

School's Out

Massachusetts Youth in Adult
Correctional Systems Denied Education

Citizens for Juvenile Justice
August 2022



Thanks are in order for compiling this work: This report was written by CfJJ staff, including Joshua Dankoff, Sana Fadel and Leon Smith. Research, drafting, and data analysis tasks were shared by a range of capable interns and volunteers including: Reilly Loynd, Elizabeth Walsh, James Roy, Audrey Wynne, Bryan Kennedy, and Maya Dayan. Thank you to EdLaw Project staff for pursuing public records, and to both EdLaw and MHLAC staff for providing feedback on an earlier draft of the report.



Table of Contents

Executive Summary	3
I. Introduction	7
II. Legal obligations to educate incarcerated youth in Massachusetts	9
A. Federal protection of the right to a free and appropriate public education	9
B. State law on the provision of FAPE to incarcerated students.....	12
III. Findings	14
<i>Finding 1:</i> A maelstrom of agencies, yet accountability nowhere: The current administrative structure – including DESE’s delegation of authority to school districts – leaves no single agency sufficiently accountable for delivering educational services – including special education – to youth incarcerated at HOCs and DOC ...	14
<i>Finding 2:</i> HOCs massively fail to identify young people in their care with existing IEPs, which is a key bottleneck to these youth receiving FAPE.	18
<i>Finding 3:</i> The DOC significantly under-identifies young people with existing IEPs, has a large number of young people on waiting lists for education services, and has an inadequate response to major mental health problems.....	22
<i>Finding 4:</i> DESE fails to meet its duty to ensure that youth at HOCs and DOC receive educational services to which they are legally entitled.	26
<i>Finding 5:</i> DYS meets more of its legal obligations to provide educational services for the children and young adults in its care (even though some concerns remain).	27
<i>Finding 6:</i> School districts across Massachusetts fail to provide support to students who are incarcerated, despite students technically remaining a part of the district...	31
IV. Conclusion and Recommendations	
Youth who experience the juvenile court system and DYS have better educational opportunities leading to better life outcomes and public safety outcomes than youth who experience the adult court system and HOCs/DOC.	34
<i>Recommendation 1.</i> The Massachusetts Legislature should raise the age of juvenile jurisdiction to include 18- to 20-year-olds in the Juvenile Court system, because youth in DYS custody are more likely to access their educational rights and receive developmentally appropriate treatment.....	35
<i>Recommendation 2.</i> DESE, HOCs, and DOC should improve interagency data sharing to improve identification of incarcerated youth with IEPs already in place.	36
<i>Recommendation 3.</i> DESE should (1) strengthen oversight at both the HOCs and DOC, (2) be held to account for the non-identification of youth with IEPs, and (3) ensure that high school credit is granted to youth who attend classes at HOCs and DOC. ...	37

Recommendation 4. HOCs and DOC should create a dedicated education budget and prioritize educational programming to ensure all school aged youth (up to their 22nd birthday) have access to school every weekday and incentivize educational participation through goodtime credit.....37

Recommendation 5. The Office of the State Auditor should consider investigating educational obligations and practices for school-aged youth (18 to 21) at HOCs and DOC in the spirit of increasing accountability for legal obligations.....38

V. Appendix: Data Analysis Details39

Abstract

Despite state and federal laws that are in place to ensure that all students receive a free and appropriate public education (FAPE) until their 22nd birthday, Massachusetts youth between the ages of 18 to 21 who are incarcerated in the adult criminal system face significant barriers to actually accessing educational programming and services. These barriers include (1) deficient policies and procedures to identify students with individualized education program (IEPs) in both county Houses of Correction (HOCs) and state Department of Correction (DOC) facilities, (2) woefully inadequate oversight of education in HOC and DOC facilities by the state Department of Elementary and Secondary Education (DESE), and (3) inadequate interagency coordination and data sharing between the DESE and correctional facilities. As a result, only a small fraction of those eligible for special education receive any specialized instruction or related services when incarcerated at HOCs or DOC.

Executive Summary

Educating incarcerated youth benefits society in multiple ways. First, young people have boundless potential and by ensuring educational access and attainment, we acknowledge their humanity and affirm a commitment to their positive development, consistent with our desire and self-interest in having them re-enter communities in a better position despite the harms of incarceration.¹ Second, given that young people incarcerated in jails and prisons are the product of multiple system failures – including the educational system – during childhood, we owe it to them to make up for these past failures while they are in state custody. Third, focusing on education helps promote public safety through lower recidivism rates for those who have achieved a high school diploma, and especially for those who have achieved college degrees.² Finally, providing a free and appropriate public education (FAPE) for youth under age 22 with an identified disability and an individualized educational program (IEP) in place is a legal obligation under both federal and state law. In short, educating incarcerated youth is not only legally mandated; it is the right thing to do from a moral, fiscal, and community safety perspective.

Purpose and methodology: This report provides a comparative overview of educational approaches and outcomes in the adult and juvenile systems for incarcerated young people aged 18–21 in Massachusetts, with a focus on special education. The report was compiled with data from a series of public records requests, policy and practice reviews, and key informant interviews.

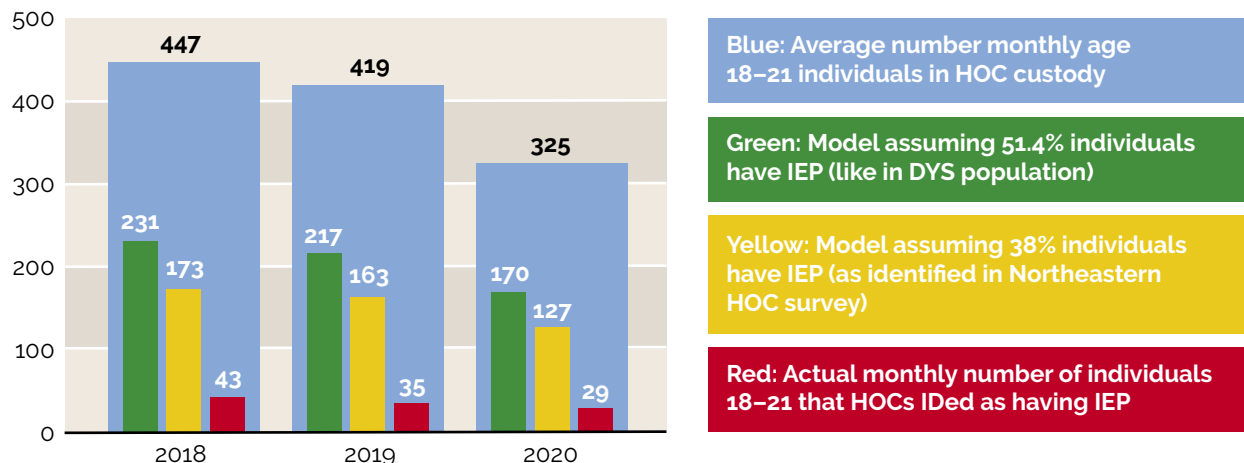
Findings: Data show that *adult* correctional agencies in Massachusetts – both county Houses of Correction (HOCs) and the state Department of Corrections (DOC) – are failing to meet their education-related legal obligations to the young people in their care, and that the Department of Youth Services (DYS) does a better job in the *juvenile* system. The state’s education agency, the Department of Elementary and Secondary Education (DESE), also fails to provide adequate oversight of the educational practices at the HOCs and DOC, especially for youth with identified disabilities. DESE gives school districts a major role in educating incarcerated youth but does not provide oversight to make sure that districts fulfill their duty. The HOCs and DOC massively under-identify youth aged 18 to 21 who have IEPs in place, denying these young people their federally protected right to a FAPE. Further, even when a young person at an HOC is able to access education, they only rarely earn high-school credits toward graduation.

1 This is especially true since 95% of those imprisoned will be released U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, “Reentry Trends in the United States,” <http://www.bjs.gov/content/reentry/reentry.cfm>. This refers to people of all ages.

2 The employment rate of high school graduates is 10.6 percentage points higher than for those with less than high school completion. The employment rate of college graduates is 27.6 percentage points higher than those with less than high school completion. https://www.bls.gov/opub/ted/2019/44-6-percent-of-high-school-dropouts-and-72-3-percent-of-college-graduates-employed-in-august-2019.htm?view_full

Figure 1. Estimated monthly number of youth with IEPs at HOCs in Massachusetts, and the estimated under-identification³

Monthly total of youth age 18–21 at MA HOCs, Estimated Number of Youth with IEPs, and Actual Number HOCs have IDed as having IEP



Recommendations: The failure of DESE and adult criminal legal system actors to provide meaningful educational interventions for young people, including those with identified disabilities, is an illustration of a system ill-equipped to implement developmentally appropriate interventions with older adolescents. This provides a strong argument for raising the age of juvenile jurisdiction to include children and young adults through age 21 (starting first with the 18- to 20-year-olds) in a system that is better equipped with the expertise and the capacity to provide developmentally appropriate responses for this group. If a young person is incarcerated, their right to an education is far more likely to be honored within the DYS system. Given the juvenile system’s orientation toward education, retaining youth – including older adolescents aged 18 to 20 – at DYS would lead to improved life outcomes for that young person as well as improved public safety and fiscal outcomes for society at large.

In addition to raising the age, state and county agencies – specifically DESE, DOC and HOCs – should ensure universal access to quality educational and special education services to all high-school aged/eligible youth in their custody, so that all youth are provided meaningful opportunities to graduate high school and pursue further education if desired. HOCs and DOC must improve the identification of youth with disabilities and prioritize promptly providing educational services to youth through age 21⁴ in line with the youths’ IEPs, as required by federal law. Finally, DESE and HOCs/DOC should put in place data sharing mechanisms (already in place between DESE and DYS) to facilitate the quick identification of youth with IEPs.

³ Detailed information that forms the basis for this chart can be found in the appendix to this report.

⁴ The current proposal to raise the age excludes 21-year-olds, who are otherwise still protected by educational laws, therefore even with full implementation of this proposal, adult correctional institutions would still need to adopt improved educational policies and practices to ensure all eligible young people attain their educational rights.

Adult correctional agencies in Massachusetts have deprioritized educational access and quality for youth ages 18 to 21 (as well as other adults in their custody), and DESE's lackluster oversight has not held the HOCs to account for the dismal identification of youth who have IEPs in place. While this report recommends some ways to improve the operation of educational programming and administrative oversight from DESE, the only way to truly achieve positive educational outcomes for incarcerated older adolescents in Massachusetts is for the legislature to raise the age of juvenile jurisdiction. Raising the age would ensure that youth age 18–21 experience legally mandated educational opportunities available at the Department of Youth Services.

