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R STREET SHORTS NO. 51
November 2017

EXAMINING MICHIGAN'S 'RAISE THE AGE' EFFORTS

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INTRODUCTION

Financial pressure caused by the “Great Recession” acted as an impetus for governors and state legislatures to re-examine their budget priorities. For many states, this careful reflection resulted in a growing awareness of the significant amount of taxpayer dollars going to the criminal justice system.¹ In 2016, the U.S. Education Department estimated that total state expenditures for corrections had nearly quadrupled in the course of three decades, from \$17 billion to \$71 billion.² During the same time, the number of incarcerated individuals also grew exponentially, as the total number in both state and federal prison grew by nearly 1 million people.³

Despite the significant amount of public dollars expended on the criminal justice system, its success remains questionable. Recidivism rates among ex-offenders remain far too high, as nationwide, nearly two-thirds of prisoners are arrested in the first three years following their release.⁴ After five years, that figure jumps to nearly 75 percent.⁵

Accordingly, taxpayers, policymakers and the public have begun to recognize that, far too often, incarceration begets incarceration rather than rehabilitation. While this is alarm-

ing for all populations impacted by the criminal justice system, it is particularly concerning for the juveniles these policies affect.

Still in their formative years, juveniles have the best opportunity to avoid further interaction with the criminal justice system. Indeed, the Supreme Court recently acknowledged as much when they ruled that a life sentence for a juvenile offender constitutes cruel and unusual punishment, citing that only in rare cases was it likely that a juvenile offender was “irreparably corrupt.”⁶

For this reason and many more, states seeking common ground on criminal justice reform have chosen to begin by focusing on juvenile populations. Until recently, some states charged 16-year-olds as adults but one common reform proposal is to raise the age of criminal jurisdiction to 18. Most other states with a similar approach to juveniles set 17 as the starting age of criminal jurisdiction. However, 17-year-olds are children and should be treated as such by the criminal justice system. Indeed, failing to do so is a costly mistake.

Since 2009, eight states have passed legislation that increases the age of adult prosecution to 18.⁷ From conservative states like Mississippi and South Carolina, to liberal states like Massachusetts, such momentum has been a bipartisan effort. Most recently, New York and North Carolina—the last two states to automatically prosecute 16-year-olds as adults—successfully passed “raise the age” legislation. As of 2017, Wisconsin, Texas, Georgia, Missouri and Michigan are the only remaining states that prosecute 17-year-olds as adults.⁸

As these five states contemplate whether and how to proceed with legislative efforts to raise the age, it is natural that financial implications will play a central role in each state’s policy debate. States should enter into this dialogue not only considering the cost of changing the policy but also the broad implications of failing to do so. Thus far, there has been an appropriate focus on the cost of the former, but the latter has not yet been adequately considered.

Accordingly, this paper presents a case study of one state’s ongoing debate to “raise the age” and the associated cost considerations. It examines the impact current practices have on parental rights, public safety goals and the employability of youth. Further, it urges public officials to consider the costs of inaction as they weigh policy options going forward.

A MICHIGAN CASE STUDY

In 2016, Michigan’s legislature debated the merits of a legislative package that would “raise the age” of majority for criminal prosecution in Michigan from 17 to 18.⁹ That legislative package passed the Michigan House of Representatives with an overwhelming, bipartisan majority.¹⁰ However, once

the bills reached the Michigan Senate, they stalled and ultimately died at the close of the legislative session.

As the bills progressed, opponents became increasingly vocal regarding their concerns about the potential costs of treating 17-year-olds as juveniles. Even more so, concerns surfaced about who would bear the burden of those costs: the state or local units of government. As a result, the legislature commissioned a study intended to identify the costs associated with this effort.¹¹ The results of this research are expected in early 2018.

In the meantime, the Michigan House of Representatives has reintroduced a package of bills to raise the age. Some lawmakers have expressed a reticence to proceed before the cost study is complete. However, to commit the fate of the legislation to the outcomes of this study would be a mistake.

