



# JUVENILE JUSTICE REFORM

— FEDERAL FUNDING OPPORTUNITIES —



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## LETTER FROM THE FUNDERS

The Barr Foundation, the Blue Cross Blue Shield of Massachusetts Foundation, the Boston Foundation, and the Tufts Health Plan Foundation joined with ADS Ventures and commissioned Jobs for the Future to examine how the Commonwealth can maximize federal resources on behalf of its residents, particularly low- and middle-income individuals. Jobs for the Future researched challenges and opportunities for the Commonwealth, and released an initial report in February 2015 that provided a short list of potential areas in which Massachusetts can receive new or increased reimbursement for ongoing programs. That report also identified previously untapped federal grant programs and sought to assist State House leaders in the design of an infrastructure that will more effectively import federal resources while exporting Massachusetts' public policy innovations.

This report, the second in the series, focuses on a critical topic for low and middle-income residents, juvenile justice reform, and resources that the Commonwealth can access to help support these efforts. The third report in the series, issued separately, addresses the healthcare workforce, an industry that provides career opportunities across the state for low and middle-income residents .

All three reports are intended as the beginning of a conversation, and we are encouraged that the Legislature has already signaled its willingness to participate. Both the House and Senate have created committees on intergovernmental affairs, and we hope that this research and the discussion it engenders will be a valuable tool to these committees as they work to address the opportunities and challenges moving forward. In addition, Massachusetts has long been the beneficiary of a federal delegation in the U.S. Congress that has been the most effective and influential in the nation. We continue to have outsized influence due to the talent of the current delegation in Washington D.C., and this asset can and should be fully utilized by ensuring that the state has the necessary resources and infrastructure.

While all three reports focus on how our state legislature can better partner with the federal government, the process reminds us how important it is for government to partner effectively with philanthropy. Philanthropy has the ability to take on issues in a nonpartisan, nonpolitical manner in order to foster a conversation around a shared goal—improving the lives of the people in the Commonwealth we call home. We are all rightfully proud of our state, but we share the challenge of providing resources and opportunity to those whom our economic recovery is leaving behind. It is our hope that working together we can ensure that Massachusetts maximizes every opportunity to provide the services our residents deserve.



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# I. INTRODUCTION

This report is the second in a series designed to highlight potential ways for the Commonwealth of Massachusetts (the Commonwealth) to work more effectively with the federal government. The previous report in this series, entitled “Maximizing Federal Support and Opportunity for the Commonwealth of Massachusetts,” examined a number of opportunities by which Massachusetts might work with the federal government to receive additional federal funding, more effectively utilize existing funding, or improve efficiencies in various state-federal partnerships. In contrast to the previous report, this report will focus solely on the juvenile justice system and examine in more depth the ways in which the Commonwealth can reform the juvenile justice system’s utilization of federal funding to achieve an outcome that will improve both the system and the lives of those going through it.

For several years now, lawmakers on Beacon Hill have considered legislation that would reform in various ways the Commonwealth’s juvenile justice system. Some of those pieces of legislation—for instance, the 2013 “Raise the Age” bill, which placed 17-year-olds back in the juvenile system—have passed, while others, such as the Senate’s 2016 proposed slate of reforms, have not. For the most part, the intent of this report is not to comment on the various legislative proposals that have either already come before lawmakers, or that may in the future. Rather, we intend to examine individual funding or cost-saving opportunities and leave to legislators the discretion as to which opportunities best fit in with the public policy goals of the Commonwealth.



## II. CURRENT STRUCTURE OF THE JUVENILE JUSTICE SYSTEM IN MASSACHUSETTS

The juvenile justice system in the Commonwealth is a complex web of multiple stakeholders arranged in several cabinet secretariats. These include, but are not limited to: the Juvenile Court Department of the statewide Massachusetts Trial Court, the Department of Youth Services (DYS), the Commonwealth's county-based District Attorneys (DA), the Department of Children and Families (DCF), various state and local police agencies, and various nonprofits. Each of these stakeholders is described in more detail below.

➤ **Juvenile Trial Court**

The Juvenile Court is “a statewide court with jurisdiction over civil and criminal matters including delinquencies, youthful offender cases, care and protections and children requiring assistance cases.” The Juvenile Court has 41 judges, including the Chief Justice located in Boston, and courts located in each of Massachusetts' 14 counties. The court's purpose is “to protect children from abuse and neglect, to promote opportunities for children to reside in a safe, stable, permanent family environment, to strengthen families, to rehabilitate juveniles, to protect the public from delinquent and criminal behavior and to decide all cases fairly and impartially.”<sup>2</sup> In some cases, juvenile courts are colocated with traditional adult courts; this raises certain potential problems, which are addressed later in this report.

> **Department of Youth Services**

Located within the Executive Office of Health and Human Services, DYS is the main detention agency within the juvenile justice system and is tasked with serving the emotional, physical, and educational health of those juvenile delinquents and youthful offenders committed to its care. Youth “committed” to DYS remain under the legal custody of the Department until age 18, 19, or 21, depending on the offense(s) committed, and at what age. DYS has 22 offices statewide, and operates “50 residential programs, ranging from staff secure programs to hardware secure programs,” in addition to a number of non-residential programs intended to divert repeat low-level offenders from residential committal.<sup>3</sup> Particularly for potentially fragile youth offenders, educational, emotional, and mental support are very important, and a key part of DYS’s mission is to approach each youth in DYS custody in a way that will minimize the negative impacts on their life, post-committal.

