

Emerging Adults in the Massachusetts Criminal Justice System

**Report of the Task Force on Emerging Adults in the Criminal
Justice System**

February 26th, 2020

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Task Force on Emerging Adults in the Criminal Justice System

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TABLE OF CONTENTS

INTRODUCTION	4
TASK FORCE SCOPE.....	4
AUTHORITY: ENABLING STATUTE	5
EXECUTIVE SUMMARY.....	6
KEY FINDINGS.....	6
RECOMMENDATIONS OF THE TASK FORCE	8
TASK FORCE FINDINGS AND RECOMMENDATIONS	11
LEGISLATIVE INTITIAIVES.....	35
APPENDIX I: ENABLING STATUTE	42
APPENDIX II: OVERVIEW OF JUVENILE JUSTICE SYSTEM	44

Introduction

The Emerging Adults in the Criminal Justice System Task Force (“Task Force”) held ten sessions from January through November 2019. At each session, the Task Force heard testimony from different stakeholders including, but not limited to, law enforcement, community-based organizations, formerly incarcerated emerging adults, and experts in emerging adult development. For more information about the Task Force meetings, the meeting minutes are available upon request.

Task Force Scope

The Task Force was charged with:

1. Evaluating the advisability, feasibility and impact of changing the age of juvenile court jurisdiction to defendants younger than 21 years of age, including:
 - a. the benefits and disadvantages of including 18 to 20 year olds in the juvenile justice system;
 - b. the impact of integrating 18 to 20 year olds into the under-18 population in the care and custody of the department of youth services;
 - c. the ability to segregate young adults in the care and custody of the department of youth services from younger juveniles in such care; and,
 - d. the potential costs to the state court system and state and local law enforcement.
2. Making recommendations for the establishment, implementation and provision to young adults, aged 18 to 24, who have been committed to the department of correction or a county correctional facility with increased and targeted age-appropriate programming and the establishment of young adult correctional units as authorized in section 48B of chapter 127 of the General Laws. The study shall include, but not be limited to:
 - (i) identifying the need and resources necessary to provide appropriate training to corrections and court staff, community supervision staff and behavioral health providers;
 - (ii) recommendations for programmatic development including, youth development and mentoring programs, mental health access, anger management and de-escalating conflicts, education opportunities and employment and vocational training;
 - (iii) recommendations to improve access to family and increase family involvement;
 - (iv) identifying opportunities to partner with or access appropriate programs or services within the department of youth services;

- (v) identifying any costs or savings from implementing such programs and identifying any grants or other opportunities to reduce such costs;
- (vi) reviewing policies and best practices from other jurisdictions and experts in the field;
- (vii) reviewing existing models and programs currently being provided; and
- (viii) identifying any costs related to the implementation of new protocols for correction's and court staff, community supervision staff and behavioral health providers.

Authority: Enabling Statute

Section 221 of Chapter 69 of the Acts of 2018. See Appendix I. for the enabling statute of the Task Force.

Executive Summary

Note: As of the date of this report's issuance, in Massachusetts, juvenile jurisdiction extends until an individual's 18th birthday.

Summary of Key Findings

Developmental Differences (1-2)

1. Emerging adults (ages 18-24) in the criminal justice system are a unique population that requires developmentally-tailored programming and services.
 - a. Emerging adults, while possessing the cognitive capacity to make deliberative decisions, are more likely to be more impulsive, less future-oriented, more unstable in emotionally charged settings, and more susceptible to peer and other outside influences.
 - b. Emerging adults are more prone to recidivism.
 - c. Emerging adults are also uniquely amenable to rehabilitative programming.
2. Emerging adult women have different needs and benefit from more tailored services, including trauma-informed institutional environments.

Collateral Consequences (3-4)

3. Collateral consequences due to involvement with the criminal justice system uniquely impact emerging adults; for example, employment, occupational licensing, housing, voting, education, and other opportunities may not be available to those with criminal records.
4. Pre-arraignment diversion programs are effective for rehabilitation and reducing collateral consequences and should be used to the extent possible for emerging adults in the criminal justice system.

Specialized Resources for Emerging Adults (5-6)

5. Specialized emerging adult units in correctional facilities have shown positive initial results.
6. Specialized emerging adult courts, while too new to assess in Massachusetts, have shown promise in other jurisdictions.

Department of Youth Services (7-9)

7. The Department of Youth Services (DYS) currently serves a portion of the justice-involved emerging adult population.

8. The Department of Youth Services has high-quality programming that is appropriate for emerging adults.
9. The Positive Youth Development approach, used by DYS, is crucial to the overall success of emerging adults in the criminal justice system. This approach should be emulated to the extent possible in all adult correctional facilities serving emerging adults.

Raising the Age of Juvenile Jurisdiction (10-13)

10. Juvenile Court caseloads have been steadily declining even after juvenile jurisdiction was expanded to include 17 year olds in 2013.
 - a. The juvenile court system may still require additional resources to accommodate increases in the age of juvenile jurisdiction beyond age 18.
11. Increasing the age of juvenile jurisdiction does not violate the provisions of the Juvenile Justice and Delinquency Prevention Act (“JJDP”) and the Prison Rape Elimination Act (“PREA”).
12. DYS is currently serving youth up until age 21 who were adjudicated as Youthful Offenders, meaning juvenile facilities in Massachusetts are already experienced in serving this age range simultaneously.¹
 - a. The most serious crimes will continue to be eligible for adult sentencing, due to the Youthful Offender statute, regardless of any increase in juvenile jurisdiction.
 - i. Young adults facing murder charges are always heard in adult court.
 - ii. For other serious offenses, prosecutors may continue to seek a “youthful offender” indictment.
 1. If adjudicated a youthful offender, the judge has the power to impose (1) a juvenile sentence (until age 21); (2) an adult sentence; or (3) a combination of juvenile and adult sentencing past their 21st birthday.
13. The juvenile justice system offers more opportunities for continued family involvement in comparison to the adult system.

¹ The Department of Youth Services did not take a position on the issue of raising the age of juvenile jurisdiction and indicated that they would accommodate the will of the Legislature.

Summary of Task Force Recommendations

1. Expand the reach and scope of targeted programming for emerging adults by increasing the availability of community-based organizations working with justice-involved youth throughout the state and ensuring adequate resources for the Department of Probation to identify and oversee such programming.
2. Expand gender-responsive programming to all facilities holding emerging adult women.
 - i. Prioritize housing for incarcerated young mothers to be geographically close to their children and families.
 - ii. Allow contact visits for incarcerated emerging adult parents and their children.
3. Increase opportunities for diversion for emerging adults to the extent possible.
 - i. Ensure all diversion programs are well funded and able to serve emerging adults effectively, which may require additional funding or trainings for certain counties.
 - ii. Ensure there are sufficient pre-arraignment diversion programs and placements available to serve all eligible emerging adults.
4. Expand the specialized housing units to serve a larger portion of incarcerated emerging adults in the adult criminal justice system and monitor the emerging adult court's outcomes.
 - i. This may entail expanding pre-existing housing in current facilities and adding specialized housing units to additional facilities serving emerging adults.
 - ii. Monitor the emerging adult court's progress and outcomes.
5. Expand the use of the Positive Youth Development approach to all facilities serving emerging adults, including staff trainings.
6. Expand continuing educational opportunities for emerging adults to the extent possible.
 - i. Expand Individualized Education Plan (IEP) programming to service all eligible incarcerated emerging adults.
 - ii. In addition, improve access to higher education programming for course credit that can be applied towards an associate or bachelor's degree.
 - iii. Expand hands-on vocational training for incarcerated emerging adults.

7. Expand Department of Youth Services (DYS) programming and best practices to all facilities serving emerging adults, including staff trainings.

Additional Proposals for Legislative Consideration

The Task Force is not recommending a specific course of action on the issue of raising the age of juvenile jurisdiction, but offers the following options for legislative consideration.

1. Raise the age to include 18, 19, and 20 years olds in the juvenile justice system.
2. Raise the age to include 18 year olds in the juvenile justice system. This would include a larger portion of high-school students in the juvenile justice system and provide them access to the enhanced programming through DHS. Allowing these older teenagers the opportunity to remain in the juvenile justice system would also increase their access to educational programming that will allow them a meaningful opportunity to finish high school and improve their future prospects.
3. Create a “young adult offender” category for individuals aged 18-20 within the jurisdiction of the Juvenile Court system.
 - a. **Excludes certain high-level offenses modeled after the current youthful offender standard** (individuals charged with committing an offense that would be punishable by state imprisonment of over 5 years and who were previously incarcerated in a House of Correction or Department of Correction facility);
 1. Individuals charged with infliction of serious bodily injury previously incarcerated in Department of Correction or House of Correction, or
 2. Violation of paragraph (a), (c) or (d) of section ten or section ten E of chapter two hundred and sixty-nine.
4. Provide District Court and Boston Municipal Court judges discretion on their own or by motion of either party to refer eligible cases to Juvenile Court.
 - a. Applies to individuals aged 18-20
 - b. **Excludes certain high-level offenses modeled after the current youthful offender standard**, (individuals charged with committing an offense that would be punishable by state imprisonment of over 5 years and who were previously incarcerated in a House of Correction or Department of Correction facility), or
 - i. Individuals charged with infliction of serious bodily injury, previously incarcerated in Department of Correction or House of Correction, or

- ii. Violation of paragraph (a), (c) or (d) of section ten or section ten E of chapter two hundred and sixty-nine.
 - iii. Suggested procedure
 - 1. Prior to arraignment, a hearing on the motion would be held within 14 days, to determine whether the defendant would be best served by the Juvenile Court.
 - 2. If the judge determines that the defendant would be best served by the juvenile system, the case would then be referred to juvenile court.
- 5. Create an emerging adult court session in juvenile or district court
 - a. Automatic jurisdiction for individuals between the ages of 18-25, excluding murder charges and certain sex offenses
 - b. Suggested procedure
 - i. Judge first determines eligibility for pre-arraignment judicial diversion
 - ii. If ineligible for judicial diversion, develop an action plan with community partners and court officials; may include restorative justice components
 - iii. A young adult's action plan may include connecting participant with counseling, behavioral health services, and anger management classes, as appropriate.
 - iv. Participants will appear in court for regular progress reports until graduation 12-18 months after the initial intake.
 - 1. At the completion of the program, participation may results in reduced charges and/or expungement of the associated offense.
 - v. Sentencing options
 - 1. Supervised probation
 - 2. DYS (up until age 21)
 - 3. Incarceration in specialized housing unit (21-26)

Task Force Findings and Recommendations

Developmental Differences (Findings #1, 2)

1. Emerging adults in the criminal justice system are a unique population that requires developmentally tailored programming and services.
 - a. Emerging adults, while possessing the cognitive capacity to make deliberative decisions, are more likely to be more impulsive, less future-oriented, more unstable in emotionally charged settings, and more susceptible to peer and other outside influences.
 - b. Emerging adults are more prone to recidivism.
 - c. Emerging adults are uniquely amenable to rehabilitative programming.
2. Emerging adult women have different needs and benefit from more tailored services, including trauma-informed institutional environments.

Discussion

Finding #1. Emerging adults in the criminal justice system are a unique population that requires developmentally tailored programming and services.

