



# Unlocking potential

Addressing the overuse of juvenile  
detention in Massachusetts

CITIZENS FOR JUVENILE JUSTICE • MARCH 2014



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Cover photo by Richard Ross

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**Citizens for Juvenile Justice (CfJJ)** is the only independent, non-profit, statewide organization working exclusively to improve the juvenile justice system in Massachusetts. We advocate, convene, conduct research, and educate the public on important juvenile justice issues.

# Executive summary

Every year, hundreds of Massachusetts children who have never been found guilty of a crime are locked in jail-like facilities while they await trial. Others are locked up because they have violated a condition of probation by doing something like failing to attend school or arguing with their parents. The majority of these kids are charged with low-level offenses and pose little risk to themselves or others. However, the Commonwealth spends millions of dollars to detain them, leading to worse outcomes for both kids and communities.

Detention is traumatic — disrupting normal adolescent development and interfering with education. It also significantly reduces kids' chances of growing up into successful, law-abiding adults. This report

highlights why detention is harmful to kids, whom we detain, and which alternatives to detention are working well in Massachusetts. It also calls attention to work that still needs to be done, including the need to expand models already being developed at the local level to reduce juvenile incarceration around the Commonwealth.

Key findings include:

- Detention is traumatic, disconnecting youth from their families and other positive supports and interfering with their education
- Detention makes kids more likely to drop out of school and reoffend, and decreases their chances of being employed as adults



PHOTO BY RICHARD ROSS.

- While declining juvenile crime rates have led to fewer detentions overall, the proportion of arraigned kids who are detained has held constant despite ongoing reform efforts
- More than 50% of youth in detention have only misdemeanor charges, a percentage that has increased over time
- Approximately 2/3 of the detention population are youth of color, with racial disparities in detention worsening over time
- About 40% of youth in detention have open child welfare cases and 50% have educational disabilities, suggesting avenues for further reform

A number of system stakeholders are engaged in innovative work to reduce unnecessary incarceration, including:

- Pre-arraignment diversion programs to prevent kids from entering the justice system
- Community-based alternatives to detention that provide services to kids while they remain at home
- Alternatives to secure detention, including foster care

- Programs focused on specific populations, such as youth with open child welfare cases

While these efforts are helping to reduce the number of kids who experience the detrimental impacts of detention, more work needs to be done. Citizens for Juvenile Justice recommends that Massachusetts:

1. Increase pre-arraignment diversion options and make them available in all counties, including restorative justice and other community-based programs
2. Make detention and out-of-home placement a last resort for all youth
3. Continue to expand community-based alternatives for youth at all stages of the process
4. Implement specific, targeted reforms to address overrepresentation of certain populations, particularly youth of color and youth in the child welfare system
5. Significantly expand and improve the collection and use of data about youth who are in or at risk for involvement in the juvenile justice system in order to ensure that what we are doing is evidence-based, fair, and effective

***Unlocking Potential: Addressing the Overuse of Juvenile Detention in Massachusetts*** is available at [cfjj.org/unlockingpotential.php](http://cfjj.org/unlockingpotential.php).

A companion report by the Massachusetts Budget and Policy Center, *Unlocking Potential: Examining the Funding of Juvenile Detention and Effective Alternatives in Massachusetts*, explores budget trends for juvenile detention over time. It looks at newer alternative programs for kids entering the juvenile justice system, and compares costs across the detention continuum. The report finds that placement in a secure facility is not only the most harmful option for kids, it is the most expensive. A community placement in foster care is the least expensive detention option costing less than half a placement in secure facilities. Alternatives to detention are even less expensive than foster care and keep non-violent kids out of secure facilities. The report further finds that the number of alternative placements is increasing, but that implementation has been slow and uneven. This report is available at [massbudget.org/kids.php](http://massbudget.org/kids.php).

# Introduction

Every year, Massachusetts spends millions of dollars to lock up youth in juvenile “detention” facilities, not because they have been found guilty of a crime, but because they are unable to pay for bail or have violated a condition of probation by doing something like failing to attend school or arguing with their parent. We do so even though the vast majority of these youth are charged with minor offenses and pose no risk to themselves or others.

Evidence is increasing that locking kids up not only costs a lot of money, but leads to worse outcomes for both kids and communities. Detention is traumatic – disrupting normal adolescent development and interfering with education. It also forces kids deeper into the justice system and significantly reduces their chances of growing up into successful, law-abiding adults. As a result, there is a growing national movement to replace unnecessary incarceration of youth with more effective, community-based options, many of which divert youth with low-level offenses from the court system entirely.<sup>1</sup> Nationally and in Massachusetts these efforts have been strengthened by the adoption of programs promoting more rational, evidence-based practice in the juvenile justice system.<sup>2</sup>

Over the past decade, declining juvenile crime rates and implementation of a model funded by the Annie E. Casey Foundation, the Juvenile Detention Alternatives Initiative (JDAI),<sup>3</sup> have allowed Massachusetts to cut the number of kids in detention by half.<sup>4</sup> System players throughout the Commonwealth — including the Department of Youth Services (DYS), judges, attorneys, police officers, and other service providers — are engaged in innovative work to prevent unnecessary detention of youth. As

a result, the percentage of detained kids who are sent to community-based placements rather than secure facilities has increased.<sup>5</sup> From programs that divert kids from entering court to a DYS-operated foster care model that allows detained youth to remain in their communities, these efforts demonstrate that there are opportunities to better respond to youth who come into contact with the juvenile justice system.

Despite this progress, there is still tremendous room for improvement. Massachusetts continues to detain about one-third (1/3) of youth who are arraigned in court, a rate that has held constant for years.<sup>6</sup> A growing number (the majority) of detained youth have only low-level charges, and we disproportionately lock-up youth of color, kids involved in the child welfare system, and students with disabilities. Many stakeholders have limited knowledge about programs outside their own county, creating a huge opportunity to share and expand on current efforts.

This report highlights why detention is harmful to kids, whom we detain, and which alternatives to detention are working well in Massachusetts. It also calls attention to work that still needs to be done, including the need to expand models already being developed at the local level to reduce juvenile incarceration around the Commonwealth. A companion report prepared by the Massachusetts Budget and Policy Center, *Unlocking Potential: Examining the Funding of Juvenile Detention and Effective Alternatives in Massachusetts*, explores in-depth the budgetary and cost-savings implications of further reform.



# How do Massachusetts teens end up in detention?

Massachusetts law requires that when a child is *arraigned* (formally charged with a crime) and awaiting trial, he<sup>7</sup> must remain in the custody of his parent or guardian unless:

1. The Court believes that the child will not return to court for future case proceedings. In that case, the Court can either impose conditions designed to ensure that he will return to court or set a cash bail.<sup>8</sup> If the child cannot pay for bail, he may be detained pre-trial until bail is posted or the case is resolved;  
or
2. The youth is charged with certain serious offenses, and a judge determines that he would present a danger to others and no conditions of release will reasonably assure community safety.<sup>9</sup>

A child may be also be detained pre-trial if, at some point prior to trial, he commits another offense<sup>10</sup> or disobeys pre-trial conditions of release that were imposed by the Court; these conditions can include things like not being tardy for school, refraining from arguing with his parents, or not associating with certain peers.<sup>11</sup> Children who are detained pre-trial have not been found to have committed any crime and are legally presumed innocent. Detention is different from longer-term “commitment” to DYS, which is a sentencing option after a child has been *adjudicated delinquent* (the equivalent of being found guilty of a crime).

Kids can also be detained after their initial case is resolved; if they were placed on probation and allegedly violated its terms, they may be sent to detention while they await a hearing on the violation.<sup>12</sup>

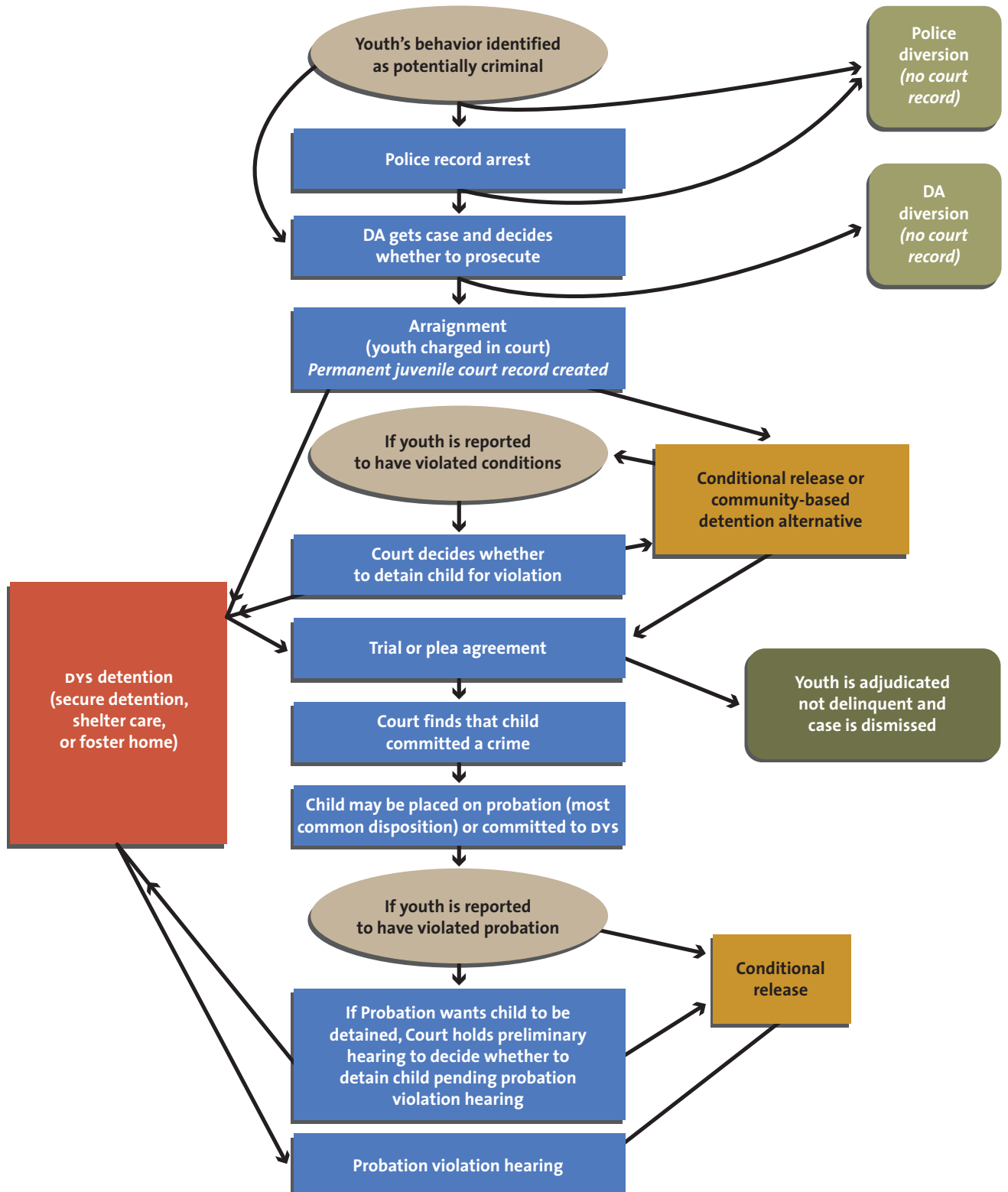
Nearly half (44%) of kids in detention are there for this reason.<sup>13</sup> Research from Massachusetts JDAI concluded that for these youth, the violations were far more likely to be “technical” violations such as missing school or a meeting with the probation officer, rather than a new arrest.<sup>14</sup>

Youth who are detained are placed in the “custody” of DYS, and the majority are held in a locked DYS facility. While facilities differ across the Commonwealth, a number are jail-like institutions with barbed wire, barred windows and doors, uniforms, and institutional sleeping and dining facilities.

