

LOCKING UP OUR CHILDREN

The Secure Detention of Massachusetts Youth After Arraignment and Before Adjudication



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Cover: But Eyes To See Through by S., age 16.

The art work in this report and on the front cover was created by girls participating in H.U.M.A.N. (Hear Us Make Artistic Noise), an art and entrepreneurship program of Boston College Law School's Juvenile Rights Advocacy Project. H.U.M.A.N. assists girls between the ages of 13-18 who have been involved in the juvenile justice system in using visual arts to document and communicate their life experiences. Through the creation of a visual autobiography and the exhibition and marketing of their artwork, these young women learn to: 1) follow a complex project through to fruition; 2) have their voices heard through a visual medium; and 3) participate in a collaborative project with other young women and teachers. During the last year, the artwork of girls involved in H.U.M.A.N. has been exhibited at the Massachusetts State House and The Cloud Foundation on Boylston Street in Boston.

Learn more about H.U.M.A.N. by visiting its website at <http://www.human-design-online.com> or by contacting H.U.M.A.N.'s Art Educator, Kate Jellinghaus, at kate_jellinghaus@yahoo.com, or H.U.M.A.N.'s Founder and Director, Francine Sherman, at shermanf@bc.edu.

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I. INTRODUCTION AND EXECUTIVE SUMMARY

The United States Constitution mandates that state juvenile justice systems treat similarly situated children equally, regardless of their race or national origin. Systems in which youth of color are overrepresented are often viewed as failing to adhere to this mandate. That perception not only undermines public confidence in the system's fairness but also impedes the system's ability to work with the families and children who need its help.

For each of the last ten years, minority youth have accounted for approximately 20% of the Commonwealth of Massachusetts's juvenile population, but nearly 60% of the young people securely detained after arraignment and before adjudication, and 60% of those committed to the Commonwealth's Department of Youth Services (DYS) after an adjudication of delinquency. Although the federal Juvenile Justice and Delinquency Prevention Act requires that the Commonwealth determine why youth of color are overrepresented and develop and implement a plan to reduce that overrepresentation, Massachusetts has done neither.

In 2003, the Racial Justice Program of the National Legal Department of the American Civil Liberties Union and the American Civil Liberties Union of Massachusetts (collectively, the ACLU) published a report documenting the Commonwealth's failure to comply with its federal legal obligations. After the report's publication, the Commonwealth

hired a Disproportionate Minority Contact Reduction Specialist to educate others about the overrepresentation of youth of color; increased the compensation of and training opportunities for attorneys who represent indigent youth; funded an alternative-to-detention pilot project in Dorchester to supervise children who would have been detained if such supervision had not been available; and began to work with the Juvenile Detention Alternatives Initiative (JDAI) of the Annie E. Casey Foundation to create alternatives to detention in Boston and Worcester.

Although the number of youth detained and committed decreased, the extent to which youth of color are disproportionately confined did not. In 2007, minority youth were overrepresented in the Commonwealth's detention and correctional (treatment) facilities to the same extent that they had been in 1998.

Efforts to determine the causes of the disproportionality have been stymied by a lack of data. Many local police departments do not maintain juvenile arrest statistics and those that do frequently do not disaggregate that data by race or ethnicity. The Massachusetts Juvenile Court only tracks the filing of delinquency complaints and youthful offender indictments and requests for jury trials. Although the Court contends that the Office of the Commissioner of Probation maintains relevant data, the Office has refused to make that data public. A bill introduced during each of the last 2 legislative sessions would have required government agencies involved in the juvenile justice system to collect and report data. It has yet to pass.

In 2006, the ACLU began to examine various decision-making points within the juvenile justice system to determine whether we could identify the reasons for the overrepresentation of minority youth. Specifically, we looked at arrest

and detention after arraignment but prior to a formal adjudication of delinquency.

We selected arrest to determine whether the disproportionate confinement of youth of color resulted from the disproportionate arrest of youth of color. Some inner-city public schools with a significant number of minority students rely heavily on the juvenile justice system to address school disciplinary problems. In 2006, for example, 82% of the students enrolled in Springfield's public schools were youth of color. During the same year, a reported 40% of all juvenile arrests in that city were made by the police officers assigned to patrol the schools. A lack of reliable state-wide juvenile arrest data, however, ultimately forced us to abandon arrest.

We chose detention because Massachusetts had one of the higher rates of secure pre-adjudication detention in the nation. In 2003, the most recent year for which nationwide data is available, the rate at which Massachusetts committed youth to DYS after an adjudication of delinquency was significantly below the national average. Yet the rate at which it detained youth prior to a determination of guilt or innocence was above the national average. Eight states committed youth at a lower rate than Massachusetts, but 33 states detained youth at a lower rate.

In addition, available data indicated that Massachusetts' pre-adjudication detention practices were at odds with its own bail statute and national and international standards. The bail statute presumes that all youth charged with delinquent behavior shall remain in the custody of a parent or guardian prior to adjudication. It limits the use of secure detention to those youth who are at high risk of flight or have been deemed dangers to their community after an evidentiary

hearing. National and international standards recommend that the use of secure detention be similarly limited.

A large percentage of the children detained by Massachusetts, however, did not appear to be flight risks or dangerous. In 2006, for example, 45% of the 5438 youth detained had been charged with misdemeanors. There was no publicly available evidence that any of these children had histories of failing to appear or were the subject of "dangerousness" hearings. In fact, at least 80% of all detained youth were released into their communities once their cases were resolved.

To examine detention practices, we obtained hundreds of documents on the demographics of detained youth from DYS, the state agency that administers or oversees the administration of all juvenile detention facilities. In addition, we interviewed over 100 state officials, justices, prosecutors, defense attorneys and advocates by telephone and in-person in 9 different locations throughout the Commonwealth. The Massachusetts Office of the Commissioner of Probation was the single state agency that refused to permit regional and local employees to speak to us.

A. FINDINGS

We conclude that the Commonwealth's detention practices are responsible for at least some of the overrepresentation of minority youth in Massachusetts's secure detention facilities. Although none of the Massachusetts Juvenile Court justices with whom we spoke acknowledged that race played a role in detention decision-making, our interviewees did confirm that:

1. **Justices regularly detain youth who do not appear to meet the standards for detention as set forth in the Massachusetts bail statute.** They detain children who are not at high risk of flight or dangers to their community because they believe detention to be in the children's best interest. Some use detention as a "wake-up call" or rehabilitative tool to frighten children who have yet to be convicted of any wrongdoing into obeying the law. Advocates report that the Office of the Commissioner of Probation is a particularly zealous proponent of the use of detention as a teaching device. In addition, almost all justices detain youth who they believe cannot return home safely. They do so because they have no other place to house these children. The Commonwealth's child welfare and mental health systems simply do not have a sufficient number of non-secure and/or therapeutic placements.
2. **National research demonstrates that the secure detention of low- and medium-risk youth is rarely in anyone's best interest.** It does not deter future criminal behavior but increases the likelihood that a child will recidivate, exacerbates behavioral problems and educational difficulties and costs taxpayers signifi-

cantly more on a per child basis than programs designed to supervise children returned to their communities or less secure housing alternatives. In addition, using detention to rehabilitate youth who are still presumed innocent violates federal constitutional law.

There is no research to suggest that detained youth in Massachusetts fair any better than those who were the subject of the national research. Almost all detained youth are housed in DYS hardware secure facilities where their movement is restricted, the population changes daily, youth charged with minor offenses commingle with youth charged with violent felonies, one-third of the direct service staff turns over annually, and there is at least one reported serious incident (e.g. peer-on-peer conflict, threatening or disruptive behavior, contraband or suicidal ideations) for every 12 youth detained. Because DYS cannot refuse to house children ordered detained and the presumption of innocent prevents it from providing detained youth with rehabilitative services until and unless they are adjudicated delinquent, DYS has limited ability to control the environment in these facilities.

In 2006, it cost Massachusetts taxpayers approximately \$15,000 to detain a child for 16 days (the average length of stay) in one of DYS's facilities. At the same time, it costs less than \$1500 to provide a child who was permitted to remain at home with 6 to 8 weeks of supervision to ensure that he returned to court and did not re-offend.

3. **Although the lack of data makes it impossible to determine the number of children detained each year who are not flight risks and not dangers to dangers to their community, advocates estimate that the number is in the hundreds, if not thousands.** To the extent

children of color are disproportionately detained, they are disproportionately affected by these detention practices.

4. **Many Massachusetts defense attorneys do not advocate effectively against secure detention.** Almost 90% of youth charged with delinquent behavior are indigent and must rely upon the Commonwealth to provide them with defense counsel. Very few of the court-appointed defense attorneys with whom we spoke consistently challenged the detention of their clients by appealing excessive bail determinations or challenged conditions of release that were not designed to guarantee a child's return to court. Although the state agency that oversees the delivery of defense services to the poor, the Committee for Public Counsel Services, has significantly increased the resources available to juvenile defense attorneys, many defenders nonetheless still lack the juvenile specific training and supervision

they need to ensure consistently effective advocacy against secure detention.

B. RECOMMENDATIONS

In light of these findings, we recommend that the Commonwealth take the steps necessary to reduce the number of securely detained youth who are not at high risk of failing to appear in court or who have not been determined to be dangers to their communities at evidentiary hearings addressing the issue. Specifically, we recommend the following:

1. The **Massachusetts Juvenile Court** should take the steps necessary to ensure that justices do not use detention as a teaching device, a rehabilitative tool or a "wake-up call" for youth who do not meet the standards for detention under the Massachusetts bail statute and are still entitled to the presumption of innocence.
2. The **Commonwealth** should increase the availability of community-based programs to supervise youth who need such support to remain at home until their cases are adjudicated.
3. The **Commonwealth** should develop an integrated inter-agency system for referring low- and medium-risk youth who cannot return home to DSS or DMH for placement or the support services necessary to permit them to return home.

4. The **Commonwealth** should increase the availability and accessibility of short-term residential placements within DSS and DMH for low- and medium-risk children charged with delinquent behavior.

5. In late 2008, when it is linked with the *MassCourts* electronic case management system, the **Massachusetts Juvenile Court** should use the system to collect, analyze and publicly report data on the reasons why youth are securely detained prior to adjudication and the extent to which secure detention deters crime, as many justices believe, or increases recidivism, as the national research demonstrates.

6. **Defense attorneys** should advocate aggressively and creatively against the detention of their clients. At a minimum, lawyers should address the criteria laid out in the bail statute, actively seek to connect their clients with community-based resources that would increase the likelihood that youth will make all court appearances, oppose the imposition of conditions of release or terms of pretrial probation that are not designed to guarantee a child's return to court, and regularly appeal excessive bail determinations.

7. The **Massachusetts Juvenile Court** should determine whether the procedures for appealing juvenile bail determinations are more onerous than those for appealing adult bail determinations and, as a result, discourage defense attorneys from taking appeals. If they are more onerous, the **Massachusetts Juvenile Court** should adopt changes to ensure that its procedures do not hinder appeals.

8. The **Committee for Public Counsel Services** should take steps to remedy deficiencies in the quality

of juvenile indigent defense representation by mandating that juvenile defenders receive additional juvenile-specific training and improving the support and supervision of such attorneys.

9. The **Commonwealth** should provide the **Committee for Public Counsel Services** with the funding necessary to create a Juvenile Defender Division designed to further improve juvenile indigent defense representation. That Division should partner with the Committee's Private Counsel Division to, among other things, develop an appropriate case management system, create additional small juvenile defender offices similar to the Suffolk County Youth Advocacy Project throughout the Commonwealth and develop a juvenile-specific affirmative advocacy and litigation unit with capacity to address systemic concerns.

We further recommend that the Commonwealth take the steps necessary to comply with its obligation under the federal Juvenile Justice and Delinquency Prevention Act to identify the reasons why youth of color are disproportionately confined in Massachusetts detention and correction facilities. Specifically, we recommend the following:

10. The **Commonwealth** should fund a comprehensive, in-depth study to determine the extent to which the policing practices in public school systems and the prosecution of youth for violating the terms of their probation contribute to the overrepresentation of youth of color in the juvenile justice system.

11. The **Legislature** should adopt and the **Governor** should approve a budget that requires local police departments, sheriffs' offices, the Office of the Commissioner of Probation and District Attorney's

Offices to collect, analyze and publicly report data on juvenile arrests, the filing of applications for delinquency complaints, the detention of youth prior to arraignment, charging decisions and the use of diversionary programs, disaggregated by race, ethnicity, gender, home zip code and charge, as a precondition of receiving state funding.

12. The **Massachusetts Juvenile Court** should use the *MassCourts* system to collect, analyze and publicly report data on the issuance of delinquency complaints, the use of diversion programs, adjudication, disposition, and pre- and post-adjudication probation violations, disaggregated by race, ethnicity, gender and charge, to determine the extent to which decisions made at these points in the juvenile justice system influence the disproportionate confinement of minority youth.

II. BACKGROUND

THE DISPROPORTIONATE CONFINEMENT OF YOUTH OF COLOR IN MASSACHUSETTS' JUVENILE DETENTION AND CORRECTIONAL (TREATMENT) FACILITIES

A. THE ACLU'S 2003 REPORT

In the late 1990s, the Office of Juvenile Justice and Delinquency Prevention of the United States Department of Justice released data revealing that youth of color were disproportionately confined in state juvenile detention and correctional facilities throughout the nation. In 1997, youth of color accounted for one-third of the nation's adolescent population, but two-thirds of youth held in state juvenile detention and correctional facilities. Latino youth were two and one-half times more likely than Caucasian youth to be confined in a detention or correctional facility. African-American youth were 5 times more likely.¹

In Massachusetts, youth of color represented slightly more than 20% of the Commonwealth's adolescent population, but approximately 60% of youth held in juvenile detention and correctional facilities (which are also referred to in Massachusetts as "treatment facilities").² Latino youth were 5 times more likely than Caucasian youth to be confined in a detention or correctional facility. African-American youth were 8 times more likely.³

Since 1988, the federal Juvenile Justice Delinquency and Prevention Act⁴ has required states receiving funding pursuant to the Act to identify the extent to which youth of color are overrepresented in their detention and correctional facilities, to determine the reasons why they are overrepresented and to take steps to reduce their numbers.⁵ Studies conducted both before and after the enactment of the statute have concluded that while poverty-related risk factors may contribute to disproportionate minority confinement, inadvertent racial stereotyping, systemic insensitivities to cultural differences and the unforeseen consequences of racially-neutral policies may also be responsible.⁶

In 2001, the ACLU set about to determine whether Massachusetts had complied with the Juvenile Justice and Delinquency Prevention Act. Documents obtained by the ACLU through the Commonwealth's Public Records Act⁷ revealed that it had not.

The Commonwealth's ability to identify the degree to which minority youth were overrepresented and the reasons for that overrepresentation had been hampered by a lack of data. Many of Massachusetts' 351 local police departments, including several located in large urban areas, did not collect juvenile arrest statistics and those that did frequently failed to tabulate arrests by race or ethnicity.

The Massachusetts Juvenile Court tracked only the number of delinquency complaints filed each year. It did not collect data on the number of children who were the subject of applications for delinquency complaints, the number of children diverted at intake, the number arraigned, the number detained at and after arraignment, the number adjudicated delinquent, the number placed on probation after an adjudication of delinquency, or the number who re-offended.⁸ It was one of 11 states that did not provide data

to the National Juvenile Court Data Archive. Created in 1975 by the Office of Juvenile Justice and Delinquency Prevention to support local and national policy and program development, the Archive currently contains the automated records of over 15 million juvenile court cases from these 39 states.⁹

The Commonwealth had drafted plans to reduce minority overrepresentation, but none had been implemented. Although the Commonwealth received millions of federal dollars for juvenile delinquency prevention programming, it had very few such programs for minority youth.

