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CPCS Comment on Emerging Adult Justice Task Force Report

Dear Chair Creem and Chair Tucker,

Thank you for the opportunity to comment on the Report of the Task Force on Emerging Adults in the Criminal Justice System published February 25, 2020.

CPCS applauds the task force's use of science based best practices in their recommendations to shape our juvenile and criminal legal systems in a more developmentally appropriate way. This approach follows the example set by the Commonwealth's child welfare, healthcare, education, and labor systems, which have already recognized emerging adults as a distinct population.

Specifically, we support the additional proposal for legislative consideration to raise the age to include 18, 19, and 20 years olds in the juvenile justice system.

DISCUSSION

Adolescence is a challenging period of transformation and transition from childhood to adulthood. Young people are undergoing profound changes in their bodies, brains, and minds, while transitioning from near complete dependence upon family and other adults to near complete independence. It is also a challenging time for their families and communities. Adolescents are far more likely to engage in impulsive and risky behavior, which can be self-destructive and/or antisocial. However, they are also uniquely amenable to rehabilitative programming. It is in society's best interest to implement practices that keep our young adults and society as safe as possible, while promoting their healthy development into self-sufficient adults. Treating all adolescents in a developmentally appropriate way brings about better legal and life outcomes. The Massachusetts juvenile justice system is a national leader in this regard.

It is time to take a more developmentally appropriate approach to Emerging Adults in our criminal legal system. An overly punitive approach often causes more offending. Currently, 76% of Emerging Adults released from Houses of Correction were re-arraigned within 3 years. Research from the National Center for Disease Control has shown that similar aged adolescents had a 34% lower recidivism rate when they were in juvenile systems that are more focused on rehabilitation than the adult system. Reducing recidivism means safer communities and eliminates a costly cycle of crime and re-incarceration.

The juvenile justice system in Massachusetts has the pre-existing structure and capacity to manage emerging adults. The juvenile justice model in Massachusetts is nationally recognized for its commitment to positive youth development. It has one of the only statewide juvenile court systems, and the only state with a statewide juvenile court clinic. The Department of Youth Services and Juvenile Probation Services have also received national acknowledgment for their innovative and successful integration of age appropriate policies. Our office, The Committee for Public Counsel Services, has one of the few statewide juvenile defense bars in the country and the only one that officially incorporates a Positive Youth Development Approach into the practice model. More and more District Attorney Offices are establishing specialized juvenile prosecution units and providing them with training on adolescent development. The system is designed to provide individualized, developmentally appropriate services for young people. Additionally, the number of cases in juvenile court has dropped dramatically over the last 10 years, creating a capacity to provide services to older adolescents.

Because of the Youthful Offender statute, people working in the juvenile justice system already work with some young people to the age of 21. For adolescents aged 18-21, most cases are misdemeanors or “lesser felonies.” These defendants do not pose a significant threat to public safety. For these cases, the juvenile courts are particularly adept at identifying case resolutions that appropriately set limits, while connecting young people to the opportunities, resources, and services they need to successfully grow out of delinquent behavior. For young people who have engaged in more serious and worrisome criminal behavior, the Youthful Offender law provides a great deal of flexibility to individualize a response to the undesirable behavior. This law gives the District Attorney the authority to evaluate the case and determine whether an indictment is appropriate. Should they choose to indict, the courtroom is opened to the public and, should the defendant be adjudicated, the judge has the authority to use juvenile or adult sanctions or a combination thereof. This includes the power to sentence children to life sentences.

The juvenile court’s commitment to family engagement has been a successful tool in maintaining a child’s connection to the community and facilitating reintegration, and there is every reason to believe this will have the same positive affect on older adolescents. Currently, family engagement in juvenile court does not stop because a person turns 18 years old. The Court continues to encourage

family participation as do the lawyers, social workers, Probation and DYS workers. Families want to be engaged and young people want their families and adult supports to be engaged. Young adult clients often rely on family members for support and advice. Effective lawyers make a point of working with the families of clients; it is part of the CPCS practice model. The juvenile court is far more open to and encouraging of this participation than the adult courts. It is also the case that many young adult clients are/were DCF involved and need extra support during this tumultuous and precarious developmental period. No one knows the challenges and needs of DCF involved youth better than the Juvenile Court and all of the people that work there. This population needs the specialized assistance of the Juvenile Court that knows how critical positive adult engagement is with adolescents for their ultimate life success.

There is some innovative work happening in adult corrections as well. Some sheriffs and the DOC are developing special units in adult jails and prisons. Sheriff Peter Koutoujian is especially committed to implementing programs based on the current research on emerging adults. However, even with these new implementations, the DOC and Houses of Corrections and jails are still far behind DYS in the implementation of developmentally appropriate programming for adolescents.

Raising the age of juvenile court jurisdiction is not a call for the cessation of all the innovative work that is happening on the adult side. This is not an either or approach. Raising the age should be implemented in addition to developing specialized options for older emerging adults in adult court, probation, corrections and parole. Raising the age to include 20 year olds in the juvenile justice system, will still leave many emerging adults (ages 21-25) in the adult justice system. Continuing this effort is vital to developing a developmentally appropriate adult criminal justice system.

Judges, lawyers and other court, probation and corrections personnel in our adult justice system need training on adolescent development, positive youth development, the Child Welfare System, and adolescent mental health. This is a significant undertaking; one that cannot be accomplished quickly, but which will pay substantial dividends for individual youth, their families and communities, and the tax payers. Probation Service has suggested implementation of specialized young adult probation officers. There are on-going discussions of developing a specialty court for emerging adults in western Massachusetts. CPCS is developing training for the nearly three thousand adult criminal defense attorneys. Several District Attorney's Offices are also working on training their prosecutors on emerging adult issues. None of this innovation should stop and should, in fact, be strengthened by raising the age of juvenile court jurisdiction. Remodeling the adult systems will take years, possibly decades. Moving the 18, 19, and 20 year olds can be done quickly. Not only will that cohort have better life outcomes, but reducing the number of adolescents in the adult system will make it easier for those systems to work on the implementation of new policies.

CPCS has a specially trained juvenile bar ready and willing to take the cases if this legislation is passed. The decrease in the number of cases in juvenile court has created the capacity for our organization to handle this older adolescent group in the juvenile court. In fact, transferring more cases away from the adult court and into the juvenile court will have a positive affect for both bars. Juvenile Defenders are highly specialized. They must have all of the skills and knowledge of lawyers handling adult cases, including jury trial skills and expertise in adult sentencing. In addition, they must become expert in juvenile law and procedure, adolescent development, Positive Youth Development, DCF and DYS, the school systems, aspects of behavioral health that are unique to adolescents, working effectively with families, etc.

Moving older adolescents into juvenile court will promote better outcomes for individuals, increases public safety, reduces the high cost of recidivism, and our system has the capacity to implement the change fairly quickly and efficiently. Improving the ability of the adult court to consistently and comprehensively function as a developmentally appropriate Emerging Adult Justice system should be supported. However, retooling the entire adult system is a massive undertaking that could take generations. Raising the age of juvenile court jurisdiction will pay dividends immediately.

Respectfully Submitted,

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