THE COST OF INACTION

Criminal justice reform has forced state governments to acknowledge that far too many criminal justice systems lack the kind of available, reliable and comparable data necessary to accurately determine the costs of enacting policy changes like “raise the age” laws. This is because to do so without common data, shared definitions or consistent practices for assessment presents a difficult task.

Even so, researchers in Michigan have been charged with identifying the costs that local and state governments may expect to incur as a result of the proposed policy change. While the research team can use the best available data and methodology to develop a reasonable projection, the findings will remain open to skepticism about their accuracy. It would be easy for this skepticism to result in a series of never-ending, government-funded studies. However, an ongoing debate of this nature would be fruitless, as it would be predicated on the idea that the only costs associated with the current policy are direct and financial in nature. Increasingly, however, we know that this is not the case.

While we recognize and support the need to identify and address the cost of transitioning the system to reflect a “raise the age” policy in Michigan, far too little attention has been paid to the cost of maintaining the status quo. As with many policy debates, it is commonly assumed that doing nothing will incur no additional costs. However, Michigan families, taxpayers and employers continue to pay a high price for a system that does not recognize the danger and cost of inaction. Moreover, these costs continue unabated while the legislature delays taking action.

PARENTAL RIGHTS AND RESPONSIBILITIES

Throughout the evolution of juvenile justice policy, there

has been a debate over the role for parental involvement as a deterrent to juvenile delinquency.¹² As lawmakers focused more on prevention and rehabilitation for juvenile crimes with the passage of the federal Juvenile Justice Prevention Act, many still felt that there needed to be a deterrent or punishment to discourage bad behavior. One method to achieve this was the implementation of policies that hold parents responsible for the behavior of their children.¹³ These aims were reflected in efforts like Michigan’s passage of a truancy law in 1976, which made it possible to hold parents accountable if their children failed to attend school.¹⁴ Proponents of such policies believed that there was a real cost to society that resulted from disengaged parenting and thus sought to remedy the situation.¹⁵

The need for parental involvement and the concept that juveniles are a vulnerable population in need of special consideration have long been prevalent views in our society. For this reason, our laws have long supported the rights of parents to make decisions on behalf of their children. This is applicable for everything from school attendance to relatively trivial matters, such as whether or not a youth can purchase a lottery ticket. In every manner, apart from the age of majority for criminal prosecution, Michigan treats individuals under the age of 18 as children.

However, when it comes to the treatment of 17-year-olds under the state’s criminal law, the protections that they and their families enjoy are markedly different from those of minors aged 16 and below. Indeed, the latter are entitled to parental involvement in their legal or criminal matters and police must notify parents when their child has been arrested or detained. Further, parents are permitted and may be required to participate in the child’s sentencing and, in some cases, may be responsible financially for the child’s representation, treatment or restitution. In limited instances, parents may also face charges as a result of their child’s behavior. These legal provisions provide parents the greatest potential opportunity to impact and safeguard the future and welfare of their child. Once a child reaches 17, however, none of these rights or responsibilities is guaranteed to the individual or their parents.

Meanwhile, society is denied the surety that parents are provided with a legal incentive to be invested in the consequences of their 17-year-old child’s behavior. Failing to guarantee parental participation in this process misses a valuable opportunity for teaching, guidance and accountability, which benefits no one.

INCARCERATION IS A BAD INVESTMENT

The financial cost of corrections is well documented, thoroughly discussed and part of the ongoing debate surrounding criminal justice reform in the state of Michigan.¹⁶ However,

the outcome of these investments and the costs of failure have received far less attention and are worthy of the same level of scrutiny.

If one objectively examines state data regarding incarceration and recidivism rates in Michigan, it is hard to make a credible case that tough-on-crime policies have deterred further criminal behavior. In fact, a growing body of national research indicates that incarceration—particularly of teenagers—is counterproductive and increases the likelihood an individual will reoffend.¹⁷

Throughout the late 1900s and early 2000s, Michigan policymakers made numerous changes to the state’s sentencing guidelines that often resulted in harsher sentences for offenders.¹⁸ Over the next two decades, the prison population exploded to more than 51,000 at its peak in 2006, as did the costs associated with its maintenance.¹⁹ More recently, and with deliberate effort by state officials, this number has stabilized and hovers around 40,000 inmates.²⁰ Nevertheless, the data simply does not support the notion that strict sentencing guidelines and other tough-on-crime policies have had the desired effect.

