A Looming Crisis

The Secure Detention of Youth After Arrest and Before Arraignment in Facilities Administered by the Massachusetts Executive Office of Public Safety and Security

ACLU
AMERICAN CIVIL LIBERTIES UNION

CHILDREN'S LAW CENTER OF MASSACHUSETTS

A Looming Crisis

The Secure Detention of Youth After Arrest and Before Arraignment in Facilities Administered by the Massachusetts Executive Office of Public Safety and Security

A Looming Crisis:
The Secure Detention of Youth After Arrest and Before Arraignment in Facilities Administered by the Massachusetts Executive Office of Public Safety and Security

Published: December 2008

Written by Robin L. Dahlberg, with assistance from Arlene Kohn Gilbert, Barbara Kaban, Jason Langberg, Amy Reichbach, John Reinstein

THE AMERICAN CIVIL LIBERTIES UNION is the nation's premier guardian of liberty, working daily in courts, legislatures and communities to defend and preserve the individual rights and freedoms guaranteed by the Constitution and the laws of the United States.

OFFICERS AND DIRECTORS
Susan N. Herman, President
Anthony D. Romero, Executive Director
Richard Zacks, Treasurer

ACLU NATIONAL OFFICE
125 Broad Street, 18th Fl.
New York, NY 10004-2400
(212) 549-2500
www.aclu.org

ACLU of Massachusetts
211 Congress Street
Boston, MA 02110
(617) 482-3170
www.aclum.org

The Children's Law Center of Massachusetts (CLCM), a private non-profit legal services agency located in Lynn, Massachusetts since 1977, annually provides legal representation to more than 500 children and youth in child welfare, juvenile justice and education matters. The CLCM works to improve outcomes for at-risk youth through trial and appellate advocacy, outreach, and research and policy initiatives.

Children's Law Center
298 Union Street
Lynn, MA 01901
(781) 244 1433

I.	Executive Summary	5
II.	Background: Massachusetts' System for Securely Detaining Children between Arrest and Arraignment is in Need of Reform.	7
III.	Probation Officers' Unfettered Discretion Results in the Detention of Too Many Children Who Should Be Awaiting Arraignment in Their Homes.	9
IV.	Approximately Half of All Securely Detained Children Have Been Charged With Minor Offenses.	13
V.	Children 13 Years of Age and Younger Are Being Securely Detained Unlawfully.	17
VI.	Massachusetts Youth Are Being Denied Their Statutory Right to Bail.	19
VII.	Youth of Color Are Disproportionately Detained	21
VIII.	EOPSS Has Failed to Mandate the Licensure of Two of its Secure Facilities, Resulting in Inadequate Care.	23
IX.	Mechanisms for Funding the ALPs are Inadequate.	25
X.	Endnotes	29

I. Executive Summary.

To ensure the safety of children charged with delinquent behavior, the federal Juvenile Justice and Delinquency Prevention Act, 42 U.S.C. § 5633(a)(12), prohibits the detention of recently arrested youth in police stations for more than 6 hours. It requires that those held longer be housed separately from adult arrestees. Because most Massachusetts police departments do not have, and lack the resources to create, separate juvenile lock-up facilities, the Commonwealth has established Alternative Lock-up Programs (ALPs), free-standing juvenile detention facilities that serve multiple police departments.

Although the federal requirement has been in force for years, the ALP system is, at best, haphazard and ad-hoc. At present, the state's child welfare agency, the Massachusetts Department of Children and Families (DCF) (formerly the Department of Social Services), and the Massachusetts Executive Office of Public Safety and Security (EOPSS) each contract with 4 different service providers to operate non-secure and hardware secure facilities, respectively. The law governing the detention decision-making process and the guidelines regarding the placement of youth in non-secure versus secure facilities are ambiguous, poorly defined, or ignored, resulting in the unnecessary secure detention of youth who should be awaiting arraignment at home.

While conditions at the non-secure facilities are subject to relatively rigorous regulation and oversight, those at the EOPSS ALPs are not. Among other things, EOPSS does not mandate on-going staff training; policies and procedures regarding behavior management and the use of restraints; assessments of youth entering its facilities for medical and mental health problems; or licensure by the state agency responsible for licensing residential juvenile facilities. At times, some secure facilities have operated without showers; without recreational activities, without a sufficient number of staff, and without female guards for female detainees.

Massachusetts law presumes that children arrested when court is not in session shall be released to an adult who can guarantee their subsequent appearance in court. Although it allows arresting police departments to detain a child, they may only do so if the child is 14 years of age or older *and* he was arrested pursuant to a warrant authorizing his detention or a local probation officer directed that he be detained. Because the statute sets forth no standards to guide probation officers in this decision, substantial numbers of children who might otherwise be released are detained, including children under the age of 14 and a disproportionate number of youth of color. Youth of color account for between 20 and 25% of the adolescents residing in the Commonwealth, but account for more than 60% of all children detained in the EOPSS ALPs.

The unnecessary detention of juvenile arrestees could be reduced if the children were readily afforded access to bail magistrates—state officials authorized to set bail when courts are not open. Massachusetts law guarantees arrested youth the same right to bail as adults. Arresting police departments, however, often neglect to contact bail magistrates and some bail magistrates are reportedly unwilling to make bail determinations for children. To remedy these problems, the Commonwealth's Bail Administrator recently launched a campaign to better educate police officers, local juvenile proba-

tion officers and bail magistrates about the right of juveniles to bail.

Although EOPSS officials have claimed that its ALPs are intended for "serious and violent delinquents," recent data show that approximately half of those detained are charged with misdemeanors such as simple assault and battery, minor drug-related offenses, disorderly conduct, resisting arrest, disturbing a school classroom, violating a city ordinance, trespassing, vandalism, or malicious destruction of property.

Because of EOPSS's failure to provide consistent oversight, two of its contractors are not licensed to operate an ALP. State law requires that any entity administering a program that provides care to one or more children on a 24-hour a day basis, including those that do so at the request of law enforcement agencies, must have a residential child care license from the Massachusetts Department of Early Education and Care to ensure the safety of the facility, the adequacy of staff and the observance of the rights of the children and their families. All non-secure ALP contractors and three secure ALP contractors are licensed. The two that are not have been housing children for at least four years.

Funding of the EOPSS ALPs remains a major problem. At present, the secure facilities are funded solely with federal grants from the Office of Juvenile Justice and Delinquency Prevention (OJJDP) intended to support programs to reduce detention and prevent recidivism. As a result of the Commonwealth's continued reliance on the grants to fund detention facilities, there is little federal money available for programs to keep youth out of such facilities. Moreover, because the amount of the federal grants has decreased so significantly over the last 10 years, there is growing concern that within the next one or two years, the grants will no longer be sufficient to support the secure ALPs.

To address these problems, the American Civil Liberties Union, the ACLU of Massachusetts and the Children's Law Center of Massachusetts recommend that the Commonwealth clarify the circumstances under which youth may be detained between arrest and arraignment and delegate administration of all secure ALPs to the Massachusetts Department of Youth Services (DYS). More specifically, we recommend that the Commonwealth adopt measures to ensure that: (1) detention is limited to youth who are at risk of flight or whose release would endanger their communities, (2) access to bail or prompt immediate arraignment is readily available to all juvenile arrestees, (3) children 13 years of age or under are not detained in hardware secure facilities, and (4) pre-arraignment detention is incorporated into Massachusetts' Juvenile Detention Alternatives Initiative, an effort spearheaded by DYS to reduce juvenile post-arraignment detention. Finally, the Commonwealth should plan for the orderly transition from dependence on federal funds to support the ALP system.

II. Background: Massachusetts' System for Securely Detaining Children between Arrest and Arraignment is in Need of Reform.

The Commonwealth of Massachusetts has been known historically as a forerunner in innovative and rehabilitative juvenile justice. Unfortunately, that reputation may no longer be deserved. According to the 2006 report, *Do You Know Where The Children Are? A Report on Massachusetts Youth Unlawfully Held Without Bail*,[1] hundreds of youth accused of delinquent behavior are unnecessarily detained after arrest and prior to arraignment in secure Alternative Lock-Up Programs (ALPs). Data obtained through the Massachusetts Public Records Act and interviews with police officers, state administrators and advocates reveal that the Commonwealth has taken few steps to remedy this problem.

Children arrested while the Massachusetts Juvenile Court is in session are typically taken by the arresting police officers to the police station to be booked and then to the Court to be arraigned before a judge. As previously stated, state law presumes that children arrested while the Court is not in session will be released by the arresting officers to an adult who can guarantee their return to the Court. It provides, however, that children 14 year of age or older, arrested pursuant to a warrant authorizing their detention or ordered detained by a local probation officer, and ineligible for or unable to post bail, may be held by the arresting officer until court reopens.[2]

According to the federal Juvenile Justice and Delinquency Prevention Act (JJDPA), detained children may be housed initially in adult jails or lock-up facilities but after six hours must be moved to juvenile-specific facilities.[3] Until July 2008, the Boston Police Department was the only Massachusetts police department to have its own juvenile detention facility. To assist the Commonwealth's remaining 350 police departments in complying with the 6-hour rule, EOPSS, the state entity responsible for Massachusetts' compliance with the JJDPA, created a network of hardware secure and non-secure juvenile ALPs, all of which are currently managed on a day-to-day basis by third-party contractors.[4] The Department of Children and Families oversees the non-secure ALP contracts and EOPSS administers the secure ALP contracts. For the last several years, the EOPSS contractors have included the Key Program, Inc., the Bristol County Sheriff's Office, the Essex County Sheriff's Office, and the Center for Human Development, Inc.

