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SJC-13854

PIPER P. vs. BARRON B.¹

Worcester. April 8, 2026. – October 5, 2026.

Present: Budd, C.J., Gaziano, Kafker, Wendlandt, Georges,
Dewar, & Wolohojian, JJ.

Harassment Prevention. Expungement. Juvenile Court,
Jurisdiction. Jurisdiction, Juvenile Court. Practice,
Civil, Record, Reconsideration.

Complaint for protection from harassment filed in the Worcester County Division of the Juvenile Court Department on April 24, 2024.

The case was heard by Anthony J. Marotta, J., motions for reconsideration and for relief from judgment were also heard by him, and a motion for clarification or reconsideration regarding expungement was considered by him.

The Supreme Judicial Court granted an application for direct appellate review.

Amy S. DiDonna for the defendant.
Kirk G. Hanson, Special Assistant Attorney General, for Massachusetts Probation Service, amicus curiae, submitted a brief.

¹ The parties' names are pseudonyms.

GEORGES, J. This appeal involves the intersection of juvenile proceedings, harassment prevention orders issued under G. L. c. 258E, and the limits of judicial authority. The juvenile, who was in the fourth grade when these events occurred, asks this court to recognize a broader equitable authority to expunge harassment prevention orders later vacated for insufficient corroboration of the alleged harassment.

A harassment prevention order entered against the defendant (juvenile), following a hearing during which a Juvenile Court judge credited the testimony of the plaintiff, the juvenile's classmate, that the juvenile had engaged in several instances of harassing behavior. A subsequent school investigation failed to substantiate that the juvenile intentionally injured the plaintiff. The same Juvenile Court judge (motion judge) later terminated² the order, concluding that the evidence did not establish harassment. The motion judge nevertheless determined that expungement was unavailable because there was no clear and convincing evidence of fraud on the court.

The juvenile argues that this result is fundamentally unfair, particularly where the order was issued against a child and where the order remains within record-keeping systems

² For harassment prevention orders, "trial courts have used 'vacated' and 'terminated' interchangeably." J.S.H. v. J.S., 91 Mass. App. Ct. 107, 108 n.2 (2017).

notwithstanding the later judicial determination of insufficient evidence.³ We recognize the force of those concerns. A juvenile who successfully challenges a previously issued harassment prevention order understandably may view the continued existence of that order in governmental databases as difficult to reconcile with a later determination that subsequently presented evidence did not support continued relief.

The issue before us, however, is not whether expungement would be sound policy. The question is whether there is statutory or inherent judicial authority for expungement in these circumstances. We conclude that there is none.

General Laws c. 258E does not expressly authorize a judge to order the expungement of records concerning harassment prevention orders. Nor can such authority be implied within the statute, for essentially the same reasons we stated in Vaccaro v. Vaccaro, 425 Mass. 153, 157-159 (1997). Finally, although a narrow authority to expunge records has been recognized in order to remedy fraud on the court, see Commissioner of Probation v. Adams, 65 Mass. App. Ct. 725, 733-734 (2006), the judge here expressly found that no fraud on the court had been established, and we decline to expand this authority.

³ See G. L. c. 258E, § 9.

Thus, as the motion judge was without authority to order expungement, the judge correctly denied the juvenile's request to expunge. We therefore affirm.⁴

Background. We summarize the facts consistent with the motion judge's rulings based on the record before us. See E.C.O. v. Compton, 464 Mass. 558, 559 (2013).

On April 24, 2024, the plaintiff, also in fourth grade, sought an ex parte harassment prevention order against the juvenile in the Juvenile Court. A judge declined to issue an ex parte order and referred the matter to mediation, which the plaintiff's family later declined.

A two-party hearing occurred before the motion judge on May 2, 2024. The plaintiff testified that the juvenile pushed her into a corner during gym class, kicked her in the head, and stepped on her hand. She further asserted that she suffered a concussion and went to a hospital's emergency room following the incident; she provided the judge with her medical records from the incident. She also described several other interactions with the juvenile that she characterized as bullying. The juvenile disputed the allegations.

At the hearing, the juvenile's counsel informed the motion judge that the school district was investigating the allegations

⁴ We acknowledge the amicus brief submitted by the Massachusetts Probation Service.

of bullying and expected to issue a written report shortly. The motion judge issued the harassment prevention order effective through November 1, 2024, crediting the plaintiff's testimony. The motion judge also stated that he would revisit the order once the school investigation was completed.

Several weeks later, the school district completed its investigation pursuant to the antibullying statute, G. L. c. 71, § 370. See Cormier v. Lynn, 479 Mass. 35, 42 n.15 (2018) ("the schools of the Commonwealth are now statutorily required to address bullying"). According to the investigator's report, interviews with students and staff did not substantiate the allegations that the juvenile intentionally made physical contact with the plaintiff. Further, the report concluded that "there [was] not a preponderance of evidence that [the juvenile had] repeatedly targeted [the plaintiff] with inappropriate, malicious or disparaging verbal statements, physical acts or gestures such as would be necessary to support a finding of bullying or cyberbullying under [G. L.] c. 71, § 370." The juvenile submitted the report to the Juvenile Court and moved for reconsideration.

Following a further hearing, in July 2024, the motion judge terminated the harassment prevention order. In doing so, the judge wrote:

"After further hearing, there is no evidence[,] physical or anecdotal, of an intentional blow to the plaintiff[']s face[.] [Ten] students and several staff were interviewed and provide little insight or evidence[.] [There was] no bruising[,] no outward signs of [a] kick to [her] face/head or stomping on [her] fingers[, and] no evidence of intentional injury[.] Harassment order terminated."

The juvenile then moved to expunge all records associated with the harassment prevention order. The motion judge initially allowed the motion. The Massachusetts Probation Service intervened and moved for reconsideration, arguing that expungement was unavailable absent fraud on the court. The judge reconsidered the ruling and vacated the expungement order.

The juvenile appealed, and we granted the juvenile's application for direct appellate review.

Discussion. The juvenile urges us to expand our jurisprudence to recognize a Juvenile Court judge's authority to expunge a harassment prevention order, even absent fraud in its procurement, where subsequently gathered evidence fails to corroborate the allegations that formed the basis for the order.

In considering that argument, we first turn to the legislative source and limits of the Juvenile Court's authority. "The Juvenile Courts, like all the courts of the Commonwealth, except the Supreme Judicial Court, are creatures of the Legislature and derive their powers, other than those powers that are inherent in all courts, . . . from the Legislature" (citation omitted). School Comm. of Worcester v. Worcester Div.

of the Juvenile Court Dep't, 410 Mass. 831, 834 (1991).

Accordingly, any legislative grant of authority to the Juvenile Court "must either be articulated expressly or be capable of being deduced by necessary and inevitable implication" (quotation and citation omitted). Id.

1. Statutory authority. We begin with the governing statutory framework under G. L. c. 258E. See Makis M. v. Commonwealth, 494 Mass. 23, 30 (2024).

