

**HOW TO DOWN-SIZE A SYSTEM:
QUERYING THE CONTRACTION OF MASSACHUSETTS' JUVENILE LEGAL
SYSTEM AND ENVISIONING NEXT STEPS**

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ABSTRACT

This Article documents the radical reduction in the size of the Massachusetts juvenile legal system over the past fifteen years, arguing that this decline is due in part to legal and policy changes and in part to broader societal shifts. The Article poses a framework for analyzing where the juvenile legal system stands in Massachusetts—how we got to where we are today, where we can go next, and what lessons other states can take away. It finds that there remain opportunities to continue the trend of reducing system contact and its associated harms for youth whose needs remain unmet by government intervention, particularly with respect to those affected by ongoing racial and ethnic disparities in the system.

While this Article highlights various system improvements, it should not be construed as a congratulatory job well done. Rather, it notes an inflection point. Looking forward, Massachusetts policymakers should: (1) further reduce the scope of the juvenile legal system's impact on children in conflict with the law and (2) raise the age of juvenile jurisdiction to include eighteen- to twenty-year-olds. Policymakers and advocates outside of the state should consider ways to meet the developmental needs of young people outside of the juvenile legal system and orient youth-serving systems toward positive youth development. The huge reduction in the number of children subject to the juvenile legal system in Massachusetts is a major victory, but the work of universally responding to adolescent behavior in a developmentally appropriate manner remains unfinished.

INTRODUCTION

The Massachusetts juvenile legal system¹ has seen a radical reduction in size over the previous fifteen years, partly due to legal and policy changes and partly due to broader societal shifts. In the 1990s, a prominent yet misguided narrative existed that the new generation of adolescents were unlike previous youth—they were radical, remorseless, and dangerous to society. Several influential criminologists peddled this narrative, coining the term “superpredators” to refer to children who were perceived as beyond rehabilitation.² To pacify safety concerns raised by this new perception of children, nearly every state in the country expanded laws that withdrew adolescents from the (relatively) rehabilitative-focused juvenile legal system into the punitive adult system.³ For example, the 1990 Harbour Amendment and the 1991 Copney-Grant Amendment lowered the standards under which children could be charged in adult court in Massachusetts.⁴ This increased criminalization and punishment of youth resulted in the state’s juvenile

1 This Article uses the term “juvenile legal system” in place of “juvenile justice system,” recognizing that the current system that responds to and sometimes incarcerates youth accused of breaking the law is not consistently just. The use of the neutral term “legal” rather than “justice” removes the presumption that the system distributes justice and allows a more critical analysis of system actors’ intentions and practices. Some legal system advocates have replaced the term “justice system” with “legal system,” including the Vera Institute for Justice and David Harris, while at Harvard University’s Institute for Race & Justice. Erica Bryant, *Why We Say “Criminal Legal System,” Not “Criminal Justice System,”* VERA (Dec. 1, 2021), <https://www.vera.org/news/why-we-say-criminal-legal-system-not-criminal-justice-system>; David J. Harris, *The Phrase ‘Criminal Justice System’ Has to Go,* COMMONWEALTH MAG. (June 28, 2020), <https://commonwealthmagazine.org/opinion/the-phrase-criminal-justice-system-has-to-go/>. The word “juvenile” refers broadly to people under age eighteen, though the lower age of juvenile court jurisdiction in Massachusetts changed from seven to twelve on July 1, 2019, due to changes enacted in the 2018 criminal justice reform legislation. An Act Relative to Criminal Justice Reform, 2018 Mass. Acts 94, 96–97 (codified as amended at MASS. GEN. LAWS ch. 119, §§ 52, 54, 67, 68, 68A, 84 (2018)). This Article covers a time period that is both before and after this change, so the data reflects age ranges of seven to seventeen or twelve to seventeen depending on the year. Because the word “juvenile” is almost never used in a positive sense in English (as evidenced by the awkwardness of the following example: “I took my juveniles to school today”), this Article instead uses the word “youth” to mean young people subject to juvenile court jurisdiction.

2 See *The Superpredator Myth, 25 Years Later*, EQUAL JUST. INITIATIVE (Apr. 7, 2014), <https://eji.org/news/superpredator-myth-20-years-later/>.

3 *Id.*

4 MARGO NASH, *THE POLITICS OF MURDER* 50–52 (2016).

legal system growing to its maximum size during the mid-2000s.⁵

Youth involvement in crime has declined substantially during the past three decades across the country, as measured by rates of youth arrests and incarceration. Between the mid-2000s and 2022, the number of young people coming into contact with the juvenile legal system in Massachusetts has trended sharply downward.⁶ The decrease in the number of children arrested, under the jurisdiction of the juvenile court, and committed to the Department of Youth Services (DYS)⁷ outpaced declining numbers in both Massachusetts' adult criminal legal system and the juvenile systems in other states.⁸

This Article argues that changes in Massachusetts law, policy, and practice were key drivers of the decline. Accordingly, I argue that Massachusetts policymakers should, at the same time: (1) further reduce the scope of the juvenile legal system's impact on children in conflict with the law and (2) raise the age of juvenile jurisdiction to include eighteen-to-twenty-year-olds. Policymakers and advocates outside of the state should, wherever possible, consider making changes in line with those made in Massachusetts in their efforts to meet the developmental needs of young people outside of the juvenile legal system and orient their youth-serving systems toward positive youth development.

Fundamentally, I support such decreases in the juvenile legal system because court involvement simply does not benefit most youth—even those who have committed serious crimes—nor does court involvement result in meaningful or timely accountability. For decades, studies have shown that formal system processing does not reduce

5 *See infra* Figure 1.

6 *See infra* Section II.A.

7 This Article uses a number of acronyms, listed here for ease of reference: Department of Youth Services (DYS), Office of the Child Advocate (OCA), Positive Youth Development (PYD), Juvenile Justice Policy and Data Board (JJPAD), Department of Corrections (DOC), School Resource Officer (SRO), Memorandum of Understanding (MOU), Department of Elementary and Secondary Education (DESE), Committee for Public Counsel Services (CPCS), Youth Advocacy Division (YAD), Children and Family Law Division (CAFL), Child Requiring Assistance (CRA), Child in Need of Services (CHINS), Family Resource Center (FRC), Department of Children and Families (DCF), Mental Health Advocacy for Kids (MHAP for Kids), Supreme Judicial Court (SJC), Continuance Without a Finding (CWOFF), Ohio Youth Assessment System (OYAS), Youth Engaged in Services (YES), Youth Advocacy Project (YAP), Grant of Conditional Liberty (GCL), Juvenile Detention Alternatives Initiative (JDAI), Office of Juvenile Justice and Delinquency Prevention (OJJDP), Special Education in Institutionalized Settings (SEIS).

8 *See infra* Section II.B.

delinquency and that incarceration is ineffective at reducing recidivism.⁹ Formal system processing has been found to actually increase juvenile delinquency, particularly when compared to outcomes for youth who participated in diversion programs or who received alternative community-based services.¹⁰ Juvenile legal system involved youth often struggle in the transition to adulthood due to exposure to crime, interfering with school and family connections, and simply being labeled “criminal.”¹¹ Pathways to Desistance, a long-term longitudinal study following more than 1,300 youth accused of serious offenses, identified factors that led some young people to persistently re-offend and those that led others to desist from crime.¹² The study indicates that even youth accused of serious offenses mature psychologically, socially, and cognitively over time;¹³ as such, the severity or frequency of offending does not necessarily predict future re-offending.¹⁴ This aging out of risky and illegal behavior coincides with their increased brain development, even without system intervention.¹⁵

- 9 Francis T. Cullen et al., *Prisons Do Not Reduce Recidivism: The High Cost of Ignoring Science*, 91 PRISON J. 48S, 57S–58S (2011) (reviewing empirical evidence of recidivism to conclude prisons do not clearly reduce recidivism and may instead have criminogenic effects); Anthony Petrosino et al., *Formal System Processing of Juveniles: Effects on Delinquency*, CAMPBELL SYSTEMATIC REVIEWS, Jan. 29, 2010, at 1, 5–6, 36–38 (finding, after a review of twenty-nine studies over the course of thirty-five years, that juvenile system processing tends to increase subsequent delinquent behavior rather than reduce it).
- 10 Petrosino, *supra* note 9, at 6, 39.
- 11 JESSE JANNETTA & CAMERON OKEKE, URB. INST., STRATEGIES FOR REDUCING CRIMINAL AND JUVENILE JUSTICE INVOLVEMENT 3 (2017), <https://www.urban.org/sites/default/files/publication/94516/strategies-for-reducing-criminal-and-juvenile-justice-involvement.pdf>.
- 12 LAURENCE STEINBERG, MODELS FOR CHANGE, GIVE ADOLESCENTS THE TIME AND SKILLS TO MATURE, AND MOST OFFENDERS WILL STOP 1 (2014), <https://www.pathwaysstudy.pitt.edu/documents/MacArthur%20Brief%20Give%20Adolescents%20Time.pdf>.
- 13 *Id.* at 1–2.
- 14 *Id.* at 2–3 (identifying five varying patterns of antisocial or criminal behavior during adolescence and showing that majority of youth in each category tended to desist in such behavior over time, though to varying degrees); *see also* Kathryn C. Monahan et al., *Trajectories of Antisocial Behavior and Psychosocial Maturity from Adolescence to Young Adulthood*, 45 DEV. PSYCH., 1654, 1654, 1664–65 (2009) (full study documenting “adolescence-limited” offenders—youth who desist from antisocial behavior beyond their teenage years, regardless of their previous patterns of behavior—and “life-course-persistent offenders,” who make up the minority of youth and whose behaviors are likely derived from “neuropsychological and cognitive deficits that, in combination with early family disadvantage, continue to affect functioning”).
- 15 *See* Duzbayeva Saltanat Bekbolatkyzya et. al, *Aging Out of Adolescent Delinquency:*

Given the well-documented harms of legal system involvement—especially for youth who have committed less serious offenses¹⁶—the reduction in the number of children interacting with the juvenile legal system is unambiguously good. Not only does legal system involvement fail to prevent future offenses, but it also harms youth in the process. Legal system involvement harms youths' access to education, future employment, and ability to secure housing.¹⁷ It can also be traumatic from the point of arrest on through detention and incarceration.¹⁸ Alternate responses to developmentally appropriate, though sometimes illegal, behavior include decriminalization, diversion, and reduced consequences of court contact. These approaches can allow most youth to safely take developmentally appropriate risk-taking actions without the aforementioned harms that come with system involvement.¹⁹

Admittedly, the juvenile legal system is also set up to weigh accountability and public safety, especially in response to allegations of serious and violent behavior. But the point is that only a small number of youth require the level of intervention that the court system brings, and this intervention should be tailored, provide wrap-around services, and be steeped in positive youth development framing to actually make the life trajectory shifts that benefit the youth while also meeting public safety and accountability system goals.

This position aligns with recent advances in the scientific understanding of adolescent brain development—advances that propelled an overarching culture shift among system policymakers and professionals away from a punitive juvenile legal system. In the 1990s, researchers achieved many milestones in understanding the adolescent brain.²⁰ Their research paved the way for the subsequent

Results from a Longitudinal Sample of T Youth and Young Adults, 60 J. CRIM. JUST. 108, 108 (2019); Laurence Steinberg, *Adolescent Development and Juvenile Justice*, 5 ANNU. REV. CLINICAL PSYCH. 459, 467–70 (2009).

16 E.g., Mahsa Jafarian & Vidhya Ananthkrishnan, *Just Kids: When Misbehaving Is a Crime*, VERA (Aug. 2017), <https://www.vera.org/when-misbehaving-is-a-crime>.

17 HEALTH IMPACT PROJECT, HOW INVOLVEMENT IN THE CRIMINAL JUSTICE SYSTEM AFFECTS HEALTH (2018), https://www.pewtrusts.org/-/media/assets/2018/12/howinvolvementcriminaljusticesystemaffectshealth_infographic_v4.pdf.

18 NONI GAYLORD-HARDEN, VIOLENCE EXPOSURE, CONTINUOUS TRAUMA, AND REPEAT OFFENDING IN FEMALE AND MALE SERIOUS ADOLESCENT OFFENDERS, 3, 8–9 (2018), <https://www.ojp.gov/pdffiles1/ojjdp/grants/254493.pdf>; see Carly B. Dierkhising et al., *Trauma Histories Among Justice-Involved Youth: Findings from the National Child Traumatic Stress Network*, EUR. J. PSYCHOTRAUMATOLOGY, July 16, 2013, at 1, 1–2.

19 See *infra* Section IV.B.

20 NAT'L RSCH. COUNCIL & INST. MEDICINE ET AL., ADOLESCENT DEVELOPMENT AND THE

change in the way youth behavior is understood and aims to address youth needs. As researchers set out to learn more about how to best understand youth during their transition into adulthood, they began to recognize the unique challenges and opportunities of adolescence.²¹ Advances in technology allowed researchers to identify continued brain growth throughout adolescence, challenging previous assumptions that an individual's brain development ceased upon reaching puberty.²² Specifically, neuro-imaging found that the “frontal lobes, home to key components of the neural circuitry underlying ‘executive functions’ such as planning, working memory, and impulse control,” are not fully developed until around the age of twenty-five.²³ Increased understanding of cognitive development has allowed youth-serving institutions to better understand the impulsivity and risk-seeking behavior that takes place during adolescence.²⁴ More recently, the recognition that normal brain development continues through age twenty-five has led to a push for a specialized approach by the legal system to support “emerging adults” (namely those aged eighteen to twenty-five) as well.²⁵

A better understanding of adolescence also paved the way for the emergence of strategies and approaches that support young people in developmentally appropriate ways. Prior to the late twentieth century, professionals working with adolescents generally focused on the management of risk factors.²⁶ Professionals thus applied a deficit-model of adolescent development,²⁷ which applied “a perspective [that] attributes failures such as lack of achievement, learning, or success in

BIOLOGY OF PUBERTY 8–13 (Michele D. Kipke ed. 1999), https://www.ncbi.nlm.nih.gov/books/NBK224695/pdf/Bookshelf_NBK224695.pdf.

21 See Nancy L. Galambos & Bonnie J. Leadbeater, *Trends in Adolescent Research for the New Millennium*, 24 INT'L J. BEHAV. DEV. 289, 290 (2000).

22 Sara B. Johnson et al., *Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent Health Policy*, 45 J. ADOLESCENT HEALTH 216, 216–18 (2009).

23 *Id.* at 216.

24 JUV. DEF. NETWORK, ADOLESCENT BRAIN DEVELOPMENT: UNDERSTANDING THE PARTS OF THE BRAIN 3 (2005), <https://www.publiccounsel.net/ya/wp-content/uploads/sites/6/2014/08/Understanding-the-Parts-of-the-Brain.pdf>.

25 SELEN SIRINGIL PERKER & LAEL CHESTER, EMERGING ADULTS: A DISTINCT POPULATION THAT CALLS FOR AN AGE-APPROPRIATE APPROACH BY THE JUSTICE SYSTEM 1–4 (2017), https://www.hks.harvard.edu/sites/default/files/centers/wiener/programs/pcj/files/MA_Emerging_Adult_Justice_Issue_Brief_0.pdf.

26 JEFFREY A. BUTTS ET AL., COAL. FOR JUV. JUST., POSITIVE YOUTH JUSTICE: FRAMING JUSTICE INTERVENTIONS USING THE CONCEPTS OF POSITIVE YOUTH DEVELOPMENT 9 (2010), https://www.publiccounsel.net/ya/wp-content/uploads/sites/6/2015/02/resource_1548.pdf.

27 *Id.*

gaining employment to a personal lack of effort or deficiency in the individual.”²⁸ This model undergirded the more punitive juvenile legal system.

More recent developments in adolescent brain research support an approach called Positive Youth Development (PYD), which has gained notable attention in Massachusetts²⁹ and elsewhere.³⁰ PYD is a strengths-based approach to supporting young people’s development—one that builds upon a young person’s potential, specifically seeing them as resourceful and resilient when they are in adverse conditions.³¹ Instead of looking at adolescence as a period of risk and turmoil, PYD sees young people as assets and the period of adolescence as an opportunity. Research also highlights the benefits of using incentives alongside—or instead of—punishments for youth.³² Incentives shown to increase positive behaviors include intangible and tangible reinforcement of positive behavior, such as immediate and consistent positive feedback and tickets to community events.³³

This broad shift has been not only from punishment and incapacitation to rehabilitation, but also toward developmentally appropriate interventions that support young people’s healthy development, without assuming that adolescents have been “debilitated” and need “rehabilitation.” While this cultural and practice change exists both inside and outside of the juvenile legal system, we do not consider this shift to be “complete” but rather a trend and an ongoing process. Pressure coming from police public relations offices,³⁴ as well as some prosecutors and politicians,³⁵ means that a backslide toward

28 *Deficit Model*, OXFORD REFERENCE, <https://www.oxfordreference.com/view/10.1093/oi/authority.20110803095707115> (last visited Mar. 31, 2023).

29 See *infra* Section III.C.

30 E.g., Richard F. Catalano et al., *Positive Youth Development in the United States: Research Findings on Evaluations of Positive Youth Development Programs*, 591 AM. ACAD. POL. & SOC. SCI. 98 (2004).

31 BUTTS ET AL., *supra* note 26, at 9.

32 Samantha Harvell et al., URB. INST., BRIDGING RESEARCH AND PRACTICE IN JUVENILE PROBATION 51–52 (2018), https://www.urban.org/sites/default/files/publication/99223/bridging_research_and_practice_in_juvenile_probation_8.pdf.

33 *Id.* at 52–53.

34 See, e.g., Maya Lau, *Police PR Machine Under Scrutiny for Inaccurate Reporting, Alleged Pro-Cop Bias*, L.A. TIMES (Aug. 30, 2020), <https://www.latimes.com/california/story/2020-08-30/police-public-relations> (describing the ways in which police public relations offices “assassinate the character” of individuals the police kill).

35 E.g., Ivy Scott, *Hayden Fires Head of Juvenile Unit, Drawing Mixed Reactions from Reformers and Supporters*, BOS. GLOBE (Sept. 16, 2022), <https://www.bostonglobe.com/2022/09/16/metro/hayden-fires-head-juvenile-unit-drawing-mixed->

more punitive responses to youth activity is possible. Even now, while Massachusetts' child-serving system actors such as DYS have moved toward a PYD model generally, not all youth receive the benefits of such strategies. For instance, Black and Latinx youth and emerging adults remain subject to an overly harsh charging and adult carceral system poorly equipped to handle their needs.³⁶ Nonetheless, the growing knowledge regarding adolescent development has laid the foundation for better outcomes for youth to receive developmentally appropriate responses to their needs and behavior. These responses to youth have led to less system intervention overall.

At the same time, youth involvement in crime declined substantially during the past three decades across the country, as measured by rates of youth arrests and incarceration.³⁷ Researchers propose many potential reasons for the decline, including changes in exposure to social controls and social settings to which youth are exposed, as well as changes to youth behavior and propensity for unhealthy risk-taking.³⁸ In a study analyzing global crime reduction, researchers noted that a technology-facilitated shift of public to private social interactions in the United States may have decreased exposure of individuals to offenders, while increasing the number of people at home and advancing their home-security measures.³⁹ Additionally, researchers have relied on data from the Centers for Disease Control and Prevention to reveal that adolescents are individually engaging in less health-risk behaviors, such as drinking alcohol and physically fighting, since the earliest year

reactions-reformers-supporters/; Julie O'Donoghue, *Juvenile Justice Official Suggests Louisiana Prosecutors Should Charge More Minors as Adults*, LA. ILLUMINATOR (Aug. 9, 2022), <https://lailluminator.com/2022/08/09/juvenile-justice-official-suggests-louisiana-prosecutors-should-charge-more-minors-as-adults/>; Keri Blakinger, *Prosecutors Who Want to Curb Mass Incarceration Hit a Roadblock: Tough-on-Crime Lawmakers*, MARSHALL PROJECT (Feb. 3, 2022), <https://www.themarshallproject.org/2022/02/03/prosecutors-who-want-to-curb-mass-incarceration-hit-a-roadblock-tough-on-crime-lawmakers>.

36 PERKER & CHESTER, *supra* note 25, at 1–4; *see infra* Section II.C.

37 *Juvenile Arrest Rate Trends*, OJJPD STAT. BRIEFING BOOK (July 08, 2022), https://www.ojjdp.gov/ojstatbb/crime/JAR_Display.asp?ID=qa05200&selOffenses=1; *Youth Incarceration in the United States*, ANNIE E. CASEY FOUND. (Dec. 14, 2014), <https://www.aecf.org/resources/youth-incarceration-in-the-united-states#summary>.

38 Eric P. Baumer et al., *The Contemporary Transformation of American Youth: An Analysis of Change in the Prevalence of Delinquency, 1991–2015*, 59 CRIMINOLOGY 109, 110–11 (2021). Changes to social controls refer to macro-level adjustments, including quantity and quality of policing and social institutional strength. *Id.*

39 Eric P. Baumer et al., *Evaluating Contemporary Crime Drop(s) in America, New York City, and Many Other Places*, 31 JUST. Q. 5, 22–23 (2014).

of data collection.⁴⁰ And although national trends are different, fewer adolescents report carrying handguns in Massachusetts between 2002 and 2019.⁴¹ These trends mark individual changes in behavior favoring self-preservation and safety that partially contribute to lower crime rates for youth and emerging adults.

There is still significant debate among criminologists regarding what drove the decrease in reported youth crime rates, and I do not aim in this piece to attribute individual factors that likely contributed to the reduction.⁴² This lower rate, however, is a factor in the analysis of the juvenile legal system size, both because crime rate correlates with arrests and because the low crime rate may have indirectly paved the way for a shift from the inflammatory, tough-on-crime rhetoric about “superpredators” toward a preference for proportional accountability.

As youth crime rates have declined, national public opinion has expressed increasing preference for a rehabilitative criminal system rather than one that prioritizes punishment. For example, in 2016, the Alliance for Safety and Justice surveyed more than 800 victims of crime, finding that more than half prefer a system that deals shorter prison sentences and devotes more resources to prevention and rehabilitation programs.⁴³ Changes in public opinion have also been met with changes in policy, with some states prioritizing community-based interventions and limiting length of confinement for youth.⁴⁴ “Progressive prosecutors” campaigning on reform-heavy platforms to end mass incarceration and prosecuting fewer low-level offenses have won victories nationwide in the last several years,⁴⁵ though this movement has drawn criticisms from

40 Laura Kann et al., *Youth Risk Behavior Surveillance – United States, 2015*, MORBIDITY & MORTALITY WKLY. REP.: SURVEILLANCE SUMMARIES, June 10, 2016, at 1, 1; see also NAT’L ACADS. SCIS., ENG’G, & MED., PROMOTING POSITIVE ADOLESCENT HEALTH BEHAVIORS AND OUTCOMES 3 (Robert Graham & Nicole F. Kahn eds., 2020).

41 Kay Lazar, *More Kids Report Carrying Handguns, with Largest Rise Among White, Wealthy, and Rural Teens, New Study Finds*, BOS. GLOBE (Apr. 26, 2022), <https://www.bostonglobe.com/2022/04/26/metro/more-kids-report-carrying-handguns-with-largest-rise-among-white-wealthy-rural-teens-new-study-finds/>.

42 Though this would be a rich area for future research.

43 ALL. FOR SAFETY & JUST., CRIME SURVIVORS SPEAK: THE FIRST-EVER NATIONAL SURVEY OF VICTIMS’ VIEWS ON SAFETY AND JUSTICE 4–6 (2016), <https://allianceforsafetyandjustice.org/wp-content/uploads/documents/Crime%20Survivors%20Speak%20Report.pdf>.

44 DANA SHOENBERG, PEW CHARITABLE TRS., HOW STATE REFORM EFFORTS ARE TRANSFORMING JUVENILE JUSTICE 1, 15–16 (2019), https://www.pewtrusts.org/-/media/assets/2019/12/how_state_reform_efforts_are_transforming_juvenile_justice_v2.pdf.

45 Caren Morrison, *Progressive Prosecutors Scored Big Wins in 2020 Elections, Boosting a Nationwide Trend*, CONVERSATION (Nov. 18, 2020), <https://theconversation.com>.

abolitionists,⁴⁶ as well as “tough on crime” actors with deep pockets.⁴⁷

These nationwide changes in public opinion and policy contribute to decreased crime rates,⁴⁸ especially for youth and young adults that are widely seen as amenable to rehabilitation and less deserving of harsh punishment.⁴⁹ That said, in a system long associated with oppression of poor and historically marginalized communities,⁵⁰ white youth have seen a steeper decline in police contacts, arrests, and commitments than Black and Latinx youth.⁵¹

This Article poses a framework for analyzing where the juvenile legal system stands in Massachusetts, how we got to where we are today, where we can go next, as well as what lessons other states can take away.

com/progressive-prosecutors-scored-big-wins-in-2020-elections-boosting-a-nationwide-trend-149322.

46 See Rachel Foran et al., *Abolitionist Principles for Prosecutor Organizing: Origins and Next Steps*, 16 STAN. J. C.R. & C.L. 496, 499–500 (2021).

47 See, e.g., Thomas Fuller, *Voters in San Francisco Topple the City's Progressive District Attorney, Chesa Boudin*, N.Y. TIMES (June 8, 2022), <https://www.nytimes.com/2022/06/07/us/politics/chesa-boudin-recall-san-francisco.html> (recall of “progressive prosecutor” Chesa Boudin in San Francisco); Dario McCarty, *Big Donors Fueled High Profile Recall of Progressive San Francisco District Attorney Chesa Boudin*, OPEN SECRETS (July 7, 2022), <https://www.opensecrets.org/news/2022/07/big-donors-fueled-high-profile-recall-of-progressive-san-francisco-district-attorney-chesa-boudin/> (identifying some of the large donors that funded her recall).

48 *Youth Crime Rates Drop, But Progress is Still Needed*, MST SERVICES (Nov. 14, 2018), <https://info.mstservices.com/blog/juvenile-crime-rates>.

49 NAT'L JUV. JUST. NETWORK, POLLING ON PUBLIC ATTITUDES: TREATMENT OF YOUTH IN TROUBLE WITH THE LAW 1–2 (2016), <https://www.njjn.org/uploads/njjn-publications/Polling-Oct2016.pdf?phpMyAdmin=14730ab3483c51c94ca868bccffa06ef>.