With respect to the EOPSS ALPs, *Do You Know Where The Children Are?* found that:

- Probation officers' decisions to securely detain were often cursory and ill-informed;
- Many probation officers ordered the secure detention of youth 13 years of age or younger, in violation of state law;
- Few police departments provided securely detained youth with access to bail magistrates, in violation of state law;
- Many bail magistrates refused to set bail for youth;
- Youth of color were disproportionately securely detained; and
- Two of EOPSS contractors—the Essex and Bristol County Sheriffs' Offices—were not licensed to operate ALPs by the Massachusetts Department of Early Education and Care.[5]

On July 1, 2008, with little advanced notice, the Boston Police Department closed its detention facility for budgetary reasons, throwing the entire ALP system into chaos. Many children arrested by the Boston Police Department who previously would have been detained in that facility were suddenly transported to ALPs that did not have the capacity to accommodate them and to which parents without cars could not travel to post bail.[6]

The Commonwealth must take immediate steps to rectify the ALP situation. As the data analyzed herein makes clear, returning to the status quo by financing a new detention facility in the Boston area would be unacceptable.

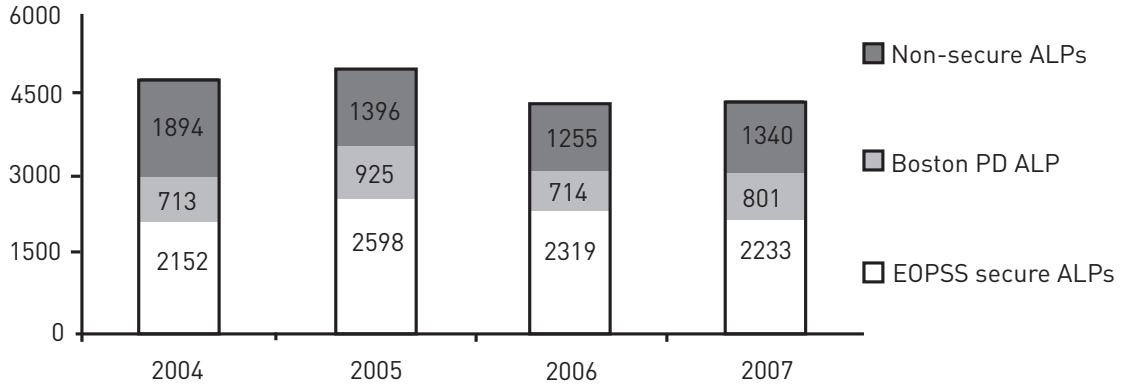
III. Probation Officers' Unfettered Discretion Results in the Detention of Too Many Children Who Should Be Awaiting Arraignment in Their Homes.

National and international standards recommend that secure detention should be limited to youth who are at high risk of re-offending or failing to return to court. Although Massachusetts law limits the detention of *youth at arraignment* to those who are at risk of flight,[7] whose release would endanger their communities,[8] or who are in need of a mental health evaluation to assist with the adjudication of their cases,[9] it is silent on the standard to be used by probation officers in deciding whom to detain *prior to arraignment*. In 2006, according to at least one local probation officer, the Office of the Commissioner of Probation had written guidelines but would not make them public.[10] In 2008, the Office claimed to be revising a form for probation officers to use when making detention decisions and stated that it could not be released to the public until it had been finalized.[11]

During each of the last four years, the Commonwealth has detained more than 2000 youth in EOPSS ALPs.

As Table 2 demonstrates, in 2007, the majority of these youth came from just 20 of the approximately 350 police departments for which the EOPSS ALPs were created.

Table 1.[12]
Number of Youth Detained Prior to Arraignment – 2004 to 2007



As illustrated in Table 3, in 2007, the most recent calendar year for which such data is available, an estimated one quarter of the EOPSS youth were held at the direction of local probation officers, who, because of ambiguities in the law and the unwillingness of the Office of the Commissioner of Probation to make its guidelines public, appeared to exercise unfettered discretion when deciding whom to detain.

According to police officers, probation officers' decisions to detain are generally based on the charges against the child and the child's prior involvement with the juvenile justice system. Probation officers rarely see or speak with the child or the child's parents or family members prior to making the determination and do not appear to engage in any other type of meaningful analysis that would permit them to determine whether a youth is at risk of flight or a danger to himself or others.

Table 2.[13]
Police Departments Securely Detaining 15 or More Youth in EOPSS ALPS 2007
(Table does not include Boston Police Department)

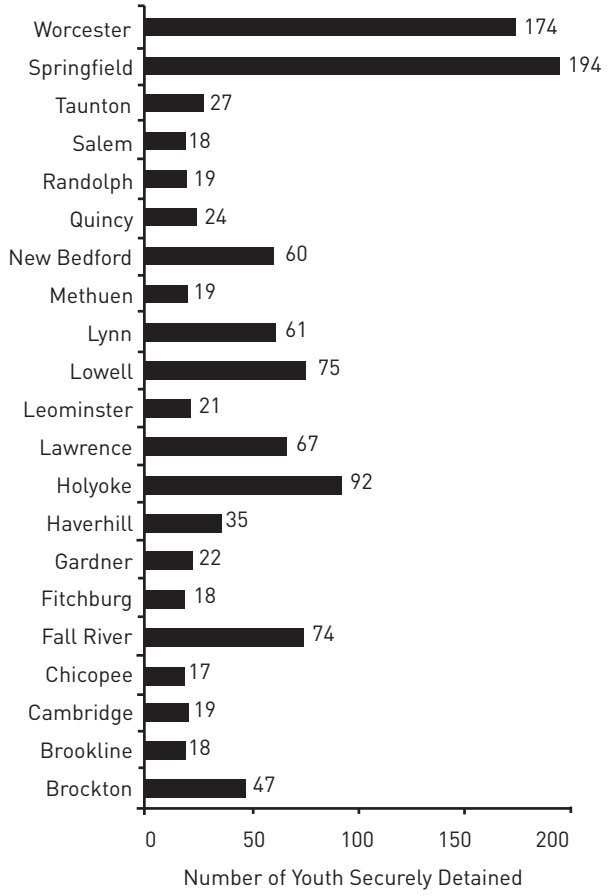
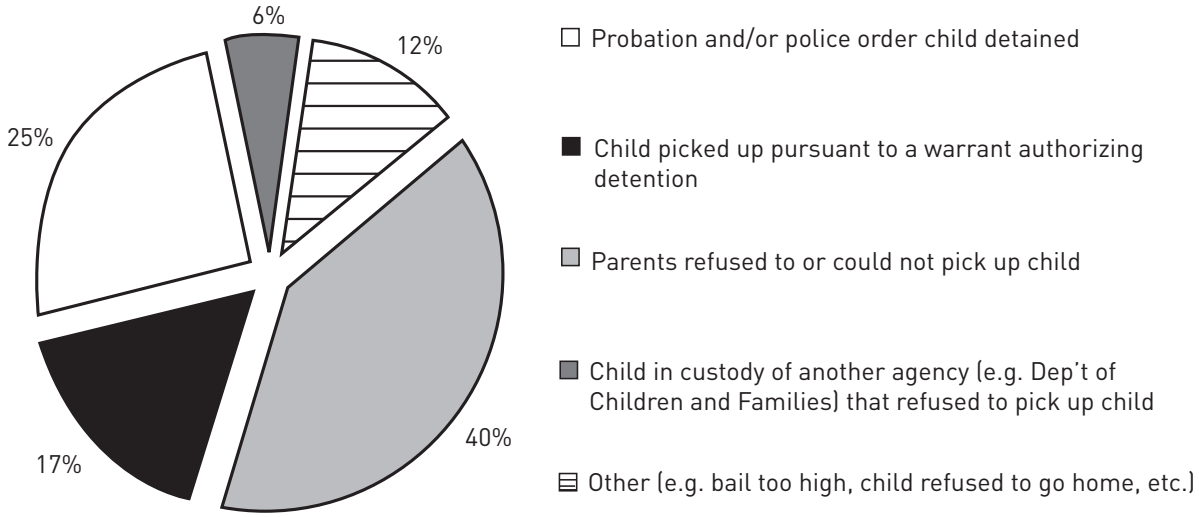


Table 3.[14]
Estimated Percentage of Youth Detained in EOPSS ALPs for Reasons Indicated - 2007



IV. Approximately Half of All Securely Detained Children Have Been Charged With Minor Offenses.

Until 2008, EOPSS claimed that its secure ALPs were intended for "pre-arraigned serious and violent delinquents."[15] According to a chart prepared early on by EOPSS and reproduced as Table 4 below, children charged with misdemeanors who could not return home because a parent or other responsible adult could not be located or would not come forward were to be housed in non-secure facilities. Yet, Department of Children and Families contractors often refused to accept children referred to them. Between 2006 and early 2008 for example, non-secure ALPs in the western part of the Commonwealth would not place any youth arrested in connection with a domestic dispute or pursuant to a default warrant, regardless of the underlying facts.[16]

