

THE MASSACHUSETTS JUVENILE JUSTICE
SYSTEM OF THE 1990s:
RE-THINKING A NATIONAL MODEL

Report of the Boston Bar Association's
Task Force on the Juvenile Justice System

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INTRODUCTION

The juvenile justice system in America was developed on the premise that individuals under the age of eighteen who commit crimes do not act with the same degree of responsibility as their adult counterparts and should, accordingly, be treated differently. The system has evolved as one centered on rehabilitation of juveniles, not just on their punishment. Today, however, escalating levels of juvenile violence have led to legislative changes in many states, including our own, that have greatly compromised this longstanding and laudable focus.

The Boston Bar Association commissioned this study to analyze specifically two recent changes in the Massachusetts juvenile justice system.¹ In 1990 and again in 1991, following widespread publicity concerning three particularly brutal homicides committed by juveniles, the Legislature amended the statutes pertaining to the transfer process -- the procedure by which it is determined whether a juvenile should be tried as an adult -- to make it easier to try juveniles accused of certain offenses as adults. The Boston Bar Association wanted to know how those involved in the system perceived these amendments and what philosophical and practical

¹/ The study was conducted by a Task Force appointed by the President and Council of the Bar Association. It was composed of attorneys (including defense attorneys and prosecutors), a clinical psychologist and a law student. Some members of the Task Force had had extensive experience with the juvenile justice system before working on this project. Others had only limited experience with the system.

impacts the amendments have had, and are likely to have, on the juvenile justice system. This Report attempts to answer those questions based on a review of the literature on juvenile justice reforms across the country; extensive interviews of officials in the executive and legislative branches of our state government, judges, prosecutors, defense attorneys, juvenile offenders, probation officials, officials of the Department of Youth Services ("DYS") and others who work with juvenile offenders; and discussions among Task Force members that took place over a year-long period.

The Report first examines the history of the juvenile justice system -- including the manner in which the system's rehabilitative goals have developed over time -- and analyzes how the current system attempts to balance rehabilitative and punitive goals.

Second, the Report describes how the juvenile justice system now operates in Massachusetts.

Third, the Report examines the evolution of the transfer process and the recent changes in that process enacted by the Massachusetts Legislature. It evaluates the impact of these changes in terms of their stated goals as well as in terms of their actual effect on the rehabilitative focus of the juvenile justice system.

In Appendix I the Report offers recommendations for revisions in existing transfer legislation.

In Appendix II, the Report provides demographics of the adolescents under the supervision of the Probation Department or DHS.

I. HISTORY OF THE JUVENILE JUSTICE SYSTEM IN MASSACHUSETTS

In 1991, the National Council on Crime and Delinquency ("NCCD") cited the Massachusetts juvenile corrections system and the community-based programs of DYS as a national model which appropriately balanced considerations of public safety and rehabilitation. NCCD based its conclusion on its finding of a relatively low recidivism rate among offenders committed to DYS when compared to rates in other states.² Despite this national reputation, however, in recent years the Massachusetts juvenile justice system has come under attack. An informed evaluation of these criticisms can only be made with an understanding of how the system developed.

A. Purposes of the Juvenile Justice System: Why Treat Children Differently.

Histories of the juvenile justice system in the United States generally attribute the development of a separate criminal justice system for children to three factors: (1) a recognition that children's behavior is very strongly influenced by their social and familial environments; (2) a concern that the limited autonomy of their behavior makes punishment unfair; and (3) a belief that, because of their vulnerability to being influenced by their environments, it is possible to modify their behavior and prevent adult criminality. While a youth may know "right" from "wrong",

^{2/} See generally, National Council on Crime and Delinquency, Unlocking Juvenile Corrections: Evaluating the Massachusetts Department of Youth Services (1991).

society has developed the view that a child offender cannot be considered blameworthy in the same manner as an adult, and thus should not receive the same punishment as an adult who committed the same offense.³ According to this view, determining the appropriate societal response to a child's offense or conduct requires an integrated analysis of both the seriousness of the offense (i.e., the degree of violence perpetrated, the injury inflicted or value taken, and the resulting harm) and the quality of the offender's choice or decision to perform it. While an eight-year old can produce as much "harm" with a .44 magnum handgun as an adult, the degree of his or her culpability differs because the level of development of an eight-year old's judgment, moral and social values, as well as his or her independence from the environment, mitigate blameworthiness.

Because a child who commits the same crime as an adult may thus have a markedly different level of responsibility for the crime, traditional precepts of juvenile justice require examination of the offender as well as the nature of the offense. In conducting this examination, the system also tries to develop measures tailored to the individual offender. In doing so, it emphasizes efforts to rectify the offender's deficiencies and to create the opportunity for the juvenile to escape what may otherwise become an inevitable criminal lifestyle. If the ability to make responsible choices is

3/ See Barry C. Feld, The Transformation of the Juvenile Court, 75 Minn. L. Rev. 691, 724 (1991).

learned behavior, this model of the juvenile justice system affords both society and the juvenile the chance to make things right.

B. The Development of Juvenile Justice.

The establishment of specific mechanisms and institutions for children who violate the law occurred as a result of a Quaker reform movement focused on poverty and adult crime. In 1824 the New York Legislature established the first "House of Refuge" where children were placed to remove them from the negative influences of their "degrading", "intempera[te]" and "indolen[t]" families and friends, and to provide for education and moral reformation to prevent future criminal behavior.⁴ Managers of the house held broad authority to determine which children were "proper objects" of reformation.⁵

As the country grew and the population became more heterogeneous, and as some parents protested the summary removal of their children from home, various legal challenges to the system and alternative philosophies about how to prevent delinquency developed. During the middle part of the nineteenth century, the emphasis shifted from a religious and educational approach to an emphasis on providing a better family life and vocational training. Foster homes began to be heavily utilized, especially as a means of removing abandoned and delinquent immigrant children from eastern cities to the west. Localities varied greatly, however, in how they

⁴/ Sanford J. Fox, Juvenile Justice Reform: An Historical Perspective, 22 Stan L. Rev. 1187, 1189-90 (1970).

⁵/ Id. at 1190.

made decisions about which children to remove from their homes and which ones to process through the adult criminal system.⁶

The next phase in the development of the juvenile justice system began at the end of the nineteenth century with the establishment of separate juvenile courts, the development of a variety of child welfare organizations and the development of social/psychological approaches to behavior modification. The philosophy of parens patriae, the state as "parent", became the basis of legislation in Massachusetts and other states which mandated that government assume the role of ensuring that the "care, custody and discipline of the children brought before the court shall approximate as nearly as possible that which they should receive from their parents ..."⁷ The influence of the Industrial Revolution was apparent in the establishment of "Industrial Training Schools," large state-funded institutions which attempted to provide vocational education and various social/psychological treatment approaches to modify delinquent behavior. The issue of which children would be treated within the separate juvenile system and which would be referred to the adult system was gradually formalized through what came to be known as the "transfer process" -- a subject to which this Report will return.