I. Introduction

Educating incarcerated youth benefits society in multiple ways. First, young people have boundless potential: by ensuring educational access and attainment, we acknowledge their humanity and affirm a commitment to their positive development, consistent with our desire and self-interest in having them re-enter communities in a better position, despite the harms of incarceration.⁵ Second, given that young people who end up incarcerated in jails and prisons are a product of multiple system failures — including the educational system — during childhood, we owe it to them to make up for these past failures while they are in state custody. Third, focusing on education helps promote public safety through lower recidivism rates for those who have achieved a high school diploma and especially for those who have achieved college degrees.⁶ Finally, providing a free and appropriate public education (FAPE) for youth under age 22 with an identified disability and an individualized educational program (IEP) in place is a legal obligation under both federal and state law. In short, educating incarcerated youth is not only legally mandated; it is the right thing to do from a moral, fiscal, and community safety perspective.

This report provides a comparative overview of educational approaches and outcomes in the adult and juvenile systems for incarcerated young people aged 18 to 21 in Massachusetts, with a focus on special education.

Scholars have long documented a link between special education and the “school to prison pipeline.” People with disabilities, particularly those of color, are dramatically overrepresented in the prisons and jails of the United States. In fact, persons incarcerated in jails and prisons are as high as six times as likely to report having a disability.⁷

Disproportionality clearly extends to the youthful incarcerated population. Nationwide, “seventeen to fifty-three percent of system-involved youth have a learning disability,” and “emotional disabilities appear in forty-seven percent of incarcerated youth as compared to eight percent of the nation’s school system population.”⁸ The same goes for young

5 This is especially true since 95% of those imprisoned will be released U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, “Reentry Trends in the United States,” <http://www.bjs.gov/content/reentry/reentry.cfm>. This refers to people of all ages.

6 The employment rate of high school graduates is 10.6 percentage points higher than for those with less than high school completion. The employment rate of college graduates is 27.6 percentage points higher than those with less than high school completion. https://www.bls.gov/opub/ted/2019/44-6-percent-of-high-school-dropouts-and-72-3-percent-of-college-graduates-employed-in-august-2019.htm?view_full

7 “[P]eople behind bars in state and federal prisons are nearly three times as likely to report having a disability as the nonincarcerated population, while those in jails are more than four times as likely... [P]eople incarcerated in prison are four times as likely and those incarcerated in jail more than six times as likely to report a cognitive disability as the general population.” Rebecca Vallas, *Disabled Behind Bars*, Center for American Progress (2020), <https://www.americanprogress.org/issues/criminal-justice/reports/2016/07/18/141447/disabled-behind-bars/> (last visited Nov 10, 2021).

8 Lauren A. Koster, *Who Will Educate Me? Using the Americans with Disabilities Act to Improve Educational Access for Incarcerated Juveniles with Disabilities*, 60 B.C.L. Rev. 673, 691 (2019) <https://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=3742&context=bcclr>

adults.⁹ Notwithstanding this, and despite federal legal obligations that continue until a young person's 22nd birthday, youth in adult correctional facilities rarely receive the FAPE to which they are entitled, whether or not incarcerated.

Part II of this report lays out the obligations under federal and state law to provide education and special education services. Part III of the report documents the failures of Massachusetts State and County correctional agencies, as well as DESE to identify and provide FAPE to students with disabilities who are incarcerated. Part IV provides some conclusions and recommendations.

9 Melissa Edelson, *Special Education in Adult Correctional Facilities: A Right Not a Privilege*, 50 LOY. L.A. L. REV 93, 117 (2017) (<https://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=2988&context=llr>). (Noting disproportionately in learning disability diagnosis and special education eligibility.)

II. Legal obligations to educate incarcerated youth in Massachusetts

Individuals through age 21, inside and outside of correctional facilities, have a right to a FAPE in Massachusetts. This includes youth who require special education services in correctional facilities, who are also the subject of several legislative protections. This section lays out both federal and state laws as they pertain to state educational agency and correctional facilities' duty to ensure FAPE.

A. Federal protection of the right to a free and appropriate public education

Under federal law, students detained or incarcerated have the same right to receive high-quality education as non-incarcerated students.¹⁰ States have an obligation to adopt and implement rigorous academic content and achievement standards for all students.¹¹ The Individuals with Disabilities Education Act (IDEA) aims at the federal level to ensure that all youth with disabilities, including incarcerated students through age 21, receive FAPE. There are additional educational obligations outlined in the Juvenile Justice Delinquency Prevention Act (JJDP A).

"Absent a specific exception, all IDEA protections apply to students with disabilities in correctional facilities . . . the fact that a student has been charged with or convicted of a crime does not diminish his or her substantive rights or the procedural safeguards and remedies provided under the IDEA."

– US Department of Education,
<http://www2.ed.gov/policy/gen/guid/correctional-education/idea-letter.pdf>.

Individuals with Disabilities Education Act

The federal IDEA mandates educational support and accommodations for children with certain disabilities.¹² Any student with a disability is entitled to what is known as a "free appropriate public education" (FAPE). FAPE provides students with disabilities with the right to an education that meets their needs in the public-school setting and that is of no cost to them or their families. Under the IDEA, FAPE is defined to include special education and

10 See Title I of the Elementary and Secondary Education Act, as reauthorized and amended by ESSA, 20 U.S.C § 6301; M.G.L. c. 69, § 1

11 20 U.S.C § 6311(b)(1), M.G.L. c. 69, § D.

12 DESE, *IEP Process Guide* (2001), <http://www.doe.mass.edu/sped/iep/proguide.pdf>. In Massachusetts, the following disabilities may make a child eligible for IDEA services: autism, developmental delay, intellectual impairment, sensory impairment (including hearing or visual impairment, or deaf/blind), neurological impairment, emotional impairment, communication impairment, physical impairment, health impairment, or specific learning disability.

related services.¹³ The requirement must be “an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”¹⁴

Students entitled to services under IDEA must receive an individualized education program (IEP). An IEP outlines a student’s needs and details the specialized instruction and related services that the child should receive in the most appropriate learning environment. The U.S. Department of Education affirmed that a FAPE applies in carceral settings in a 2004 letter, stating: “Absent a specific exception, all IDEA protections apply to students with disabilities in correctional facilities ... the fact that a student has been charged with or convicted of a crime does not diminish his or her substantive rights or the procedural safeguards and remedies provided under the IDEA.”¹⁵

Under federal law, the State Educational Agency (SEA)—DESE in Massachusetts—is responsible for ensuring that a free, appropriate public education is available to all children with disabilities residing in the state.¹⁶ This oversight requirement includes ensuring that all programs administered by any other state or local agency meet DESE’s educational standards.¹⁷ Since 1974, a specialized unit operating under DESE called Special Education in Institutional Settings (SEIS) has predominantly overseen the provision of special education to children within facilities operated by the Department of Youth Services (DYS), as well as those in HOCs, the Department of Public Health (DPH), and the Department of Mental Health (DMH) facilities.¹⁸ DESE/SEIS’s oversight responsibility also requires that they provide individual services where a local educational agency (LEA), usually a school district, has failed to do so.¹⁹

While Federal law requires DESE to put a system in place to provide special education for

13 34 CFR § 300.17.

14 *Id.* at *12.

15 Melody Musgrove & Michael K. Yudin, “Dear Colleague” Letter on the Individuals with Disabilities Education Act for Students with Disabilities in Correctional Facilities, U.S. DEP’T OF EDUC. 1 (Dec. 5, 2014), <http://www2.ed.gov/policy/gen/guid/correctional-education/idea-letter.pdf>.

16 20 U.S.C. § 1412(a)(1)(A).

17 20 U.S.C. § 1412(a)(11)(A). Federal case law has further delineated that the oversight responsibility of the SEA cannot be abdicated by delegation or a particular administrative structure. See, e.g., *Charlene R. v. Solomon Charter Sch.*, 63 F. Supp. 3d 510, 516 (E.D. Pa. 2014), *Case K. ex. Rel. Norman K. v. St. Anne Community High School. Dist. No. 302*, 400 F. 3d 508, 512 (7th Cir. 2005).

18 *Special Education in Institutional Settings*, Massachusetts Department of Elementary and Secondary Education (last visited December 2, 2021), <https://www.doe.mass.edu/seis/>.

19 Under 20 U.S.C. § 1413(g)(1), “[a] State educational agency shall use the payments that would otherwise have been available to a local education agency or to a state agency to provide special education and related services directly to children with disabilities residing in the area served by the local education agency, or for whom that state agency is responsible, if the state educational agency determines that the local educational agency . . . is unable to establish and maintain programs of free appropriate public education that meet the requirements of subsection (a).” Federal courts have interpreted this language to mean that SEA’s can also be held liable for failure to provide a child with FAPE. *Gadsby v. Grasmick*, 109 F. 3d 940, 952 (4th Cir. 1997) (“This language suggests that, ultimately, it is the SEA’s responsibility to ensure that each child within its jurisdiction is provided a free appropriate public education. Therefore, it seems clear that an SEA may be held responsible if it fails to comply with its duty to assure that IDEA’s substantive requirements are implemented.”).

incarcerated youth, DESE's regulations choose to place some responsibility on local school districts.²⁰ The ultimate responsibility still rests with DESE, however, to ensure that there are clear structures and mechanisms in place that ensure all agencies fulfill their responsibilities and that students receive FAPE.²¹ Moreover, while every other agency at any level of government that is involved in the provision of special education and related services to students with disabilities in correctional settings must ensure the provision of FAPE,²² DESE has the ultimate responsibility to ensure that all requirements of IDEA are met. As stated by the federal Office of Special Education and Rehabilitative Services (OSERS), "[r] egardless of the structure in a State, the State, as the IDEA, Part B grantee, has ultimate responsibility for ensuring FAPE is made available to all eligible students with disabilities residing in state local juvenile and adult correctional facilities."²³ The state has the authority to decide who has the responsibility to fund special education in facilities.²⁴

The IDEA lays out some exceptions that limit the legal obligations to provide a FAPE for "children" in "adult" correctional facilities.²⁵ This includes exemptions when providing such services would be inconsistent with state law or practice and when the individual was not identified as a child with a disability prior to placement in the adult correctional facility. There is also an exemption where the child's IEP team elects to modify the child's IEP or placement upon the State demonstrating "a bona fide security or compelling penological interest that cannot otherwise be accommodated." Lastly ... the federal government is statutorily limited in what penalties it may enact for IDEA noncompliance in the adult correctional facility context.²⁶ Despite these limitations, state law provisions that require that children in HOCs receive special education services remain, including important legal

20 DESE regulations (603 CMR 28.10, available at <https://www.doe.mass.edu/lawsregs/603cmr28.html?section=10>) state that, "The school district where the parent(s) or legal guardian resides shall have both programmatic and financial responsibility . . . [w]hen a student lives and receives educational services in an institutional facility operated by or, through contract, authorized by the Department of Mental Health, the Department of Public Health, the Department of Youth Services, or the Department of Correction or County House of Correction." Exceptions exist if a child was in foster care, or is above age 18 and was living independently.