The Juvenile Court is vested with exclusive jurisdiction of harassment prevention proceedings under G. L. c. 258E where the defendant is under the age of eighteen. G. L. c. 258E, § 2. See G. L. c. 258E, § 1 (defining "Court" for purposes of G. L. c. 258E to include Juvenile Court). Pursuant to G. L. c. 258E, § 9, whenever the Juvenile Court issues a harassment prevention order, the clerk is required to transmit information concerning the order to the Commissioner of Probation for inclusion in designated record-keeping systems, including the Statewide domestic violence record-keeping system (DVRS).⁵ The directive

⁵ "The DVRS is a registry of sorts, established by the commissioner of probation pursuant to [St. 1992, c. 188, § 7], and includes, among others, records of the issuance of and any violations of criminal or civil restraining or protective orders." Commonwealth v. Dossantos, 472 Mass. 74, 77-78 (2015). General Laws c. 258E, § 9, more specifically directs that information on harassment prevention orders be maintained within the DVRS, the court activity record information (CARI) system, or "a recordkeeping system created by the commissioner of probation to record the issuance of, or violation of,

is mandatory. Nothing in G. L. c. 258E expressly authorizes the removal or expungement of those records from the DVRS when an order is later vacated because the evidence is ultimately deemed insufficient. Cf. Vaccaro, 425 Mass. at 156 ("There is nothing . . . in G. L. c. 209A . . . that permits a record to be removed or that authorizes . . . judicial . . . expungement of a record from the [DVRS]"). The statutory text likewise draws no distinction, for purposes of retaining DVRS records, between orders that remain active and those later terminated or vacated.⁶ In short, the authority the juvenile seeks is not expressly stated in the statute.

[harassment] prevention orders." CARI records are included in the DVRS. St. 1992, c. 188, § 7.

⁶ The statute does require a court to notify the "appropriate law enforcement agency" in writing when a harassment prevention order is vacated, and to direct that agency to destroy all record of the vacated order. G. L. c. 258E, § 9. But the "appropriate law enforcement agency" is not the office of the Commissioner of Probation. It is the agency that received the order for service on the defendant. See *id.* See also Guideline 4:06 of the Guidelines for Judicial Practice: Harassment Prevention Proceedings (Oct. 2025) (defining "appropriate law enforcement agency" as "the police department with jurisdiction over the defendant's residence" or "any police department of the municipality where the defendant is most likely to be found").

For that reason, the record-destruction provision in G. L. c. 258E, § 9, does not apply to the DVRS records maintained by the office of the Commissioner of Probation. Cf. Vaccaro, 425 Mass. at 156-157 (reaching same conclusion as to virtually identical language in G. L. c. 209A, § 7).

Nor are we persuaded that such authority may be implied. The Legislature's intent, reflected in the statutory framework and legislative history, is particularly instructive. When the Legislature enacted G. L. c. 258E in 2010, it expressly directed that harassment prevention orders be incorporated into the DVRS, the same centralized record-keeping system that maintains abuse prevention orders issued under G. L. c. 209A. See St. 2010, c. 23; St. 1992, c. 188, § 7. That decision reflects a deliberate legislative judgment that prior harassment prevention orders, like prior abuse prevention orders, should remain available to law enforcement officials and judges evaluating, among other things, subsequent requests for protective relief. See Commonwealth v. Dossantos, 472 Mass. 74, 77-78 (2015).

Against that backdrop, our decision in Vaccaro controls. There, we considered whether a judge had authority to expunge abuse prevention order records maintained in the DVRS. See Vaccaro, 425 Mass. at 154-158. We concluded that the Legislature had created a comprehensive statutory scheme requiring retention of those records and that "no power to order expungement can be implied." Id. at 157. The same reasoning applies here. See Tom T. v. Lewis L., 97 Mass. App. Ct. 698, 700-701 (2020) ("Chapters 209A and 258E are particularly similar in their treatment of records following the issuance of an order, as well as after an order is vacated" [citation

omitted])). Cf. O'Brien v. Borowski, 461 Mass. 415, 417-418 (2012), abrogated on another ground by Seney v. Morhy, 467 Mass. 58, 61-62 (2014) (determining proper avenue of review for G. L. c. 258E order based on G. L. c. 209A precedent).

Like G. L. c. 209A, G. L. c. 258E reflects a legislative determination that retaining these records serves continuing judicial and law enforcement needs. Prior filings, including inactive orders, may assist judges who are evaluating future requests for harassment prevention orders in assessing risk, credibility, escalation, and patterns of alleged conduct. See Vaccaro, 425 Mass. at 157-158. Preserving those records therefore advances the central purpose of G. L. c. 258E: protecting victims of harassment. See J.S.H. v. J.S., 91 Mass. App. Ct. 107, 109 (2017). Reading an implied judicial power of expungement into the statute would thus conflict with the statute's "manifest purpose." Vaccaro, supra at 158.

The juvenile argues that the government's interest in retaining these records largely disappears once an order has been vacated for insufficient evidence. That concern is understandable. A vacated order does not carry the same weight as one that remains valid and enforceable. But, as noted, even vacated orders "can provide meaningful information, notwithstanding their inactive status and regardless of the reason for termination," Vaccaro, 425 Mass. at 158 n.5, at least

where the order was not procured through fraud on the court, see Adams, 65 Mass. App. Ct. at 735-736.

In sum, G. L. c. 258E neither expressly nor implicitly authorizes the expungement of harassment prevention orders from the DVRS or any other repository. We shall not read such a mechanism into the statute where the Legislature has not seen fit to put it there -- particularly where such a mechanism would be contrary to the Legislature's intent. See Entergy Nuclear Generation Co. v. Department of Env'tl. Protection, 459 Mass. 319, 329 (2011) ("We will not create provisions the Legislature did not see fit to include . . . "). See also School Comm. of Worcester, 410 Mass. at 834.

2. Inherent authority and fraud on the court. The juvenile next argues that courts possess broader inherent equitable authority to expunge records where a harassment prevention order is later determined to lack evidentiary support. We disagree.

The Appeals Court has recognized a narrow inherent judicial authority to expunge records of both abuse prevention orders and harassment prevention orders in one limited circumstance: where the order was procured through fraud on the court. See J.S.H., 91 Mass. App. Ct. at 112 (G. L. c. 258E orders); Adams, 65 Mass. App. Ct. at 737 (G. L. c. 209A orders). That authority does not arise from generalized equitable concerns. Rather, it stems

from the judiciary's obligation to protect the integrity of the judicial process itself. See Adams, supra at 731. Fraud on the court involves conduct that corrupts the adjudicative process; it is not established from the mere fact that evidence is later determined to be inaccurate, mistaken, or unsupported. See id. at 729 ("Fraud on the court implies corrupt conduct and embraces only that species of fraud which does, or attempts to, defile the court itself" [citation omitted]). See also Matter of Neitlich, 413 Mass. 416, 422-423 (1992) (were court to "condone" actions of respondent who "perpetrate[d] a fraud on the court," "the integrity of the judicial process would be vitiated").

For that reason, the standard is exacting and requires clear and convincing evidence. See Adams, 65 Mass. App. Ct. at 737. Here, as expressly noted in a margin endorsement, the judge did not find by clear and convincing evidence that the plaintiff had committed fraud on the court.⁷ Instead, the judge had concluded only that subsequently developed evidence failed to establish any intentional injury or willful and malicious conduct necessary to justify continued relief under G. L. c. 258E. Those are materially different conclusions.

