Implementation of the Juvenile Justice Reform Act: Youthful Offenders in Massachusetts

Commonwealth of Massachusetts

Executive Office of Public Safety Programs Division

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EXECUTIVE SUMMARY

According to the Juvenile Justice Reform Act, Massachusetts youth, between the ages of 14 and 16 whose current criminal charges and background meet certain criteria, can be charged as Youthful Offenders (YOs). The impetus of this study was the growing number of inquiries from various governmental agencies and the public regarding the characteristics of YOs. The Massachusetts Statistical Analysis Center (SAC) contacted several other state agencies regarding this subject and all were in agreement that a study was needed to document the implementation of the Juvenile Justice Reform Act (the Act) and its effect on those involved.

The SAC obtained 1997 juvenile court data from the Massachusetts Office of the Commissioner of Probation and analyzed these data to identify the characteristics of juveniles charged as YOs. This dataset contained only those juveniles that were processed for certain Youthful Offender eligible crimes and therefore did not include all YOs processed in 1997. The SAC also conducted interviews with juvenile justice system representatives, mainly prosecutors, to determine how the Act is being implemented.

Selected findings

- 96% of Youthful Offenders (YOs) included in this study were male.
- 45% of YOs included in this study were charged with assault and battery.
- 29% of total female YO charges included in this study were for robbery.
- Of the prosecutors interviewed, all believed the YO process was an improvement over the defunct transfer hearing process.
- The majority of those interviewed believed YOs were receiving fair sentences in relation to their crimes.

Summary

Keeping in mind that Youthful Offenders (YOs) represented in this study are only a subset of those processed in 1997 and not all case criteria were examined, the number of YOs processed for certain crimes was relatively small compared to those juveniles processed as delinquents for the same crimes. All juvenile justice parties interviewed regarded the YO process very seriously and acknowledged the gravity of its consequences.

The SAC recommends further YO research by each involved juvenile justice agency. Such research could lay the proper foundation for an impact study as well as improve the process and handling of YOs at each phase of the juvenile justice system.

INTRODUCTION

The violent behavior of a relatively small percentage of juveniles has created a public perception of rampant juvenile violent crime and has prompted state governments to get tough on juvenile offenders. Society is demanding that juveniles be held responsible for the crimes they commit, which in many cases, results in treating and processing juveniles as adults (Austin et al., 1998).

Following a nationwide trend, in July 1996, the former Governor of Massachusetts, William F. Weld, signed into law Chapter 200 of the Acts of 1996 entitled, "An Act to Provide the Prosecution of Violent Juvenile Offenders in the Criminal Courts of the Commonwealth," also known as the Juvenile Justice Reform Act. The law automatically transferred the court jurisdiction for youth charged with 1st or 2nd degree murder from juvenile court to adult court. In addition, this legislation created a new category of youth in Massachusetts, termed "Youthful Offenders."

According to Massachusetts General Law (c.119, §52), a "Youthful Offender" (YO) is "a person who is subject to an adult or juvenile sentence for having committed, while between the ages of fourteen and seventeen, an offense against a law of the commonwealth which, if he were an adult, would be punishable by imprisonment in the state prison," and:

> (1) was previously committed to the Department of Youth Services (DYS); or
>
> (2) has committed an offense which involves the threat or infliction of serious bodily harm; or
>
> (3) the charge is a firearms charge (under M.G.L. c.269 §10 (a), (c), (d), or (e)).

This law also made trials and records of those youth charged with murder or as Youthful Offenders open to the public.

One of the primary functions of the Massachusetts Statistical Analysis Center (SAC) is the dissemination of criminal justice and public safety research and statistical information to the public, state and federal government representatives, and the media. Following the implementation of the Act, the Massachusetts SAC witnessed a growing inquiry from government representatives and the public regarding the impact of the Act on all parties. In researching these inquiries and speaking with Office of the Commissioner of Probation (OCP) and Department of Youth Services (DYS) representatives, it was decided that further inquiry into the Youthful Offender law was warranted. Specifically, the SAC initiated a study aimed at determining how the Act is being implemented across the Commonwealth, and identifying the characteristics of YOs.

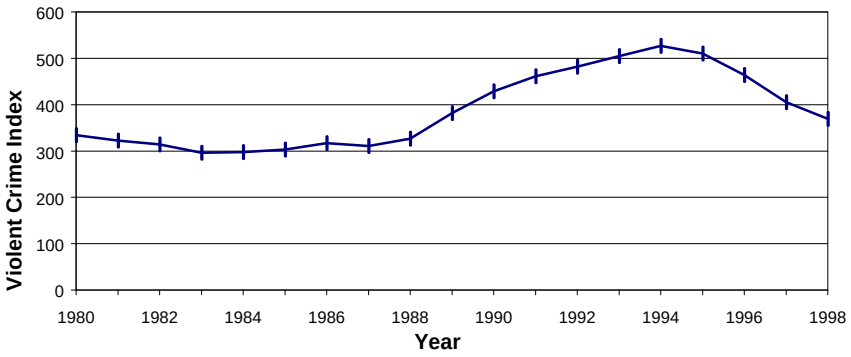
The following report documents how the Juvenile Justice Reform Act is being implemented across the Commonwealth, and provides general recommendations for improving the administration of the Act.

JUVENILE VIOLENCE AND CRIME

In 1999, 17% of all persons arrested nationally were under the age of 18. Juvenile arrests accounted for 12% of all U.S. violent crimes cleared by arrests in 1999, specifically, 6% of murders, 12% of forcible rapes, 15% of robberies, and 12% of aggravated assaults (FBI, 2000).

In examining juvenile Uniform Crime Report (UCR) arrest rates through 1998, H. Snyder (1998) noted that juvenile arrest rates increased between 1988 and its peak in 1994. Following the national attention surrounding juvenile arrest rates in 1994, for the following four years, the juvenile arrest rates dropped. In 1998, the number of juvenile arrests for Violent Crime Index offenses was the lowest in the 1990's. According to Snyder (1999), "the growth in the juvenile violent crime arrest rate from 1988 to 1994 was largely erased by 1998, with the 1998 rate just 13% above the 1988 level."

Figure 1. U.S. Violent Crime Index Arrests per 100,000 Juveniles Ages 10-17, 1980 - 1998



Source: OJJDP *Statistical Briefing Book*, 2000

In Massachusetts, the total number of juveniles arrested for a violent crime in 1999 represented 38.2% of all juvenile arrests, declining 13% over 1998 (FBI, 2000). Massachusetts experienced a decline in all violent juvenile arrest categories except for robbery. Table 1 provides the number of Massachusetts juvenile violent crime arrests from 1990-1999. As the number of reporting agencies can vary over time, caution should be exercised when making observations of juvenile arrest trends. Juvenile arrest rates for Massachusetts are not currently available.

Table 1. Massachusetts Juvenile Violent Crime Arrests, 1990 - 1999

OFFENSE	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	% Change, 98-99
Violent Crime Arrests	**971**	**1,730**	**2,029**	**2,503**	**2,381**	**2,820**	**2,597**	**2,818**	**2,666**	**2,314**	**-13.2%**
Homicide Arrests	2	19	20	26	16	15	15	10	6	5	-16.6%
Rape Arrests	37	71	71	95	69	72	85	69	70	55	-21.4%
Robbery Arrests	189	401	510	468	621	621	570	563	373	401	7.5%
Aggravated Assault Arrests	743	1,239	1,428	1,914	1,675	2,112	1,927	2,176	2,217	1,853	-16.4%

Source: FBI *Crime in the U.S.* 1990-1999

RESPONSES TO JUVENILE VIOLENCE AND CRIME: JUVENILE JUSTICE REFORM

Nationally, states are modifying juvenile age/offense transfer criteria to allow more serious and violent juvenile offenders to be tried as adults and incarcerating these offenders for longer periods of time (Torbet et al., 1998). This dramatic expansion of juvenile transfers to the adult court system is based on the premise that some offenses warrant criminal prosecution and some juveniles are beyond rehabilitation (National Crime Association, 1997). In most states, juvenile court judges now have significantly less authority to make decisions regarding the venue for cases involving violent or other serious crimes than they had prior to the 1990's and legislators and prosecutors have clearly emerged with expanded roles in the justice system's response to violent juvenile crime (Torbet et al., 1998). According to Torbet, et al. (1996), few states have a good plan for paying for such changes, and even fewer states have a mechanism for implementing them.

David Altschuler (1994) compared changes in the national juvenile incarceration rate to changes in the juvenile violent crime arrest rate. He found the following: the number of juveniles admitted to public facilities increased 45% from 1979 to 1989, and the number of juveniles admitted to adult prisons increased 30% from 1988 to 1990. Despite this, juvenile arrests for violent crimes also increased, from 388 youth arrests per 100,000 juveniles in 1989, to 459 arrests per 100,000 in 1991, an increase of 18%. Altschuler reported no positive effect (i.e., decrease in juvenile arrests) from the adultification of juveniles in the justice system.

However, changes in legislation reflect the belief that harsher laws will deter offenders and potential offenders, thus reducing the juvenile crime rate and therefore, the overall crime rate in the long-term. All states, including the District of Columbia, allow adult criminal prosecution of juveniles under certain circumstances. From 1992 to 1995, 40 states and the District of Columbia passed laws making it easier for juveniles to be tried as adults (Griffin et al., 1998). This widespread enactment of legislation enhancing juvenile exposure to criminal prosecution was a direct response to the escalation of juvenile violent crime in the preceding years (National Crime Association, 1997). It is important to note that these legislative changes did not come about as a result of any empirical evidence, but as a political response to heightened public concern about the rise in crime (Austin et al., 1998). However, recent trends demonstrate a decline in juvenile arrests for violent crime in the years following the nationwide push towards the adultification of juvenile crimes.

