



# Disrupting the Cradle to Prison Pipeline: The Massachusetts Experience

Raising the Lower Age of Legal System Involvement

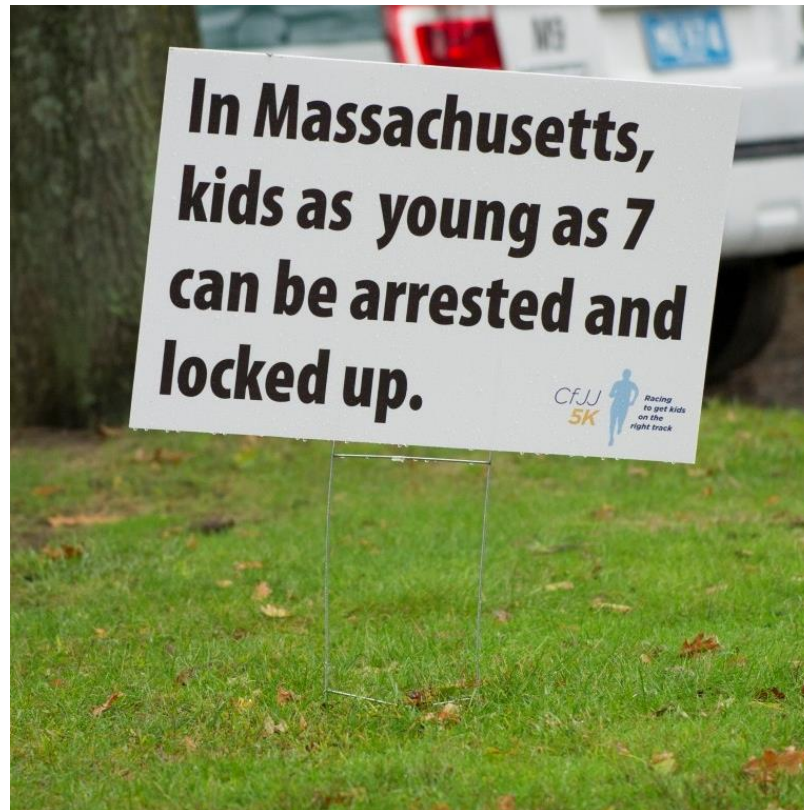
A horizontal row of silhouettes of people of various ages, from children to adults, is positioned at the bottom of the slide. The silhouettes are dark blue and set against a lighter blue background. They are arranged in a slightly overlapping manner, creating a sense of a diverse group of people.

Sana Fadel  
*Citizens for Juvenile Justice*  
May 2024

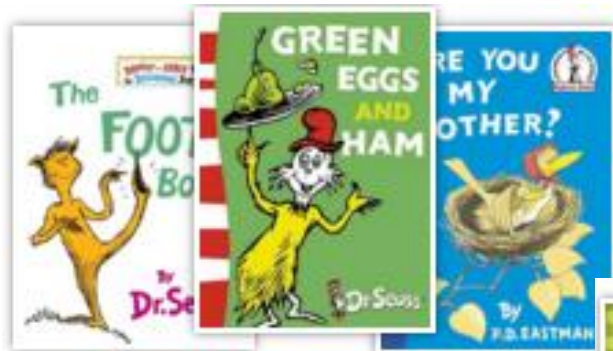
# Raising the Lower Age in Massachusetts

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## 1906-2018



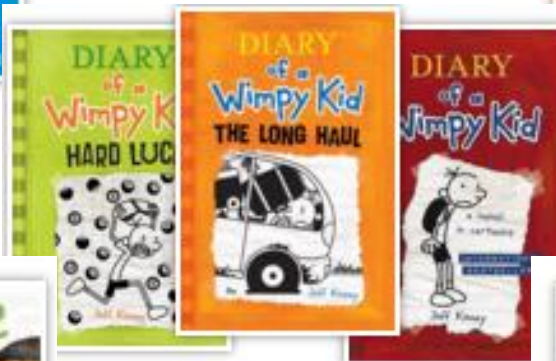
# A Profile of 7- to 11-year-olds: Most Popular Book in Massachusetts