On average, kids in Massachusetts spend roughly three weeks *per stay* in detention.<sup>15</sup> While three weeks may not sound like a long time to busy adults, three weeks in the life of a middle or high school student is enormous; for youth who may have been struggling academically, it could mean the end of any hope of passing their grade level. A small but troubling fraction of kids (5%) are detained for two months or more, including a number with very minor offenses — one girl charged with shoplifting languished in detention for nearly three months.<sup>16</sup> Again, inadequate data exists to track how many youth cycle in and out of detention facilities multiple times, but it is likely that some youth spend significantly more than three weeks in locked facilities before they are ever found guilty of a crime.

## Overview of diversion and detention decision points

This chart is intended to show the points at which diversion and detention decisions are made. It does not provide a comprehensive view of how youth travel through Massachusetts' juvenile justice system.





# Why is detention harmful to kids and communities?

Incarceration of young people – especially young people who have not been found guilty of committing any crime – is problematic for many reasons. It is traumatic, not just because of the experience itself, but because it disconnects youth from all of the positive supports that are necessary for healthy youth development: family, school, peers, community activities, and needed support services (including mental health or substance abuse treatment). Research also shows that once youth are locked up, they are more likely to be treated harshly by other system players or accept unfavorable plea deals simply to get out of a facility, driving them further into the justice system.

In addition to causing harm to youth, detention harms communities by actually increasing the likelihood that youth will commit a future crime.<sup>17</sup> Youth who are detained are also less likely to graduate from high school or secure long-term employment as adults.

## **Detention is traumatic and undermines healthy youth development**

The experience of detention is deeply traumatic for young people. Kids are taken away from their parents, handcuffed and shackled,<sup>18</sup> strip searched,<sup>19</sup> and forced to live in a jail-like facility with other frightened and upset young people. Youth in detention wear a uniform and sleep in a bed that isn't their own in a locked room with strangers. Younger children with misdemeanor charges may be surrounded by kids who are older, bigger, and have lengthy delinquency histories and serious charges. Incarceration increases opportunities for kids to negatively influence each other.<sup>20</sup>

For the more than one-third of the girls and 15% of the boys in the juvenile justice system that have

previously been sexually abused, assaulted, or raped,<sup>21</sup> the experience of detention can be re-traumatizing. Some young people choose to not visit with parents or other family members rather than being subjected to the repeated strip searching that is required following family visits for youth in facilities.

Parents play a critical role in preventing delinquency,<sup>22</sup> but detention substantially interferes with and can undermine this key relationship. Incarcerated youth have fewer behavior incidents and perform better in school when they see their families regularly,<sup>23</sup> but kids are often detained far from home, making it difficult for families to visit. For a family in Western Massachusetts, a trip via public transportation to see a child could take more than eight hours round trip on three separate buses. Even

**Myth:** Detention can serve as a helpful “wake up call” for kids who are starting to display problematic behavior.

**Fact:** Not only is this an unlawful use of pre-trial detention, it is also counter-productive. Detention takes kids away from their families, schools, and support systems and exposes them to negative peer influences in a traumatic environment. These experiences increase the odds that kids will reoffend.<sup>24</sup> Furthermore, there is no empirical support for the notion that kids can be scared into compliance. In fact, research shows that “Scared Straight” and other similar programs, which briefly expose youth to prison life in order to scare them from engaging in future delinquency, actually *increase* recidivism.<sup>25</sup>

when parents and siblings are able to visit consistently, a child in detention still sees his family only a few hours a week.

Detention also disrupts any other positive relationships kids have, as well as participation in extracurricular activities such as sports teams or Boys & Girls clubs. These connections serve as buffers against delinquency<sup>26</sup> and the consequences of cutting them off continue even after a child returns home. A sports team may not allow a child to rejoin after he has missed several practices and games. A therapist may close out a child's case by the time he returns home.

For youth who have pre-existing mental health needs, secure detention can exacerbate their problems rather than improve them.<sup>27</sup> Being disconnected from mental health providers while in a particularly traumatic environment can cause a serious setback for some youth. Though DYS provides acute mental health services for kids in detention, temporary clinicians cannot step into the shoes of a long-term care provider. Kids on medication for mental health or other reasons may also have gaps in their treatment during the transition to and from detention.

**Myth:** Detention can be a way to get a child connected with the services that he needs.

**Fact:** Locking a child up to “get services” is neither legal nor effective. Services in detention facilities are designed simply to help youth adjust to detention and ensure their safety while they are there, not to address their comprehensive physical or behavioral health needs. In addition, services provided in secure facilities are less effective than community-based programs.<sup>28</sup>

### Undoing educational progress

Detention significantly interferes with kids' ability to attend and succeed in school. Kids in detention miss an average of three weeks at their home school,<sup>29</sup> and the classes they attend in detention are not a sufficient substitute. Teachers in facilities contend with a huge range of grade levels and a revolving door of students as youth enter or leave the program. Though half the youth in detention receive special education services in their home



PHOTO BY RICHARD ROSS.



PHOTO BY RICHARD ROSS.

school,<sup>30</sup> it can take weeks for DYS to get a copy of their Individualized Education Plans (IEP) and other school records, if it receives them at all. Many kids end up on a trajectory that leads them to drop out.<sup>31</sup> Once youth return to their home school, they often face additional barriers, including schools refusing to re-enroll them or let them make up missed work.

### Pre-trial detention drives kids further into the system

A judge's decision to detain a child pre-trial also negatively influences future decisions in a child's case. Detention can pressure an unsophisticated adolescent to agree to a plea deal and may lead to harsher treatment by the system, increasing the likelihood that the young person will be found delinquent and *committed* to DYS (incarcerated after his case ends).

Kids in detention pre-trial are often given a choice between staying in detention longer to have a trial or agreeing to a deal that will allow them to go home. Research indicates that adolescents are generally more likely to over-value the short-term "reward" of getting out over the long-term consequences of an adjudication,<sup>32</sup> and may therefore be more willing to accept a plea even if it results in a lifetime record. Attorneys report that even teenagers who are innocent of any wrongdoing can

be eager to accept a plea if it means they can get out for an important sports game or a party with peers.<sup>33</sup>

National research suggests that, even after controlling for a range of factors, pre-trial detention increases the likelihood that a young person will be convicted<sup>34</sup> and sentenced to an out-of-home placement.<sup>35</sup> In some studies, pre-trial detention increased the odds that a child would receive an out-of-home sentence more consistently than any other variable, including prior offenses and offense seriousness.<sup>36</sup>

### Long-term consequences of incarceration

Separating a child from his family and other supports, interrupting his education, exposing him to trauma and the influence of delinquent peers, and stigmatizing him — all of this disrupts normal development. Not surprisingly, youth who are incarcerated have poor long-term outcomes.<sup>37</sup> Looking at pre-trial detention specifically, one study showed that youth who were detained reoffended at rates almost double those of participants in an alternative program, even though risk assessment scores for those in the alternative program indicated that they were at *higher* risk for engaging in subsequent delinquent activity.<sup>38</sup>

Incarceration interferes with success in other areas as well.<sup>39</sup> Incarcerated youth are less likely to graduate from high school than their peers, even after controlling for variables including risky behavior and delinquency.<sup>40</sup> The effect is weaker for those incarcerated during summer vacation, suggesting that school disruptions caused by detention play a large role in pushing kids out of school.<sup>41</sup> Youth who are incarcerated also have lower levels of employment more than a decade later, even controlling for adult incarceration and work experience.<sup>42</sup>

Of jurisdictions that have reduced their detention populations as part of the Juvenile Detention Alternatives Initiative (JDAI), the majority have seen safety outcomes improve. Pre-trial re-arrest rates and overall juvenile crime rates have both decreased in most JDAI sites, and in some areas, the decline has greatly outpaced the national average.<sup>43</sup>



# What do we know about kids who are detained in Massachusetts?

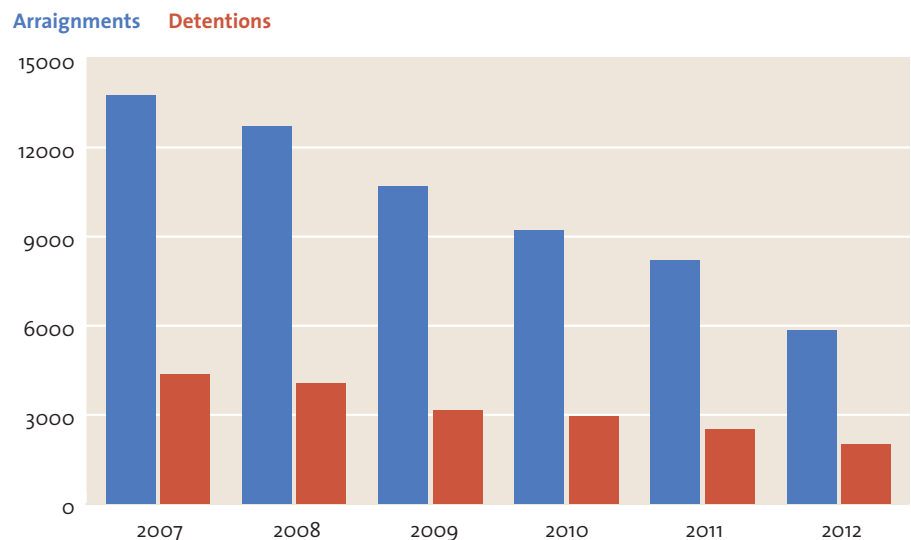
We know that incarceration is generally associated with negative outcomes for kids as well as communities. One would hope, then, that detention would be reserved for the tiny number of young people who cannot safely remain in their communities while awaiting trial or a probation violation hearing, or for whom we have no other way of securing their return to court. Data provided to CfJJ by the Department of Youth Services, however, tells a very different story.