- a. **Emerging adults are more likely to be more impulsive, less future-oriented, and more unstable in emotionally charged settings.**

Studies on brain development suggest that the differences between adult and adolescent brains are stark. Emerging adulthood (ages 18-26) is the stage when an individual bridges the gap between those periods.² From a technical standpoint, these differences are due to the different development timelines of the limbic system and frontal lobes of the cortex.³ The limbic system is responsible for basic drives, emotions and memory.⁴ The frontal lobes are responsible for executive functions (natural capacity to set, manage and attain goals), self-regulating and organizing behavior.⁵ In emerging adults, the frontal lobes are still underdeveloped.⁶ In part, due to the brain development process, an individual's ability to self-regulate sensation-seeking behavior does not fully mature until between the ages of 23 and 26.⁷

² NASME, INVESTING IN THE HEALTH AND WELL-BEING OF YOUNG ADULTS, (2015), *available at* <https://www.ncbi.nlm.nih.gov/books/NBK284782/>.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ STEINBERG ET AL, AROUND THE WORLD, ADOLESCENCE IS A TIME OF HEIGHTENED SENSATION SEEKING AND IMMATURE SELF-REGULATION, (2017), *available at* <https://www.ncbi.nlm.nih.gov/pubmed/28150391>.

Due to the brain's developmental process, emerging adults are likely to be more impulsive, less future-oriented, more unstable in emotionally charged settings, and more susceptible to peer and other outside influences.⁸ Furthermore, these characteristics are more pronounced in youth who experienced trauma, which is a significant portion of justice-involved youth.⁹

Although these studies indicate that emerging adults are generally more prone to impulsive behavior due to their stage in brain development, this does not mean emerging adults are unable to make deliberative decisions. Studies on the subject indicate that although emerging adults may be less capable of making emotionally charged decisions, they do have the skills to make more deliberative decisions, such as the decision to seek reproductive health services.¹⁰

b. Emerging adults are more prone to recidivism

Available research and data supports a finding that emerging adults are more prone to recidivism. A study of the Massachusetts justice system by the Council for State Governments shows that emerging adults (aged 18 to 24) have the highest risk of reoffending, with a recidivism rate of 76% within 3 years of release.¹¹ Based on available data of Massachusetts justice-involved populations aged 18-20, those involved in the juvenile system have a 26%¹² re-conviction rate versus 55% in the adult system.¹³

c. Emerging adults are uniquely amenable to rehabilitation

Studies have shown that emerging adults are also uniquely amenable to interventions focused on rehabilitation. Available research indicates that people will reach an age where their ability to self-regulate will overcome their impulses effectively helping them "age out" of criminal behavior if treated appropriately.¹⁴ For this reason, targeted interventions that focus on deterring emerging adults from further involvement in the criminal justice system during this more volatile age range can be highly effective.

⁸ Schiraldi et al., *Community-Based Responses to Justice Involved Young Adults* (2015), available at <https://www.ncjrs.gov/pdffiles1/nij/248900.pdf>.

⁹ *Id.*

¹⁰ Steinberg et al., *Are adolescents less mature than adults?: minors' access to abortion, the juvenile death penalty, and the alleged APA "flip-flop"* (2009), available at <https://www.ncbi.nlm.nih.gov/pubmed/19824745>.

¹¹ Council of State Governments Justice Center, *Justice Reinvestment in Massachusetts: Policy Framework*, (2017), available at <https://csgjusticecenter.org/jr/massachusetts/publications/justice-reinvestment-in-massachusetts-policy-framework/>.

¹² Department of Youth Services, *Juvenile Recidivism Report for Youth Discharged During 2014*, (2018), available at <https://www.mass.gov/files/documents/2018/12/17/recid2018.docx>.

¹³ See 11, *supra*.

¹⁴ Perker & Chester, *Emerging Adults: A distinct population that calls for an age-appropriate approach by the justice system* (2017), available at https://www.hks.harvard.edu/sites/default/files/centers/wiener/programs/pcj/files/MA_Emerging_Adult_Justice_Issue_Brief_0.pdf.

Specifically, studies have shown that these targeted interventions can result in better outcomes and a decrease in recidivism.¹⁵ A report from Harvard Kennedy School's Weiner Institute found that UTEC and Roca, both community-based programs in Massachusetts focused on developmentally appropriate responses for young adults, successfully reduced the rate of recidivism for their respective program participants.¹⁶ Such community-based programs focus on the unique needs of emerging adults in the criminal justice system with age appropriate programming that provides justice involved youth education, job training, employment and counseling. The Department of Probation also plays a significant role in connecting eligible youth with resources and has expressed concern relative to the availability and number of such age appropriate programs.¹⁷

Finding #2: Justice-involved emerging adult women require tailored resources

Emerging adult women have different needs and benefit from more tailored services, including trauma-informed institutional environments.¹⁸ Through testimony, the Task Force learned about the unique characteristics and needs of emerging adult women in the criminal justice system and recommended services for this demographic. For instance, due to the high-rate of trauma and abuse in this demographic, justice-involved emerging adult women benefit significantly from trauma-informed institutional environments.¹⁹ Such programming should promote a feeling of safety to avoid causing further trauma.²⁰

Likewise, justice-involved women are also frequently parents of young children.²¹ For this reason, emerging adult women benefit from dual-generational programming for both the parent and child.²² In addition, a significant portion of justice-involved emerging adult women also identify as LGBTQ, so programming needs to be appropriately LGBTQ-informed.²³ Research has also found that justice involved emerging adult women also benefit from including strong female-role models in program leadership positions, and including a strength-based approach to services.²⁴

Gender-responsive programming is also vital to the long-term success of all justice-involved women. Research examining the needs of justice-involved women as a broader population found that cognitive behavioral therapy (CBT), a generally effective program, has no impact on the recidivism of female inmates if the program is not gender-

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See p. 33-34 for additional discussion of these programs and resources.

¹⁸ Roca, *Young Women Involved in Violence: Findings and Recommendations from Our Communities, Our Partners, and the Research*, June 30, 2019.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

responsive.²⁵ In addition, a recent study of justice-involved women found that women who participated in gender responsive correctional interventions were 22% to 35% more likely to succeed in the community after incarceration than non-participants.²⁶

Recommendations:

- i. Expand the reach and scope of targeted programming for emerging adults by increasing the availability of community-based organizations throughout the state and ensuring adequate resources available to the Department of Probation to identify and oversee such programming.
- ii. Expand gender-responsive programming to all facilities holding emerging adult women.
 - a. Prioritize housing incarcerated young mothers geographically close to their children and families.
 - b. Allow contact visits for incarcerated emerging adult parents and their children.

Collateral Consequences (Findings #3-4)

3. Collateral consequences from involvement with the criminal justice system uniquely impact emerging adults.
4. Pre-arraignment diversion programs are effective for rehabilitation and reducing collateral consequences and should be used to the extent possible for emerging adults in the criminal justice system.

Discussion:

Finding #3: Collateral consequences from involvement with the criminal justice system uniquely impact emerging adults.

Collateral consequences are “legal and regulatory sanctions and restrictions that limit or prohibit people with criminal records from accessing employment, occupational licensing, housing, voting, education, and other opportunities.”²⁷ The American Bar Association and the Council of State Governments identified 1,693 collateral consequences of a conviction in Massachusetts.²⁸ Within this group, 752 consequences are Massachusetts-specific, while the remaining consequences are federal.²⁹

²⁵ Palmer et al., *Cognitive skills programs for female offenders in the community: Effect on reconviction* (2015), *Criminal Justice and Behavior*, 345-360.

²⁶ Gobeil et al. *A meta-analytic review of correctional programs for women offenders: Gender-neutral versus gender-informed approaches* (2016), *Criminal Justice and Behavior*, 301-322.

²⁷ NATIONAL INVENTORY OF COLLATERAL CONSEQUENCES OF CONVICTION, <https://niccc.csgjusticecenter.org/> (last visited, Dec., 23, 2019).

²⁸ *Id.*

²⁹ *Id.*

The majority of identified collateral consequences relate to employment, which is significant in the context of emerging adults in the criminal justice system, because it limits their ability to rehabilitate after a criminal conviction.³⁰ For example, in Massachusetts, if an individual has a felony conviction, they are permanently banned from becoming an architect, or working as a manager of an assisted living facility.³¹ For misdemeanor convictions, an individual is not permitted to work as a marriage and family therapist, rehabilitation counselor, or mental health counselor,³² or for the state police.³³

Studies have also found that individuals with criminal convictions are less likely to receive callbacks for interviews.³⁴ One study found that white applicants with criminal convictions were 50 percent less likely to receive a callback for a job interview, and black applicants with criminal convictions were 65 percent less likely to receive a callback.³⁵

Collateral consequences also have a disparate impact on communities of color. Massachusetts imprisons African Americans at 7.5 times the rate of whites and Hispanics at 4.3 times the rate of Caucasians.³⁶ Due to these disparities, certain minority groups are disproportionately burdened by the collateral consequences of a criminal conviction.

In the context of emerging adults, these facts illustrate the stifling impact an adult criminal conviction can have on a young person's future. By limiting legitimate employment opportunities at the beginning of adulthood, it is much more difficult for an individual to rehabilitate and avoid future criminal behavior. In addition, disrupting a young person's educational progress, through incarceration, can also increase their likelihood of recidivism. One study of prisoners found that the rate of recidivism decreases based on an individual level of educational attainment.³⁷ This study found that the recidivism rate was approximately 62 percent for individuals with an eighth grade education or less, 57 percent for individuals with high school diplomas, and 52 percent for individuals with some college education.³⁸

Finding #4: Pre-arraignment diversion programs are effective for rehabilitation and reducing collateral consequences and should be used to the extent possible for emerging adults in the criminal justice system.

³⁰ *Id.*

³¹ MASS. GEN. LAWS ch. 112, §60B.

³² MASS. GEN. LAWS ch. 112, § 165

³³ MASS. GEN. LAWS ch. 22C, § 14.

³⁴ DEVAH PAGER, MARKED: RACE, CRIME, AND FINDING WORK IN AN ERA OF MASS INCARCERATION, (University of Chicago Press ed., 2007).

³⁵ *Id.*

³⁶ Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, <https://www.sentencingproject.org/wp-content/uploads/2016/06/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf>, (last visited, Dec., 23, 2019).

³⁷ Beck, A. J., & Shipley, B. E. *Recidivism of prisoners released in 1983*. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, (1989) available at <http://www.bjs.gov/content/pub/pdf/rpr83.pdf>.

³⁸ *Id.*

In Massachusetts, there are two types of diversion programs that can help emerging adults avoid further involvement in the criminal justice system. Diversion programs can be a particularly effective tool for reducing recidivism among emerging adults, because they create a consequence without the negative implications of a criminal record.

There are diversion programs managed by police departments and District Attorney Offices throughout Massachusetts. In Massachusetts, the District Attorney diversion programs are independently operated by each District Attorney's office. Through these programs, District Attorneys can choose whether to proceed with a criminal complaint brought by the police, or divert the young adult into alternative programming. Often diversion programs involve community based restorative justice, which brings victims, offenders and community groups together to address the harm created by an offense, without punitive measures, provided that the offender take responsibility for their actions and makes some sort of reparation to the victim or community.

For example, the Middlesex County District Attorney's Office operates a Juvenile and Young Adult Diversion Program for juveniles and youthful offenders (up to age 26).³⁹ The program is voluntary and is available to eligible defendants pre-arraignment.⁴⁰ If the youth decides to participate in the program, they are required to sign an individualized written agreement with the Middlesex District Attorney's Office.⁴¹ This agreement may include a variety of conditions, such as counseling, educational programs, community service, letter of apology, remedial measures, and restitution to victims.⁴² Here, successful completion of the program results in the elimination of the youth's Board of Probation ("BOP") record.⁴³

The Task Force heard testimony from the father of a young man who participated in the Middlesex District Attorney's Young Adult Diversion Program. This father's testimony detailed how his son's participation in the program provided him a second chance to complete his college education and avoid further involvement in the criminal justice system.

