

DEATH RATES OF OUR CLIENTS

Hailed as the most comprehensive report in 60 years, Dr. Linda Teplin of the Northwestern University Feinberg School of Medicine conducted a longitudinal study of the death rates of 1,829 youth (1172 males and 657 females) who passed through the Cook County Juvenile Temporary Detention Center. Her study, published in the June 2005 issue of *Pediatrics*, found that youth in the juvenile justice system are four times more likely to die than youth outside the system. For girls, the rate was eight times higher than girls outside the system.

Of the youth studied, 90 percent of deaths were due to murder and 5 percent were due to encounters with law enforcement. The remainder included suicides and car accidents.

In the release for the report, Dr. Teplin observed, "We need to get away from the stereotype that delinquent youth are just bad kids...The few who do study delinquents most often examine the perpetration of violence. Few people study victimization. We don't often think of delinquent kids as being vulnerable to violent victimization."

The report points out that "the 52 children who died in school shootings between 1990 and 2000 have received far more attention than the far greater number of homicides involving inner city youth," she said. "In New York City alone there were 840 homicides of kids 14 to 17 during the same time period. Although urban violence may not be considered as newsworthy, the health professions must address the equally tragic, if less dramatic, daily violence that disproportionately affects urban youth in general and delinquent youth in particular."

Full text of the study available under Past Issues page at: <http://pediatrics.aappublications.org/> (Pediatrics Vol. 115 No. 6 June 2005, pp. 1586-1593)

MASSACHUSETTS: CHILDREN IN A STATE OF RISK

POVERTY INDICIA

The Annie E. Casey Foundation tracks the number of children living in poverty in the United States and publishes the results in *Kids Count Data Book* available on their website. *Kids Count* calculated that 18 percent of America's 72.5 million children, or 13 million children are living at the poverty level. In Massachusetts, the number of children living at the poverty level in 2005 was 14 percent.

	2001		2005	
	RATE	# OF CHILDREN	RATE	# OF CHILDREN
Children at Poverty Level Nationally	17%		17%	
Children at Poverty Level in Massachusetts	12%	161,000	14%	194,000
Children in Extreme Poverty* Nationally	7%		8%	
Children in Extreme Poverty* in Massachusetts	5%	70,000	7%	97,000

**Extreme Poverty is defined as children living at 50% below the national poverty level*

Of more concern is that 7 percent of Massachusetts children live in extreme poverty, up from 5 percent in 2001.

Children as a group are disproportionately affected by poverty. Fourteen percent of children in Massachusetts live below the poverty line, while only 10.3 percent of the general population does. Out of all 50 states, in 2005 Massachusetts had the fifth lowest percentage of children in poverty. This year, in 2006 Massachusetts is ranked number 10.

The rise in poverty levels in Massachusetts is attributed to drastic increases in the cost of living in recent years. According to Project Bread, between 1996 and 2003, food costs have risen 31 percent. The cost of fuel (including home heating fuel) has also substantially increased.

Also of note are the findings of a national Brookings Institute survey that indicates that for the first time, people living in poverty in the suburbs outnumber their urban counterparts by at least one million.

For more child poverty statistics, visit: www.aecf.org/kidscount

Read the entire Brookings Institute report at:
http://www.brook.edu/metro/pubs/20061205_citysuburban.htm
<http://www.everychildmatters.org/homelandinsecurity/DoBetter.html>

HUNGER

The increase in the cost of living has also affected the number of children who are food insecure and going hungry in Massachusetts. According to Project Bread, between 2002 and 2005 the percentage of people who live in low income neighborhoods in Massachusetts who experience hunger jumped from 7.8 percent to 18.3 percent. During that same time period for the same population, the percentage of people who are food insecure jumped from 20.2 percent to 31.9 percent. The Greater Boston Food Bank reports that of the 320,000 people to whom it distributes food each year, 109,000 are children.

HEALTH INSURANCE

Discrepancies between data showing how many children in Massachusetts are uninsured persist but one thing remains clear: too many children are uninsured. A report by The National Association of Children's Hospitals (NACH) indicates that in 2005, 135,000 Massachusetts children (or 8.6 percent) were without health insurance. However, according to the Office of Health and Human Services, between 1998 and 2005 the percentage of Massachusetts children who were uninsured fell from 4.5 percent to 2.5 percent. The NACH report claims that 59 percent of uninsured children are eligible but not enrolled in Medicaid or the State Children's Health Program.

POPULATION CHANGES

Various articles in the *Boston Globe* have depicted the increasing number of immigrants living in Massachusetts, up from 772,983 in 2000 to 891,184 in 2005. By some estimates, 29 percent of Boston's population are immigrants. Recent statistics show the major source of immigrants are South and Central American countries, with the largest number of people coming from Brazil. Another growing group of immigrants in Massachusetts is Africans, increasing about 26 percent since 2000, while immigrants from Asian and Caribbean countries increased 20 percent and 16 percent respectively in that same time period.

The Massachusetts Alliance on Teen Pregnancy (MATP) issued a release in January 2007 that warned of increasing teen pregnancy rates in certain cities and towns of Massachusetts. The statewide teen birth rate is relatively low in Massachusetts at 46 percent below the US rate (which itself has dropped two percent since 2004 according to the Center for Disease Control). The low statewide rate has the effect of concealing high teen birth rates in communities such as Holyoke, Chelsea, Lawrence and Springfield which all have rates that are over 200 percent above the state rate.