A witness, particularly a child witness, may sincerely recount events later determined to be inaccurate or unsupported

⁷ The juvenile does not challenge this finding on appeal.

by corroborating evidence. See Commonwealth v. Gomes, 470 Mass. 352, 373 (2015), S.C., 478 Mass. 1025 (2018) ("memories of witnesses . . . are highly malleable" [citation omitted]). See also Commonwealth v. A Juvenile, 21 Mass. App. Ct. 121, 124 & n.5 (1985) (age of witness factored into assessment of witness credibility). A subsequent failure of proof does not itself establish intentional deception. See Smith v. Jones, 67 Mass. App. Ct. 129, 138 (2006) ("That a plaintiff presents a claim that fails does not mean that she has perpetrated a fraud on the court . . . "). Nor does a judge's decision to terminate an order retroactively transform the original proceeding into a fraud on the court.

The juvenile nevertheless urges us to expand the judiciary's inherent authority beyond cases involving fraud on the court and to recognize a broader equitable power to expunge records whenever an order is later vacated for insufficient evidence. We decline to do so. "[T]he inherent powers of the courts are those whose exercise is essential to the function of the judicial department, to the maintenance of its authority, or to its capacity to decide cases." Sheriff of Middlesex County v. Commissioner of Correction, 383 Mass. 631, 636 (1981). That is, the judiciary's inherent authority is implicated where the absence of statutory authority "impairs the function of the court or threatens the maintenance of its authority." Vaccaro,

425 Mass. at 159 n.7. See Makis M., 494 Mass. at 33 (scope of court's inherent authority is "concurrent with its purpose: to allow judges to perform core functions necessary for the proper administration of justice" [quotation and citation omitted]).⁸

That concern is directly implicated where an order is obtained through fraud on the court because such fraud strikes at the judiciary's ability "impartially to adjudicate a matter."

Rockdale Mgt. Co. v. Shawmut Bank, N.A., 418 Mass. 596, 598 (1994). In that circumstance, some judicial remedy must exist and the absence of express statutory authorization for expungement becomes "immaterial" (citation omitted). Adams, 65 Mass. App. Ct. at 731.

No similar concern exists here. Maintaining an accurate record of the issuance of the harassment prevention order, as well as its subsequent termination, in the DVRS does not

⁸ Compare Makis M., 494 Mass. at 33 ("establishment of pretrial remediation programming for incompetent juveniles strays beyond . . . the scope of the court's inherent authority" [quotation and citation omitted]), with Commonwealth v. Teixeira, 475 Mass. 482, 483 (2016) ("because [Boston Municipal Court] judges have inherent authority to issue orders essential to their capacity to decide cases, they may . . . order prehearing discovery"), and Gray v. Commissioner of Revenue, 422 Mass. 666, 672-673 (1996) (courts have inherent power to grant change of venue to secure impartial trial, use contempt proceedings to ensure orderly administration of justice, order county to pay adequate resources to ensure proper operation of courts, make rules governing internal organization of courts, and revoke judgment obtained by fraud on court, because "[s]uch powers are inseparable from a judge's power to hear and decide cases").

"impair[] the court's function or threaten[] its authority or ability to decide cases so as to require an exercise of any inherent power of expungement."⁹ Vaccaro, 425 Mass. at 159 n.7. To nonetheless recognize such an inherent authority would effectively create a new expungement regime untethered to any threat or impairment to the integrity of the judiciary itself. Courts would be required to determine when later evidentiary developments justify erasing otherwise properly issued orders from legislatively mandated databases, even without any attendant threat to the integrity of the judicial system or

⁹ Applying this framework, courts have repeatedly declined to expunge the records of a vacated harassment prevention order in the absence of fraud, even when the equities of the individual case seem to favor expungement, as doing so would override the legislative command that a record of all orders, vacated or not, be maintained. See, e.g., Silva v. Carmel, 468 Mass. 18, 24-25 (2014) (expungement not available even though initial ex parte abuse prevention order should not have issued because parties were not household members); J.S.H., 91 Mass. App. Ct. at 112-113 (expungement not available where plaintiff failed to make adequate evidentiary showing for extension of harassment prevention order, but record did not establish that plaintiff's statements were fabricated or motivated by deceptive scheme); B.C. v. F.C., 90 Mass. App. Ct. 345, 350-351 (2016) (expungement not available where both parties agreed abuse prevention order was premised on "fantastical representations from a plaintiff then suffering a psychotic episode with delusions" but there was no "conscious fabrication of abuse" or perjury by plaintiff); M.C.D. v. D.E.D., 90 Mass. App. Ct. 337, 342-343 (2016) (expungement not available where although plaintiff wife's allegation of abuse was false, she did not recant allegation; it was defendant husband's own view that plaintiff suffered from alcohol addiction and did not knowingly make false complaint; and judge found no "larger plan intended to harass the defendant or to undermine the judicial process").

impairment to the courts' ability to adjudicate cases, and notwithstanding the Legislature's evident intent that such records be retained. See id. at 158 (expungement powers "would be inconsistent with the manifest purpose of G. L. c. 209A and other abuse prevention statutes").

That determination involves competing policy considerations regarding public safety, record retention and access,¹⁰ and the treatment of juveniles. The Legislature is institutionally better equipped to balance those interests and determine whether a broader expungement remedy should exist. See Decker v. Black & Decker Mfg. Co., 389 Mass. 35, 42 (1983) ("conflicting policy considerations are best resolved in the Legislature where the resolution can be based on full consideration of the competing interests and the ramifications involved with any change of the legislative scheme" [citation omitted]). Consistent with our constitutional role, and in the absence of a threat to the judiciary or its ability to carry out its adjudicatory functions, we decline to use the court's inherent authority to override the Legislature's policy choice.

¹⁰ Records maintained in the DVRS are not public; "the records in the system are available only to trial court judges through the court's computer system and to law enforcement agencies through the criminal justice information system," and such authorized persons or agencies may use the information contained therein only "to further the protective purpose[s] of . . . statutes aimed at preventing abuse." Vaccaro, 425 Mass. at 159 n.6. See St. 1992, c. 188, § 7.

3. Juvenile status. The juvenile further argues that Juvenile Court judges possess broader equitable authority because proceedings involving children are guided by rehabilitative principles and concern the welfare of minors.¹¹ We do not disagree that juvenile proceedings differ in important respects, nor do we minimize the significance of placing a child's name in databases accessible to law enforcement agencies indefinitely.

Even so, we have declined to recognize the power of the Juvenile Court to expunge probation records where the Legislature enacted a statutory scheme governing confidentiality and retention that did not confer such power, notwithstanding the "unique goals of the juvenile justice system" (citation omitted). Commonwealth v. Gavin G., 437 Mass. 470, 472-473 (2002). In addition to the limitation governing vacated orders discussed above, G. L. c. 258E, § 10, provides that records involving a juvenile "shall be withheld from public inspection,"

¹¹ In his postargument letter filed pursuant to Mass. R. A. P. 22 (c), as appearing in 481 Mass. 1651 (2019), the juvenile points to several provisions of G. L. c. 119 governing the powers of the Juvenile Court and contends that they supply the authority necessary to expunge records of vacated harassment prevention orders. See G. L. c. 119, §§ 26, 29, 39E, 53. Those statutes, however, are inapplicable. They concern the Juvenile Court's authority in matters involving care and protection proceedings, proceedings for children requiring assistance, and delinquency proceedings, not the retention or expungement of harassment prevention orders governed by G. L. c. 258E.

with limited exceptions. Where the Legislature has specifically addressed confidentiality in this manner, a recognition of an expungement power would be particularly "inappropriate." Gavin G., supra at 475.