In 2003, the ACLU published a report setting forth its findings and recommending, among other things, that Massachusetts: (1) prioritize the reduction of the number of youth of color in its juvenile justice system; (2) revamp the advisory committee appointed by the Governor pursuant to the Juvenile Justice Delinquency and Prevention Act to oversee the Commonwealth's implementation of the Act; (3) develop meaningful data collection capabilities; (4) identify the root causes of overrepresentation in at least one geographic area; and (5) ensure that youth of color had equal access to appropriate community-based alternatives to detention.¹⁰

Several months later, the ACLU hosted a forum in Boston to introduce Commonwealth policy-makers to strategies employed by Multnomah County, Oregon; Santa Cruz County, California; Cook County, Illinois and other localities to reduce the number of minority youth securely detained prior to adjudication.¹¹ With assistance and technical support from the Juvenile Detention Alternatives Initiative (JDAI) of the Annie E. Casey Foundation, these localities monitored pre-adjudication detention decision-making to ensure that they detained only those children who were at

high risk of re-offending or failing to appear at court hearings. They returned medium- and low-risk children to their parents or guardians. They developed short-term community-based programs to provide the supervision necessary to ensure that these children did not re-offend or fail to appear in court while at home. For those medium- and low-risk children who did not have a parent or guardian to whom they could be released, these localities developed non-secure housing alternatives.¹²

Over a period of several years, Multnomah County, Oregon reduced its average daily juvenile detention population by 65% and the proportion of detained youth who were youth of color by almost 25%. Santa Cruz County, California reduced its average daily detention population by 65% and the average minority population in its juvenile hall by 17%.¹³ Subsequent studies showed that JDAI strategies were between 3 and ten times less expensive than secure detention on a per child basis, just as effective in ensuring that children returned to court and did not re-offend, and less detrimental to children.¹⁴

As of the date of the forum, Massachusetts neither monitored detention decision-making nor had any officially recognized community-based alternatives to detention.¹⁵

B. MASSACHUSETTS' SUBSEQUENT EFFORTS TO ADDRESS DISPROPORTIONATE CONFINEMENT

Following the publication of the ACLU's 2003 report, a number of state agencies made changes in their policies and practices. The Governor's Office reconfigured the advisory committee that oversaw the Commonwealth's implementation of the Juvenile Justice Delinquency and Prevention Act and the dissemination of federal funds received pursuant to the Act. Known within the Commonwealth as the Juvenile Justice Advisory Committee (JJAC), this group now represents a wide variety of organizations and entities that work with at-risk youth and communities of color.¹⁶ Prior to the report, the majority of members were state employees.

The Massachusetts Executive Office of Public Safety and Security (EOPSS), which staffs the JJAC, hired a full-time Disproportionate Minority Contact Reduction Specialist to study and educate others about the issue and to work with the JJAC to develop strategies to reduce overrepresentation.

The reconstituted JJAC publicly announced that reducing the number of youth of color in the Commonwealth's detention facilities was one of its priorities. With EOPSS's assistance, it hosted forums throughout the Commonwealth to identify reasons why minority youth were disproportionately confined and strategies for addressing the disparity. In addition, it revised the manner in which it awarded the federal funds received pursuant to the Act, giving preference to programming that addressed the overrepresentation of minority youth.¹⁷

Among others, the JJAC provided federal funding to the Robert F. Kennedy Children's Action Corp., Inc. to develop the Commonwealth's first community-based alternative to detention — an intensive case management program known as the Detention Diversion Advocacy Project (DDAP). Located in Dorchester, the program supervises youth released to their parents or guardians until their cases are adjudicated (usually 6 to 8 weeks) to ensure that they appear in court and do not re-offend. During its first 2 years of operation, the program served 157 youth, all but 4 of whom were youth of color, at an average cost of \$1,350 per child.¹⁸ Eighty-five percent successfully completed the program.¹⁹

The JJAC also provided federal funding to DYS to interest the Annie E. Casey Foundation in working with the cities of Boston and Worcester to develop alternatives to detention. In late 2006, the Foundation formally designated Boston and Worcester as JDAI sites.²⁰ To move the initiative forward, DYS has convened state and local steering committees on which 24 different stakeholder agencies, including DSS, the Office of the Commissioner of Probation, the Massachusetts Juvenile Court and the Committee for Public Counsel Services, are represented. It has tasked the steering committees with, among other things, gathering data, mapping the juvenile court system and developing risk assessment tools to guide judicial detention decision-making.

The Committee for Public Counsel Services (CPCS), the state agency that oversees the provision of legal representation to the indigent, took a number of steps to enhance the quality of representation in delinquency proceedings. In mid-2005, it successfully persuaded the Legislature to increase the rate of compensation paid to public defender attorneys from \$30 to \$50 per hour.²¹ It created new staff attorney positions to provide additional support to juvenile

defenders throughout the Commonwealth, and it now requires attorneys to complete not only 5 days of training as a prerequisite for representing indigent clients, but also 8 hours of training each year.²² (Only 2 hours of the 5-day pre-service training focus on juvenile representation; defenders do not need to attend juvenile-specific programs to fulfill the annual 8-hour training requirement.) With federal funds awarded to it by the JJAC, the Committee also enhanced its Juvenile Defender Network to assist defenders in advocating against the unnecessary detention of their clients.

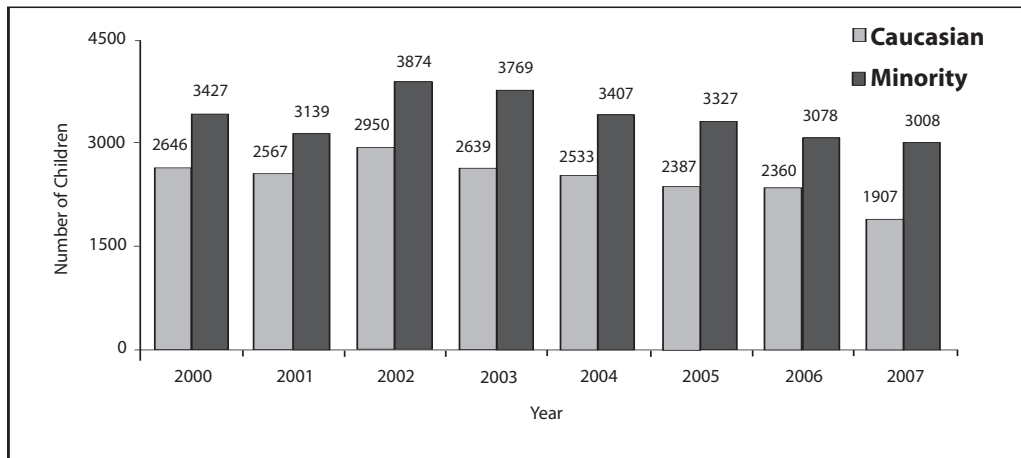
Lastly, the Massachusetts Court System developed and installed a web-based electronic case management system, *MassCourts*. As of February 2008, the system only tracked adult criminal cases, but by the end of 2008, it is expected to track juvenile delinquency cases as well. According to the Chief Justice of the Massachusetts Juvenile Court, the system will have the capacity to collect and analyze data that the Court has not previously collected or analyzed.

C. THE CONTINUED OVERREPRESENTATION OF YOUTH OF COLOR

The degree to which youth of color are overrepresented in the Commonwealth’s secure detention facilities and juvenile correctional facilities, however, has not changed. Moreover, Massachusetts is no closer than it was in 2003 to understanding why youth of color are overrepresented. It has no comprehensive state-wide plan to address the issue and it continues to appropriate very little money either to reduce overrepresentation or to develop alternatives to secure detention.

Although the actual number of detained and committed youth fell between 1998 and 2007, minority youth continued to account for slightly more than 20% of the Commonwealth’s population ages 10 to 16 and approximately 60% of those youth detained and committed.²³

**Table 1.²⁴
Number of Caucasian and
Minority Youth Detained:
DYS Total Detention
Admissions**



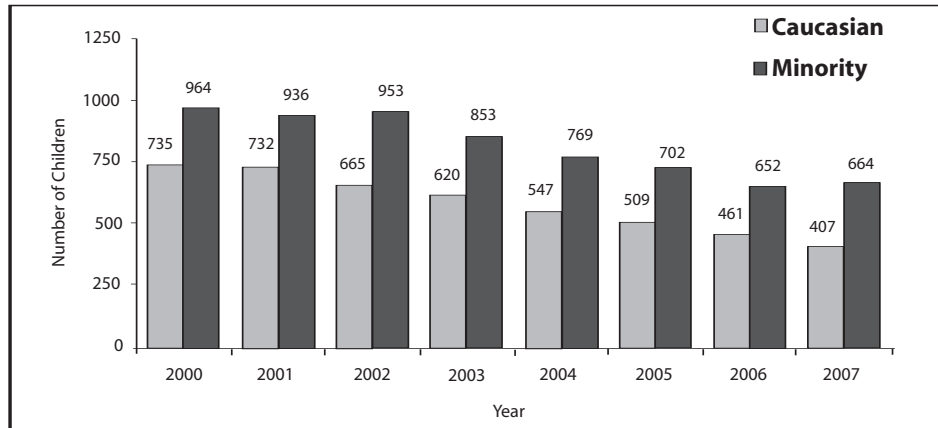


Table 2.²⁵
Number of Caucasian and
Minority Youth Committed:
DYS Total Commitments

The Commonwealth’s ability to determine why youth of color are disproportionately detained continues to be stymied by a lack of data. Law enforcement agencies gather no more data than they did in 2003. The Massachusetts Juvenile Court is awaiting the *MassCourts* system. Although the Office of the Chief of Probation reportedly collects some relevant data, it has refused to make public any data other than the aggregate caseload data posted on its website.²⁶ The JJAC had funding to hire social scientists to cull data from individual case files but, according to the Massachusetts Juvenile Court, the Office of the Commissioner of Probation controls the files and the Office will not permit social scientists to access them.²⁷

During the last 2 legislative sessions, former state Senator Jarrett Barrios introduced a bill before the Massachusetts Legislature that would have required state agencies involved in the juvenile justice system and municipal law enforcement agencies to collect and report data. That bill never made it out of committee because of an apparent lack of interest.²⁸

The most concrete plans to address disproportionate minority confinement are the Dorchester DDAP program and DYS’s JDAI effort in Boston and Worcester. The Office of the Commissioner of Probation, however, is in a position to frustrate both. The success of the JDAI model, for example, depends on accurate data about why youth are detained and whether they are dangerous enough to require locked supervision. In Massachusetts, that information reportedly is part of the data that the Office of the Commissioner of Probation has refused to make public, even to DYS and the JDAI working groups.

According to DDAP program administrators and members of the JJAC, the Office views the DDAP program as intruding upon the Office’s role in the detention decision-making process. It allegedly attempts to assert its authority by refusing to refer otherwise eligible youth to the program and asking that the Juvenile Court impose onerous record-keeping requirements on the program.

In fiscal year 2006-07, the only money the Commonwealth allocated for the development of programming specifically designed to reduce minority overrepresentation was \$500,000 in federal funds. During the last several years, however, the federal government has substantially reduced the amounts it distributes to Massachusetts and other states for delinquency prevention programming. In fiscal year 2001-02, for example, Massachusetts received \$6.9 million. In fiscal year 2006-07, it received \$1.9 million. Of that \$1.9 million, the Commonwealth set aside roughly \$1.4 million to pay third-party vendors to house juveniles held by local police departments between arrest and arraignment, leaving only \$500,000 for disproportionate minority reduction initiatives.²⁹ Even less money was available in fiscal year 2007-08. As of the date of this report, the Commonwealth had not allocated any state funds to compensate for the decrease in federal funding.

III. THE ACLU'S 2006-07 STUDY:

AN ATTEMPT TO IDENTIFY THE REASONS FOR DISPROPORTIONATE MINORITY CONFINEMENT

A. PURPOSE OF STUDY

In light of the Commonwealth's inability to identify the reasons why youth of color are overrepresented, the ACLU decided to determine whether we could do so. Although there are many points between arrest and disposition at which decisions are made that influence the manner in which cases proceed through the juvenile justice system, we initially chose to focus on 2 — arrest and detention after arraignment but before adjudication.

We initially looked at arrest rates and patterns because we had heard from many justices and advocates that the overrepresentation of minority youth in detention and correctional (treatment) facilities was caused, in part, by the disproportionate arrest of youth of color. The justices and advocates speculated that minority youth were arrested in greater numbers than Caucasian youth because of the extent to which inner-city public schools with large minority student bodies rely on the juvenile justice system to address school disciplinary problems. In 2006, for example, 82% of the students enrolled in Springfield's public schools were youth of color.³⁰ During the same year, a

reported 40% of all juvenile arrests in the City of Springfield were made by police officers assigned to patrol the city's schools.³¹ Similarly, in 2005, 79% of the students enrolled in Holyoke's public schools were youth of color,³² and approximately one-quarter of all juvenile arrests were school-based.³³

Because of a lack of reliable juvenile arrest data disaggregated by race and ethnicity, we ultimately concluded that we could not conduct a statewide study of arrest practices and decided to limit the focus of our study to pre-adjudication detention decision-making.³⁴ We elected to study detention because, in 2003, the most recent year for which nationwide data is available, a one-day count of youth confined to juvenile detention and correctional facilities across the country revealed that Massachusetts had one of the higher rates of detention in the nation. Thirty-three states had a smaller percentage of their adolescent population residing in detention facilities than did Massachusetts. On the other hand, only 8 states had a smaller percentage of their adolescent population residing in correctional facilities than did Massachusetts.³⁵

In addition, available data indicated that Massachusetts' detention practices were at odds with national and international standards, including the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, the United Nations Standard Minimum Rules for Non-Custodial Measures, the United Nations Minimum Rules for the Administration of Juvenile Justice, the United Nations Convention on the Rights of the Child, the Institute of Judicial Administration/American Bar Association Juvenile Justice Standards and guidelines promulgated by the National Council of Juvenile and Family Court Judges and the Coalition for Juvenile Justice. These standards recommend that detention should be limited to youth who are at

high risk of re-offending or failing to appear at their next court hearing and that all other children should be allowed to remain at home until their cases are adjudicated.³⁶

Despite these standards, a large percentage of the children detained by Massachusetts do not appear to be at high risk of re-offending or failing to return to court. In 2006, 45% or 2447 of the 5438 youth detained had been charged with misdemeanors.³⁷ There was no publicly available evidence that any of these children had histories of failing to appear or were dangers to their communities. In fact, at least 80% of all detained youth were released into their communities once their cases were resolved. Either they were not guilty of the charges against them or the crimes for which they were adjudicated delinquent were not serious enough to warrant commitment.³⁸

That the Commonwealth was detaining large numbers of low- and medium-risk children was further supported by the fact that the rate at which the Commonwealth detained youth appeared to have no correlation to the rate at which it arrested and committed them. Between 2000 and 2005, for example, the estimated number of juvenile arrests and the number of youth committed to DYS decreased by 17% and 27% respectively. Yet the number of youth securely detained during the same time period decreased by only 5%.³⁹

B. METHODOLOGY

Initially, we sought and obtained hundreds of documents from DYS, the state agency responsible for housing youth detained after arraignment. Although DYS has the statutory authority to develop a variety of detention facilities, it has only secure facilities and a limited number of foster homes for very young children. DYS compiles demographic data on youth residing in its secure facilities, disaggregated by age, gender, race, ethnicity, severity of offense, municipality of residence, length of stay and Juvenile Court Division. It does not, however, maintain data on the reasons why youth are detained.⁴⁰

To obtain that information, we conducted in-person and telephone interviews with 14 of the Commonwealth's 39 Juvenile Court justices; attorneys from the Berkshire, Hampden, Worcester, Bristol, Middlesex, Suffolk and Cape and Islands District Attorney's Offices; administrators and clerks from the Berkshire, Hampden, Worcester, Bristol, Middlesex, Suffolk and Essex County Divisions of the Massachusetts Juvenile Court; administrators from DYS, DSS, DMH, EOPSS, the Committee for Public Counsel Services and the Office of the Commissioner of Probation; officers from police departments in Boston, Fall River, Holyoke, Lawrence, Lowell, Lynn, Pittsfield, Springfield and Worcester; ⁴¹ 35 juvenile defense attorneys and 8 other juvenile advocates. In addition, we attended forums hosted by the JJAC in Worcester, Brockton and Boston to which various stakeholders from around the Commonwealth had been invited to discuss the reasons for and the alternatives to pre-adjudication detention. The Office of the Commissioner of Probation was the only state agency that refused to permit its regional and local employees to be interviewed.

