

Mackinac Center for Public Policy

Issues and Ideas Forum

“Raising the Age: Should 17-Year-Olds be Eligible for Juvenile Justice in Michigan?”

Speakers:

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Juvenile Justice Policy Associate,
Michigan Council on Crime and Delinquency**

**Nila Bala,
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Introduction and Moderator:

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KAHRYN RILEY: Well, good afternoon, everyone. Thank you so much for coming out to join us for this Issues and Ideas Forum on juvenile justice and raise the age in Michigan. I'd like to start by thanking Auto Owner's Insurance, our sponsor, for making this event possible.

My name is Kahryn Riley. I work for the Mackinac Center, where I manage the Criminal Justice Initiative. And it's my pleasure to moderate this conversation today. So, welcome. One housekeeping item before we begin. The way that we do Q&A for events like this – because they are webcast, we want to ensure that everyone who's watching via the web has a chance to hear questions during the Q&A. So what we ask that you do is fill out these question cards if you have a question. And then once we wrap up the discussion portion we'll move into the Q&A. You can write your question down. And then just hold your card in your hand. And my colleagues will come around, collect these cards, and bring them to me. And I will actually pose the questions to our panelists and read them into the mic, so that the people who are watching online can hear the question.

So with that, let me introduce our panelists. Jason Smith is the juvenile justice policy associate at the Michigan Council on Crime and Delinquency, where he leads MCCD's campaign to raise the age of adult criminal liability in Michigan to 18. He also manages other projects that aim to reduce the use of out-of-home placement for justice-involved youth by expanding effective community juvenile justice programs. Nila Bala is the senior fellow in criminal justice policy with the R Street Institute, where she develops policy to advance reforms in juvenile justice and economic justice, including reducing barriers to ex-offenders – that they face in returning to society. Please join me in welcoming our panelists. (Applause.)

So, Nila, I'd like to start with you. Can you talk about, you know, who the R Street Institute is, and why you guys got involved in criminal justice?

NILA BALA: Absolutely. So the R Street Institute is a policy organization in D.C. Identifies sort right of center, free market institution. And we do have a robust criminal justice policy program. And juvenile justice has always been an interest for us in terms of the reforms that we wish to enact. We found that whether people are, you know, identifying as liberals, conservatives, or libertarians, often good policy ends up being good policy. And so we're really excited to be here and to be talking about raise the age.

MS. RILEY: And you have shared with me, as I've kind of come on board in this capacity and particularly on the juvenile justice issue, a lot of information about what other states have done to actually bring their adult liability in line across the spectrum of legal privileges and responsibilities. So can you talk about where Michigan stands in the national spectrum of juvenile justice and raise the age in particular?

MS. BALA: Absolutely. So just to back up for a second, just so everyone's on the same age, when we're talking about raising the age of criminal responsibility, what that means is that Michigan is one of five states that still automatically includes 17-year-olds in the adult system. So that's what raising the age of criminal responsibility means. So 45 states, as well as the

District of Columbia, at various points in the last couple decades have decided 17-year-olds really belong in the adult system – or, sorry – in the juvenile system.

And we're not talking about judicial discretion in those cases where a 16- or 17-year-old might most appropriately be served by the adult system – maybe a particularly serious offense or a particularly criminally responsible or mature individual. We're talking about the automatic inclusion of all 17-year-olds in the adult system, whether it's shoplifting, smoking a joint of marijuana, jumping a turnstile. No matter what. In this state, they're in the adult system. And there's only five states left. There's Michigan, Missouri, Wisconsin, Georgia, and Texas who still automatically prosecute 17-year-olds as adults.

MS. RILEY: Yeah, that's great. So can you talk about some of the – just the larger differences. And I know Jason is kind of our local subject matter expert, but why it's so important that 17-year-olds have access to juvenile justice?

MS. BALA: It's important for a lot of reasons. So there's sort of two pieces to it. And one is thinking about whether 17-year-olds are more like juveniles or more like adults. And I wanted to, since I was a human biology major in college, kind of talk about the science for a second, because at this point in history more than ever we have the neuroscience and we have the research to kind of tell us about what adolescent brains look like. And so if you take your hand – unless you're eating, and that's OK – and if you make a fist and you put your thumb on the inside, that's actually a pretty decent model of what the human brain looks like.

So your wrist and this area going down would be your spinal column and your brain stem. And then this would be the actual brain. And so there's two parts of the brain that we really want to think about when we're looking at adolescent decision making. The first is the limbic system, which if you opened up your hand would be kind of where your thumb is on the inside. So it's a pretty deep part of your brain. And it's working fine in 17-year-olds. It's working pretty well in adolescents. It's the emotional center of the brain. So it's what controls the fear response and what creates the flight or fight response. The emotions that make us and motivate us to do things.

Seventeen-year-olds, they have that. It's the accelerator of the brain. But then we also have the brakes of the brain. And that's the prefrontal cortex. So on your wrist, that would be sort of the front – the area right behind your forehead. And that's not so well-developed in 17-year-olds. And it looks a lot more like their teenage counterparts – their 13-, 15-, 16-year-old counterparts – than it does like a brain of someone in their early to mid-20s. And that's where we see that development actually happen.

And the reason why that's so important is because it's the prefrontal cortex that actually helps people make rational decisions, control their impulses, and calm down and make the right choices. And so what we see is that kids tend to grow out of those kind of foolish and crazy things that you and I probably did when we were young. I mean, if you think back to when you were 17, you probably did something that was foolish or maybe even dangerous. And you're probably really glad that you got a second chance and that you aren't forever kind of known by that one thing you did.