^{6/} Id. at 1208-22.

^{7/} Mass. Gen. L. Ann. ch. 119, § 53 (emphasis added).

C. Due Process Evolution.

Although there were many programmatic and administrative changes in the first half of this century, the next major modification of the juvenile justice system resulted from the mid-century focus on the civil liberties of juveniles. Supreme Court review of juvenile court procedures led to changes in the laws regarding the jurisdiction of adult criminal courts over juveniles and the manner in which juveniles charged with crimes were to be treated within the juvenile courts.

In 1966, the Supreme Court in Kent v. United States,⁸ limited judicial discretion in transferring juvenile offenders to adult courts. The Court held that basic procedural due process requirements must be observed in any determination to transfer a juvenile to adult court. Before a juvenile may be transferred, said the Supreme Court in Kent, he or she is entitled to a hearing meeting the essentials of due process and fair treatment, to access by his or her counsel to probation records and other social records which presumably would be considered by the transferring court, and to a statement of the reasons for the transfer decision sufficient to enable meaningful appellate review.⁹

The following year, the Court issued its decision in In Re Gault,¹⁰ guaranteeing juveniles, in proceedings to determine

⁸/ 383 U.S. 541 (1966).

⁹/ Id. at 557-563.

¹⁰/ 387 U.S. 1 (1967).

delinquency, a number of due process rights previously afforded only to adults in criminal cases: representation by counsel, notice of the charges, the privilege against self-incrimination and cross-examination of witnesses. Prior to Gault, the concepts of parens patriae and "best interest of the child" had guided the process and outcome of cases in the nation's juvenile courts. Under these doctrines the government could intervene in the lives of children and deprive them of liberty. Such intervention, in the "best interest of the child," was undertaken without regard to the traditional due process protections guaranteed and afforded to adults. Juveniles were often committed to locked institutions for indeterminate periods of time -- often for the duration of their minority -- without benefit of counsel. When juveniles did have representation, their advocates usually confined their participation to "best interest" considerations. Gault attempted to change this by assuring that due process consideration would be observed in the treatment-oriented juvenile court.

D. The Evolution of Juvenile Justice in Massachusetts.

Historically, even as they embraced (at least in theory) the goal of rehabilitation, courts in Massachusetts in the early 20th century continued to institutionalize juvenile offenders and commit them to adult correctional facilities. Delinquent boys under the age of fifteen could be committed to training schools; those boys fifteen and older could be sent to any institution established for

the "reformation" of juvenile offenders.¹¹ Similarly, delinquent girls under seventeen could be committed to the Industrial School for Girls.¹² Alternatively, the courts could, in lieu of commitment to an institution, impose "such other punishment as is provided by law for the offense," including confinement in an adult correctional facility.

Moreover, as of 1921, charging any juvenile between the ages of seven or seventeen with a crime punishable by death or life imprisonment subjected him or her to trial and sentencing in the adult criminal courts. This jurisdictional rule continued until the Commonwealth modified the juvenile code in 1948 to provide for the commitment of any delinquent child to the custody of the Youth Service Board.¹³ The 1948 amendments gave the Youth Service Board the discretion to transfer a child to that facility which in the opinion of the Board would best serve the needs of the child.¹⁴ The 1948 Act also restricted transfer to the adult system to those juveniles between the ages of fourteen and seventeen, unless they had committed an offense punishable by death or life imprisonment.

¹¹/ Mass. Revised L. 86, §27 (1922).

¹²/ Id.

¹³/ In 1952, the Youth Service Board was renamed the Division of Youth Services and was placed under the direction of the state Department of Education. In 1969 it assumed its present name, Department of Youth Services, and was made part of the Executive Office of Human Services.

¹⁴/ 1948 Mass. Acts 310, §4.

Between 1965 and 1968 the Youth Service Board was the subject of several major critical studies. The investigations were initiated by reports of brutality and extreme corporal punishment and found the system to be, among other things, coldly custodial and authoritarian.¹⁵ The publicity attending these charges led Governor John Volpe to invite a team of experts from the U.S. Department of Health, Education and Welfare to conduct an investigation. The HEW Study found a myriad of deficiencies, and these findings were confirmed by a blue ribbon committee appointed by Governor Volpe. A coalition led by the Massachusetts Committee on Children and Youth introduced reform legislation that was passed in 1969 with the strong support of Governor Francis Sargent.¹⁶ The reform bill, 1969 Mass. Acts 838, reorganized the juvenile correctional system into what is now DYS, with a broad mandate that included effective clinical and diagnostic services in a community-based system of care.

A national search for a DYS commissioner to lead the new agency brought Dr. Jerome G. Miller to Massachusetts with his vision to humanize services for delinquent children and to build therapeutic communities within the institutions.¹⁷ Within a short time

^{15/} Lloyd E. Ohlin, et al., Radical Correctional Reform: A Case Study of the Massachusetts Youth Correctional System. Harvard Ed. Rev., Feb. 1974 at 74, 78-79.

^{16/} Id.

^{17/} William J. Greilich, et al. Statistical Analysis Center, Mass. Committee on Criminal Justice, Punishing Juveniles: What Works? 13-14 (1981).

Dr. Miller, frustrated by the lack of improvements in the system, determined that a swift closure of all the then existing custodial training schools was necessary. The early 1970's thus brought about the closing, one by one, of each of the state's large, traditional juvenile facilities. Dr. Miller replaced them with small, contracted community-based programs operated by private non-profit organizations, together with several relatively small, locked facilities operated by DYS.

II. HOW THE JUVENILE CORRECTIONAL SYSTEM WORKS IN MASSACHUSETTS¹⁸

A. The Court Process

Juvenile cases are assigned to one of the four divisions¹⁹ of the Juvenile Court Department or are heard in a juvenile session in one of the 69 district courts in the state. On the whole, the Task Force found that the divisions of the full-time juvenile court provided a better venue for the disposition of juvenile cases because of their expertise and because they involve specialists to a greater extent than the district courts in all phases of such cases. Court clinics, administered through

^{18/} On January 13, 1993, Governor William F. Weld signed into law the Court Reform Act of 1992, 1992 Mass. Acts 379, which, among other things, created a single, statewide juvenile court to be phased in over three years. That statute took effect on February 12, 1993. It is too early, of course, to assess the effect of this legislation on the juvenile justice system. This section of the Report profiles the juvenile correctional system as it existed prior to enactment of this recent Court Reform Act.

