

# Massachusetts Coalition for Juvenile Justice Reform

## Summary of Juvenile Justice Provisions in An Act Relative to Criminal Justice Reform (Chapter 69 of the Acts of 2018)

The bill was signed into law on April 13, 2018 and most provisions of the law were effective upon signing (unless otherwise noted below). The law was modified by H.4930\* on October 2018. For more information or to download this document, please visit [cfjj.org/advocacy](http://cfjj.org/advocacy).

### PREVENTING KIDS' ARREST, DELINQUENCY COURT PROCESSING AND CONFINEMENT

#### EXCLUDING CHILDREN UNDER AGE 12 FROM DELINQUENCY PROCEEDINGS

- Raises the lower age of juvenile jurisdiction (for delinquency proceedings) from age 7 to age 12, excluding typically elementary school age children (§72, §73, §§76-79) – *effective July 13, 2018*

#### JUDICIAL AUTHORITY FOR PRE-ARRAIGNMENT JUVENILE DIVERSION

- Authorizes juvenile court judges to divert pre-arraignment in partnership with Probation. Protects children on the diversion track from school exclusion. (§75) – *effective July 13, 2018*
- Young people with Youthful offender indictments are ineligible for diversion, neither are youth charged with violations of chapter 90 §§ 22F, 24, 24D, 24G, 24L, and 24N; chapter 90B §§8, 8A, and 8B; chapter 119A; chapter 209; chapter 209A; chapter 265 (except §13A); chapter 266 §25; chapter 268 §§ 1, 2, 3, 6, 6A, 6B, 8B, 13, 13B, 14, 14B, 15, 15A, 16, 17, 18, 19, 20, 23, 28, 31 and 36; chapter 268A; chapter 269 §§ 10, 10A, 10C, 10D, 10E, 11B, 11C, 11E, 12, 12A, 12B, 12D and 12E; or chapter 272 §§ 1, 2, 3, 4, 4A, 4B, 6, 7, 8, 12, 13, 16, 28, 29A and 29B. (§75) – *effective July 13, 2018*
- Authorizes the diversion of young people to Restorative Justice programs (§80, §202) – *effective July 13, 2018*

#### SCHOOL-BASED ARRESTS

- Decriminalizes “disturbing lawful assembly” and “disorderly conduct” offenses for students (under age 18) when in school or at school events (§§159-160). Additionally, these offenses will also be decriminalized for any child under age 18 for whom this is a first time offense (§72, *effective July 13, 2018* and §203).
- Requires schools with an assigned School Resource Officer to enter into a Memorandum of Understanding setting boundaries that school administration, and not SROs, shall be responsible for enforcing school discipline and SROs are dedicated to public safety. Sets standards for hiring and training of SROs. Model MOU and guidance to be developed by EOPSS with guidance from DESE (§27) – *effective July 13, 2018*

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## CIVIL INFRACTIONS\*

- Youth could no longer be found delinquent for violations of local ordinances, and the first offense of a misdemeanor for which the punishment is a fine and/or incarceration for no more than six month. (§72, *effective July 13, 2018* and §203)
- Allows juvenile court judges to convert delinquency charges to civil infractions, an option available to adults. (§203). \*H.4930 §24 excludes some charges in Ch.119 of offenses against children ineligible for treatment as a civil infraction.

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## RESTORATIVE JUSTICE

- Allows voluntary participation in community-based restorative justice programs, pre- or post-arraignment, with victim and district attorney consent. Successful completion of the program will result in case dismissal. Failure to complete the program will result in the resumption of the court case. (§80, *effective July 13, 2018*)
- Participation in and statements made to the program may not be used as evidence or an admission in the current or subsequent legal case against any participant. Evidence obtained through the program would be inadmissible in court unless obtained through an independent source or inevitably discovered by lawful means.
- Sex offenses, offense against a family or household member, or an offense resulting in death or serious bodily injury are ineligible for participation.

