

2019

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Recommended Citation

Brianna Hill, *Legislative Update: Massachusetts Raises Minimum Age of Criminal Responsibility*, 39 CHILD. LEGAL RTS. J. 168 (2020).

Available at: <https://lawcommons.luc.edu/clrj/vol39/iss2/6>

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Legislative Update:
Massachusetts Raises Minimum Age of Criminal Responsibility

By: Brianna Hill

I. INTRODUCTION

In April 2018, Massachusetts Governor Charlie Baker, signed into law an extensive criminal justice overhaul bill. The bill passed with almost unanimous support in the House and the Senate. Supporters for the bill included the Massachusetts Sheriff's Association, the Council of State Governments Justice Center, Greater Boston Legal Services, and Citizens for Juvenile Justice. The reforms will include bail reform, increased use of diversion programs, increased availability of expungement of juvenile records, restrictions on the use of solitary confinement, elimination of mandatory minimums for certain low-level drug offenses, and tougher penalties for fentanyl and cafentanil trafficking. The bill passed 148-to-5 in favor in the House of Representatives and 37-to-0 in favor in the Senate.

Among the various provisions, the bill raised the minimum age of juvenile court jurisdiction from seven to 12. This means that if a child is under 12, the state cannot prosecute that child for committing an act that otherwise would be considered a crime. Raising the minimum age of criminal responsibility in Massachusetts is intended to prevent involvement in the criminal justice system. However, Massachusetts will now need to legislate alternative supports for families with children who commit a crime so that both children and families can receive the help they need.

II. WHY HAVE A MINIMUM AGE OF CRIMINAL RESPONSIBILITY?

Lawmakers in Massachusetts included the minimum age provision in the reform bill because of their concern regarding involvement in the criminal justice system. They believe that if a child enters the system at a young age, they will be less likely to break free of the system as they approach adulthood. "There's an indisputable link between the age in which a child enters our criminal justice system and the likelihood of a child remaining in the system throughout their life," said House Judiciary Committee Chairwoman Claire Cronin, "So we've taken so many steps that will slow down that trajectory, and I think we'll see on that end very, very big gains." In a 2010 study, the Campbell Collaboration found that juvenile system processing does not appear to have a crime control effect and, in fact, appears to increase delinquency. Further, the same study found that juvenile system processing had a much more negative effect than diversion programs. Studies have also shown that introducing a child to the justice system at a young age can cause substantial harm and can damage a child's development.

At this point, 20 states and the American Samoa have a minimum age of criminal responsibility. The ages range from six to 13. Many of the states include provisions for murder and sexual crimes that may be tried in adult court or may be prosecuted no matter how old the child is. Moreover, in some states, parents can be held civilly liable for a crime their child commits while under the minimum age. By making the minimum age of criminal

responsibility 12 in Massachusetts, lawmakers hope that they will prevent children from ever getting involved in the criminal justice system, which will lead to better outcomes for children and families.

III. WHY RAISE THE AGE?

Previously, the minimum age of criminal responsibility in Massachusetts was seven. This meant anyone over the age of seven could be criminally prosecuted in juvenile court. Raising the minimum age will hopefully keep more kids out of the juvenile justice system. But how many seven to 11 year olds commit crimes and are involved in the juvenile justice system? According to the Office of Juvenile Justice and Delinquency Prevention, eight percent of all delinquency cases handled in juvenile court throughout the country in 2015 were under the age of 13. While this is a very small percentage of children who are brought into juvenile court, raising the minimum age will still have a significant impact on those children who might otherwise be brought into the system. Children who are seven through 11 years old will no longer have to be prosecuted in juvenile courts and will have the opportunity to correct their behavior through other means.

Additionally, children under the age of 12 may have difficulty comprehending the court process. This brings into question a person's competency to stand trial. A 2003 study found that children ages 11 to 13 "demonstrated significantly poorer understanding of trial matters, as well as poorer reasoning and recognition of the relevance of information for a legal defense, than did 14 and 15 year olds." Because of their diminished capacity, children under the age of 12 cannot participate sufficiently in their defense as constitutionally required. Therefore, it is logical to exclude young children from prosecution in juvenile courts in order to preserve their constitutional protections.

Finally, not prosecuting children under 12 reduces the amount of judicial and law enforcement resources. While the number of children being excluded under this law from prosecution may be small, it will still save the juvenile courts time and money from not having to process these children. Law enforcement will also save resources because they will not have to arrest and supervise any of these children.

IV. WHAT WILL HAPPEN NOW THAT YOUNG CHILDREN CANNOT BE PROSECUTED?

If children under the age of 12 commit acts that could be considered crimes, what will happen to them now that they cannot be arrested and prosecuted in the juvenile court system in Massachusetts? This seems to be a question that remains unanswered in the Massachusetts legislation, but one that needs attention. The first potential alternative is that the child would become involved in the child welfare system. If a child commits an act that could be considered a crime and a person calls the police, the police would not be able to arrest the child and so they might call the local child abuse and neglect hotline for assistance. This could result in the child being taken away from their family and put into alternative placements. While in some circumstances this may be warranted, in others these families might not be families who would otherwise be involved with the child welfare system.

The other alternative would be for the legislature to create a process that allows children under the age of 12 who commit acts that would otherwise be considered crimes to receive social work services. If a child is acting in a way that could be considered criminal, it is clear that the child, and potentially the family, need assistance. However, involvement in the child welfare system may not be warranted because there might not be actual abuse or neglect occurring in the home. Massachusetts needs to create a process through which a crisis can be assessed and a child and family can receive appropriate services to correct the child's behavior. These services can include therapy, social work services, domestic violence services, and restorative justice practices so that the child does not have to be removed from the home if it is not necessary. Human services will more adequately address the needs of the child and family than the court process, but there needs to be a way of providing those services without automatically involving the child welfare system. Young children still need to be held accountable for their actions, but non-juvenile justice, community-based interventions are more effective and timely in delivering consequences and solutions for young children.

The Massachusetts legislature must not only create a process through which young children can be held accountable for their actions but, outside of the juvenile justice system, they must provide funds for the process as well. Community-based organizations are overworked and under-funded in the most high needs areas and if the Massachusetts legislature truly wants to keep children out of the justice system, then they need to provide these organizations with the funds to provide assistance. Part of the funds could come from the money that is saved through not processing children under 12 in the juvenile justice system.

V. CONCLUSION

Massachusetts took a significant step in the right direction by eliminating the possibility of prosecuting children under the age of 12. However, the next step is to ensure that young children who do commit acts that would otherwise be considered crimes are held accountable in age-appropriate ways. This includes restorative justice practices, community-based supports, and any services the family as a whole might need to provide a safe environment for the child. With these measures, children will be able to grow up to be productive citizens without involvement in the juvenile justice system.

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