

Minor Transgressions, Major Consequences

*A picture
of 17-year-olds
in the Massachusetts
criminal justice system*



Citizens for Juvenile Justice

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INTRODUCTION

How Massachusetts Can Keep Teens on the Right Side of the Law

Every year, Massachusetts sends thousands of high-school-aged kids charged with minor, non-violent offenses into our adult criminal justice system. They are put in the adult system simply because they have turned 17 – despite research showing that treating kids as adults actually increases crime and despite the fact teens incarcerated in the adult system often cannot attend school or receive other age-appropriate services.

Our current system is costly, not just for the kids and families involved, but for all Massachusetts taxpayers. Higher crime means stretched police resources, increased court and jail costs, and more expenditures to help victims of crime. In the long run, losing more children to crime also means fewer high school graduates and taxpayers, and more consumers of public benefits, substance abuse services, and other safety-net resources.

The time to fix our system is now. *Massachusetts has a model juvenile justice system equipped to handle all teens under 18, regardless of the charges against them. Teens in our juvenile system are required to go to school and get services. In contrast to the adult system, parents must be notified if a youth is arrested and charged with a crime. Given the dramatic reductions in juvenile court caseloads over the last few years, the system also has the capacity – now – to handle the additional cases with modest, if any, additional funding.*

Massachusetts is one of the few states in the country that automatically sends all 17-year-olds charged with crimes into the adult criminal system. Although the vast majority of 17-year-olds are charged with minor, non-violent offenses, they are held with older criminal offenders in adult jails and prisons, where they are at much higher risk for victimization and suicide. Seventeen-year-olds incarcerated in adult facilities are not required to attend school, nor are they consistently provided with the services they need to become responsible adults, as is the case in

Under current law, parents of 17-year-olds have no right to be notified if their child is arrested or charged with a crime.

the juvenile system. Parents do not have the right to be notified of either their child's arrest or any of the charges against him.¹

Research demonstrates that 17-year-olds who are sent to the adult system are more likely to commit additional crimes, and even escalate into violent crime, than kids who stay in the juvenile system. The existence of an adult criminal record is also likely to permanently limit these teens' educational, housing, job and military service options, making them much less likely to become contributing, tax-paying members of our society. As a practical matter, an adult record means that a fight at school, or a one-time minor drug charge could result in a teen being permanently barred from receiving student aid, make him ineligible for certain jobs or even exclude him from living in housing with his family.

Massachusetts is in a unique position to remedy this bleak situation right now. Given the dramatic decrease in caseloads in our juvenile court over the past few years, adding 17-year-olds to our juvenile system is likely to have only modest, if any, immediate net cost.² At the same time, the short- and long-term savings that would be realized by reducing future crime and improving the educational and employment prospects for youth would be significant.

Adding 17-year-olds to our juvenile system is likely to have only modest, if any, immediate net cost; the short- and long-term cost savings that will be realized by reducing future crime and improving the educational and employment prospects for youth are significant.

What You Will Find in this Report

This report outlines CfJJ's research, initial findings, and recommendations about how best to handle 17-year-olds who have been arrested or accused of a crime.

Chapter 1 profiles what we know about 17-year-olds in Massachusetts, in particular those who are arrested for or charged with a crime. As the chapter explains, the vast majority of 17-year-olds currently sent to our adult system are charged with minor, non-violent offenses and overall have a similar or *less* serious offense profile than their younger teen peers.

Chapter 2 outlines current scientific and sociological research on adolescent development, including what we know about what works – and what doesn't – to prevent or reduce youth crime. As explained in Chapter 2, research has repeatedly demonstrated that sending teens through adult court and adult facilities actually increases crime, as well as all of the human and financial costs associated with crime.

Chapter 3 reviews what currently happens to kids and their families in the juvenile and adult systems in Massachusetts. Teens in the juvenile system are required to attend school, while teens in the adult system are unlikely to receive classroom instruction or any special education services (despite being legally entitled to them).

Chapter 4 discusses the practical and financial impact that including 17-year-olds in our juvenile system would have, including both the costs and benefits of such a change.

Chapter 5 briefly profiles two other states – Connecticut and Illinois – that have recently made the switch to including 17-year-olds in their juvenile system.

Finally, the report concludes with a discussion of how Massachusetts could (and should) raise the age of juvenile jurisdiction now, and identifies other strategies to address the inappropriate inclusion of 17-year-olds in our adult system.

Inclusion of 17-Year-Olds in the Juvenile System is Long Overdue

Massachusetts has not seriously considered the appropriate upper age range for jurisdiction in juvenile delinquency cases since the laws establishing the precursors of the juvenile “reform” system were drafted nearly 200 years ago.³ In the intervening years, there has been a global and national recognition of 18 as the age that marks the entry into adulthood,⁴ and, in fact, 18 marks the dividing line between childhood and adulthood with respect to nearly every other law in Massachusetts. Seventeen-year-olds cannot vote, sit on juries or drive in cars with their friends. Not surprisingly, most of them are still attending high school and living in their parents’ homes.



Because the juvenile court is already authorized to impose adult sentences, including state prison time in the case of serious offenders, and statutorily precluded from considering cases involving murder, bringing 17-year-olds into the juvenile system is consistent with public safety. Seventeen-year-olds involved in serious offenses would still receive appropriately punitive sentences, but these offenders, as well as the vast majority of other 17-year-olds, who have much less serious cases, would receive the expert attention, treatment and rehabilitation that is a hallmark of the specialized Massachusetts Juvenile Court system.

Everyone wants to keep communities safe and ensure that all kids have a chance to grow up into law-abiding, tax-paying citizens. Holding 17-year-olds who are charged with crimes accountable in ways that don’t actually encourage future criminal conduct furthers both these aims. Fortunately, Massachusetts has the financial capacity and expertise to do just that in our juvenile system today.

The Massachusetts Juvenile Court System: Balancing Rehabilitation with Responsibility

In Massachusetts, a child between the ages of 7 and 17 who is accused of a criminal offense or violation of a town ordinance or by-law¹ may be brought before the Juvenile Court for a determination, or “adjudication,” that he is a “delinquent child.”⁶ If a child is found delinquent, the Juvenile Court may place the child on probation with conditions or “commit” the child to the custody of the Department of Youth Services (DYS) until the child’s 18th birthday (19th birthday in the case of youth who are not adjudicated until they are 18).⁷

Although the focus of the Juvenile Court is treatment and rehabilitation of youth, the court is empowered to impose more severe, adult sentences in “youthful offender” (YO) cases. These cases involve youth between the ages of 14 and 17 who are charged with a felony and were: (a) previously committed to DHS; (b) charged with a crime that involves the “infliction or threat of serious bodily harm;” or (c) charged with a firearm offense.⁸ Youth convicted as YOs can receive an adult prison or county House of Correction sentence, a commitment to DHS to age 21, or a commitment to DHS with a suspended adult sentence. In cases in which a juvenile between the ages of 14 and 17 is charged with murder, Massachusetts law requires that the case be brought in adult court and that an adult sentence be imposed.

Teens in the juvenile justice system are generally required to attend school, either as a condition of their release or while in DHS custody. In every case, parents are notified at the time of arrest and must attend initial and subsequent court hearings. Teens in the juvenile system are subject to evaluations and assessments and frequently must participate in services and programs designed to teach responsible behavior as part of their sentence.

¹ This report generally uses the male pronoun to describe youth involved in the juvenile justice system. While many teen girls are also involved in the system, the vast majority (roughly ¾) of youth involved in our system are male.

² See discussion in Chapter 4, *infra*.

³ See discussion in Chapter 1, footnote 1.

⁴ See map, Chapter 5 (p. 27). See also further discussion in Chapter 2.

⁵ See MGL Ch. 119 § 52 *et seq.* Unlike adults, who may not be detained or incarcerated for a violation of a municipal ordinance or by-law, youth may be committed to the custody of the Department of Youth Services (DYS) if they are adjudicated delinquent as a result of such violation.

⁶ Although most youth who are charged are brought before the Juvenile Court, a few counties around Massachusetts have recently launched programs to divert certain cases from the court system entirely. See, e.g., information on the Essex District Attorney’s Juvenile Diversion program, available at http://www.mass.gov/?pageID=deasmodulechunk&L=1&Lo=Home&sid=Deas&tb=terminalcontent&f=juvenile_justice&csid=Deas.

⁷ MGL Ch. 119 § 58. Like adult court judges, juvenile court judges also have the authority to “continue a case without a finding,” essentially placing a case on hold and subjecting a child to probation for a set period of time, at the end of which the case may be dismissed if the child has complied with the terms of the probation and not gotten into any additional trouble.

⁸ MGL Ch. 199 § 52.

Arbitrarily Divergent Responses to the Same Kids

The Massachusetts law setting 16 as the upper age for juvenile court jurisdiction was established centuries ago.¹ At the time, our law also permitted children to work without attending school and for unlimited hours.² Adolescence, as we now understand it, is a modern and evolving concept.

Given the enormous changes in our understanding of childhood and adolescence that have taken place in the intervening years, there is little justification for continuing our treatment of 17-year-olds as adults. We know that, from a biological and psychological point of view, 17-year-olds lack the ability to consistently engage in mature adult thinking when it comes to matters of foresight or impulse control.³ As discussed below, 17-year-olds in Massachusetts do not commit more serious crimes than their younger peers, nor are they deterred from crime by virtue of their processing in the adult system.⁴ And, like younger teens, 17-year-olds are likely to age out of criminal conduct.⁵ Finally, most 17-year-olds are still in high school and living with their families; as a result, their needs are far more consistent with the requirements and services provided by the juvenile system than the adult criminal justice system.

Seventeen-Year-Olds Are Similar to the Younger Teens in Our Juvenile System

Seventeen-Year-Olds and Younger Teens Self-Report Equivalent Amounts of High-Risk Behavior

Perhaps not surprisingly, given their similarity to younger teens in so many other areas, 17-year-olds have similar criminal offense profiles to their younger peers. Nationally, 17-year-olds self-report engaging in risky behaviors at either the same or lower rates than younger adolescents.⁶

PERCENTAGE OF YOUTH REPORTING BEHAVIOR AT SPECIFIC AGES

Behavior	Age 12	Age 13	Age 14	Age 15	Age 16	Age 17
Suspended from school	6	9	14	13	12	10
Ran away from home	n/a	n/a	5	6	7	6
Belonged to a gang	2	2	2	2	2	2
Vandalized	14	17	16	14	13	9
Theft less than \$50	0	13	14	13	12	11
Theft more than \$50	3	3	4	5	5	4
Assaulted with intent to seriously hurt	9	10	11	11	11	9
Sold drugs	1	2	5	6	8	8
Carried a handgun	5	4	5	6	5	4

***Seventeen-Year-Olds and Younger Teens
Are Arrested for and Charged with Similar Offenses***

FBI arrest data for Massachusetts confirms that 17-year-olds are arrested for the same, predominantly low-level, non-violent offenses as younger teens. In 2008 and 2009, law enforcement officials reported arresting 7,049 and 5,888 17-year-olds, respectively, compared with 13,326 and 11,051 juveniles under 17.⁷ Like younger teens, the majority of 17-year-olds are arrested for relatively minor offenses, including drug abuse violations (primarily marijuana), larceny/theft, simple assaults, liquor law violations and disorderly conduct.⁸ In fact, compared with their younger peers, 17-year-olds are less likely to be arrested for “violent” offenses (8.7% versus 11.5% of under 17 arrests in 2008, 9.3% versus 11.7% in 2009).⁹

While the arrest data is helpful in providing a broader context for the offense profile of youth under 18, the numbers of 17-year-olds actually formally charged (arraigned) in court and the categories of offenses they are ar-

raigned for are key to understanding the potential impact of changing our jurisdictional age. According to the most recent data provided to CfJJ by the Department of Probation, the number of 17-year-olds formally charged in adult court in 2010 was 3,818. This marks a 10.6% decline from the previous year (4,273 in 2009). Examining the arraignment data from 2009, it appears that the vast majority (over 85%) of the 17-year-olds who were charged with a crime in district or superior court were charged with assaults or non-violent offenses.¹⁰

Unfortunately, precise statistics on the sen-

TOP ARREST OFFENSES FOR 17-YEAR-OLDS (2008)

1. Drug Abuse Violation
2. Larceny/Theft
3. Simple Assaults
4. Liquor Law Violations
5. Disorderly Conduct
6. Aggravated Assaults

TOP ARREST OFFENSES FOR YOUTH UNDER 17 (2008)