In addition to violent offenses, many states authorize criminal prosecution of juveniles for non-violent offenses, and many have special transfer treatment based on the prior record of the accused juvenile. State transfers differ from one another primarily in to whom they designate the responsibility for deciding whether or not a given juvenile should be prosecuted in the juvenile or adult court (Griffin et al., 1998).

On July 29, 1996, the former Governor of Massachusetts, William F. Weld, signed into law the Juvenile Justice Reform Act. Under this legislation, juveniles 14 years or older charged with first or second degree murder are automatically tried in adult superior court. These juveniles are now held in the Department of Youth Services (DYS), potentially on bail, and if found guilty,

sentenced as an adult (for 1st degree murder: life without parole, for 2nd degree murder: life with parole eligibility after 15 years). The murder provisions of the law took effect immediately.

All other juveniles charged in cases other than murder are tried in juvenile court. Youth between the ages of 14 and 16, who are charged with having committed a felony and who either have previously been committed to DYS, or are charged with an offense that involves the threat or infliction of serious bodily harm, or are charged with certain firearm violations, are eligible to be indicted as "Youthful Offenders" (YOs).

The prosecutor has the discretion to seek an adult sentence by proceeding through indictment (i.e., direct indictment). If the Grand Jury hands down a "true bill" on the indictment, the youth is arraigned as a YO and the case proceeds in front of a juvenile court judge. If the Grand Jury returns a "no bill," the prosecution can proceed with the original delinquency charge. If the juvenile arraigned as a YO is subsequently adjudicated guilty, the juvenile court judge has three sentencing options: an adult sentence, a combination sentence of DYS commitment until the age of 21 plus a suspended adult sentence, or DYS commitment until age 21. This law significantly enhances the sentencing authority of the juvenile court judge, which previously allowed for a maximum sentence of DYS commitment to the age of 18. This law also eliminated trial de novo, which allowed a juvenile to seek a jury trial if he/she was dissatisfied with the outcome of a trial before a judge. The YO provisions of the law took effect on October 1, 1996.

Adjudicated YOs between the ages of 17 and 21, who were sentenced to imprisonment in the House of Correction or state prison, remain on the DYS caseload, with some of the population serving their sentences with adults in the county or state correctional facilities. In October 1999, there were 99 DYS committed youth serving time in adult facilities.

Transfer Provisions/Waivers

Waivers relinquish jurisdiction over certain types of cases from juvenile to criminal court. Legislative and judicial processes of transferring youth to criminal court vary from state to state. Many states base transfers on one or more of the following criteria established by ***Kent v. United States (383 U.S. 541, 566-67 (1966))***:

1. A minimum age
2. A specified type or level of offense
3. A sufficient previous record of serious delinquency
4. Any combination of the above.

States can have several methods of ordering and implementing waivers or transfer provisions: direct file, statutory exclusion, discretionary waiver, etc. These different methods described below, unless otherwise noted, are from *Trying Juveniles as Adults in Criminal Court: An Analysis of State Transfer Provisions* (Griffin et al., 1998).

<u>Direct file</u> (i.e., direct indictment, prosecutor discretion, concurrent jurisdiction) is a provision which allows prosecutors to determine whether to initiate a case against a minor in juvenile court or criminal (adult) court. Fifteen states, including **Massachusetts**, have direct file. However, in Massachusetts, when a youth is indicted as a Youthful Offender (YO) the jurisdiction remains in juvenile court with the juvenile court judge having both juvenile and adult sentencing options.

Nationally, prosecutors have considerable discretionary powers under direct file. In their charging decisions, they may in effect choose the forum in which the case will be heard and thus, the sanctions that will be available upon adjudication. The direct file authority rests on the juvenile and criminal courts' concurrent jurisdiction over a given type of case. There is a wide variation among the states regarding criteria for direct file treatment (e.g., seriousness of current offense, prior offense history). Table 2 highlights the criteria needed in Massachusetts for prosecutors to utilize direct indictment.

Table 2. Massachusetts Direct File: Minimum Age and Offense Criteria

Offense Category	Minimum Age	Offense Detail
Certain Felonies	14	Any offense punishable by imprisonment in state prison if the accused was previously committed to DYS.
Person Offense	14	Any offense punishable by imprisonment in state prison if it involves the infliction or threat of serious bodily harm.
Weapon Offense	14	Any offense punishable by imprisonment in state prison for the distribution, sale, or transfer of specified quantities of firearms; unlawful possession/carrying of a firearm; possession of a machine gun; and ownership, possession, or carrying of a sawed-off shotgun.

Source: Griffin et al., 1998

Statutory exclusion (i.e., legislative exclusion, automatic transfer) grants criminal courts original jurisdiction over a whole class of cases involving juveniles. Between 1992 and 1997, a total of 44 states, including **Massachusetts**, expanded their statutory provision for transferring juveniles to adult court (Snyder et al., 2000). A statutory exclusion is when a law specifically excludes an offense from the juvenile court, thus having the case originate against the minor in the criminal court. **Massachusetts** excludes first and second degree murder from juvenile court. The criteria for which a juvenile falls under statutory exclusion varies from state to state. With statutory exclusion, a state legislature is essentially predetermining the question of criminal prosecution for itself and taking the decision out of both the prosecutor's and the court's hands. For transfer provisions, **Massachusetts** is the only state that has the combination of *direct file* and s*tatutory exclusion* provisions.

Discretionary waiver (i.e., judicial, certification, bindover, remand) gives juvenile court judges discretion to waive jurisdiction in individual cases involving juveniles, allowing for prosecution in adult criminal courts. In the 46 discretionary waiver states, the juvenile court must conduct a hearing at which the parties are entitled to present evidence bearing on the waiver issue and the prosecution bears the burden of proof. However, some states designate special circumstances under which this burden may be shifted to the juvenile. **Massachusetts'** discretionary waiver was repealed in 1996.

Mandatory waiver initially grants jurisdiction over the case to juvenile court, with no other role than to confirm that statutory requirements (certain age, offense, or other specified criteria) are met and/or probable cause exists that the juvenile committed the alleged offense. Once the criteria are met, the juvenile judge is mandated to waive the juvenile to criminal court. A total of 14 states have a mandatory waiver. **Massachusetts** does not have mandatory waiver.

Presumptive waiver (present in 15 states) is when a case in which a waiver to adult court is presumed because a juvenile meets certain age, offense, or other statutory criteria (e.g.,

seriousness of current offense, prior offense history). The burden of proof concerning the transfer is shifted from the state to the juvenile. Unless the juvenile can prove he/she can be rehabilitated, the juvenile's waiver to criminal court is required. However, the specific process of the presumptive waiver varies from state to state. **Massachusetts** does not have presumptive waiver.

Reverse waiver is a statutory mechanism available in 23 states by which a transferred juvenile being prosecuted in criminal court may petition to have their case transferred back into juvenile court. **Massachusetts** does not have reverse waiver.

"Once An Adult Always An Adult" is a special transfer category, present in 31 states, that permanently terminates juvenile court jurisdiction over individual juveniles who have been tried or convicted as adults. **Massachusetts** does not have this provision.

Although Massachusetts abolished judicial waivers in 1996, the majority of states permit juvenile judges the authority to waive youth to criminal court (i.e., discretionary waivers). As Table 3 indicates, from 1986 to 1995, there was a 33% increase in the number of juveniles who were judicially waived to criminal court. Person offense cases doubled from 2,300 in 1986 to 4,600 in 1995 and the number of drug cases tripled during this same time period. This number of youth waived for property offenses decreased 18% from 1986 to 1995. However, when comparing data from 1991 to 1995, there were decreases in youth charged with property, drug, and public order crimes, and a 27% increase in the number of youth waived to adult court for person offenses (Sickmund et al., 1998). The increase in the number of transferred juveniles, the potential for appeals, and normal criminal justice proceeding delays results in more juveniles being detained for longer periods of time in juvenile facilities or adult corrections (Torbet et al., 1996).

Table 3. Petitioned Delinquency Cases Judicially Waived to Criminal Court, 1986 - 1995

	Number of Cases by Year			**Percent Change**	
Most Serious Offense	**1986**	**1991**	**1995**	**1986 - 95**	**1991 - 95**
Delinquency	***7,300***	***10,800***	***9,700***	***33%***	***-10%***
Person	2,300	3,600	4,600	100%	27%
Property	4,000	4,600	3,300	-18%	-29%
Drugs	400	1,800	1,200	180%	-32%
Public Order	600	800	700	8%	-13%

Source: Sickmund et al., 1998

According to the *State Court Processing Statistics: 1990-1994 Juvenile Felony Defendants in Criminal Court* (1998), which reports the number of juveniles processed in criminal courts in the nation's 75 largest counties, juveniles handled as adults in criminal court represented about 1% of all felony defendants. Two-thirds of the juveniles transferred to criminal court were charged with a violent offense, including 11% with murder, 34% with robbery, and 15% charged with felony assault.

The U.S. General Accounting Office (1995) examined juveniles processed in criminal courts and their dispositions from 1988 through 1992. This national study found that males represented the

majority (95.8%) of those youth waived to adult court. Ninety percent of the youth waived were 16 years of age or older. Racially, waived youth were almost evenly divided between white and black youth, 48.4% and 49.2% respectively.

Additional Juvenile Justice Reforms

In addition to transfer procedures, other legislative changes affect juveniles and their proceedings, (e.g., confidentiality of juvenile court records). States continue to shift from the traditional confidentiality concerns of the juvenile court while emphasizing information sharing. Legislatures now stress the "public's right to know" and the victim's right to be present in the courtroom.