> **District Attorneys**

Massachusetts has 11 elected DAs, roughly corresponding to the Commonwealth’s 14 counties. Due to this balkanized structure, as well as the unique position of discretion a DA has over whether to press charges, Massachusetts’ District Attorneys have an extremely important position in the juvenile justice system and have significant leeway to engage in unique or pilot programs, including programs relating to juvenile offenders. An example of this is Essex County, which has had a juvenile diversion program for first-time offenders since 1981.<sup>4</sup>

> **Department of Children and Families**

The Department of Children and Families is the state’s child welfare agency, and is responsible for both in-home services, as well as out-of-home services such as adoption and foster care. Although not always directly involved with youth offenders, DCF frequently receives referrals from the Juvenile Trial Courts, and there is a natural overlap between the populations served by DCF and DYS. In fact, in 2014, 35 percent of youth in DYS residential detention were characterized as “DCF-involved.”<sup>5</sup>

> **State and Local Police**

As the first connection most youth offenders will have with the juvenile justice system, police departments play a critical role in ensuring proper treatment of youth who come into contact with the justice system. Police are a key “front end” focus for efforts in Massachusetts to, for example, reduce instances of “disproportionate minority contact” with the juvenile justice system.<sup>6</sup> The increased focus of many police departments in recent years on community policing, particularly in urban areas, also plays a pivotal role in improving police-youth relations and interactions. This topic is addressed in greater detail later on in this report.

> **Nonprofits**

There are a number of nonprofit agencies in the Commonwealth that either partner with the juvenile justice system or help provide interventionary services targeted at youth who have been involved in the juvenile justice system. Of particular note, Massachusetts, in conjunction with the federal Department of Labor, has pioneered an innovative pay-for-success funding model for juvenile justice with Chelsea-based Roca, designed as a “high-impact intervention [for] 929 at-risk young men aged 17 to 23 who are in the probation system or exiting the juvenile justice system.”<sup>7</sup> Other nonprofits target juvenile populations at risk for criminal justice issues, including high school dropouts. One prominent example is YouthBuild, which receives a mix of state, federal, and private funding to teach job training and leadership skills to at-risk youth populations across the Commonwealth. In addition to direct service-provision organizations, there are also advocacy organizations involved in juvenile justice issues, most notably Boston-based Citizens for Juvenile Justice.

### III. SYSTEM SCOPE AND BUDGET

In Fiscal Year 2015, 38,709 cases were filed in the Juvenile Trial Court system, a slight increase over FY14 (37,157 cases).<sup>8</sup> However, there has been a significant decrease in the number of cases filed in Juvenile Courts since the mid-2000s, when the system “handled 45,000 to 50,000 cases a year.”<sup>9</sup> For the Juvenile Court, “the large majority of cases (roughly two-thirds) involve charges brought against young people,” including juvenile delinquency and youthful offender cases.<sup>10</sup> A breakdown of detainees by offense is included below as Figure 1. Massachusetts has a consistently low violent crime rate (defined as Part I or Index Crimes, namely criminal homicide, forcible rape, robbery, aggravated assault, burglary, larceny, motor vehicle theft, and arson); the Commonwealth’s 2013 rate of 42 arrests per 100,000 persons was less than half of the national average.<sup>11</sup> This low rate is reflected in the relatively low number of “youthful offenders” (i.e., repeat-offending youths between the ages of 14 and 18 who have been indicted for a crime which, if they were an adult, would be categorized as a felony). In FY14, the Commonwealth had 151 youthful offender cases, a significant increase over FY13, but mostly attributable to the aforementioned 2013 legislation increasing the juvenile court’s jurisdiction from age 16 to 17.

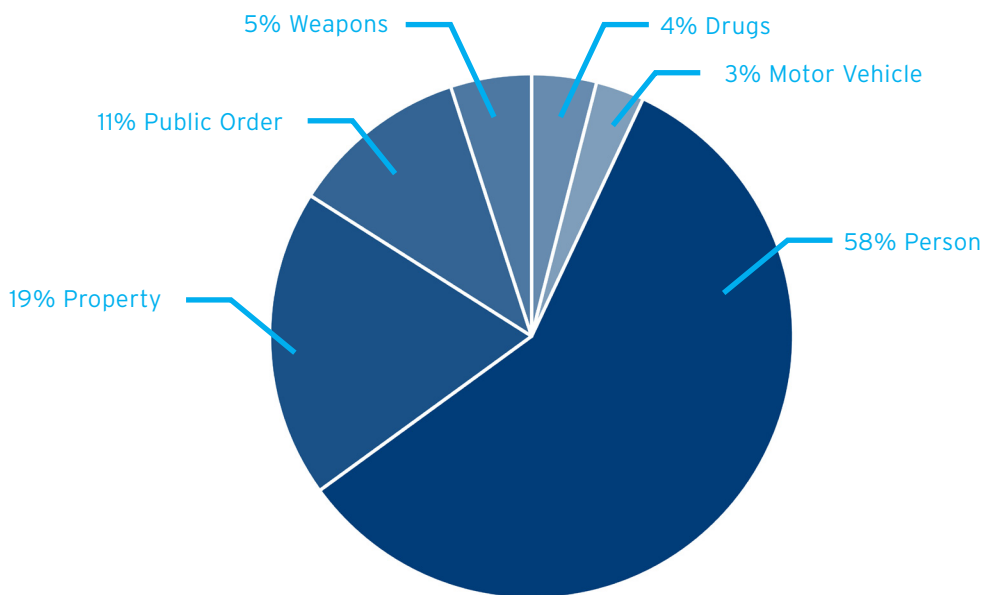


Figure 1: DYS Detainee Population by Offense, 2014.