50 *US: Criminal Justice System Fuels Poverty Cycle*, HUM. RTS. WATCH (June 21, 2018), <https://www.hrw.org/news/2018/06/21/us-criminal-justice-system-fuels-poverty-cycle>; *The Legal System Has Failed Its Promise of Equal Justice*, EQUAL JUST. UNDER L., <https://equaljusticeunderlaw.org/overview> (last visited Mar. 31, 2023); SENT'G PROJECT, REPORT OF THE SENTENCING PROJECT TO THE UNITED NATIONS SPECIAL RAPPORTEUR ON CONTEMPORARY FORMS OF RACISM, RACIAL DISCRIMINATION, XENOPHOBIA, AND RELATED INTOLERANCE (2018), <https://www.sentencingproject.org/app/uploads/2022/08/UN-Report-on-Racial-Disparities.pdf>; SUSAN NEMBARD & LILY ROBIN, URB. INST., RACIAL AND ETHNIC DISPARITIES THROUGHOUT THE CRIMINAL LEGAL SYSTEM (2021), <https://www.urban.org/sites/default/files/publication/104687/racial-and-ethnic-disparities-throughout-the-criminal-legal-system.pdf>.

51 JOSHUA ROVNER, SENT'G PROJECT, RACIAL DISPARITIES IN YOUTH COMMITMENTS AND ARRESTS 1–4 (2016), <https://www.sentencingproject.org/app/uploads/2022/08/Racial-Disparities-in-Youth-Commitments-and-Arrests.pdf>; Robert D. Crutchfield et al., *Racial Disparity in Police Contacts*, 2 RACE & JUST. 179, 196–97 (2012).

In looking back at the major changes that impacted youth interactions with the legal system, a critical eye should be cast toward the harms and disparities that the system continues to perpetuate. Attention must be paid to the youth who remain in the system despite the reforms that allowed many others to avoid system contact. Ultimately, an opportunity exists to continue the trend of reducing system contact and its associated harms, with a particular focus on the youth whose needs remain unmet by government intervention.

In exploring potential drivers of the decline in the number of youth who move through the juvenile legal system, I do not aim to attribute causation to any single legislative, policy, or practice change. Instead, I hope to identify the legislative and policy changes that were successful in reducing the harms associated with system contact and how such changes targeted young people differently by race, ethnicity, and geography. My goal is to take inventory of the reforms and interventions that have led to positive change, in the hopes of both expanding their impact to reach the state's most vulnerable young people and defining a new baseline for future change. In identifying Massachusetts' successes and failures, policymakers can continue to change course toward achieving a more just legal system for all young people in the Commonwealth. I applaud the reduction in size of the juvenile system over the last fifteen years and suggest that it may serve as a "model" for reducing juvenile system size in other states, as well as for addressing mass incarceration for young adults both in Massachusetts and elsewhere.

Ultimately, I argue that annoying and sometimes illegal adolescent behavior may ultimately be developmentally appropriate—a phenomenon increasingly recognized by a recent cultural shift, especially among system professionals. Such behavior is suitable to the age range and developmental characteristics of a specific group of children. This behavior is an inherent part of youth, and most youth will grow out of risk-taking behavior without intervention as they grow older.⁵² I further argue that the juvenile legal system should prioritize developmentally appropriate accountability measures to respond to disruptive adolescent behavior. These approaches will help improve

52 JUV. JUST. POL'Y & DATA BD. [JJPAD], IMPROVING ACCESS TO DIVERSION AND COMMUNITY-BASED INTERVENTIONS FOR JUSTICE-INVOLVED YOUTH 7, 18 (2019), <https://www.mass.gov/doc/improving-access-to-diversion-and-community-based-interventions-for-justice-involved-youth-0/download> [hereinafter IMPROVING ACCESS TO DIVERSION]; Steinberg, *supra* note 15, at 467; see also Margot Peeters et al., *Unique Developmental Trajectories of Risk Behaviors in Adolescence and Associated Outcomes in Young Adulthood*, PLoS ONE, Nov. 13, 2019, at 1.

youth life and developmental outcomes, as well as reduce reoffending and recidivism, a key public safety metric.

While this Article highlights various system improvements, it should not be construed as a congratulatory job well done, in the vein of some self-adulating discourse on Massachusetts exceptionalism.⁵³ Rather, we see this moment as an inflection point wherein the Commonwealth can either sit back idly and allow a larger number of children to enter the juvenile legal system, or consciously push all child-serving systems to meet the needs of *all* youth and further reduce the size of the juvenile legal system. Achieving the latter option requires both continued advocacy and action from lawmakers and system leaders. It should not be forgotten that the policy and culture shifts described in this Article are precarious and can easily backslide.

Accordingly, this Article proceeds in four parts. Part I contextualizes the decline in the juvenile legal system in the context of potentially significant economic, social, and public health events. Part II then presents data to document the decline of the size of the legal system in Massachusetts, focusing on three key decision points: arrests, court filings, and commitments. Part III seeks to understand what factors drove this dramatic reduction in the number of children in conflict with the law, considering (1) upstream interventions to address the needs of youth, (2) changes to system-actors' approaches toward youth, (3) the juvenile legal system's increased focus on developmentally appropriate responses to youth behavior, and (4) advocacy efforts that pushed for greater accountability and collaboration between system actors. Finally, Part IV makes forward-looking recommendations for policymakers in both Massachusetts and other states.

The huge reduction in the number of children subject to the juvenile legal system in Massachusetts is a major victory, but the work of universally responding to adolescent behavior in a developmentally appropriate manner remains unfinished.

I. CONTEXT MATTERS: SOCIETAL IMPACTS ON JUVENILE SYSTEM SIZE

The shrinking number of youth involved in the Massachusetts juvenile legal system takes place within the context of broader society. It

⁵³ See generally THE POLITICS OF MASSACHUSETTS EXCEPTIONALISM: REPUTATION MEETS REALITY (Jerold Duquette & Erin O'Brien eds. 2022) (providing a "reality check" for the Massachusetts readers who have developed an over-confident perspective of their state's governance).

must, therefore, be analyzed alongside major events and trends that have impacted the lives of young people across the United States. A detailed exploration of all events that impacted young people during the past two decades is beyond the scope of this Article. I instead focus on events with significant economic, social, and public health impacts I consider inextricably tied to young people's development and their interactions with the legal system. This Part discusses the following major events: (A) public health responses to lead paint; (B) the opioid epidemic; (C) the Great Recession's impact on youth poverty; (D) ongoing systemic racism; and (E) the COVID-19 pandemic.

Because structural racism has overlaid all of these issues and events, each sub-section below highlights how the negative impacts of these events have been greater for Black and Latinx communities. Each of these events, however, have had major implications for all young people in the United States and cannot be untied from Massachusetts' recent reduction in the juvenile legal system. Conversations about future reductions in the juvenile legal system must necessarily include a recognition of the social, political, and economic context in which young people are living.

A. Determined Though Uneven Public Health Response to Lead Paint

Young people's development is impacted by their access to a healthy environment, which public health interventions have improved for some youth. In particular, lead paint regulation has affected youth legal system contact. In the 1990s and 2000s, researchers discovered that increased delinquent behavior is one of the harms associated with lead paint exposure, as lead exposure can alter an individual's brain structure, especially in an adolescent's pre-formed brain.⁵⁴ Increased blood lead levels are correlated with decreased adult gray matter volume in children's prefrontal cortices—the area of the brain that manages attention, regulates behavior, and assesses conflicts and tasks.⁵⁵ The impairment of these executive functions can lead to antisocial behaviors, such as delinquency.⁵⁶ Executive function impairment may also cause deficits in children's school skills, which can generate negative home and school environments, and which can produce an individual ripe for

54 See Tara E. Martin & Scott E. Wolfe, *Lead Exposure, Concentrated Disadvantage, and Violent Crime Rates*, 37 JUST. Q. 1, 2–4 (2020).

55 Kim M. Cecil et al., *Decreased Brain Volume in Adults with Childhood Lead Exposure*, PLoS MED., May 27, 2008, at 741, 744.

56 *Id.* at 742, 744.

persistent antisocial behavior and offending.⁵⁷

Young people's exposure to lead has declined since the passage of the Lead Based Paint Poisoning Prevention Act in 1971, which sought to remove lead paint from residential structures.⁵⁸ The Act "defined lead-based paint as paint containing more than 1 [percent] lead by weight, and paint chips as the primary hazard source" and instructed the Secretary of Health, Education, and Welfare to prohibit the use of lead-based paint in federally constructed or rehabilitated residential structures.⁵⁹ Between 1973 and 1992, further legislation banned the use of lead-based paint in residential structures containing a certain proportion or more of lead, increased funding for research into the harms of lead exposure, and "shift[ed] the focus of Federal requirements from responding to lead-poisoned children to actions that address lead-based paint hazards and reduce the risk that children will be poisoned" (essentially shifting from a downstream solution to an upstream solution).⁶⁰ Implementing these measures lessened the risk of individuals, especially children, contracting lead poisoning and suffering from the subsequent consequences.⁶¹

Access to lead-free environments, however, is not consistent across the board, with minority groups, people living in poverty, and city dwellers disproportionately susceptible to lead poisoning.⁶² The ongoing Flint water crisis provides one such example of "environmental injustice" in lead exposure.⁶³ In 2016, water testing conducted across roughly 300 public school buildings in Massachusetts also revealed high lead levels in 164 schools.⁶⁴ Two years later, the Massachusetts Department of Public

57 NAT'L CTR. FOR HEALTHY HOUS., ISSUE BRIEF: CHILDHOOD LEAD EXPOSURE AND EDUCATIONAL OUTCOMES 2 (2013) <https://www.nhlp.org/wp-content/uploads/NCHH-Childhood-Lead-Exposure-and-Educ-Outcomes.pdf>; see also Kim N. Dietrich et al., *The Developmental Consequences of Low to Moderate Prenatal and Postnatal Lead Exposure: Intellectual Attainment in the Cincinnati Lead Study Cohort Following School Entry*, 15 NEUROTOXICOLOGY & TERATOLOGY 37, 38 (1993) (study reviewing early effects of lead exposure on "school-age intellectual attainment").

58 *Legislative History of Lead-Based Paint*, DEP'T HOUS. & URB. DEV. 2, https://www.hud.gov/sites/documents/20258_LEGISLATIVEHISTORY.PDF (last visited Mar. 31, 2023); Timothy Dignam et al., *Control of Lead Sources in the United States, 1970-2017: Public Health Progress and Current Challenges to Eliminating Lead Exposure*, 25 J. PUB. HEALTH MGMT. & PRAC. S13, S13, S16 (2019).

59 Dignam et al., *supra* note 58, at S16.

60 *Legislative History of Lead-Based Paint*, *supra* note 58, at 2.

61 See Dignam et al., *supra* note 58, at S19.

62 Martin & Wolfe, *supra* note 54, at 2.

63 *Id.* at 1; Melissa Denchak, *Flint Water Crisis: Everything You Need to Know*, NRDC (Nov. 8, 2018), <https://www.nrdc.org/stories/flint-water-crisis-everything-you-need-know>.

64 Travis Anderson, *High Lead Levels Found more than 160 School Buildings*

Health estimated that still only about 10 percent of housing units built before 1978 had undergone de-leading.⁶⁵

Public health interventions in response to lead paint thus promoted healthier development and better long-term outcomes for the youth who received access to their benefits and magnified disparities for those who did not. These interventions also likely contributed to a decrease in behavior that leads to juvenile legal system involvement. At the same time, the uneven public health interventions are a reminder both of the disparate experiences of youth and of the need for measures that properly address these disparate results.

B. A Slow Shift Toward a Public Health Response to the Opioid Epidemic

Young people today grew up during an opioid epidemic that devastated their communities, increasing the risk of system involvement for many.⁶⁶ At the same time, the reframing of this epidemic as a public health emergency, rather than as a public safety issue, has shifted resources away from criminalization—the prominent response to the crack epidemic in the 1980s.⁶⁷ This shift mediated the criminalized impact of opioids and young people’s legal system involvement.⁶⁸

Though the U.S. Department of Health and Human Services did not declare the epidemic a public health emergency until 2017, opioid overdoses have been steadily increasing since 1999, with at least five times as many people dying of an opioid overdose in 2016 than in 1999.⁶⁹

in Mass., Bos. GLOBE (Nov. 15, 2016), <https://www.bostonglobe.com/metro/2016/11/15/high-lead-levels-found-more-than-school-buildings-mass/XOOX7JS309896EtX7JhAZO/story.html>.

65 Renée Loth, *Banned 40 Years Ago, Lead Paint is Still Poisoning Our Children*, Bos. GLOBE (Feb. 12, 2018), <https://www3.bostonglobe.com/opinion/2018/02/12/banned-years-ago-lead-paint-still-poisoning-our-children/7i3a4cvg98nWFgG8t2kaZL/story.html?arc404=true>.

66 *Understanding the Opioid Overdose Epidemic*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/opioids/basics/epidemic.html#print> (June 1, 2022).

67 Carmel Shachar et al., *Criminal Justice or Public Health: A Comparison of the Representation of the Crack Cocaine and Opioid Epidemics in the Media*, 45 J. HEALTH POL., POL’Y & L. 211, 211–39 (2020).

68 Jonathon A. White, *The Pipe v. the Prescription: The Difference between the Crack Epidemic and Opioid Crisis*, 11 J. RACE, GENDER, & POVERTY 65, 81–84 (2021); *Supporting Youth and Families Impacted by Opioid Use*, OFF. JUV. JUST. & DELINQ. PREVENTION (Sept. 11, 2020), <https://ojjdp.ojp.gov/programs/supporting-youth-and-families-impacted-by-opioid-use>.

69 Puja Seth et al., *Quantifying the Epidemic of Prescription Opioid Overdose Deaths*, 108

Despite its delayed response, the reframing of the opioid epidemic as a public health emergency reflected a changed disposition by the U.S. government with respect to drug-related crimes. The government's hardline response to the crack cocaine epidemic was to criminalize addiction through the racialized War on Drugs, whereas its response to the opioid epidemic was driven by an increased public health- and treatment-focused response to drug use and addiction.⁷⁰

Of course, simply categorizing the epidemic as a public health issue has not shielded young people from the effects of addiction in their homes. Children in households with members suffering from substance abuse disorders are more likely to experience increased difficulties functioning in academic, social, and family settings and to develop substance use disorders later in life.⁷¹ Infants are at a higher risk of neonatal abstinence syndrome now than before the epidemic, which may lead to “premature birth, low birthweight, sleep and growth problems, tremors, and seizures.”⁷² Toddlers are at greater risk of opioid poisoning, with instances increasing by 205 percent between 1997 and 2012.⁷³ A parent with a substance abuse disorder is also “[three] times more likely to physically or sexually abuse their child” than a parent without substance use disorder.⁷⁴ In 2017, one in three children entering foster care had parental drug abuse listed as the reason for removal.⁷⁵ Experiencing parental drug use increases a child's likelihood to engage

AM. J. PUB. HEALTH 500, 501 (2018).

70 Shachar et al., *supra* note 67, at 232–33. The difference in the political response prompted a discussion about the War on Drugs policies driving the mass incarceration of people of color versus the public health response to the opioid epidemic, which aimed to provide medical treatment for opioid users who were a whiter demographic than crack cocaine users. *Id.* at 215–16.

71 RACHEL N. LIPARI & STRUTHER L. VAN HORN, SUBSTANCE ABUSE & MENTAL HEALTH SERVS., CHILDREN LIVING WITH PARENTS WHO HAVE A SUBSTANCE USE DISORDER (2017), https://permanent.fdlp.gov/gpo133856/www.ncbi.nlm.nih.gov/books/NBK464590/pdf/Bookshelf_NBK464590.pdf.

72 Marian Wright Edelman, *Children and the Opioid Crisis*, CHILD.'S DEF. FUND (Oct. 27, 2017), <https://www.childrensdefense.org/child-watch-columns/health/2017/children-and-the-opioid-crisis/>.

73 *Id.*

74 Laura Lander et al., *The Impact of Substance Use Disorders on Families and Children: From Theory to Practice*, 28 SOC. WORK PUB. HEALTH 194 (2013).

75 Kristin Sepulveda & Sarah Catherine Williams, *One in Three Children Entered Foster Care in 2017 Because of Parental Drug Abuse*, CHILD TRENDS (Feb. 26, 2019), <https://www.childtrends.org/blog/one-in-three-children-entered-foster-care-in-fy-2017-because-of-parental-drug-abuse>. The number of children in foster care has risen parallel to the opioid epidemic and has been linked to parental opioid addiction and overdose. *Id.*

in maladaptive social behaviors, such as delinquency,⁷⁶ and thus their likelihood of contact with the juvenile system.

While the consequences of the opioid crisis increased young people's likelihood of coming into contact with the juvenile legal system, the shift toward a public health (rather than criminal) framing of opioids has mediated the impact on youths' juvenile system involvement. For example, drug courts, family treatment courts, as well as other models supported by the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP), have attempted to meld a public health framework with traditional accountability of courts.⁷⁷ There has been a call to "[e]mphasize positive development and recovery" rather than criminalization.⁷⁸ The public health framework has yielded public health strategies to prevent system-involved youth from engaging in opioid use as well.⁷⁹

Despite improved public health rhetoric, young people still face disparate access to substance use treatment.⁸⁰ Their likelihood of receiving treatment for drug abuse or dependence is low across various demographics, but youth of color receive significantly less treatment than white youth.⁸¹ Further, Black and Latinx people continue to be criminalized more often for drug-related offenses, despite similar rates of drug use to other races and ethnicities.⁸² Thus, merely relabeling the

76 Asheka Jackson, *Assessing the Impact of Parental Drug Use, Family Structure, and Environmental Conditions on Adolescents' Self-Reported Drug Use, Serious Delinquency, and Deviant Behaviors*, INT'L J. CRIMINOLOGY & SOCIO. THEORY, Mar. 2013, at 1103, 1105–06.

77 *Supporting Youth and Families Impacted by Opioid Use*, *supra* note 68.

78 Carlos Blanco et al., *America's Opioid Crisis: The Need for an Integrated Public Health Approach*, TRANSLATIONAL PSYCHIATRY, May 28, 2020, at 1, 5 (Theme 2: "Emphasize a person-centered approach").

79 The LeSA program is one such strategy. Danica Kalling Knight et al., *Preventing Opioid Use Among Justice-Involved Youth as They Transition to Adulthood: Leveraging Safe Adults (LeSA)*, BMC PUB. HEALTH, Nov. 20, 2021, at 1.

80 See Nora Volkow, *Access to Addiction Services Differs by Race and Gender*, NAT'L INST. ON DRUG ABUSE (July 16, 2019), <https://nida.nih.gov/about-nida/noras-blog/2019/07/access-to-addiction-services-differs-by-race-gender>; Andra Wilkinson & Hannah Winslow, *White Youth Are More Likely to Receive Treatment for Drug Abuse than Youth of Color, Although Treatment Is Rare for Both Groups*, CHILD TRENDS (Mar. 19, 2019), <https://www.childtrends.org/blog/white-youth-are-more-likely-to-receive-treatment-for-drug-abuse-than-youth-of-color-although-treatment-is-rare-for-both-groups>.

81 Wilkinson & Winslow, *supra* note 80.

82 DRUG POL'Y ALL., THE DRUG WAR, MASS INCARCERATION AND RACE 1–2 (2015), https://www.unodc.org/documents/ungass2016/Contributions/Civil/DrugPolicyAlliance/DPA_Fact_Sheet_Drug_War_Mass_Incarceration_and_

opioid epidemic as a public health crisis is not enough—comparable public policy and practice reform fueled by increased service provisions, treatment access, and compassion is required.

C. The Impact of the Great Recession and COVID-19 on Youth Poverty

The youth experience has been impacted by child poverty as the U.S. economy has fluctuated. Young people faced the impacts of skyrocketing unemployment, foreclosure, and poverty rates during the Great Recession of the late 2000s.⁸³ Although economic downturn and increased poverty rates are widely associated with increases in crime, the Great Recession did not cause an immediate spike in the crime rate.⁸⁴ However, a more nuanced look at the effects of the early 2000s predatory mortgage lending and the subsequent economic crisis reveals a lasting impact on young people that continues to shape their interactions with the legal system, change their behavior, and impede their access to the labor market.⁸⁵

Data released in 2015 shows that “poverty rates among families with children not only increased during the Great Recession but have declined only slightly five years after it ended.”⁸⁶ Additionally, the recession led to an increase in areas of concentrated poverty, particularly

Race_June2015.pdf.

- 83 See Evan Cunningham, *Great Recession, Great Recovery? Trends from the Current Population Survey*, U.S. BUREAU LAB. STAT.: MONTHLY LAB. REV. (Apr. 2018), <https://www.bls.gov/opub/mlr/2018/article/great-recession-great-recovery.htm>; INGRID GOULD ELLEN & SAMUEL DASTRUP, STAN. CTR. ON POVERTY & INEQ., HOUSING AND THE GREAT RECESSION 1–3 (2012), <https://furmancenter.org/files/publications/HousingandtheGreatRecession.pdf>; SHELDON DANZIGER ET AL., STAN. CTR. ON POVERTY & INEQ., POVERTY AND THE GREAT RECESSION 2–3, 5 (2012), https://inequality.stanford.edu/sites/default/files/Poverty_fact_sheet.pdf.
- 84 See CHRISTOPHER UGGEN, STAN. CTR. ON POVERTY & INEQ., CRIME AND THE GREAT RECESSION 1–2 (2012), https://inequality.stanford.edu/sites/default/files/Crime_fact_sheet.pdf.
- 85 See Matthew J. Parlow, *The Great Recession and Its Implications for Community Policing*, 28 GA. STATE UNIV. L. REV. 1193 (2012); David N. F. Bell & David G. Blanchflower, *Young People and the Great Recession*, 27 OXFORD REV. ECON. POL’Y 241 (2011); RACHEL MARCUS & MAJA GAVRILOVIC, OVERSEAS DEV. INST., THE IMPACTS OF THE ECONOMIC CRISIS ON YOUTH: REVIEW OF EVIDENCE 27, 63–64 (2010), https://assets.publishing.service.gov.uk/media/57a08b1740f0b64974000970/60828_Youth-Evidence-Review-Final.pdf.
- 86 Zakia Redd, *Child Poverty in the Aftermath of the Great Recession*, CHILD TRENDS (Oct. 7, 2015), <https://www.childtrends.org/blog/child-poverty-in-the-aftermath-of-the-great-recession>.

for Black and Latinx residents of certain metro areas.⁸⁷ While the economy improved overall after the recession, people outside of areas with concentrated resources were less likely to access the benefits of the recovery.⁸⁸ Households of color were impacted the most by the Great Recession.⁸⁹

The increase in youth growing up in poverty—both poverty within their own families and within their broader communities—will have lasting effects.⁹⁰ Children who grow up in poverty “are more likely to have delayed cognitive development; poorer school performance, socio-emotional development, and physical health; and to be poor as adults.”⁹¹ These cognitive delays, however, are not inherent, and research does not reinforce the notion that people remain in poverty because of a lack of cognitive capability.⁹² In reality, these delays may be the result of the effects of social determinants created by poverty.⁹³

Living in poverty depletes a parent’s cognitive resources and increases their risk of depression and anxiety—aptly described as poverty’s “mental tax.”⁹⁴ This is particularly impactful for children, as having distracted or depressed parents can lead to a family life “characterized by conflict and emotional withdrawal rather than nurturing and supportive relationships.”⁹⁵ Repeated exposure to these interactions and stressors may physically inhibit a young person’s brain capacity, affecting their ability to learn, remember, and reason.⁹⁶ One

87 Elizabeth Kneebone & Natalie Holmes, *U.S. Concentrated Poverty in the Wake of the Great Recession*, BROOKINGS (Mar. 31, 2016), <https://www.brookings.edu/research/u-s-concentrated-poverty-in-the-wake-of-the-great-recession/> (“concentrated poverty” includes high poverty neighborhoods where the federal poverty rate is between 20 and 40 percent and extreme poverty neighborhoods where the federal poverty rate exceeds 40 percent).

88 Annie Lowrey, *The Great Recession Is Still With Us*, ATLANTIC (Dec. 1, 2017), <https://www.theatlantic.com/business/archive/2017/12/great-recession-still-with-us/547268/>.

89 *Id.*; Sabrina Tavernise, *Recession Study Finds Hispanics Hit the Hardest*, N.Y. TIMES (July 26, 2011), <https://www.nytimes.com/2011/07/26/us/26hispanics.html>.

90 *Children in Poverty – Poverty and Its Effects on Children*, CHILD’S BUREAU (Jan. 28, 2019), <https://www.all4kids.org/news/blog/poverty-and-its-effects-on-children/>.

91 Redd, *supra* note 86.

92 Kimberly G. Noble, *How Poverty Affects Children’s Brains*, WASH. POST (Oct. 2, 2015), https://www.washingtonpost.com/opinions/no-poor-child-left-behind/2015/10/02/df86c56e-4048-11e5-9561-4b3dc93e3b9a_story.html.

93 *Id.*

94 *Id.*

95 *Id.*

96 *Id.*

study even found that, over the course of ten years, growing adolescent boys were “more likely to offend during years in which their parents’ [socioeconomic status] was lower than during years in which [it] was higher,” directly connecting increases in poverty with increases in juvenile crime.⁹⁷

Like the Great Recession, the ongoing COVID-19 pandemic has depleted American resources and led to increased child poverty, especially for Latinx and Black children.⁹⁸ The federal government responded to the COVID-19 economic shutdown with cash and near-cash transfers to households, including earned income and child tax credits, which led to a decrease in child poverty from 12.6 percent in 2019 to 9.7 percent in 2020.⁹⁹ However, the child tax credits were allowed to expire in December 2022, sending millions of children back into poverty.¹⁰⁰ In other words, we know how to reduce child poverty, and it is an active political choice not to do so. Because the longer-term impacts of increased poverty on juvenile legal system involvement are well known, allowing the child-tax credits to expire was a missed opportunity to make a strong investment in youth well-being and also to reduce juvenile legal system involvement.

Without access to comparable resources to their more affluent neighbors, youth in poverty experience more physical and mental stress, and are more likely to engage in risk-taking behaviors. The ongoing financial and mental health consequences of the Great Recession and COVID-19 have led to more youth growing up in poverty, increasing the risk of more widespread juvenile legal system involvement.

97 Roderik Rekker et al., *Moving in and out of Poverty: The Within-Individual Association Between Socioeconomic Status and Juvenile Delinquency*, PLoS ONE, Nov. 17, 2015, at 1, 14.

98 Dana Thomson & Yiyu Chen, *Child Poverty Increased Nationally During COVID, Especially Among Latino and Black Children*, CHILD TRENDS (June 3, 2021), <https://www.childtrends.org/publications/child-poverty-increased-nationally-during-covid-especially-among-latino-and-black-children>.

99 Anna Aizer & Claudia Persico, *Lessons Learned from the COVID-19 Policy Response and Child Well-Being*, in RECESSION REMEDIES: LESSONS LEARNED FROM THE U.S. ECONOMIC POLICY RESPONSE TO COVID-19 (Wendy Edelberg et al. eds., 2022), <https://www.brookings.edu/wp-content/uploads/2022/04/RR-Chapter-7-Child-Well-Being.pdf>.

100 Ben Popken, *Millions of Kids Were Thrust Back into Poverty After the Child Tax Credit Expired. What's Next?*, NBC NEWS, <https://www.nbcnews.com/business/business-news/millions-kids-thrust-back-poverty-child-tax-credit-expired-s-rcna13450> (Jan. 26, 2022).

