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Committee on the Judiciary
House Committee on Ways and Means
The State House
Boston, MA 02133

Subject: Testimony on S.2820 Reforming Police Standards

Dear Chair Cronin, Chair Michlewitz, Vice Chair Day, Vice Chair Garlick and House members of the Judiciary and the House Ways and Means Committees,

Thank you for the opportunity to submit written testimony. We comprise a group of retired judges who strongly recommend the inclusion of a provision in the House racial equity and reforming police standards legislation to gradually raise the age at which a young person is automatically prosecuted as an adult from age 18 to age 21. Our group includes seasoned jurists and trial practitioners with extensive experience in juvenile and criminal court sessions. Some of us have spent their entire careers in child welfare and juvenile justice. All of us are committed to redressing critical systemic racial and ethnic disparity and sincerely believe that raising the age of juvenile court jurisdiction will further that goal while significantly reducing recidivism.

Racial and ethnic disparities exist in both the juvenile and criminal systems, but, according to a 2016 Prison Policy Initiative study, African Americans are six times more likely to enter Massachusetts jails and prisons than whites. This is one of the highest rates of disparity in the country. Treating emerging adults in a juvenile court system with a focus on positive youth development and a Department of Youth Services with much lower recidivism rates is good public policy and more consistent with racial equity.

The US Supreme Court has established that youth are categorically different than adults, and psychological and scientific research has indicated that adolescent brain development may continue until age 25. The state's Task Force on Emerging Adults noted that emerging adults are "a unique population that requires developmentally tailored programming and services."

The emerging adult population also has the highest rate of recidivism. Emerging adults constitute 10 percent of the state's population but more than 29 percent of arrests. According to the National Center of State Courts, 76 percent of emerging adults released in 2011 from Massachusetts jails and prisons were back in court within three years. By contrast, the recidivism rate is approximately 25 percent for youth discharged from the Department of Youth Services. While racism and ethnic disparities plague all systems, the juvenile court's more rehabilitative philosophy allows for consideration of the structural factors that contribute to court involvement.

The risk of further criminal involvement for this age group is exacerbated by the collateral consequences of a criminal record, which adversely affects their ability to continue their education and obtain housing and employment. Juvenile court diversion options allow for pre-arraignment dismissals which do not generate a record.

The lawyer and activist Bryan Stevenson has said that each of us is more than the worst thing we have ever done. An example of not only the juvenile court's power on a young person's life, but the wider range of tools available in the juvenile court, is exemplified by the case of a teenager arrested in school who was able to have her case diverted without a stigmatizing record, which enabled her to avoid expulsion and go on to graduate. She subsequently graduated first in her class from community college and invited the juvenile court judge who oversaw her case to attend the ceremony last year. On the other end of the spectrum juvenile court jurisdiction includes all felonies other than murder allegations involving youth fourteen years of age or older. District court jurisdiction is limited to misdemeanor and a limited number of felony cases. Youthful offender jurisdiction until age twenty-one confers the same scope of sentencing authority to juvenile court as occurs in superior court which means a juvenile court judge can sentence in a youthful offender case to state prison for any term of years.

Keeping young people from returning to jail is important, but it is not the only reason to raise the age. For many years, the Department of Youth Services has been promoting the so-called positive youth development model, which engages youth in their communities, schools, and families in a manner that supports healthy development.

Supporting prosocial development has short and long-term benefits. It provides opportunities for educational continuity, including access to specialized education plans and family engagement. DYS and the juvenile court also partner with the Juvenile Detention Alternative Initiative, which attempts to reduce unnecessary detention and address racial and ethnic disparities. There is no analog in the criminal system.

Some argue we should create some form of youthful offender jurisdiction in the district court, but that would require substantial planning and infrastructure that already exists in the more rehabilitative juvenile system. Approximating this model in the criminal court, other than providing for a crude youth discount in sentencing, could take years. There are other constraints as well. Criminal cases often involve the question of parole or probation violation and the possibility of further court appearances. Everyone in the DYS system is discharged, the equivalent of being paroled, at the age of 18 in delinquency cases, or 21 in youthful offender matters. Over half of youths who are discharged continue to receive services voluntarily.

The juvenile court already deals with older adolescents up to age 21 in youthful offender cases and hears serious felony cases the district court cannot. Juvenile court judges hear child welfare as well as delinquency cases. Many adolescents are involved in both juvenile and the child welfare systems and the juvenile court can understand the issues they face with greater context.

Child welfare jurisdiction extends to age 22 for youth who are in the care of the Department of Children and Families, which enables the court to monitor these young people as they age out of care. Adolescents who leave care without such oversight are at a significant risk of becoming homeless and then entering the criminal justice system.

The juvenile court is also supported by specialized probation officers and a statewide court clinic system which conducts psychodynamic assessments of youth and their families. Since many of

the 18- and 19-year-old adolescents who now appear in district court are still in high school, treating them in the more rehabilitative juvenile court makes common sense.

DYS has the capacity to handle raising the age. In November of 2019, prior to the pandemic, the Juvenile Justice Policy And Data board reported that juvenile arraignments had declined by 43 percent, and Trial Court data indicates that prior to the pandemic care and protection filings had decreased by approximately 11%. In addition, during the last year and detention and commitment rates have dropped dramatically. While jail numbers have also decreased, the decreases in DYS have been much more dramatic. Currently, there are less than 100 youth being held in detention; their average age is between 16 and 17. An important part of the decrease in arraignments is attributable to significantly expanded diversion opportunities in juvenile courts, which allow for first-time offenders who would face a jail sentence of six months or less to have their cases dismissed without a record. Emerging adults in the juvenile court would be treated similarly. To the degree that capacity is indeed an issue it is better public policy to address that by supporting the juvenile court rather than to continue policy which is not adequately addressing the needs of adolescents and protecting the public.

In 2018, Vermont became the first state in the country to raise the age from 18 to 21, phased in over a over a three-year period. An important part of Vermont's legislative scheme was creating a presumption that first-time offenders of non-violent crimes would have their cases diverted. This mirrors current Massachusetts juvenile court practice.

We all remember when the Commonwealth raised the age of juvenile court jurisdiction to include seventeen-year old youths. There were dire predictions that we would need to increase D.Y.S. capacity by 200 beds. Given declining arraignment, detention and commitment rates this projection proved to be inaccurate and the sky didn't fall. There is little doubt that if we raised the age to include emerging adults in phases, perhaps starting with including eighteen- year old adolescents there would be no problem. Raising the age in the more rehabilitative and developmentally oriented juvenile court is better for youth, costs the public a lot less, and better protects public safety. Let's be smart on crime and join Vermont.

Thank you for considering our testimony. Please feel free to contact anyone of us if you have any questions or wish to discuss these issues in further detail.

Sincerely,

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