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R STREET POLICY STUDY NO. 60
April 2016

A CONSERVATIVE CASE TO 'RAISE THE AGE' IN MICHIGAN

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INTRODUCTION

In recent years, conservative policymakers in states across the nation have come to question whether the one-size-fits-all "tough on crime" approaches adopted in the 1980s and 1990s are still effective long-term solutions to improve public safety. Prison overcrowding[1] and high recidivism rates[2] have prompted state and federal lawmakers to rethink criminal-justice policy and examine ways to reduce excessive mandatory-minimum sentences, improve indigent defense, curtail civil-asset forfeiture and expand prisoner reentry programs. The efforts to date have been promising, as measured by their ability to alleviate state budgetary pressures without compromising public safety.

Another important goal of criminal-justice reform, generally overlooked by conservatives, should be to address inequities within the juvenile-justice system. Too often, children who aren't old enough to buy cigarettes legally nonetheless are thrust automatically into an adult penal system ill-suited to the unique challenges and opportunities teenagers present.

Under current law in New York and North Carolina, 16-year-olds who are arrested are tried in adult criminal court without exception. Michigan is one of seven states to prescribe the same rules for 17-year-olds.[3] The other 41 states treat 18 as the youngest age to try individuals as adults. that would permit at least some juveniles to be tried in adult criminal court and sentenced to regular prisons for certain serious crimes. But the default policy is first to steer juvenile delinquents toward rehabilitation, and generally to pair any form of detention with educational and rehabilitative services.

States that are unwilling to enact a rehabilitation-focused approach to juvenile offenders face myriad unintended consequences, for individuals, families and communities. This policy study explores some of those consequences and contrasts them with the benefits (economic, as well as personal) that "raise the age" juvenile-justice reform can create.

BRIEF HISTORY OF JUVENILE JUSTICE

In 1899, the first juvenile court was established in Cook County, Illinois.[4] The court's creation was an attempt to curtail the previously accepted policy of treating all offenders over the age of seven as adults. The stated goal of the juvenile court was to attempt to rehabilitate youthful offenders.

Over the past 117 years, approaches taken by different jurisdictions to deal with juvenile offenders have varied widely.

1. Audrey Williams, "Prison Overcrowding Threatens Public Safety and State Budgets," American Legislative Exchange Council, April 8, 2014. https://www.alec.org/article/prison-overcrowding-threatens-public-safety-state-budgets/

2. Office of Justice Programs, "Data Collection: Recidivism of State Prisoners," Bureau of Justice Statistics, accessed March 29, 2016. http://www.bjs.gov/index.cfm?ty=dcdetail&iid=270

3. Maurice Chammah, "The 17-Year-Old Adults," The Marshall Project, June 3, 2015. https://www.themarshallproject.org/2015/03/03/the-17-year-old-adults#.Te9InmCwe

4. Center on Juvenile and Criminal Justice, "Juvenile Justice History," San Francisco State University, accessed March 29, 2016. http://www.cjcj.org/education1/juvenile-justice-history.html

Some arguably have been too exacting and others too lenient. As neuroscientists and social and behavioral scientists have learned more about the cognitive development of teenagers, policymakers have continued to tinker with juvenile-justice systems to find the appropriate balance between punishment and rehabilitation.

Although Michigan has a history of trying 17-year-olds as adults going back to the start of the 20th century, this practice was expanded in the late 1980s, following a national trend to enact "tough on crime" laws. The effect was a lower bar for criminal prosecution to include truancy and curfew violations.[5]

Over the past decade, many states and the federal government have altered their approach to criminal and juvenile justice, such as by lowering mandatory minimum sentences and improving rehabilitative services. As part of this trend, some states – namely, Illinois, Massachusetts, New Hampshire, Mississippi, Rhode Island and Connecticut – have at various points moved to raise the minimum age for adult prosecution.[6] (As discussed later in this paper, Rhode Island first lowered the minimum age, but quickly reversed that decision.)

