

Massachusetts Coalition for Juvenile Justice Reform

Action for Boston Community Development
ACLU of Massachusetts
Bethel Institute for Social Justice/Generation Excel
Black Lives Matter- Worcester
Boston Teachers Union
Bridge Over Troubled Waters
Center for Public Representation
Center for Teen Empowerment
Charles Hamilton Houston Institute, Harvard Law School
Children's Law Center of Massachusetts
Children's Mental Health Campaign
Citizens for Juvenile Justice
City Mission Society
The City School
Coalition for Effective Public Safety
Committee for Public Counsel Services
Criminal Justice Policy Coalition
Dorchester Youth Collaborative
Ending Mass Incarceration Together
Fair Sentencing of Youth
Friends of Children
GLBTQ Legal Advocates & Defenders
Greater Boston Legal Services, CORI & Re-entry Project
The Home for Little Wanderers
High Risk Youth Network
I Have a Future/Youth Jobs Coalition
InnerCity Weightlifting
Jobs Not Jails
Justice Resource Institute
Juvenile Rights Advocacy Program, Boston College Law School
Lawyers Committee for Civil Rights
League of Women Voters of Massachusetts
Louis D. Brown Peace Institute
Mass Mentoring Partnership
Massachusetts Bar Association
Massachusetts Commission on LGBTQ Youth
Massachusetts Society for the Prevention of Cruelty to Children
Mental Health Legal Advisors Committee
MissionSAFE
More Than Words
Mothers for Justice & Equality
My Life My Choice
Nat'l Alliance on Mental Illness – MA
North American Family Institute
Parents/Professional Advocacy League

Reforming Police Standards Testimony House Hearing on S.2820

July 17, 2020

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

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

We have all spent the last few months concerned about the state of emergency created by COVID-19, and have seen a disproportionate health and economic harm falling Massachusetts' residents of color. The past few weeks' protests and uprisings standing up for the life and dignity of Black residents is a culmination of decades and decades of modern day racial oppression – both overt and subtle. The murders of George Floyd, Ahmaud Arbery and Breonna Taylor at the hands of active and retired law enforcement officers is the ultimate injustice on the hands of public officials sworn to “serve and protect”. As advocates for youth justice we are also keenly aware that the killing of Black children – Cornelius Frederick, Jayson Negron, Kwame Jones and Tamir Rice – was protected by our legal systems.

It is a tremendous time to see a wave of understanding and commitment to address the racial injustices our society has sanctioned against its residents of color and to hold our law enforcement officers and agencies accountable to their duty to serve and protect. We extend our appreciation that Massachusetts' legislative leaders are committed to seeing an agenda towards racial equity, and with that we share our recommendations towards reaching that goal.

While a racially motivated killing is the ultimate harm, it is important to recognize that racial indignities permeate all stages of interactions with legal system agencies. Studies show that young people reporting police contact, particularly more intrusive contact, also display higher levels of anxiety, trauma and even post-traumatic stress

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Prisoners' Legal Services
Project RIGHT
RFK Children's Action Corp
Real Costs of Prison Project
Roca, Inc.
Roxbury Youthworks
Sociedad Latina
Spectrum Health Services
Strategies for Youth
UTEK
Unitarian Universalist Mass Action
Network
Violence in Boston
Vital Village Network
Year Up
Young Sisters/Young Brother United
Youth Build Boston
YW Boston

disorder associated with these experiences and it is evident that racism is fundamentally damaging not just Black adults, but Black youth.

Our coalition fully supports the priorities of the members of the Black and Latino caucus in advancing race equity and policing reform in our state. We respectfully submit this testimony strongly recommending that the House bill also include the following three priorities that would tackle the systemic and institutional racial inequities plaguing our legal system and that omnibus racial equity legislation hold our state systems, not just individual officers, accountable to a more just society and include three reforms that play a role towards that goal:

- (1) Require transparency in juvenile justice decisions by race and ethnicity (as filed by Rep. Tyler in H.2141, with modifications)**
- (2) End the automatic prosecution of teenagers as adults (as filed by Rep. O'Day in H.3420)**
- (3) Expand expungement eligibility (as filed by Reps. Decker and Khan in H.1386 and as passed in S.2820 §§59-61)**

Recommendation 1: Require transparency and accountability by reporting race/ethnicity data at each major decision point of the juvenile justice system.

Massachusetts has one of the worst racial disparities for youth incarceration in the country¹ despite more than a decade of reforms to reduce the pretrial detention of youth. Massachusetts also lacks the transparency on how our legal system responds to children and youth once they get arrested and how they move across each decision point. Additionally, LGBTQ youth – especially girls² – are overrepresented in juvenile justice systems, and they are predominantly youth of color³, therefore transparency on racial inequities must also include the disparities built on the intersectionality of race, ethnicity, gender identity and sexual orientation. Legislation to shed light on the racial inequity in our juvenile justice system is a necessary first step to confronting the disparate treatment

¹ According to the Sentencing Project, Massachusetts' has the 6th worst Black-White disparity in youth incarceration, with Black youth 10 times more likely to be incarcerated than White youth. <https://www.sentencingproject.org/publications/black-disparities-youth-incarceration/>

² Himmelstein, K. &. (2011). Criminal Justice and School Sanctions Against Nonheterosexual Youth: A National Longitudinal Study. *Journal of Pediatrics*, 127(1), 48-56.