And that's because people have the capacity to change. What we find with youth of that age, that 17-year-old, 16-year-old, 18-year-old age, that group, they are so resilient, they're so pliable. And with the right interventions, with the right programming, they end up doing really well. And the adult system is just really not – it's not prepared, it's not ready, it's not appropriate for kids of that age. It doesn't have the programming that they need to actually get them back in the world as successful adults.

MS. RILEY: So, just hearing this conversation going, some people might be a little surprised to hear the R Street Institute and the Mackinac Center actually advocating these reforms. Can you talk about why this should matter to conservatives?

MS. BALA: Absolutely. So if you're a true conservative and you're building your philosophy on, perhaps, let's say three pillars of compassion, public safety, and controlled government spending, then the right answer would be to raise the age of criminal responsibility. If we're talking about it from a compassion perspective, youth who are in the juvenile justice system just do significantly better and they end up with far less of a risk of physical, sexual, and mental abuse. Youth who are in adult facilities are actually 36 times more likely to commit suicide. And the reason for that is because of the assaults and the abuse that often happen when you put young people in that system.

I just wanted to share a story with you. Pretty recent, from 2015, just here in Michigan, there was a class-action lawsuit brought on behalf of 200 young people who were in the adult system. And I wanted to share a story of John Doe #11. He's one of the youth that was in that group. And he describes how he was at one of these facilities, he was raped by a gentleman who was significantly larger and older than him – 20 years older, 50 pounds heavier. I mean, he was pretty much my size. He was 5'6", 130 pounds.

So this is – this is a boy we're talking about, 17 years old. And it wasn't a violent offense that he was in for. He's on the ground in the shower crying. Nobody comes to respond to his trauma. And minutes and minutes pass. And he's forever going to be traumatized and changed by that. The adult system isn't appropriate for these kids. They are children. They're kids. And so that's one of the things that certainly motivates us, the compassion.

But if we're looking at public safety or controlled government spending, I mean, the arguments are there for that as well. With public safety, youth who are in the juvenile justice system, these 17-year-olds – and, again, we have the benefit of the 45 states that have already done this – they're 37 percent less likely to recidivate. That means they're less likely to offend when they come out because they're actually receiving the services they need.

The other thing is, when you're in the juvenile system, you don't get an adult criminal record when you come out. So you have a second chance. And one thing I bring to the table is I was a juvenile public defender. And one of the places I practiced was in California. And I had the chance to do a record-sealing project, which meant I had the opportunity to see these youth in their 20s, after they had already been through the system, and see how they had changed their lives.

And I wanted to share another story with you about this youth who just completely changed his life because of the services he received. In 1998, and I'll call him George for the purposes of this conversation, he was actually attacked by five or six other youth in a park in California. He was maced. He suffered a concussion. My client was hit so badly that – the back of his head with a flashlight that he essentially got a concussion. And a couple days after, again asking as a 17-year-old boy, he took a gun and he went to two of his assaulters' homes. He didn't shoot them, didn't attack them. He just showed them the gun and said: Don't mess with me.

And as a result, he got three felony counts, including using a firearm. And he was in the juvenile system. He was 17 and he had the benefits of the juvenile system. So he got the program he needed. He completed high school with honors. He decided to enlist in the U.S. Army, got a combat deployment to go into Iraq, earned 14 hours – including three Army commendation medals. Comes back to California, enrolls at California State University, gets a degree in criminal justice administration, and his dream now is to work with the juvenile probation youth that had an experience similar to him. And he would not have had that experience if he was in the adult system. He'd be far more likely to recidivate. So if you're looking at a public safety perspective, it's a win there.

And then finally with controlled government spending, I think that's of all things what's probably on people's minds today in this room, because a lot of people at this point I think get why raising the age may be the right thing to do. But they're really worried, how much is it going to cost us? How is it going to work? How are the counties going to absorb this – these 17-year-olds coming into the system? And, again, we have the benefit of other states who have successfully done this. And many of these states did do cost studies in advance of making the change. And none of them – not a single state – spent as much as they predicted they would have to spend in making this change, because juvenile crime has been consistently declining. And Michigan's actually at the forefront of this. Michigan has a crime rate – a youth crime rate that's 30 percent lower than the nationwide crime rate.

So that crime rate continues to decrease, and Michigan has the infrastructure to do it too, which is awesome. There's already so many diversion programs in place here. There's something called the consent calendar, which you might be familiar with, where if the youth and their guardian and the prosecutor and the judge all agree that keeping this child out of the juvenile justice system is the right thing to do, then they don't even have to end up with a permanent record. They can get a case plan in place, get the diversion programming they need, and not end up stuck in the system.

And so there's already all this infrastructure in place. I'm not going to mess with you or play with you and say it's not going to cost any money. It might, especially in the beginning. There might be an investment that's required. But at the end of the day, when you think of kids like John Doe 11 or kids like George, who had the benefit, it comes down to living our values and doing the right thing as well.

MS. RILEY: Nila, thank you so much for your remarks. Really, really thought-provoking stuff. And I certainly hope that we get a lot of good questions for you, because there's a lot to this and a lot that we can learn from the examples in other states. Of course, there's no apples to apples, but we do have some models that we could use going forward.

So, with that, Jason, I'd really like to talk to you. You're on the ground here in Michigan. You have a background in social work and probation officer and that. And I would love for you just to talk a little bit about how Michigan specifically does juvenile justice. Like, just give us an overview of how that works – because it's a little bit different from the adult system. So even attorneys who are familiar with criminal justice might not really understand what happens at the juvenile – at the level.

JASON SMITH: Sure. So most of – oh, sorry if my voice is too booming. (Laughter.)