Source: Massachusetts Juvenile Justice Advisory Committee, derived from DYS figures.



One significant challenge faced by the system is the disproportionate share of minority youth affected. The federal Juvenile Justice and Delinquency Prevention Act “required states to develop and implement plans to reduce the proportion of minority youth detained or confined in secure detention facilities, secure correctional facilities, jails, and lockups if they exceeded the percentage of minority youth in the general population.”<sup>12</sup> This is true in Massachusetts, where, according to the Commonwealth’s Juvenile Justice Advisory Committee (known as the JJAC, it is tasked with tracking compliance with the JJDP Act, and remedying areas where Massachusetts falls short), “compared to the total population of Massachusetts minority youth in 2013 (32%), 77% of DYS committed youth in 2015 were minority.”<sup>13</sup> This is a significant obstacle to equitable juvenile justice efforts in the Commonwealth.

There are a number of alternatives to DYS committal in the Commonwealth’s juvenile justice system; it is relatively common for juveniles who have been charged to receive a “continuance without a finding,” “delinquent probation,” or a suspended sentence from a juvenile judge before being committed to DYS. These steps ensure that the majority of first-time offenders are not committed to DYS. Consequently, despite the thousands of cases filed in the Juvenile Trial Court system annually, DYS in early 2015 had custody of only 675 youth, “a decrease of 77% since its high of 2,943 in January 2004.” (See Figure 2 below).<sup>14</sup> As noted above, the number of youth in DYS “custody” does not reflect the number in formal residential programs, as DYS operates a number of residential alternative programs.

The primary cost driver in the juvenile justice system is DYS. Compared to a relatively small \$18.8 million budget to run the Juvenile Trial Court, DYS will receive \$176.6 million in FY17, the vast majority of which will fund residential services for the detained (awaiting trial) and committed youth populations (combined, these two residential line items comprise \$143.5 million).<sup>15</sup> This number represents an almost \$23 million increase since FY13, despite a continued (although slowing) decline in the DYS caseload.<sup>16</sup> A 2014 report by the Massachusetts Budget and Policy Center (MassBudget) suggested a similar decline in juvenile detentions, from nearly 5,600 in 2003 to less than 2,000 in 2012.<sup>17</sup> It should be noted that these declines have actually exacerbated racial disparities in DYS; MassBudget notes “from 2006 to 2010 the detention of white youth decreased 42 percent, while the detention of youth of color decreased 27 percent.”<sup>18</sup>

One program that sees a large increase in the Commonwealth’s FY17 budget is the Alternative Lock Up program. A relatively new DYS initiative (previously, the program was a patchwork operated under the Executive Office of Public Safety and Security (EOPSS), Alternative Lock Up is “designed to relieve police departments of the burden of caring for alleged juvenile delinquents during non-court hours, thereby ensuring that no juvenile will be detained in a police lockup for longer than the federally mandated six-hour time limit.”<sup>19</sup> Although a relatively small program (\$2.3 million), Alternative Lock Up saw the largest increase in the juvenile justice arena, an almost 8 percent increase over FY16.<sup>20</sup>

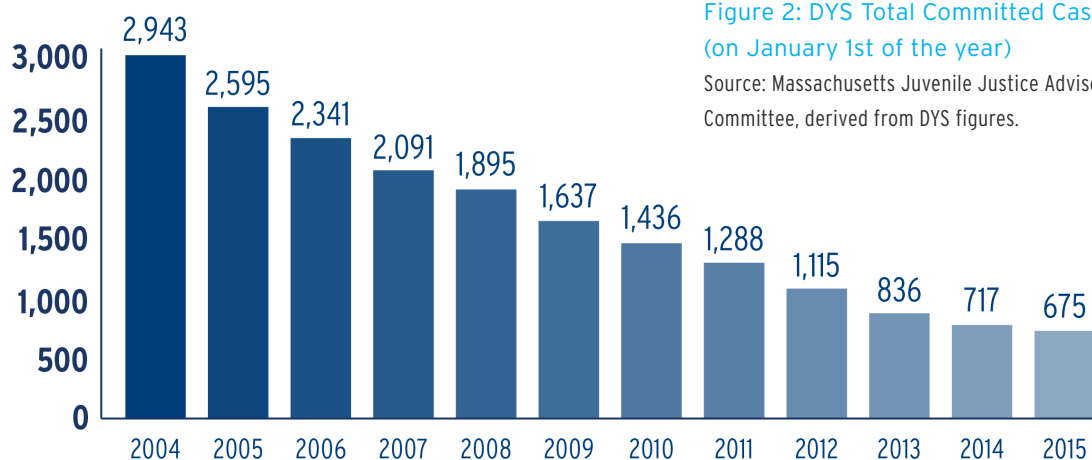


Figure 2: DYS Total Committed Caseload (on January 1st of the year)

Source: Massachusetts Juvenile Justice Advisory Committee, derived from DYS figures.



## IV. OPPORTUNITIES FOR FEDERAL FUNDING OR COST SAVINGS

The Department of Justice (DoJ), like all federal agencies, has a combination of formula and competitive grant programs that fund states, cities, municipalities, and NGOs. The purpose of the following section is to outline discrete areas in which the Commonwealth might secure additional federal revenue, or use federal policies or seed funding to realize cost savings in the juvenile justice system. Generally, these opportunities are presented without overt evaluation of their public policy metrics; rather, the intention is to acquaint policymakers with the universe of federal policies and funding streams into which the Commonwealth might tap. Ultimately, policymakers in the state government must decide which opportunities to pursue.

