

# DISPROPORTIONATE MINORITY CONFINEMENT

## IN MASSACHUSETTS

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Failures in Assessing and Addressing the  
Overrepresentation of Minorities in the  
Massachusetts Juvenile Justice System



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Written by Robin Dahlberg.

Other contributors: Vincent Warren, Reginald Shuford,  
Adam Cox, and Spencer Freedman.

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NATIONAL OFFICE  
125 Broad Street, 18th Floor  
New York, NY 10004  
(212) 549-2500  
[www.aclu.org](http://www.aclu.org)

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# DISPROPORTIONATE MINORITY CONFINEMENT IN MASSACHUSETTS

Failures in Assessing and Addressing the Overrepresentation of Minorities in the Massachusetts Juvenile Justice System

## I. INTRODUCTION

The United States Constitution guarantees similarly situated persons equal treatment under the law. It entitles juveniles who commit the same types of offenses and have similar delinquency histories to equal treatment by the police, the prosecutors and the courts, regardless of their race, ethnicity or gender. According to national research, however, this does not happen. In almost every state, youth of color are treated more harshly than their white counterparts. They are more likely to be detained, to be formally charged in juvenile court, and to be confined to state correctional systems than white youth who have committed the same types of offenses and have similar delinquency histories.<sup>1</sup>

The disparate treatment of youth of color has a devastating impact not only on the lives of the children and families directly involved in the juvenile justice system, but also on the integrity of the system itself. The unaddressed perception that racial bias influences decision-making undermines public confidence in the ability of the system to conduct the fair administration of justice.

Since 1992, Congress has required states receiving federal funding pursuant to the Formula Grants program of the federal Juvenile Justice and Delinquency Prevention Act (the “Delinquency Prevention Act”) to identify the extent to which minorities are overrepresented in their juvenile justice systems, assess the underlying causes and take steps to address the overrepresentation.<sup>2</sup> The federal Office of Juvenile Justice and Delinquency Prevention (“OJJDP”) monitors each participating state’s compliance with this mandate, sanctions those states that are not in com-

pliance and provides technical assistance to states that need and request it.<sup>3</sup>

Massachusetts receives federal funding pursuant to the Formula Grants program. To determine the degree to which it has complied with the Delinquency Prevention Act’s mandate concerning minority overrepresentation, the American Civil Liberties Union (“ACLU”) obtained relevant documents for the period 1995 through 2002 from OJJDP and the Programs Division of Massachusetts’ Executive Office of Public Safety, the state agency responsible for administering federal and state-funded criminal justice grants.

## II. SUMMARY OF KEY FINDINGS

These documents reveal that, for at least the last ten years, Massachusetts’ youth of color have been overrepresented at every decision-making point in the Commonwealth’s juvenile justice system. According to statistics generated on behalf of Massachusetts’ Juvenile Justice Advisory Committee, in 1993, youth of color represented approximately 17% of the Commonwealth’s juvenile population, 29% of youth arrested, 59% of youth arraigned, and 57% of juveniles committed to secure facilities.<sup>4</sup> In 2002, youth of color represented 23% of the juvenile population, 25% of youth arrested and 63% of juveniles committed to secure facilities (arraignment statistics were not available).<sup>5</sup>

Although OJJDP audits repeatedly have found Massachusetts to be in compliance with the Delinquency Prevention Act’s mandate, the Commonwealth appears to have taken no meaningful steps to address racial disparities.

- **No single entity or individual has taken a leadership role in addressing the issue.** Neither of the state entities charged with implementation of the Delinquency Prevention Act, the Commonwealth’s Juvenile Justice Advisory Committee and the Executive Office of Public Safety, has made the elimination of racial disparities a priority.

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- **The Commonwealth has yet to identify adequately the nature and scope of the racial disparities in its juvenile justice system.** Between 1995 and 2003, the Commonwealth tried four times to collect the data necessary to determine the degree to which youth of color were overrepresented. Each effort failed. The Commonwealth has no centralized management information system that tracks youth from arrest to disposition and adjudication. Juvenile courts and correctional agencies do not maintain data in a uniform manner. Certain key data does not distinguish Latino youth from African-American and White youth. Other data cannot be accessed without a manual search of court records, many of which contain information that is incomplete, inaccurate or unverifiable. Still other data is simply unavailable.
  
- **The Commonwealth has yet to determine the true causes of these disparities.** Based on studies conducted between 1995 and 1997, the Commonwealth claims that racial disparities do not result from any systemic biases, but from the fact that youth of color are arrested more frequently. According to the Commonwealth, they are arrested more frequently because they live in high crime areas that are aggressively (and appropriately) patrolled by law enforcement.<sup>6</sup> The studies upon which the Commonwealth relies do not support this conclusion:
  - △ Racial disparities continue to exist in detention and adjudication decisions after controlling for gender, age, severity of offense and prior record.
  
  - △ Although there are more Latino youth than African-American youth in Massachusetts, the studies focus exclusively on African-American arrest rates. They contain no data on the arrest rates of Latino youth.
  
  - △ The authors of the studies never examined the arrest rates and police behavior in the areas they deemed as high crime.

Instead, they relied upon generalized social science literature on crime and urbanization. A meta-analysis of studies on race and the juvenile justice system found that about two-thirds of the studies of disproportionate minority confinement showed negative “race effects” at one stage or another of the juvenile justice process.<sup>7</sup>

- **Although the Commonwealth has developed plans to reduce minority overrepresentation, these plans have not been implemented.** The plans call for such things as the improvement of data collection systems; the training and education of juvenile justice practitioners; the creation of a staff position to identify problems in the juvenile justice system and hold practitioners accountable; and the development and/or maintenance of programs for at-risk minority youth. As of December 2002, none of the above objectives had been accomplished.
  
- **Almost none of the millions of federal dollars received by the Commonwealth for youth-related programs (including juvenile delinquency efforts) has been allocated to minority overrepresentation.** Until FY01, none of the roughly \$1.3 million the Commonwealth received each year in Formula Grant funding was allocated to minority overrepresentation. In both FY01 and FY02, approximately 5% of that amount was set aside to address the issue. Although the Commonwealth participates in several other programs pursuant to which it receives federal funds for youth-related purposes, these monies appear to have been disseminated to communities throughout the Commonwealth with little regard for the minority juvenile arrest rates of those communities or the number of at-risk minorities in the communities.

### **III. SUMMARY OF RECOMMENDATIONS**

National research has shown that the overrepresentation of minority youth may result from any number

of complex factors, including the unintended consequences of seemingly race-neutral practices.<sup>8</sup> Regardless of their origin, however, racial disparities must be squarely confronted, analyzed and addressed to ensure fairness in a juvenile justice system. In various jurisdictions around the country, the right leadership, sufficient political support and the appropriate distribution of resources have enabled juvenile justice policymakers to identify concrete steps they can take to reduce minority overrepresentation, create fairer and more effective juvenile justice systems, and ensure better outcomes for many children.

Based on their work in these jurisdictions, the Annie E. Casey Foundation, the Youth Law Center's Building Blocks for Youth and the W. Haywood Burns Institute have identified the hallmarks of successful reform strategies. If Massachusetts is to address its own overrepresentation issues in a meaningful manner, it should develop and implement system-wide strategies that incorporate these hallmarks.

### Recommendation #1

**The Governor should reconfigure the Juvenile Justice Advisory Committee to ensure that it represents adequately the broad spectrum of individuals and entities who work with at-risk youth and communities and people of color.** Historically, individuals with close ties to the Commonwealth's Department of Youth Services have dominated the Committee and have shown little interest in addressing minority overrepresentation. Reconfiguring the Committee will permit the appointment of individuals who are willing and capable of taking a leadership role with respect to the issue.

### Recommendation #2

**At the same time the Governor appoints the Juvenile Justice Advisory Committee, he should issue an Executive Order directing the Committee and the Executive Office of Public Safety to make the reduction of racial disparities in the Commonwealth's juvenile justice system a priority.** Because this issue is so important to the viability of the juvenile justice system, the Advisory

Committee and the Executive Office of Public Safety should be held accountable to the public for their efforts to address it. Within sixty (60) days of its appointment, the Advisory Committee should establish new policies and procedures that require it to, among other things, meet on a regular and periodic basis throughout each calendar year and open those meetings to the public.

### Recommendation #3

**Starting with the City of Boston, the Governor, the Legislature and the Judiciary should take immediate steps to identify the root causes of the racial disparities in the juvenile justice system. By July 2004, the Governor should issue a report examining decision-making by law enforcement personnel who interact with Boston's youth of color, and the Judiciary should issue a report examining decision-making by court personnel in the Boston juvenile and criminal court systems. Both reports should identify actions that contribute to minority overrepresentation and steps that will be taken to reduce overrepresentation. The Legislature should appropriate the funds necessary to prepare the reports within the time periods indicated.**

Common sense dictates that the Commonwealth cannot begin to address racial disparities in any meaningful manner until it determines the causes of those disparities. As is explained in more detail later in the report, the Juvenile Justice Advisory Committee recently selected Boston as the site for an initiative designed to reduce minority overrepresentation. The Commonwealth should expand that initiative to include a comprehensive study of the causes of racial disparities in the Boston area. The Boston study can then act as a prototype for similar studies in other areas of the Commonwealth with a high percentage of youth of color.

### Recommendation #4

**The Advisory Committee and the Executive Office of Public Safety should develop the capacity to monitor statewide, countywide and municipality-wide trends on the overrepresentation of youth of**

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**color by July 2004.** Accurate and timely data will be needed to expand the Boston project to other areas. The Commonwealth should begin to develop the means of gathering and analyzing that data now.

The Advisory Committee and the Executive Office of Public Safety should determine the type of data they will need and work with representatives of the court system, juvenile and adult correction agencies, indigent defender associations and law enforcement offices to develop policies and procedures for uniform data collection by these agencies, associations and offices. Data categorized by age, gender, race and ethnicity should be collected at every important stage of the juvenile justice system.

### **Recommendation #5**

**During the next legislative cycle, the Legislature should condition state funding for the Judiciary, the District Attorney's Association, the Department of Youth Services, the Office of the Commissioner of Probation and local police departments on their collaboration and cooperation with the Advisory Committee and the Executive Office of Public Safety in collecting and analyzing relevant data.**

### **Recommendation #6**

**By April 2004, the Juvenile Justice Advisory Committee and the Executive Office of Public Safety should review and revise existing federal grant programs to ensure that youth of color have equal access to appropriate community-based alternatives to detention and are provided with a local continuum of culturally sensitive post-adjudicative services, including treatment, supervision and placement options.** Funding decisions should be made on the basis of need, not grant-writing abilities.