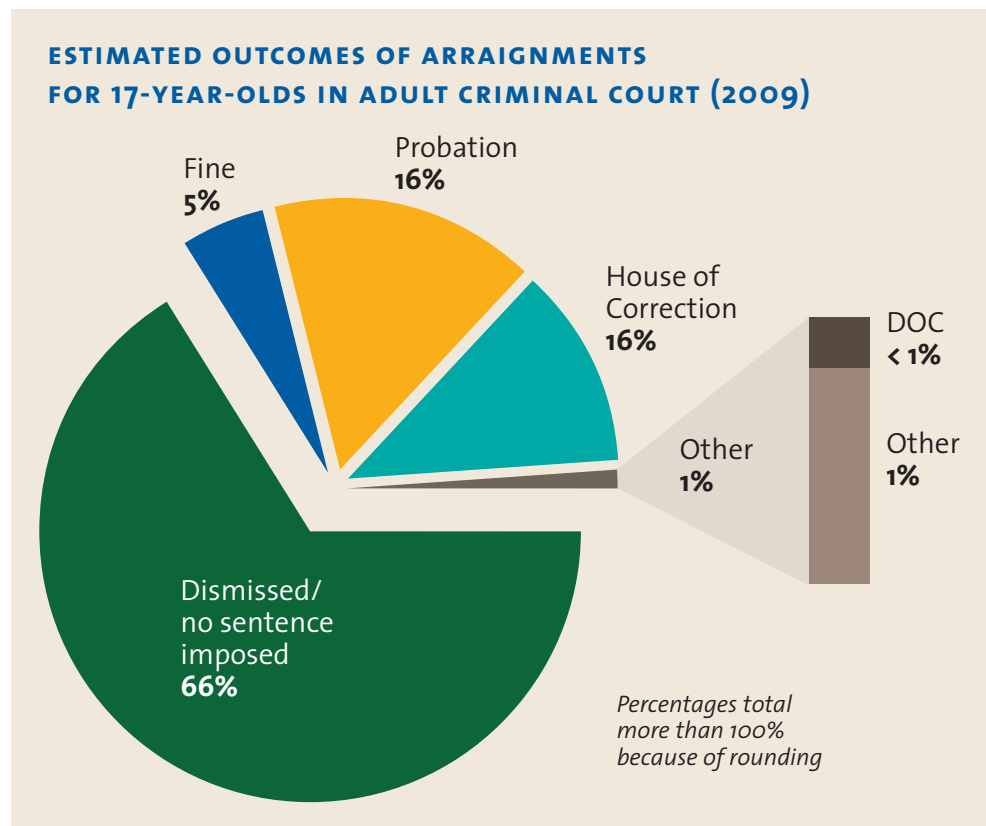
1. Simple Assaults
2. Larceny/Theft
3. Drug Abuse Violations
4. Aggravated Assaults
5. Disorderly Conduct
6. Vandalism

TOP TEN 17 YEAR OLD ARRAIGNMENT OFFENSES (2009)

Offense	Proportion of arraignments
Assaults (often “simple” assault) ¹¹	17.15 %
Larceny/Fraud	14.03 %
Disturbing the Peace/Disorderly Conduct	9.61 %
Other Public Order Offense	8.10 %
Controlled Substance Offense (primarily marijuana) ¹²	7.30 %
Liquor Law Violation	6.63 %
Destruction of Property	6.32 %
Other Major Motor Vehicle	6.29 %
Burglary/Breaking & Entering	5.68 %
Trespass	4.17 %
Total	85.27 %

tencing of individuals who were 17 at the time of their offense are not readily available, as sentencing statistics generally reflect the age of the individual at the time of sentencing, not at the time of offense. Based on available data, however, CfJJ estimates that no more than 1/3 of 17-year-olds' arraignments end in a conviction or plea – in other words, roughly 2/3 of the cases that are arraigned end without the state taking any action: such as a fine, incarceration or probation.¹³

As noted above, in 2009, 4,273 17-year-olds were arraigned in adult court. During the same year, a total of 1,147 seventeen **and** 18-year-olds were sentenced in adult court; this number is actually *over-inclusive*, as it likely includes some individuals who were arraigned for offenses committed when they were 18.¹⁴ As set forth below, the majority of cases (2/3) appear to have been dismissed or otherwise disposed of long before any sentence was imposed. For those who were sentenced, the majority of sentences involve probation or a fine; approximately 1/3 of the sentences involved a sentence to a county House of Correction, and only a tiny fraction (less than 1%) resulted in confinement to a state prison.¹⁵



- ¹ The last major change was in 1846, when the legislature raised the age of juvenile court jurisdiction from 15 to 16 to permit more young people to be sent to the juvenile reformatories that were just then being created.
- ² In 1836, a law was enacted requiring children under 15 working in factories to attend school at least three months a year and in 1842 only children under age 12 were limited to the number of hours a day they could work (10 hours). See http://www.continuetolearn.uiowa.edu/laborctr/child_labor/about/us_history.html. See further discussion in Chapter 2.
- ³ Id.
- ⁴ See *infra*.
- ⁵ Snyder, Howard N. and Melissa Sickmund. *Juvenile Offenders and Victims: 2006 National Report*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention (2006), at 71.
- ⁶ Id. at 70.
- ⁷ 2009 and 2008 Massachusetts Arrests by State detailed UCR data set, provided to CfJJ by the FBI Criminal Justice Information Services (CJIS) Division. Raw data available from CfJJ.
- ⁸ Id.
- ⁹ Id.
- ¹⁰ 2009 arraignment data on 17-year-olds was provided directly to CfJJ by the Research Division of the Department of Probation and is available from CfJJ. Nearly ¾ of these individuals were male and 63% were white, 20% were African-American, 15% were Hispanic, 1% were Asian, and less than 1% were Cape Verdean or Native American.
- ¹¹ Probation statistics do not distinguish between types of assaults that are arraigned. However, based on arrest data, it appears that approximately half of the assault cases were for simple assault. A simple assault can include any intentional unwanted or offensive touching, “no matter how slight,” including spitting. See, e.g. *Commonwealth v. Cohen*, 55 Mass. App. Ct. 358, 359 (Mass. App. Ct. 2002).
- ¹² Prior to 2009, Controlled Substance Act (CSA) violations represented a much larger percentage of 17-year-old arraignments (19.5% in 2007 and 16.7% in 2008). Well over half of these offenses pertained to Class D (marijuana) offenses. Marijuana offenses still account for nearly half of CSA arraignments for 17-year-olds, but in 2009, the number of Class D arraignments dropped precipitously, from 1123 to 250, presumably as a result of a 2008 law decriminalizing possession of less than one ounce of marijuana. See http://www.boston.com/news/local/breaking_news/2009/01/marijuana_decri_1.html.
- ¹³ Based on this data, it seems apparent that additional reforms, including increased use of community diversion or reform of charging/arraignment practices, could result in substantial cost-savings by avoiding having these cases in the system in the first place.
- ¹⁴ Data provided by the Massachusetts Sentencing Commission, on file at CfJJ.
- ¹⁵ Additional data from 2009, including sentencing data for just those individuals who were 17 at the time of sentencing, is set forth below:

Sentence Type	# of 17-year-olds	% of Sentences	# of 17- & 18-year-olds	% of Sentences	% of 17-y.o. arraignments
Department of Correction	2	0.6	12	0.8	0.3
House of Correction	94	30.2	502	34.7	11.5
Probation	156	50.2	688	47.5	15.7
Fine	49	15.8	200	13.8	4.5
Other	10	3.2	45	3.1	1.0
Total	311	100	1447	100	33.0

Important note: Since the number of arraignment of 17-year-olds dropped 11% in 2010, it is safe to assume that the number of 17-year-olds sentenced to incarceration or other less serious disposition also declined significantly in 2010.

What Works for Kids: Programs to Promote Safety and Success for Teens and Communities

Most parents raising a teenager experience a “what was he thinking!” moment at some point on their child’s road to adulthood. Whether it involves a child engaging in under-age drinking at a party or speeding with friends in the family car, parents are often baffled by teens’ propensity to be reasonable at one moment and impulsive and short-sighted the next.¹

What teens are thinking and, more precisely, *how* they think, has been the subject of extensive research over the last two decades. Confirming the work of cognitive and behavioral scientists, new research in neurobiology has demonstrated that teen brains differ from adult brains in ways that directly affect teens’ ability to exercise self-control and think through long-term consequences.² As noted researcher Laurence Steinberg describes it, “The teenage brain is like a car with a good accelerator but a weak brake. With powerful impulses under poor control, the likely result is a crash.”³

Not surprisingly, given what we know is going on in their heads (or, more accurately, not going on), the vast majority of youth self-report at least some illegal behavior before adulthood.⁴ For most young people this behavior is relatively minor and short-lived. For other teens, more serious intervention is needed. But for both groups, a growing body of research tells us what works to improve their chances at life success and to make our communities safer.

Adolescent Brain Development: Accelerating without the Brakes

Recent research on adolescent development confirms that the abilities necessary for self-control and positive decision-making continue to develop throughout adolescence.⁵ In fact, even when older adolescents have the cognitive capacity to engage in reasoned decision-making, they are still less able than adults to accurately weigh risks or rewards, control their own behavior or successfully resist peer pressure.⁶ As one group of noted experts put it:

*Although adolescents can, and on occasion do, exhibit adult levels of judgment and control, their ability to do so is limited and unreliable compared to that of adults.*⁷

Research on the adolescent brain conducted over the past decade has revealed a biological basis for these observed behavioral differences in teens. Specifically, the part of the brain (the prefrontal cortex) that figures heavily in inhibition, emotional regulation, decision-making and evaluation of consequences develops *after* portions of the brain that actually *motivate* risky and reward-based behavior (including the portion of the brain responsible for the “fight or flight” response).⁸ In short, although adolescents, including older adolescents, “may appear to be as intelligent as adults, their ability to regulate their behavior in accord with these advanced intellectual abilities is more limited.”⁹

This scientifically grounded understanding of adolescent development has been recognized by the United States Supreme Court in several recent cases: *Graham v. Florida* and *Roper v. Simmons*, both

of which established 18 as the critical dividing line between adolescence and adulthood for purposes of criminal sentencing.¹⁰ Even more recently, in *J.D.B. v. North Carolina*, the Supreme Court again recognized the importance of age in providing a context for criminal laws and procedure.¹¹ Setting the line at 18 is also consistent with international law, including the International Covenant on Civil and Political Rights (ICCPR) and the United Nation’s Convention on the Rights of the Child.¹²

Increasing Public Safety with Smart Approaches to Juvenile Crime

At the same time that we have gained a new appreciation of the causes of adolescent behavior, a growing body of research has identified the most promising strategies to help youth develop into mature, productive adults, including youth engaged in risky or criminal activity.¹³

As previously noted, the vast majority of teens who are arrested, including 17-year-olds, are low-level, non-violent offenders, many of whom will have only a brief encounter with the criminal justice system.¹⁴ For these teens, research shows that even minimal court involvement can have a detrimental effect on their development;¹⁵ diversion from the court system to community or other services is therefore the preferred option.¹⁶

In general, programs that require kids to develop positive decision-making and concrete skills, further their education and engage with their families and other positive adult role models¹⁷ are far more likely to result in increased public safety, particularly compared with



schemes that funnel kids into the adult system, increasing their likelihood of recidivism and even escalation into serious, violent crime.¹⁸ For teens involved in more serious or persistent risky activity, research demonstrates that successful crime prevention and rehabilitation programs:

- Are developmentally appropriate;¹⁹
- Promote “positive youth development” by building relationships between youth and adult role models and ensuring that youth have opportunities to learn and demonstrate new skills, including self-control and interpersonal skills;²⁰
- Engage youth in effective, age-appropriate therapy or drug treatment when necessary;²¹
- Avoid the use of institutional placements or incarceration unless necessary for public safety;²²
- Avoid exposing youth to the adult criminal justice system and adult criminal offenders.²³

Programs that incorporate these principles are both more effective and more cost-effective than incarceration.²⁴

As discussed in more detail at Chapter 3, the juvenile justice system in Massachusetts reflects many of these features: it promotes rehabilitation by requiring kids to participate in school, counseling and skills training. It also works with parents and kids to ensure that kids transition out of risky behavior. Massachusetts is unique in having a statewide juvenile court system, including a specialized juvenile court clinic program and judges, prosecutors, defense attorneys and probation officers who have specialized training and experience with juvenile offenders. These professionals also have relationships with schools, local youth organizations and other service providers who deal with young people and families.

