.

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Prisoners' Legal Services
Project RIGHT
RFK Children's Action Corp
Real Costs of Prison
Roca, Inc.
Roxbury Youthworks
Sociedad Latina
Spectrum Health Services
Strategies for Youth
UTECH
Unitarian Universalist Mass Action
Network
Violence in Boston
Vital Village Network
Year Up
Young Sisters/Young Brother United
Youth Build Boston
YW Boston

We ask that omnibus racial equity legislation hold our state systems, not just individual officers, accountable to a more just society and include three reforms that play a role towards that goal:

- (1) **Require transparency in juvenile justice decisions by race and ethnicity (H.2141/S.1386)**
- (2) **End the automatic prosecution of teenagers as adults (H.3420/S.825)**
- (3) **Expand expungement eligibility (H.1386/S.900)**

Recommendation 1: Require transparency and accountability by reporting race/ethnicity data at each major decision point of the juvenile justice system. (H.2141 sponsored by Rep. Tyler and S.1386 sponsored by Sen. Creem)

Massachusetts has one of the worst racial disparities for youth incarceration in the country¹ despite more than a decade of reforms to reduce the pretrial detention of youth. Massachusetts also lacks the transparency on how our legal system responds to children and youth once they get arrested and how they move across each decision point. Additionally, LGBTQ youth – especially girls² – are overrepresented in juvenile justice systems, and they are predominantly youth of color³, therefore transparency on racial inequities must also include the disparities built on the intersectionality of race, ethnicity, gender identity and sexual orientation. Legislation to shed light on the racial inequity in our juvenile justice system (H.2141/S.1386) was stripped from the Criminal Justice Reform Act of 2018 because of opposition to any transparency that may (and will) show the disparate treatment of Black and Brown youth by our legal system. **We don't solve institutional racism by making the racial impact of our decisions invisible.** This legislation will gather key demographic data at major decision points – race and ethnicity, sexual orientation, gender identity/expression, and age – to better identify decision points leading to the over representation of certain populations in the juvenile justice system.

In 2017, the Department of Youth Service (DYS) and Probation partnered on a statistical analysis to answer one question: "Is the disproportionate incarceration of Black and Latinx youth

¹ According to the Sentencing Project, Massachusetts' has the 6th worst Black-White disparity in youth incarceration, with Black youth 10 times more likely to be incarcerated than White youth.
<https://www.sentencingproject.org/publications/black-disparities-youth-incarceration/>

² Himmelstein, K. &. (2011). Criminal Justice and School Sanctions Against Nonheterosexual Youth: A National Longitudinal Study. *Journal of Pediatrics*, 127(1), 48-56.

³ Wilson, B., Jordan, S., Meyer, I., Flores, A., Stemple, L., & Herman, J. (2017). Disproportionality and Disparities among Sexual Minority Youth in Custody. *Journal on Youth and Adolescence*

compared to White youth explained by a difference in offending or a difference in the legal system's response to similar offenses?" The analysis found that Black youth were 91% more likely to be incarcerated for similar offenses than White youth, with the disparities rising to 2.5 times in some counties.⁴ Rather than dig deeper into that data and try to actually work to address the factors creating this disparity, the Juvenile Court rescinded a three-way data sharing agreement, prohibiting Probation Services from sharing data with DYS and dictating greater control on any future analysis that may reflect poorly on the decision of the state judges.

The legislature invested \$75 million to revamp the judicial databases in the 2013 rollout of MassCourts. While that data system may need additional upgrades, we are certain that the capacity of that data system today is able to provide the information required by H.2141/S.1386: the number of arraignments by age and race, or detention and disposition decisions by gender and race. The Detention Utilization Study highlighted issues of data collection (rather than reporting) of ethnicity (Hispanic or non-Hispanic) which can be addressed administratively.