### **Recommendation #7**

**The Executive Office of Public Safety, working in partnership with the Committee for Public Counsel Services, should contract with an inde-**

**pendent evaluator with extensive experience in indigent defense delivery systems to conduct a thorough review of defender services available to indigent youth of color throughout the state. To the extent that indigent defense providers do not have the resources to provide all minority youth with constitutionally adequate legal representation, the Commonwealth should take immediate steps to rectify this deficiency.** Competent legal advocates can act to ensure the fair treatment of youth of color once they have entered the juvenile justice system and can empower children to seek the services and make the changes necessary to avoid future court involvement.

## **IV. THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT**

The Formula Grants program of the Delinquency Prevention Act makes federal funds available to states to support "state and local programs that prevent juvenile involvement in delinquent behavior."<sup>9</sup> These funds are known as Formula Grant funds because the federal government determines the amount for which each state is eligible under the program using a formula based upon the state's juvenile population. Every three years, participating states must submit a plan to OJJDP. The plan, in turn, must:

1. Establish an advisory group of between 15 and 33 members, appointed by the governor, to assist in the formulation of the plan, review and comment on the state's use of Formula Grant funds, and make policy recommendations on juvenile justice to the governor, legislators and other state agencies. A majority of the members of the group may not be full-time government employees.<sup>10</sup>
2. Attempt "to reduce . . . the disproportionate number of juvenile members of minority groups who come in contact with the juvenile justice system"<sup>11</sup> by
  - a. *Identifying* the nature and extent of overrepresentation in the system using "quantifiable" data,<sup>12</sup>



- b. *Assessing* the data to identify and explain differences in arrest, diversion, pre-trial detention, adjudication rates, and disposition rates,<sup>13</sup> and
  - c. *Developing and implementing strategies*, based on the above assessment, to diminish overrepresentation.<sup>14</sup>
3. Ensure that juvenile status offenders, aliens in custody, and juvenile non-offenders are not detained in secure detention or correctional facilities.<sup>15</sup>
  4. Ensure that juveniles are not detained or confined in any institution in which they have contact with incarcerated adults.<sup>16</sup>
  5. Ensure that juveniles are not detained or confined in any adult jail or lockup facility for longer than six hours.<sup>17</sup>

Participating states must submit annual plan amendments and performance reports to OJJDP describing their progress in implementing the programs set forth in their plans and analyzing the effectiveness of those programs.<sup>18</sup> OJJDP audits each state to determine its compliance with the above provisions of the Act. A state not in compliance with any one of these mandates may lose some of its funding.<sup>19</sup>

**V. MASSACHUSETTS' EFFORTS TO ADDRESS MINORITY OVERREPRESENTATION**

**V.A. The State Advisory Committee**

As required by the Delinquency Prevention Act, the Commonwealth has established a Juvenile Justice Advisory Committee. According to its mission statement, the Advisory Committee is responsible for the implementation of the objectives of the Delinquency Prevention Act, the coordination of juvenile justice and delinquency prevention efforts within the Commonwealth, and the provision of policy recommendations to the Governor and state legislators on matters concerning juvenile justice.<sup>20</sup> The Programs Division of the Executive Office of Public Safety staffs it.

Although the Advisory Committee and the Executive Office of Public Safety would be the logical leaders of any effort to address minority overrepresentation, a review of the documents produced to the ACLU reveals that neither has played such a role. Both entities have concerned themselves primarily with the mechanics of disseminating federal and/or state funds to counties, municipalities, law enforcement agencies and others for youth-related programs (including juvenile delinquency prevention).

The Advisory Committee decides how to allocate monies obtained by the Commonwealth pursuant to the following federal grant programs: the Formula Grants Program; Title V, §§ 501-506, of the Delinquency Prevention Act;<sup>21</sup> Title II, Part E of the Delinquency Prevention Act (“Challenge Grant funding”);<sup>22</sup> and the Juvenile Accountability Incentive Block Grant Program (“JAIBG”).<sup>23</sup> The Executive Office of Public Safety assists the Advisory Committee in its funding decisions and, without the Advisory Group’s input, disseminates funding obtained through the federal Edward Byrne Memorial State and Local Law Enforcement Assistance Formula Grant Program<sup>24</sup> and various other programs.

Historically, neither the Advisory Committee nor the Executive Office of Public Safety has been concerned about the degree to which the programs they fund serve youth or communities of color. As is discussed in further detail, the Advisory Committee first awarded grants to programs designed to address minority overrepresentation in 2001. At that time, it set aside Challenge Grant funds for two programs in Brockton and Worcester.

In 2002, with the assistance of technical assistance providers supplied by OJJDP, the Advisory Committee began to require applicants for certain youth-related program grants to explain in their applications whether their programs would address racial disparities. In early 2003, the Executive Office of Public Safety made available \$275,000 for a two-year initiative in Boston to promote alternatives to incarceration for youth of color.

Outside of the funding arena, the Advisory Committee and the Executive Office of Public Safety

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have done even less to address minority overrepresentation. Between 1995 and 1997, the two groups commissioned three studies to identify and assess the causes of overrepresentation. In 1998, the Advisory Committee prepared a Disproportionate Minority Confinement Action Plan,<sup>25</sup> which was incorporated into plans prepared by the Commonwealth pursuant to the Delinquency Prevention Act, and has yet to be implemented. In September 2002, the Executive Office of Public Safety prepared a new plan to address minority overrepresentation.

The reason for the lack of activity may be due to any number of reasons. Contrary to the mandates of the Delinquency Prevention Act, the Advisory Committee has been heavily dominated by full-time government employees, many of whom were actively involved in juvenile law enforcement or corrections. In 1997, the Committee had 26 members, 16 of whom were full-time government employees.<sup>26</sup> OJJDP twice directed the Commonwealth to reduce the number of government employees.<sup>27</sup> In early 2003, the Committee had 23 members, 12 of whom were full-time government employees.<sup>28</sup>

The subcommittee to which the Advisory Committee has delegated responsibility for addressing minority overrepresentation meets infrequently. While the Commonwealth has represented to OJJDP that the subcommittee meets at least four times per year,<sup>29</sup> its meetings have been sporadic and irregular. In 1999, for example, it met only three times. In 2000, it met five times, but four of those meetings took place between mid-September and early November. During 2001 and 2002, the subcommittee met slightly more frequently.<sup>30</sup>

And, the Advisory Committee has effectively shielded itself from any type of public oversight or scrutiny. In contravention of the Massachusetts Open Meetings Law,<sup>31</sup> neither the meetings of the Advisory Committee nor those of its subcommittees are open to the public. Local advocates report that the Executive Office of Public Safety has refused to release the dates, times and locations of the meetings, even in response to requests made pursuant to the Commonwealth's Public Records Act.<sup>32</sup>

### **V.B. The Overrepresentation Mandate**

Despite the inactivity of the Advisory Committee and the Executive Office of Public Safety, OJJDP has repeatedly found Massachusetts to be in compliance with the Delinquency Prevention Act's requirements pertaining to the overrepresentation of minority youth.<sup>33</sup> As previously mentioned, the Act's overrepresentation mandate has three components: identification, assessment and the development and implementation of strategies. According to OJJDP, the Commonwealth has complied with the first two of these three components. It has adequately *identified* the scope of the racial disparities in its juvenile justice system and *assessed* their causes.<sup>34</sup> Between 1995 and 1997, the Commonwealth commissioned three studies that concluded that although racial disparities exist, they do not result from systemic biases, but from the fact that youth of color live in high-crime areas aggressively patrolled by the police and thus are arrested more frequently.<sup>35</sup>

In FY00, however, OJJDP conditioned its continued certification of compliance on Massachusetts' receipt of technical assistance.<sup>36</sup> While Massachusetts had developed strategies to *address* overrepresentation as required by the third component of the mandate, it had taken almost no steps to implement them.<sup>37</sup> In 1999, Massachusetts was one of five states selected by OJJDP to participate in a Disproportionate Minority Confinement Intensive Technical Assistance Initiative.<sup>38</sup>

Based on a review of the documents provided to the ACLU, however, it appears that the Commonwealth has not adequately complied with any of the mandate's components. The three studies conducted during the mid-1990s are flawed. The statistics upon which they rely are neither accurate nor complete and do not support the conclusions the Commonwealth has drawn from them. Moreover, while the Commonwealth is participating in the Technical Assistance Initiative, it has responded defensively to recommendations made by the technical assistance providers and has been reluctant to implement them.

**V.B.1. Identification and Assessment**

In 1995 and 1996, the Executive Office of Public Safety and the Advisory Committee commissioned the independent consulting firm, Social Science Research and Evaluation, Inc. (“SSRE”), to conduct two studies to identify the scope of and assess the causes for minority overrepresentation. SSRE reviewed arrest, diversion, arraignment, adjudication, transfer to adult court, disposition, and commitment data from Suffolk, Worcester, Middlesex and Hampden counties for calendar year 1993. It also examined the race of the juveniles detained in secure juvenile detention facilities, secure juvenile correctional facilities, adult lockups, and adult jails for the same calendar year.