For those youth who are detained or committed, DYS has expressly adopted a positive youth development (PYD) framework to shape and evaluate its work with youth, with the goal of having youth served by DYS not just stay out of trouble, but “thrive.”²⁵ The PYD framework is integrated into all aspects of DYS’s work, including education, clinical services, and community supervision, and DYS has begun to adopt PYD outcomes to track how youth are faring as well.²⁶ DYS uses Dialectical Behavioral Therapy (DBT) with many of its committed youth to ensure that youth develop skills to self-regulate their behavior and recently revised its room confinement policies in secure facilities to ensure that youth are consistently and actively engaging with staff and other positive adults to address problem behavior.²⁷

DYS has also taken the lead in reforming its pre-trial detention system to ensure that youth awaiting trial are not unnecessarily incarcerated, thus saving money and reducing recidivism.²⁸ Since 2006, when it was selected by the Annie E. Casey Foundation to participate in a nationwide effort to reform detention policies, DYS has been working closely with other stakeholders in the system (including the police and courts) and community partners to create a multi-tiered system of detention alternatives and diversion programs that more effectively and appropriately serves the needs of court-involved youth.²⁹ For committed youth, DYS offers a range of placement options, from locked secure facilities to therapeutic foster homes, options proven to be much less costly and more effective than incarceration for most kids.³⁰ Because DYS works with teenagers who are committed until age 18 or 21, they already work extensively with and are familiar with the developmental needs of 17-year-olds.

When kids come into the juvenile system in Massachusetts, they are held accountable not just for their actions but for their futures. They are required to attend school, get counseling and learn to behave responsibly. Their families are required to attend court proceedings so that they know what is going on and are encouraged to be involved in their children’s progress through participation in DYS classification hearings and subsequent DYS treatment strategies, as well as through regular communication with juvenile probation officers.

*It’s scary because you don’t know who’s in there with you.
They strip search you, which is horrible.*

—A young man sent to adult county jail as a 17-year-old

Treating Kids as Adults Increases Crime and Results in Long-Term Negative Consequences for Kids and Communities

One of the greatest benefits of the juvenile court system may be that it reduces crime and keeps kids out of the adult criminal justice system. Research shows that adult court processing and incarceration actually result in *substantial* increases in recidivism among juvenile offenders, particularly among violent offenders, and have “little general deterrent effect on would-be juvenile offenders.”³¹ In fact, adult court processing alone, even without incarceration, increases the likelihood that a young person will commit future crimes.³²

Even a cursory look at how 17-year-olds in Massachusetts are treated in our adult system helps explain why adult court treatment has such a negative effect on young people.³³ In contrast to their younger peers in the juvenile system, 17-year-olds are, for the most part, left adrift in the adult system, surrounded by older adult criminal offenders, subject to much higher rates of victimization than in the juvenile system, with little or no access to rehabilitation programs or even school.³⁴ The adult court judges and attorneys may have almost no experience with young offenders and are unlikely to have much knowledge of local schools or community programs that could help young people in trouble. In contrast to the juvenile system, where incarceration in a locked facility is just one of an array of options available to DYS, including cheaper community based programs, the choice for 17-year-olds is stark: probation, or incarceration in a HOC or DOC facility. As previously mentioned, research demonstrates that incarceration is often counterproductive in addressing youth crime, not to mention costly.³⁵ Adult correctional workers typically have no specialized training in dealing with young people and are simply not expected to act as mentors, let alone teachers, for the young people who happen to come into their facilities. Family members of youth are not informed of or, in many cases, involved in their children’s cases. For many youth, accustomed to being treated as children in every other aspect of their lives, being tried and convicted as adults is terrifying. Young people incarcerated in adult facilities report significantly greater rates of Post-Traumatic Stress Disorder (PTSD) and mental illness, and are much more likely to be afraid for their safety than those in juvenile facilities.³⁶

In addition to the immediate negative consequences of adult court processing, treating 17-year-olds as adults also reduces their long-term chances for life success. As discussed in more detail at Chapter 3, having an adult criminal record can permanently limit or even eliminate a teen’s opportunities for education, jobs, housing, military service and more.³⁷ These consequences are devastating for the young people involved as well as society in general, as the cost of losing a tax-paying citizen, added to the cost of supporting an individual who is unable to find a good job or housing, is tremendous.³⁸

What the f--- are you doing here? Fathers don't come here.

—An officer at a station house, surprised that the father of a 17-year-old had come to bail out his son

¹ See, e.g., David Dobbs, *Beautiful Brains*, National Geographic (October 2011), available at <http://ngm.nationalgeographic.com/2011/10/teenage-brains/dobbs-text>.

² See, e.g., Laurence Steinberg, *Adolescent Development and Juvenile Justice*, 16 *Ann. Rev. of Clinical Psychol.* 47 (2008) (hereinafter “Steinberg, *Adolescent Development*”).

³ Stephanie Chen, *States Rethink ‘Adult Time for Adult Crime’*, CNN, January 15, 2010, <http://www.cnn.com/2010/CRIME/01/15/connecticut.juvenile.ages/index.html>.

⁴ See, e.g. Jeffrey A. Butts, Gordon Bazemore, & Aundra Saa Meroe. *Positive Youth Justice—Framing Justice Interventions Using the Concepts of Positive Youth Development*. Washington, DC: Coalition for Juvenile Justice (2010) (hereinafter referred to as “Butts et al. *Positive Youth Justice*”). In 2007, for example, one out of four high school students in Massachusetts reported having used marijuana in the past 30 days. See *A Shared Vision for Massachusetts Youth and Young Adults*. Governor’s Adolescent Health Council and Massachusetts Department of Public Health (2008). Available at http://www.mass.gov/Eoehhs2/docs/dph/com_health/shared_vision_report.pdf.

⁵ Steinberg, *Adolescent Development*.

⁶ Id. at 56-59.

⁷ See Brief of the American Medical Association and the American Academy of Child and Adolescent Psychiatry, in support of neither party, submitted to the U.S. Supreme Court in *Graham v. Florida*, 560 U.S. ____ (2010), Docket No. 08-7412 (hereinafter “AMA Amicus Brief”), at 4.

⁸ See generally Steinberg, *Adolescent Development*; AMA Amicus Brief.

⁹ Steinberg, *Adolescent Development* at 55.

¹⁰ See *Graham v. Florida*, 560 U.S. ____ (2010) (holding it unconstitutional to sentence youth under 18 at the time of their offense to life without parole in non-homicide cases), *Roper v. Simmons*, 125 S. Ct. 1183 (2005) (holding it unconstitutional to sentence youth under 18 at the time of their offense to death).

¹¹ See *J.D.B. v. North Carolina*, 564 U.S. ____ (2011). The Court in *J.D.B.* held that a child’s age was relevant in determining whether the child, under the circumstances, would reasonably believe that he or she was free to leave or must submit to questioning by the police, the relevant analysis for whether or not a police officer is required to give a *Miranda* warning.

¹² See, e.g., *Graham*, 130 S.Ct. at 849, see also U.N. Convention on the Rights of the Child at Article 1; International Covenant on Civil and Political Rights (“ICCPR”), 999 U.N.T.S 171, entered into force, Mar. 23, 1976 at Article 14 (the ICCPR also expressly prohibits subjecting youth under 18 to the death penalty and requires age to be considered in all matters pertaining to juveniles (interpreted as those under 18)).

¹³ See generally Mark W. Lipsey, James C. Howell, Marion R. Kelly, Gabrielle Chapman, and Darin Carver. *Improving the Effectiveness of Juvenile Justice Programs: A New Perspective on Evidence Based Practice*. Center for Juvenile Justice Reform (December 2010) (hereinafter “Lipsey et al. *Improving Effectiveness*”).

¹⁴ See Laurence Steinberg and Ron Haskins. *Keeping Adolescents Out of Prison. The Future of Children*, Policy Brief (Fall 2008) (noting that “[n]umerous studies show that antisocial behavior increases almost tenfold during adolescence and then rapidly declines for most teens”). See also further discussion at Chapter 1 (“Profile of Seventeen Year Old Offenders in Massachusetts”).

¹⁵ See, e.g., Gary Sweeten, *Who Will Graduate? Disruption of High School Education by Arrest and Court Involvement*. 23 *Justice Quarterly* 4 (December 2006).

¹⁶ See generally Richard A. Mendel. *No Place for Kids: The Case for Reducing Juvenile Incarceration*. Annie E. Casey Foundation (October 2011) (hereinafter “No Place for Kids”).

¹⁷ See Butts et al. *Positive Youth Justice*. See also Lipsey et al., *Improving Effectiveness* at 24-27; Steve Aos, Marna Miller, and Elizabeth Drake. *Evidence-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs, and Crime Rates*. Olympia: Washington State Institute for Public Policy (2006) (hereinafter “WSIPP Study”); Mark W. Lipsey, David B. Wilson, and Lynn Cothorn, *Effective Intervention for Serious Juvenile Offenders*. OJJDP Juvenile Justice Bulletin (April 2000) (hereinafter “Lipsey et al. *Effective Intervention*”).

¹⁸ See generally Richard E. Redding. *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?* OJJDP Juvenile Justice Bulletin (June 2010) (hereinafter “Redding, *Juvenile Transfer Laws*”); Centers for Disease Control. *Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to Adult Justice System* (November 2007) (hereinafter “CDC Study”).

¹⁹ Steinberg, *Adolescent Development and Juvenile Justice* at 67.

²⁰ Butts et al. *Positive Youth Justice* at 17-19. See also Lipsey et al. *Improving Effectiveness*, Lipsey et al, *Effective Interventions*, discussing findings from a meta-analysis of over 200 programs for serious juvenile offenders. Notes that “most effective interventions were interpersonal skills training, individual counseling, and behavioral programs for non-institutionalized offenders, and interpersonal skills training and community-based, family-type group homes for institutionalized offenders.”

²¹ See Butts et al. *Positive Youth Justice* (noting that only a limited number of youthful offenders need therapeutic intervention, particularly where engaged in normal adolescent risk-taking, or where programs targeted at underlying issues could better address problematic behavior); see also Lipsey et al. *Improving Effectiveness* at 40-41 (noting need for individualized needs assessment and case management plan).

- ²² See Edward P. Mulvey. *Highlights from Pathways to Desistance: A Longitudinal Study of Serious Adolescent Offenders*. OJJDP Fact Sheet (March 2011) (hereinafter “Mulvey, *Highlights from Pathways to Desistance*”), available at http://www.pathwaysstudy.pitt.edu/documents/OJJDP%20Fact%20Sheet_Pathways.pdf. See also Barry Holman and Jason Ziedenberg. *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*. Washington, D.C.: The Justice Policy Institute (November 2006) (hereinafter “Holman & Ziedenberg, *Dangers of Detention*”), available at <http://www.justicepolicy.org/research/1978>, see also *Detention Reform: An Effective Public Safety Strategy*. Juvenile Detention Alternatives Initiative. Annie E. Casey Foundation, available at http://jdaihelpdesk.org/Docs/Documents/z%20044-07_JDAI_fact-sheet2_r13bl.pdf.
- ²³ See Redding, *Juvenile Transfer Laws*; CDC Study.
- ²⁴ One comprehensive study, by the Washington State Institute for Public Policy (WSIPP), found that Multidimensional Treatment Foster Care, Diversion and restorative justice programs (for lower risk offenders), Family Integrated Transition programming, family therapy, and other therapy programs that were targeted specifically at adolescents (such as specialized juvenile sex offender programming) were more cost effective than incarceration, considering both the costs of incarceration and the costs of any anticipated recidivism. See WSIPP Study, *supra*. These findings are echoed in a meta-analysis conducted by OJJDP, which also found that programs involving cognitive behavioral therapy and which promoted either direct family programming or “family-like” environments with positive adults were most effective. See Lipsey et al. *Effective Interventions*.
- ²⁵ Email from Edward Dolan, Department of Youth Services, to CfJJ.
- ²⁶ *Id.*
- ²⁷ See 2008 Annual Report, Massachusetts Department of Youth Services (March 2010), available at http://www.mass.gov/?pageID=eohhs2terminal&L=4&LO=Home&L1=Government&L2=Newsroom&L3=Department+of+Youth+Services+News%2c+Updates+and+Reports&sid=Eeohhs2&b=terminalcontent&f=dys_g_annual_reports&csid=Eeohhs2.
- ²⁸ See *id.*, see also Holman & Ziedenberg, *Dangers of Detention*.
- ²⁹ *Id.*
- ³⁰ See generally, *No Place for Kids*.
- ³¹ See Redding, *Juvenile Transfer Laws*.
- ³² *Id.*
- ³³ Research indicates that conditions like those experienced by 17-year-olds in Massachusetts lead to increased recidivism among juvenile offenders, including exposure to criminal mores and abusive treatment while incarcerated with adult offenders, a decreased focus on rehabilitation and family support in the adult system, and stigmatization and other negative effects that result from labeling juveniles as convicted felons. See, e.g., Redding, *Juvenile Transfer Laws*.
- ³⁴ The adult detention and incarceration system is, for the most part, completely decentralized, with the vast majority of incarcerated individuals housed in county jails or Houses of Correction that are independently managed by county sheriffs. Organized, statewide efforts to provide education or other services to young people in the adult system, let alone systemic explorations of alternatives to detention or diversion for select populations, are non-existent and nearly impossible to implement.
- ³⁵ See generally, *No Place for Kids*.
- ³⁶ Jeffrey Fagan & Aaron Kupchik. *Juvenile Incarceration and the Pains of Imprisonment*. Duke Forum for Law and Social Change (April 2011). Columbia Public Law Research Paper No. 11-263.
- ³⁷ See further discussion at Chapter 3, *infra*.
- ³⁸ See further discussion at Chapter 4, *infra*.