Most juvenile justice programs, services, treatment have been at the county-based level. Michigan's juvenile justice system is a decentralized system, so each county really controls what programming and services look like in their own communities. Most of the services and programs that are used in the juvenile justice system is paid for through what's called the Child Care Fund, which is managed by the state Michigan Department of Health and Human Services. Eligible services, both for child welfare and juvenile justice – mostly juvenile justice – the counties are reimbursed 50 percent for programs that are eligible for the Child Care Fund reimbursement. So there's really a state and county partnership when it comes to funding.

But the counties really drive what the actual local jurisdictions, the local juvenile justice systems look like. So for example, I worked in Wayne County. And the Wayne County system is really unique amongst Michigan's juvenile justice systems. It's very privatized. Instead of having a juvenile probation officer, youth that are adjudicated and placed on formal probation or supervised by the court are assigned to care management organizations. The whole county is split up into five regions, and each county is – youth in Wayne County is placed in a care management agency that serves their zip code. So the treatment and services that are provided are even further individualized to that youth and his particular community. That's just one unique example, Wayne. But every county has their own unique and innovative programming that they provide to young people in the juvenile justice system.

And that's why we think that 17-year-olds would fare better if they were served as juveniles versus adults. The juvenile justice system does a far better job of partnering with other youth-serving organizations. I can attest to that as a former probation officer. I had a strong relationship with community mental health, that treats 17-year-olds in their children services agencies, the schools. Wrap around services are much stronger working with the entire family in Michigan's juvenile justice system, compared to the adult system.

And to build onto Nila's point about convictions and criminal records, I can't even count how many times I've work with youth – not youth – not just in the juvenile justice job, but in other jobs as well as a social worker, where they ask me, someone who's been adjudicated in the juvenile justice system, do I need to check a box on a job application that I've been convicted of a felony? I'm able to tell them, no, you don't have to. You were adjudicated, and adjudication is

not the same as a conviction. And that opportunity 17-year-olds currently don't have here. And a kid from Illinois or Indiana or Ohio or Canada, for that matter, does have that opportunity to come to Michigan and not have to check that box. And has a leg-up when it comes to college and jobs as well. And it's something that we really need to consider. And I hope that that helps people realize how urgent this issue is.

MS. RILEY: So Michigan actually has introduced a package of legislation addressing raise the age and what that would look like. And that was ended up being put briefly on pause so that the legislature could commission a study to find out how much it would actually cost to go ahead and move this cohort of 17-year-olds from the adult system to the juvenile system. So can you give us an overview of the package – the bill package and the cost study?

MR. SMITH: Yes. So there's currently, as Kahryn said, an active bill package – a bipartisan bill package – Republican-led, I believe – that does a range of things, with the aim of reducing the number of youth entering the adult system. Chief among those, are the policy priorities of raising the age of juvenile jurisdiction to 18, and then also removing all youth under the age of 18, even those that are convicted as adults, from adult prisons and jails. If they have a sentence that extends beyond the age of 18, then they possibly would then transfer onto that adult facility. But all youth under the age of 18 to comply with the federal Prison Rape Elimination Act, and to keep them safe and sound, and give them age-appropriate services while they're still at that youth status, they would be placed in a youth facility.

Last session – this is the second time these bills have been introduced. Last session the bills passed overwhelmingly in the House. When they reached the Senate, there was a hearing in the Senate Judiciary, but that's where the bill stalled – around the issue of cost. And that was a concern for various stakeholders, both at the county and state level. The bills – around the time that the bills passed the House, that's when the funds were appropriated for the legislative cost study. And that's really defined a timeline of moving the bills this session. Everyone has been waiting for the results of the legislative cost study. We're hopeful that there will be a vote on approving that cost study next month. And once we have the numbers finalized, people can move the discussion beyond how much it will cost to how we will pay for it, and what exactly implementation will look like.

For the most part, most stakeholders here in Michigan, the counties, the justice professionals, say that they agree in concept with raise the age. They agree with youth – that 17-year-olds would be better served in the juvenile justice system. So there's not a large philosophical battle here. It's more the fact that we have to figure out a way to cover the cost. Figuring out – reducing that uncertainty of how much that is is a huge step in that. Now we need to figure out how to make it happen, how to pay for it. And we're hoping that we'll get to that point.

There's a – the separate funding work group, co-chaired by Representative Martin Hawrylak, who's here today, and the president of the Michigan Probate Judges, Judge Dorene Allen, that's separate from the legislative work – excuse me – the Criminal Justice Policy Commission that's working on the cost study, is looking at what that funding mechanism will be.

We're hoping that having this cost study finally done will allow that work group to reconvene soon and nail down what that mechanism will be, so that we can move the legislation forward.

MS. RILEY: Yeah, and I think one important aspect of this too is just in the – in the event going through the cost study and actually kind of gathering this data and looking at what courts are doing and what they are reporting in terms of what these different things cost them, it brought to light a point that I try to underscore a lot, which is that there's a lot we don't know about the justice system and the juvenile system. So do you predict that this conversation will help maybe reinforce the need for better reporting and better information about what's going on?

MR. SMITH: Yep, I absolutely do. I think that, like other states, Michigan can use raise the age as the opportunity to make larger reforms to their systems. One of the things that we've been working on while we were waiting for the cost study to be completed over the last year is reengaging these stakeholders and having conversations with the counties and the juvenile court professionals about what they feel that their challenges are to successfully implementing raise the age, incorporating 17-year-olds into their juvenile justice system.

There are some concerns that are related to older youth and making sure that they have programming that more aligns with the needs of a 17-year-old, maybe vocational training, high school completion programs, things like that. But a lot of the other concerns that I've heard from folks are really long-standing historical concerns with the way that the juvenile justice system works. The issue with access to quality data to look at outcomes to inform policy and practice, the use of evidence-based risk assessments to drive treatment planning and to make sure that the level of service that a youth receives is based on their level of need – the intensity is based on their level of need. These are – this is a really great opportunity to work on those changes in tandem with bringing 17-year-olds into the adult system – I mean, into the juvenile system, excuse me.