In September 1995, it published the results of its first study, together with the Commonwealth’s first set of Disproportionate Minority Confinement matrixes.<sup>39</sup> Based on this study, the Commonwealth concluded that overrepresentation occurred primarily

ly at arrest and did not increase or decrease substantially thereafter.<sup>40</sup>

The quality of the data upon which SSRE was forced to rely, however, was so poor that the study cannot support the Commonwealth’s conclusions. Because the Commonwealth’s juvenile justice system did not track youth from arrest to disposition and adjudication in any meaningful way, SSRE had to collect data from outside sources over which it had no control or manually by reviewing individual case records.<sup>43</sup>

SSRE obtained arrest statistics from the FBI’s Uniform Crime Report system, which relied on local police departments for its primary data. In 1993, 50% of the police departments in the four counties surveyed by SSRE failed to submit all relevant data to the FBI.<sup>44</sup> The FBI, in turn, categorized Latino/Hispanic arrests as either White or African-American, leaving SSRE’s matrixes with no arrest data for Latino youth and overstating the arrests of White and African-American juveniles.<sup>45</sup>

**FIRST DISPROPORTIONATE PROCESSING OF MINORITY YOUTH INDEX MATRIX<sup>41</sup>  
STATEWIDE (AGGREGATE RESULTS FROM FOUR COUNTIES); 1993 DATA**

	<b>% of juvenile population</b>	<b>% of youth arrested (delinquent)</b>	<b>% of youth arraigned</b>	<b>% of youth adjudicated delinquent</b>	<b>% of youth committed to state secure facility</b>
African-American	6.0%	28.2%	28.9%	33%	30.1%
Latino	7.6%	n/a	25.9%	29.4%	19.5%
Asian/Pacific Islander	2.8%	1.4%	2.6%	1.4%	2.4%
All Minorities	17.2%	28.6%	59%	65.1%	57.3%
White	82.8%	71.4%	41%	34.9%	42.7%

**FIRST DISPROPORTIONATE MINORITY CONFINEMENT INDEX MATRIX<sup>42</sup>  
STATEWIDE (AGGREGATE RESULTS FROM FOUR COUNTIES); 1993 DATA**

	<b>% of juvenile population</b>	<b>% of youth arrested</b>	<b>% of youth in adult lockups</b>	<b>% of youth in adult jails</b>	<b>% of youth in secure juvenile det. facilities</b>	<b>% of youth in secure juvenile det. facilities</b>
African-American	6.0%	27.2%	17.4%	20%	35.5%	30.1%
Latino	7.6%	n/a	21.3%	40%	16.1%	19.5%
Asian/Pacific Islander	2.8%	1.4%	1.3%	20%	2.1%	2.4%
All Minorities	17.2%	28.6%	40.5%	80%	65.8%	57.3%
White	82.8%	71.4%	59.5%	20%	34.2%	42.7%

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To obtain arraignment, adjudication and disposition data, SSRE reviewed 1,222 juvenile records from ten courts in the four counties,<sup>46</sup> each of which had its own record-keeping system. In some jurisdictions, crucial information was either missing from the files or unverifiable; in others, records were in complete disarray.<sup>47</sup> Board of Probation Reports frequently contained inaccurate information about the status of a case; Juvenile Intake Probation Forms were often only partially completed or contained information of dubious validity; some court records contained arrest reports while others did not; some juveniles had different folders in different courts with different pieces of information.<sup>48</sup>

In 1996, SSRE published a second report examining the relationship between race and the decision to place a child in a secure facility during detention; to adjudicate a juvenile delinquent; and to commit a child to a secure treatment facility after adjudication.<sup>49</sup> SSRE analyzed the data collected during its first study using a multiple regression analysis and interviewed or surveyed 193 police officers, judges, prosecutors, Department of Youth Services staff and probation officers; only 20% were minority.<sup>50</sup> It also interviewed approximately 110 youth in the juvenile justice system, roughly 60% of whom were minority.<sup>51</sup>

The multiple regression analysis demonstrated that racial disparities continued to exist in detention, adjudication and post-adjudication placement decisions after controlling for factors such as gender, age, severity of offense and prior record.

Yet, without further explanation, SSRE dismissed all disparities as statistically insignificant<sup>56</sup> and concluded that there was no “significant empirical evidence that the juvenile justice system operates in a biased or differential manner toward youth of color.”<sup>57</sup> At the same time, however, it cautioned that the poor quality of the data prevented it from definitively stating that “extra-legal” factors, such as race, did not play a role in juvenile justice decision-making.<sup>58</sup> And it noted that while a majority of the white professionals interviewed or surveyed thought most youth received equal treatment and processing, a substantial number of minority professionals thought that youth of color were treated differently at every stage of the juvenile justice system.<sup>59</sup> A majority of the

youth interviewed or surveyed reported frequent abuse, harassment and bias by the police.<sup>60</sup>

In 1997, the Executive Office of Public Safety and the Advisory Committee asked the Commonwealth’s Statistical Analysis Center to study the interaction between youth of color and the police at the point of arrest, a decision-making point not examined in SSRE’s second report. On the basis of 1990 census information, the Statistical Analysis Center concluded that “a majority” of Asian, African-American and Native American juveniles lived in census blocks<sup>61</sup> where more than 20% of the population was minority.<sup>62</sup> It then noted that most of these census blocks were located in urban areas with high population densities and “a host of other characteristics associated with high crime locations,”<sup>63</sup> such as a greater number of poor residents, a greater number of residents who were unemployed and a greater number of female-headed households with children.<sup>64</sup>

Based on a review of social science literature on crime throughout the United States, the Statistical Analysis Center concluded that police patrol those areas inhabited by the urban poor more aggressively. More aggressive policing leads to more juvenile arrests. Since many of the urban poor are minority, it also leads to “a population of minority youth with a larger criminal record than their suburban counterpart.”<sup>65</sup> Longer criminal records, in turn, result in dispositions involving confinement and juvenile correctional facilities with a population that is largely minority.<sup>66</sup>

According to the Statistical Analysis Center, there was no bias within the Commonwealth’s juvenile justice system. Adolescents of color were overrepresented in the juvenile justice system because they lived in the wrong neighborhoods.<sup>67</sup>

Significantly, the Statistical Analysis Center did not include Latino youth in its analysis despite the fact that one-third of all juveniles adjudicated delinquent in Massachusetts are Latino. The 1990 census data, like the UCR arrest data, categorized Latinos as either White or African-American.<sup>68</sup>

Even more significantly, the Statistical Analysis Center took no steps to confirm that the findings of

**PERCENTAGE OF YOUTH PLACED IN SECURE AND NON-SECURE FACILITIES DURING PRE-ADJUDICATION DETENTION, ADJUSTED FOR AGE AND OFFENSE<sup>52</sup>**

	<b>Non-secure Placement During Detention</b>	<b>Secure Placement During Detention</b>
African-American Males	13%	87%
Latino Males	14%	86%
White Males	21%	79%

**PERCENTAGE OF YOUTH PLACED IN SECURE AND NON-SECURE FACILITIES AFTER ADJUDICATION, ADJUSTED FOR AGE AND OFFENSE<sup>53</sup>**

	<b>Non-secure Placement After Adjudication</b>	<b>Secure Placement After Detention</b>
African-American Males	32%	68%
Latino Males	34%	66%
White Males	42%	58%

**PERCENTAGE OF JUVENILES ADJUDICATED DELINQUENT, ADJUSTED FOR OTHER CHARACTERISTICS<sup>54</sup>**

	<b>Adjudicated Delinquent</b>	<b>Not Adjudicated Delinquent</b>
African-American Males	35.4%	64.6%
Latino Males	35.6%	64.4%
White Males	30.3%	69.7%

**PERCENTAGE OF JUVENILES ASSIGNED TO SECURE TREATMENT FACILITIES, ADJUSTED FOR OTHER CHARACTERISTICS<sup>55</sup>**

	<b>Assigned to Secure Treatment Facilities</b>	<b>Rejected, Escalated, Diverted or Waived</b>
African-American Males	64.7%	35.3%
Latino Males	64.5%	35.5%
White Males	57.6%	42.4%

the social science studies it reviewed actually applied to Massachusetts. It did not examine arrest rates within its “high percent minority” census blocks to confirm that these blocks were high crime areas.<sup>69</sup> It did not interview law enforcement personnel or neighborhood residents to confirm that these areas were patrolled more aggressively. It made no effort to determine the policies, practices and attitudes of the arresting police officers.

In early 2001, Massachusetts updated its initial Disproportionate Minority Confinement matrixes. Apparently unable to gather all relevant data from a single calendar year, it compared 2000 demographic information with 1999 arrest data, 1997 arraignment data, 1993 adjudication data, 1999 data on juveniles confined in adult lockups, data generated in 1993 for juveniles confined in secure juvenile detention facilities, and 2001 data for juveniles confined in secure juvenile correctional facilities.

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### FOURTH DISPROPORTIONATE MINORITY PROCESSING INDEX MATRIX STATEWIDE (AGGREGATE RESULTS FROM FIVE COUNTIES)<sup>72</sup>; 1999-2002 DATA<sup>73</sup>

	% of juvenile population (2000)	% of youth arrested (delinquent) (1999)	% of youth arraigned	% of youth adjudicated delinquent	% of youth committed to secure facility (2002)
African-American	6%	20%	n/a	n/a	29%
Latino	10%	15% <sup>74</sup>	n/a	n/a	26%
Asian/Pacific Islander	4%	2%	n/a	n/a	2%
All Minorities	23%	22%	n/a	n/a	63%
White	77%	78%	n/a	n/a	37%

### FOURTH DISPROPORTIONATE MINORITY CONFINEMENT INDEX MATRIX STATEWIDE (AGGREGATE RESULTS FROM FIVE COUNTIES); 2000-2002 DATA<sup>75</sup>

	% of juvenile population (2000)	% of youth arrested (2000)	% of youth in adult jails (2002) <sup>76</sup>	% of youth in adult lockups (2002)	% of youth in secure juvenile det. facilities (2002)	% of youth in secure juvenile cor. facilities (2002)
African-American	6%	24%	100%	16%	24%	29%
Latino	10%	n/a	0%	22%	22%	26%
Asian/Pacific Islander	4%	1%	0%	3%	4%	2%
All Minorities	23%	25%	100%	43%	60%	63%
White	77%	75%	0%	57%	40%	37%

In August 2001, OJJDP advised the Commonwealth that the matrixes were inadequate because the data came from different years and asked the Commonwealth to revise them.<sup>70</sup> In late 2001, the Commonwealth produced a third set of DMC matrixes, this time focusing on Suffolk, Hampden and Bristol counties. In April 2003, it published a fourth set, aggregating data from Bristol, Essex, Hampden, Suffolk and Worcester counties. The matrixes continue to use data from different years.<sup>71</sup>

#### V.B.2. Implementation

For the last seven years, the Commonwealth's Delinquency Prevention Act plans have contained essentially the same objectives with respect to the overrepresentation of minority youth. These objec-

tives, which incorporate elements of the Advisory Committee's Action Plan, include:

- The improvement of the quality of juvenile justice system data.
- The continued identification of the causes of minority overrepresentation.
- The ongoing training and education of juvenile justice practitioners, elected officials, and the general public regarding disproportionate minority confinement issues and trends.
- The creation and/or maintenance of programs for at-risk minority youth and support for prevention programs in communities with a high percentage of minority residents.