^{19/} The four divisions are located in Bristol County and the cities of Boston, Springfield and Worcester.

the Division of Forensic Mental Health of the Department of Mental Health, are more likely to be available in the juvenile courts to assist the Probation Department in its efforts to provide psychiatric and psychological services to adolescents. According to judges and attorneys who work in district courts, juvenile cases in district courts are often assigned to the least senior judge in a particular court, or to a visiting judge, and very often to a judge who would prefer not to hear such cases. In many district courts there are no probation officers who work exclusively with juvenile offenders or other specialized services.

In either venue, at arraignment, a juvenile charged with an offense, like an adult, may have bail set or may be detained pending trial or until bail is met. Juveniles detained for trial on serious charges are held in one of seven locked facilities maintained by DYS. Those awaiting trial on charges not warranting a locked facility are referred to one of six staff-secure facilities (i.e., a facility providing staff supervision twenty-four hours a day). Whether in a physically secure or staff-secure facility, juveniles awaiting trial receive five hours of academics a day, some vocational training and medical and recreational services. They do not, however, receive any individualized services directed to the problems associated with their delinquency, because of their status as pre-trial detainees.

A youth adjudicated delinquent in a juvenile or district court proceeding may be placed on probation with or without a suspended commitment to DYS or may be committed outright to DYS.

B. Juveniles on Probation

If placed on probation, the adolescent remains under the supervision of the court for the duration of the period of probation. The average length of a probation term is eleven months. The court sets the conditions of probation and bases its decision on the recommendation of a probation officer assigned to the offender. That recommendation in turn is based upon a "risk/need analysis" performed by the probation officer. The risk/need analysis is designed to determine the intensity of probation supervision required, based on a weighting of the offense and a variety of factors -- including school, drug, health and family problems -- thought to predispose adolescents to delinquency.

In addition, it is on the basis of the risk/need analysis that the probation officer determines the amount of time to allocate to each probationer. Probation intensity is typically characterized as: "maximum", requiring one face-to-face contact every two weeks; "moderate", one such contact monthly; and "minimum", occasional phone or other contact.

The Task Force found that probation services are unfortunately uneven, varying greatly with the court's ability to provide services directly, the presence or absence of a court

clinic, and the resources available in the local community. Depending on court resources and the needs of the offender, services provided directly by probation staff may be limited to occasional phone contact or brief monthly meetings, or they may include weekly counseling visits, community services, restitution programs, after school recreational programs and violence prevention group programs. If the court can neither provide services directly nor contract for services with local private agencies, it often refers juveniles on probation and in need of services to available community resources. Consequently, whether the probationer receives services may well depend on whether the required services are available in the community or close to transportation and whether the probationer's family has health insurance or other resources to pay for the services.

If one of the conditions of probation is that the adolescent have a residential placement, the juvenile may be referred to one of several privately-funded group homes and treatment centers in the state. In the best of circumstances, payment for such placement is obtained through cost-sharing by the Department of Social Services, in whose custody the juvenile is voluntarily placed, and the juvenile's local school system.

C. Commitment To DYS

If a juvenile adjudicated delinquent is committed to DYS, that agency, not the court, determines the nature of the

treatment the youth receives. As one might expect, some judges lament that they cannot specify what treatment DYS-committed offenders should receive or for how long a period treatment should last. The judges whom the Task Force interviewed tend to agree that DYS makes better treatment decisions for serious offenders (e.g., those adjudicated delinquent by reason of murder, manslaughter or sexual assault) than for less serious offenders (e.g., those adjudicated delinquent by reason of various property crimes). In the judges' view, DYS is more likely to place the serious offender in a physically secure facility where treatment is thought to be more intense and the adolescent is removed from negative influences in his or her community.

For most youths committed to DYS, decisions about treatment occur after the offender has been evaluated in a detention/assessment facility. The evaluation is coordinated by a caseworker who must prepare a case history, including any record of the offender's prior involvement with the court or other state agencies, a family history, a school history and a medical history. The caseworker must also visit the offender's home and arrange for a psychological evaluation by a psychologist employed by or under contract with DYS. The information thus gathered is presented at a so-called "staffing," which determines the treatment plan for the juvenile. The participants in the staffing always include the caseworker, the juvenile and the

parents. The staffing may also include the clinician, detention staff, the juvenile's attorney, school officials, previous therapists, probation staff and members of the district attorney's staff. A treatment plan determined by the staffing may include placement in a community-based group home, placement in foster care, placement in the homeward-bound program (a short-term program stressing the conquest of physical challenges, based on the outward bound model), placement in a non-residential program (various community-based programs for youths in the custody of DYS, but living in their own homes or foster homes under intensive DYS casework supervision), or some combination of these treatment alternatives.

D. Classification of Serious Offenders

If a youth has committed a serious offense (e.g., murder, rape, armed robbery) he or she is automatically referred to the DYS classification panel for review. A youth may also be referred to the panel if he or she is a chronic offender or has failed to respond to less restrictive programs.

The classification panel was established in 1981 in response, in part, to concerns about public safety. Its purpose was to increase the accountability of serious offenders, establish a uniform method of placing offenders in locked facilities and to communicate clearly the concern of DYS about public safety. Classification injects notions of proportionality to juvenile sentencing analogous to those governing adult

sentencing by introducing determinate minimum terms in secure treatment for specific serious offenses.

Each year approximately 30% of youths committed to DYS are referred to the panel, and the panel accepts 75% of the cases presented to it. The panel consists of three members who are appointed by the Commissioner of Youth Services and is charged with reviewing an offender's case to determine the need for security, the length of stay in security and the specific program placement. These determinations are made after a hearing in which the offender's caseworker and clinician present their evaluations. The youth's attorney, a prosecutor, a probation officer and the youth's parents may also be present at the hearing. The panel makes its determinations by balancing the risk the youth presents to the community with his or her perceived ability to control or modify anti-social behavior. Any decision of the panel may be appealed to the deputy commissioner by the youth or by the DYS regional director or assistant commissioner of facility operations.

Despite the continued rehabilitative purpose behind a youth's commitment in DYS' secure facilities, the punitive aspect of confinement is not lost on the adolescents who undergo treatment there. The young people whom the Task Force interviewed in secure treatment acutely feel the loss of liberty and their isolation from family and friends. For many, secure treatment, with its regimentation and rules, represents the most

structure they have ever known in their lives. Moreover, the treatment itself is regarded by some as punitive. One young man told the Task Force, for example, how strongly a sense of punishment he felt when required to participate in group therapy sessions.

III. EVOLUTION OF THE JUVENILE TRANSFER LAW

A. 1975-1990

The changes in the Massachusetts juvenile correction system in the early 1970's were followed by changes in the state's transfer law. In Breed v. Jones,²⁰ the Supreme Court struck down the California system for transferring juveniles to adult court. Because the system in California for making transfer decisions was similar to that of Massachusetts, the case had significant implications in the Commonwealth.