MS. RILEY: So at this time, I want to go ahead and open the floor for questions. And as I mentioned at the beginning, there's question cards in the middle of every table. So please write your question down and then just if you hold it in your hand, I'm going to have my colleagues circulate and collect these cards. They'll bring them to me and I'll ask the questions.

So one of the things that I did want to touch on too, as we get the Q&A rolling here, is that we didn't really talk about the waiver program. And I know the bottom line for a lot of people when it comes to criminal justice issues is safety and wanting to know that when a truly reprehensible act occurs, no matter how old the perpetrator is, that they are – that justice is really served appropriately. So these bills would not prevent a prosecutor or a judge from bringing even a younger person into the adult system if that appropriate, correct?

MR. SMITH: Correct. If you are convicted of a – or charged with a serious crime, the most serious of crimes – homicide, criminal sexual conduct, things that – prosecutors will still have the discretion to waive that youth to the adult system. We are advocating that when a kid is under the age of 18, for their protection, as much as possible and feasible that they are placed in a youth-serving facility. But they would still be waived to the adult system and end up likely with an adult conviction if prosecuted.

MS. RILEY: Do you have anything on the public safety aspect, Nila?

MS. BALA: Nothing to add to what Jason just said about that particular issue. I think he summed it up well.

MS RILEY: Yeah, so if that's a concern –

MS. BALA: So, I mean, if people in this room are concerned about that specific issue, about the – you know, the youth who is accused murder and is 17 ½, I mean, that's not what the core of this discussion is. Yeah.

MS. RILEY: OK, yeah. Because this is a discussion right on top of the pile. What's the difference between a 17-year-old brain and a 19-year-old, or 21? How do we know 18 is the right age?

MR. SMITH: You want to take that?

MS. BALA: Sure. I can take a stab at it, and then feel free to add in anything I miss. It's a great question. In terms of – in terms of brain science, I mean, there's no magical bright line or no magical age where people suddenly become responsible adults. The neuroscience that I was referencing on average shows that children, really their brains don't completely develop until they're 24 or 25. But at the end of the day, we have to put a line somewhere. And 18 is where a lot of the rights and responsibilities associated with adulthood do kick in. It's when you can buy a cigarette, buy a lottery ticket. You have the right to own property. You get to vote. I mean, a lot of the things that generally as a society we associate with adulthood come at that age.

It's also the age when many children graduate from high school. It's the age when people become more independent – not completely. I'm not saying all – you know, all of the sort of safeguards and help of the family fall away, again, magically at 18. That's not the case. But it's a step in the right direction. And of course, there are states who are considering raising the age even more. And that's not what we're looking at today on the table. We're just looking at including a group of youth who, for all intents and purposes in society, when we're talking about any other right or responsibility, are not considered adults. And yet, if you're 17 – just turned 17 – 17 and a day and you commit a crime, you're suddenly an adult. And that's really the discrepancy that we're discussing. But, yes, in terms of neuroscience, there isn't a bright line.

MR SMITH: Nila said it well. I would just add that a clear example of that is the child welfare system. A 17-year-old is considered a youth. Still in the child welfare system. Their parents could be charged with abuse and neglect to a certain extent in the child welfare system. Yet, that same parent, if that child is arrested, isn't notified that they're in custody. When we do public education events, statewide people are – don't even realize that this is a law. They think that the age is set at 18, just like it is for everything else.

Really, this is just putting us in line with all the other laws that govern the state of Michigan, and nationally as well. The Supreme Court which has, you know, determined that anyone under the age of 18 is a youth. And this is just putting us on proper standing with what is now the national standard in how young people are treated who come into contact with the justice system.

MS. RILEY: Jason, how many youth are currently in the adult criminal justice system? And how many youth are anticipated to enter the system every year? Do you know?

MR. SMITH: Yeah, so that's tricky. Getting that data has been really difficult. And I appreciate the work that the researchers that are part of the Criminal Justice Policy Commission's cost study – the work that they've done to try to figure that out. I can tell you that generally in the youth – so, 17-year-olds – all youth under the age of 18 that are in adult prisons are kept sight and sound separated from the rest of the adults. And so we have a pretty good idea of how many 17-year-olds, or just youth in general under the age of 18, are in adult prisons. It usually hovers between 80 and 100. Jails, that's harder to figure out. We know that around 12,000 or so 17-year-olds are arrested every year. And that number has been declining each year.

We – I don't want to, like, give too much of a lead on what the cost study will say, but we – they anticipate the researchers that there may be around 2,500 17-year-olds that would enter the juvenile justice system, if you take into account cases that are dismissed, cases that are diverted, which, like Nila mentioned, happens much more often on the juvenile justice system than the adult side.

MS. RILEY: And, again, this question really raises that aspect of the dearth of data, and actually knowing how many kids there are. And, you know, a question that came up with other stakeholders, you know, the accountability, right? You know, we're spending all this taxpayer money without really knowing, in many cases, you know, where the kids are, how many there are. So, again, just something to kind of keep in mind moving forward on this.

Nila, here's one for you. How can including 17-year-olds in the juvenile system help those kids reenter society after detention?

MS. BALA: Bunch of different ways. So one thing that's going to be different about being in the juvenile justice system is, like Jason was alluding to, there's just much more prevalence of wrap around services, which include educational programming, mental health treatment that's actually geared towards adolescents, as well as vocational and job skills that, again, is geared towards that age group. The focus on the juvenile justice system is fundamentally different from the adult system. At the outset, most statutes in most states actually have made clear that the goal is rehabilitation. And so when that is the central goal, a lot of the programming and a lot of the thought process even is in line with that goal.