21 20 U.S.C. § 1412(a)(12); 34 CFR 300.154.

22 34 CFR § 300.2(b)(1)(iv); U.S. DOE, Dear Colleague Letter on the IDEA for Students with Disabilities in Correctional Facilities (Dec. 5, 2014), at 5. See also, 20 U.S.C. § 1412(a)(11)(A); 20 U.S.C. § 1412(a)(1), (2), (4), (5), (6), (11); 20 U.S.C. § 1416(b)(1); 20 U.S.C. § 1416(b)(2)(C); 20 U.S.C. 1416(f); 20 U.S.C. § 1418(a), (b).

23 *United States Department of Education Office of Special Education and Rehabilitation Services Dear Colleague Letter*, December 5, 2014, at 6

24 20 U.S.C. 1412(a)(12)(B); 34 CFR 300.2(b)(iv).

25 IDEA uses the term 'child' and 'children' for all those who qualify for FAPE up to their 22nd birthday.

26 *Melissa Edelson, Special Education in Adult Correctional Facilities: A Right Not a Privilege*, Loyola of Los Angeles Law Review. Vol. 50:91, at 93-4 2017. Available at https://www.horvitzlevy.com/R5FD3S351/assets/files/News/50.1-Edelson_Note_Writing_Sample.pdf, internal footnotes removed, though Edelson's FN 18 lists relevant provisions: "20 U.S.C. § 1412(a)(1)(B)(i) (2004) (allowing states to limit the provision of special education if it would be inconsistent with state law or practice); id. §1412(a)(1)(B)(ii) (exempting adult correctional facilities from the child find obligation in limited circumstances), 20 U.S.C. § 1414(d)(7)(B) (2012) (allowing modifications of an incarcerated individual's IEP in certain circumstances), id. § 1416(h) (limiting the withholding power of the Secretary of Education in the context of adult penal institutions)."

obligations to identify young people who already have an IEP in place upon their admission to the facility and to provide them with a free and appropriate education under the IDEA.²⁷

Juvenile Justice Delinquency Prevention Act (JJDP)

The Juvenile Justice and Delinquency Prevention Act, explicitly states that agencies or states receiving funding's under this title must collaborate with the education agency to ensure that education records of adjudicated juveniles are transferred to the school district and that the juveniles receive full or partial credit towards high school graduation.²⁸

B. State law on the provision of FAPE to incarcerated students

All children and youth in Massachusetts are entitled to a free and thorough education under the Massachusetts Constitution²⁹ and the Commonwealth is often cited as the number one state in the nation for educational outcomes.³⁰ Cities, towns and school districts are, in general, responsible for providing public education to their residents.³¹ The Massachusetts Education Reform Act of 1993 (MERA)³² had the express purpose of ensuring that all public school children receive a comprehensive, high quality education in at least eight core subjects including math, science, technology, history, social science, English, foreign languages and the arts. MERA also expresses the intent to ensure classroom conditions conducive to learning; a consistent commitment of resources; a deliberate process for establishing individualized educational goals; and a process for holding educators accountable.³³

Providing Special Education to Institutionalized Students in Massachusetts

State Statutes – HOCs and DYS: The 1972 state special education law (Chapter 766 of the Acts of 1972) found in MGL Chapter 71B, and the Code of Massachusetts Regulations (603 CMR, Section 28.00) outline the state's obligations to provide special education services to children with disabilities, including students in institutional settings. MGL c. 71B §11 gives DESE explicit responsibility to provide special education to school age children with

27 See M.G.L. c. 71B, sec. 11A. See also, letter from Stephanie Smith Lee, Dir., Office of Special Educ. & Rehab. Serv.; (U.S. IDEA limits FAPE for children aged 18 through 21 where State law doesn't require special education and related services under Part B to be provided to students with disabilities who, in their last educational placement prior to incarceration in an adult correctional facility, were not identified as being a child with a disability under 34 C.F.R. § 300.8, and did not have an individualized education program (IEP) under Part B). Dept. of Educ., to Geoffrey A. Yudien, Legal Counsel, Vt. Dep't of Educ. (Aug. 19, 2003) [hereinafter IDEA Letter], <https://sites.ed.gov/idea/idea-files/policy-letter-august-19-2003-to-vermont-department-of-education-legal-counsel-geoffrey-a-yudien/x>.

28 34 USC 1112 §223 (a)(32)

29 In 1993, the Massachusetts Supreme Judicial Court held in *McDuffy v. Secretary of Executive Office of Education* that the Education Clause in the Massachusetts Constitution required the state executive and legislative branches to provide *all* public school children with a comprehensive, high quality education in several academic subjects including history.

30 See KidsCount. www.Kidscount.org

31 M.G.L. c. 76, § 1.

32 G.L. c. 69, §§ 1 *et seq.*

33 G.L. c. 69, § 1 (emphasis supplied).

disabilities who are incarcerated in HOC's.³⁴ Additionally, MGL c. 71B § 12 requires DESE to establish, maintain and administer a school department in DYS, DMH, DDS and DPH facilities that serve students with disabilities. While § 11 does not address the question of cost, § 12 does address costs. Specifically, the statute directs DESE to create a school department in each facility to service students with disabilities and while DESE may seek reimbursement from a student's local district, the statute also directs DESE to, "assume all costs of all aspects of the educational program in such departments."³⁵

State Regulations – HOCs and DYS: While state statute explicitly gives DESE responsibility for providing services to students in HOCs and creating a school department to provide services to students in DYS, the regulations promulgated by DESE complicate the matter. 603 CMR 28.06(9) states that the DESE, through SEIS, shall provide "certain special education services" to eligible students in DYS and HOCs, however, "[t]he department shall retain the discretion to determine based upon resources, the type and amount of special education and related services that it provides in such facilities."³⁶ Moreover, under the regulations, the student's home school district remains responsible for referral, evaluation and the provision of special education services, including any services not provided by DESE or the facility. As a result of this regulation, and in spite of the statutory obligation imposed on them, DESE has handed responsibility for provision of special education services and ensuring FAPE to the school districts. Despite this regulatory shirking of its own responsibility, DESE's own internal adjudicatory body (the Board of Special Education Appeals) has reiterated that DESE has the ultimate responsibility to ensure that students in DYS receive FAPE.³⁷

34 MGL c. 71B §11A.

35 MGL c. 71B §12.

36 603 CMR 28.06(9).

37 See, for example; In re: Student v. BPS & DESE, BSEA No. 20-08568; In re: Student v. Boston Public Schools & DESE, BSEA # 20-06658, and In re: Student v. Southbridge Public Schools, BSEA 21-00615.

III. Findings

Finding 1: A maelstrom of agencies, yet accountability nowhere: The current administrative structure — including DESE's delegation of authority to school districts — leaves no single agency sufficiently accountable for delivering educational services — including special education — to youth incarcerated at HOCs and DOC.

Every agency at any level of government that is involved in the provision of special education and related services to students in correctional facilities must ensure the provision of FAPE, even if other agencies share that responsibility.

Melody Musgrove & Michael K. Yudin, “Dear Colleague” Letter on the Individuals with Disabilities Education Act for Students with Disabilities in Correctional Facilities, U.S. DEP’T OF EDUC. 1 (Dec. 5, 2014), <http://www2.ed.gov/policy/gen/guid/correctional-education/idea-letter.pdf>.

For a young, incarcerated person with an IEP in Massachusetts to receive educational services, a range of state (and sometimes county and municipal) agencies need to align to provide this education. One primary challenge is that **no single agency takes ultimate responsibility to ensure that incarcerated 18- to 21-year-olds with disabilities receive education to which they are entitled.** The agency that is obliged under law to assure the delivery of special education services in jails and prisons, DESE, has largely delegated the duty to local districts that typically do not act unless the child and/or parent hires an attorney. This stands in stark contrast to the stated expectation from the US Department of Education that “[e]very agency at any level of government that is involved in the provision of special education and related services to students in correctional facilities must ensure the provision of FAPE, even if other agencies share that responsibility.”³⁸ In Massachusetts, DESE’s failure to provide oversight and coordination, as well as the DOC and HOC’s failures to prioritize education, leads to an expected result: young people not getting the education they are entitled to. The data suggest that only a small fraction of youth with IEPs at HOCs and DOC *actually receive appropriate educational services*, as will be detailed in findings 2 and 3 below. The administrative structure presents a major barrier to allowing incarcerated young people aged 18 to 21 at HOCs and DOC to be enrolled in credit-bearing high school classes, and for those with an IEP in place to receive a FAPE.

Imagine for a moment that an 18-year-old with an IEP who has not finished high school is incarcerated pre-trial at one of the county HOCs. This young person is legally entitled to

38 Melody Musgrove & Michael K. Yudin, “Dear Colleague” Letter on the Individuals with Disabilities Education Act for Students with Disabilities in Correctional Facilities, U.S. DEP’T OF EDUC. 1 (Dec. 5, 2014), <http://www2.ed.gov/policy/gen/guid/correctional-education/idea-letter.pdf>. 20 U.S.C. § 1412(a)(1)(A).

True Case Vignette:

An 18 year old student was enrolled at a special education day school when he was arrested. He pled to a sentence in adult court. The student did not receive special education services until an attorney at the EdLaw project sent a letter to the HOC facility identifying him as a student on an IEP and then reached out to DESE. DESE arranged for some math and English support, even though his IEP called for full time therapeutic support. He was told he could not both work and go to school, and he would earn more good time if he worked, so he wanted to work. We tried to intervene to come up with a combined schedule and requested a meeting. He was released before the meeting was scheduled.

receive a FAPE, but from whom? In the SEIS County House of Correction Practice Manual, DESE asks HOCs to identify whether that the young person has an IEP, but HOCs generally fail at that task. Practices differ across the Commonwealth: one county HOC sends a written letter to incarcerated youth once a month informing them of their right to education, while another county holds a monthly meeting where youth with IEPs are expected to publicly identify themselves, ignoring how stigmatizing such identification can be for some youth. DESE's Special Education in Institutional Settings (SEIS) unit has an obligation to provide this education and DESE contracts out the provision of education to a private non-profit organization (the Collaborative for Educational Services (CES)).³⁹ However, DESE only considers a young person a "student" after the HOC has identified them as having an IEP. In practice, this leads to very small numbers of youth being identified, **as only 25-30 young people at any one time across all Massachusetts county HOCs receive any special education services, and only two young people at DOC have received special education services over the last 2.5 years.**⁴⁰ In our example, a young person may still be enrolled at their local high school, but school districts are incentivized to remove 'problem' students from their rolls to boost test scores (further enabled by MGL Chapter 71, Section 37H 1/2, which allows for the suspension of a student upon the issuance of a felony complaint or the expulsion of a student upon a felony adjudication or conviction).⁴¹