In addition to a concerning growth in both the prison population and state expenditures on corrections—which total more than \$2 billion in Michigan annually²¹—recidivism rates among ex-offenders remain too high. Currently, nearly one in every three prisoners who are released will reoffend and re-enter the prison system within a three-year period.²² This does not include incidents of recidivism that result in jail time, for which data are not readily available. While Michigan does not separately record recidivism rates for 17-year-olds, national research has found that youth exiting the adult system are 34 percent more likely to reoffend, reoffend sooner and escalate to more violent offenses than their counterparts exiting the juvenile justice system.²³

Simply put, taxpayers are currently placing a lot of financial investment into a public safety system that, in the long run, may actually be perpetuating criminal behavior among young adults. This is concerning for many reasons, not the least of which is that the vast majority of offenders will eventually be paroled back into the community. The goal of the criminal justice system is to ensure that offenders are rehabilitated before release. For 17-year-olds, there can be no doubt that effective rehabilitation requires access to physical and mental health care and substance abuse treatment, among other things. While these services may be available on a limited basis within the adult system, the juvenile system, particularly with its growing commitment to community-based care, maintains far more robust options for treatment that yield a far better return on investment for taxpayer dollars.²⁴

INVESTING IN MICHIGAN’S TALENT POOL

Like many states across the nation, Michigan is currently facing a talent shortage. Employers across the state often struggle to find employees to fill open jobs; a problem that is projected to worsen in coming years.²⁵ For this reason, perhaps the most underestimated impact of incarcerating young adults is the long-lasting effect it will have on the state’s labor market and the ability of employers to hire the workers they need to thrive.

This problem is only exacerbated by treating a 17-year-old as an adult. Such policies have a lasting and negative impact on the likelihood that a child will complete their education, gain access to training or be able to find gainful employment upon completion of their sentence.²⁶ This is because, among other reasons, adult corrections facilities are not generally equipped with the resources needed to educate high school-aged students. The most recent data available from the Department of Justice indicates that nearly 40 percent of adult jails do not provide any education services and only 7 percent provide services to help train young people for a job.²⁷ Further, such data does not speak to the availability of coursework or the quality of the respective programs.

Even after release, research has indicated that youth who have been incarcerated are far less likely to complete their education.²⁸ For example, one study of more than 35,000 individuals in Chicago found that youth that went to prison were 39 percent less likely to finish high school than other kids from their same neighborhood. Young offenders who were charged but not incarcerated were still disadvantaged, at 26 percent less likely to complete high school.²⁹

Accordingly, Michigan’s family court system, which is responsible for the adjudication of minors, is far better equipped to hold youth accountable, while also supporting various treatment options and completion of at least a high school education. This can be achieved through community-based programming that allows young offenders to continue to attend school or to live as part of a residential treatment facility. Most juvenile facilities in Michigan offer educational opportunities and many are part of a traditional K-12 school system. Additionally, youth that are able to stay connected in some capacity to a traditional school setting have a greater likelihood of access to training programs, such as career technical education.

Employers have a vested interest in ensuring Michigan’s youth contribute to an educated and employable workforce. 17-year-olds who are convicted as adults will be marked with an adult criminal record and will be regularly required to report this to prospective employers. The barrier this creates is significant and often insurmountable, and indeed an inability to obtain gainful employment often merely exposes rehabilitated offenders to further criminal behavior. Such an

outcome is harmful not only to the youthful offender but to businesses and the community-at large.

CONCLUSION

It is time to acknowledge that there is a real and growing cost of continued business-as-usual approaches to juvenile justice. While it may not be directly felt by government entities, it burdens Michigan families, businesses, communities and taxpayers.