The release urges Massachusetts to increase funding for teen pregnancy prevention especially in impoverished communities. The report stresses that these communities need programs that improve residents' perception of hope and opportunity. Says the executive director of MATP, "Access to information about sexuality and access to contraception for sexually active youth are critical, but without hope for a bright future, teens are at risk."

For more information regarding teen pregnancy, visit:
<http://www.massteenpregnancy.org/>

To read the CDC report, visit:
<http://www.cdc.gov/nchs/products/pubs/pubd/hestats/prelimbirths05/prelimbirths05.htm>

**SPECIAL REPORT:
CHILDREN’S MENTAL HEALTH IN THE COMMONWEALTH:
THE TIME IS NOW**

In January 2006, the US District Court in Worcester found that Massachusetts violated the federal Medicaid Act by failing to provide appropriate home-based mental health care for an estimated 15,000 children. In response to this decision and to the general inadequacies of mental health care in Massachusetts, The Massachusetts Society for the Prevention of Cruelty to Children (MSPCC) along with Children’s Hospital Boston, issued a report titled, *Children’s Mental Health in the Commonwealth: The Time is Now* which outlines the steps Massachusetts must take in order improve the lives of children suffering from mental disorders.

The report claims that of the almost 1.5 million children living in Massachusetts, nearly 150,000 are in need of mental health care. The report estimates that 100,000 of these children are not receiving services.

The report’s authors recommend that the state create a “coherent mental health policy” with “dynamic state leadership,” as well as requiring private insurance companies to pay for treatment for mental health disorders on a par with physical disorders.

The report has specific implications for the juvenile justice system as well. The report states, “The juvenile justice system has become the children’s mental health ‘system of last resort’ and ‘a warehouse for children suffering from mental illness’... Far too often, this is where children end up when the school system, the child welfare system, and the mental health system have not coordinated the appropriate care.” The report claims that of the almost 5,000 youth committed to the care of DYS, approximately 3,000 are clinically in need of mental health treatment.

The report urges the state to develop a plan that would reduce the number of children with mental health issues that are involved with the juvenile courts and with DYS. The Massachusetts Juvenile Courts, with DMH, have already established a system of court-based mental health clinics. The court clinics provide court-ordered evaluations, referral services and limited treatment for court involved youth. However, due to budgetary issues, court clinic capacity only permits referral of 4-11 percent of eligible youth. In addition to its limitations on the number of clients it can serve, the court clinics are also suffering from staff recruitment, retention and morale issues due to under-funded salaries. This report advocates for the augmentation of the Juvenile Court Clinic budget in order to better serve court-involved youth. It also suggests that DYS make available to youth in its custody all necessary mental health and substance abuse treatment.

To read the entire report, visit: <http://www.childrenshospital.org/newsroom/Site1339/Documents/MentalHealthPaper.pdf>

DROP OUT RATE

The Boston Youth Transition Task Force (BYTTTF) released a report in May 2006 detailing Boston’s current dropout crisis. According to the report, as many as one-third of Boston students drop out of high school. Additionally, there are over 8,000 youth and adults living in Boston who do not have a high school diploma or a GED certificate. Black and Latino youth are disproportionately represented among Boston dropouts and are more than twice as likely to drop out as white or Asian students.

Data released in January 2007 by the Massachusetts Department of Education point to troubling statistics statewide. Though dropout rates are not as acute as in Boston, four-year graduation rates, especially for black and Latino students are alarmingly low with only 64 percent and 57 percent finishing in four years respectively.

	4-YEAR GRADUATION RATE	DROP OUT RATE
All Students	80%	12%
Low-Income	63%	21%
African-American	64%	18%
Asian	84%	8%
Hispanic	57%	26%
White	85%	9%

Percentages of students who entered 9th grade in the 2002–2003 school year.

The BYTTTF has found (based on surveys, interview and focus groups with students, parents, teachers and youth service providers) that many factors can lead to a student dropping out of school. These include:

- Negative relationships with teachers and other caring adults. According to the BYTTTF, teens’ relationships with adults are the most important factor in a student’s school experience, whether positive or negative.
- Disruptive peers who cause students to feel unsafe or distracted
- Inappropriate pace of instruction (too fast or too slow)
- Personal problems
- Lack of individual attention and programming
- Teachers assuming that they cannot influence a student to stay in school
- Economic hardships
- Poor communication with parents/school environment that is not welcoming and respectful
- “Second chance” programs that do not accommodate students with weak academic skills

To read the entire report, visit: http://www.bostonpic.org/youth/Too_Big_To_Be_Seen.pdf

To see entire Massachusetts Department of Education data set, visit: <http://www.doe.mass.edu/info/services/reports/gradrates/06state.html>

YOUTH EMPLOYMENT

	STATE FUNDING		US DEPT OF LABOR FUNDING		HUD EZ FUNDING		TOTAL FUNDING	TOTAL JOBS
	FUNDING	NUMBER OF JOBS	FUNDING	NUMBER OF JOBS	FUNDING	NUMBER OF JOBS		
1998	\$2,123,000	1,983	\$1,630,400	1,149	\$0	0	\$3,753,400	3,132
2000	\$420,220	377	\$722,780	391	\$0	0	\$1,143,000	768
2002	\$467,384	425	\$798,457	263	\$0	0	\$1,265,841	688
2004	\$0	0	\$552,395	110	\$1,000,000	761	\$1,552,395	871
2006	\$1,900,000	1483	\$467,000	90	\$250,278	202	\$2,663,278	1,775

Source: Massachusetts Executive Office of Public Safety

The Juvenile Justice Center believes that employment opportunities for young people are critical to their development and maturity. Studies show that youth who work are less likely to have police contact than those who do not. For economically disadvantaged youth, working during high school increases odds of graduation and urban areas with higher rates of teen employment have significantly lower teen pregnancy rates.