The second type of diversion is Judicial Diversion. In Massachusetts, the District and Municipal courts have authority to divert any defendant who has no previous convictions after age 18, excluding traffic violations, or any outstanding warrants, continuances, appeals or pending criminal cases to a diversion program.⁴⁴ To be eligible, an individual must also receive a recommendation that they would, in light of the capacities of and

³⁹ Middlesex District Attorney's Office, *Juvenile and Young Adult Diversion Programs*, <https://www.middlesexda.com/beyond-courtroom/pages/juvenile-and-young-adult-diversion-programs>, (last visited Dec. 26, 2019).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ MASS. GEN. LAWS ch. 276A, §2.

guidelines governing it, benefit from participation.⁴⁵ However, there are certain categories of offenses that are ineligible for diversion.⁴⁶

Probation officers screen each defendant for eligibility to assist the judge in making their determination.⁴⁷ If a defendant is determined to be qualified for consideration, at arraignment, they may receive a fourteen-day continuance to allow the diversion program to assess whether they would benefit from the diversion program.⁴⁸ After the fourteen-day period, the diversion program director submits the assessment to the judge, which includes a recommendation and a plan for services.⁴⁹

Once the judge receives this report, the court provides an opportunity for additional feedback from the District Attorney and any victims of the alleged offense.⁵⁰ At this point, the judge makes a final determination about the defendant's eligibility for diversion.⁵¹ If the defendant consents in writing to the terms of the program, the criminal proceedings are stayed for 90 days.⁵² Alternatively, the judge may decide that justice is better served by issuing a continuance without a finding (CWOFF).⁵³ Unlike a successfully completed pre-arraignment diversion program, a CWOFF still appears on an individual's criminal record.⁵⁴ If the defendant completes the diversion program successfully, the judge may dismiss the original charges against the defendant or take whatever action is deemed appropriate at that time.⁵⁵

Recommendations:

- i. **Increase diversion opportunities for emerging adults to the extent possible.**
 - a. Ensure all diversion programs are well funded and able to effectively serve emerging adults, which may require additional funding, or trainings, for certain counties.
 - b. Ensure there are sufficient pre-arraignment diversion programs and placements available to serve all eligible emerging adults.

⁴⁵ *Id.*

⁴⁶ *Id.* §4(b)

⁴⁷ *Id.* §2

⁴⁸ *Id.*

⁴⁹ MASS. GEN. LAWS ch. 276A, §5

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ MASS. GEN. LAWS ch. 276A, §7

⁵⁴ Department of Probation, 2019.

⁵⁵ See 53 *supra*.

Specialized Resources for Emerging Adults (Findings #5-6)

5. Specialized emerging adult housing units in correctional facilities have shown positive initial results.
6. Specialized emerging adult courts, while too new to assess in Massachusetts, have shown promise in other jurisdictions.

Discussion:

Finding #5: Specialized emerging adult housing units in correctional facilities have shown positive initial results.

There are two noteworthy specialized housing units currently serving emerging adults in the Massachusetts criminal justice system. First, there is the P.A.C.T. unit at the Middlesex County House of Correction in Billerica, which the Task Force had the opportunity to tour at our Sixth Meeting. The Middlesex Sheriff's Office created the P.A.C.T. unit in February 2018 through a partnership with the Vera Institute for Justice, a non-profit research institution in New York City.⁵⁶ The P.A.C.T. unit is a separate specialized housing unit serving a portion of 18- to 24-year-old male inmates at the Middlesex House of Correction in Billerica.⁵⁷ Participation is voluntary and inmates in the specified age range apply to be placed in the unit.⁵⁸ Notably, there is no specialized housing unit serving incarcerated emerging adult women in Massachusetts.

The P.A.C.T. unit offers a different experience than what is available for the general population at the Middlesex House of Correction. P.A.C.T.'s daily schedule is inspired by the German and Norwegian jail and prison systems, which emphasize human dignity for incarcerated people.⁵⁹ In the P.A.C.T. unit, inmates have group check-ins with staff, continuing educational opportunities, and access to individual and group exercise programming.⁶⁰ In addition, inmates can move freely in communal areas 16 hours a day and are permitted contact visits with family members.⁶¹ Such privileges are not available for emerging adult inmates in the general population. Further, the unit has partnered with

⁵⁶ ALEX FRANK ET AL, CULTIVATING CHANGE: HOW THE MIDDLESEX SHERIFF'S OFFICE AND THE RESTORING PROMISE INITIATIVE ARE TRANSFORMING INCARCERATION FOR YOUNG MEN, (2019), available at https://www.middlesexsheriff.org/sites/middlesexsheriff/files/uploads/cultivating_change_-_how_the_middlesex_sheriffs_office_and_the_restoring_promise_initiative_are_transforming_incarceration_for_young_men.pdf.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

UTEC and Roca to facilitate the reentry process for its participants.⁶² The overall emphasis of the program is to focus on rehabilitation as a method to reduce recidivism.⁶³

Notably, initial studies have found participation in the P.A.C.T. unit has already improved outcomes for program participants.⁶⁴ Based on internal data analysis, the MSO found that 37 percent of young adults from the P.A.C.T. unit were approved for parole, whereas 13 percent of emerging adults in the general population of Middlesex Jail and House of Correction were granted parole during this same period.⁶⁵

The second noteworthy specialized housing unit is the P.E.A.C.E. unit created by the Suffolk County Sheriff's Department at the South Bay House of Correction.⁶⁶ Like the P.A.C.T. unit, the P.E.A.C.E. unit is a specialized housing unit designed to provide a more familial and supportive environment for emerging adults at the facility to reduce the high rate of recidivism in this demographic.⁶⁷ The P.E.A.C.E. unit has the capacity to serve a maximum of 75 inmates.⁶⁸ The goal of the facility is to "break the cycle of incarceration by focusing on education, job training and developing skillsets, individual/group counseling, attitudinal changes and conflict resolution."⁶⁹ The officers assigned to the unit are trained in restorative justice techniques to facilitate productive conflict resolution within the unit.⁷⁰

In 2019, the Massachusetts Department of Corrections received grant funding to develop an emerging adult unit for incarcerated emerging adult fathers in one of their facilities.⁷¹ This program will provide targeted assistance to encourage the bonds between incarcerated young fathers and their children as a means to support their rehabilitation.⁷² Examples of this assistance include encouraging communication between incarcerated fathers and children through video conferencing, emails, and potentially texting.⁷³ In addition, the state will subsidize transportation costs for children to visit the facility.⁷⁴

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Simón Rios, *Suffolk Sheriff Sets Up Family-Oriented Cellblock to Keep Young Inmates Out Of Jail*, WBUR, Nov. 30, 2018, <https://www.wbur.org/news/2018/11/30/peace-unit-south-bay-jail-boston>, (last visited Dec. 19, 2019).

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Sarah Betancourt, *DOC launching unit for young inmates who are fathers*, Commonwealth Magazine, Nov. 19, 2019, <https://commonwealthmagazine.org/criminal-justice/doc-launching-unit-for-young-inmates-who-are-fathers/>, (last visited Dec. 19, 2019).

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

Finding #6: Specialized emerging adult courts, while too new to assess in Massachusetts, have shown promise in other jurisdictions.

In Springfield, Massachusetts, the Hampden County District Attorney's office is creating a specialized court to serve emerging adults 18-24 years old called the Emerging Adult Court of Hope ("EACH").⁷⁵ The court is modeled after a specialized emerging adult court created in San Francisco.⁷⁶

Hampden County's program is designed to be 12-18 months in duration⁷⁷ and will serve mid-to-high-risk offenders.⁷⁸ The envisioned program will include individualized service plans ("ISPs") designed to provide the necessary services to help each emerging adult avoid future criminal behavior.⁷⁹ A team consisting of judges, ADAs, defense attorneys, service providers, case managers will work with the emerging adult,⁸⁰ and guide them through services such as housing assistance, job training, education, and counseling.⁸¹

Each phase is individualized, but for those participating in the program's supervised probation, advancement will be predicated on meeting the goals of the ISP and attendance at counseling and service sessions *with no new arrests*.⁸² In order to help emerging adults achieve these goals, EACH partnered with local community colleges and Roca to assist in job training, education, and different types of programming and counseling that have proven effects on recidivism, like cognitive behavioral therapy and transitional employment.⁸³ Upon graduation, depending on the case, the team could decide on any number of resolutions, from reducing the length of probation to reducing, or dismissing, charges.⁸⁴

Recommendations: Expand the specialized housing units to serve a larger portion of incarcerated emerging adults in the adult criminal justice system, and monitor the EACH program outcomes.

- i. This may entail expanding pre-existing programming in current facilities and adding specialized housing units to additional facilities serving emerging adults.
- ii. Monitor the emerging adult court's (EACH) progress and outcomes.

⁷⁵ Emerging Adult Court of Hope (Brochure), Hampden County District Attorney's Office, 2019.

⁷⁶ Sarah Betancourt, *Hampden DA behind state's first court for young adults*, Commonwealth Magazine, Aug 25, 2019, <https://commonwealthmagazine.org/courts/hampden-da-behind-states-first-court-targeting-young-adult-offenders/> (last visited Dec. 19, 2019).

⁷⁷ See 75, *supra*.

⁷⁸ See 76, *supra*.

⁷⁹ See 75, *supra*.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

Department of Youth Services (Findings #7-9)

7. The Department of Youth Services (DYS) currently serves a limited emerging adult population.
8. The Department of Youth Services has high-quality programming that is appropriate for emerging adults.
9. The Positive Youth Development approach, used by DYS, is crucial to the overall success of emerging adults in the criminal justice system. This approach should be emulated to the extent possible in all adult correctional facilities serving emerging adults.

Discussion:

Finding #7: The Department of Youth Services (DYS) currently serves a limited emerging adult population.

The Department of Youth Services (“DYS”) is the primary agency for juvenile justice in Massachusetts.⁸⁵ DYS serves youth committed as juvenile delinquents or youthful offenders in addition to detained youth awaiting judicial action.⁸⁶ Currently headed by Commissioner Peter Forbes, DYS is an agency within the Department of Health and Human Services that addresses, “the unique educational, psychological, and health needs” of delinquent youth.⁸⁷

DYS currently serves certain youth up to age 21, who were adjudicated as Youthful Offenders.⁸⁸ However, this option is only available to individuals who were under age 18 at the time of the offense. At present, if an individual is 18 or older at the time of the alleged offense, they are not eligible to be housed in DYS facilities.

DYS also provides voluntary services to youth until age 22 through their *Youth Engaged in Services (YES)* program.⁸⁹

Housing Detained and Committed Youth

DYS manages the temporary detainment and long-term commitment of children in the Commonwealth.⁹⁰ DYS divides the state into five geographic regions and works out of

⁸⁵ Department of Youth Services, <https://www.mass.gov/orgs/departments-of-youth-services> (last visited Dec. 19, 2019).

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ MASS. GEN. LAWS ch. 119, § 58(c).

⁸⁹ Department of Youth Services, *Youth Engaged in Services [YES]: Voluntary Post-Discharge Services for DYS Committed Youth*, 2018.

⁹⁰ MassBudget, <http://children.massbudget.org/dept-youth-services-administration> (last visited Dec. 19, 2019).

22 district offices with locations in each region.⁹¹ Within 30-45 days, a child placed in DYS custody is given a comprehensive assessment of the child's past and present behavior and home environment to determine the most appropriate placement option.⁹² DYS may choose to place the child in a locked facility, a secure, but less prohibitive facility, a community-based program, or with a foster or biological family⁹³

Non-residential placement is the preferred placement option, because it lessens the disruption and harm caused from youth involvement in the juvenile justice system.⁹⁴ However, youth enrollment in a community-based program can be revoked and the child returned to residential programming if a community placement proves ineffective.⁹⁵ Alternatively, youth may also graduate to less restrictive placement upon reaching behavioral milestones including acknowledging delinquency, understanding what led to delinquency, and establishing a plan to prevent future delinquent behavior.⁹⁶

The most secure placement option is the Juvenile Unit within the adult county prison system.⁹⁷ This facility is located within the Plymouth County Correctional Facility and reserved exclusively for juveniles who have been charged with or convicted of murder and are facing adult sentences.⁹⁸ Notably, only a small portion of committed youth is housed in this unit.⁹⁹

Finding #8: The Department of Youth Services has high-quality programming that is appropriate for emerging adults.