³ Wilson, B., Jordan, S., Meyer, I., Flores, A., Stemple, L., & Herman, J. (2017). Disproportionality and Disparities among Sexual Minority Youth in Custody. *Journal on Youth and Adolescence*

of Black and Brown youth by our legal system. **We don't solve institutional racism by making the racial impact of our decisions invisible.** This legislation will gather key demographic data at major decision points – race and ethnicity, sexual orientation, gender identity/expression, and age – to better identify decision points leading to the over representation of certain populations in the juvenile justice system.

In 2017, the Department of Youth Service (DYS) and Probation partnered on a statistical analysis to answer one question: "Is the disproportionate incarceration of Black and Latinx youth compared to White youth explained by a difference in offending or a difference in the legal system's response to similar offenses?" The analysis found that Black youth were 91% more likely to be incarcerated for similar offenses than White youth, with the disparities rising to 2.5 times in some counties.⁴ Rather than dig deeper into that data and try to actually work to address the factors creating this disparity, the Juvenile Court rescinded a three-way data sharing agreement, prohibiting Probation Services from sharing data with DHS and dictating greater control on any future analysis that may reflect poorly on the decision of the state judges.

The legislature invested \$75 million to revamp the judicial databases in the 2013 rollout of MassCourts. While that data system may need additional upgrades, we are certain that the capacity of that data system today is able to provide the information required by H.2141/S.1386: the number of arraignments by age and race, or detention and disposition decisions by gender and race. The Detention Utilization Study highlighted issues of data collection (rather than reporting) of ethnicity (Hispanic or non-Hispanic) which can be addressed administratively.

See Appendix A for a proposed modification to H.2141

Recommendation 2: End the automatic prosecution of Massachusetts' oldest teens as adults. Youth of color bear the harshest brunt of that failed policy resulting in double the recidivism rate of similar teens in the juvenile system and its worse collateral consequences

Massachusetts treats similar teenagers very differently with devastatingly different outcomes as they transition into adulthood. In 2013, Massachusetts ended the automatic prosecution of 17-year-olds as adults amid cries of panic that 17-year-olds are somehow different than other teenagers and high cost estimates of implementation. Not only were official state estimates 37% above actual costs, the juvenile justice system's caseload today is lower than **before** the introduction of 17-year-olds.⁵

“Each of the three states that led the national trend in raising the age—
Connecticut, Illinois, Massachusetts—managed to contain costs, reduce

⁴ An excerpt of the Detention Utilization Study analysis of Black-White disparities can be found at <https://www.cfj.org/s/Detention-Utilization-Study-RED-Excerpt.pdf>

⁵ A detailed analysis of arrest, Juvenile Court and Department of Youth Services caseloads can be found at <https://www.raisetheagema.org/court-capacity>.

confinement, reallocate funds to more effective approaches that keep most young people in the community, and enhance public safety.”⁶

While we are advocating to address the racial disparities in the juvenile justice system, the racial disparities in the adult system are even worse. Only 25% of Massachusetts’ transition age youth population is Black or Latinx, but 70% of youth incarcerated in state prisons and 57% of youth incarcerated in county jails are people of color. Black and Latinx youth are 3.2 and 1.7 times, respectively, as likely to be imprisoned in adult correctional facilities as their White peers. This racial disparity in adult system involvement further exacerbates the disparity in long-term outcomes.

Young people in the adult system have the worst outcomes of any age group in our legal system. **Recidivism among young people incarcerated in the adult corrections is more than double similar youth released from department of youth services commitment.** Teenagers and young adults incarcerated in Massachusetts’ adult correctional facilities have a 55%⁷ re-conviction rate, compared to a similar profile of teens who remained in the juvenile system whose re-conviction rate is 22%⁸. DYS has been successful in reducing its recidivism rate following almost four decades of reforms building in an emphasis on providing treatment and imposing policies whose primary goal is to ensure young people’s healthy and positive development into adulthood.

Youth of color exiting the adult criminal legal system are not only saddled by a public criminal record limiting their educational and economic opportunities, the adult system’s lack of focus and expertise on positive youth development, means that while youth are under state custody they are less likely to engage in rehabilitative programming, which is the cornerstone of the juvenile system.

