

CONFERENCE COMMITTEE REPORT
S.2371, AN ACT RELATIVE TO CRIMINAL JUSTICE REFORM

JUVENILES

- Raises the minimum age of criminal responsibility from **seven to twelve**.
- Decriminalizes first offense misdemeanors for which a punishment is a fine or imprisonment of not more than 6 months and decriminalizes the offenses of disturbing a public assembly and disorderly conduct committed by students on school grounds.
- Eliminates license revocation as a penalty for vandalism and expands Good Samaritan protections for alcohol incapacitation.
- Establishes a Juvenile Justice Policy and Data Board to analyze and report on impacts of legislation, diversion, and programs within the juvenile justice system.
- Creates a Childhood Trauma Task Force to study and recommend gender responsive and trauma-informed approaches to treatment of juveniles in the juvenile justice system.
- Authorizes creation of young adult units within correctional facilities.
- Requires juvenile arrests to be entered into non-public police logs.
- Establishes a task force to examine and study the treatment and impact of the court system and the correctional system on individuals ages 18 to 24.
- Limits the shackling of juveniles and prohibits the placement of a person in DYS custody in involuntary room confinement as a punishment.

DIVERSION AND RESTORATIVE JUSTICE

- Expands diversion programs to the Juvenile Court and removes the existing age restrictions on diversion in the District Court.
- Requires district attorneys to create pre-arraignment diversion programs for active armed service members, veterans, and individuals with substance abuse disorders and mental illness.
- Allows a victim's testimony to be considered during requests for diversion.
- Establishes restorative justice as a voluntary program available to adults and juveniles pre-arraignment to help victims and offenders.

BAIL REFORM

- Establishes that bail should not be set at an amount higher than what would reasonably assure the appearance of the person before the court and requires that a person's financial resources be taken into account when determining bail.
- Requires written or orally recorded findings as to why nonfinancial conditions or an affordable amount would not assure the person's appearance if bail is set at an amount that is likely to lead to the long term pre-trial detention of the person.
- Allows judges to use community correction programs for pre-trial release.
- Creates a pre-trial services unit to notify defendants of upcoming court dates.

MANDATORY MINIMUMS AND DRUG CRIMES

- Eliminates the following mandatory minimum sentences for certain low level drug offenses that do not involve trafficking or minors:

Mandatory and Statutory Minimums

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| ○ First offense Dist/Poss w/ intent Cocaine | 1 year minimum |
| ○ First offense Dist/Poss w/ intent Meth | 1 year minimum |
| ○ First offense Dist/Poss w/ intent Phencyclidine | 1 year minimum |
| ○ Sec./Subs. Dist/Poss w/ intent Class C | 1.5 year minimum |
| ○ Sec./Subs. Dist/Poss w/ intent Class B | 2 year minimum |
| ○ Sec./Subs. Dist/Poss w/ intent Cocaine | 3.5 year minimum |
| ○ Sec./Subs. Dist/Poss w/ intent Meth | 3.5 year minimum |
| ○ Sec./Subs. Dist/Poss w/ intent Phencyclidine | 3.5 year minimum |
| ○ Sec./Subs. Dist/Poss w/ intent Class D | 1 year minimum |
| ○ Dist/Poss w/ intent drug paraphernalia | 1 year minimum |
- Repeals the offense of being in the presence of heroin.
 - Limits the existing mandatory minimums for school zone violations to only apply when the defendant used violence or possessed a firearm, directed another to commit a felony in violation of chapter 94C, or distributed to a minor or induced a minor to distribute.
 - Adds carfentanil and U-47700 to Class A and moves fentanyl from Class B to Class A. Adopts the federal schedule for synthetic opioids that are not otherwise classified into Class A.
 - Strengthens the current fentanyl trafficking law by changing 10 net grams of fentanyl to 10 grams of a mixture containing fentanyl, and adding a minimum penalty of 3.5 years.
 - Establishes a penalty for anyone who knowingly trafficks in Carfentanil in any amount by imprisonment for 3.5 to 20 years.

CORI REFORM

- Reduces the wait time to seal a conviction from **10 years to 7 years for a felony, and from 5 years to 3 years** for a misdemeanor. It also allows a conviction for resisting arrest to be sealed.
- Expands the ability of an applicant with a sealed record to be able to answer “no record” on **housing applications, and professional and occupational license applications.**
- Establishes protections for businesses and landlords who shall be presumed to have no notice or ability to know about criminal records that have been sealed or expunged.

EXPUNGEMENT

- Creates expungement for the first time in Massachusetts; currently records can only be sealed. This bill establishes a process for expunging certain juvenile and criminal records for young adults (18-21), and permits the court to expunge records in cases where there was fraud upon the court or where the offense is no longer a crime.
- Prevents third party data mining companies from disseminating expunged records and directs the commissioner of probation to request the FBI and DOJ to seal or expunge a record.

FELONY THRESHOLDS

- Increases the threshold for a felony from \$250 to \$1,200 for theft and destruction of property offenses.

FINES AND FEES

- Establishes a uniform standard by which certain fines and fees may be reducible or waivable upon a showing that a “substantial financial hardship” would result from the imposition of the fees.
- Increases the daily incarceration credit from \$30/day to \$90/day in order to reduce the time spent in confinement for not paying fines or expenses.
- Adds a **one year grace period** after release from custody during which a person shall not be assessed parole fees, and adds a **six month grace period** after release from custody for supervised or administrative probation fees.