The federal government also weighed in on the treatment of juveniles. In 2003, Congress passed the Prison Rape Elimination Act (PREA),[7] which established a federal mandate that juvenile offenders (defined as those age 17 and younger) detained in adult facilities must be kept separate from the adult population. The law also proscribes states from detaining juveniles in solitary confinement. Despite these mandates, many adult correctional facilities do not appropriately protect youth. A 2009 study from the National Prison Rape Elimination Commission (NPREC) reported: "more than any other group of incarcerated persons, youth incarcerated with adults are probably at the highest risk for sexual abuse."[8]

States that disregard these federal changes face increased liability. This manifested in the tragic story of Kalief Browder,[9] a 16-year-old accused of stealing a backpack. Browder was held at New York's Rikers Island for three years, mostly in solitary confinement, and never received a trial. Months after his release, he committed suicide.[10] Browder's family has since filed a $20 million lawsuit against the New York City Department of Corrections.[11]

17-YEAR-OLDS UNDER MICHIGAN LAW

Michigan currently defines a juvenile as a person less than 17 years of age. A Michigan juvenile accused of a criminal offense generally will be adjudicated in the family division of a state circuit court. If charged with a serious felony offense, the juvenile may receive an adult sentence from the family division, or may be waived to adult criminal court and tried and sentenced as an adult.

Unlike in 41 other states, 17-year-olds in Michigan are not afforded this flexible approach and or focus on rehabilitation. Instead, 17-year-olds exist in a strange legal limbo. In every other aspect of their lives, they are treated as adolescents: required to attend school, subject to child-labor laws and driving restrictions, and unable to vote. However, these same children automatically are treated as adults by the criminal courts, no matter how minor or severe the offense.

Since 2003, more than 20,000 Michigan youths have been convicted as adults and placed on probation, sent to jail or imprisoned for a crime they committed before turning 18. Nearly 60 percent of these juveniles in the adult criminal-justice system have been adjudicated for nonviolent crimes that did not include a weapon. More than half – specifically, 58 percent – of those who entered the system at age 17 had no prior juvenile criminal record.[12]

Unstable family structures, limited education and substance-abuse and mental-health issues all are major contributing issues for juveniles in the correctional system. It's been estimated that more than half the youths convicted as adults since 2003 had known drug-abuse problems. Nearly a quarter of the population previously had been treated for mental-health issues.Moreover, youth classified as persons of color are overrepresented among 17-year-olds in Michigan's adult-corrections system. About 53 percent of those currently under the jurisdiction of the Michigan Department of Correction for offenses committed as 17-year-olds are persons of color. By contrast, only 23 percent of Michigan's statewide 17-year-old cohort are persons of color.[13]

5. Michigan Council on Crime and Delinquency, "YOUTH BEHIND BARS: THE HIGH COST OF KIDS IN THE ADULT CRIMINAL JUSTICE SYSTEM," May 2014. http://www.miccd.org/wp-content/uploads/2014/06/MCCD-Youth-Behind-Bars-Final.pdf

6. Chammah, 2015.

7. 108th Congress, "PRISON RAPE ELIMINATION ACT OF 2003," Public Law 108–79," Sept. 4, 2003. https://www.gpo.gov/fdsys/pkg/PLAW-108publ79/pdf/PLAW-108publ79.pdf

8. Youth First Initiative, "Statement Submitted by Liz Ryan," National Prison Elimination Commission, July 15, 2015. http://docs.house.gov/meetings/GO/GO00/20150715/103747/HHRG-114-GO00-Wstate-RyanL-20150715.pdf

9. Jennifer Gonnerman, "Before the Law," The New Yorker, Oct. 6, 2014. http://www.newyorker.com/magazine/2014/10/06/before-the-law

10. Michael Schwirtz and Michael Winerip, "Kalief Browder, Held at Rikers Island for 3 Years without Trial, Commits Suicide," *The New York Times*, June 8, 2015. http://www.nytimes.com/2015/06/09/nyregion/kalief-browder-held-at-rikers-island-for-3-years-without-trial-commits-suicide.html

11. Christopher Mathias, "Kalief Browder's Family to Sue New York City For $20 Million," *Huffington Post*, Aug. 7, 2015. http://www.huffingtonpost.com/entry/kalief-browder-lawsuit_us_55c4a848e4b0f1cbf1e4955e

12. Michigan Council on Crime and Delinquency, 2014.

13. Ibid.

Enacting legislative reform to raise the age when an offender can be tried as an adult from 17 to 18 could curtail some of the law's long-term hidden effects, which hinder the economy and disrupt public safety. Raising the age would still allow courts to treat 17-year-olds as adults where warranted by the severity of a crime. However, the default approach would be to send 17-year-olds to family court, shifting the onus to the state to prove why the family system is insufficient.