The government's role in the criminal justice system should be limited to ensuring the public's safety through effective, accountable means. Michigan's current treatment of 17-year-olds is costly and ineffective. It infringes on the rights of parents, exacerbates the state's labor shortage and has lasting, negative impacts on our communities. The Michigan Legislature has an opportunity to develop a more effective, accountable system for handling these young offenders and Michiganders are counting on them to do just that.

ABOUT THE AUTHORS

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ENDNOTES

1. Sarah Breitenbach, "Prisons, Policing at Forefront of State Criminal Justice Action," The Pew Charitable Trusts, June 27, 2016. <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2016/06/27/prisons-policing-at-forefront-of-state-criminal-justice-action>.
2. U.S. Department of Education, "Report: Increases in Spending on Corrections Far Outpace Education," Press Release, July 7, 2016. <https://www.ed.gov/news/press-releases/report-increases-spending-corrections-far-outpace-education>.
3. "Trends in U.S. Corrections," The Sentencing Project, June 2017, 1. <http://sentencingproject.org/wp-content/uploads/2016/01/Trends-in-US-Corrections.pdf>.
4. National Institute of Justice, "Recidivism," Office of Justice Programs, June 17, 2014. <https://www.nij.gov/topics/corrections/recidivism/Pages/welcome.aspx>.
5. Ibid.
6. Josh Rovner, "Juvenile Life Without Parole: An Overview," The Sentencing Project, Oct. 13, 2017, 1. <http://www.sentencingproject.org/publications/juvenile-life-without-parole>.
7. *Raise the age: Shifting to a Safer and More Effective Juvenile Justice System*, Justice Policy Institute, March 2017, p. 16. <http://www.justicepolicy.org/uploads/justicepolicy/documents/raisetheage.fullreport.pdf>.
8. Teresa Wiltz, "Children Still Funneled Through Adult Prisons, but States Are Moving Against It," USA Today, June 17, 2017. <https://www.usatoday.com/story/news/2017/06/17/how-raise-age-laws-might-reduce-recidivism/400065001>.
9. The age of majority is the age by which a youth is presumptively treated as an adult in the criminal justice system.
10. See, e.g., David Eggert, "Bills to Raise Adult Criminal Age to 18 Advance in Michigan," *Detroit Free Press*, April 30, 2016. <http://www.freep.com/story/news/local/michigan/2016/04/30/michigan-adult-criminal-age/83761774>.
11. See, e.g., John Holland, "Raise the Age Wave Stalled in Michigan, but Gathering Strength in Texas, North Carolina," Juvenile Justice Information Exchange, April 20, 2017. <http://jjie.org/2017/04/20/raise-the-age-wave-stalled-in-michigan-but-gathering-strength-in-texas-nc>.
12. See, e.g., J. Herbie DiFonzo, "Parental responsibility for juvenile crime," *Oregon Law Review* 80:1 (Spring 2001). http://scholarlycommons.law.hofstra.edu/faculty_scholarship/214.
13. Ibid.
14. State of Michigan, *The Revised School Code* (Excerpt) Act 451 of 1976, Michigan Legislature, Jan. 13, 1977, §380.1588. [http://www.legislature.mi.gov/\(S\(pngux5yatppterpe2d3ko2xfz\)\)/mileg.aspx?page=GetObject&objectname=mc-cl-380-1588](http://www.legislature.mi.gov/(S(pngux5yatppterpe2d3ko2xfz))/mileg.aspx?page=GetObject&objectname=mc-cl-380-1588).
15. See, e.g., Jason Emilius Demetris, "Parental responsibility statutes – and the programs that must accompany them," *Stetson Law Review* XXVII (1997). <http://www.stetson.edu/law/lawreview/media/parental-responsibility-statutes-and-the-programs-that-must-accompany-them-27-2.pdf>.
16. See, e.g., Jeff Guilfoyle, "Corrections Spending in Context: Historical and Comparative Trends," Citizens Research Council of Michigan, March 17, 2011. <http://crcmich.org/PUBLICAT/2010s/2011/corrections/Guilfoyle.pdf>; Lori Higgins, "Michigan spending on prisons far outpaces schools," *Detroit Free Press*, Jul. 7, 2016. <http://www.freep.com/story/news/education/2016/07/07/michigan-spending-schools-corrections/86795772>; Justice Center, "Michigan," The Council of State Governments, 2017 <https://csgjusticecenter.org/jr/mi/>; and John Bebow, "Cut prison spending, CFM tells Senate Panel," Center for Michigan, Feb. 14, 2012. <http://www.bridgemi.com/public-sector/cut-prison-spending-cfm-tells-senate-panel>.
17. See, e.g., Teresa Wiltz, "'Raise the Age' Laws Could Reduce Recidivism for Young Offenders," *Governing the States and Localities*, May 31, 2017. <http://www.governing.com/topics/public-justice-safety/stl-recidivism-laws-raise-the-age.html>.
18. See, e.g., Sheila Robertson Deming, "Michigan's Sentencing Guidelines," *Michigan Bar Journal* 79:6 (June 2000). <https://www.michbar.org/journal/article?articleID=92&volumeID=B&viewType=archive>.
19. Ted Roelofs, "43,000 Michigan prisoners: Who should we cut loose first?" *Bridge Magazine*, August 20, 2015. http://www.mlive.com/politics/index.ssf/2015/08/43000_michigan_prisoners_who_s.html.