The better outcomes of the juvenile justice system compared to the adult criminal legal system are tied to the former’s responsiveness to older teenagers and a better understanding of how to capitalize on their developmental stage to promote better public safety and youth development outcomes. Attempts by the adult criminal justice system to create specialized carve-outs are their attempt to re-create positive aspects of the juvenile justice system. While commendable and a positive short-term step, they are and will only be available to a handful of youth leaving the vast majority of young people without access to these reforms. Most importantly, they do not incorporate the legal impact and practical considerations of juvenile system involvement. A young person in a young adult court session cannot legally be committed to DYS rather than an adult facility. A young person incarcerated in a young adult unit does not have the legal protections of an adjudication, compared to a conviction; nor are they connected to the range of tools, programming and

⁶ Justice Policy Institute, *Raising the Age: Shifting to a safer and more effective juvenile justice system*, 2017. <http://www.justicepolicy.org/uploads/justicepolicy/documents/raisetheage.fullreport.pdf>

⁷ Council of State Governments Justice Center, “Justice Reinvestment in Massachusetts: Policy Framework,” February 21, 2017. Available at <https://csgjusticecenter.org/jr/massachusetts/publications/justice-reinvestment-in-massachusetts-policy-framework/>

⁸ Department of Youth Services, “Juvenile Recidivism Report For Youth Discharged During 2014” November 19, 2018. Available at <https://www.mass.gov/files/documents/2018/12/17/recid2018.docx>

interventions available within the juvenile justice systems to promote positive youth development.

This testimony will address three specific questions that keep coming up about this proposal:

- **Does Massachusetts' juvenile justice system have the capacity to handle older teens?**
- **Can the juvenile justice system handle serious crimes?**
- **Will parents of 18-year-olds be able to participate in their children's cases?**
- **Does raising the upper age of juvenile justice jurisdiction over a youth's 18th birthday violate federal law requiring separation of youth from adults in the legal system?**

Massachusetts' juvenile justice system has the capacity to handle the incremental entry of 18- to 20-year-olds.

In 2013, Massachusetts policy makers ended the practice of automatically prosecuting 17-year-olds as adults. Since then, juvenile crime has declined by 28%, and has seen faster declines in violent and property crime rates than the national average. With juvenile crime continuing to plummet, the system – including courts and DYS – **can handle all 18-year-olds TODAY.** Over the past decade, the juvenile system's caseloads have dropped significantly, creating ample capacity to absorb older teens into the system:

- The total number of juvenile arrests decreased by 70% since 2008.
- The total number of juvenile court cases (child welfare, CRA, delinquency and youthful offender cases) has steadily declined: Since the introduction of 17-year-olds into the juvenile court in FY14, there has been a 16% decrease in juvenile court filings through FY2018.
- Juvenile delinquency and youthful offender arraignments fell by 50% (FY13 to FY20)
- DYS detention admissions dropped by 73% and commitments dropped by 72%.

The juvenile system is already serving 18- to 20-year-olds. Over 80% of young people over the age of 18 that are committed to the Department of Youth Services are adjudicated as a Youthful Offender and committed until age 21. In 2017, DYS served 357 young people 18-years and older who were either committed to DYS until age 21 or through voluntary services provided by DYS through age 22.

The arrests of 18- to 20-year-olds during the same period (2008-2018) similarly dropped by 72%, indicating that even with full implementation, the caseloads at all stages of the juvenile system would still be lower than the caseloads of years prior to the first Raise the Age law. See Appendix B for a detailed caseload analysis.

Massachusetts' juvenile justice system has the specialized skills to handle 18- to 20-year-olds with serious and violent charges.

Approximately 10% of 18- to 20-year-olds are charged with a serious felony that leads to Superior Court charges. The juvenile system currently handles almost all of these cases, including the cases of young people under the age of 21 who are indicted on serious offenses.

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 for children as young as 14. In those cases, the prosecutor has the discretion to indict a young person as a “Youthful Offender” or arraign them as a delinquent. An indictment requires that an offense: (1) resulted in or threatened to cause serious bodily injury; (2) involved a firearm; or (3) is a felony and the young person was previously committed to DYS for another offense. If the young person is adjudicated a Youthful Offender, then the judge has the discretion to sentence in three ways: (1) commitment to DYS until age 21; (2) a straight adult sentence; or (3) commitment to DYS until age 21 with a subsequent adult sentence. So even with the possibility of an adult sentence (due to the discretion of prosecutor and judge), the youth is still in Juvenile Court where they are eligible for juvenile and/or adult sentences.

By contrast, the district courts only handle misdemeanors and felonies punishable by imprisonment for no more than five years; the Superior Court has the jurisdiction over the remaining more serious felonies. Since the juvenile courts have jurisdiction over all offenses, with the exception of first and second degree murder cases, the juvenile courts and its practitioners have more experience dealing with serious offenses.

The juvenile system typically imposes more supervision and intensive programming while in confinement than the adult criminal justice system. Educational, counseling and independent living programs are difficult-to-impossible to access in adult correctional settings. Teens in the juvenile system may be required to receive evaluations and assessments and frequently must participate in services and programs designed to teach responsible behavior as part of their sentence.

This legislation does not change the current statute requiring the prosecution of young people who are charged with murder to be automatically tried as an adult in Superior Court and subject to adult sentences.