Court and Juvenile Criminal Records. In many states, juvenile court hearings for violent and/or serious crimes are open to the public, as is the juvenile offender's name and address. **Massachusetts** has open hearings and releases to the public the names of juveniles charged with murder or charged as Youthful Offenders (YOs). Access and disclosure of juvenile court records are allowed by many state legislatures to one or more of the following parties: the public, schools, prosecution, law enforcement, or social agencies. However, all states allow records to be released to any party, who can show a legitimate interest, typically by court order. In **Massachusetts**, the juvenile court records of juveniles charged with murder and those juveniles charged as YOs are public record (Torbet et al., 1998).

Many states now have a central criminal record repository. Fingerprinting and photographing are often the basis of the record, but the repository can also include personal identification or other pertinent identification data. **Massachusetts** has a Statewide Criminal Record Repository, as well as a registry for sexual offenders. While **Massachusetts** also fingerprints and photographs juveniles, it currently does not have fingerprint-based supported records. In **Massachusetts**, a YO is disqualified as an applicant for certain firearm permits (Torbet et al., 1998).

Victims of Juvenile Crime. With increasing visibility, victims of juvenile crime participate in the justice proceedings. A number of states either recently modified or enacted victim legislation that allows victim access to juvenile hearings, allows victims to submit victim impact statements, and gives victims timely notice of the release or escape of convicted youth. **Massachusetts** allows members of the victim's family and supporters to bring a photograph of a murder victim into court.

Prosecution of Juvenile Offenders

Federal law requires prosecutors to restrict proceedings to those cases where there is a substantial federal interest. In 1994, U.S. Attorneys filed cases against 240 persons for alleged acts of juvenile delinquency, defined as a violation of federal law committed by a person under 18 years old, which would be a crime if committed by an adult. Juveniles adjudicated may be charged as an adult if: the offense is a violent felony or drug trafficking or importation offense *and* if the offense was committed after the person's 15th birthday; the juvenile possessed a firearm during a violent offense and the offense was committed after the juvenile's 13th birthday; or the juvenile had been previously adjudicated of a violent felony or drug offense. Many juveniles adjudicated in the federal system are Native Americans due to tribal jurisdictions and lack of tribal resources.

As of September 30, 1994, 124 juveniles were confined in a state juvenile correctional facility under contract to the Federal Bureau of Prisons (Scalia, 1997).

As reported in the *1994 National Survey of Prosecutors*, almost two-thirds of prosecutors' offices transferred at least one juvenile case to criminal court in 1994. Of those offices, 37% transferred at least one aggravated assault case, 35% at least one burglary case, 34% at least one robbery case, and 32% at least one murder case. About 87% of prosecutors' offices that handle transferring juveniles to criminal court indicated using juvenile delinquency history information at some phase during prosecution (De Frances & Storm, 1997).

Sentencing Juvenile Offenders

Like waivers, judicial sentencing options vary from state to state. Blended sentencing is the combining of juvenile and/or adult correctional sanctions for convicted serious and violent juvenile offenders. The following blended sentencing definitions describe the various options available to judges across the nation when sentencing transferred juveniles (Torbet and Szymanski, 1998).

> Juvenile Court Exclusive Blend- The juvenile court has the choice to impose a sanction in either the juvenile or the adult correctional system.
>
> Juvenile Court Inclusive Blend- The juvenile court imposes both a juvenile and an adult sentence, with the latter suspended pending service of the juvenile sanction.
>
> Juvenile Court Continuous Blend- Imposed sanctions via juvenile court that go beyond the age of majority. Therefore, juvenile sanctions are carried out and, once of age, youth are transferred to serve remaining sentence in adult corrections.
>
> Criminal Court Exclusive Blend- The criminal court imposes either a juvenile or adult sanction.
>
> Criminal Court Inclusive Blend- The criminal court imposes both juvenile and adult sanctions and suspends adult sentence pending the service of the juvenile sanction.

Another potential sentencing type available is extended jurisdiction. All states have a set age in which juveniles can be held in the juvenile correctional department for a longer period of time than the court's original jurisdiction.

Blended sentencing options often can demonstrate an ambivalence and lack of resolve regarding what to do and where to place serious and violent juvenile offenders. When is a juvenile considered a juvenile, and when is a juvenile considered an adult? (Torbet et al., 1996).

By law, **Massachusetts'** judges have three sentencing options when sentencing a Youthful Offender (YO). They are:

> "(a) a sentence provided by law;

> (b) a combination sentence which shall be a commitment to the department of youth services until he reaches the age of twenty-one, and an adult sentence to the house of correction or to the state prison as is provided by the law for the offense. The adult sentence shall be suspended pending successful completion of a term of probation, which shall include, but not be limited to, the successful completion of the aforementioned commitment to the department of youth services…;
>
> (c) or a commitment to the department of youth services until he reaches the age of twenty-one" (M.G.L. c.119, §58).

According to Massachusetts General Law c.119, §58, in sentencing YOs, "the court shall conduct a sentencing recommendation hearing to determine the sentence by which the present and long-term public safety would be best protected. At such hearing, the court shall consider, but not be limited to, the following factors":

1. The nature, circumstances, and seriousness of the offense
2. Victim impact statement
3. A report by a probation officer concerning the history of the Youthful Offender
4. The Youthful Offender's court and delinquency records
5. The success or lack of success of any past treatment or delinquency dispositions regarding the Youthful Offender
6. The nature of services available through the juvenile justice system
7. The Youthful Offender's age and maturity
8. The likelihood of avoiding future criminal conduct
9. Any other factors it deems relevant to disposition.

An issue widely covered in prior research is whether transferred juveniles receive harsher or lighter sentences in criminal court. Some have found that juvenile offenders receive lenient sentences in the criminal courts. Champion (1989) reported that most youths waived to criminal court received sentences of probation. Contrary to Champion's findings, Fagan et al. (1987) found that violent offenders transferred to adult court received sentences considerably longer than those likely or even possible in the juvenile justice system. Barnes and Franz (1989) analyzed cases from a single California jurisdiction over a 6-year period and reported that juveniles convicted of violent offenses were sentenced more harshly in adult court than they would have been in juvenile court.

According to *State Court Processing Statistics: 1990-1994 Juvenile Felony Defendants in Criminal Court* (1998), fifty-nine percent (59%) of juveniles transferred to criminal courts were convicted of a felony and 52% of those convicted of a felony were sentenced to prison. About a third of the juveniles sentenced in criminal court to State prison received a sentence of four years or less. The average prison sentence for juveniles convicted in criminal court was approximately nine years; for those convicted of a violent offense, the average prison sentence was nearly 11 years (Strom and Smith, 1998).

Juveniles in Adult Corrections

A report by the National Institute of Corrections, titled *Offenders Under Age 18 in State Adult Correctional Systems: A National Picture* (1995), examines how state Departments of Correction are responding to the challenge of dealing with younger inmates under their jurisdiction. Of the total 1993 national prison population of over one million, slightly more than 5,200 people age 17 or younger were confined to adult prisons, compared to over 65,500 people age 18 to 21. Of the 5,200 age 17 or younger, the vast majority (79%) came from 10 states, with North Carolina accounting for one quarter (24%) of all juvenile admissions.

Changes in sentencing and correctional programming options available to courts have resulted in increased incarceration of juveniles convicted of violent or other serious offenses without comparable attention to community corrections, including probation and aftercare (Torbet et al., 1996). Many people are concerned that housing juvenile inmates with older populations will result in victimization, assault, and abuse, both physically and sexually. Further, young inmates have different developmental needs than older adult inmates, e.g., physical, emotional and dietary. Misconduct by young inmates is, to some extent, linked to their development as adolescents (Torbet et al., 1996). As a result, adult correction facilities are now challenged with developing programming for younger inmates and juvenile correction facilities are burdened with violent juvenile offenders who stay for longer periods of time (Parent et al., 1997). These juvenile detention facilities are often not designed to hold youth awaiting trial or alternative placement for long periods of time.

Massachusetts reports that offenders under the age of 17 that are housed in an adult correctional facility are held separately from the general population. As of January 1, 2000, the Massachusetts Department of Correction (DOC) had only one inmate under 17 years of age in their custody.

Table 4. Number of Inmates Under 17 Years Under DOC Supervision

Age	Number of Youth
16	1

Source: Massachusetts Department of Correction, 2000

Recidivism

Bishop et al. (1996) conducted a study in Florida to compare recidivism of youths transferred to criminal court with that of those retained in the juvenile justice system. The study found that the transfer group, despite being incarcerated for longer periods of time, recidivated at higher rates (30%) than the non-transfer group (19%) and also committed more offenses after being released. The authors suggest the original reason for transferring juveniles, harsher punishment for the crime committed and public safety, was negated when the juveniles were released and committed more crimes.

A follow-up study (Winner et al., 1997) found that transferred juveniles re-offended more quickly and more times than juveniles who were not transferred to adult court. However, further analysis revealed that after a period of time non-transfers eventually caught up with the transfers in re-arrests. Transfer seemed to reduce recidivism for property felons; more transferred property felons avoided re-arrest on release than was true for their non-transferred counterparts. Transfer was more likely to aggravate recidivism than to stem from it (Bishop et al., 1997).

