

S. 2185 CJ Summary

PROPOSED LEGISLATION:

- Provides that cases that are dismissed before arraignment are not recorded on a person's criminal offender record information ("CORI").
- Clarifies in the definition of CORI that, in a case involving a juvenile, the case will only appear on the juvenile's record where it was tried as an adult in superior court or tried as an adult after transfer of a case from a juvenile session to another trial court department.
- Eliminates the parole board's authority to regulate criminal identification information.
- Requires the state police to transmit criminal case disposition information, including sealing and expungement orders, to the Federal Bureau of Investigation ("FBI") to ensure that the FBI's Interstate Identification Index reflects case outcomes.
- Requires the Executive Office of Public Safety and Security ("EOPSS") to facilitate a criminal history system that utilizes a fingerprint-based state identification number as the unique identifier of a person from the point of arrest or charging through each contact the person has with the criminal or juvenile justice systems.
- Permits cities and towns to elect to decriminalize certain misdemeanors and enforce them as civil violations.
- Requires that police log entries about juveniles be kept in a separate, non-public log.
- Outlines the procedure that chiefs of police must follow when selecting a school resource officer and establishes criteria for memoranda of understanding between school superintendents and police departments.
- Repeals a provision requiring that the Registrar of Motor Vehicles suspend a person's license when an arrest or default warrant issues.
- Prohibits a finding of delinquency for a first offense of driving with a suspended or revoked license.
- Requires the court to waive or reduce certain surcharge assessments for operating a motor vehicle under the influence and operating a motor vehicle negligently if the assessment would cause substantial financial hardship to the person or his or her family or dependents.
- Prohibits a finding of delinquency for a first offense of

operating a motor vehicle without a liability policy, bond, or security deposit.

- Permits the Registry of Motor Vehicles to institute a payment plan to allow violators to discharge fees and fines assessed for license suspensions in monthly payments.
- Adds fentanyl, fentanyl derivatives, and carfentanil to Class A controlled substances and incorporates by reference synthetic opioids classified in schedule I and II of the federal schedules that are not otherwise classified in the Massachusetts General Laws.
- Repeals the punishment to state prison for not less than 3½ years nor more than 15 years for a second or subsequent offense of possession with intent to distribute a Class A controlled substance.
- Repeals the punishment to state prison for not less than 2 years nor more than 10 years for a second or subsequent offense of possession with intent to distribute a Class B controlled substance.
- Repeals the punishment to jail for not less than 1 year nor more than 2½ years for a first offense of possession with intent to distribute methamphetamine and cocaine, and further repeals the second and subsequent offense punishment of prison for not less than 3½ years nor more than 15 years for such an offense.
- Repeals the punishment to a house of corrections for not less than 18 months for a second or subsequent offense of possession with intent to distribute a Class C controlled substance.
- Repeals the punishment to a house of corrections for not less than 1 year for a second or subsequent offense of possession with intent to distribute a Class D controlled substance.
- Repeals the punishment to state prison for not less than 2 years nor more than 15 years for trafficking 18 to 36 grams of cocaine or methamphetamine.
- Repeals the punishment to state prison for not less than 3½ years nor more than 20 years for trafficking 36 to 100 grams of cocaine or methamphetamine.
- Adds fentanyl, fentanyl derivatives, and carfentanil to the sentencing scheme for heroin trafficking, and repeals the

existing sentencing scheme for fentanyl trafficking.

- Repeals the mandatory minimum punishment of 1 year in a house of corrections for selling drug paraphernalia.
- Repeals the offense of distributing drugs within 300 feet of a school facility or 100 feet of a park or playground between the hours of 5 A.M. and midnight.
- Repeals the mandatory minimum sentence of 2½ years to state prison for a second or subsequent offense of heroin possession.
- Permits non-public departmental records of drug possession charges maintained by police and other law enforcement agencies to be sealed in cases of a first offense.
- Prevents persons seeking medical assistance for themselves or others experiencing drug-related overdoses from being found in violation of conditions of probation, parole, or pre-trial release.
- Repeals the crime of being in the presence of heroin.
- For the purpose of a defendant charged with a drug offense who requests an examination to determine if he or she is eligible for drug diversion, permits an addiction specialist to undertake the evaluation, rather than requiring it to be a psychiatrist or psychologist.
- Expands drug diversion eligibility beyond first time offenders and to dependent persons who distribute.
- Amends the procedures for when a juvenile is arrested outside of court hours to remove the requirement that the probation officer on duty be notified and further provides a procedure to notify the Department of Children and Families for children arrested who are in the Department's care and custody.
- Raises the lower age of juvenile court jurisdiction from 7 to 12 years old.
- Permits diversion of juveniles before arraignment.
- Prohibits juveniles from being shackled in court proceedings unless the judge makes a finding on the record that the juvenile presents an immediate and credible risk of escape, poses a threat to public safety, or that the restraints are necessary to maintain court order.
- Permits a juvenile to participate in community-based restorative justice programs.

