

DISPROPORTIONATE MINORITY CONFINEMENT IN MASSACHUSETTS
Failures in Assessing and Addressing Overrepresentation of
Minorities in the Massachusetts Juvenile Justice System

AN ACLU REPORT
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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.¹

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.² 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 compliance and provides technical assistance to states that need and request it.³

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 Island 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.

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.⁴ 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).⁵

Although OJJDP audits have repeatedly 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.
- ! The Commonwealth has yet to adequately identify 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 are 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.

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.

! 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.⁶ The studies upon which the Commonwealth relies do not support this conclusion:

P Racial disparities continue to exist in detention and adjudication decisions after controlling for gender, age, severity of offense and prior record.

P 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.

P 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.⁷

! 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

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).

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 be 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.⁸ 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 policy makers 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 youth at risk 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

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.

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 1, 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 color by July 1, 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 1, 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 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.