

# Raise the age to close the revolving courtroom door

By Martin W. Healy

*“Youth is ever apt to judge in haste, and lose the medium in the wild extreme.”*

— Aaron Hill

Whether you are prosecuting or defending, no lawyer wants to see the same defendant back in court on new charges. “Emerging adults” — that is, 18- to 25-year-olds — have the highest recidivism rate of any age group in Massachusetts.

Recently, a task force chaired by Sen. Cynthia S. Creem, D-Newton, and Rep. Paul F. Tucker, D-Salem, presented options for legislative action to address emerging adults’ high recidivism rates, including ending the automatic prosecution of 18- to 20-year-olds as adults, as well as a handful of adult criminal justice reforms. Although the report made no hard recommendations, it did identify a number of important issues surrounding the debate on the appropriate treatment of emerging adults in the criminal justice system.

Neuroscience partially explains the recidivism problem around emerging adults. Their brains are still developing, with the prefrontal cortex, which is responsible for executive functioning, being the last region to mature, making emerging adults risk-takers with poor impulse control and a great susceptibility to

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peer pressure.

Milestones that are associated with ending criminal activity, such as marriage and steady employment, are coming later in life than they once did in previous generations. Nevertheless, there is one factor that we can control: policy. Recidivism is fed by the practice of sending these youth to a system fundamentally unsuited for them.

People in this developmental stage are strongly influenced by their environments and so are quite amenable to rehabilitation, which there is far too little of in the adult criminal justice system, despite some havens of great programming created by our talented, innovative judicial leaders.

The commonwealth’s Department of Youth Services, meanwhile, provides an array of mental health services, mandates school attendance, and provides special education services that are essential to the population it serves.

DYS is guided by a Positive Youth Development model that emphasizes a young person’s strengths and has been proven to support achievement

in school, work and life. Youth who remain in the juvenile system, of course, do not have public records to act as a barrier to opportunity.

The Massachusetts Bar Association, along with a host of organizations such as the highly respected Citizens for Juvenile Justice, was proud to endorse raising the age of Juvenile Court jurisdiction to an individual’s 21st birthday.

Regardless of where we sit in court, we want justice to be done. Setting adulthood at 18 is not justice. We now know that maturation is a gradual

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process occurring throughout the early 20s. Perhaps more to the point, we know that the current practice of sending these youth to the adult system represents a systemic failure.

That is true in every state. As our Legislature weighs raising the age of juvenile jurisdiction, so are legislators in California, Colorado, Connecticut and Illinois. Vermont has already passed legislation that will eventually raise the age of juvenile jurisdiction to 20.

Massachusetts is ready to make this change. Delinquency cases have been falling for years, a decline that continued even after the state

revised its laws in 2017 to include 17-year-olds in the juvenile system.

Delinquency cases dropped 21 percent between 2014 and 2018, according to an analysis by the Columbia University Justice Lab. The same analysis showed that DYS is holding fewer young people in custody. The number of detained youth dropped 78 percent and the number of committed youth dropped 76 percent between 2014 and 2018.

It’s important to note that DYS already serves many young people up to their 21st

birthday. The average age of the DYS committed population is 17.9 years.

Some have expressed legitimate concerns that now is not the time to send young people into the juvenile system when Massachusetts is experiencing a crisis of attorney representation for poor defendants, particularly in western Massachusetts. However, a closer look demonstrates that the shortage of defenders in the region’s courts rests on the adult side, not the juvenile.

Taking these cases out of District Court would help remediate the crisis, not worsen it. With the significant

decrease in the delinquency caseload, private attorneys do not have enough of a caseload to sustain a delinquency practice or to develop the specialized expertise to defend those in youthful offender cases.

Representing youth does require special skills, including a knowledge of the developmental differences that were referenced earlier. Fortunately, in Massachusetts the Youth Advocacy Division of the Committee for Public Counsel Services offers excellent training and resources for private attorneys who wish to practice in the Juvenile Court as bar advocates.

When the state raised the age of juvenile jurisdiction to include 17-year-olds, the MBA supported the reform. Contemporary science and societal changes have caused our understanding of youth and adulthood to greatly evolve. That evolution has not stopped. Raising the age in 2017 led to better outcomes for youth and decreased crime in our state. All the evidence suggests that expanding upon this successful policy will promote justice, success and safety.

The time has come for legislative, court and bar leadership to work collaboratively to push forward this long-overdue jurisdictional change to our commonwealth’s great juvenile justice system. Massachusetts court leaders are recognized nationally as progressive thinkers whose hard-won reputational status must be preserved. **MW**