Prior to Breed, any juvenile in Massachusetts between the ages of fourteen and seventeen accused of a violation of any state law or city ordinance faced an adjudicatory hearing in juvenile court or in a juvenile session of a district court. If the juvenile were found delinquent, the court would examine his or her "record" and determine whether a subsequent hearing on amenability to treatment within the juvenile system should be conducted. If after a second hearing on "amenability to treatment", the juvenile were found not amenable, he or she would be transferred to the adult court to be re-tried as an adult.

²⁰/ 421 U.S. 519 (1975).

Because this new trial involved the same offense for which the juvenile had already been found delinquent, the Court in Breed held that the prosecution of a juvenile for the same offense in adult court after an adjudication of delinquency in juvenile court violated the double jeopardy clause of the Fifth Amendment.

In response to Breed, Massachusetts enacted a transfer statute in 1975 which remained relatively unchanged for fifteen years. This "new" transfer law contained several important provisions. First, no juvenile under the age of fourteen could be tried as an adult under any circumstances. Second, prior to 1991 pursuant to Mass. Gen. L. c. 119, §61 (1990) (amended 1991), a juvenile between the ages of fourteen and seventeen years of age was "eligible" to be transferred, if the juvenile either had been charged with an offense, which if he or she were an adult would be punishable by incarceration in state prison, and if he or she had been previously committed to DYS or the juvenile had been charged with an offense involving the infliction or threat of infliction of serious bodily harm. Only in those narrow circumstances could a proceeding to transfer a juvenile to the adult court be brought. Third, any court which issued an order transferring a juvenile to adult court was required to make written findings, based on clear and convincing evidence (1) that the juvenile presented a significant danger to the public and (2) that the juvenile was not amenable to rehabilitation within the juvenile justice system. These findings had to be supported by

subsidiary findings regarding the seriousness of the offense, the child's family, school and social history, the adequacy of protection of the public, the nature of any past treatment efforts and the likelihood of rehabilitation.

In addition, the transfer hearing itself was divided into two parts: a probable cause hearing, called the "Part A" hearing; and a hearing to determine whether the juvenile was amenable to rehabilitation within the juvenile system, designated the "Part B" hearing. If after the Part A hearing a court found probable cause that the juvenile had committed the offense, the Commonwealth then bore the burden of proving by clear and convincing evidence at the Part B Hearing, that the juvenile was both a significant danger to the public and not amenable to rehabilitation within the juvenile system. Only if the Commonwealth met this burden could the court order the juvenile transferred to the adult court for trial.

B. The 1990 Transfer Amendments

The shocking murder of a young woman in October, 1990, by a gang of juveniles provided the impetus for the first major revision of the 1975 juvenile transfer statute. On Halloween night in 1990, Kimberly Rae Harbour was repeatedly raped, beaten and stabbed by a group of youths in the Franklin Field section of Boston. Five of the youths accused of the murder were under the age of seventeen. On December 5, 1990, in response to Ms. Harbour's murder, the Legislature enacted amendments to the

transfer section of the juvenile code which were designed to make it easier to transfer juveniles accused of murder to adult court for trial and sentencing.²¹

The amendments, which took effect on January 1, 1991, created for the first time in Massachusetts a rebuttable presumption that a juvenile accused of murder was dangerous and not amenable to rehabilitation in the juvenile system and therefore should be transferred to the adult system. As noted in the preceding section, prior to these amendments, the burden was on the Commonwealth to demonstrate by clear and convincing evidence that the juvenile was dangerous and not amenable to rehabilitation. With the introduction of the rebuttable presumption, the burden of production shifted to the juvenile to present evidence sufficient to demonstrate that he or she was not dangerous and was amenable to rehabilitation.²² The amendments also reduced the burden of proof necessary to support a transfer of a juvenile to adult court in all murder cases from clear and convincing evidence to a preponderance of the evidence.

Thus, as a result of these amendments, following a finding of probable cause at the Part A Hearing, the defendant, in the first instance at the Part B hearing, bears the burden of rebutting the presumption that he is both dangerous and not amenable to treatment. The Commonwealth's burden in countering

²¹/ 1990 Mass. Acts 267.

²²/ 1990 Mass. Acts 267 §3.

any such rebuttal is reduced to proof by a preponderance of the evidence.²³

In addition, as a result of the 1990 amendments, a juvenile not transferred, but committed to DYS after an adjudication of delinquency for murder, will be held until age twenty-one.²⁴

Finally, the 1990 amendments required that all juveniles charged with specifically designated crimes resulting in serious bodily injury -- including murder, manslaughter, rape, kidnapping or armed robbery -- be presented to the court for possible transfer to the adult system.²⁵ This change eliminated both the court's discretion to order and the prosecutor's discretion to request a transfer hearing for these specified offenses.

C. The 1991 Amendments

One year after the passage of the 1990 Amendments, on December 31, 1991, the Legislature passed the Copney-Grant bill in an effort to ease further the standards for the transfer of a juvenile to adult court. The bill was named after eleven-year-old Charles Copney and fifteen-year-old Korey Grant who were shot to death on the steps of an apartment building in the Roxbury section of Boston. The three boys accused of their murders were all juveniles at the time of the shooting. In the fall of 1991,

^{23/} Id.

^{24/} Discharge from DYS is otherwise mandated at age eighteen unless an extension order is granted by the court. See Mass. Gen. L. Ann. ch. 120, §16-19.

^{25/} 1990 Mass. Acts 267, §3.

when the adolescent accused of actually firing the gun that killed Copney and Grant was not transferred under the transfer law as amended in 1990, the push for stern action against juvenile murderers once again gained momentum.

The initial goal of the bill to which the Copney-Grant amendment²⁶ was attached was to grant to the Commonwealth the right to appeal the denial of a transfer. Support for the Commonwealth's right to appeal was widespread. In its original form, the administration's Copney-Grant amendment provided for the filing of certain juvenile cases directly in adult court. During hearings before the Legislature in October, 1992, however, national juvenile justice experts testified that states that had pursued such "direct filing" models had compromised the effectiveness of existing juvenile justice systems without achieving the desired result of securing long adult prison sentences for violent juvenile offenders. Apparently based in part on this information, the direct-file provisions of the administration's bill were rejected.

The bill which ultimately passed by voice vote on December 31, 1991, requires that transfer hearings be held in eight categories of crimes (murder in the first and second degree, manslaughter, armed assault with intent to murder or rob, rape, forcible rape of a child, kidnapping, and armed

^{26/} Proposed by Governor Weld.

burglary).²⁷ It also provides for an expedited timeline for the Part A and Part B hearings.²⁸

The most significant provision of the 1991 Amendments, however, was one which requires a judge, in the case of a juvenile retained in the juvenile system and adjudicated delinquent by reason of murder, to impose a mandatory minimum sentence: fifteen years minimum to be served before parole eligibility in first degree murder cases and ten years minimum to be served prior to parole eligibility in second degree murder cases. No right of discharge prior to that time is permitted.²⁹ Juveniles retained in the juvenile system and adjudicated delinquent of murder are first committed to DYS. They are then transferred to the Department of Corrections at age twenty-one, or at age eighteen if DYS so requests, to serve out the balance of their sentences.