Table 4.
ALP Referral Chart

SECURE ALTERNATIVE LOCKUP PROGRAM

Aggravated Assault
Armed Robbery
Arson *(any fire / burning related crime)*
Assault & Battery
Assault & Battery on a Police Officer
Assault & Battery on a Public Official
Assault & Battery with a Dangerous Weapon
Attempted Murder
Auto Theft
Battery
Breaking and Entering (*Day or Night*)
Burglary
Civil Rights/Hate Crimes
Conspiring to Violate Drug Laws
Carjacking
Domestic Assault & Battery
Home Invasion
Inciting a Riot
Indecent Assault
Indecent Assault & Battery
Kidnapping
Larceny of a Motor Vehicle
Lewd and Lascivious Conduct
Manslaughter
Multiple Default Warrants (*Regardless of charges*)
Murder (*under age 14 only)*
Pos. of Controlled Substance (any class) w/ Intent to Dist.
Possession of a deadly Weapon (firearms, knives, explosive devices)
Prostitution/ Solicitation of Prostitution
Rape
Resisting Arrest
Robbery *(unarmed)*
Sexual Assault
Stalking

NON-SECURE ALTERNATIVE LOCKUP PROGRAM

STATUS OFFENDERS:any and all status offenders (Chins Warrants, Runaways, Stubborn Child, Truants, Youth Curfews Violators, or any other age related offense)

Assault
Breaking and Entering a Motor Vehicle
Destruction of Property
Disorderly Conduct
Disturbing the Peace
Domestic Assault
Failure to Stop for a Police Officer
Forgery / Counterfeit
Graffiti/ Defacing Property
Harassment
Intimidation of a Witness
Larceny *(Over & Under $250)*
Malicious Destruction of Property
Minor in Possession of Alcohol
Open Container/ Public Consumption of Alcohol
Operating a Motor Vehicle without a License
Possession of Ammunition
Possession of Burglary Tools
Possession of Controlled Substance (*All Classes*)
Possession of Dangerous Weapon (*air rifles & other weapons*)
Protective Custody
Receiving Stolen Property
Receiving Stolen Motor Vehicle
Runaway
Shoplifting
Trespassing
Unauthorized Use of Motor Vehicle

* *In the event that the arresting agency finds itself needing to refer a juvenile to an ALP and feels strongly that the ALP designated by this charge sheet is not in the best interest of the juvenile and / or the ALP, the referring agency has the authority to supersede this charge sheet and refer the youth to the ALP (Secure/Non- Secure) that they deem is most appropriate.*

* **Unable to locate the charge? –** use the charge on the sheet that most closely resembles the charge against the Juvenile to determine placement.

* **"Attempted" / "Conspiracy"/ "Threats" charges –** to refer a juvenile charged with attempting or conspiring to commit a crime, use crime that was attempted or conspired to determine placement of the juvenile.

* **Warrants-** to place a juvenile arrested on a warrant, use the original charge in the warrant to determine placement.

* **Violation of Probation-** use original charge to determine placement of juvenile.

In an effort to clarify the circumstances under which children charged with low-level offenses were to be placed in non-secure facilities, Department of Children and Families (DCF) and EOPSS recently produced a second placement guideline, reproduced as Table 5 below. Unlike its predecessor, this chart officially permits non-secure contractors to reject children charged with minor offenses.

Although EOPSS requires that its contractors track the offenses with which detainees are charged, the contractors do not record this data in a uniform manner. Each uses its own abbreviations and codes, making it almost impossible to determine with any precision the total number of youth charged with any particular type of offense. A review of 2007 data,

Table 5.[18]
Revised ALP Referral Chart

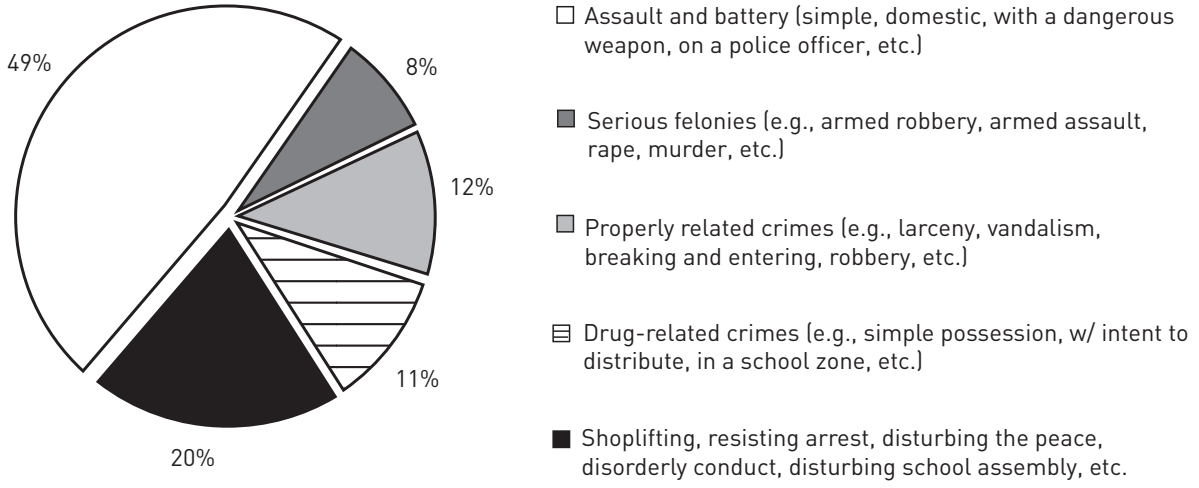
MASSACHUSETTS EXECUTIVE OFFICE OF PUBLIC SAFETY AND SECURITY
and the DEPARTMENT OF CHILDREN AND FAMILIES

JUVENILE JUSTICE PROGRAM PLACEMENT GUIDELINES FOR JUVENILE LOCKUPS (Non-Secure)

WILL PLACE	* MAY PLACE UPON EVALUATION	WILL NOT PLACE
Status Offenders	Domestic Assault & Battery	Arson
CHINS (with or without warrants)	Disorderly Conduct9	Bombings
Curfew Violations	DUI (Breathalyzer reading .08 or less)	Robbery (Armed or Unarmed)
Disturbing the Peace	Forgery	Burglary
Larceny (under $250)	Giving a false name	Assault & Battery
Possession of Alcohol (Under 17)	Loitering	Any charge of a sexual nature
Protective Custody	Malicious Destruction (under $250)	Kidnapping
Runaway (Ch. 119 sec.39H)	Minor Motor Vehicle Violations	Any Type of B&E
Trespassing	Minor in Possession of Alcohol (Under 17)	Possession of a firearm
	Open Container /Public Consumption of Alcohol	Murder (Hold Y.O. as adults)
	Possession of ammunition	Assault w/ a deadly weapon
	Possession of Drugs (Class D&E)	Assault w/ intent to kill
	Property Destruction (under $250)	Intent to distribute any class of drugs
	Receiving stolen property (under $250)	Larceny over $250
	Tagging / Defacing Property	Auto theft
	Vandalism	B&E (Day or Night)
		Civil Rights or Hate crimes
		Carjacking
		Any charge of a sexual nature
		Multiple Default Warrants
		Any Default Charge
		Resisting arrest
		Stalking
		Lewd & Lascivious Conduct
		Manslaughter

however, reveals that an estimated 45% to 55% had been charged with misdemeanors such as simple assault and battery, minor drug-related offenses, disorderly conduct, resisting arrest, disturbing a school classroom, violating a city ordinance, trespassing, vandalism, malicious destruction of property, unauthorized use of a motor vehicle, larceny involving property less than $250 in value, possession of alcohol, shoplifting or speeding. Evidence that any of these youth were at risk of flight or dangers to their communities was either unavailable or nonexistent.

Table 6.[19]
Estimated Percentage of Youth Detained in EOPSS ALPs Categorized by Charge - 2007

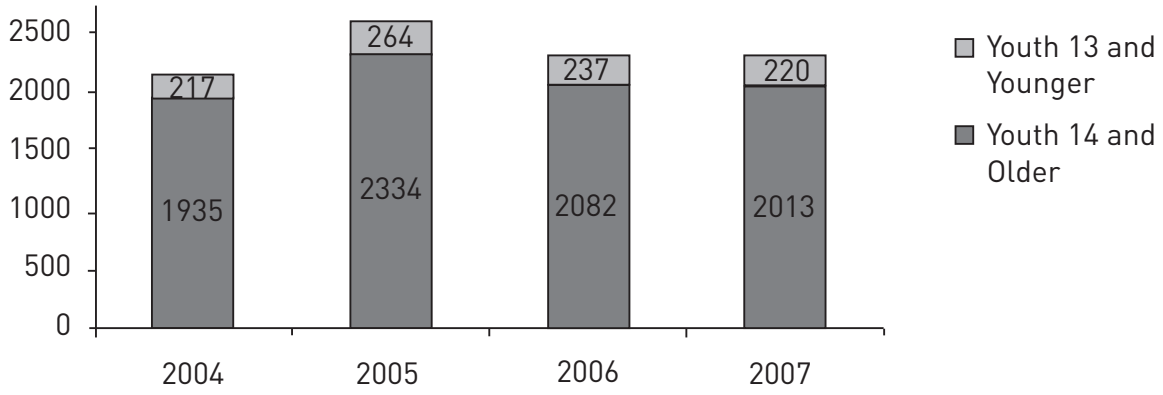


V. Children 13 Years of Age and Younger Are Being Securely Detained Unlawfully.

According to the Massachusetts Supreme Judicial Court, laws limiting individual freedoms must be "strictly construed" to ensure that "individuals are not deprived of liberty without a clear statement of legislative intent to do so."[20] Section 67 of Chapter 119 of the Massachusetts General Laws permits police departments to detain "a child between seven and seventeen years of age arrested with or without a warrant" while a police officer contacts the local probation officer and the child's parent or guardian or an individual with whom the child resides. It permits the continued detention of youth after such contact under the circumstances set forth earlier in this report, but only if the "child [is] between fourteen and seventeen years of age."[21] It makes no mention of the continued detention of children under the age of 14.