## Despite steep declines in juvenile crime, Massachusetts continues to detain a large fraction of youth who are arraigned

Despite a steep decline in the number of youth charged with crimes in Massachusetts over the last five years, the Commonwealth continues to detain a large percentage of the youth who are arraigned. The rate of detention for those coming into court has remained relatively constant, with about one-third of arraigned youth being held.<sup>44</sup> Just under 2,000 kids were detained in Massachusetts in 2012.<sup>45</sup>

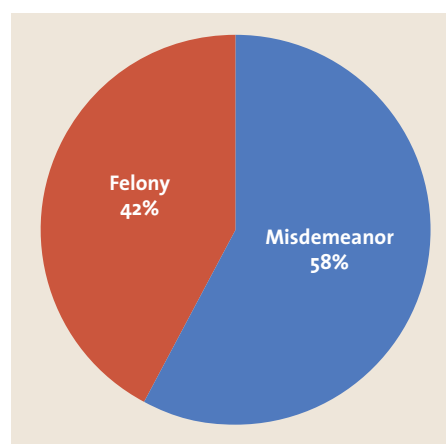
Given the negative outcomes that pre-trial detention leads to, it is deeply troubling that only a tiny

## Decreases in arraignments and detentions



STATE OF THE INITIATIVE POWERPOINT PRESENTATION, MASSACHUSETTS JUVENILE DETENTION ALTERNATIVES INITIATIVE 4, Department of Youth Services, November 12, 2013. On file with CfJJ.

## Most serious charge of detained youth



2011 data provided by Department of Youth Services Research Division. On file with CfJJ.

fraction of the youth in pre-trial detention facilities in the Commonwealth are held there because they are believed to pose a safety risk to themselves or others. Instead, kids in detention tend to be accused of relatively minor offenses, and few of them present a high level of risk.<sup>46</sup>

58% of youth in detention are charged with only misdemeanors,<sup>47</sup> and the proportion of kids detained for misdemeanor charges is increasing; in 2006, in comparison, the majority of kids in detention were charged with felonies.<sup>48</sup> Even the term “felony” can be misleading, as felonies encompass many

### Locking kids up for not going to school?

Many youth awaiting trial “voluntarily” agree to conditions of pre-trial probation such as “attend school daily, on time, without incident,” “obey home rules,” and “attend counseling.” In reality, many of these agreements are voluntary in name only, as judges make clear that they will detain youth if they do *not* agree to these conditions. Kids on probation after being adjudicated delinquent are typically required to abide by similar conditions. Unfortunately, many conditions are unrealistic for young people to achieve consistently. A child who struggles to behave in school due to an emotional disability, for example, is unlikely to be successful at attending school “without incident” for the many months that his case is pending. In other contexts, these types of violations are known as “status offenses” because they are not criminal acts and are unlawful only due to the child’s “status” as a minor. Massachusetts law generally prohibits secure confinement of youth charged with status offenses and was recently updated to emphasize the importance of serving these kids in their communities.<sup>54</sup> Nevertheless, we continue to incarcerate children for violating these kinds of “technical” conditions of probation, which is contrary to what we know works for kids as well as the law regarding status offenders.

non-violent offenses; for example, stealing an iPhone or a nice jacket (because of the value of the item) or using a credit card without permission. Furthermore, less than a quarter of detained youth end up committed to a secure facility at the conclusion of the case<sup>49</sup> — 78% are either not found guilty of the underlying offense or are released on probation.<sup>50</sup>

Why are so many low-risk youth with low-level offenses being detained? Despite substantial evidence to the contrary, some players in the juvenile justice system think that detention is a good “wake up call” for kids.<sup>51</sup> In some cases, angry parents refuse to take their kids home or the Department of Children and Families does not have an appropriate placement, so kids are locked up because they have nowhere else to go.<sup>52</sup> In addition, almost half the

youth in DYS Detention facilities are held only because they violated a term of probation.<sup>53</sup>

One promising development is DYS’s recent reduction of its use of secure detention. In fiscal year 2013, 7% of detained youth were in community-based foster homes and 27% were in “shelter care” settings, which have locked exterior doors and often require removal of a child from their home community but feel more like group homes than jails.<sup>55</sup> Nevertheless, the majority of detained youth are still placed in secure facilities.

### Certain youth are disproportionately subject to detention

It is clear that Massachusetts detains a large number of youth who have committed very minor offenses. The youth our courts detain are also disproportionately black and Latino, abused and neglected, educationally underserved, and suffering from trauma.

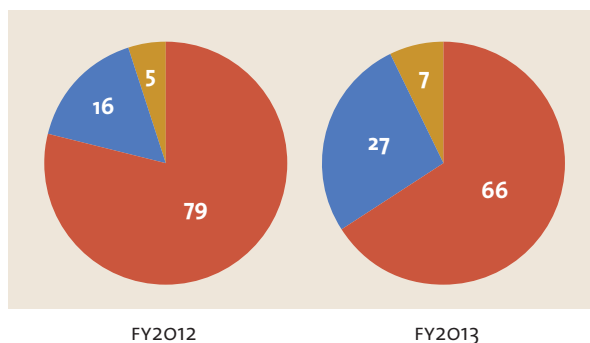
### Disproportionate minority contact

Large racial and ethnic disparities persist in detention. Though only 33% of Massachusetts children are youth of color,<sup>56</sup> they made up 67% of the detention population in 2012.<sup>57</sup> Latino youth were 4 times more likely than whites to be in detention during 2012, while black youth were detained at 7 times the rate of whites.<sup>58</sup>

Inadequate data regarding race and ethnicity at earlier stages in the system makes it difficult to fully determine why youth of color are overrepresented in detention. Among those who were arraigned,

#### Placement of detained youth

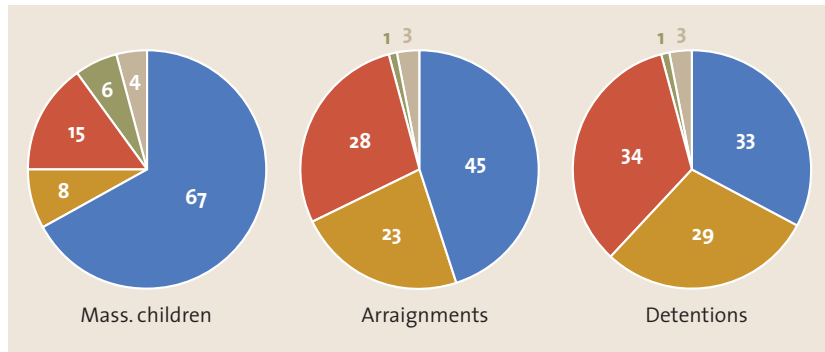
Percent   **Secure detention**   **Shelter care**  
**Community-based option**



STATE OF THE INITIATIVE POWERPOINT PRESENTATION, MASSACHUSETTS JUVENILE DETENTION ALTERNATIVES INITIATIVE 6, Department of Youth Services, November 12, 2013. On file with CfJ.

## Disproportionate minority contact

Percent **White** **Black** **Latino** **Asian** **Other**

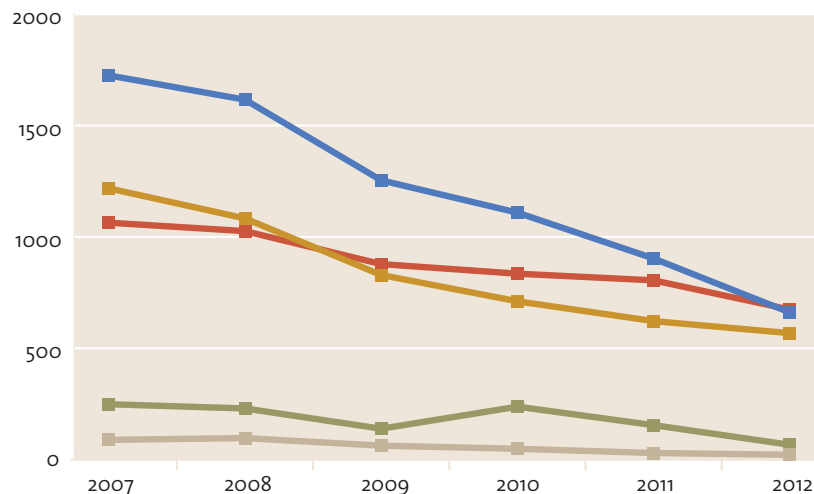


2012 statewide data available at <http://datacenter.kidscount.org/data/tables/103-child-population-by-race?loc=23&loct=2#detailed/2/23/false/867,133,38,35,18/66,67,68,69,70,71,12,72/423,424>.  
 2012 detention data provided by Department of Youth Services Research Division. On file with CfJJ.  
 2012 arraignment data provided by Department of Probation Research Division. On file with CfJJ.

black and Latino youth were more than 1.6 times more likely to be detained than whites in 2012.<sup>59</sup> Moreover, while detention rates continue to drop for youth of all races, they are decreasing more slowly for black and especially Latino youth, so racial disparities in detention are actually *increasing*. This may be due, in part, to the fact that diversion and alternative-to-detention programs are disproportionately located in counties with smaller minority populations.

## Change in detention population by race/ethnicity

**White** **Black** **Latino** **Asian** **Other**



STATE OF THE INITIATIVE POWERPOINT PRESENTATION, MASSACHUSETTS JUVENILE DETENTION ALTERNATIVES INITIATIVE 8, Department of Youth Services, November 12, 2013. On file with CfJJ.

## Youth involved with the Department of Children and Families

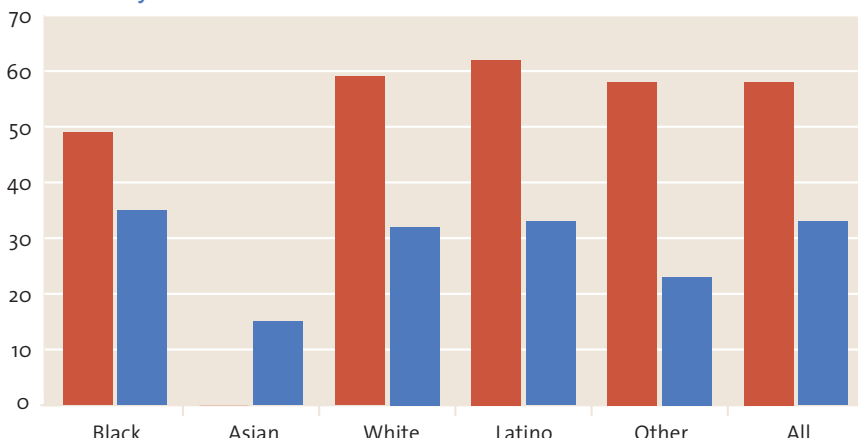
Youth involved with the Department of Children and Families (DCF), the Massachusetts agency responsible for protecting children from abuse and neglect, are vastly overrepresented in detention. Kids involved with both DCF and the juvenile justice system are known as “dually-involved” or “multi-system” youth. Only 2.4% of children in Massachusetts have open DCF cases,<sup>60</sup> but about 40% of youth in detention — and close to 60% of girls in detention — are involved with DCF when they are detained.<sup>61</sup> These numbers only include youth with current DCF cases; if those with prior DCF involvement were included, they would be even higher.

