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Testimony Re: House Bill 5359 Relating to Delinquent and Dependent Children – Proceedings in Family Court
House Committee on the Judiciary
March 16, 2023
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Mr. Chairman and members of the Committee, thank you for the opportunity to provide testimony today. We would also like to thank Representative Kislak for sponsoring this important bill and Representatives Felix, Morales, Potter, Ajello, Cruz, Boylan, Caldwell, Casimiro, and Knight for co-sponsoring. Rhode Island KIDS COUNT strongly supports House Bill 5359, which would prohibit the incarceration of children under the age of 14 at the Rhode Island Training School for any offense other than murder, first degree sexual assault, or an attempt to commit such offenses.

Why younger children should not be incarcerated

Nationally and in Rhode Island, pre- or early-adolescent children only make up a small portion of youth involved in the juvenile justice system. After researching the Rhode Island General Laws, we learned that Rhode Island does not have a statutory minimum age for incarceration. This bill ensures that children under the age of 14 are protected from early exposure to a correctional setting.

During adolescence, the prefrontal cortex - the part of the brain that controls reasoning, weighs consequences, helps youth consider the implications of their behavior and is responsible for emotion regulation - is still developing. Research over the last two decades has confirmed that the human brain does not reach maturation until at least age 26.

Juvenile justice systems have a range of options for monitoring and rehabilitating youth, including restorative justice programs, evidence-based treatment programs, probation, and incarceration. **Alternatives to incarceration have been shown to be more effective in preventing recidivism, more cost effective, and are often the more appropriate response to developmentally typical child and adolescent behavior that is often criminalized.**

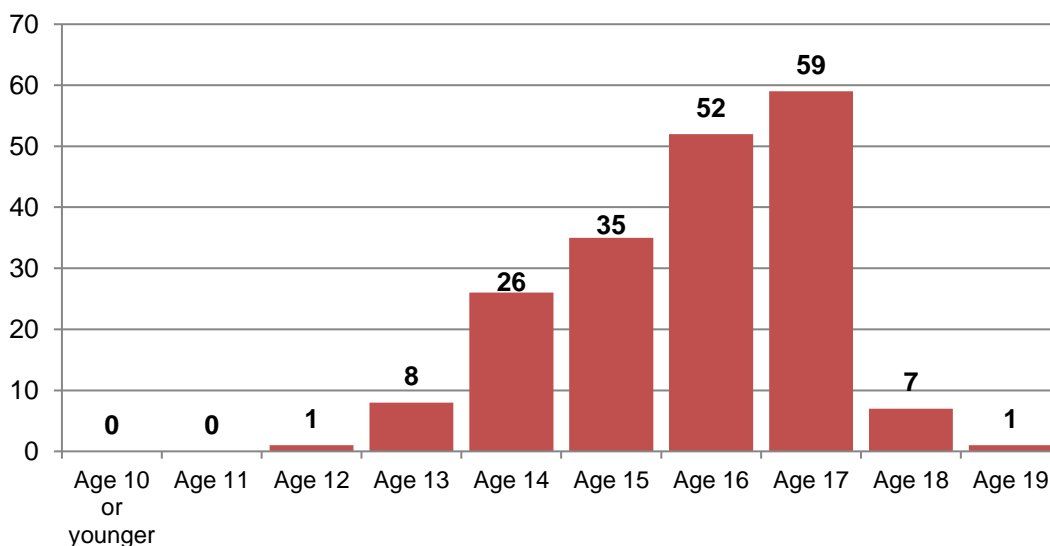
Youth with mental health needs that go unaddressed are often funneled into the juvenile justice system due to historic criminalization of behaviors associated with mental health needs, and the justice system they interact with is not always designed to meet those needs. The more disruptive behaviors are often the result of unmet needs and untreated trauma are more appropriately served by culturally and developmentally appropriate behavioral health services and not the justice system. Approximately 65-70% of youth arrested annually in the United States have a diagnosable mental health disorder. Although a mental health diagnosis can often be associated with problem behaviors, not all youth who have a mental health diagnosis will commit offenses, and not all youth who commit offenses have a mental health diagnosis. Some youth may be incarcerated due to an unmet mental health need that resulted in a behavior that was criminalized, and many more develop mental health issues due to the trauma of incarceration.

Protecting public safety is critically important, and we recognize that children who engage in law-breaking behavior need to be held accountable. However, preventing future offending is best achieved in a setting that is conducive to addressing their behavioral, mental health, and family needs. Research clearly shows that incarcerating children can exacerbate criminal behavior and that children who are incarcerated are more likely to be arrested again in the future. It is especially concerning and harmful for younger children to be placed with much older and more serious offenders. Research also demonstrates that youth in secure confinement facilities experience a significant stagnation in psychosocial maturity including temperance, perspective and responsibility, essentially intensifying the issue that brought them in contact with the justice system to begin with.

How our juvenile justice system can better support younger children

Rhode Island has the capacity to care for children with troubling behavior and does not need to place young children at the Training School. During 2022, there were only 9 children under age 14 held at the Training School. Those under 14 represented less than 5% of the youth at the Training School during the calendar year (see chart below).

Youth at the Training School, Calendar Year 2022



Source: Rhode Island Department of Children, Youth and Families (2022)

We know that the Family Court and DCYF work hard to find ways to address law-breaking behavior without sending children to the Training School, and we support their great efforts. Children ages 10 and under committed <1% of offenses referred to Family Court during 2022, 1.9% were committed by children aged 11, 6.2% were committed by children aged 12, and 10.2% were committed by children aged 13. The overwhelming majority of these children were not incarcerated. Rhode Island has made tremendous progress over the past several years to reduce the number of children that are held at the Training School. From 2008 to 2022, the annual total number of youth at the Training School has decreased by 83%.

Rhode Island has existing service providers capable of caring for children with serious issues and challenging behavior, and there are many service options that would be more appropriate and significantly more cost effective than incarcerating a young child at the Training School. Currently, however, the existing network of programs that provide community-based behavioral health services to children in the care of DCYF are facing significant staffing shortages. The

DCYF provider workforce is in crisis due to underfunding caused by a failure to ensure rates paid to community providers keep pace with the cost of providing services. This workforce shortage has forced community providers to place vulnerable children on waitlists, delaying access to vital services. This problem creates an additional crisis because the lack of placement options has resulted in children being inappropriately placed in the Training School. Although the current system has failed youth who need mental health services by not providing other appropriate service options, the shortfalls of the current system are not a valid reason to incarcerate young adolescents and expose them to the system.

Finally, this legislation establishes into law what is already being practiced for all but a handful of children and adolescents referred to Family Court each year. It provides protection to children whose parents are not able to effectively advocate for their children's needs. For children from well-resourced families, a child's arrest would likely lead his or her parents to frantically call anyone they could think of to avoid having their child held at the Training School. Children from families struggling with substance use disorders, mental health needs, poverty, or other contributing factors may not have adults in their lives who are able to provide this level of advocacy. This is an equity issue.

House Bill 5359 will ensure that the system connects young children and their families with community-based services and supports and help Rhode Island continue its path of juvenile justice reform.

Thank you for your efforts to support juvenile justice reform and for the opportunity to testify.