Even with public funding for summer jobs at their highest level since the 1990's, the 2004 youth employment rate of 36.4 percent was the lowest it has ever been in the 57 years data has been collected, according to a Northeastern University study.

For more information regarding teen joblessness see: The Paradox of Rising Teen Joblessness in an Expanding Labor Market, available at www.nyec.org/Teen_Employment_jan_2005.pdf

CHILD ABUSE AND NEGLECT

As recently brought to public attention by Massachusetts House Speaker Salvatore DiMasi, Massachusetts has the third highest rate of confirmed cases of child abuse and neglect in the country. Other disturbing statistics from the Massachusetts Children's Trust Fund (CTF) include:

- In 2005, *each day* nearly 300 children in Massachusetts were reported as being either abused or neglected.
- Half of the more than 35,000 Massachusetts children who were confirmed abused or neglected were under the age of seven.

According to the CTF's website, "Youth who experience maltreatment during childhood are significantly more likely to develop a variety of problem behaviors during adolescence, including serious and violent delinquency, teen pregnancy, drug use, low academic achievement and mental health problems." The CTF notes that children who are abused are 40 percent more likely to be delinquent or to be involved in adult criminality. Additionally, over half of youth committed to Massachusetts DYS come from families with confirmed reports of abuse.

To read more about child abuse in Massachusetts and its effects, visit the Massachusetts Children's Trust Fund at: www.MCTF.org and click on Crisis in Massachusetts.

SUMMARIES OF JUVENILE JUSTICE CASES OF INTEREST AND IMPORTANCE 2005-2006

Unless otherwise indicated, these summaries were prepared by Stephan Harris, JD '07, and Atara Rich-Shea, JD '09, and edited by Juvenile Justice Center Supervising Attorney Ken J. King.

COMMONWEALTH V. SEBASTIAN S., 444 MASS. 306, 827 NE2D 708 (2005)

In *Sebastian S.*, both defendants, one juvenile and one adult, entered admissions to sufficient facts on pending complaints and were sentenced to “pretrial probation.” The Juvenile and District Court judges respectively relied upon M.G.L. chapter, 278 §18 as authority to grant pretrial probation following an admission. The Commonwealth appealed these sentences, arguing that the judge should have recorded a disposition of “‘continuance without a finding,’ rather than ‘pretrial probation.’” 444 Mass. at 309.

The court examined the statute governing acceptance of guilty pleas, M.G.L., chapter 278, §18, and the statute governing probation, M.G.L., chapter 276, §87, to decide whether these two statutes, taken together, allow a judge to accept admissions from a defendant and then to place that defendant on pretrial probation. The court started by noting that “‘an admission of facts sufficient for a finding of guilt’... constitutes ‘a tender of a plea of guilty.’” 444 Mass. at 310. Thus, the admissions made by the defendants in this case amounted to a guilty plea. Once the court established this, it looked to the wording of the statutes to determine whether defendants could be placed on pretrial probation after the acceptance of a guilty plea. The court determined that they could not. The court stated that “[o]nce such a plea or admission is accepted, guilt has been established, there will never be a trial, and the case has moved the dispositional phase of the proceeding... Consequently, the probation statute’s provision permitting the imposition of probation ‘before trial or before a guilty plea’ is plainly inapplicable... Simply put, if probation is imposed as a disposition under M.G.L. c. 278, §18, it is not ‘pretrial’ probation.” 444 Mass. at 313. The court further noted that placing a defendant on probation after the tender of a guilty plea is “the equivalent in every respect of a ‘continuance without a finding’ conditioned on probation.” As such, it should be so recorded in the docket.

COMMONWEALTH V. DARNELL D., 445 MASS. 670, 840 N.E.2D 33 (MASS. 2005)

In *Darnell D.*, the juvenile was adjudicated delinquent for receiving a stolen motor vehicle in violation of M.G.L., chapter 266, § 28. At the close of trial, the juvenile moved for a required finding of not delinquent. The judge denied the motion. On appeal, the Appeals Court affirmed the trial judge. The SJC granted the juvenile’s application for further review on the issue of the sufficiency of the evidence. The Court held that the evidence at trial did not show that the juvenile had possessed the stolen vehicle. In so holding, the court rejected the Commonwealth’s argument that the juvenile could be found to be in possession of the vehicle based largely on unsupported conjecture that the juvenile had given the driver directions to the juvenile’s aunt’s home. The Court wrote that, “[e]ven if the juvenile recognized the car [following the stolen vehicle] as a police vehicle, it would appear from the evidence that the [stolen vehicle’s] route was designed to pick up and drop off passengers. ...[T]here is nothing in the record to support an inference that the juvenile was providing directions to the driver.” 445 Mass. at 673. The Court concluded by reiterating that “a conviction may not be based on consciousness of guilt alone.” *Id.*

COMMONWEALTH V. CATHY C., 833 N.E.2D 1189 (MASS. APP. CT. 2005)

In *Commonwealth v. Cathy C.*, the juvenile was adjudicated delinquent for violating M.G.L., chapter 268 §13B, prohibiting intimidation of a witness. The facts of the case were straightforward. The juvenile had attended the trial of a friend, Perez. After the verdict was announced at Perez’s trial, the juvenile told the victim, a witness at the trial, that “she was going to beat [the victim’s] ass.” 64 Mass. App. Ct. at 472. The juvenile made several arguments as to why this statement did not meet the statutory definition of intimidation of a witness. M.G.L. c. 268 §13B.