**Age 7**  
**(1<sup>st</sup> – 2<sup>nd</sup> Grade)**



**Age 8**  
**(2<sup>nd</sup> – 3<sup>rd</sup> Grade)**



**Age 9**  
**(3<sup>rd</sup> – 4<sup>th</sup> Grade)**



**Age 10**  
**(4<sup>th</sup> – 5<sup>th</sup> Grade)**



**Age 11**  
**(5<sup>th</sup> – 6<sup>th</sup> Grade)**

# A Profile of 7- to 11-year-olds: Juvenile Justice System Involved Children

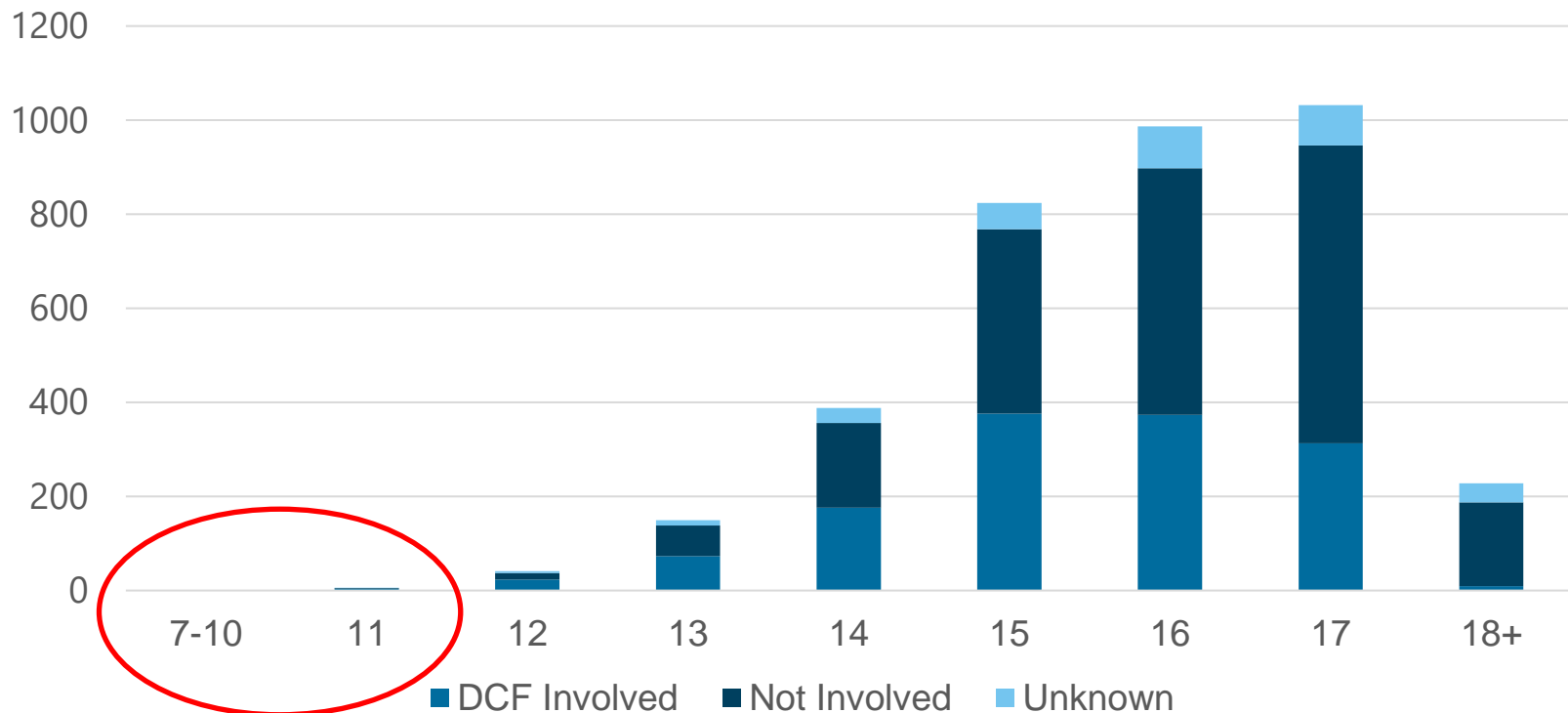
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In 2017:

- **164** children with open cases at the time of bill passage
- Based on arrest data, children were charged (**not** adjudicated) with:
  - Assaults (**40%** of arrests)
  - Property destruction/trespass (**11%** of arrests)