### OFFICE OF JUSTICE PROGRAMS

The Office of Justice Programs is the DoJ agency that most often funds state and local law enforcement via discretionary grants. The mission of OJP is to “provide innovative leadership to federal, state, local, and tribal justice systems, by disseminating state-of-the art knowledge and practices across America, and providing grants for the implementation of these crime fighting strategies.”<sup>21</sup> As such, OJP is one of the only agencies within DoJ with no real law enforcement responsibilities. Rather, the majority of OJP’s discretionary budget is directed toward capacity building and research grants to state and local entities. (Within its mandatory spending authority, OJP also oversees the Crime Victims Fund, which makes some formula grants to states). In FY16, OJP spent almost \$1.7 billion on discretionary grants for local capacity building.<sup>22</sup> These grants are channeled through two main sub-offices, the Bureau of Justice Assistance (BJA) and the Office of Juvenile Justice and Delinquency Prevention (OJJDP) (See Figure 3 below).

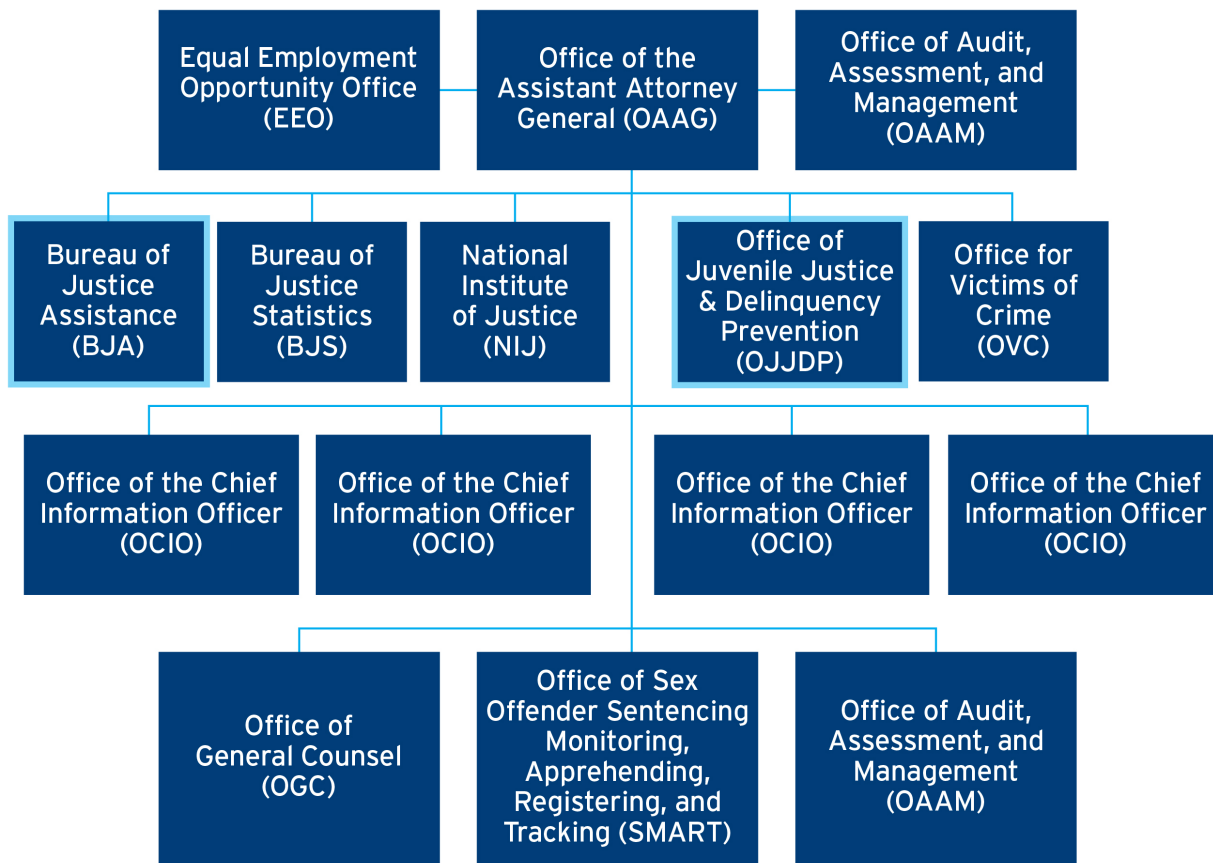


Figure 3: Organizational Chart - Office of Justice Programs

Source: U.S. Department of Justice

BJA is by far the largest funder within OJP, and provides funds through a wide range of programs. The largest among them is the Edward Byrne Memorial Justice Assistance Grant. These grants, funded at \$376 million in FY2016, are awarded via a formula to states, and are expended on the basis of statewide strategic plans assembled by the State Administering Agency, in the case of Massachusetts. There are many possible uses of Byrne JAG funds, and states are provided a wide range of flexibility in addressing criminal justice issues, including those facing juveniles. For instance, in Connecticut, Byrne JAG is helping the state adjust to a change in juvenile eligibility age (like in Massachusetts, recently raised to 17) by funding “innovative programs focused on preventing repeat criminal behavior and supporting successful offender re-

integration into the community,” including the development of an offender reentry program, and nationally recognized crisis intervention teams.<sup>23</sup> In addition to Byrne JAG, BJA also oversees funding through the Second Chance Act (to prevent recidivism), which includes a program funding demonstration grants to address some of the challenges faced by the children of incarcerated parents.

OJJDP, for its part, had an FY16 budget of \$270 million, and funds a number of grant programs, many of which the Commonwealth already avails itself.<sup>24</sup> One specific grant program within OJJDP, the Title II Formula Grant program, is examined in greater detail below.

## OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION TITLE II FORMULA GRANTS

As noted above, OJJDP is a major funder of juvenile justice grants, and is housed under DoJ's Office of Justice Programs. The Office was established by the JJDP Act of 1974 to work with state and local authorities to improve the juvenile justice system and address disparities. OJJDP oversees an FY16 budget of \$270 million, the vast majority of which is passed to states, localities, tribes, and the nonprofit community through a number of grant programs, including the Delinquency Prevention Program, the Girls in the Juvenile Justice System Program, the now-lapsed Juvenile Accountability Block Grant, the Missing and Exploited Children Program, and the Title II Formula Grant Program.<sup>25</sup>

Although the majority of the grant programs managed through the OJJDP are competitive programs, all states are entitled to funding under the Title II Formula Grant Program, in proportion to the state's relative juvenile population. In FY15, OJJDP authorized \$39.9 million in spending under the program, with Massachusetts slated to secure over \$679,000. Unfortunately, due to a unique-in-the-nation lack of compliance with the grant's authorizing statute (the JJDP Act), Massachusetts had 20 percent of its funding withheld, ultimately receiving a grant of only \$545,000. FY15 was the fifth consecutive year in which Massachusetts was noncompliant, and although FY16 Title II allocations are not yet public, the Commonwealth will almost certainly be noncompliant yet again.

State formula funding through the Title II Formula Grant Program is predicated on compliance with the four core requirements of the JJDP Act, as most recently amended in 2002. These requirements are:

- Reduction of disproportionate minority contact (DMC) within the juvenile justice system.
- Deinstitutionalization of status offenders.
- Separation of juveniles from adults in secure facilities (separation).
- Removal of juveniles from adult jails and lockups (jail removal).<sup>26</sup>

As previously noted, Massachusetts does have a potentially serious DMC problem in its juvenile justice system, as minorities are significantly overrepresented. The Commonwealth has attempted to address this issue mainly through police training and encouraging pre-arraignment diversion in urban jurisdictions (more on the latter below).<sup>27</sup> However, the reason for Massachusetts' noncompliance, and corresponding reduction in funding, is a lack of separation of juveniles from adults in secure facilities. Since the OJJDP's original finding of noncompliance in FY11, Massachusetts has been part of an ever-dwindling group of states found to be out of compliance with core requirements of the JJDP Act—and as of FY15, the Commonwealth now holds the dubious distinction of being the only state not in compliance (although Puerto Rico and the U.S. Virgin Islands also did not meet compliance standards, and FY16 compliance information is not publicly available).<sup>28</sup>

In its most recent "Three Year Plan," the Commonwealth's JJAC outlined the reasons for the Commonwealth's lack of compliance with the JJDP Act:

"Numerous court holding facilities do not provide adequate separation between juvenile and adult detainees. All facilities constructed during the past decade and onward are—and will continue to be—compliant. However, many of the older court houses, some dating back several decades, were not built with the intention of separating juveniles and adults. These facilities require significant funding for remedies."<sup>29</sup>

In response to the noncompliance determination, the JJAC convened a working group comprising representatives from the Trial Court, the Division of Capital Asset Management and Maintenance, EOPSS, and DYS. The working group conducted tours of many juvenile facilities across the Commonwealth, and ultimately decided on a schedule to bring all facilities into JJDP Act compliance by December 2018.<sup>30</sup>

Since renovation and construction are not eligible uses of funding under the Title II Formula Grant Program, the Commonwealth has had to use a combination of state funding and federal funding derived from the Juvenile Accountability Block

Grant to help bring courthouses into compliance. In its FY15 Annual Report, the Massachusetts Court System reported that the federal funding “was used to purchase security equipment and to remedy a first group of three piloted courthouse sites in Hingham, Barnstable, and Lynn.” However, the report also noted that as many as 25 facilities across the Commonwealth may still remain out of compliance.<sup>31</sup>

The impact of the Title II Formula Grant reduction has been significant. If the Commonwealth sticks to its current plan to rectify all extant separation violations by December 2018, it will still mean an eight-year process to bring the Commonwealth’s juvenile detention system in compliance with 15-year-old federal requirements. And this corresponds to an eight-year reduction in federal grant funding through Title II. Between FY11 and FY15, we estimate that Massachusetts has missed out on over \$700,000 of non-competitive, formulaic federal revenue (see Figure 4). With the Commonwealth estimating a continued lack of

compliance until at least December 2018, it appears likely that Massachusetts could ultimately miss out on at least \$1 million in federal revenue to which the state was entitled. This is money that could have helped to address a number of issues facing the Commonwealth’s juvenile justice system, including the DMC concern, another important federal requirement, and a serious equity issue.

Although at present, rapidly accelerating the Commonwealth’s compliance plan is not likely to be feasible, policymakers might be able to move forward the proposed renovations by as much as a year, ultimately making a similar investment in physical renovations but salvaging an extra year of full Title II Formula funding. At the very least, we suggest that policymakers should be aware of the deficiencies in juvenile detention facilities in the Commonwealth, the plan to rectify those deficiencies, and the stakes of continued noncompliance with the JJDP Act.