Teens' Experiences in the Juvenile and Adult Systems in Massachusetts

Despite having many of the key elements necessary for a model juvenile court system, Massachusetts continues to automatically process all 17-year-olds in the adult criminal justice system, a system which is overloaded and ill-equipped to deal with teenagers. The juvenile justice system in Massachusetts is specifically equipped to deal with school-aged offenders who, even when they have more serious treatment and confinement needs, have a remarkable capacity for rehabilitation and growth. In recognition of the important role that parents and families play in shaping and supporting youth, the juvenile system is designed to include families and, in many cases, parents and guardians are required to be notified of and participate in court proceedings. Youth in the juvenile system also work with staff and others who are specially trained to deal with adolescents.

In comparison to teens processed in the juvenile system, youth in the adult criminal system:

- Are more likely to re-offend than youth not exposed to the adult criminal justice system;
- Are at significantly greater risk for sexual assault and suicide;
- Receive inadequate or no education, mental health treatment or age-appropriate rehabilitative programming.

The vast majority of 17-year-olds are non-violent offenders, many of whose cases will eventually be disposed of without any need for confinement or supervision. Under the current system, these teens are jailed alongside adult criminal defendants while awaiting trial, often in facilities where they cannot attend school. Once they exit the system, these teens face the permanent, potentially life-altering consequences of having an adult criminal record. For those teens who require more intense intervention, there are few, if any, age-appropriate services in the adult system, and little to no effort to include teens' families in the process. As discussed below, continuing to engage in the fiction that these youth are adults has harmful short- and long-term consequences, not just for individual young people but for society as a whole.

COMPARISON OF JUVENILE AND ADULT SYSTEMS IN MASSACHUSETTS

	Juvenile System	Adult System
Police notify parent of arrest	Yes	No
Court notifies parent of case against child	Yes	No
Parent involved in sentencing and follow up	Yes	No
Child kept apart from adult criminal defendants	Yes	No
Total court caseload (2010 complaints)	22,919 (95% under 18)	246,193 (<2% under 18)
Judges, attorneys and other court personnel trained in and experienced with adolescents	Yes	No
Sentencing options	Probation Commitment to DYS to 18 or 21 (YO) Commitment to DYS with suspended adult sentence (YO) Adult sentence (YO)	Probation Adult sentence
Classroom instruction available while confined	Yes	Generally no
School attendance required (while confined or on probation)	Yes	No (may or may not be required if on probation)
Special education services generally provided	Yes	No
Age-appropriate substance abuse services consistently provided	Yes	No
Staff trained in dealing with adolescents	Yes	No
Available placements if confined/committed	“Hardware secure” facility, “staff secure” facility, foster home (regular or therapeutic), independent living, community supervision	County House of Correction or Department of Correction (DOC for fewer than 1% of sentences)

Contrasting Experiences of Teens in the System

Arrest and Pre-Trial Detention

For both 17-year-olds and younger teens, the first involvement with the justice system usually begins with an arrest.¹ For a child under 17, police are required to notify parents or guardians “immediately” upon arrest and, in most cases, can release that child to the custody of his or her parent or guardian.² If police do decide it is necessary to hold a youth 14 or older, they must notify the youth’s parents and are required to remove the youth from the police station within 6 hours and place the youth in a “Alternative Lock-Up Program,” separating the youth from adults (by both sight and sound) until court is open.³

In contrast, because 17-year-olds are considered adults, police officers are *not* required to notify their parents when their child is arrested.⁴ If the decision is made to hold a 17-year-old on bail until court is in session, he is transported to a county jail and held in crowded conditions alongside adults. As of September 2011, nine of 13 counties reported that the occupancy rates in their jails and HOC facilities were in excess of 100%.⁵

Research demonstrates that teens held in adult jails are particularly vulnerable to assault or sexual abuse: while teens represent only 1% of the adult jail population nationwide, up to 21% of the victims of inmate-on-inmate sexual violence are under 18.⁶ Teens are also 19 times more likely than the general population to commit suicide while in adult jail, and 36 times more likely to commit suicide than teens held in juvenile detention facilities.⁷ The tragic suicide of a teenager held pre-trial in an adult facility was an important factor in Connecticut’s recent decision to raise the age of juvenile court jurisdiction to include 16- and 17-year-olds.⁸

Arraignment and Court

In 2010, the juvenile courts in Massachusetts handled 22,596 delinquency complaints involving 9,208 youth, as well as an additional 323 Youthful Offender indictments involving 129 different youth.⁹ Individual county caseloads ranged from 1349 to 278 complaints or indictments annually.

Compared with the specialized and relatively small juvenile system, the adult system processes an enormous number of defendants with widely different offenses, needs and backgrounds. Arraignments of 17-year-olds¹⁰ make up only a tiny fraction (less than 2% in 2010) of the adult court criminal caseload in Massachusetts heard in Boston Municipal, District and Superior Courts. In District Courts¹¹ in 2010, for instance, the judges processed criminal complaints involving 200,572¹² different defendants. This is in addition to the tens of thousands of civil, motor vehicle and other cases that these courts hear every year.

Up to 21% of the victims of inmate-on-inmate sexual violence are under 18. Teens are 19 times more likely than adults to commit suicide while in adult jail, and 36 times more likely to commit suicide than teens held in juvenile detention facilities.

If the Commonwealth decides to charge a seventeen-year-old with a crime, it will file either a complaint or indictment. If the seventeen-year-old is not currently in custody, he will receive a summons with a notice of when to appear in court.¹³ However no notice to the youth's parents of the pending case is required.¹⁴ A complaint issued to a juvenile, on the other hand, must also be served on the juvenile's parent or legal guardian.

In the adult system, a 17-year-old may be arrested, charged, tried and sentenced without his parent ever finding out. In contrast, the juvenile court requires that parents of a child who is accused of a crime be notified and, in fact, summoned to the court to address the charges against their child.¹⁵ Parents must be consulted before their child can waive his right to counsel,¹⁶ and must consent before the court can order that their child's case be "continued without a finding" (i.e. placed on hold to permit the possible dismissal of the case if the child does not get into any more trouble).¹⁷ Parents may also be involved in the crafting and imposition of conditions of probation, including participation in activities ranging from therapy to afterschool employment.

In juvenile court, if a teen pleads or is adjudicated delinquent, his or her case may be continued (with or without probation), he may be placed on probation, or he may be "committed" to the custody of DYS up until age 18 (19 if sentenced after his 18th birthday). In Youthful Offender cases, the court is authorized either to commit the teen to the custody of DYS until age 21, impose an adult sentence (including incarceration in an adult facility *once the teen turns 18*) or a combination DYS commitment with a suspended adult sentence that can continue after the youth turns 21. Because the jurisdiction of the juvenile court may continue until 18 or 21, juvenile sentences can be substantially longer than adult sentences for youth convicted of less serious offenses.

If a 17-year-old in adult court pleads to or is found guilty of the charged offense, he will be subject to statutorily defined sentences, which can range from probation (with or without specific conditions) to a

The Massachusetts Juvenile Court: Experience and Expertise with Teens Accused of Crimes

The Juvenile Court in Massachusetts was created with the unique needs and profile of juveniles in mind. Judges, court clinic personnel, attorneys, probation officers and other staff all have training and experience working with teenagers. Attorneys who represent youth in juvenile court, for example, must be specially certified to handle delinquency or youthful offender cases, and many have specialized training and experience, including knowledge of developmental psychology, education advocacy, community resources for teens and unique issues regarding counseling minor clients (and their parents). Our statewide juvenile court clinic system means that trained clinical practitioners are always available to evaluate or assess youth's mental health and other needs. Juvenile probation officers and DYS staff regularly interact with schools and are able to negotiate potential barriers to educational or other services that youth might face.

In contrast, judges and other staff in adult court may have no knowledge of basic adolescent development, let alone knowledge of schools or local youth programs. Attorneys appointed for 17-year-olds are not necessarily aware of the special issues involved in counseling and assessing competence of adolescent clients, nor are they generally equipped to provide special education or other kinds of specialized advocacy that many teen clients need.

life sentence. There is no requirement that his parent participate in developing or even know about his sentencing terms or conditions. As discussed in Chapter 1, the majority of 17-year-olds are sentenced to probation or a fine; for those who are sentenced to incarceration, the vast majority are confined to a county House of Correction (HOC) facility. By contrast, teens in juvenile court may be placed in a wide variety of DYS placements, depending on their needs and offenses, ranging from foster homes to secure facilities.

Services Available to Teens in the Juvenile and Adult Systems

In contrast to the adult system, the focus of the juvenile court and the services that are offered to juveniles and their families in the court, both pre- and post trial, are fundamentally rehabilitative in nature.¹⁸ Required school attendance and curfews are routine conditions of probation in juvenile court, and youth committed to the custody of a DYS facility are required to attend a DYS school for at least six hours each day. In many cases, counseling and other treatment programs are also required. All DYS staff receive training in, among other areas, adolescent development, positive youth development, educational services, Dialectical Behavioral Therapy, crisis de-escalation, and suicide assessment and prevention.¹⁹ DYS has recently undertaken a major effort to improve the quality, training and retention of its staff, including its teachers.

Approximately 45% of the DYS committed population has been identified as having special education needs.²⁰ While there is still room for improvement, DYS has, within the last few years, taken numerous steps to improve coordination and services for these students, working cooperatively with the State Department of Elementary and Secondary Education (DESE) Education Services in Institutional Settings (ESIS) Program to conduct cross-trainings to improve identification, assessment and record-keeping for eligible youth, and to promote inclusion of special education students in the DYS general education programs.²¹

The experiences of 17-year-olds in the adult system are dramatically different from their younger peers in the juvenile system. As discussed above, they are incarcerated with adults and supervised by staff who have little or no training related to adolescents. They may remain there for months awaiting trial. Although the adult system offers some services to individuals who are incarcerated or awaiting trial – including drug testing and treatment programs, GED classes and counseling and personal development programs – few if any of these services are targeted at adolescents, and teens are generally not required to participate in them.²² The availability and quality of programs varies widely from facility to facility and county to county. Houses of Correction, where the vast majority of 17-year-olds will end up if they are sentenced for a less serious felony,²³ are particularly problematic, with some facilities offering little to no educational programming at all.²⁴ Within the Department of Correction (DOC), programs for teen inmates are also extremely limited. In most DOC facilities, there are few regular school programs. Some offer GED classes only via closed-circuit television, without the benefit of a live classroom teacher.²⁵

*You learn something one way or the other,
but it's more ugly than good.*

–A young man sent to adult county jail at 17

For students with special education needs, the additional services they need to learn and to which they are entitled are virtually non-existent within either HOC or DOC facilities. As noted above, DYS estimates that nearly half of its committed population is eligible for special education services, and statewide approximately 17% of the student population has been found eligible for special education services. Yet despite these numbers, the DESE identified only 236 children as receiving special education services in institutional settings during the 2010-11 school year,²⁶ or significantly less than the likely population of eligible students currently in HOC facilities, let alone the likely population of these youth in institutional settings statewide.

While the DESE, in cooperation with local school districts and the facilities themselves, has a clear, legal obligation to provide and secure services for young people in HOC custody who are eligible for special education services,²⁷ it appears that this simply is not happening on a consistent basis. Even more troubling, there is no single agency responsible for ensuring that students in DOC custody receive any special education services at all;²⁸ while local school districts remain obligated to identify and follow up with youth

from their districts who are incarcerated, it does not appear that they are doing so in any meaningful way, nor do they appear to have any incentive to do so. Neither DOC, DESE, nor the local school districts appear to have any organized process for ensuring that eligible students in HOC or DOC custody or their parents are made aware of their rights. Finally, because 17-year-olds are viewed as children for



purposes of special education law, their parents technically hold the right to assert their need to services or accommodations; given the lack of allowance for or recognition of the need for parental involvement in the adult system, it is difficult to imagine that the kind of partnerships necessary to arrange these services would be feasible, let alone common.²⁹

The Life-Long Consequences of Being Sent to Adult Court

Though they have similar offense profiles to younger teens, 17-year-olds tried in adult court have dramatically different outcomes and face dramatically different consequences than their younger peers.