Thus, if section 67 is strictly construed, it does not permit the continued detention of children 13 years of age or younger after the relevant notification. Yet, during each of the last four years, approximately 10% of the youth securely detained in EOPSS facilities have been 13 years of age or younger. In 2005, 18 youth securely detained in EOPSS facilities were 11 years old. In 2006, four 10-year-olds were securely detained.

Table 7.[22]
Number of Youth Detained in EOPSS ALPs Who Were 13 Years of Age or Younger
2004-2007



VI. Massachusetts Youth Are Being Denied Their Statutory Right to Bail.

Massachusetts law provides youth with the same right to bail as adults.[23] Once a probation officer directs that a child should be detained, state law requires the arresting police department to provide the child with access to a bail magistrate. Bail magistrates are authorized to hold bail hearings in jails and police stations to determine whether the posting of a cash bond will increase the likelihood of a child's return to court. If, after examining a number of factors set forth in state law, the magistrate determines that it will, the magistrate may set bail. If the youth's family is able to post bail, he must be released.[24]

In 2007, police departments failed to provide more than 300 of the 2233 youth detained in EOPSS facilities with access to a bail magistrate. Most of these police departments were located in Hampden County; few, if any, had "a system for after hours bail setting."[25]

Although all bail magistrates must respond promptly to requests for their services,[26] police officers report that they have not always done so. The officers state that some bail magistrates have refused to respond, believing that that they would not be compensated for their efforts. Under the system currently in place, bail magistrates receive $40 per person for their services but only if the person actually posts bail. They are not compensated if the person does not post bail.[27] Unlike adults who can post their own bail, young people are dependent on their parents or guardians to post bail. If the parent or guardian refuses to do so after bail has been set, the magistrate does not receive $40.

In mid-2008, the Commonwealth's Bail Administrator, Michael McEneaney, launched an extensive educational campaign to remedy some of these deficiencies. Among other things, he has reached out to chiefs of police and juvenile probation officers to inform them of the need to provide youth with access to bail magistrates, and is preparing a comprehensive memorandum for bail magistrates.[28]

VII. Youth of Color Are Disproportionately Detained.

Youth of color are disproportionately represented in the EOPSS ALPs. In 2007, they accounted for roughly 20% of the adolescent population in the area served by those ALPs (i.e, all counties but Suffolk County),[29] but more than 60% of youth detained in the ALPs.

A small number of police departments were primarily responsible for this disparity. As set forth in Table 9 below, over 80% of the youth detained by each of the Holyoke, Lawrence, Lynn, Springfield and Worcester Police Departments were youth of color. Because most police departments do not maintain juvenile arrest data by ethnicity, it is impossible to determine whether youth of color are detained in greater proportions because they are arrested in greater proportions. Although minority youth comprise a majority of the adolescent population in the cities of Lawrence and Springfield, they comprise less than half of the adolescent population in Worcester and Lynn.[31]

Table 8.[30]
Percentage of Youth Detained in EOPSS ALPs Who Were Youth of Color 2004-2007

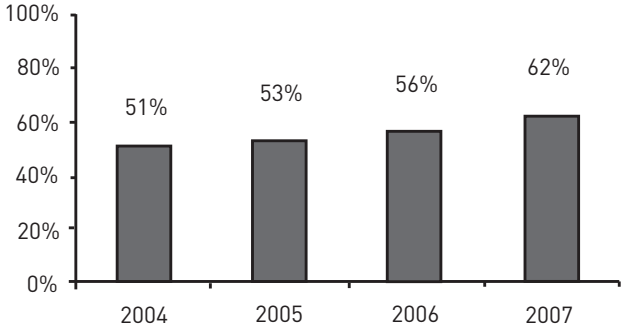
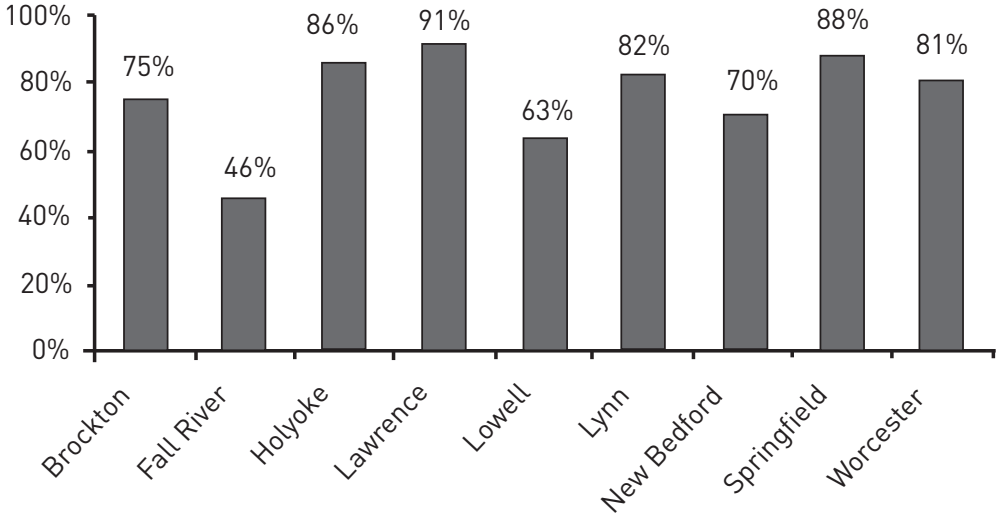


Table 9.
Percentage of Youth Detained By Arresting Police Departments Who Were Youth of Color - 2007



VIII. EOPSS Has Failed to Mandate the Licensure of Two of its Secure Facilities, Resulting in Inadequate Care.

State law requires that entities operating temporary shelter care facilities must have a residential child care license from the Massachusetts Department of Early Education and Care.[33] It defines a temporary shelter facility as:

> Any facility which operates to receive children under 18 years of age for temporary shelter care during the day or night when such children request shelter therein, or when such children are placed there by a placement agency, a parent, a law enforcement agency, or a court with authority to make such placement. Temporary shelter facility shall not mean family foster care or a group care facility, a police station or a town lockup.[34]

Under this definition, the EOPSS ALPs qualify as temporary shelter facilities. They are designed to temporarily house children at the request of law enforcement agencies.

That two EOPSS contractors are sheriff's offices does not make their ALPs police stations or town lockups. The sheriffs' offices bid for the secure ALP contracts in the same manner as the three other secure providers; they are subjected to the same contract policies, provisions and rules as the three other providers; and like the three other providers, they house children from dozens of surrounding police departments.[35] Unlike the three other contractors, however, the sheriffs' offices are not are licensed by the Department of Early Education and Care and never have been.[36]

In 2000, members of the Juvenile Justice Advisory Committee, a group appointed by the Governor to advise the Commonwealth on how to spend the federal funds it receives pursuant to the federal Juvenile Justice Delinquency and Prevention Act, questioned the fact that the Bristol County Sheriffs' Office, which had been awarded an ALP contract in 1999,[37] was not licensed and had no plans to obtain a license. In response, EOPSS stated that it would seek a legal opinion to determine whether a license was necessary.[38] According to EOPSS's General Counsel, no such opinion was ever rendered.[39]

Licensed facilities must meet Department of Early Education and Care regulations concerning, among other things: (1) admissions policies and procedures; (2) the physical condition of the facilities; (3) staffing; (4) the types of services provided; (5) behavior management techniques; (6) the rights and responsibilities of parents, children and staff; and (7) organization, financing and administration.[40] The sheriffs' offices have not always met these standards.