D. *Structural Racism Remains While Antiracist Movements Have Gained Visibility*

Young people's interactions with the legal system in Massachusetts are shaped by its systemic racism. Losing family members to incarceration, being subject to surveillance and dehumanizing treatment by law enforcement, and witnessing the murders of countless Black people at the hands of police has led to widespread trauma among people of color in targeted communities.¹⁰¹ Compounding this trauma, youth of color also experience greater disparities in treatment by the juvenile legal system.¹⁰²

At the same time, youth coming of age in the last decade have witnessed an increasingly visible and powerful grassroots movements for racial justice and equity, largely driven by the national coverage of law enforcement assaulting and murdering Black youth.¹⁰³ One such movement is Black Lives Matter, founded in response to Trayvon Martin's murder in 2012 and George Zimmerman's acquittal in 2013.¹⁰⁴ The movement expanded in response to the 2014 murders of Michael Brown in Missouri and Eric Garner in New York, and led worldwide demonstrations following the 2020 murder of George Floyd.¹⁰⁵ It has also faced intense backlash from a growing white supremacist movement that poses a serious security threat,¹⁰⁶ but which some police officers

101 Jocelyn R. Smith Lee & Michael A. Robinson, "That's My Number One Fear in Life. It's the Police": Examining Young Black Men's Exposures to Trauma and Loss Resulting from Police Violence and Police Killings, 45 J. BLACK PSYCH. 143, 170–72 (2019).

102 See *infra* Section II.C.

103 See Katie Nodjimbadem, *The Long, Painful History of Police Brutality in the U.S.*, SMITHSONIAN MAG. (July 27, 2017), <https://www.smithsonianmag.com/smithsonian-institution/long-painful-history-police-brutality-in-the-us-180964098/>.

104 See *About*, BLACK LIVES MATTER, <https://blacklivesmatter.com/about/> (last visited Mar. 31, 2023).

105 Wesley Lowery, *Black Lives Matter: Birth of a Movement*, GUARDIAN (Jan. 17, 2017), <https://www.theguardian.com/us-news/2017/jan/17/black-lives-matter-birth-of-a-movement>; Jason Silverstein, *The Global Impact of George Floyd: How Black Lives Matter Protests Shaped Movements Around the World*, CBS NEWS (June 4, 2021), <https://www.cbsnews.com/news/george-floyd-black-lives-matter-impact/>.

106 See Harper Neidig & Rebecca Beitsch, *Biden Officials Testify that White Supremacists Are Greatest Domestic Security Threat*, HILL (May 12, 2021), <https://thehill.com/policy/national-security/553161-biden-officials-testify-that-white-supremacists-are-greatest/>; Bill Hutchinson, *Turning Point: Black Lives Matter Organizers Say Right-Wing Backlash Was Expected as Movement Grew*, ABC NEWS (Oct. 25, 2020), <https://abcnews.go.com/US/turning-point-black-lives-matter-organizers-wing-backlash/story?id=72863444>.

either do not take seriously or actively sympathize with.¹⁰⁷

Youth interactions with the legal system have also been shaped by structural racism, and the Black Lives Matter movement has raised at least fleeting attention to the injustice of racism in policing and throughout the criminal legal system.¹⁰⁸ The modest progress we have achieved through reducing the size of the juvenile legal system in Massachusetts would not have been possible without a recognition of the harm associated with system-contact and public support for the culture shift within the system.

At the same time, news media is driving rhetoric that youth crime—especially violent crime—is on the rise, though this narrative is completely inaccurate.¹⁰⁹ This harmful portrayal partially counteracts progress toward reforming the juvenile legal system and reaffirms the importance of using concrete data and facts to prevent a backslide toward a more punitive juvenile legal system.

While an in-depth analysis of racial disparities is beyond the scope of this Article, the pernicious racial disparities in Massachusetts and national juvenile legal system decision points must be addressed head-on. Within multiple systems of racial oppression that continue in the spirit of slavery and Jim Crow-era policies, both the family regulation (child welfare) and juvenile legal systems require robust racial equity audits and responses.¹¹⁰ The “mainstreaming” of racism within the Republican Party, exacerbated by Donald Trump’s election and the hijacking of the party by racist policy and rhetoric, does not help.¹¹¹ The

107 Michael German, *White Supremacist Links to Law Enforcement Are an Urgent Concern*, BRENNAN CTR. FOR JUST. (Sept. 1, 2020), <https://www.brennancenter.org/our-work/analysis-opinion/white-supremacist-links-law-enforcement-are-urgent-concern>.

108 See Frank Leon Roberts, *How Black Lives Matter Changed the Way Americans Fight for Freedom*, ACLU (July 13, 2018), <https://www.aclu.org/blog/racial-justice/race-and-criminal-justice/how-black-lives-matter-changed-way-americans-fight>; *Race and Juvenile Justice*, NAT’L ASS’N CRIM. DEF. LAWS. (Nov. 29, 2022), <https://www.nacdl.org/Content/Race-and-Juvenile-Justice>; see also DOROTHY ROBERTS, *TORN APART* (2022) (discussing structural racism in the child welfare system).

109 CITIZENS FOR JUV. JUST. [CFJJ], *FICTION: MEDIA SENSATIONALISM AND THE FALSE NARRATIVE OF A YOUTH CRIME WAVE IN MASSACHUSETTS I* (2022), <https://www.cfjj.org/fiction>.

110 See Kim Gilmore, *Slavery and Prison – Understanding the Connections*, SOC. JUST., Fall 2000, at 195; see also Roberts, *supra* note 108 (arguing that the only way to address racism is through the abolition of the foster care system rather than reform); MICHELLE ALEXANDER, *THE NEW JIM CROW* (10th anniversary ed. 2020) (arguing that the criminal legal system and mass incarceration are forms of racial control, like Jim Crow laws once were).

111 RICHARD C. FORDING & SANFORD F. SCHRAM, *The Mainstreaming of Racism in American*

juvenile legal system in the United States operates within the context of, and contributes to, structural racism. As long as the system continues, policymakers have an obligation to intentionally undermine the effects of racism, if not the racist structures themselves.

E. The COVID-19 Pandemic and Mental Health

The COVID-19 outbreak reached pandemic status in March 2020, prompting massive public health, political, and economic responses. The pandemic led to immediate, unexpected, and unprecedented changes in young people's lives, including the closure of physical school buildings and a sudden—and, for some, prolonged—move to online schooling for the large majority of children globally.¹¹² While the early impact of COVID-19-related shutdowns saw a reduction in arrests and system contacts,¹¹³ the pandemic's longer-term impacts on youth contact with the legal system remain to be seen.

Nationally, quarantines and temporary agency-level policies led to an immediate decline in youth coming into contact with the legal system.¹¹⁴ Massachusetts was no exception, with “a 62 percent drop in monthly new commitments to Department of Youth Services facilities and a 40 percent drop in overnight arrest admissions.”¹¹⁵ These numbers have continued to drop through June 2021, with only eighty-nine new first-time commitments to DYS during fiscal year 2021.¹¹⁶

Politics, in HARD WHITE: THE MAINSTREAMING OF RACISM IN AMERICAN POLITICS 1–19 (2020).

112 See BEDE SHEPPARD ET AL., HUM. RTS. WATCH, “YEARS DON’T WAIT FOR THEM”: INCREASED INEQUALITY IN CHILDREN’S RIGHT TO EDUCATION DUE TO THE COVID-19 PANDEMIC I (2021), https://www.hrw.org/sites/default/files/media_2021/05/global_covideducation0521_web.pdf.

113 JJPAD, COVID-19 AND THE MASSACHUSETTS JUVENILE JUSTICE SYSTEM 17 (2021), <https://www.mass.gov/doc/covid-19-and-the-massachusetts-juvenile-justice-system-jjpad-report-october-2021/download> [hereinafter JJPAD COVID-19 REPORT].

114 See KIM GODFREY LOVETT, PBS LEARNING INST., RESPONDING TO THE PANDEMIC 2 (2021), https://pbstandards.org/media/1457/respondingtothepandemic_issuebrief3_feweryouthsincustody.pdf; *Decarceration and Crime During COVID-19*, ACLU (July 27, 2020), <https://www.aclu.org/news/smart-justice/decarceration-and-crime-during-covid-19>.

115 Shira Schoenberg, *Juvenile Delinquency Dropped During Pandemic*, COMMONWEALTH MAG. (Oct. 7, 2021), <https://commonwealthmagazine.org/criminal-justice/juvenile-delinquency-dropped-during-pandemic/>. These numbers will be contextualized in relation to long-term declines in Part II below.

116 See Off. Child Advoc., *Data About Youth on Probation or Committed to DYS*, MASS. GOV., <https://www.mass.gov/info-details/data-about-youth-on-probation-or>

Due to the increase of remote activities and widespread loss brought on by the pandemic, a surplus of young people experienced isolation and grief.¹¹⁷ The U.S. Surgeon General recognized a youth mental health crisis in an advisory, stating that “[m]ental health challenges in children, adolescents, and young adults are real, and they are widespread.”¹¹⁸ In Massachusetts, suicide is now the second leading cause of death among people aged ten to twenty-four.¹¹⁹

Furthermore, the pandemic caused economic hardship for families and exacerbated racial and ethnic disparities in access to education.¹²⁰ In-person learning resumed in areas with the resources to bring students back safely, and schools in lower-resourced communities remained closed for a full year or more, which resulted in significant learning loss.¹²¹ Young people in low-income communities of color have been disproportionately impacted by illness, loss, and economic and educational consequences.¹²² The pandemic will continue to impact the system for years to come, but its effects remain uncertain. There is a chance that the economic pain and mental health crises associated with the pandemic will lead to increased system involvement in the years to come.

committed-to-dys (May 10, 2021) [hereinafter *Data About Youth on Probation*].

- 117 See KRISTINA D. WEST ET AL., ASSISTANT SEC’Y FOR PLAN. & EVALUATION, CHILD AND ADOLESCENT MENTAL HEALTH DURING COVID-19: CONSIDERATIONS FOR SCHOOLS AND EARLY CHILDHOOD PROVIDERS, 1 (2021), <https://aspe.hhs.gov/sites/default/files/documents/0bcc372f4755cca29ebc80a47cfe300e/child-adolescent-mh-covid.pdf>.
- 118 OFF. SURGEON GEN., PROTECTING YOUTH MENTAL HEALTH: THE U.S. SURGEON GENERAL’S ADVISORY 4 (2021), <https://www.hhs.gov/sites/default/files/surgeon-general-youth-mental-health-advisory.pdf>.
- 119 Jessica Brown, ‘*This Is a Matter of Life and Death; Factors Leading to Youth Mental Health Crisis*, WCVB5, <https://www.wcvb.com/article/warning-signs-youth-mental-health-crisis-massachusetts-general-hospital/39908874> (May 4, 2022).
- 120 ORG. FOR ECON. COOP. & DEV., THE IMPACT OF COVID-19 ON STUDENT EQUITY AND INCLUSION 2 (Nov. 19, 2020), https://read.oecd-ilibrary.org/view/?ref=434_434914-59wd7ekj29&title=The-impact-of-COVID-19-on-student-equity-and-inclusion.
- 121 Clare Halloran et al., *Pandemic Schooling Mode and Student Test Scores: Evidence from US States 2–3* (Nat’l Bureau of Econ. Rsch., Working Paper No. 29497, 2021), <http://www.nber.org/papers/w29497>; Francesco Agostinelli et al., *When the Great Equalizer Shuts Down: Schools, Peers, and Parents in Pandemic Times* (Nat’l Bureau of Econ. Rsch., Working Paper No. 28264, 2020), <https://www.nber.org/papers/w28264>.
- 122 Faith Mitchell, *COVID-19’s Disproportionate Effects on Children of Color Will Challenge the Next Generation*, URB. INST. (Aug. 17, 2020), <https://www.urban.org/urban-wire/covid-19s-disproportionate-effects-children-color-will-challenge-next-generation>.

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This Part has presented some—though by no means all—of the broader societal events and shifts over the last twenty years, allowing for some preliminary conclusions. First, national crises may sometimes (as with the opioid epidemic) lead to more empathetic and individualized care, rather than criminalization. This shift shows the capacity of large systems to change for the better, especially when negative impacts reach white Americans. Second, public health crises (including the opioid epidemic, exposure to lead paint, and COVID-19) exacerbate underlying problems in youths' lives, and the reductions in the size of the Massachusetts juvenile system have been in spite of these crises. Third, the impacts of these decreases are felt disproportionately across race and socioeconomic status. Finally, most of these events merely correlate with the decreased rates of juvenile legal involvement rather than causing its reduction—with the one exception of the concerted response to lead paint exposure likely having a more causal effect. The issues discussed here are just a handful of events happening in young people's lives. While all of these have occurred outside of the juvenile legal system itself, all have had an impact on youth and the juvenile legal system.

II. MEASURING THE DECREASE IN JUVENILE LEGAL SYSTEM SIZE

Having considered broad societal factors—some of which caused the decrease in the number of youth who come in conflict with the law—we now aim to answer the question: how much has Massachusetts' juvenile legal system contracted in size since its peak in the mid-2000s? This Part analyzes data from three specific decision points—rates of arrests, court filings, and commitments—to illustrate a downsize in the Massachusetts juvenile legal system over the last fifteen to twenty years.

Arrests reflect the decision to respond to youth behavior by removing them from the community and taking them into legal custody. *Court filings* reflect the decision to expose youth to the criminogenic effects of formal court involvement by formally initiating a juvenile proceeding alleging that a juvenile is delinquent and describing their alleged offenses. *Commitments* reflect the decision to subject youth to the highest level of legal system intervention by transferring legal responsibility over a child to the state and placing them in a private or state-run facility.

These three decision points provide an overview of system size, while also highlighting the approach of a variety of system actors when

responding to youth behavior and need.

*A. Major Decreases Across Arrests, Court Filings, and
Commitment Rates*

Juvenile arrests, court filings, and commitment rates have all seen sharp downward trends in recent years. Figure 1 demonstrates that, despite a small uptick in arrest rates after Massachusetts raised the age of juvenile court jurisdiction to include seventeen-year-olds in September 2013,¹²³ the number of arrests has steadily and rapidly declined since 2008. As of 2020, the rates were the lowest in two decades. There are three categories of arrests incorporated into the relevant data: (1) on-view arrests; (2) summoned/cited (not taken into custody); and (3) taken into custody.¹²⁴ The first and third categories constitute “custodial arrests”—those in which juveniles are taken into police custody¹²⁵ and are one of two ways that cases come into the Juvenile Court.¹²⁶ The other way involves the use of a “summons,” with which the police summon a youth to appear in the juvenile legal system without taking them into custody.¹²⁷ Thus, Figure 1 represents the declining arrest numbers to the juvenile system’s front door. Declining arrests drive the reduction in system-size, including the number of youth involved in court proceedings, as discussed in Part III.

123 See DEP’T YOUTH SERVS., 2016 RAISE THE AGE REPORT 2 (2016), <https://www.mass.gov/doc/dys-raise-the-age-report-2016/download> [hereinafter *DYS RAISE THE AGE REPORT*].

124 *All Arrestee 2021: Massachusetts*, MASS. CRIME STAT., https://ma.beyond2020.com/ma_tops/report/all-arrestee/massachusetts/2021 (last visited Mar. 31, 2023). Note that the number of arrests accounted for do not distinguish the number of individuals arrested, as one person may be arrested more than once. *Id.*

125 Off. Child Advoc., *Data About Youth Arrests*, MASS.GOV, <https://www.mass.gov/info-details/data-about-youth-arrests> (Sept. 29, 2021) [hereinafter *Data About Youth Arrests*].

126 JJPAD, MASSACHUSETTS JUVENILE JUSTICE SYSTEM: 2021 ANNUAL REPORT 35 n.58 (2022), <https://www.mass.gov/doc/jypad-2021-annual-report/download> [hereinafter *JJPAD 2021 ANNUAL REPORT*]; see *All Arrestee 2021*, *supra* note 124.

127 *Data About Youth Arrests*, *supra* note 125.

Figure 1: Juvenile Arrests in Massachusetts¹²⁸

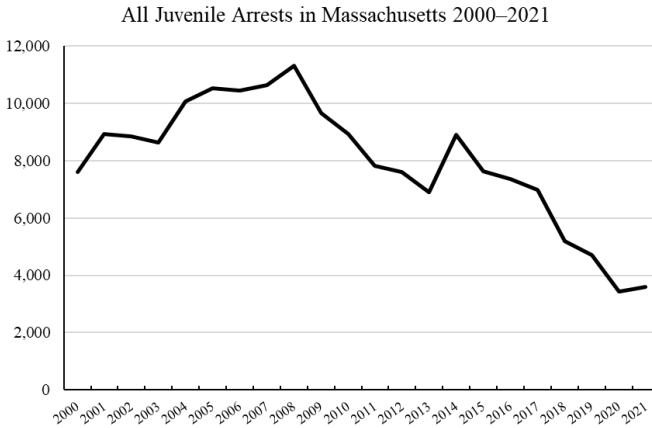


Figure 1: Juvenile arrests in Massachusetts peaked in 2008 at 11,327.¹²⁹ By 2021, there were 3,589 juvenile arrests, a 68% decrease in 13 years. The slight increase between 2020 and 2021 arrest rates can be explained by stay-at-home orders during the COVID-19 pandemic, though the 2021 numbers remain below pre-2020 levels.¹³⁰ Notice that the graph reflects a sudden increase of arrests between 2013 and 2014. This is because prior to September 2013, 17-year-olds were prosecuted in the adult criminal legal system;¹³¹ for that reason, I excluded arrest rates of 17-year-olds in the data prior to that date. Upon their incorporation to the juvenile legal system, arrest rates spiked in 2014. Nevertheless, the downward trend continued during the following years, and reached a rate lower than 2012 again by 2016. Additionally, as of 2018, the lower age of juveniles who may be brought before the juvenile court was raised from 7 years old to 12 years old.¹³²

Meanwhile, juvenile court filings in Massachusetts (filed as “applications for complaint” since 2013) have similarly declined since 2006, as demonstrated by Figure 2. In this state, police officers must file an application for complaint with the Juvenile Court upon arresting

128 Reporting Periods 2000-2021, ‘SRS Arrestees Under 18’, MASS. CRIME STAT., https://ma.beyond2020.com/ma_public/Browse/BrowseTables.aspx (last visited Mar. 31, 2023) [hereinafter MASS. CRIME STAT.].

129 “Juvenile Arrests” refers to arrests of persons of the ages included in juvenile court jurisdiction.

130 JJPAD COVID-19 REPORT, *supra* note 113, at 19.

131 DYS RAISE THE AGE REPORT, *supra* note 123, at 2.

132 An Act Relative to Criminal Justice Reform, 2018 Mass. Acts 94 (codified as amended at MASS. GEN. LAWS ch. 119, §§ 52, 54 (2018)) (updating the definition of “delinquent child” to establish a lower age of twelve rather than seven).

a juvenile or giving them a summons to appear at court.¹³³ Again, the decline continued even with the inclusion of seventeen-year-olds in the juvenile court.

Figure 2: Juvenile Court Filings in Massachusetts¹³⁴

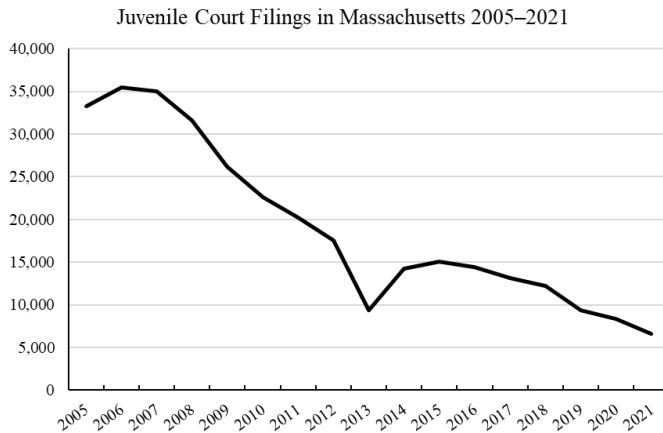


Figure 2: Juvenile court filings in Massachusetts were at their highest in 2006. Between 2006 and 2021, these filings dropped from 35,502 to 6,588 (an 81% decrease). Beginning in FY 2013, the reporting unit for delinquency and youthful offender cases shifted from counting each charge to each case, which accounts for the steep drop of complaints counted in 2013.¹³⁵ The sharp increase between 2013-2014 can again be explained by the inclusion of 17-year-olds in September 2013.

Juvenile commitments to DYS saw the biggest decline of the

¹³³ Mass. Ct. Sys., *Child Welfare and Juvenile Justice Reports and Dashboards*, MASS.GOV, <https://www.mass.gov/info-details/child-welfare-and-juvenile-justice-reports-and-dashboards> (Aug. 24, 2022).

¹³⁴ The data from this graph has been pulled from Annual Trial Court Statistics data made available online by the Massachusetts state government. *See Annual Trial Court Statistics*, MASS.GOV, <https://www.mass.gov/lists/annual-trial-court-statistics> (listing Massachusetts Court statistical data for every fiscal year beginning in 2002). Data from 2012 to 2021 was cited from the Juvenile Court's yearly reported caseload statistics. Data from 2005 to 2011 stems from the Massachusetts Trial Court's summary of FY2011 case filings by type. Mass. Trial Cts., *Summary of FY2011 Case Filings by Type*, MASS.GOV (2011), <https://www.mass.gov/doc/year-end-summary-of-all-court-activity-1/download>. There is not a relevant record of juvenile court filings prior to the year 2005.

¹³⁵ *Fiscal Year 2013 Juvenile Court Department Statistics*, MASS. CT. SYS., <https://www.mass.gov/doc/caseload-statistics-31/download> (last visited Mar. 31, 2023) (“Complaints for delinquency and adult cases and indictments for youthful offender cases now include one or more charges/indictments and are assigned one docket number.”).

three measures in this Section, as shown in Figure 3. Massachusetts' multi-district adoption of the Juvenile Detention Alternatives Initiative (JDAI)¹³⁶—“a network of juvenile justice practitioners . . . working to build a better and more equitable youth justice system”¹³⁷—contributed to this decrease by diverting youth away from detention pending further court action.¹³⁸ This initiative has not, however, impacted the racial disparities in access to detention alternatives, with detention of white youth decreasing at a much faster rate than Black and Latinx youth.¹³⁹

DYS data presented in Figure 3 reveals a continued decrease in first-time juvenile commitments through 2020 and 2021.¹⁴⁰ This is unsurprising given both the decreases in the earlier steps in the process (i.e., arrests and court filings), as well as certain policy changes (e.g., preferences for diversion, the introduction of risk assessments at the probation stage, and the 2018 criminal justice reform legislation—all of which will be discussed in Part III).

136 Dep't Youth Servs., *JDAI Massachusetts County Information*, Mass.gov, <https://www.mass.gov/service-details/jdai-massachusetts-county-information> (last visited Mar. 31, 2023).

137 *Juvenile Detention Alternatives Initiative (JDAI)*, ANNIE E. CASEY FOUND., <https://www.aecf.org/work/juvenile-justice/jdai> (last visited Mar. 31, 2023).

138 Dep't Youth Servs., *JDAI Diversion*, Mass.gov, <https://www.mass.gov/service-details/jdai-diversion> (last visited Mar. 31, 2023).

139 Mike Clifford, *MA Drops Number of Youth in Secure Detention*, PUB. NEWS SERV. (Apr. 17, 2017), <https://www.publicnewsservice.org/2017-04-17/juvenile-justice/ma-drops-number-of-youth-in-secure-detention/a57282-1>.

140 See JJPAD 2021 ANNUAL REPORT, *supra* note 126, at 76.

Figure 3: New and First-Time Juvenile Commitments in Massachusetts¹⁴¹

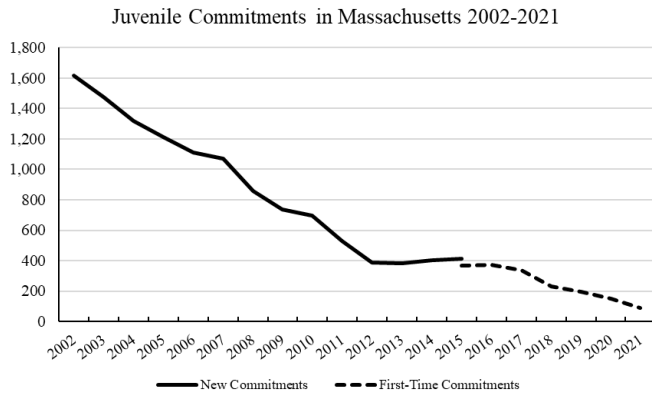


Figure 3: Because DYS changed how it presented the number of juveniles committed to their custody in 2015, Figure 3 separates juvenile commitment data between “new commitments” (all juveniles committed to DYS custody) and “first-time commitments” (excluding juveniles who had previously been committed to DYS). Despite this change in the representation of the data, it is clear that juvenile commitments decreased the most dramatically of the three measurement points represented in this Section, falling from 1,618 new commitments in 2002 to 412 in 2015 (a 75% decrease) and further to 89 first-time commitments in 2021 (a further 75% decrease from first-time commitments in 2015). Similar decreases were seen in the number of detained juveniles in Massachusetts, dropping from 4,500 youth in 2006 to about 2,000 in 2015.¹⁴²

Overall, these declining numbers suggest that Massachusetts’ juvenile legal system is rapidly shrinking and on track to continue. Whereas a child found by authorities to have engaged in a misdemeanor offense in the 1990s was likely to be arrested and possibly detained at

¹⁴¹ “New commitments” data was collected from the 2007, 2009, 2014, and 2015 DYS Annual Reports. The 2007, 2009, 2014, and 2015 DYS reports are available in the archives of the State Library of Massachusetts. *See*, STATE LIBRARY OF MASSACHUSETTS, <https://archives.lib.state.ma.us> (last visited Mar. 31, 2023) (search “Massachusetts Department of Youth Services Annual Report”). “First time” commitment data was collected from the 2019, 2020, and 2021 DYS Annual Reports and DYS statistical data on the Mass.gov website. *See*, DYS Reports and Resources, MASS.GOV, <https://www.mass.gov/service-details/dys-reports-and-resources> (last visited Mar. 31, 2023). Data on first-time youth commitment data trends is also available on the Mass.gov website. *Data About Youth on Probation, supra* note 116 (“Youth Commitment Data Trends”).

¹⁴² Clifford, *supra* note 139.