CRIME, RECIDIVISM AND REHABILITATION

The crux of the "tough on crime" philosophy is that, if punishments for lawbreaking aren't sufficiently severe to serve as deterrents, individuals will be more likely to break the law. States that lowered the age for adult adjudication to 17 did so on the belief the change was needed because older adolescents were getting away with only a slap on the wrist. If teenagers could be deterred by harsher penalties, the logic went, lower crime rates would follow.

However, academic studies have shown that efforts to increase deterrence with more severe penalties often fail to translate into lower crime rates. The New York Juvenile Offender Law, enacted in 1978, limited access to juvenile court solely to offenders between the ages of 13 and 15 who are accused of specified serious crimes.[14] A 1988 study of the law by Simon Singer and David McDowall found the harsher punishments for 16- and 17-year-old offenders did not lower crime rates.[15] These results were corroborated by a 2010 Sentencing Project review of the available research, which the report said "generally indicates that increases in the certainty of punishment, as opposed to the severity of punishment, are more likely to produce deterrent benefits."[16]

Unlike the justice system described in Victor Hugo's "Les Misérables," the American criminal-justice system is geared toward a goal of rehabilitation, especially for youth. Working to address the underlying causes of criminal behavior is expected to go a long way to give the offender a better future outcome.

The juvenile court system steers delinquents into rehabilitation programs to address these root causes of criminality, as well as other factors that may have contributed to their destructive behavior. The system allows teenagers to continue their education, with a focus on future re-entry into the community. The adult penitentiary system, by contrast, presents relatively few opportunities for inmates to access these services, making rehabilitation much more difficult.

A 1990s MacArthur Foundation study compared the treatment and outcomes of 2,000 delinquent youth in New York and New Jersey.[17] Adolescents arrested in New York are automatically tried before an adult court, while in New Jersey, the same adolescent offenders are tried before a juvenile court. The results were astounding: youths tried before an adult court were 85 percent more likely later to be rearrested for violent crimes and 44 percent more likely to be rearrested for felony property crimes compared to those tried before a juvenile court. Furthermore, the youths tried as adults were 26 percent more likely to be re-incarcerated within the six-year follow-up period.[18]

These staggering results have been replicated in multiple states whose juvenile court systems treat 17-year-olds similarly.[19] Shifting the paradigm from harsh punishments as a means of deterrence to punishment with the goal of rehabilitation has been shown to help families and communities, while also producing substantial economic and fiscal benefits for state and local governments.

RAISING THE AGE

Evidence shows that adjudicating 17-year-olds in juvenile courts helps reduce recidivism. The benefits of this strategy flow not only to the communities made safer, but also to taxpayers, who otherwise would be forced to patch strapped state budgets. The evidence can be seen by looking to jurisdictions that already have enacted raise-the-age reforms and by the research conducted by states currently considering changes.

Connecticut and Rhode Island – Over the past decade, the neighboring states of Connecticut and Rhode Island have taken very different approaches to the treatment of juvenile offenders. In 2007, Connecticut passed a law that would gradually raise the age of adult accountability from 16 to 18. The changes have offered strong benefits to public safety and to taxpayers.[20]

A 2010 report on the changes from the Connecticut Juvenile

14. Nick Novak, "Mandatory Sentencing 17 year-olds in Adult Court - Is There a Better Alternative for Wisconsin's Youth and Taxpayers," MacIver Institute, Oct. 23, 2013. http://www.maciverinstitute.com/2013/10/mandatory-sentencing-17-year-olds-in-adult-court/

15. Ibid.

16. Valerie Wright, "Deterrence in Criminal Justice: Evaluating Certainty vs. Severity of Punishment," The Sentencing Project, November 2010. http://www.sentencingproject.org/doc/Deterrence Briefing .pdf

17. Jeffrey Fagan and Franklin E. Zimring, "The Changing Borders of Juvenile Justice: Transfer of Adolescents to the Adult Criminal Court," MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice, Sept. 1, 2000. https://www.macfound.org/media/files/ADJJTRANSFER.PDF

18. Ibid.

19. Novak, 2013.

20. Michele Deitch, Rebecca Breeden and Ross Weingarten, "Seventeen, Going on Eighteen: An Operational and Fiscal Analysis of a Proposal to Raise the Age of Juvenile Jurisdiction in Texas," *American Journal of Criminal Law*, Vol. 40, Issue 1, p. 1, September 2012. http://ajclonline.org/wp-content/uploads/2013/03/40-1-Deitch.pdf