## Youth with educational disabilities

Youth with identified educational disabilities also have a disproportionate presence in detention. Though only 17% of students in Massachusetts qualify to receive special education services,<sup>62</sup> half the youth in detention were receiving special education services in their home schools prior to being detained.<sup>63</sup> Of these, more than half have an emotional disability as their primary disability.<sup>64</sup> This means that, while only 1.4% of students in Massachusetts have an emotional disability,<sup>65</sup> more than a quarter of youth in detention have an

## Percent of detained youth with open child welfare cases (by race/ethnicity and gender)

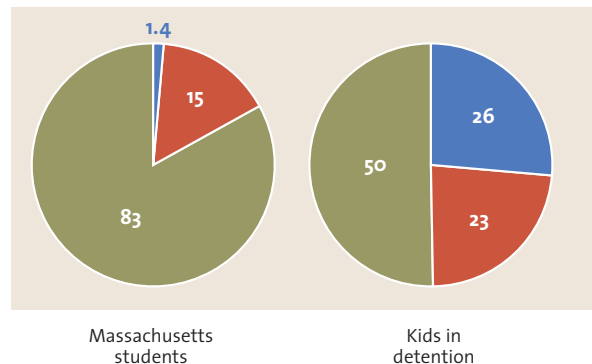
**Girls** **Boys**





## Percent of kids with identified educational disabilities

Emotional disability    Other disability  
No identified disability



Statewide data from Thomas Hehir, Todd Grindal and Hadas Eidelman, Review of Special Education in the Commonwealth of Massachusetts, report commissioned by the Massachusetts Department of Elementary and Secondary Education 7 (2012). Detention data is for youth in detention longer than 7 days. STATE OF THE INITIATIVE POWERPOINT PRESENTATION, MASSACHUSETTS JUVENILE DETENTION ALTERNATIVES INITIATIVE 42, Department of Youth Services, November 12, 2013. On file with CfJJ.

emotional disability. Compared to the general population, youth in detention are also more likely to have a specific learning disability, a health-related disability, an intellectual disability, or multiple disabilities.

Furthermore, kids in detention with educational disabilities tend to have particularly high levels of need; almost 60% were in substantially separate classrooms, separate day schools, or residential placements prior to being detained, and only 25% spent at least 80% of their school day in classrooms with typically-developing peers.<sup>66</sup> In comparison, 63% of students with disabilities in Massachusetts are in regular classroom settings for at least 80% of the day.<sup>67</sup>

### *Youth with complex trauma and significant mental health needs*

Massachusetts does not currently track how many youth in the juvenile justice system suffer from trauma exposure or have mental health diagnoses. National research, however, found high rates of exposure to complex trauma among justice system-involved youth.<sup>68</sup> 62% had experienced trauma within their first five years of life and 90% had experienced multiple types of trauma during their lives. Some of the most prevalent types included separation from caregiver, death of a loved one, exposure to domestic violence, emotional abuse, physical abuse, community violence, neglect, and — especially among girls — sexual abuse, assault, or rape.

These complex trauma histories make kids highly susceptible to mental health disorders. Compared with adolescents who experienced a single type of trauma (who themselves display disproportionately high rates of mental health problems), adolescents who have experienced multiple forms of trauma have double the risk of depression, triple the risk of post-traumatic stress disorder (PTSD), three to five times increased risk of substance abuse disorders, and five to eight times increased risk of multiple disorders.<sup>69</sup> National research suggests that approximately 70% of youth involved with the juvenile justice system meet the criteria for at least one mental health disorder and the majority have two or more diagnoses.<sup>70</sup> Roughly one-quarter have a mental health disorder severe enough to require significant, immediate treatment,<sup>71</sup> and 60% also have a substance abuse disorder.<sup>72</sup>

Understanding the high rate of trauma and behavioral health needs among justice system-involved youth is critical for evaluating and responding to their behavior.<sup>73</sup> Depressed youth, for example, may be irritable and hostile, and youth with PTSD may react aggressively to perceived threats. These adolescents are more likely to engage in behavior that results in not just court involvement, but also in decisions that push them deeper into the system, particularly when they are removed from family or community supports.

### *LGBTQ youth*

Lesbian, gay, bisexual, transgender, and queer/questioning (LGBTQ) youth are overrepresented in groups that are at higher risk for detention and are therefore probably overrepresented in detention as well.<sup>74</sup> LGBTQ youth are particularly vulnerable to harassment in detention,<sup>75</sup> and may have unique needs that are not adequately addressed by standard detention procedures. However, none of the agencies involved in the Massachusetts juvenile justice system currently collect information about LGBTQ status, though DYS is working to implement staff trainings and other changes to be more responsive to the needs of these children.

# Promising Massachusetts programs

Given the significant harms that holding kids in detention facilities can cause, avoiding these placements whenever possible is wise. As discussed below, some of the alternatives to secure placements being explored in Massachusetts include pre-arraignment diversion programs, community-based alternatives to DYS-run detention, DYS-operated alternatives to secure detention, and programs focused on particularly vulnerable populations.

## **Fostering innovative practice**

Massachusetts has made significant strides in reducing its detention population over the last decade, and several promising alternative programs have been developed to address youths' needs in their communities. Much of this progress has been fostered by the Annie E. Casey Foundation's Juvenile Detention Alternative Initiative (JDAI), which focuses on reducing reliance on secure detention. Massachusetts' participation in JDAI since 2006 has greatly improved the way the Commonwealth handles kids who come in contact with the justice system.

## **Pre-arraignment diversion**

Across the United States, nearly half of youth who are alleged to have committed offenses are diverted from formal court processing altogether.<sup>76</sup> This makes sense, as a substantial portion of first-time offenders do not reoffend and formal case processing generally increases recidivism.<sup>77</sup> In Massachusetts, where a youth cannot expunge a court record even if he is subsequently determined to be inno-

cent, an arraignment record can follow a young person for the rest of his life. Accordingly, many kids who commit offenses could be better served by interventions which hold them accountable through pre-arraignment diversion programs that keep them from entering the court system in the first place. Diversion can reduce further system involvement, prevent youth from being stigmatized as "delinquent," and save money.<sup>78</sup> As discussed below, diversion can work even for repeat offenders and those with relatively serious charges.<sup>79</sup> Unfortunately, Massachusetts lags behind the rest of the country in providing pre-arraignment, community-based diversion programs.

## ***Traditional diversion***

District attorneys in most Massachusetts counties run diversion programs for first-time non-violent offenders.<sup>80</sup> Participants are asked to complete a variety of tasks, such as individual counseling, group therapy, community service, and paying restitution to the victim. If a child completes the program, his case is not prosecuted. There are also diversion programs in certain counties that focus on addressing the specific issue that brought the child into court. For example, youth who attended an illegal bonfire might be given the opportunity to take a fire safety course rather than being arraigned.

Unfortunately, pre-arraignment diversion is still not available to youth in Berkshire County or Suffolk County, where a large percentage of the youth of color in the Commonwealth live. Additionally, DA diversion programs are open only to first-time offenders and exclude youth with certain types of offenses.<sup>81</sup> DAs also do not generally report the number or characteristics of youth who are offered diversion or participants' demographic information.

It is therefore impossible to assess how these programs are working and whether diversion options are made available to all youth (including youth of color, children with disabilities, and those with open DCF cases) equally.

### ***Restorative justice diversion***

Restorative justice programs have been successfully adopted in other states and are starting to gain momentum in Massachusetts. The goal of these programs is to “involve, to the extent possible, those who have a stake in an offense and to collectively identify and address harms, needs and obligations, in order to heal and put things right as possible.”<sup>82</sup> The aim is to hold kids accountable without the repercussions of court involvement.<sup>83</sup>

Research has found restorative justice to be effective with a wide range of youth, including those with violent offenses and prior offenses.<sup>84</sup> Restorative justice can be more satisfying for victims than traditional case processing because it allows them to actively participate in a process that they tend to view as procedurally just, flexible, and focused on

providing care and promoting dialogue.<sup>85</sup> Offenders who participate in restorative justice also have lower recidivism rates than comparable offenders whose cases are resolved in court.<sup>86, 87</sup>

In Massachusetts, restorative justice programs generally use a “circle” process: the youth, the “impacted party,” family, and others affected by the offense discuss what happened and agree on a plan for the youth to repair the harm or address underlying issues causing the behavior. For example, in a school graffiti case participants might include the janitor and the school resource officer and the child might write a letter of apology to the janitor and help clean up the graffiti. If the parties agree, action plans can include many of the same tasks as traditional diversion programs, such as restitution, community service, counseling or other appropriate services, or may incorporate non-traditional responses, such as making a pamphlet about peer pressure to prevent other kids from engaging in similar behavior.<sup>88</sup>



RESTORATIVE JUSTICE CIRCLE. PHOTO PROVIDED BY C4RJ.



Communities for Restorative Justice (C4RJ) has resolved more than 600 cases in the Massachusetts Metro Northwest region since 2000 involving both adults and youth.<sup>89</sup> Unlike many diversion programs, their services are not limited to misdemeanors, non-violent offenses, or first-time offenders. C4RJ receives most referrals through police departments, frequently preventing court involvement. According to C4RJ, 97% of participants successfully complete their action plans, and 92% of victims and their supporters and 83% of offenders and their supporters report satisfaction with the process.<sup>90</sup> A 2010 recidivism study found only 16% of C4RJ participants from 2000-2009 had been cited for a new offense, compared to a recidivism rate of 27% nationally among those processed through the traditional justice system.<sup>91</sup>

Another program, Juvenile Court Restorative Justice Diversion (JCRJD), was recently established in Lowell.<sup>92</sup> JCRJD receives case referrals, including low-level felonies, from the Middlesex District Attorney's office pre-arraignment. The program started taking cases in late 2012, so it is too soon to have comprehensive data on results. However, it has already earned support from a wide array of stakeholders including judges and the local district attorney, and has received a one-year federal grant for expansion.