DYS pre-trial, today's youth may be better able to avoid the trauma and consequences of juvenile system involvement. It is important for Massachusetts to learn from these trends and continue to prioritize the wellbeing of youth by keeping the system small.¹⁴³ It is also necessary that Massachusetts extend the current approach taken in the juvenile legal system to youths aged eighteen to twenty.¹⁴⁴

B. The Decline in Massachusetts' Juvenile Legal System Size Outpaced the Decline Nationwide and in Massachusetts' Adult Criminal Legal System

The shrinking of Massachusetts' juvenile legal system is even more striking as it has far outpaced similar declines across other states and outpaced the decrease in size of its adult criminal legal system. This Section provides a comparative analysis of the juvenile legal system in Massachusetts to the state's adult carceral system and to the juvenile legal system at a national level. I do not provide a comparative analysis to a year beyond 2019 in the following figures, as 2019 is the most recent year not affected by COVID-19.¹⁴⁵

I. Arrests

Although arrest rates decreased in both the Massachusetts adult system and nationwide for juveniles, arrest rates for juveniles in Massachusetts decreased more rapidly than both, as shown in Figure 4.

143 *See infra* Section IV.A.

144 *See infra* Section IV.C.

145 While the number of children impacted by the juvenile legal system continued to drop in 2020 and 2021, in part due to less activity during the early chapters of the COVID-19 pandemic, I do not want the reader to conclude that the smaller system size is largely explained by the pandemic.

Figure 4: Comparative Percent Decrease in Arrests¹⁴⁶

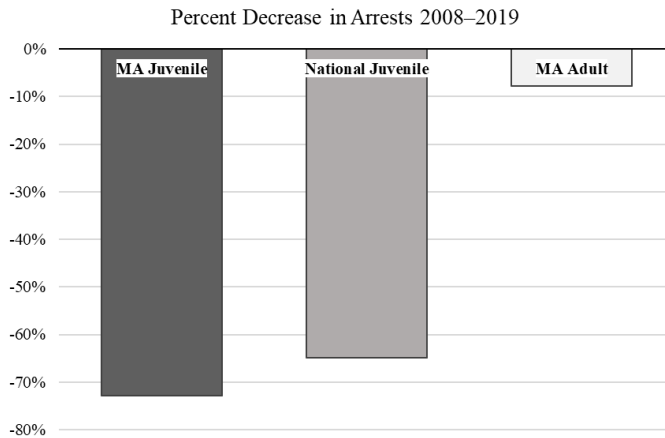


Figure 4: This chart compares the rate of change of juvenile arrests in Massachusetts to the rate of change in juvenile arrest rates nationally and to the adult arrest rate in Massachusetts. It compares the 2008 arrest rate (the beginning of the sharp juvenile system decline in the Massachusetts juvenile system) with the 2019 rate (the most recent year not affected by the pandemic). Juvenile arrests in Massachusetts decreased 73% between 2008 and 2019, while national juvenile arrest rates fell by 65% and adult arrests in Massachusetts fell by just 8%.¹⁴⁷

2. Court Filings

The national rates of juvenile court filings and rates of Massachusetts adult court filings also decreased at a slower rate than the

¹⁴⁶ The arrest data for juveniles in Massachusetts was sourced from the Massachusetts Crime Statistics database. MASS. CRIME STAT., *supra* note 128. The arrest data for adults in Massachusetts was similarly sourced from Massachusetts Crime Statistics. Reporting Periods 2008-2019, 'SRS Arrestees 18 and Over', MASS. CRIME STAT., https://ma.beyond2020.com/ma_public/Browse/BrowseTables.aspx. The arrest data for juveniles nationwide was sourced from the U.S. Office of Juvenile Justice and Delinquency Prevention (OJJDP). OJJDP, *Law Enforcement & Juvenile Crime: Juvenile Arrest Rates*, STATISTICAL BRIEFING BOOK, <https://www.ojjdp.gov/ojstatbb/crime/jar.asp> (last visited Mar. 31, 2023) (complete record of juvenile arrests nationwide from 1980 to 2020 available as a spreadsheet for download).

¹⁴⁷ Note that for the purpose of this comparison, and for consistency with the national data, we calculated the percent difference of all youths under eighteen years old brought before the legal system between 2008 and 2019, even though seventeen-year-olds were adjudicated in the adult criminal system in Massachusetts until 2013.

juvenile court filings in Massachusetts, as shown in Figure 5 below.

Figure 5: Comparative Percent Decrease in Court Filings¹⁴⁸

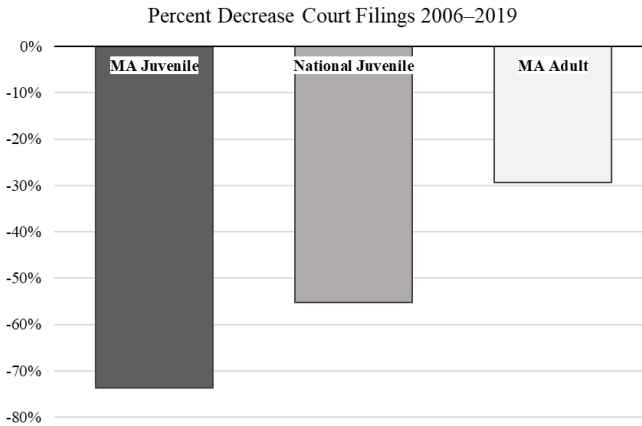


Figure 5: This chart compares the rate of change of juvenile court filings in Massachusetts to the rate of change in juvenile court filings nationally and to adult court filings in Massachusetts. Between 2006 and 2019, there was a 55% decrease in juvenile court filings nationwide and a 29% decrease in adult court filings in Massachusetts. The juvenile court filings in Massachusetts decreased by 74% during the same years.

148 The court filings data for “MA Juvenile” was sourced from the Massachusetts Annual Trial Court Statistics. *Annual Trial Court Statistic*, *supra* note 134. The court filing data for “MA Adult” was compiled by adding together data from the Boston Municipal, District, and Superior Courts. Specifically, the data was calculated by adding “cases entered” from Boston Municipal Court reports; “complaints entered” until 2007 and then “criminal defendants” thereafter in the District Court reports (it is not clear whether this language change reflects a practice change from reporting cases as opposed to charges); and “cases entered” in Superior Court reports. *See Annual Trial Court Statistic*, *supra* note 134 (Trial Court Statistics for Fiscal Years 2002–2019). Note that, prior to FY2018, the Superior Court included only criminal indictments under its reported “criminal cases”; in FY 2019, the criminal case category expanded to incorporate bail petitions, criminal complaints, grand jury matters, SDP appeals, and youthful offender cases. Mass. Trial Ct., *Summary of Case Filings by Type: FY2015 to FY2019*, Mass.gov (2019), <https://www.mass.gov/doc/year-end-summary-of-all-court-activity-8/download>. The court filings data for juveniles nationwide (“National Juvenile”) was sourced from the U.S. Office of Juvenile Justice and Delinquency Prevention. OJJDP, *National Estimates of Juvenile Court Processing for Delinquency Cases*, EASY ACCESS JUV. CT. STAT. (2022), <https://www.ojjdp.gov/ojstatbb/ezajcs/asp/process.asp> (data reflects the “total petitions” of juveniles below age eighteen 2002–2019).

3. Commitments

As shown in Figure 6 below, the decrease in juvenile commitments to DYS in Massachusetts outpaced both the decrease in the rate of commitment for juveniles nationally and the decrease in the rate of adult commitments to the Massachusetts Department of Corrections.

Figure 6: Comparative Percent Decrease in Commitments¹⁴⁹

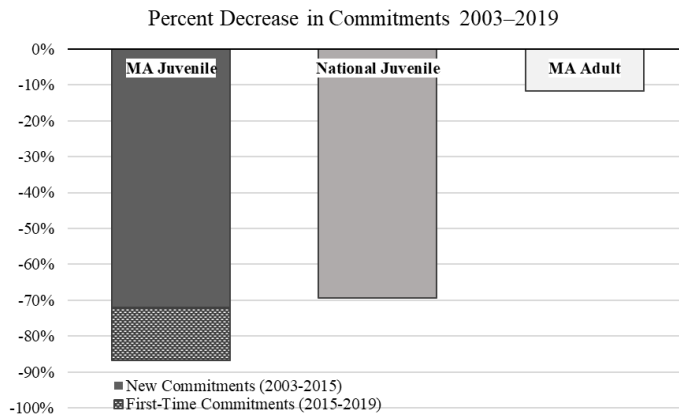


Figure 6: This chart compares the rate of change in juvenile commitments to national trends and to the rate of change in the adult system in Massachusetts. We begin with 2003 because it is the first year for which data is available for all three systems. Commitments have decreased steadily since then. Overall in Massachusetts, the trend shows an 87% decrease in the number of commitments, although this is comparing all new juvenile commitments in 2003 to first-time juvenile commitments in 2019.¹⁵⁰ Between 2003 to 2015,

¹⁴⁹ Data for Massachusetts juvenile commitments was collected from DYS. DYS, 2009 ANNUAL REPORT I (2011); *Data About Youth on Probation*, *supra* note 116. Data for national juvenile commitments were collected from the OJJPD. OJJPD, EASY ACCESS CENSUS JUVS. RESIDENTIAL PLACEMENT (2022), <https://www.ojjdp.gov/ojstatbb/ezacjrp/asp/selection.asp> (select toggles “Committed”; “Committed: Adjudicated, placed here”; and “Committed: Convicted, criminal court”). Data for adults committed to the Massachusetts criminal system was collected from the Department of Correction’s annual Prison Population trends Reports. *See* Mass. Dep’t Corr., *Prison Population Trends*, MASS.GOV, <https://www.mass.gov/lists/prison-population-trends> (last visited Mar. 31, 2023) (reports available from 2009, which includes data dating back to 2002) (“criminally sentenced” in these reports equates to “commitments” for the purposes of this Article).

¹⁵⁰ As described under Figure 3, Massachusetts changed how it counted juvenile commitments to DYS: before 2015, all new juvenile commitments were counted, regardless of whether the youth had been committed previously; following 2015,

all new juvenile commitments in Massachusetts decreased by 72%. Between 2015 to 2019, first-time commitments continued to decline, decreasing by an additional 47%. National juvenile commitments, on the other hand, decreased by 69%, and the adult incarceration rate decreased by 12% between 2003 and 2019.

These declines are nothing short of remarkable and are to be celebrated, as youth may now get their needs met at the community level and outside of the legal system. Part III of this Article discusses the drivers of this decline. At the same time, these declines are precarious, and policymakers should continue to intentionally work to keep the system small or make it even smaller. However, as the next Section describes, the declines have not been even across race and ethnicity.

C. Discriminatory Bias Remains a Major Challenge

While the number of youths coming into contact with the juvenile legal system decreased across multiple contact points, racial and ethnic disparities persisted, and LGBTQ¹⁵¹ youth remain overrepresented. In 2020, the Juvenile Justice Policy and Data Board (JJPAD) reported that Black and Latinx youth were overrepresented at every process point for which data was available.¹⁵² While white youth make up approximately 60 percent of the population in Massachusetts,¹⁵³ they consistently represented less than 40 percent of custodial arrests (Figure 7), applications for complaint (Figure 8), and first-time commitments (Figure 9) between 2017 and 2020.

DYS began counting only first-time commitments.

151 This Article uses the acronym “LGBTQ” rather than the more inclusive “LGBTQIA+.” This was done in order to accurately present the data collection category from DYS, which has data limited to youth identifying as LGBTQ. At times, the Article uses the terms “LGB,” “LGBTQ,” and “gender nonconforming” when discussing statistics that centered on youth identifying within these terms. I recognize that these terms are under-inclusive and hope for more thorough data collection moving forward.

152 JJPAD, MASSACHUSETTS JUVENILE JUSTICE SYSTEM: 2020 ANNUAL REPORT 70 (2020), <https://www.mass.gov/doc/jjpad-board-2020-annual-report/download> [hereinafter JJPAD 2020 ANNUAL REPORT].

153 *Child Population by Race and Ethnicity in Massachusetts*, ANNIE E. CASEY FOUND: KIDS COUNT DATA CTR., <https://datacenter.kidscount.org/data/tables/103-child-population-by-race-and-ethnicity?loc=1&loc=1#detailed/2/23/false/2048,574,1729,37,871,870,573,869,36,868/68,69,67,12,70,66,71,72/423,424> (Oct. 2022).

1. Racial Disparities

Figure 7 shows that while custodial arrests decreased in Massachusetts overall between FY2018 and FY2021, white youth disproportionately benefitted from this decrease. While the proportion of white youth decreased, the proportion of Black, Latinx, and other youth slightly increased between those years.

Figure 7: Custodial Arrests of Juveniles in Massachusetts by Race¹⁵⁴

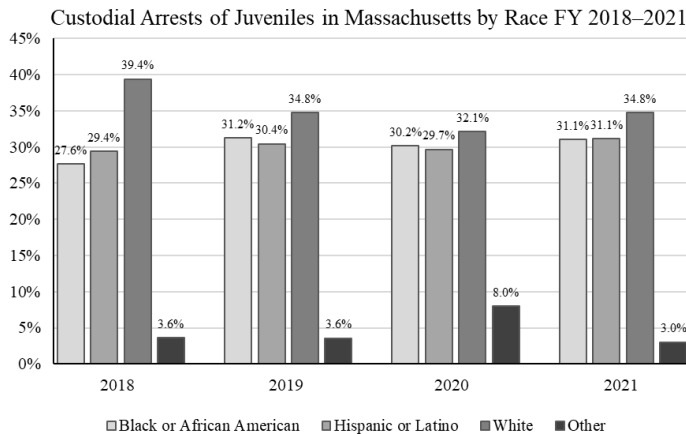


Figure 7: Black and Latinx youth disproportionately experience custodial arrest. The overrepresentation of youth of color in custodial arrests increased between 2018 and 2021. During these years, Black youth went from accounting for 27.6% of all custodial arrests in Massachusetts to 31.1%, while Latinx youth fluctuated between 29.4% and 31.1% of custodial arrests. At the same time, the proportion of white youth arrested dropped significantly from 39.4% in 2018 to 34.8% in 2021.

¹⁵⁴ *Data About Youth Arrests*, *supra* note 125 (“Youth Arrest Data: Demographic and Geographic Breakdowns”); *see also* JJPAD 2020 ANNUAL REPORT, *supra* note 152, at 99.

Youth of color are also continually overrepresented in juvenile court filings (filed as applications for complaint), as shown in Figure 8.

Figure 8: Juvenile Applications for Complaint in Massachusetts by Race¹⁵⁵

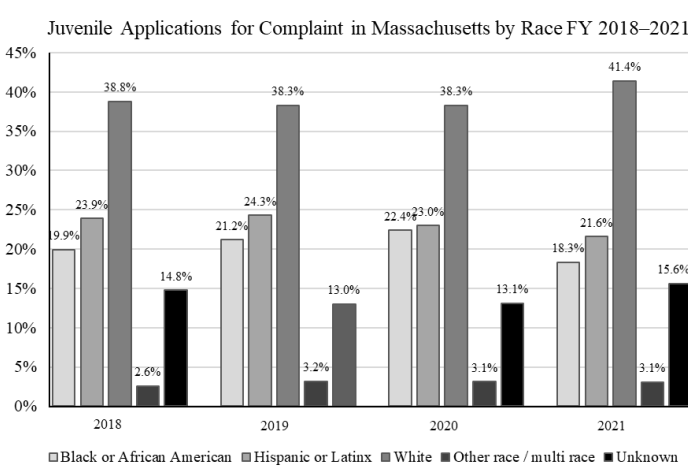


Figure 8: While white youth made up 60% of the population in 2019,¹⁵⁶ they consistently represented some 40% or less of applications for complaint between 2018 and 2021. Meanwhile, Black youth represented roughly 20% of applications for complaints across those same years, despite making up 9% of the population, and Latinx youth made up more than 20% despite making up 19% of the population.¹⁵⁷

155 Off. Child Advoc., *Data About Delinquency Cases Filed with the Juvenile Court*, MASS.gov, <https://www.mass.gov/info-details/data-about-delinquency-cases-filed-with-the-juvenile-court> (May 10, 2021) (“Delinquency Filing Data: Demographic and Geographic Breakdowns”) (data collected by the OCA from the Trial Court’s public data dashboard).

156 *Child Population by Race and Ethnicity in Massachusetts*, *supra* note 153.

157 *Id.*

Youth of color were dramatically overrepresented in first-time DYS commitments between 2017 to 2020.

Figure 9: First-time Commitments in Massachusetts by Race¹⁵⁸

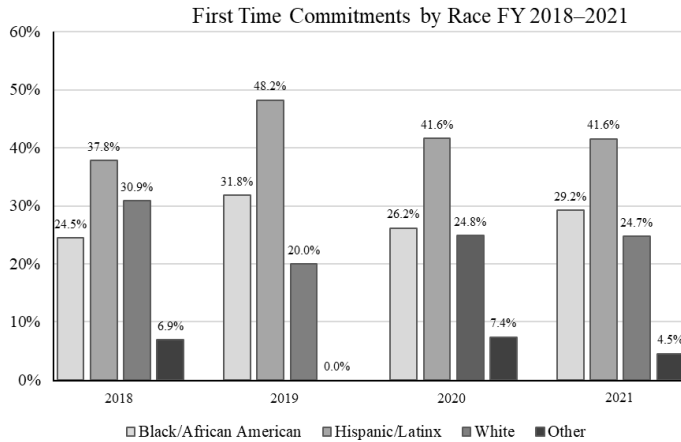


Figure 9: Black youth represented only 9% of the population but made up more than 24% of first-time commitments to DYS between 2018 and 2021. Latinx youth similarly represented only 19% of the youth population in Massachusetts but consistently made up over 35% of first-time commitments to DYS. White youth, by comparison, made up around 25% of first-time commitments, despite making up a 60% proportion of the youth population in Massachusetts.

2. Disparities in LGBTQ Youth

Youth who identify as LGBTQ are twice as likely to enter the juvenile legal system compared to non-LGBTQ youth.¹⁵⁹ Transgender and gender nonconforming people in general are also twice as likely to be incarcerated compared to other LGBQ-identifying persons¹⁶⁰—a statistic that carries implications for similarly-identifying youth. Moreover, transgender people of color are incarcerated at more than

¹⁵⁸ *Data About Youth on Probation*, *supra* note 116 (“Youth Commitments Data: Demographic and Geographic Breakdowns”).

¹⁵⁹ MASS. COMM’N ON LESBIAN, GAY, BISEXUAL, TRANSGENDER, QUEER, & QUESTIONING YOUTH, MASSACHUSETTS COMMISSION ON LGBTQ YOUTH: REPORT AND RECOMMENDATIONS FOR FISCAL YEAR 2022 92, 95 (2021), <https://www.mass.gov/doc/mclgbtqy-annual-recommendations-fy-2022/download>.

¹⁶⁰ *Id.* at 96.

four times the rate of other LGBQ people.¹⁶¹

These LGBTQ disparities are a national issue. Research shows that, though LGBT youth comprise around 13 to 15 percent of youth in the juvenile legal system nationwide, they only make up 5 to 7 percent of the youth population overall.¹⁶² Other research places this number even higher, at 20 percent of all youth in the juvenile system.¹⁶³ For female-identifying youth, the proportion of those who identify as LBQ and/or gender nonconforming jumps to 40 percent.¹⁶⁴

According to research from the early 2010s, LGB-identifying youth were not only more likely to be stopped by police, but LGB and gender nonconforming youth were also twice as likely as their heterosexual and gender-normative counterparts to have been detained for truancy, warrants, probation violations, running away, and prostitution.¹⁶⁵ Yet, the study found no disparity between LGBTQ youth and cis-gender heterosexual youth in the number of serious offenses actually committed, including violence, weapon charges, property transgressions, and alcohol or drug offenses.¹⁶⁶

Racial disparities also exist within the LGBTQ population in the juvenile legal system; of all LGBT and gender nonconforming youth in juvenile legal facilities, 85 percent are youth of color.¹⁶⁷ Nationally, once detained, LGB youth in the juvenile legal system experience youth-on-youth sexual assault at ten times the rate of heterosexual youth and

161 *Id.*; see also MASS. COAL. FOR JUV. JUST. REFORM, TESTIMONY TO THE JOINT COMMITTEE ON PUBLIC SAFETY AND HOMELAND SECURITY IN SUPPORT OF “AN ACT IMPROVING JUVENILE JUSTICE DATA COLLECTION” (S.1558) 3 (2021) <https://jri.org/sites/default/files/inline-files/TESTIMONY%20JJ%20Coalition%20Data%20Bill%20S1558%20Public%20Safety.pdf> [hereinafter TESTIMONY TO THE JOINT COMMITTEE ON PUBLIC SAFETY] (noting that female-identifying LGBTQ youth—particularly youth of color—make up more than a third of LGBTQ youth in DYS custody). There remains a gap in the literature on transgender youth to date.

162 OFF. JUV. JUST. DELINQ. PREVENTION [OJJDP], LGBTQ YOUTHS IN THE JUVENILE JUSTICE SYSTEM 2 (2014), https://ojjdp.ojp.gov/model-programs-guide/literature-reviews/lgbtq_youths_in_the_juvenile_justice_system.pdf.

163 Angela Irvine & Aisha Canfield, *The Overrepresentation of Lesbian, Gay, Bisexual, Questioning, Gender Nonconforming and Transgender Youth Within the Child Welfare to Juvenile Justice Crossover Population*, 24 AM. U.J. GENDER, SOC. POL’Y & L. 243, 248 (2016).

164 *Id.* at 249.

165 OJJDP, *supra* note 162, at 5.

166 *Id.*

167 CTR. FOR AM. PROGRESS ET AL., UNJUST: LGBTQ YOUTH INCARCERATED IN THE JUVENILE JUSTICE SYSTEM 1–2 (2017), <https://www.lgbtmap.org/file/lgbtq-incarcerated-youth.pdf>.

twice as much sexual abuse from facility staff.¹⁶⁸

These disparities demonstrate that, while Massachusetts has come a long way in shrinking its juvenile legal system, it has not done so equitably. This derives both from youth of color having higher risk factors for system involvement (such as experiencing poverty) than white youth,¹⁶⁹ as well as over-policing of communities of color. Police policies and practices effectively target Black and Latinx communities and Black/Latinx youth throughout Massachusetts.¹⁷⁰ These policies mean that youth of color are more likely to interact with police and more likely to be arrested.¹⁷¹ Any conversation about continued decreases in system size must include concomitant efforts to address these disparities. *All* youth deserve the benefit of these changes.

III. DRIVERS OF THE DECREASE

This Part explores major system changes that impacted youth and their interactions with the legal system, which ultimately reduced the size of the juvenile legal system in Massachusetts. Section (A) looks at upstream interventions in the education and Child Requiring Assistance systems; Section (B) examines “less is more” strategies across all three branches of government; Section (C) considers the juvenile system’s focus on developmentally appropriate responses to youth behavior; and, finally, Section (D) considers system-wide collaborative efforts in the state.

Unfortunately, the data does not allow for attaching any

168 *Id.* at 1, 6. Note that the relevant studies limited their findings to individuals identifying as “LGB.” This is not to suggest that transgender or gender non-conforming individuals are not disproportionately affected by this abuse.

169 See Ana Mari Cauce et al., *The Face of the Future: Risk and Resilience in Minority Youth*, in 57 HEALTH DISPARITIES YOUTH & FAMILIES 13, 19–23 (Gustavo Carlo et al. eds., 2011).

170 JJPAD, RACIAL AND ETHNIC DISPARITIES AT THE FRONT DOOR OF MASSACHUSETTS’ JUVENILE JUSTICE SYSTEM 17–18 (2022) [hereinafter RACIAL AND ETHNIC DISPARITIES].

171 See, e.g., Evie Blad & Alex Harwin, *Black Students More Likely to Be Arrested at School*, EDUC. WK. (Jan. 24, 2017), <https://www.edweek.org/leadership/black-students-more-likely-to-be-arrested-at-school/2017/01> (explaining that Black students are arrested in schools across the country at disproportionate rates compared to all other racial groups). See generally Robin Smyton, *How Racial Segregation and Policing Intersect in America*, TUFTS NOW (June 17, 2020), <https://now.tufts.edu/2020/06/17/how-racial-segregation-and-policing-intersect-america> (finding that predominantly Black neighborhoods are frequently over-policed for the purpose of “surveillance and social control”).

numerical value in system size decrease to any particular change, though I recommend future research to determine which changes contributed the most to the reduction in youth coming into contact with the legal system. Instead, this Part takes inventory of the major changes that helped decrease the size of the juvenile legal system in what I see as many small steps coming together for a positive outcome. When examined as a whole, the legislative, jurisprudential, policy, and practice changes demonstrate a culture shift toward addressing youth needs and implementing developmentally appropriate approaches to working with youth.

A. *“Youth-Serving” Institutions Implemented Upstream Interventions to Address Mental and Behavioral Health Needs, with a Heightened Understanding of Trauma*

In part, the reduction in the number of youths coming into conflict with the law may be attributed to upstream efforts to address youth educational, mental health, and behavioral health needs. Upstream efforts, including those within the child welfare and education systems, increasingly aim to address mental and behavioral health needs of youth. Where these “youth-serving” institutions fail to address such needs, they become at least partially responsible for pushing youth into the juvenile legal system. The education system can “push” youth into the juvenile legal system through the “school-to-prison pipeline”—a system of policies and practices that drives students away from educational spaces into the juvenile legal system through school exclusion, police presence, and arrests.¹⁷²

Similarly, the child welfare system induces trauma in youth, pushing them into the juvenile legal system by removing children from their homes unnecessarily and moving children through multiple placements, which can increase their likelihood of expressing trauma through aggressive behavior.¹⁷³ Removing a child from their home can also result in emotional, psychological, and/or physical harm.¹⁷⁴ Youth

172 ACLU, LOCATING THE SCHOOL-TO-PRISON PIPELINE I (2008), https://www.aclu.org/sites/default/files/images/asset_upload_file966_35553.pdf.

173 CfJJ, MISSED OPPORTUNITIES: PREVENTING YOUTH IN THE CHILD WELFARE SYSTEM FROM ENTERING THE JUVENILE JUSTICE SYSTEM I, 6–7 (2015), <https://www.cfjj.org/misled-opp> [hereinafter MISSED OPPORTUNITIES] (“A study of a . . . sample of youth committed to DYS between 2000–2012 found 72% had involvement with [the Department of Children and Families] either prior to or during their involvement with DYS.”).

174 Shanta Trivedi, *The Harm of Child Removal*, 43 N.Y.U. REV. L. & SOC. CHANGE 523,

removed from their homes are subject to high incidences of abuse and neglect in foster care, experience continuous instability inherent in the removal process, and are more likely to develop separation and attachment disorders.¹⁷⁵ The Massachusetts Department of Children and Families (DCF) has at times put its own institutional concerns above those of both children and their parents.¹⁷⁶

1. Dismantling the School-to-Prison Pipeline

There is a wide consensus around the harms associated with “exclusionary school discipline,” defined as “any type of school disciplinary action that removes or excludes students from their usual educational setting,” such as suspension or expulsion.¹⁷⁷ Thus, in addition to reducing instances of youth arrest and detention, reducing the use of exclusionary discipline in schools will similarly result in more positive outcomes for youth.¹⁷⁸ Legislative changes and advocacy efforts across several states have pushed schools to meet students’ educational needs and address behavior without removing students from the classroom.¹⁷⁹ Notably, Massachusetts implemented legislative changes in 2012,¹⁸⁰

527–28, 546–48 (2019).