We asked each interviewee about his or her own personal experiences and observations. No interviewee was asked to speculate about practices and policies of which he or she had no first-hand knowledge.

The results of our investigation are set forth below.

C. FINDINGS

1. Massachusetts Statutory And Case Law Limits The Secure Detention Of Youth

Massachusetts state law presumes that all children charged with delinquent behavior shall remain in the custody of a parent or guardian until their cases are adjudicated.⁴² However, it permits the detention of youth at arraignment or any time after arraignment and prior to a formal determination of guilt or innocence under circumstances set forth in the Massachusetts bail statute (as it is encoded in the Massachusetts General Law) and a decision of the Massachusetts Supreme Judicial Court, *Jake J. v. Commonwealth*.⁴³

In accordance with national and international standards, the bail statute, which applies to adults and children equally, only authorizes the detention of those determined to be at high risk of flight or re-offending. More specifically, Massachusetts General Law limits detention at arraignment to:

- Adults and children who are at risk of flight based on the nature of the charges against them, the potential penalty they face, and their family ties, financial

resources, employment records, mental health, reputation, and prior involvement with the criminal or juvenile justice systems;⁴⁴

- Adults and children who are dangers to their communities, based upon evidence presented at a hearing commonly referred to as a “dangerousness hearing;”⁴⁵ and
- Children in need of a mental health evaluation to assist with the adjudication of their cases.⁴⁶

Adults and children who are deemed to be at risk of flight may still be permitted to remain at home if they or their families post bail guaranteeing their appearance at their next court hearing.⁴⁷ Adults and children who are considered dangers to their communities may also be allowed to remain at home if they agree to adhere to certain conditions imposed by a court to minimize that danger.⁴⁸ State statutory law mandates that the conditions be the least restrictive necessary to ensure the safety of the community.⁴⁹

The Massachusetts bail statute similarly limits the subsequent detention of adults and children initially permitted to remain at home to:

- Adults and children charged with another crime while released on bail, provided a justice: (a) previously warned them of the consequences of a subsequent charge; (b) finds probable cause to believe that they committed the second crime; and (c) finds that their re-release will seriously endanger any person or the community;⁵⁰ or
- Adults and children who were determined to be dangers to their communities at a “dangerousness hear-

ing,” were released on conditions designed to minimize that danger, and violated those conditions, provided a justice finds that there are no other conditions that can be imposed that will reasonably assure the safety of the community or that they are likely to abide by.⁵¹

A third circumstance under which youth initially permitted to remain at home may be detained is set forth in the *Jake J.* decision. Contrary to national and international standards and the bail statute, however, the *Jake J.* decision, which applies only to children, does not limit detention to youth deemed to be flight risks or dangers to their community.

Pursuant to Chapter 278, Section 87, of the Massachusetts General Law, an individual who is neither a danger to his community nor a flight risk may be ordered to abide by certain conditions while at home prior to adjudication but *only* if that individual *agrees* to the conditions. A justice may ask the individual to agree to any condition that the justice “deems proper.”⁵² Although Section 87 is silent as to whether a justice may detain an individual who violates those conditions, the *Jake J.* decision permits the justice to detain a child who does so pursuant to the justice’s “inherent interest” in enforcing his or her own orders.⁵³ In deciding whether to detain, the justice does not need to find that the child is at risk of flight or a danger to his community but only that “the juvenile [is] ‘unlikely to abide by any [other] condition or combination of conditions of release.’”⁵⁴

2. Massachusetts Uses Secure Pre-Adjudication Detention As A Disciplinary And Rehabilitative Tool

The Massachusetts Juvenile Court justices we interviewed acknowledged that the Court’s 39 justices do not uniformly apply the law as set forth above. Some adhere to the letter

of the law, detaining only those youth who are at high risk of flight or who have been determined to be dangers to their community after a “dangerousness hearing.” Others, however, will hold youth who are neither flight risks nor dangerous because they believe secure detention to be in the children’s “best interest.”

The justices in the second group, together with the Office of the Commissioner of Probation⁵⁵ and a significant number of defense attorneys, prosecutors and police officers, view detention as an effective rehabilitative and/or disciplinary tool. They believe that it can and should be used to frighten youth into obeying the law or to compel them to “conform” their behavior:

“You ask why detention is so high. Some judges would say that they use it as a teaching tool for kids.”

—Juvenile Court Justice

“Putting kids into DYS detention is one of the best things for some kids who really need to be scared and to think, ‘I don’t want this to happen to me again.’”

—Defense Attorney

“If a kid is appropriate for bail but needs ‘a wake-up call,’ I may detain him. He ‘must learn that there are consequences . . .’”

—Juvenile Court Justice

“Detention shows that there are consequences to behavior.”

—Assistant District Attorney

“One of the judges, if conditions are given and conditions are violated, he will hold kids accountable [by detaining them]. . . [It’s] better to give kids a taste of lock-up without commitment.”

—Defense Attorney

“Probation officers often referred to pre-adjudication detention as a ‘wake-up call.’”

—Defense Attorney

“Sometimes we agree to have our kid detained for one to 2 weeks . . . a sort of a spanking. Probation will often agree to do this with a defense attorney when the kid needs a sort of reality check.”

—Defense Attorney

“Secure detention can be used as a ‘time out’ for a period of reflection so that the child sees what it’s like to be incarcerated.”

—Police Officer

Even though a youth may not be at risk of flight, these justices sometimes set bail at an amount neither the child nor his family can pay in order to demonstrate to him the potential consequences of an adjudication of delinquency. The amount of bail does not need to be in the hundreds of thousands for a child to be unable to pay. If the child is indigent, bail in the amount of \$500 or \$1000 can be excessive.

The same justices will also detain a youth to “hold him accountable” for violating the conditions he was ordered to obey while at home awaiting adjudication. In most cases, the conditions were not imposed to guarantee the child’s return to court or in response to a “dangerousness hearing,” but for rehabilitative purposes. They usually include: “attend school without incident,” “remain drug and alcohol free,” “obey rules at home” and “obey curfew.”

James R.

Fifteen year-old James R. spent a week in a DYS detention facility after a juvenile court set bail at \$1500, an amount that neither he nor his family could pay. James allegedly stole a bus pass from another child. His only other contact with the juvenile justice system had been an arrest a few months earlier after the police found him in possession of a CD allegedly stolen from a car by another group of juveniles. Both he and his mother had appeared at all court hearings in connection with the earlier charge. On appeal, the superior court vacated the juvenile court’s order setting bail at \$1500 bail and released James to his mother.

Federal and state constitutional law prohibits the use of pre-adjudication detention as a rehabilitative tool or “wake-up call.” Pursuant to that law, every individual charged with criminal wrongdoing or delinquent behavior is presumed to be innocent. Until he has been proven guilty beyond a reasonable doubt, he may not be detained or otherwise deprived of his liberty for rehabilitative or punitive purposes.⁵⁶ As one Massachusetts Juvenile Court justice said, “Pre-trial is not the time to rehabilitate kids . . . the presumption of innocence applies.”⁵⁷

Moreover, according to national research, secure pre-adjudication detention does not frighten youth into behaving. In fact, it does exactly the opposite. It provides children with an opportunity to interact with peers with more serious criminal histories and behavioral problems without the potentially mitigating influences of family, school, service

providers or community. As a result, it is one of the most accurate predictors of recidivism.⁵⁸ According to one Massachusetts Juvenile Court justice, detention makes the young people who come before him less fearful of jail: “[Youth] who are at DYS think that they can now handle prison, so they’re not afraid of going to prison and they should be....”⁵⁹

Kenny A.

Fifteen year-old Kenny A., a boy in the legal custody of the DSS, spent 5 days in a secure DYS detention facility after a juvenile court set bail at \$300, twice the amount requested by the District Attorney. Kenny, who had had no prior contact with the juvenile justice system, had been charged with receiving a stolen motor vehicle after police officers noticed a group of boys peering into an empty vandalized car parked on the side of the road. Although the District Attorney asked that bail be set at \$150, the juvenile court set it at \$300 after learning that Kenny had allegedly made homophobic remarks in his last foster care placement. On appeal, the superior court vacated the juvenile court’s order setting bail and released Kenny to DSS.

Justices who use pre-adjudication detention as a teaching and/or rehabilitative device often support their detention decisions with arguments that fail to acknowledge the unconstitutionality of punitive pre-adjudication detention or the national research demonstrating that pre-adjudication detention has negative consequences on children. For example, some justices, when asked to provide a legal jus-

tification for bail determinations designed to give youth a “feel for life behind bars” contend that the amount of bail is justified by public safety concerns arising from the nature of the offense with which the youth has been charged.

This rationale, however, fails for 2 reasons. First, the Massachusetts Supreme Judicial Court has made clear that bail determinations may not be based on a justice’s subjective determination of a youth’s supposed threat to public safety. The Court must hold a “dangerousness hearing.”⁶⁰ Second, although the nature of the offense is one factor to be considered in determining flight risk and the appropriate amount of bail, it is not the only one. State law requires that the nature of the offense be balanced with a number of other previously mentioned factors, including the youth’s family ties, financial resources, employment and mental health records, reputation in the community and prior involvement with the juvenile justice system.⁶¹

When asked to justify the subsequent detention of low- and medium-risk youth initially permitted to remain at home subject to conditions, justices refer to the Juvenile Court’s rehabilitative mission, the *Jake J.* decision and the fact that the child voluntarily agreed to the conditions. These arguments are often without merit as well.

First, as previously mentioned, the presumption of innocence prevents the rehabilitation of a youth who has yet to be adjudicated delinquent and determined to be in need of rehabilitation.

Second, advocates report that the conditions imposed are not necessarily rehabilitative; they are often not tailored to the individual needs and circumstances of the child and frequently imposed without any meaningful assessment as to whether the child is capable of adhering to them. By way

of example, these advocates point to youth with substance abuse problems ordered to remain drug free; children with a long history of conflict with their parents ordered to obey home rules; and young people who have difficulty controlling their behavior because of diagnosed disabilities ordered to attend school without incident.

Advocates further report that once these children are at home, there are few community-based services available to support their compliance with the conditions while they await adjudication — a wait that could be as long as 6 months. Out-patient drug treatment and counseling programs in low income and minority communities have long waiting lists or lack the experience or training to provide culturally competent services to the different ethnic groups that reside in their communities.

Lastly, according to advocates, most youth do not “voluntarily” agree to the conditions. Instead, justices routinely threaten to detain young people to compel their acquiescence.

Although defense attorneys may challenge the imposition of conditions not designed to ensure a child’s return to court or imposed in connection with a “dangerousness hearing,” or appeal excessive bail determinations to the Massachusetts Superior Court,⁶² few of those whom we interviewed reported that they did so on a regular basis. An estimated 90% of youth charged with delinquent behavior are represented by an attorney assigned to them by the Juvenile Court. To be eligible for an assignment, an attorney must contract with one of 11 regional bar advocacy programs administered by the Committee for Public Counsel Services. Most contract attorneys function as solo-practitioners and are provided with little juvenile-specific training and minimal direct supervision or support.

Some defense attorneys argue that the “system” discourages the appeal of juvenile bail determinations. They contend that the process for taking such appeals is overly burdensome and time-consuming, particularly when compared to the process established by the Massachusetts District Court for appeals of adult bail determinations. In the adult system, the court itself forwards all necessary paperwork to the appellate court. In the juvenile system, defense attorneys must compile and forward it. Some justices interviewed, however, deny that the Massachusetts Juvenile Court places systemic impediments in the way of juvenile defenders and state that to the extent such impediments exist they are the result of policies and practices established by clerks in individual juvenile courthouses.

3. Massachusetts Uses Secure Detention Facilities To House Youth Who Cannot Be Accommodated By The Commonwealth’s Child Welfare and Mental Health Systems

All justices interviewed stated that they detain youth who are not at high risk of flight or who have not been determined to be dangerous if they believe the youth cannot return home safely. A child’s living situation may be too chaotic or violent; his parents or guardians may not want to care for him; or he may have behavioral, mental health and/or substance abuse problems that require an out-of-home placement. Alternatively, the child may be in foster care and DSS refuses to permit him to return.

Because the children are not at high risk of flight and have not been determined to be dangerous, they do not need to be in a locked facility. In theory, they should be placed with DSS, the state agency responsible for working with at-risk

families and caring for children whose parents or guardians cannot or will not care for them, or with DMH, the state agency responsible for addressing the needs of mentally ill adults and children.

The Commonwealth's juvenile justice and social service systems, however, are not integrated, making it difficult for youth involved with one system to access services offered by another in a timely and efficient manner. Youth charged with delinquent behavior, for example, may not obtain services from DSS unless they are also the subject of a substantiated report of child abuse or neglect or a Child in Need of Supervision (CHINS) petition, or have been placed voluntarily in DSS custody by a parent or guardian. On occasion, justices will ask probation officers to file abuse and neglect reports or request that a parent, school official or police officer file a CHINS petitions. The mere filing of a report or petition, however, does not always result in the provision of services. It does, however, involve a child in additional and intrusive court proceedings.⁶³

Maria R.

Fifteen-year-old Maria R. was detained in a secure DYS detention facility for 8 weeks because the Department of Social Services could not locate an appropriate placement for her. She had been arrested at school for having a small metal nail file in her possession. She could not return home because her mother was unable to provide her with a safe and secure environment. Prior to her arrest, she had been brutally raped by an uncle.

Neither DSS nor DMH has a sufficient number of short-term residential programs to accommodate youth charged with delinquent behavior.⁶⁴ Advocates in Middlesex, Berkshire, Bristol, Worcester and Hampden Counties report that they have been warned by local DSS officials not to "waste their time" looking for foster homes, group homes or residential treatment programs. There are none.⁶⁵ Although DMH contends that its long-term adolescent residential facilities are under-utilized, it admits that the availability of shorter-term residential treatment programs, crisis stabilization programs and respite care beds varies by geographic region.⁶⁶

Every division of the Massachusetts Juvenile Court has a clinic staffed with licensed psychologists, social workers and mental health counselors who could theoretically assist youth in finding alternative placements, but the clinics consider themselves desperately under-funded and under-staffed. They claim that they are only able to service about 11% of court-involved youth with mental health issues, substance abuse issues, special educational needs and histories of abuse and neglect.⁶⁷ Non-emergency cases must often wait 6 to 8 weeks for the clinics to complete evaluations. For 8 years, the state legislature refused to increase the clinics' funding. In FY 2006-07, the clinics received an additional \$500,000 and in FY 2007-08, an additional \$686,000, for a total of \$1.868 million, slightly more than one-half of what they had requested.⁶⁸

To hold children who cannot return home safely, justices might set bail at one dollar, payable only by the children's parents or by DSS, knowing that the parent will not pay the bail and that DSS has no funding stream from which it can obtain funds for such purposes.⁶⁹ The children remain in detention until a more suitable placement is found, or if their parents had refused to take them home, until their parents relent.

Tanya K.

Tanya K. was detained in a secure DYS detention facility for 3 weeks, not because she was a flight risk or a danger to her community but because her mother refused to allow her to return home. She was arrested at her mother's request after her mother reported to the police that her daughter had hit her. According to Tanya's defense attorney, there were no alternative placements.