The regulations prohibit licensed contractors from requiring youth to wear clothing that identifies them as coming from a residential facility.[41] Youth detained at the Bristol ALP are currently required to wear white and black striped prison clothing.[42]

The regulations require licensed contractors to have a staff-to-youth ratio appropriate to the age, capabilities and needs of the children.[43] In 2007, EOPSS noted that the Bristol County Sheriffs' Office did not have sufficient staff on site.[44]

Licensed contractors must have gender-appropriate staff.[45] The Essex County Sheriffs' Office frequently relies on off-duty police officers to serve as staff and at times has been unable to find female officers when girls have been detained.[46]

Licensed contractors must have trained staff.[47] In reviewing applications for ALPs in 2006, members of the Juvenile Justice Advisory Committee expressed concern that staff employed by the Essex County Sheriff's Office "may not be aware of what they need to do as an ALP" and acknowledged that "Essex staff have minimal training."[49]

Licensed contractors must maintain their facilities in a sanitary condition, with at least one tub or shower for every six residents.[50] In 2005, the Essex ALP, a double-wide trailer outside the building housing the Essex County Sheriff's Office, had no shower or tub. A shower was later installed, but in 2006, members of the Juvenile Justice Advisory Committee raised concerns about the "quality of care" at the ALP, noting that "the 'trailer' is not an ideal facility."[51]

Licensed contractors must maintain their facilities in a safe condition.[52] In 2007 and again in 2008, EOPSS recommended to the Essex County Sheriff's Office that it take steps to secure the perimeter of the trailer to prevent escapes and that it increase bed-checks to ensure the safety of the youth detained.[53] In mid-2008, a young man disappeared from the Essex ALP, purportedly by crawling out of one of the trailer's heating ducts. He was later found at his home.[54]

Licensed contractors must use approved behavior management techniques and policies and procedures governing the use of restraints.[55] In 2007, the Bristol County Sheriff's Office designated a stool affixed to the floor of a bedroom in its ALP as a behavior management tool; poorly behaved children were to be handcuffed to the stool. The Bristol County Sheriff's Office contends that it never used the stool.[56]

The oversight provided by EOPSS in lieu of licensing is minimal. It inspects each facility yearly or as needed, and makes recommendations as it deems necessary. While it has suggested to the unlicensed contactors training, staffing ratios, intake procedures and recreational activities, it does not mandate its recommendations and the Essex County Sheriff's Office has done little to implement them.[57]

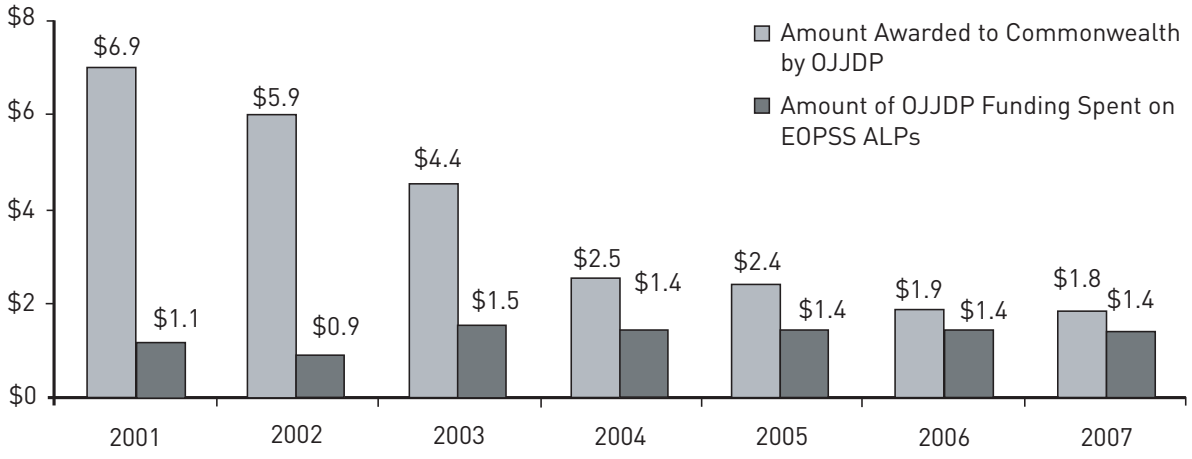
IX. Mechanisms for Funding the ALPs are Inadequate.

EOPSS finances its secure facilities with federal funds awarded to it by the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP) pursuant to the Juvenile Justice and Delinquency Prevention Act and the Juvenile Accountability Block Grant (JABG) program. The Juvenile Justice and Delinquency Prevention Act provides "formula grant" funds to states to develop programs to prevent delinquency, improve the juvenile justice system, deinstitutionalize status offenders, remove children from adult jails and reduce disproportionate minority confinement.[58] The JABG program provides funding for delinquency prevention, graduated sanctions, substance abuse, mental health screening and treatment, reentry and restorative justice programming.[59]

The Commonwealth should not continue to rely on OJJDP federal funds to pay for secure ALPs. First, the amount of money OJJDP has made available to states has decreased significantly over the last eight years. In 2001, the Commonwealth received $6.9 million, 16% of which it spent on ALPs. In 2007, it received $1.8 million, 74% of which it spent on ALPs. If the Commonwealth's federal award continues to decrease, it will not be able to sustain the secure ALPs.

Second, every federal dollar spent on a detention bed represents one less dollar that the Commonwealth can spend on programs to reduce detention and prevent recidivism. In prior years, the Commonwealth has used federal monies to fund aftercare/reentry programs, alternatives to secure detention, gender-specific services, disproportion-

Table 10.[60]
Amount of OJJDP Funding Spent by Commonwealth on EOPPS ALPs
(in Millions of Dollars)
2001-2007



ate minority contact reduction programs, mental health services and substance abuse prevention programs in Boston, Brockton, Chelsea, Holyoke, Lowell, Lynn, New Bedford, Springfield and Worcester. As the amount of federal funding not earmarked for ALPs has declined, the Commonwealth has been able to finance fewer such programs.[61]

Third, the Juvenile Justice Delinquency and Prevention Act expressly prohibits the payment of formula grant funds to unlicensed residential programs.[62] To the extent EOPSS uses Delinquency Prevention Act funds to finance the Essex and Bristol County ALPs, it is violating this prohibition.

In 2006, the Commonwealth's Juvenile Justice Advisory Committee wrote a letter to the Governor requesting that the Commonwealth assume the cost of the EOPSS ALPs and, in its 2007 annual report to the Governor and the Legislature, it recommended the same.[63] Neither the current nor the former Governor responded to the letter or the annual report. In late 2007, the JJAC voted to force the issue by refusing to allocate any federal funding for ALPs. In May 2008, at the request of Mary Elizabeth Heffernan, EOPSS's Undersecretary for Criminal Justice, the Committee reversed its decision. More recently, EOPSS reminded the Committee that it has only an advisory role over the JABG funds, and that if the Commitee again refused to allocate federal funds for ALPs, EOPSS might allocate those funds itself.[64]

X. Conclusions and Recommendations.

The Commonwealth must take control of the ALP program. At a minimum, it must:

- Articulate criteria for securely detaining youth prior to arraignment and in so doing, limit secure pre-arraignment detention to youth who are 14 years of age or older and at high risk of re-offending or failing to reappear in court if released;

- Educate police officers, probation officers and the Juvenile Court about the criteria and require probation officers to include in the Juvenile Court file of every youth they order securely detained a written statement setting forth the reasons for the detention;

- Delegate administration of all secure ALPs to the Massachusetts Department of Youth Services (DYS), the single state agency with experience in the detention of children and young people;

- Provide DYS with the state funding needed to administer facilities that are licensed by the Massachusetts Department of Early Education and Care and adhere to its regulations;

- Inform police departments that failure to provide youth with access to bail magistrates on a systemic basis will jeopardize their receipt of state funding and require police departments to maintain records demonstrating that they have provided such access;

- Consider opening the Juvenile Court in the evenings and on weekends in large metropolitan areas to arraign youth arrested during those time periods; and

- Take steps to reduce the overrepresentation of youth of color in secure ALPs by gathering and analyzing relevant data and including pre-arraignment detention in the Juvenile Detention Alternatives Initiative spearheaded by DYS.

X. Endnotes

[1] Barbara Fedders and Barbara Kaban, *Do You Know Where the Children Are? A Report on Massachusetts Youth Unlawfully Held Without Bail*, Sept. 2006, available at http://www.prisonpolicy.org/kidsbail/kidsbail.pdf.

[2] Section 67 of Chapter 119 of the Massachusetts General Law states in relevant part that:

> [W]henever a child between seven and seventeen years of age is arrested with or without a warrant, . . . the officer in charge of the police station or town lockup to which the child has been taken shall immediately notify the probation officer of the district court, or of the juvenile court, if there is one, within whose judicial district such child was arrested and at least one of the child's parents, or, if there is no parent, the guardian or person with whom it is stated that such child resides, and shall inquire into the case. Pending such notice and inquiry, such child shall be detained. Upon the acceptance by the officer in charge of said police station or town lockup of the written promise of said parent, guardian or any other reputable person to be responsible for the presence of such child in court at the time and place when such child is to appear or upon the receipt of such officer in charge from said probation officer of a request for the release of such child to him, such child shall be released to said person giving such promise or to said probation officer making such request; provided, that, if the arresting officer requests in writing that a child between fourteen and seventeen years of age be detained, and if the court issuing a warrant for the arrest of a child between fourteen and seventeen years of age directs in the warrant that such child shall be held in safekeeping pending his appearance in court, or, if the probation officer shall so direct, such child shall be detained . . ..

[3] 42 U.S.C. § 5633(a)(12). In 1992, Congress amended the JJDPA to permit the federal government to penalize states failing to comply with the 6-hour mandate by withholding federal funding awarded pursuant to the Act. 42 U.S.C. '5633(c). In 1997 and 1998, federal audits revealed that Massachusetts police departments were not complying with the rule. In 1999, the federal government reduced the amount of money the Commonwealth received pursuant to the Act by 25% and ordered it to spend 50% of the remaining funding on lockup removal programs and training until it could demonstrate compliance. Ltr. from Shay Bilchik, Administrator, Office of Juvenile Justice and Delinquency Prevention (OJJDP), to Michael J. O'Toole, Acting Executive Director, Executive Office of Public Safety, Sept. 4, 1998; Memo from Kimberly J. Budnick, SRAD, to Shay Bilchik, Administrator, OJJDP, re Review of FY 1998 State Plan Update, June 30, 1998.