- Prohibits the Department of Revenue from suspending licenses for the non-payment of child support when the amount in question is less than \$500.
- Prohibits the Department of Youth Services from using involuntary room confinement as punishment for juveniles in their custody.
- Requires the superintendents of the correctional institutions and the keepers of jails and houses of correction to maintain a record of fingerprint-based state identification numbers.
- Defines "restrictive housing" as a placement where a prisoner is confined to a cell for more than 22 hours per day.
- Provides for minimum standards for those placed in restrictive housing, including meals at the same standard as those provided to the general population, three showers per week, rights of visitation, access to reading and writing material, access to radio and television, periodic mental and psychiatric examinations, medical and psychiatric treatment as needed, access to canteen, and access to disability accommodations.
- Requires that an inmate be screened by a qualified mental health professional before being placed in restrictive housing.
- Prohibits the use of restrictive housing for inmates with serious mental illnesses or those for whom it is otherwise clinically contraindicated, except for 72 hours while an appropriate placement is found.
- Provides that, if an inmate with a serious mental illness is placed in restrictive housing and is not relocated within 72 hours, the commissioner or sheriff must justify the placement in writing.
- Provides that, if an inmate is placed in restrictive housing to protect the prisoner from harm from others and is not relocated within 72 hours, the commissioner or sheriff must justify the placement in writing.
- Prohibits using as grounds for placement in restricted housing the fact that a person is or is perceived to be lesbian, gay, bisexual, transgender, queer or intersex or that a person has or is perceived to have a gender identity or expression or sexual orientation uncommon in the general population of the facility.
- Requires inmates placed in restrictive housing to receive regular placement reviews, and to be released unless the prisoner is determine to pose an unacceptable risk to the safety

of the institution.

- Requires placement reviews to take place at the following intervals:
 - Every 72 hours for a prisoner with a serious mental illness or who has been placed in restrictive housing to protect the inmate from others;
 - Every 15 days if the inmate is awaiting the adjudication of an alleged disciplinary breach;
 - Every 6 months for a prisoner committed to restrictive housing for a disciplinary breach; and
 - Every 90 days for any other prisoner held in restrictive housing.
- Requires training of corrections officers deployed to restrictive housing.
- Requires extensive reporting about restrictive housing.
- Requires that prisoners held in restrictive housing for periods greater than 60 days have access to vocational, educational and rehabilitative programs.
- Authorizes the Commissioner of Corrections to allow conditional medical parole of prisoners who are incapacitated or terminally ill and pose no public safety risk.
- Eliminates fees charged for parole supervision.
- Provides that an indigent prisoner serving a life sentence for an offense committed before reaching the age of criminal majority has the right to counsel at parole hearings and the right to funds for experts.
- Increases, from \$30 to \$90, the per day credit a prisoner receives toward discharging a fine or fee for which the prisoner is confined
- Provides that a person shall not be imprisoned solely for the nonpayment of fines or fees if he or she makes a showing that he or she is unable to pay without imposing substantial hardship on the person or the person's family or dependents.
- Provides that a person shall not be incarcerated solely for the nonpayment of money if the person was not offered an attorney for the commitment portion of the case.
- Prohibits the detention of a juvenile for the nonpayment of

finest or fees.

- Allows the court to waive the assessment for persons referred to certified batterers' treatment programs if the assessment would constitute a substantial financial hardship for a person or his or her family or dependents.
- Requires the trial court to submit all criminal case disposition information to the department of state police for each offender appearing in court for purposes of updating the criminal history record.
- Phases out the \$150 indigent counsel fee by 2020
- Repeals the \$150 indigent counsel fee for juveniles.
- Updates reporting on the appointment of indigent counsel.
- Requires a fingerprint-based ID to accompany complaints and indictments.
- Clarifies that the District Court and Boston Municipal Court have original jurisdiction concurrent with the Superior Court over conspiracy and solicitation to commit a felony.
- Prohibits parents and children from testifying against one another, except where the victim is a family or household member.
- Expands the definition of a critical witness to include those who have participated and are reasonably anticipated to participate in a criminal investigation or court proceeding, in addition to a witness currently participating in investigations or proceedings.
- Creates the crime of corporate manslaughter and requires a corporation found guilty of corporate manslaughter to pay a fine of not less than \$250,000.
- Decriminalizes sexual intercourse with a person under the age of 16 where: (i) the minor is 15 years old and the defendant is less than 3 years older, (ii) the minor is between 12 and 14 and the defendant is less than 2 years older, or (iii) the minor is under 12 and the defendant is less than 1 years older.
- Decriminalizes indecent contact with a minor where: (i) the minor is 12 or 13 and the defendant is less than 2 years older, or (ii) if the minor is under 12 and the defendant is less than 1 year older.
- Raises the threshold for felony larceny from \$250 to \$1,500.