That conclusion remains true even if the juvenile believes the statutory protections are inadequate. As we explained in Gavin G., 437 Mass. at 476:

"The juvenile cannot, merely by pointing to ostensible holes or inadequacies in the legislative scheme protecting his records, pretend that the Legislature has not provided the protections that it deems appropriate and sufficient. The Legislature has struck its own balance between the juvenile's interest in not being unfairly prejudiced by his record and the needs of courts and law enforcement agencies for information pertaining to juvenile proceedings. . . . Where the Legislature has determined that a very few limited persons . . . are entitled in certain circumstances to know that proceedings were brought against a particular juvenile, the juvenile's contention that those limited persons should not have access to that information, that they do not need it, or that they will misuse it, is a contention that should be addressed to the Legislature, not to a Juvenile Court judge."

Thus, even accounting for the Juvenile Court's special concern for the welfare of children, judges may not disregard the Legislature's explicit directives. See Vaccaro, 425 Mass. at 158. The Legislature mandated retention of harassment prevention order records and did not authorize discretionary expungement based solely on equitable considerations or juvenile status. And, as explained by the Appeals Court in Adams, 65 Mass. App. Ct. at 731, the judiciary's limited inherent

authority to expunge exists to protect the integrity of the judicial process itself, not to override legislative judgments whenever perceived fairness concerns arise.

Conclusion. No statute authorized the motion judge to expunge the juvenile's records associated with the harassment prevention order, and the judge had no inherent authority to do so. The order denying the juvenile's motion to expunge is affirmed.

So ordered.

KAFKER, J. (concurring, with whom Wendlandt, J., joins).
The 2018 Criminal Justice Reform Act, St. 2018, c. 69 (criminal justice reform act or 2018 act), fundamentally changed the jurisdiction of the Juvenile Court. In recognition of the harm caused by involvement in the juvenile justice system and the continuing damage caused by the records created by such involvement, the Legislature excluded from the definition of "[d]elinquent child," and thus the jurisdiction of the Juvenile Court, children below the age of twelve accused of committing criminal offenses, and children who commit "a civil infraction . . . or a first offense of a misdemeanor." St. 2018, c. 69, § 72. It stands to reason that the Legislature also intended at that time to exclude from the jurisdiction of the Juvenile Court the issuance of G. L. c. 258E harassment prevention orders against a child under twelve; after all, the issuance of such an order also necessitates involvement of such a young child in the juvenile justice system and the creation of a damaging record of such involvement, thereby contradicting a fundamental purpose of the 2018 reform. For that reason, I concur here.

As we have previously explained, "[t]he Juvenile Court is a court of limited jurisdiction, which has no . . . authority in the absence of a specific statutory authorization" (quotation

and citation omitted). Commonwealth v. Mogelinski, 473 Mass. 164, 167 (2015).¹

The scope of the Juvenile Court's jurisdiction over delinquency proceedings underwent a substantial change in April 2018, after the Legislature enacted St. 2018, c. 69, entitled "An Act relative to criminal justice reform." For over one-half century prior to the enactment of the criminal justice reform act, the term "delinquent child" was broadly defined as "a child between seven and seventeen who violates any city ordinance or town by-law or who commits any offence against a law of the commonwealth."² G. L. c. 119, § 52, as amended through St. 1960, c. 353, § 1. The criminal justice reform act considerably narrowed this definition by excluding children below the age of twelve, as well as children who commit a civil infraction or a first offense of certain minor misdemeanors. G. L. c. 119, § 52, as amended through St. 2018, c. 69, § 72.

The purpose of this change was well documented. As we explained in Lazlo L. v. Commonwealth, 482 Mass. 325, 333-334 (2019):

¹ "[W]henever a problem of subject matter jurisdiction becomes apparent to a court, the court has both the power and the obligation to resolve it." Doherty v. Civil Serv. Comm'n, 486 Mass. 487, 491 (2020), quoting Rental Prop. Mgt. Servs. v. Hatcher, 479 Mass. 542, 547 (2018).

² This definition was amended in 2013 to include children between seven and eighteen. See St. 2013, c. 84, § 7.

"The legislative history of the act indicates that the Legislature understood that children who enter the juvenile justice system have a higher risk of reoffending for the remainder of their lives, and that their risk of recidivism is greater the earlier they enter the system. See State House News Service (House Sess.), Nov. 13, 2017 (statement of Rep. Claire D. Cronin, co-chair, Joint Committee on Judiciary) ('the earlier a child become[s] involved' in justice system, 'the more likely that child will remain in the system through his or her life'); State House News Service (House Sess.), Apr. 4, 2018 (statement of Rep. Kay Khan, co-chair, Joint Committee on Children, Families and Persons with Disabilities) (amendment that 'raises juvenile jurisdiction from [seven] to [twelve],' among other amendments, 'will give young people a second chance'); State House News Service (Senate Sess.), Oct. 26, 2017 (statement of Sen. William N. Brownsberger, co-chair, Joint Committee on Judiciary) ('decriminalizing childhood behaviors' part of effort to 'cut the chains that hold people down when they're trying to get back up on their feet'). . . . In so doing, the Legislature implicitly declared that the juvenile justice system is not the appropriate forum to address offenses committed by children under twelve, or civil infractions, or first offenses of a minor misdemeanor committed by any child, and that such matters should not result in a juvenile record that may later adversely affect a child and increase his or her risk to recidivate."

See Commonwealth v. Carson C., 489 Mass. 54, 63 n.4 (2022)

(juvenile records may lead to difficulties in accessing educational services, obtaining employment, serving in military, finding and maintaining housing, and gaining admission to and securing financial aid from colleges and universities).

There is no question that delinquency proceedings could not be brought against the child in question for the alleged conduct. He was nine years old at the time the events at issue occurred and thus was too young to be considered a delinquent

child. The Juvenile Court therefore has no jurisdiction on these grounds.

The Juvenile Court does, however, have jurisdiction over harassment prevention orders issued pursuant to G. L. c. 258E (harassment order statute) against minors. See G. L. c. 258E, §§ 2, 3. Such proceedings are civil in nature, while violations of orders issued thereunder are criminal in nature. G. L. c. 258E, § 4. The hybrid nature of these proceedings for children under twelve is particularly confusing, as delinquency proceedings can no longer be brought against such children.

The impact of the amended definition of "delinquent child" on c. 258E harassment proceedings is not clear from the 2018 act itself. The Legislature did not expressly address the issue in the legislation. Contrast A.T. v. C.R., 88 Mass. App. Ct. 532, 539 n.9 (2015) ("In addition, when the Legislature changed the age for determining who was a juvenile from under seventeen to under eighteen, § 2 of the harassment order statute was amended to reflect that change. See G. L. c. 258E, § 2, as amended by St. 2014, c. 284, § 74"). No such change was made after 2018, even though there are obvious conflicts between the 2018 act and the harassment order statute, at least when the child against whom the order is sought is under twelve. If such a child violates the order, as explained above, no delinquency proceedings can be brought to enforce it, even though the

principal remedy provided by c. 258E for violation of harassment prevention orders is criminal in nature. Indeed, under § 9 thereof, each harassment prevention order issued must state that "VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE," and any violation "shall be punishable by a fine . . . , or by imprisonment . . . , or both." G. L. c. 258E, § 9.³ Moreover, the fundamental purpose of the 2018 act is defeated in the circumstances of this case. A child, at the tender age of nine, has been brought into the juvenile justice system, with the negative consequences the 2018 reform was meant to prevent, including the record the defendant (juvenile) seeks to expunge here.