Parental involvement is a key component of the juvenile justice system.

Parental involvement does not end at age 18:

“Despite the fact that the “age of majority” is eighteen, this does not mean that all obligations between parents and children will end on the day a child turns eighteen. In fact, Massachusetts courts have stated that in this state, there is no fixed age when complete emancipation occurs, and that it does not automatically occur when the child turns eighteen. For example, in some cases, parents can be required to support their children beyond the child’s eighteenth birthday. See, Turner v. McCune, 4 Mass.App.Ct. 864, 357 N.E.2d

942 (1976) and Larson v. Larson, 30 Mass.App.Ct. 418, 469 N.E.2d 406 (1991). This may occur when the child lives with a parent and is principally dependent upon that parent for support.”⁹

The juvenile justice system already has charge of people over 18 and is one of many systems within the Commonwealth that involves the parents of people up to the age of 21 – and in some cases beyond that. In families with resources, parents are typically quite involved in providing guidance and help to their children through college and beyond. Families with children involved in the juvenile justice system are no less invested in their children and no less essential to their children’s success. However, parental involvement is close to impossible in the adult criminal justice system which makes it very difficult for these older teens to benefit from family support. The Department of Youth Services already supervises youth up to age 22 and involves parents in their programming and discharge planning.

While there are older youth whose parents will not be involved in their case for any of a variety of reasons – whether the youth or the parent is unwilling or unable to have the parent involved – most older teens will opt-into having a parent or other interested adult guiding them through their case. The juvenile court has a precedent of overseeing similar children whose parents are not involved, particularly with youth in the care and custody of DCF who are disproportionately involved in the juvenile justice system. In those cases, the court can assign, though infrequently – and for youth 18 and older, the youth can choose – a case worker, an assigned guardian or other interested adult to help guide the youth. Cases generally are not delayed or stuck in those circumstances, especially as a child is older.

Youth who age out of foster care are more likely to be involved in the criminal justice system than similarly aged youth, yet when they turn 18, the adult courts do not take into consideration that in the preceding years the Commonwealth was their parent. Families are welcome but cases don’t bog down as long as they are not critical to the disposition of the case. DCF kids – caseworker can sign, guardians can be appointed when needed, rare, legally old enough to decide for yourself interested.

Parental involvement past the 18th birthday is evident in other state systems. The most common setting for parental involvement of youth 18 and older is public education. More than 22,000 students in Massachusetts high schools are aged 18 to 20. That’s more students than play high school football. When students turn 18, schools do not stop sending report cards home to parents or stop communicating with families about health, safety and behavior. This involvement is especially evident with special education students, who are also at much higher risk of school discipline and school-based arrest than their peers. When students have an Individualized Educational Plan, parents usually remain part of the IEP team even after the student turns 18.

⁹ Children’s Law Center of Massachusetts, “Emancipation and the Legal Rights of Minors in Massachusetts”. <https://www.masslegalhelp.org/children-and-families/emancipation>

Clients in the child welfare system may receive Department of Children and Families services up to age 23. However, if they enter the adult criminal legal system, those services, especially those from child-serving agencies, can be severed. Adult legal system involvement becomes a serious impediment for these support systems to offer continuity and keep people connected to adult service providers and mentors.

Raising the age of Juvenile Jurisdiction will not violate federal core requirements under the Prison Rape Elimination Act (PREA) and the Juvenile Justice and Delinquency Prevention Act (JJDP)

According to the Columbia University Justice Lab, which is assisting the state of Vermont in implementing its law raising the age, states that:

Neither the federal Juvenile Justice Delinquency Prevention Act nor the Prison Rape Elimination Act pose obstacles to states' proposals to raise the upper age of juvenile jurisdiction over age 18. By enacting laws that explicitly include youth over age 18 in the juvenile justice system, states can protect these youth from harm from older adults in the same way that they now protect youth under age 18.¹⁰

Recommendation 3: Expand eligibility for expungement to rectify the collateral consequences of the over-policing and criminalization of communities of color

Expungement is an important tool to allow individuals to completely and fully re-integrate into society without the burden of a criminal record has no predictive value of future offending because either the records are old or because there was no conviction. **More importantly, expungement can be an important tool to rectify the documented systemic racism at every point of the criminal legal system.**

In 2018, Massachusetts passed legislation that created an opportunity to expunge juvenile and adult criminal records for folks whose offense was charged prior to their 21st birthday. While this is a tremendous step forward, the law created a significant limit: there can only be one charge on the record, and the Judiciary committee reported a limited bill expanding the eligibility to include multiple charges for one incident.

The Washington Post compiled a comprehensive list of peer-reviewed studies or reviews of municipal and state level data from across the US and found that overwhelmingly, racial disparities against Black individuals was documented at every stage of the legal system – from policing and profiling, court proceedings to sentencing and every stage in between:

¹⁰ Columbia Justice Lab, “Raising the Upper Age of Juvenile Jurisdiction: Implications of Federal JJDP and PREA Requirements,” December 2019

“I’ve had more than one retired police officer tell me there is a running joke in law enforcement when it comes to racial profiling: It never happens . . . and it works.”