And then the other thing I wanted to touch on is all the collateral consequences that come with having an adult criminal record. So the benefits of being in the juvenile justice system don't stop when you exit the juvenile justice system. That a huge benefit that, again, Jason

mentioned, is you're not convicted of something. It's an adjudication. And there's a huge difference when you're filling out job applications. When you're in the adult system and you come out with a conviction, that can actually prevent your ability to get student loans. It can prevent your ability to get housing, employment. It has all of these trickle-down effects. And when you are in the juvenile justice system, to some extent, you are protected from some of those – most of those collateral consequences.

And just looking at education as one example, there was a recent study completed by the RAND Corporation that showed that every dollar that we invest in youth who are in the juvenile justice system actually create a \$5 benefit. So it's hugely beneficial when these youth are able to get the education and the programming that they need in the juvenile justice system, instead of being in the adult system where they don't have the infrastructure and the support. The goals are just different. And everything is drive by that difference in goals.

MS. RILEY: Well, and almost just to push back on that idea, just to play devil's advocate for a minute, right, I mean, what about the kids for whom that isn't true, right? You know, even if it's 30 percent more successful, there's still a lot of kids for whom it will not be successful. They'll enter the system, they'll receive these substantially more expensive services – I mean, substantially more expensive. And what happens when it doesn't work?

MS. BALA: Right. I mean, the idea is to give youth, as much as possible, the benefit of the doubt, and to give them the programming and the chance to change. And sometimes you won't see the benefits right away, as well. Sometimes it might take a few years for them to, I don't know, for lack of a better term, get their act together and understand the opportunity they've been given. And, again, I'm just speaking from my experience of seeing these youth in their 20s and watching sort of how their life had unfolded from their juvenile justice involvement. And everything didn't magically occur as soon as they exited the juvenile justice system.

But for the majority of these youth, I would say if you look at it even from a statistical standpoint, at the age crime curve – which is just – in Western nations they've actually studied the way crime goes up in late adolescence, early adulthood, and then pretty much drops. And that's across the board. And so are there going to be exceptions or aberrations to that? Are there going to be youth who continue a life of crime? Absolutely. I'm not saying that just by putting a child in the juvenile justice system you're guaranteeing that they're going to be successful. But you're actually giving them a shot. And I think that's a shot worth taking, because most of these youth – and, again, I speak for my experience of seeing them and the aftermath of how successful they were – were really able to change their lives and turn things around.

I also wanted to point out that the youth we're talking about – so, the Michigan 17-year-old youth we're talking about – two-thirds of them are there for nonviolent offenses. And most of them are there for the first time. They're first-time offenders. So we're not talking about these chronic, serious, violent offenders, for the most part. When we're talking about this bill, we're generally talking about people who, again, have made a usually one-time foolish, dangerous, stupid mistake. And those are the kids generally who are going to learn even just from being involved or even going into the courtroom that this was a mistake. And given the

right tools, and given a chance to have a fresh start when they come out, are probably going to succeed.

MR. SMITH: Can I add one point to that?

MS. RILEY: Yeah, I was actually going to ask because you mentioned, you know, your experience as a probation officer and doing social work and that. And I think, you know, age isn't the only thing that takes into consideration what happens when kids make mistakes. So I mean, yeah, whatever you want to add to that.

MR. SMITH: Well, just to the point about reentering society after being in detention. Another key point about the juvenile justice system is that because it recognizes a 17 – or, youth as being a child, they understand that a young person is a part of their family unit. And so there's much more of a stronger emphasis on trying to include the family, engaging the family, siblings, other loved ones in the treatment and rehabilitation of that youth, than occurs on the adult side. Not to say that it doesn't happen at all on the adult side.

And I know that they're making more strides to engage families to support people reentering society before a young person who, for most, you know, cases have never lived independently. Most of them have never had a job, still rely heavily on their family. Still rely heavily on their parents. And that's essential that they're a part of their treatment and anything that happens as a part of their court case. So that's a key element that's missing for 17-year-olds right now in Michigan, and they would benefit from, and would help them to successfully reenter society after coming home from detention, or a long-term residential placement.

MS. BALA: And what's incredible about that, is that the therapeutic model that Mason's referring to – which often one model is called multi-systemic family therapy – it's so successful that a study that came out this year actually showed that caregivers of the youth who participated in the study were less likely to get involved in the criminal justice system. That's how incredible that kind of therapeutic model is. And 17-year-olds, absolutely, putting their family model into that and thinking about them as part of that family structure is just enormously important.

MS. RILEY: Yeah. I want to touch on that point. But first, I'd like to ask my colleague just to circulate once more. If you have questions that have come up since our last call for questions and I'd like to have that submitted, please just go ahead and put your card in your hand.

So I know we're here primarily to talk about the bills and to talk about the cost study, but I think, you know, so much of this – of criminology really talks about some of the societal factors that go into what might cause someone to offend. And, I mean, I'd love your insight on what can we as a society do in the private sector to support youth and support families who might become justice involved?

MS. BALA: Well, that's a big question. (Laughter.) Oh, man.

MS. RILEY: Came out of left field.

MS. BALA: I mean, I'm going to name a lot of things that I think anybody would probably guess are vital components. It really starts at birth and early childhood. So before I was a public defender, I was actually a preschool teacher. And I worked in two very different preschools – one that was in east Palo Alto, a low-income sort of Head Start program. Most of the children in my classroom were not native English speakers. And really having that Head Start program, having that preschool experience has huge benefits. And, again, that's just one item that people could sort of look at to help kids stay out of the juvenile justice system. Because if kids come into the kindergarten with a little bit more self-regulation skills, social problem-solving skills, getting a head start with their letters and numbers and reading, it can really, really just change their trajectory of how well they do later.