The juvenile first argued that her actions did not fall within §13B because they were merely threats that were made after the conclusion of the criminal proceeding. The court noted that §13B criminalizes two different forms of witness intimidation: “(1) interference, actual or threatened, with a witness or juror during the pendency of a criminal proceeding, and (2) physical injury to person or property undertaken in retaliation for testimony given at a criminal proceeding, regardless of when such acts are carried out.” 64 Mass. App. Ct. at 472 (emphasis added). The Appeals Court rejected the juvenile’s argument that the threat was made after the termination of the criminal proceeding. The court held that “a verdict is by no means a final disposition.” 64 Mass. App. Ct. at 473. It noted that sentencing, post-trial motions and appeals may all be considered as part of the criminal proceeding in these circumstances. Hence, it held that the juvenile’s threats were made during the pendency of the criminal proceeding and fell within the ambit of §13B. 64 Mass. App. Ct. at 473-474.

Next, the juvenile argued that she could not have intended to influence the witness because her statements were made after the witness had already testified. The court held that the prohibition against the use of threats of force “to influence, impede, obstruct, delay or otherwise interfere with any witness or juror” in ‘13B “encompasses far more than simply influencing the content of testimony, but also reaches any form of conduct that directly touches on the performance of the witness’s... function.” 64 Mass. App. Ct. at 475. The Court held that the juvenile’s interference with the witness’s exit from the courthouse constituted a sufficient influence to fall within the prohibition. Notably, in a footnote the court also distinguished *Commonwealth v. Conley*, 34 Mass. App. Ct. 50, 53 (1993), which is often cited for the elements of ‘13B, and the requirement that an intent to influence a witness’ testimony must be proven. The Court noted in *Conley*, the misconduct alleged was influencing testimony. 64 Mass. App. Ct. at 475 n. 3.

Finally, the juvenile argued that the trial court should not have admitted the victim’s testimony because the juvenile had merely mouthed her threat. The appeals court said that that was a question of reliability of the testimony and, as such, should affect the weight of the evidence, not its admissibility.

COMMONWEALTH V. MARK M., 65 MASS. APP. CT. 703, 843 NE2D 680, REVIEW DENIED, 447 MASS. 405 (2006), APPEAL FOLLOWING REMAND, 59 MASS. APP. CT. 86 (2003),

analyzed by Paul Rudolf, Esq., Committee for Public Counsel Services

In *Mark M.*, the juvenile was alleged to have “indecently touched” his cousin and was taken, along with his grandmother, to the police station for questioning. When they arrived at the police station, the juvenile and his grandmother were given *Miranda* rights, orally and in printed form. Both signed the statement of *Miranda* rights and acknowledged that they understood the rights. After signing the *Miranda* rights, the juvenile proceeded to speak with the police officer with his grandmother’s consent. During the interview, the juvenile made incriminating statements that were the subject of this appeal. After the interviewing started, the grandmother became uncomfortable and asked the juvenile whether he would be more comfortable finishing the questioning with the police officer alone. The juvenile responded in the affirmative. At that point, the police officer left the juvenile and his grandmother alone for several minutes before returning, escorting the grandmother to another room and continuing to question the juvenile. The question on appeal was whether the statements before and/or after the break in questioning should be suppressed because the juvenile was not given a “real opportunity” to consult with his grandmother before waiving his *Miranda* rights.

The court started with the proposition that “[i]n order for the court to find that a waiver has been made knowingly, intelligently, and voluntarily, the Commonwealth must prove that an interested adult was present, understood the warnings, and had an actual opportunity to consult with the juvenile.” 65 Mass. App. Ct. at 706. The court affirmed the motion judge’s finding that the grandmother, although present, did not fully understand the warnings, as was evidenced by the fact that she voluntarily left the juvenile alone to be questioned. The court also affirmed the motion judge’s finding that the two were not given an adequate opportunity to consult prior to waiving their *Miranda* rights. The court further held that a break in questioning of no more than several minutes when the grandmother was escorted to another room, did not insulate the statement taken in her absence from the initial illegality of taking a statement without providing the grandmother and the juvenile an opportunity to consult regarding the waiver. 65 Mass. App. Ct. at 708. For these reasons, the court suppressed the entire interview with the juvenile.

ROSIE D. V. ROMNEY, 4101 F.SUPP. 2D 18 (D. MASS. 2006)

This class action suit was brought by eight named plaintiffs on behalf of a class of “all current and future Medicaid-eligible children in Massachusetts under twenty-one years of age, who were (or might become) eligible to receive, but were not receiving, what plaintiffs described as ‘intensive home-based services.’” 2006 WL 181393, at*1. The plaintiffs, children suffering from serious emotional disturbances (“SED”) “such as autism, bi-polar disorder, or post-traumatic stress disorder” sued the Commonwealth of Massachusetts, under 42 U.S.C. §1983 alleging violations of three parts of the Medicaid Act. *Id.* The plaintiffs specifically alleged that the Commonwealth violated the Medicaid Act’s requirement of, “early and periodic screening, diagnostic, and treatment services” (“EPSDT services”); “reasonable promptness” in service; and, “equal access” to services. *Id.*

The court found that the Medicaid Act’s EPSDT services mandate “requires that defendants provide, at a minimum, reasonably comprehensive medical assessments and ongoing clinical oversight of the services being provided.” *Id.* at *2. After inspecting all of the evidence presented, the court found the defendants’ efforts “woefully inadequate.” It found that the Commonwealth’s case management and non-crisis mental healthcare did not meet the minimally acceptable standards. The court also held that, because the Commonwealth was not adequately providing services, it was also in violation of the Medicaid Act’s “reasonable promptness” provision. The court did not, however, find a violation of the Medicaid Act’s equal protection mandate.

