

## An Act Relative to Expungement – H.1451 and S.936

(Lead Sponsors: Senator Creem and Representatives Decker and Khan)

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Expungement is an important tool to allow individuals to completely and fully re-integrate into society without the burden of a criminal record, particularly when the record has no predictive value of future offending. **More importantly, expungement is an important tool to rectify the documented systemic racism at every point of the criminal legal system.** 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.**<sup>1</sup>

**Progress** | The legislature has advanced expungement of juvenile and adult criminal records as a component of criminal justice and police accountability reforms:

- ✓ multiple charges from one incident shall count as one charge; (passed 2020)
- ✓ requires a minimum of 3 or 7 years without re-offending to demonstrate reduced risk and judicial oversight and final decision power; (passed 2018)
- ✓ increases number of cases eligible for expungement from one to two (passed 2020)

**Unfinished Business** | While this is a tremendous step forward, this bill would bring the law a step closer to the principles of youth justice and goals race equity: **The risk of young people – who have not re-offended in the subsequent FOUR years – is equal to the risk of the general population, regardless of number or type of prior offenses.** This bill would:

- ❑ **limit offenses with a lifetime ban on expungement to those resulting in serious bodily injury and sex-based offenses resulting in sex offender registration** | The waiting period automatically excludes offenses with lengthy and life-long sentences. Sex-based offenses which are ineligible for sealing should also not be eligible for expungement. The list of 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).
- ❑ **allow eligibility for non-convictions and non-adjudications** | The current law limits eligibility to cases with no more than two non-convictions/non-adjudications. However, if the legal system declares a young person is not guilty of an offense, expungement of such records should not be limited with a record following them for their lifetime.
- ❑ **create an incentive to desistance from re-offending by removing barriers to expunging cases with juvenile adjudications** | Many young people may need multiple chances to exit the criminal justice system and the overwhelming majority do and pose no risk to public safety. This bill [incentivizes](#)<sup>2</sup> young people to get back on the right track and not give up with an adjudication on their record.
- ❑ **prohibit dissemination of finger print juvenile arrests to the FBI, unless it is to submit a sealing or expungement order** | While Massachusetts law protects juvenile records from

public dissemination, arrest records submitted to the FBI are available to the public circumventing Massachusetts confidentiality laws.

- **evaluate impact and implementation of the expungement law** | The bill would require Massachusetts Probation Services to annually report on expungement petitions, outcomes and reasons for denials to allow policy makers to evaluate the impact of the legislation.

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Criminal records are primarily a tool to measure future risk. Yet there is a point where these records have no predictive value. The assumption is that individuals with a criminal record are at a higher risk of future criminal activity. However, research that followed a large cohort of individuals over more than three decades found that the predictive value of a record diminished over time. Individuals whose last arrest was as in their youth, had little to no difference in risk of future offending compared to those with no prior record after four years. The mere presence of a juvenile court record is neither an indication of guilt nor an indication of public safety risk. Massachusetts' juvenile court data show that 10%-13% of the cases resulted in an adjudication of delinquency.

**Impact of Expungement on Reducing Recidivism**

- ✓ 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.
- ✓ Criminal convictions (for adults) in Canada are routinely "set aside" through expungement or pardons. A review of the recidivism rate of people whose convictions were set aside found that "the ability to grant offenders a pardon may be an important step in restoring a person's self-perceptions as a non-offender and, in turn, may actually increase public safety in Canada by reducing recidivism within this population."

**Permanent Juvenile and Criminal Court Records are Barriers to Success and Re-Entry** | A juvenile record is a barrier to accessing higher education, employment, maintaining housing, or pursuing a career in the military. Even decades later, a juvenile court record can prevent an individual from becoming a foster parent or obtaining certain types of employment. Juvenile records are also available to local law enforcement agents, courts, and the armed forces. A permanent court record that interferes with individuals' access to education and employment decades later undermines the rehabilitative purpose of juvenile court proceedings by attaching precisely the stigma that our juvenile court system is intended to avoid.

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<sup>1</sup> Daniel Litwok, "Have You Ever Been Convicted of a Crime? The Effects of Juvenile Expungement on Crime, Educational, and Labor Market Outcomes". Available at <http://econ.msu.edu/seminars/docs/Expungement%20112014.pdf>

<sup>2</sup> Rick Ruddell and Thomas Winfree, Jr. "Setting Aside Criminal Convictions in Canada: A Successful Approach to Offender Reintegration". *The Prison Journal* 2006 86: 452