Adult Court Processing Increases Recidivism for Teens

Research has repeatedly confirmed that teens tried in the adult system are *substantially more likely* to be involved in future criminal conduct than teens processed in the delinquency system, even after controlling for the type of offense committed and other factors.³⁰ One federally-funded study found that 49% of juveniles transferred to adult court reoffended, compared with 35% of juveniles retained in the juvenile system, even after controlling for offense, age, gender, race, number of previous juve-

The prisoners were a lot older, some in their 40s and 50s. They'd been in prison for so long, they'd know it in and out, but tell you to get out of it: Don't be like me. Some were on trial for murder. That was a big shift in your mentality, like murder's normal.

—A young man sent to adult county jail at 17

nile referrals, most serious prior offense, and number of charges.³¹ Another study found a 100-percent greater likelihood of re-arrest for a violent offense and a 47-percent greater likelihood of re-arrest for a property offense among New York juveniles whose cases were processed in adult criminal court compared with New Jersey juveniles tried in the juvenile system for the same offenses, and of the same age.³² “The stigmatization and other negative effects of labeling juveniles as convicted felons, the sense of resentment and injustice juveniles feel about being tried and punished as adults, the learning of criminal mores and behavior while incarcerated with adult offenders, and the decreased focus on rehabilitation and family support in the adult system” are all factors which help explain higher recidivism rates among youth tried in the adult system.³³ Exposure to adult offenders, sexual or other violence at the hands of older inmates, lack of schooling or treatment and interruption of required services for disabled students, also contribute to the terrible outcomes for youth sent into the adult system.

Researchers in other states have made similar findings about 17-year-olds in the adult system due to jurisdictional laws like ours. Researchers in Wisconsin, for example, found that 17-year-olds (who, as in Massachusetts, are automatically treated as adults), committed new offenses at significantly higher rates than youth in the juvenile system (48% over three years, compared to 18% over 2 years and 27% over four years).³⁴ Researchers in North Carolina found similar results, with recidivism rates for the 16- and 17-year-olds in their system (both of whom are automatically treated as adults) around 46%.³⁵

Regrettably, very little Massachusetts-specific data is available on recidivism rates for either 17-year-olds or juveniles. The Probation Department does not keep re-offense data based on age for adult offenders and does not track actual re-offense data for juveniles.³⁶ The HOC system does not publicly report recidivism rates for the populations that they serve, and the data available from DYS are limited to those youth who are actually committed to the custody of DYS (less than 10% of the youth who are arraigned).³⁷ In short, we simply have no reliable and specific data to tell us whether any of our systems are working, let alone whom they are working for.

Collateral Consequences of Adult Convictions

In addition to being less likely to successfully exit the criminal justice system, 17-year-olds treated in adult court are burdened with a permanent adult criminal record that can severely limit their chances of life success.

Unlike most youth who are adjudicated delinquent, 17-year-olds convicted of a crime may be asked by employers about their criminal history during the hiring process (although not as part of their ini-

tial application) and may be subject to a mandatory or presumptive disqualification for a conviction, for example, where state or federal law prohibits hiring a person with one or more convictions.³⁸ Under federal law, their families may also be excluded from federally-funded local public housing and Section 8 subsidized apartments.³⁹ While, generally speaking, any drug convictions before the student reaches the age of 18 will not jeopardize federal aid, if the student was tried as an adult (as is the case for 17-year-olds in Massachusetts), it may render him ineligible.⁴⁰ For immigrant youth, an adult criminal conviction may result in mandatory deportation.⁴¹

Because juvenile adjudications are not considered criminal convictions⁴² and because juvenile court proceedings are not made available to the public,⁴³ extending juvenile court jurisdiction by just one year would have a dramatically beneficial effect for many young people in Massachusetts. These youth would have greater access to employment, federally-funded public housing, financial aid for education and military service.

As discussed in the next chapter, the short- and long-term costs of losing hundreds and perhaps thousands of young people each year to recidivism, under- or unemployment, homelessness and substance abuse are enormous. In comparison, including 17-year-olds in the juvenile system will have few immediate costs and numerous, long-term economic and other benefits.

¹ As discussed at Chapter 1, the arrest offense profile of the teens currently sent to the juvenile court (those who commit their offense before they turn 17) is similar to that of 17-year-olds now sent to adult court, with both groups most likely to be arrested for assaults or theft.

² MGL Ch. 119 § 67.

³ The federal Juvenile Justice and Delinquency Prevention Act (JJDP) prohibits alleged and adjudicated delinquents from being detained or confined in a secure institution (such as a jail, lockup, or secure correctional facility) in which they have sight or sound contact with adult offenders.

⁴ Cf. Boston Police Department Rule 318B (requiring notice to parents and special transporting and holding procedures for juveniles), available at <http://www.cityofboston.gov/police/rules.asp>.

⁵ *Population Report September 2011*, Massachusetts Sheriff's Assoc. available at: http://www.mass.gov/?pageID=msageneric5landing&L=1&Lo=Home&f=Home_more&sid=Smsa#top.

⁶ See *Jailing Juveniles: The Danger of Incarcerating Juveniles in Adult Jails in America*. Campaign for Youth Justice (November 2007) at 4.

⁷ *Id.*

⁸ Neelum Arya, Ian Augarten, and Yaamini Rao. *The Connecticut Success Story: Raising the Age of Juvenile Court Jurisdiction* at 2. Campaign for Youth Justice (April 2009). Available at: http://www.campaignforyouthjustice.org/documents/cfyjss_ct.pdf.

⁹ See FY 2010 statistics available at <http://www.mass.gov/courts/courtsandjudges/courts/juvenilecourt/2010stats.html>. The definition of a youthful offender is set forth in the Introduction to this report.

¹⁰ 4,378 in 2009 per research provided to CfJJ by the Probation Research Division.

¹¹ In general, the District and Boston Municipal Courts (BMC) handle misdemeanors, crimes that carry penalties of less than 5 years imprisonment, and certain other crimes defined by statute or determined by court; the Superior Courts handle more serious felonies.

¹² FY 2010 statistics set forth below are available at <http://www.mass.gov/courts/courtsandjudges/courts>.

¹³ Mass. R. Crim. P 6(a).

¹⁴ *Id.*

¹⁵ MGL Ch. 119 § 55.

¹⁶ MGL Ch. 119 § 55A.

¹⁷ MGL Ch. 119 § 58.

¹⁸ See MGL Ch. 119 § 53, noting that “the care, custody and discipline of the children brought before the court shall approximate as nearly as possible that which they should receive from their parents, and that, as far as practicable, they shall be treated, not as

criminals, but as children in need of aid, encouragement and guidance. Proceedings against children under said sections shall not be deemed criminal proceedings.”

¹⁹ Email from Julia Quinn to CfJJ.

²⁰ Mary Sylva. *Department of Youth Services Public Information Packet* (April 2010). Massachusetts Department of Youth Services, at 3.

²¹ *DYS Comprehensive Education Partnership Report: A System-wide Approach for Providing High Quality Education to DYS Clients* (2010). Available at <http://www.doe.mass.edu/research/reports/1210dys.doc>.

²² Email from Leslie Walker, Prisoners’ Legal Services, to CfJJ.

²³ See discussion at Chapter 1.

²⁴ Email from Leslie Walker, Prisoners’ Legal Services, to CfJJ.

²⁵ Id.

²⁶ See 2010-2011 Special Education Counts and Rates for Educational Environment. Massachusetts Department of Elementary and Secondary Education. Available at <http://www.doe.mass.edu/infoservices/reports/enroll/default.html?yr=sped1011>.

²⁷ See MGL Ch. 71B § 11A; 603 CMR 28:06(9).

²⁸ The statute (MGL Ch. 71B § 11A) requiring the Mass. DESE to perform this service for youth in DYS, DMH or HOC custody simply doesn’t identify DOC as one of the locations that institutionalized youth might be located, leaving a gap in the statutory scheme for these youth.

²⁹ Employees of the DESE ESIS division have actually testified that, even for youth detained by DYS, they will not initiate contact with a local school district or take any other action regarding an eligible youth unless they receive a request from a parent for services along with a copy of the student’s IEP and other records. See *In Re: Taunton Public Schools*. BSEA No. 09-5294 at par. 73. Available at <http://www.doe.mass.edu/bsea/decisions/09-5294.doc>.

³⁰ See Richard E. Redding, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?* OJJDP Juvenile Justice Bulletin (June 2010) (hereinafter “Redding, *Juvenile Transfer Laws*”). The study reviewed six large scale studies on youth tried in adult court and found that “the extant research provides sound evidence that transferring juvenile offenders to the criminal court does not engender community protection by reducing recidivism. On the contrary, transfer substantially increases recidivism.” See also Centers for Disease Control. *Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to Adult Justice System* (November 2007).

³¹ Lonan Lanza-Kaduce, Charles E. Frazier, Jodi Lane, & Donna M. Bishop. *Juvenile Transfer to Criminal Court Study: Final Report*, OJJDP (2002), available at <http://www.prisonpolicy.org/scans/juveniletransfers.pdf>. See also summary at Redding, *Juvenile Transfer Laws* at 5.

³² Redding, *Juvenile Transfer Laws* at 6.

³³ Id. at 7. A recent literature review conducted by the UCLA School of Law Juvenile Justice Project was consistent with these findings: “A compilation of statistics from 15 states indicates that juveniles released from state prisons are rearrested at a rate of 82%, a rate 16% higher than their adult counterparts. Studies focusing on individual states produced similar results. . . Youth tried as adults in Pennsylvania were more likely to be rearrested after their release, and for more serious crimes, than youth prosecuted in juvenile court. Minnesota youth tried as adults were 16% more likely than their peers tried in juvenile court to reoffend within 2 years of release. Again, these youth were rearrested for more serious crimes than those sentenced as juveniles, evidenced by a 12% difference in arrests for felony offenses against persons and property between the two groups. Studies examining the negative impact of transfer on recidivism have concluded that youth in juvenile custody benefit from services that juvenile facilities are uniquely equipped to provide, whereas youth subject to transfer are often placed in an environment where “adult criminals [are] their teachers.” *The Impact of Prosecuting Youth in the Adult Criminal Justice System: A Review of the Literature*. UCLA School of Law Juvenile Justice Project (July 2010).

³⁴ See *Risking Their Futures: Why Trying Nonviolent 17 Year Olds as Adults is Bad Policy for Wisconsin*. Wisconsin Council on Children and Families, at 6.

³⁵ See *Report on Study of Youthful Offenders Pursuant to Session Law 2006-248*. North Carolina Sentencing and Policy Advisory Commission (March 2007), at 11.

³⁶ The Probation Department tracks and makes public the number of new “surrender” cases – cases in which an individual has violated the terms of their probation (either for a new offense or as the result of a technical violation) – but not recidivism rates.

³⁷ DOC does provide regular recidivism data for its population, but because of the very small number of 17-year-olds sentenced to DOC custody, the numbers are statistically unreliable. An older study by the Massachusetts Sentencing Commission also evaluated recidivism among offenders in various kinds of state custody, but only considered the group of individuals who were under 20 so was not limited to 17 year olds.

³⁸ See M.G.L. c. 151B, § 4(9½) (effective Nov. 4, 2010).

³⁹ See 24 C.F.R. § 960.204 and 24 C.F.R. § 982.553. Housing authorities and subsidized landlords generally do not have access to juvenile criminal histories because CORI does not include adjudications of children under the age of 17. See 803 CMR § 2.04(2).

⁴⁰ See Student Aid Eligibility Worksheet available at <http://fafsa.ed.gov>.

- ⁴¹ While any alien convicted of a crime may be deported, juvenile adjudications of delinquency are not considered “convictions” by immigration authorities, so youth who are adjudicated delinquent are not subject to deportation solely on the basis of their offense. *See* I.N.A. § 101(a)(48)(A); 8 U.S.C. § 1101(a)(48)(A).
- ⁴² *See DYS v. A Juvenile*, 384 Mass. at 787 (“An adjudication concerning a juvenile is not, of course, a conviction of crime.”).
- ⁴³ *See* M.G.L. c. 119 § 60A (“[R]ecords of the court in cases of delinquency arising under sections fifty-two to fifty-nine, inclusive, shall be withheld from public inspection except with the consent of a justice of such court . . .”); *see also* 803 CMR 2.04 (“CORI shall not include information concerning a person who is under the age of 17 unless that person is prosecuted criminally pursuant to M.G.L. c. 119, § 58.”).

A Unique Opportunity for System Reform

We know that including 17-year-olds in our juvenile court system is likely to improve outcomes for teens and communities, by holding troubled teens accountable through measures that reduce future crime. But what impact will it have on our existing criminal and juvenile justice systems? And what will it cost?