“A 2018 review of academic research found that at nearly all levels of the criminal justice system, “disparities in policing and punishment within the black population along the colour continuum are often comparable to or even exceed disparities between blacks and whites as a whole.” That is, the darker the skin of a black person, the greater the disparity in arrests, charges, conviction rates and sentencing”.¹¹

We ask the legislature to use the expungement legislation to rectify the over-policing and disparate treatment of people of color by expanding eligibility for expungement:

- The current law limits eligibility to the same number and type of offenses regardless of the case outcome of a conviction/adjudication or a favorable disposition. We ask the legislature amend the expungement statute to exclude non-convictions and non-adjudications from the eligibility restrictions based on number of charges or cases.
- Reduce the list of offenses NEVER eligible for expungement to those currently ineligible for sealing: sex-based offenses, homicide and offenses with life-long sentences. The list of offenses NEVER eligible for expungement is too broad and doesn’t take into account young people’s histories of trauma (with a significant number of children dually-involved with the Department of Children and Families and the legal system), nor the circumstances behind a certain offense (fear of violence in their communities or in their own homes). The current expungement law incorporated a process of checks where eligibility only allows a petitioner to make their case to a judge, after a prosecutor’s review.
- Support creating opportunities for young people with more than one conviction to have a chance to prove their rehabilitation, whether through increasing the number of maximum convictions eligible for expungement or by the creation of a specialized rehabilitation certificate process for youth who successfully complete a rehabilitation program and have no subsequent offenses on their record. There is a strong incentive for the state to invest in reducing recidivism in high-risk young people, and many of these evidence-based programs work and those young people desist from future offending and become upstanding members of the community.
- States where there are minimal administrative barriers to sealing and/or expungement of juvenile records have significantly reduced re-arrest/recidivism rates and increased college graduation and incomes as these young people

¹¹ *There’s overwhelming evidence that the criminal justice system is racist. Here’s the proof.* Washington Post, June 10, 2020. <https://www.washingtonpost.com/graphics/2020/opinions/systemic-racism-police-evidence-criminal-justice-system/>

transition to adulthood.¹² As the Courts seek funding for technological advances, we recommend that these improvements include an upgrade to MA Probation Service's system of record sealing to permit electronic filing of petitions to seal and automatic sealing after expiration of an applicable waiting period.

Thank you for considering our recommendations. If you have any questions or to follow up, please contact Sana Fadel from Citizens for Juvenile Justice at sanafadel@cfjj.org or 617.338.1050.

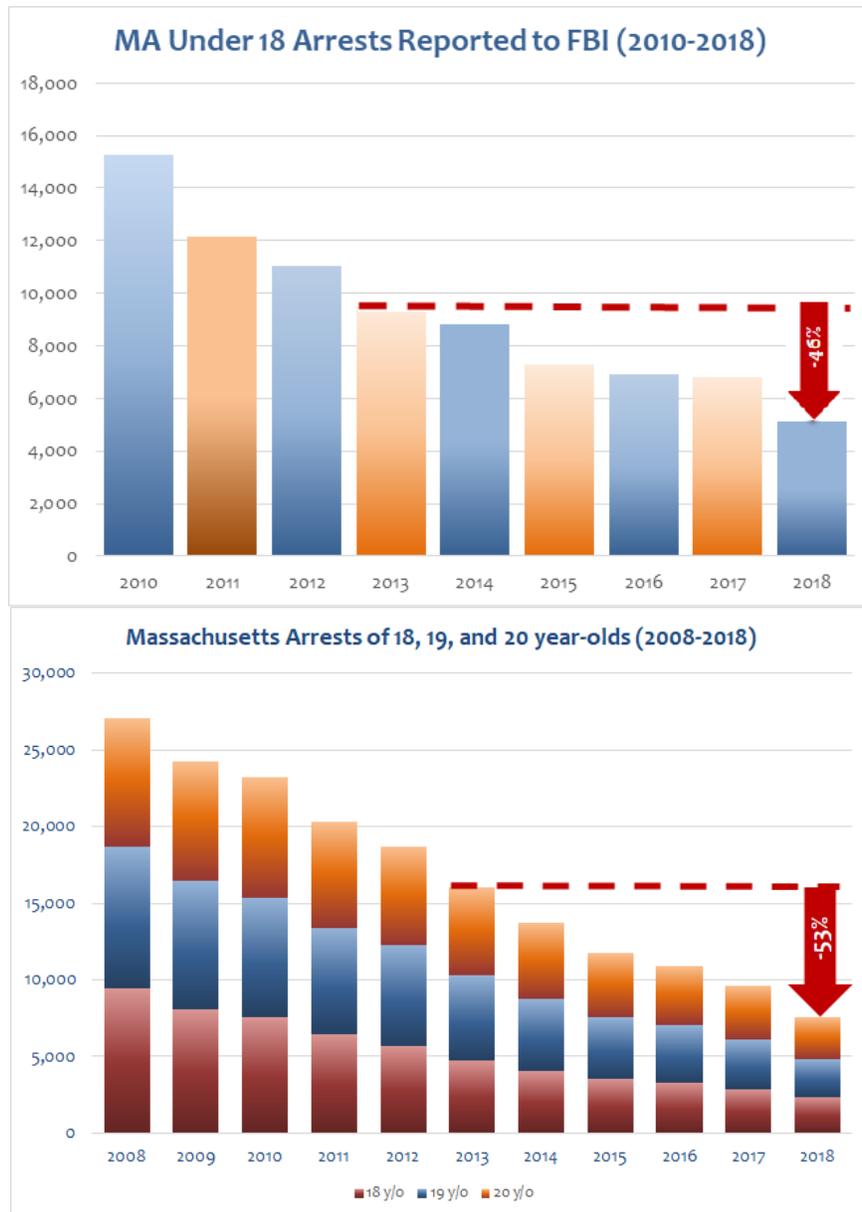
Respectfully,
Members of the Massachusetts Juvenile Justice Reform Coalition