The degree to which DYS secure detention facilities are used as placements of last resort received considerable attention in 2005 after 2 securely detained youth committed suicide. At that time, the Massachusetts Statehouse News Service quoted then Health and Human Services Secretary Ronald Preston as stating “[w]e believe that DYS is not being used appropriately . . . Kids end up there that ought not to be there.”⁷⁰ It quoted another state official as stating that DYS was “increasingly becoming a ‘place of last resort’ for hundreds of troubled children . . . who would be better served in other settings.”⁷¹

4. Unnecessary Secure Detention Harms Youth

The use of secure detention facilities to house youth in need of alternative placements, even temporarily, is bad public policy. According to a large body of national research, the detention environment, by itself, can exacerbate and/or cause mental health problems, substance abuse, stress-related illnesses and learning difficulties and send young people back to their families and communities

with increased anger, frustration or depression.⁷² As DYS Commissioner Jane Tewksbury notes, the environment is particularly difficult for youth with behavioral health needs that require a predictable structure.⁷³

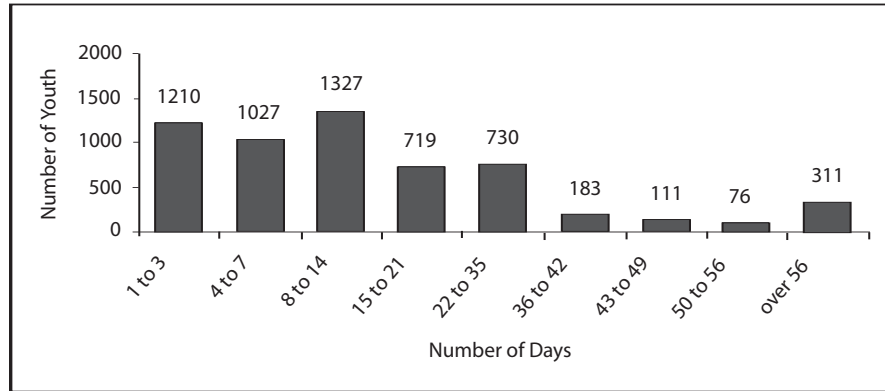
Although the Commonwealth detains many children for only 2 or 3 days, hundreds are held for much longer. In 2006, when DYS calculated length of stay by counting the number of days that a child was physically present in a detention facility, the average length of stay was 16 days.⁷⁴ In 2007, after DYS began to calculate length of stay by counting the number of days between the date a justice ordered a child detained and the date a justice ordered the same child released, the average length of stay increased to 25 days.⁷⁵

Because DYS does not administer any non-secure detention facilities, all detained youth but the very young are housed in hard-ware secure facilities.⁷⁷ (Recently, DYS began placing children under the age of 12 in foster homes.) These youth are transported to the facilities in shackles and strip-searched upon entering. Once they enter the facilities, their ability to move about is restricted. All perimeter doors and bedroom doors are locked. All windows are screened and locked.

According to DYS, one-third of the direct service staff is new each year. Many leave because of the stressful nature of the job and the low rate of compensation.⁷⁸ In 2006, entry-level line staff received approximately \$24,000 per year.⁷⁹

The number of youth in each facility fluctuates daily, as new children are ordered detained and others are released. Although every child receives a psychological assessment and medical examination when admitted to a facility, DYS

Table 4. ⁷⁶
Securely Detained Youth by
Number of Days Detained:
DYS Total Detention
Admissions - 2006



has limited ability to ensure the compatibility of children housed in any particular facility. It cannot turn away a child who has been ordered detained.

DYS estimates that 75% of detained youth have substance abuse issues; 20% take psychotropic medication; and 65% have had some prior involvement with DSS.⁸⁰ Because of the presumption of innocence, however, DHS cannot treat detained youth for the emotional and behavioral problems that may have contributed to their arrest unless and until they have been adjudicated delinquent. To the extent psychological and counseling services are available, they are designed to meet acute and immediate needs or to help youth adjust to the correctional environment.

Between January 2005 and December 2006, there were 1374 reported “serious incidents” at 21 different detention facilities. Six hundred forty three of the 1374 incidents involved the use of restraints because of an alleged threat, an attempted assault or some other form of alleged detainee misconduct. Over 200 incidents involved assaults and 92 involved suicidal gestures, ideations or attempts.⁸¹

The number of incidents varied from facility to facility. Some reported one incident for every 3 detainees while others reported one incident for every 17 detainees.⁸²

Every child is required to receive 5 hours of educational instruction per day while detained. Advocates report, however, that the instruction offered at the facilities frequently has little or no connection to that offered by local school districts, making it difficult for detained youth to transition back into the public school system after they are released.

5. Unnecessary Secure Detention Wastes Taxpayer Dollars

In addition to pushing youth deeper into the criminal justice system by increasing recidivism and exacerbating the mental health, behavioral and educational difficulties of detainees, secure detention wastes public monies. National research shows that programs that supervise children released to their parents or guardians until their cases are adjudicated are between 3 and 10 times less expensive and just as effective in ensuring that the children do not re-

offend while released and return to court as required.⁸³ In 2006, for example, securely detaining a single child for 16 days (the average length of stay) cost Massachusetts's taxpayers approximately \$15,000.⁸⁴ Providing supervision and support to a child for 6 to 8 weeks through the Commonwealth's single alternative to detention program, DDAP, cost taxpayers approximately \$1,350.

IV. CONCLUSION AND RECOMMENDATIONS

In summary, the ACLU concludes that although the Commonwealth's detention practices appear to be responsible for some of the overrepresentation of youth of color in Massachusetts's secure detention and commitment (treatment) facilities, they may not be the primary reason. None of Massachusetts Juvenile Court justices we interviewed acknowledged race as a factor in the decision making process. Our interviewees did, however, acknowledge that some justices routinely detain youth who do not meet the standards for detention set forth in Massachusetts state law. To the extent youth of color are disproportionately detained, they are disproportionately affected by this misuse of detention.

Additional studies are needed to determine the extent to which decisions made at different points within the juvenile justice system may contribute to overrepresentation. Massachusetts should undertake these studies immediately. The Commonwealth has evaded its responsibilities under the federal Juvenile Justice Delinquency and Prevention Act for 20 years. Given the detrimental impact of unnecessary detention and incarceration, young people of color residing in the Commonwealth cannot afford to wait another 20 years.

A. RECOMMENDATIONS

In light of our findings, we recommend that the Commonwealth take the steps necessary to reduce the number of securely detained youth who are not at high risk of failing to appear in court or who have not been subjected to a "dangerousness hearing" and determined to be dangers to their community. Specifically, we recommend the following:

1. The **Massachusetts Juvenile Court** takes the steps necessary to ensure that justices do not use detention as a teaching device, a rehabilitative tool or a "wake up" call for youth who do not meet the standards for detention under the Massachusetts bail statute and are still entitled to the presumption of innocence.
2. The **Commonwealth** should increase the availability of community-based programs to supervise youth who need such support to remain at home until their cases are adjudicated.
3. The **Commonwealth** should develop an integrated inter-agency system for referring low- and medium-risk youth who cannot return home to DSS or DMH for placement or the support services necessary to permit them to return home.
4. The **Commonwealth** should increase the availability and accessibility of short-term residential placements within DSS and DMH for low- and medium-risk children charged with delinquent behavior.

5. In late 2008, when it is linked with the *MassCourts* electronic case management system, the **Massachusetts Juvenile Court** should use the system to collect, analyze and publicly report data on the reasons why youth are securely detained prior to adjudication and the extent to which secure detention deters crime, as many justices believe, or increases recidivism, as the national research demonstrates.

6. **Defense attorneys** should advocate aggressively and creatively against the detention of their clients. At a minimum, lawyers should address the criteria laid out in the bail statute, actively seek to connect their clients with community-based resources that would increase the likelihood that youth will make all court appearances, oppose the imposition of conditions of release or terms of pretrial probation that are not designed to guarantee a child's return to court, and regularly appeal excessive bail determinations.

7. The **Massachusetts Juvenile Court** should determine whether the procedures for appealing juvenile bail determinations are more onerous than those for appealing adult bail determinations and, as a result, discourage defense attorneys from taking appeals. If they are more onerous, the **Massachusetts Juvenile Court** should adopt changes to ensure that its procedures do not hinder appeals.

8. The **Committee for Public Counsel Services** should take steps to remedy deficiencies in the quality of juvenile indigent defense representation by mandating that juvenile defenders receive additional juvenile-specific training and improving the support and supervision of such attorneys.

9. The **Commonwealth** should provide the **Committee for Public Counsel Services** with the funding necessary to create a Juvenile Defender Division designed to further improve juvenile indigent defense representation. That Division should partner with the Committee's Private Counsel Division to, among other things, develop an appropriate case management system, create additional small juvenile defender offices similar to the Suffolk County Youth Advocacy Project throughout the Commonwealth and develop a juvenile-specific affirmative advocacy and litigation unit with capacity to address systemic concerns.

We further recommend that the Commonwealth take the steps necessary to comply with its obligation under the federal Juvenile Justice and Delinquency Prevention Act to identify the reasons why youth of color are disproportionately confined in Massachusetts detention and correction facilities. Specifically, we recommend the following:

10. The **Commonwealth** should fund a comprehensive, in-depth study to determine the extent to which the policing practices in public school systems and the prosecution of youth for violating the terms of their probation contribute to the overrepresentation of youth of color in the juvenile justice system.

11. The **Legislature** should adopt and the **Governor** should approve a budget that requires local police departments, sheriffs' offices, the Office of the Commissioner of Probation and District Attorney's Offices to collect, analyze and publicly report data on juvenile arrests, the filing of applications for delinquency complaints, the detention of youth prior to arraignment, charging decisions and the use of diver-

sionary programs, disaggregated by race, ethnicity, gender, age, home zip code and charge, as a precondition of receiving state funding.

12. The **Massachusetts Juvenile Court** should use the *MassCourts* system to collect, analyze and publicly report data on the issuance of delinquency complaints, the use of diversion programs, adjudication, disposition, and pre- and post-adjudication probation violations, disaggregated by race, ethnicity, gender, age and charge, to determine the extent to which decisions made at these points in the juvenile justice system influence the disproportionate confinement of minority youth.

APPENDIX A

GLOSSARY OF TERMS

Adjudication: Judicial determination (judgment) as to whether a youth is responsible for the violation of criminal law charged in a complaint or status offense charged in a petition.

Alternatives to Detention: Community based programs that provide supervision to youth who have been accused of criminal wrongdoing to ensure that they return to court and do not re-offend while at home awaiting the adjudication of the charges against them.

Arraignment: The youth's first appearance in court, during which the justice ensures that he understands his rights, the charge(s) against him, and the possible consequences. The court may appoint counsel if the youth cannot afford private counsel and conditions of release may be set pending the next appearance in court.

Bail: An amount of money or security posted for the release of a person against whom criminal charges are pending, to guarantee his appearance in court.

Bar Advocate: A private attorney who contracts with one of 11 regional bar advocacy programs administered by the Committee for Public Council Services to represent indigent youth in CHINS or delinquency proceedings.

Child In Need Of Services (CHINS): A procedure whereby a petition is filed in the Juvenile Court alleging that a youth is running away, truant, or failing to abide by house or school rules. A youth who has been adjudicated a CHINS may be placed under the supervision of the probation department or removed from his home and placed in the care and custody of the Department of Social Services.

Commitment: A court order placing a youth in the physical custody of DYS until the age of 18 or 21. A committed youth resides in a DYS residential facility or may be released into the community on a "conditional grant of liberty." A youth released on a "conditional grant of liberty" is expected to abide by certain conditions while released. The violation of those conditions may result in a return to a DYS facility. The parent of a committed youth retains legal custody.



Four Walls by Anonymous



Behind these Gates by Adrian

This is a picture of me crying from the DYS Center window,
missing my home.



Dreaming and thinking by Janae



Do You Have Any Time For Me? by Minotte

Time is running out for me and no one is paying attention!
There's no open arms behind these gates
Only windows to look through
Only visions of fun



Sadness by Minotte

I'm sad because the world's looking at me but can't see me.
The worlds listening but can't understand me.
But I am always keeping a close watch.



But Eyes To See Through by S., age 16

Complaint: A document filed in juvenile court alleging that a youth is a delinquent and asking that the court assume jurisdiction over the youth or that an alleged delinquent be transferred to criminal court for prosecution as an adult.

Delinquent Act/Offense: A criminal act committed by a juvenile and over which the Massachusetts Juvenile Court has jurisdiction.

Detention: The holding in custody of a child charged with an offense pending resolution of the charges against him or until the child or his family post bail. A child may be detained prior to, at or after arraignment.

Detention Facility: A facility in which a youth accused of committing a delinquent act may be placed pending the outcome of his or her case. A “secure” facility is characterized by locks on the doors and other restrictive hardware designed to restrict the movement of the residents and protect public safety. A “non-secure” facility provides structured residential care in a less restrictive setting.

Disposition: The sanction ordered following an adjudication of delinquency. A disposition is similar to a sentence in an adult court.

Disproportionate Minority Confinement: Disproportionate minority confinement exists when the proportion of youth detained or confined in secure detention facilities, secure correctional facilities, jails, and lockups who are members of minority groups exceeds the proportion such groups represent in the general population.

Diversion: The channeling of young people into programs as an alternative to processing their cases through the juvenile court. Such programs may include restitution; education; the performance of community service; and/or the avoidance of situations that may lead to the commitment of additional offense. Failure to meet the requirements of the program may result in full prosecution of the case. Most diversion programs in Massachusetts accept only first-time offenders charged with particular types of non-violent low-level crimes.

Intake/Arrest: The taking of a youth into police custody for the purpose of charging him or her with a delinquent act.

Juvenile: Any person who is at least 7 years of age and under the age of 17. Youth who are 17 years of age and older and accused of criminal wrongdoing are prosecuted as adults.

Juvenile Justice Advisory Committee (JJAC): A state advisory group authorized by the Juvenile Justice and Delinquency Prevention Act to help coordinate juvenile justice and delinquency prevention efforts in the Commonwealth. The JJAC, along with other experts, gives the Massachusetts Executive Office of Public Safety and Security input in developing a statewide plan for identifying and offering guidance on matters relating to delinquency prevention and overall child well-being. With federal grant money and guided by issues raised in the statewide plan, the JJAC funds programs, projects, and activities that implement the JJDP Act's goals. In addition, the JJAC provides policy recommendations to the Governor and state legislators on juvenile justice matters.

Massachusetts Committee for Public Counsel Services (CPCS): A 15-member body appointed by the Massachusetts Supreme Judicial Court to oversee the provision of legal representation to indigent persons in criminal and civil court cases and administrative proceedings in which there is a right to counsel.

Massachusetts Department of Mental Health (DMH): The state agency responsible for assuring and providing access to services and supports to meet the mental health needs of Commonwealth residents of all ages. Among other things, DMH sets the standards for the operation of mental health facilities and community residential programs and provides clinical, rehabilitative and supportive services for adults with serious mental illness, and children and adolescents with serious mental illness or serious emotional disturbance.

Massachusetts Department of Social Services (DSS): The state agency responsible for protecting children from abuse and neglect, providing services to youth and their families to strengthen the family unit, and providing services to children who are the subject of CHINS petitions. DSS also administers non-secure detention facilities for pre-arraigned youth charged with status offenses and non-violent delinquent offenses.

Massachusetts Department of Youth Services (DYS): The Commonwealth's juvenile justice agency. DYS is legislatively mandated to provide comprehensive and coordinated services, including physical and mental health and social services, to youth committed by the juvenile court after an adjudication of delinquency. DYS is also charged with responsibility for the care and custody of youth detained at or after arraignment.

Massachusetts Executive Office of Public Safety and Security (EOPSS): The state agency that plans and manages the Commonwealth's public safety efforts by supporting, supervising and providing planning and guidance to a variety of Massachusetts public safety agencies, boards and commissions, including the JJAC.

Massachusetts Juvenile Court: The Massachusetts Juvenile Court has jurisdiction over delinquency complaints; CHINS petitions alleging truancy, repeat school offender, runaway or stubborn child; care and protection petitions filed on behalf of abused or neglected children; adoption, guardianship, and termination of parental rights proceedings; and complaints against adults for contributing to the delinquency of minors or failing to send children to school. It is divided into eleven divisions and each division has one or more courthouses.

Office of the Commissioner of Probation: The state agency that oversees the 105 departments of the Massachusetts Probation Service, the Office of Community Corrections and the Massachusetts Trial Court Community Service Program.

Prosecution: The institution of legal proceedings against a person charged with violating the criminal laws of the Commonwealth.

Status Offense: Offense committed by a child which would not be illegal if committed by an adult, such as failing to attend school, violating curfew or running away.