Fortunately, the Massachusetts juvenile justice system is in an unusually good position to incorporate 17-year-olds right now. Over the past decade, juvenile crime has decreased and caseloads in the juvenile court and at the Department of Youth Services (DYS) have dropped dramatically, resulting in capacity in the system to handle additional youth.¹ At the same time, many jurisdictions in Massachusetts are beginning to experiment with diversion programs for low-level offenders, avoiding the high cost of court proceedings, incarceration and even probation where public safety can be better served through community-based programs and incentives. The current juvenile justice system already serves 17-year-olds (The average age of youth in DYS custody is 17.2 years) and has programs in place for them. Finally, DYS and other providers in the juvenile system are currently investing in a number of new, evidence-driven initiatives designed to better serve youth while driving down costs. These include reducing unnecessary secure confinement (by far the most expensive option), improving the capacity and training of juvenile defenders representing youth and better coordinating services between DYS, Department of Children and Families (DCF) and mental health providers to address underlying causes of delinquency.

As a result of these developments, including 17-year-olds in the juvenile justice system is more of a matter of re-allocating resources than anything else. The juvenile system can handle the estimated influx of 17-year-olds without adding facilities or staff. Thus there would be little or no cost in including 17-year-olds in the juvenile system. However, the costs of increased crime and long-term life dysfunction – the likely results of continuing to include 17-year-olds in the adult system – are substantial.

There is a horrible potential to adversely impact a kid's life for something stupid.

– Father of a 17-year-old prosecuted as an adult for a nonviolent prank

Anticipated Impact on the Juvenile System of Including 17-year-olds

Police Resources and Alternative Lock Ups

Because the police already respond to all arrests, there is no anticipated need for additional police services if 17-year-olds are included in the juvenile system.

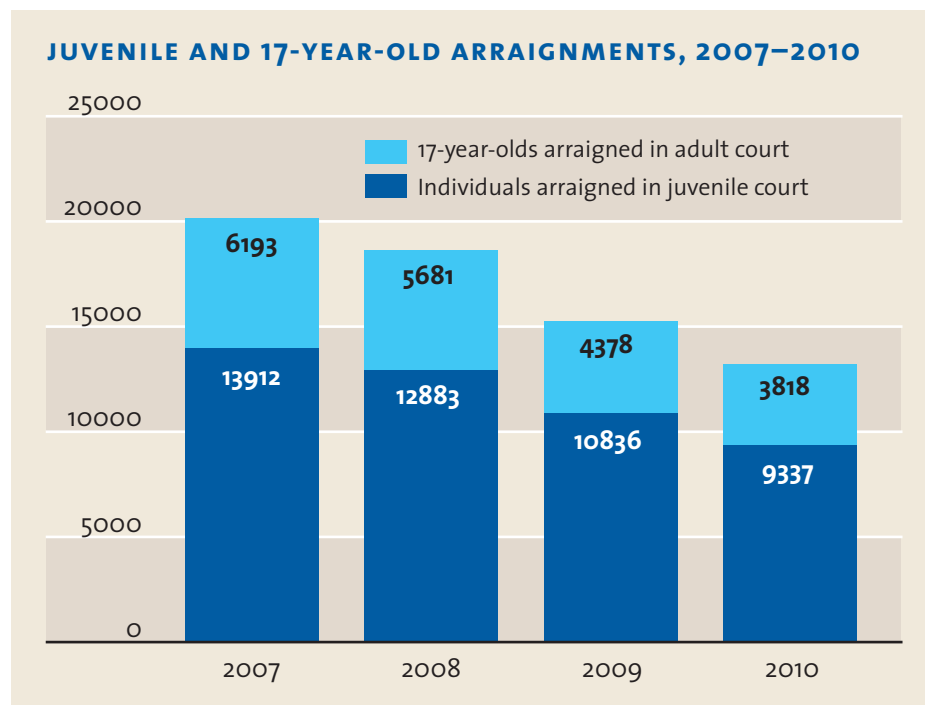
Beds in Alternative Lock-up Programs (ALPs), short-term facilities that are used for arrested youth, may need to be increased slightly in order to accommodate those youth who cannot be released to their parents while waiting for court to open (evenings, weekends and holidays) but are required by federal law to be removed from police stations and protected from adult offenders. Given the small number of 17-year-olds who are arrested for violent offenses statewide (566 in 2008, the most recent data available, with that number anticipated to drop in 2009 and 2010), it is anticipated that no more than a handful of 17-year-olds would need to be held in ALPs around the state on any given day. *Currently ALPs are funded with federal dollars, so there would be no immediate impact on the state budget.*

Impact on Court, District Attorney and Defense Services

In 2010, 3,818 17-year-olds were arraigned in district or superior courts.² The vast majority of these cases were minor offenses which could potentially be diverted from the courts altogether.³ However,

even if none of these cases were diverted, adding these cases into the juvenile system would only bring juvenile court caseloads to just below 2007 levels.⁴

Given the dramatic and continuing reductions in the juvenile court caseload, CfJJ does not anticipate that additional staffing (whether court personnel, district attorneys or defense attorneys) would be needed to handle new seventeen year old arraignments. Although staff may need to be relocated to courts with higher overall caseloads, these reallocations should not impact budget bottom lines.

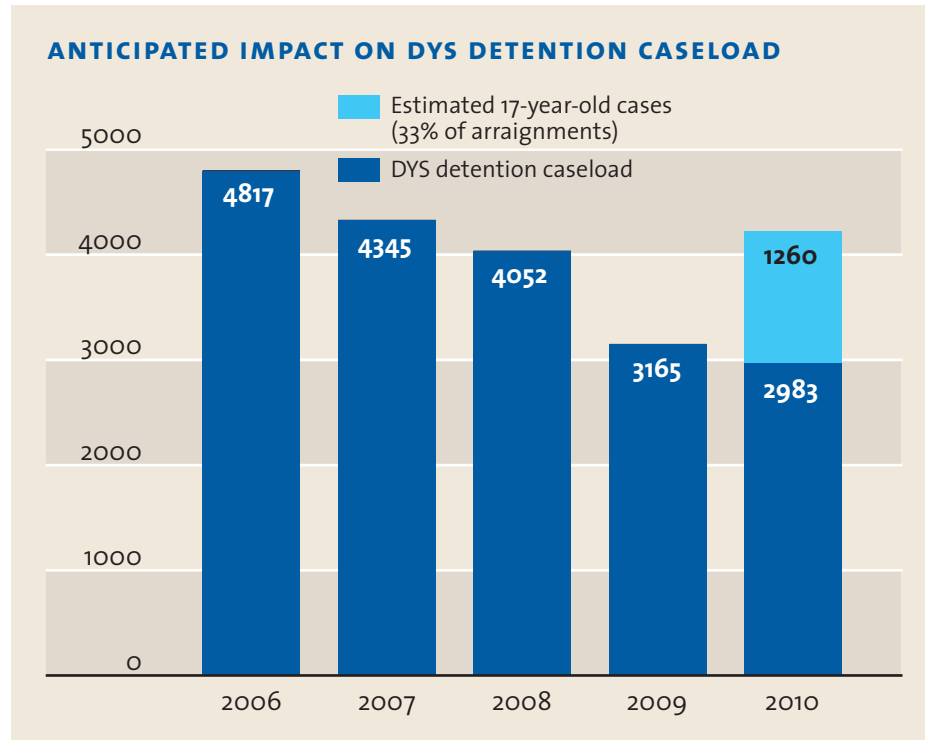


Pre-Trial Detention:

Assuming that 17-year-olds are detained (securely confined either pre-trial or as the result of a probation violation) at roughly the same rates as other juveniles,⁵ their inclusion in the juvenile system could potentially result in a sizeable influx of 17-year-olds into the DYS detention system. However, because of the continuing reduction in the DYS detention population, CfJJ estimates that the inclu-

sion of 17-year-olds would bring annual detention caseloads back to 2007 levels,⁶ therefore requiring only modest, if any, additional outlays in funds to cover any funds that have been reallocated from this area to other initiatives. These costs will be further offset by reductions in the pre-trial jail or HOC population of 17-year-olds.

In contrast to the jails or HOC system, DYS has also aggressively pursued reform in the use of pre-trial detention, offering the possibility of even further cost savings. In collaboration with Annie E. Casey’s national Juvenile Detention Alternative Initiative (JDAI), DYS has adopted model practices for determining which youth to detain and for how long, practices that it plans to expand across the state.⁷



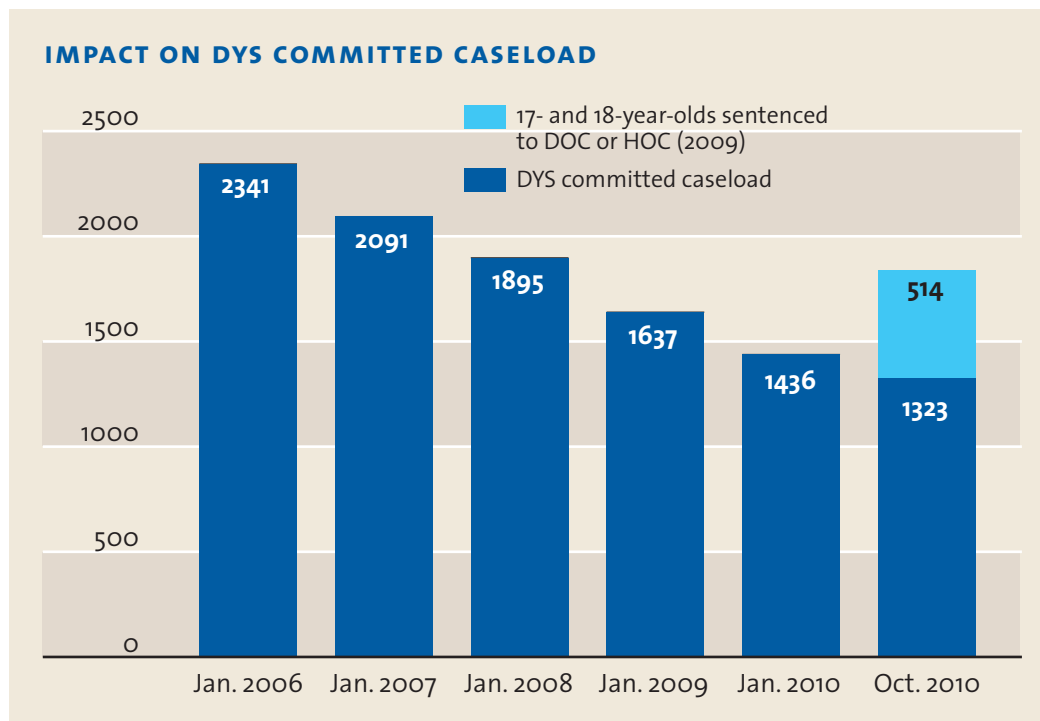
Since DYS currently has custody of a number of 17-year-olds and provides treatment and custody for youth up to age 21, it is not anticipated that changing the age of juvenile jurisdiction would require changes in staff training or the services that are provided.

Probation Services:

While the addition of 17-year-olds to the juvenile system may require some retraining or reallocation of probation officers, it is not anticipated that Probation will incur additional expenses as the result of the change. Probation currently provides services to 17-year-olds in the adult system, and there are no caseload standards for either juvenile or adult probation officers. At least until recently, it appears that probation caseloads were driven less by case staffing needs in a particular region or office than by where “preferred” candidates wish to be placed,⁸ and a recent recalculation of the probation caseload by the acting commissioner indicates that the probation caseload is actually *half* of what was previously reported. Fortunately, the Probation Department is in the midst of a comprehensive overhaul of its hiring and assignment procedures; the time is therefore ripe to include 17-year-olds so that Probation can incorporate this consideration into its strategic planning process.

DYS Commitment Caseload and Post-Trial Services:

As previously noted, CfJJ estimates that fewer than 10% of juveniles and 12% of 17-year-olds who are arraigned in court are actually sentenced and incarcerated as a result of their offense. CfJJ estimates that fewer than 500 individuals who were seventeen years old at the time of their offense were sentenced to



either HOC or DOC custody in 2009.⁹ Of these, some number would still be given an adult sentence even if the juvenile court age of jurisdiction were raised, as they would be tried and convicted as youthful offenders and therefore could be sentenced as adults. Accordingly, the anticipated additional burden on DYS of including 17-year-olds in the committed caseload would be fairly small.

As with the detention caseload, the DYS committed (i.e. post-adjudication) caseload has dropped dramatically over the last decade. As a result, CfJJ anticipates that including 17-year-olds in the juvenile systems would, *at most*, bring DYS committed caseloads to roughly 2008 levels.¹⁰

Not only will adding 17-year-olds to the DYS committed population have minimal impact in terms of population numbers or services, it potentially offers significant up-front cost savings because of the availability of low-cost and highly effective community-based alternatives that DYS offers, options which are simply not available in the HOC system. DYS currently uses an assessment tool to evaluate each committed youth to determine which level of security he requires and reevaluates each youth on an ongoing basis to ensure that he is in the least restrictive environment necessary given his risk profile. Some of these programs, including community-based supervision, foster care or independent living programs, cost significantly less than incarceration in an adult facility.¹¹ Appropriate use of these programs could therefore significantly reduce the money the Commonwealth spends on these teens while simultaneously providing them with the services and supervision they need. Finally, in contrast to HOC or DOC, both of which have minimal reentry programs, DYS offers re-entry programs for youth leaving DYS custody, programs which are critical to ensuring that youth do not commit future crimes.