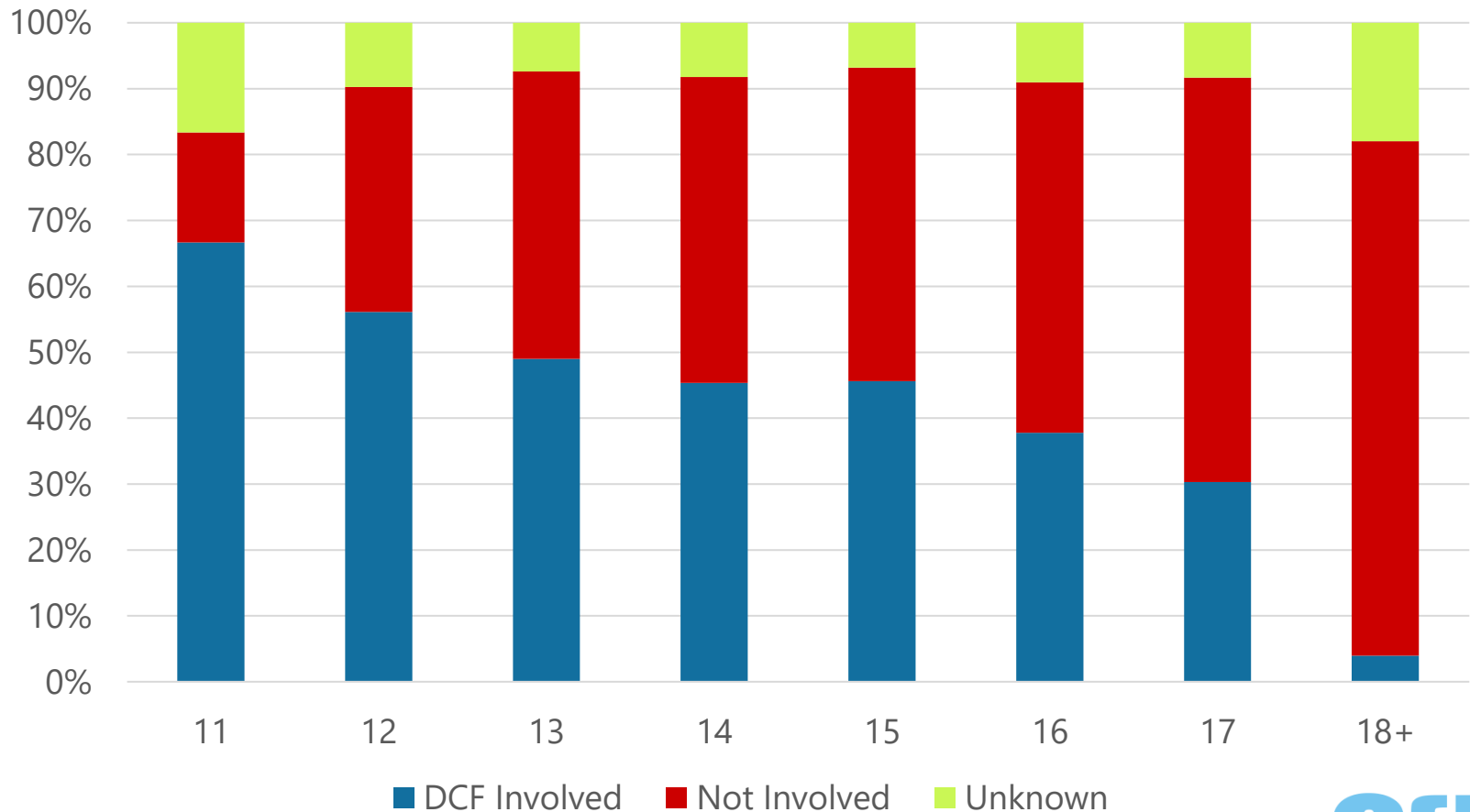
# A Profile of 7- to 11-Year-Olds Among Juvenile Justice System Involved Children

## DYS Detention FY2016 & FY2017 by Age and DCF Involvement



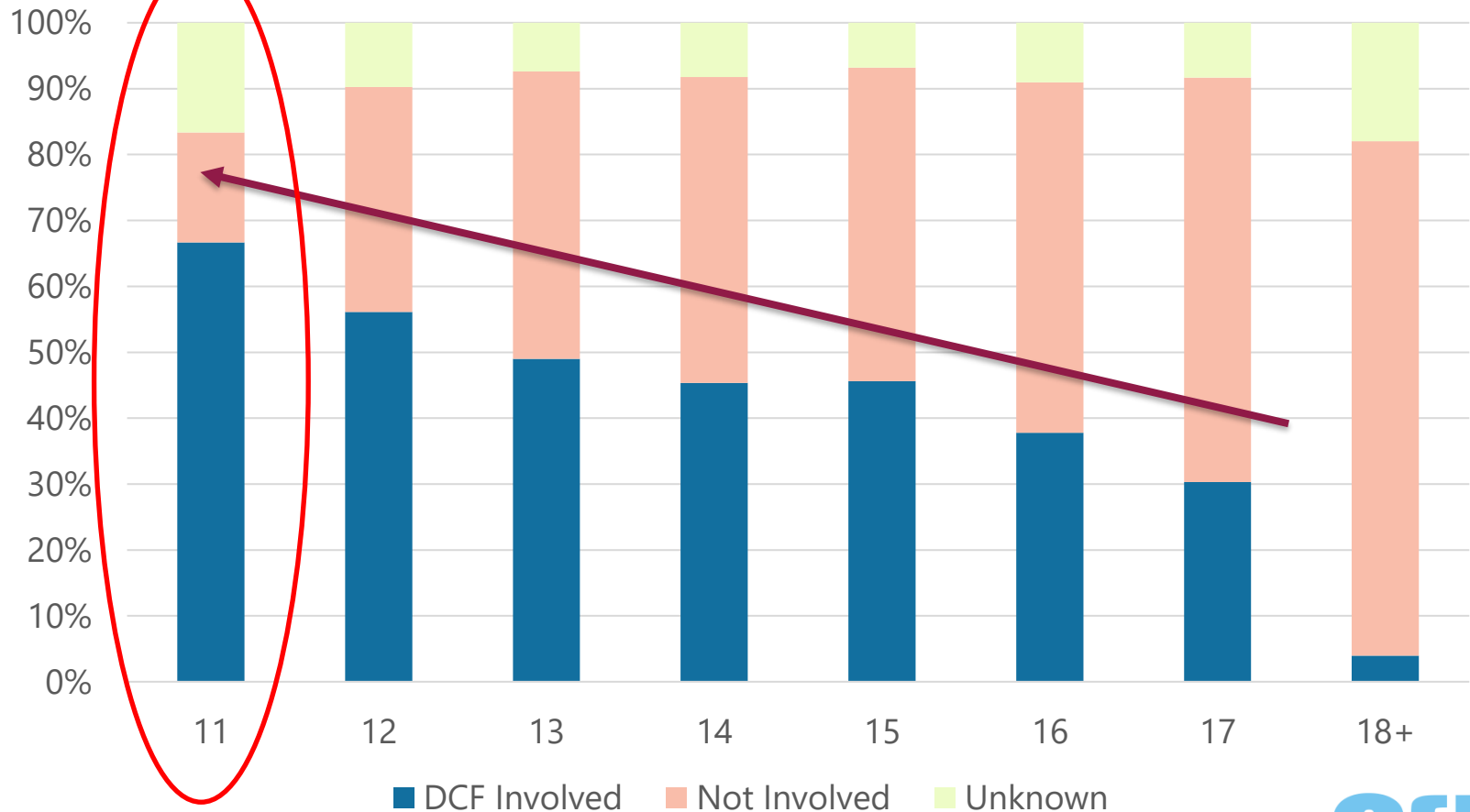
# A Profile of 7- to 11-Year-Olds Among Juvenile Justice System Involved Children