YOUTH ARRAIGNED IN MASSACHUSETTS, 1997

Data Analysis

The Massachusetts SAC obtained juvenile court data for calendar year 1997, from the Massachusetts Office of the Commissioner of Probation (OCP). The dataset contained information on all juveniles arraigned in 1997 charged with certain felonies (Appendix A) that could make them eligible to be prosecuted as Youthful Offenders (YOs) if additional conditions applied (i.e., prior DYS commitment, threat or infliction of serious bodily harm, and weapons charges). Other eligible YO felonies were not included (Appendix B), including assault and battery with a dangerous weapon. The data analyzed was a subset of the 22,213 juvenile arraignments and of that, the 338 YOs processed by Massachusetts juvenile courts in 1997.

As for data regarding previous charges, DYS commitment and case circumstances were not present in the OCP dataset, the SAC was unable to determine that a delinquent youth was "YO eligible." Dataset variables for both YOs and delinquents included: sex, ethnicity, court name, status of case, date of birth, offenses, dispositions, etc. The data was imported into the statistical program SPSS where computations were made. For the scope of this project, dispositional data were not examined. The OCP is currently reviewing the possibility of conducting a study of YO dispositional data.

In analyzing the dataset, the SAC staff identified both the number of YOs and delinquent youth and the number of charges associated with these youth. The SAC used the juvenile's docket number to identify whether the youth was arraigned as a YO or as a delinquent. It is important to note that this is solely a method of classification and does not indicate the adjudication of the case. In courts across the Commonwealth, YOs are assigned a docket number that includes the characters "YO" (Youthful Offender) or "FIY" (First Instance Youthful Offender). Delinquent offenders are assigned a docket number that include the characters "JV" (Juvenile), "DL" (Delinquency) or "FID" (First Instance Delinquency). The computation used to calculate the total number of YO charges varied according to the docket numbers associated with the youth. For youth identified as YOs, only "Youthful Offender" or "First Instance Youthful Offender" docket numbers were counted. If a youth had both "Youthful Offender" (YO) and "First Instance Youthful Offender" (FIY) docket numbers, only the "First Instance Youthful Offender" charges were counted.

For youth identified as delinquent, "Juvenile" (JV), "Delinquency" (DL), or "First Instance Delinquency" (FID) charges were counted. If a youth had both "Juvenile" and "First Instance Delinquency" or "Delinquency" and "First Instance Delinquency" docket numbers, only the "First Instance Delinquency" charges were counted. Using this method eliminated the potential for double counting cases where a youth was brought before the court twice on the same charge. Of the 242 youth identified as YOs, 205 youth had "Youthful Offender" docket numbers only, 11 had "First Instance Youthful Offender" docket numbers only, and 26 had both "Youthful Offender" and "First Instance Youthful Offender" docket numbers. Of the 4,146 youth identified as delinquents, 3,789 had "Delinquent" or "Juvenile" docket numbers only, 72 had "First Instance Delinquency" docket numbers only, and 285 had both "Juvenile" and "First Instance Delinquency" or "Delinquency" and "First Instance Delinquency" docket numbers. Any delinquent charges associated with YOs were not included in this analysis.

Youthful Offenders and Delinquents in Massachusetts

In 1997, 4,406 juveniles were arraigned in Massachusetts' juvenile courts for selected felonies (Appendix A). It must be emphasized that the 4,406 juveniles are a subset of the total number of juveniles who were processed by Massachusetts juvenile courts in 1997 and not all offenses were examined (Appendix B). A juvenile was identified as a YO if they had at least one docket number that included a code for a "Youthful Offender" or "First Instance Youthful Offender." All other juveniles were classified as delinquent. Although they have not been *adjudicated* as such, for the purposes of this report, the term "delinquent" is used for those youth *charged* as juveniles. Of the 4,406 youth examined, 242 youth (5.5%) were identified as YOs and 4,146 youth (94.0%) were identified as delinquent. Eighteen youth were not included in the analysis because they had other docket numbers.

Youthful Offenders and Delinquents by Charge

A total of 472 charges were associated with the 242 Youthful Offenders (YOs). Table 5 illustrates that 109 YOs (45%) had a total of 143 assault and battery charges (30%), representing the offense most frequently associated with YOs. Following assault and battery were the crimes of armed robbery (27% of YOs and 20% of YO charges) and assault with a dangerous weapon (21% of YOs and 17% of YO charges).

A total of 5,785 charges were associated with the 4,146 delinquent offenders. Table 5 illustrates that 3,143 delinquent offenders (76%) had a total of 3,870 assault and battery charges (67%), representing that assault and battery is overwhelmingly the offense most frequently associated with delinquent offenders. Following assault and battery was the crime of assault with a dangerous weapon (16% of both delinquent offenders and delinquent offender charges).

Table 5. Massachusetts Youthful Offenders and Delinquents by Charge, 1997

Charge	# of Youthful Offenders	% of Youthful Offenders	# of Youthful Offender Charges	% of Total YO Charges	# of Delinquent Offenders	% of Delinquent Offenders	# of Delinquent Offender Charges	Percent of Total Delinquent Charges
Assault and Battery	109	45%	143	30.3%	3,143	75.8%	3,870	66.9%
Indecent Assault & Battery on a Child	11	4.5%	14	3.0%	136	3.2%	232	4.0%
Indecent Assault & Battery on a Person	2	.8%	3	.6%	7	.2%	9	.2%
Arson	6	2.4%	7	1.5%	11	.3%	11	.2%
Assault with a Dangerous Weapon	51	21%	80	16.9%	677	16.3%	899	15.5%
Indecent Assault on a Child	1	.4%	1	.2%	8	.2%	10	.2%
Assault with the Intent to Kill	13	5.3%	18	3.8%	22	.5%	26	.4%
Burglary	4	1.7%	4	.8%	35	.8%	47	.8%
Carjacking	4	1.7%	4	.8%	10	.2%	10	.2%
Possession of a Shotgun	1	.4%	1	.2%	4	.1%	4	.1%
Home Invasion	7	2.8%	7	1.5%	23	.6%	25	.4%
Kidnapping	6	2.4%	6	1.3%	15	.4%	21	.4%
Possession of Ammunition	17	7.0%	19	4.0%	56	1.4%	57	1.0%
Rape	11	4.5%	18	3.8%	28	.7%	33	.6%
Rape of a Child	14	5.7%	22	4.7%	84	2.0%	153	2.6%
Robbery	29	11.9%	33	7.0%	178	3.6%	203	3.5%
Armed Robbery	65	26.8%	92	19.5%	153	3.7%	175	3.0%
TOTAL CHARGES	*	*	472	100.0%	*	*	5,785	100.0%

Source: Massachusetts Office of the Commissioner of Probation

*As youth can be charged with multiple offenses, the total number of youth by charge is not available.

Number of Youthful Offender and Delinquent Charges

According to the data, Youthful Offenders (YOs) were more likely to have multiple charges filed against them than delinquent offenders. Forty-eight percent (48%) of YOs were charged with a single offense compared to 74% of delinquent offenders. Forty percent (40%) of YOs had a total of two or three charges, compared to 23% of delinquents. Twelve percent (12%) of YOs had four or more charges, as compared to 3% of delinquent offenders.

Table 6. Massachusetts Youthful Offenders and Delinquents by Number of Charges, 1997

Number of	Number of Offenders	Youthful	Number of Offenders	Delinquent
1		48.3%		74.3%
	71		725	
3		10.7%		5.3%
	19		68	
5		1.2%		.7%
	3		9	
7		.4%		.1%
	0		5	
9		.4%		.02%
	1		0	
11		0%		.02%
	0		0	
13		0%		0%
	0		1	
16		0%		.02%
	242		4,146	

Source: Massachusetts Office of the Commissioner of Probation

Youthful Offenders and Delinquents by Gender

The data reported in Table 7 indicates that only 4% of Youthful Offenders (YOs) were female, consistent with the national trend for judicial waivers. Comparatively, 28% of delinquent offenders were female.

Table 7. Massachusetts Youthful Offenders and Delinquents by Gender, 1997

Gender	Youthful Offender	YO Percent	Delinquent	Delinquent Percent
Male	233	96%	2,999	72%
Female	9	4%	1,147	28%
Total Youth	242	100%	4,146	100%

Source: Massachusetts Office of the Commissioner of Probation

Female Youthful Offenders and Delinquents by Charge. The crimes of assault and battery and robbery represented the majority of charges filed on female YOs (each represented 29% of all charges). Similarly, the overwhelming majority of charges filed against female delinquent offenders were for the crime of assault and battery (83%). Assault with a dangerous weapon was the second most frequently filed charge against female delinquent offenders, while no female YOs were charged with this crime.

Table 8. Massachusetts Female Youthful Offenders and Delinquents by Charge, 1997

Charge	# of Female YO Charges	Percent of Total Female YO Charges	# of Female Delinquent Charges	Percent of Total Female Delinquent Charges
Assault and Battery	5	29.4%	1,239	82.6%
Indecent Assault & Battery on a Child	-	-	11	.7%
Indecent Assault & Battery on a Person	-	-	-	-
Arson	2	11.7%	1	.1%
Assault with a Dangerous Weapon	-	-	130	8.7%
Indecent Assault on a Child			2	.1%
Assault with the Intent to Kill	2	11.7%	2	.1%
Burglary	-	-	2	.1%
Carjacking	-	-	3	.2%
Possession of a Shotgun	-	-	-	-
Home Invasion	1	5.8%	10	.7%
Kidnapping	1	5.8%	7	.5%
Possession of Ammunition	-	-	7	.5%
Rape	-	-	2	.1%
Rape of a Child	-	-	9	.6%
Robbery	5	29.4%	46	3.1%
Armed Robbery	1	5.8%	29	1.9%
TOTAL CHARGES	17	100.0%	1,500	100.0%

Source: Massachusetts Office of the Commissioner of Probation

Male Youthful Offenders and Delinquents by Charge. Charges filed on male YOs followed a similar pattern as the female YOs, with assault and battery and armed robbery the most frequently filed charges, 30% and 20% respectively. Similarly, the overwhelming majority of charges filed against male delinquent offenders were for the crime of assault and battery (61%). Assault with a dangerous weapon was the second most frequently filed charge against male delinquent offenders (18%) (Table 9).