In summary, county HOCs are tasked with identifying youth with an IEP and communicating that information to DESE, whose charge is to coordinate with the youth's prior school district to ensure that the student gets the instruction and services outlined in their IEP. DESE contracts with CES to provide some special education services, generally math and English Language Arts (ELA) instruction from a special education teacher, while the student's school district is tasked with providing any additional instruction and services

39 CfJJ telephone conversations with HOC education staff during 2021.

40 More detailed numbers and the calculations and sources for this are detailed under findings 2 and 3 below.

41 <https://malegislature.gov/laws/generallaws/parti/titlexii/chapter71/section37h1-2>

outlined in the IEP. This includes any additional support from a special education teacher in other course areas and any related services like occupational therapy or speech and language services. **In practice, this framework rarely works.** The HOCs do a poor job of identifying youth with IEPs and DESE seems disinterested in improving this process. CES has only minimal staffing because the number of students identified for services is so small, meaning that a special education teacher may only be on site to provide instruction and services for one day a week depending on the facility. This does not include situations where teachers aren't even allowed inside the facility, such as during a lockdown. Students' home school districts are generally nowhere to be found in any of this. Additionally, even if the student receives their services, there is no guarantee that the student will receive all the courses that they need to take or earn credit towards their high school diploma. Based on attorney and advocate experiences, it is uncommon for students in HOCs or DOC to receive credit towards their high school diploma for their work, even when they are receiving special education services. Most HOCs do not have a high school, and most the information provided by the response to our public records requests did not indicate that students were receiving credits towards their high school diploma. *While several agencies are tasked with roles to play in the education of these youth, the buck ultimately stops with no single agency, and no one is held accountable for the failures.*

By contrast, an 18-year-old⁴² with an IEP who is detained or committed to DYS will be immediately enrolled in their full-time school and receive some special education services within a few days of entry. (See details in finding 5 below.) **Fully one half of youth in DYS custody receive special education services.** This is, in part, because of a data sharing mechanism between DESE and DYS to identify IEP eligible students in secure juvenile facilities. Information sharing between DESE and DYS leads to young people with IEPs being quickly identified at DYS, while being overlooked at HOCs and DOC. Youth in DYS not only have access to a full time school program with general education teacher and a special education teacher, committed youth are also assigned an Education and Career Counselor, employed by CES, who is tasked with coordinating with the student's home schools to ensure that credits are given for school work towards graduation and to ensure that the young person can be re-enrolled at their home school upon release.

42 DYS maintains custody of youth past their 18th birthday under 2 circumstances: (1) the disposition of a juvenile case was reached after the youth turned 18 or (2) youth indicted as a youthful offender and is sentenced to DYS until they turn 21.

Figure 2: Comparing Educational Opportunities in the Juvenile and Adult Systems in Massachusetts

Domain	Youth at DYS	Youth at HOCs / DOC
Orientation / Philosophy	Implemented a positive youth development model which acknowledges that young people often age out of criminal behaviors and focuses on reentry into society.	The adult carceral system is designed for deterrence and punishment.
Broad educational mandate	All detained and committed youth have a right to free public education through high school. Federal law guarantees FAPE for those with IEP until 22 nd birthday.	Youth 18-21 have same broad educational rights through high school. While the adult correctional system is not required to ID youth who need an IEP, there is a requirement to provide FAPE to those with IEP already in place. However, all programs make up between 1-5% of HOC budgets; DOC spends 1.8% of budget on programs.
Identification of those eligible for IEPs under the IDEA	Based on DYS/DESE data sharing MoU, all students with an IEP are identified within days of admission. DYS reports that between 49 and 51% of detained youth and between 51 and 55% of committed youth had an IEP.	Neither HOCs nor DOC have active data sharing MoU with DESE despite legal obligation to provide educational services to students age 18-21 with an IEP. DESE's guidance (SEIS County House of Correction Practice Manual) puts responsibility for identification of youth with IEPs squarely on HOC. In practice, based on interviews with HOC educational staff, individuals sometimes need to volunteer the fact they qualify for an IEP in public settings, adding social barriers to identification. As a result, only around 0.5% of 18–21-year-olds in DOC and about 10% in HOCs were identified as having an IEP, indicating gross under-identification. ⁴³
Delivery of education to youth with IEPs	DYS is equipped to deliver at least math and reading SPED services to youth with an IEP.	An estimated 170 young people who are eligible for IEPs in DOC do not receive special education that they are entitled to. Further, at HOCs, between 125 and 171 youth each year do not receive the education that they have a right to.

43 See Figure 3 below, and data in appendix.

Domain	Youth at DYS	Youth at HOCs / DOC
Who are the teachers?	DYS has a contract with Collaborative for Educational Services (CES) to staff non-SPED education. DESE has a contract with CES to provide special education for youth at DYS, HOCs, DPH, and DMH facilities.	For special education, DESE's SEIS contract with CES covers youth at both DYS and HOCs. However, because so few students are identified, SPED teachers show up at most HOC facilities less than full time. In some facilities, it is only one day per week. Further, the SPED teachers only provide instruction and support in math and English, even if the IEP indicates a broader need. DOC employs teachers directly, though it is not known if any are special education certified. Even if they were, DOC provided special education to only 2 students over a 2.5-year period.
Waiting list for educational services?	No. All youth are in school for 5.5 hours a day.	HOC: Waiting lists vary by county. DOC: More than 4,000 people are on a waiting list for educational programming.
Are high school credits/degrees given?	Yes. HiSET is also available. Partnerships with community colleges, and sometimes 4-year colleges in place for any young person interested.	No. Neither HOCs nor DOC systematically provide high school credit or degrees. Only HiSET. Limited College in Prison programs available at some DOC institutions, though DOC pays for none of it.
Public Safety Outcomes	25% re-conviction rate (1 year)	55% re-conviction rate (3-year)

Finding 2: HOCs massively fail to identify young people in their care with existing IEPs, which is a key bottleneck to these youth receiving FAPE.

HOCs are tasked with identifying youth in their care who have an IEP and therefore qualify for special education services. In spite of national trends that show a high prevalence of youth with disabilities in correctional facilities, DESE reports monthly counts between 23 and 30 special education students’ at HOCs from fall 2019 to present. The chart below shows that there is only an average student count of 28.6 students with IEPs at any one time across **all** the HOCs statewide during the 2019-20 school year, and an average of 30.4 students at any one time from September-December 2020.⁴⁴ In January 2022, only 23 students across all of the county HOCs were considered ‘enrolled’ in special education. Based on data received from DESE, DOC, and HOCs that reasonably complied with public records requests, **we estimate that, HOCs under-identified between 142 and 189 youth who had IEPs in place each fiscal year between 2018-2020.**

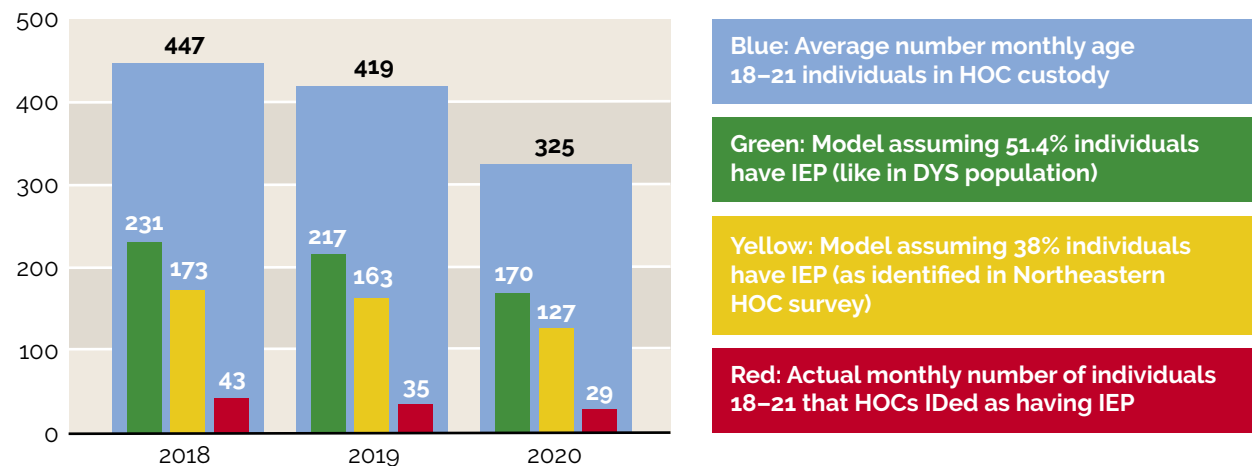
44 DESE-SEIS response to CfJJ public records request, March 2021.

County HOCs only identify between 8 and 10% of youth between the ages of 18–21 who qualify for special education services. This is far lower than the 48–51% of youth committed to DYS who receive special education services, and far lower than the 38% of HOC residents surveyed in 2020⁴⁵ who were covered by an IEP while in local schools.

Figure 3. Estimated monthly number of youth with IEPs at HOCs in Massachusetts and the estimated under-identification⁴⁶

	Estimate monthly total # of 18–21-year-olds at HOCs	Estimated # of 18–21-year-olds with IEPs at HOCs using 51% model	Estimated # of youth with IEPs at HOCs using 38% model	Actual # of youth who HOCs have IDED as having IEP	Estimated # of under-identified youth with IEPs at HOCs using 51% model	Estimated # of under-identified youth with IEPs at HOCs using 38% model
2018	447	231	173	43	189	131
2019	419	217	163	35	183	129
2020	325	170	127	29	142	99

Monthly total of youth age 18–21 at MA HOCs, Estimated Number of Youth with IEPs, and Actual Number HOCs have IDED as having IEP



The very low number of youth identified as requiring special education represents a failure by the HOCs, and as discussed in a finding 4 below, a failure by DESE to provide meaningful oversight. This low number is not surprising given that DESE/SEIS does not have any

45 Stephanie Hartung & Erin Stewart (2021). *Criminalizing a “Rough Life”: A Study of Systems Involvement Among Incarcerated People in Massachusetts*, at p. 17. Available at: <https://law.northeastern.edu/wp-content/uploads/2022/01/c2p-prison-survey-2022.pdf>

46 Detailed information that forms the basis for this chart can be found in the appendix to this report.

memoranda of understanding in place with the HOCs for data sharing, as is in place between DESE and DYS, and leaves identification of youth with IEPs solely to the HOCs. The joint outcome means that most young people are just not receiving educational services while incarcerated as required under Federal law.

Figure 4. DESE reports the small average number of special education students at HOCs across the state each school year.