Thus, in any case of murder in Massachusetts, the offender will serve time in an adult prison regardless of the age of the offender at the time the offense was committed.³⁰ For the first

²⁷/ 1991 Mass. Acts 488, §2.

²⁸/ 1991 Mass. Acts 488, §3.

²⁹/ 1991 Mass. Acts, §7. In manslaughter cases, a commitment to DYS is required until the juvenile attains the age of twenty-one.

³⁰/ In further amendments, enacted in December, 1992 to correct errors in the 1991 bill, age fourteen was established as the minimum age at which a transfer hearing would be held. 1992 Mass. Acts 286, §188.

time, adolescents who are found to be capable of being rehabilitated will face a sentence in adult prison (regardless of their rehabilitative needs or capacity or their response to treatment within DYS) because of the nature of the crime they have committed.

In providing for state prison terms in juvenile murder cases, the Legislature was required to add an indictment provision to the juvenile code in the 1991 Amendments.³¹ The indictment provision underscores the radical restructuring of the juvenile justice system resulting from the 1991 amendments. Under the indictment provision, the Commonwealth has the option of bypassing the Part A probable cause hearing and commencing the transfer process by means of a direct indictment.³² Prior to this amendment, the indictment procedure had only been used in adult cases.

IV. CRITIQUE OF THE 1990 AND 1991 LEGISLATIVE PROVISIONS OF THE TRANSFER HEARING STATUTE: IS THE RATIONALE RATIONAL?

A. The Rationale

In many ways, the 1990 and 1991 legislative changes can be understood as frustrated outcries against three murders. Those murders, which were especially gruesome, engendered in many a desire for retribution.

³¹/ 1991 Mass. Acts 488, §10.

³²/ An indictment is a procedure by which a grand jury instead of a judge determines whether there is probable cause to believe that the subject of the indictment has committed the particular offense charged.

Whereas the juvenile justice system had been premised on the notion that society was both capable of, and responsible for, ensuring that as many juveniles as possible became law-abiding citizens, those who supported the 1990 and 1991 legislative changes saw this approach as "unsatisfying" and "soft". The proponents of legislative change, especially the Governor, believed that regardless of society's ability to reform certain juveniles, society has an obligation to exact retribution for at least some crimes.³³ Moreover, these reformers believed that retribution could not be achieved by retaining the juveniles who committed those crimes in the juvenile justice system. Only by facilitating the transfer of violent offenders to the adult system, they concluded, could retribution be properly attained.

Those who advocated the 1990 and 1991 legislative changes also argued that they were necessary to effect other goals. They believed that changes in the transfer statute would improve the efficiency of the transfer process; they believed that by making it easier for courts to transfer violent juveniles to the adult system, DYS would be better able to treat the remaining juveniles; and, they believed that changes in the sentencing statute would achieve greater uniformity in the treatment juveniles received.

³³/ As Robert J. Cordy, the Governor's chief legal counsel argued to the Task Force, "just because they [juvenile offenders] may become law-abiding, productive citizens is not enough. There needs to be a balancing of justice [i.e., a community sense of satisfaction] with public safety." Interview with Robert J. Cordy (July 1, 1992).

B. The Reality

In assessing whether the revisions to the transfer statute were necessary or, from a pragmatic perspective, effective, the Task Force interviewed a wide variety of participants in the juvenile justice system, including prosecutors, defense attorneys, judges, legislators, and DYS officials. The Task Force investigated the reaction of other jurisdictions to increased juvenile violence and reviewed the analysis of legal commentators who have studied this issue intensively. The Task Force's conclusion from consulting these sources is that there are significant impediments to the achievement, by the revisions to the transfer law, of their desired results. They will not necessarily put more violent juveniles into adult jails for longer periods of time, and they are likely to affect adversely the ability of the juvenile system to treat non-violent offenders.

1. Retribution

During our inquiry, it became apparent that the amendments were the legislative outgrowth of public pressure to enact retributive measures against violent juveniles. Insofar as the legislative amendments sought to effect this retribution through harsher penalties for juvenile offenders, however, they have not achieved their purpose.

If anything, the enactment of mandatory minimum prison terms, for example, seems to tip the balance against transfer to the adult system, where there is potential for far greater punitive sanctions.

According to some prosecutors, the mandatory minimum sentences for murder discourage judges from transferring juveniles to the adult system for trial, because judges know that juveniles charged with murder in the first or second degree will end up in the Department of Corrections whether or not they are transferred. Thus, by returning the youthful offender to the juvenile system, courts believe that they may obtain, in some sense, the best of both worlds: they secure some treatment for the juvenile within the structure of programs available in the juvenile system and exact retribution once the juvenile turns eighteen or twenty-one.³⁴ As the discussion below shows, however, this belief may be misplaced.

Moreover, although the 1991 amendments mandated an increased number of transfer hearings by requiring hearings in certain categories of cases, both the number and rate of transfers have declined since these amendments were enacted. Figures obtained from the Commissioner of Probation³⁵ reveal that in 1990, before the effective date of the 1990 amendments, (January 1, 1991) there were 118 transfer hearings held statewide, resulting in 11 transfers to the adult criminal court (9%). In 1991, the number of hearings rose to 155 with 17 children being transferred (11%). In 1992, however,

³⁴/ The 1991 amendments give the Commissioner of Youth Services, with the concurrence of the Commissioner of Corrections, the authority to transfer a juvenile offender to the adult correctional system at age eighteen. See Mass. Gen. L. Ann. ch. 120, §10.

³⁵/ Source: Summary Report, December 1992. Research and Planning Department, Office of the Commissioner of Probation.

the number of transfer hearings rose to 229, but the number of juveniles who were transferred dropped to 10 or 4%.³⁶

Ironically, there are also reliable indications that even when youths are transferred to the adult system, their sentences do not measure up to punitive expectations. Several studies show that children tried in adult court receive lower sentences than adults because their age engenders leniency.³⁷ Moreover, as Frank Orlando, a former Florida juvenile justice, testified at the legislative hearings which preceded the 1991 amendments, as the adult system is forced to accommodate more children, their sentences are reduced because the threat they present to public safety is measured against that of an adult offender.

2. Efficiency of the Transfer Process

From interviews and the experiences reported by individual prosecutors and defense attorneys practicing under the amended transfer law, the Task Force analyzed whether the legislative changes have made the system more efficient. So far there is little indication that efficiency has improved.