#### *Police-led diversion collaborative*

Police have always practiced informal diversion, especially in smaller communities, by calling kids' parents or driving them home with a warning rather than arresting them and referring them to court. Some police departments have also developed formal diversion programs. In 2008, the Cambridge Police Department joined forces with the Cambridge schools and service providers to establish the Cambridge Safety Net Collaborative, which operates a diversion program for first-time offenders.<sup>93</sup> Officers with specialized training work with the child and his family to conduct a risk/need assessment, develop a Youth Service Plan with goals such as following curfew and working with a mentor, and connect the child to services. An adolescent psy-

chologist works with officers to ensure that the plan appropriately addresses any mental health needs. If kids complete the goals on their service plan and do not have any new offenses while in the diversion program, their case is not sent to court.

Safety Net's record management system was recently modified to allow it to better track individual data, including completion rates, but the program reports a 57% decrease in Cambridge juvenile arrest rates since the program began.<sup>94</sup> Safety Net has helped change police department culture to encourage officers to "work to prevent youth from committing a first-time offense or recidivating and investigat[e] what triggers a youth to behave in a certain way."<sup>95</sup>



DDAP ADVOCATES AND YOUTHS GO ZIPLINING.

#### **Alternatives to DYS detention**

Even if excellent state-wide diversion options are available, some youth will continue to be arraigned. Some do not meet the standard for detention and should simply be released pending trial. For others,

community-based programs can provide an appropriate post-arraignment alternative to detention.

The Robert F. Kennedy Children's Action Corps' Detention Diversion Advocacy Project (DDAP) in Dorchester is one such program.<sup>96</sup> Each child assigned to DDAP is matched with a Youth Advocate who sees the child several times per week while the case is pending to address unmet needs that the child may have. This can include accompanying the child to court dates, engaging him in recreational activities, advocating at special education meetings, working with parents, and more, depending on the child's needs. The program lasts only while the case is pending, but many clients receive informal services and support from DDAP after formal discharge. More than three-quarters (76%) of participants successfully complete the program, meaning that they comply with its requirements, have no new offenses, and attend all court dates.<sup>97</sup> Because it is located in a predominantly-minority community, all participants have been youth of color, so the program also helps reduce racial and ethnic disparities in detention.

In Salem, "On Point," a collaboration between Plummer Home, the Salem Police, and the Essex County Juvenile Court, provides a community-based alternative to detention, though kids can also be referred to the program post-adjudication or by

DCF.<sup>98</sup> The program is guided by "positive youth development," a strength-based approach that focuses on "understanding, educating, supporting, and engaging youth rather than targeting problems and trying to correct or treat them."<sup>99</sup> Participants are required to engage in a certain number of therapeutic groups and community service sessions, as well as recreational offerings such as trauma-informed yoga, art and music classes, and basketball tournaments. They are also expected to achieve one personal goal, such as improving their school attendance or getting their driver's license. Three-quarters of kids referred to the program successfully complete its requirements, and many alumni choose to continue attending after they have "graduated."

### Keeping kids out of locked detention facilities

When a judge detains a child, he is sent to DYS. Over the last decade, DYS has made a concerted effort to reduce its reliance on secure detention facilities and tailor placements to kids' individual needs. In line with its goal to place "the right youth in the right place for the right reason," DYS has begun to expand its use of shelter care and community-based options. In fiscal year 2013, one-third of the youth sent to detention were held in non-secure settings, a significant increase over prior years.<sup>100</sup>

One community-based alternative-to-secure-detention program that DYS has established in Worcester County has been exceptionally effective in ensuring kids' attendance at court.<sup>101</sup> After an initial intake screening, youth in the program are brought to foster parents in the area who receive extra support from DYS staff to serve their "detention" in the community. They attend their home schools and continue participating in pre-existing services and activities. DYS workers transport youth to and from school, to a DYS reception center or other services in the afternoon, and back to the foster home in the evening. They also are on call to address problems that



ON POINT YOUTH PERFORM AT HOUSE OF SEVEN GABLES IN SALEM.

arise at other times. To ensure the availability of beds, DYS pays the foster families (at a lower rate) even when no child is placed with them.

Of the over 450 youth placed in the Worcester program, *none* have missed court appearances, and only *one* has been re-arrested while his case was pending.<sup>102</sup> Although a small number struggle in foster care and are subsequently sent to secure detention, DYS works to mediate disputes rather than automatically removing a child when challenges arise. While the very low-risk profile of youth referred to the program raises questions about whether these youth should have been detained in the first place, the program is still a promising alternative to secure detention, and may be a particularly helpful approach when a delinquency case arises out of a conflict with family members and the young person is unable to return home.

### Focusing on dually-involved youth

As noted above, a troublingly high percentage of youth who are held in detention have open DCF cases. As a result, DYS, in partnership with DCF, has begun to develop a new model for identifying and better serving this population. In 2009, DCF and DYS drafted a joint Memorandum of Understanding (MOU) with the goal of reducing the unnecessary use of secure detention for children in DCF care or custody.<sup>103</sup> The MOU sets forth procedures that must be followed when a child in DCF care is detained and requires the agencies to work together. DCF and DYS also established a working group to develop more effective ways to serve these youth.

Building on these efforts, a new protocol for dually-involved youth has been established in Hampden County.<sup>104</sup> The protocol is based on a model developed by the MacArthur Foundation's Models for Change network,<sup>105</sup> and is grounded in the understanding that the behavior bringing these youth into court is typically the result of a system failure or a symptom of some other problem that is not being addressed.

The protocol first requires the Court and DCF to check whether a child with delinquency charges is involved with DCF.<sup>106</sup> If a young person is dually-involved, he and his parent or guardian can, in consultation with his defense attorney, sign a release allowing information-sharing between DCF, DYS, Probation, and the Court. If they agree, the Court Clinic facilitates a case conference attended by DCF, DYS, the attorneys, and other relevant players such as therapists or school personnel. Participants discuss their concerns about the child and develop a case plan, including action items clarifying the responsibilities of each agency or provider; for example, finding a placement, making a referral for an evaluation, or setting up appropriate services. Before the pre-trial conference, the Court Clinic calls to follow up on the action items and prepare a report for the judge. There is a dedicated docket for dually-involved cases, so a judge knowledgeable about the process hears the case every time and can hold DCF and other system players accountable for completing the action items to which they committed.

The program, which began in 2013, is still too early in its development to evaluate. However, attorneys report that DCF-involved kids who are detained now receive more attention, which tends to result in quicker placements and shorter stays in detention. Judges may also be more willing to release youth since they know that there will be prompt case planning that they will be able to monitor. While the goal of actually preventing abused and neglected youth from inappropriately entering the system or being detained is not yet a reality, the program is a promising development, in particular as it appropriately shifts some responsibility to the agencies that are charged with keeping these vulnerable young people from harm.



# Conclusion

While progress has been made in Massachusetts in reducing the use of secure detention and developing innovative alternatives, there remains a lot of work to be done. Massachusetts lags far behind most other states in adopting programs that divert low-level offending youth from the system entirely. Few of the model initiatives mentioned in this report have been taken to-scale across the Commonwealth, so promising programs are available to only a small number of Massachusetts youth. Importantly, ongoing and disturbing disparities remain in the characteristics of youth who end up in detention. This raises questions about whether diversion and alternative-to-detention reforms are reaching all youth coming to the attention of the system equally, and whether the array of programs currently available appropriately matches the needs of these youth. Finally, while significant efforts have been made to reduce unnecessary pre-trial detention, additional attention must be focused on kids detained for probation violations, who make up close to half the detention population. These youth would also benefit from evidence-based programs that address concerns about their behavior while they are on probation — without detaining them.

As noted throughout this report, improving data collection and coordination between agencies is a necessary prerequisite to gaining a better understanding of how our juvenile justice system is and is

not working. Without knowing arrest or arraignment rates for kids involved with DCF, for example, it is impossible to determine why those youth are so disproportionately likely to end up in detention or to make informed decisions about how to address that disparity. Nevertheless, some directions for improvement can be gleaned from the information currently available.

As new programs are developed to serve kids at different stages of the process, it is important to ensure that the mere existence of a program does not inadvertently lead to more children entering the system, a phenomenon referred to as “net-widening.” Professionals within the system must be vigilant in ensuring that they do not unnecessarily push kids deeper into the system in an attempt to “treat” them. More broadly, kids shouldn’t have to come to court to get the help they need; families, schools, and others should have access to services that help youth and, when necessary, hold them accountable within the community without having to resort to our court system. Our juvenile justice system must also be structured and informed by our knowledge that kids are generally best served by the least restrictive intervention that is necessary to avoid harm to themselves or others.

# Recommendations

**Expand pre-arraignment diversion, including restorative justice and other community-based options.** Pre-arraignment diversion programs should be established in all counties and should be available to all youth in the county equally.<sup>107</sup> These programs should be based on evidence-based models, including evidence-based risk-assessment tools, and should be regularly assessed to ensure that they are effective and serve all youth equally. Community-based programming, including restorative justice programs, should be available in addition to traditional models.

**Make detention and out-of-home placement a last resort.** Given the harm to youth and communities that results from detaining youth and removing them from their homes, it is critical that judges and others comply with the applicable legal standards and limit detention to youth who present a real danger to the community or whose presence in court cannot be secured through any other means.<sup>108</sup> Decisions regarding detention should be based on structured, evidence-based risk assessments,<sup>109</sup> and conditions of release should only be imposed if they are necessary to address dangerousness or ensure that a child appears in court.<sup>110</sup> The Courts should track and report on detention decisions and outcomes at the local court and individual courtroom level so that judges are more aware of the outcomes of their decision-making, including any disparate outcomes between populations of youth.

**Continue to expand community-based alternatives** for youth who would otherwise be detained, both as an alternative to pre-trial detention and as an option for youth who violate conditions of release or probation.<sup>111</sup> These programs should be available to all youth, regardless of where they live.