## DEVELOPMENTALLY APPROPRIATE INTERVENTIONS TO REDUCE CRIME AND IMPROVE YOUTH OUTCOMES

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## EXPUNGEMENT

- Creates an opportunity for the expungement of juvenile or criminal records of misdemeanor or some felony offenses (adjudications/convictions and non-adjudications/non-convictions) charges prior to age 21, for first time offenses only (as long as there is no other court appearance on the record). Felony charges (including non-adjudications/non-convictions) including sex offenses, domestic violence (intimate partner and intra-family), armed offenses, and aggravated assaults and battery offenses are ineligible for expungement. (§195) – *effective October 14, 2018*
- Requires a three-year wait for misdemeanors and a seven-year wait for felonies. (§195) – *effective October 14, 2018*
- Allows for expungement of juvenile and criminal records that are a result of false identity, fraud on the court, errors by witnesses, law enforcement or court personnel and for offenses that are no longer a crime. (§195) – *effective October 14, 2018*
- Expungement orders shall be transmitted to DCJIS and all criminal justice agencies and the FBI. Regulations shall be promulgated by the courts, DCJIS and probation (§195) – *effective October 14, 2018*
- Expungement court proceedings shall be closed to the public. (§195) – *effective October 14, 2018*

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## CONFIDENTIALITY AND SEALING OF JUVENILE AND CORI RECORDS

- Adds confidentiality protections by excluding Youthful Offender records (which are tried in juvenile court) from criminal (CORI) records, and defining these records as juvenile records. Only cases tried in superior or district court are subject to CORI. The law did not change the sealing time for juvenile records keeping it at three years. (§4)
- Requires EOPSS to create a booklet given to individuals upon release from commitment to DYS, HOC or DOC explaining their rights to seal CORI records. The law does not explicitly require explanation of rights to seal juvenile records. (§10) – *effective July 13, 2018*
- Juvenile arrest logs are no longer subject to public record (§§25-26) – *effective December 31, 2018*
- Reduces time for sealing of criminal records to 3 years for misdemeanors and to 7 years for felonies. (§§186-187)
- Requires that courts submit the order to seal or expunge records to the State Police. (§106)
- Allows cases of survivors of human trafficking, charged with sex for fee, resorting to a tavern/inn for an immoral purpose, and simple possession offenses to be vacated if the court finds that the offense was committed due to their trafficking (§132) – *effective July 13, 2018*

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## PARENT-CHILD PRIVILEGE

- Creates a privilege between parents and their minor children, when a child is the defendant so that a parent cannot testify against their child. This privilege existed for (defendant) parents prior to this law's passage. A parent would be defined as the birth, adoptive, stepparent, legal guardian or a person who has the legal right to "act in loco parentis" for the child. The privilege is limited if the victim is a member of the family and household. (§111)

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## CODIFYING DYS' INVOLUNTARY ROOM CONFINEMENT POLICY

- Codifies DYS' model involuntary room confinement policy, prohibiting such confinement as punishment, harassment or retaliation (§82)

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## SHACKLING

- Codifies the Juvenile Court's policy banning indiscriminate shackling of children in court (§80)

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## REQUIRE THE NOTIFICATION OF DCF WHEN A CHILD UNDER THE CARE AND CUSTODY OF DCF IS ARRESTED

- Current law requires the notification of a parent or guardian when a child is arrested. The law also requires an arresting police to contact both Probation and the Bail Magistrate when there is a written request to detain a child overnight. The new law would require DCF notification for children in the care and custody of DCF, who would otherwise be at risk of overnight lock-up because DCF was not notified of the arrest. The new law also removes the requirement for police to contact probation for an overnight arrest, so that police are only contacting the Bail Magistrate for an overnight arrest. (§76) – *effective July 13, 2018*

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## CODIFYING FEDERAL PROTECTIONS FOR JUSTICE-INVOLVED YOUTH

- Reinforces the state’s commitment to JJDPA protections for justice-involved youth, prohibiting incarceration (DYS and DOC) of young people for status offenses; and mandating sight and sound separation of young people and adults; prohibiting incarceration of children with active child welfare cases (§80) – *effective July 13, 2018*