175 *Id.* at 528–30, 542–44.

176 For example, children in DCF care and custody are often placed in multiple homes, a practice not in the best interests of the children. MISSED OPPORTUNITIES, *supra* note 173, at 1. Additionally, the agency’s language-based discrimination has led to negative outcomes for children in foster care. MASS. APPLESEED CTR. FOR L. & JUST., FAMILIES TORN APART: LANGUAGE-BASED DISCRIMINATION AT THE MASSACHUSETTS DEPARTMENT OF CHILDREN AND FAMILIES 49–53 (2021), <https://massappleseed.org/reports/families-torn-apart/>.

177 COMM. FOR CHILD., RECENT TRENDS IN STATE LEGISLATIVE EXCLUSIONARY DISCIPLINE REFORM 2 (2018), <https://www.cfchildren.org/wp-content/uploads/policy-advocacy/exclusionary-policy-brief.pdf>; accord Catherine Winter, *Spare the Rod: Amid Evidence Zero Tolerance Doesn’t Work, Schools Reverse Themselves*, APM REPORTS (Aug. 25, 2016), <https://www.apmreports.org/episode/2016/08/25/reforming-school-discipline>.

178 See Winter, *supra* note 177. Consider also that school districts that rely heavily on exclusionary discipline are associated with increases in local violent crime. Julie Gerlinger, *Exclusionary School Discipline and Neighborhood Crime*, SOCIUS, Jan.–Feb. 2020, at 1, 11.

179 See *School-Based Restorative Justice: State-by-State Analysis*, CTR. ON GENDER JUST. & OPPORTUNITY GEO. L. (Nov. 2020), <https://genderjusticeandopportunity.georgetown.edu/restorative-justice-practices/rj-trends/>.

180 An Act Relative to Student Access to Educational Services and Exclusion from School, 2012 Mass. Acts 1043–48.

2018,¹⁸¹ and 2020,¹⁸² which blocked certain entry-points into the school-to-prison pipeline by limiting the use of exclusionary discipline and by clarifying and modifying the role of police in schools.

In 2012, Massachusetts passed *An Act Relative to Student Access to Educational Services and Exclusion from School* (usually referred to as Chapter 222) to address the overuse of exclusionary school discipline.¹⁸³ The new law required school districts to collect and share data about the use of exclusionary discipline, provide procedural protections for young people being suspended for breaking their schools' codes of conduct, and provide alternative education services to all students excluded from their schools for longer than ten days.¹⁸⁴ Two years after the law was implemented, the Lawyers' Committee for Civil Rights and Economic Justice released a report reviewing the extent to which progress was made in Massachusetts to reduce school exclusion and discipline as a result.¹⁸⁵ The data showed that overall rates of suspension and expulsion dropped, though Black and Latinx students, students with disabilities, and English language learners were still more likely than their peers to experience school removal.¹⁸⁶ The report also highlighted the gap in reporting on school removals due to school-based arrests.¹⁸⁷

In 2018, amid a nationwide push to re-examine the role of police in schools after the Marjory Stoneman Douglas High School shooting,¹⁸⁸ the Massachusetts Legislature passed *An Act Relative to*

181 *An Act Relative to Criminal Justice Reform*, 2018 Mass. Acts 80–82, 94–96.

182 *An Act Relative to Justice, Equity and Accountability in Law Enforcement in the Commonwealth*, 2020 Mass. Acts 934–39.

183 *School Discipline Law (Chapter 222)*, MASS. ADVOCS. FOR CHILD., <https://www.massadvocates.org/chapter-222#:~:text=This%20law%20allows%20students%20who,provided%20by%20the%20school%20district> (last visited Mar. 31, 2023).

184 *Chapter 222 of the Acts of 2012, An Act Relative to Student Access to Educational Services and Exclusion from School*, MASS. DEP'T ELEMENTARY & SECONDARY EDUC. (Nov. 28, 2012), <https://www.doe.mass.edu/news/news.aspx?id=7127>.

185 JOANNA TAYLOR & MATT CREGOR, LAWYERS' COMM. FOR C.R. & ECON. JUST., UNFINISHED BUSINESS: ASSESSING OUR PROGRESS ON SCHOOL DISCIPLINE UNDER MASSACHUSETTS CHAPTER 222 3 (2018), <http://lawyersforcivilrights.org/wp-content/uploads/2019/01/Unfinished-Business-PDF.pdf>.

186 *Id.* at 4–6. While the new law focused on decreasing overall suspension and expulsion rates, it did not address the disparity of such rates between different student groups. *See id.* at 13. Schools also reflect structural racism at the societal level, and these discipline disparities are a symptom. As such, the disparities remained roughly the same as before the law was implemented, just at a lower overall rate. *Id.* at 14–18.

187 *Id.* at 8, 23–24.

188 Cheryl Corley, *Do Police Officers in Schools Really Make Them Safer?*, NPR: CRIM. JUST. COLLABORATIVE (Mar. 8, 2018), <https://www.npr.org/2018/03/08/591753884/>

Criminal Justice Reform, which included a provision requiring schools with School Resource Officers (SROs) to enter into a Memorandum of Understanding (MOU) with the relevant chiefs of police.¹⁸⁹ The MOUs between school districts and police departments would clarify that it was the *school administrators* who were responsible for enforcing school discipline, not the police officers.¹⁹⁰

However, school districts did not immediately, or even, implement the MOU requirements following the Act's passage.¹⁹¹ In their 2019 report assessing the early impacts of the 2018 Act, JJPAD recommended to the state legislature that it "designate a state agency or agencies to track and review MOUs."¹⁹² In response, the legislature added to a 2020 police reform bill a requirement that MOUs be publicly reported and filed with the Massachusetts Department of Elementary and Secondary Education (DESE).¹⁹³ The legislation, which passed into law on December 31, 2020,¹⁹⁴ additionally required schools to adopt a model MOU and required that SROs receive additional training and certifications.¹⁹⁵ It further allows districts to not use SROs at all,¹⁹⁶ and

do-police-officers-in-schools-really-make-them-safer.

189 An Act Relative to Criminal Justice Reform, 2018 Mass. Acts. 80–82 (codified as amended at MASS. GEN. LAWS ch. 71, § 37P (2020)).

190 MASS. COAL. FOR JUV. JUST. REFORM, SUMMARY OF JUVENILE JUSTICE PROVISIONS IN AN ACT RELATIVE TO CRIMINAL JUSTICE REFORM (2018), <https://static1.squarespace.com/static/58ea378e414fb5fae5ba06c7/t/5c114512562fa7b2353f0ae8/1544635668333/SUMMARY+of+JJ+Provisions+in+CJ+Reform+Law+updated+10.17.18.pdf> [hereinafter SUMMARY OF JUV. JUST. PROVISIONS]; see 2018 Mass. Acts 80–82.

191 See JJPAD, EARLY IMPACTS OF "AN ACT RELATIVE TO CRIMINAL JUSTICE REFORM" 12–13, 68 (2019), <https://www.mass.gov/doc/early-impacts-of-an-act-relative-to-criminal-justice-reform-november-2019/download>. A JJPAD working group survey of Massachusetts police departments found that many MOUs are not fully in compliance with the statute, with nearly 40 percent of responding departments failing to include provisions on required trainings, prohibitions on police powers in schools, and/or how to incorporate SROs into school environments in their MOUs. *Id.* at 68.

192 *Id.* at 13.

193 An Act Relative to Justice, Equity and Accountability in Law Enforcement in the Commonwealth, 2020 Mass. Acts, 937–38 (codified as amended at MASS. GEN. LAWS ch. 71, § 37P(d) (2020)).

194 Sarah Betancourt, *Baker Signs Police Reform Bill into Law*, COMMONWEALTH MAG. (Dec. 31, 2020), <https://commonwealthmagazine.org/criminal-justice/baker-signs-police-reform-bill-into-law/>.

195 2020 Mass. Acts 934–39.

196 Rachel M. Cohen, *New Massachusetts Law Paves the Way for Police-Free Schools*, APPEAL (Feb. 12, 2021), <https://theappeal.org/politicalreport/massachusetts-law-police-free-schools/>.

six of Massachusetts' jurisdictions, including its two largest cities, have either voted to end SRO programs or have rebranded programs to remove arrest powers.¹⁹⁷

The 2020 legislation also required public schools to report yearly school-based arrests to the DESE.¹⁹⁸ Unfortunately, compliance with this requirement was also underwhelming, with only 11 percent of Massachusetts school districts reporting their arrests in the 2018–2019 school year.¹⁹⁹ In particular, the Boston public school district—the largest in the state—reported only four out of 114 school-based arrests made that year.²⁰⁰ Springfield Public Schools similarly underreported their arrest data.²⁰¹ Persistent underreporting highlights the importance for continued attention on data collection and advocacy pressuring public schools to increase data transparency.

Education advocates across Massachusetts have been working to ensure that more students remain in the classroom and that schools meet the educational needs of their students. Since 2000, the EdLaw Project has been working at the intersection of the education and juvenile legal systems to provide education advocacy for court-involved youth in Massachusetts.²⁰² Through direct representation and attorney training programs in collaboration with the Committee for Public Counsel Services' (CPCS') Youth Advocacy Division²⁰³ and Children and Family

197 These six include Boston, Brookline, Easthampton, Northampton, Somerville, and Worcester. Internal Factsheet on Local, Regional and National Review of Jurisdictions That Have Ended SRO Programs, CfJJ (2021) (on file with author).

198 2020 Mass. Acts 937–38.

199 Shannon Dooling, *Mass. Has Been Tracking Impact of Police in Schools for a Year, but Reporting Has Been Spotty*, WBUR (Sept. 18, 2020), <https://www.wbur.org/news/2020/09/18/police-schools-arrest-reports-mass>.

200 *Id.*

201 *Id.*

202 *EdLaw Project*, COMM. FOR PUB. COUNS. SERVS., <https://www.publiccounsel.net/edlaw/> (last visited Mar. 31, 2023) (“The EdLaw Project is an initiative between the Youth Advocacy Foundation [YAF] and the Committee for Public Counsel Services.”). The project was originally geared toward education advocacy for the YAF’s clients but has since expanded to combating the school-to-prison pipeline through training, technical assistance, and direct education advocacy. *Id.*

203 The Massachusetts Youth Advocacy Division (YAD) of CPCS “provides leadership, training, support, attorney mentoring, and oversight to a diverse and collaborative juvenile defense bar across the state.” *Youth Advocacy Division*, COMM. FOR PUB. COUNS. SERVS., [https://www.publiccounsel.net/ya/what-we-do/#:~:text=The%20Youth%20Advocacy%20Division%20\(YAD,in%20fair-%20treatment%20in%20court](https://www.publiccounsel.net/ya/what-we-do/#:~:text=The%20Youth%20Advocacy%20Division%20(YAD,in%20fair-%20treatment%20in%20court) (last visited Mar. 31, 2023). By doing so, YAD “ensures that every child from an indigent family in Massachusetts has access to zealous legal representation . . . [in an effort to] achieve both legal and life success” for

Law Division,²⁰⁴ the EdLaw Project has created the potential to provide education advocacy for all court-involved youth in Massachusetts.²⁰⁵ This advocacy aims to hold school districts accountable to implement legislative changes and pushes schools to address the educational needs of the state's most vulnerable youth.

2. Child Requiring Assistance, Legislative Reform, and the Creation of Family Resource Centers

Massachusetts has worked to address the needs of local youth by increasing access to community-based resources and removing court-involvement as a pre-requisite to accessing services. Legislative reforms have decreased the criminalization of youth who were brought before the court and aim to increase access to community resources that divert youth away from court involvement.²⁰⁶ These reforms decriminalized “status offenses” and allowed youth to access services in the community without a court mandate, thereby streamlining services for at-need youth without the consequences of the juvenile legal system.²⁰⁷

One of the most poignant reforms to the judicial system was the creation of the Child Requiring Assistance (CRA) case type, which is uniquely situated to monitor youth access to these services. Though both are under the jurisdiction of the Juvenile Court, CRA cases are distinct from juvenile delinquency cases, as CRA cases only take on non-criminal “status offenses.”²⁰⁸ A CRA case begins when a parent,

their clients. *Id.*

204 The Children and Family Law Division of CPCS provides lawyers to represent “children and parents in cases in which [DCF] removes children from their homes” in response to abuse or neglect claims and to children and parents in child requiring assistance cases. *Children and Family Law Division*, COMM. FOR PUB. COUNS. SERVS., <https://www.publiccounsel.net/cafl/> (last visited Mar. 31, 2023).

205 See *EdLaw Project*, *supra* note 202.

206 Jennifer M. Herrmann, *Proposed Legislation Would Increase Opportunities for Juvenile Diversion*, ZALKIND DUNCAN & BERNSTEIN: BOS. LAW. BLOG (July 22, 2022), <https://www.bostonlawyerblog.com/proposed-legislation-would-increase-opportunities-for-juvenile-diversion/>.

207 Status offenses are acts that are considered illegal due only to the alleged offender's status as a child. Kathleen Michon, *Juvenile Law: Status Offenses*, NOLO, <https://www.nolo.com/legal-encyclopedia/juvenile-law-status-offenses-32227.html> (last visited Mar. 31, 2023). For example, truancy—the act of skipping school without a valid excuse—is the most common “status offense” in the juvenile legal system. *Id.* Other examples include underage alcohol or drug use, running away from home, and violating curfew. *Id.*

208 Off. Child Advoc., *Child Requiring Assistance (CRA) Filings*, MASS.GOV, <https://www.mass.gov/info-details/child-requiring-assistance-cra-filings> (last visited

guardian, or school district representative files an application claiming that the child is stubborn, truant, a habitual school offender, or a runaway.²⁰⁹ The Juvenile Court may then step in to help “supervise” the child.²¹⁰ If, upon the conclusion of a fact-finding hearing, the judge finds that the child “requires assistance,” they will schedule a conference and disposition hearing to decide upon a plan of tasks for the child and arrange to oversee their progress.²¹¹ The court then decides if the child is to be returned to their home or placed into the custody of another family member or with the DCF.²¹² Judicial orders resulting from CRA cases may last no longer than 390 days, after which time the judge must dismiss the case.²¹³ CRAs aim to resolve concerning adolescent behavior through court involvement without subjecting them to punishments or sanctions as with juvenile delinquency cases.

In 2012, CRA case types replaced Child in Need of Services (CHINS) cases, which were adverse to youth because: (1) they did not focus on alternative methods to court-involvement; (2) they kept records of cases after they ended; and (3) they did not have set timelines for procedural hearings.²¹⁴ To remedy this, the Massachusetts Legislature

Mar. 31, 2023) [hereinafter *CRA Filings*]. For instance, the most frequent types of status offenses handled in CRA cases are “stubbornness” and “truancy.” *Id.* “Stubborn petitions” may be filed for children who “repeatedly fail[] to obey the lawful and reasonable commands of [their] parent, legal guardian or custodian.” *Id.* “Truancy petitions” are reserved for children who willfully skip school more than eight days in a quarter. *Id.*

209 MASS. GEN. LAWS ch. 119, § 39E (2012).

210 See Juv. Ct., *Child Requiring Assistance Cases*, MASS.GOV, <https://www.mass.gov/child-requiring-assistance-cases> (last visited Mar. 31, 2023).

211 Mass. L. Reform Inst., *What Happens at the “Fact-Finding” Hearing in a Child Requiring Assistance (CRA) Case?*, MASSLEGALHELP (Feb. 2021), <https://www.masslegalhelp.org/children-and-families/cra/fact-finding-hearing>; Mass. L. Reform Inst., *What Happens at the Conference and Disposition Hearing in a Child Requiring Assistance (CRA) case?*, MASSLEGALHELP (Feb. 2021), <https://www.masslegalhelp.org/children-and-families/cra/conference-disposition> [hereinafter *What Happens at the Conference?*]; Ellen Marie Curran, *You Filed a CRA. What Happens in Court Now?*, E. M. CURRAN LEGAL LLC (Jan. 13, 2020), <https://www.emcurranlegal.com/blog/you-filed-a-cra-what-happens-in-court-now>.

212 *What Happens at the Conference?*, *supra* note 211.

213 Juv. Ct., *Find Out What Happens After the Preliminary Hearing in a Child Requiring Assistance Case*, MASS.GOV, <https://www.mass.gov/info-details/find-out-what-happens-after-the-preliminary-hearing-in-a-child-requiring-assistance-case> (last visited Mar. 31, 2023); MASS. GEN. LAWS ch. 119, § 39G (2012).

214 JJPAD, IMPROVING MASSACHUSETTS’ CHILD REQUIRING ASSISTANCE SYSTEM 23–24 (2022), <https://www.mass.gov/doc/improving-massachusetts-child-requiring-assistance-system-an-assessment-of-the-current-system-and-recommendations-for-improvement-10-years-post-chins-reform/download>

passed *An Act Regarding Families and Children Engaged in Services* in 2012, which introduced the current CRA law in an attempt to reduce the criminalization of youth.²¹⁵ For example, in an effort to address the ongoing consequences of court involvement, the CRA law requires the destruction of all case records once the case is closed.²¹⁶ In recognition of the criminogenic effects of being brought before the court, the law also forbids shackling youth brought before the court on a CRA case.²¹⁷ Additionally, the law aims to divert some young people away from court proceedings altogether by requiring court clerks to ask petitioners if they might prefer to delay filing the CRA and be connected to a community-based resource instead.²¹⁸

There remain, however, notable disparities in recent CRA filings. This may be because youth living in areas with more resources are more likely to receive services through their schools or communities, avoiding having to come before the court altogether.²¹⁹ These youth may therefore avoid the cascading consequences of formal court involvement by being diverted through their community-based programs and taking advantage of better- (or privately-) funded after-school and summer programming.²²⁰ Youth in poverty, however, often live in low-resourced communities that are less able to provide the funds required to support

[hereinafter IMPROVING MASSACHUSETTS' CRA SYSTEM].

- 215 An Act Regarding Families and Children Engaged in Services, 2012 Mass. Acts 1362–76; IMPROVING MASSACHUSETTS' CRA SYSTEM, *supra* note 214, at 14.
- 216 2012 Mass. Acts 1365–66 at § 6. The Act amended chapter 119, section 39E of the Massachusetts General Laws to require that all records of CRA proceedings, including applications for assistance and creations of dockets, be destroyed once the case is closed. *Id.* The CRA case cannot appear in any criminal record information system with information identifying the young person. *Id.*
- 217 *See id.* at 1370 (codified as amended at MASS. GEN. LAWS ch. 119 § 39G (2012)).
- 218 *Id.* at 1366 (codified as amended at MASS. GEN. LAWS ch. 119 § 39E (2012)).
- 219 Suzanne M. Bouffard et al., *Demographic Differences in Patterns of Youth Out-of-School Time Activity Participation*, J. YOUTH DEV., Spring 2006, at 24, 38; *see also*, CfJJ, SEIZING AN EARLY OPPORTUNITY: RESULTS FROM A SURVEY OF POLICE DEPARTMENTS ON YOUTH DIVERSION PRACTICE IN MASSACHUSETTS (2018), <https://www.cfjj.org/seizing-opportunity> [hereinafter SEIZING AN EARLY OPPORTUNITY] (documenting that towns in Massachusetts with higher median family incomes were more likely to have police-level diversion available than towns with lower median family income).
- 220 AFTERSCHOOL ALL., FROM PREVENTION TO DIVERSION: THE ROLE OF AFTERSCHOOL IN THE JUVENILE JUSTICE SYSTEM (2020), <https://files.eric.ed.gov/fulltext/ED606195.pdf> (discussing the impact of diversionary afterschool and summer learning programs); SEIZING AN EARLY OPPORTUNITY, *supra* note 219, at 2 (documenting that towns in Massachusetts with higher median family incomes were more likely to have police-level diversion available than towns with lower median family income).

such community programs, thus rendering most impoverished youth less able to access these diversion opportunities.²²¹ As demonstrated in Figure 10, there was a correlation between the poverty rate and the CRA case rate in Massachusetts counties in 2019, acknowledging Berkshire County as an outlier.

Figure 10: Rate of CRA Filings Compared to Poverty Rate in Massachusetts²²²

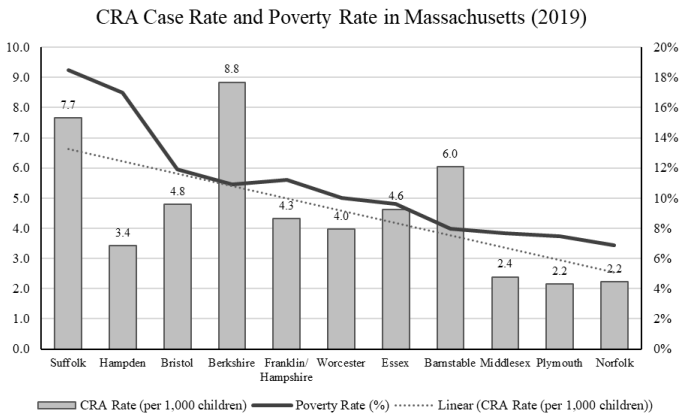


Figure 10: Massachusetts counties are arranged from highest to lowest poverty rate from left to right. The solid line represents the poverty rate. The bars represent the rate of CRA cases in each

²²¹ *Benefits for Youth, Families, and Communities*, YOUTH.GOV, https://youth.gov/youth-topics/afterschool-programs/benefits-youth-families-and-communities#_ftn17 (last visited Mar. 31, 2023); see Beth E. Molnar et al., *Effects of Neighborhood Resources on Aggressive and Delinquent Behaviors Among Urban Youths*, 98 AM. J. PUB. HEALTH 1086 (2008).

²²² The rate of CRA filings was calculated by dividing the number of CRA filings to each county population and represents the rate per 1,000 children (ages zero to seventeen). CRA filings data obtained from the Juvenile Court's statistical data for fiscal year 2019. Juv. Ct. Dep't, *Fiscal Year 2019 Filings by Case Type and Division*, MASS.GOV (2019), <https://www.mass.gov/doc/total-filings-by-court-location-16/download>. The county population data was obtained from the U.S. Office of Juvenile Justice and Delinquency Prevention. OJJDP, EASY ACCESS JUV. POPULATIONS: 1990-2020, https://www.ojjdp.gov/ojstatbb/ezapop/asp/profile_selection.asp (last visited Mar. 31, 2023) (select: "Population Profiles" > "Massachusetts", "[County]", Ages 0-17). The poverty rate was obtained from the U.S. Census Bureau. *Quick Facts*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/barnstablecountymassachusetts/IPE120221> (last visited Mar. 31, 2023) (see "persons in poverty" line). The user can find the poverty rate by looking at the "persons in poverty" line under the "Income and Poverty" section. Search by county in the search bar.

county per 1,000 children, and the dotted line represents the trend of CRA cases. CRA cases generally trend downward as the poverty rate trends downward, representing a correlation between poverty rate and CRA case rate.

In order to increase access to diversion services, the 2012 Act also established a network of Family Resource Centers (FRCs) that provides families with childcare, education, housing, healthcare, and many other services.²²³ As of March 2022, twenty-seven FRC sites have opened across Massachusetts since their launch in 2015.²²⁴ The FRCs, with contracts overseen by DCF, consolidate a variety of services for children and families in one community-based location outside of the court infrastructure.²²⁵ They serve largely as anti-poverty resource centers with a broad range of services, including parenting workshops, support groups, access to outside services, educational supports, and cultural events.²²⁶ By providing access to services in their home communities, FRCs create an avenue outside of court to address the mental health and behavioral needs of young people and to promote positive outcomes.

Referral to the FRC may serve as an early intervention for youth who would otherwise become court involved. In 2021, the FRCs reached more than 23,000 individuals (13,466 families); of these, 6 percent of children reached were also involved with the courts, 16 percent of adults were involved with DCF, and 12 percent of new families indicated health or mental health as being their primary concern.²²⁷ Given the wide breadth of services they provide to families in need, it is plausible that the FRCs serve to prevent court involvement by providing some of their services to youth without requiring them to go through the court process.²²⁸ Youth with unmet mental health needs may also access

223 An Act Regarding Families and Children Engaged in Services, 2012 Mass. Acts 1362–63, 1375 (codified as amended at MASS. GEN. LAWS ch. 6A, § 16U (2015)); see *Services*, FAM. RES. CTRS., <https://www.frcma.org/content/services> (last visited Mar. 31, 2023).

224 A. D. HENRY ET AL., FAM. RES. CTRS., MASSACHUSETTS FAMILY RESOURCE CENTER NETWORK: 2021 PROGRAM EVALUATION REPORT I (2022), <https://www.mass.gov/doc/massachusetts-family-resource-center-network-program-evaluation-report-march-2022/download>.

225 *See id.*

226 *Id.* at 2.

227 *Id.* at 3–6.

228 *See* FAMS. & CHILD. REQUIRING ASSISTANCE ADVISORY BD., FAMILIES AND CHILDREN ENGAGED IN SERVICES; CHAPTER 240 OF THE ACTS OF 2012 29 (2021), <https://www.mass.gov/doc/families-and-children-requiring-assistance-2020-annual-report/download> (explaining that clerks at juvenile court are required to inform CRA petitioners of local FRCs as an alternative to court involvement).

an attorney through an FRC, rather than through the CRA process.²²⁹ Attorneys working under FRC programs assist families in accessing mental health services, where bureaucratic and other challenges may otherwise create a barrier.²³⁰ By providing connections to services, at times with the assistance of an attorney, the FRC programs demonstrate Massachusetts' expanded ability to address youth needs without court involvement.

In sum, legislative changes that limited school policing, reformed the CHINS/CRA system, and created FRCs have paved the way to reducing youth exposure to the juvenile legal system, while still aiming to connect youth to services. By mandating that school districts reduce exclusionary disciplinary tactics and police intervention, the Massachusetts legislature has helped reduce (though by no means eliminate) the school-to-prison pipeline. By decriminalizing the CHINS system and expanding access to youth-friendly community resources, youth are less vulnerable to the long-term consequences of juvenile legal system involvement. Of course, this is a work in progress—schools do not universally comply with requirements, and there remain disparities in access. Nevertheless, Massachusetts' recent strides in this area have seen real progress and may therefore serve as a model for other states that wish to reduce reliance on a punitive carceral model.