[4] *Juvenile Secure Alternative Lockup Program, Request for Response* (EOPSS, Programs Division, Boston, Mass.), Federal FY 2001, at 1.

[5] *Do You Know Where the Children Are? supra*.

[6] Interview with Boston Police Department Superintendent-in-Chief Robert P. Dunford, July 21, 2008; Milton J. Valencia, "Hub stuck shuttling juvenile suspects," BOSTON GLOBE, Aug. 12, 2008, *available at* http://www.boston.com/news/local/articles/2008/08/12/hub_stuck_shuttling_juvenile_suspects/; memo from J.J.A.C. Compliance Subcommittee to J.J.A.C. Members & E.O.P.S.S. Staff, re A.L.P. System Update, dated Nov. 10, 2008.

[7] In determining whether a child is at risk of flight, state law requires that a court consider the following factors: the nature of the offense with which the child is charged, the child's ties to his community and family, the child's employment history, his financial resources and his prior involvement, if any, with the juvenile justice system. Mass. Gen. Law ch. 276, § 58.

[8] Before detaining a child on the ground that his release will endanger his community, a court must hold an evidentiary hearing at which the child, represented by counsel, may present evidence in support of his release. Mass. Gen. Law ch. 276, § 58A.

[9] Mass. Gen. Law ch. 119, § 68A.

[10] Ltr. from Trial Court of the Commonwealth, Juv. Ct. Dep't, Barnstable County/Town of Plymouth Division, Barnstable Probation Office (signatory illegible), to Arlene Gilbert, Attorney, ACLU, faxed June 2, 2006.

[11] Interview with Patricia Walsh, Deputy Commissioner of the Office of the Commissioner of Probation, Nov. 14, 2008.

[12] For 2004 EOPSS and 2004 Boston data, *see Annual Report to the Governor, 2006* (Mass. Juvenile Justice Advisory Committee, Boston, Mass.), submitted May 2007, at 15, *available at* http://www.mass.gov/Eeops/docs/programs/fjj/2006_jjac_annual_report.pdf. For 2004-2007 Department of Children and Families data, *see* email from Mia Alvarado, Department of Children and Families, to Robin L. Dahlberg, Senior Staff Attorney, ACLU, dated Apr. 23, 2008. For 2005-2007 Boston data, *see* email from Shara Bedard, Paralegal, Office of Legal Advisor, Boston Police Department, to Andre Segura, Attorney, ACLU, dated June 12, 2008, and email from Shara Bedard, Paralegal, Office of Legal Advisor, Boston Police Department, to Andre Segura, Attorney,

ACLU, dated July 11, 2008. For 2005 and 2006 EOPSS data, *see* ltr. from T. Jane Gabriel, Deputy General Counsel, EOPSS, to Robin Dahlberg, Senior Staff Attorney, ACLU, dated July 14, 2008. For 2007 EOPSS data, *see Monthly Secure Alternative Lockup Program (ALP) Data Form* (Juvenile Alternative Lock-up Program, Bristol County Sheriff's Office, North Dartmouth, Mass.), 01-01-2007 to 01-31-2007; 02-01-2007 to 02-28-2007; 03-01-2007 to 03-31-2007; 04-01-2007 to 04-30-2007; 05-01-2007 to 05-31-2007; 06-01-2007 to 06-30-2007; 07-01-2007 to 07-31-2007; 08/01/2007 to 08/30/2007; 09-01-2007 to 9/29/2007; 10/01/07 to 10/31/07; 11/04/2007 to 11/30/2007; 12/01/2007 to 12/31/2007; *Monthly Secure Alternative Lockup Program (ALP) Data Form* (The Key Program, Inc., Worcester, Mass.), 1/1/07 to 1/31/2007; 2/1/07 to 2/28/07; 3/1/07 to 3/31/07; 4/1/07 to 4/30/07; 5/2/07 to 5/31/07; 6/2/07 to 6/30/07; 7/2/07 to 7/31/07; 8/01/07 to 8/31/07; 9/1/07 to 9/29/07; 10/3/07 to 10/31/07; 11/01/07 to 11/30/07; 12/01/07 to 12/29/07; *Monthly Secure Alternative Lockup Program (ALP) Data Form* (Center for Human Development – Western Area, Springfield, Mass.), 1 Jan 07 to 31 Jan 07; 1 Feb 07 to 28 Feb 07; 1 March to 31 March 07; 1 April 07 to 30 April 07; 5/1/07 to 5/31/07; 1 June 07 to 30 June 07; 1 July 07 to 31 July 07; [missing August]; 9/1/07 to 9/30/07; 1 Oct to 31 Oct 2007; 1 Nov 07 to 30 Nov. 07; 1 Dec 07 to 31 Dec 07; *Monthly Secure Alternative Lockup Program (ALP) Data Form* (Westfield Youth Service Center, Westfield, Mass.), 1/01/ 07 to 1/31/07; 2/01/2007 to 2/28/07; 3/01/07 to 3/31/07; 4/01/2007 to 4/30/07; 5/01/2007 to 5/31/07; 6/01/07 to 6/30/07; 7/01/07 to 7/31/07; 8/01/2007 to 8/31/07; 9/01/07 to 9/30/07; 10/1/07 to 10/31/07; 11/01/07 to 11/30/07; 12/1/07 to 12/31/07; *Monthly Secure Alternative Lockup Program (ALP) Data Form* (Essex County Sheriff's Office, Lawrence, Mass.), Jan 01, 07 to Jan, 31, 07; Feb. 1, 2007 to Feb. 28, 2007, Mar. 1, 2007 to Mar. 31, 2007, Apr. 1, 2007 to Apr. 30, 2007; May 1, 07 to May 31, 07; June 1, 2007 to June 30, 2007, July 1, 2007 to July 31, 2007; August 1 to August 31; Sept. 1 to Sept. 30, 2007; 10-01-07 to 10-31-07;11-01-07 to 11-30-07; 12-01-07 to 12-31-07.

[13] *Monthly Secure Alternative Lockup Program (ALP) Data Form* (Juvenile Alternative Lock-up Program, Bristol County Sheriff's Office, North Dartmouth, Mass.), 01-01-2007 to 01-31-2007; 02-01-2007 to 02-28-2007; 03-01-2007 to 03-31-2007; 04-01-2007 to 04-30-2007; 05-01-2007 to 05-31-2007; 06-01-2007 to 06-30-2007; 07-01-2007 to 07-31-2007; 08/01/2007 to 08/30/2007; 09-01-2007 to 9/29/2007; 10/01/07 to 10/31/07; 11/04/2007 to 11/30/2007; 12/01/2007 to 12/31/2007; *Monthly Secure Alternative Lockup Program (ALP) Data Form* (The Key Program, Inc., Worcester, Mass.), 1/1/07 to 1/31/2007; 2/1/07 to 2/28/07; 3/1/07 to 3/31/07; 4/1/07 to 4/30/07; 5/2/07 to 5/31/07; 6/2/07 to 6/30/07; 7/2/07 to 7/31/07; 8/01/07 to 8/31/07; 9/1/07 to 9/29/07; 10/3/07 to 10/31/07; 11/01/07 to 11/30/07; 12/01/07 to 12/29/07; *Monthly Secure Alternative Lockup Program (ALP) Data Form* (Center for Human Development – Western Area, Springfield, Mass.), 1 Jan 07 to 31 Jan 07; 1 Feb 07 to 28 Feb 07; 1 March to 31 March 07; 1 April 07 to 30 April 07; 5/1/07 to 5/31/07; 1 June 07 to 30 June 07; 1 July 07 to 31 July 07; [missing August]; 9/1/07 to 9/30/07; 1 Oct to 31 Oct 2007; 1 Nov 07 to 30 Nov. 07; 1 Dec 07 to 31 Dec 07; *Monthly Secure Alternative Lockup Program (ALP) Data Form* (Westfield Youth Service Center, Westfield, Mass.), 1/01/ 07 to 1/31/07; 2/01/2007 to 2/28/07; 3/01/07 to 3/31/07; 4/01/2007 to 4/30/07; 5/01/2007 to 5/31/07; 6/01/07 to 6/30/07; 7/01/07 to 7/31/07; 8/01/2007 to 8/31/07; 9/01/07 to 9/30/07; 10/1/07 to 10/31/07; 11/01/07 to 11/30/07; 12/1/07 to 12/31/07; *Monthly Secure Alternative Lockup Program (ALP) Data Form* (Essex County Sheriff's Office, Lawrence, Mass.), Jan 01, 07 to Jan, 31, 07; Feb. 1, 2007 to Feb. 28, 2007, Mar. 1, 2007 to Mar. 31, 2007, Apr. 1, 2007 to Apr. 30, 2007; May 1, 07 to May 31, 07; June 1, 2007 to June 30, 2007, July 1, 2007 to July 31, 2007; August 1 to August 31; Sept. 1 to Sept. 30, 2007; 10-01-07 to 10-31-07;11-01-07 to 11-30-07, 12-01-07 to 12-31-07.