## DYS Detention FY2016 & FY2017 by DCF Involvement



# A Profile of 7- to 11-Year-Olds Among Juvenile Justice System Involved Children

**DYS Detention FY2016 & FY2017 by DCF Involvement**



# Argument #1: Competency

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- Young children have limited capacity to stand trial:
  - they have a poor understanding of the process,
  - what's at stake,
  - risk assessments
- They have limited capacity to exercise their legal rights in a meaningful way.
- 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."



# Argument #1: Competency

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- Kids this young often don't even know the difference between the judge, prosecutor, defense attorney and probation officer, much less how to discuss a case and contribute to their own defense with their attorney
- Competency requires the defendant, including children, to have a "sufficient present ability to consult with his [or her] lawyer with a reasonable degree of rational understanding and a rational as well as factual understanding of the proceedings."
  - *Commonwealth v. Vailes & Dusky v. United States*

# Argument #2: Legal System Involvement Delays Interventions

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- Delinquency proceedings actually delay a child accessing the programming needed.
- A child found not competent cannot be placed under probation supervision; cannot access any programming in detention; cannot be referred to a program.
- Young children are left without necessary services for what can be years of their lives while they await to achieve competency.

# Argument #3: Legal System Involvement Is Harmful & Developmentally Inappropriate

- The earlier a child is involved in the juvenile justice system, the more likely they are to continue to be justice system involved (recidivism)
- They are more likely to have worse physical and mental health issues and be less likely they are to be contributing positively to society.
- They are most likely doing these things as a result of trauma or other negative circumstances in their lives.

# Raise the Lower Age Passes April 2018

- Criminal Justice Reform Act of 2018 included juvenile and criminal legal system reforms as an omnibus package of reforms
- Raises the floor from age 7 to age 12
- Does not “carve out” offenses
- Creates permanent Juvenile Justice and Policy Board to evaluate impact of all juvenile justice provisions of law, including raising the floor.



# Raise the Age Passes April 2018

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- Due to the small number of impacted children the law did not create procedures or programs exclusively for children who would have otherwise been subject to arrest and court processing. The legislature envisioned utilization of existing child serving programs to meet children's needs
- Supreme Judicial Court vacated pending cases citing rehabilitation focus of juvenile courts and legislative intent of "decriminalizing childhood"

# Law Enforcement Opposition

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## Law Enforcement Arguments:

- Lacking authority to intervene with services in response to serious offenses, posing a public safety risk
- Sexual assaults, including when the child was a survivor of sexual abuse, if unaddressed increases recidivism
- Families who deny charges or refuse services

## Law Enforcement Recommendations:

- Expanding Police authority to file Child Requiring Assistance petitions
- Authority to restrain non-compliant juveniles
- Authority of arrest for certain offenses to compel participation in programming

# Response to Law Enforcement Opposition

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- Black and Latine children more likely than white children to be perceived as requiring law enforcement response:
  - offense severity doesn't explain disparities in custodial arrest, as Black/Latine kids are arrested more frequently than white kids even for the same offense
  - Black and Latine youth arrested far more than white youth within almost every offense type, especially drug offenses
- Counter to legislative intent of reducing recidivism by delaying legal system involvement