Justice Alliance found that "savings can be demonstrated throughout the system."[21] Savings in court costs, reduced rates of detention, improved clinical evaluations and lower recidivism all contributed to lower costs for the state.[22]

Connecticut's success stands in stark contrast with Rhode Island, which in 2007 tried to move the age of juvenile jurisdiction in the opposite direction, trying more youth as adults. Rhode Island lowered the age of adult jurisdiction from 18 to 17. Legislators hoped the change would alleviate pressures on the state budget. In Rhode Island, housing an inmate in the adult state prison cost an average of $39,000 a year, less than half of the $98,000 it cost to put a teen through the Rhode Island Training School, where juveniles attend classes and receive rehabilitative services.[23]

But after only a few months, Rhode Island found that federal changes mandated by the Prison Rape Elimination Act increased the cost of detaining juvenile offenders in adult facilities dramatically. Instead of the $39,000 cost for adult offenders, it cost about $104,000 per year to house one 17-year-old in an adult facility.[24]

Lowering the age of jurisdiction forced the state to spend more on 17-year-old offenders than it had previously. The law was repealed quickly and Rhode Island once again set the age of adult criminal responsibility at 18.

The Texas debate – Texas is currently debating reforms to raise the age of adult jurisdiction. Like Michigan, the Lone Star State treats 17-year-olds as adults. As Texas lawmakers work toward change, a number of groups and commissions have offered projections of the economic benefits the state stands to gain from pursuing reform.

According to a 2012 cost-benefit analysis from the LBJ School of Public Affairs at the University of Texas, raising the minimum age of adult jurisdiction would have a net benefit of $88.9 million for every cohort of 17-year-olds moved into the juvenile system in Texas.[25]

A 2007 Texas blue ribbon task force report added:

> Each teen prevented from becoming a career criminal (including future adult offenders) could save between 1.7 and $2.3 million per youth. The ultimate goal is to stop the cycle of violence that feeds the juvenile- to adult-pipeline in which so many youth and families are trapped.[26]

Last year's Texas House Committee on Criminal Jurisprudence interim report succinctly summarized the potential economic impacts of raise-the-age efforts: "Youth become taxpayers rather than burdens on taxpayers."[27] There is no reason to suspect Michigan could not enjoy similar economic benefits from raising the age.

LOCAL COLLABORATIONS FOR JUSTICE

The search for balance and effectiveness in the juvenile justice should be familiar to Michigan lawmakers. It mirrors the search for a similar balance in the other government-run system upon which Michigan youth rely: the state's education system. For years, teachers and schools have worked with policymakers to modify curricula and teaching strategies to match students' cognitive awareness and development, and their particular needs.

School-choice initiatives,[28] improved vocational training[29] and teacher-tenure reforms[30] are examples of the kinds of efforts conservatives long have championed, all of which require the state to coordinate with local and county agencies to improve the education system.

Balancing state and local interests also was key to the reforms Michigan enacted last year to the state's civil asset-forfeiture laws. Though the topics are quite different, this legislative effort could serve as a template for state lawmakers thinking about how to approach juvenile-justice reform.[31]

Before last year's change, local law-enforcement departments in Michigan – like thousands of such agencies nationwide – were able to keep nearly all property confiscated in connection with criminal activities. This established practice enabled departments to boost their budgets by profiting

21. Connecticut Juvenile Justice Alliance, "Safe and Sound: A new approach to juvenile justice and its effect on public safety and spending in Connecticut," December 2010. http://www.ctjja.org/resources/pdf/CTJJA-SafeAndSound.pdf

22. Ibid.

23. Te-Ping Chen, "Minors in the Big House," The Nation, Jan. 31, 2008. http://www.thenation.com/article/minors-big-house/

24. Chammah, 2015.

25. Deitch, 2012.

26. Ibid.

27. House Committee on Criminal Jurisprudence, "Interim Report to the 84th Legislature," Texas House of Representatives, January 2015. http://www.house.state.tx.us/_media/pdf/committees/reports/83interim/House-Committee-on-Criminal-Jurisprudence-interim-report.pdf

28. Audrey Spaulding, "More Michigan Students Opt for School Choice," Michigan Capitol Confidential, Jan. 22, 2013. http://www.michigancapitolconfidential.com/17968