THE STATE OF JUVENILE JUSTICE

Keynote speech by Vincent Schiraldi

Director of Department of Youth Rehabilitation Services, Washington, DC

Suffolk Law School, November 10, 2006

I thought I'd get at my topic today about the state of juvenile justice in America by starting off with a story from ancient Greek Mythology – the Story of Procrustes and Theseus.

Theseus is the hero of the fable who, as the story begins, must travel from Crete to Athens in haste. Despite his need for speed, however, Theseus is warned by his advisors to take the slower, sea route instead of going by land. The reason, they explain, is that Procrustes, an evil demi-god, haunts the road from Crete to Athens.

Now Procrustes snatches up unwary travelers on the road, and imprisons them in his castle. The trouble with his castle is that, while it has many rooms, all of the beds in those rooms are exactly the same size. Procrustes' solution? If travelers are too tall to fit into those beds, he cuts their legs off to make them fit. If they're too short, he puts them on the rack and stretches them out.

The myth of Procrustes suggests at least two lessons to me about juvenile justice for a good deal of the rest of the country including, unfortunately and at least for the present, the District of Columbia.

The first message I take from the myth is that our system of justice should be designed to fit the needs of consumers—defined as victims, offenders, or society at large—and not the other way around. Right now, the system is not serving the needs of victims or offenders by missing a huge opportunity to work with our nation's troubled young people and return them to us better equipped to live productive, law abiding lives.

America's, and DC's, juvenile justice system is best characterized by a joke I once heard a judge in California tell, who later went on to become Dean of Howard University's Law School. Complaining about the lack of options available to judges, he said that sentencing decisions are like going to a doctor with a headache and having the doctor tell you that there were two cures for your headache—an aspirin or a prefrontal lobotomy—take your pick.

Juvenile justice systems are too often characterized by this devil's choice with funds and non-violent youngsters flowing freely into large, debilitating locked institutions; while community based programs go begging. Nearly 20 years of litigation have revealed conditions in DC's Procrustean institutional beds at the Oak Hill Youth Center to be uniformly substandard and debilitating, while rehabilitation programs, in and out of our facilities have been found wanting and not only failed to improve, but put the department on the brink of receivership when I arrived on the scene two years ago.

The lack of adequate programming for troubled youth, of course, leads judges and probation officers to overuse our nation's large, locked institutions, like Oak Hill for non-violent youth who could be better rehabilitated in the community. About seven out of 10 youth in the Oak Hill Youth Center, for example, are locked up for nonviolent offenses. In Massachusetts, you're doing a little better in your institutions—only six out of 10 youth are confined for non-violent offenses. Three quarters of those in our detention system are confined for non-violent offenses. DC's numbers are typical of national patterns for detention.

According to data produced by the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative, two-thirds of the youth detained nationally are detained for technical violations of their release, status offenses, or non-violent offenses.

It would be bad enough if all this overuse of confinement cost us was measured in terms of dollars and cents, but that's hardly the case. For one thing, once we detain young people pretrial, research tells us that, even controlling for other factors like offense severity and prior adjudications, we're more likely to file petitions against them and they're more likely to receive formal court intervention than non-detained youth. Worse still, serving time in a juvenile institution has been shown to be the single greatest predictor of future delinquency, more than six times more predictive than poor parental relationships, gang membership, and carrying a weapon.

Interesting research, to be sure, but this should surprise no one in this room, of course. It's only when we're dealing with other people's kids, "clients", "residents", "inmates" or whatever word we pick to describe them, that we think anything other than that youth prisons make kids worse. If we were thinking of our own children, we wouldn't need multi-variate analysis to tell us that they're going to get a worse deal if they're detained than if they're back at home pretrial, and that if they get sent to an institution, they're going to come out worse—more hardened, more abused, and generally with worse life prospects. All of us know that about our own kids instinctively, as do the parents of youth in the juvenile justice system, we only distance ourselves from that when it's other people's children we're talking about or caring for.

What's most surprising for me at this particular point in my career, is that none of what I just said is controversial in the jurisdiction I work in, and is becoming less controversial nationally. The DC Mayor's Blue Ribbon Commission, every study done during the 20 year history of the *Jerry M* lawsuit, which is the litigation over our system, the City Council and the judiciary—in short, all three branches of government agree that we are overconfining youth in conditions that worsen, not improve, their behavior.

In fact, this is one of the rare occasions in my 25 years in this field where I find myself interacting with people any place about diverting people from incarceration into treatment where, at least in words, the political leadership actually supports my position – maybe that's a sign of age or something.

So what could a continuum of rigorous community based programs look like if we had one, and what has been the experience of other places that have taken the route of designing their system to fit the needs of the kids, and not the other way around? Or put another way, what options are there between the aspirin and prefrontal lobotomy, between hobbling kids and stretching them out to fit our limited, bipolar options?

To start with, there would be no large, locked institutions for kids—no more Oak Hills designed on a 19th Century model of juvenile justice. At the deepest end, when we had to put our most troubled young people in locked custody, they would be confined in small, home-like

facilities, with no more than 30 to 60 youth in each facility, which is what standards for both the American Bar Association and the American Correctional Association recommend. These facilities would be located close to the child's home to facilitate their families being involved in their treatment and rehabilitation from the start of their confinement to the day of their release. And they would be geared toward returning young people to the community better, not worse, than when they entered. In short, to go back to what I stated earlier, they'd be the kinds of places that, if you had a troubled son or daughter who was in so much distress that they simply had to be held in locked custody, you would feel comfortable having them go to.