First, although the amendments reduced the prosecutors' burden of proof, there is little evidence that they have shortened the

^{36/} One juvenile court judge reported to the Task Force that his court was incapable of handling the increased number of transfer hearings resulting from the 1991 amendments. The resulting backlog has led to an increased number of plea bargains and often to reduced charges.

^{37/} See Barry C. Feld, The Juvenile Court Meets the Principle of the Offense: Legislative Changes in Juvenile Waiver Statutes, 78 Journal of Criminal Law and Criminology at 501 (1987).

length of the transfer hearings or otherwise have facilitated transfer decisions.³⁸ Second, and more significant, because the amendments mandate transfer hearings in eight categories of cases, they strain an already burdened system. A typical transfer hearing requires approximately five days for completion and requires a considerable amount of attorney preparation at significant expense to the Commonwealth for both prosecution and defense.³⁹ The additional mandatory transfer hearings therefore mean more hearing days for the courts and attorneys and more expense for the whole system. This hardly seems a more efficient transfer process.

3. Impact on DYS

While it is difficult to isolate the impact of the amendments on DYS from other changes affecting the system (e.g., increases in violent juvenile crime, see, Risky Business at DYS, The Boston Globe, June 29, 1993) the least that can be said is that the amendments appear to contribute to, rather than alleviate, DYS' burdens. Edward J. Loughran, present Commissioner of Youth Services, voiced important concerns about the amendments' effect on his Department.

^{38/} Indeed, a number of judges complained that the amendments increased their workload significantly by adding the requirement that they report their findings when they decide not to transfer a juvenile (as well as when they do). See also note 36, supra.

^{39/} On the issue of amenability to treatment both prosecutors and defense attorneys generally obtain expert evaluations. This illustrates one kind of expense involved in a transfer hearing.

First, the amendments' mandatory transfer hearing provision, which increases the number of juveniles subject to transfer, exacerbates the diversion of resources from treatment to custodial detention. Juveniles awaiting the outcome of an inevitably lengthy transfer hearing are typically placed in DYS custody. These juveniles are held in DYS' secure detention facilities, without receiving individualized treatment, at great expense to the state. In addition, because DYS must detain these juveniles, it is deprived of an important tool in treating other juveniles who are committed to DYS and whose treatment plans consist of placement in unlocked settings. Typically, DYS returns to secure detention adolescents who are failing in unlocked settings and may be at risk for re-offending. There DYS reviews treatment plans for and imposes short-term sanctions on such juveniles. In the absence of available detention spaces, these short-term measures cannot be effectuated.⁴⁰

Moreover, even when a juvenile is ultimately transferred, DYS remains saddled with the juvenile's care while the juvenile is awaiting trial in adult court.⁴¹

Furthermore, the mandatory minimum sentencing requirements imposed by the amendments make it more difficult for DYS to "treat"

^{40/} The Task Force learned of one tragic case in which a DYS-committed juvenile could not be removed from home because of a lack of available detention beds and was later charged with murder.

^{41/} See Rambert v. Commonwealth, 389 Mass. 771 (1983) (Mass. G.L.c. 119, §68 prohibits detention of a juvenile under age seventeen in an adult correctional facility pending trial).

certain juveniles. Those juveniles who are subject to adult prison terms after their tenure at DYS have little incentive to participate in the rigorous treatment programs DYS operates. Moreover, these youths who are "doing time" in DYS are likely to have a disruptive effect on other juveniles who are participating in individualized treatment plans.

For these reasons, to the extent that the mandate of DYS is the treatment of juvenile offenders, the amendments make it more difficult for DYS to discharge its responsibility. Whether forced to allocate more of its limited resources to juveniles awaiting transfer to adult court or to expend treatment dollars on juveniles who have little incentive to accept treatment, DYS is increasingly relegated to a warehousing agency.

4. Balanced Punishment for Certain Offenses.

The 1991 amendments prescribe determinate sentences for juveniles committed to DYS for delinquency by reason of murder and manslaughter. As noted in Section C of Part III, first-degree murderers must be confined for at least fifteen years. Second-degree murderers must be confined for at least ten years. The juvenile adjudicated delinquent by reason of manslaughter must be committed to DYS until he or she reaches age twenty-one. While these sentences do not balance the consequences for juveniles and adults charged with the same crime, they do attempt to ensure that some significant period of confinement will be imposed for the

offenses of murder and manslaughter, even if the offender is a juvenile.

Where this effort at uniformity may break down, however, is in the disparity between the sentence received by juveniles transferred to the adult system and convicted there on charges of murder or manslaughter and those retained in the juvenile system and found delinquent on those same charges. Once he or she is transferred to the adult system, the juvenile becomes subject to the vagaries of that system. This may mean that the juvenile convicted of murder or manslaughter in an adult court will receive a longer sentence and more jail time than a juvenile retained in the juvenile system for the same crime, or it may mean just the opposite. If judges in Massachusetts' adult courts evince the propensity of judges in other states to treat juveniles more leniently than adults charged with murder or manslaughter because of their age, the results may be the same as those in other states: transferred juveniles may actually serve less time in jail for their crimes than their counterparts adjudicated delinquent for the same crimes and retained in the juvenile system. (See discussion above in Section B.1 of this Part IV.)

Although sufficient experience is not available to determine whether the goal of greater balance in sentencing has been or will be met by the amendments, historical indicators suggest some skepticism and the need to monitor this subject closely.

C. What Direction Next?

Whether the architects of the 1990 and 1991 amendments will ultimately see the accomplishment of the underlying goals of these statutory changes is still a matter of conjecture. But whether those goals are achieved or not, the important question is whether they are worth their cost. To put it another way, is the degree to which the 1990 and 1991 amendments achieve their goals at least equal to the price the juvenile justice system must pay for the changes? Because it seems too early to measure cost in purely economic terms, and the Task Force is not equipped to perform the analysis properly in any event, the Task Force considered a less obvious, but no less important, measure of cost -- the cost to the continued integrity of the juvenile justice system itself.

The legislative changes embody a dramatic philosophical shift as to how the juvenile justice system should deal with violent offenders. While there is nothing new in the view that certain juveniles cannot and should not be treated within the juvenile justice system (that has always been the underlying rationale for the transfer statute), the 1990 and 1991 amendments introduced a very different basis for the decision about how to respond to juvenile offenders. In eight categories of offenses, it is now solely the crime charged that determines whether a juvenile will automatically face a hearing on transfer to the adult system; and, if the crime charged is murder or manslaughter, the nature of the offense determines the penalty imposed as well. The amendments

reduce to secondary matters the juvenile's background, character, and capacity for rehabilitation (i.e., the juvenile justice system's traditional focus on the offender rather than the offense). And, in the case of murder, the legislative changes make essentially meaningless a court's determination as to which juveniles are amenable to treatment because, regardless of amenability, a juvenile adjudicated delinquent by reason of this crime will be confined for ten to twenty years (including a period of incarceration in state prison) depending on the degree of the murder offense.

