



SUMMARY OF CRIMINAL JUSTICE REFORM BILL S2371, AN ACT RELATIVE TO CRIMINAL JUSTICE REFORM

The Governor signed the criminal justice reform bill on April 13, 2018. More information and a section by section links to the text of the bill can be found on website of Senator Will Brownsberger, Senate Chair of the Judiciary Committee and Conference Committee at: <https://willbrownsberger.com/final-criminal-justice-package-released/>.

MAJOR PROVISIONS

CORI SEALING AND RELATED PROVISIONS (Effective 6 months from enactment)

The time period to wait for sealing cases through the Commissioner of Probation was decreased from 10 years to 7 years for a felony and from 5 years to 3 years for a misdemeanor.

Resisting arrest convictions can now be sealed.

Cases dismissed before arraignment will not appear on criminal records.

Youthful offender cases tried in juvenile court will not appear as adult CORI.

Allow some expungement of cases involving related to errors of justice.

Allow expungement of less serious cases up to age 21 (both juveniles and young adults).

People will be permitted to say they have "no record" after they seal their records when they apply for housing and occupational licenses (e.g. to work in nail salon, as barber, other trades), not just for jobs applications as provided under current law.

FELONY LARCENY THRESHOLD (Effective immediately).

Increased from \$250 to \$1200. (This is more than the \$1000 provided by House bill and less than the \$1500 in the Senate bill). Effective immediately.

DECRIMINALIZATION OF MINOR OFFENSES

Disruptive behavior at school by an elementary or secondary school student involving disturbing assembly or disorderly conduct is no longer a crime.

Repeals the offense of being the presence of heroin.

Use and possession of prescribed drugs and medical marijuana shall not constitute a probation violation.

RMV

Driver licenses no longer suspended for court defaults or convictions for tagging or vandalism.

FEES AND FINES (DECRIMINALIZATION OF POVERTY)

No parole fee for the first year after release from prison. (The Senate bill would have eliminated all parole fees).

No probation fee for the first six months after release from incarceration.

Uniform fee waiver language across fees and more fees are waivable.

"Fine time" (the rate at which fines are worked off in jail or prison) increased from \$30 to \$90 per day.

Increased due process and related protections include requiring that (1) a court shall not commit a person for non-payment of money owed if such a person is not represented by counsel for the commitment proceeding unless the person waived counsel; and (2) a person deemed indigent for the purpose of being offered counsel shall not be assessed a fee for such counsel.

Fine time" (the rate at which fines are worked off in jail or prison) increased from \$30 to \$90 per day.

INCARCERATION ALTERNATIVES FOR PRIMARY CARETAKERS OF CHILDREN

Require judges to consider alternatives to incarceration and make written findings before imposing a sentence of incarceration on a primary caretaker of a child or children.

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DIVERSION OF MINOR OFFENSES FROM PROSECUTION/INCARCERATION

Create mechanism for judicial diversion of juveniles for less serious offenses.

Expands district court diversion of adult cases.

Eliminates defunct requirement for probation certification of diversion programs

Eliminates age restrictions on diversion

Assures that victims are heard in diversion decisions

Creates legal/administrative framework to expand use of restorative justice programs for diversion of both juveniles and adults

Make drug diversion more workable by making it possible for a wider range of professionals to make findings of dependence.

Preserve powers of District Attorneys to divert cases

REFORM OF BAIL TO REDUCE UNNECESSARY INCARCERATION

Codifies main holding of the SJC in the Brangan case. A judge must consider financial capability of defendant and set bail only as high as needed to ensure the defendant's return to court.

Require that if judge set bail that a person cannot afford, the judge make written findings that the Commonwealth's interest in assuring return outweighs the harm of detention to the individual and their family.

Allows judges to use community corrections facilities for pre-trial release (consistent with CSG report).

Creates pre-trial services unit to remind defendants of upcoming court dates using modern messaging approaches.

Creates commission on bail to monitor change and suggest further improvements.

IMPROVES PRISON CONDITIONS

Assure that transgender prisoners are housed with prisoners of the same gender identity unless it would endanger the prisoner or other prisoners.

Requires that all prisoners without high school diplomas have access to education programming.

Requires that all prisoners are assessed for substance use disorders (but do not require medically assisted treatment).

Preserves inmate access to regular in-person visitation. Video visits are permitted, but not in lieu of in person visits.

Authorizes the creation of special prison units for young adults (ages 18 to 24).

Create commission to study LGBTQ prison health and a task force to study correctional officer suicides.

Study prison long distance phone costs.

RELEASES PRISONERS WHO ARE PERMANENTLY INCAPACITATED AND POSE NO SAFETY RISK

Prisoners who are seriously incapacitated and do not present a public safety risk may petition their superintendent or sheriff for medical release. (The parole board will supervise the released prisoners and re-incarcerate them if they recover despite medical prognosis).

MANDATORY MINIMUM SENTENCES ELIMINATED OR MITIGATED:

Mandatory minimum for second and subsequent offenses for distribution and for possession with intent to distribute Class B.

Mandatory minimum for distribution and for possession with intent to distribute angel dust, cocaine, meth.

Mandatory minimum for second and subsequent offenses for distribution and for possession with intent to distribute Class C (Valium, etc.)

Mandatory minimum for second offense class D (marijuana, phenobarb).

Mandatory minimum for sales of drug paraphernalia,

Mandatory minimum for school zones limited to cases related to guns, violence, or minors.

OTHER PROVISIONS ¹

CHANGES TO EXPAND MANDATORY MINIMUM SENTENCES FOR OPIOIDS

Makes all federally scheduled opioids class A drugs in Massachusetts (if not otherwise scheduled by Massachusetts)

¹ These provisions are not supported by the Jobs NOT Jails Coalition and most non-law enforcement advocacy groups. More efforts to repeal all mandatory minimums will likely be made in the future.

Include **fentanyl**, **carfentanil** and emerging synthetic opiates in trafficking weight ladder – mixtures containing these substances and weighing over 18g, 36g, 100g, or 200g will draw the same minimum mandatory penalties currently applicable to mixtures containing heroin.

Modify **fentanyl** trafficking statute so that it applies to mixtures weighing over 10 grams that contain fentanyl. Add minimum mandatory of 3 years, effectively adding a special bottom rung applicable only to fentanyl to the trafficking weight ladder. 10 grams gets 3 years under this section, 18 grams gets 3.5 years (from the main opioid ladder).

Add a special minimum mandatory applicable to mixtures of any weight containing carfentanil in any quantity but with the proviso that the commonwealth must prove knowledge that the mixture contained carfentanil.

NEW MANDATORY MINIMUM SENTENCE ADDED

New mandatory minimum sentence of one year for assault and battery on a police officer. (The section in the Senate bill providing for a mandatory minimum sentence of 5 years for a death resulting from the distribution of drugs was not included in the final bill).

April 14, 2018