	<b>FUNDING ALLOCATION</b>	<b>TWENTY PERCENT PENALTY</b>	<b>FUNDING RECEIVED</b>
<b>FY2015</b>	<b>\$679,447</b>	<b>\$135,889</b>	<b>\$544,614</b>
<b>FY2014</b>	<b>\$686,306</b>	<b>\$137,261</b>	<b>\$549,045</b>
<b>FY2013</b>	<b>\$603,814</b>	<b>\$120,762.75</b>	<b>\$483,051</b>
<b>FY2012</b>	<b>\$606,971</b>	<b>\$121,394.25</b>	<b>\$485,577</b>
<b>FY2011</b>	<b>\$1,250,000</b>	<b>\$250,000</b>	<b>\$1,000,000</b>
<b>FY2011-FY2015</b>	<b>\$3,826,538</b>	<b>\$765,307</b>	<b>\$3,062,287</b>
	<b>= Estimated</b>		

Figure 4: Estimate of Lost Title II Formula Grant Funding, FY2011-FY2015

Source: Authors’ Estimate based on publicly-available data (see below)<sup>32</sup>

## PERFORMANCE PARTNERSHIPS PILOTS

A common theme in our conversations with individuals involved in the juvenile justice system is the need for increased resources to fund programs that keep at-risk or disconnected youth off the street and involved in after-school or summertime activities. To do this, the Commonwealth should look at opportunities that cross federal agencies and allow social and educational services to be funded in conjunction with the routine DoJ monies Massachusetts already receives.

One prime example is the Performance Partnership Pilots for Disconnected Youth (P3). The P3 program was created in the FY2014 Consolidated Appropriations Act as a mechanism to test “innovative, cost-effective, and outcome-focused strategies for improving results for disconnected youth.”<sup>33</sup> As we noted in our first report, the program is reflective of the broader federal appetite to fund outcomes, rather than inputs, and to ensure federal dollars are achieving maximum impact. In addition to the ability to combine multiple discrete federal funding streams, P3 awards also come with a startup grant of several hundred thousand dollars.

At its inception, the P3 program allowed the Departments of Labor, Health and Human Services, and Education to work with states, localities, regions, and tribes to combine various (discretionary) federal funding streams, both competitive and formulaic, with the intent to improve outcomes for individuals coming out of foster care, involved in the juvenile justice system, unemployed, or not enrolled in an educational institution. In the FY2015 reauthorization of the P3 program, DoJ was added as one of the federal agencies from which funding (almost exclusively from OJP) could be “blended” to create better outcomes.

Since utilizing a wide range of services and programs from diverse federal agencies, including the Departments of Labor, Health and Human Services, Education, and Justice, seems to be the most effective method of preventing disconnected youth from (re)entering the juvenile justice system, it stands a natural opportunity for the Commonwealth to pursue in addressing juvenile justice reform. Further, because of near-constant federal budget uncertainty, including around OJP, it

would be diligent of the Commonwealth to explore strategies that will allow it to broaden federal funding streams, and to pursue funding that might be used to test innovative new projects and cover otherwise pending gaps.

Over recent years, the Commonwealth has emerged as a leader in outcomes-based models, especially in the context of juvenile justice. In January 2014, Massachusetts invested \$18 million (and potentially up to \$27 million) in a Social Impact Bond to tackle recidivism in several cities, including Springfield, Chelsea, and Boston. The seven-year project is managed by Chelsea-based Roca, Inc., with fiscal sponsorship by Third Sector Capital Partners and financial risk taken on by, among others, Goldman Sachs, the Boston Foundation, New Profit, and The Kresge Foundation, as well as funds from the federal Department of Labor.<sup>34</sup> Roca’s targeted intervention will help up to 1,000 youth (including youth aging out of the DYS system) by (re)engaging them “through positive and intensive relationships,” with the goal of fostering “competencies in life skills, education and employment and [to] move [them] toward economic independence and living out of harm’s way.”<sup>35</sup> Although the pay for success model being employed in the Roca/Third Sector Capital Partners project is not perfectly analogous to the kind of funding flexibility allowed under P3, it does illustrate the kind of forward-thinking, results-focused mentality that the Commonwealth has brought to juvenile justice interventions in the past.

A hypothetical Massachusetts P3 application might draw on several different sources of funding to help address mentoring for children who are in foster care in the Commonwealth. For instance, the Commonwealth has in the past secured funding made available under the Second Chance Act. (In 2015, for example, DYS received \$190,000 from OJJDP.) The Commonwealth might combine funding derived from this or a similar OJJDP youth mentoring funding stream with foster care revenue derived from a number of different sources within the Department of Health and Human Services. Combining these resources, using the P3 grant authority, as well as the accompanying startup funding, could allow the Commonwealth to test new solutions for addressing higher rates of juvenile offending and recidivism among the foster population.

The most recent request for P3 proposals (letter of intent due May 2016) included priorities that would reduce barriers for juveniles involved in the justice system and provide employment opportunities. That RFP was a delayed solicitation using FY15 funding authority. Although the federal fiscal year is almost over, an FY16 RFP is still forthcoming, meaning the Commonwealth has time to determine whether a P3 application would be worthwhile.

## COMMUNITY ORIENTED POLICING SERVICES (COPS)

Founded in 1994, COPS is an office within DoJ that represents a major funding stream for state and local police departments that are seeking to improve relationships in their community through the use of community policing. The COPS office makes significant resources available to help ease the transition of state and local law enforcement into a more resource-intensive community policing model. In FY16, COPS was appropriated \$216 million, most of which was distributed through five main grant programs: the COPS Hiring Program, the Community Policing Development Program, the Coordinated Tribal Assistance Solicitation, the COPS Anti-Heroin Task Force Program, and the COPS Anti-Methamphetamine Program.<sup>36</sup> The vast majority of the office's funding (\$187 million) went to the CHP, which provides state and local law enforcement entities with funding to "enhance community policing capacity by providing funds for entry-level salary and benefits of newly hired or rehired (as a result of layoffs) community policing officer positions over 3 years."<sup>37</sup> The CHP program provides some flexibility to departments to allow them to fill needs as they see fit, but does specify "priority funding areas." Among these are several areas that touch on juvenile justice issues, particularly as they relate to the need to improve youth-police interactions in the community. For instance, COPS grants can go toward hiring school resource officers, and may help departments deal with "trust problems" in the community. These are tenets of any community policing strategy, and they also tend to uniquely impact juvenile populations.