In 1981, the state of Missouri began what we have proposed for DC and what Massachusetts pioneered successfully in the early 1970's, a process of downsizing large, locked facilities and creating smaller, homelike, treatment-rich facilities like the ones I just described. That year, the state closed the behemoth 650-bed Booneville Training School, along with the Chillicothe girls training school, replacing them with facilities housing no more than 40 youths, often less, spread throughout the state so that they are close to the youths' homes. Missouri's youth centers maintain a heavy emphasis on treatment in every aspect of their programming, including a strong emphasis on aftercare when youths are released. If you walk into them, you see kids wearing their own clothes, with pictures of their parents and family on the wall, calling staff by their first names. They sleep on non-institutional wooden beds in a dorm rooms, with comforters on their beds. They eat with metal knives and forks. For those of you who haven't spent any time in juvenile training schools, these are revolutionary concepts. The soften and normalize the inherently abnormal institutional setting in a way that compliments the wonderful staff culture that they have established—and trust me the three—staff culture, training, and softer, more homelike physical plant, are inextricably intertwined.

These reforms were accomplished with support from both parties—remember, tough-on-crime former Attorney General John Ashcroft was Attorney General and later Governor of Missouri when many of these changes were enacted—and both parties have maintained their strong support for this innovation because it has delivered on the promise that better treatment can reduce youth offending. For example, within three years of release from Missouri's more rehabilitative system, only 8 percent of youths were sentenced to state prison, compared to 32 percent of youth reimprisoned within three years of release from DC's system.

In talking about the creation of a continuum of care, I started with the Missouri story for a number of reasons. For one thing, it is not a state known for its liberal, mollicoddling of young people and seems to have come to its position because of a hard-nosed analysis that this was a better approach to achieving public safety than the typical institution-based system. It's a state that's not richer, smarter or more liberal/progressive than any place else in the country. And it has two large urban centers in St. Louis and Kansas City that present many of the same big city challenges experienced in other large urban centers. In fact, if you could pick a state where you'd want a successful social experiment with treating kids like human beings instead of animals to take place, you could hardly pick a better place than Missouri.

Additionally, the Missouri model instantly addresses the fact that I recognize that some young people need to be held in locked custody, and that my call for America to cease confining its young people in large, factory-like prisons are not a call to tear down the walls of Jericho and plead with young people to simply go forth and sin no more—to mix my religions. Rather this is a call to redesign our juvenile justice system in a manner that *makes sense* for victims, youthful offenders, and District residents at large.

In addition to replacing our current large and ineffective youth prison with small, home-like youth facilities, like they have done in Missouri and you pioneered in Massachusetts—there are many, many model programs into which DC youth could be placed instead of incarceration.

I won't try to chronicle all of the promising approaches to juvenile delinquency that are being tried around the country, but rather, I'll discuss three particularly well-researched efforts that have many of the elements I believe should be replicated. One is called multi-systemic therapy, which is a highly effective, home-based, family focused intervention for delinquent youths with multiple contacts with the juvenile justice system and their families. MST, as it is abbreviated, works with not only the youth identified as being the "trouble-maker", but with the many systems—school, family, neighborhood—with which that youth comes into contact. The project draws the youth and his or her family into the process of designing successful home-based plans, and then intensively works with the family and youth on bringing those plans to fruition. MST has been extensively evaluated in multiple jurisdictions, and has been shown to reduce future days in corrections or residential placement by at least 47 percent. MST costs about \$6,000 per youth, compared to the over \$150,000 per year it costs to incarcerate a youth at Oak Hill.

More than 20 years ago, recognizing that segmented, label-driven efforts to respond to troubled youth were not working, the Wraparound approach was born. Wraparound models, perhaps best implemented in Milwaukee, Wisconsin, are more of a process than a single program, that recognizes that young people each have individual needs and strengths that must be considered and addressed if we are to achieve positive outcomes. It is a youth and family-focused approach using flexible, non-categorical funding and is coordinated across agencies. Wraparound addresses the youth's problems in their natural setting—their home communities—working with the youth's entire family, building upon the youth's individual needs and strengths and creating a support system around the youth and his or her family. After Milwaukee introduced the Wraparound model, the number of youths in residential programming declined from 360 to 135 per day and psychiatric hospitalization declined by 80 percent. Arrests per participant dropped from 2.3 prior to enrollment, to .98 during enrollment, to .6 after enrollment—a 75 percent decline.

The Juvenile Detention Alternatives Initiative, funded by the Baltimore-based Annie E. Casey Foundation, is another systemic reform that has been heavily studied and found to successfully reduce the number of youths detained pre-adjudication without jeopardizing public safety. Using a data driven and best practices approach to reforming detention systems in three diverse counties around the country, JDAI has successfully demonstrated that jurisdictions could safely reduce reliance on secure detention, and increase placement of youngsters in workable alternatives to incarceration. In Chicago, one of the first jurisdictions JDAI operated in, the number of youths in detention fell from 692 to 478 youth, with failures to appear and rearrests dropping dramatically. In Portland, Oregon, not only has the city's detention population fallen from 96 to the 20's allowing them to close several cottages and save millions annually, and not only have youth crime, rearrests and failures to appear all declined, but African American and Latino youth are now detained in Portland at almost exactly the same rate as white youth, probably the only jurisdiction in the country that can claim that disproportionate minority confinement does not worsen after kids are locked up in their detention system.