- The development and/or maintenance of appropriate community-based alternative lock-up programs for pre-arraigned minority youth in the juvenile justice system.
  - The creation of positions or the enhancement of existing positions in the Office of the Juvenile Justice Monitor to identify problems
- in the juvenile justice system and hold practitioners accountable.<sup>77</sup>
- In FY00, the Commonwealth added:
- Support for a system of graduated sanctions and a continuum of treatment alternatives to minority youth.<sup>78</sup>

**SUBGRANTS MADE WITH FORMULA GRANT FUNDING AWARDED TO THE COMMONWEALTH FOR FY98, FY99, FY00 AND FY01<sup>82</sup>**

Grantee	Type of Program	FY98	FY99	FY00	FY01
Total Award		\$1,345,000	\$1,403,000	\$1,377,000	\$1,376,000
Bristol County	Alternative Lockup	\$300,000	\$275,000	\$265,325	n/a
Division of Youth Services	Alternative Lockup	n/a	\$108,900	n/a	\$143,900
Greenfield Police Dept.	Transportation to Alternative Lockups	\$76,000 \$53,000 <sup>83</sup>	\$53,000	n/a	n/a
Lawrence Boys and Girls Club	Overnight Arrest Unit	\$270,000	\$271,000	\$67,000 \$165,400 <sup>84</sup>	\$232,700
New Bedford	Secure Juvenile Facility	\$243,000 \$216,000 <sup>85</sup>	n/a	\$220,000	n/a
Plymouth County Sheriff	Alternative Lockup	\$32,200	n/a	n/a	n/a
Springfield Center for Human Dev.	Alternative Lockup	\$75,000	\$ 75,000	\$94,000	n/a
Worcester KEY	Alternative Lockup	\$250,000	\$250,000	n/a	\$300,000
Yarmouth KEY	Alternative Lockup	n/a	\$102,000	n/a	n/a
Juvenile Justice Planning		\$134,000	\$140,300	\$137,700	\$137,600
Advisory Committee		\$30,000	\$30,000	\$31,900	\$31,750
Juvenile Justice Monitoring		\$150,000	\$150,000	n/a	\$150,000

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And in FY02, it added:

- The maintenance of programs administered with Juvenile Accountability Incentive Block Grant and Title V funds that have disproportionate minority confinement implications.<sup>79</sup>

The only program objective the Commonwealth states that it actually achieved between FY97 and FY02 was the continued identification of the causes of disproportionate minority confinement – a task that it claims that it accomplished with the Statistical Analysis Center’s September 1997 report.<sup>80</sup> The Commonwealth contends that a lack of funding has prevented it from completing the remaining tasks.<sup>81</sup>

Although Massachusetts received roughly \$1.3 million in funding pursuant to the Formula Grants program of the Delinquency Prevention Act during each of the last five years, it did not allocate any of that funding to address the overrepresentation of minorities until FY01.

Instead, almost all Formula Grant funding was used by the Commonwealth to ensure its compliance with that provision of the Delinquency Prevention Act forbidding the detention of juveniles in adult jails and lockups. In FY97 and FY98, OJJDP concluded that the Commonwealth was not in compliance with this provision, reduced its federal funding by 25% and required that it spend all remaining Formula Grant funding on lockup removal programs and training until it could demonstrate compliance.<sup>86</sup> Formula Grant funds were then used to purchase additional beds and spaces in juvenile correctional facilities throughout the state and transportation to and from those facilities. Although Massachusetts achieved compliance with the lockup removal provision in FY99,<sup>87</sup> it continued to allocate all funding to lockup alternative programs until FY01.<sup>88</sup>

At that time, it set aside roughly \$250,000 to address minority overrepresentation, \$50,000 of which was to be used in FY01 and \$200,000 in FY02.<sup>89</sup> The amount allocated for FY02 was later reduced to \$150,000.<sup>90</sup> As of August 2002, however, the Advisory Committee had yet to decide how to spend the funds.

In September 2002, apparently fearful that the FY01 funds would revert back to the federal government if not spent by September 2003,<sup>91</sup> the Executive Office of Public Safety informed the Advisory Committee that it would use the funds to finance the Boston initiative mentioned earlier in this report.<sup>92</sup> It also prepared and distributed a new plan for addressing the overrepresentation of minorities. The plan calls for the implementation of the Boston initiative and proposes similar strategies in Springfield and New Bedford, an assessment of the programs funded by the Executive Office of Public Safety to determine how they are addressing overrepresentation, and exploration of the possibility of working with the Annie E. Casey Foundation to implement a Pathways to Juvenile Detention Reform Project.<sup>93</sup> This plan was subsequently incorporated into the Commonwealth’s FY03 Delinquency Prevention Act Plan.<sup>94</sup>

### **V.C. Technical Assistance**

As previously mentioned, Massachusetts was one of five states selected by OJJDP to receive technical assistance through the DMC Intensive Technical Assistance initiative. Three cities, Boston, Springfield and New Bedford, were subsequently invited to participate.<sup>95</sup> Documents produced by the Commonwealth indicate that the Advisory Committee has had little involvement with the provision of technical assistance on the local level, and has been largely resistant to technical assistance at the state level.

The first statewide technical assistance provider, Thomas R. English, conducted an assessment to determine the Commonwealth’s readiness to address minority overrepresentation and to provide the groundwork necessary to inform and build support. Based on site visits in October and November 1999, he concluded, among other things, that key players were either unaware or lacked a clear understanding of the issue.<sup>96</sup> A few weeks after he published his findings, OJJDP asked him to step aside, apparently because of dissatisfaction expressed by some state officials.<sup>97</sup> He was replaced with new technical assistance providers who began to work with the Advisory Committee in September 2000.



The relationship between the new providers and the Advisory Committee appears to have been strained. In January 2002, after having worked with the Advisory Committee for over one year, the providers issued a report expressing concern about the infrequency of the meetings of the subcommittee to which the Advisory Committee had delegated the minority overrepresentation issue; the low attendance at those meetings; the subcommittee's lack of diversity (seven of its eight members were white); the fact that it was "heavily influenced" by the Department for Youth Services; and its passivity and indecisiveness on the issue. The providers recommended that the subcommittee "take an active stance," permit community representatives to serve on the subcommittee and increase the frequency of its meetings.<sup>98</sup>

In a May 2002 draft letter responding to the report, the subcommittee refused to permit community members to sit on the subcommittee, defended the Department of Youth Services' representation on the subcommittee, stated that the subcommittee already met with the requisite frequency, and expressed general reluctance to deviate from its current method of operation.<sup>99</sup>

At the subcommittee's September 10, 2002, meeting, its Chair stated that he felt that the subcommittee "and [the Executive Office of Public Safety] are heading in the right direction and [technical assistance] may no longer be necessary." He then asked an OJJDP representative present at the meeting about the possibility of changing technical assistance providers and finding someone closer to Massachusetts. OJJDP felt that the subcommittee would benefit from additional technical assistance, but agreed to inquire into the possibility of changing providers.<sup>100</sup>

**VI. ALTERNATIVE SOURCES OF FUNDING**

As previously stated, the Commonwealth receives federal funding for youth related programs pursuant to Title V of the Delinquency Prevention Act; the Challenge Grant program; the Edward Byrne Memorial State and Local Law Enforcement Assistance Formula Grant Program; and the JAIBG program. Also, as previously stated, the Advisory Committee and the Executive Office of Public Safety are responsible for the dissemination of these funds. Based on the documents produced to the ACLU, neither entity has a strategic plan or a set of articulated goals guiding its funding decisions.

FY99 Challenge Grant funds were the first federal funds that Massachusetts set aside specifically for minority overrepresentation. In mid-2000, the Executive Office of Public Safety issued a Request for a Response (RFR) to Hampden County, seeking proposals for a minority overrepresentation pilot project using the FY99 Challenge Grant funds. No one responded. The Executive Office of Public Safety subsequently revised the RFR and in February 2001 sent it to eleven cities with significant number of juvenile arrests (although not necessarily minority juvenile arrests): Boston, Brockton, Fall River, Holyoke, Lawrence, Lynn, Lowell, New Bedford, Pittsfield, Springfield and Worcester. Interested parties were asked to submit proposals for programs addressing minority overrepresentation in one of three designated areas: alternatives to incarceration; alternatives to suspension and expulsion; or increased aftercare services.<sup>103</sup>

**FEDERAL FUNDING AWARDED TO THE COMMONWEALTH  
BY SOURCE AND FISCAL YEAR<sup>101</sup>**

	FY98	FY99	FY00	FY01
Title V	\$358,000	\$807,000	\$723,000	\$742,000
Challenge Grant	\$183,000	\$169,000	\$163,000	\$162,000
JAIBG	\$4,589,700	\$4,636,900	\$4,412,600	\$4,601,750
Byrne Grant <sup>102</sup>	\$9,986,400	\$9,959,400	\$8,548,000	\$8,747,400
<b>TOTAL</b>	<b>\$15,117,198</b>	<b>\$15,572,399</b>	<b>\$13,846,600</b>	<b>\$14,253,151</b>

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In July 2001, the Commonwealth awarded \$36,700 to the City of Worcester to fund programs to explore the use of electronic monitoring devices as an alternative to incarceration and to provide services to suspended or expelled students and their families.<sup>104</sup> It awarded \$125,000 to the Brockton Area Private Industry Council, Inc. to provide increased services to minority youth released from juvenile correctional facilities through internship opportunities and career development services.<sup>105</sup> During FY02, the Worcester alternatives to incarceration program served 35 children, approximately 71% of whom were minority.<sup>106</sup> Between September 2001 and June 2002, the Brockton program served 78 youth, 78% of whom were minority.<sup>107</sup> Additional Challenge Grant funding has been allocated to extend these programs until September 2003.

Grants from other federal sources appear to have been awarded with little regard for the number of minorities served by the programs financed with the funds. According to the Massachusetts Statistical Analysis Center, 23% of all juvenile arrests for Part I crimes (homicide, rape, robbery, aggravated assault, larceny, burglary, arson, motor vehicle theft)<sup>108</sup> and 15% of all juvenile arrests for Part II crimes (DUI, liquor law violations, disorderly conduct, drunkenness, vagrancy, vandalism, etc.) involve an African-American arrestee.<sup>109</sup> Roughly 70% of both Part I and Part II African-American juvenile arrests are made in five counties. These five counties, however, are not the recipients of the most federally funded grants, either in terms of the number of grants awarded or the amount of money distributed.