29. Bloomberg News, "Snyder: Vocational schools key to economic growth," Crain's Detroit Business, Aug. 6, 2014. http://www.crainsdetroit.com/article/20140806/NEWS01/140809911/snyder-vocational-schools-key-to-economic-growth

30. Press release, "Teacher tenure reform signed into law," Office of Gov. Rick Snyder, July 19, 2011. http://www.michigan.gov/snyder/0,1607,7-277-57577-259445--,00.html

31. Jonathan Oosting, "Snyder signs Michigan civil asset forfeiture laws requiring more transparency, evidence," MLive, Oct. 21, 2015. http://www.mlive.com/lansing-news/index.ssf/2015/10/snyder_signs_michigan_civil_as.html

from the sale of seized property, even if the owner was never actually convicted or even charged with a crime. While civil asset-forfeiture law had usually been used to address drug crimes,[32] there are very real examples of abuse by local departments.[33] There was little transparency or oversight to prevent abuse.

While the seven-bill package passed in Michigan did not end civil asset forfeiture, the amended law increased the burden of proof required for police departments to keep confiscated property. Among other changes, the law now requires "clear and convincing" evidence that assets are related to a crime. The law also requires more transparency from local law-enforcement departments, who are asked to file detailed reports with the state about forfeiture cases.[34]

Both education and civil asset-forfeiture reforms serve as examples of how conservative state legislators in Michigan have taken the lead to improve public policy. While the changes required local and county agencies to alter the status quo, they also serve as a template for real policy solutions that benefit the state, as well as local communities.

CONCLUSION

Treating 17-year-olds as adults would require Michigan policymakers to tell their constituents the truth about Michigan's juvenile arrest rates. Though the reported rates are well below the national average, the state's unique definition of a juvenile may give Michiganders a false understanding of the state of public safety among teenagers.

As the Michigan Committee on Juvenile Justice report explained, if Michigan treated 17-year-olds like those states that require they be processed initially in the juvenile-justice system, "the number of juvenile arrests reported statewide in 2013 would have increased by 65 percent."[35]

The report continues:

> The overall juvenile arrest rate would have increased from 14.4 to 20.6 arrests for every 1,000 juveniles. On the other hand, thousands of 17-year-olds would have been diverted from the adult corrections system and may have had access to developmentally appropriate services and programming from which they are currently excluded.[36]

In Michigan, 17-year-old offenders currently are stuck in the shadows of the state's judicial system. They do not fit the definition of adults, but also are not currently counted as juveniles. Policymakers should change this immediately. There is no silver bullet to ensure public safety but increasing the age for trying individuals in an adult court holds the promise of rehabilitation for juvenile offenders. These benefits will translate into lower levels of public spending, less crime and more restored families.

"Raise the age" is an opportunity for a balanced solution that saves taxpayers money and improves public safety. Pursuing this reform can bring to Michigan the decreased recidivism, lower crime rates and slimmer state budgets that dozens of other states already enjoy.

ABOUT THE AUTHOR

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Immediately before joining R Street, Nathan served as the legislative and coalitions associate for GenOpp, a D.C.-based millennial advocacy organization. In this role, Nathan worked regularly with congressional leaders and staff on issues of particular importance to young Americans. In this capacity, he also managed GenOpp's "Free the Brews" project, a nationwide campaign highlighting the tax and regulatory barriers facing small microbreweries.

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32. Jonathan Oosting, "Forfeiture package sails through Michigan Legislature, requiring police to disclose profits," MLive, Oct. 7. 2015. http://www.mlive.com/lansing-news/index.ssf/2015/10/forfeiture_package_sails_throu.html

33. Jarrett Skorup and Dan Korobkin, "Civil Forfeiture in Michigan: A Review and Recommendations for Reforms," Mackinac Center for Public Policy and the American Civil Liberties Union of Michigan, May 4, 2015. http://www.mackinac.org/archives/2015/s2015-05.pdf

34. Oosting, Oct. 21, 2015.

35. Public Policy Associates Inc., "Michigan's Statewide Juvenile Arrest Analysis Report," Michigan Department of Health and Human Services, Juvenile Justice Programs and the Michigan Committee on Juvenile Justice, June 2015. http://michigan-committeeonjuvenilejustice.com/2013 JCAR Report_Final.pdf

36. Ibid.