Recommendation 2: End the automatic prosecution of Massachusetts' oldest teens as adults. Youth of color bear the harshest brunt of that failed policy resulting in double the recidivism rate of similar teens in the juvenile system and its worse collateral consequences (H.3420 sponsored by Reps. O'Day & Khan and S.825 sponsored by Sen. Boncore)

Massachusetts treats similar teenagers very differently with devastatingly different outcomes as they transition into adulthood. In 2013, Massachusetts ended the automatic prosecution of 17-year-olds as adults amid cries of panic that 17-year-olds are somehow different than other teenagers and high cost estimates of implementation. Not only were official state estimates 37% above actual costs, the juvenile justice system's caseload today is lower than **before** the introduction of 17-year-olds.⁵

*"Each of the three states that led the national trend in raising the age—Connecticut, Illinois, Massachusetts—managed to contain costs, reduce confinement, reallocate funds to more effective approaches that keep most young people in the community, and enhance public safety."*⁶

While we are advocating to address the racial disparities in the juvenile justice system, the racial disparities in the adult system are even worse. Only 25% of Massachusetts' transition age youth population is Black or Latinx, but 70% of youth incarcerated in state prisons and 57% of youth

⁴ An excerpt of the Detention Utilization Study analysis of Black-White disparities can be found at <https://www.cfjj.org/s/Detention-Utilization-Study-RED-Excerpt.pdf>

⁵ A detailed analysis of arrest, Juvenile Court and Department of Youth Services caseloads can be found at <https://www.raisetheage.org/court-capacity>.

⁶ Justice Policy Institute, *Raising the Age: Shifting to a safer and more effective juvenile justice system*, 2017. <http://www.justicepolicy.org/uploads/justicepolicy/documents/raisetheage.fullreport.pdf>

incarcerated in county jails are people of color. Black and Latinx youth are 3.2 and 1.7 times, respectively, as likely to be imprisoned in adult correctional facilities as their White peers. This racial disparity in adult system involvement further exacerbates the disparity in long-term outcomes.

Young people in the adult system have the worst outcomes of any age group in our legal system. **Recidivism among young people incarcerated in the adult corrections is more than double similar youth released from department of youth services commitment.** Teenagers and young adults incarcerated in Massachusetts' adult correctional facilities have a 55%⁷ re-conviction rate, compared to a similar profile of teens who remained in the juvenile system whose re-conviction rate is 22%⁸. DYS has been successful in reducing its recidivism rate following almost four decades of reforms building in an emphasis on providing treatment and imposing policies whose primary goal is to ensure young people's healthy and positive development into adulthood.

Youth of color exiting the adult criminal legal system are not only saddled by a public criminal record limiting their educational and economic opportunities, the adult system's lack of focus and expertise on positive youth development, means that while youth are under state custody they are less likely to engage in rehabilitative programming, which is the cornerstone of the juvenile system.

The better outcomes of the juvenile justice system compared to the adult criminal legal system are tied to the former's responsiveness to older teenagers and a better understanding of how to capitalize on their developmental stage to promote better public safety and youth development outcomes. Attempts by the adult criminal justice system to create specialized carve-outs are their attempt to re-create positive aspects of the juvenile justice system. While commendable and a positive short-term step, they are and will only be available to a handful of youth leaving the vast majority of young people without access to these reforms. Most importantly, they do not incorporate the legal impact and practical considerations of juvenile system involvement. A young person in a young adult court session cannot legally be committed to DYS rather than an adult facility. A young person incarcerated in a young adult unit does not have the legal protections of an adjudication, compared to a conviction; nor are they connected to the range of tools, programming and interventions available within the juvenile justice systems to promote positive youth development.

⁷ Council of State Governments Justice Center, "Justice Reinvestment in Massachusetts: Policy Framework," February 21, 2017. Available at <https://csgjusticecenter.org/jr/massachusetts/publications/justice-reinvestment-in-massachusetts-policy-framework/>

⁸ Department of Youth Services, "Juvenile Recidivism Report For Youth Discharged During 2014" November 19, 2018. Available at <https://www.mass.gov/files/documents/2018/12/17/recid2018.docx>

Recommendation 3: Expand eligibility for expungement to rectify the collateral consequences of the over-policing and criminalization of communities of color (H.1386 sponsored by Reps. Decker and Khan and S.900 sponsored by Sen. Creem)

Expungement is an important tool to allow individuals to completely and fully re-integrate into society without the burden of a criminal record has no predictive value of future offending because either the records are old or because there was no conviction. **More importantly, expungement can be an important tool to rectify the documented systemic racism at every point of the criminal legal system.**

In 2018, Massachusetts passed legislation that created an opportunity to expunge juvenile and adult criminal records for folks whose offense was charged prior to their 21st birthday. While this is a tremendous step forward, the law created a significant limit: there can only be one charge on the record, and the Judiciary committee reported a limited bill expanding the eligibility to include multiple charges for one incident.