SOLITARY CONFINEMENT AND MEDICAL PAROLE

- Establishes regulation and accountability surrounding the use of restrictive housing.
- Requires regular reviews and mental health screenings of inmates in restrictive housing to be evaluated for return to general population.
- Expands access to vocational, educational and rehabilitative programs for prisoners in restrictive housing.
- Creates a **restrictive housing oversight committee** to collect data on the use of segregation and its impact on inmates, violence, recidivism, and costs. The committee will report this data annually to the legislature.
- Prohibits the use of restrictive housing for pregnant women and prohibits using an inmate's gender identity or expression uncommon in the general population as grounds for placing an LGBTQ individual in restrictive housing.
- Establishes a process through which an inmate with a terminal illness or permanent incapacitation, an inmate's family, an inmate's medical provider, or institutional staff may initiate a petition to have the inmate medically paroled.

PROTECTIONS FOR HUMAN TRAFFICKING VICTIMS

- Allows for vacating a conviction or adjudication as a delinquent child of certain prostitution offenses and simple possession of a controlled substance if a court finds that the defendant participated in the offense while a victim of human trafficking.
- Provides the Victims of Human Trafficking Fund with additional sources of fee revenue.

PRIMARY CARETAKER

- In cases where incarceration is not required by law, a defendant may file a motion requesting that the judge take the defendant's role as a primary caretaker for a dependent child into consideration before imposing a sentence. If such a motion is filed, the judge shall make written findings on the defendant's status as a primary caretaker and potential alternatives to incarceration.

VICTIM'S COMPENSATION FUND

- There is no change to the current law prohibiting an offender or accomplice from collecting compensation with respect to a crime committed by the offender.
- This bill adds language that, in a case of the victim's death by homicide, any reduction in the award due to the victim's contributory acts shall not be reduced below the costs for a reasonable funeral subject to the existing \$8,000 limit on such expense.

CORPORATE MANSLAUGHTER

- Creates a penalty of a fine of not more than \$250,000 and optional debarment of up to 10 years for a corporation or other business organization that is convicted of manslaughter.

SOLICITATION

- Creates the crime of solicitation that is tied to the severity of the underlying crime.

INCREASED OUI PENALTIES

- Updates the OUI laws to include increasing penalties for a sixth, seventh, eighth, and ninth or subsequent offense. This allows for enhanced punishments for the most egregious and dangerous re-offenders.

SEXUAL ASSAULT TRACKING SYSTEM

- Directs EOPSS to convene a task force to develop and implement a statewide sexual assault tracking system to be used by law enforcement agencies, hospitals and medical facilities and district attorneys.
- Requires EOPSS to ensure that statewide policies and procedures for contact with victims are adopted.

DNA COLLECTION

- Under current law, an adult convicted of a felony and a juvenile adjudicated as a youthful offender for committing an offense punishable by state prison time shall submit a DNA sample to the state police within one year of conviction/adjudication or release from incarceration, whichever occurs first.
- This legislation removes the one year waiting period to submit a DNA sample and requires the sample to be collected forthwith upon conviction, within 10 days of intake to a correctional facility, or as a condition of probation to avoid a delay or failure to collect the required sample.

DATA COLLECTION

- Creates comprehensive data collection initiatives to evaluate policy changes in this bill and in the Council of State Governments legislation. Along with data collection for solitary, medical parole, and juveniles, this bill establishes data collection practices to include:
 - National Incident-Based Data Reporting (NIBRS)- standardizes arrest data across the Commonwealth.

- Probation Central File (PCF) number- allows for cross-tracking through the criminal justice system.
- Sheriffs Inmate Management System (SIMS) - establishes uniform data collection in county jails and Houses of Correction.
- Offense- based tracking number – requires a unique identifying number for each arrest or charge to enable tracking offenses and dispositions.
- Fingerprint-based state identification number - ensures the accurate identification of individuals through the criminal justice system and allows for efficient updating of records upon disposition, sealing, or expungement.

SPECIAL COMMISSIONS

- **Forensic Science Oversight Board** – creates a board to investigate and study the state police crime lab and forensic techniques used in the Commonwealth.
- **Special Commission to study the ability of defendants to pay fines and fees-** establishes a commission to study the ability of a defendant to pay fines and fees, including the establishment of uniform definitions and standards for indigency and “substantial financial hardship” and the feasibility of establishing a portal for the Officer of the Commissioner of Probation to access DOR tax returns when determining whether a person would suffer a substantial financial hardship if ordered to pay fines or fees.
- **Justice-Involved Women Panel-** creates a panel to review and report on the impact of criminal justice laws on women. The panel shall make recommendations on gender-responsive and trauma-informed approaches to address the needs of justice-involved women.
- **Special Commission to study health and safety of LGBTQ individuals in correctional institutions-** creates a commission to evaluate current access to appropriate healthcare services and healthcare outcomes in DOC and HOC facilities.
- **Study on telephone services in HOCs and DOCs-** directs the department of correction and the department of telecommunications to study and report on the cost of telephone services provided to inmates.
- **Bail Reform Commission-** creates a commission to evaluate the policies and procedures related to the bail system and recommend improvements.