- Replaces the existing punishment scheme for property stolen from a common carrier with a staggered set of penalties for stealing property valued between \$250 to \$1,500.
- Allows for probable-cause based arrests without a warrant for larceny involving property over \$250.
- Raises the threshold, from \$100 to \$250, for which the crime of stealing merchandise is eligible for shoplifting as opposed to larceny.
- Updates the definition of credit card in the context of misuse or fraud of credit cards.
- Increases the fine for credit card misuse or fraud from up to \$500 to up to \$3,000.
- Raises the possible fine for receipt of stolen property for a first offense from a fine of not more than \$1,000 to a fine of not more than \$2,500.
- Allows for probable-cause based arrests without a warrant for receipt of stolen property over \$250.
- Removes the penalty of license suspension from the offense of vandalism and tagging.
- Expands the scope of what constitutes witness intimidation by contemplating retaliatory acts and acts against family members and increases the maximum penalty from up to 10 years in state prison to up to 20 years in state prison for certain offenses.
- Repeals the crime of inducing a person under 18 years of age "of chaste life" to have sexual intercourse.
- Prohibits an elementary or secondary student from being charged with disturbing an assembly if the conduct was on school grounds or in the course of school-related events.
- Decriminalizes first offense disturbance of the peace for juveniles and prohibits an elementary or secondary student from being charged with disturbance of the conduct was on school grounds or in the course of school-related events.
- Replaces the current statutory standard for criminal attempt, which criminalizes attempting to commit a crime by doing any act toward its commission, with a three pronged standard that includes affirmative defenses for complete and voluntary abandonment.

- Establishes the crime of solicitation of a felony and authorizes punishment up to 20 years in state prison if the intent of the solicitation is a crime punishable by imprisonment for life.
- Overhauls the bail statute to:
 - provide judges with more options than money bail, including unsecured bonds and the power to set a wider range of pretrial conditions;
 - require the use of a risk assessment tool when such a tool has been developed and validated by the department of probation;
 - require that judges consider the defendant's ability to pay when setting a bail amount for adults;
 - require that, when a defendant is not released on personal recognizance or an unsecured bond, the conditions imposed be the least restrictive conditions necessary to assure the defendant's appearance in court;
 - require that, if the judicial officer imposes a financial condition that results in pretrial detention, the judicial officer put findings on the record as to why the defendant's risk of non-appearance is so great that no alternative, less restrictive conditions will assure the defendant's presence in court. and that the defendant is likely to be incarcerated if convicted;
 - expand the availability of pretrial detention for a dangerous defendant, provided the judge finds by clear and convincing evidence, after a hearing in which the defendant is represented by counsel, that no conditions will ensure the safety of the community;
- Abolishes financial conditions when setting bail for juveniles.
- Limits the detention of juveniles pretrial for risk of flight to cases in which the judge finds, on the record, that the defendant's risk of non-appearance is so great that no alternative, less restrictive conditions will assure the defendant's presence in court. and the defendant is likely to be incarcerated if convicted.
- Clarifies that a juvenile detained pretrial because of risk of flight is entitled to court review of his or her detention every 15 days.
- Establishes a pretrial services initiative within the department

of probation to: (i) develop programs to minimize pretrial detention, (ii) notify defendants of court appearance obligations, and (iii) assist the defendant released pretrial in securing employment and mental and drug treatment, as necessary.

- Prohibits a person from being compensated for providing bail or acting as a surety.
- Prohibits probation violations for using properly prescribed substances.
- Requires a court, before ordering restitution in a criminal case, to make findings concerning the amount of restitution that the defendant has the ability to pay monthly without causing substantial financial hardship, taking into account the defendant's financial resources and the defendant's financial obligations.
- Authorizes a court, in a criminal case, to order a defendant to make restitution or, in lieu of restitution, to issue a civil judgment in favor of the victim.
- Reduces the amount of time that must pass before the Commissioner of Probation may seal a misdemeanor record from 5 years to 3 years.
- Reduces the amount of time that must pass before the Commissioner of Probation may seal a felony record from 10 years to 7 years.
- Allows for the sealing of convictions for resisting arrest.
- Permits applicants for housing or an occupational or professional license to answer 'no record' with respect to an inquiry relative to prior arrests if the applicant's record of the arrest is sealed.
- Reduces the amount of time that must pass before the Commissioner of Probation may seal a juvenile record from 3 years to 1 year.
- Allows for expungement of juvenile misdemeanors 3 years after the disposition and requires the submission of such expungement orders to the Interstate Identification Index by the state police.
- Allows for the expungement of a record in the case of misidentification or fraud on the court and requires the submission of such expungement orders to the Interstate

Identification Index by the state police.