Keeping 17-Year-Olds in the Juvenile System Will Mean Immediate Cost Savings for All Massachusetts Taxpayers

As previously discussed,¹² the inclusion of 17-year-olds in the juvenile system would have profound implications for the 17-year-olds currently processed in the adult system and for their families, reducing exposure to violence or abuse from adult inmates, increasing the family involvement in

cases and ensuring that kids are held accountable for attending school and participating in other services that reduce recidivism and increase life success.

Beyond these impressive outcomes for individual youth, there are tremendous, immediate fiscal and social benefits that will be realized by all Massachusetts taxpayers if we reform our system to focus on decreasing recidivism for young offenders and ensuring that they attend and complete school.

The two principal groups that benefit from reduced offending are (1) private citizens, whose harms are reduced as the number and/or severity of crimes are reduced; and (2) public agencies, that will spend less to investigate, arrest, and supervise individuals who desist earlier from expected offending.¹³ One study estimated that the average cost to citizens and public agencies per juvenile arrest is slightly under \$30,000.00;¹⁴ assuming that amount is accurate in Massachusetts, reducing future offenses among 17-year-olds by even 25% could result in savings of tens of millions of dollars each year.¹⁵ Other programs studying the cost-effectiveness of targeted juvenile intervention programs have found that successful programs can save taxpayers from \$30,000 to over \$100,000 per teen, each year, in incarceration, victimization and other costs.¹⁶

Simply improving the chances that young people currently swept into the adult system would graduate from high school could also have a huge impact on the Massachusetts economy. Researchers estimate that nearly 14,200 students who should have graduated from Massachusetts' high schools in 2010 had dropped out instead; the lost lifetime earnings in Massachusetts for that class of dropouts alone total nearly \$3.7 billion.¹⁷ These same researchers also estimated that Massachusetts' economy could see a combination of crime-related savings and additional revenue of about \$115 million *each year* if the male high school graduation rate increased by just 5 percent.¹⁸ In the Boston metropolitan area, where over 10,000 students dropped out of the class of 2008, getting just an additional 1,000 students to graduate could have a tremendous impact, as these graduates would earn an additional \$15 million each year, spend an additional \$1.4 million each year purchasing vehicles and, by the time they reach the midpoint of their careers, would buy homes worth \$53 million more than what they would likely have spent without a diploma.¹⁹ These graduates could also support 90 new jobs in the region, increase the gross regional product by \$19 million, and pour an additional \$1.8 million annually into state and local coffers, all through their increased spending and investments.²⁰

There are tremendous, immediate fiscal and social benefits that will be realized by all Massachusetts taxpayers if we reform our system.

Additional Reforms Could Lead to Even Greater Cost Savings

In addition to the immediate cost-savings that can be realized by reducing teen recidivism rates, there are multiple areas of potential cost-savings that could arise from a more comprehensive reform of our juvenile justice system. In particular, the following reforms could lead to dramatic savings while simultaneously reducing the chances that youth will reoffend.

1. Continuing to reduce over-reliance on secure detention for juveniles, particularly for misdemeanor offenders or youth who have committed only technical (i.e. non-offense based)

- violations of the terms of their probation;
2. Expanding and creating consistent standards for the use of pre-arraignment and pre-trial diversion for juveniles, particularly for juveniles arrested for or charged with low-level offenses;
 3. Adopting best practices for juvenile probation officers, including the use of evidence-based risk assessment tools and appropriate follow-up and supervision to reduce the chances that youth will reoffend;
 4. Creating additional alternative to incarceration programs for juvenile offenders, particularly cheaper, community-based programs that directly engage youth and their families; and
 5. Continuing to adopt best practices for juvenile defense attorneys, including the use of specialized lawyers and social workers employing a Youth Development Approach to representation.

¹ There are multiple possible explanations for the dramatic reduction in cases, including lower juvenile crime rates, more successful interventions with young people, and even lower rates of crime reporting.

² Email from Probation Department Research Division to CfJJ, April 19, 2011.

³ See further discussion at Chapter 1.

⁴ Juvenile court arraignment data is available directly from the Massachusetts Court system at <http://www.mass.gov/courts/court-sandjudges/courts/stats/index.html>. Information about the numbers of 17-year-olds arraigned in the adult courts between 2007 and 2010 was provided to CfJJ by the Probation Department Research Division.

⁵ As previously noted, 17-year-olds actually have a lower rate of arrest for violent offenses than younger teens, and should therefore be less likely to require pre-trial detention.

⁶ See note 4, *ibid*.

⁷ See 2009 DYS Report on JDAI Accomplishments, available from CfJJ.

⁸ See, generally, November 2010 Report of the Independent Counsel, Paul F. Ware, *In the Matter of the Probation Department of the Trial Court* (hereinafter “Ware Report”).

⁹ Based on data provided to CfJJ by the Massachusetts Sentencing Commission, only 96 individuals who were seventeen at the time of sentencing received an HOC or DOC sentence (only 2 received a DOC sentence).

¹⁰ As previously noted, because precise sentencing data for youth who commit offenses at 17 is unavailable (see further discussion at Chapter 1), CfJJ has combined sentencing data for individuals who were 17 *or* 18 *at the time of sentencing*. As a result, the numbers in the chart are likely to *overestimate* the number of 17-year-olds who would receive a confinement or probation sentence by a significant amount.

¹¹ The average annual cost of HOC confinement is approximately \$35,000; the average annual cost of a DOC confinement is approximately \$46,000. Although DYS commitment costs can range from \$5,000 to \$90,000 a year, depending on the level of confinement used, approximately half of the committed caseload is served by community supervision programs, which cost, on average, less than \$8,000/year, per youth.

¹² See generally, discussion in Chapter 3.

¹³ See Roman, John K., Aaron Sundquist, Jeffrey A. Butts, Aaron Chalfin, and Simon Tidd (2010). *Cost-Benefit Analysis of Reclaiming Futures*. A Reclaiming Futures National Evaluation Report at 20 (setting forth a model for assessing the costs associated with recidivism).

¹⁴ See *id*. The cost estimates in the *Reclaiming Futures* report are based on detention and commitment costs that are significantly less than the estimated costs for these services in Massachusetts; accordingly, it is very likely that the costs associated with recidivism, as well as the potential cost savings in preventing future crime, would be much more significant in Massachusetts.

¹⁵ Assuming that 50% of 17-year-olds who were arraigned in 2009 re-offended, if even 25% of these youth did not reoffend, the savings would be nearly \$17 million.

¹⁶ See Steve Aos, Marna Miller, and Elizabeth Drake. *Evidence-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs, and Crime Rates*. Olympia: Washington State Institute for Public Policy (2006).

¹⁷ Alliance for Excellent Education, *Massachusetts Fact Sheet* (2010). Available at <http://www.all4ed.org/files/Massachusetts.pdf>.

¹⁸ *Id*.

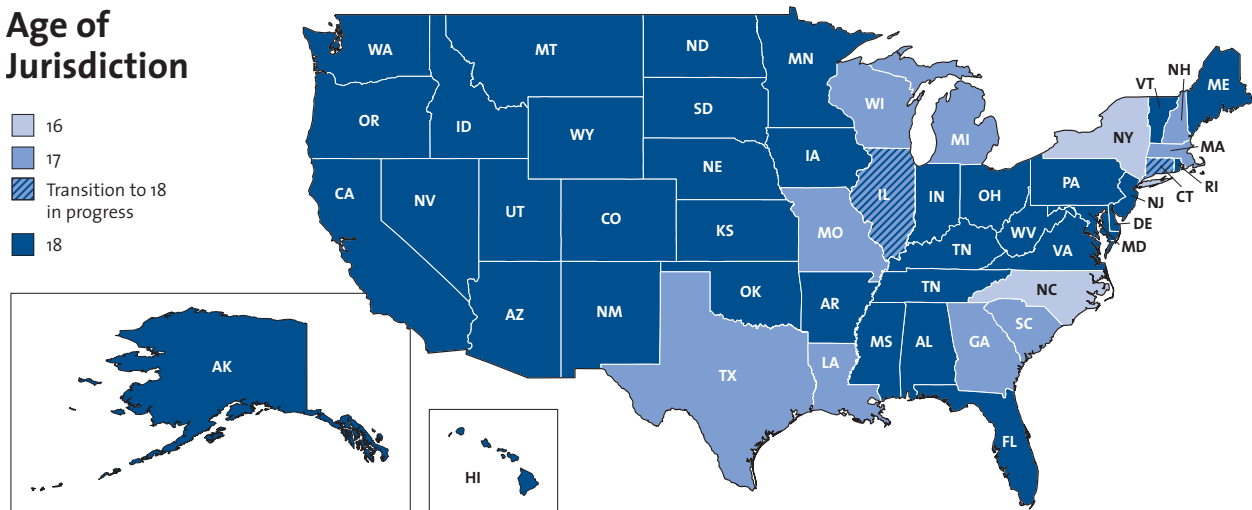
¹⁹ Alliance for Excellent Education, *The Economic Benefits from Halving Boston’s Dropout Rate* (January 2010), available at http://www.all4ed.org/files/BostonMA_leb.pdf

²⁰ *Id*.

The Tide Is Turning Away from Treating Children as Adults

Massachusetts is not alone in reevaluating both the wisdom and short- and long-term costs of processing youth under 18 in our adult criminal system. As previously noted, the majority of U.S. states (37) set the age of adult court jurisdiction at 18. In recent years, two states that automatically processed younger teens in their adult courts – Connecticut and Illinois – have passed laws to raise the age of juvenile court jurisdiction to 18, and at least four other jurisdictions have considered or are considering legislation to change their laws.¹ At the same time, over a dozen other states have recently reformed other aspects of their system for addressing youthful offenders, including passing laws to ensure that youth are not held in adult facilities, changing laws to reduce the likelihood that youth will be transferred to adult court or reforming mandatory minimum sentencing to take into account developmental differences between youth and adults.² Numerous other states around the country are considering additional reforms,³ reflecting a growing consensus that the best way to address youthful offending – and to prevent crime – is to treat youth in ways that hold them accountable while also addressing their unique developmental status and needs.

Age of Jurisdiction



Models for Change: The Experiences of Connecticut and Illinois

In Connecticut, 16-year-olds have been returned to the juvenile justice system, and 17-year-olds are scheduled to be added to the system on July 1, 2012.⁴ In Illinois, the legislature began by returning 17-year-olds accused of misdemeanors to the juvenile justice system;⁵ although those accused of felonies are still tried in adult court, legislation is currently pending to address these cases as well.⁶ As discussed below, both states offer Massachusetts potentially useful models for reform.

Connecticut: Recognizing the Importance of Change Despite Upfront Costs

Like Massachusetts, Connecticut's law establishing 16 as the lower age of adult criminal court jurisdiction was a relic of the past. Efforts to raise the age of juvenile court jurisdiction in Connecticut came together in 2005, spurred in part by the tragic suicide of David Burgos, a 17-year-old who was suffering from untreated mental health issues and was confined in an adult facility while awaiting trial when he took his life.⁷ Connecticut actually faced a considerably more daunting task than Massachusetts, as their law required *both* 16- and 17-year-olds to be automatically tried in adult court, with nearly 8,000 young people facing adult court jurisdiction every year.⁸ As in Massachusetts, the adult prison system in Connecticut was not equipped to help these teens become contributing members of society upon reentry; the lack of educational, vocational and other services for 16 and 17 year olds meant that many youth in Connecticut were more likely to commit new crimes.⁹

Efforts to raise the age of juvenile court jurisdiction in Connecticut were spurred by the tragic suicide of David Burgos, a 17-year-old who was suffering from untreated mental health conditions and was incarcerated in an adult facility on a probation violation when he took his life.