The Legislature also provided an alternative means of addressing the very type of misconduct alleged here by very young children at school. In fact, the misconduct at issue occurred, in part, during a game of "beanbag tag" in gym class and Wiffle ball at recess. The antibullying statute, G. L. c. 71, § 370, prohibits bullying both on and off school grounds, G. L. c. 71, § 370 (b), and requires school districts to develop procedures for "promptly responding to and investigating reports

³ Section 9 of the harassment order statute also states: "Criminal remedies provided herein are not exclusive and do not preclude any other available civil or criminal remedies. The court may enforce by civil contempt procedure a violation of its own court order." G. L. c. 258E, § 9.

of bullying or retaliation," disciplining perpetrators, "restoring a sense of safety for a victim and assessing that victim's needs for protection," notifying the parents or guardians of the perpetrator and victim, and "providing counseling or referral to appropriate services for perpetrators and victims," among other things, G. L. c. 71, § 370 (d) (2). In fact, this restorative justice process was applied in the instant case, and although the Juvenile Court judge here issued the harassment prevention order initially, he vacated the order following the school's investigation under the antibullying statute, concluding that the allegations that the juvenile had engaged in bullying behavior could not be substantiated.⁴

The limited case law involving harassment prevention orders and children under twelve that existed before the passage of the 2018 criminal justice reform act also demonstrates the problems with the application of the harassment order statute to such young children. In these rare cases, the courts have struggled with the difficulty of applying the standard to such young children. See A.P. v. M.T., 92 Mass. App. Ct. 156 (2017); A.T., 88 Mass. App. Ct. at 538-540. Although the Appeals Court upheld

⁴ I recognize that the antibullying statute says that "[n]othing in this section shall supersede or replace existing rights or remedies under any other general or special law." G. L. c. 71, § 370 (i). For children twelve and over, there is of course no question that delinquency proceedings could also be brought against the offending child.

the standard's application in A.P., it described the child's age as "concerning." A.P., supra at 161. To support its conclusion that the Legislature expressly meant to provide the Juvenile Court with jurisdiction over children of this age, the Appeals Court relied specifically on the former statute that provided the Juvenile Court with delinquency jurisdiction for children as young as seven. Id. at 161-162. Such reasoning is no longer applicable to such young children, at least with respect to delinquency jurisdiction, after the criminal justice reform act of 2018.⁵ See Commonwealth v. Ambrose A., 495 Mass. 135, 135-136 (2024) (declining to expunge delinquency finding against eleven year old that was entered in 2013); F.A.P. v. J.E.S., 87 Mass. App. Ct. 595, 596-597 (2015) (remanding harassment order proceedings for eleven year old boy who was also subject to delinquency proceedings for digital rape of seven year old). Those dissenting and concurring in these decisions were particularly focused on the very young age of the child and the

⁵ Such reasoning also flies in the face of the fact that the decision to raise the age of criminal responsibility from seven to twelve "resulted from a recognition that the brains of young children are still developing and that addressing unlawful behaviors of children under the age of [twelve] through the delinquency system is neither fair nor developmentally appropriate." Juvenile Justice Policy and Data Board, Early Impacts of "An Act Relative to Criminal Justice Reform" 48 (Nov. 2019), <https://www.mass.gov/doc/early-impacts-of-an-act-relative-to-criminal-justice-reform-november-2019/download> [<https://perma.cc/UK9D-T4RQ>].

difference that made in the analysis. See A.P., supra at 168 (Kafker, C.J., concurring) ("I write separately, however, to stress the importance of M.T.'s very young age -- he was apparently only eight years old at the time of the incident -- and how that age complicates the analysis and distinguishes this case from those on which the majority relies that involve adults"); A.T., supra at 542 (Blake, J., dissenting) ("Equally important to the analysis is the fact that the defendant was eleven years old and in the sixth grade when the acts occurred. While the language of G. L. c. 258E does not delineate between adult and juvenile defendants, with the exception of jurisdiction, the age of the defendant cannot be ignored").

Given the manifold problems associated with application of the harassment order statute to very young children, particularly after the 2018 act, it is not apparent why the Legislature failed to make corresponding changes in the harassment order statute. Contrast Commonwealth v. Gavin G., 437 Mass. 470, 481-482 (2002) (holding that there was no evidence of Legislature's inadvertence given sophisticated statutory structure in place governing juvenile court and probation records; "[c]onspicuously absent from that entire legislative scheme governing court and probation records, whether for adults or juveniles, is any suggestion that the Legislature intended such records be destroyed").

At a minimum, where delinquency proceedings are no longer available to enforce the violation of harassment prevention orders by children under twelve as provided by the criminal justice reform act, clarification of how the violation of such orders are meant to be enforced is required. The required reference to criminal enforcement is misleading and confusing at best. Whether, if not why, such orders are required to be retained by the Commissioner of Probation in designated record-keeping systems, when the orders could not be subject to enforcement through delinquency proceedings, particularly after having been vacated as was done in the instant case, also merits further clarification.⁶ More significantly, as explained above, it is not at all clear how the issuance of such orders to children under the age of twelve squares with the fundamental objectives of the criminal justice reform act.

Based on my review of the statutory language and the legislative history, I cannot determine whether the Legislature

⁶ I note that in the 2018 criminal justice reform act, see St. 2018, c. 69, § 195, the Legislature, without again addressing age limitations related to delinquency jurisdiction, included harassment prevention orders in the long list of offenses for which no expungement could be ordered, except where the petitioner meets the requirements of G. L. c. 276, § 100K (reason-based expungement). See G. L. c. 276, § 100J (a) ("No criminal record resulting from a disposition of the following offenses shall be eligible for expungement pursuant to [§ 100F, 100G, or 100H]: . . . [16] any offense in violation of an order issued pursuant to [c.] 258E).

considered these problems, as harassment prevention orders against children under twelve do not appear to have been discussed during the legislative hearings and sessions on the criminal justice reform act, and the harassment order statute was not in any way revised to take into account the changes, including the age change that excludes children under twelve from delinquency proceedings. The text of the harassment order statute without any such amendment provides for the issuance of such orders against all minors, regardless of their age. While that may have been consistent with the law prior to the criminal justice reform act when the Juvenile Court had jurisdiction over children as young as seven for delinquency proceedings, it seems the Legislature underwent a sea change in its thinking in 2018. Is it still, after 2018, the Legislature's intention that nine year olds, seven year olds, or even kindergartners shall be subject to harassment orders? And to have such records retained by the Commissioner of Probation in various record-keeping systems, even though those orders cannot be enforced through delinquency proceedings and they leave very young children with a potentially damaging record?