Table 9. Massachusetts Male Youthful Offenders and Delinquents by Charge, 1997

Charge	# of Male YO Charges	Percent of Total Male YO Charges	# of Male Delinquent Charges	Percent of Total Male Delinquent Charges
Assault and Battery	138	30.3%	2,631	61.4%
Indecent Assault & Battery on a Child	14	3.1%	221	5.2%
Indecent Assault & Battery on a Person	3	.7%	9	.2%
Arson	5	1.1%	10	.2%
Assault with a Dangerous Weapon	80	17.6%	769	17.9%
Indecent Assault on a Child	1	.2%	8	.2%
Assault with the Intent to Kill	16	3.5%	24	.6%
Burglary	4	.9%	45	1.1%
Carjacking	4	.9%	7	.2%
Possession of a Shotgun	1	.2%	4	.1%
Home Invasion	6	1.3%	15	.4%
Kidnapping	5	1.1%	14	.3%
Possession of Ammunition	19	4.2%	50	1.2%
Rape	18	4.0%	31	.7%
Rape of a Child	22	4.8%	144	3.4%
Robbery	28	6.2%	157	3.7%
Armed Robbery	91	20.0%	146	3.4%
TOTAL CHARGES	455	100.0%	4285	100.0%

Source: Massachusetts Office of the Commissioner of Probation

Youthful Offenders and Delinquents by Age

Nearly half (49%) of Youthful Offenders (YOs) were 16 years old at the time of their first court appearance. Because of the YO age requirements, there is more variation in the ages of delinquents. Three-quarters of delinquent youth (75%) were between the ages of 14 and 16 at the time of their court appearance. Interestingly, 142 offenders were between the ages of 17 and 23, and over 900 youth were 13 years old or younger.

Table 10. Massachusetts Youthful Offenders and Delinquents by Age, 1997

Age	Youthful Offender	YO Percent of Total	Delinquent	Delinquent Percent of Total
7			1	.02%
8			17	.4%
9			22	.5%
10			31	.8%
11			96	2.3%
12			225	5.4%
13			510	12.3%
14	43	17.8%	779	18.8%
15	66	27.3%	1,067	25.7%
16	119	49.2%	1,253	30.2%
17	14	5.8%	121	2.9%
18			11	.3%
19			8	.2%
20			1	.02%
23			1	.02%
TOTAL	242	100%	4,146	100.0%

Source: Massachusetts Office of the Commissioner of Probation

Youthful Offenders by Age and Charge. As seen in the table below, the most common YO charge regardless of offender age was assault and battery. Armed robbery was the second most frequent YO charge for 14 and 15 year olds, and the third for 16 year olds (24%, 20%, and 19% respectively). Assault with a dangerous weapon was the second most frequent YO charge for 16 year olds (21%), and third among 15 year olds (18%). Robbery was the third most common YO charge for youth age 14 (14%) and armed robbery for 16 year old (10.5%) (Table 11).

Table 11. Massachusetts Youthful Offender Charges by Age of Offender, 1997

Charge	Age of Youthful Offender							
	14	**Percent of Charges**	**15**	**Percent of Charges**	**16**	**Percent of Charges**	**17**	**Percent of Charges**
Assault and Battery	24	30.8%	40	27.9%	71	30.6%	8	42.1%
Indecent Assault & Battery on a Child	2	2.6%	4	2.8%	6	2.6%	2	10.5%
Indecent Assault & Battery on a Person			3	2.1%				
Arson	2	2.6%	4	2.8%	1	.4%		
Assault with a Dangerous Weapon	5	6.4%	25	17.5%	49	21.1%	1	5.3%
Indecent Assault on a Child					1	.4%		
Assault with the Intent to Kill	3	3.8%	5	3.5%	10	4.3%		
Burglary	1	1.3%	3	2.1%				
Carjacking			3	2.1%	1	.4%		
Possession of a Shotgun					1	.4%		
Home Invasion	1	1.3%	1	.7%	5	2.2%		
Kidnapping	1	1.3%	1	.7%	3	1.3%	1	5.3%
Possession of Ammunition	1	1.3%	2	1.4%	14	6%	2	10.5%
Rape	1	1.3%	12	8.4%	5	2.2%		
Rape of a Child	7	9%	3	2.1%	10	4.3%	2	10.5%
Robbery	11	14.1%	9	6.3%	12	5.3%	1	5.3%
Armed Robbery	19	24.4%	28	19.6%	43	18.5%	2	10.5%
TOTAL	78	100%	143	100%	232	100%	19	

Source: Massachusetts Office of the Commissioner of Probation

Youthful Offenders and Delinquents by Race

According to national data, from 1990 to 1994, 63% of youth transferred to criminal court were black males, 29% were white males, 3% were black females, and 2% were white females. Black male defendants represented 7 in 10 violent juvenile defendants in adult court and three-fourths of juvenile drug offenses in criminal court (Strom & Smith, 1998). Because minority juveniles are already over-represented in the crime categories now targeted by new laws (e.g., serious and violent offenses, particularly those involving weapons, and juveniles with more extensive histories), these laws have a disproportionate impact on minorities (Torbet et al., 1996).

In 1998, there were an estimated 1,790,934 juveniles (aged 19 years and under) in Massachusetts (U.S. Census Bureau, 1999). Of those juveniles, 80% were white, 7.1% were black, 4.6% were Asian, and 10.2% were Hispanic.

In Massachusetts, 39% of juveniles arraigned as Youthful Offenders (YO) in 1997 were black, compared to 17% of delinquent offenders. White juveniles represented 24% of the Youthful Offenders, and 50% of the delinquent offenders.

Table 12. Massachusetts Youthful Offenders and Delinquents by Race, 1997

Race	Massachusetts Juvenile (under 19) Population estimates 1998	Youthful Offender	YO Percent	Delinquent	Delinquent Percent
White	77.9%	59	24%	2,080	50%
Black	7.1%	95	39%	725	17%
Hispanic	10.2%	46	19%	764	18%
Asian	4.6%	10	4%	79	2%
Cape Verdean	N/A	5	2%	100	2%
Native American	.2%	0	0%	10	.2%
Unknown	-	27	11%	388	9%
Total	100%	242	100%	4,146	100%

Sources: U.S Census Bureau (1999); Massachusetts Office of the Commissioner of Probation

It is clear black youth are over-represented as YOs. One possible reason for such representation is that the majority of Massachusetts' minorities live in highly populated urban areas with a host of other characteristics associated with high crime areas. As a result, these areas are often policed aggressively, which leads to more arrests and a population of minority youth with larger criminal records. Since the length and seriousness of a juvenile's criminal record is often taken into consideration in determining Youthful Offender eligibility, this can also adversely affect minority youth with previous police encounters. Data presented later in this report (Table 14) supports this claim, as the majority of YOs in Massachusetts were found in Boston courts (30%) as compared to 12% of delinquents. It needs to be noted that additional research and analysis of Youthful Offender race data is required to make proper interpretations and form definitive conclusions of these findings.

Youthful Offenders and Delinquents by Charge and Race. Four charges, armed robbery, robbery, assault and battery, and assault with a dangerous weapon are highlighted and the races are compared for both YOs and delinquent offenders. "Unknown" race is not included in Tables 13 and 14.

As Table 13 indicates, 48% of assault and battery charges were against black YOs compared to 18.9% of white YOs. Thirty-six percent of assault with a dangerous weapon charges were against white YOs compared to 24% of black YOs and 15% of Hispanic YOs. Over half of YO armed robbery charges and over 60% of robbery charges were against black youth.

Table 13. Number and Percentage of Youthful Offender Charges by Race, 1997

Charge	Black	White	Hispanic	Asian	Cape Verdean	Total
Armed Robbery	45	16	17	3	2	83
Percent of Armed Robbery Charges	54.2%	19.3%	20.5%	3.6%	2.4%	100%
Robbery	17	7	2	-	1	27
Percent of Robbery Charges	63%	25.9%	7.4%	-	3.7%	100%
Assault and Battery	61	24	35	6	1	127
Percent of Assault and Battery Charges	48%	18.9%	27.6%	4.7%	.8%	100%
Assault with a Dangerous Weapon	16	24	10	15	1	66
Percent of Assault with a Dangerous Weapon Charges	24.2%	36.4%	15.2%	22.7%	1.5%	100%

Source: Massachusetts Office of the Commissioner of Probation

As Table 14 indicates, 49% of armed robbery charges were against black delinquents compared to 22% of white delinquents. Similar to the black YO armed robbery and robbery charges, close to half of delinquent armed robbery and robbery charges were against black youth. More than 50% of assault and battery and assault with a dangerous weapon charges were against white delinquents.