Given the high prevalence of complex trauma among justice system-involved youth, programs serving this population should be trauma-informed.<sup>112</sup>

**Implement specific reforms to reduce racial and ethnic disparities and address overrepresentation of other groups of youth.** Youth of color continue to be overrepresented in detention and additional, focused work is needed to understand and address these disparities, including better collection and analysis of race and ethnicity data in the context of other complicating risk factors. DCF, DYS, and the Courts should continue to work together to better understand why so many DCF-involved kids enter detention, and to develop ways to reduce their overrepresentation, including changes in policy and practice that may drive this disparity.<sup>113</sup>

**Better data collection.** Every agency involved in the juvenile justice system, including police, district attorneys, the Courts, Probation, and DYS, should record and publicly report statistical data at each system decision point.<sup>114</sup> At a minimum, the data collected should include age, gender, race/ethnicity, and LGBTQ status, as well as information about type of crime, DCF or other agency involvement, educational status and disabilities, any physical or behavioral health diagnoses, and outcomes for youth served by any programs. All agencies should use the same criteria or definitions for each of these factors to allow for meaningful comparison. Data regarding program outcomes should be collected and analyzed for all diversion and detention-alternative programs as well as traditional detention programs to determine what is working and how we can continue to improve the way we respond to youth at the front end of the juvenile justice system.<sup>115</sup>

# Citations

<sup>1</sup> BARRY HOLMAN AND JASON ZIEDENBERG, *THE DANGERS OF DETENTION: THE IMPACT OF INCARCERATING YOUTH IN DETENTION AND OTHER SECURE FACILITIES* (Justice Policy Institute 2006) [hereinafter *THE DANGERS OF DETENTION*]; *UNLOCKING THE FUTURE: DETENTION REFORM IN THE JUVENILE JUSTICE SYSTEM* (Coalition for Juvenile Justice 2003) [hereinafter *UNLOCKING THE FUTURE*]; JAMES AUSTIN, KELLY DEDEL JOHNSON, AND RONALD WEITZER, *ALTERNATIVES TO THE SECURE DETENTION AND CONFINEMENT OF JUVENILE OFFENDERS* (Office of Juvenile Justice and Delinquency Prevention 2005) [hereinafter *ALTERNATIVES TO THE SECURE DETENTION*]; RICHARD A. MENDEL, *NO PLACE FOR KIDS: THE CASE FOR REDUCING JUVENILE INCARCERATION* (The Annie E. Casey Foundation 2011) [hereinafter *NO PLACE FOR KIDS*]; RICHARD A. MENDEL, *TWO DECADES OF JDAI, FROM DEMONSTRATION PROJECT TO NATIONAL STANDARD* (The Annie E. Casey Foundation 2009) [hereinafter *TWO DECADES OF JDAI*].

<sup>2</sup> One such program is the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative (JDAI), which encourages jurisdictions around the country to develop local, targeted ways of helping kids that do not involve secure confinement. *TWO DECADES OF JDAI*, *supra* note 1. Similarly, the MacArthur Foundation's Models for Change initiative supports efforts to ensure that juvenile justice systems are "fair, effective, rational and developmentally-appropriate," and that "kids who make mistakes are held accountable and treated fairly throughout the juvenile justice process." Models for Change website, <http://www.modelsforchange.net/index.html>.

<sup>3</sup> *TWO DECADES OF JDAI*, *supra* note 1.

<sup>4</sup> DATAPOINTS: CURRENT TRENDS 5 (Citizens for Juvenile Justice 2013).

<sup>5</sup> STATE OF THE INITIATIVE POWERPOINT PRESENTATION, MASSACHUSETTS JUVENILE DETENTION ALTERNATIVES INITIATIVE 6, Department of Youth Services [hereinafter "DYS"], November 12, 2013. On file with CfJJ [hereinafter *STATE OF THE INITIATIVE*].

<sup>6</sup> *Id.* at 4. This pattern continues despite previous work calling attention to the issue. ROBIN L. DAHLBERG, *LOCKING UP OUR CHILDREN: THE SECURE DETENTION OF MASSACHUSETTS YOUTH AFTER ARRAIGNMENT AND BEFORE ADJUDICATION* (American Civil Liberties Union and ACLU of Massachusetts 2008) [hereinafter *LOCKING UP OUR CHILDREN*].

<sup>7</sup> This report generally uses the male pronoun to describe youth involved in the juvenile justice system. While many girls are also involved in the system, the vast majority (79%) of kids in detention are male. 2012 data provided by DYS Research Division. On file with CfJJ.

<sup>8</sup> M.G.L. ch.276 §58.

<sup>9</sup> M.G.L. ch.276 §58A. *Victor V. v. Commonwealth*, 423 Mass. 793 (1996). This includes offenses that involve attempted or threatened use of physical force, burglary, arson, violations of restraining orders, and certain weapon offenses. In these cases, a young person may be held for up to 90 days without bail.

<sup>10</sup> M.G.L. ch.276 §58B.

<sup>11</sup> These can include pre-trial conditions unrelated to flight risk or dangerousness if the child agreed to those conditions. *Jake J. v. Commonwealth*, 433 Mass. 70 (2000).

<sup>12</sup> Commonwealth of Massachusetts Juvenile Court Department Standing Order 1-07: Violation of Probation Proceedings 5-6. Available at <http://www.mass.gov/courts/courtsandjudges/courts/juvenilecourt/standingorder107.pdf>. Dist. Crt. R. Prob. Viol. Proc. Rule 8. Available at <http://www.mass.gov/courts/209a/docs/districtcourt-trans723-probation-violation-rules.pdf>.

<sup>13</sup> *STATE OF THE INITIATIVE*, *supra* note 5, at 18.

<sup>14</sup> See Dr. Amy Seeherman, *Juvenile Detention Alternatives Initiative (JDAI) Massachusetts, Accomplishments, 2009*, at 6-7, on file with CfJJ. The report notes that the "overwhelming majority of probation violators [in detention] were detained as a result of technical violations."

<sup>15</sup> FY2012 data provided by DYS Research Division. On file with CfJJ.

<sup>16</sup> *Id.*

<sup>17</sup> *REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH* 123 (Richard J. Bonnie et al. eds., National Research Council of the National Academies, 2013) [hereinafter *REFORMING JUVENILE JUSTICE*].

- <sup>18</sup> Massachusetts DYS General Administration Policy #02.01.02(b)(B)(1).
- <sup>19</sup> Massachusetts DYS Searches in Secure Facilities Policy # 03.01.02(a)(B)(2).
- <sup>20</sup> ROBERT AGNEW, JUVENILE DELINQUENCY: CAUSES AND CONTROL 289 (2001); Leslie D. Leve & Patricia Chamberlain, *Association with Delinquent Peers: Intervention Effects for Youth in the Juvenile Justice System*, 33 J. OF ABNORMAL CHILD PSYCHOLOGY 339, 339 (2005). Furthermore, youth already at high risk for inappropriate behavior, as those involved in the juvenile justice system tend to be, are particularly susceptible to the negative influence of being surrounded by delinquent peers. *Id.*
- <sup>21</sup> Carly B. Dierkhising et al., *Trauma histories among justice-involved youth: findings from the National Child Traumatic Stress Network*, 4 EUR. J. PSYCHOTRAUMATOLOGY 20274 (2013). Available online at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3714673/>.
- <sup>22</sup> Terri N. Sullivan, Eva M. Kung & Albert D. Farrell, *Relation Between Witnessing Violence and Drug Use Initiation Among Rural Adolescents: Parental Monitoring and Family Support as Protective Factors*, 33 J. CLINICAL CHILD & ADOLESCENT PSYCHOL. 488 (2004); Grace M. Barnes et al., *Effects of Parental Monitoring and Peer Deviance on Substance Use and Delinquency*, 68 J. MARRIAGE & FAM. 1084 (2006); Robert D. Laird et al., *Parents' Monitoring-Relevant Knowledge and Adolescents' Delinquent Behavior: Evidence of Correlated Developmental Changes and Reciprocal Influences*, 74 CHILD DEV. 752 (2003).
- <sup>23</sup> Sandra Villalobos Agudelo, *The Impact of Family Visitation on Incarcerated Youth's Behavior and School Performance: Findings from the Families as Partners Project*, Vera Institute of Justice Issue Report (April 2013).
- <sup>24</sup> TWO DECADES OF JDAI, *supra* note 1; REFORMING JUVENILE JUSTICE *supra* note 17, at 123.
- <sup>25</sup> Anthony Petrosino, Carolyn Turpin-Petrosino, and John Buehler, *Scared Straight and Other Juvenile Awareness Programs for Preventing Juvenile Delinquency: A Systematic Review of the Randomized Experimental Evidence*, 589 ANNALS, AAPSS 41 (2003).
- <sup>26</sup> Marc A. Zimmerman, Jeffrey B. Bingenheimer, Paul C. Notaro, *Natural Mentors and Adolescent Resiliency: A Study with Urban Youth*, 30 AM. J. COMMUNITY PSYCHOL. 221 (2002); Joseph L. Mahoney, *School Extracurricular Activity Participation as a Moderator in the Development of Antisocial Patterns*, 71 CHILD DEV. 502 (2000).
- <sup>27</sup> TWO DECADES OF JDAI, *supra* note 1.
- <sup>28</sup> Incarcerated youth are often less willing to engage in services because they resent being locked up. Additionally, programs in institutions have limited ability to address the family, school, and other underlying problems that may be instigating delinquency, so they can't fully prepare youth to contend with challenges they will face upon reintegration into their community. AGNEW, *supra* note 20, at 289, 305; SUSAN GUARINO-GHEZZI & EDWARD J. LOUGHRAN, BALANCING JUVENILE JUSTICE 154 (2004).
- <sup>29</sup> FY2012 data provided by DYS Research Division. On file with CfJJ.
- <sup>30</sup> STATE OF THE INITIATIVE, *supra* note 5, at 4.
- <sup>31</sup> Randi Hjalmarsson, *Criminal justice involvement and high school completion*, 63 J. URBAN ECON. 613 (2008).
- <sup>32</sup> Thomas Grisso et al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 LAW & HUM. BEHAV. 333, 357 (2003).
- <sup>33</sup> One reason children are more likely to inappropriately accept plea deals is because our law inadvertently discourages parental involvement in these decisions. Because communication between children and their parents is not protected or privileged under Massachusetts law, parents' ability to assist and give advice to their child is compromised.
- <sup>34</sup> M. Dyan McGuire, *Cumulative Disadvantage as an Explanation for Observed Disproportionality within the Juvenile Justice System: An Empirical Test*, 53 JUV. & FAM. CT. J. 1, 9, 11 (2002); Philip E. Secret and James B. Johnson, *The effect of race on juvenile justice decision making in Nebraska: Detention, adjudication, and disposition, 1988-1993*, 14 JUST. Q 445 (1997); Bohsiu Wu, *The effect of race on juvenile justice processing*, 48 JUV. & FAM. CT. JUDGES 43 (1997).
- <sup>35</sup> Kareem L. Jordan, *Preventive Detention and Out-of-Home Placement: A Propensity Score Matching and Multilevel Modeling Approach*, 2 J. JUV. JUST. 41 (2012); Lori Guevara et. al., *Racial Disparities in Juvenile Court Outcomes: A Test of the Liberation Hypothesis*, 9 J. ETHNICITY & CRIM. JUST. 200 (2011); Nancy Rodriguez, *The cumulative effect of race and ethnicity in juvenile court outcomes and why preadjudication detention matters*, 47 J. RESEARCH IN CRIME & DELINQUENCY 391 (2010); Michael J. Leiber and Kristan C. Fox, *Race and the Impact of Detention on Juvenile Justice Decision Making*, 51 CRIME DELINQUENCY 470, 489 (2005); FLORIDA JUVENILE DELINQUENCY COURT ASSESSMENT (Office of the State Courts Administrator, Office of Court Improvement 2003); McGuire, *supra* note 34, at 53; Secret & Johnson, *supra* note 34, at 14; Wu, *supra* note 34, at 48.
- <sup>36</sup> McGuire, *supra* note 34, at 1, 10; Secret & Johnson, *supra* note 34, at 445, 471.
- <sup>37</sup> NO PLACE FOR KIDS, *supra* note 1.
- <sup>38</sup> Randall G. Shelden, *Detention Diversion Advocacy: An Evaluation*, OJJDP Juvenile Justice Bulletin 5, 11 (1999).
- <sup>39</sup> A natural randomized experiment provides further evidence that incarceration, rather the nature of the youth who end up in custody, leads to these negative trajectories. Youth who enter the juvenile justice system in Chicago are randomly assigned to different judges, some of whom place kids in custody (including pre-trial detention) at much higher rates than others. Being assigned to a judge with a greater propensity to incarcerate not only raised an individual child's chances of being incarcerated,



it also increased his odds of dropping out of school and ending up incarcerated as an adult. Anna Aizer & Joseph J. Doyle, Jr., *Juvenile Incarceration, Human Capital and Future Crime: Evidence from Randomly-Assigned Judges*, NBER Working Paper No. 19102 (2013).