Unfortunately, despite these problems, I cannot be sure what that age limitation is, if any, based on the text and legislative history of the relevant statutes. For that reason, I agree with the court that the statutory text allowing the

issuance of harassment prevention orders against minors, without further age qualification, supports the Juvenile Court's jurisdiction over the nine year old in the instant case and the enforcement of the law as written here, which includes retention and not expungement of the order. I would hope, however, that the Legislature addresses these evident problems and further considers the question whether the issuance of c. 258E harassment orders against children under twelve is consistent with the fundamental principles underlying the criminal justice reform act and, if not, makes corresponding changes in the harassment order statute. If the Legislature does not intend for nine year olds to be subject to such orders, it surely can easily clarify the age requirements in the statute and prevent another very young child from unnecessarily entering the juvenile system and suffering negative consequences as this little boy did here.

BUDD, C.J. (dissenting). The facts here are undisputed, and the court ably captures the unusual and unfortunate events that unfolded. After a judge issued a harassment prevention order against the defendant child at the request of the plaintiff child, the judge later concluded that no evidence supported the order and terminated it. Ante at . The defendant child has appealed from the denial of his motion to expunge the record of an order that had no basis to be issued in the first place.

I agree with the court that there is nothing, either express or implied, in G. L. c. 258E that authorizes the expungement of a record of a harassment prevention order when an order is later vacated because the evidence is ultimately deemed insufficient. See ante at . Indeed, G. L. c. 258E, § 9, instructs that records of all harassment prevention orders, without exception, are to be kept permanently.

But clearly, exceptions have been made. See generally Commissioner of Probation v. Adams, 65 Mass. App. Ct. 725, 733-735 (2006). And although there are limits on the court's inherent powers, it is beyond dispute that these powers exist "without statutory authorization and cannot be restricted or abolished by the Legislature." Brach v. Chief Justice of the Dist. Court Dep't, 386 Mass. 528, 535 (1982). Accord Adams, supra at 734 ("the judge's inherent power to fashion an

appropriate remedy is not vitiated by the statute's omission regarding expungement"). Moreover, "[t]he very conception of inherent power carries with it the implication that its use is for occasions not provided for by established methods" (citation omitted). O'Coin's, Inc. v. Treasurer of the County of Worcester, 362 Mass. 507, 516 (1972). Here the court concludes that the Juvenile Court has no authority to exercise its inherent power because the facts here do not mirror the one case to have considered this issue, where the defendant failed to demonstrate that the plaintiff child perpetrated a fraud on the court. This, despite the fact that the unsupported order was obtained by a young child against another young child, who may well suffer serious consequences as a result. Given these circumstances, I believe that there is flexibility in the standard to account for the differences between adults and children. I therefore respectfully dissent.

1. Reexamining the standard in a case of first impression. While I agree with the court that creating a broader equitable authority for vacated orders is not the answer here, and assuming proper subject matter jurisdiction exists, see ante at (Kafker, J., concurring), I cannot join the court in concluding that the court's inherent authority is so inflexible as to bar relief. Because the court's inherent powers are "essential to the function of the judicial department," Sheriff

of Middlesex County v. Commissioner of Correction, 383 Mass. 631, 636 (1981), the ability to exercise them must be more than theoretical, see O'Coin's, Inc., 362 Mass. at 514 ("regardless of any statute, every judge must exercise his inherent powers as necessary to secure the full and effective administration of justice" [emphasis added]). Given the unique characteristics of these parties, a tailored application of the existing standard is required.

The analysis to determine whether to use the court's inherent powers was applied straightforwardly in Adams, 65 Mass. App. Ct. at 733-735. There the court concluded that the plaintiff's conduct, which was, among other things, "part of a larger pattern of harassment" perpetrated through a "calculated pattern of false statements to the court," constituted fraud. Id. at 730. The court then determined that the "potential harm to the courts and to [the person requesting expungement] outweigh[ed] the governmental interest in maintaining and disseminating the fraudulently obtained [G. L. c.] 209A order, because the order contains absolutely no informational purpose." Id. at 736. Consequently, expungement by way of the court's inherent powers was affirmed. Id. at 737.

This case, however, presents an issue of first impression for the court: whether the existing standard can and should be applied when the litigants are young children. The fraud

standard is not well suited for the circumstances presented here, as it is entirely unclear whether young children even have the capacity to commit fraud. See J.D.B. v. North Carolina, 564 U.S. 261, 274 (2011) ("'[o]ur history is replete with laws and judicial recognition' that children cannot be viewed simply as miniature adults" [citation omitted]); Thompson v. Oklahoma, 487 U.S. 815, 835 (1988) ("The reasons why juveniles are not trusted with the privileges and responsibilities of an adult also explain why their irresponsible conduct is not as morally reprehensible as that of an adult").

Moreover, the law has long excluded younger children from even the limited punishments and procedures applicable to older juveniles. See Thompson, 487 U.S. at 836-837 (capital punishment's goals of retribution and deterrence "simply inapplicable" to child as young as fifteen). Perhaps the most obvious example of differential legal treatment of young children is the jurisdictional limit of the Juvenile Court. The Legislature has made clear that children under twelve years of age cannot be subject to delinquency proceedings.¹ See G. L. c. 119, § 52, as amended through St. 2018, c. 69, § 72 (defining "[d]elinquent child" in part as "a child between 12 and 18 years

¹ Children under the age of fourteen are excluded from the definition of youthful offender. G. L. c. 119, § 52.

of age"). See also Lazlo L. v. Commonwealth, 482 Mass. 325, 333 (2019) ("the Legislature implicitly declared that the juvenile justice system is not the appropriate forum to address offenses committed by children under twelve"). This legal demarcation, recognizing that children below a certain age are simply not legally or morally responsible for their actions, brings into serious question whether a young child is capable of forming specific, criminal intent at all. Cf. In re Gault, 387 U.S. 1, 16 (1967) ("At common law, children under seven were considered incapable of possessing criminal intent"). Although jurisdictional age limits vary (they typically are between twelve and fourteen years of age), other States similarly recognize, through common law or statute, that young children either are presumptively incapable of forming criminal mental states, are incompetent to participate in legal proceedings, or both.²

² See, e.g., Ark. Code Ann. § 9-27-502(b)(1)(A) (juveniles under age thirteen presumed incapable of mental states required for capital murder, murder in first degree, and capital rape); Cal. Penal Code § 26 (rebuttable presumption that juvenile under fourteen incapable of committing crimes); Me. Rev. Stat. tit. 15, § 3318-A(8) (burden to prove juvenile's competence to commit crimes lies with State before age fourteen); Mich. Comp. Laws § 330.2062(1) (juveniles not presumed competent to commit crimes until age ten); Ohio Rev. Code Ann. § 2152.52(A)(2) (rebuttable presumption of competency only for juveniles age fourteen or older); Okla. Stat. tit. 10A, § 2-2-401.2(A)(3) (rebuttable presumption of competency only for juveniles age thirteen or older); W. Va. Code § 49-4-727(c) (juveniles under age thirteen presumed incompetent). See also A.G. v. State, 895 So. 2d 473,

In light of the fundamental limitations of young children, requiring a defendant to present proof that a young child plaintiff had formed a specific and substantial intent to manipulate and defraud the court is ill suited to the circumstances. Indeed, it is not clear that a judge would ever be able to find a young child capable of the specific "corrupt conduct" intended to "defile the court" as contemplated in Adams, 65 Mass. App. Ct. at 729, even if the testimony provided by a young child plaintiff is patently untrue.³ Cf. B.C. v.