### **COUNTIES WITH THE GREATEST NUMBER OF AFRICAN-AMERICAN JUVENILE ARRESTS FOR PART I CRIMES; CALENDAR YEAR 1998<sup>110</sup>**

<b>Counties</b>	<b>Number of Part I Arrests</b>
Suffolk	814
Hampden	169
Norfolk	125
Plymouth	124
Worcester	118

### **COUNTIES WITH THE GREATEST NUMBER OF AFRICAN-AMERICAN JUVENILE ARRESTS FOR PART II CRIMES; CALENDAR YEAR 1998<sup>111</sup>**

<b>Counties</b>	<b>Number of Part II Arrests</b>
Suffolk	836
Hampden	364
Plymouth	259
Worcester	183
Norfolk	130

**NUMBER OF SUBGRANTS MADE TO INDIVIDUAL COUNTIES WITH BYRNE, CHALLENGE, JAIBG, AND TITLE V FUNDS AWARDED TO COMMONWEALTH IN FEDERAL FY98, FY99, FY00 AND FY01<sup>112</sup>**

FY98		FY99		FY00		FY01	
Middlesex	21	Middlesex	20	Middlesex	20	Middlesex	16
Essex	17	Essex	15	Essex	14	Essex	14
Worcester	10	Worcester	12	Worcester	9	Suffolk	9
Hampden	7	Hampden	9	Bristol	9	Barnstable	8
Plymouth	7	Suffolk	9	Suffolk	7	Hampden	7
Norfolk	6	Bristol	8	Hampden	7	Bristol	6
Suffolk	6	Plymouth	6	Berkshire	5	Norfolk	6
Berkshire	5	Barnstable	5	Plymouth	5	Worcester	6
Barnstable	4	Franklin	5	Barnstable	4	Plymouth	5
Bristol	4	Norfolk	4	Norfolk	4	Berkshire	4
Franklin	4	Berkshire	3	Franklin	3	Franklin	3
Hampshire	1	Hampshire	2	Hampshire	2	Hampshire	2
<b>TOTAL</b>	<b>92</b>	<b>TOTAL</b>	<b>99</b>	<b>TOTAL</b>	<b>89</b>	<b>TOTAL</b>	<b>85</b>

**TOTAL AMOUNT OF SUBGRANTS MADE TO INDIVIDUAL COUNTIES WITH BYRNE, CHALLENGE, JAIBG AND TITLE V FUNDS AWARDED TO COMMONWEALTH IN FEDERAL FY98, FY99, FY00 AND FY01<sup>113</sup>**

FY98		FY99		FY00		FY01	
Suffolk	\$1,086,374	Suffolk	\$1,169,174	Suffolk	\$1,110,174	Suffolk	\$1,180,130
Middlesex	\$1,058,924	Essex	\$1,160,031	Essex	\$941,009	Middlesex	\$858,998
Essex	\$1,052,926	Middlesex	\$911,605	Middlesex	\$879,180	Essex	\$558,796
Worcester	\$659,236	Worcester	\$666,086	Worcester	\$521,586	Hampden	\$470,482
Hampden	\$546,947	Hampden	\$535,663	Bristol	\$480,293	Berkshire	\$425,510
Plymouth	\$501,013	Bristol	\$451,831	Hampden	\$453,189	Worcester	\$363,752
Norfolk	\$484,252	Plymouth	\$372,905	Berkshire	\$435,424	Plymouth	\$361,747
Bristol	\$389,379	Norfolk	\$353,000	Plymouth	\$329,751	Bristol	\$321,425
Berkshire	\$219,191	Barnstable	\$267,515	Norfolk	\$253,764	Barnstable	\$300,166
Barnstable	\$201,715	Franklin	\$266,659	Barnstable	\$202,515	Norfolk	\$248,523
Franklin	\$180,459	Berkshire	\$182,768	Franklin	\$196,959	Franklin	\$134,219
Hampshire	\$20,000	Hampshire	\$40,000	Hampshire	\$75,000	Hampshire	\$97,675
<b>TOTAL</b>	<b>\$6,400,416</b>	<b>TOTAL</b>	<b>\$6,377,237</b>	<b>TOTAL</b>	<b>\$5,878,844</b>	<b>TOTAL</b>	<b>\$5,321,423</b>

While grant recipients are required to submit to the Executive Office of Public Safety quarterly reports, most of which record the number and race of the children served by their programs, the Commonwealth has made little use of such information. The only formal analysis appears to be in a publication by the

Statistical Analysis Center released in 2000. Based in part on a review of quarterly progress reports prepared by Title V grant recipients in FY97, FY98 and FY99, the Statistical Analysis Center concluded that the majority of the youth served by the programs administered by these recipients were white.<sup>114</sup>

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<b>PERCENT OF PARTICIPANTS IN TITLE V PROGRAMS WHO WERE WHITE FY97, FY98 AND FY99</b>					
<b>Town or Country</b>	<b>Program</b>	<b>Number of Participants Per Quarter</b>	<b>% of Participants who were White</b>		
			<b>FY97</b>	<b>FY98</b>	<b>FY99<sup>15</sup></b>
Amherst	Juvenile Diversion	10	40-50%	0-18%	56-60%
Bridgewater	Alternative HS	15-33	93-100%	100%	90-100%
Cambridge	Supervised visitation in cases of domestic violence and father absence	28-56	n/a	70-85%	68-76%
Franklin	Juvenile Diversion	6-63	83-100%	87-94%	77-90%
Harvard	Student/Community Assistance Program	79-579	86-96%	not available	86-92%
Holliston	Youth Diversion Program	10-34	100%	100%	100%
Lynnfield	Community Youth Center	98-595	96%	96%	93%
Natick	Delinquency Prevention Program	9-58	61-95%	71-100%	78-94%
North Andover	Project Now	235-666 (1998, 1999)	—	83-87%	86-87%
Southbridge	Youth Center	261-369	26-48%	22-45%	25-40%
Stoneham	Delinquency Prevention	628 (1997)	97%	—	—
Ware	Youth Center Court-ordered Community Service Program	1,500 (1998) 4-17 (1997 and 1999)	— 50-60%	97% not available	82-100%
Wilbraham/Hampden	Family Involvement Project	286-1,335	99-100%	70-88%	85-87%
Worcester	Truancy Abatement Program	44-169	50-63%	51-64%	52-65%

In FY01, Title V grant applications were amended to ask applicants to include, “if applicable,” a description of how their proposed program would address the minority overrepresentation. Few, if any, of the FY02 Title V applications included such a description. JAIBG grant applications were to be similarly amended.

As previously stated, in September 2002, the Executive Office of Public Safety announced its intention to survey all programs funded by its office to assess how these programs addressed the overrepresentation of minorities.<sup>116</sup> The survey is to be completed in mid-2004.<sup>117</sup>

## VII. CONCLUSION AND RECOMMENDATIONS

Based on documents produced by OJJDP and the Programs Division of the Executive Office of Public Safety, Massachusetts is failing to meet its obligation under the Delinquency Prevention Act with respect to overrepresentation of youth of color. Although it acknowledges that youth of color are overrepresented at almost every stage of its juvenile justice system, it has yet to adequately identify the scope of the problem or to determine its causes. While it has developed plans to address minority overrepresentation, it has taken no meaningful steps to implement them. It has allocated little of the youth-related federal funding it receives to the issue.

National research has shown that racial disparities can result from a host of complex factors, including the unintended consequence of seemingly race-neutral practices. Regardless of their origin, however, such disparities must be confronted and addressed if juvenile justice systems are to be seen as genuinely fair. Strategies developed and implemented in various jurisdictions around the country demonstrate that with the right leadership, sufficient political support, relevant data and appropriate distribution of resources, factors contributing to minority overrepresentation can be successfully addressed.

Based on their work in these jurisdictions, the Annie E. Casey Foundation, the Youth Law Center’s

Building Blocks for Youth, the W. Haywood Burns Institute, and other youth advocacy groups have identified the hallmarks of successful reform strategies. If Massachusetts is to address its own overrepresentation issues in a meaningful manner, it must develop and implement systemic strategies that incorporate these hallmarks.

### Recommendation #1

**The Governor should reconfigure the Juvenile Justice Advisory Committee to ensure that it adequately represents the broad spectrum of individuals and entities who work with at-risk youth and communities and people of color.**<sup>118</sup> Historically, individuals with close ties to the Commonwealth’s Department of Youth Services have dominated the Committee and have shown little interest in addressing minority overrepresentation. Reconfiguring the Committee will permit the appointment of individuals who are willing and capable of taking a leadership role with respect to the issue.

### Recommendation #2

**At the same time the Governor appoints the Juvenile Justice Advisory Committee, he should issue an Executive Order directing the Committee and the Executive Office of Public Safety to make the reduction of racial disparities in the Commonwealth’s juvenile justice system a priority.** Because this issue is so important to the viability of the juvenile justice system, the Advisory Committee and the Executive Office of Public Safety should be held accountable to the public for their efforts to address it. Within sixty (60) days of its appointment, the Advisory Committee should establish new policies and procedures that require it to:

- Meet on a regular and periodic basis throughout each calendar year.
- Open its meetings and those of its subcommittees to the public by advertising widely the date, time and location of each meeting.

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- Make its minutes and those of its subcommittees publicly available by posting them on the Committee's website.
- Issue periodic reports to the public on the steps that it has taken to address racial disparities and include a detailed summary of those reports in its Annual Report.

### **Recommendation #3**

**Starting with the City of Boston, the Governor, the Legislature and the Judiciary should take immediate steps to identify the root causes of the racial disparities in the juvenile justice system and to address those causes in a manner that reduces the disparities. By July 2004, the Governor should issue a report examining decision-making by law enforcement personnel who interact with Boston's youth of color, and the Judiciary should issue a report examining decision-making by court personnel (e.g., judges, probation officers, etc.) in the Boston juvenile and criminal court systems. Both reports should identify actions that contribute to minority overrepresentation and steps that will be taken to reduce overrepresentation. The Legislature should appropriate the funds necessary to prepare the reports within the time periods indicated.**

Common sense dictates that the Commonwealth cannot begin to address racial disparities in any meaningful manner until it determines the causes of those disparities. Because each county has its own police departments and juvenile courts, and each police department and juvenile court has its own set of policies, procedures and personnel, the causes may differ from county to county or from city to city.