B. Less Is More: Smaller (or No) System Intervention Leads to Better Outcomes for Youth

Research has repeatedly shown that legal system intervention, especially for low-level offenses, does not lead to positive outcomes for youth.²³¹ Normal adolescent behavior naturally involves testing limits and engaging in risk-taking behavior, and most youth will outgrow this behavior without any legal system intervention.²³² As youth mature, these impulses lessen without the need for intervention.²³³ Despite this, society has chosen to criminalize perfectly normal risk-taking behavior,

229 See *Initiatives: Mental Health Advocacy Program for Kids*, HEALTH L. ADVOCES., <https://www.healthlawadvocates.org/initiatives/mhapforkids> (last visited Mar. 31, 2023); PATRICIA ELLIOT, BOS. UNIV. SCH. PUB. HEALTH EVALUATION TEAM, MENTAL HEALTH ADVOCACY PROGRAM FOR KIDS: REPORT OF BASELINE EVALUATION DATA 2 (2022), <https://www.healthlawadvocates.org/pdfs/BUSPH-Evaluation-MHAP-Baseline-Report-2022-01-31.pdf>.

230 ELLIOT, *supra* note 229 at 13–14.

231 E.g., Steinberg, *supra* note 15, at 477–80.

232 *Id.* at 467; IMPROVING ACCESS TO DIVERSION, *supra* note 52, at 7, 18.

233 JJPAD, IMPROVING ACCESS TO DIVERSION, *supra* note 52, at 18.

which draws youth into a legal system that may cause harm and prevent the natural maturation process from taking place.²³⁴

In this spirit, between 2015 and 2018, the juvenile legal system in Massachusetts began to use less intervention and lower levels of intervention in certain circumstances by: (1) decriminalizing low-level offenses;²³⁵ (2) offering opportunities for diversion;²³⁶ (3) reducing the consequences of court involvement;²³⁷ (4) creating a first offense exception for low-level misdemeanors;²³⁸ and (5) introducing risk-assessment into probation.²³⁹ Taken together, these legislative changes have successfully chipped away at the jurisdiction of the juvenile legal system to respond to low-level offenses and implemented necessary risk assessments.

1. Decriminalization

On top of providing certain education-related reforms to reduce the school-to-prison pipeline for juveniles,²⁴⁰ Massachusetts' 2018 *An Act Relative to Criminal Justice Reform* implemented several statutory changes to reduce youth involvement with the juvenile legal system, including by limiting juvenile court jurisdiction and decriminalizing certain offenses.²⁴¹ For instance, the Act raised the minimum age of

234 See Steinberg, *supra* note 15, at 478; see also IMPROVING ACCESS TO DIVERSION, *supra* note 52, at 21–22 (explaining that associating youth with the juvenile legal system is harmful to adolescent development and that those successfully diverted from formal court procedures are less likely to re-offend).

235 LEGAL UPDATE: SPRING 2018 CRIMINAL JUSTICE REFORM BILL, MASS.GOV 2 (2018), <https://www.mass.gov/doc/criminal-justice-reform-bill/download>.

236 IMPROVING ACCESS TO DIVERSION, *supra* note 52, at 19–21.

237 See Josh Gordon, *Massachusetts Passes Comprehensive Youth Justice Reforms*, NAT'L JUV. JUST. NETWORK (May 31, 2018), <https://www.njjn.org/article/massachusetts-passes-comprehensive-youth-justice-reforms> (explaining that first-offense misdemeanors and most felonies committed before a juvenile turns twenty-one may now be expunged from their records).

238 An Act Relative to Criminal Justice Reform, 2018 Mass. Acts 94 (codified as amended at MASS. GEN. LAWS ch. 119, § 52 (2018)) (modifying the definition of a “delinquent child” to exclude civil infractions and other low-level offenses).

239 Mass. Prob. Serv., *Learn About the Massachusetts Probation Service's Famous Firsts*, MASS.GOV, <https://www.mass.gov/info-details/learn-about-the-massachusetts-probation-services-famous-firsts> (Apr. 25, 2018) [hereinafter *Learn About the MPS' Famous Firsts*].

240 See *infra* Section IV.A.

241 See 2018 Mass. Acts 78 (codified as amended at MASS. GEN. LAWS ch. 18C, § 14 (2018)); 2018 Mass. Acts 94, 96–102 (codified as amended at MASS. GEN. LAWS ch. 119, §§ 52, 54, 67–68A, 84, 86–89 (2018)); 2018 Mass. Acts 124–25 (codified as

juvenile court jurisdiction for delinquency proceedings from seven to twelve, thus removing the potential for seven- to eleven-year-olds to be charged with a delinquency filing in court.²⁴² The Act also targeted school-based arrests by decriminalizing “disturbing lawful assembly” and “disorderly conduct” for students under eighteen years old while at school or school events.²⁴³ These charges had routinely led to the unnecessary criminalization of students, subjecting them to the harmful consequences that come with legal system involvement—all as a result of actions that are better-handled by school disciplinarians.²⁴⁴ Additionally, the Act removed the potential for youth to be found delinquent for violations of local ordinances or for first-offense misdemeanors, for which the punishment was a fine, incarceration of up to six months, or both.²⁴⁵ These important legislative changes helped decriminalize youth by raising the minimum age from which a child may be arrested and charged in court and by building in the presumption of a second chance for children accused of first-time misdemeanor offenses.

2. Diversion

Massachusetts has three legislatively prescribed pre-arraignment diversionary avenues: district attorney diversion,²⁴⁶ clerk magistrate diversion,²⁴⁷ and judge diversion.²⁴⁸ Police diversion also operates in some municipalities, though with wide variation in availability and practice.²⁴⁹ These actors have the opportunity to divert children away from further legal system involvement through: *informal* diversionary measures, by which a youth is steered away from the court system (e.g., by means of a judge dismissing their case before arraignment or allowing a youth to atone for their behavior in some extrajudicial manner); or *formal* diversion, a “structured program with eligibility and completion

amended at MASS. GEN. LAWS ch. 272, § 40, 53 (2018)); 2018 Mass. Acts 141 (codified as amended at MASS. GEN. LAWS ch. 277, § 70C (2018)).

242 SUMMARY OF JUV. JUST. PROVISIONS, *supra* note 190, at 1 (incorporated in 2018 Mass. Acts at sections 72, 73, 76–79).

243 *Id.* (incorporated in 2018 Act at sections 159–60).

244 Noelia Rivera-Calderón, *Arrested at the Schoolhouse Gate: Criminal School Disturbance Laws and Children’s Rights in Schools*, 76 NAT’L LAW.’S GUILD REV. 1, 13–14 (2019).

245 SUMMARY OF JUV. JUST. PROVISIONS, *supra* note 190, at 2 (incorporated in 2018 Mass. Acts at section 72).

246 MASS. GEN. LAWS ch. 119, § 54A(d) (2018).

247 *Id.* at ch. 218, § 35A (2014).

248 *Id.* at ch. 119, § 54A(b).

249 See SEIZING AN EARLY OPPORTUNITY, *supra* note 219 (analyzing the availability of police diversion).

requirements.”²⁵⁰

The use of diversion directly reduces the number of young people involved with the juvenile legal system by allowing decision-makers to decide whether to respond to youth behavior with interventions outside of the system. Such measures not only spare youth the consequences of court involvement by providing alternatives to arrest and legal sanctions, but they also are more effective in deterring future “delinquent” behavior.²⁵¹ In fact, low-risk youth who are diverted are 45 percent less likely to reoffend than those who faced formal court processing.²⁵²

While there are multiple opportunities for diversion, Massachusetts has not yet implemented a uniform statewide system of diversion or any circumstance in which diversion is mandatory.²⁵³ Instead, diversion programs are operated at the discretion of the police, district attorneys, court clerks, and judges.²⁵⁴ Furthermore, there is no requirement to collect data on the use of diversion.²⁵⁵ As a result, as of 2019, few of these decision-makers were tracking any data on the youth they diverted, and even fewer made that data publicly available.²⁵⁶ The lack of uniformity and data on use of diversion programs makes it difficult to analyze how often and how equitably diversion is being used.²⁵⁷ In response, the Office of the Child Advocate (OCA) and DYS are currently trialing a Youth Diversion initiative, which aims to address some of these concerns by implementing evidence-based “learning labs” designed “to learn [from], to improve, and to refine the diversion model,” including with respect to geographic inequities.²⁵⁸

Additionally, two decisions by the Massachusetts Supreme Judicial Court (SJC) opened opportunities to redirect youth away from legal system involvement. In a 2013 decision, *Commonwealth v. Humberto H.*, the SJC held that it was within a juvenile court judge’s discretion to rule on a motion to dismiss for lack of probable cause *before* the

250 IMPROVING ACCESS TO DIVERSION, *supra* note 52, at 19.

251 *What is Diversion in Juvenile Justice?* ANNIE E. CASEY FOUND., <https://www.aecf.org/blog/what-is-juvenile-diversion> (last visited Mar. 31, 2023).

252 *Id.*

253 CfJJ, LESS CRIME FOR LESS MONEY 8 (2016), <https://www.cfjj.org/less-crime>.

254 IMPROVING ACCESS TO DIVERSION, *supra* note 52, at 19.

255 *Id.* at 30–31

256 *Id.* at 31.

257 *See id.* at 32–36.

258 Press Release, Off. Child Advoc., OCA and DYS Launch Youth Diversion Initiative (Dec. 9, 2021), <https://www.mass.gov/news/oca-and-dys-launch-youth-diversion-initiative> (internal quotes not included).

arraignment of a young person.²⁵⁹ This allows youth to challenge a clerk's determination that there is probable cause to issue a complaint before being arraigned on the charges.²⁶⁰ If a motion to dismiss is successful, the youth avoids the direct consequences of arraignment, such as the creation of a criminal record.²⁶¹ They also avoid the indirect criminogenic effects of being arraigned on delinquency charges, such as the tendency of a juvenile who has been confined to re-offend.²⁶²

The juvenile court may also issue a "continuance without a finding" (CWO) and place a young person on probation, rather than finding them delinquent.²⁶³ In *Commonwealth v. Magnus M.*, the SJC contemplated whether this authority to continue juvenile delinquency proceedings without a finding ends when a case proceeds to a jury trial.²⁶⁴ The Commonwealth argued that this authority was limited to the pretrial stage.²⁶⁵ The court rejected that argument, finding that, because juvenile proceedings are not criminal proceedings, they should be governed liberally to ensure that juveniles are treated "not as criminals, but as children in need of aid, encouragement and guidance."²⁶⁶ Therefore, the court interpreted the statute to allow juvenile court judges to continue cases without a finding even after a jury trial returns a guilty verdict of delinquency for the defendant.²⁶⁷ Making such a finding allows the youth the opportunity to avoid DYS commitment, as well as other negative collateral consequences of being adjudicated delinquent.²⁶⁸ Note that a CWO does not trigger an automatic dismissal of their case.²⁶⁹ The

259 *Commonwealth v. Humberto H.*, 998 N.E.2d 1003, 1006 (Mass. 2013).

260 *See id.* at 1015–16 (Spina, J., dissenting) (disputing the validity of allowing pre-arraignment decisions).

261 *Id.* at 1014–15.

262 *See* Matt DeLisi et al., *The Road to Murder: The Enduring Criminogenic Effects of Juvenile Confinement Among a Sample of Adult Career Criminals*, 9 YOUTH VIOLENCE & JUV. JUST. 207, 209 (2011) (explaining how juvenile confinement can negatively impact a youth, particularly by increasing the likelihood of recidivism).

263 MASS. GEN. LAWS ch. 119, § 58 (2023).

264 *Commonwealth v. Magnus M.*, 961 N.E.2d 581, 582–83 (Mass. 2012).

265 *Id.* at 583. The "pretrial stage" is when the parties file court motions and participate in "pretrial conferences" addressing matters affecting the procedural disposition of a case. *See* Massachusetts Juvenile Court Rules for the Care and Protection of Children 15, <https://www.mass.gov/juvenile-court-rules/rules-for-the-care-and-protection-of-children-rule-15-pretrial-conference-in-care-and-protection-cases#rule-15>.

266 *Magnus M.*, 961 N.E.2d at 583–83 (quoting MASS. GEN. LAWS ch. 119, § 53 (2022)) (internal quotations omitted).

267 *Id.* at 587–88.

268 *See id.* at 587.

269 *Id.*

ultimate outcome of a CWOFF may depend on the youth's compliance with the terms of probation that accompany the finding.²⁷⁰

Youth diversion access has been expanded legislatively and through SJC jurisprudence over the last ten years, and diversion coordination is in inchoate form through the Youth Diversion initiative.

3. Reducing the Consequences of Court Involvement

Legislative changes reduced the lasting consequences of court involvement by targeting the impact and permanency of juvenile records. The 2018 Act introduced expungement opportunities for juvenile and criminal records for first offenses committed prior to age twenty-one.²⁷¹ However, the scope of the 2018 expungement legislation was limited in that it applied only to the young person's first *charge*.²⁷² In other words, if the first "offense" included multiple charges (and most do), only the first "charge" could be expunged and any subsequent charges brought to court would not be eligible for expungement.²⁷³ The Act also included a long list of offenses that were disqualified,²⁷⁴ and the complicated application process precluded many young people from accessing the benefits of the legislation.²⁷⁵

The 2020 Police Reform Act created additional expungement opportunities for young people by expanding eligibility to two charges.²⁷⁶ It also provided that multiple charges from the same incident count as one offense.²⁷⁷ These "offenses" need not involve convictions or adjudications of delinquency or youthful offender in order to be eligible for expungement.²⁷⁸ This theoretically expanded the eligibility for expungement, but the number of actual juvenile case expungements

270 *Id.*

271 An Act Relative to Criminal Justice Reform, 2018 Mass. Acts 132–33, 135 (codified as amended at MASS. GEN. LAWS ch. 276, §§ 100F, 100I(2) (2020)).

272 SUMMARY OF JUV. JUST. PROVISIONS, *supra* note 190, at 2 (incorporated in 2018 Mass. Acts at section 195).

273 *Id.*

274 2018 Mass. Acts 135–36 (codified as amended at MASS. GEN. LAWS ch. 276, § 100J (2020)).

275 Dan Adams, *Massachusetts Legislature is Pressured to Ease Burden of Criminal Records*, BOS. GLOBE (Jan. 3, 2022), <https://www.bostonglobe.com/2022/01/03/marijuana/state-legislature-pressured-ease-burden-criminal-records/?event=event12>.

276 An Act Relative to Justice, Equity and Accountability in Law Enforcement in the Commonwealth, 2020 Mass. Acts 942–43 (codified at MASS. GEN. LAWS ch. 276, § 100G (2020)).

277 *Id.*

278 *Id.* at 943 (codified at MASS. GEN. LAWS ch. 276, § 100H(a) (2020)).

issued to date have been quite small, with only 11 percent of petitions filed granted expungements as of July 2022.²⁷⁹ The expansion also applied retroactively to expungement petitions that were previously ineligible under the one charge limitation.²⁸⁰

The benefits of expungement of juvenile court records are clear, though this tool has only just begun to be applied in Massachusetts. This area is ripe for further expansion.

4. Limiting Juvenile Life Without Parole

Jurisprudence from both the U.S. Supreme Court and the Massachusetts SJC has reduced the permitted duration of incarceration for some children under eighteen at the time of the alleged offense who are tried as adults and sentenced to life sentences without the possibility of parole.²⁸¹ The Supreme Court declared mandatory life without the possibility of parole (LWOP) sentences unconstitutional for all people under eighteen years of age at the time of the commission of a crime—including murder—in the landmark 2012 case *Miller v. Alabama*.²⁸² Shortly thereafter, in 2013, the SJC decided *Diatchenko v. District Attorney for Suffolk District*, which held that *Miller* applied retroactively under the Massachusetts state constitution.²⁸³ The decision to apply *Miller* retroactively in Massachusetts held particular significance between 2013 and 2016, as the Supreme Court did not apply *Miller* retroactively until 2016 when *Montgomery v. Louisiana* was decided.²⁸⁴

In addition to holding that the Supreme Court's ban on mandatory LWOP sentences applied retroactively, the SJC in *Diatchenko* went further, holding that *all* juvenile sentences to LWOP—even

279 Out of 2,940 expungement petitions filed between January 2019 and July 2022, only 326 expungements were issued. Expungement Data Jan 2019–July 2022, CJJJ (on file with authors) (data received by Citizens for Juvenile Justice from Massachusetts Probation Service).

280 See MASS. GEN. LAWS ch. 276, § 100B (2022) (“Any person having a record of entries of a delinquency court appearance in the commonwealth on file . . . [may] request that the commissioner seal such file.”).

281 See *Montgomery v. Louisiana*, 577 U.S. 190, 200, 212 (2016); *Miller v. Alabama*, 567 U.S. 460, 465 (2012); *Diatchenko v. Dist. Att’y for Suffolk Dist.*, 1 N.E.3d 270, 276 (2013). *But see* MASS. GEN. LAWS ch. 119, § 74 (2013) (maintaining that cases in Massachusetts involving first and second degree murder charges against a fourteen-year-old or older must be adjudicated in ordinary adult criminal proceedings).

282 *Miller*, 567 U.S. at 465.

283 *Diatchenko*, 1 N.E.3d at 276.

284 *Louisiana*, 577 U.S. at 200, 212.

discretionary sentences—were inconsistent with Article 26 of the Massachusetts Declaration of Rights’ prohibition against cruel and unusual punishment.²⁸⁵ In doing so, the SJC eliminated the potential for any mistakes made by a child to result in a life in prison. This decision is consistent with the overall shift toward recognizing that all children are entitled to developmentally appropriate treatment.²⁸⁶

Unfortunately, the Supreme Court has not gone as far as the SJC in eliminating discretionary sentences to LWOP; while it has made some strides toward that end, it has also demonstrated a willingness to walk back the progress made in juvenile sentencing law. In *Montgomery*, the Court specified that *Miller* reserved juvenile sentences to LWOP “for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility.”²⁸⁷ This was still relatively positive because it recognized that most, if not all, youth are capable of change. Yet, in 2021, the Court further narrowed its position in *Jones v. Mississippi*, holding that, while a court should consider the attributes of youth, it did not need to make explicit findings of “incorrigibility.”²⁸⁸ This removed the protections of *Montgomery* for juveniles sentenced to LWOP and implicitly dismissed the belief that only “the rarest of juvenile offenders” were deserving of such punishment.²⁸⁹ The Court walked back its earlier decision in part by emphasizing the importance and necessity of discretionary sentencing.²⁹⁰ Advocates and other state supreme courts may wish to follow the Massachusetts SJC model of reducing juvenile court involvement, or find other workarounds, to reduce the sentencing of juveniles in light of the *Jones* decision.

285 *Diatchenko*, 1 N.E.3d at 284–85.

286 *See id.* at 284 (“[B]ecause the brain of a juvenile is not fully developed, either structurally or functionally, by the age of eighteen, a judge cannot find with confidence that a particular offender, at that point in time, is irretrievably depraved. . . . Therefore, it follows that the judge cannot ascertain, with any reasonable degree of certainty, whether imposition of this most severe punishment is warranted.”).

287 *Montgomery v. Louisiana*, 577 U.S. 190, 209 (2016). The “permanently incorrigible” standard has been derided as being “[p]atently [i]neffective.” *See* Casey Matsumoto, Note, “*Permanently Incorrigible*” Is a Patently Ineffective Standard: Reforming the Administration of Juvenile Life Without Parole, 88 GEO. WASH. L. REV. 239, 249–53 (2020).

288 *Jones v. Mississippi*, 141 S. Ct. 1307, 1318–19 (2021).

289 *See id.* at 1328 (Sotomayor, J., dissenting).

290 *Id.* at 1313, 1317–18.

5. Introducing Risk-Assessment to Probation

In addition to instituting reforms focused on preventing juveniles from coming into initial contact with the juvenile legal system or diverting them from arraignment after an arrest, the Massachusetts Probation Service (MPS) has implemented probation reforms to reduce system contact for juveniles during post-arraignment and post-adjudication processes. Reforms include both a concerted effort to limit the use of probation notices in response to mere technical violations and the introduction of risk-assessment tools to probation determination.²⁹¹ Between 2015 and 2021, these reforms reduced the monthly juvenile probation caseloads by approximately two-thirds.²⁹²

First, juvenile probation officers in Massachusetts have recently endeavored to reduce their use of probation violation notices in response to non-criminal violations, in part by developing a “graduated response system” for probation officers.²⁹³ Officers are generally authorized to issue notices of probation violation against youth who commit criminal or non-criminal violations, for which they must appear in court.²⁹⁴ Non-criminal violations include such acts as skipping probationary appointments, not paying fees, failing drug tests, and breaking curfew.²⁹⁵ These types of “technical” violations have historically made up about two-thirds of all juvenile probation violations.²⁹⁶ The graduated response system was thus devised to provide probation officers with an alternative to issuing violation notices in the form of “a straightforward evidence based rehabilitative system of responses” to non-criminal violations of probation.²⁹⁷

291 KELLY CONLIN, MASS. PROB. SERV., MASSACHUSETTS GRADUATED RESPONSE SYSTEM I, 5 (2019) (on file with author); see *Data About Youth on Probation*, *supra* note 116.

292 *Data About Youth on Probation*, *supra* note 116.

293 CONLIN, *supra* note 291, at 1; see also *Data About Youth on Probation*, *supra* note 116.

294 *Data About Youth on Probation*, *supra* note 116. An individual violates the terms of their probation when they “fail[] to comply with any of the court -ordered [sic] conditions of probation.” *Id.*

295 CONLIN, *supra* note 291, at 1; *Probation Violation Hearing*, SPRING & SPRING, <https://www.springandspring.com/probation-violation-hearings/#::~text=A%20technical%20violation%20is%20any,or%20failing%20a%20drug%20test> (last visited Mar. 31, 2023).

296 *Data About Youth on Probation*, *supra* note 116; see also Juv. Ct. Prob. Dep’t, *Monthly Report of Probation Activity: Juvenile Court Department*, TABLEAU DASHBOARD, <https://public.tableau.com/app/profile/mpsresearchdept/viz/JuvenileCourtProbationDepartment/DelinquencyTrendsDashboard> (Feb. 28, 2023).

297 CONLIN, *supra* note 291, at 1.

The point was to combat disproportionate responses to minor violations of probation terms.²⁹⁸ The system outlines more appropriate responses to different levels of violations: probation officers may now only file a notice of probation violation in response to the most serious violations, such as the commission of a similar or more serious transgression than the underlying offense.²⁹⁹ This reduces the likelihood that a youth will be brought back to court for a minor transgression, thereby reducing the likelihood that they will be detained again or face other harmful consequences.³⁰⁰ Instead, the graduated response system recommends informal responses to lower levels of violations, such as warnings, motivational interviewing, and logging daily activities.³⁰¹ The system's matrix (providing varying levels of sanctions depending on the severity of the probation violation) aims to minimize additional system involvement and re-incarceration in response to normal adolescent behavior.³⁰²

Second, the MPS introduced “validated screening tools” at multiple decision points within probation's workflow.³⁰³ Prior to arraignment, the MPS utilizes one such tool “to identify the likelihood a youth will be successful in a diversion program.”³⁰⁴ Thanks in part to pre-arraignment supervision and diversion, the number of youth on pretrial supervision decreased from 1,267 in January 2015 to 758 in January 2021.³⁰⁵

For youth adjudicated delinquent or who have been issued a CWO, a court can issue one of two forms of probation: risk-need or administrative probation.³⁰⁶ Risk-need probation requires direct

298 *See id.*

299 *Id.* at 6.

300 *See* JOSH WEBER ET AL., TRANSFORMING JUVENILE JUSTICE SYSTEMS TO IMPROVE PUBLIC SAFETY AND YOUTH OUTCOMES 4 (2018), <https://csgjusticecenter.org/wp-content/uploads/2020/02/Transforming-Juvenile-Justice-Systems.pdf>.

301 CONLIN, *supra* note 291, at 6.

302 *Id.* at 1.

303 *Learn About the MPS' Famous Firsts*, *supra* note 239; STANDARDS AND FORMS FOR THE RISK / NEED CLASSIFICATION SYSTEM AND PROBATION SUPERVISION FOR THE PROBATION OFFICES OF THE DISTRICT, BOSTON MUNICIPAL AND SUPERIOR COURTS (2014), <https://www.mass.gov/doc/section-11-oras-standards-with-clarifications-november-2014/download>.

304 *Data About Youth on Probation*, *supra* note 116.

305 *See* Off. Child Advoc., *Pretrial Proceedings, Supervision, and Detention*, MASS.GOV, <https://www.mass.gov/info-details/pretrial-proceedings-supervision-and-detention> (last visited Mar. 31, 2023) [hereinafter *Pretrial Proceedings*] (see graph: Youth Pretrial Supervision Data Trends).

306 *Data About Youth on Probation*, *supra* note 116.

supervision of youth by probation officers, whereas administrative probation generally assigns “limited supervision and . . . fewer court-ordered conditions.”³⁰⁷ Under risk-need probation, Massachusetts probation officers use the Ohio Youth Assessment System (OYAS) to determine the necessary level of supervision that a youth requires.³⁰⁸ OYAS was developed in 2009 following a report published by the University of Cincinnati’s Center for Criminal Justice Research, which found that “lower risk youth were best served in [their home] communit[ies] while higher risk youth did as well if not better in more intensive programs.”³⁰⁹ The MPS utilizes OYAS to assess whether a youth is at low, moderate, or high risk of re-offending and implements appropriate intervention services based on that assessment.³¹⁰

The number of youth on administrative and risk-need probation decreased by 75 percent and 82 percent, respectively, between January 2015 and January 2021.³¹¹ Additionally, the majority of youth on risk-need probation at the time of this writing are subject to minimum supervision, as compared to moderate or maximum supervision.³¹² This stands in sharp contrast to the data in 2015, when roughly 70 percent of youth on risk-need probation were subjected to maximum supervision.³¹³ Thus, the changes within the juvenile probation system in Massachusetts over the last decade under strong leadership³¹⁴ have been remarkable, helping

307 *Id.*

308 *Id.*

309 EDWARD LATESSA ET. AL., CTR. FOR CRIM. JUST. RSCH., THE OHIO YOUTH ASSESSMENT SYSTEM ii, 1 (2009) https://www.uc.edu/content/dam/uc/ccjr/docs/reports/project_reports/OYAS_final_report.pdf.

310 *Data About Youth on Probation, supra* note 116.

311 *Id.* (citing data on “Juvenile probation caseload by supervision type,” showing 989 juveniles on administrative probation in January 2015 compared to 243 in 2021, and 1,122 juveniles on risk-need probation in January 2015 compared to 198 in 2021).

312 *Id.* (citing data on “Juvenile Risk/Need probation caseload by supervision level”).

313 *Id.*

314 The actions of MPS Commissioner Ed Dolan and now retired Juvenile Probation director John Millett have helped improve the policies and practices of, and therefore reduce the numbers coming from, juvenile probation in Massachusetts. They achieved this by, among other initiatives, introducing risk screening tools and setting (and then achieving) a goal to reduce probation violation rates by 50 percent. Mass. Prob. Serv., *Trial Court Leaders and Representatives from the Juvenile Justice Field Recognize Juvenile Probation Statewide Supervisor John Millett at Virtual Retirement Party*, MASS.GOV (Sept. 10, 2021), <https://www.mass.gov/news/trial-court-leaders-and-representatives-from-the-juvenile-justice-field-recognize-juvenile-probation-statewide-supervisor-john-millett-at-virtual-retirement-party>; Mass. Prob. Serv., *Massachusetts Probation Commissioner Edward J. Dolan is Recipient*

to reduce the number of youth on probation, reduce the number and types of violations, focus on risk screening, and overall transitioning the agency from “referee” to “coach.”