475 (Fla. Dist. Ct. App. 2005) ("there is a legitimate question of competency when a child, aged nine, will be subjected to delinquency proceedings"); Matter of Registrant J.G., 169 N.J. 304, 326-327 (2001) (children under age seven conclusively presumed incapable of forming criminal intent; children between ages seven and fourteen rebuttably presumed incapable of criminal intent).

³ The court acknowledges as much, see ante at , as did the motion judge when he at one point questioned whether the plaintiff child "has a wherewithal to fabricate." Our Legislature similarly understands that young children possess significant limitations when testifying under oath, not because they intend to lie, but because they are young. See G. L. c. 119, § 1 (noting children under twelve years of age not entitled to "presumption of competency" in care and protection proceedings). Massachusetts is not alone in this recognition. See, e.g., Ariz. Rev. Stat. Ann. § 12-2202(2) (children under ten may not testify if they cannot discern or relate truth); Colo. Rev. Stat. § 13-90-106(1)(b) (same); Idaho Code Ann. § 9-202(2) (same); Mo. Ann. Stat. § 491.060(2) (same); Ohio Rev. Code Ann. § 2317.01 (same). See also N.Y. Fam. Ct. Act § 343.1 (children under nine cannot testify unless they understand nature of witness's oath); State v. Butcher, 165 W. Va. 522, 525 (1980) (rebuttable presumption that witnesses under fourteen not competent to testify).

F.C., 90 Mass. App. Ct. 345, 350 (2016) (false allegations not part "of a conscious fabrication of abuse"); M.C.D. v. D.E.D., 90 Mass. App. Ct. 337, 342 (2016) (plaintiff's false accusations "while suggesting a deliberate purpose . . . did not add up to a larger plan intended to harass the defendant or to undermine the judicial process").

In the existing framework, a finding of fraud is what permits the court to move to the balancing analysis where the judge considers the harm not only to the court but also to the defendant. Here, the defendant is a young child under the jurisdiction of the Juvenile Court that has a mandate to protect him. See Police Comm'r of Boston v. Municipal Court of the Dorchester Dist., 374 Mass. 640, 667 (1978) (Police Comm'r) ("Juvenile Courts have a broad mandate to act in furtherance of a child's welfare"). Assuming it is not possible to find that a plaintiff child has committed fraud, under this limited

Moreover, young children are especially vulnerable to coercion and suggestion. Cf. Commonwealth v. Evelyn, 485 Mass. 691, 699, (2020) ("the naiveté, immaturity, and vulnerability of a child will imbue the objective communications of a police officer with greater coercive power"); Commonwealth v. Allen, 40 Mass. App. Ct. 458, 462 (1996) ("leading or coercive questioning can distort a child's memory"); United States v. Rouse, 100 F.3d 560, 572 (8th Cir. 1996) (noting "children's susceptibility to suggestive interview practices"). I note that here the parent of the plaintiff child was significantly involved at the initial two-party hearing, attempting to supplement the plaintiff's own testimony while vigorously lobbying for the issuance of the order.

framework, there is no opportunity to consider harm either to the court or to the defendant child. Thus, it leaves the Juvenile Court vulnerable to misuse and exposes the young child defendant -- a person the Juvenile Court is tasked to protect -- to potential injustice without any meaningful opportunity for relief. In short, it renders the court's inherent power to expunge a harassment prevention order recognized under Adams illusory for young defendants. Cf. Commonwealth v. Long, 485 Mass. 711, 721 (2020) (unduly high evidentiary burden, in practice, meant "right of drivers to be free from racial profiling will remain illusory").

Because the parties in Adams were adults, there is no reason to believe that the standard articulated in that case was ever contemplated to apply to children this young. Indeed, it appears that neither this court, nor the Appeals Court, has ever considered the standard to expunge records of a harassment prevention order obtained by a young child plaintiff. This case provides the court with a unique opportunity to consider the appropriate standard to apply when the parties involved are young children. As discussed supra, in most other respects, the law treats children as categorically different from adults, and children under twelve years of age as categorically different from older children. It stands to reason, then, that this court

should consider how the material differences between adults and children should be taken into account in this context.

With the aforementioned considerations in mind, in my view the use of the court's inherent power to expunge a vacated harassment prevention order may be appropriately considered where the plaintiff is a child under twelve years of age,⁴ and a judge has determined that the allegations of harassment underlying the original order lack factual support or are otherwise untrue.

2. Balancing the interests. As the judge has already made the requisite finding as to the underlying facts alleged by the plaintiff child, that is, there was "no evidence -- physical or anecdotal" -- in support of the original allegation of harm, I turn to the balancing analysis. To determine whether expungement would be appropriate in this case, the interest the government has in maintaining the record is measured against the harm suffered from doing so. See Adams, 65 Mass. App. Ct. at 735.

First, as the court observes, ante at , the Legislature has determined that retention of harassment prevention order

⁴ This analysis would apply only where the plaintiff child is the reporting party completing the affidavit in support of the harassment protection order. The typical fraud standard applies to adults seeking protection orders who may list their minor children as additional plaintiffs.

records serves important judicial and law enforcement functions, mainly protecting victims of harassment. However, in the context of orders that are later vacated on the basis that the order was insupportable when originally issued, that interest is significantly diminished. See, e.g., Police Comm'r, 374 Mass. at 658 ("there are situations where the maintenance of criminal records of a particular individual cannot be said to serve any valid law enforcement purpose because the events whose happening they reflect are of little or no relevance to the individual's likelihood of participation in future criminal activities or necessary to the achievement of other ancillary goals of the criminal justice system"); Adams, 65 Mass. App. Ct. at 736 (minimal government interest in maintaining fraudulent record containing "absolutely no informational purpose"). See also Police Comm'r, supra at 656-657, and cases cited (noting propriety of expungement for records denoting exoneration of underlying conduct). The interest in maintaining the record is even further reduced here: because the Juvenile Court does not have jurisdiction over delinquency complaints against children under twelve years of age, see G. L. c. 119, § 52, the order lacks an enforcement mechanism. Thus, the government's interest in retaining a record of the erroneous harassment prevention order in this case is ostensibly reduced to nil.

With regard to the potential nature of harm in retaining the record to the individual seeking expungement, G. L. c. 258E, § 10, provides that records involving minor defendants "shall be withheld from public inspection" except by court order.

However, as the court points out, ante at , records of all harassment prevention orders are kept permanently in the Statewide domestic violence record-keeping system (DVRS). See G. L. c. 258E, § 9. Thus, the defendant child in this case will be identifiable as having had a harassment prevention order issued against him for the rest of his life. The record will also be maintained in the court activity record information (CARI) system.⁵ We previously have noted the weighty consequences for juveniles with information stored in CARI and criminal offender record information (CORI) databases, including the potential that the information can be "used to enhance

⁵ CARI stands for "[c]ourt activity record information" and "include[s] an individual's criminal offender record information (CORI) and all court appearances related to juvenile delinquency and civil protective order proceedings." Commonwealth v. Humberto H., 466 Mass. 562, 572 n.7 (2013). It is also possible, if not likely, that record of the vacated order will be captured by the interstate identification index of criminal history records retained by the Federal Bureau of Investigation (FBI), commonly referred to as "Triple I." See St. 1992, c. 188, § 7 (noting information contained in DVRS "shall be made available to law enforcement agencies"). Cf. Fowlkes v. Rodriguez, 584 F. Supp. 2d 561, 567 (E.D.N.Y. 2008) (State disseminated noncriminal sex offender information to FBI for national dissemination "through its interstate identification index of criminal history records").

future sentencing or affect charging or probation decisions."