And then there's so many other things we can name, like adequate health care, mental health treatment, so many things in the private sector that could make a huge difference for kids. Also one thing I noticed when I was doing this record-sealing work is the juveniles I encountered – a lot of them had had trauma in their early childhood, and then later had become sort of in the offender category. And so when we create this really strict separation between victims and people who are committing delinquent behavior, it often is actually the same group of people.

And so that's one thing to think more broadly about, how we as a society respond when somebody is the victim of sexual violence or physical violence or domestic violence in the home, because, I mean – and you've probably heard this quote, hurt people hurt people, right? So a lot of the delinquent behavior that youth exhibit, a lot of that behavior that often gets kids in the juvenile justice system in the first place is coming from a place of maybe some past trauma. So if we as a society were better at responding to that on the front end, maybe we wouldn't see these kids in the system anyway when they're adolescents.

MR. SMITH: And I'd just like to add, for the private sector, good jobs. Youth employment would really impact that population a lot. We view this raise the age partly as a workforce issue here in Michigan. We're an aging population. We need as many young people in the workforce as possible. If you have the opportunity to offer a young person – wherever they may be, whatever community they're from – an opportunity to work, they're more – less likely to commit crimes in the future. So youth employment is a big key and something that communities can do to positively impact youth in the right way.

MS. RILEY: Mmm hmm. So, Jason, here's another one for you regarding the cost. Is the question about who pays, whether the state or the county, or is it about the overall price tag, how much we're going to pay?

MR. SMITH: Both. (Laughter.) So there is concern about exactly what each county because, like, I said, it's a decentralized system, and each system has their certain services in place. Like we mentioned – or, Nila mentioned – caseloads and arrests have declined over the last couple of years. And how counties and juvenile courts have reacted to that is different – has been different. Some have retracted their system, laid off staff. Some have kept their probation staff and services at the same level. So how raise the age is going to impact them is different. All of that has to be – has to be considered at a statewide and then at an individual county level.

And then who pays for it is a big discussion that's been debated over the last couple of years. From the county's point of view, I know they view raise the age as a new service that they would be mandated to require and are advocating that then the state would pay for it 100 percent.

MS. RILEY: So, Nila, I wanted to ask also you, because you mentioned a pretty surprising statistic, which is that none of the 14 other states which have raised the age ended up spending as much as they projected they would. So can you talk a little bit about the distinction between these potential costs and these direct costs, and what we might actually really expect? The spending areas and the initiatives that we're really going to probably see?

MS. BALA: Absolutely. So there's a couple of reasons why the states didn't end up spending as much as they thought. And actually some of them have experienced net benefits, or declines in the amount of cost that they have had to spend overall in the juvenile justice system. So there's a couple of reasons why I think these cost studies are difficult in terms of approximating the real cost. They're ultimately – they have to make certain assumptions. And those assumptions are sort of a worst-case scenario basis. So not really accounting for the declines or for the opportunities of diversion. Certainly not accounting for the fact that recidivism is going to go down, as soon as you keep these youth in the juvenile justice system.

So the cost studies are sort of inherently – and the people who make the cost studies often acknowledge this within the cost studies – that they've been tasked with something very difficult to do. And even if they do a very good job, sometimes that number could be quite off. The other is, of course – and Jason sort of mentioned this – data. We don't have the data. The data is often not collected or itemized in a way that makes these estimations easy to do. So the direct costs that we might actually end up seeing could be quite different. And they don't take into account all the other reforms that are happening in these states.

I mean, that's one of the biggest reasons why these seven or eight states that I mentioned that have changed their laws in the last decade, and have sort of looked back now and said: Well, were we right about our cost studies? And they all said, well, no, these cost studies were way off. They were too high. And a lot of them were markets because of different diversion programming that was instituted at the same time as the raise the age legislation or, in case like Michigan, has already been starting even before the legislation has passed.

Some states sort of did it at the same time. They raised the age and they started closing down their youth prisons and doing more diversion. And so they did see the declines over time even though, again, initially there might have been some reallocation involved, just to divert some funds, to make that community-based alternative programming more robust and ready to look at the numbers of 17-year-olds who'd be coming into the system.

MS. RILEY: Yeah. Well, and I think too, just in terms of getting down to brass tacks, I think I'm right in saying that it's about \$38(,000) or \$40,000 per adult per year to detain them in a state prison. And to detain a youth is probably more than double that, is that right? But of course, the difference being there that, you know, there's really no alternative for adults. You pay a fine, you serve time in prison. We are starting to see more problem-solving courts – lots of

problem-solving courts that can do diversion and things, which is really taking off in this state to great success. But there's a much broader focus on services and flexibility in the youth system. So that's why I think it's a little bit difficult to compare apples to apples. Do you want to say something about that?

MR. SMITH: Yeah, just to add that it is more costly, but youth are less likely to be put in placement nowadays. Counties and the state have shifted away from using residential placement as a primary use for sanction for young people. The treatment and the rehabilitative services in those residential treatment facilities are more age and developmentally appropriate for young people when they do go. And I would add that though the cost is higher, the length of stay is much, much shorter for a young person that's placed out of the home in a juvenile facility than an adult facility.

They'll be home sooner. Their families are more engaged in treatment. They're usually placed closer to home. I don't know how many stories I've heard of adults here in the Detroit area, or in Lansing, that are placed in prisons way up north. And their parents – or their loved ones have to travel eight or nine hours to go and see them. When young people are placed in facilities, they're closer to home and the treatment is more appropriate for their age level.