[14] These figures are estimates because although EOPSS asks that each of its contractors maintain data on the reason each child is detained, only 3 reported such data in 2007. *Monthly Secure Alternative Lockup Program (ALP) Data Form* (Juvenile Alternative Lock-up Program, Bristol County Sheriff's Office, North Dartmouth, Mass.), 01-01-2007 to 01-31-2007; 02-01-2007 to 02-28-2007; 03-01-2007 to 03-31-2007; 04-01-2007 to 04-30-2007; 05-01-2007 to 05-31-2007; 06-01-2007 to 06-30-2007; 07-01-2007 to 07-31-2007; 08/01/2007 to 08/30/2007; 09-01-2007 to 9/29/2007; 10/01/07 to 10/31/07; 11/04/2007 to 11/30/2007; 12/01/2007 to 12/31/2007; *Monthly Secure Alternative Lockup Program (ALP) Data Form* (The Key Program, Inc., Worcester, Mass.), 1/1/07 to 1/31/2007; 2/1/07 to 2/28/07; 3/1/07 to 3/31/07; 4/1/07 to 4/30/07; 5/2/07 to 5/31/07; 6/2/07 to 6/30/07; 7/2/07 to 7/31/07; 8/01/07 to 8/31/07; 9/1/07 to 9/29/07; 10/3/07 to 10/31/07; 11/01/07 to 11/30/07; 12/01/07 to 12/29/07; *Monthly Secure Alternative Lockup Program (ALP) Data Form* (Center for Human Development – Western Area, Springfield, Mass.), 1 Jan 07 to 31 Jan 07; 1 Feb 07 to 28 Feb 07; 1 March to 31 March 07; 1 April 07 to 30 April 07; 5/1/07 to 5/31/07; 1 June 07 to 30 June 07; 1 July 07 to 31 July 07; (missing August); 9/1/07 to 9/30/07; 1 Oct to 31 Oct 2007; 1 Nov 07 to 30 Nov. 07; 1 Dec 07 to 31 Dec 07.

[15] *Massachusetts Juvenile Justice Data and Information* (EOPSS, Programs Division, Boston, Mass.), Dec. 2004, at 116, *available at* http://www.mass.gov/Eeops/docs/programs/fjj/mass_juvenile_justice_data_version_july05.doc; *Juvenile Secure Alternative Lockup Program, Request for Response* (EOPSS, Programs Divisions, Boston, Mass.), FY 2001.

[16] *Juvenile Accountability Block Grant (JABG) Quarterly Programmatic and Evaluation Report, 3rd Quarter: 1/1/06 to 3/31/06* (Center for Human Development, Springfield, Mass.), undated, at 9; *Juvenile Accountability Block Grant (JABG) Quarterly Programmatic and Evaluation Report, 2nd Quarter, 1 October to 31 Dec 07* (Center for Human Development, Springfield, Mass.), Jan. 8, 2008, at 11.

[17] *Massachusetts Juvenile Justice Data and Information* (EOPSS, Boston, Mass.), Dec. 2004, at 120, *available at* http://www.mass.gov/Eeops/docs/programs/fjj/mass_juvenile_justice_data_version_july05.doc.

[18] Memo to Amy Reichbach, ACLU of Massachusetts, from

Gretchen Carleton, ALP Coordinator, Department of Children and Families, Nov. 17, 2008.

[19] *See* Footnote 13, *supra*.

[20] *Commonwealth. v. Gillis*, ___ Mass. ____, 861 N.E.2d 422, 425 (Mass. 2007) (quoting *Commonwealth v. Beck*, 187 Mass. 15, 17 (1904)).

[21] *See* Footnote 2, *supra*.

[22] For 2004 data, *see Monthly Secure Alternative Lockup Program (ALP) Data Form* (Juvenile Alternative Lock-up Program, Bristol County Sheriff's Office, North Dartmouth, Mass.), 01-01-2004 to 01-31-2004; 02-01-2004 to 02-28-2004; 03-01-2004 to 03-31-2004; 04-01-2004 to 04-30-2004; 05-01-2004 to 05-31-2004; 06-01-2004 to 06-30-2004; 07-01-2004 to 07-31-2004; 08/01/2004 to 08/30/2004; 09-01-2004 to 9/29/2004; 10/01/04 to 10/31/04; 11/04/2004 to 11/30/2004; 12/01/2004 to 12/31/2004; *Monthly Secure Alternative Lockup Program (ALP) Data Form* (The Key Program, Inc., Worcester, Mass.), 1/1/04 to 1/31/2004; 2/1/04 to 2/28/04; 3/1/04 to 3/31/04; 4/1/04 to 4/30/04; 5/2/04 to 5/31/04; 6/2/04 to 6/30/04; 7/2/04 to 7/31/04; 8/01/04 to 8/31/04; 9/1/04 to 9/29/04; 10/3/04 to 10/31/04; 11/01/04 to 11/30/04; 12/01/04 to 12/29/04; *Monthly Secure Alternative Lockup Program (ALP) Data Form* (Center for Human Development – Western Area, Springfield, Mass.), 1 Jan 04 to 31 Jan 04; 1 Feb 04 to 28 Feb 04; 1 March to 31 March 04; 1 April 04 to 30 April 04; 5/1/04 to 5/31/04; 1 June 04 to 30 June 04; 1 July 04 to 31 July 04; 8/1/04 to 8/31/04; 9/1/04 to 9/30/04; 1 Oct to 31 Oct 2004; 1 Nov 04 to 30 Nov. 04; 1 Dec 04 to 31 Dec 04; *Monthly Secure Alternative Lockup Program (ALP) Data Form* (Westfield Youth Service Center, Westfield, Mass.), 1/01/ 04 to 1/31/04; 2/01/2004 to 2/28/04; 3/01/04 to 3/31/04; 4/01/2004 to 4/30/04; 5/01/2004 to 5/31/04; 6/01/04 to 6/30/04; 7/01/04 to 7/31/04; 8/01/2004 to 8/31/04; 9/01/04 to 9/30/04; 10/1/04 to 10/31/04; 11/01/04 to 11/30/04; 12/1/04 to 12/31/04; *Monthly Secure Alternative Lockup Program (ALP) Data Form* (Essex County Sheriff's Office, Lawrence, Mass.), Jan 01, 04 to Jan, 31, 04; Feb. 1, 2004 to Feb. 28, 2004, Mar. 1, 2004 to Mar. 31, 2004, Apr. 1, 2004 to Apr. 30, 2004; May 1, 04 to May 31, 04; June 1, 2004 to June 30, 2004, July 1, 2004 to July 31, 2004; August 1 to August 31; Sept. 1 to Sept. 30, 2004; 10-01-04 to 10-31-04;11-01-04 to 11-30-04, 12-01-04 to 12-31-04; *Alternative Lockup Program (ALP) Data Form* (Berkshire Sheriff's Office, Pittsfield, Mass.), 1/01/ 04 to 1/31/04; 2/01/2004 to 2/28/04; 3/01/04 to 3/31/04; 4/01/2004 to 4/30/04; 5/01/2004 to 5/31/04; 6/01/04 to 6/30/04; 7/01/04 to 7/31/04; 8/01/2004 to 8/31/04; 9/01/04 to 9/30/04; 10/1/04 to 10/31/04; 11/01/04 to 11/30/04; 12/1/04 to 12/31/04. For 2005 and 2006 data, see ltr. from T. Jane Gabriel, Deputy General Counsel, EOPSS, to Robin Dahlberg, Senior Staff Attorney, ACLU, dated July 14, 2008. For 2007 data, see Footnote 13, *supra*.

[23] Mass. Gen. Law ch.119 § 67; *Jake J. v. Commonwealth*, 433 Mass. 70, 76 (2000).

[24] Mass. Gen. Law ch.276 §§ 42, 57, 58; 44 Mass. Prac., Juvenile Law. ' 1.22 (2006). Pursuant to Mass. Gen. Law ch 276 '58A, youth charged with certain types of offenses, such as felony offenses involving the use or the substantial risk of the use of physical force, may not be entitled to bail if a court determines, at an evidentiary hearing, that their release would endanger their community.

[25] *Juvenile Accountability Block Grant (JABG) Quarterly Programmatic and Evaluation Report, 3rd Quarter: 1 Jan to 31 March 07* (Center for Human Development, Springfield, Mass.), Apr. 17, 2007, at 10.

[26] *Quinn v. State Ethics Commissioner*, 401 Mass. 210, 212-213 (1987) (bail commissioner must respond with all reasonable promptness after regular court hours to admit arrested persons to bail); *Commonwealth v. Hampe*, 419 Mass. 514, 519 (1995) ("[p]art of the responsibility of a bail commissioner is . . . 'to respond with all reasonable promptness to calls for their services.'")

[27] Interview with State Bail Administrator Michael McEneaney, Oct. 31, 2006.

[28] Interview with State Bail Administrator Michael McEneaney, Oct. 17, 2008.

[29] C. Puzzanchera, T. Finnegan, and W. Kang, *Easy Access to Juvenile Populations*, 2007, *available at* http://www.ojjdp.ncjrs.gov/ojstatbb/ezapop/.

[30] For 2004 data, *see Annual Report to Governor, 2006, supra*, at 11. For 2005 and 2006 data, see ltr. from T. Jane Gabriel, Deputy General Counsel, EOPSS, to Robin Dahlberg, Senior Staff Attorney, ACLU, dated July 14, 2008. For 2007 data, *see* Footnote 13, *supra*.