Programming through DYS

Juvenile Detention Alternatives Initiative

The Juvenile Detention Alternatives Initiative (JDAI) is “a national systems-reform Initiative” working to ensure “the right youth, is in the right place, for the right reasons.”¹⁰⁰ In 2007, former DYS Commissioner Jane E. Tewksbury endorsed a statewide JDAI program to “create a multi-tiered system of detention alternatives and diversion programs with a

⁹¹ Department of Youth Services, <https://www.mass.gov/orgs/department-of-youth-services> (last visited Dec. 19, 2019).

⁹² *Id.*

⁹³ *Id.*

⁹⁴ MassBudget, <http://children.massbudget.org/residential-services-detained-population> (last visited Dec. 19, 2019).

⁹⁵ MassBudget, <http://children.massbudget.org/residential-services-committed-population> (last visited Dec. 19, 2019).

⁹⁶ *Id.*

⁹⁷ MassBudget, <http://children.massbudget.org/non-residential-services-committed-population> (last visited Dec. 19, 2019).

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ Department of Youth Services, <https://www.mass.gov/service-details/dys-national-initiatives-and-best-practices> (last visited Dec. 20, 2019).

range of security levels and program services that better serve the needs of court-involved youth.”¹⁰¹

With the support of the Annie E. Casey Foundation, cross-agency teams collaborated with private partners to establish JDAI committees in six of the eleven judicial counties in Massachusetts: Bristol, Essex, Hampden, Middlesex, Suffolk and Worcester.¹⁰² These counties represent 73% of the juvenile population in Massachusetts and 85% of the detained juvenile population.¹⁰³ Massachusetts’ adoption of JDAI generated a dramatic drop in detention admissions. In 2012, detention admissions were 54% lower than they were pre-JDAI in 2006.¹⁰⁴

DYS Educational Programming

Education is a major protective factor for justice-involved youth. Acknowledging this, in 2003, DYS partnered with the Department of Elementary and Secondary Education (“DESE”), the Commonwealth Corporation (“CommCorp”) and the Collaborative for Education Services (CES) to create new educational programming referred to as the Comprehensive Education Partnership (“CEP”).¹⁰⁵

The stated purpose of the CEP is “to create a continuum of options and opportunities--high-quality education and training, vocational and employability programs, and other services--that will give DYS youth the knowledge, skills, and confidence they need to build a better future.”¹⁰⁶ Below are summaries of two workforce-development CEP initiatives operated through DYS.

- Bridging the Opportunity Gap (“BOG”) Initiative: The BOG initiative focuses on career development training for DYS-involved youth. This may include hands-on vocational training, or other career preparation skill development.¹⁰⁷
- Empower Your Future: This program is a “life-skills, career development and employability curriculum guide developed for all phases of the DYS continuum.”¹⁰⁸

¹⁰¹ Department of Youth Services, <https://www.mass.gov/service-details/dys-history-of-youth-services>, (last visited Dec. 20, 2019).

¹⁰² Department of Youth Services, <https://www.mass.gov/service-details/jdai-massachusetts-county-information>, (last visited Dec. 20, 2019).

¹⁰³ *Id.*

¹⁰⁴ Massachusetts Juvenile Diversion Assessment Study, <https://static1.squarespace.com/static/58ea378e414fb5fae5ba06c7/t/593709d2197aeac077e3f2f9/1496779220634/MADivers+ion+FinalReport+2015+01+14-FINAL.PDF>, (last visited Dec. 20, 2019).

¹⁰⁵ Department of Youth Services, <https://www.mass.gov/service-details/dys-programs-education>, (last visited Dec. 20, 2019).

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

Notably, at DYS, all of their educational programming embodies a positive youth development framework, which includes an asset-based approach to education and culturally responsive trainings for all educators.¹⁰⁹ In addition, all educational programming is aligned with Common Core State Standards to ensure DYS-involved youth have access to the same rigor of programming that would be available in their home districts.¹¹⁰ Likewise, as of 2015, 100 percent of general educators in the DYS system had the appropriate licenses through the Department of Elementary and Secondary Education and none were on waivers.¹¹¹

Special Education Services

The Department of Youth Services and DESE's Special Education in Institutional Settings (SEIS) unit work in collaboration to expand and enhance the delivery of special education services for students with disabilities in the DYS system.¹¹² These educators receive trainings to identify students who may benefit from special education services at the early stages of detention and connect eligible youth with services at DYS residential facilities.¹¹³

LGBTQI Informed Programming

The DYS Lesbian, Gay, Bi-Sexual and Transgender, Queer and Intersex ("LGBTQI") policy on the Prohibition of Harassment and Discrimination of Youth has been recognized nationally as the most comprehensive to-date.¹¹⁴ DYS policies include specialized intake on how to identify and ask about gender identity and sexual orientation, placement decisions for youth based on their gender identity, guidance on practices for clothing, hair, showers, searches, medical procedures, using preferred names and pronouns, detailed reporting procedures for alleged violations of the policy and guidelines, and a confidentiality policy regarding gender and sexual identity information.¹¹⁵

Substance Abuse Services

At DYS, all committed youth are given a substance abuse screening upon arrival, which determines which substance abuse track they will follow: treatment or

¹⁰⁹ *Id.*

¹¹⁰ DYS, *DYS Comprehensive Education Partnership Report, FY18*, <https://www.mass.gov/service-details/dys-programs-education>, (last visited Dec. 20 2019)

¹¹¹ *Id.*

¹¹² Collaborative for Educational Services, <https://www.collaborative.org/programs/dys/dys-partnership>, (last visited Dec. 20, 2019).

¹¹³ *Id.*

¹¹⁴ Department of Youth Services, <https://www.mass.gov/service-details/dys-national-initiatives-and-best-practices> (last visited Dec. 20, 2019).

¹¹⁵ Department of Youth Services, *DYS Policy and Practice, LGBTQI–GNC Youth*, (Presentation to the Task Force, 2019).

prevention.¹¹⁶ Both tracks use an evidence-based curriculum to either treat substance abuse issues, or provide education on substance abuse to encourage prevention.¹¹⁷ The programs are age and gender specific and focus on addressing the role substance abuse plays in relation to other types of self-destructive behavior.¹¹⁸ The program fits into the Dialectical Behavioral Therapy Framework that DYS uses for every committed youth.¹¹⁹ In addition, DYS collaborates with the Institute of Health and the Department of Public Health (“DPH”) to develop a community continuum of care by providing substance abuse service coordinators and intense case management to work alongside services that are currently available in the community.¹²⁰

Youth Engaged in Services (YES)

DYS operates a program called Youth Engaged in Services (YES), where formerly DYS-involved youth can voluntarily receive services in the community until the age of 22.¹²¹ About 60% of discharges from DYS continue to receive services through YES and those who do not choose to engage in services upon discharge are given a 90-day window in which they can change their mind.¹²² The average daily YES population is approximately 150 youth and youth remain in services for an average of 9 months.¹²³

Through the YES program, youth continue to receive services, such as housing and educational assistance, career training, behavioral health services and other individualized treatment, as needed.¹²⁴ Discharged youth enter into a YES agreement with a caseworker, which dictates the goals of their first 3 months of services, followed by a renewal of these goals every 3 months they remain in the program.¹²⁵

Data submitted to the Task Force by DYS suggests that the YES program is effective at reducing recidivism.¹²⁶ In 2016, 138 youth signed on for YES. For that population, the recidivism rate was 15%. The rate for committed youth who opted for a straight discharge was 26%.¹²⁷

Finding #9: The positive youth development approach, used by DYS, is crucial to the overall success of emerging adults in the criminal justice system. This approach

¹¹⁶ Department of Youth Services, *DYS - Substance Abuse Services for Juvenile Offenders*, <https://www.mass.gov/service-details/dys-substance-abuse-services-for-juvenile-offenders> (last visited Dec. 20, 2019).

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ DYS, *Youth Engaged in Services [YES]: Voluntary Post-Discharge Services for DYS Committed Youth Factsheet – 2018*.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ DYS, *YES Powerpoint Slide*, December 2019.

¹²⁷ *Id.*

should be emulated to the extent possible in all adult correctional facilities serving emerging adults.

DYS and several other organizations and agencies that serve juveniles and emerging adults apply a positive youth development framework in their programming. A positive youth development framework is a comprehensive way of thinking about the youth development through the factors that influence their individual growth and development.¹²⁸ Positive Youth Development is not a specific technique or method, but a series of recommended activities and approaches that give young people opportunities to practice skills to encourage healthy development.¹²⁹ One important component of the positive youth development framework is an emphasis on a young person's strengths, rather than their problems.¹³⁰

Recommendations: Expand DYS programming and best practices to all facilities serving emerging adults.

- i. Expand the use of the Positive Youth Development approach to all facilities serving emerging adults, including staff training.
- ii. Expand continuing educational opportunities for emerging adults to the extent possible.
 - a. Expand Individualized Education Plan (IEP) programming to service all eligible incarcerated emerging adults.
 - b. In addition, improve access to higher education programming for course credit that can be applied towards an associates or bachelor's degree.
 - c. Expand hands-on vocational training for incarcerated emerging adults.

Raising the Age of Juvenile Jurisdiction (Findings #10-13)

10. Juvenile Court caseloads have been steadily declining even after juvenile jurisdiction was expanded to include 17 year olds in 2013.
 - a. The juvenile court system may still require additional resources to accommodate increases in the age of juvenile jurisdiction, beyond age 18.
11. Increasing the age of juvenile jurisdiction does not violate the provisions of the JJDP or PREA
12. DYS is currently serving youth up until age 21 who were adjudicated as Youthful Offenders

¹²⁸ DYS, *National Initiatives and Best Practices*, <https://www.mass.gov/service-details/dys-national-initiatives-and-best-practices>, (last visited Dec. 20, 2019).

¹²⁹ *Id.*

¹³⁰ HHS, *What is Positive Youth Development?*, <https://www.acf.hhs.gov/sites/default/files/fysb/whatispyd20120829.pdf>, (last visited Dec. 20, 2019).

13. The juvenile justice system offers more opportunities for continued family involvement.

Discussion:

Finding #10: Juvenile Court caseloads have been steadily declining even with the cases added due to the court's expansion of jurisdiction to include 17 year olds in 2013.

Capacity

Available data from the Massachusetts Trial Courts indicates that the overall caseload in the juvenile court system has been progressively decreasing.¹³¹ A summary of case filings from FY14 through FY18 illustrates a downward trend in case filings in the juvenile court system.¹³² During this period, the number of juvenile delinquency and youthful offender case filings decreased from a total of 10,206 in 2014, to 8,025 in 2018.¹³³ During this period, the number of care and protection filings in the juvenile court also decreased.¹³⁴ Notably, this downward trend continued even after September 2013, when Massachusetts increased the age of juvenile jurisdiction to include 17 year olds.¹³⁵

According to FBI arrest data, since Massachusetts last increased the age of juvenile jurisdiction, the state has experienced a 23 percent decrease in juvenile arrests.¹³⁶ During this same period, arrests for 18, 19, and 20 year olds also decreased, by 53 percent.¹³⁷

Since 2009, the juvenile court system has experienced a 15 percent average annual reduction in arraignments.¹³⁸ Based on the available arraignment data from FY2015, there were 1,712 18-year-olds; 2,112 19-year-olds; and 2,558 20-year-olds arraigned in Massachusetts.¹³⁹ Considering the overall downward trend in arraignments, relying on these numbers likely overestimates the actual current arraignment numbers. However, using these estimates, if Massachusetts were to add 18 year olds and 19 year olds to the juvenile justice system, the projected total juvenile arraignments would be approximately 4,880 by FY2022, which is less than the total juvenile arraignments in FY2014.¹⁴⁰ In addition, if we were to add only 18-year olds to the juvenile justice system in FY2020, the

¹³¹ Massachusetts Trial Courts, *Summary of Case Filings by Type: FY2014 to FY2018*.