APPENDIX B

STATEWIDE ARREST, DETENTION AND COMMITMENT TRENDS

I. Juvenile Population

According to the United States Census Bureau, the number of young people who are 10 to 16 years of age has remained fairly constant over the last 5 years. In 2000, there were 673,695 youth ages 10 to 16 and in 2006, 670,398 – a decrease of 0.4%. While Caucasians remained the overwhelming majority, their numbers have decreased slightly and the number of youth of color has increased slightly.

Table 5. ⁸⁵
Juvenile Population, Ages 10-16, By Race

	2000	2006
Caucasian	78.1%	76.2%
African-American	7.6%	8.0%
Latino	9.5%	11.1%
Asian	4.2%	4.7%

II. Arrests

According to data gathered by the Federal Bureau of Investigation from Massachusetts police departments, the estimated number of juvenile arrests peaked in 2001, declined during 2002, 2003 and 2004, and rose in 2005 and 2006.

Table 6. ⁸⁶
Estimated Number Of Juvenile Arrests

	2000	2001	2002	2003	2004	2005	2006	2007
Violent	2,295	2,273	2,098	1,290	1,314	1,329	2,072	n/a
Property	3,508	3,840	3,478	2,457	2,475	2,545	2,872	n/a
Total	17,819	19,765	17,395	14,694	14,460	14,841	17,862	n/a
# of reporting	261	270	239	278	278	298	301	n/a

These numbers are considered estimates because they do not reflect data from all of Massachusetts' 351 local police departments. Local police departments are not required to provide data to the FBI and each year approximately 20% of Massachusetts' police departments do not, usually claiming that they do not have the staff necessary to compile the data. Police departments in Boston, Cambridge, Chester, Fall River, Lawrence, Lee, Lynn, Malden, Medford, New Bedford, Pittsfield, Somerville, Taunton, and Wareham are among those that have failed to report data.⁸⁷

III. Detention Admissions

The number of children detained by the Commonwealth in secure facilities does not rise and fall at the same rate as arrests. Although the estimated number of juvenile arrests peaked in 2001 and then began to fall rapidly, the number of total detention admissions youth peaked one year later in 2002 and the number of new detention admissions peaked 2 years later in 2003.

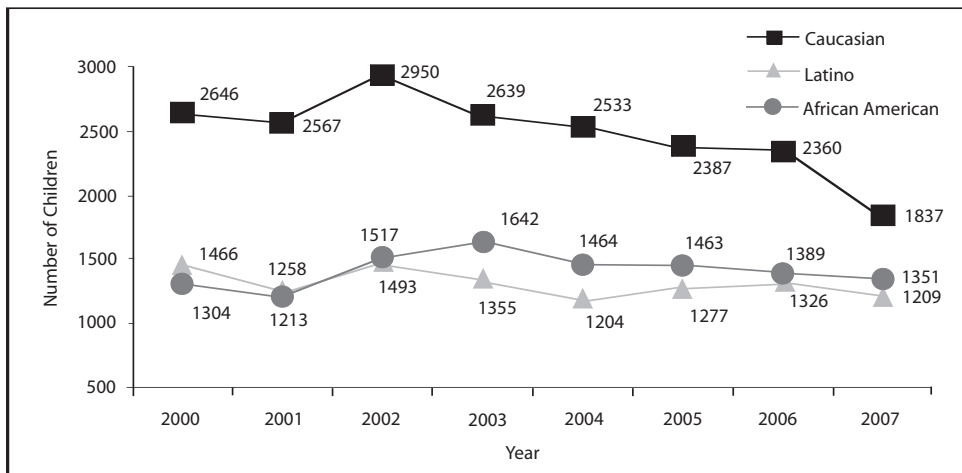
A child is considered a “new detention admission” if he has not been previously adjudicated delinquent and committed to DYS. “Total detention admissions” refers to all detained children including those who had been previously committed.⁸⁸

Table 7.⁸⁹
DYS Detention Admissions

	2000	2001	2002	2003	2004	2005	2006	2007
New Detention Admissions	5387	5273	5262	5562	5190	4988	4827	4345
Total Detention Admissions	6073	5706	6824	6408	5940	5714	5438	4915

As Table 8 illustrates, the number of Latino and African American youth detained has not declined to the same extent as the number of Caucasian youth detained. In 2007, for example, there were 31% fewer Caucasian youth detained than in 2000, but 4% *more* African American children detained.

Table 8.⁹⁰
Number Of Caucasian, Latino And African American Youth Detained
DYS Total Detention Admissions



IV. Commitments

Unlike the number of detained youth, the number of children committed decreased as estimated arrest rates decreased. DYS's committed case load peaked in 2002 and has fallen every subsequent year. New commitments peaked in 2001, the same year estimated arrests peaked and then decreased until 2005, rising slightly in 2006.

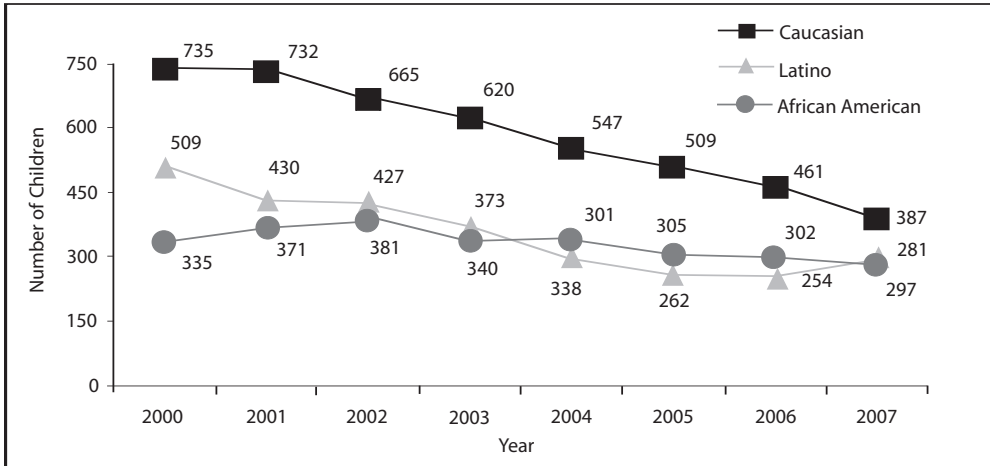
A child is considered a "new commitment" if he has never been committed to DYS because of a prior adjudication of delinquency. "Total commitments" represents all youth committed to DYS including those previously committed.⁹¹

Table 9. ⁹²
DYS Commitment Statistics

	2000	2001	2002	2003	2004	2005	2006	2007
DYS Committed Caseload	3151	3261	3278	3132	2943	2595	2341	2091
Total Commitments	1669	1668	1618	1473	1316	1211	1113	1071
New Commitments	1355	1348	1298	1207	1007	933	950	840

Although the number of Caucasian total commitments decreased by 47% between 2000 and 2006, the number of African American total commitments decreased by only 16%.⁹³

Table 10.⁹⁴
Number Of Caucasian, Latino and African American Youth Committed
DYS Total Commitments



APPENDIX C

Table 11. ⁹⁵
Rate Of Secure Detention By State Per 100,000 Juveniles - 2003

State	No. of Youth per 100,000	State	No. of Youth per 100,000
1. Rhode Island	5	27. Oklahoma	74
2. New Hampshire	20	28. Maryland	75
3. North Dakota	25	29. Alabama	76
4. Arkansas	30	30. Kansas	78
5. Maine	33	31. New Mexico	83
6. Mississippi	33	32. West Virginia	83
7. Montana	37	33. Massachusetts	84
8. Tennessee	38	34. Georgia	84
9. Vermont	43	35. Ohio	93
10. Minnesota	47	36. Florida	94
11. New York	48	37. Wyoming	97
12. Connecticut	49	38. Colorado	99
13. Kentucky	50	39. Indiana	98
14. North Carolina	57	40. New Jersey	100
15. Utah	56	41. Virginia	110
16. Illinois	56	42. South Carolina	110
17. Wisconsin	58	43. Nebraska	111
18. Missouri	59	44. South Dakota	117
19. Michigan	63	45. Arizona	124
20. Hawaii	63	46. California	128
21. Oregon	63	47. Louisiana	136
22. Washington	63	48. Nevada	157
23. Iowa	63	49. Alaska	158
24. Idaho	65	50. Delaware	187
25. Pennsylvania	67	51. District of Columbia	381
26. Texas	73		

Table 12. ⁹⁶
Rate Of Secure Detention By State Per 100,000 Juveniles - 2003

State	No. of Youth per 100,000
1. Vermont	30
2. Hawaii	63
3. New Jersey	98
4. Maryland	106
5. North Carolina	109
6. Maine	116
7. Mississippi	118
8. New Hampshire	127
9. Massachusetts	129
10. Kentucky	131
11. Arizona	144
12. Illinois	151
13. Georgia	155
14. Connecticut	161
15. Washington	170
16. New Mexico	175
17. Delaware	177
18. Virginia	178
19. Missouri	185
20. Tennessee	185
21. West Virginia	185
22. Arkansas	186
23. Michigan	191
24. Oklahoma	190
25. Montana	200
26. Nevada	204

State	No. of Youth per 100,000
27. Alaska	208
28. Minnesota	208
29. Wisconsin	216
30. Nebraska	220
31. Idaho	222
32. New York	223
33. Ohio	224
34. Pennsylvania	224
35. District of Columbia	230
36. Iowa	232
37. South Carolina	236
38. Texas	243
39. Colorado	244
40. Louisiana	246
41. Utah	251
42. Oregon	250
43. Kansas	255
44. California	263
45. Alabama	267
46. Rhode Island	284
47. Indiana	313
48. North Dakota	317
49. Florida	352
50. South Dakota	444
51. Wyoming	509

APPENDIX D

DETENTION AND COMMITMENT DATA BY DIVISION OF THE MASSACHUSETTS JUVENILE COURT

There are eleven divisions of the Massachusetts Juvenile Court, each of which meets in 3 or more courthouses within its jurisdictional area.

Table 13. ⁹⁷
Divisions Of The Massachusetts Juvenile Court

Juvenile Court Division	Location of Courthouses
Barnstable, Dukes and Nantucket Counties	Barnstable, Plymouth, Orleans, Falmouth, Edgartown and Nantucket
Berkshire County	Pittsfield, North Adams and Great Barrington
Bristol County	Fall River, New Bedford, Taunton and Attleboro
Essex County	Lawrence, Lynn, Salem and Newburyport
Franklin and Hampshire Counties	Northampton, Ware, Greenfield and Orange
Hampden County	Springfield, Holyoke and Palmer
Middlesex County	Cambridge, Framingham, Lowell and Waltham
Norfolk County	Dedham, Quincy and Stoughton
Plymouth County	Brockton, Wareham and Hingham
Suffolk County	Boston, Chelsea, Dorchester and West Roxbury
Worcester County	Worcester, Dudley, Fitchburg, Milford and Leominster

In 2006, the Worcester County Division had the highest rate of detention. One thousand seven hundred seventy two youth under the age of 17 were the subject of delinquency complaints filed with the Worcester County Division. Eight hundred fifteen youth under the age of 17 were securely detained by the Worcester County Division. Although a greater number of children were the subject of delinquency complaints filed in each of the Suffolk County, Essex County and Middlesex County Divisions, a smaller percentage of those children were ordered securely detained.

Table 14. ⁹⁸
Number Of Youth Against Whom Delinquency Complaints Were Filed By Juvenile Court Division – 2006

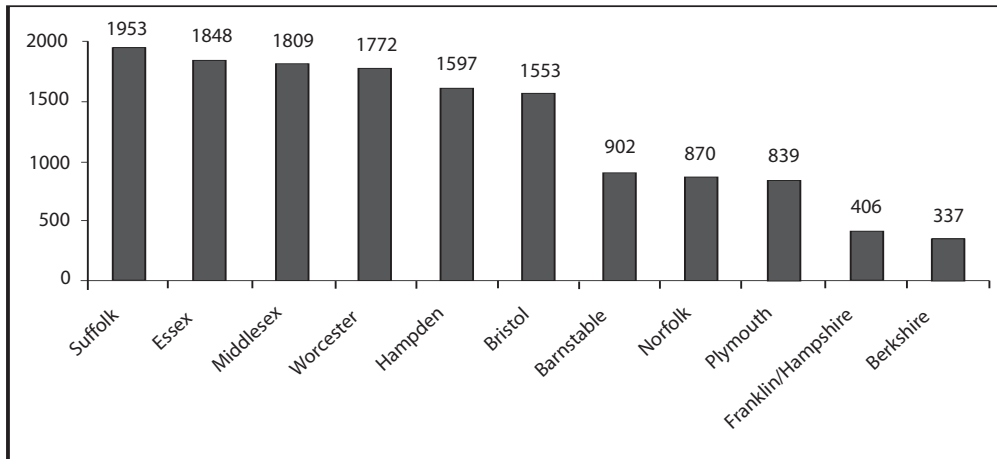
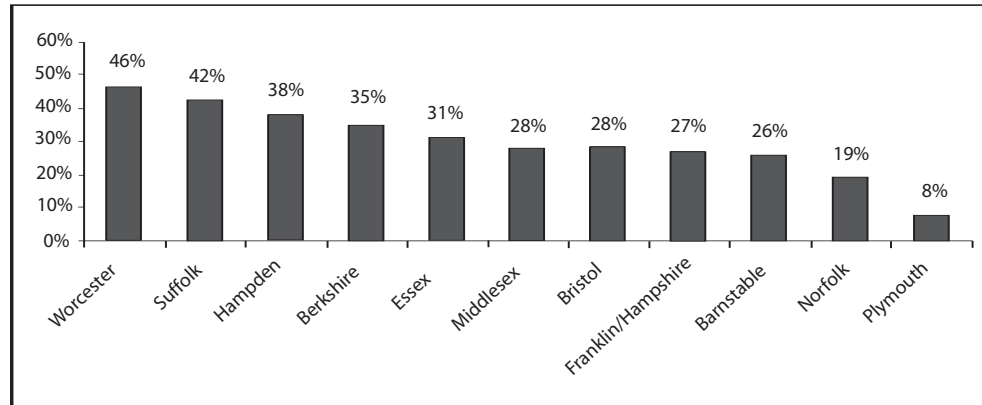
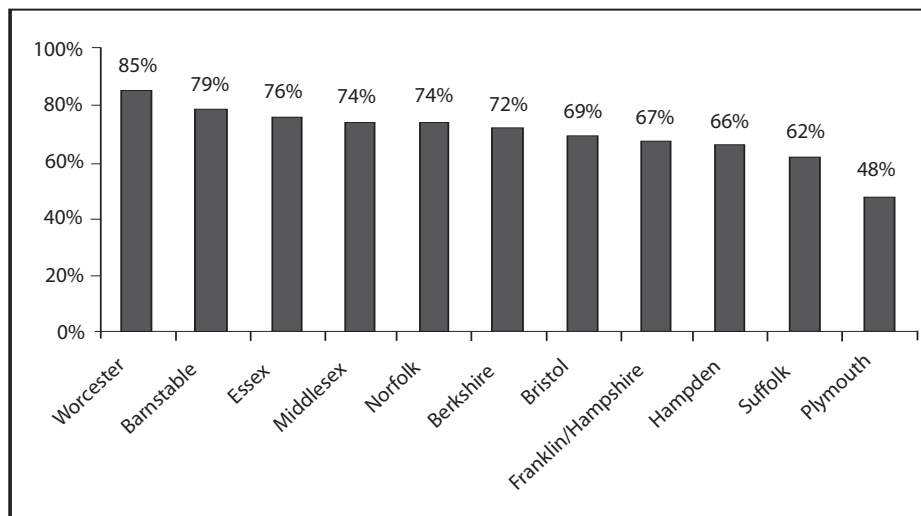


Table 15.⁹⁹
Number Of Securely Detained Youth Under The Age of 17 As A Percentage Of Youth Against Whom Delinquency Complaints Were Filed By Juvenile Court Division -2006



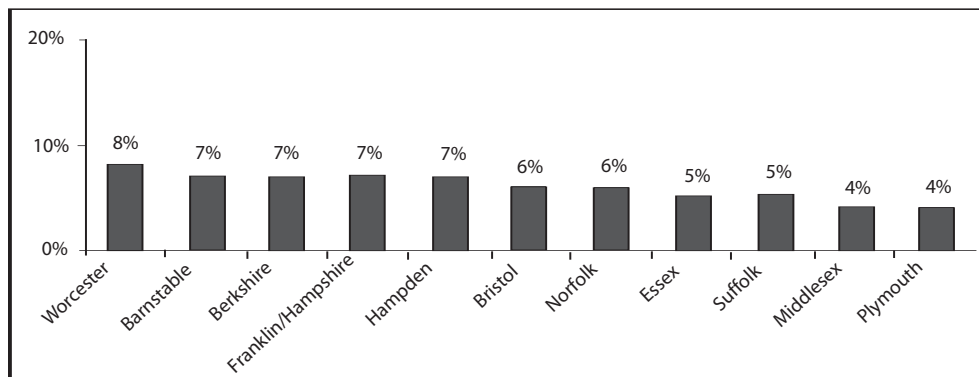
During the same year, the Worcester County Division also detained the greatest percentage of youth charged with misdemeanors and low-level felonies (e.g., offenses categorized by DYS as ones and twos on its offense grid).