The Juvenile Justice Advisory Committee recently selected Boston as the site for an initiative designed to reduce minority overrepresentation. The Commonwealth should expand that initiative to include a comprehensive study of the causes of racial disparities in the Boston area. The Boston study can then act as a prototype for similar studies in other areas of the Commonwealth with a high percentage of youth of color.

### **Recommendation #4**

**The Advisory Committee and the Executive Office of Public Safety should develop the capacity to monitor statewide, countywide and municipality-wide trends on the overrepresentation of youth of color by July 2004.** Accurate and timely data will be needed to expand the Boston project to other areas. The Commonwealth should begin to develop the means of gathering and analyzing that data now. The Advisory Committee and the Executive Office of Public Safety should determine the type of data they will need and work with representatives of the court system, juvenile and adult correction agencies, indigent defender associations and law enforcement offices to develop policies and procedures for uniform data collection by these agencies, associations and offices. Accurate and timely data categorized by age, gender, race and ethnicity should be collected at every important stage of the juvenile justice system. This data must distinguish Latino youth from African-American and White youth. At a minimum:

- Local police departments, starting with the Boston Police Department, should be required to collect data on juvenile pedestrian stops and arrests;
- Court personnel, including the Probation Department, should be required to collect data on juvenile arraignments, dispositions, the length of sentences, probationary periods and confinement, and the number of juveniles tried for murder in adult court;
- Correction agencies should be required to collect data on juveniles committed to the Department of Youth Services and the Department of Corrections.

### **Recommendation #5**

**During the next legislative cycle, the Legislature should condition state funding for the Judiciary, the District Attorney's Association, the Department of Youth Services, the Office of the Commissioner of Probation and local police**

departments on their collaboration and cooperation with the Advisory Committee and the Executive Office of Public Safety in collecting and analyzing relevant data.<sup>119</sup>

**Recommendation #6**

**By April 2004, the Juvenile Justice Advisory Committee and the Executive Office of Public Safety should review and revise existing federal grant programs to ensure that youth of color have equal access to appropriate community-based alternatives to detention and are provided with a local continuum of culturally sensitive post-adjudicative services, including treatment, supervision and placement options.** Funding decisions should be made on the basis of need, not grant-writing abilities. At a minimum, the Committee and the Executive Office of Public Safety should:

- Conduct an audit of federal funding currently allocated to lockup removal initiatives to determine whether that money is being used in the most effective way possible.
- Require grant recipients to document, on a quarterly basis, the number of minority youth served by their programs and incorporate that information into funding decisions.
- Examine the manner in which grant applicants are solicited and take additional steps to encourage organizations located in communities of color, managed by people of color and outside the law enforcement and correctional arenas to apply for grants.

**Recommendation #7**

**The Executive Office of Public Safety, working in partnership with the Committee for Public Counsel Services, should contract with an independent evaluator with extensive experience in indigent defense delivery systems to conduct a thorough review of defender services available to indigent youth of color throughout the state. To**

**the extent that indigent defense providers do not have the resources to provide all minority youth with constitutionally adequate legal representation, the Commonwealth should take immediate steps to rectify this deficiency.** Competent legal advocates can act to ensure the fair treatment of youth of color once they have entered the juvenile justice system and can empower children to seek the services and make the changes necessary to avoid future court involvement.

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### ENDNOTES

- 1 See Poe-Yamagata, Eileen and Jones, Michael A., *And Justice for Some: Differential Treatment of Minority Youth in the Justice System*, Washington, DC: Building Blocks for Youth, April 2000; Villarruel, Francisco A. and Walker, Nancy E., *¿Dónde Está La Justicia? A Call to Action on behalf of Latino and Latina Youth in the U.S. Justice System*, Washington, DC: Building Blocks for Youth, July 2002.
- 2 42 U.S.C. § 5633(a)(22). Minority youth are defined as African-American, Native American, Latino, Pacific Islander and Asian American. 28 C.F.R. 31.303(j)(6). They are overrepresented in a juvenile justice system if the percentage of such youth arrested, detained, arraigned and adjudicated delinquent exceeds their percentage in the general population. 28 C.F.R. 31.303(j).
- 3 See 42 U.S.C. §§ 5611, 5614; see also Devine, Patricia, Coolbaugh, Kathleen and Jenkins, Susan, *Disproportionate Minority Confinement: Lessons Learned From Five States*, Washington, DC: Office of Juvenile Justice and Delinquency Prevention, December 1998.
- 4 Social Science Research and Evaluation, Inc., *Disproportionate Minority Confinement (DMC) Analysis: Stage 1 Final Report*, Sept. 14, 1995, Appendixes D and E.
- 5 FY03 Juvenile Justice and Delinquency Prevention Act Formula Grant Application and State Three Year Plan, Apr. 30, 2003, Attachment 3, at 39.
- 6 See Kaufmann, Charles F., *Disproportionate Minority Confinement in Massachusetts*, Boston, Mass: Statistical Analysis Center, Sept. 1997 (“1997 MSAC Report”).
- 7 Leonard, K., Pope, C., & Feyerherm, W. (eds.), *Minorities in Juvenile Justice*, Thousand Oaks, CA: SAGE, Inc. (1995). A study in Washington state concluded that juvenile justice decision-makers were more likely to see the criminal behavior of youth of color as indicative of inadequate moral character and personality flaws, “internal factors” which only state intervention could resolve. The criminal behavior of white youth, however, was seen as resulting from external forces such as the environment or a lack of appropriate role models. Bridges, George S., and Steen, Sara, *Racial Disparities in Official Assessments of Juvenile Offenders: Attributional Stereotypes as Mediating Mechanisms*, American Sociological Review, Vol. 63 (1998).
- 8 See, e.g., Hoytt, Eleanor H., Schiraldi, Vince, Smith, Brenda V., and Ziedenberg, Jason, *Reducing Racial Disparities in Juvenile Detention*, Annie E. Casey Foundation, 2002, at 13-14.
- 9 42 U.S.C. § 5602.
- 10 42 U.S.C. § 5633(a)(3). The group must include representatives from law enforcement and juvenile justice agencies, public agencies concerned with delinquency prevention and treatment, private nonprofit organizations, and persons with experience in school violence, learning disabilities, emotional difficulties and child abuse and neglect. *Id.*
- 11 42 U.S.C. § 5633(a)(22).
- 12 28 C.F.R. 31.303(j)(1).
- 13 28 C.F.R. 31.303(j)(2).
- 14 28 C.F.R. 31.303(j)(3)(i)-(v).
- 15 42 U.S.C. § 5633(a)(11).
- 16 42 U.S.C. § 5633(a)(12).
- 17 42 U.S.C. § 5633(a)(13).
- 18 42 U.S.C. §§ 5633(a); 5633(a)(21)(B).
- 19 42 U.S.C. § 5633(c).
- 20 Juvenile Justice Advisory Committee brochure, [www.state.ma.us/jjac/jjac1.html](http://www.state.ma.us/jjac/jjac1.html).
- 21 The Title V Delinquency Prevention program supports communities that have developed comprehensive and collaborative strategies to prevent juvenile delinquency. Program Overview, at [www.state.ma.us/ccj/titlev.htm](http://www.state.ma.us/ccj/titlev.htm).
- 22 Challenge Grant funding is available to states to develop, adopt and improve juvenile delinquency prevention policies and programs in one or more of 10 areas specifically designated by Congress, including alternatives to incarceration, increased aftercare and alternatives to suspension and expulsion. Program Overview, [www.state.ma.us/ccj/challenge.htm](http://www.state.ma.us/ccj/challenge.htm).
- 23 The Juvenile Accountability Incentive Block Grant (JAIBG) Program provides grants to states to strengthen policies, programs, and administrative systems that foster the creation of safe communities. Funds must be spent in one of 16 purpose areas: (1) developing, implementing and administering graduated sanctions for juvenile offenders; (2) building, expanding, renovating or operating juvenile detention or correctional facilities; (3) hiring additional judges, probation officers and defenders; (4) hiring additional prosecutors; (5) providing funds to



enable prosecutors to address drug, gang and youth violence problems more effectively and to purchase technology, equipment and training to expedite prosecution; (6) establishing and maintaining training programs for law enforcement and other court personnel with respect to preventing and controlling juvenile crime; (7) establishing juvenile gun courts for the prosecution and adjudication of juvenile firearms offenders; (8) establishing drug court programs; (9) establishing and maintaining a system of juvenile records designed to promote public safety; (10) establishing and maintaining interagency information-sharing programs; (11) establishing and maintaining accountability-based programs designed to reduce recidivism among juveniles who are referred by law enforcement personnel or agencies; (12) establishing and maintaining programs to conduct risk and need assessments of juvenile offenders that facilitate the effective early intervention and provision of comprehensive services, including mental health screening and treatment and substance abuse testing and treatment to such offenders; (13) establishing and maintaining accountability-based programs that are designed to enhance school safety; (14) establishing and maintaining restorative justice programs; (15) enabling courts and probation offices to be more effective and efficient; and (16) hiring and training detention and corrections personnel. 42 U.S.C. § 3796ee.

