

SENATE No. 2424

Senate, July 12, 2016 -- Text of the Senate Bill promoting transparency, best practices, and better outcomes for children and communities (Senate, No. 2424) (being the text of Senate, No. 2417, printed as amended)

The Commonwealth of Massachusetts

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

An Act promoting 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. Subsection (b) of section 37P of chapter 71 of the General Laws, as
2 appearing in the 2014 Official Edition, is hereby amended by striking out the second paragraph
3 and inserting in place thereof the following paragraph:-

4 In selecting a school resource officer, the chief of police shall assign candidates that the
5 chief believes would strive to foster an optimal learning environment and educational
6 community; provided, however, that the chief of police shall give preference to candidates who
7 have received specialized training in (i) child and adolescent development, de-escalation and
8 conflict resolution techniques with children and adolescents; (ii) behavioral health disorders in
9 children and adolescents; (iii) alternatives to arrest and other juvenile justice diversion strategies;
10 and (iv) behavioral threat assessment methods. The appointment shall not be based solely on
11 seniority. The performance of school resource officers shall be reviewed annually by the
12 superintendent and the chief of police. The superintendent and the chief of police shall enter into

13 a written memorandum of understanding to clearly define the role and duties of the school
14 resource officer which shall be placed on file in the offices of the school superintendent and the
15 chief of police. The memorandum of understanding shall: (A) state that the school resource
16 officer may use traditional policing techniques, including arrest, citation and court referral only
17 when necessary to address and prevent serious, real and immediate threats to the physical safety
18 of the school and the wider community; (B) state that school resource officer shall not become
19 involved in routine discipline in response to nonviolent school infractions, including tardiness,
20 loitering, use of profanity, dress code violations and disruptive or disrespectful behaviors; (C) set
21 forth protocols for utilizing the expertise of mental health professionals in addressing the needs
22 of students with behavioral and emotional difficulties in crisis situations and otherwise; (D)
23 require school resource officers to devote professional development time to school-based or
24 other training activities that promote heightened awareness of the various challenges faced by
25 students in the school to which they are assigned, with an emphasis on those that impart
26 information regarding child development, including the incidence and impact of adverse
27 childhood experiences, de-escalation techniques and implicit or unconscious bias; (E) specify
28 how the school and police departments shall regularly monitor and assure that school resource
29 officer is complying with the terms of the memorandum of understanding and avoiding
30 inappropriate arrest, citation or court referral; and (F) specify the manner and division of
31 responsibility for collecting and reporting all school based arrests, citations and court referrals of
32 students to the department of elementary and secondary education in accordance with regulations
33 promulgated by that department which shall collect and publish disaggregated data in a like
34 manner as school discipline data is made available for public review.

35 SECTION 1A. Section 23 of chapter 90 of the General Laws, as so appearing, is hereby
36 amended by inserting after the figure “\$500”, in line 53, the following words:- ; provided,
37 however, that notwithstanding any general or special law to the contrary, a finding of
38 delinquency shall not be entered against a person against whom such a complaint has been
39 issued.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

86 (i) the seriousness of the present charge, including whether the charge supports a
87 concern that the juvenile has an incentive to attempt to escape;

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

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

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

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

94 (vi) any previous or attempted escapes;

95 (vii) whether the juvenile poses a risk of flight from the courtroom;

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

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

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

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

106 SECTION 9A. Chapter 120 of the General Laws, as appearing in the 2014 Official
107 Edition, is hereby amended by inserting after section 10 the following section:-

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

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

113 If a prisoner is serving a life sentence for a conviction of murder as defined in section 1
114 of chapter 265 which was committed before the prisoner's eighteenth birthday, the prisoner shall
115 have the right to have appointed counsel at the parole hearing if the prisoner is deemed to be
116 indigent and shall have the right to funds for experts as determined by the standards in chapter
117 211D.

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

120 Fourth, Except in a proceeding before an inquest, grand jury, trial of an indictment or
121 complaint or any other criminal, delinquency or youthful offender proceeding where the victim
122 in the proceeding is not a family member and does not reside in the family household, neither the
123 parent nor minor child shall testify against the other; provided, however, that for the purpose of
124 this clause, “parent” shall mean the biological or adoptive parent, stepparent, foster parent, legal
125 guardian or any other person who has the right to act in loco parentis for the child; and provided,
126 further, that in cases where the victim is a family member and resides in the family household,
127 the parent shall not testify as to any communication with the child that was for the purpose of
128 seeking advice regarding the child’s legal rights.