CHC Program	5Y 20/21 Student Average to Date	5Y 19/20 Sept–June Average Student Count	5Y18/19 Sept–June Average Student Count	5Y17/18 Sept–June Average Student Count	5Y 16/17 Sept–June Average Student Count	5Y 15/16 Sept–June Average Student Count
Barnstable County House of Correction	0.0				0.0	0.4
Berkshire County House of Correction	0.0	3.3	4.1	3.7	6.3	3.8
Bristol County House of Correction	4.2	6.7	4.0	4.6	4.0	6.4
Essex County House of Correction	2.8	0.2	0.3	2.9	1.7	7.2
Franklin County House of Correction	0.8	1.2	2.8	2.7	4.0	3.7
Hampden County Correctional Center at Stony Brook	2.0	2.5	2.4	3.4	5.0	4.5
Hampshire County House of Correction	0.0		0.7	1.2	0.9	2.4
Middlesex County House of Correction	6.4	3.2	4.1	4.6	4.2	2.1
Nashua Street Jail	1.6					
Norfolk County House of Correction	0.0			0.0	0.0	0.0
Plymouth County House of Correction	0.2	1.9	1.6	3.2	1.9	4.0
Suffolk County House of Correction	5.8	5.0	9.8	10.8	9.6	8.0
Western Mass Regional Women's Correctional Center	0.8			0.0	0.0	0.0
Worcester County House of Correction	5.8	4.6	4.9	5.6	3.9	3.7
<i>CHC Totals</i>	30.4	28.6	34.7	42.7	41.5	46.2

Figure 5: Recent HOC special education enrollments.

CHC Enrollment, January 2022

Program Name	Number of students
Berkshire County House of Correction	2
Bristol County House of Correction	4
Essex County House of Correction	5
Franklin County House of Correction	1
Hampden County Correctional Center at Stony Brook	2
Nashua Street Jail	2
Suffolk County House of Correction	3
Worcester County House of Correction	4
Grand Total	23

CHC Enrollment, December 2021

Program Name	Number of students
Berkshire County House of Correction	2
Bristol County House of Correction	3
Essex County House of Correction	7
Franklin County House of Correction	1
Hampden County Correctional Center at Stony Brook	3
Nashua Street Jail	3
Middlesex County House of Correction	2
Suffolk County House of Correction	3
Worcester County House of Correction	4
Grand Total	28

Methods for identifying students with IEPs vary widely across different HOC facilities. For instance, reports from one county HOC detail that young people who newly arrive at a facility may be asked in front of their peers to raise their hands if they are on an IEP. This method of identification violates student confidentiality, shows a lack of sensitivity to the stigma associated with having an IEP, and undoubtedly contributes to the under-identification of students with IEPs in HOCs. Youth in the Worcester County HOC are notified monthly by a written letter that they have the opportunity to alert SEIS that they have an existing IEP in place, while youth in Middlesex County are invited once a month to an education orientation meeting where they can learn about the possibility of notifying SEIS that they have an existing IEP. Both of these processes allow a young person to sit for up to 30 days without any educational services or even alerting the facility or DESE that they have an IEP, depending on when in the month they arrived at the facility and when the monthly letter was sent/monthly meeting occurred.⁴⁷ As it pertains to pre-trial youth, we

47 This point was brought to DESE's attention in the CFJJ/EdLaw/MHLAC Letter to DESE Re: Screening for Special Education and data sharing at County Houses of Corrections and the Department of Corrections, August 2021.

acknowledge that this population of youth often only stay for a short time at an HOC, making identification and service delivery challenging. However, there are still lessons to be learned from how quickly and efficiently DYS works to quickly identify and provide special educational services even to detained youth.

From the data CfJJ received in response to public records requests, different HOCs appear to do better or worse at identifying youth with IEPs, as outlined in Figure 6 below. While Berkshire and Franklin identify close to the number of youth with IEPs that are estimated by our comparison to the DYS population (for example, 3.3 youth identified is close to 4 in the Berkshire graph on the opposite page), Middlesex, Worcester, and Norfolk all appear to significantly under-identify youth with IEPs (for example, while we would expect 20 youth to be identified with an IEP in Middlesex at any one time in 2020, there were an average of only 3.2 identified. Norfolk HOC has identified zero youth with IEPs from 2018–2020. Other county HOCs either did not respond to our public record request or requested exorbitant fees that were a barrier to presenting state-wide data.)

HOCs deprioritize educational programming for youth in other ways.

Even when a young person manages to enroll in educational classes, they are regularly not given credit towards their high school graduation requirements for completed work at any of the HOCs. This undercuts the incentive for young people to engage in their education. This is incredibly discouraging to a population of young people that has often already dealt with school pushout and other negative experiences during their educational journey. Furthermore, in some facilities such as the Bristol County HOC, youth are incentivized away from education because their sentence can be reduced more quickly through engaging in work programs, a benefit that doesn't exist for school attendance and completion.

This combined failure to identify youth with IEPs, to provide school credit towards graduation and to provide sentence reduction incentives places a major burden and disincentive on incarcerated young people, making the exercise of their legislatively protected right to an education and the goal of achieving a high school diploma difficult and at times impossible.

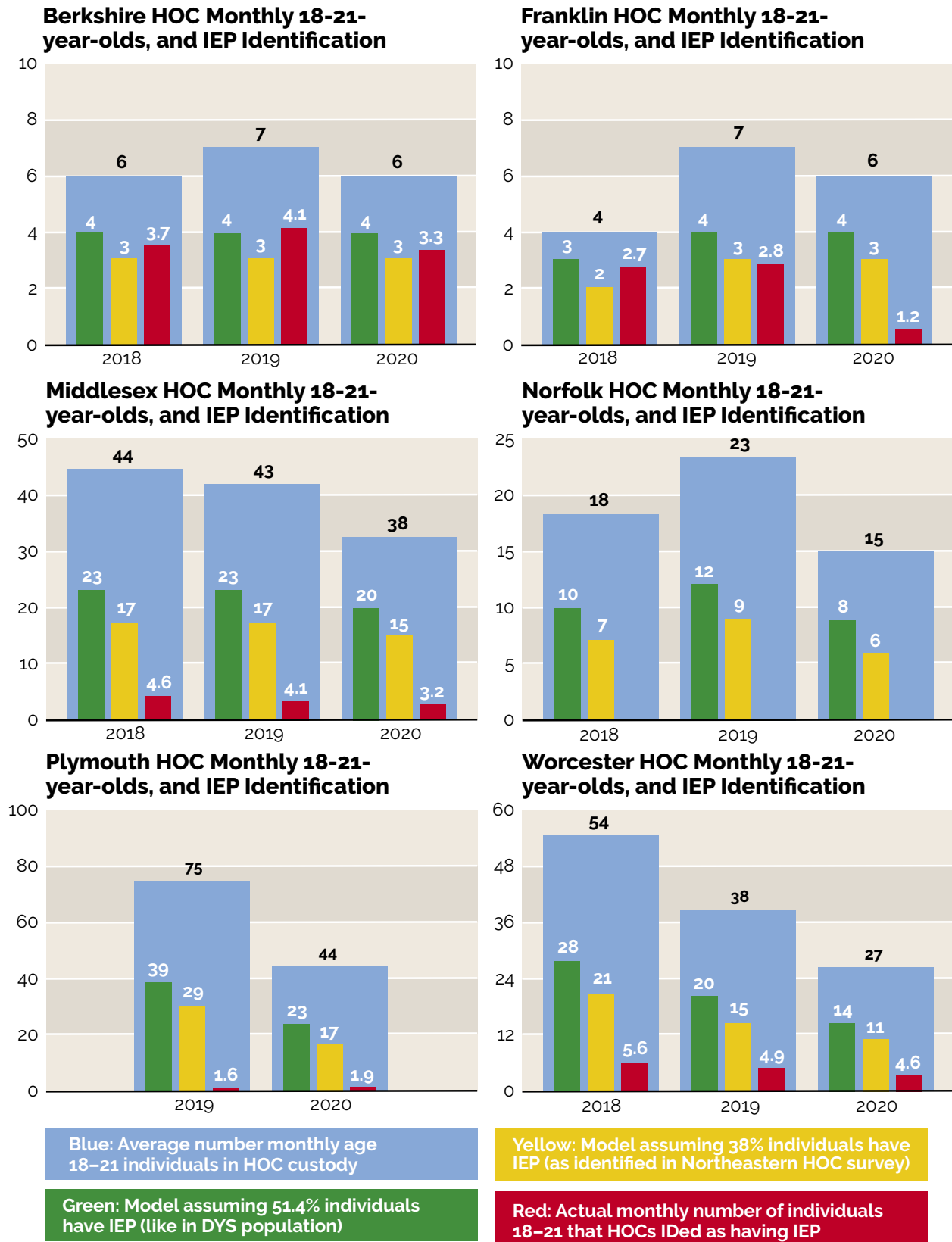
Finding 3: The DOC significantly under-identifies young people with existing IEPs, has a large number of young people on waiting lists for education services, and has an inadequate response to major mental health problems.

Federal law, under the IDEA, requires that DESE serve children identified as having disabilities and that adult carceral institutions like the Massachusetts DOC identify incarcerated youth who have an existing IEP in place in order to provide them with special education services.⁴⁸ Massachusetts DOC policy states that “an initial assessment shall be done for every incoming inmate,” including the completion of an “Education/Vocation Assessment

⁴⁸ See US Department of Education Child Find Regulations at Section 300.111, available at <https://sites.ed.gov/idea/regs/b/b/300.111>.

Figure 6: Select county HOC estimated monthly number of youth with IEPs, and the estimated under-identification

Note: the gap between the green and red bars show the level of under-identification on a monthly basis. Monthly 18-21 custody totals (blue bar) extrapolated by CfJJ from 18-20 data; green and yellow bars are CfJJ calculation. Sources: Responses to public records requests from DESE (red bar) and HOCs (blue bar).



Questions for Risk Assessment.”⁴⁹ The assessment questions appear to be self-reported and ask “Were you in special education classes in school? NO YES”⁵⁰ The “Consent Form for Adult Inmates Seeking a Determination of Eligibility for Special Education Services” provides seven check box questions, a signature place, and requires a witness.⁵¹

Under-identification: In practice, Massachusetts DOC significantly under-identifies incarcerated students who have existing IEPs. In response to an EdLaw Project public records request, the DOC reported on May 4, 2021 that while 346 incarcerated persons age 18–21 were enrolled in school at some point over the last four years, “DOC records reflect that of the inmates⁵² age 18-22, only one housed at MCI–Norfolk and one housed at MCI–Framingham were identified as needing and receiving special education services during the last 2½ years.”⁵³ Despite the differing timelines (2.5 years vs 4 years), two out of 346 represents only one-half of one percent of the population of school-aged young people, which must be a huge under-identification of youth with special education needs. Assuming that youth aged 18–21 at DOC have similar rates of special education needs as youth at DYS (where 50% of youth in DYS custody have an IEP in place), DOC likely failed to provide FAPE to 176 youth with disabilities in its custody between 2018 and 2020.⁵⁴ These numbers show DOC’s de-prioritization of educational programming, as well as inadequate policies and practice (1) to identify which youth have an IEP already and (2) to provide special education services to those youth. Ultimately, it shows DOC’s lack of care to fulfill the special educational rights of youth aged 18–21 with an identified disability. It also shows that DESE has not taken the necessary initiative to ensure that it receives cooperation from DOC to satisfy its mandate to provide special education for incarcerated youth.