<sup>40</sup> Randi Hjalmarsson, *Criminal justice involvement and high school completion*, 63 J. URBAN ECON. 613 (2008).

<sup>41</sup> *Id.*

<sup>42</sup> Bruce Western & Katherine Beckett, *How Unregulated Is the U.S. Labor Market? The Penal System as a Labor Market Institution*, 104 AM. J. SOC. 1030, 1051 (1999).

<sup>43</sup> TWO DECADES OF JDAI, *supra* note 1, at 19-20.

<sup>44</sup> STATE OF THE INITIATIVE, *supra* note 5, at 4.

<sup>45</sup> 2012 data provided by DYS Research Division. On file with CfJJ.

<sup>46</sup> STATE OF THE INITIATIVE, *supra* note 5, at 22, 24. According to DYS's own risk assessment instrument, nearly 2/3 of the youth detained in FY 2013 were medium or low risk.

<sup>47</sup> 2011 data provided by DYS Research Division. On file with CfJJ.

<sup>48</sup> LOCKING UP OUR CHILDREN, *supra* note 6, at 6. Similarly, DYS classifies offenses into six grid levels, with 1 being the least serious and 6 being the most serious. In 2012, three-quarters of youth in detention were there for level 1 or 2 offenses – the least serious, including offenses like shoplifting, tagging, and driving without a license. In 2007, in comparison, almost half of the kids in detention had level 3 or higher offenses. STATE OF THE INITIATIVE, *supra* note 5, at 21, 22.

<sup>49</sup> 22% of kids in detention are ultimately committed to DYS. Email from Robert Tansi, Research Analyst, DYS, to Citizens for Juvenile Justice (Feb. 13, 2014). On file with CfJJ.

<sup>50</sup> 22% of kids in detention are ultimately committed to DYS. *Id.*

<sup>51</sup> LOCKING UP OUR CHILDREN, *supra* note 6, at 7, 20-21.

<sup>52</sup> LOCKING UP OUR CHILDREN, *supra* note 6, at 7, 23-25.

<sup>53</sup> 44% are detained only for a violation of probation. STATE OF THE INITIATIVE, *supra* note 5, at 18. On file with CfJJ. LOCKING UP OUR CHILDREN, *supra* note 6, at 21-23.

<sup>54</sup> M.G.L. ch.119 §§39G-H.

<sup>55</sup> “These facilities have locked perimeter doors and windows, unlocked dormitory style bedrooms and physically less restrictive program areas however, security supervision by trained staff is utilized.” DYS Public Information Packet 2013 4. Available online at <http://www.mass.gov/eohhs/docs/dys/public-info-packet.pdf>. STATE OF THE INITIATIVE, *supra* note 5, at 6. Emails from Lynsey M. Heffernan, JDAI Detention Reform Specialist, DYS, to Citizens for Juvenile Justice (Feb. 14, 2014). On file with CfJJ.

<sup>56</sup> *Child Population by Race: Massachusetts, 2012*. Kids Count Data Center, available online at <http://datacenter.kidscount.org/data/tables/103-child-population-by-race?loc=23&loct=2#detailed/2/any/false/868/66,67,68,69,70,71,12,72/423,424> [hereinafter *Child Population by Race*].

<sup>57</sup> Data provided by DYS Research Division. On file with CfJJ.

<sup>58</sup> Of 936,199 white youth in Massachusetts, 661, or 0.07% were detained in 2012. Of 218,544 Latino youth in Massachusetts, 672, or 0.31% were detained in 2012. Of 110,264 black youth in Massachusetts, 568, or 0.52% were detained in 2012. Statewide data from *Child Population by Race*, *supra* note 56. 2012 detention data provided by DYS Research Division. On file with CfJJ.

<sup>59</sup> Detention data provided by DYS Research Division. On file with CfJJ. Arraignment data provided by Department of Probation Research Division. On file with CfJJ.

<sup>60</sup> Massachusetts DCF Annual Profile 2012. Available online at <http://www.mass.gov/eohhs/docs/dcf/reports/annual/annual-data-profile-cy2012.pdf>. State population data from *Child Population by Race*, *supra* note 56.

<sup>61</sup> 41% of youth detained in FY2013 had open DCF cases. STATE OF THE INITIATIVE, *supra* note 5, at 40. In 2011, 38% percent of kids in detention were DCF-involved, as were 58% of girls in detention. Data provided by DYS Research Division. On file with CfJJ.

<sup>62</sup> 2012 Massachusetts State Report Card Part I - Enrollment & Educator Data. Available online at <http://profiles.doe.mass.edu/staterc/enrollment.aspx?fyCode=2012>.

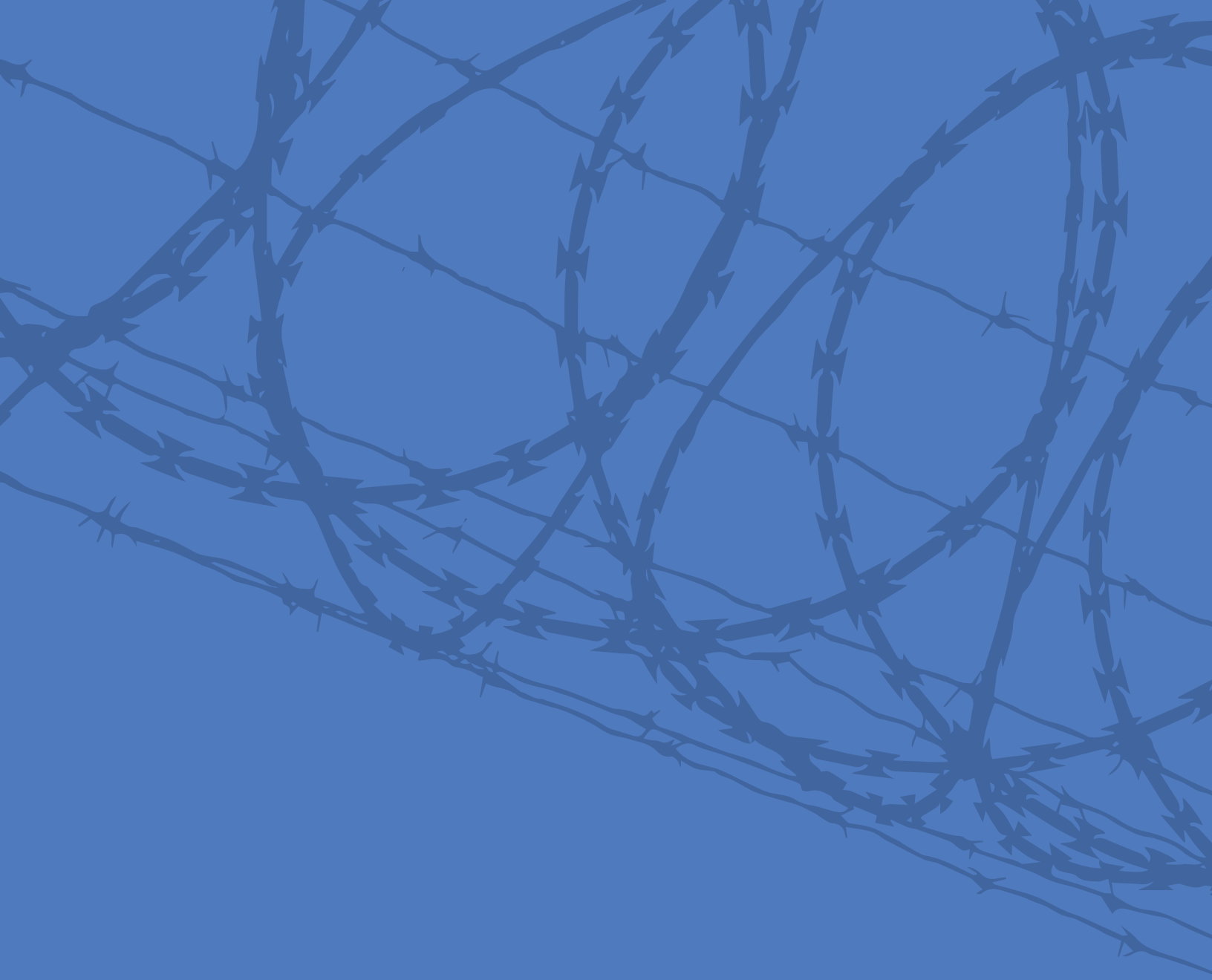
<sup>63</sup> Data is for youth in detention longer than 7 days. STATE OF THE INITIATIVE, *supra* note 5, at 42.

<sup>64</sup> *Id.*

<sup>65</sup> Thomas Hehir, Todd Grindal and Hadas Eidelman, REVIEW OF SPECIAL EDUCATION IN THE COMMONWEALTH OF MASSACHUSETTS, report commissioned by the Massachusetts Department of Elementary and Secondary Education 7 (2012). Available online at <http://www.kurzweil.edu.com/files/special-education-ma-thomas-hehir-reseff.pdf>.