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ Citizens for Juvenile Justice, *Summary of Key System Trends of Justice Involved Youth and Young Adults in Massachusetts*, Updated November 2019.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

projected number of arraignments would be approximately 3,181, which is less than the total amount of juvenile arraignments in FY2014 and FY2015 respectively.¹⁴¹

Finding #11: Increasing the age of juvenile jurisdiction does not violate the provisions of the JJDPA and PREA.

Questions were raised as to whether 18, 19 and 20 year olds were a ‘good fit’ for the juvenile justice system. Primarily, there were concerns about including emerging adults in facilities with younger children. In addition, there was speculation about whether parents of non-minors would be sufficiently involved in their children’s proceedings.

The Task Force heard testimony in response to these issues. In reference to the first argument, there were concerns about the legality of intermingling younger juveniles with emerging adults in DYS facilities. The Federal Juvenile Justice and Delinquency Prevention Act (“JJDPA”) does ban intermingling juveniles with individuals who are criminally charged or convicted as “adults.”¹⁴² However, the statute defines an adult as an individual who i) has reached the age of full criminal responsibility under applicable State law, and (ii) has been arrested and is in custody for or awaiting trial on a criminal charge, or is convicted of a criminal offense.”¹⁴³ It does not extend to a person “who (i) at the time of the offense, was *younger than the maximum age at which a youth can be held in a juvenile facility* under applicable State law; and (ii) was committed to the care and custody or supervision [...] of a juvenile correctional agency by a court of competent jurisdiction or by operation of applicable State law.”¹⁴⁴ Therefore, this federal prohibition does not define adult as a specific age but rather accepts the maximum age of juvenile jurisdiction as defined in state law. For this reason, increasing the age of juvenile jurisdiction is consistent with the provisions of the JJDPA.

Moreover, increasing the age of juvenile jurisdiction does not violate the sight, sound, and physical separation housing requirements of the federal Prison Rape Elimination Act (“PREA”). PREA requires sight, sound, and physical separation when housing “youthful inmates,” which is defined as youth under age 18 who are being held in *adult* facilities.¹⁴⁵ However, for juvenile facilities, PREA does not require separation for any person confined or detained in the facility, regardless of age.¹⁴⁶

¹⁴¹ *Id.*

¹⁴² 34 USCS §11133 (12) (A)

¹⁴³ 34 USCS § 11103 (26) (A)

¹⁴⁴ 34 USCS § 11103 (26) (B).

¹⁴⁵ 28 C.F.R. §115.5.

¹⁴⁶ National Standards to Prevent, Detect, and Respond to Prison Rape, 77 Fed. Reg. 37106, 37115 (June 20, 2012) (to be codified at 28 C.F.R. §115).

It should be noted that the Department of Youth Services did not take a position on the issue of raising the age of juvenile jurisdiction and indicated that it would accommodate the will of the Legislature.

Finding #12: DYS is currently serving youth up until age 21 who were adjudicated as Youthful Offenders, meaning juvenile facilities in Massachusetts are already experienced in serving this age range simultaneously.

DYS is currently serving youth up until age 21 who were adjudicated as Youthful Offenders, meaning juvenile facilities in Massachusetts are already experienced in serving this age range simultaneously. Notably, DYS informed the Task Force that approximately 25 percent of youth in their facilities were 18 and older, as of May 2019.¹⁴⁷ In addition, at that time, the average age of DYS committed youth was 17.4 years old.¹⁴⁸

In certain circumstances, the District Attorney has discretion to charge a juvenile either as a delinquent or a youthful offender.¹⁴⁹ A juvenile may be charged as a youthful offender if they are between the ages of 14 and 18, charged with committing an offense that would be punishable by state imprisonment if committed by an adult, and were previously committed to DYS.¹⁵⁰ Alternatively, a juvenile may be charged as an youthful offender if the offense involves the infliction or threat of serious bodily harm in violation of law, or the juvenile committed a violation of paragraph (a), (c) or (d) of section ten or section ten E of chapter two hundred and sixty-nine, which includes certain firearms offenses.¹⁵¹ If a juvenile is charged as a youthful offender, they will be indicted in accordance with MGL chapter 277.¹⁵² Notably, in Massachusetts, all juveniles over age 14 who are charged with first- or second-degree murder are tried in adult criminal courts.¹⁵³

Finding #13: The juvenile justice system offers more opportunities for continued family involvement.

The Task Force also heard testimony on the issue of parental involvement. Through this testimony, parents of children who experienced both DYS and the adult system described various resources available through the juvenile justice system that allowed them to continue to play a meaningful role in their children's lives. These resources included support groups, programming and discharge planning designed to keep parents involved in their incarcerated children's lives. In addition, the Task Force heard from a

¹⁴⁷ Per DYS, 2020.

¹⁴⁸ *Id.*

¹⁴⁹ MASS. GEN. LAWS ch. 119, § 54.

¹⁵⁰ *Id.*

¹⁵¹ See *id.*

¹⁵² See *id.*, See also MASS. GEN. LAWS ch. 277; MASS. GEN. LAWS ch. 269, §§ 10, 10E.

¹⁵³ MASS GEN. LAWS ch. 119, § 74.

mother of an incarcerated teenager who described the difficult experience of losing access to contact visits with her son after he transitioned from DYS to the adult system. When compared to juvenile facilities, the adult criminal justice system does not provide similar access to contact visits, or otherwise provide opportunities for parents of young adults to stay connected and involved in their children's lives during the period of incarceration.

Finding #14: There are a significant number of high school students who would benefit educationally and emotionally by remaining within Juvenile Court jurisdiction.

The Task Force heard significant testimony on the benefits of increasing the age of juvenile jurisdiction, many of which were discussed above. Developmentally, there appears to be no meaningful difference between 17 year olds and 18 year olds, and more than 22,000 students in Massachusetts high schools are between the ages of 18 and 20.¹⁵⁴ Allowing older teenagers the opportunity to remain in the juvenile justice system would increase their access to meaningful educational programming that will allow many an opportunity to finish high school and improve their future prospects. Unlike the adult system, classroom or vocational instruction is required in the juvenile system, which is particularly beneficial for emerging adults who have not completed their high school education.¹⁵⁵ In addition, the educational resources through DYS include access to special education instruction, which is not similarly available for inmates in the adult criminal system.¹⁵⁶ Also, allowing younger offenders the opportunity to move forward without the stigma of an adult conviction reduces the likelihood that they recidivate.

Noteworthy Resources for Justice-Involved Emerging Adults

Community-Based Organizations

The Task Force heard testimony from several community-based organizations serving emerging adults, including UTEC and Roca. **UTEC** is a community-based organization in Lowell, Massachusetts that serves high-risk young adults (17-25) who are transitioning back to their communities after incarceration.¹⁵⁷ The Task Force had the opportunity to tour UTEC's facility and learn about its programming firsthand.

¹⁵⁴ Citizens for Juvenile Justice, *Testimony to the Criminal Justice Task Force on Juvenile Age*, December 9, 2019.

¹⁵⁵ See, e.g., <https://www.mass.gov/service-details/dys-programs-education>, <https://www.mass.gov/doc/dyseducation-report-sy-2017-2018/download> and <https://www.mass.gov/service-details/dys-future-ready-initiative>.

¹⁵⁶ Department of Youth Services, *Comprehensive Education Partnership Report*, FY2018. Available at <https://www.mass.gov/service-details/dys-reports-and-resources>.

¹⁵⁷ UTEC, <https://utecinc.org/who-we-are/mission/> (last visited Dec. 18, 2019).

In FY18, **UTEC** served 148 young adults in their intensive enrollment program, and over 600 total, including Streetworker outreach and engagement.¹⁵⁸ The average UTEC enrollee stays in the program for 18-24 months. UTEC's programming is focused on reducing recidivism and supporting high-risk young adults in their communities, with diverse programming that provides counseling, job training and opportunities for civic engagement. Through UTEC's Streetworker program, Streetworkers approach high-risk young adults in the community and connect them with services. Often these Streetworkers are former gang-members or otherwise familiar with the issues impacting young adults in this demographic.

All youth involved with UTEC are assigned Transitional Coaches who act as mentors and service coordinators to ensure success as they return to the community. The transition coaches are responsible for overseeing their entire UTEC experience, making sure they are meeting their goals and connecting them with the necessary services, like on-site mental health and substance abuse trainings.¹⁵⁹

UTEC also features a number of social enterprises through which young people are given an opportunity to participate in as part of their programming. These enterprises are designed to give young adults valuable job skills and an opportunity to earn money in an effort to teach them how to make positive life choices. These include one of the DEP's three approved mattress recyclers, retail food service and catering kitchens, and a woodshop that recently contracted with Whole Foods to sell their cutting boards.¹⁶⁰ In addition to these enterprises, UTEC enrollees have the opportunity to participate in onsite education that helps them work toward their HiSet, GED or other trade certifications.

Of the people enrolled in UTEC's programming in FY18, 97% had no new convictions and 88% had no new arrests. In addition, although 52% of young adults in Massachusetts are re-arraigned within a year of release, only 12% of UTEC participants are re-arraigned during that initial period. Moreover, not only are these young adults staying out of jail, 63% of them are making positive strides by gaining industry recognized certifications.¹⁶¹

Roca is a community-based organization serving high-risk young adults in 5 communities throughout Massachusetts.¹⁶² Roca's stated mission is "to disrupt the cycle of incarceration and poverty by helping young people transform their lives."¹⁶³ The Task

¹⁵⁸ UTEC, *Outcomes & Impact Snapshot FY2018*, <https://utecinc.org/wp-content/uploads/2019/06/UTEC-FY18-Outcomes-Snapshot.pdf> (last visited Dec. 18, 2019).

¹⁵⁹ UTEC, *Our Programs*, <https://utecinc.org/what-we-do/our-programs/> (last visited Dec. 18, 2019).

¹⁶⁰ UTEC, *Social Enterprises*, <https://utecinc.org/what-we-do/social-enterprises/> (last visited Dec. 18, 2019).

¹⁶¹ UTEC, <https://utecinc.org/who-we-are/mission/> (last visited Dec. 18, 2019).

¹⁶² Roca, <https://rocainc.org/about/locations/> (last visited Dec. 18, 2019).

¹⁶³ Roca, <https://rocainc.org/> (last visited Dec. 18, 2019).

Force heard testimony from emerging adults who participated in Roca's programming and from Roca's staff who discussed their programming for young at-risk mothers.