- 24** The Byrne program focuses on assisting state and local law enforcement with the control of violent and drug-related crime and serious offenders. Gifford, Sidra Lea, and Owens, Stephen D., *Justice Variable Pass Through Data, 1997*, Washington, DC: Bureau of Justice Statistics, November 2001.
- 25** Among other things, the Plan called for: (a) the improvement of the quality of juvenile justice data and the establishment of a client tracking system; (b) the development of policy guidelines and training; (c) the development of a pilot project to improve opportunities for youth who are diverted; (d) the consideration of a pilot diversion program; (e) supporting prevention programs in high minority areas; and (f) creating a Juvenile Justice Monitor to identify problems and hold practitioners accountable for their decisions. FY02 Formula Grant Application, Three-Year Comprehensive State Plan Amendments, Mar. 29, 2002, at 76, 86; FY01 Formula Grant Application, Three-Year Program Plan (undated) at 77; FY00 Formula Grant Application, Three-Year Program Plan, Apr. 28, 2000, at 70, 81; FY99 JJDPA Formula Grant Application, Three-Year Program Plan, May 27, 1999, at 20.
- 26** FY97 JJDPA Formula Grant Application, State Advisory Group Composition, Mar. 28, 1997.
- 27** U.S. Dept of Justice, Award, No. 98-JF-FX-0025, Sept. 4, 1998, at 4; U.S. Dep't of Justice, Award, No. 1999-JF-FX-0025, Sept. 24, 1999, at 3.
- 28** [www.state.ma.us/jjac/members.html](http://www.state.ma.us/jjac/members.html). As of May 2003, the Governor's Office was reconsidering the configuration of the Advisory Committee and the appointment of new members. FY03 Juvenile Justice and Delinquency Prevention Act Formula Grant Program Application and State Three Year Plan, Apr. 30, 2003, at 119.
- 29** See, e.g., FY01 Formula Grant Application, Three-Year Program Plan (undated), at 70; FY00 Formula Grant Application, Three-Year Comprehensive State Plan, Apr. 28, 2000, at 72; FY97 Formula Grant Application, Three-Year Plan, Mar. 28, 1997, at 11.
- 30** Minutes of Apr. 2, 2002 DMC Subcommittee Meeting, Apr. 5, 2002, ¶ VI.
- 31** "All meetings of a governmental body shall be open to the public and any person shall be permitted to attend any meeting...." M.G.L. 30A § 11A 1/2.
- 32** M.G.L. 66 § 10.
- 33** Ltr. from J. Robert Flores, Administrator, OJJDP, to Michael O'Toole, Executive Director, Massachusetts Committee on Criminal Justice, Executive Office of Public Safety, June 25, 2002; Ltr. from Terrence Donahue, Acting Administrator, OJJDP, to Michael J. O'Toole, Executive Director, Executive Office of Public Safety Programs Division, Sept. 30, 2001; Memo from Ellen Shields-Fletcher, State Representative, to John J. Wilson, Acting Administrator, OJJDP, re Review of FY2000 Formula Grant, undated; Ltr. from Shay Bilchik, Administrator, OJJDP, to Michael O'Toole, Executive Director, Executive Office of Public Safety, Sept. 14, 1999; Memo from Kimberly J. Budnick, SRAD (State Relations and Assistance Division), to Shay Bilchik, Administrator, OJJDP, re Review of FY1998 State Plan Update, June 30, 1998; Memo from Gregory C. Thompson, State Representative., SRAD, to Shay Bilchik, Administrator, OJJDP, re Review of FY1997 Formula Grant, Sept. 30, 1997.
- 34** Memo from Ellen Shields-Fletcher, State Representative, to John J. Wilson, Acting Administrator, OJJDP, re Review of FY2000 Formula Grant, undated; Memo from Ellen Shields-Fletcher, SRAD, to Shay Bilchik, Administrator, OJJDP, re Review of FY1999 State Plan Update, Sept. 9, 1999; Memo from Kimberly J. Budnick, SRAD (State Relations and Assistance Division), to Shay Bilchik, Administrator, OJJDP, re Review of FY1998 State Plan Update, June 30, 1998; Memo from Gregory C. Thompson, State Rep., SRAD, to Shay Bilchik, Administrator, OJJDP, re Review of FY1997 Formula Grant Application, Sept. 30, 1997.
- 35** FY02 Formula Grant Application, Three-Year Comprehensive State Plan Amendments, Analysis of Juvenile Justice Needs and the Juvenile Crime Problem,

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- Mar. 29, 2002 at 58-59; FY01 Formula Grant Application, Three-Year Program Plan, undated, at 54, 76-77; FY00 Formula Grant Application, Three-Year Comprehensive State Plan, Apr. 28, 2000, at 81.
- 36** Memo from Ellen Shields-Fletcher, OJJDP State Representative, to John J. Wilson, OJJDP Acting Administrator, Review of FY2000 Formula Grant (undated), at 6.
- 37** *See, e.g.*, FY02 Formula Grant Application, Three-Year Comprehensive State Plan Amendments, Mar. 29, 2002, at 86; FY01 Formula Grant Application, Three-Year Program Plan, undated, at 77; FY00 Formula Grant Application, Three-Year Comprehensive State Plan, Apr. 28, 2000, at 81; FY99 Formula Grant Application, Three-Year Program Plan, May 27, 1999, at 20.
- 38** Ltr. from Roberta Dorn, Director, State Relations and Assistance Division, OJJDP, to Michael J. O'Toole, Executive Director, Programs Division, Executive Office of Public Safety, Apr. 26, 1999.
- 39** Social Science Research and Evaluation, Inc., *Disproportionate Minority Confinement (DMC) Analysis: Stage 1 Final Report*, Sept. 14, 1995 ("Stage 1 Report"). Federal reporting requirements permit states to examine as few as three counties when trying to determine the nature and extent of disproportionate minority confinement. *Id.*, at 5.
- 40** FY02 Formula Grant Application, Three-Year Comprehensive State Plan Amendments, Mar. 29, 2002, at 85; FY01 Formula Grant Application, Three-Year Program Plan, undated, at 76; FY00 Formula Grant Application, Three-Year Comprehensive State Plan, Apr. 28, 2000, at 81.
- 41** Stage 1 Report, Appendix E.
- 42** *Id.*, Appendix D.
- 43** *See* Social Science Research and Evaluation, Inc., *Disproportionate Minority Confinement (DMC) Analysis: Stage Two Final Report*, Apr. 1996 ("Stage 2 Report"), at 60.
- 44** Stage 1 Report, at 9. Sixteen of the 26 Hampden County police departments, 10 of the 16 Suffolk County police departments, 34 of the 62 Worcester County police departments, and 23 of the 64 Middlesex County police departments did not report all data for calendar year 1993. *Id.*, at 10.
- 45** *Id.*, at 9, 17. *See also* 1997 MSAC Report, at 5 (noting the difficulty in assessing trends in minority overrepresentation without complete and accurate arrest data).
- 46** For reasons not set forth in SSRE's report, Hampden County is overrepresented in the sample; 41% of the 1,222 cases came from Hampden County, 21% from Worcester County, 18% from Suffolk County, and 20% from Middlesex County. Stage 1 Report, at 11.
- 47** *Id.*, at 5-6.
- 48** Stage 2 Report, at 60.
- 49** *Id.*, at 13-16.
- 50** *Id.*, at 13, 17.
- 51** *Id.*, at 30, 36.
- 52** *Id.*, at 45-46.
- 53** *Id.*, at 46-47.
- 54** *Id.*, at 48-49 (adjusted for age, severity of offense, weapon use, prior offenses, previous and DYS commitments, and prior probation violations or defaults).
- 55** *Id.*, at 50 (adjusted for age, offense, family status (two-parent family), number of times recommitted to DYS, and services being received (mental health counseling, foster care, residential care, probation, special education and medical services)).
- 56** *Id.*, at 48-49, 50, 54, 55, 57, 59.
- 57** *Id.*, at 58.
- 58** *Id.*, at 58-60. *See* 1997 MSAC Report, at 21.
- 59** Stage 2 Report, at 25-29, 52, 59.
- 60** *Id.*, Appendix I. At the conclusion of its report, SSRE recommended, among other things, that the Executive Office of Public Safety and the Advisory Committee commission a study to examine the nature of police-youth interactions, establish a number of community forums across the state at which police-youth interactions could be addressed, improve the quality of juvenile justice system data and establish a client tracking system, increase the presence of bilingual staff within the Department of Youth Services, investigate the conditions of confinement of youth detained in secure and non-secure facilities and convene a daylong symposium to discuss the findings of SSRE's reports. *Id.*, at 59-63. The recommendations were not implemented.
- 61** The smallest geographic group used by the United States Census Department is the block group. A block group generally contains between 250 and 550 housing units

- with the average being about 400 housing units. For purposes of the 1990 census, Massachusetts had 5,603 block groups. Some small towns were encompassed with a single block group. In urban areas, a block group could consist of a single city block. 1997 MSAC Report, at 8-9.
- 62** 1997 MSAC Report, at 11-13.
- 63** *Id.*, at 20.
- 64** *Id.*, at 12.
- 65** *Id.*, at 20.
- 66** *Id.*, at 20.
- 67** *Id.*, at 20. At the conclusion of its report, the Statistical Analysis Center recommended that the Executive Office of Public Safety and the Advisory Committee act to improve the quality of juvenile justice data, develop consistent policies for data gathering by courts and juvenile correctional agencies, mandate diversity training for juvenile justice personnel, encourage community policing, develop clear policies for handling juveniles and create positions for juvenile justice system auditors. *Id.*, at 21-28. Again, the recommendations were not implemented.
- 68** *Id.*, at 9-10.
- 69** *Id.*, at 8.
- 70** E-mail from Heidi Hsia, OJJDP, to Michael Leiber, ITA consultant, re Massachusetts' updated DMC Identification Matrixes, Aug. 31, 2001: "There is no way to ascertain the extent of DMC for any one year nor to compare from one year to another in the 8 years [sic] period." *See also* memo from Lynn Wright, Director of Juvenile Programs, Executive Office of Public Safety Programs Division, to Michael J. O'Toole, Executive Director, Executive Office of Public Safety Programs Division, re DMC Meeting Discussion Points, Oct. 24, 2001.
- 71** The Commonwealth continues to be plagued by data collection problems. In its FY98 Formula Grant Application, a 1999 letter to OJJDP requesting technical assistance, and its FY03 Formula Grant Application, it stated that the retrieval of statistics regarding juvenile crime and juvenile demographics was a consistent problem, preventing Massachusetts from accurately monitoring racial disparities and juvenile crime and detention trends. FY98 Juvenile Justice and Delinquency Prevention Act Formula Grant Application, Technical Assistance Needs, Mar. 30, 1998; Ltr. from Michael J. O'Toole, Executive Director, Programs Division, Executive Office of Public Safety, to Ellen Shields-Fletcher, OJJDP, May 13, 1999; FY03 Formula Grant Application, Apr. 30, 2003, Attachment 3, at 2.
- 72** The Disproportionate Minority Confinement Matrixes reproduced in the text contain data for youth between the ages of 10 and 16.
- 73** FY03 Formula Grant Application, Apr. 30, 2003, Attachment 3, at 39-43.
- 74** This figure appears larger than it should be because the data on which the percentage of Latinos arrested for delinquency is based differs from that used for other minorities. *Id.*, at 41.
- 75** *Id.*, at 9-13.
- 76** There was only 1 juvenile in an adult jail.
- 77** *See* FY02 Formula Grant Application, Three-Year Comprehensive State Plan Amendments, Three-Year Program Plan, Mar. 29, 2002, at 74-75; FY01 Formula Grant Application, Three-Year Program Plan, undated, at 68-71; FY00 Formula Grant Application, Three-Year Comprehensive State Plan, Apr. 28, 2000, at 70-73; FY99 JJDPA Formula Grant Application, Three-Year Program Plan, May 27, 1999, at 9-12; FY98 Juvenile Justice and Delinquency Prevention Act Formula Grant Application, Three-Year Plan, Mar. 30, 1998, at 9-12.
- 78** FY01 Formula Grant Application, Three-Year Program Plan, undated, at 77; FY00 Formula Grant Application, Three-Year Comprehensive State Plan, Apr. 28, 2000, at 72.
- 79** FY02 Formula Grant Application, Three-Year Comprehensive State Plan Amendments, Three-Year Program Plan, Mar. 29, 2002, at 74-75.
- 80** FY99 JJDPA Formula Grant Application, Three-Year Program Plan, May 27, 1999, at 10; FY98 Juvenile Justice Delinquency Prevention Act Formula Grant Application, Three-Year Plan, Mar. 30, 1998, at 10.
- 81** FY02 Formula Grant Application, Three-Year Comprehensive State Plan Amendments, Three-Year Program Plan, Mar. 29, 2002, at 73, 85; FY01 Formula Grant Application, Three-Year Program Plan, undated, at 68, 77.
- 82** Ltr. from Michael J. O'Toole, Executive Director, Programs Division, Executive Office of Public Safety, to Robin Dahlberg, ACLU, Nov. 13, 2001; Ltr. from Robin Dahlberg, ACLU, to Lynn Wright, Director of Juvenile Programs, Programs Division, Executive Office of Public Safety, Oct. 1, 2001; Memo from Gregory C. Thompson, State Rep., SRAD to Shay Bilchik, Administrator, OJJDP, Sept. 30, 1997; U.S. Dept of Justice, Award, No. 98-JF-FX-0025, Sept. 4, 1998; U.S. Dept. of Justice, Award, No. 1999-JF-FX-0025, Sept. 24, 1999; U.S. Dept. of