Table 14. Number and Percentage of Delinquent Charges by Race, 1997

Charge	Black	White	Hispanic	Asian	Cape Verdean	Native American	Total
Armed Robbery	71	33	35	5	2	-	146
Percent of Armed Robbery Charges	48.6%	22.6%	24.0%	3.4%	1.4%	-	100%
Robbery	80	54	31	3	4	-	172
Percent of Robbery Charges	46.5%	31.4%	18.0%	1.7%	2.3%	-	100%
Assault and Battery	600	2,052	698	66	88	10	3,514
Percent of Assault and Battery Charges	17.1%	58.4%	19.9%	1.9%	2.5%	.3%	100%
Assault with a Dangerous Weapon	158	444	170	33	19	5	829
Percent of Assault with a Dangerous Weapon Charges	19.1%	53.6%	20.5%	4.0%	2.3%	.6%	100%

Source: Massachusetts Office of the Commissioner of Probation

Youthful Offenders and Delinquents by Massachusetts Court

As Table 15 demonstrates, of the 39 courts that processed Youthful Offenders (YOs), seven courts saw ten or more YOs in 1997. Of the seven courts, three were located in Boston (Dorchester, Roxbury, and Brighton). Dorchester led with the most YOs processed with 32 (13% of YOs), followed by Springfield with 21 cases (8.7%), Roxbury with 18 cases (7.4%), Brockton with 17 cases (7.0%), Lowell with 15 cases (6.2%), Worcester with 13 cases (5.3%), and Brighton with 10 cases (4.1%).

A total of 69 courts processed delinquents charged with certain felonies that could make them eligible for indictment if specified conditions applied. The top five courts by volume were: Springfield with 279 delinquency cases (6.7% of delinquent youth), Worcester with 256 cases (6.1%), Lowell with 244 cases (5.9%), Brockton with 202 cases (4.8%), and Dorchester with 199 cases (4.8%).

Table 15. Number of Youthful Offenders and Delinquents Processed by Court, 1997

Court	YO (n=242)	Youthful Percent	Delinquent (n=4,164)	Delinquent Percent	Court	YO (n=242)	Youthful Percent	Delinquent (n=4,164)	Delinquent Percent
Adams			6	.1%	Nantucket			2	.04%
Attleboro	1	.4%	58	1.4%	Natick			9	.2%
Ayer			18	.4%	New Bedford	5	1.2%	139	3.3%
Barnstable	1	.4%	81	1.9%	Newburyport	2	.8%	30	.7%
Brighton	10	4.1%	27	.6%	Newton			15	.4%
Brockton	17	7.0%	202	4.9%	North Adams	1	.4%	17	.4%
Brookline	1	.4%	15	.4%	Northampton			61	1.5%
Cambridge	2	.8%	59	1.4%	Orange			39	.9%
Charlestown			6	.1%	Orleans			49	1.1%
Chelsea	2	.8%	41	1.0%	Palmer			40	1 %
Chicopee	2	.8%	46	1.1%	Peabody			14	.3%
Clinton			11	.3%	Pittsfield	5	2.1%	61	1.4%
Concord	2	.8%	25	.6%	Plymouth	7	2.9%	76	1.8%
Dedham			33	.8%	Quincy	3	1.2%	105	2.5%
Dorchester	32	13.2%	199	4.8%	Roxbury	18	7.4%	111	2.6%
Dudley			68	1.6%	Salem	3	1.2%	50	1.2%
East Boston	2	.8%	30	.7%	Somerville	3	1.2%	36	.8%
Edgartown			11	.3%	South Boston	3	1.2%	39	.9%
Fall River	2	.8%	178	4.3%	Spencer			21	.5%
Falmouth			45	1.1%	Springfield	21	8.7%	279	6.7%
Fitchburg	2	.8%	49	1.2%	Stoughton	1	.4%	18	.43%
Framingham	5	2.1%	50	1.2%	Taunton			55	1.3%
Gardner			19	.6%	Uxbridge			29	.7%
Gloucester			20	.48%	Waltham	7	2.9%	18	.4%
Greenfield			44	1.05%	Ware			21	.5%
Haverhill			37	.88%	Wareham	3	1.2%	50	1.2%
Hingham	3	1.2	44	1.05%	West Roxbury	9	3.7%	88	2.1%
Holyoke			39	.93%	Westboro			18	.4%
Ipswich			7	.16%	Westfield	1	.4%	20	.5%
Lawrence	9	3.7%	182	4.3%	Winchendon			5	.12%
Leominster	2	.8%	47	1.12%	Woburn	3	1.2%	31	.7%
Lowell	15	6.2%	244	5.85%	Worcester	13	5.3%	256	6.1%
Lynn	4	1.7%	111	2.6%	Wrentham			19	.5%
Malden	2	.8%	70	1.68%	Missing	16	6.6%	152	3.7%
Marlborough	2	.8%	34	.81%	**Total**	**242**	**100%**	**4,164**	**100%**
Milford			35	.84%					

Source: Massachusetts Office of the Commissioner of Probation

PERSPECTIVES OF JUVENILE JUSTICE SYSTEM PROFESSIONALS

Interviews

Interviews were conducted with juvenile justice system representatives for the purposes of documenting how the Act is being implemented, and identifying any legal or administrative issues that have emerged as a result of the Act. Each of the 11 Massachusetts District Attorney's Offices was contacted and asked to be interviewed. Nine District Attorney's Offices expressed interest in participating, and Assistant District Attorneys and other staff from each of the nine offices were interviewed. A defense attorney and a juvenile court judge were also interviewed for this project. The focus of the interviews was on juveniles charged as Youthful Offenders (YOs), rather than youth charged as an adult with murder and automatically tried in superior court. To facilitate the interview process, an interview instrument was developed for the interviewer to follow during the meeting. Topics addressed in each interview included: general court procedures, indictment, Grand Jury and trial proceedings, sentencing and probation, and interviewees' general thoughts, opinions, and recommendations. With each interview conducted, a better understanding of the law and court procedures was gained. Therefore, the interview instrument evolved to include new areas of questioning, as well as the dismissal of others. Interviews generally lasted 45 to 60 minutes in length, were informal in nature, and were not recorded on audio or videotape.

It should be noted that since most interviewees were prosecutors, opinions tend to lean favorably toward the YO Law and the prosecution. In most cases, the sole defense attorney interviewed strongly disagreed with or was in direct opposition to the law, its surrounding circumstances, and the opinions and thoughts of the prosecutors interviewed.

Prosecutorial Data on Youthful Offenders

The majority of Massachusetts prosecutors interviewed by the SAC knew approximately how many Youthful Offenders (YOs) were indicted and generally knew the outcomes of the trials and the type of sentences that were handed down. Most also stated that because the majority of youth agreed to a sentence before YO indictment proceedings, the number of juveniles charged as YOs was relatively low. At least two prosecutors maintained detailed data regarding the number of YO indictments, as well as case outcomes. All interviewed were curious about the true number of YOs processed statewide, as well as the disposition of these cases.

Quality of Prosecution/Defense Counsel

The quality of prosecution and defense affects every aspect of a court proceeding. With the passage of the Youthful Offender (YO) Law, both prosecutors and defense attorneys needed to become familiar with the law and its application. All persons interviewed agreed there are always areas in need of improvement and said they are open to trainings, legal education, and any other tools that can serve to improve the quality and performance of defense and prosecution.

Defense attorneys are required to be certified by the Committee for Public Counsel Services (CPCS). According to CPCS, 263 attorneys are currently certified to defend YOs. One interviewee felt there was a lack of CPCS certified defense attorneys in their county. With this perceived lack of YO defense attorneys, he/she felt there was a greater possibility of a conflict of

interest. For example, a defense attorney who defended Youthful Offender John Doe might later defend another client in which the victim or witness is the same John Doe.

When asked about the overall quality of defense counsel in YO cases, two respondents deemed the overall quality "appropriate" and "fine." Two others thought that the quality of defense attorneys was improving, as the defense gained more experience and familiarity with the YO Law. Another interviewee stated that the overall quality of both the defense and prosecution had improved greatly since the commencement of the law. It was the opinion of these interviewees that both the prosecution and the defense have educated themselves, been appropriately trained, and can effectively try YO cases. Also noted was that District Attorneys' Offices often have specialized units and are better prepared for YO prosecutions. While there are quality regional defense groups, there is no defense organization statewide.

Prosecution/Defense Interaction

Interviewees were asked about the overall interaction between prosecution and defense in Youthful Offender (YO) cases. Three of the ten persons interviewed stated there should be more communication between the defense and the prosecution regarding YO cases. Specifically, one of the three thought there should be more communication prior to the trial. The defense attorney interviewed termed communication "rare" and stated that the prosecution should be more proactive in determining the defendant's circumstances before indicting the youth as a YO. An Assistant District Attorney thought there was a good relationship between the defense and prosecution, despite there being limited interaction. Only two prosecutors interviewed thought the communication between the two parties was "positive" or "good." In general, the prosecutors and the defense attorney agreed there can be more effort on both parts for open communication and coordination, particularly since the YO repercussions are severe.

Deciding Eligibility for Indictment

All prosecutors follow some sort of procedure to collect background information when deciding whether to indict a juvenile as a Youthful Offender (YO). Many factors are considered and reviewed such as police reports, school records, attempts at rehabilitation and counseling, court and/or DYS records, and family involvement. Some prosecutors stated they receive materials from the defense supporting why youth should not be indicted as a YO. This might include letters of support from the family, therapists, and clergy. Also, if the defense knows any extenuating circumstances that might affect the status of the juvenile, it is usually brought forward to the prosecution.

All persons interviewed agreed that the prosecution now holds immense power in that they decide which juveniles are indicted as Youthful Offenders (YOs) and which are processed as delinquents. Nearly all prosecutors stated they move for indictment on cases that are particularly violent in which the youth has a history of court involvement. One interviewee mentioned the ambiguity of the second criteria of deciding whether or not to indict a youth who "…has committed an offense which involves the infliction or threat of serious bodily harm in violation of law" (M.G.L. c.119, §52). He/she suggested that the specific offenses to be included in that category should be listed for clarification.