Table 16. ¹⁰⁰
Percentage Of Securely Detained Youth Under The Age Of 17 Who Were Charged with Misdemeanors Or Low-Level Felonies by Juvenile Court Division - 2006



In addition, the Worcester County Division committed children at a greater rate than other divisions. In 2006, it committed 150 youth under the age of 17 years of age, or 8% of 1772, the number of youth against whom delinquency complaints were filed in the Worcester County Division.

Table 17.¹⁰¹
Number Of Committed Youth Under The Age Of 17 As A Percentage of Children
Against Whom Delinquency Complaints Were Filed
By Juvenile Court Division -2006

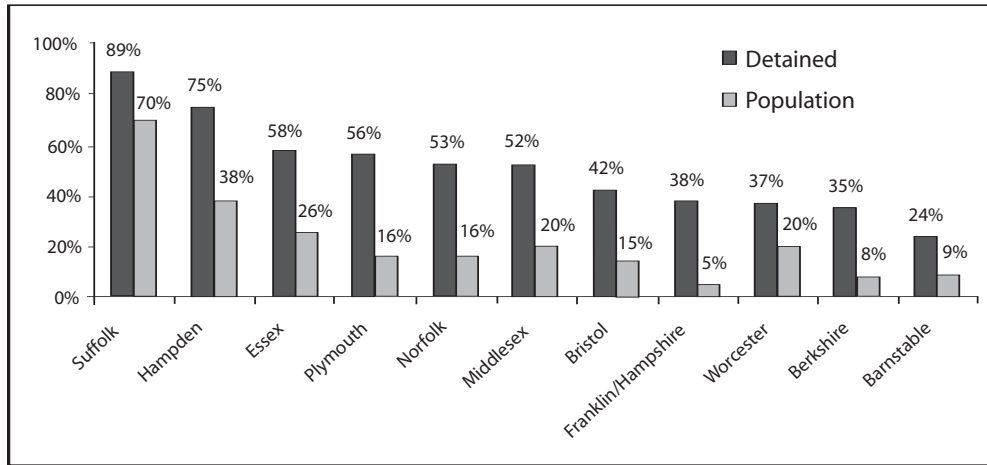


The Suffolk and Hampden County Divisions detained the greatest percentage of youth of color. In 2006, 86% of all youth detained by the Suffolk County Division were youth of color. Seventy-five percent of all youth detained by the Hampden County Division were youth of color.

Although every Division detained a significantly greater percentage of youth of color under the age of 17 than resided within the county over which it had jurisdiction, that disparity was greatest in the Plymouth County Division. Youth of color between the ages of 10 and 17 years of age accounted for 16% of the adolescents residing within the jurisdiction of the Division, but 56% of the youth detained by the Division. The Suffolk and Worcester County Divisions had the smallest disparity.

Table 18. ¹⁰²

Securely Detained Youth Under The Age Of 17 Who Were Youth Of Color vs. Estimated Percentage Of Youth Ages 10 To 16 Years Residing In County Who Were Youth Of Color - 2006

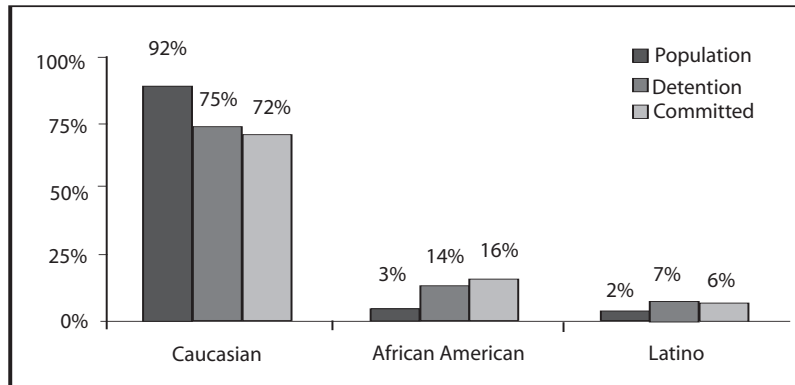


The charts below compare the percentage of youth detained by each Juvenile Court Division who are youth of color with the percentage of youth committed by the same Division who are youth of color and the percentage of youth residing within the jurisdiction of that Division who are youth of color. Thus, for example, even though African Americans account for only 11% of the adolescent population of Hamden County, they account for 27% of all youth ordered detained by the Hampden County Division of the Juvenile Court and 32% of all youth committed by the Division.

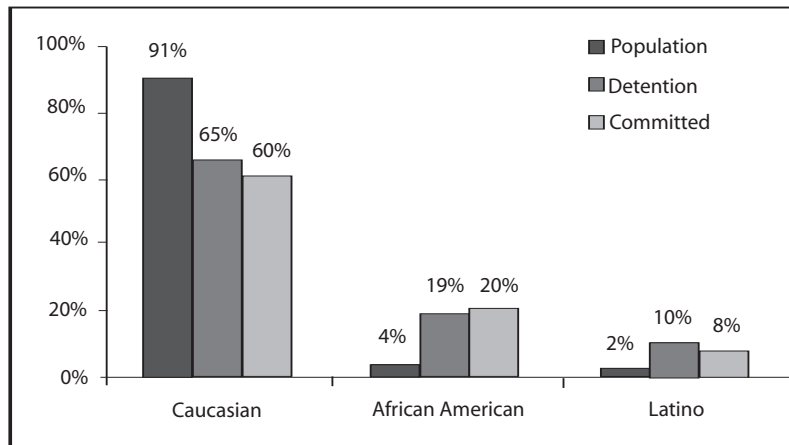
Tables 19-28. ¹⁰³

Estimated Adolescent Population Of County Over Which Juvenile Court Division Has Jurisdiction vs. Juvenile Court Division's Total Detention Admissions And Total Commitments, Youth 10 to 16, by Race and Ethnicity - 2006

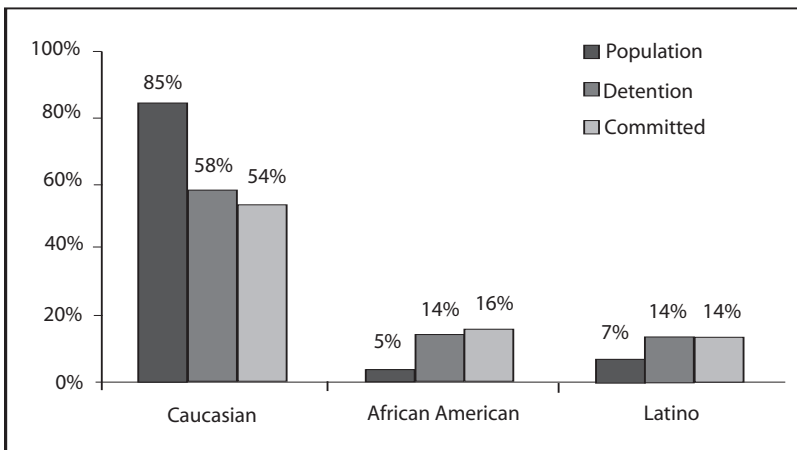
Barnstable County Division Of Juvenile Court



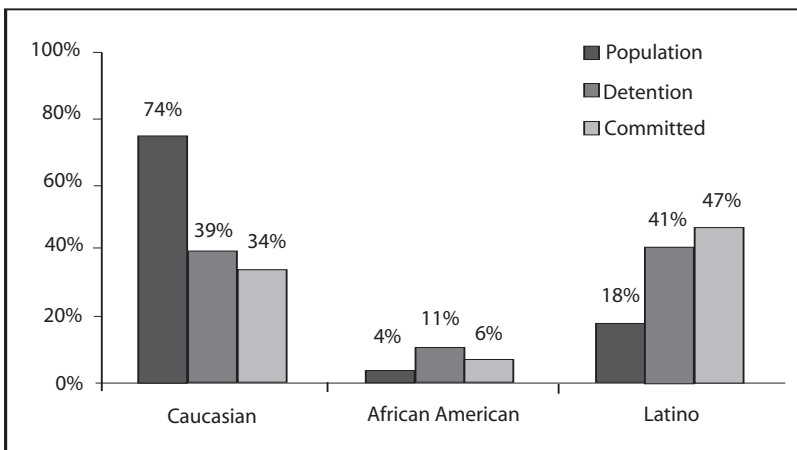
Berkshire County Division Of Juvenile Court



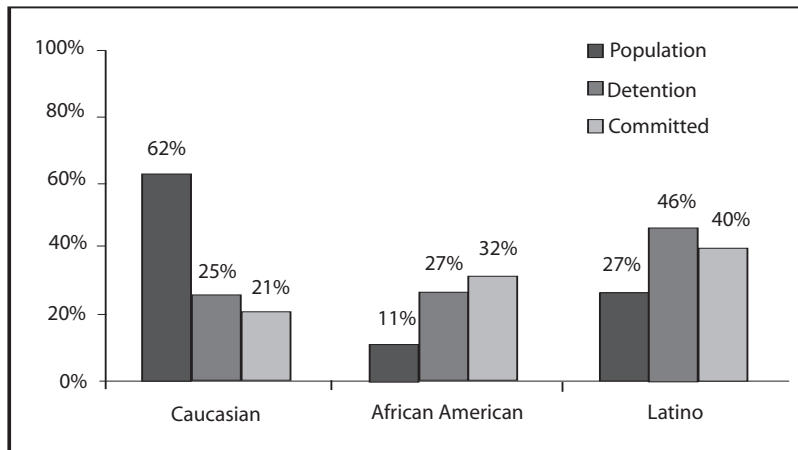
Bristol County Division Of Juvenile Court



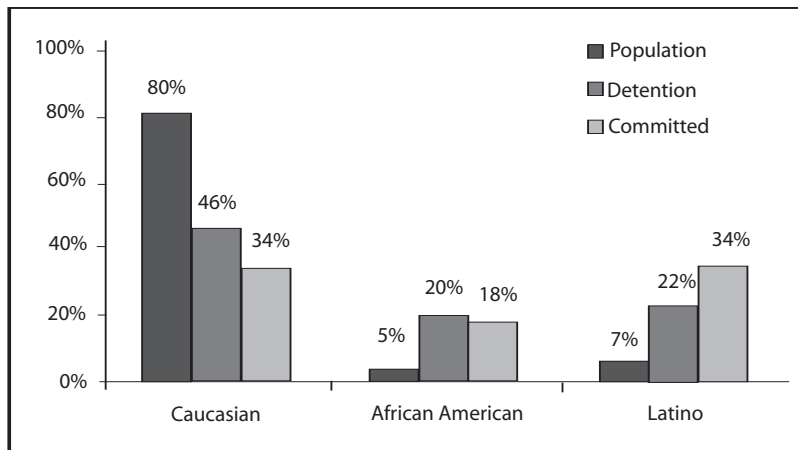
Essex County Division Of Juvenile Court



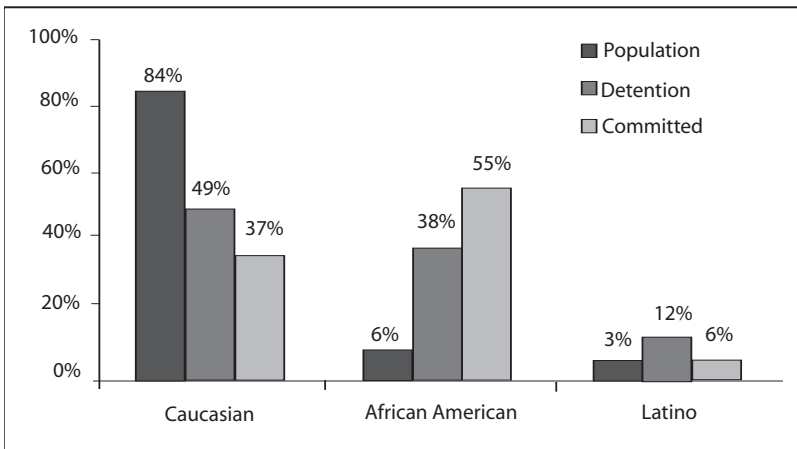
Hampden County Division Of Juvenile Court



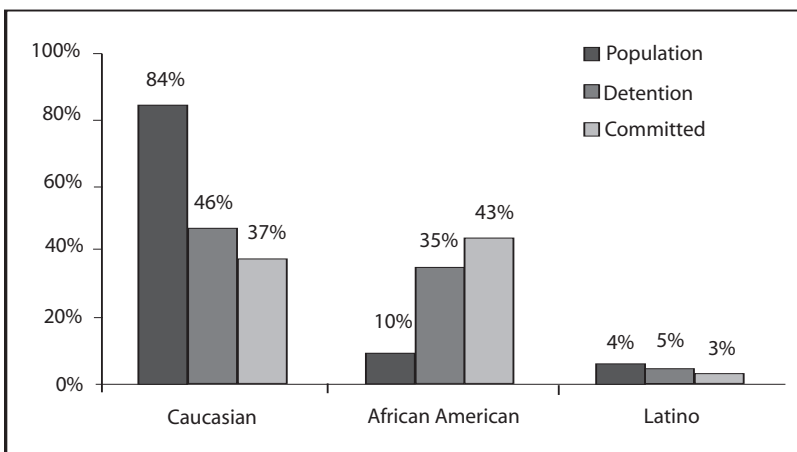
Middlesex County Division Of Juvenile Court



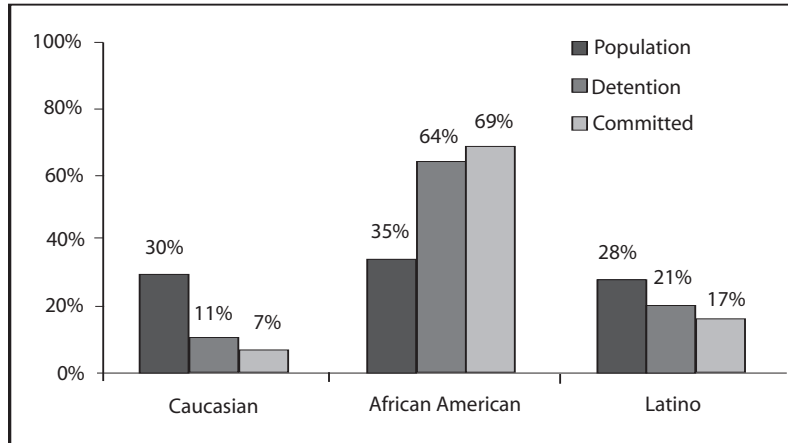
Norfolk County Division Of Juvenile Court



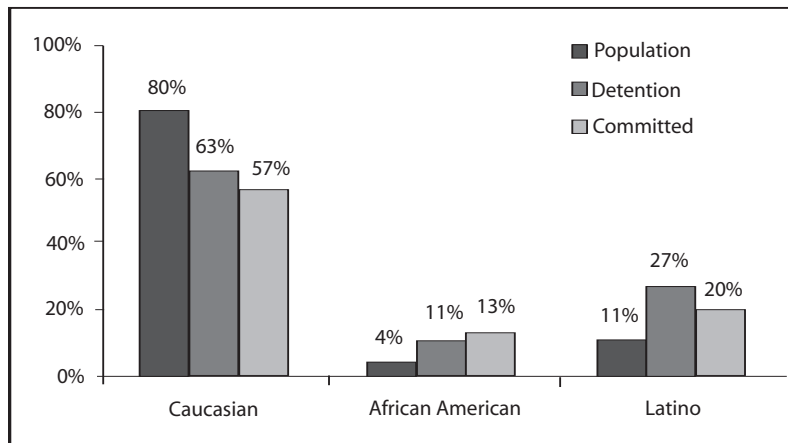
Plymouth County Division Of Juvenile Court



Suffolk County Division Of Juvenile Court



Worcester County Division Of Juvenile Court



APPENDIX E

ENDNOTES

¹ Eileen Poe-Yamagata and Michael A. Jones, *And Justice for Some, Differential Treatment of Minority Youth in the Juvenile Justice System* (Building Blocks for Youth, Wash., D.C.), Apr. 2000, at 3, available at <http://www.buildingblocksforyouth.org/justiceforsome/jfs.html> (in 1997, for every 100,000 youth residing in the United States, 204 Caucasian youth, 1,018 African American youth and 515 Latino youth were housed in a detention or correctional facility).