- Removes the requirement that diversion programs be certified by the Commissioner of Probation.
- Increases, from those under 22 years old to those under 26 years old, the maximum age in which a person is eligible for diversion in district court and Boston Municipal Court proceedings.
- Permits a victim to make a recommendation about the diversion of a defendant.
- Clarifies that nothing in the chapters governing diversion by the court limits the ability of district attorneys and police departments to divert defendants.
- Allows for diversion of defendants to community-based restorative justice programs, except if a defendant is charged with certain serious offenses. Also establishes an advisory board to oversee such programs.
- Allows low-level offenses committed by juveniles to be treated as civil infractions.
- Clarifies which offenses may be treated as civil infractions at the discretion of the court, as well as which will be ineligible for diversion.
- Requires the court to provide notice of consequences of non-payment when the court sentences a person to pay a fine.
- Requires the court to make written findings as to necessity before sentencing a primary caregiver to incarceration.
- Requires the court to transmit fingerprint-based identification with the mittimus to a correctional institution.
- Requires the Commissioner of Correction and the Secretary of Public Safety to promulgate regulations to implement the medical release program for incapacitated and terminally ill prisoners.
- Requires the Commissioner of Correction to provide a plan to the House and Senate Committee on Ways and Means regarding the resources needed to comply with restrictive housing reforms.
- Establishes a juvenile justice data task force.
- Establishes a task force to examine how to handle fingerprint-

based ID when a case proceeds but there is no underlying arrest.

- Establishes a task force to examine raising the age of criminal majority past the age of 19.
- Prevents juvenile records from being shared with the Registry of Motor Vehicles, except where the sentence involves a driving-related offense.

**ESTIMATED
COST:**

This legislation creates a pre-trial services initiative which will have an estimated one-time cost of \$550,000 and an estimated ongoing annual costs of \$700,000.

This legislation eliminates the \$150 indigent counsel fee for persons under the age of criminal majority. This change could impact appropriately 10,000 individuals, all of whom are currently eligible to have the fee waived if the fee imposes a substantial financial hardship. The fiscal impact of this change would not exceed an estimated \$1,500,000, but is expected to have significantly less impact because of the current waiver ability.

Over the course of 3 years, this legislation gradually eliminates the \$150 indigent counsel fee for persons above the age of criminal majority. The annual cost of this change will not exceed approximately \$2,000,000.

This legislation eliminates the \$50 monthly parole supervision fee and the \$5 monthly parole services surcharge. This is expected to have an annual fiscal impact of \$600,000.

This legislation will require the Department of Corrections to perform regular multidisciplinary placement reviews for inmates in restrictive housing, beginning July 1, 2018, and further requires prisoners in restricted housing to have access to vocational, educational and rehabilitative programming, effective January 1, 2019. The Department of Correction is required to submit a financial plan detailing resources needed to comply with these requirements as well as its efforts to reduce the population in restricted housing to facilitate program improvements.

This legislation removes the prohibition on waivers and reductions of the motor vehicle violation surcharges for operating under the

influence and negligent operation. The approximately \$7,000,000 to \$10,000,000 that these fees generate will now be subject to waiver.

The legislation raises the age of juvenile jurisdiction to include 18 year olds, effective January 1, 2019. The cost to the Commonwealth for this change is expected to be between \$8,000,000 and \$13,000,000 when considering increased costs to the Department of Youth Services and the Juvenile Court and savings from other agencies no longer responsible for the care of 18 years old.

Medical release for terminally ill and permanently incapacitated inmates is expected to save between \$1,000,000 and \$2,000,000 annually. A portion of that cost, however, is expected to shift to Medicare and Medicaid, for which the Commonwealth may pay a percentage.

This legislation is expected to impact approximately 400 inmates currently serving a mandatory minimum sentence on a drug offense. Those inmates will, upon the effective date of this bill, become eligible for parole or deductions in sentence. A high percentage of those inmates serving impacted mandatory minimums are serving it in addition to a non-drug offense or a non-mandatory drug offense, which may impact their eligibility for release. The commonwealth can expect to save approximately \$4,000,000 to \$8,000,000 in inmate supervision costs, but where parole replaces incarceration these cost savings will be reduced.