Various police agencies in Massachusetts have previously applied for and been awarded CHP grants, including, most recently, the City of Lawrence. This grant was awarded to Lawrence to support the work of the city's gang unit. However, this grant is several years old, and our scan of recent Massachusetts awards did not find any grants focused on juvenile justice issues. This stands in stark contrast to other states, some of which have tested innovative strategies for improving relationships between police and young people in the community.

El Paso County, Texas, is one example of a community that used a CHP grant for an innovative purpose, addressing delinquency issues among 26 at-risk juveniles. The summer Teen and Police Service program tasks school resource officers hired through the CHP program with addressing "the continuum of supervision for at-risk juveniles and their reentry into the school setting."<sup>38</sup> TAPS helps the county confront "extreme community poverty and the lack of services in colonias (unincorporated, unregulated, substandard settlements)," through a model that employs officers who live and work in the community to strengthen bonds with families, teachers, and other members of the community to work in students' favor.<sup>39</sup> Since the 2014 launch of the program, the County Sheriff's Office reports that TAPS has helped the department "to develop a closer bond with students and see one another in a more positive light."<sup>40</sup> The City of Troy, N.Y., is another example of a jurisdiction that has utilized a 2013 COPS grant to "provide crime prevention services, and early intervention as well, by interacting with kids on a personal level."<sup>41</sup>

## REDUCING JUVENILE DETAINMENT

Detainment remains one of the most controversial issues confronting the juvenile justice system. While rehabilitation efforts are generally encouraged for low-level offenses throughout the justice system, they are particularly important for juveniles—a population for whom the prevention of recidivism should be a top priority. In recent years, community-based, non-residential rehabilitation efforts have been increasingly favored by many juvenile justice experts, not only because they have proven to significantly lower the rate of repeat or graduated offenders, but also because they have the potential to save states millions of dollars annually.

While many other states have recognized that the price tag for conventional out-of-home facilities is often too high for the return on investment, only in recent years have several states looked at ways to bring in additional federal funding for juvenile justice programs by reducing the total number of juvenile offenders who are sent to secure residential facilities. This strategy has brought additional funding to these states through increased federal grants, and decreased residential costs are projected to save some states tens of millions of dollars over the next decade.

There are several reasons to favor non-residential solutions for first-time and low-level youthful offenders, and particularly for avoiding pre-trial detention. Boston-based Citizens for Juvenile Justice addressed many of these concerns in their 2014 report “Unlocking Potential: Addressing the Overuse of Juvenile Detention in Massachusetts.” In the report, CfJJ examines some of the deleterious impacts of detention on juveniles. For instance, far from the conventional wisdom that detention can serve as a “wake-up call” for kids, CfJJ alleges that detention is traumatic, undermines healthy youth development, and can both exacerbate mental health issues and stunt educational development. Furthermore, according to CfJJ, evidence shows that pre-trial detention “can pressure an unsophisticated adolescent to agree to a plea deal and may lead to harsher treatment by the system, increasing the likelihood that the young person will be found delinquent and committed to DYS.”<sup>42</sup>

Massachusetts detained a total of 2,164 youth pre-arraignment in 2014.<sup>43</sup> The negative effects of detainment are exacerbated by the persistent racial disparities in the DYS detention system; Latinos, for instance, were four times more likely than whites to be in detention in FY12, while African Americans were seven times more likely.<sup>44</sup> These disparities raise persistent questions of disproportionate minority contact in the Commonwealth’s juvenile justice system.

The other argument against secure confinement, of course, is an economic one. Here, a 2015 CfJJ estimate found that Massachusetts spent a combined \$44 million in FY11 on residential committal of juveniles who committed a misdemeanor as their most serious offense.<sup>45</sup> Although no one would suggest that all of these young people should be at home, the Commonwealth could undoubtedly save millions of dollars annually by looking more closely at its policies surrounding juvenile detention, particularly pre-trial, where 78 percent of youths are ultimately either found not guilty of their accused offense or are released on probation after their trial.<sup>46</sup>

As detailed earlier, Massachusetts has done an exceptional job in recent years of lowering the total number of cases heard in the Juvenile Trial Court. A decreased caseload, and the use of procedural methods such as a continuance without a finding or a suspended sentence, have also helped keep more juvenile offenders out of the residential rehabilitation system. The continued decrease in caseload at the Juvenile Trial Court (over 30 percent since 2006) has been mirrored in a corresponding drop in youth under DYS custody.<sup>47</sup> Still, the Commonwealth will spend almost \$150 million on housing both accused (pre-trial) and committed (post-trial) juveniles in residential facilities in FY16. Given the huge investment in this population, it stands to reason that the Commonwealth should look to experts, and to the experiences of other states, to see whether the Commonwealth might be able to both save money and improve outcomes for juveniles.