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- Justice, Award No. 2000-JF-FX-0025, Sept. 30, 2000; U.S. Dept. of Justice, Award No. 2001-JF-FX-0025, Sept. 30, 2001.
- 83** The first amount is for the period February through September 1999, and the second for the period October 1999 to September 2000.
- 84** The first amount is for the period October to December 2000, and the second for the period January through June 2001.
- 85** The first amount is for the period October 1998 through September 1999, and the second for the period October 1999 through September 2000.
- 86** Ltr. from Shay Bilchik, Administrator, OJJDP, to Michael J. O’Toole, Acting Executive Director, Executive Office of Public Safety, Sept. 4, 1998; Memo from Kimberly J. Budnick, SRAD, to Shay Bilchik, Administrator, OJJDP, re Review of FY1998 State Plan Update, June 30, 1998.
- 87** Ltr. from Shay Bilchik, Administrator, OJJDP, to Michael J. O’Toole, Executive Director, Executive Office of Public Safety, Sept. 14, 1999.
- 88** FY02 Formula Grant Application, Three-Year Comprehensive State Plan Amendments, Three-Year Program Plan, Mar. 29, 2002, at 85; FY01 Formula Grant Application, Three-Year Program Plan, undated, at 77; FY00 Formula Grant Application, Three-Year Comprehensive State Plan, Apr. 28, 2000, at 73. At various times, the Commonwealth has contended that by complying with the lockup removal provision it has also acted to reduce minority overrepresentation. *See, e.g.*, FY98 Juvenile Justice Delinquency Prevention Act Formula Grant Application, Three-Year Plan, Mar. 30, 1998, at 9. There is no evidence, however, that the children who would have been placed in adult jails and lock-ups but for the Delinquency Prevention Act’s mandate are now released back into the community. Instead, it appears that they are placed in the juvenile pre-adjudication detention facilities paid for with Formula Grant funding.
- 89** FY01 Formula Grant Application, Three-Year Program Plan, undated, at 71.
- 90** FY02 Formula Grant Application, Three-Year Comprehensive State Plan Amendments, Three-Year Program Plan, Mar. 29, 2002, at 77; Ltr. from Michael J. O’Toole, Executive Director, Programs Division, Executive Office of Public Safety, to Robin Dahlberg, ACLU, July 1, 2002.
- 91** Memo from James Houghton, Juvenile Justice Specialist, to DMC Subcommittee members, re Minutes of Sept. 10, 2002 meeting, dated Oct. 1, 2002. *See* Memo from Amy Dickert, Juvenile Justice Program Coordinator, to DMC Subcommittee members, Minutes of May 15, 2002 Meeting.
- 92** E-mail from Amy Dickert, Juvenile Justice Program Coordinator, to Elaine Riley, Chair, Juvenile Justice Advisory Committee, dated Sept. 26, 2002.
- 93** Commonwealth of Massachusetts, *Proposed Plan for Further Addressing Disproportionate Minority Confinement* (DMC), draft dated Sept. 3, 2002.
- 94** FY03 Juvenile Justice and Delinquency Prevention Act Formula Grant Program Application and State Three Year Plan, Attachment 3: Other Program Attachments, Apr. 30, 2003, at 6.
- 95** Technical assistance to these localities was subsequently suspended in late 2002 or early 2003. FY03 Juvenile Justice and Delinquency Prevention Act Formula Grant Program Application and State Three Year Plan, Attachment 3: Other Program Attachments, Apr. 30, 2003, at 2.
- 96** *See* English, Thomas R., *Report of On-Site DMC Readiness for the State of Massachusetts*, Cygnus Corporation, undated, at 2.
- 97** Ltr. from Thomas R. English to Karen B. Francis, Cygnus Corporation, Dec. 15, 1999.
- 98** Leiber, Michael, and Respass, Selena, “Intensive Technical Assistance, MA,” Report #4, Jan. 22, 2002.
- 99** Draft letter to Michael Leiber, ITA Provider, from Elaine Riley, Chair, Juvenile Justice Advisory Committee, and Steven Jefferson, Chair, DMC Subcommittee, May 28, 2002.
- 100** Memo from James Houghton, Juvenile Justice Specialist, to Disproportionate Minority Confinement Subcommittee members, re Minutes of Sept. 10, 2002, dated Oct. 1, 2002.
- 101** Ltr. from Diana A. Brensilber, Acting Executive Director, Executive Office of Public Safety Programs Division, to Robin Dahlberg, American Civil Liberties Union Foundation, Apr. 15, 2003.
- 102** Less than half of Byrne Grant funding is allocated to youth programs. The remainder is used to finance other programs related to the Commonwealth’s criminal justice system.
- 103** Executive Office of Public Safety Programs Division website, [www.state.ma.us/ccj/challenge.htm](http://www.state.ma.us/ccj/challenge.htm); Disproportionate Minority Confinement Challenge Grant Application: *Disproportionate Minority Confinement*

*Challenge Grant for Community Alternatives to Incarceration, Aftercare Services, Alternatives to Suspension and Expulsion*; undated.

- 104** Program Overview, [www.state.ma.us/ccj/challenge.htm](http://www.state.ma.us/ccj/challenge.htm).
- 105** *Id.*
- 106** University of Massachusetts Memorial Community Healthlink, Worcester Youth Guidance Center, *Disproportionate Minority Confinement Challenge Grant, Fiscal Year 2002*. See also City of Worcester Challenge Grant/DMC Pilot Program Application, Apr. 30, 2002.
- 107** *The Disproportionate Minority Confinement Challenge Grant, Brockton Update*, Nov. 6, 2002. See also *DMC Challenge Grant: Continuation Application for Aftercare Services, The "CO-OP" Program: Community Opportunities for Minority Juveniles in the City of Brockton*, Brockton Area Private Industry Council, Inc., May 2, 2002, at 10.
- 108** Massachusetts Statistical Analysis Center, *Juvenile Crime in Massachusetts: The Characteristics of Massachusetts' Juvenile Population, Juveniles in the Justice System, Juvenile Arrests, and Data Reported by Massachusetts Law Enforcement to the National Incident-Based Reporting System*, Nov. 2000, at 43.
- 109** *Id.*, at 53. Because the Massachusetts Statistical Analysis Center relied on the FBI's arrest data that consider "Latino" an ethnicity as opposed to a race, there were no similar figures for Latino youth.
- 110** *Id.*, at 43.
- 111** *Id.*, at 53.
- 112** Ltr. from Diana A. Brensilber, Acting Executive Director, Executive Office of Public Safety Programs Division, to Robin Dahlberg, American Civil Liberties Union Foundation, Apr. 15, 2003.
- 113** *Id.*
- 114** Massachusetts Statistical Analysis Center, *Title V Delinquency Prevention: Program Years 1997-1999: A Report of the Juvenile Justice Evaluation Partnership Project*, June 2000.
- 115** FY99 statistics are only for the first three quarters of that fiscal year.
- 116** Commonwealth of Massachusetts, *Proposed Plan for Further Addressing Disproportionate Minority Confinement (DMC)*, draft dated Sept. 3, 2002.
- 117** FY03 Juvenile Justice and Delinquency Prevention Act Formula Grant Program Application and State Three Year Plan, Attachment 3, Apr. 30, 2003, at 6.
- 118** Implementation of this recommendation appears to be under way as this report goes to press. FY03 Juvenile Justice and Delinquency Prevention Act Formula Grant Program Application and State Three Year Plan, Apr. 30, 2003, at 119.
- 119** When the Massachusetts Sentencing Commission conducted a study on recidivism (*Comprehensive Recidivism Study* (June 1, 2002)), cooperation with the Commission's work was specifically mandated in the budgetary line items for relevant criminal justice agencies. For example, with respect to the Department of Correction, line item 8900-0002 states that funds are allocated to the Department provided that it "shall collaborate and cooperate with the sentencing commission for the completion of the comprehensive recidivism study required of said commission in item 0330-0317 by supplying all data, information and reports requested pursuant to said study in a timely and complete fashion."



NATIONAL OFFICE  
125 Broad Street, 18th Floor  
New York, NY 10004  
(212) 549-2500  
[www.aclu.org](http://www.aclu.org)