Roca uses a four year, three phase intervention model that is evidence-based and data-driven.¹⁶⁴ After determining a young person is a good candidate for their services, Roca begins its intervention by building trust with the youth over a four month period.¹⁶⁵ In the second phase, Roca's programming focuses on changing behaviors through skill development and trainings over an 18-month period.¹⁶⁶ In the final phase, Roca tapers the amount of programming, but remains available for support to sustain behavioral changes over time.¹⁶⁷

In FY19, Roca served 904 high-risk young men in Massachusetts.¹⁶⁸ Within this group of emerging adults, 97 percent had no new arrests, 184 enrolled in transitional employment, 274 were placed in a job, 80 percent stayed with Roca, and 79 percent stayed with their job for six months or longer.¹⁶⁹

Roca also has programming tailored for at-risk young mothers. Their "Young Mothers" program serves over 200 at-risk young (16-24 years old) mothers in Chelsea, East Boston, Revere, Everett, Springfield, Malden, Somerville and Cambridge.¹⁷⁰ The program targets single mothers who are gang and street involved and may also have a history of drug and alcohol abuse, trauma, or a history of involvement in the criminal justice system.¹⁷¹ The program applies the same intervention model detailed above.¹⁷² However, the men and women are served separately.¹⁷³ In FY19, Roca served 246 young mothers and 309 children in Massachusetts.¹⁷⁴ Further, 85 percent of program participants held jobs for a year or more and 96 percent delayed further pregnancies.¹⁷⁵

In addition, in 2014, Roca partnered with Massachusetts General Hospital to develop and pilot a cognitive behavioral therapy (CBT) program as an element of their services.¹⁷⁶ Available research indicates that cognitive behavioral therapy may be an effective tool at meeting the emotional needs of high-risk emerging adults involved in the

¹⁶⁴ Roca, *Our Intervention Model*, <https://rocainc.org/work/our-intervention-model/> (last visited Dec. 18, 2019).

¹⁶⁵ *Id.*

¹⁶⁶ *See id.*

¹⁶⁷ *See id.*

¹⁶⁸ Roca, *Young Men Program*, <https://rocainc.org/work/young-men-program/> (last visited Dec. 18, 2019).

¹⁶⁹ *Id.*

¹⁷⁰ Roca, *Young Mothers Program*, <https://rocainc.org/work/young-mothers-program/> (last visited Dec. 18, 2019).

¹⁷¹ *Id.*

¹⁷² *See id.*

¹⁷³ *See id.*

¹⁷⁴ *See id.*

¹⁷⁵ *See id.*

¹⁷⁶ Baldwin et al., *Cognitive Behavioral Theory, Young Adults, and Community Corrections: Pathways for Innovation*, Program in Criminal Justice Policy and Management, Harvard Kennedy School, April 2018, available at https://www.hks.harvard.edu/sites/default/files/centers/wiener/programs/pci/files/cbt_young_adults.pdf.

criminal justice system.¹⁷⁷ CBT asserts that “emotions, thoughts, and behaviors are interconnected and suggests that individuals can develop skills to foster healthier emotions-thoughts-behaviors cycles.”¹⁷⁸ Through this partnership, Roca is adapting CBT curriculum to a format that may more effectively serve their target population.¹⁷⁹

More Than Words

More Than Words is a nonprofit social enterprise that focuses on empowering court involved, foster-system involved, homeless, or out of school youth by giving them the opportunity to operate a bookstore with locations in Boston’s South End and Waltham.¹⁸⁰ Through this program, youth between the ages of 16-24, work part-time at the bookstore, facilitating every aspect of the business.¹⁸¹ Participating young adults also work a paid “YOU” job focused on advancing personal goals and education.¹⁸² Youth are normally active in the program for 6-12 months and upon graduation receive at least 2 years of proactive career support from the organization.¹⁸³ In FY19, 80% of program graduates were productively engaged in work and/or school at least 30 hours per week, while 91% of program graduates worked or went to school at least 15 hours per week.¹⁸⁴

Department of Probation Initiatives

In Massachusetts, the Department of Probation offers specialized probation for emerging adults.¹⁸⁵ Through this program, Massachusetts’ probation officers working with young adults are trained in topics including: (i) supervising and counseling young adults; (ii) psycho-social and behavioral development of young adults; (iii) cultural competency; (iv) rehabilitation of young adults; (v) educational programs; and (vi) relevant community-based services and programs.¹⁸⁶

In addition to providing specialized probation for emerging adults, the Department of Probation is also involved in multiple partnerships with community-based organizations and other state agencies to address the needs of this demographic. First, the Department of Probation partnered with the Executive Office of Administration and Finance to provide referrals to the Pay for Success program.¹⁸⁷ Through this program, the Department of Probation refers high risk young men aged 18-24 through an independent evaluator to

¹⁷⁷ *Id.*

¹⁷⁸ *See id.*

¹⁷⁹ *See id.*

¹⁸⁰ More than Words, *What We Do*, <https://mtwyouth.org/what-we-do/mission-model/>, (last visited Jan. 6, 2020).

¹⁸¹ More than Words, *What We Do*, <https://mtwyouth.org/what-we-do/mission-model/>, (last visited Jan. 6, 2020).

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ More than Words, *What We Do-Impact*, <https://mtwyouth.org/what-we-do/impact/>, (last visited Jan. 6, 2020).

¹⁸⁵ MASS. GEN. LAWS ch. 276, § 89B.

¹⁸⁶ *Id.*

¹⁸⁷ *Massachusetts Probation Service*, 2019.

ROCA.¹⁸⁸ The service area includes Boston, Cambridge, Chicopee, Everett, Holyoke, Ludlow, Lynn, Malden, Medford, Revere, Somerville, Springfield, West Springfield, Westfield and Winthrop.¹⁸⁹

The Department of Probation created the Transitional Youth Early Intervention Program in collaboration with UTEC to improve outcomes for eligible high-risk emerging adult men.¹⁹⁰ The program includes direct services and aftercare, such as training staff in cognitive behavioral therapy, MST-EA, and other developmentally appropriate approaches for emerging adults, providing vocational opportunities through UTEC's programming, and connecting participants with continuing educational programs.¹⁹¹

Further, the Department of Probation worked in partnership with the Hampden County District Attorney's office, Massachusetts Trial Courts, and Roca to create the Emerging Adult Court of Hope in 2020.¹⁹² For this specialized court, the Department of Probation will provide a dedicated probation officer to work with the caseload.¹⁹³

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*

Legislative Initiatives

In 2018, Vermont became the first state to raise the age of juvenile jurisdiction to include “all teenagers” up to age 20 in their juvenile justice system.¹⁹⁴ The implementation process for Act 201 is scheduled to occur over the course of two years.¹⁹⁵ The first 18-year-olds will be added to the juvenile system beginning in July 2020.¹⁹⁶

Act 201 provides for 18 and 19-year-olds to be treated the same as 16 and 17-year-olds in Vermont’s juvenile justice system. By July 1, 2022, all cases involving 18 and 19-year-olds, except those charged with Vermont’s “Big 12” offenses, will originate in Vermont’s juvenile court.¹⁹⁷ In addition, all 18 and 19-year olds with misdemeanor charges will be heard in juvenile court, while the court will have discretion to transfer 18 and 19-year olds with felony charges to the adult criminal court.¹⁹⁸ Notably, all cases involving Vermont’s “Big 12” offenses will continue to originate in Vermont’s adult criminal court.¹⁹⁹

Act 201 also creates a presumption of diversion for low to mid-level risk youth. The law requires Vermont’s State’s Attorneys to consider the results of risk and needs screenings in assessing whether a young offender is eligible for diversion. A State’s Attorney may overcome the presumption by explaining why the interest of justice would not be best served by diverting the youth to programming.

In November 2019, Vermont released a report on the status of its implementation plan.²⁰⁰ The report came with several takeaways, including recommendations to increase diversion opportunities by removing cases from formal court processing, maximizing the efficiency of the juvenile court process to the extent possible, and ensuring that there are sufficient post-dispositional facilities and programs to place all eligible youth.²⁰¹ Overall, the implementation report indicated that everything is on track to integrate the additional youth into their juvenile justice system.

In addition, research and emerging trends are leading more states and communities to adopt alternative programs for young adults in the criminal justice system. For example, at least 12 states allow for more discretionary youthful offender sentencing for young

¹⁹⁴ VT Act. 201, 2018.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ VT. STAT ANN. tit. 33, § 5201(d).

¹⁹⁸ *Id.*

¹⁹⁹ VT. Stat Ann. tit. 33, § 5204(a).

²⁰⁰ VT DCF, Act 201 Implementation Plan Report, https://static1.squarespace.com/static/5c6458c07788975dfd586d90/t/5dd2ebf2b1425d33ae1ef1/1574104062934/Vermont-RTA-DCF-Report-Final_EAJP.pdf, (last visited Dec. 26, 2019).

²⁰¹ *Id.*

adults.²⁰² In addition, young adult courts and specialized correctional housing are expanding to more jurisdictions, while innovative community-based programs are finding the best ways to reduce recidivism among young adult offenders. In this section, certain statutes and related initiatives will be discussed along with summaries of relevant bills filed in Massachusetts this session.

Vermont

In July 2018, prior to the implementation of Act 201, Vermont expanded their Youthful Offender statute to include eligible youth under age 21.²⁰³ Through this statute, eligible youth can apply for Youthful Offender status, which, if granted, allows the case to be heard in Vermont's juvenile court.²⁰⁴ Through this program, upon the successful completion of a Youthful Offender's supervised probation, an individual is eligible to have their record expunged.²⁰⁵ However, if they fail to complete their supervised probation successfully, the case resumes in adult criminal court.²⁰⁶ Even after the passage of Act 201, Vermont continues to allow Youthful Offender consideration for all offenders under age twenty-two.²⁰⁷ A Youthful Offender petition can be filed by a State's Attorney, the defendant, or the court on its own motion.²⁰⁸

South Carolina

South Carolina extends its Youthful Offender program to certain crimes that were committed under the age of twenty-five.²⁰⁹ In order to be eligible, the alleged crime must be nonviolent and punishable by no more than 15 years of imprisonment.²¹⁰ Through this program, young offenders may be subject to conditional release and supervision at any time.²¹¹

SC Code § 63-19-10 applies the following definitions:

(d) "Youthful offender" means an offender who is:

(ii) seventeen but less than twenty-five years of age at the time of conviction for an offense that is not a violent crime, as defined in Section 16-1-60, and

²⁰² Alex A. Stamm, *Young Adults Are Different, Too: Why and How We Can Create a Better Justice System for Young People Age 18 to 25*, 95 Tex. L. Rev. 72, 80 (2017) (discussing youthful offender sentencing options).

²⁰³ VT. Stat Ann. tit. 33, §§ 5280-87.

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ S.C. Code Ann. § 24-19-10 et seq (2016).

²¹⁰ *Id.*

²¹¹ *Id.*

that is a misdemeanor, a Class D, Class E, or Class F felony, or a felony which provides for a maximum term of imprisonment of fifteen years or less;

(iv) seventeen but less than twenty-one years of age at the time of conviction for burglary in the second degree (Section 16-11-312). If the offender committed burglary in the second degree pursuant to Section 16-11-312(B), the offender must receive and serve a minimum sentence of at least three years, no part of which may be suspended, and the person is not eligible for conditional release until the person has served the three-year minimum sentence;

(vi) seventeen but less than twenty-five years of age at the time of conviction for committing criminal sexual conduct with a minor in the third degree, pursuant to Section 16-3-655(C), and the conviction resulted from consensual sexual conduct, provided the offender was eighteen years of age or less at the time of the act and the other person involved was at least fourteen years of age at the time of the act.²¹²

To further address high recidivism rates in young adults, South Carolina's Department of Corrections established the Division of Young Offender Parole & Reentry Services (YORPS), which uses a number of Institution-Based Services to reduce recidivism.²¹³ Within this department, South Carolina uses four primary programs to streamline rehabilitation.²¹⁴ Youth Offender Institutionalized Services (YOIS) and Intensive Supervision Services (ISS) both conduct risk assessments and strive to meet the specific needs of young adult offenders.²¹⁵ Both programs provide substance abuse education, addiction treatment, parenting courses, counseling, and educational opportunities.²¹⁶

Additionally, the Shock Incarceration Program is a 90-day service used as an alternative to traditional incarceration.²¹⁷ Non-violent offenders between 17 and 29 can opt into a boot camp-like program that requires daily physical training, community service, substance abuse education, and educational opportunities.²¹⁸ After successfully completing the program, participants are conditionally allowed back into the community.²¹⁹

²¹² *Id.*

²¹³ South Carolina Department of Corrections, *Division of Young Offender Parole & Reentry Services*, <http://www.doc.sc.gov/programs/yoprs.html> (last visited, Dec. 30, 2019).