Source: Juvenile Justice Policy and Data Board, *Racial & Ethnic Disparities at the Front Door of Massachusetts' Juvenile Justice System: Understanding the Factors Leading to Overrepresentation of Black and Latino Youth Entering the System* (2022)

# Response to Law Enforcement Opposition

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## Advocates' Recommendations:

- Engaging families by offering resources for their children voluntarily, is more effective than compelling a child into treatment through threats with a law enforcement response.
- Removing threat of prosecution removed barriers to community-based services
- Access to community-based interventions does not require legal system involvement



# Reasons Parents Reject Law Enforcement Imposed Services

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- Parents sought access to these services for months but were denied or faced significant barriers, including waiting lists
- Fear of being blamed for child' behavior
- Stigma of child's behavior
- Language barriers
- Insurance issues
- Transportation issues
- Fear of law enforcement interactions

# JJPAD Evaluation of Law

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“Based on available data to the Board, it appears this part of the law is having its intended effect:

- The Juvenile Court no longer has delinquency jurisdiction for youth under the age of 12. If a child under age 12 is arrested, Clerk magistrates will not issue a delinquency complaint for the youth under the age of 12 due to lack of jurisdiction.
- There is no evidence available to the Board indicating youth under 12 are increasingly using other state systems. For example, in FY23, there were 231 CRA admissions for youth under the age of 12, a 23% decrease from the 299 CRA admissions in FY18.
- It is important to note that the Board does not collect data from many of the organizations and agencies youth under 12 interact with (e.g., community or faith based, mental health services, school, etc.). As such, there may be changes in the number of youth under 12 in those organizations.”

# Implementation Challenges

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- Responses to sexually problematic behaviors
- Gang involvement
- Mental health access
- Child welfare involvement
- Collateral consequences before 2018

# Responses to Sexually Problematic Behaviors

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## **Developmentally inappropriate behavior indicate possible:**

- Prior victimization
- Early exposure to sexually inappropriate materials
- Exposure to violence or physical abuse
- Experience and interventions are different from adolescents

# Responses to Sexually Problematic Behaviors

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## Myths:

- Highly likelihood of recidivism
- Requires placement in secure residential treatment facilities
- Requires intensive long-term therapy to reduce recidivism in their adolescence or adulthood
- Prioritizing addressing sexually problematic behavior before tackling other issues

Source: National Center on Sexual Behavior of Youth, Children with Sexual Behavior Problems: Common Misconceptions vs. Current Findings (2003).

# Responses to Sexually Problematic Behaviors

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## Facts:

- With appropriate treatment and supervision, most children can live safely with other children
- Outpatient treatment can be successful for most children
- Children exhibit very low recidivism rates and do not continue offending in adolescence or adulthood

Source: National Center on Sexual Behavior of Youth, Children with Sexual Behavior Problems: Common Misconceptions vs. Current Findings (2003).

# Responses to Sexually Problematic Behaviors

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## Massachusetts implementation

- By removing possibility of prosecution, very young children are treated as victims rather than offenders at Child Advocacy Centers (CACs) – (Model began 2016).
- Legislature funded programs to train all Child Advocacy Centers on evidence-based evaluations of problematic sexual behavior for appropriate referrals
- National Center on the Sexual Behavior of Youth (model developed at University of Kentucky)

# Responses to Sexually Problematic Behaviors

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## Unfinished Business: Sex Offender Registration

- Massachusetts requires sex offender registration upon turning 14 with no minimum age floor at time of offense
- Unlike federal law which requires extreme violence for registration, Massachusetts does not include that limitation
- Permanent entry on juvenile court record, ineligible for diversion or expungement



# Responses to Sexually Problematic Behaviors

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## Unfinished Business: Process mapping

- Guidance for law enforcement response to 911 calls regarding problematic sexual behavior

# Responses to Gang Involvement

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## Reasons for Gang Involvement

- Belonging and social connections
- Protection
- Surrogate families
- Disengagement from school

# Responses to Gang Involvement

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## Massachusetts implementation

- Violence prevention and intervention programs target ages 10-24
- Law enforcement referrals
- Free, voluntary, and confidential
- Approach gang-involved children through lens of exploitation and labor trafficking
- From basic needs (housing, afterschool care) to clinical case management
- Family centered interventions
- School based restorative circles

# Unfinished Business: Child Welfare Involvement

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**Filing reports alleging abuse or neglect by law enforcement against non-parent/non-guardian children under age 12 as “perpetrators”:**