Of course, discussing the move away from large, locked facilities to smaller facilities and a continuum of care in Massachusetts is like bringing coal to Newcastle. Every discussion of these types of reforms

needs to tip its hat to what your state was able to do in the early 1970s and sustain for years and years prior to reverting to an institution-based system. To those of you not intimately familiar with the story and the outcomes, I'll give the short story of the "Massachusetts Experiment" or "Massachusetts Miracle" as some in the field call it.

Fed up with attempts to fix an inherently flawed design—the juvenile training school—in the early 1970s, DYS Secretary Jerome Miller decided to close the institutions run by the state of Massachusetts and chaotically design a system that was based in the community, not in juvenile prisons. Over a few short years, Miller moved almost all of the 1,000 youth out of Massachusetts' locked facilities and placed them in an as yet not fully formed network of community programs. He and many of his predecessors like Ned Loughran gave increased control to his regional directors to localize their approach to his vision, started many of the programs that are now mainstays of juvenile justice systems around the country—Key Tracking and Wilderness Challenge programs being but two of those—and established small, 30 or so bed facilities to replace the large locked training school model—facilities that Missouri came and studied prior to initiating its reforms.

The research on the Massachusetts Experiment by Harvard and the National Council on Crime and Delinquency had yielded several positive outcomes, two of which I'll mention. One was that, in the regions of the state where a full continuum of care was developed, as opposed to just overrelying on group homes, recidivism amongst former DYS youth was significantly lower. The other is that youth in the less community based system "matriculated" into Massachusetts' adult prison systems at half the rate of youth from the previous, institution-based system. I understand from personal interactions and the buzz in the juvenile justice community that a breath of fresh air is blowing through the Department of Youth Services in the form of its Secretary Jane Tewksbury. We all hope that under Jane's visionary leadership, Massachusetts can reestablish itself as the nation's leader in juvenile justice reform.

So – back to Procrustes. The first message of the myth of Procrustes and Theseus is that we need to have a system tailored to the needs of our young people rather than tailored to the needs of our bureaucracy, our pre-existing program slots, or our politicians desire to pander to people's fears!

But the second message of Procrustes is even more important than the first, in my opinion. And that second message is that Procrustes never could have done what he did to his prisoner-victims unless he first depersonalized them and dehumanized them.

The dehumanization of young people has taken many disturbing forms in recent years. One way our society depersonalizes juveniles is our predilection for demonizing our young people and, close upon the heels of that demonization, trying them as adults and imprisoning them with adults. During the 1990's 47 states including Massachusetts and the District of Columbia, made it easier to try juveniles as adults and there was a virtual explosion of imprisoning young people alongside adults throughout the country. 250,000 young people are tried in adult courts in America each year, and nearly 20,000 youth under age 18 reside in adult prisons and jails on any given night—a practice unheard of in the rest of the Western world. This despite research that has found that youths incarcerated with adults are five times more likely to be sexually assaulted, and eight times more likely to commit suicide, than youths kept in the juvenile justice system. Youths sentenced as adults are also more likely to be rearrested and to be rearrested for more serious crimes than youths with similar prior records and current

offenses who are kept in the juvenile justice system. Again, another research "DUH" moment, it's only other people's kids, depersonalized kids, kids who don't look like our kids or have the resources of our kids, that we'd need to research these questions—sort of like researching whether rain is wet. If any of us had a loved-one who was locked up in an adult jail or prison we know in our heart of hearts what fears we'd take with us to bed every night.

All too often, conditions and lack of programming for young people in our juvenile facilities can serve as a form of dehumanization as well. During the past few years a youth in my system, we'll call him, Robert was stripped naked and bound with tape, by group of other youths, taken into a bathroom and sexually assaulted for an hour. Only reason it even came to light is that staff realized that it was caught on videotape. Not long ago, there was a gang assault of a youth, and, viewing the videotape, it is apparent that staff were encouraging the assault.

I wish that this were a phenomenon unique to the Nation's Capitol. But unfortunately, institutional abuses are as old and widespread as the institutions themselves and are, to my mind, part of the inevitable state to which these facilities inevitably entropy.

Various inquiries into US juvenile institutions during more than three decades have revealed that abuse is all too common. During the late 1960s and early 1970s, youths in several of Texas's juvenile facilities were regularly beaten, slapped, kicked and tear-gassed, a federal judge found in 1974. In the 1980s, children in Florida's facilities were hog-tied and those who escaped were hunted with dogs. It took a federal lawsuit to stop the abuse, and eventually the state closed one facility and dramatically downsized two others.

In juvenile facilities in Louisiana, according to a 1997 Justice Department report, violence was pervasive. Officers seriously injured dozens of young people; some had fractures to jaws, noses, cheeks and eye sockets. In Georgia in 1997, another Justice Department investigation found "a pattern of egregious conditions," including "physical abuse by staff and the abusive use of mechanical and chemical restraints on mentally ill youths." State facilities were so overcrowded at times that "between two and five youths shared the single 8-by-10-foot cell designed for one youth," investigators reported.

A 2002 Justice Department investigation in Mississippi found that at the Columbia Training School "girls are punished for acting out or being suicidal by being placed in a cell called the 'dark room.'" The investigators alleged in a 2003 report that "most girls are stripped naked when placed in the 'dark room.'" In April, the Los Angeles Times reported that officers at one California youth prison allowed attack dogs to bite an incarcerated boy, even though he was following orders and lying on the floor.