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## RIGHT TO COUNSEL AT PAROLE HEARING FOR LIFE SENTENCES

- Codifies SJC case law allowing counsel to be appointed for parole hearings for individuals incarcerated as adults. (§98)

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## ELIMINATING ATTORNEY FEES FOR JUVENILES

- Waives the attorney fees for all young people with delinquency cases. (§107)

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## YOUNG ADULTS 18- TO 24-YEAR-OLDS

- Authorizes HOC’s to operate young adult units. (§96) – *effective December 31, 2018*
- Authorizes specialized young adult probation officers (§183)
- Creates a task force to study the feasibility and impact of raising the age to include 18-20 year olds in the JJ system and to make recommendations for additional developmentally appropriate reforms for justice-involved 18-24 year olds. *See addendum for mandate.* (§221) – *findings due July 1, 2019*

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## CONSENSUAL ADOLESCENT SEXUAL ACTIVITY (AKA ROMEO & JULIET)

- Did not pass.

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## IMPROVING THE TRANSPARENCY AND ACCOUNTABILITY OF THE JUVENILE LEGAL SYSTEM

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### JUVENILE DATA COLLECTION AND REPORTING

- Requires a unique state ID number to track individuals throughout all criminal justice agencies (§10) – *effective July 13, 2018*
- Requires police departments to collect arrest data, including race, gender, age and offense and report it to the Department of Criminal Justice Information Services. DCJIS shall publish quarterly arrest reports (§5, §12) – *effective July 13, 2018*
- Requires EOPSS to set data collection and reporting standards for incarcerated adults in DOC and HOC and recidivism data. Also requires EOPSS to set standards for reporting of racial and ethnic composition of the criminal justice system. Does not require District Attorneys to collect and report data, and though setting standards may be helpful, the law does not require any agency to collect and report juvenile justice data (§10) – *effective July 13, 2018*

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## JUVENILE JUSTICE POLICY AND DATA BOARD

- Creates a (permanent) Juvenile Justice Policy and Data board which shall report on:
  - Childhood trauma that leads to juvenile justice involvement (annual reports required) (§17) – *effective July 13, 2018*
  - Annual reports on data capacities of criminal justice agencies; study changes to jurisdiction; and limitations of data systems of all juvenile justice agencies. Also requires a one-time report on the OCA’s role in creating a tool for the uniform collection of basic demographic information (§80) – *effective July 13, 2018*
  - See addendum for mandate

## OTHER ISSUES IMPACTING CHILDREN AND YOUTH

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### BAIL AND DETENTION REFORM

- Codifies the *Brangnan* SJC case requiring judges to consider a person’s ability to pay when setting bail. (§100)

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### PRIMARY CAREGIVERS

- Requires DOC and HOC to report status as primary caregiver of a minor child (§10, §207) – *effective July 13, 2018*
- Creates a task force on justice involved women (§223) – *annual reports due December 31<sup>st</sup>*

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### FELONY THRESHOLD

- Raises the felony threshold from \$250 to \$1,200 (§136, §137, §141, §143, §146, §154)

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### DRIVER’S LICENSE COLLATERAL CONSEQUENCES FOR TAGGING AND VANDALISM

- Repeals the penalty of driver’s license suspension for vandalism and tagging offenses (§§152-153)