[31] *2005 American Community Survey* (U.S. Census Bureau, Wash., D.C.), last viewed Aug. 4, 2008, *available* http://factfinder.census.gov/servlet/CTTable?_bm=y&-context=ct&-ds_name=ACS_2005_EST_G00_&-mt_name=ACS_2005_EST_G2000_B01001&-tree_id=305&-redoLog=false&-geo_id=16000US2523000&-geo_id=16000US2534550&-geo_id=16000US2537000&-geo_id=16000US2537490&-geo_id=16000US2545000&-geo_id=16000US2567000&-geo_id=16000US2582000&-geo_id=NBSP&-search_results=01000US&-dataitem=ACS_2005_EST_G2000_B01001H.B01001H_5_EST|ACS_2005_EST_G2000_B01001H.B01001H_6_EST|ACS_2005_EST_G2000_B01001H.B01001H_20_EST|ACS_2005_EST_G2000_B01001H.B01001H_21_EST|ACS_2005_EST_G2000_B01001.B01001_5_EST|ACS_2005_EST_G2000_B01001.B01001_6_EST|ACS_2005_EST_G2000_B01001.B01001_29_EST|ACS_2005_EST_G2000_B01001.B01001_30_EST&-format=&-_lang=en (2005 estimated population data).

[32] *See* Footnote 13, *supra*.

[33] Mass. Gen. Law ch. 15D § 11.

[34] Mass. Gen. Law ch. 15D § 9.

[35] The Bristol ALP serves 90 cities and towns. *See., e.g., Application, Executive Office of Public Safety, Programs Division, FY03 Juvenile Secure Alternative Lockup Program*, signed by Bristol County Sheriff's Office (signature illegible), 7/31/02, at 1.

[36] Interview with Lael Chester, Member of the Juvenile Justice Advisory Committee and Executive Director of Citizens for Juvenile Justice, July 26, 2008. *See also* email from Jane Gabriel, Assistant General Counsel, EOPSS, to Robin L. Dahlberg, Senior Staff Attorney, ACLU, dated Aug. 8, 2008.

[37] *Application, Executive Office of Public Safety, Programs Division, FY 01 Juvenile Secure Alternative Lockup Program*, signed by Bristol County Sheriff's Office (signature illegible), 8/1/01, at 1.

[38] Michael J. O'Toole, Executive Director, EOPSS, *Memorandum* , dated Sept. 26, 2000, at 2.

[39] Email from T. Jane Gabriel, Assistant General Counsel, EOPSS, to Robin L. Dahlberg, Senior Staff Attorney, ACLU, dated Aug. 8, 2008.

[40] Mass. Gen. Law ch. 15D § 10.

[41] 102 CMR 3.07(4)(a) ("[t] he licensee shall not require any resident to wear a uniform which identifies him or her as a resident of a particular facility").

[42] Interview with Maria Cramer, *Boston Globe*, June 2008; memo from J.J.A.C. Compliance Subcommittee to J.J.A.C. Members & E.O.P.S.S. Staff, re A.L.P. System Update, dated Nov. 10, 2008.

[43] 102 CMR 3.07(2)(d) ("[t]he licensee shall assure a staff-child ratio appropriate to the age, capabilities, needs and service plans of the residents in the facility, and sufficient to carry out the requirements of 102 CMR 3.00. Volunteers shall not be included in the staff-child ratio.")

[44] Ltr. from Andrew V. Polk, Juvenile Justice Compliance Monitor, EOPSS, to Arthur Caesar, Director, Juvenile Alternative Lockup Program, Bristol County Sheriff's Department, dated May 3, 2007.

[45] 102 CMR 3.07 (2)(a) ("[t]he staffing pattern shall be gender-appropriate").

[46] Ltr. from Andrew Polk, Juvenile Justice Compliance Monitor, EOPSS, to Joseph Furnari, Superintendent, Essex County Sheriff's Department, dated Feb. 21, 2007; ltr. from Andrew Polk, Juvenile Justice Compliance Monitor, EOPSS, to Joseph Furnari, Superintendent, Essex County Sheriff's Department, dated Oct. 16, 2008.

[47] 102 CMR 3.04(7)(a)(1) ("staff orientation . . . shall include at a minimum, but not be limited to the characteristics of children served; symptoms and behavioral signs of emotional disturbance; symptoms of drug overdose, alcohol intoxification, or possible medical emergency; the program's emergency and evacuation procedures, procedures for reporting suspected incidents of child abuse and neglect, orientation in first aid and C.P.R., training in universal precautions and infection control procedures, and the program's policies regarding medication, runaway children, behavior management and restraint. ."); 3.04(a)(1)(a) ("[e] ach new employee (who may work with residents) of a program which utilizes restraint shall receive a minimum of sixteen (16) hours of training in the prevention and use of restraint, which shall address the needs and behaviors of the population served, relationship building, prevention of restraint, de-escalation methods, avoiding power struggles, thresholds for restraints, ...");

[48] Minutes of JJAC Meeting, Sept. 20, 2006, at 2.

[49] Minutes of JJAC Grants Review Subcommittee, Alternative Lockup Review Applications Review, Oct. 30, 2006.

[50] 102 CMR 3.08(5), (8).

[51] Minutes of JJAC Grants Review Subcommittee, Alternative Lockup Review Applications Review, Oct. 30, 2006.

[52] 102 CMR 3.08(5).

[53] Ltr. from Andrew Polk, Juvenile Justice Compliance Monitor, EOPSS, to Joseph Furnari, Superintendent, Essex County Sheriff's Department, dated Feb. 21, 2007; ltr. from Andrew Polk, Juvenile Justice Compliance Monitor, EOPSS, to Joseph Furnari, Superintendent, Essex County Sheriff's Department, dated Oct. 16, 2008; memo from J.J.A.C. Compliance Subcommittee to J.J.A.C. Members & E.O.P.S.S. Staff, re A.L.P. System Update, dated Nov. 10, 2008.

[54] Interview with Lael Chester, Member of the Juvenile Justice Advisory Committee and Executive Director of Citizens for Juvenile Justice, Oct. 18, 2008.

[55] 102 CMR 3.07(7)(a) ("[e]ach licensee shall maintain a written statement defining rules, policies and procedures for behavior management. This statement shall provide for and include a description of the safeguards for the emotional, physical and psychological well-being of the population served. This statement shall include measures for positive responses to appropriate behavior and shall define and explain the use of behavior management procedures used in the facility including, where applicable . . . : [it shall set forth] the type and range of restrictions a staff member can authorize for misbehavior of residents; . . . the form of physical restraint used, the behavioral interventions used as alternatives to restraint, including de-escalation techniques and non-confrontational approaches to angry or aggressive residents,

and controls on abuse of such restraints; . . . the circumstances under which the program would restrain a resident; . . . the name of the restraint coordinator; . . . the procedure for regular review of restraint data by a restraint safety committee; . . ..")

[56] Ltr. from Andrew V. Polk, Juvenile Justice Compliance Monitor, EOPSS, to Arthur Caesar, Director, Juvenile Alternative Lockup Program, Bristol County Sheriff's Department, dated May 3, 2007; interview with Lael Chester, Member of the Juvenile Justice Advisory Committee and Executive Director of Citizens for Juvenile Justice, July 26, 2008.

[57] *See, e.g.*, ltr. from Andrew Polk, Juvenile Justice Compliance Monitor, EOPSS, to Joseph Furnari, Superintendent, Essex County Sheriff's Department, dated Feb. 21, 2007; ltr. from Andrew V. Polk, Juvenile Justice Compliance Monitor, EOPSS, to Arthur Caesar, Director, Juvenile Alternative Lockup Program, Bristol County Sheriff's Department, dated May 3, 2007; ltr. from Andrew Polk, Juvenile Justice Compliance Monitor, EOPSS, to Joseph Furnari, Superintendent, Essex County Sheriff's Department, dated Oct. 16, 2008.

[58] For a description of the Juvenile Justice and Delinquency Prevention's Formula Grant program, *see* http://www.mass.gov/?pageID=eopsterminal&L=5&L0=Home&L1=Funding+%26+Training+Opportunities&L2=Justice+%26+Prevention&L3=Grant+Programs&L4=Juvenile+Justice+%26+Delinquency+Prevention+Act+Formula+Grant+Program+(JJDPA)&sid=Eeops&b=terminalcontent&f=programs_fjj_jjdpa_overview&csid=Eeops.

[59] For a description of the Juvenile Accountability Block Grant program, *see http://www.mass.gov/?pageID=eopsterminal&L=4&L0=Home&L1=Funding+%26+Training+Opportunities&L2=Justice+%26+Prevention&L3=Grant+Programs&sid=Eeops&b=terminalcontent&f=programs_fjj_JABG&csid=Eeops*.

[60] *Annual Report to the Governor, 2006, supra*, at 15 (2001 to 2006 figures); Interview with Andrew Polk, Office of Grants and Research, EOPSS, May 2008 (2007 figures).

[61] *Annual Report to the Governor, 2006, supra*, at 13-14.

[62] 42 U.S.C. § 5674(c).

[63] *See, e.g., Annual Report to the Governor, 2006, supra*, at 15-17.

[64] Interview with Lael Chester, Member of the Juvenile Justice Advisory Committee and Executive Director of Citizens for Juvenile Justice, Oct. 17, 2008.