49 See MADOC Policy 103 DOC 441 “Inmate Training and Education,” effective 2/14/2022 at 441.03. The Policy goes on to reference an MoU between DOC and DESE: “To assist in meeting the educational needs of inmates who require special placement because of physical, mental, emotional, or learning disabilities, and in compliance with the Memorandum of Understanding (MOU) between the Department of Correction and DESE, the designated Site Supervisor or designee, shall advise inmates under the age of twenty-two (22) of their special education rights and complete the following necessary forms. The MOU can be found on the Division of Inmate Training and Education intranet page.”

50 See MADOC Policy 103 DOC 441 “Inmate Training and Education,” effective 2/14/2022 at Attachment #1.

51 Id. at Attachment 2.

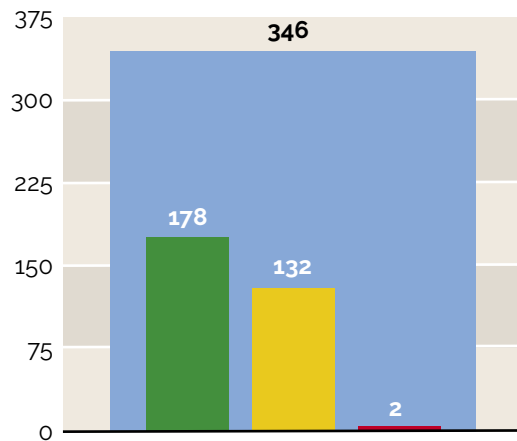
52 The authors of this report strongly prefer the more humanizing term ‘incarcerated persons,’ though we have retained DOC’s original language in this direct quote. For further discussion of this point, see Cox, A., 2020. The language of incarceration. *Incarceration*, 1(1) 1–13. Available at: <https://journals.sagepub.com/doi/pdf/10.1177/2632666320940859>.

53 DOC response to EdLaw Project Public Records Request. 2021.

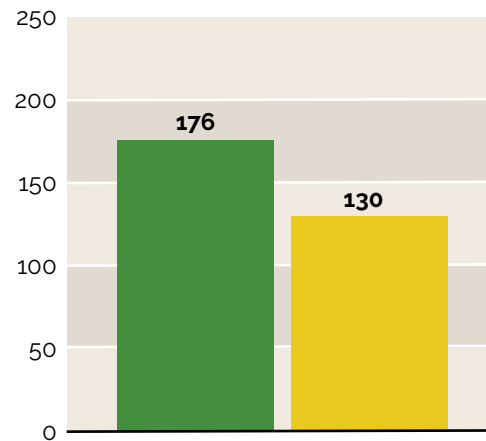
54 Using the FY19 estimate that 49.8% of youth in DYS have an existing IEP and applying this rate to the 346 youth in DOC, and then subtracting the two cases identified. In other words, $346 * 0.498 - 2 = 170$.

Figure 7: Estimated number of youth with IEPs at Massachusetts DOC, and the estimated under-identification

DOC Total Youth Age 18-21 Enrolled in School 2017-21, Estimated Number of Youth with IEPs, and Actual Number of Youth DOC identified as having IEP.



Estimated number of under-identified youth at DOC age 18-21 with IEP



Blue: Total youth age 18-21 enrolled in school in DOC custody, 2017-21

Green: Model assuming 51.4% individuals have IEP (like in DYS population)

Yellow: Model assuming 38% individuals have IEP (as identified in Northeastern HOC survey)

Red: Actual number of youth age 18-21 that DOC IDed as having IEP, 2019-21

Waiting lists: The number of people of all ages in DOC custody has dropped significantly over the last several years. Any freed-up resources, however, are not employed to provide meaningful educational programming opportunities to persons who desire them. As of December 1, 2021, there were 6,029 people in DOC custody. Of those, there were 886 people (or just under 15% of the total population) enrolled in educational classes, “including adult basic education (ABE), adult secondary education (ASE), vocational, technology and those offered in specialized and restrictive housing units.”⁵⁵ At the same time, 4,065 people – more than 67% of the incarcerated population – were on waiting lists for adult basic education and adult secondary education. Given that DOC invests only 1.9% of its budget on program costs, this unmet demand for educational programming is unsurprising.⁵⁶

Suicide rate and mental health: Approximately 29.4% of those incarcerated at DOC facilities had a serious mental illness in 2021,⁵⁷ and these facilities were also shown to have the

55 Massachusetts Department of Correction public records response dated August 20, 2021. <https://correctionalfunding.com/wp-content/uploads/2021/12/Valerio-programs.pdf>.

56 Gordon Haas, <http://www.realcostofprisons.org/writing/haas-doc-expenditures-and-staffing-fy-2021.pdf>.

57 Inmate Profile Dashboard, Mass.gov (last visited December 2, 2021), <https://www.mass.gov/info-details/inmate-profile-dashboard>

fourth highest suicide rate in the nation according to a 2015 report released by the U.S Department of Justice (DOJ).⁵⁸ An investigation conducted by the DOJ in 2020 later found that widespread failure to provide even basic mental health services was partly responsible for the high suicide rate in MA prisons. This is especially relevant given the intersection between mental health and special education, as youth identified for an IEP under the emotional disturbance disability category often have significant mental health diagnoses.

Finding 4: DESE fails to meet its duty to ensure that youth at HOCs and DOC receive educational services to which they are legally entitled.

The responsibility to provide FAPE for youth ages 18–21 with an existing IEP in place lies with DESE according to state and federal special education law, as outlined in Section II of this report. This legal obligation extends to youth incarcerated at HOCs and DOC, with DESE holding the primary duty to ensure that these youth with IEPs receive FAPE. However, DESE has delegated that duty to multiple other actors – including the HOCs to identify who has an IEP in place, to CES to provide SPED services, and to school districts to pay when necessary – while failing to maintain the level of oversight necessary to hold these other actors accountable in fulfilling these roles.

DESE’s conceptualization of its own mandate extends only to their oversight of the contract between themselves, SEIS and CES (the service provider), and only nominally holding school districts responsible for unmet needs. SEIS does not attempt to exercise oversight authority over DOC,⁵⁹ but DESE does have an MoU in place with DOC to manage the relationship. DOC’s educational programming booklet makes no mention of partnering with DESE or of providing special education programming at all.⁶⁰

This abdication of responsibility leaves behind an estimated 189 youth per year with existing IEPs at both HOCs and DOC with no access to FAPE. Without adequate DESE oversight, HOCs and DOC continue to violate the law not only without consequence, but with seeming approval from the very agency tasked with oversight.

The lack of a data sharing MoU between DESE and the HOCs or the DOC compounds the idea that these youth are beyond the purview of DESE. This means that youth themselves are left to fight for a right – access to a free and appropriate education – to which they are entitled to by law. Experiences relayed by education attorneys and advocates in Massachusetts show that the only way for many incarcerated young people to receive the education they are entitled to is through a legal challenge to the school district and HOC, through filing complaints with DESE’s internal Problem Resolution System (PRS) or by appealing the poor implementation of the IEP to the Bureau of Special Education Appeals (BSEA), the administrative body responsible for resolving special education disputes. While the outcomes of these appeals are often in the young person’s favor, the systemic failures remain

58 <https://www.bostonglobe.com/2021/03/22/opinion/dragging-state-prisons-into-21st-century/>

59 See M.G.L. c.71B, § 11A, which mentioned DESE authority over HOCs but not DOC.

60 Program Description Booklet available here: <https://www.mass.gov/service-details/inmate-programming>.

unaddressed. There is inadequate provision of services at the HOCs as a rule, and a BSEA appeal requires resources, wherewithal, and often legal counsel. The process – including some counties requiring a public self-identification of special education status – acts as a disincentive for young people to advocate for their own educational rights.

CfJJ and other advocates raised these concerns to DESE in a letter in August 2021,⁶¹ though the response has been both inadequate and discouraging. While not necessarily in response to our letter and one follow up meeting, DESE did issue a “Technical Assistance Advisory” letter to superintendents and SPED administrators in November 2021 entitled “Shared Responsibilities for Special Education Services in Institutional Settings.”⁶² However, this Advisory has two primary flaws:

- first, in outlining DESE’s own responsibilities to these youth, the Advisory re-states the most ‘shirking’ line of regulation, namely that DESE “shall retain the discretion to determine based upon resources, the type and amount of special education and related services that it provides in such facilities;”⁶³ and
- second, concerning the need to identify special education students at host facilities, the Advisory states that, “For students who have reached the age of majority (18) and make their own educational decisions, privacy considerations mean that the host agency facility asks them to self-identify as eligible for special education.”⁶⁴ Simply citing ‘privacy considerations’ as the barrier to providing timely information and educational services to youth with an IEP is not acceptable.

Taken together, DESE’s regulatory regime provides inadequate oversight to youth at HOCs and DOC, pushes the responsibility to identify youth with IEPs onto HOCs and the incarcerated young themselves, and then pushes ‘fiscal and programmatic responsibilities’ onto school districts. All the while, DESE does not provide adequate oversight of either school districts or adult carceral institutions when very few youth are identified or actually receive SPED services.

Finding 5: DYS meets more of its legal obligations to provide educational services for the children and young adults in its care (even though some concerns remain).

When given the time and support to mature and build social and intellectual skills, youth are less likely to reoffend. DYS’s approach meets these needs in ways the HOCs/DOC cannot. The enhanced educational access and experience at DYS stems from differences in system orientation in the juvenile system as reflected in the law, regulation/practice, and

61 CfJJ, MHLAC, and EdLaw Project letter to DESE Re: Screening for Special Education and data sharing at County Houses of Corrections and the Department of Corrections. August 24, 2021. Available at: <https://www.dropbox.com/s/ihfz1qs2k5epbwn/Letter%20to%20DESE%20re%20CHCs%20and%20DOC%208.24.2021.pdf?dl=0>

62 Massachusetts Department of Elementary and Secondary Education (DESE). Technical Assistance Advisory SPED 2021-3: *Shared Responsibility for Special Education Services in Institutional Settings*. November 19, 2021.

63 Citing to 603 CMR 28.06(9).

64 Massachusetts Department of Elementary and Secondary Education (DESE). Technical Assistance Advisory SPED 2021-3: *Shared Responsibility for Special Education Services in Institutional Settings*. November 19, 2021.

