

## SJC faults state for not sealing juvenile records

By Christian M. Wade | Statehouse Reporter

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BOSTON — The state’s highest court has sided with criminal justice advocates who challenged a policy that blocked people who committed offenses as juveniles from sealing their criminal records.

The ruling by the Supreme Judicial Court, issued on Wednesday, concluded that the Massachusetts Probation Service erred when it denied a request from a man to seal his juvenile records by applying the state’s adult criminal record sealing statute to his youthful offenses.

Criminal justice advocates filed a lawsuit last year against the state agency alleging that the agency was violating a law allowing people with juvenile offenses to request that their records be sealed after 3 years.

Under state law, people found guilty of misdemeanors can ask that a case be sealed after three years. The waiting time for felony offenses is seven years. Major convictions — for murder, felony assault, rape and other sexually based offenses — cannot be sealed.

But the state’s youthful offender law, which dates back to the 1970s, is supposed to allow the sealing of all juvenile records after three years.

Pauline Quirion, a senior attorney with Greater Boston Legal Services who filed the lawsuit, said it’s not clear how many years the department was applying the adult sealing statute to youthful offenses, but said the SJC’s ruling will have major implications for people with juvenile records going forward.

“Even if a case was dismissed, they were making people wait seven years or saying they could never be sealed, which is disturbing,” she said. “The bottom line is that the Legislature wouldn’t have set up a different record-sealing statute for kids if they had intended for them to be treated the same as adults.”

Quirion said the practice has disproportionately impacted Black and Latino youth, who are more likely than whites to get caught up in the criminal justice system.

The legal challenge was filed on behalf of a man — who wasn't identified in the court filings — who was 16 when he was indicted in 2012 on witness intimidation and felony extortion. He served his probation and stayed out of trouble and got his life back on track, according to court filings.

In 2021, the man requested that his juvenile record be sealed but was denied by the agency, which applied the state's adult criminal records sealing law to juvenile court youthful offender records, even to charges that had been dismissed. He appealed the ruling to a county court, which referred the case to the Supreme Judicial Court for review.

In the SJC ruling, Justice David Lowy wrote that it was an "error" for the Commissioner of Probation to refuse to seal the petitioner's juvenile court records under the youthful offender sealing law "given that the petitioner has satisfied all listed requirements and the statute mandates sealing in such instances."

Lowy, who authored the ruling before retiring from the bench earlier this month, wrote that the Legislature "intended for there to be a path for the sealing of youthful offender adjudications" when it approved two different record-sealing statutes for adults and juvenile offenses.

"We conclude that the Legislature intended that, in the context of record-sealing, youthful offender adjudications be treated more like delinquency adjudications than adult criminal adjudications," he wrote.

The probation service didn't immediately respond to a request for comment.

"This is a huge and impactful decision," said Leon Smith, executive director of Citizens for Juvenile Justice, one of several advocacy groups that backed the lawsuit. "Access to record-sealing is key to anyone who is moving on from past negative behavior and wants to stay on the right path, but it's especially critical for young people."

Despite reforms in recent years, Massachusetts is known as being especially unforgiving when it comes to allowing people to get out from under the shadow of a previous conviction.

Criminal records can haunt people long past their punishment, criminal justice reform advocates say, preventing them from getting jobs or housing or going to college. As of 2019, more than 1 million Massachusetts residents had a criminal record, advocates say.

To be sure, sealed criminal records never actually disappear. Law enforcement agencies, prosecutors, defense attorneys and even employers can still access sealed convictions under certain conditions, including juvenile records.

Despite the ruling, Quirion said she was informed that the probation department doesn't plan to retroactively seal juvenile records from applicants who were previously denied because they applied the adult sealing statute to their offenses. She said petitioners will need to resubmit their applications.

"It's disappointing that they are not doing more to right the wrongs they created," Quirion said. "Given all the recent court decisions on brain development and the huge impact on youth in communities of color, it was alarming that this practice was going on in the first place."

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