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ South Carolina Department of Corrections, *Shock Incarceration Program*, <http://www.doc.sc.gov/programs/shock.html> (last visited Dec. 18, 2019).

²¹⁸ *Id.*

²¹⁹ *Id.*

Finally, the Intensive Supervision Administrative Release Authority (ISARA) is a panel of corrections professionals that possess the authority to release any Youthful Offender who has demonstrated constructive behavior.²²⁰ Each offender receives a victim representative, and both victims and impacted community advocates are considered in the release process.²²¹

Alabama

Alabama's Youthful Offender program allows individuals under age 21 the opportunity to apply to be tried as a Youthful Offender in juvenile court.²²² To be tried as a youthful offender, an application must be submitted by plaintiff's counsel and approved by the judge.²²³ No limitations exist regarding the degree of the charge, but in cases involving violence leading to injury or death, any victim (or their next of kin) must receive 10 days of notice.²²⁴ If convicted with a Youthful Offender felony charge, the court holds the power to commit the defendant to a term not to exceed three years, suspend the jail sentence, impose probation, or impose a fine up to \$1,000.²²⁵ Youthful Offender convictions will not appear on a criminal record, and typical penalties associated with the felony, like prohibition of voting or owning firearms, will not apply.²²⁶

Additional Programs in Other States

Young Adult Courts

Young Adult Court- San Francisco, CA: In 2015, The San Francisco District Attorney's office established a young adult court designed to address the specific needs of 18-25 year olds in the criminal justice system.²²⁷ Through this court, violent and non-violent offenders alike (excluding firearm and repeat offenders), are given a chance at rehabilitation, rather than punitive measures through a collaborative, problem-solving treatment model.²²⁸ This model features an intensive intake process, used to create a wellness plan that will address the specific needs of the young adult.²²⁹ Together, with community partners and court officials, the young adult will work through this wellness plan, regularly appearing in court for progress reports until graduation 12-18 months after

²²⁰ South Carolina Department of Corrections, *Division of Young Offender Parole & Reentry Services*, <http://www.doc.sc.gov/programs/yoprs.html> (last visited Dec. 18, 2019).

²²¹ *Id.*

²²² AL Code § 15-19-1 (a)-(c), (2018).

²²³ *Id.*

²²⁴ *Id.*

²²⁵ AL Code § 15-19-6 (2018).

²²⁶ AL Code § 15-19-7 (2018).

²²⁷ San Francisco District Attorney's Office, *Young Adult Court*, <https://sfdistrictattorney.org/young-adult-court>, (last visited Dec. 18, 2019).

²²⁸ *Id.*

²²⁹ *Id.*

the initial intake.²³⁰ The outcome at graduation is dependent on the individual, but often results in clean, or reduced, criminal records.²³¹

Second Chance Community Improvement Program- Dallas, Texas: Similar to the Young Adult Court in San Francisco, the Second Chance Community Improvement Program (“SCCIP”) is a specialized court for non-violent and drug offenders aged 17-30 that offers pre-trial community court services focused on building connections between the community and law enforcement, rehabilitation and social services.²³² The program has certain expectations that must be met to graduate, which normally occurs 9-18 months after the program begins.²³³ Participants must submit social services assessments, which help, dictate next steps, attend weekly court hearings to track progress, and abide by any court orders such as drug testing, education and job training requirements and counselling.²³⁴ Upon successful completion of this program, a participant’s pending case is dismissed and expunged.²³⁵

Sentencing Planners

In San Francisco, the District Attorney’s office hired internal “Sentencing Planners” to assist District Attorneys with devising appropriate plea deals and treatment plans.²³⁶ These professionals use their knowledge of local programs to connect young adults with services that appropriately target their underlying needs.²³⁷ A Sentencing Planner helps District Attorneys determine the best outcome in terms of public safety and reducing recidivism.²³⁸

Multisystemic Therapy for Emerging Adults (MST-EA)

Nationally, Multisystemic Therapy (“MST”) is an evidence-based treatment style used to help adolescents with anti-social behavior.²³⁹ Multisystemic Therapy for Emerging Adults (“MST-EA”) is a variation that focuses on family and community based responses, using collaborative, wrap-around treatment methods of which the ultimate goal is to reduce recidivism and improve outcomes for court involved emerging adults.²⁴⁰ MST-EA takes a team based approach with multiple masters level clinical psychologists working

²³⁰ *Id.*

²³¹ *Id.*

²³² City Square Advocacy, <https://www.citysquareadvocacy.org/sccip>, (last visited Dec. 18, 2019).

²³³ *Id.*

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ San Francisco District Attorney’s Office, *Sentencing Planner*, <https://sfdistrictattorney.org/sentencing-planner>, (last visited Dec. 18, 2019).

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ Ashli Sheidow ET AL., *Multisystemic Therapy for Emerging Adults With Serious Mental Illness and Justice Involvement* (2015).

²⁴⁰ *Id.*

together to target specific risk factors for each individual involved.²⁴¹ They work with families and community organizations to focus on improving the client's positive functioning in hitting the critical milestones of emerging adulthood.²⁴² These milestones include education, housing and interpersonal relationship building.²⁴³ They do this while treating any underlying serious mental illness and substance abuse issues to ensure a continuum of community-based wraparound care for the emerging adult.²⁴⁴

Bills Filed in Massachusetts

Three relevant bills were filed in the Massachusetts Legislature in the 2019-2020 session. Each aims to reduce recidivism among the emerging adult population and improve developmentally appropriate programming through age 26.

S.530, H.1295, *An Act to Promote Public Safety and Better Outcomes for Young Adults*

This legislation would gradually increase the upper age in delinquency and youthful offender cases from 18 to 20. It would also extend the upper age of commitment in the Department of Youth Services (DYS) to 20-years-olds in delinquency cases and 23 year-olds in Youthful Offender cases. By restructuring the juvenile system, this bill aims to improve treatment, education, and training for young adults and decrease recidivism.

S.1533, H.2697, *An Act to Reduce Recidivism among Emerging Adults*

This bill would implement developmentally appropriate, evidence-based policies into Massachusetts' adult facilities for young adults under the age of twenty-six. It would bolster individualized case planning, restrict the use of solitary confinement and restraints, engage family, improve access to secondary and post-secondary education, increase access to medical and mental health-based services, and protect LGBTQIA members from discrimination.

S900, *An Act Relative to Expungement*

This bill would expand upon relevant provisions of the recent criminal justice reforms passed in 2018. Primarily, for individuals with charges that did not result in a conviction, this law would allow them the opportunity to apply for expungement, even if they have more than one offense on their record. In addition, for individuals with charges that resulted in a conviction or adjudication, this bill would allow individuals the opportunity to apply for expungement after 3 years for misdemeanors and 5 years for felonies, as long as the individual had no other convictions or adjudications during that

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ *Id.*

period. Further, the bill would remove Youthful Offender juvenile court records from public inspection, consistent with the privacy of delinquency case records. Moreover, the bill would remove delinquency adjudications from an individual's record after the case closes, rather than when the juvenile is released from DYS custody. The bill specifies that entries shall be made in the court and probation records indicating any adjudications that were vacated, and would prohibit the use of a juvenile adjudication as a predicate offense to trigger a mandatory minimum. And, the bill would stop the reporting of juvenile arrests to the FBI.

In addition, this bill would result in several changes to the law regarding the sealing of criminal records. First, the bill would allow for automatic sealing of eligible juvenile records after the required waiting period, rather than requiring administrative action on behalf of the applicant. Furthermore, the bill would require the courts to provide juveniles written information about sealing and expungement at the time of disposition, and insert language so that juveniles can file a motion to request sealing of a case that ended in dismissal, nolle prosequi, or not guilty finding without a waiting period.

Appendix I: Enabling Statute

Section 221 of Chapter 69 of the Acts of 2018

(a) Notwithstanding any special or general law to the contrary, there shall be a task force to examine and study the treatment and impact of individuals ages 18 to 24 in the court system and correctional system.

(b) The task force shall consist of 20 members: 1 of whom shall be the secretary of health and human services or the secretary's designee; 1 of whom shall be the secretary of public safety and security or the secretary's designee; 1 of whom shall be the commissioner of youth services or the commissioner's designee; 1 of whom shall be the commissioner of the department of correction or the commissioner's designee; 1 of whom shall be the commissioner of probation or the commissioner's designee; 1 of whom shall be the chief justice of the district court or the chief justice's designee; 1 of whom shall be the chief justice of the Boston municipal court or the chief justice's designee; 1 of whom shall be the chief justice of the juvenile court department or the chief justice's designee; 1 of whom shall be the director of the juvenile court clinic or the director's designee; 1 of whom shall be a designee of the Massachusetts District Attorneys Association; the chief counsel of the committee for public counsel services; 2 of whom shall be appointed by the governor, 1 of whom shall have expertise in the neurological development of young adults and 1 of whom shall have expertise in young adult justice; 1 of whom shall be a member appointed by the speaker of the house of representatives who shall serve as co-chair; 1 of whom shall be a member appointed by the president of the senate who shall serve as co-chair; 1 of whom shall be a member appointed by the minority leader of the house of representatives; 1 member appointed by the minority leader of the senate; 1 of whom shall be a member appointed by American Federation of State, County and Municipal Employees Council 93 who shall be an employee of the department of youth services and have not less than 5 years of experience working in a department of youth services secure facility; 1 of whom shall be the executive director of Citizens for Juvenile Justice, Inc or the executive director's designee; and 1 of whom shall be appointed by the Massachusetts Sheriff's Association.

(c) The task force shall evaluate the advisability, feasibility and impact of changing the age of juvenile court jurisdiction to defendants younger than 21 years of age. The study shall include, but not be limited to:

- (i) the benefits and disadvantages of including 18 to 20 year olds in the juvenile justice system;
- (ii) the impact of integrating 18 to 20 year olds into the under-18 population in the care and custody of the department of youth services;

(iii) the ability to segregate young adults in the care and custody of the department of youth services from younger juveniles in such care; and

(iv) the potential costs to the state court system and state and local law enforcement.

The task force shall consider resources and facilities, if any, that could be reallocated from the adult system to the juvenile system and the advisability and feasibility of establishing a separate young adult court for persons aged 18 to 24.

(d) The task force shall also make recommendations for the establishment, implementation and provision to young adults, aged 18 to 24, who have been committed to the department of correction or a county correctional facility with increased and targeted age-appropriate programming and the establishment of young adult correctional units as authorized in section 48B of chapter 127 of the General Laws. The study shall include, but not be limited to:

(i) identifying the need and resources necessary to provide appropriate training to corrections and court staff, community supervision staff and behavioral health providers;

(ii) recommendations for programmatic development including, youth development and mentoring programs, mental health access, anger management and de-escalating conflicts, education opportunities and employment and vocational training;

(iii) recommendations to improve access to family and increase family involvement;

(iv) identifying opportunities to partner with or access appropriate programs or services within the department of youth services;

(v) identifying any costs or savings from implementing such programs and identifying any grants or other opportunities to reduce such costs;

(vi) reviewing policies and best practices from other jurisdictions and experts in the field;

(vii) reviewing existing models and programs currently being provided; and

(viii) identifying any costs related to the implementation of new protocols for correction's and court staff, community supervision staff and behavioral health providers.