- FY2020: 85
- FY2021: 108
- FY2022: 132

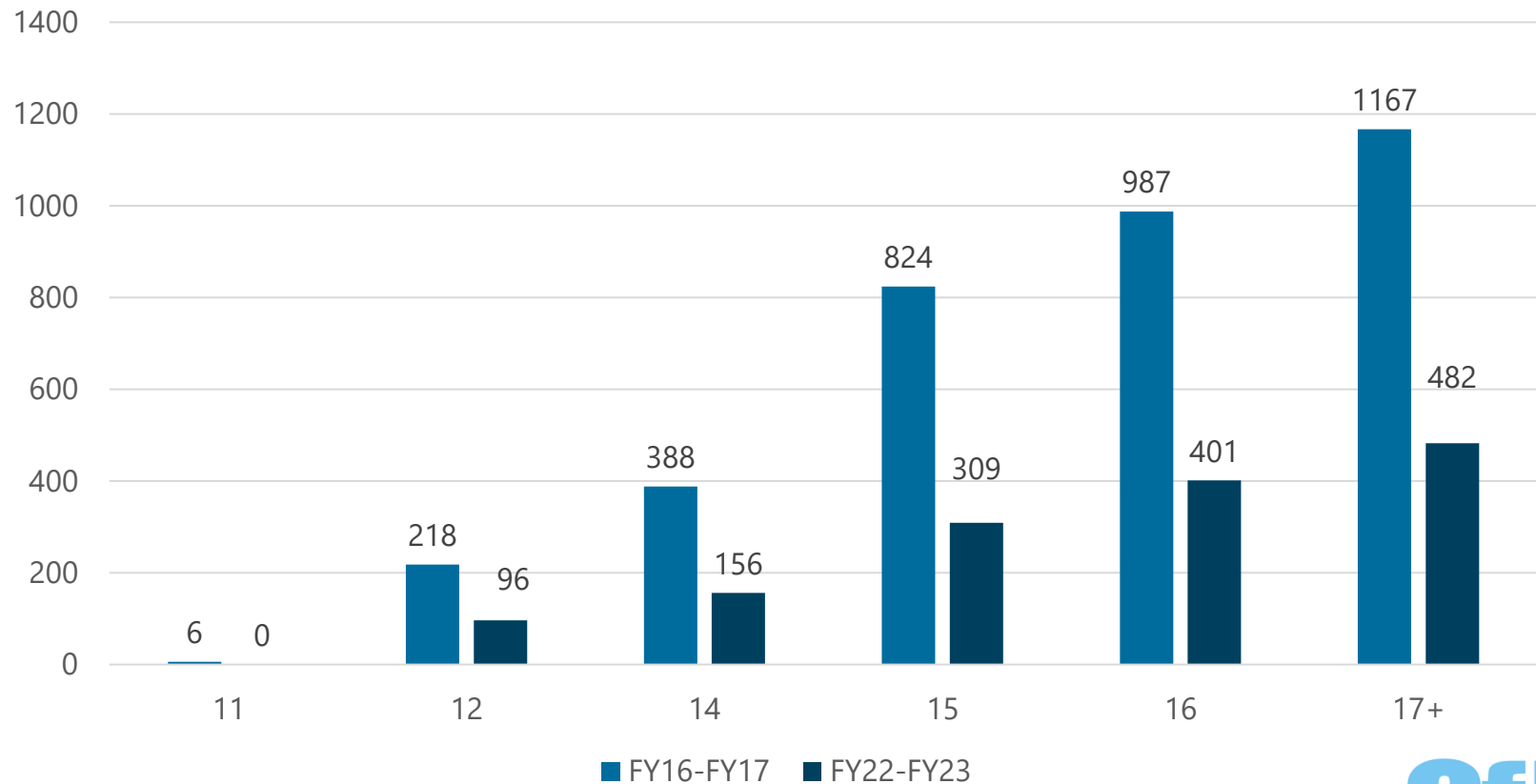
Allegations of abuse or neglect resulted in supported finding (children under age 18): 1.3%-2.2%