The 1991 legislative amendments, and to a lesser extent those passed in 1990, thus cast aside certain basic tenets of the juvenile justice system as they have evolved for more than a century. This cost, the Task Force believes, brings into serious question all the changes wrought by the 1990 and 1991 amendments.

Nevertheless, the Task Force recognizes that neither success of the reforms, nor their costs, invalidates the goals they were designed to achieve. For this reason, the Task Force considered whether the centerpiece of the reforms -- the desire for a more visible means of achieving retribution -- could be achieved at lesser cost. The Task Force believes it can be and, accordingly, proposes certain modifications to the legislative amendments.

The Task Force's modifications focus on the mandatory sentencing provisions of the 1991 amendments. As now written, these provisions, in the Task Force's view, are antithetical to the fundamental premise of the juvenile justice system, because,

although they continue to embody the notion that youths and adults should be treated differently (the mandatory minimum sentences are significantly more lenient than life without parole for example), they undermine much of the basis for the differential.

The different treatment accorded youths in the juvenile justice system is justified in large part by the belief that children have far greater capacity to reform than adults. Adults have additional years of experience and accumulated habits that make changes more difficult and unlikely, whereas juveniles are more likely to be influenced and molded by proper environment and education. The mandatory minimum sentencing provisions, however, gainsay the efficacy of treatment and the possibility of reform. They remove a juvenile's incentive to participate in the treatment process, and make it far more likely that the positive effects of treatment the juvenile receives in the juvenile system will be subsequently undone in the state prison environment. Moreover, these sentencing provisions operate even though a court has made the determination, by retaining the youth in the juvenile justice system, that the youth, despite the offense he or she has committed, is amenable to treatment and should be treated.

Recognizing that the mandatory minimum sentencing provisions may serve retributive goals, and perhaps, act as a deterrent, however, the Task Force proposes a legislative compromise that would retain such sentences for juveniles committed to DYS for murder unless they can prove that they are in fact ready and capable of rejoining

society. The Task Force's modifications provide that the mandatory minimum sentences would be fully enforced if, at age twenty-one, the juvenile could not demonstrate that he or she has taken advantage of the rehabilitative services DYS has provided, and that he or she no longer presents a significant danger to the public. See proposed Mass. G.L. c. 119, §58D(g). Conversely, under the proposed modifications, a juvenile committed to DYS for murder would have the opportunity to show, before scheduled transfer to the Department of Corrections, that he or she is entitled to release because treatment has resulted in successful rehabilitation. See proposed Mass. G.L. c. 119 §58D(h).

While this burden of proving rehabilitation would be onerous, the opportunity to prove his or her own reform would introduce a critical incentive for the juvenile's treatment. Further, the opportunity would be consistent with the notion that decisions about juveniles should be made on the basis of their individual characteristics, not simply on the basis of the crimes they commit.

In Appendix I, which follows, the Task Force proposes revisions to the existing transfer law.

APPENDIX I

An Act Relating To The Transfer of Juveniles To Adult Court

SECTION ONE:

Amends M.G.L. c. 119, § 72 by striking said section and replacing it with the following:

Juvenile courts or juvenile sessions of any court shall continue to have jurisdiction over children who attain their seventeenth birthday pending a hearing under section sixty-one of this chapter, or adjudication of their cases, or pending hearing and determination of their appeals, or during continuances or probation, or after their cases have been placed on file; and if a child commits an offense prior to his seventeenth birthday, and is not apprehended until between his seventeenth and eighteenth birthdays, the court shall deal with such child in the same manner as if he had not attained his seventeenth birthday, and all provisions and rights applicable to a child under seventeen shall apply to such child.

Juvenile courts or juvenile sessions of any court shall continue to have jurisdiction over persons who attain their eighteenth birthday pending the determinations allowed under section sixty-one of this chapter, or pending adjudication of their cases, or pending hearing and determination of their appeals, or during continuances or probation, or after their cases have been placed on file. Nothing herein shall authorize the commitment of a person to the department of youth services after he has attained his nineteenth birthday, or give any juvenile court, or juvenile session of any court, any power or authority over a person after he has attained his nineteenth birthday.

SECTION TWO:

Amends M.G.L. c. 120, § 10, by deleting from the first paragraph of subsection (a) the last sentence beginning at line 12.

SECTION THREE:

Amends M.G.L. c. 218, § 27 by deleting after the word "section", in line 6, the word "seventy-two" and replacing it with the word "fifty-eight D".

SECTION FOUR:

Amends M.G.L. c. 119, § 58 by striking the first sentence of the second paragraph of said section and replacing it with the following sentence:

If a child is adjudicated a delinquent child, the court may place the case on file or may place the child in the care of a probation officer for such time and on such conditions as it deems appropriate or may commit him to the custody of the department of youth services, but the probationary or commitment period shall not be for a period longer than until such child attains the age of eighteen, or age nineteen in the case of a child whose case is disposed of after he has attained his eighteenth birthday; provided, however, that a child adjudicated delinquent by reason of having violated section one of chapter two hundred and sixty-five shall be committed in accordance with the provisions of section fifty-eight C.

SECTION FIVE:

Amends G.L. c. 119 by adding a new section, Section 58C.

Section 58C. Adjudication as a Delinquent Child By Reason Of Murder

A child who is fourteen years or older and is adjudicated delinquent by reason of having violated section one of chapter two hundred and sixty five, shall be committed to a maximum confinement of twenty years and, except as provided for in section fifty-eight D for a period of not less than fifteen years if the adjudication is for murder in the first degree. If the adjudication is for murder in the second degree, such child shall be committed for a maximum confinement of fifteen years but, except as provided for in section fifty-eight D for a period not less than ten years.

Such confinement shall be to the custody of the department of youth services in a secure facility until a maximum age of twenty-one years. Within ninety days of said child's twenty-first birthday a hearing shall be held in the committing court pursuant to section fifty-eight D of this chapter, to determine whether the child should be released on probation for the remaining portion of his sentence, or transferred to the department of correction to be incarcerated for the remaining mandatory minimum portion of his sentence. Notwithstanding any other provisions of this section, if said adjudication is for manslaughter, said child shall be committed to the custody of the department of youth services until he reaches twenty-one years of age.

SECTION SIX:

Amends G.L. C. 119 by adding a new section, Section 58D.

Section 58D. Release Hearing for Child Adjudicated
Delinquent by Reason of Murder.