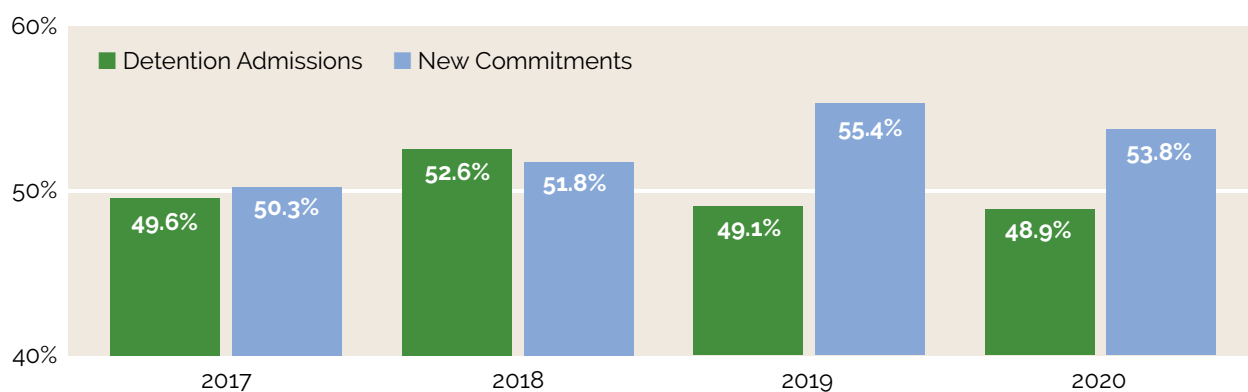
organizational culture, as well as dedication of staffing and resources to educational programming as part of a Positive Youth Development (PYD) model.

System orientation: DYS is designed to provide individualized, developmentally appropriate services for young people and operates using a PYD model. DYS requires all individuals within its custody to receive some level of education while housed at their facilities, while the HOCs and DOC do not. Those in DYS custody may also be required to receive mental health evaluations and must participate in programs designed to develop more responsible behaviors.⁶⁵ The DOC and HOCs both lack equivalent programs necessary to promote personal and neurological development of the youth in their custody. Indeed, these systems are punitive in nature, and their funding priorities reflect that system orientation. As mentioned above, DOC provides education to only about 15 percent of those in its custody: more than $\frac{2}{3}$ of individuals incarcerated at DOC are on a waitlist for educational programming. HOCs spend only between 1 and 5% of their budgets on programming overall, of which education is only one part.⁶⁶

Data sharing and early identification is the rule at DYS: A data sharing mechanism exists between DESE and DYS to identify IEP eligible students in DYS custody: On a weekly basis, DYS provides DESE's Data Services with the names of students who have been newly detained since the last data match, which allows DESE to identify which youth receive special education.⁶⁷ This reflects interagency coordination and a productive working relationship between DESE and DYS. It also is evidence of what appears to be an adequate process to identify and provide incarcerated youth at DYS with special education services to which they are entitled.

Figure 8: Between 48 and 55% of all youth in DYS custody have an IEP in place

Percentage of DYS Youth with an IEP



65 <https://www.mass.gov/service-details/dys-reports-and-resources> (in the 2021 DYS Fact Sheet)

66 Massachusetts Correctional Funding Commission Report. Available at <https://correctionalfunding.com/commission-report/>

67 DESE and DYS, *DYS and DESE Agency Coordination Process for DYS Youth Eligible for Special Education Detention and Commitment* (Updated August, 2017).

In FY2019 and FY2020, DYS reports that between 49% and 51% of detained youth and between 51% and 55% of committed youth had an IEP.⁶⁸ This means that 394 out of 768 newly detained youth and 82 out of 137 newly committed youth in FY2020 were identified as having IEPs.⁶⁹ This is more than 2.5 times the 18.7% of general MA youth population with an IEP,⁷⁰ and reflects both the complex needs of juvenile justice system involved youth, as well as the failure of our schools and community systems to meet the needs of these youth. As this report has shown, this number is in stark contrast to the tiny percentage of similarly situated youth in HOC and DOC custody who receive special education services.

Figure 9: The number and proportion of DYS youth in detention who have an IEP by race and ethnicity

DYS Detention Admissions w/ IEP as Reported by DESE by Race/Ethnicity (FY2020)	N	%
Hispanic/Latinx	150	48.5%
Black or African American	126	53.2%
White	90	54.2%
Multiracial	8	38.1%
Chooses not to self-identify	12	60.0%
American Indian or Alaska Native	6	85.7%
Asian	0	0.0%
Native Hawaiian or Other Pacific Islander	<5	66.7%
Total	394	51.4%

Pathways to desistance,⁷¹ a major, long-term longitudinal study of over 1,300 serious juvenile offenders, identified factors that led some young people to persist in their offending and those that led to their desistance from crime. The study found that young people, including those with serious offenses, mature psychologically, socially, and cognitively, over time. Moreover, the severity or frequency of offending did not predict future offending,

68 Source: DYS response to Citizens for Juvenile Justice (CfJJ) public record request. April 2021. In juvenile justice parlance, ‘detained’ refers to time pre-trial, and ‘committed’ is post-trial, after adjudication.

69 [1] We recognize that 82 out of 137 is 59%, not 55%. The total number of new DYS commitments is from OCA JJPAD 2020 Annual Report. The 55% calculation was provided by DYS in response to CfJJ public record request.

70 DESE. School and District Profiles. Massachusetts level, 2020-21. <https://profiles.doe.mass.edu/profiles/student.aspx?orgcode=00000000&orgtypecode=0&leftNavId=305&>

71 Laurence Steinberg (2014) *Give Adolescents the Time and Skills to Mature, and Most Offenders Will Stop*. Chicago, IL: MacArthur Foundation.” Available at <https://www.pathwaysstudy.pitt.edu/documents/MacArthur%20Brief%20Give%20Adolescents%20Time.pdf>

however maturation and the pace young people met developmental milestones were more predictive of offending.⁷² Young people who had diminished impulse control and diminished suppression of aggression were more likely to persist in offending.⁷³ From research, we know that programs that require kids to develop positive decision-making and concrete skills, further their education and engage with their families and other positive adult role models⁷⁴ are far more likely to result in increased public safety, particularly compared with policies that push young people into the adult system, increasing their likelihood of recidivism and even escalation into serious, violent crime.⁷⁵

Knowing the importance of education in preventing recidivism, enacting legislation to extend that age of juvenile jurisdiction to include 18- to 20-year-olds, coupled with a commitment from all system actors to utilize a Positive Youth Development framework, would help to reduce recidivism while best meeting the legal obligations to provide a FAPE to young people.

There are six domains of development that are tied to improved outcomes of justice-involved young people.⁷⁶ Within the six domains (work, education, relationships, community, health, and creativity), DYS is inherently better equipped to address the needs of young people within the system.

Nationally, with Massachusetts being an early-adopter, youth-serving legal systems are moving towards interventions that are geared towards equipping young people with skills as well as with social connections.⁷⁷ For youth involved in more serious or persistent risky activity, research demonstrates that successful crime prevention and rehabilitation programs have the following characteristics:⁷⁸

1. Developmentally appropriate programming.
2. Promotion of “positive youth development” by building relationships between youth and adult role models and ensuring that youth have opportunities to learn and demonstrate new skills, including self-control and interpersonal skills.

72 Id.

73 Monahan KC, Steinberg L, Cauffman E, Mulvey EP. Trajectories of antisocial behavior and psychosocial maturity from adolescence to young adulthood. *Dev Psychol.* 2009;45(6):1654–1668. doi:10.1037/a0015862. Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2886970/>

74 Butts et al. *Positive Youth Justice*.

75 Centers for Disease Control. *Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to Adult Justice System* (November 2007). Available at <https://www.cdc.gov/mmwr/preview/mmwrhtml/rr5609a1.htm>

76 Butts, Jeffrey A., Gordon Bazemore, & Aundra Saa Meroe, “Positive Youth Justice: Framing Justice Interventions Using the Concepts of Positive Youth Development” (2010). Available at <https://positiveyouthjustice.files.wordpress.com/2013/08/pyj2010.pdf>

77 Benjamin Foreman and Sarah Yee. *Viewing Justice Reinvestment Through a Developmental Lens* (2015). MassInc. Available at <https://massinc.org/research/viewing-justice-reinvestment-through-a-developmental-lens/>

78 Butts et al. *Positive Youth Justice at 17-19*; Centers for Disease Control and Prevention. *Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System*. MMWR 2007;56 (No. RR- 9). Available at <https://www.cdc.gov/mmwr/pdf/tr/rr5609.pdf>

3. Engagement with youth in effective, age-appropriate therapy or drug treatment when necessary.
4. Avoidance of the use of institutional placements or incarceration unless necessary for public safety.

In addition to having a full-time school at each site, DYS has a clear system of credit hours and contracted staff responsible for ensuring the transfer of credits for youth who participate in school in DYS to the student's home school district. Additionally, for students who complete their needed credits towards graduation while in DYS, the agency holds their own graduation ceremony for the student to commemorate the event.

Comparatively, DYS does a far better job than the DOC and HOCs to prioritize education for the youth in its custody. Still, attorneys and advocates state that some concerns remain. Specifically, concerns have been expressed that youth in DYS do not consistently receive all of the services that are outlined in their IEPs, with math and reading being prioritized, sometimes to the exclusion of other educational services. Further, school districts remain largely absent in supporting DYS-detained and committed youth, and often impose barriers to a youth's re-enrollment in their home school after being incarcerated at a DYS facility.

Finding 6: School districts across Massachusetts fail to provide support to students who are incarcerated, despite students technically remaining a part of the district.

Under the current regulatory regime, school districts have an obligation to support students and provide them with educational services, even when they are incarcerated. School districts are “responsible for students in institutional settings ...” and “... not relieved of their obligations to students in such settings.”⁷⁹ As DESE notes, in its November 2021 technical guidance, “School districts maintain fiscal and programmatic responsibilities for students in host agency facilities, just as they would for students who attend school in their school buildings.”⁸⁰ While DESE imposes this regulation on school districts, districts are not held accountable for failure to fulfill their role. As such, **school districts in Massachusetts, largely ignore their obligation, especially with respect to their students with IEPs in HOCs and DOC.** According to education law advocates, these students generally need to have an education lawyer to fully access the services outlined in an IEP.

Students with an IEP remain enrolled at their original districts whether they are incarcerated or not. Some school districts have a larger responsibility number-wise than others with respect to this population; for example — over 50 students admitted to DYS detention had last attended Lawrence High School in FY2019 and 2020 alone (See Figure 10 below). While DESE has a process for documenting cases where LEAs are not responding to requests for assistance for youth at HOCs in the SEIS County House of Correction Practice

79 603 CMR 28.06(9)(a).

80 Massachusetts Department of Elementary and Secondary Education (DESE). *Technical Assistance Advisory SPED 2021-3: Shared Responsibility for Special Education Services in Institutional Settings*. November 19, 2021.

Manual, this process has not been utilized in recent years according to responses received from DESE and CES public records requests.