No expungement option for child protection registry



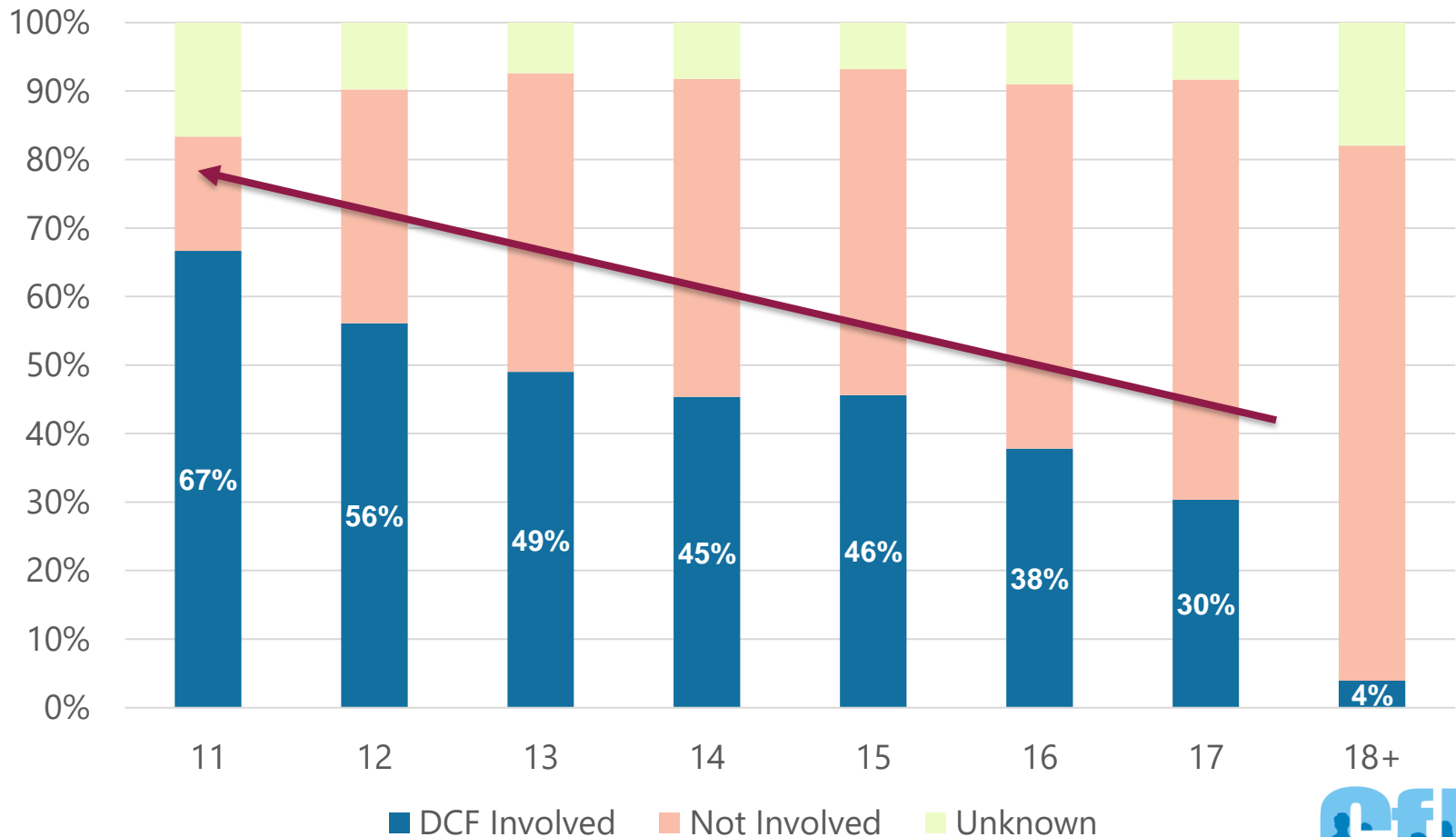
# Impact of Prevention Focused Juvenile Justice Reforms: Five-Year Evaluation

## DYS Detention FY2016-FY2017 Compared to FY2022-FY2023



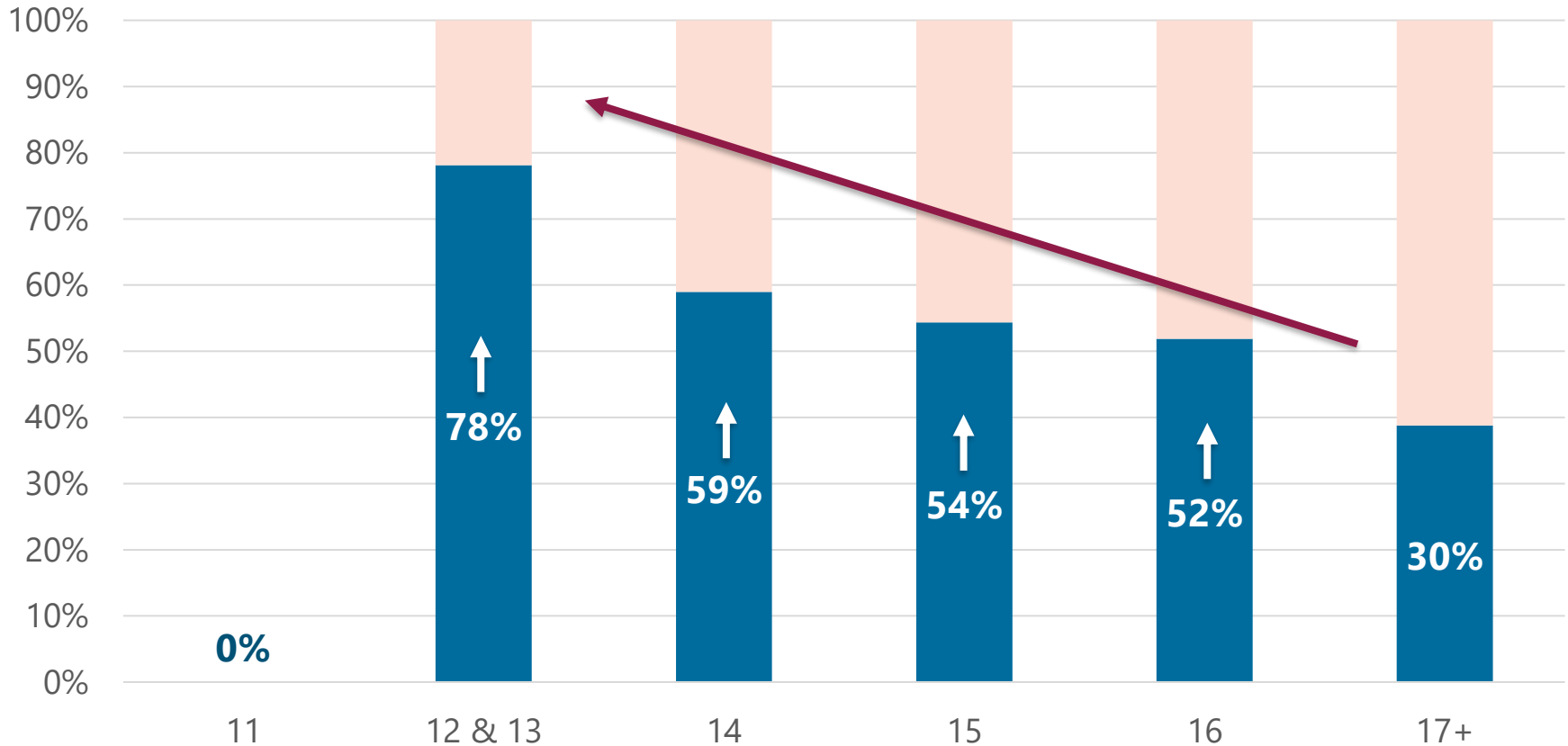
# Unfinished Business: Child Welfare Involvement of Children 12+