(e) The task force shall submit its findings to the clerks of the house of representatives and the senate not later than July 1, 2019 and the clerks shall forward the report to the house and senate chairs of the joint committee on the judiciary and the house and senate chairs of the joint committee on ways and means.

Appendix II: Overview of the Juvenile Justice System

Process: Arrest to Adjudication

ARREST

Arrest is a juvenile's first point of contact with the juvenile justice system. Acknowledging the unique developmental concerns of juveniles and the significance of arrest, the Massachusetts State Police Department developed special procedures for dealing with juveniles.²⁴⁵

Notification

Pursuant to M.G.L. chapter 119, section 67(a), the officer in charge is required to immediately notify a parent, guardian, custodian, or representative of DCF following a juvenile's arrest.²⁴⁶ If the child is in the custody of the Department of Children and Families (DCF), the officer must contact the department's emergency hotline and notify the on-call worker of the child's arrest.²⁴⁷

Pre-trial Release

In Massachusetts, a summons is the preferred method for bringing juveniles to court.²⁴⁸ Following notification, a child shall be released to a parent, guardian, custodian or representative of DCF who signs a written promise to take responsibility for the child's appearance in court at the time and place the child is ordered to appear.²⁴⁹ An arrest warrant will not be issued unless, "the court has reason to believe the child will not appear upon a summons, or if the child has been summoned and did not appear, or if the juvenile violated the terms and conditions of probation."²⁵⁰

Pre-Trial Detention

Following arrest, a child may be detained if "the arresting officer requests in writing that a child between 14 and 18 years of age be detained," or if "a warrant for the arrest of a child between 14 and 18 years of age" directs that "the child shall be held in safekeeping

²⁴⁵ Municipal Police Training Committee, *Massachusetts Juvenile Arrest Procedures*, <https://www.mass.gov/files/documents/2018/06/27/Juvenile%20Arrest%20Procedures-June%202018%20-%20FINAL.pdf>, (last visited Dec. 18, 2019).

²⁴⁶ Mass. Gen. Laws ch. 119, §67.

²⁴⁷ *Id.*

²⁴⁸ See *id.*

²⁴⁹ See *id.* §67 (b).

²⁵⁰ See note 246, *supra*. (Mass. Gen. Laws ch. 119, §67).

pending the child's appearance in court"²⁵¹ Detention of juveniles is regulated through MGL chapter 119, section 67(c).

Neither DYS nor the Department of Correction will place a juvenile in a "secure detention facility or secure correction facility."²⁵² Nor shall either department "detain or confine any juvenile...alleged to be or found to be delinquent in any institution in which they have contact with adult inmates."²⁵³ Chapter 119, section 67(b) provides detention homes through Department of Youth Services (DYS), or any other home of temporary custody approved by DYS, that can serve as an alternative to police station detention.²⁵⁴

In Massachusetts, juveniles are required to have a detention hearing within 24 hours of entering any detention facility.²⁵⁵

ADJUDICATION

In Massachusetts, delinquency proceedings generally comply with the Massachusetts Court Rules of Criminal Procedure with one major caveat: "[A]s far as practicable, they shall be treated, not as criminals, but as children in need of aid, encouragement and guidance. As such, proceedings against children under said sections shall not be deemed criminal proceedings."²⁵⁶

Treating delinquent children as "children in need of aid," the adjudicatory process is less punitive than the adult criminal justice system, and diversion is encouraged in the early stages of adjudication.²⁵⁷ MGL chapter 119 sections 52-55 stipulate special procedures for delinquency determinations.²⁵⁸

Complaint

The adjudication process begins with the filing of a complaint. A complaint application must be filed with a police department for submission to the juvenile court or the juvenile session of a district court.²⁵⁹ At this stage of the process, a District Attorney or Clerk Magistrate can choose to either arraign the juvenile or divert the child from the juvenile justice system.²⁶⁰

²⁵¹ Mass. Gen. Laws ch. 119, §67.

²⁵² Mass. Gen. Laws ch. 119, §87.

²⁵³ *Id.*

²⁵⁴ Mass. Gen. Laws ch. 119, §67.

²⁵⁵ *Caseflow management of juvenile cases*, Mass. Dist. Ct. Standing Order 2-88.

²⁵⁶ Mass. Gen. Laws ch. 119, §53.

²⁵⁷ Mass. Gen. Laws ch. 119, § 54A.

²⁵⁸ Mass. Gen. Laws ch. 119, §§ 54-58

²⁵⁹ Mass. Gen. Laws ch. 119, § 54.

²⁶⁰ *Id.*

Arraignment

Summons

Should they choose to arraign the juvenile, the court shall issue a summons for the child to appear in court.²⁶¹

Pleadings

During arraignment, a juvenile may plead “not delinquent” to a delinquency complaint.²⁶² If indicted, the juvenile may plead that they should not be adjudged as a Youthful Offender.²⁶³ If the Commonwealth cannot reach an agreement with the juvenile on a recommended disposition, the juvenile may tender a plea with request for a specific disposition.²⁶⁴ Pursuant to MGL chapter 119, section 55B, such request may include a request that no findings be entered, and that “the case be continued without a finding to a specific date thereupon to be dismissed.”²⁶⁵

Diversion

Diversion is a discretionary practice by which low-level offenders are removed from the juvenile justice system and diverted to various developmental and rehabilitative treatment programs. Massachusetts General Law chapter 119 section 54A(a) gives the juvenile court jurisdiction to “divert from further court processing a child who is subject to the jurisdiction of the juvenile court as the result of an application for complaint brought pursuant to section 54.”²⁶⁶

All diversion programs must fall within the parameters of a “program” under MGL chapter 276A, section 1: “[Program means] any program of community supervision and services including, but not limited to, medical, educational, vocational, social, substance use disorder treatment and psychological services, corrective and preventive guidance, training, performance of community service work, counseling, provision for residence in a halfway house or other suitable place, and other rehabilitative services designed to protect the public and benefit the individual.”²⁶⁷

In the juvenile system, diversion can originate in several ways.²⁶⁸ Prior to arraignment, a juvenile may request that the court consider his or her eligibility for

²⁶¹ See Mass. Acts of 2018, 69, Sec. 233.

²⁶² Mass. Gen. Laws ch. 119, § 55B.

²⁶³ *Id.*

²⁶⁴ *Id.*

²⁶⁵ See note 262, *supra*. (Mass. Gen. Laws ch. 119, § 55B.)

²⁶⁶ Mass. Gen. Laws ch. 119, § 54A(a).

²⁶⁷ *Id.*

²⁶⁸ Mass. Gen. Laws ch. 119, § 54A.

diversion.²⁶⁹ In addition, the court may independently decide that the facts and circumstances are sufficient to divert the juvenile from further involvement in the justice system.²⁷⁰ Further, diversion may also be pursued at the District Attorney's discretion.²⁷¹

Trial

A juvenile may waive their right to a trial by jury.²⁷² If a juvenile chooses to waive their right to a jury trial, the trial will follow the procedures for jury-waived trials in the superior court.²⁷³ However, the juvenile has the option to request a judge who has not rejected any agreed upon recommendation or disposition request made by the child.²⁷⁴

For jury trials, the trial will follow the same procedures applicable to trials by jury in superior court.²⁷⁵ For delinquency cases, trial by jury includes six jurors, except in cases where the commonwealth has proceeded by indictment, in which the juvenile is entitled to a jury of twelve.²⁷⁶

DISPOSITION

At a delinquency hearing, if the allegations against the juvenile are proven beyond a reasonable doubt, they will be adjudged a delinquent child.²⁷⁷ At present, the most serious punishment available for juvenile delinquency is commitment to DYS until age 18.²⁷⁸ A judge may also sentence a juvenile to supervised probation.²⁷⁹ If the allegations are not proven beyond a reasonable doubt, the case may be dismissed, or continued without a finding (CWOFF).²⁸⁰

For juveniles charged as youthful offenders, a judge may sentence them to a DYS facility until age 21.²⁸¹ Depending on the offense, a youthful offender may also receive a combination sentence, which would include a commitment to DYS until they reaches the age 21, and an added adult sentence.²⁸²

When determining appropriate sentencing for a youthful offender, the court conducts a sentencing recommendation hearing to assess how best to protect present and

²⁶⁹ MASS. GEN. LAWS ch. 119, § 54A(b).

²⁷⁰ *Id.*, § 54A(b).

²⁷¹ *Id.*, § 54A(d).

²⁷² *Id.*, § 55A.

²⁷³ *Id.*

²⁷⁴ *Id.*

²⁷⁵ *Id.*, § 56(e).

²⁷⁶ *Id.*

²⁷⁷ *Id.*, § 58.

²⁷⁸ *Id.*

²⁷⁹ *Id.*

²⁸⁰ *Id.*

²⁸¹ *Id.*, (c).

²⁸² *Id.*, (b).

long-term public safety.²⁸³ In this hearing, the court considers several factors including, “the nature, circumstances and seriousness of the offense, victim impact statement, a report by a probation officer concerning the history of the youthful offender, the youthful offender's court and delinquency records, the success or lack of success of any past treatment or delinquency dispositions regarding the youthful offender, the nature of services available through the juvenile justice system, the youthful offender's age and maturity, and the likelihood of avoiding future criminal conduct.”²⁸⁴

Overview of the Juvenile Court System

The juvenile court system has jurisdiction over cases involving delinquency, children requiring assistance, child protection, adult contributing to the delinquency of a child, adoption, guardianship, youthful offenders, and the termination of parental rights.²⁸⁵ The juvenile court has 11 juvenile court divisions, with sessions in more than 40 locations.²⁸⁶

Pre-Arrest Diversion

The juvenile court allows judges to divert cases prior to arraignment.²⁸⁷ Pre-arrest diversion is an effective tool to remove low-level offenders from the juvenile justice system.

Prior to arraignment, a juvenile may request the court to assess their suitability for diversion.²⁸⁸ In response to this request, the judge may grant a 14-day continuance to assess the juvenile's suitability for diversion.²⁸⁹ The Department of Probation may also assist in this determination.²⁹⁰ Further, a judge may order the juvenile to diversion without first ordering an assessment if the court determines there is already sufficient information available.²⁹¹

After the assessment, a recommendation is submitted to the court regarding whether the juvenile is a good candidate for diversion.²⁹² Upon receipt of the

²⁸³ See note 277, *supra*. (§ 58.)

²⁸⁴ *Id.*

²⁸⁵ Massachusetts Juvenile Court, <https://www.mass.gov/info-details/jurisdiction-of-the-juvenile-court-department>, (last visited Dec. 22, 2019).

²⁸⁶ *Id.*

²⁸⁷ *Id.*, § 54A(a).

²⁸⁸ *Id.*, § 54A(b).

²⁸⁹ *Id.*

²⁹⁰ *Id.*

²⁹¹ *Id.*

²⁹² *Id.*, § 54A(c)(1).

recommendation, the judge shall provide an opportunity for both the prosecution and counsel for the juvenile to be heard regarding diversion.²⁹³

The judge shall then make a final determination as to the eligibility of the juvenile for diversion.²⁹⁴ If the juvenile is determined to be eligible, the proceedings will be stayed for 90 days, unless the judge determines a shorter timeframe is more appropriate.²⁹⁵ However, the juvenile must also agree in writing to the terms and conditions of the stay of proceedings and waive his or her right to a speedy trial.²⁹⁶

Notably, if a child is determined to be eligible for diversion, they will not be arraigned and there will be no entry into the criminal offender record information (CORI) system unless a judge issues an order to resume the ordinary processing of a delinquency proceeding.²⁹⁷

²⁹³ *Id.*

²⁹⁴ *Id.*

²⁹⁵ *Id.*

²⁹⁶ Mass. Gen. Laws ch. 119, § 54A(c)(2).

²⁹⁷ *Id.*, (4).