² FY03 Massachusetts Juvenile Justice and Delinquency Prevention Act Formula Grant Application and State Three Year Plan, Attachment 3, Apr. 2003, at 39 (using 2000 demographic data, 1993 detention data and 2001 commitment data).

³ *And Justice for Some, Differential Treatment of Minority Youth in the Juvenile Justice System*, *supra* at Table 13 (in 1997, for every 100,000 youth residing in Massachusetts, 96 Caucasian youth, 804 African American youth and 582 Latino youth were in a detention or correction (treatment) facility).

⁴ 42 U.S.C. §§ 5601-5785.

⁵ 42 U.S.C. § 5633(a)[23]. In 2002, the Juvenile Justice Delinquency and Prevention Act was amended to require states to reduce minority contact with the juvenile justice system as opposed to *confinement*. The regulations promulgated pursuant to the Act, however, continue to require states to address the overrepresentation of youth of color in juvenile detention and correctional facilities. 28 C.F.R. § 31.303(j).

⁶ David Juizinga, Terrence Thornberry, Kelly Knight and Peter Lovegrove, *Disproportionate Minority Contact in the Juvenile*

Justice System: A Study of Differential Minority Arrest/Referral to Court in Three Cities, A Report to the Office of Juvenile Justice and Delinquency Prevention, Doc. No. 219743 (United States Department of Justice, Wash., D.C.), July 28, 2007, available at <http://www.ncjrs.gov/pdffiles1/ojjdp/grants/219743.pdf>, citing to M.J. Leiber and K.M. Jamieson, *Race and Decision Making Within Juvenile Justice: The Importance of Context*, JOURNAL OF QUANTITATIVE CRIMINOLOGY 11(4): 363-388 (1995); G.S. Bridges and S. Steen, *Racial disparities in official assessments of juvenile offenders: attribution stereotypes as mediating mechanisms*, AMERICAN SOCIOLOGICAL REVIEW 63(4): 554-570 (1998); and M.D. Sealock and S.S. Simpson, *Unraveling bias in arrest decisions: the role of juvenile offender type-scripts*, JUSTICE QUARTERLY 15(3):427-457 (1998).

⁷ Mass. Gen. Law Ann., ch. 66 § 10.

⁸ See *Disproportionate Minority Confinement (DMC) Analysis: Stage Two Final Report* (Social Science Research and Evaluation, Inc., Boston, Mass.), Apr. 1996, at 60 (discussing the inadequacies of Massachusetts juvenile court data).

⁹ See <http://ojjdp.ncjrs.org/ojstatbb/njcda/asp/guide.asp> for a list of participating states.

¹⁰ Robin L. Dahlberg, *Disproportionate Minority Confinement in Massachusetts, Failures in Assessing and Addressing the Overrepresentation of Minorities in the Massachusetts Juvenile Justice System* (ACLU, National Legal Department, New York, N.Y.), May 2003, at 2-3, available at http://www.aclu.org/FilesPDFs/dmc_report.pdf.

¹¹ Chief Justice Martha Grace of the Massachusetts Juvenile Court was the forum's keynote speaker.

¹² *Results from the Juvenile Detention Alternatives Initiative* (The Annie E. Casey Foundation, Baltimore, Md.), 2006, available at <http://www.aecf.org/MajorInitiatives/JuvenileDetentionAlternativesInitiative/CoreStrategies.aspx>.

¹³ *Id.*

¹⁴ Barry Holman and Jason Ziedenberg, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities* (Justice Policy Institute, Wash., D.C.), 2006, at 10-11, available at http://www.justicepolicy.org/images/upload/06-11_REP_DangersOfDetention_JJ.pdf. See *Unlocking the Future, Detention Reform in the Juvenile Justice System, 2003 Annual Report* (Coalition for Juvenile Justice, Wash., D.C.), 2004, at 22-23, available at http://www.juvjustice.org/media/resources/resource_114.pdf.

¹⁵ Several District Attorneys' Offices had diversion programs, but those programs were not designed as alternatives to detention. Instead, they permitted a select group of youth (usually those who had no prior criminal history and were charged with non-violent crimes) to avoid arraignment and/or further prosecution by performing community service or making restitution. For a description of some of these diversionary programs, see: <http://www.mass.gov/da/cape/juvjustice.htm> (Cape and Islands District Attorney); <http://mass.gov/?pageID=deassubtopic&L=3&L0=Home&L1=Awareness%2c+Prevention+%26+Victim+Assistance&L2=Juvenile+Justice&sid=Deas> (Essex County District Attorney); <http://www.mass.gov/da/norfolk/juvenilejustice.html> (Norfolk District Attorney); <http://www.mass.gov/da/plymouth/services/juvenilediversion.html> (Plymouth County District Attorney).

¹⁶ For a current listing of JJAC members, see http://www.mass.gov/?pageID=eopsterminal&L=4&L0=Home&L1=Law+Enforcement+%26+Criminal+Justice&L2=Justice+%26+Prevention&L3=Juvenile+Justice+Advisory+Committee&sid=Eeops&b=terminalcontent&f=programs_fjj_jjac_current_members&csid=Eeops.

¹⁷ See *Annual Report to the Governor* (Massachusetts Juvenile Justice Advisory Committee, Boston, Mass.), May 2006, at 19, available at http://www.mass.gov/Eeops/docs/programs/fjj/2006_jjac_annual_report.pdf.

¹⁸ Interview with Nichelle Sadler, Boston Area Director, Robert F. Kennedy Children's Action Corps., Inc., Mar. 28, 2007. In contrast, in 2006, Massachusetts taxpayers had to pay \$15,000 to detain a single child for 16 days – the average length of stay.

¹⁹ Jed Hresko, *Interim Report on RFK-CAC Detention Diversion Advocacy Program (DDAP)* (Hresko Associates, Inc., Boston, Mass.), Jan. 2008.

²⁰ See Dan Devine, *Youth Services takes fresh look at lockup*, THE BOSTON – BAY STATE BANNER, Vol. 42, No. 18, Dec. 14, 2006; Dan Devine, *New juvenile justice plan expected to close racial gap*, THE BOSTON – BAY STATE BANNER, Vol. 42, No. 20, Dec. 28, 2006.

²¹ Jonathan Saltzman, *Pay-measure for court-appointed attorneys becomes law*, THE BOSTON GLOBE, July 30, 2005.

²² See *Assigned Counsel Manual Policies and Procedures* (Committee for Public Counsel Services, Boston, Mass.), 2004, at 16, available at <http://www.mass.gov/cpcs/manuals/pcmanual/index.htm>.

²³ Email from Robert Tansi, Research Analyst, DYS, to Arlene Gilbert, Attorney, ACLU, dated Mar. 2, 2007 (on file with author) (hereinafter "Tansi email dated Mar. 2, 2007"); email from Crispin Birnbaum, General Counsel, DYS, to Robin L. Dahlberg, Senior Staff Attorney, ACLU, dated Feb. 18, 2008 (on file with author) (hereinafter "Birnbaum email dated Feb. 18, 2008").

²⁴ Tansi email dated Mar. 2, 2007; Birnbaum email dated Feb. 18, 2008.

²⁵ Tansi email dated Mar. 2, 2007; Birnbaum email dated Feb. 18, 2008.

²⁶ Interview with Carmen Cicchette, Director of Research, Office of the Commissioner of Probation, May 17, 2006. The data posted by the Office can be viewed at <http://www.mass.gov/courts/probation/20062007general-stats.pdf>.

²⁷ Interview with Lael Chester, Executive Director, Citizens for Juvenile Justice, and member of the Massachusetts Juvenile Justice Advisory Committee, Feb. 11, 2008. Mass. Gen. Law ch. 119 § 60a permits the Massachusetts Juvenile Court to make individual case files available on a confidential basis.

²⁸ Interview with Lisa Thureau-Gray, Attorney, Juvenile Justice Center, Suffolk Law School, Feb. 26, 2008. The bill, formally known as “Senate Bill 1344: An Act to Improve Juvenile Justice Data Collection,” is available at <http://www.mass.gov/legis/bills/senate/185/st01/st01344.htm>.

²⁹ Federal law prohibits detention of children in adult jails or lock-ups prior to arraignment for more than 6 hours. 42 U.S.C. § 5633(a) (13). To comply with this mandate, Massachusetts contracts with third-party vendors to house children in trailers and secure boarding homes. Because the Governor and the Legislature have repeatedly refused to assume this expense, the Commonwealth is forced to use federal funds to finance it. *Annual Report to the Governor*, *supra* at 15.

³⁰ *2006-07 Enrollment By Race/Gender* (Mass. Dep’t of Education, Boston, Mass.), *available at* <http://profiles.doe.mass.edu/enrollmentbyracegender.aspx?mode=&orderBy=&year=2007&filterBy=> (last accessed Apr. 16, 2008).

³¹ Interview with Edward Flynn, Commissioner, Springfield Police Department; Mark Anthony, Deputy Commissioner, Springfield Police Department, Jan. 29, 2007.

³² *2005-06 Enrollment By Race/Gender*, *supra*.

³³ *Holyoke Police Department – June Arrests 2000 thru 2006 – April* (Holyoke Police Dep’t, Holyoke, Mass.), June 5, 2006.

³⁴ The ACLU believes that subsequent review of arrest rates and patterns could reveal important insights regarding the Commonwealth’s high rate of disproportionate minority confinement and thus is an area for future study.

³⁵ According to the one-day count, 128 of every 100,000 Massachusetts youth resided in a juvenile correctional facility while 219 of every 100,000 adolescent Americans resided in a juvenile correctional facility. Eighty-four of every 100,000 Massachusetts youth resided in a juvenile detention facility while 83 of every 100,000 adolescent Americans lived in a juvenile detention facility. The 1-day count is conducted every 2 years. The year 2003 is the most recent year for which data is available. Melissa Sickmund, T.J. Sladky, and Wei Kang, *Census of Juveniles in Residential Placement Datebook* (National Council of Juvenile and Family Court Judges, National Center for Juvenile Justice, Reno, Nev.), Dec. 17, 2005 (last accessed on Apr. 17, 2008), *available at* <http://www.ojjdp.ncjrs.org/ojstatbb/cjrp/>. See Appendix C for a complete list of states and their rankings.

³⁶ United Nations Convention on the Rights of the Child, art. 37(b); United Nations Rules for the Protection of Juveniles Deprived of their Liberty 17; United Nations Standard Minimum Rules for Non-custodial Measures 6.1 and 6.2 (1990); United Nations Standard Minimum Rules for the Administration of Juvenile Justice 13.1 and 13.2 (1985); *Juvenile Justice Standards Relating to Interim Status, The Release, Control and Detention of Juvenile Offenders Between Arrest and Disposition* (Institute of Judicial Administration/American Bar Association, Chicago, Ill.), 1980, at Standard 6.6; *Juvenile Delinquency Guidelines, Improving Court Practice in Juvenile Delinquency Cases* (Nat’l Council of Juvenile and Family Court Judges, Reno, Nev.), Spring 2005, at 81, *available at* <http://www.ncjfcj.org/images/stories/dept/ppcd/pdf/JDG/juveniledelinquencyguidelinescompressed.pdf>; *Alternatives to Detention in the Juvenile Justice System* (Coalition for Juvenile Justice, Wash., D.C.) *available at* http://www.juvjustice.org/media/factsheets/factsheet_2.pdf. See also *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, *supra* at 5.

³⁷ Peter Forbes, *Detention Reform in Massachusetts: The Juvenile Detention Alternatives Initiative (JDAI)* (DYS, Boston, Mass.), distributed on Feb. 7, 2007 (on file with author).

³⁸ Tansi email dated Mar. 2, 2007.

³⁹ See Appendix B for a discussion of statewide juvenile arrest, detention and commitment trends and relevant data citations.

⁴⁰ Although the majority of young people in its detention facilities are awaiting adjudication of the charges against them, a smaller number are awaiting a probation violation hearing. In many cases, these youth were placed on probation after having been adjudicated delinquent or pursuant to a continuance without a finding after having admitted to facts sufficient to support a finding of delinquency. DYS's detention data does not distinguish between those awaiting adjudication and those awaiting a violation hearing.

⁴¹ As of 2003, an estimated 55% of all securely detained youth resided in these municipalities. *Massachusetts Juvenile Justice Data and Information* (Mass. Executive Office of Public Safety, Programs Division, Boston, Mass.), Dec. 2004, at 125, available at http://www.mass.gov/Eeops/docs/programs/fjjj/mass_juvenile_justice_data_version_july05.doc.

⁴² *Jake J. v. Commonwealth*, 433 Mass. 70, 76 (2000) (applying the Massachusetts bail statute to juveniles); *Commonwealth v. Dodge*, 428 Mass. 860, 865 (1999) (“[t]he preferred disposition under the bail statute is release on personal recognizance”); *Commonwealth v. Finelli*, 422 Mass. 860, 862-3 (1996) (“[Section 58 of the bail statute] was not intended to give the courts discretion to deny bail but rather to establish the right of the accused, in most circumstances, to be admitted to bail”); *Jenkins v. Chief Justice of the District Court Dep’t*, 416 Mass. 221, 239 (1993) (“[t]he Massachusetts bail statute [citation omitted] seeks to ‘protect the rights of the defendant by establishing a presumption that he or she will be admitted to bail on personal recognizance without surety . . .’”); *Delaney v. Commonwealth*, 415 Mass. 490, 495 (1993) (“[o]ur Legislature intended § 58 [of the bail statute] to protect the rights of the defendant by establishing a presumption that he or she will be admitted to bail on personal recognizance without surety . . .”).

⁴³ 433 Mass. 70 (2000).

⁴⁴ Mass. Gen. Law Ann. ch. 276, § 58.

⁴⁵ Mass. Gen. Law Ann. ch. 276, § 58A. See *Schall v. Martin*, 467 U.S. 253, 263-65 (1984) (recognizing that the State’s *parens patriae* interest in preserving and promoting the welfare of children may permit it to detain children who are the subject of delinquency proceedings if those children are dangers to themselves or others); *Victor V. v. Commonwealth*, 423 Mass. 793, 796 (1996) (statute providing for pretrial detention without bail upon finding of dangerousness applies to juveniles appearing in delinquency proceedings).

⁴⁶ Mass. Gen. Law Ann. ch. 119 § 68A.

⁴⁷ Mass. Gen. Law Ann. ch. 276 § 58.

⁴⁸ Mass. Gen. Law Ann. ch. 276 § 58a(3).

⁴⁹ Mass. Gen. Law Ann. ch. 276 § 58A.

⁵⁰ Mass. Gen. Law Ann. ch. 276 § 58B.

⁵¹ Mass. Gen. Law Ann. ch. 276 §§ 58B, 87.

⁵² Mass. Gen. Law Ann. ch. 276 § 87.