The Washington Post compiled a comprehensive list of peer-reviewed studies or reviews of municipal and state level data from across the US and found that overwhelmingly, racial disparities against Black individuals was documented at every stage of the legal system – from policing and profiling, court proceedings to sentencing and every stage in between:

“I’ve had more than one retired police officer tell me there is a running joke in law enforcement when it comes to racial profiling: It never happens . . . and it works.”

“A 2018 review of academic research found that at nearly all levels of the criminal justice system, “disparities in policing and punishment within the black population along the colour continuum are often comparable to or even exceed disparities between blacks and whites as a whole.” That is, the darker the skin of a black person, the greater the disparity in arrests, charges, conviction rates and sentencing”.⁹

We ask the legislature to use the expungement legislation to rectify the over-policing and disparate treatment of people of color by expanding eligibility for expungement:

- The current law limits eligibility to the same number and type of offenses regardless of the case outcome of a conviction/adjudication or a favorable disposition. We ask the legislature amend the expungement statute to exclude non-convictions and non-adjudications from the eligibility restrictions based on number of charges or cases.
- Reduce the list of offenses NEVER eligible for expungement to those currently ineligible for sealing: sex-based offenses, homicide and offenses with life-long sentences. The list of

⁹ *There’s overwhelming evidence that the criminal justice system is racist. Here’s the proof.* Washington Post, June 10, 2020. <https://www.washingtonpost.com/graphics/2020/opinions/systemic-racism-police-evidence-criminal-justice-system/>

offenses NEVER eligible for expungement is too broad and doesn't take into account young people's histories of trauma (with a significant number of children dually-involved with the Department of Children and Families and the legal system), nor the circumstances behind a certain offense (fear of violence in their communities or in their own homes). The current expungement law incorporated a process of checks where eligibility only allows a petitioner to make their case to a judge, after a prosecutor's review.

- Support creating opportunities for young people with more than one conviction to have a chance to prove their rehabilitation, whether through increasing the number of maximum convictions eligible for expungement or by the creation of a specialized rehabilitation certificate process for youth who successfully complete a rehabilitation program and have no subsequent offenses on their record. There is a strong incentive for the state to invest in reducing recidivism in high-risk young people, and many of these evidence-based programs work and those young people desist from future offending and become upstanding members of the community.
- States where there are minimal administrative barriers to sealing and/or expungement of juvenile records have significantly reduced re-arrest/recidivism rates and increased college graduation and incomes as these young people transition to adulthood.¹⁰ As the Courts seek funding for technological advances, we recommend that these improvements include an upgrade to MA Probation Service's system of record sealing to permit electronic filing of petitions to seal and automatic sealing after expiration of an applicable waiting period.

Thank you for considering our recommendations. If you have any questions or to follow up, please contact Sana Fadel from Citizens for Juvenile Justice at sanafadel@cfjj.org or 617.338.1050.

Respectfully,
Members of the Massachusetts Juvenile Justice Reform Coalition

¹⁰ Daniel Litwok, *Have You Ever Been Convicted of a Crime? The Effects of Juvenile Expungement on Crime, Educational, and Labor Market Outcomes*. <http://econ.msu.edu/seminars/docs/Expungement%20112014.pdf> and Jeffrey Selbin, Justin McCrary, and Joshua Epstein, *Unmarked? Criminal Record Clearing and Employment Outcomes*, 108 J. Crim. L. & Criminology 1 (2018). <https://scholarlycommons.law.northwestern.edu/jclc/vol108/iss1/1>