(a) Any child adjudicated delinquent by reason of violation of section one of chapter two hundred and sixty five shall be entitled to a release hearing before the committing court upon reaching the age of twenty-one. Upon notice by the department of youth services pursuant to section sixteen A of chapter one hundred and twenty, the court shall set a time and place for such hearing. The child shall remain in the custody of the department of youth services during the pendency of the release hearing provided for herein.

(b) The court shall notify the following of the time and place of the hearing:

- (i) the person whose liberty is involved and if he or she is not sui juris;
- (ii) his parent or guardian (if such person can be reached and if not, the court shall appoint a person to act in the place of the parent and guardian);
- (iii) the office of the prosecuting attorney that represented the commonwealth in the juvenile delinquency proceeding;
- (iv) a member of the victim's family;
- (v) any other person who has filed a written request with the court to be notified of a release hearing with respect to the child to be transferred or released on probation.

Except for the child to be transferred or released under supervision of probation and the prosecuting attorney, the failure to notify a person listed above shall not affect the validity of a release hearing or a release determination if the record in the case reflects that a reasonable effort was made by the court to notify those persons.

(c) At any release hearing, the child to be transferred or released on probation shall be afforded an opportunity to appear in court with the aid of counsel and of process to compel attendance of witnesses and the production of evidence. When he

is unable to provide his own counsel, the court shall appoint counsel to represent him.

(d) At a release hearing, the court may consider, in addition to the testimony of witnesses and other relevant evidence, written reports and records from the department of youth services, and the record from the juvenile transfer hearing.

(e) A release hearing shall be open to the public.

(f) A release hearing must be recorded pursuant to rule two hundred and eleven of the special rules of the district court.

(g) The burden of proof shall be on the child to prove by clear and convincing evidence that he does not present a significant danger to the public and has taken advantage of the rehabilitative services provided to him by the department of youth services.

(h) In making a determination under this section, the court shall consider, but shall not be limited to, evidence of the nature, circumstances, and seriousness of the offense for which the child was committed, the maturity of the child, the success or lack of success of any treatment efforts of the child, the adequate protection of the public, the degree of rehabilitation of the child, and the recommendations of the department of youth services and the prosecuting attorney.

(i) If, at the conclusion of the hearing, the court enters a written finding based on clear and a convincing evidence, that the child does not present a significant danger to the public and has taken advantage of the rehabilitative services provided to him by the department of youth services, the court shall suspend the remaining portion of the child's sentence and release him on probation under such terms and conditions as the court deems appropriate. In such instances, the committing court shall issue an order transmitting the case for supervision by the Superior Court probation department in the county in which the underlying offense was committed.

(j) If the court fails to make such findings, the court shall state its reasons in writing and the child shall be transferred to the custody of the department of corrections for the remaining portion of the commitment, provided for in section fifty-eight C. Said child shall not be eligible for parole under section one hundred and thirty-three A of chapter one hundred and twenty-seven until said child has served a total of fifteen years in the department of youth services and the department of corrections, if the adjudication was for murder in the first degree, or a total of ten years of confinement in the department

of youth services and the department of corrections if the adjudication was for murder in the second degree. Thereafter said child shall be subject to the provisions of law governing the granting of parole permits by the parole board. The provisions of section one hundred and twenty-nine, one hundred and twenty-nine C or one hundred and twenty-nine D of chapter one hundred and twenty-seven shall not apply to such confinement.

SECTION SEVEN:

Amends G.L. c. 120 by adding a new section, section 16A. Section 16A. Release of a Child Adjudicated Delinquent By Reason of Murder.

The department shall notify the committing court within ninety (90) days of the twenty-first birthday of such child, and request that the court set a time and place for a release hearing pursuant to section fifty-eight D of chapter one hundred and nineteen. The department shall assist the court in making a determination of whether such child presents a significant danger to the public and has taken advantage of the rehabilitative services provided by the department by providing the court with written reports and records relating to such child, and with a recommendation under section fifty-eight D of chapter one hundred and nineteen. A recommendation shall be accompanied by a written statement of facts upon which the department bases its opinion that the child should or should not be released on probation for the remaining portion of his sentence.

APPENDIX II

Demographics of the Juvenile Corrections System in Massachusetts*

Each year approximately 19,000 arraignments take place in the four full-time juvenile courts in Massachusetts or in juvenile sessions of one of the district courts. In 1991, of the juveniles arraigned, 3,212 (2,788 males and 424 females) were placed under probation supervision after trial. The average age of the adolescents on probation was 14.9 years. Thirty-two percent had a prior record, and 24% had a period of probation sometime during the last five years. Only 764 adolescents (or about 4% of the total arraignments) were newly committed to DYS in 1991. The total DYS caseload in 1991 was 1,568 (1,442 males and 126 females), and the average age was about sixteen. Approximately 39% of youths committed to DYS were white, 35% were African American, 23% were Latino, 2% were Asian, and 1% were of other racial or ethnic backgrounds.

A review of DYS and probation statistics for 1991 reveals that only a small proportion of juveniles found delinquent commit

* The source of the probation statistics in this Appendix are the Juvenile Risk/Need Summary Tables prepared and maintained by the Research and Planning Department, Office of the Commissioner of Probation, April, 1992. The sources of the DYS statistics are the December, 1991 Monthly Report and the May 1, 1991 "Analysis of Commitment" prepared and maintained by the Bureau of Planning, Research and Systems, Department of Youth Services.

violent crimes. Of all the offenders placed under probation, 24.3% committed an offense against persons, while 51.7% committed property offenses. The remainder committed drug, motor vehicle and other less serious offenses.

Of DYS-committed adolescents, 29% committed crimes against persons, 5% committed assaultive sex crimes, .5% committed non-assaultive sex crimes, 12% committed drug offenses, 40% committed property offenses, 5% committed motor vehicle offenses, 3% committed public order offenses and 4% committed other offenses. In 1991, only 21 offenders, or .013% of the total DYS caseload, were referred to the classification panel for the most serious offenses of murder, attempted murder, manslaughter and homicide by motor vehicle. Another 216 or 14% were referred on charges of armed robbery, assault and battery with a dangerous weapon, arson, kidnapping, possession of a firearm and sexual offenses involving a victim.

It will come as no surprise that juveniles who come into contact with the juvenile correctional system have a host of family and social problems. Most of them come from families where the average family income is less than \$15,000. Most have school problems, and, in fact, the majority of DYS-committed youths are chronic truants or school dropouts. Physical, sexual or emotional abuse is common in the history of these young people, particularly those in the DYS population. Many come from single-parent homes. Of the juveniles on probation, 36% were

found by the Probation Department in 1991 to have alcohol or drug abuse problems. Of those committed to DYS the numbers were even higher -- 85% of them had involvement with drugs or alcohol. Fully one-half of all youths committed to DYS were teenage parents and had experienced previous involvement with the Department of Social Services.

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