MS. RILEY: I think it might be worth it to – we've been throwing around a few different terms, and it might be worth just to define some of what we're saying. There's three kind of primary ways that juvenile justice works, right? There's the waiver system, which would bring a youth into the adult system. And then there's kind of two, the formal calendar and the consent calendar, that are the two primary ways of administering juvenile justice. Can you just explain how that works?

MR. SMITH: Sure. So formal calendar essentially means that you've been adjudicated of an offense and either placed on community supervision or probation or in some sort of residential placement depending on what the judge or your disposition is, your court order says. And then consent calendar is basically a form of diversion. It's an informal probation. So a young person and their family and the court all agree that this person may need a little bit of supervision and services, but they're placed on an informal docket. They sign what's called a consent agreement to agree to participate in whatever treatment or sanction that's given by the court. And if those requirements are met, their case is dismissed and they don't have a formal record.

Those options are way more prevalent in the juvenile justice system. And you often see offenses that may land somebody in jail or pay heavy fines in the adult system – a minor in possession of alcohol, low-level retail frauds, school fights, things like that are easily resolved using consent calendar for these low-level offenses in the juvenile justice system.

MS. RILEY: And it's also worth pointing out that youth are viable for offenses that would not be crimes if they were committed by an adult. So you can you talk – just briefly define the status offense.

MR. SMITH: So those are status offenses, basically offenses based on your status as a youth. An example of that is minor in possession of alcohol. Because you're not 21 it's an offense for you. Curfew is another one. Someone shout some out.

MS. RILEY: Truancy.

MS. BALA: Truancy.

MS. RILEY: Yeah.

MR. SMITH: Yeah. (Laughs.) Truancy is another example of that.

MS. BALA: Minor in possession of a cigarette. That would be another one.

MR. SMITH: Running away.

MS. BALA: Running away, yes. (Laughter.)

MR. SMITH: Yes, all of those are examples of offenses that are regularly seen in the juvenile courts, but still touch upon 17-year-olds. The compulsory age for school attendance here in Michigan is 18. Right now, 17-year-olds, if they're truant, their case could be sent to the district court, but it doesn't likely happen often because the district courts really focus mostly on adults. And so they're kind of on an island, unfortunately, where they're not receiving any kind of treatment or help to resolve whatever their issue is for not being in school, even though they're mostly juniors and seniors in high school.

MS. RILEY: Thank you for clarifying. And then one additional clarifying question for Nila. You said that two-thirds of 17-year-olds are nonviolent offenders. And that was two-thirds of adjudicated youth or two-thirds of convicted 17-year-olds?

MS. BALA: That would be two-thirds – I mean, I can double check – but two-thirds of, I believe, the 17-year-olds even just coming into the system, yeah.

MS. RILEY: Right, so if you're a 17-year-old and you're becoming justice involved, it's likely because you committed a nonviolent offense?

MS. BALA: Sure, nonviolent offenses, correct. Exactly.

MR. SMITH: And we looked at the most recent Michigan police arrest records – arrest rates. And 80 percent of 17-year-olds are arrested for nonviolent offenses. And over half of them are for misdemeanors, ones that are, like I just mentioned, that list, that would most likely be diverted if they were in the juvenile justice system. In talking to some of the court administrators around the state, they've been able to look at kids that are mostly in the district courts, which in Michigan the district courts handle mostly misdemeanors and our circuit courts are those that handle the felonies that end up in the Michigan Department of Corrections. For those district court kids, I've heard as high as 80 percent of those kids would be diverted if they

were in the juvenile justice system, rather than being treated as an adult where if they violated or if they messed up they could end up in adult jail.

MS. RILEY: And, yeah, may be worth pointing out again, too, you know, someone might say, OK, well this has been working fine. You know, 17-year-olds – that this is the way that it is, and that's how – you know, that's the price you pay, these are the consequences for being 17 years old. You don't – you don't get to do the juvenile justice. You have to do the adult justice. And that just, again, would go to underscore the point that, you know, you get better outcomes, right? If we were to move that cohort, it's not necessarily that justice isn't being served, it's that we're serving it in a really specified way.

MR. SMITH: Absolutely. Accountability is a part of positive youth development. No one's saying that kids aren't being treated and held accountable for their actions and their behavior. It's just done in a way that's age and developmentally appropriate for them. You know, a kid who is placed in a juvenile detention facility or even a secure residential placement for more serious offenders would not tell you that they are treated with kid gloves. You know, they're being held accountable for their actions. Yes, those are consequences for 17-year-olds that are in the adult system. But those are only 17-year-olds in Michigan. The rest of the country does not treat kids that way. And we don't necessarily – we can't make the argue that our outcomes are any better for doing it the way that it currently is, so.

MS. RILEY: OK. One other question. I heard that Ingham County holds 17-year-olds in virtual solitary while awaiting trial. Is this a similar situation in Wayne, Oakland and Macomb? Do you know?

MR. SMITH: I'm not sure. I know that is the case for Ingham County. I know that several sheriffs have said for the research, the cost sharing, and just in just general conversations that it's really difficult for them to comply with keeping youth under the age of 18 sight and sound separated from adults. Some counties have already made – taken the steps to put 17-year-olds that are already convicted or in the process or being through the court system in the juvenile detention centers to keep them separated from adults. That's not statewide practice by any means. But it's something that is a serious concern here in Michigan.

And I hope that, you know, this legislation moves and passes successfully, and that we can work through implementation in a way that works for everyone. I would hate for it to be a situation where this movement is pushed because of a lawsuit, because of some of some terrible story about something that happened to a young person, a 17-year-old, in an adult facility that was not protected when they should have been, as the federal standards outline.

MS. RILEY: So –

MS. BALA: Can I say something about that too?

MS. RILEY: Oh, yeah. Please jump in.