Over the last decade, all three branches of the Massachusetts government—the Legislature, the Judiciary (through the SJC and MPS), and the Executive (through DYS and others)—have taken a “less is more” approach to system intervention for youth by actively decriminalizing offenses, prioritizing diversion, dipping into expungement, reducing lengthy incarceration terms, and improving probation services. Taken together, these actions have reduced the scope of the juvenile legal system’s jurisdiction and helped decrease the number of youths involved in the system overall.

C. The Juvenile Legal System’s Increased Focus on Developmentally Appropriate Responses to Youth Behavior

As cultural values shifted away from punitive responses to youth behavior, the Massachusetts juvenile legal system started utilizing adolescent development research to implement strategies that support youth in achieving positive outcomes. Research has revealed the benefits of using Positive Youth Development (PYD), which recognizes a young person’s positive behaviors and promotes the development of their social, emotional, moral, and self-determinative competencies.³¹⁵ Whereas the traditional tools available to legal system agencies (i.e., probation and incarceration) are based on a deficit model that focuses on the individual failings of youth, legal system agencies in Massachusetts worked to redesign their interventions by instead centering positive

of Prestigious Maud Booth Correctional Services Award, Mass.GOV (Aug. 5, 2019), <https://www.mass.gov/news/massachusetts-probation-commissioner-edward-j-dolan-is-recipient-of-prestigious-maud-booth-correctional-services-award>.

315 Catalanano et al., *supra* note 30, at 101–05, 107; see also Chris Bonell et al., *What is Positive Youth Development and How Might It Reduce Substance Use and Violence? A Systematic Review and synthesis of theoretical literature*, BMC PUB. HEALTH, Feb. 10, 2016, at 1, 1–2 (applying the use of PYD in the context of reducing substance abuse and violence among youth); Jodie Roth et al., *Promoting Healthy Adolescents: Synthesis of Youth Development Program Evaluations*, 8 J. RSCH. ON ADOLESCENCE 423, 425–26 (1998). Cf. Naomi E.S. Goldstein et al., “You’re on the Right Track!” *Using Graduated Response Systems to Address Immaturity of Judgment and Enhance Youths’ Capacities to Successfully Complete Probation*, 88 TEMP. L. REV. 803, 819 (2016) (discussing “graduated response systems” as a means of fostering positive youth development of young people on probation by creating incentives to encourage positive behaviors).

reinforcement.³¹⁶ Agencies implemented PYD and incentive-based systems to pivot away from the perspective that youth are problems to be solved, seeking to instead facilitate their healthy development towards adulthood.³¹⁷ Massachusetts’ public defender agency adopted the PYD model in an attempt to create more positive outcomes for youth.³¹⁸

1. Programmatic Developments Based on Positive Youth Development

DYS, the state agency with authority and custody over youth detained pretrial and committed post-adjudication,³¹⁹ now uses PYD to guide its program development.³²⁰ As the number of youth in DYS custody decreased and facilities became less crowded, DYS could provide “better and more sophisticated services” for youth in their care.³²¹ For example, DYS offers high school-level classes in math, English, social studies, and science, as well as high school equivalency, college and career readiness, and college-level courses.³²² DYS also has processes in place to quickly identify youth in their care with “individualized educational programs” who qualify for special education.³²³ Staff members once designated as “floor staff,” who did little more than stand in doorways watching the class, have been upgraded to “teaching assistants,” who now circulate

316 See MASS. COAL. FOR JUV. JUST. REFORM, TESTIMONY TO THE JOINT COMMITTEE ON THE JUDICIARY IN SUPPORT OF AN ACT TO PROMOTE PUBLIC SAFETY AND BETTER OUTCOMES FOR YOUNG ADULTS I, 9–11, <https://static1.squarespace.com/static/5d6e84547e7c7d000106c704/t/61ed6afd4e5e511742aace1a/1642949374333/JJ+Coalition+Testimony+H1826+S920.pdf> (describing the legal system agencies in Massachusetts and developments they have made to positively support youth).

317 *Id.* at 9.

318 *Id.* at 10–11.

319 Off. Child Advoc., *Department of Youth Services (DYS)*, MASS.GOV, <https://www.mass.gov/service-details/department-of-youth-services-dys> (last visited Mar. 31, 2023).

320 Dep’t Youth Servs., *DYS National Initiatives and Best Practices*, MASS.GOV, <https://www.mass.gov/service-details/dys-national-initiatives-and-best-practices> (last visited Mar. 31, 2023).

321 Interview with Ed Dolan, Comm’r Prob. (former DYS Comm’r), Mass. Prob. Serv., in Bos., Mass. (June 3, 2021).

322 Dep’t Youth Servs., *DYS Programs - Education*, MASS.GOV, <https://www.mass.gov/service-details/dys-programs-education> (last visited Mar. 31, 2023) [hereinafter *DYS Programs – Education*].

323 JOSHUA DANKOFF ET AL., SCHOOL’S OUT: MASSACHUSETTS YOUTH IN ADULT CORRECTIONAL SYSTEMS DENIED EDUCATION 28 (2022), <https://www.cfjj.org/schools-out>.

classrooms to assist the students.³²⁴ DYS has also implemented treatment and support systems that center individuals and help maintain critical family connections by facilitating family engagement.³²⁵ As a result, DYS has developed a sense of pride in how they run their detention centers, though still acknowledging that “detention is not a good thing” for youth.³²⁶

Through the Youth Engaged in Services (YES) program, DYS also “offers voluntary, post-discharge services and case management support to youth beyond their DYS commitment until their [twenty-second] birthdays.”³²⁷ A 2021 evaluation of the YES program found a 57.7 percent participation rate in YES for youth discharged from DYS custody between 2015 and 2019.³²⁸ According to 2016 DYS data, youth who opted into YES had a lower recidivism rate than youth who declined to participate: the one-year reconviction rate for YES youth was 21 percent, compared to 29 percent for youth who did not participate.³²⁹ An even lower recidivism rate for participants was found in the YES evaluation.³³⁰ The structure of this program demonstrates a shift toward preemptive, rather than reactive, measures—supporting the healthy development of youth as they grow out of risk-taking behaviors.

Finally, the creation of a statewide Juvenile Court in 1992 allowed the courts to formulate effective, youth-specific approaches.³³¹

324 Interview with Ed Dolan, *supra* note 321; *see also* *DYS Programs – Education*, *supra* note 322.

325 Dep’t Youth Servs., *DYS National Initiatives and Best Practices*, Mass.gov, <https://www.mass.gov/service-details/dys-national-initiatives-and-best-practices> (last visited Mar. 31, 2023) (for example, DYS facilitates a family engagement program called “Parenting with Love and Limits” and utilizes the “Youth Level of Service/Case Management Inventory” risk management tool to determine the proper level of care and treatment a youth requires).

326 Interview with Ed Dolan, *supra* note 321.

327 MASS. DEP’T YOUTH SERVS., FY 2017 ANNUAL REPORT (2017), <https://www.mass.gov/doc/dys-annual-report-2017/download>; *see also* Off. Child Advoc., *Data About the Youth Engaged in Services (YES) Voluntary Program*, MASS.GOV (Nov. 2, 2020), <https://www.mass.gov/info-details/data-about-the-youth-engaged-in-services-yes-voluntary-program>.

328 JONATHAN F. ZAFF ET AL., CERES INST. FOR CHILD. & YOUTH, ANALYSIS OF THE MASSACHUSETTS DEPARTMENT OF YOUTH SERVICES’ YES INITIATIVE 10 (2021), <https://www.mass.gov/doc/analysis-of-ma-dys-yes-initiative-report/download>.

329 MASS. DEP’T YOUTH SERVS., JUVENILE RECIDIVISM REPORT FOR YOUTH DISCHARGED DURING 2016 20 (2020), <https://www.mass.gov/doc/dys-2020-recidivism-report/download>.

330 ZAFF ET AL., *supra* note 328, at 19.

331 *See* Michael Jonas, *Outgrowing Juvenile Justice*, COMMONWEALTH MAG. (Jan. 1, 2001), <https://commonwealthmagazine.org/criminal-justice/outgrowing-juvenile->

Since the expansion from a single Juvenile Court to a statewide system, the Juvenile Court has adapted court proceedings based on the developmental stages of young people.³³² The statewide Juvenile Court also introduced policies that differentiate practice from adult court. For example, the Juvenile Court created a policy banning indiscriminate shackling of youth in court,³³³ which was later codified by the 2018 Act.³³⁴ The unification of the Juvenile Court system in Massachusetts allowed it to specialize in youth development practices and led to specialized training for relevant staff.³³⁵

DYS and the Juvenile Court have revamped their policies and practices toward ensuring more developmentally appropriate responses to adolescent behavior and aim to prioritize the healthy development of those who still are subject to the system.

2. Juvenile Advocacy and Access to Specialized Counsel

The Youth Advocacy Division (YAD) of the Committee for Public Counsel Services (CPCS), Massachusetts' statewide public defender agency, has made substantial strides in reforming the juvenile legal representation by adopting a PYD model and ensuring that youth have access to specialized counsel. These efforts have helped young people achieve positive outcomes and made the system more equitable overall.

YAD was established in 2009.³³⁶ The creation of this juvenile defender division encouraged a zealous advocacy tailored to the developmental needs of children.³³⁷ YAD's mission is to ensure "that

justice/. Prior to this change, there were multiple, independently run and managed courts with their own policies and procedures. *Id.*

332 *See id.*

333 Memorandum from the Commonwealth Mass. Admin. Off. Juv. Ct. 2 (Feb. 25, 2010), <https://njdc.info/wp-content/uploads/2014/10/Massachusetts-Use-of-Restraints-on-Juveniles-Memo-2.25.10.pdf>.

334 An Act Relative to Criminal Justice Reform, 2018 Mass. Acts 98 (codified as amended at MASS. GEN. LAWS ch. 119, § 86(b) (2018)).

335 *See, e.g.,* MASSACHUSETTS JUVENILE COURT CLINICS, <https://www.mass.gov/doc/majvenilecourtclicinsumarypdf/download> (last visited Mar. 31, 2023) (explaining that all Juvenile Court clinicians must receive specialized training administered by the Massachusetts Department of Mental Health and the University of Massachusetts Medical School).

336 YAD was modeled off of the Youth Advocacy Project in Roxbury, founded in 1992. *Youth Advocacy Division - Committee for Public Counsel Services*, IDEALIST, <https://www.idealists.org/en/government/c516b24f0f5e4469adce6fc19b4de265-youth-advocacy-division-committee-for-public-counsel-services-boston> (last visited Mar. 31, 2023).

337 *See YAD Social Services*, COMM. FOR PUB. COUNS. SERVS. [CPCS], <https://www>.

every child in Massachusetts has access to zealous legal representation that incorporates a Youth Development Approach resulting in both legal and life success.”³³⁸ In order to achieve that mission, YAD attorneys are trained in using a holistic representation model and in applying positive youth development to their work.³³⁹ YAD’s performance standards direct attorneys to “have a strong understanding of adolescent brain development, including both scientific studies and case law.”³⁴⁰ The creation and expansion of the EdLaw Project is an attempt to normalize education advocacy into juvenile defense practice.³⁴¹

The professionalization of juvenile representation ensures that all system-involved youth have access to a legal team that understands the opportunities and challenges of adolescent development. This directly affects the interactions and relationships between attorneys (and social workers) and clients, as YAD attorneys are expected to be nurturing adults in their clients’ lives.³⁴² This also allows YAD attorneys to push other system actors to prioritize engaging with youth with a greater understanding as to how to promote the best legal and life outcomes for their clients.³⁴³ Specialized, high-quality representation strives to hold the legal system accountable to providing equitable, developmentally appropriate treatment for youth.

In addition to increasing the quality of representation through professionalization around developmentally appropriate approaches, YAD expanded the types of representation available to youth.³⁴⁴ For

publiccounsel.net/ya/yad-social-services/ (last visited Mar. 31, 2023).

338 *Who We Are and How We Are Structured*, CPCS, <https://www.publiccounsel.net/hr/divisions/> (last visited Mar. 31, 2023).

339 *YAD Social Services*, *supra* note 337.

340 CPCS, PERFORMANCE STANDARDS GOVERNING REPRESENTATION OF INDIGENT JUVENILES IN DELINQUENCY, YOUTHFUL OFFENDER, AND CRIMINAL CASES 2 (2014), <https://www.publiccounsel.net/ya/wp-content/uploads/sites/6/2014/11/Juv-Del-Performance-Standards-10-22-14-FINAL.pdf>.

341 *See* EdLaw Project, *supra* note 202 (discussing education advocacy initiatives between YAF and CPCS).

342 YOUTH ADVOC. DIV., THE POSITIVE YOUTH DEVELOPMENT APPROACH TO ZEALOUS ADVOCACY (on file with author) (YAD providing training to juvenile defense attorneys on a positive youth development approach to zealous advocacy).

343 *Id.*

344 *See* *Juvenile Appeals*, CPCS, <https://www.publiccounsel.net/ya/juvenile-appeals/> (last visited Mar. 31, 2023) (providing private counsel to represent youth in direct appeals and screenings); *YAD Private Counsel*, CPCS, <https://www.publiccounsel.net/ya/private-counsel/> (last visited Mar. 31, 2023) (providing private trial attorneys trained to represent youth in delinquency, youthful offender, juvenile murder, and GCL revocation cases); *Revocation Panel*, CPCS, <https://www.publiccounsel.net/ya/private-counsel/revocation-panel/> (last visited Mar. 31,

instance, YAD represents youth who are returned to DYS custody due to alleged violations of their Grants of Conditional Liberty (GCL).³⁴⁵ Representation on GCL revocation hearings ensure that the youth's voice is amplified in challenging the allegations and the amount of time DYS is seeking to hold them; it also allows the youth to appeal the disposition after the initial hearing.³⁴⁶ Upholding a youth's due process protections during the administrative GCL revocation process can hold the hearing officer accountable to basing decisions in fact.³⁴⁷ Accessing due process protections can also be therapeutic for youth; the youth's perception of fairness in the adjudication process is crucial to using the legal system consequences as an accountability measure and to promote healthy development.³⁴⁸ "[T]he perception and reality of an equitable adjudication process is essential for an adolescent to ultimately accept consequences handed down through the justice system."³⁴⁹

Children in conflict with the law in Massachusetts have benefitted from the specialization of the youth division of the public defender agency. While it is difficult to make a causal argument between improved representation and system size, YAD's adoption of PYD as a guiding framework has empowered public defenders to make informed decisions based on their clients' broader lives and developmental behaviors, with the understanding that positive youth development leads to more positive case outcomes.

D. System-Wide Collaboration Allowed System Actors to Share Best Practices and Implement Broader-Reaching Changes

Massachusetts' juvenile legal system also benefited from the formation of coalitions inclusive of legal system actors and advocacy

2023) (providing panel attorneys in Grant of Conditional Liberty cases).

345 *Revocation Panel, supra* note 344. A GCL is when a youth who was committed to DYS custody strikes a conditional written agreement with the department to return home (or to some non-carceral setting) prior to the end of their commitment. *See* 109 MASS. CODE REGS. 8.03 (2016). It is "roughly equivalent to 'parole' in the adult justice system," where youth released into the community are still considered under DYS commitment. JJPAD 2020 ANNUAL REPORT, *supra* note 152, at 52 n.65, 52–53.

346 *Revocation Panel, supra* note 344.

347 *See id.*

348 *See* Jay D. Blitzman, *Gault's Promise Revisited: The Search for Due Process*, JUV. & FAM. CT. J., June 2018, at 49, 70 ("[T]he perception and reality of an equitable adjudication process is essential for an adolescent to ultimately accept consequences handed down through the justice system.").

349 *Id.*

organizations to coordinate reform efforts. There are three main groups working in this area: (1) the Juvenile Detention Alternatives Initiative (JDAI), which works to reduce reliance on youth detention;³⁵⁰ (2) the Child Welfare and Juvenile Justice Leadership Forum, which works to define a shared vision for system-involved youth and families through strategic planning;³⁵¹ and (3) most recently, the JJPAD, which “is charged with evaluating juvenile justice system policies and procedures and making recommendations to improve outcomes.”³⁵²

The JDAI is a national network of practitioners and stakeholders working to use a “data-driven, problem-solving approach” to reduce reliance on detention.³⁵³ Massachusetts adopted JDAI “with the intention of scaling it statewide,” starting with Worcester and Suffolk counties in 2006.³⁵⁴ By 2019, all six judicial districts with juvenile detention centers were participating in JDAI to establish a more effective and efficient detention system.³⁵⁵ JDAI partners include government agencies, non-profits, judiciary, education, and police departments.³⁵⁶ Their strategic objectives involve “reduc[ing] detention rates of low-risk youth,” “identify[ing] opportunities to reduce lengths of stay in detention through case processing reforms,” “reduc[ing] racial and ethnic

350 *Juvenile Detention Alternatives Initiative*, *supra* note 137.

351 *Child Welfare and Juvenile Justice Leadership Forum*, CFJJ, <https://www.cfjj.org/child-welfare-and-juvenile-justice-leadership-forum> (last visited Mar. 31, 2023).

352 Off. Child Advoc., *Juvenile Justice Policy and Data Board*, MASS.GOV, <https://www.mass.gov/juvenile-justice-policy-and-data-boardchildhood-trauma-task-force> (last visited Mar. 31, 2023) [hereinafter *Juvenile Justice Policy and Data Board*]. There is also the Juvenile Justice Advisory Committee (JJAC), which acts as a State Advisory Group under the Juvenile Justice and Delinquency Prevention Act. Off. Grants & Rsch., *Juvenile Justice and Delinquency Prevention Act (JJDP) Grant Program*, MASS.GOV, <https://www.mass.gov/service-details/juvenile-justice-and-delinquency-prevention-act-jjdp-grant-program> (last visited Mar. 31, 2023). However, given the JJAC’s capture by carceral District Attorney (DA) offices (its 2017 membership list reveals that four of its members were either an elected DA or a current or former Assistant DA in the state, including the current JJAC chair) and its limited impact on meaningful policy or practice change, I do not include it on this list of collaborative efforts. See *Current Juvenile Justice Advisory Committee Members*, MASS.GOV, <https://www.mass.gov/doc/current-jjac-members/download> (last visited Mar. 31, 2023).

353 *Juvenile Detention Alternatives Initiative*, *supra* note 137.

354 SARAH GUCKENBURG ET AL., WESTED JUST. & PREVENTION RSCH. CTR., JUVENILE DETENTION ALTERNATIVES INITIATIVE SCALE-UP: STUDY OF FOUR STATES 6 (2019), <https://assets.aecf.org/m/resourcedoc/wested-jdaiscaleup-2019.pdf>.

355 *Id.*

356 Dep’t Youth Servs., *List of Massachusetts JDAI Partners*, MASS.GOV, <https://www.mass.gov/service-details/list-of-massachusetts-jdai-partners> (last visited Mar. 31, 2023).

disparities,” and “replicat[ing] JDAI with fidelity at the local level.”³⁵⁷

JDAI’s efforts have coincided with a large reduction in the number of youth held in detention; “[p]rior to JDAI, in 2006, there were nearly 5000 children held on bail each year.”³⁵⁸ By 2013, the number had reduced to less than 2,000.³⁵⁹ In 2019, less than 500 youth were admitted to a secure detention facility.³⁶⁰ In addition to reducing detention numbers, JDAI’s broad focus on racial and ethnic disparities in the juvenile legal system has drawn attention and resources towards increasing equity in the system.³⁶¹ Through sharing data on racial and ethnic disparities, and by creating resources to lay out the problem and share best practices, JDAI has led the conversation around how to address disparity in the juvenile legal system.³⁶²

Between 2014 and 2020, the Child Welfare and Juvenile Justice Leadership Forum (“Leadership Forum”) gathered state government and non-profit stakeholders to promote “appropriate placement; fairness and effectiveness; a well resourced, mutually accountable, evidence-driven, and data-informed system; and a system that works to eliminate racial and ethnic disparities.”³⁶³ By bringing together system actors voluntarily (i.e., without a statutory mandate) and providing

357 MASSACHUSETTS- JUVENILE DETENTION ALTERNATIVES INITIATIVE: STRATEGIC PLAN: GOALS AND ACTIVITIES FOR YEARS 2016 – 2018 (2016), <https://www.mass.gov/doc/jdai-strategic-plan-2016-2018-0/download>; see also *JDAI Core Strategies*, ANNIE E. CASEY FOUND., <https://www.aecf.org/work/juvenile-justice/jdai/jdai-core-strategies> (last visited Mar. 31, 2023).

358 *Juvenile Detention Alternative Initiative: Massachusetts*, JUV. DET. ALT. INITIATIVE, <https://www.mass.gov/doc/jdai-in-massachusetts-info-sheet/download> (last visited Mar. 31, 2023).

359 *Id.*

360 MASS. JUV. DET. ALT. INITIATIVE, MASSACHUSETTS JUVENILE DETENTION ALTERNATIVES INITIATIVE DASHBOARD: STATEWIDE OVERVIEW: JANUARY–MARCH 2020 UPDATE (2020) (data pulled from “Types” tab and only includes secure detention).

361 ANNIE E. CASEY FOUND., DETENTION REFORM: AN EFFECTIVE APPROACH TO REDUCE RACIAL AND ETHNIC DISPARITIES IN JUVENILE JUSTICE (2009), <https://assets.aecf.org/m/resourcedoc/aecf-DetentionReform3ReduceRacialDisparities-2009.pdf>. For example, the JDAI created and distributed *Seeing RED*, a film that explores the racial and ethnic disparities within the juvenile legal system to challenge its tendency to push youth further into the system. JDAI Massachusetts, *Seeing RED*, VIMEO (Oct. 11, 2016), <https://vimeo.com/186438594>.

362 See Mass. Juv. Det. Alt. Initiative, *Massachusetts JDAI: Decision-Specific Relative Rate Index (RRI) Dashboard*, TABLEAU DASHBOARD, https://public.tableau.com/shared/SPEJD7C2W?:display_count=yes&:showVizHome=no (last visited Mar. 31, 2023); *Seeing RED*, *supra* note 361.

363 *Child Welfare and Juvenile Justice Leadership Forum*, *supra* note 351. For full disclosure, the author of this Article staffed the Leadership Forum from mid-2015 through 2019.

space for collaboration, the Leadership Forum was able to create the *Positive Youth Outcome and Recidivism Reduction Strategy* in 2017.³⁶⁴ This strategy led to Massachusetts receiving an Office of Juvenile Justice and Delinquency Prevention Second Chance Act Grant to develop the graduated response grids at MPS and DYS and to increase education advocacy efforts at CPCS.³⁶⁵ The Grant allowed MPS to collect data on violations of probation, which drove MPS' efforts to reduce violations of probation stemming from its administrative caseload.³⁶⁶ The Leadership Forum also convened stakeholders to create a Race Equity Working Group, which worked to publicize and implement Race Equity Principles and Core Competencies across the system.³⁶⁷ Ultimately, without statutory mandate or regular funding, the Leadership Forum stopped meeting in early 2020.³⁶⁸

The JJPAD was created as part of the Criminal Justice Reform legislation in 2018³⁶⁹ and operates with professional staffing from the OCA, which chairs the Board.³⁷⁰ The JJPAD operates as an umbrella for data- and community-based initiatives committees, as well as the Child Trauma Taskforce.³⁷¹ It produces regular reports and maintains a website with data compiled from across the system.³⁷² The JJPAD was the basis for the creation of the Youth Diversion Initiative.³⁷³

The JDAI, Leadership Forum (when operating), and JJPAD create significant opportunities for stakeholders in Massachusetts' juvenile legal system to envision progressive reforms together. Current system leaders and senior staff sit at these tables, and the Massachusetts-specific recommendations below are for their members, as well as the legislature as a whole.

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Taken together, upstream interventions, commitment to less system intervention, implementation of developmentally appropriate responses to youth behavior, specialization of youth advocates in the

364 *Id.*

365 *Id.*

366 *Id.*

367 *Id.*

368 Citing personal knowledge as a former member of the Leadership Forum.

369 *See* An Act Relative to Criminal Justice Reform, 2018 Mass. Acts 99 (codified as amended at MASS. GEN. LAWS ch. 119 § 89(b) (2018)).

370 Off. Child Advoc., *Juvenile Justice Policy and Data Board*, MASS.GOV (Dec. 30, 2021), <https://www.mass.gov/resource/juvenile-justice-policy-and-data-board>.

371 *Id.*

372 *Id.*; *see also*, *Juvenile Justice Policy and Data Board*, *supra* note 352.

373 *See* IMPROVING ACCESS TO DIVERSION, *supra* note 52, at 6–11.

public defender system, and system-wide collaboration generally contributed to the decrease of the Massachusetts juvenile legal system size. As the system is now a fraction of the size it was fifteen years ago, this is an opportune moment for Massachusetts to consider its next steps and for other states to consider whether the policies adopted in this state could serve as a model to reducing their juvenile legal systems.

IV. WHAT COMES NEXT?

In laying out the major changes affecting the juvenile legal system over the past two decades, we highlighted which changes were successful in reducing the harm caused by legal system contact, where Massachusetts can continue to make changes to further its progress, and where it can pivot to create a more equitable system. While this Article provides a broad overview, more work is needed to understand which changes directly caused the reduction in Massachusetts' system size. We hope that advocates and researchers continue to examine the drivers of the reduction in system size and that future researchers attempt to attribute specific policy changes to the number or proportion of youth who did not enter the system. In Massachusetts, we need to understand which changes are effective so that we can ensure their impacts are not reversed.

Given the current state of the Massachusetts juvenile legal system—with lower numbers but persisting disparities—the following recommendations aim to advance the strides already being made to reduce its size and to provide guidance for other states seeking to do the same. These recommendations *are* possible to implement over the next five years in Massachusetts, and they would further developmentally appropriate interventions and equity in the system. Policymakers and advocates from other states should look first to Part III of this Article and then to the below recommendations in their efforts to reduce the size, scope, and focus of their juvenile legal systems.

A. Recommendation 1: Keep the System Small or Make it Smaller

Addressing the educational, financial, as well as mental and behavioral health needs of youth, imposing lower levels of legal intervention, and focusing on developmentally appropriate treatment for system-involved children all promote positive life outcomes for youth. These life outcomes are often summarized in youth development literature as the six Cs: confidence, character, connection, competence,

contribution, and caring.³⁷⁴ Even in cases where contextual factors push decision-makers toward incarceration and punishment, we must ensure that the system responds with research-backed, effective strategies. Focus should first be placed on reducing poverty upstream (i.e., implementing poverty reduction measures such as tax credits and guaranteed minimum income). At the same time, any increase in poverty-related crime should not lead to increasing the use of the juvenile legal system. The benefits of reduced system contact for youth are well-researched and well worth it.