APPENDIX A. Proposed re-draft of H.2141 (separately attached)

¹² Daniel Litwok, *Have You Ever Been Convicted of a Crime? The Effects of Juvenile Expungement on Crime, Educational, and Labor Market Outcomes*. <http://econ.msu.edu/seminars/docs/Expungement%20112014.pdf> and Jeffrey Selbin, Justin McCrary, and Joshua Epstein, *Unmarked? Criminal Record Clearing and Employment Outcomes*, 108 J. Crim. L. &Criminology 1 (2018).
<https://scholarlycommons.law.northwestern.edu/jclc/vol108/iss1/1>

APPENDIX B: Summary of Key System Trends of Justice Involved Youth and Transition Age Youth in Massachusetts

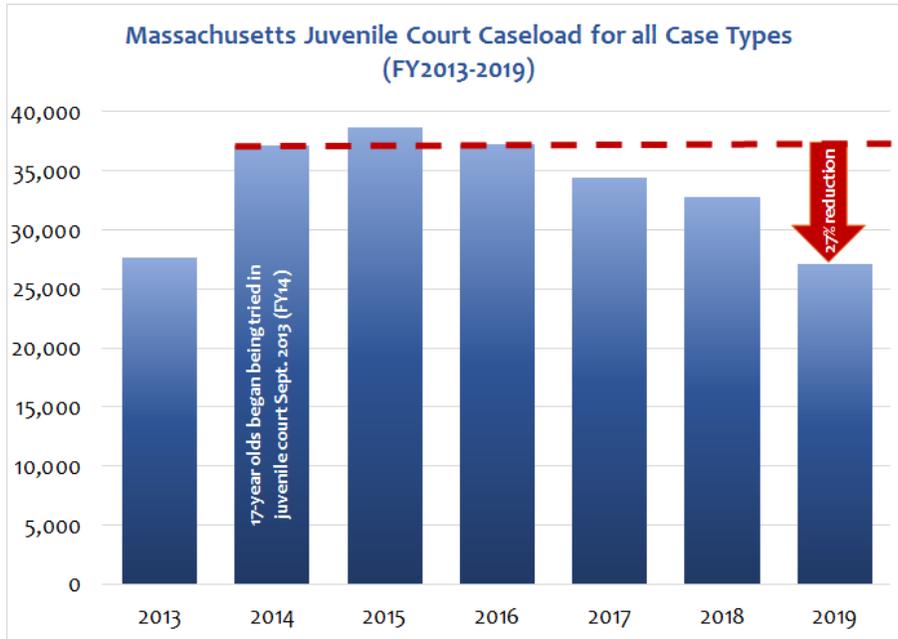
ARRESTS¹³ — There are fewer youth under age 21 getting arrested and coming to court: The decline in arrests of 18- to 20-year-olds (53%) closely mirrors the decline of arrests of children under age 18 (46%).