## DYS Detention FY2016 & FY2017 by DCF Involvement



# Unfinished Business: Child Welfare Involvement of Children 12+

## DYS Detention FY2022 & FY2023 by DCF Involvement



↑ Increase from FY16-17

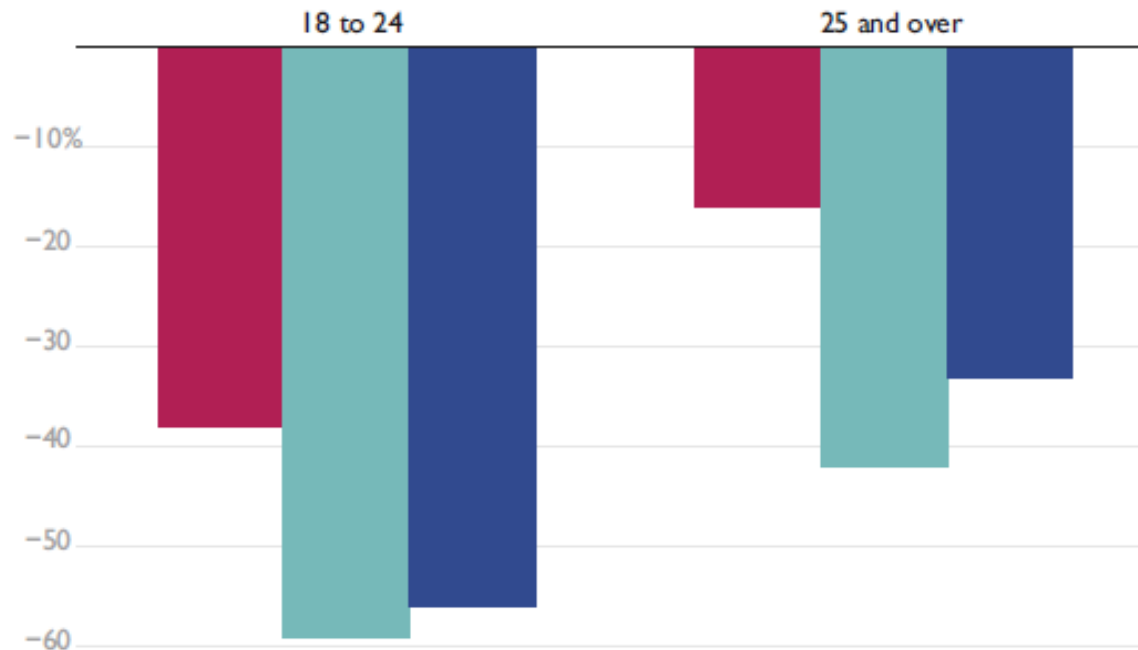
■ DCF Involved ■ Not Involved



# Impact of Prevention Focused Juvenile Justice Reforms: Five-Year Evaluation

Percent change in the correctional population by sex and age (emerging adult vs. general adult population), January 2017 to January 2023

■ HOC Pretrial ■ HOC Sentenced ■ DOC Sentenced



Source: Massachusetts Executive Office of Public Safety and Security, Cross-Tracking System

Source: MassINC, Boston Indicators, Criminal Justice Reform in Massachusetts: A Five-Year Progress Assessment (Jan 2024)



# Learn More and Take Action

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