Lead by the Connecticut Juvenile Justice Alliance (CTJJA), legislators and leaders from area school districts, community organizations, state agencies and family advocates from around the state met over the course of two years to discuss the best ways to improve outcomes for youth and communities.¹⁰ As legislators learned about adolescent development and more effective ways to hold youth accountable within the juvenile justice system while decreasing recidivism, they saw the fiscal and public safety benefits for moving kids into the juvenile system.¹¹ Experts testified that moving 16- and 17-year-olds back to the juvenile system would return about \$3 in benefit for every \$1 in cost, assuming no new juvenile facilities were needed.¹² Even with new construction for juvenile facilities included in the costs of the move, they estimated the result would be a little less than a \$1 return for every \$1 invested during the years of construction, increasing to a \$3 return for every \$1 invested in following years.¹³

In 2006, the Connecticut General Assembly created a Juvenile Jurisdiction Planning and Implementation Committee (JJPIC) and, in 2007, the JJPIC recommended that the legislature begin a two-year process to raise the age of juvenile court jurisdiction from 16 to 18.¹⁴ The JJPIC further recommended that the state (1) improve court diversion and pre-trial detention practices; (2) establish regional youth courts; (3) gradually phase in services and supports for 16- and 17-year-olds (to avoid straining the current system); and (4) establish a policy and operations coordinating council to monitor the implementation of the central components of the JJPIC plan.¹⁵

To date, the addition of 16-year-olds has had less of an impact than expected: Connecticut determined that the creation of youth courts was unnecessary and 16-year-olds have been absorbed without adding any new courts or building any new training schools or facilities. In fact, even with the



addition of 16-year-olds and upcoming addition of 17-year-olds in the juvenile system, the Judicial Branch has closed one of the three state-run detention centers, since they are only at about 30% capacity.¹⁶

Connecticut's thoughtful and strategically planned transformation of its juvenile justice system, even in the face of potential upfront costs, is an important model for Massachusetts. As the Connecticut legislature realized, the cost-savings realized by reducing recidivism and improving life outcomes for youth more than offset any short-term costs. Particularly for Massachusetts, where the anticipated influx of 17-year-olds is *not* anticipated to increase the juvenile court or DYS caseload beyond levels of just a few years ago and is not anticipated to impact probation caseloads at all, the financial and social advantages of moving 17-year-olds into the juvenile system are apparent. Massachusetts should not wait for a tragedy to spur reform; the time for legislative change is now.

Illinois: A Two-Step Approach

Illinois, like Massachusetts, automatically treated all 17-year-olds as adults regardless of the offense. Like Connecticut and Massachusetts, the Illinois law establishing the threshold for adult court jurisdiction at 17 was a holdover from an earlier era.¹⁷ However, in 2009, in response to years of advocacy, the legislature voted to extend the age of juvenile court jurisdiction to 18 for teens charged with misdemeanor offenses. The legislature is currently studying the cost and broader system impact of extending the reform to 18-year-olds charged with felonies.¹⁸

While Illinois' gradual approach to bringing 17-year-olds into the juvenile system is instructive, Massachusetts does not face the same challenges as Illinois and is therefore in a much better position to adopt change on a whole system basis. First, Illinois arguably faces more significant potential costs in retaining 17-year-olds in the juvenile system than Massachusetts does. In particular, opponents of change in Illinois asserted that new juvenile facilities would need to be constructed to handle the estimated influx of 17-year-olds charged with felonies.¹⁹ In Massachusetts, as discussed at Chapter 4, the estimated influx of 17-year-olds into the juvenile court is only anticipated to bring caseloads back to 2006 or 2007 levels; our courts and facilities have the capacity to handle this increase in caseload, so the upfront costs, if any, are far less.

Another potential barrier faced by Illinois was the lack of "blended" sentencing options for youth convicted of more serious offenses. In Massachusetts, most youth charged with serious crimes ("youthful offenders")²⁰ are tried in juvenile court, but if convicted can be sentenced to an adult sentence of incarceration, a juvenile sentence, or a suspended adult sentence imposed only if the young person fails to succeed in the juvenile system.²¹ This sentencing system is often recognized as a more effective way to deal with serious

*Massachusetts
should not wait for
a tragedy to spur
reform; the time for
reform is now.*

crime among kids, combining the benefits of the rehabilitative services in the juvenile system with sufficiently punitive sanctions for youth convicted of serious offenses. It also means that the Massachusetts juvenile court system has experience with and expertise in treating youth charged with serious crimes. Illinois, in contrast, has relied heavily on mandatory or presumptive transfer provisions for youth charged with serious crimes. As a result, incorporating more youth charged with felonies into the Illinois juvenile system may require a greater transformation of the existing system than what would be required in Massachusetts.

¹ These states include Wisconsin, North Carolina, Missouri, and New Hampshire.

² Neelum Arya (2011). *State Trends: Legislative Changes from 2005 to 2010 Removing Youth from the Adult Criminal Justice System*, Washington, DC: Campaign for Youth Justice, at 7.

³ *Id.* at 21-43.

⁴ See Conn. Gen. Stat. Ann. § 46b-121 (West 2010).

⁵ See S.B. 2275, 95th Gen. Assem. (Ill. 2009) (enacted).

⁶ See S.B. 3085, 96th Gen. Assem. (Ill. 2010) (enacted) (requires the Illinois Juvenile Justice Commission to study the impact of, develop timelines, and propose a funding structure to accommodate the expansion of the jurisdiction of the Illinois Juvenile Court to include youth age 17 charged with felony offenses and to submit a report with recommendations by December 31, 2011 to the General Assembly).

⁷ Neelum Arya, Ian Augarten, and Yaamini Rao. *The Connecticut Success Story: Raising the Age of Juvenile Court Jurisdiction* at 2. Campaign for Youth Justice (April 2009). Available at: http://www.campaignforyouthjustice.org/documents/cfyjss_ct.pdf.

⁸ *Id.* at 1.

⁹ *Id.* at 1-2.

¹⁰ *Id.* at 3.

¹¹ *Id.* at 4.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 4-5.

¹⁵ *Id.* at 5-6.

¹⁶ Email to CfJJ from Abby Anderson, Executive Director, CT Juvenile Justice Alliance, 7/22/11.

¹⁷ Until 1973, girls were treated as juveniles until they were 18. However, in response to an equal protection suit, the age of adult court jurisdiction was lowered to 17 for both boys and girls. Juvenile Justice Initiative SB 2275 Fact Sheet, available at <http://www.jjustice.org/pdf/SB2275%20Fact%20Sheet%20Nov%2008.pdf>. See also Richard F. Walsh. *Raising the Age for Juvenile Jurisdiction in Illinois: Medical Science, Adolescent Comptency, and Cost.* 39 *Loy. U. Chi. L.J.* 767 (2008) (hereinafter *Raising the Age*).

¹⁸ See note 6.

¹⁹ See Walsh, *Raising the Age* at 771.

²⁰ See further discussion of the Massachusetts youthful offender system at Introduction.

²¹ MGL Ch. 119 § 58. Youth who are given a “blended” juvenile and adult sentence must also serve out the rest of the term of their adult sentence under the supervision of the Probation Department once they are released from DYS custody. *Id.* Youth charged with the most serious offenses in Massachusetts – first or second-degree murder – are excluded from the juvenile court and are automatically charged, tried, and sentenced in adult court. MGL Ch. 119 § 72B. Raising the age of juvenile jurisdiction to 18 would *not* alter this structure

The Fix

In order to ensure that 17-year-olds are fully integrated into and served by our existing juvenile justice system, we would need to change our law to raise the upper age limit for juvenile court delinquency and youthful offender jurisdiction to 17. Indeed, the legislature has recently embraced precisely this kind of comprehensive reform in a closely related area, raising the age of juvenile court jurisdiction for kids in foster care to age 22, effective January 2011.¹

Even without system-wide reform, however, there are other ways to reduce the number of 17-year-olds automatically tried and sentenced as adults in Massachusetts and to address the presence of 17-year-olds in adult criminal justice facilities. These less formal improvements rely on law enforcement stakeholders exercising their discretion to limit 17-year-olds' exposure to adult facilities. They also place a burden on all adult criminal justice practitioners to recognize and respond to the fact that 17-year-olds are simply not adults, either developmentally or under any of our other laws.

No one's perfect and life is all about making mistakes as long as we learn from them.

—A 17-year-old who hopes that an adult charge will not mean the end of the internship where she's thriving

Recommendations for Immediate Action

Recognize and Accommodate 17-Year-Olds' Youth Status

The first, critical reform that must happen is for adult criminal justice stakeholders to recognize that 17-year-olds are not the same as adults and to adjust their procedures accordingly. Knowing that they are holding a school-aged individual, police should make every effort to contact a teen's parents or guardians and, whenever possible, to release the youth to a parent's custody. When young people are held in facilities with adult offenders, police departments and sheriffs should closely monitor them to prevent abuse or harassment.²

Once kids are in the adult court system, it is essential for practitioners to identify them as young people and treat them accordingly. Probation officers, district attorneys and public defenders who handle cases involving 17-year-olds should receive the same training and access to resources that their juvenile court counterparts receive – particularly training in how to access services appropriate for this

population. Judges and court staff should make sure that procedures and protocol in cases involving 17-year-olds accommodate the participation and presence of parents, and take into account the unique educational, housing and developmental realities of 17-year-olds. Finally, appropriate, meaningful educational services, including special education services, must be made available in all HOC and DOC facilities to ensure that youth do not continue to be denied their right to a free and appropriate public education.

Exercise Discretion to Minimize the Harms Caused by Exposing 17-Year-Olds to the Adult System

Both police and prosecutors have the discretion to decide whether to arrest or charge an individual with a criminal offense as well as what offenses to charge him with. For example, a prosecutor could decide to offer pre-arraignment diversion to all 17-year-olds charged with minor offenses (the majority of cases), effectively removing these cases from adult criminal court altogether. To date, systemic use of diversion for low-level offenses has not been done in Massachusetts.

Research shows that diversion programs (i.e. programs that divert kids from the court system entirely, usually for low-level offenses) can have enormous benefits for communities as well as kids, including significant cost-savings.³ Here in Massachusetts, multiple jurisdictions have begun to explore this option through both police departments and district attorney's offices. These efforts are laudable, and should be encouraged and improved by adding data collection to track their effectiveness and ensure that these options are not selectively and unfairly offered only to wealthier or favored populations of kids.



For kids who are already in the system, additional adjustments can be made. Attorneys representing 17-year-olds should draw upon relevant research and case law regarding young clients and should explore age-appropriate, community-based alternatives to HOC confinement or probation when appropriate. In crafting sentences for seventeen-year-olds, judges should be aware of the profoundly negative consequences of incarcerating 17-year-olds with adults and attempt to identify suitable, community-based teen-focused alternatives for these young people. Finally, the Probation Department should assign all 17-year-olds to probation officers with juvenile training, or require probation officers working with school-aged probationers to address specific concerns or undergo training in adolescent development, educational advocacy and other youth-specific topics.

Data Collection

Regardless of whether our law is changed or adult criminal justice system stakeholders voluntarily adopt reforms, it is important that we develop data collection systems that allow us to easily identify and track 17-year-olds in the adult system. As a recent report from the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP) noted, states that use statutory exclusions to keep certain teens in the adult system (such as Massachusetts) frequently fail to identify these cases, or track offense profiles, demographic characteristics, or sentencing and long-term outcomes for this population.⁴ Our police, courts, probation department, district attorneys, public defenders, as well as the Houses of Correction and Department of Correction should track and make public this important data specific to 17-year-olds.

Conclusion

Keeping 17-year-olds charged with crimes in our juvenile system would benefit every citizen of the Commonwealth. We would decrease crime while increasing the number of young people on the path to becoming law-abiding, tax-paying citizens. A 17-year-old is not an adult and cannot be safely or appropriately managed in the adult system. Holding 17-year-olds accountable in the juvenile system is far likelier to correct their behavior, often through the use of lower-cost alternatives not available on the adult side. Handling in the adult system, in contrast, often leads to escalation or repetition of offenses. The vast majority of 17-year-olds in Massachusetts are arrested for and charged with minor, non-violent offenses. Because the Massachusetts juvenile system has both the capacity and expertise to handle 17-year-olds, even those charged with serious crimes, the time for reform is now.

¹ The legislation, Senate Bill 40, was sponsored by Senator Jennifer Flanagan and was enacted as Sections 18-22 of Chapter 359 of the Acts of 2010 (<http://www.malegislature.gov/Laws/SessionLaws/Acts/2010/Chapter359>).

² Some jurisdictions currently hold 17-year-olds apart from adults in their facilities. However, this policy often causes them to be subjected to prolonged isolation, which can cause profound psychological harm, particularly for adolescents.

³ See *Juvenile Diversion Guidebook*. The Models for Change Juvenile Diversion Workgroup (Center for Juvenile Justice Reform, National Center for Mental Health and Juvenile Justice, National Juvenile Defender Center, National Youth Screening and Assessment Project, and Robert F. Kennedy Children's Action Corps) (March 2011), pp. 11-16, available at <http://www.modelsforchange.net/publications/301>.

⁴ Patrick Griffin, Sean Addie, Benjamin Adams, and Kathy Firestine. *Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting*. *Juvenile Offenders and Victims: National Report Series Bulletin*. OJJDP (September 2011) pp. 15, 21.

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