129 SECTION 13. Section 53 of chapter 272 of the General Laws, as so appearing, is hereby
130 amended by inserting after the figure “\$150”, in line 10, the following words:- “; provided,
131 however, that notwithstanding any general or special law to the contrary, no person who violates
132 this subsection shall have a finding of delinquency entered against that person for a first
133 offense.”

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

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

139 (b) Notwithstanding section 100A or any other general or special law to the contrary, a
140 person of any age who has a record of juvenile or criminal court appearances and dispositions on
141 file with the office of the commissioner of probation may have misdemeanor convictions or
142 adjudications expunged from that person's criminal and court records if the offense was
143 committed before the person turned 18 years of age and upon the filing of a petition with a judge
144 in the court in which the appearance or disposition occurred. The form of the petition shall be
145 furnished by the commissioner of probation. Before a petition is filed, the person shall have: (i)
146 completed a sentence or disposition imposed by the court or, where applicable, a period of
147 commitment or probation imposed pursuant to section 58 of chapter 119; (ii) not been
148 adjudicated delinquent or found guilty of any new criminal offense in the commonwealth before
149 the completion of that person's juvenile sentence; and (iii) not been adjudicated delinquent or
150 found guilty of any new criminal offense in the commonwealth since the completion of a
151 sentence or disposition imposed by the court or, where applicable, a period of commitment or
152 probation imposed pursuant to said section 58 of said chapter 119. The court may, in the
153 discretion of the court, upon motion of that person, expunge the appearance or disposition
154 recorded for a misdemeanor conviction or adjudication if the offense was committed before the
155 person turned 18 years of age.

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

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

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

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

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

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

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

184 court; the secretary of health and human services; the commissioner of probation; the
185 commissioner of youth services; the commissioner of children and families; the commissioner of
186 mental health; the commissioner of transitional assistance; the executive director of Citizens for
187 Juvenile Justice, Inc.; the president of the Massachusetts Society for the Prevention of Cruelty to
188 Children; the executive director of the Children’s League of Massachusetts; the executive
189 director to the Massachusetts District Attorneys Association; a representative of the
190 Massachusetts Chiefs of Police Association; and 2 members to be appointed by the governor,
191 each of whom shall have experience or expertise related to the juvenile justice system or the
192 design and implementation of juvenile justice data systems or both.

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

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

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

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

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

205 The task force shall file a report on the options for improving interagency coordination,
206 modernization and upgrading of state and local juvenile justice data and information systems.
207 The report shall include, but not be limited to: (i) recommended additional collection and
208 reporting responsibilities for agencies, departments or providers; (ii) recommendations for the
209 creation of a web-based statewide clearinghouse or information center that would make relevant
210 juvenile justice information on operations, caseloads, dispositions and outcomes available in a
211 user-friendly, query-based format for stakeholders and members of the public, including a
212 feasibility assessment of implementing such a system; and (iii) a plan for improving the current
213 juvenile justice reporting requirements, including streamlining and consolidating current
214 requirements without sacrificing meaningful data collection and including a detailed analysis of
215 the information technology and other resources necessary to implement improved data
216 collection. The report shall be filed with the clerks of the house and senate not later than
217 January 1, 2017 and the clerks shall forward the same to the senate and house chairs of the joint
218 committee on the judiciary and the senate and house chairs of the joint committee on children,
219 families and persons with disabilities.

220 SECTION 17. The trial court departments, including the juvenile court department, shall
221 assess the feasibility and utility of and make recommendations concerning the creation of youth
222 status as a distinct mitigating factor in any proceeding against a juvenile.

223 As part of the assessment, the courts shall consider:

224 (i) the procedure for obtaining a finding of youth status in a given proceeding, including
225 the type, if any, of presumption that should be made with respect to youth status as a distinct

226 mitigating factor in any proceeding against a juvenile and the burden required to overcome any
227 presumption;

228 (ii) the issues that a finding of youth status should mitigate including, but not limited to,
229 intent, knowledge, premeditation and purpose or the reasonableness of a juvenile's belief that the
230 juvenile faced an imminent threat of death or serious bodily injury or the reasonableness of the
231 juvenile's perception of the amount of force that was necessary to combat the perceived threat;
232 and

233 (iii) the sentencing modification that should attach in proceedings where youth status has
234 been found to be a mitigating factor.

235 The trial court departments shall collaborate to prepare a report which shall include their
236 findings and recommendations and drafts of legislation necessary to implement those
237 recommendations. The report shall be submitted to the clerks of the house and senate not later
238 than August 1, 2017 and the clerks shall forward the report to the senate and house chairs of the
239 joint committee on the judiciary.