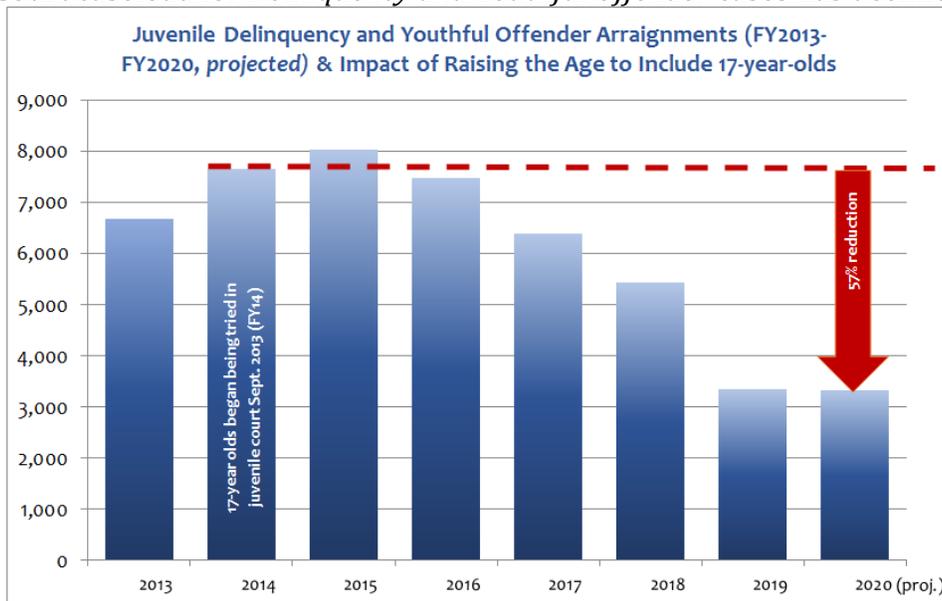
¹³Federal Bureau of Investigation, Uniform Crime Reports; Kaplan, Jacob. *Jacob Kaplan's Concatenated Files: Uniform Crime Reporting (UCR) Program Data: Arrests by Age, Sex, and Race, 1974-2018*. Ann Arbor, MI: Inter-university Consortium for Political and Social Research [distributor], 2020-02-27. <https://doi.org/10.3886/E102263V9>

COURT INVOLVEMENT — The Juvenile Court’s caseloads, for all case types, have declined steadily over the last 10 years. Since raising the age in 2013¹⁴:

Juvenile Court caseload for *ALL* case types (child welfare, Child Requiring Assistance, adoption, delinquency, etc.) has declined by 27%.

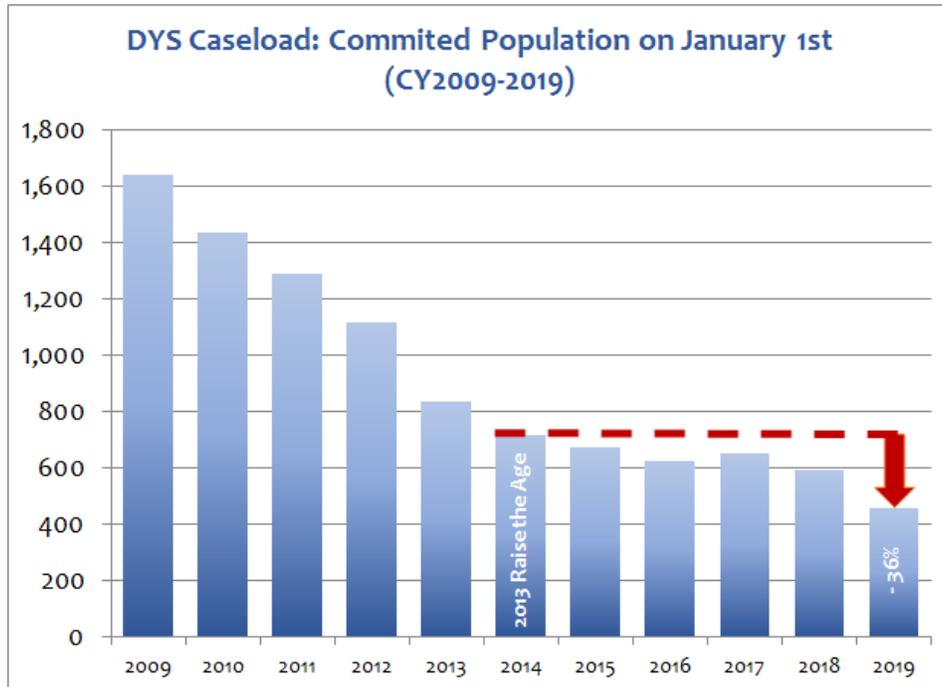
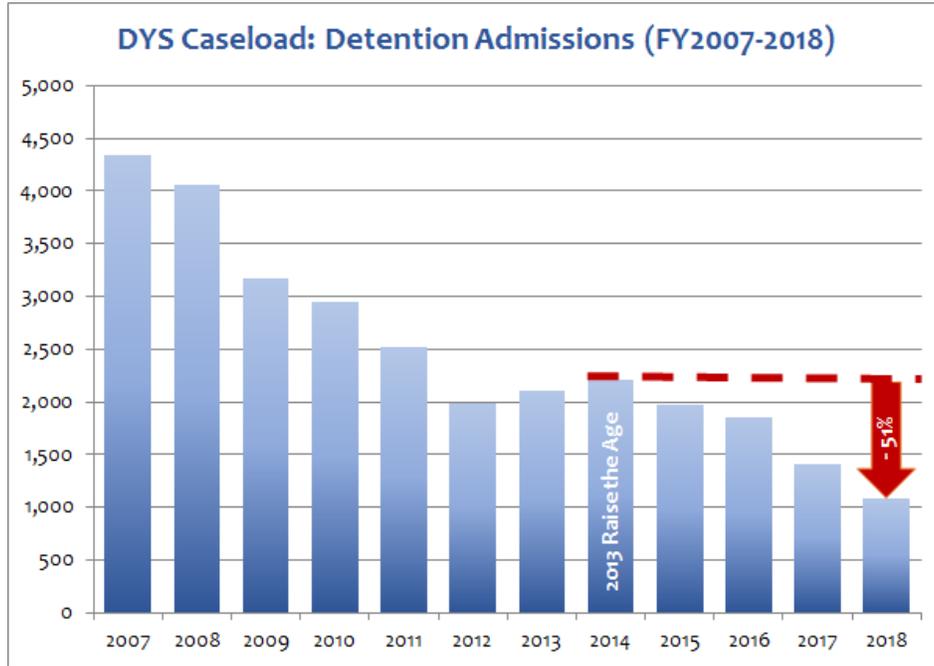