In addition to reducing instances of youth arrest and detention, reducing the use of exclusionary discipline in schools and overall contact with the child welfare system similarly results in more positive outcomes for youth. School districts that rely heavily on suspensions are actually associated with increases in local crime,³⁷⁵ and removing a child from their home into the child welfare system can lead to harmful consequences.³⁷⁶

Massachusetts has seen success in keeping youth and their communities safe with community-based alternatives to detention and commitment.³⁷⁷ We should also aim to continue implementing alternatives to incarceration that are suitable for all youth, including for those labeled “high risk.” High risk youth are especially likely to be detained pretrial, but “wraparound” services at a community-based site could address their particular needs without the harms of incarceration.³⁷⁸

Finally, in 2019, female youth only made up twenty-seven new

374 See *Positive Youth Development Outcomes*, ACT FOR YOUTH, https://actforyouth.net/youth_development/development/outcomes.cfm (last visited Mar. 31, 2023) (citing KAREN JOHNSON PITTMAN ET AL., PREVENTING PROBLEMS, PROMOTING DEVELOPMENT, ENCOURAGING ENGAGEMENT II (2003), <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.471.1224&rep=rep1&type=pdf>).

375 Gerlinger, *supra* note 178, at 11; see *supra* Section III.A.

376 Vivek Sankaran et al., *A Cure Worse than the Disease? The Impact of Removal on Children and Their Families*, 102 MARQ. L. REV. 1161, 1165–69 (2019); KATE LOWENSTEIN, CFJJ, SHUTTING DOWN THE TRAUMA TO PRISON PIPELINE 8–9 (2018), <https://www.cfjj.org/trauma-to-prison>.

377 See *supra* Section III.A.2.

378 “Wraparound is an intensive, structured process that convenes a team of youths, caregivers, and family members, along with professionals and natural supports relevant to a youth with SED and their family.” Jonathan R. Olson et al. *Systematic Review and Meta-analysis: Effectiveness of Wraparound Care Coordination for Children and Adolescents*, 60 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 1353, 1353–54 (2021).

commitments to DYS.³⁷⁹ Closing all secure facilities for girls is within reach—putting resources toward addressing the needs of fewer than thirty girls is an attainable first step to addressing the needs of all youth in community-based settings. While this Article has not deeply engaged with the growing and powerful literature on system abolition, this is mostly out of a desire not to alienate system leaders and policymakers who might discount the entire Article simply by using the term. Some of the changes articulated in Part III above, and furthered by the recommendations in Part IV, encourage the positive, community-based alternatives that are envisioned by the abolitionist movement. Many—even some abolitionists—would accept a 90 percent decrease in system size as an important, incremental step toward abolition. It is my hope that the legal system, and indeed society more broadly, can prioritize positive youth development and outcomes such that a Juvenile Court, youth probation, and certainly youth incarceration will be rendered moot.

B. Recommendation 2: Meet Basic, Educational, and Mental Health Needs of All Young People

While we have made great strides in working to meet the needs of youth upstream within the legal system, we have a long way to go to ensure that all youth have access to the support they need. In the face of poverty,³⁸⁰ educational disruption,³⁸¹ and trauma,³⁸² we must focus on increasing anti-poverty resources and access to educational and mental health services.

In March 2021, Congress responded to increased youth needs by expanding the Federal Child Tax Credit to provide families with monthly payments per child and removed a provision that prevented families from fully benefiting from the credit for earning too little

379 *Data About Youth on Probation*, *supra* note 116.

380 *See supra* Section I.C.

381 SARAH JACKSON, BOS. FOUND., *WHEN THE BOUGH BREAKS* 5, 7 (Brianna A. Savage & Sandy Kendall eds., 2021), <https://www.tbf.org/-/media/tbf/reports-and-covers/2021/when-the-bough-breaks-20211213.pdf>; Emma Dorn et al., *COVID-19 and Education: The Lingering Effects of Unfinished Learning*, MCKINSEY & Co. 2 (July 27, 2021), <https://www.mckinsey.com/industries/education/our-insights/covid-19-and-education-the-lingering-effects-of-unfinished-learning>; *see supra* Section I.E.

382 CHILDHOOD TRAUMA TASK FORCE, *FROM ASPIRATION TO IMPLEMENTATION: A FRAMEWORK FOR BECOMING A TRAUMA-INFORMED AND RESPONSIVE COMMONWEALTH II* (2020), <https://malegislature.gov/Bills/191/SD3134.pdf>.

income.³⁸³ This single piece of legislation effectively cut child poverty by 30 percent, with 91 percent of low-income families using their monthly benefit to pay for basic needs like food, clothing, school supplies, utility bills, and rent.³⁸⁴ Unfortunately, the expanded tax credit has now lapsed and experts predict that the drop in the monthly child poverty rate could be as short lived as the legislation itself.³⁸⁵ While Massachusetts cannot singlehandedly alter the national tax code, the state can emulate this federal initiative by providing tax breaks for, or distributing direct cash benefits to, low-income families with children. Decreasing poverty would help reduce a key risk factor for youth involvement with the juvenile legal system.

Increased food insecurity is also a concern among families with children, as Congress allowed the pandemic-era Universal Free School Meals program to lapse on June 30, 2022.³⁸⁶ Massachusetts legislators have the power to extend the program statewide to address youth nutritional needs.³⁸⁷ Fortunately, the passage of *An Act to Streamline Access to Critical Public Health and Safety-net Programs through Common Applications* will make it easier for families to apply for federal nutrition benefits.³⁸⁸ It also lays the groundwork for creating a “common application” for other needs-based programs that often require the duplication of

383 Cory Turner, *The Expanded Child Tax Credit Briefly Slashed Child Poverty. Here's What Else It Did*, NPR (Jan. 27, 2022), <https://www.npr.org/2022/01/27/1075299510/the-expanded-child-tax-credit-briefly-slashed-child-poverty-heres-what-else-it-d>.

384 *Id.*

385 KRIS COX ET AL., CTR. ON BUDGET & POL'Y PRIORITIES, IF CONGRESS FAILS TO ACT, MONTHLY CHILD TAX CREDIT PAYMENTS WILL STOP, CHILD POVERTY REDUCTIONS WILL BE LOST 4–5 (Dec. 3, 2021), <https://www.cbpp.org/sites/default/files/12-2-21tax.pdf>.

386 Isabel Tehan, *Massachusetts Families 'Facing a Perfect Storm' as Free School Lunch Programs Come to an End*, SOUTHCOAST TODAY (Mar. 28, 2022), <https://www.southcoasttoday.com/story/news/education/2022/03/28/pandemic-free-school-lunches-ending-unless-lawmakers-extend-program-ma-new-bedford-fall-river-covid/7165839001/>; see Robert M. Leshin, *School Meal Service Questions and Answers for School Year 2022-2023*, MASS. DEP'T ELEMENTARY & SECONDARY EDUC. (Aug. 31, 2022), <https://www.doe.mass.edu/news/news.aspx?id=26867>.

387 See Mackenzie Wilkes, *States Put Free School Meals on the Menu*, POLITICO (Dec. 31, 2022), <https://www.politico.com/news/2022/12/31/states-put-free-school-meals-on-the-menu-00075642>.

388 *Common Application to Close the Gaps*, PROJECT BREAD, <https://www.projectbread.org/list-of-policies/close-the-snap-gap#:~:text=About%20the%20bill,care%2C%20housing%2C%20fuel%20assistance> (last visited Mar. 31, 2023); see *Bill H.1290*, GEN. CT. COMMONWEALTH MASS., <https://malegislature.gov/Bills/192/H1290> (last visited Mar. 31, 2023).

information.³⁸⁹ Simply allowing families to apply for multiple benefits within the same process will likely expand access and eliminate benefit gaps for low-income households.

On the other hand, many youths still face long wait lists and bureaucratic or financial challenges in accessing mental and behavioral health services.³⁹⁰ More youth could avoid court involvement if community- or school-based services met their needs. Areas with fewer financial resources see higher rates of CRAs, and some youth must go through court processing simply because they need services only available through a court order from MPS or DYS.³⁹¹ We should continue to strengthen access to community- and school-based services for all youth to prevent court involvement driven only by a need to access services.

As of the completion of this Article, the Massachusetts Legislature has not passed *An Act to Create a Thriving Public Health Response for Adolescents* (the “Thrives” Act) into law.³⁹² This bill would create a council of ten members tasked with creating and implementing “a multi-tiered system of behavioral health promotion prevention and intervention services in each school district.”³⁹³ Passing the Thrives Act would represent a commitment to implementing upstream solutions that address youth behavior and mental health without relying on harmful system involvement. The provision of these much needed

389 *Common Application to Close the Gaps*, *supra* note 388.

390 Tori Bedford, *Teens of Color in Boston Struggle to Find Help in a Mental Health Crisis*, GBH (June 30, 2022), <https://www.wgbh.org/news/local-news/2022/06/30/teens-of-color-in-boston-struggle-to-find-help-in-a-mental-health-crisis>; Martha Bebinger, *Wait Lists for Children’s Mental Health Services Ballooned During COVID*, WBUR (June 22, 2021), <https://www.wbur.org/news/2021/06/22/massachusetts-long-waits-mental-health-children-er-visits>; Stacy Hodgkinson et al., *Improving Mental Health Access for Low-Income Children and Families in the Primary Care Setting*, PEDIATRICS, Jan. 2017, at 1, 3.

391 *CRA Filings*, *supra* note 208; *Massachusetts Poverty Rate by County*, INDEXMUNDI, <https://www.indexmundi.com/facts/united-states/quick-facts/massachusetts/percent-of-people-of-all-ages-in-poverty#map> (last visited Mar. 31, 2023).

392 *Bill H.2084*, GEN. CT. COMMONWEALTH MASS., <https://malegislature.gov/Bills/192/H2084> (last visited Mar. 31, 2023); Mandy McLaren, *Bill Seeks to Eliminate School Takeovers by Mass. Education Department*, BOS. GLOBE (Feb. 2, 2023), <https://www.bostonglobe.com/2023/02/02/metro/bill-seeks-eliminate-school-takeovers-by-mass-education-department/>.

393 H. 2084, 192d Gen. Ct. 1, 5 (Mass. 2021); *accord An Act to Create a Thriving Public Health Response for Adolescents*, CHILD’S MENTAL HEALTH CAMPAIGN, <https://www.childrensmentalhealthcampaign.org/wp-content/uploads/An-Act-to-create-a-thriving-public-health-response-for-adolescents.pdf> (last visited Mar. 31, 2023).

services must also be equitable as they are delivered through school districts. Massachusetts legislators should continue to push for passage of the Thrives Act.

Currently, Massachusetts ranks forty-sixth in the United States for racial equality in education.³⁹⁴ In particular, racial and ethnic disparities persist in the use of exclusionary discipline and school-based arrests.³⁹⁵ A joint study by the Center for Civil Rights Remedies and the Schott Foundation for Public Education found that Black students in Massachusetts who were disciplined missed thirty-four out of 100 school days between the 2015 to 2016 school year—more than triple the amount of days missed by white students who were disciplined that year.³⁹⁶ In 2020, despite accounting for 9 percent of the student body statewide, 18 percent of students arrested in schools were Black.³⁹⁷

These disparities also exist across the intersection of disability. According to the same study, students with disabilities missed an average of thirty-two days of schooling per 100 enrolled students due to discipline.³⁹⁸ Additionally, the provision of special education services in state custody is inconsistent, preventing students with disabilities from accessing a quality education.³⁹⁹ While collaborative efforts built the infrastructure to provide special education services to committed youth through the Department of Elementary and Secondary Education's office entitled "Special Education in Institutionalized Settings,"⁴⁰⁰ on-

394 Adam McCann, *Best States for Racial Equality in Education*, WALLETHUB (June 7, 2020), <https://wallethub.com/edu/states-education-with-the-most-racial-equality/75962>.

395 Aster Richardson, Capstone, *Massachusetts School Discipline Policy Change: Exclusion, Alternatives, and Inequality in Public District and Charter Schools*, SCH. PUB. POL'Y CAPSTONES, Spring 2018, at 1, 4; C[ITIZEN] & STRATEGIES FOR YOUTH, FAIL: SCHOOL POLICING IN MASSACHUSETTS 12–13 (2020), <https://www.cfjj.org/policing-in-schools>; cf. David Scharfenberg, *Massachusetts' Public Schools Are Highly Segregated. It's Time We Treated that Like the Crisis It Is*, BOS. GLOBE (Dec. 11, 2020), <https://www.bostonglobe.com/2020/12/11/opinion/massachusetts-public-schools-are-highly-segregated-its-time-we-treated-that-like-crisis-it-is/> (reviewing the intense levels of racial segregation that pervade the Massachusetts public school system and its negative consequences on students).

396 DANIEL J. LOSEN ET AL., CTR. FOR C.R. REMEDIES, SUSPENDED EDUCATION IN MASSACHUSETTS 7 (2017), <https://schottfoundation.org/resource/suspended-education-in-massachusetts/>.

397 Liza Hirsch, *Fighting Police Brutality Starts in Our Schools*, MASS. ADVOCS. FOR CHILD. (Aug. 24, 2020), <https://www.massadvocates.org/news/fighting-police-brutality-starts-in-our-schools>.

398 LOSEN ET AL., *supra* note 396, at 6–7.

399 DANKOFF ET AL., *supra* note 323, at 13–14.

400 *Special Education in Institutional Settings*, MASS. DEP'T ELEMENTARY & SECONDARY

the-ground practitioners still find that not all youth are receiving their special education services while they are in DYS.⁴⁰¹ We should ensure that the systems we put in place consistently work and hold the system accountable to providing committed youth the education they are entitled to by tracking education services. As we continue to increase access to quality education, we need to ensure that we are eliminating racial, ethnic, and disability disparities in the education system.

C. Recommendation 3: Raise the Age of Juvenile Court Jurisdiction

Raising the age of the juvenile court jurisdiction will help ensure developmentally appropriate treatment for all young people. After Massachusetts raised the age of juvenile court jurisdiction to include seventeen-year-olds in 2013, juvenile crime declined by 34 percent.⁴⁰² Adding seventeen-year-olds to the court's jurisdiction led to an initial increase in commitment and detention numbers; however the numbers began leveling off during the same year and continued their downward trend after 2015.⁴⁰³ The addition of seventeen-year-olds implies that the juvenile legal system has the capacity to handle cases involving all young people who are developmentally similar to adolescents—even youths up to twenty years old. There could also be a shuffling of resources from the District and Superior Courts to the Juvenile Court and from the county Houses of Correction and the state Department of Correction to DYS, which would give the juvenile system the capacity to take on additional age groups. Research into youth brain development has repeatedly shown that young people's brains continue to mature into their mid-twenties, with aspects of executive functioning and emotional regulation developing until the early- to mid-twenties.⁴⁰⁴ Due to this pattern of development, the brain of an eighteen-, nineteen-, or twenty-

EDUC. [https://www.doe.mass.edu/seis/#:-:text=Special%20Education%20in%20Institutional%20Settings%20\(SEIS\)%20Mission%3A%20To%20provide,student%20success%20in%20postsecondary%20and](https://www.doe.mass.edu/seis/#:-:text=Special%20Education%20in%20Institutional%20Settings%20(SEIS)%20Mission%3A%20To%20provide,student%20success%20in%20postsecondary%20and) (Oct. 22, 2021);

401 DANKOFF ET AL., *supra* note 323, at 31.

402 *Frequently Asked Questions, RAISE THE AGE MASS.*, <https://www.raisetheage.ma.org/faqs> (last visited Mar. 31, 2023).

403 *See supra* Figure 3; *see also Data About Youth on Probation, supra* note 116 (showing first-time commitments rates beginning in 2015); *Pretrial Proceedings, supra* note 305 (showing youth pretrial detention data rates beginning in 2015).

404 *Adolescent Brain Development, COAL. FOR JUV. JUST.: SOS PROJECT*, <https://www.juvjustice.org/our-work/safety-opportunity-and-success-project/national-standards/section-i-principles-respondin-10> (last visited Mar. 31, 2023).

year-old is distinct from that of a fully formed adult.⁴⁰⁵ Laws throughout the United States that establish the legal drinking age and the age to legally use marijuana and tobacco at twenty-one already acknowledge this developmental difference.⁴⁰⁶

Subjecting eighteen- to twenty-year-olds to the juvenile system rather than the adult carceral system is not only developmentally appropriate, but also better for public safety and state costs. Young people discharged from DYS have lower recidivism rates than young people discharged from adult houses of correction.⁴⁰⁷ This may, in part, be attributed to the fact that DYS centers rehabilitation as a system goal, whereas the adult system is more punitive.⁴⁰⁸ The adult system exposes developing youth to more serious crime-committing behaviors and harsher punishments.⁴⁰⁹ Additionally, diverting young adults to the juvenile system immediately saves taxpayer dollars by reducing confinement and addressing youth needs through more cost-effective, community-based programs.⁴¹⁰ In the long term, access to rehabilitative services, as opposed to harsh punishment, allows youth to more appropriately transition into adulthood and become productive members of society.⁴¹¹

While eligibility for special education services extends through a young person's twenty-second birthday, adult facilities do not have infrastructure in place to provide the educational services⁴¹² to which incarcerated young people with disabilities are legally entitled in

405 SELEN SIRINGIL PERKER ET AL., COLUM. JUST. LAB, EMERGING ADULT JUSTICE IN ILLINOIS: TOWARDS AN AGE-APPROPRIATE 2–3 (2019), <https://justicelab.columbia.edu/sites/default/files/content/EAJ%20in%20Illinois%20Report%20Final.pdf>.

406 *Frequently Asked Questions*, *supra* note 402.

407 *Id.*

408 COLUM. JUST. LAB, A COMPARISON OF JUVENILE AND ADULT JUSTICE SYSTEMS IN MASSACHUSETTS 1–2 (2019), <https://static1.squarespace.com/static/5c6458c07788975dfd586d90/t/5daf32743a426532faf40651/1571762804880/A+Comparison+of+Juvenile+and+Adult+Justice+Systems+in+Massachusetts.pdf>.

409 EDWARD P. MULVEY & CAROL A. SCHUBERT, OJJDP, TRANSFER OF JUVENILES TO ADULT COURT: EFFECTS OF A BROAD POLICY IN ONE COURT 3–4, 13 (2012), <https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/232932.pdf>.

410 See Sean Smith, *The Importance of Raising the Age of Criminal Responsibility*, AM. LEGIS. EXCH. COUNCIL (June 23, 2017), <https://alec.org/article/the-importance-of-raising-the-age-of-criminal-responsibility/#:~:text=The%20CDC%20states%20that%20including,money%20and%20increases%20economic%20productivity>.

411 See JUST. POL'Y INST., RAISING THE AGE 67–68 (2017), <https://justicepolicy.org/wp-content/uploads/2021/06/raisetheage.fullreport.pdf>.

412 TESTIMONY TO THE JOINT COMMITTEE ON PUBLIC SAFETY, *supra* note 161, at 19–20.

Massachusetts.⁴¹³ The developmentally appropriate interventions implemented by the juvenile system, including positive youth development and incentives-based systems,⁴¹⁴ are equally applicable to eighteen- to twenty-year-olds. Raising the age of juvenile court jurisdiction to include these young people will extend the reach of the positive changes we have seen in the juvenile system.⁴¹⁵

D. Recommendation 4: Acknowledge and Combat Demographic and Geographic Disparities and Discrimination

Massachusetts has a long way to go to achieve an equitable legal system. Youth of color, specifically Black and Latinx youth, are still more likely to be represented at every stage of system involvement.⁴¹⁶ This overrepresentation begins with the over-policing of youth of color and communities of color.⁴¹⁷ While Black youth accounted for 10 percent of all youth in Massachusetts in 2020, they represented 30 percent of all juvenile arrests in the same year.⁴¹⁸ Increased police contact and surveillance also have detrimental and compounding trauma on youth of color. Research suggests that mere knowledge of widespread police violence has adverse effects on the mental health of Black youth, leading to trauma-related disorders worsened by the continued threat of violent victimization by police patrolling their neighborhoods.⁴¹⁹

Youth in Massachusetts also face disparate treatment based on where they live. One area where youth face “justice by geography” is in access to diversion programs;⁴²⁰ thus, improvements to the diversion system in Massachusetts would serve to greatly reduce geographic

413 MASS. GEN. LAWS ch. 71B, § 11A (2001); *see also id.* at ch. 71B, § 1 (defining “school age child” as “any person of ages three through twenty-one who has not attained a high school diploma or its equivalent”); 20 U.S.C. § 1412(a)(1)(A).

414 *See supra* Section III.C.

415 *Emerging Adult Justice Reform*, CfJJ, <https://www.cfjj.org/emerging-adult-justice> (last visited Mar. 31, 2023).

416 *See* RACIAL AND ETHNIC DISPARITIES, *supra* note 170, at 3.

417 *See id.* at 3–4.

418 *Data About Youth Arrests*, *supra* note 125.

419 Jocelyn R. Smith Lee & Michael A. Robinson, “*That’s My Number One Fear in Life. It’s the Police*”: *Examining Young Black Men’s Exposures to Trauma and Loss Resulting From Police Violence and Police Killings*, 45 J. BLACK PSYCH. 143, 147, 169–73 (2019).

420 “Justice by geography” refers to how individuals face varying levels of access to resources solely because of where they live. *See* Lauren Kirchner, *For Juvenile Records, It’s ‘Justice by Geography’*, PAC. STANDARD, <https://psmag.com/news/juvenile-records-justice-geography-crime-police-law-enforcement-94909> (Feb. 26, 2019).

disparities. A uniform, statewide system of diversion would ensure that diversion is used in the same circumstances across jurisdictions. Consistent access to services for diverted youth would ensure that they are not processed through the legal system because of a lack of resources. Finally, collecting data on the use of diversion would allow for analyses on how often and how equitably diversion is being used to inform policy and practice changes.

As noted above, LGBTQ+ youth also face disparate treatment by the legal system and are over-represented in both child welfare and juvenile legal systems. It will be most effective to address the numerous factors that drive LGBTQ+ youth toward behavior that increases their chances of legal system involvement. LGBTQ+ youth are more likely to experience childhood sexual and physical abuse in their homes and endure bullying, victimization, and assault from classmates, teachers, or administrators at school.⁴²¹ They are also subjected to harsher discipline, including suspensions and expulsions, than their non-LGBTQ+ peers.⁴²² These experiences “contribute to higher rates of truancy, absenteeism, and dropping out, in addition to lower academic scores,” and running away from home.⁴²³ In order to survive, some “LGBTQ[+] youth are pushed towards criminalized behaviors such as drug sales, theft, or survival sex, which increase their risk of arrest and confinement.”⁴²⁴ The safety and support of LGBTQ+ youth must be prioritized by addressing these underlying experiences and decreasing police contact legal system disparities both in Massachusetts and nationally.

E. Recommendation 5: Solidify Progress Achieved Through Legislation

Many of the changes in the juvenile legal system were the result of a cultural shift within agencies and leadership.⁴²⁵ In order to solidify the progress we have made, the legislature should codify the policies and practices that led to positive change. As leadership changes within the system, or public opinion temporarily shifts in response to current events, we should aim for consistency in the focus on research-driven, effective strategies. Just as *An Act Relative to Criminal Justice Reform*

421 OJJDP, *supra* note 162, at 2–4.

422 *Id.* at 4.

423 *Id.* at 3–4.

424 Alexi Jones, *Visualizing the Unequal Treatment of LGBTQ People in the Criminal Justice System*, PRISON POLY INITIATIVE (Mar. 2, 2021), <https://www.prisonpolicy.org/blog/2021/03/02/lgbtq/>.

425 *See supra* Part III.

codified the Juvenile Court's policy banning indiscriminate shackling,⁴²⁶ additional legislation could help ensure the longevity of leadership-driven changes beyond the terms of the individual system leaders who enacted the changes.

Specifically, alternatives to police intervention should be codified into law to facilitate the use of developmentally appropriate and rehabilitative services to address youth needs. As of this writing, “[t]here is no specific legal or policy guidance from the Massachusetts Legislature” on implementing diversion at the police level, leaving these decisions in hands of police discretion, likely resulting in less program access for youth of color.⁴²⁷ The legislature could improve outcomes for all youth by standardizing Massachusetts diversion programs. Additionally, the legislature should research and consider piloting alternatives to police responses for a variety of offenses that are better addressed by community intervention services, counselors, and social workers.⁴²⁸

CONCLUSION

The Massachusetts juvenile legal system has been drastically remodeled over the last two decades as a result of societal, legislative, and policy changes, driven by a growing youth-development-centered approach. Reducing the number of youths coming into contact with the legal system on a yearly basis certainly reflects positive statutory and policy changes, and Massachusetts is a strong model upon which other states can base reforms to their juvenile legal systems.

However, lawmakers in other states should view Massachusetts as a starting point for their reform, not as an end goal. Massachusetts' system is far from perfect, with several negative components that continue to cause harm to youth. Developmentally appropriate interventions, standardized diversion policies, and a conscious combatting of racial inequity require further attention and action. The harms associated with system contact are still very real for youth whose needs are not addressed in the community. This is particularly true for youth of color,

426 An Act Relative to Criminal Justice Reform, 2018 Mass. Acts 98 (codified as amended at MASS. GEN. LAWS ch. 119, § 86(b) (2018)); see *supra* Section III.A.2.

427 See SEIZING AN EARLY OPPORTUNITY, *supra* note 219, at 9, 15.

428 See JOSHUA DANKOFF & MATAN KOTLER-BERKOWITZ, CfJJ, TOO BLUE: A VISION FOR NON-POLICE RESPONSES TO COMMUNITY INCIDENTS IN BOSTON 24–25 (2021), <https://static1.squarespace.com/static/58ea378e414fb5fae5ba06c7/t/60c77653ed5a067d4c486a37/1623684709965/Too+Blue+FINAL.pdf/>.

who are still disproportionately denied access to community-based resources and disproportionately criminalized by the legal system. Lawmakers in both Massachusetts and other states must address these weaknesses in any future reforms.

This Article, while highlighting positive developments within the Massachusetts juvenile legal system, should not be read as congratulating a job well done. Instead, this Article presents the state's system as it currently stands, while challenging policymakers to capitalize on the successes of its legislative reforms and continue to lead in juvenile legal system operation. I encourage advocates, system leaders, and lawmakers alike to push legal system reforms until the needs of *all* involved youth are met, including eighteen- to twenty-year-olds currently subjected to the adult criminal legal system.

Perhaps most crucial to the reform effort is the recognition that low-level criminal behavior is typically developmentally appropriate for youth, such that the system should not respond with punitive measures and incarceration. Only through following a positive youth development model can juvenile legal systems provide services to youth that avoid the dangers of system involvement and help them navigate trauma and potentially harmful behavior. The 90 percent decrease in the size of the juvenile legal system is an important incremental step toward not requiring the system at all.