In the case of low-risk juveniles, DYS uses a program known as the Juvenile Detention Alternatives Initiative, an initiative to reduce the number of low-risk defendants or youthful offenders held in hardware-secure facilities. The program, which operates across Worcester, Suffolk, Middlesex, Essex, Bristol, and Hampden counties, has demonstrated a 54 percent reduction in low-risk offenders admitted to bail, with one-third held in non-secure or community-based settings.<sup>48</sup> In Massachusetts, these non-residential, community-based settings include services and counseling that cover “anger management, substance abuse, behavior therapy, pro-social skill groups, teen dating violence prevention, employment readiness, and parenting.”<sup>49</sup> Other promising community-based juvenile detention diversion programs include the Robert F. Kennedy Children’s Action Corps’ Detention Diversion Advocacy Project in Dorchester, and Salem’s “On Point” collaboration.<sup>50</sup> According to MassBudget, in FY2010, “the annual average cost for one bed in a secure detention facility was \$110,000,” with a medium security shelter only slightly lower, at around \$95,000.<sup>51</sup> Given these costs, and the comparatively lower cost of low-security residential or non-residential options (MassBudget notes that DDAP, for instance, serviced 30 children in FY2013 for just \$5,000 each), increased use of alternative methods, when appropriate, have the potential to save the Commonwealth millions of dollars.<sup>52</sup>

Non-residential solutions have risks, even for presumed nonviolent youth offenders. Of these, among the largest risks is that a child who has been released pre-arraignment fails to appear for their next court date. Luckily, to respond to this concern, last year the Juvenile Court also began piloting the Juvenile Probation Arraignment/Appearance Screening Tool, a “validated risk assessment tool (that) provides a score relative to a child’s risk of failure to appear” before the court.<sup>53</sup> The system, funded out of the Juvenile Detention Alternatives Initiative, is designed to provide judges with more information to help make an informed decision regarding potential detainment or release. This valuable information, when paired with a serious effort to avoid pre-trial detention, has the potential to both save money for the Commonwealth, and result in better outcomes for children.

In recent years, other states have recognized that housing low-risk offenders does more harm than good, both to delinquent youth and the taxpayer. The combination of increasing costs and evidence suggesting that resident settings do not result in statistically better outcomes has convinced some states to seek out alternative rehabilitation methods with a higher ROI. Georgia, for example, through increased state funds and federal grants, was able to invest \$6 million in FY14 and (an anticipated) \$8.85 million in FY15 in transforming its juvenile justice system.<sup>54</sup> These funds were used to “expand community-based programs and practices that help reduce recidivism,” and avoid constructing two new residential facilities.<sup>55</sup> While the state did have to front a small amount of money for this project, Georgia was able to secure a significant portion of the funds from federal grants (mainly through the OJJDP). The benefits of this relatively modest investment are expected to be substantial. The overhaul to the juvenile justice system is anticipated to save Georgia \$85 million through 2018, as the juvenile residential population is expected to drop by more than 30 percent in the state.<sup>56</sup>

Kentucky is also in the midst of overhauling its juvenile justice system. Kentucky’s Department of Juvenile Justice has an annual budget just over \$100 million, and the average cost of a bed in a juvenile residential facility is an estimated \$96,000 per year.<sup>57</sup> In 2013, the Kentucky Task Force on the Penal Code and Controlled Substances conducted a review of current laws and their associated costs and effectiveness, and recommended that “state lawmakers restrict the commitment of lower-level offenders and the lengths of their stay in out-of-home placements, expand and strengthen evidence-based programs, create a fiscal incentive program, and establish an Oversight Council.”<sup>58</sup> As a result, in April 2014, the state legislature passed, and Governor Beshear signed, legislation to overhaul the juvenile justice system, decreasing residential rehabilitation while increasing the use of community-based methods. This overhaul is expected to reduce the out-of-home population by one-third and save the state almost \$25 million over five years.<sup>59</sup>

Similar strategies are plausible for Massachusetts. The Commonwealth has done an exceptional job in containing the cost of the average bed in residential services for youthful offenders and has already implemented programs to reduce the number of low-risk youthful offenders who are committed to high-security residential programs. These programs, however, should be expanded to additional counties in the state. The legislature should also review bills that are being passed in states like Georgia, Kentucky, and Hawaii, which overhauled those states' juvenile justice systems. Following through on similar reforms in the Commonwealth will ensure that Massachusetts continues to serve both

youth offenders and the public more efficiently by reducing the rate of recidivism and saving the state a significant amount of money. Federal funding can be helpful here, and the Commonwealth should keep a close eye on funding from the OJJDP and others. However—with or without federal funding—a robust investment in alternatives to secure residential lock-ups for an increasing percentage of DYS-committed young people will likely result in substantial cost savings for Massachusetts. More importantly, reducing our detained and residential committed populations is proven to improve outcomes, reducing recidivism with no appreciable threat to public safety.

## V. CONCLUSION

While this report is by no means an exhaustive list of ways the Commonwealth can increase federal funding for—or reduce state expenses in—the juvenile justice system, we do believe it highlights several areas the state should explore, especially as the legislature contemplates an overhaul to the juvenile justice system. We urge the Commonwealth to start with the following four areas: 1) ensuring adequate deterrence opportunities and programs, including afterschool and summertime activities and employment; 2) exploring ways to use P3 waivers and funds to blend DoJ monies with HHS, DoL, and DoE sponsored initiatives; 3) pursuing additional community policing funds focused on juveniles; 4) revisiting funding, policies, and programs related to DYS and juvenile detention rates and inequities.

There is significant interest at the federal level to overhaul the justice system as a whole, and even more so to address juvenile and racial justice issues and inequities. Such an initiative will inevitably come with enhanced funding opportunities for states showing the ability to pilot or implement the initiatives the federal government lays out. By reviewing policies and funding opportunities right away, the Commonwealth will not only improve our current system and receive additional funding to do so, but we will also position ourselves at the forefront of the nation.

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