# ADDENDUM: Findings and Recommendation Tasks of the JJ Board and Young Adult Task Force

## JUVENILE JUSTICE POLICY AND DATA BOARD

- Childhood trauma topics for findings and recommendations in annual report:
  - Gender responsive and trauma-informed approaches to treatment services for justice involved young people
  - Identifying school-aged children experiencing (particularly undiagnosed) trauma
  - Providing services to child witnessing violence, crime or maltreatment
  - Study: (1) feasibility of providing school-based trainings on early trauma focused interventions, trauma-informed screening and assessment, and recognizing trauma; (2) necessity for diagnostic tools
- Data collection recommendation due June 30, 2019:
  - feasibility of the child advocate creating and annually updating an instrument to record aggregate statistical data including age, gender, racial or ethnic category and type of crime for every contact a juvenile has with justice agencies and providers
  - feasibility of all justice offices and departments (courts, police, DAs, agencies, probation, contract organizations) to use the instrument to collect data.
  - best practices for departments to submit data to the child advocate.
- JJ Board topics for findings and recommendations in annual report:
  - Recommendations on statutory changes to:
    1. improve public safety,
    2. promote the best interests of children and young adults in care/custody of DCF, DYS, juvenile court
    3. improve transparency and accountability to state-funded services for children and young adults in the juvenile justice system
    4. promote the efficient sharing of information between the executive branch and the judicial branch to ensure the regular collection and reporting of recidivism data; and
  - Analysis of the capacities and limitations of the data systems and networks used to collect and report state and local juvenile caseload and outcome data:
    1. a review of the relevant data systems, studies and models from the commonwealth and other states;
    2. identification of changes or upgrades to current data collection processes to submit data to meet JJDPA data requirements;
    3. identification and evaluation of gender, racial and ethnic disparities within the juvenile justice system and recommendations regarding ways to reduce such disparities;
    4. recommendations for creation of a web-based statewide information center to make relevant juvenile justice information on operations, caseloads, dispositions and outcomes

- available in a user-friendly, query-based format for stakeholders and members of the public, including a feasibility assessment of implementing such system;
- 5. a plan for improving the current juvenile justice reporting requirements, including streamlining and consolidating current requirements without impacting data collection and including a detailed analysis of the information technology and other resources necessary to implement improved data collection;
- 6. any other matters which the board determines may improve the collection and interagency coordination of juvenile justice data;
- the impact of any legislation that changes the jurisdiction or functioning of the juvenile court:
  1. any change in the average age of children and young adults involved in the juvenile justice system;
  2. the types of services used by designated age groups and the outcomes of those services;
  3. the types of delinquent acts or criminal offenses that children and young adults have been charged with since the enactment and implementation of such statutory change;
  4. the gaps in services identified by the committee with respect to children and young adults involved in the juvenile justice system, including, but not limited to, young adults who have attained the age of 18 after being involved in the juvenile justice system, and recommendations to address such gaps in services; and
  5. the strengths and barriers identified by the board that support or impede the educational needs of children and young adults in the juvenile justice system, with specific recommendations for reforms;
- the quality and accessibility of diversion programs juveniles;
- an assessment of the community-based services for young people who are under juvenile court supervision, or care or custody of DYS;
- an assessment of the number of dually involved youth adjudicated delinquent or youthful offender while under the supervision or custody of DCF;
- an assessment of the overlap between the juvenile justice system and the mental health care system for children.

## YOUNG ADULT JUSTICE TASK FORCE

- Evaluate the advisability, feasibility and impact of changing the age of juvenile court jurisdiction to defendants younger than 21 years of age:
  - benefits and disadvantages of raising the age;
  - the impact of integrating 18 to 20 year olds into the under-18 population in the care and custody of DYS;
  - the ability to segregate young adults in the care and custody of DYS from younger;
  - potential costs to the state court system and state and local law enforcement.

- Resources and facilities, if any, that could be reallocated from the adult system to the juvenile system and the advisability and feasibility of establishing a separate young adult court for persons aged 18 to 24.
- Recommendations for the establishment, implementation increased and targeted age-appropriate HOC and DOC programming to young adults (18 to 24), and the establishment of young adult correctional units:
  - identifying the need and resources to provide appropriate training to corrections and court staff;
  - recommendations for programming, including youth development and mentoring programs, mental health access, anger management and de-escalating conflicts, education opportunities and employment and vocational training;
  - recommendations to improve access to family and increase family involvement;
  - identifying opportunities to partner with or access appropriate programs or services within DYS;
  - identifying any costs or savings from implementing such programs and identifying any grants or other opportunities to reduce such costs;
  - reviewing policies and best practices from other jurisdictions and experts in the field;
  - reviewing existing models and programs currently being provided; and
  - identifying any costs related to the implementation of new protocols for correction's and court staff, community supervision staff and behavioral health providers.

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