Pleas Before Prosecution Indicts Juvenile as Youthful Offender

The majority of those interviewed thought a large portion of Youthful Offender (YO) eligible youth plead out, usually to DYS until 18, if they are notified of the prosecution's desire to indict them as a YO. Juveniles are aware of and want to avoid the consequences of being tried and convicted as a Youthful Offender (e.g., their record will be open to the public, longer DYS commitment, possibility of adult sentence, etc.). It was mentioned that in some cases, juveniles will plead guilty to more severe or additional charges to circumvent being prosecuted as a YO. It was noted that there is confusion regarding whether a juvenile can plead out before the District Attorney decides to prosecute youth as YO.

Grand Jury

Following the decision to prosecute a juvenile as a Youthful Offender (YO), the prosecution must present evidence to the Grand Jury. The Grand Jury does not decide guilt or innocence, but rather determines if probable cause exists that the juvenile committed the crime. One prosecutor believed the Grand Jury process was very time consuming. However, all other persons interviewed disagreed. The hearings are short in length, with most interviewees stating that their time in front of the Grand Jury lasted on average between 20 and 40 minutes. While, the prosecution selectively presents evidence to the Grand Jury, the defense is not present and usually does not submit any evidence. Upon the evidence being presented, if the Grand Jury finds there is enough evidence to find probable cause, they return a "true bill." A "no bill" is returned when the Grand Jury decides there is not enough evidence for probable cause, and the case can proceed with the youth being tried as a delinquent. All prosecutors agreed that nearly all cases are true billed by the Grand Jury. Once the true bill is ordered by the Grand Jury and the juvenile is arraigned on YO charges, the delinquency charges can be dismissed.

One prosecutor stated that often the defense counsel believes that judges have the option to process a youth as a juvenile, even following a Grand Jury YO indictment. Many interviewed stated this was not an option and should be clarified so there is no confusion. Another prosecutor estimated approximately 98% of their youth that are indicted as YOs plead out to avoid YO sentencing exposures.

Bail

The majority of prosecutors do not request a higher bail for a Youthful Offender (YO). One prosecutor, however, mentioned that in approximately half the YO cases, he/she generally would request a higher bail because "the stakes are higher."

Joinder

Joinder occurs when a Youthful Offender (YO) charge and a non-YO charge are joined together for the same trial or two defendants from the same incident are tried together. In most cases, it was agreed that while the charges can be tried together, there must be a separate disposition for each charge. For instance, if an intoxicated youth assaulted another youth with a bat, the youth might be indicted as a YO for the assault and battery, but also charged with a juvenile complaint for public drunkenness. If adjudicated, the youth will be sentenced as a YO for the assault and battery and also receive a delinquency disposition sentence for the public drunkenness charge.

Two counties noted that they do not view charges as individual, but rather as an incident. Therefore, misdemeanors are joined in the indictment with the YO charges. Another prosecutor stated that if a misdemeanor is joined with a YO charge, then the trial can no longer be held open to the public. Two interviewees wondered: if the YO felony is dismissed, is the joined misdemeanor still tried as a YO charge? Another questioned what the real difference was between indicting all offenses versus joining them. It was noted that there are 3 to 4 ways to interpret the joining or not of misdemeanors and it should be clarified.

When discussing trying YO and adult co-defendants in the same trial, interviewees agreed it is a cloudy issue, especially regarding jurisdiction. The case might be presented together to the Grand Jury but when the result is a true bill, trials and courts usually separate the defendants. However, M.G.L. c. 211B § 9 (ix) provides for interdepartmental judicial assignment so that all defendants may be joined in one court before one judge.

Defendant Capped Plea

The defendant capped plea is a temporary guilty plea in which the defense submits what they would be most willing to accept as the maximum sentence. The prosecution also submits a sentence. If the judge's sentence exceeds the defense recommendation, the defendant has the right to withdraw their plea and proceed to trial. One prosecutor believed that Youthful Offenders should be encouraged to enter into defendant capped pleas. Another saw this as a way to use the court's time while shopping around for sympathetic judges.

Trial

The majority of those interviewed stated the Youthful Offender (YO) trial was the same as the juvenile trial in length and content. However, one person interviewed stated the YO trial takes longer than a juvenile trial because the crime(s) committed is more serious and the consequences are harsher. Two interviewees stated that certain juvenile court judges lack the experience in criminal proceedings that are involved in YO trials, and this lack of experience affects the overall proceedings, as well as sentencing.

Pre-Sentencing Evaluation Report by Probation

Probation is required by statute to complete a report that reviews the facts of the case, as well as pertinent background information. Recommendations for the sentencing of the Youthful Offender (YO), based on the crimes committed are also provided. One ADA questioned whether Probation should complete a report when all parties have already agreed upon the sentence. Another county thought that the sentences Probation had recommended for YOs were too harsh.

Many interviewees suggested that Probation staff dealing with YO cases receive training on Superior Court law. Since those who are completing the reports usually work in juvenile court, they lack experience in sentencing to Houses of Correction and the Department of Correction. One prosecutor stated that Probation was doing a terrific job completing the report. According to those interviewed, in most cases, the judge follows Probation recommendations.

Sentencing Report

By law, the court "shall make a written finding, stating its reasons therefore, that the present and long-term public safety would be best protected…" (M.G.L. c.119, §58). Since there are

currently no rules or guidelines governing this report, there is great debate regarding its waivability. One interviewee believed the law clearly stated that the judge shall read and make written a report determining the interest of long term public safety. Because of the clear mandatory language of the law, the same person thought a waived report might become an issue for appeal. Others think the report is waivable as long as all parties agree to waive the report. Many interviewees wondered whether the report should be a waivable right held solely by the Youthful Offender.

Disposition

In contrast to the discourse of the Youthful Offender (YO) trial, the discussion of the sentencing aspect for YOs was varied, opinionated, and often contrasting. All persons interviewed agreed that sentencing clarification would be greatly beneficial to all involved parties.

Overall, interviewees felt that judges were sentencing YOs fairly. The majority of prosecutors thought the sentences they requested were reasonable. They believed the judges were not pro-prosecution, but rather pro-juvenile and defense counsel. They also thought juvenile judges were still sentencing in the interest of rehabilitating the youth rather than in the best interest of public safety. However, one interviewee noted that juvenile judges are not mandated to serve in the best interest of public safety, but rather in the best interest of the juvenile. One prosecutor stated that judges were granting lighter YO sentences than requested. In contrast, a prosecutor in another county thought judges were going above and beyond the guidelines when sentencing state time for YOs.

Another interviewee observed that judges were often hesitant to sentence a YO past the age of 21 because the judges do not know what will happen to the juvenile after they are released from DYS care. It was the opinion of some interviewed that judges were unclear on who supervises YOs after discharge from DYS.

<u>Any Sentence Allowed by Law</u>. This sentencing option allows the judge to sentence a Youthful Offender (YO) to any sentence as allowed by law. Prosecutors use this option to request straight adult time for YOs. All felt there was a surprisingly small number of YOs sentenced to straight adult time, especially when compared to what was originally projected by opponents of the law. The majority of prosecutors stated they would frequently get a combination sentence when they asked for a straight adult sentence. However, many interviewed thought clarification of “any sentence allowed by law” was needed. One thought it was too broad and inclusive. One ADA questioned the legality of the defense requesting a suspended HOC sentence. Although it is a legal adult sentence under law, it was felt that such a sentence was not the original nor intended punishment for eligible YO crimes.

One interviewee stated the judges’ options and authority were expanded by YO status, with judges having the option to give any type of juvenile sentence, in addition to the YO sentencing options. The remaining interviewees completely disagreed with this view and thought it was contradictory to the YO Law and the reasons why it was established. They stated that giving any other juvenile sentence other than the three options given would be unlawful.

Combination Sentencing**.** The second sentencing option, a combination sentence, is when a Youthful Offender (YO) is sentenced to DYS with a suspended adult sentence plus probation. One interviewee stated this is the sentence most frequently given in their county. Another thought the combination sentence often causes confusion. First, people are unclear when probation begins. Most agreed that the combination sentence is a concurrent one, meaning the YO is committed to DYS until the age of 21 and serving probation simultaneously, rather than DYS commitment followed by probation. Second, there is a general sense of confusion regarding who is in charge of probation after the YO's release from DYS- adult or juvenile probation? Most thought the YO should be under juvenile probation until the age of 21 then adult probation. As a whole, clarification of the combination sentence would be helpful.

In addition to probation as a part of the combination sentence, those interviewed were divided on whether or not straight probation was a legal sentence for a YO. One thought that since the third sentencing option is any sentence, straight adult probation for a YO is perfectly legal. In addition, many interviewed agreed that straight juvenile probation is not an option under the YO law as it is not a legal sentence under the law. Although many stated that there was a general confusion regarding when probation started, all interviewees thought probation starts the day of the sentencing and should be served concurrently with DYS commitment. However, according to M.G.L. chapter 119 §58, "Any juvenile receiving a combination sentence shall be under the sole custody and control of the department of youth services unless or until discharged by the department or until the age of twenty-one, whichever occurs first and thereafter under the supervision of the juvenile court probation department until the age of twenty-one and thereafter by the adult probation department." Many thought if a YO is sentenced to DYS until 21, they will receive juvenile probation. Only one county interviewed mentioned the length of probation for YOs. It was their opinion that YOs were receiving longer probation sentences than juveniles or adults for the same crimes.

DYS Commitment until 21. The third sentencing option for Youthful Offenders (YOs) is DYS commitment until the age of 21. One prosecutor had seen judges suspending commitments to DYS until 21. Many agreed that judges could not suspend such commitments and thought there needed to be clarification regarding such suspensions.