Commonwealth v. Manolo M., 486 Mass. 678, 686 (2021).

Importantly, unlike delinquency records, which are subject to a strict sealing procedure, see infra, civil harassment records maintained in these databases are freely accessible by certain agencies and organizations. Further, in certain employment and childcare sectors, such records must be reviewed as a condition of employment or engagement.⁶ Thus, at a minimum, the maintenance of a record here can be a barrier to employment opportunities, including providing child care, teaching, coaching or other volunteering activities with minors, and fostering or adopting children. These consequences all await the defendant child despite the fact that a judge ultimately found that the original order lacked factual support, a finding no one contests on appeal. Significantly, this final disposition will be absent from the defendant child's probation records. According to the Commissioner of Probation, only three

⁶ See, e.g., G. L. c. 6, §§ 172B, 172F (sealed juvenile records "shall be available" to Department of Children and Families and adoption and foster placement agencies for evaluating potential adoptive and foster placements); G. L. c. 6, § 172G ("operators of camps for children shall obtain all available [CORI] and juvenile data as found in the [CARI]" for potential employees or volunteers); G. L. c. 71, § 38R (public and private school administrators "shall obtain . . . all available [CORI]" for prospective employees, volunteers, subcontractors, or laborers). See also St. 1992, c. 188, § 7 (establishing DVRS, noting records maintained therein "shall be made available to judges . . . [and] law enforcement agencies").

codes exist pertinent to c. 258E orders: "closed-denied," "closed-expired," or "closed-vacated." There is no way to specify that an order lacked factual support from the start, as is the case here.

Turning to the harm caused to the court system, the court's integrity sustains damage in these extraordinary circumstances both because the underlying order obtained by one child against another child was baseless, and because the record to be retained in the DVRS will not accurately reflect that fact. See Adams, 65 Mass. App. Ct. at 732 ("Although labels such as 'dismissed' or 'closed' are applied to records in the system, no explanation is provided as to why the order was dismissed or the case closed"). The court should not be required to stand by and permit other entities to incorrectly rely on the retained record, in perpetuity. Cf. id. (noting concern for court's integrity "when law enforcement officials rely on inaccurate information produced by the court").

The Juvenile Court's duty to protect the children who appear before it makes this outcome particularly troubling.⁷ See Commonwealth v. Gavin G., 437 Mass. 470, 472 (2002) ("'[T]he

⁷ Although the statutory mandate refers specifically to delinquency proceedings, see G. L. c. 119, § 53, we have interpreted it broadly. See, e.g., Commonwealth v. Quahir Q., 496 Mass. 748, 750 (2025) (Juvenile Courts possess broad discretion to avoid attachment of "the stigma of a criminal" to juveniles [citation omitted]).

Juvenile Courts have a broad mandate to act in furtherance of a child's welfare,' and therefore must have 'the power to take the necessary steps to ensure that in proper circumstances the juvenile shall suffer no injury as a result of involvement with the judicial process by the dissemination of records which have in some ways an impact equivalent to criminal records'"

[citation omitted]); Police Comm'r, 374 Mass. at 667-668 (order of expungement "motivated . . . by the same concerns regarding adverse present and future consequences of a juvenile record of police or court involvement that lie behind a number of legislative enactments"). Indeed, "[t]here would be a considerable irony if a court charged with exercising its function in a manner consistent with [G. L. c. 119, § 53,] was viewed not to have the power to take the necessary steps to ensure that in proper circumstances the juvenile shall suffer no injury as a result of involvement with the judicial process by the dissemination of records which have in some ways an impact equivalent to criminal records." Police Comm'r, supra at 668.

The result of balancing the government's interest in maintaining the record against the harm caused by maintaining the record weighs heavily in favor of the Juvenile Court exercising its inherent powers to expunge the record, to protect itself against the kind of misuse of the court in a situation

like this one where the plaintiff is a young child as well as to protect the defendant child.

3. Prior precedent does not foreclose expungement here.

Pointing to Gavin G., 437 Mass. at 475-476, the court suggests that we have already considered, and rejected, the exercise of inherent powers to expunge certain juvenile records held by probation. Ante at . I do not agree.

In Gavin G., 437 Mass. at 471, the juvenile sought to expunge records related to a delinquency complaint that had been dismissed without prejudice after key witnesses failed to appear at trial. The court acknowledged the important role of the Juvenile Court in protecting juveniles but determined that the existing detailed statutory scheme shielding the records of juveniles adequately protected the records maintained by the Juvenile Court as well as the probation department. Id. at 473-474. Critically, the applicable statutory scheme included the ability to seal the juvenile's records.⁸ See, e.g., G. L. c. 119, § 60A (no public access to delinquency court records); G. L. c. 276, § 100A (existence of delinquency and child in need of services probation records known only to law enforcement agencies, courts, and appointing authorities, and juvenile may

⁸ The court observed that the juvenile was incorrect to assert that certain statutory protections, such as sealing, were unavailable to him. Gavin G., 437 Mass. at 476-477.

truthfully report "no record" to prospective employer); G. L. c. 276, § 100B (any person may move to seal delinquency records; sealing protects records from view by law enforcement agencies, appointing authorities, and public employers). The protection afforded by G. L. c. 258E, § 10, discussed supra, does not compare to the legislative scheme that shielded the juvenile in Gavin G.⁹

Finally, the court in Gavin G. did not consider whether use of the court's inherent powers would be necessary to protect the court itself and the "integrity of the pending litigation."

Adams, 65 Mass. App. Ct. at 731.¹⁰

4. Conclusion. The circumstances of this case are as unusual as they are unfortunate. The available precedent is logical as far as it goes, but is ultimately inadequate here

⁹ Indeed, G. L. c. 258E, § 10, merely brings record-keeping measures for harassment prevention orders in line with most other records retained by the Juvenile Court as it pertains to the denial of access to the general public. See, e.g., G. L. c. 119, § 38 (care and protection hearings "closed to the general public"); G. L. c. 119, § 60A (delinquency records "withheld from public inspection").

¹⁰ The juvenile in Gavin G., 437 Mass. at 471, claimed innocence, asserting that he was wrongfully identified as a perpetrator when in fact he was a victim. However, there was no determination that the delinquency complaint lacked factual support. Instead, the complaint was dismissed for want of prosecution. See Police Comm'r, 374 Mass. at 662 (expungement not appropriate "if there is a disposition of the case favorable to the juvenile due to matters not necessarily supportive of a finding of noninvolvement in delinquent behavior").

because it does not contemplate a situation where both parties are young children. This court has never determined that fraud on the court is the only circumstance in which a judge may use the inherent power of the court to expunge a restraining order that has no factual basis, and "[t]he very conception of inherent power carries with it the implication that its use is for occasions not provided for by established methods" (citation omitted). Brach, 386 Mass. at 536. This is such an occasion.

I would therefore order expungement of the records in question based on the modified standard proposed supra. The appropriate findings of fact, fully supported by the record before us, have been made, and whatever government interest remains in retaining such records does not outweigh the harms to the defendant child, particularly when considered under the special protection of the Juvenile Court, and to the court itself.