MS. BALA: I just want to talk a little bit about the juvenile solitary confinement issue. So when a child is in the adult system oftentimes the juvenile justice facilities may not be able to accept or accommodate them anymore. And so we're left with ultimately two choices, both of which are not great. One is for these youth to be in adult facilities without any sight or sound restrictions, which obviously is bad because they are extremely vulnerable. They are the inmate population that is most vulnerable to sexual assault and rape. The other option, which Jason was alluding to, which it sounds like Michigan facilities are doing, is the sight and sound restriction.

But ultimately, what that ends up meaning is that kids are in solitary confinement, which is terrible, terrible for youth. It's terrible for everyone, but it's especially bad when you're a child because your sense of time is different and your sense of the fact that this is a short-term that will probably end – you don't have that timespan as much. And so it really, really causes incredible amounts of mental trauma. And that's why that suicide rate is so much higher with adult facilities. I mean, you could imagine being in a locked cell 22 to 23 hours a day, without natural light, without contact with peers.

And education also suffers when children are in these – in this situation, because they do have to remain isolated for their own safety because of those sight and sound restrictions, that are outlined in the JJDP, the Juvenile Justice Delinquency Prevention Act, which is federal legislation. So in order to comply with that, they have to be isolated through these sight and sound restrictions. But the problem with that is that they don't get to participate in the educational programming or the mental health programming, or anything that they should have access to. I've had kids report that they basically got some worksheets. They can't even have a pen or pencil, because that's a safety risk. And that's their education for the day.

And so if we change the law to include these 17-year-olds in the juvenile justice system, then we wouldn't have to deal with this, well, do we put them with the adults, do we isolate them, how do we deal with this? And that's a huge benefit that we would also have in passing this legislation.

MS. RILEY: Yeah. And I think it's worth maybe even just backing up and asking the question too, for those who don't know, what happens when a 17-year-old is arrested, and how would that change if raise the age were implemented?

MS. BALA: Well, I'm – right now if a 17-year-old is arrested, they would go through the adult book and charge process, just like if you were a 25- or a 40-year-old who was caught committing a crime. And so you would probably be arrested, taken to your local precinct and booked. The police would probably write up an incident report and you would have a hearing in front of a commission or a judge about bail. There would be a date set for motions or trial. And you would probably be in, you know, a courtroom – an adult courtroom with a bunch of other adults.

If you were detained prior to trial because you couldn't make your bail or because you were considered a flight risk, then you would, again, probably be in an adult jail where they might be able to do sight and sound restrictions. You might have contact. You might end up isolated. You might be in a juvenile justice facility, if it's one of those counties that has that

policy in place. But it's hard to know without knowing specifically where you are. It's probably is pretty dependent on the jurisdiction and the county. But, I mean, at the end of the day, if you are a 17-year-old and we passed this law, you would be on the juvenile system. And your trajectory would be really different because of that.

MS. RILEY: What would it look like?

MS. BALA: I mean, Jason, I think can speak to this more than I can, about the Michigan specific trajectory a youth might experience. But in my experience in California, you certainly would be treated very differently by the police officers, by pre-trial. Your family would be in the loop, and that would make a huge difference.

MR. SMITH: Absolutely.

MS. RILEY: And I think my – one of the things that raised immediately for me is that you would have a non-waivable right to an attorney, right? Like, you wouldn't be able to be pressured to waive those rights or others.

MS. BALA: Right. Your parents would be looped in. You'd be more likely to have communication with an attorney more quickly. And in many – in many states – I mean, the juvenile public defenders or juvenile attorneys are different from the adult attorneys, and the way they practice might be different too. That could even affect sort of how you're treated and what information you're given. So there could be many factors. But certainly the probation officers and the pretrial officers I've seen on the juvenile side, the goals are just so different, like I was saying earlier. The rehabilitation is the goal. So everyone's really working together and trying to get this youth back into their community as soon as is feasible with the services they need.

MR. SMITH: That's the key there, everyone is working together to get the young person back into the community as quickly and as safely as possible. There are plenty examples of county juvenile facilities that have partnerships with the local and many intermediate school district to continue their education while they're there. If there's treatment options available, again, they're participating in youth-focused treatment with their peers.

It's – I mean, I don't want to rose color it, but it is a totally different scenario than placing a young person in a facility where the adults that are housed there are much older than them, the staff are trained to work with inmate and prisoners that are much older than they are. It's just night and day difference. And most young people will be better for it, if they were placed in a facility. Or, in community-based programming, which the majority of them will be, that are more in line with their age and developmental phase.

MS. BALA: I would encourage everyone, if possible, to visit a juvenile facility and an adult facility. Some of these facilities are open to the public. You do need prior permission and you need to let them know you're coming. But if you go in, you'll see the difference. Like, the aesthetic, the visual, the attitude of everybody, the protocol for getting in, the ability to talk to people –

MR. SMITH: Visitation process.

MS. BALA: Visitation process, the way the rooms are structured when visitation actually occurs, the environment, the paint on the wall. I mean, every little thing, you'll see differences if you actually go inside these facilities.

I mean, I was in the Baltimore city jails almost every day, so I can tell you it's not – it's not nice. It's not pretty. And it's definitely not where I would want my child to end up, even a 17-year-old. They shouldn't end up there. It's not the right place for them.

MS. RILEY: Well, unfortunately, we're out of time. So we're going to have to leave it there. But I know with the cost study coming back in April, this is going to be front of mind for a lot of people in this room and around Lansing. So I hope this was helpful. We very much appreciated the chance to talk to you. I'd like to thank my panelists especially for making time to come to Lansing and speak to us. So enjoy the rest of your afternoon, and thank you again for joining us. (Applause.)

(END)