A few interviewed mentioned YOs receiving DYS commitment until 18 sentences. While most believed DYS until 18 was not a sentencing option under the YO Law, one interviewee believed it was a legal sentencing option, based on the premise that the law expands upon the existing sentencing options of the juvenile judge.

Continuance Without a Finding (CWOF). To continue a case without a finding means the defendant admits to sufficient fact to warrant a finding of guilty, but the judge does not impose a decision. Instead, the case remains open while the defendant complies with set conditions (e.g., not to violate probation, no new arrests or charges, etc.) and does not return before the court for a set period of time. If he/she does return to court due to a violation of conditions, the defendant can be sentenced for both original crime(s) and any subsequent criminal activity. The case is dismissed if the defendant complies with the conditions set by the court.

There was only one interviewee that specifically stated CWOF did not happen in their county for YOs. The other interviewees had seen CWOFs in one form or another in YO cases. Most interviewed believed CWOFs were not a viable legal outcome of YO trials, despite it happening in their county. One stated there were many gray areas and loopholes regarding CWOFs, and when the right case came along, they would appeal a CWOF. Another stated that a judge can CWOF after the YO indictment, but before the YO trial. Another interviewee argued if the crime committed was serious enough to indict a youth as a YO, then the outcome of a YO trial should not be CWOF.

Suspended Sentence. Besides suspending an adult sentence in conjunction with a commitment to DYS and probation, it is unclear to those who were interviewed whether or not suspending a Youthful Offender (YO) sentence was a viable legal disposition for YOs. According to one interviewee, suspension of sentencing is open to debate because there is currently no language in the YO Law that indicates whether a judge could or could not suspend a YO sentence. Another thought since an adult can receive a suspended sentence, it is an acceptable sentence under "any sentence provided by law."

Mandatory Sentence. Mandatory sentencing laws require the judge to impose a fixed sentence previously determined by the state legislature to those defendants convicted of certain crimes. Interviewees were asked if judges were sentencing Youthful Offenders (YOs) to mandatory sentences. One interviewee stated that judges in their county are not enforcing mandatory sentences for YOs. Another interviewee had no problem with judges enforcing mandatory sentences. A different interviewee spoke of the ambiguity of the YO; they are neither an adult nor a juvenile. What does an adult mandatory sentence mean for a YO? Where do they fit in? Another prosecutor believed if a minimum mandatory sentence can be suspended for an adult, it can be suspended for a YO as well.

Many interviewees mentioned mandatory sentences for the possession of a firearm. Since M.G.L. c. 269, §10a has specific language stating the sentence given shall not be suspended, some believe that because the YO law lacks such language a judge can suspend a YO mandatory sentence.

Surrender

A couple interviewees felt that Probation was not surrendering (returning a youth to court who is in violation of the terms of their probation) Youthful Offenders (YOs) because Probation did not want to lose their credibility with the youth or because Probation was fearful of YO receiving adult time. Some stated the complete opposite: Probation is surrendering the youth. One in particular stated Probation surrenders YOs, while judges are less likely to hold the youth in violation. Another interviewee agreed that judges were not imposing sentences after a youth had violated probation. The SAC did not have access to data that would either support or dispute the issues surrounding surrenders.

Youthful Offender Law as a Deterrent

One interviewee noted that only those juveniles who were frequently in front of the court were aware of the Youthful Offender (YO) Law and its consequences. In general, juveniles are not aware of the law. Four interviewees believed the law encouraged juvenile accountability among

those who are aware of the law. Some felt there is a need for more outreach and education to youth, especially in DYS secure settings about the YO Law.

Re-Offenders

Most interviewees have not seen Youthful Offenders (YOs) back in the juvenile court system. However, a few prosecutors reported seeing YOs re-offend as delinquents.

General Thoughts/Comments on the Massachusetts Law

Those interviewed were asked what their overall feelings and experiences had been regarding the Juvenile Justice Reform Act, specifically relating to Youthful Offenders (YOs). The majority of those interviewed thought that, overall the YO proceedings are a vast improvement from the previous transfer hearing process. Compared to the old transfer system, the indictment, trial, and sentencing of a YO are significantly shorter, serving justice and its youth much quicker than before. This shortened judicial period means that convicted YOs not only receive sentences and DYS services more quickly than they would have previously, but also for longer periods of time (DYS supervision is extended to 21).

Overall, most interviewees believed the quality of investigations and dispositions has improved, stating prosecutors and defense are more thorough because the consequences are more severe. More than half agreed that the law lends accountability to the juvenile justice system as a whole by putting "teeth in the law," meaning youth are being held accountable for their actions with the consequence being one of the three possible YO sentences.

There were a few negative observations made regarding the YO Law. One observed that some youth plead guilty as a delinquent to more or harsher crimes than they actually committed rather than taking the risk of facing accurate or lesser charges as a YO. Often the prosecution holds a YO charge "over the head" of the juvenile. The juvenile not wanting to be charged and tried as a YO will plead out as a delinquent. Another believed a juvenile would rather receive a more severe but shorter sentence, than be under DYS care for a longer period of time as a juvenile (e.g., 15 year old pleads guilty as a YO and takes a House of Correction sentence for 6 months, rather than take a commitment to DYS until 18 as a juvenile).

One interviewee emphasized that the law does not include youth under the age of 14 who commit YO-eligible crimes. These youth, including those charged with murder, are currently tried as delinquents. Another stated the courts were losing their credibility with police and victims because YOs were getting shorter sentences than in the now defunct transfer system. This particular interviewee believed that juvenile court judges were still ruling more from a rehabilitative stance and in the best interest of the child, rather than what was best for public safety as required by statute.

Training Needs

All respondents agreed that continued training should be a priority for prosecution, defense, Probation, and judges. One suggestion was to continually train Assistant District Attorneys (ADAs) and defense attorneys on the law and their respective roles. Another interviewee thought that training in effective advocacy and sentencing would be useful for defense attorneys.

Others suggested training on Youthful Offender (YO) sentencing for all parties, since this area is often the most confusing.

Another interviewee suggested specifically training juvenile judges in Superior Court proceedings and sentencing. It was this person's opinion that juvenile judges often do not have the experience in adult criminal law and often their view of rehabilitation influences their YO sentences.

One person suggested cross training juvenile probation officers for juvenile, adult, and YO cases. Another recommended probation officers sit in and review Superior Court sentencing proceedings. This was believed to help Probation gain a better perspective on appropriate adult sentencing.

CONCLUSION

The 1997 data obtained from Office of the Commissioner of Probation (OCP) clearly shows the small number of youth who have been prosecuted as Youthful Offenders (YOs) for the serious felonies selected for this study. Prosecution seems to be carefully examining and choosing which juveniles they indict as YOs. The next logical step for research would be to examine the outcome of YO cases. However, a comparison of YO outcomes and delinquent outcomes would prove to be difficult, since each youth's situation and criminal circumstance is unique.

Overall, those interviewed thought the YO Law was a vast improvement over the old transfer hearing process. It was the general consensus that trials not only were heard quicker, but with DYS's authority expanded to include those youth up until 21 years of age, convicted YOs received services for longer periods of time. Convicted youth are now receiving essential services for the appropriate length of time.

Many interviewees thought the YO Law is a suitable response to violent juvenile offenders. Prosecutors generally feel if a juvenile's offenses are serious enough to make them eligible, tried, and convicted as a YO, then the YO sentencing options are in accordance to the crime. Almost everyone pointed out the number of convicted YOs was no where near what the law's opposition groups thought it would be when the law was first passed.

Training in YO Law, procedure, and sentencing were suggestions that all interviewees thought were important and necessary. Many agreed there are gray areas that need to be clarified. Since many of the counties handle similar cases differently, training in the interpretation and execution of the law would be beneficial for all parties.

All agreed there should be more communication and information sharing between all involved parties, as well as certain modifications and clarifications (e.g., "any sentence under the law," suspended sentences, waiving judge's report) made to the YO statute. Such information sharing and modifications will bring clarity to the YO Law and assist the court in better serving its youth.

The authors suggest that each group involved with YOs create a self-monitoring system to continually review their YO practices and standards as well as regulate their handling of such cases. This exercise could serve as the basis for improved YO training as well as the impetus of further research needed in this area. Additional research could improve both the capability of those who handle YOs as well as the treatment of YOs.

All states have made some recent changes regarding how serious and violent juveniles are processed. Increasingly, state laws look at violent juveniles as adults through adult court proceedings and correctional sanctions. More research needs to be conducted on this topic to understand the effects of juvenile transfers, and better serve the population it affects.

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APPENDIX A

Selected Felony Offenses Included in the Youthful Offender Analysis

Aggravated Rape

Arson

Armed Robbery

Assault and Battery

Assault to Kill

Assault with a Dangerous Weapon

Attempted Murder

Burglary

Car jacking

Home Invasion

Indecent Assault & Battery of a Child

Indecent Assault

Indecent Assault & Battery of a Person

Indecent Assault & Battery

Possession of Ammunition

Possession of a Sawed-off Shotgun

Rape

Rape of Child

Rape of Child with Force

Robbery

APPENDIX B

List of Eligible Offenses NOT Included in the Youthful Offender Analysis

Armed Assault

Armed Assault in a Dwelling

Armed Assault with Intent to Rob

Assault

Assault to Rob

Assault with Intent to Rob

Assault and Battery of a Police Officer

Assault and Battery with a Dangerous Weapon

Assault with a Dangerous Weapon

Assault with Intent to Maime

Assault with Intent to Rape

Attempted Armed Assault

Manslaughter

Mayhem