20. Jack Lessenberry, "Michigan's Prison System Must Undergo Comprehensive Reform," *The Blade*, April 22, 2016. <http://www.toledoblade.com/JackLessenberry/2016/04/22/Michigan-s-prison-system-must-undergo-comprehensive-reform.html>.
21. Ryan Bergen "Corrections," Michigan Senate Fiscal Agency, Oct. 24, 2017. http://www.senate.michigan.gov/sfa/Departments/DPcor_web.html.
22. State of Michigan, "Michigan Recidivism Rate Falls to 29.8 Percent, Among Lowest in the Nation," Press Release, March 29, 2017. <http://www.michigan.gov/som/0,4669,7-192-47796-407975--,00.html>.
23. Centers for Disease Control and Prevention, *Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System: A Report on Recommendations of the Task Force on Community Preventive Services*, U.S. Dept. of Health and Human Services, Vol. 56, No. RR-9, Nov. 30, 2007, pp. 8-9. <https://www.cdc.gov/mmwr/pdf/rr/rr5609.pdf>.
24. See, e.g., *Raise the age: Shifting to a Safer and More Effective Juvenile Justice System*, Justice Policy Institute, March 2017. <http://www.justicepolicy.org/uploads/justicepolicy/documents/raisetheage.fullreport.pdf>.
25. See, e.g., Business Leaders for Michigan, "Michigan Can Meet Demand for Most Jobs Through 2018, but Long-Term Talent Supply Threatened by Demographic and Education Trends," Press Release, April 27, 2016. <https://businessleadersformichigan.com/blm-michigan-can-meet-demand-for-most-jobs-through-2018-but-long-term-talent-supply-threatened-by-demographic-and-education-trends>.
26. See, e.g., The National Reentry Resource Center, "Reducing Recidivism and Improving Other Outcomes for Young Adults in the Juvenile and Adult Criminal Justice Systems," The Council of State Governments Justice Center, November 2015. <https://csjjusticecenter.org/wp-content/uploads/2015/11/Transitional-Age-Brief.pdf>.
27. Caroline Wolf Harlow, *Education and Correctional Populations*, Bureau of Justice Statistics, Jan. 1, 2003, p. 4. <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=814>.
28. Anna Aizer and Joseph J. Doyle Jr., "Juvenile Incarceration, Human Capital and Future Crime: Evidence from Randomly-Assigned Judges," Aug. 31, 2014, 19-21. http://www.mit.edu/~jdoyle/aizer_doyle_juvenile_incarceration_08312014.pdf.
29. *Ibid.*, 21.