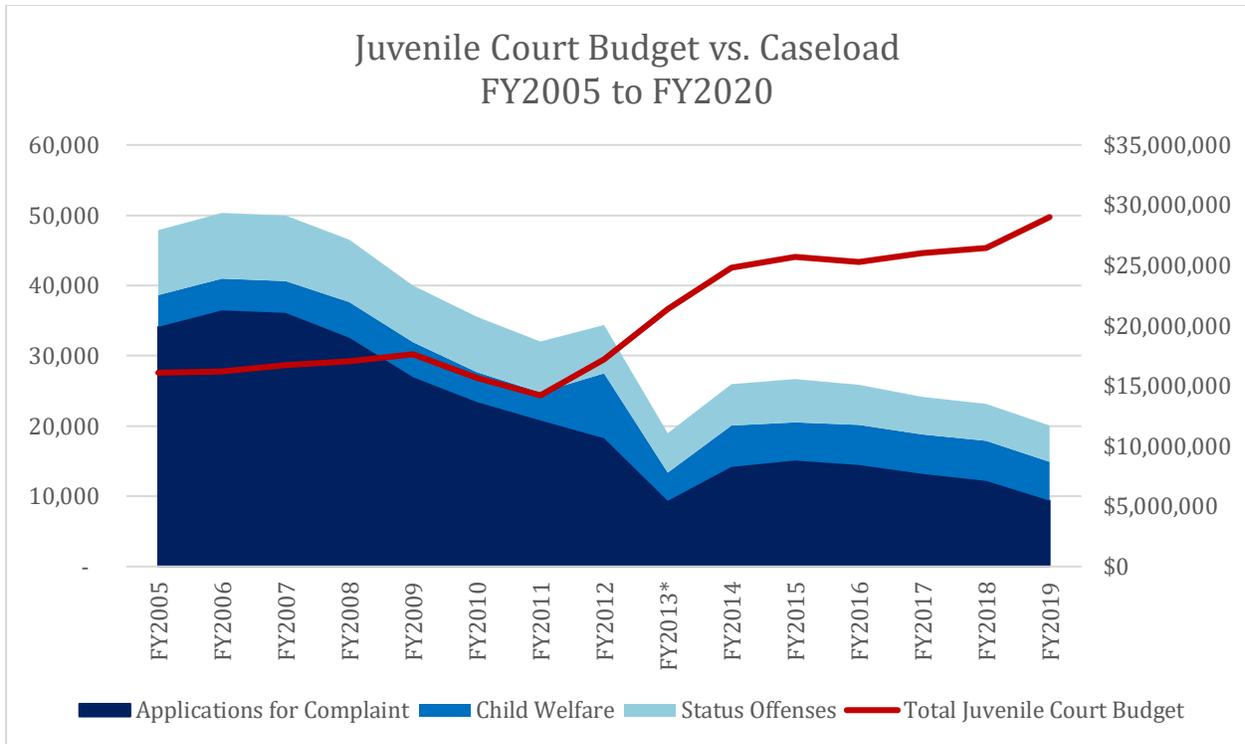
Juvenile Court caseload for *Delinquency and Youthful Offender* cases has declined by 57%.



¹⁴ Massachusetts Trial Court. *The Court releases case filing data, but have not released arraignment data since 2013, which is a more accurate reflection of the delinquency/youthful offender caseload.*

DEPARTMENT OF YOUTH SERVICES - DYS' caseload has steadily declined, even with the inclusion of 17-year-olds. Since the 2013 Raise the Age law:





**In FY2013, the Massachusetts Trial Courts changed the unit of reporting for juvenile delinquency and youthful offender cases was changed from charges to case filings.*

Sources:

Caseloads: Massachusetts Trial Courts, available at <http://www.mass.gov/courts/court-info/court-management/case-stats>

Budget: Massachusetts Budget and Policy Center; Executive Office for Administration and Finance; Massachusetts Office of the Comptroller CTHRU