⁵³ *Jake J. v. Commonwealth*, 433 Mass. at 78.

⁵⁴ *Id.* at 79 (“the judge could seek guidance from [Mass. Gen. Law ch. 276] § 58B regarding the procedure for conducting the revocation hearing and the criteria she should apply”).

⁵⁵ Most interviewees indicated that the Office of the Commissioner Probation is the Commonwealth’s most aggressive advocate of secure detention as a disciplinary tool. Some speculate that probation officers use detention as a means of controlling their caseload: more children detained means fewer children requiring supervision in the community. The Office of the Commissioner of Probation denies that its officers engage in this practice. Interview with Patricia Walsh, Deputy Commissioner, Office of the Commissioner of Probation, Feb. 13, 2007. As previously mentioned, the Office

forbade the ACLU from interviewing regional and local employees. Interview with John Cremens, First Deputy Commissioner, Office of the Commissioner of Probation, May 23, 2006.

⁵⁶ *Schall v. Martin*, 467 U.S. 253, 269 (1984) (preventive detention may not be “used or intended as a punishment”); *Bell v. Wolfish*, 441 U.S. 520, 536 (1979) (“[f]or under the Due Process Clause, a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law”); *Aime v. Commonwealth*, 414 Mass. 667, 670 (1993) (“the State may not punish an individual prior to determining his or her guilt in a proceeding that fully comports with the requirements of due process”).

⁵⁷ Massachusetts Juvenile Court Justice John Corbitt, Detention Forum, Brockton, Mass., Dec. 7, 2006.

⁵⁸ *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, *supra* at 5. See also Joan McCord and Kevin P. Conway, *Co-Offending and Patterns of Juvenile Crime*, (U.S. Dep’t of Justice, Office of Justice Program, National Institute of Justice, Wash., D.C.), Dec. 2005, at 9-11, available at <http://www.ncjrs.gov/pdffiles1/nij/210360.pdf>; James Austin, Kelly Dedel Johnson and Ronald Weitzer, *Alternatives to the Secure Detention and Confinement of Juvenile Offenders*, JUVENILE JUSTICE BULLETIN (U.S. Dep’t of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Wash. D.C.), Sept. 2005, at 2-3, available at <http://www.ncjrs.gov/pdffiles1/ojjdp/208804.pdf>; Len Engel, Meghan Howe, Jennifer Fahey and Julie Finn; *Crime and Juvenile Justice Policy Briefing Book* (Crime & Justice Institute, Boston, Mass.) July 2006, at 2, available at http://www.crjustice.org/cji/briefing_book_2006.pdf; citing to Jasmine L. Tyler, Jason Ziedenisberg and Eric Lotke, *Cost Effective Youth Corrections: Rationalizing the Fiscal Architecture of Juvenile Justice Systems* (Justice Policy Institute, Wash., D.C.), 2006, available at http://www.chicagometropolis2020.org/documents/Cost_Effective.pdf; and K.A. Doge, T.J. Dishion and J.E. Lansford, *Deviant Peer Influences in Intervention and Public Policy for Youth*, SOCIAL POLICY REPORT, Vol. 10, No. 1, at 15. See also *Annual Report to the Governor*, *supra* at 22.

One study, for example, found that the re-arrest rate of youth in New York City who attended alternative to detention programs ranged from 17 % to 36 %, compared with a re-arrest rate of 76% for youth released from secure facilities. *Juvenile Justice Project Update – July 2002*, (Correctional Association of New York, New York, N.Y.), available at www.correctionalassociation.org/JJP_Juvenile_Detention_Factsheet.htm, 2002.

⁵⁹ Maria Cramer, *Bypassing detention centers, program aims to keep youths at home, out of trouble*, THE BOSTON GLOBE, Feb. 26, 2008 (quoting Justice Leslie Harris).

⁶⁰ *Aime v. Commonwealth*, 414 Mass. at 681-83 (finding that bail statute permitting justices to base bail determinations on their own perceptions of the defendant’s dangerousness violates the due process clause). See 30 Mass. Prac., Criminal Practice & Procedure, § 508 (2d ed.).

⁶¹ Mass. Gen. Law Ann., ch. 276, § 58.

⁶² Mass. Gen. Law Ann., ch. 276, §§ 58 and 58A authorize appeals.

⁶³ Interview with Angelo McLain, Commissioner, DSS; Mia Alvarado, Chief of Staff, DSS; Virginia Peel, General Counsel, DSS, Apr. 1, 2008. Many advocates believe that CHINS petitions and abuse and neglect reports, both of which involve substantial state intrusion into a child’s life and family relationships, are not an appropriate vehicles for obtaining services.

⁶⁴ Interview with Gretchen Carleton, Integrated Clinical Services Unit, DSS Central Office; Lori Ann Bertram, Co-Director of Integrated Clinical Services Unit, DSS Central Office; Maureen Fallon-Messeder, Director of Adolescent Services, DSS Central Office, Apr. 26, 2007.

⁶⁵ The lack of mental health services for children is not limited to those young people who are detained. In a 2006 lawsuit, *Rosie D. v. Romney*, brought on behalf of 8 children with psychiatric disorders, a federal district court judge ruled that Massachusetts did not have enough mental health services for low-income children outside the juvenile justice system. 410 F. Supp. 2d 18, 52-54 (D. Mass. 2006). See Scott Allen,

Judge rips state on care for mentally ill children, THE BOSTON GLOBE, Jan. 27, 2006, at A1.

⁶⁶ Interview with Dr. Robert Kinscherff, Assistant Commissioner, DMH, Mar. 28, 2007.

⁶⁷ *Massachusetts Alliance of Juvenile Court Clinics (Line Item 5055-0000)*, available at <http://www.kidsandthelaw.org/MAJCC%20One%20Pager%20FY09%20Final.pdf> (last accessed on Apr. 16, 2008).

⁶⁸ *Id.*

⁶⁹ Interview with Angelo McLain, Commissioner, DSS; Mia Alvarado, DSS Chief of Staff; Virginia Peel, General Counsel, DSS, Apr. 1, 2008.

⁷⁰ Cyndi Roy, *State Officials Say DYS Getting Too Many Kids Who Don't Belong There*, STATEHOUSE NEWS SERVICE, Mar. 3, 2005.

⁷¹ *Id.*

⁷² *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, *supra* at 8-10, citing to D. Mace, P. Rhode and V. Gnau, *Psychological Patterns of Depression and Suicidal Behavior of Adolescent Youth in a Juvenile Detention Facility*, JOURNAL OF JUVENILE JUSTICE AND DETENTION SERVICES, Vol. 12, No. 1, 1997, at 18-23; *Incarceration of Youth Who Are Waiting for Community Mental Health Services in the United States* (Committee on Government Reform, Special Investigations Divisions, Minority Staff, Wash., D.C.), 2004; C.B. Forrest, E. Tambor, A.W. Riley, M.E. Esminger and B. Starfield, *The Health Profile of Incarcerated Male Youth*, PEDIATRICS, Vol. 105, No.1, 2000, at 286-291; and J.H. Kashani, G.W. Manning, D.H. McKnew, L. Cytryn, J.F. Simonds and P.C. Wooderson, *Depression Among Incarcerated Delinquents*, PSYCHIATRIC RESOURCES, Vol. 3, 1980, at 185-191; *Unlocking the Future*, *supra*, at 18-19.

⁷³ Interview with Jane Tewksbury, Commissioner, DYS; Crispin Birnbaum, General Counsel, DYS; Ed Dolan, Deputy Commissioner, DYS, Mar. 3, 2008.

⁷⁴ Email from Crispin Birnbaum, General Counsel, DYS, to Robin L. Dahlberg, Senior Staff Attorney, ACLU, dated Dec. 2, 2007 (on file with author) (hereinafter "Birnbaum email dated Dec. 2, 2007").

⁷⁵ Birnbaum email dated Feb. 18, 2008; Interview with Jane Tewksbury, Commissioner, DYS; Crispin Birnbaum, General Counsel, DYS; Ed Dolan, Deputy Commissioner, DYS, Mar. 3, 2008.

⁷⁶ Birnbaum email dated Dec. 2, 2007. Similar data for 2007 is not publicly available. Youth detained the longest are not necessarily those charged with the most serious offenses. In 2006, about two-thirds of the youth detained for 21 days or longer had been charged with misdemeanors or low-level felonies. *Id.*

⁷⁷ A limited number of very young children or youth with special needs are placed in foster homes. Birnbaum email dated Dec. 2, 2007.

⁷⁸ Interview with Jane Tewksbury, Commissioner, DYS; Crispin Birnbaum, General Counsel, DYS; Ed Dolan, Deputy Commissioner, DYS, Mar. 28, 2007. DYS secure detention facilities must have one direct care worker for every 5 youth during day time work shifts and one direct care worker for every 7 youth during the night time work shift. DYS Public Records Response, ACLU, Request No. 2, 3 – Contract Information, dated Mar. 26, 2007 (on file with author).

⁷⁹ DYS Public Records Response, ACLU, Request No. 2, 3 – Contract Information, *supra*.

⁸⁰ Email from Crispin Birnbaum, General Counsel, DYS, to Amy Reichbach, Racial Justice Advocate, ACLU of Mass., dated Mar. 19, 2008 (on file with author). The Massachusetts Alliance of Juvenile Court Clinics estimates that 60% of youth in Massachusetts's detention facilities face a combination of mental health and behavioral problems, medical issues, substance abuse, learning disabilities and cultural issues. *Massachusetts Alliance of Juvenile Court Clinics (Line Item 5055-0000)*, *supra*.

⁸¹ Ltr. from Crispin Birnbaum, General Counsel, DYS, to Robin L. Dahlberg, Senior Staff Attorney, and Arlene Gilbert, Attorney, ACLU, dated July 10, 2007 (on file with author). Pursuant to the policy in effect at the time, serious incidents included: (1) the death of a DYS staff member or detained youth; (2) a life-threatening injury to or illness of a DYS staff member or detained youth; (3) any escape by a detained youth that resulted in the issuance of an escape warrant; (4) major disturbances such as hostage situation, riots, fires, bomb threats, and emergency evacuations; (5) the arrest of a youth for a high profile offense; (6) the arrest of a staff member; (7) any run by a detained youth; (8) suicide attempts, ideations or gestures by detained youth; (9) unit disturbances that do not qualify as a “major disturbance;” (10) the physical restraint of a youth; (11) any job-related traffic accident involving an insurance claim or police report; (12) allegations of abuse or neglect involving a detained youth; (13) allegations of serious policy violations committed by staff; and (14) any incident determined by the Area Director/designee to warrant notification. DYS Official Policy, *Serious Incident Reporting and Investigation*, § 1.3.5(c), July 1, 2004. In late 2007, DYS revised its regulations so that facility staff is still required to report the use of restraints but does not have to report it has a serious incident unless it results in the injury of a child. DYS Official Policy, *Serious Incident Reporting and Investigation*, § 1.3.5.d, Feb. 22, 2008, available at http://www.mass.gov/Eoehs2/docs/dys/policies/010305d_serious_incident_reporting.doc.

⁸² Email from Crispin Birnbaum, General Counsel, DYS, to Robin L. Dahlberg, Senior Staff Attorney, ACLU, dated Oct. 30, 2007 (on file with author) (hereinafter, “Birnbaum email dated Oct. 30, 2007”) (number of children detained at each facility in 2006); email from Robert Tansi, Research Analyst, DYS, to Arlene Gilbert, Attorney, ACLU, dated June 2, 2007 (on file with author) (number of children detained at each facility in 2005); Ltr. from Crispin Birnbaum, General Counsel, DYS, to Robin L. Dahlberg, Senior Staff Attorney, and Arlene Gilbert, Attorney, ACLU, dated July 10, 2007 (on file with author) (number of reported serious incidents per facility).

⁸³ See *Unlocking the Future, Detention Reform in the Juvenile Justice System, 2003 Annual Report, supra*; *Alternatives to the Secure Detention and Confinement of Juvenile Offenders, supra*

at 13-14; *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities, supra* at 10-11.

⁸⁴ Ltr. from Crispin Birnbaum, General Counsel, DYS, to Jeffrey J. Pyle, Attorney, Prince, Lobel, Glovsky & Tye, dated Dec. 20, 2006.

⁸⁵ *Easy Access to Juvenile Populations: 1990-2006* (U.S. Dep’t of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Wash. D.C.), Oct. 17, 2007, available at http://www.ojjdp.ncjrs.org/ojstatbb/ezapop/asp/profile_selection.asp.

⁸⁶ These arrest statistics include youth 17 years of age even though in Massachusetts young people who are 17 years of age or older are treated as adults. “Violent crimes” are defined as murder, non-negligent manslaughter, forcible rape, robbery and aggravated assault. “Property crimes” are defined as burglary, larceny-theft, motor vehicle theft and arson. *2006 Crime in the United States* (United States Dep’t of Justice, Federal Bureau of Investigation, Criminal Justice Information Services, Wash., D.C.), Sept. 2007, at Table 69 (last accessed on Apr. 17, 2008), available at <http://www2.fbi.gov/ucr/ucr.htm>. As of the publication of this report, data for 2007 was not yet available.

⁸⁷ Ltr. from Elizabeth Spinney, DMC Reduction Specialist, Massachusetts Executive Office of Public Safety, to Robin L. Dahlberg, Senior Staff Attorney, ACLU, Attachment #2, at 129-31, dated May 12, 2006 (on file with author).

⁸⁸ *Massachusetts Juvenile Justice Data and Information, supra* at 125.

⁸⁹ Tansi email dated Mar. 2, 2007; *Annual Population Analysis – Detention Admissions* (DYS, Boston, Mass.), available at http://www.mass.gov/?pageID=eohhs2terminal&L=4&L0=Home&L1=Researcher&L2=Specific+Populations&L3=Juvenile+Offenders&sid=Eoehs2&b=terminalcontent&f=dys_r_juv_annual_detention&csid=Eoehs2 (new detention admissions).

⁹⁰ Tansi email dated Mar. 2, 2007; Birnbaum email dated Feb. 18, 2008.

⁹¹ *Massachusetts Juvenile Justice Data and Information, supra* at 125.

⁹² Tansi email dated Mar. 2, 2007 (total commitments); *Annual Population Analysis – New Commitments* (DYS, Boston, Mass.), available at http://www.mass.gov/?pageID=eohhs2terminal&L=4&L0=Home&L1=Researcher&L2=Specific+Populations&L3=Juvenile+Offenders&sid=Eeohhs2&b=terminalcontent&f=dys_r_juv_annual_new_commit&csid=Eeohhs2 (new commitments); *Annual Population Analysis – Committed Caseload* (DYS, Boston, Mass.), available at http://www.mass.gov/?pageID=eohhs2terminal&L=4&L0=Home&L1=Researcher&L2=Specific+Populations&L3=Juvenile+Offenders&sid=Eeohhs2&b=terminalcontent&f=dys_r_juv_annual_commit&csid=Eeohhs2 (committed caseload).

⁹³ Tansi email dated Mar. 2, 2007; Birnbaum email dated Feb. 18, 2008

⁹⁴ Tansi email dated Mar. 2, 2007; Birnbaum email dated Feb. 18, 2008

⁹⁵ *Census of Juveniles in Residential Placement Datebook, supra.*

⁹⁶ *Census of Juveniles in Residential Placement Datebook, supra.*

⁹⁷ For a listing of court divisions and the location of court-houses, see <http://www.mass.gov/courts/courtsandjudges/courts/juvenilecourt/index.html>.

⁹⁸ *The Massachusetts Court System, Juvenile Court Department, Fiscal Year 2006 Statistics*, available at <http://www.mass.gov/courts/courtsandjudges/courts/juvenilecourt/2006stats.html> (delinquency petition data).

⁹⁹ Tansi email dated Mar. 2, 2007 (analysis was conducted using total detention admissions for youth under the age of 17).

¹⁰⁰ Birnbaum email dated Oct. 30, 2007 (on file with author) (analysis was conducted using total detention admissions for youth under the age of 17).

¹⁰¹ Tansi email dated Mar. 2, 2007 (analysis was conducted using total commitment data is for youth under the age of 17).