- <sup>66</sup> Data is for youth in detention longer than 7 days. STATE OF THE INITIATIVE, *supra* note 5, at 42.
- <sup>67</sup> Hehir et al, *supra* note 65, at 7.
- <sup>68</sup> Carly B. Dierkhising et al., *supra* note 21.
- <sup>69</sup> Julian D. Ford et. al., *Poly-Victimization and Risk of Posttraumatic, Depressive, and Substance Use Disorders and Involvement in Delinquency in a National Sample of Adolescents*, 46 J. ADOLESCENT HEALTH 545, 548-49 (2010).
- <sup>70</sup> Jennie L. Shufelt & Joseph J. Cocozza, *Youth with Mental Health Disorders in the Juvenile Justice System: Results from a Multi-State Prevalence Study*, National Center for Mental Health and Juvenile Justice Research and Program Brief 2-3 (June 2006). Of those with at least one mental health disorder, 79% actually had two or more, 60% had three or more, and 43% had four or more. This means that of the overall sample, 55% had two or more mental health disorders, 42% had three or more, and 30% had four or more.
- <sup>71</sup> *Id.* at 4.
- <sup>72</sup> *Id.* at 3.
- <sup>73</sup> Thomas Grisso, *Adolescent Offenders with Mental Disorders*, 18 FUTURE OF CHILD. 143 (2008).
- <sup>74</sup> JUSTICE FOR ALL? A REPORT ON LESBIAN, GAY, BISEXUAL AND TRANSGENDERED YOUTH IN THE NEW YORK JUVENILE JUSTICE SYSTEM 6-7 (Urban Justice Center 2001). KATAYOON MAJD, JODY MARKSAMER, & CAROLYN REYES, HIDDEN INJUSTICE: LESBIAN, GAY, BISEXUAL, AND TRANSGENDER YOUTH IN JUVENILE COURTS (Legal Services for Children, National Juvenile Defender Center, and National Center for Lesbian Rights 2009) [hereinafter HIDDEN INJUSTICE].
- <sup>75</sup> LGBTQ YOUTH IN THE JUVENILE JUSTICE SYSTEM 2-3 (National Center for Lesbian Rights 2006). HIDDEN INJUSTICE, *supra* note 74.
- <sup>76</sup> CHARLES PUZZANCHERA ET AL., JUVENILE COURT STATISTICS 2009, at 59 (National Center for Juvenile Justice 2012). Available online at <http://www.ojjdp.gov/pubs/239114.pdf>.
- <sup>77</sup> REFORMING JUVENILE JUSTICE, *supra* note 17, at 151. Petrosino, Anthony, Carolyn Turpin-Petrosino, and Sarah Guckenburg. *Formal System Processing of Juveniles: Effects on Delinquency*. No. 9 of Crime Prevention Research Review, U.S. Department of Justice, Office of Community Oriented Policing Services (2013).
- <sup>78</sup> JUVENILE DIVERSION GUIDEBOOK 12 (Models for Change Juvenile Diversion Workgroup 2011).
- <sup>79</sup> Kathleen J. Bergseth and Jeffrey A. Bouffard, *Examining the Effectiveness of a Restorative Justice Program for Various Types of Juvenile Offenders*, 57 INT. J. OFFENDER THER. COMP. CRIMINOL. 1054, 1061, 1069 (2013).
- <sup>80</sup> Pre-arraignment juvenile diversion is available in all Massachusetts counties except Berkshire and Suffolk Counties.
- <sup>81</sup> For example, in Worcester County, diversion is primarily used for shoplifting and certain motor vehicle offenses. Telephone interview with Don Xenos, Assistant District Attorney, The Office of the Worcester County District Attorney, February 21, 2014. In Middlesex County, on the other hand, diversion is available for a broader range of offenses, but youth with motor vehicle offenses are not eligible for diversion. Telephone interview with Alice Casey, Assistant District Attorney, The Office of the Middlesex County District Attorney, February 21, 2014.
- <sup>82</sup> HOWARD ZEHR, THE LITTLE BOOK OF RESTORATIVE JUSTICE (2002).
- <sup>83</sup> Restorative justice can also be used with adults and at other points in the legal process.
- <sup>84</sup> Bergseth & Bouffard, *supra* note 79, at 1061, 1069.
- <sup>85</sup> Jaimie P. Beven et al., *Restoration or Renovation? Evaluating Restorative Justice Outcomes*, 12 PSYCHIATRY, PSYCHOL. & LAW 194 (2005). Tinneke Van Camp & Jo-Anne Wemmers, *Victim satisfaction with restorative justice more than simply procedural justice*, 19 INT'L R. VICTIMOLOGY 117 (2013).
- <sup>86</sup> Jeff Latimer, Craig Dowden, & Danielle Muise, *The Effectiveness of Restorative Justice Practices: A Meta-analysis*, 85 THE PRISON J. 127, 137 (2005); Kathleen J. Bergseth & Jeffrey A. Bouffard, *The long-term impact of restorative justice programming for juvenile offenders*, 35 J. CRIM. JUST. 433 (2007).
- <sup>87</sup> Restorative justice can raise due process concerns, as information revealed during the restorative justice process could potentially be used against a child if his case subsequently returns to court. As the use of restorative justice grows, formal safeguards, such as Memoranda of Understanding with District Attorneys' offices, should be established to protect participants from undue risk. Also, eligibility is often limited even though research shows that restorative justice can be effective for a broad range of offenders, leaving an important area for improvement. Bergseth & Bouffard, *supra* note 79, at 1061, 1069.
- <sup>88</sup> The key difference between restorative justice and other diversion plans is that restorative justice plans are developed by a consensus of all the parties affected, while diversion plans are often created by a third party.
- <sup>89</sup> Telephone interview with Jennifer Larson Sawin, Executive Director, Communities for Restorative Justice (October 28, 2013).

- <sup>90</sup> Communities for Restorative Justice, *The Talking Piece* (Winter 2013). Available online at <http://c4rj.com/documents/C4RJWinter2013TalkingPiece.pdf>.
- <sup>91</sup> Christy Barbee, In-depth Analysis of C4RJ's 2010 Recidivism Study (2011).
- <sup>92</sup> Telephone interview with Erin Freeborn, Executive Director, Juvenile Court Restorative Justice (October 31, 2013).
- <sup>93</sup> Email from Jacquelyn M. Rose, Director of Outreach and Community Programs, Cambridge Police Department (February 20, 2014). On file with CfJJ. THE CAMBRIDGE SAFETY NET COLLABORATIVE: A COORDINATED APPROACH TO PROMOTE ADOLESCENT DEVELOPMENT AND ADDRESS DELINQUENCY, MANUAL (2013) [hereinafter THE CAMBRIDGE SAFETY NET COLLABORATIVE]. The Safety Net Collaborative also offers prevention programs to all Cambridge youth and intervention programs for youth who are at risk of offending. The Collaborative includes The Cambridge Health Alliance (CHA), Cambridge Public Schools (CPS), and Department of Human Services Youth Programs (DHS).
- <sup>94</sup> Email from Jacquelyn M. Rose, Director of Outreach and Community Programs, Cambridge Police Department (February 20, 2014). On file with CfJJ.
- <sup>95</sup> THE CAMBRIDGE SAFETY NET COLLABORATIVE, *supra* note 93, at 8.
- <sup>96</sup> Interview with David Strong, Director, Juvenile Justice, RFK Children's Action Corps, in Boston, MA (December 6, 2013).
- <sup>97</sup> RFK Children's Action Corps, Youth Discharged from Dorchester DDP Calendar Years 2009 thru 2013 Powerpoint, on file with CfJJ.
- <sup>98</sup> Interview with James Lister, Executive Director, The Plummer Home, and Keith Willa, On Point Program Leader, in Salem, MA (January 17, 2014).
- <sup>99</sup> Kristine M. Baber & Adam Rainer, *Positive Youth Development: Bridging Theory into Practice at Therapeutic Schools and Programs*, 5 J. THERAPEUTIC SCHS. & PROGRAMS 46 (2011).
- <sup>100</sup> STATE OF THE INITIATIVE, *supra* note 5, at 6.
- <sup>101</sup> Interview with Lynsey M. Heffernan, JDAI Detention Reform Specialist (October 30, 2013).
- <sup>102</sup> Email from Lynsey M. Heffernan, JDAI Detention Reform Specialist, DYS, to Citizens for Juvenile Justice (Feb. 11, 2014). On file with CfJJ.
- <sup>103</sup> Memorandum of Understanding between the DYS and the DCF: Pretrial Detention (2009), available online at <http://www.mass.gov/eohhs/docs/dcf/memo-of-understanding-pre-trial-detention.pdf>.
- <sup>104</sup> Telephone interview with Patrick Sparks, Attorney in Charge, Youth Advocacy Division Springfield Office (December 10, 2013).
- <sup>105</sup> PATRICK GRIFFIN, MODELS FOR CHANGE: INNOVATIONS IN PRACTICE 9-11 (2010).
- <sup>106</sup> Telephone interview with Patrick Sparks, Attorney in Charge, Youth Advocacy Division Springfield Office (December 10, 2013); Email from Bridget Nichols, Springfield Juvenile Court Clinic, to Emily Bloomenthal, Senior Policy Associate, Citizens for Juvenile Justice (Feb. 27, 2014). On file with CfJJ.
- <sup>107</sup> JUVENILE DIVERSION GUIDEBOOK, *supra* note 78.
- <sup>108</sup> THE DANGERS OF DETENTION, *supra* note 1; UNLOCKING THE FUTURE, *supra* note 1; ALTERNATIVES TO THE SECURE DETENTION, *supra* note 1; NO PLACE FOR KIDS, *supra* note 1; TWO DECADES OF JDAI, *supra* note 1.
- <sup>109</sup> REFORMING JUVENILE JUSTICE, *supra* note 17, at 10-11, 145-151; DAVID STEINHART, JUVENILE DETENTION RISK ASSESSMENT: A PRACTICE GUIDE TO JUVENILE DETENTION REFORM (Annie E. Casey Foundation 2006).
- <sup>110</sup> LOCKING UP OUR CHILDREN, *supra* note 6, at 22-23.
- <sup>111</sup> PAUL DEMURO, CONSIDER THE ALTERNATIVES: PLANNING AND IMPLEMENTING DETENTION ALTERNATIVES (PATHWAYS TO DETENTION REFORM, ANNIE E. CASEY FOUNDATION (1999).
- <sup>112</sup> JULIAN D. FORD ET AL., TRAUMA AMONG YOUTH IN THE JUVENILE JUSTICE SYSTEM: CRITICAL ISSUES AND NEW DIRECTIONS, NATIONAL CENTER FOR MENTAL HEALTH AND JUVENILE JUSTICE RESEARCH AND PROGRAM BRIEF (2007).
- <sup>113</sup> JANET K. WIIG AND JOHN A. TUELL, GUIDEBOOK FOR JUVENILE JUSTICE & CHILD WELFARE SYSTEM COORDINATION AND INTEGRATION: A FRAMEWORK FOR IMPROVED OUTCOMES, 3RD EDITION (MacArthur Foundation, Models for Change 2013).
- <sup>114</sup> REFORMING JUVENILE JUSTICE, *supra* note 17, at 13-14.
- <sup>115</sup> *Id.*



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