Over the past 35 years, lawyers, the media and advocacy organizations have uncovered abuses in state, local or privately operated juvenile facilities in 23 states and the District of Columbia: Arizona, Arkansas, California, Connecticut, Florida, Hawaii, Idaho, Illinois, Kentucky, Maryland, Massachusetts, Missouri, Nevada, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota and Utah. Often the federal courts had to step in to stop the abuses. In South Dakota, after the Youth Law Center filed a civil rights lawsuit in 2000 against the state training school in Plankinton, the state agreed to stop the worst practices. In 2001, though not required by the settlement, the state decided to close the facility.

In many of the state juvenile facilities where abuses have occurred, medical and mental health professionals have failed to prevent or report dangerous conditions, or collaborated in abusive practices. In 1999, rampant psychological and physical abuse was uncovered in Maryland's state-run juvenile boot camps, including 10 youngsters who had broken bones and teeth and bad cuts; 50 more were found to have been beaten; some had been thrown through windows by "tactical officers" running the camps. Camp staffers had brought some of the beaten and bruised youths to local medical facilities, but medical professionals, juvenile justice personnel and investigating police failed to report suspected child abuse, as required by law. In 2002, the state agreed to pay \$4 million to nearly 900 of the former camp inmates.

I say these things certainly not to heap insults on already beleaguered staff in these places, but rather so that each and every one of us walks out of this room today with a sense of absolute urgency that these large locked institutions must be closed, and that services for young people inside and outside these facilities must be brought into the 21st Century so that these types of indignities are no longer heaped upon our troubled young people. Not to put too fine a point on it, but I wouldn't kennel my dog at the Oak Hill Youth Center and lots of other training schools I'm familiar with, no less place someone whose welfare I cared about in it. These kids *will be forgotten* if the people in this room do not make it our business to keep this issue on the table for policy makers, so that it doesn't get overwhelmed in debates over gay marriage, budget reductions and tax cuts.

Finally, the last type of dehumanization I'd like to talk about takes the form of racial disparities that permeate most American juvenile justice systems. Meta analyses conducted by Bill Feyerherm for the Justice Department, and published on their website, show that in the vast majority of jurisdictions studied, *even when controlling for prior record and current offense*, kids of color get incarcerated more frequently and for longer periods of time. For example, African American youth with no prior records convicted of drug crimes are 48 times as likely to be incarcerated as white youth with no prior record convicted of drug crimes—for Latino youth it's 13 times as much. You could hardly do any worse than that if you were trying.

All of this unfortunately fits within the national context for adult incarceration—a Justice Department study released in the late 1990s found that one in three African American male babies born in 2000 would go to *prison* at some time in their life. This is not the larger number of those who would spend a little time in jail, or get a felony conviction and be on probation—this is one in three black male babies born in 2000, that's today's six year olds—would spend some time in prison during their lifetimes, unless things change and frankly, they've already changed for the worse since the nation's incarceration has increased since then.

Folks, I've thrown a lot of numbers at you today, but I need you to pause over these last few for a moment or two, because if this isn't the height of dehumanization, I don't know what is. As a white man who came from a blue collar neighborhood in Brooklyn, I've seen my share of stuff, and my friends and relatives had some scrapes coming up. But if one in three of my white male blue collar and middle class friends and relatives was looking at going to the big house, America's prison policies and America's juvenile justice policies, could not exist. Likewise, if the typical youngster in one of the DC, Massachusetts or any other juvenile facilities or, even worse, one of our adult facilities, was a middle class white teenage boy from ? in Boston or Friendship Heights in DC, there is no way these policies would continue as they are. Our leaders would declare a state of emergency and bring the best

and brightest to the table to figure out how to stop locking up *our* kids in these kinds of nightmarish conditions. You know what solutions would be on the table in such a discussion? Deinstitutionalization, small and decent facilities, Multi-systemic Therapy, Wraparound Milwaukee, Juvenile Detention Alternatives Initiative, and all of the other stuff I've talked about here today in other words *education, prevention, and rehabilitation programs*. There would be a pressing sense of urgency if only two things were different about our system, just two things, that is, if all the kids had committed exactly the same crimes as these kids have committed and all the programs and community options that are available now were exactly the same and only two things were different, that is the complexion and socio-economic status of the kids, then Oak Hill and most other training schools would have been closed down decades ago, and Massachusetts never would have returned to the use of large facilities. And if that's the kind of system we'd design for white, middle class kids—for my kids, frankly—then that's the kind of system that African American and Latin youth deserve who make up 100 percent of Oak Hill's population tonight.

So, what does the myth of Procrustes teach us, in the end? Well, at least two things, to my mind. One is that, we need to design a system which gradually increases in intensity from probation, through a continuum of well designed services, to decent and humane locked custody, so that we don't have to stretch our young people out or hobble them in order to make them fit into a system that is convenient for us adults.

The other is that these institutions are full of real young people, living real lives, with real hopes and dreams. They feel real pain, they really suffer. We need to remain cognizant of this fact for at least two reasons one—because it is in our self interest to do so because if we continue to treat them like animals they will make us pay by continuing to be dysfunctional members of society when they get out. But more importantly, we need to remember this because it is simply the right thing to do.

In the end of the fable, Theseus ignores the advice of his counselors and decides to take the nobler, but more difficult, route to Athens. On the way, Procrustes attacks Theseus, who subdues him, and incarcerates Procrustes in a prison of his own making. We now need to take the nobler route on behalf of a population who needs our protection, and confront these issues head on, lest we become any fuller of Procrustean beds and imprison ourselves any deeper in this nightmare of our own making. Thank you.