Finally, some school districts claim that they are not able to give high school credit to a young person who is incarcerated because the classes offered in adult correctional facilities are not in line with the district curriculum. A young person who puts in the effort to complete the coursework that they are given only to be denied credit is a harsh outcome that can devastate the confidence of a student. Young people should not bear the impact of the failure of local and state actors to coordinate a system that ensures that young people not only have access to education but are able to receive proper recognition and credit for their work. This is an area where DESE seems especially culpable for their lack of oversight.

The disregard of incarcerated students with disabilities by school districts reflects a broader undercurrent of the public education system's criminalization of these students, particularly Black students with disabilities. Schools push these students out of the classroom starting with exclusionary discipline practices. Nationally, Black children only make up around 19 percent of students with disabilities but receive 37 percent of all out-of-school suspensions lasting 10 days or less and a staggering 47 percent of all out-of-school suspensions lasting over 10 days administered to children with disabilities.⁸¹ In Massachusetts, “[t]he statewide average for the number of days of instruction missed due to school discipline [...] is 16 days for every 100 enrolled students. This number doubles to 32 days for students with disabilities. For Black students, the number is 34 days, more than triple the amount missed by White students (10 days).” Black and brown students with a disability are two times as likely to be disciplined as white students with a disability.⁸² Black and brown students who are economically disadvantaged are one and a half times as likely to be disciplined as white students who are economically disadvantaged. Youth are more than twice as likely to be arrested during periods when they are suspended or expelled from school. Even more directly, nationally, Black students with disabilities are more than five times as likely to be referred to law enforcement than their white peers without disabilities and six times as likely to experience a school-related arrest.⁸³

81 <https://www.childtrends.org/publications/school-prison-pipeline-intersections-students-color-disabilities>

82 DESE response to CfJJ data request, based on 2019 data.

83 <https://www.gao.gov/assets/700/690828.pdf>

Figure 10: Last School Placement Prior to DYS Detention Admission; 30 most frequent sending schools.⁸⁴

	FY 19	FY 20
William McKinley, Boston	19	26
Lawrence High School, Lawrence	32	19
Haverhill High, Haverhill	12	15
Brockton High, Brockton	18	14
Springfield Public Day High School, Springfield	21	14
South High Community, Worcester	<5	12
Burncoat Senior High, Worcester	11	10
TechBoston Academy, Boston	8	9
Cambridge Rindge and Latin, Cambridge	8	9
Robert H. Goddard Academy, Central Mass SPED Academy	6	9
Phoenix Academy Public Charter High School Springfield, Springfield	<5	9
Springfield High School, Springfield	9	9
Devereux School	<5	8
Excel High School, Boston	7	8
Central Massachusetts Academy (CMSEC)	10	8
Holyoke High, Holyoke	<5	8
The Career Academy, Lowell	<5	8
Whaling City Junior/Senior High School, New Bedford	<5	8
Phoenix Academy Public Charter High School Lawrence, Lawrence	<5	8
Woodward Day School, Central Mass SPED Academy	19	7
Phoenix Charter Academy	<5	7
Springfield Central High, Springfield	7	7
Compass School (Boston)	<5	6
Brighton High, Boston	8	6
Charlestown High, Boston	<5	6
Edison Academy, Brockton	<5	6
Huntington Therapeutic Day School, Brockton	<5	6
High School of Commerce, Springfield	8	6
Doherty Memorial High, Worcester	10	6
North High, Worcester	12	6

⁸⁴ DYS response to CfJJ Public Records Request. DYS suppresses numbers fewer than 5. This is a partial list, and data is reported by DESE.

IV. Conclusion and Recommendations

Youth who experience the juvenile court system and DYS have better educational opportunities leading to better life outcomes and public safety outcomes than youth who experience the adult court system and HOCs/DOC.

Young people who spend their commitment in the custody of DYS have a much lower recidivism rate than those who are sentenced to a county HOC or the DOC. Recidivism among young people released from incarceration in the adult corrections system is more than double the recidivism of similarly aged youth released from a Department of Youth Services commitment. Teens and young adults incarcerated in Massachusetts' adult correctional DOC and HOC facilities have a three-year reconviction rate of 51% and 55% respectively⁸⁵ while teens exiting DYS commitment have a one-year re-conviction rate of 25%.⁸⁶

The juvenile system's focus on accountability through rehabilitation and positive youth development is directly tied to lower recidivism rates. CDC research has shown that similar adolescents had a 34 percent higher felony re-arrest rate when they were processed in court as adults compared to those arraigned as juveniles (CDC). Young people exposed to toxic environments like adult jails and prisons can get entrenched in problematic behaviors, increasing the probability of recidivism. DYS has been successful in reducing its recidivism rate following almost four decades of reforms that emphasize education and treatment and promoting policies whose primary goal is to ensure young people's healthy and positive development into adulthood. It is crucial that young people receive rehabilitative — and not overly punitive — treatment now, to protect their future. Most young people “age out” of offending by their mid-twenties, particularly with developmentally appropriate interventions.⁸⁷

The juvenile system typically imposes more supervision and intensive programming while in confinement than the adult criminal legal system. Education access, counseling, and independent living programs are difficult-to-impossible to access in adult correctional settings. Teens in the juvenile system may be required to receive evaluations and assessments and frequently must participate in services and programs designed to teach responsible behavior as part of their sentence.

In sum, DYS is better prepared to handle young people, deliver the educational services youth have a legal right to receive and ensure that transition out of the justice system is

85 Council of State Governments Justice Center, “Justice Reinvestment in Massachusetts: Working Group Meeting 3 Interim Report,” July 21, 2017. Available at <https://csgjusticecenter.org/publications/justice-reinvestment-in-massachusetts-third-presentation/> Additionally, re-arraignment rate is 46% after DYS commitment compared to 76% after incarceration at county jails.

86 Department of Youth Services, “Juvenile Recidivism Report for Youth Discharged During 2016.” December 15, 2020. Available at <https://www.mass.gov/doc/dys-2020-recidivism-report/download>

87 Ed Mulvey, et al. (2014). Pathways to Desistance; Final Technical Report. Available at: <https://www.ojp.gov/pdffiles1/nij/grants/244689.pdf>.

smooth and amenable to the child's needs. Youth incarcerated in adult facilities are not required to attend school, often do not receive special education services when entitled, and are much more likely to be victimized; by contrast youth who committed to DYS are *required* to attend school and generally receive age-appropriate services.

Recommendation 1. The Massachusetts Legislature should raise the age of juvenile jurisdiction to include 18- to 20-year-olds in the Juvenile Court system, because youth in DYS custody are more likely to access their educational rights and receive developmentally appropriate treatment.

Raising the age of juvenile jurisdiction will ensure that Massachusetts intervenes with 18- to 20-year-olds in a system that is already equipped with the expertise and the capacity to handle this age group. Based on statewide arrest data, older teens who are 18 to 20 years old are similar to 16- and 17-year-olds in both their development and offending patterns. If a young person is incarcerated, their right to an education is more likely to be honored within the DYS system. DYS has prioritized educational investments and documented the impact of these investments in its annual education reports.⁸⁸ Retaining young people in the juvenile system has an outsized impact on their development and has the potential for profound, long-term societal benefits.

Ultimately, the adult correctional system in Massachusetts has shown disinterest in meaningfully complying with federal and state laws concerning the education of youth with IEPs in their custody. As long as the HOCs and DOC remain oriented toward punishment, they will be ill-equipped to provide developmentally appropriate educational and other rehabilitative services to young people aged 18 to 20. To the extent that our society continues to rely on incarceration as the primary response to certain behaviors, we can no longer entrust the incarceration of 18- to 20-year-olds to the HOCs and DOC; the best solution is to raise the age of juvenile jurisdiction and place these youth in a setting that is truly invested in providing for the education and meaningful development of this population.

Raise the Age would help support young people by allowing them to remain in the DYS system, which is inherently more supportive of educational outcomes. Raising the age to include 18- to 20-year-olds must also be accompanied by a focus on educational programming for young people age 21–25 who remain in the adult system, especially 21-year-olds with disabilities.

88 <https://www.mass.gov/service-details/dys-programs-education>

CfJJ's Raise the Age Campaign

Raising the upper age of the juvenile justice system to include 18-, 19-, and 20-year-olds would reduce the recidivism rates within this population. In Massachusetts, young people incarcerated in the adult correctional system experience a 55%⁸⁹ re-conviction rate, while those who spend time in a DYS facility are reconvicted at a rate of only 22%.⁹⁰ Young people within the targeted population of the Raise the Age campaign have been identified by the Council on State Governments' as having the highest recidivism rate in Massachusetts;⁹¹ but the law continues to place them in the adult system instead of processing those individuals in the juvenile justice system, where they receive education and participate in rehabilitative programs.

Proposed legislation would raise the upper age in delinquency and youthful offender cases to include 18-, 19-, and 20-year-olds gradually over a five-year period. The bill would also broaden the upper age of DYS commitment and would allow for extended youthful offender commitment up to the age of 23.⁹²

Recommendation 2. DESE, HOCs, and DOC should improve interagency data sharing to improve identification of incarcerated youth with IEPs already in place.

The HOCs and DOC should expeditiously develop and implement memoranda of understanding with DESE to enable data sharing to identify students with IEPs more quickly and efficiently. This can be achieved through a match of the names of students who have IEPs in place with the names of youth aged 18 to 21 who enter HOC or DOC custody. DESE and DYS already practice regular data sharing for this specific purpose based on an MoU, so there is both legal and practical precedent from the DESE side for such data sharing.

89 Council of State Governments Justice Center, *Justice Reinvestment in Massachusetts: Policy Framework*, February 21, 2017. Available at <https://csgjusticecenter.org/jr/massachusetts/publications/justicereinvestment-in-massachusetts-policy-framework/>

90 Department of Youth Services, *Juvenile Recidivism Report For Youth Discharged During 2014*, November 19, 2018. Available at <https://www.mass.gov/files/documents/2018/12/17/recid2018.docx>

91 Council of State Governments Justice Center, *Justice Reinvestment in Massachusetts: Key Findings and Policy Options*, December 21, 2016. Available at https://csgjusticecenter.org/wpcontent/uploads/2016/12/JR-in-Massachusetts_Key-Findings-and-Policy-Options.pdf

92 CfJJ Raise the Age Factsheet. <https://static1.squarespace.com/static/58ea378e414fb5fae5ba06c7/t/5da775cf2ed07a162e6ee87e/1571255761015/FACT+SHEET+RtA21+with+sponsors.pdf>

Recommendation 3. DESE should (1) strengthen oversight at both the HOCs and DOC, (2) be held to account for the non-identification of youth with IEPs, and (3) ensure that high school credit is granted to youth who attend classes at HOCs and DOC.

DESE oversight of the HOCs is lacking, especially with respect to ensuring that all youth with IEPs are identified and given the opportunity to access the individualized educational services outlined in their IEPs. Specific recommendations for DESE include:

- DESE should work with each HOC’s Education Director and the DOC Education Department to establish and fully implement identification policies and procedures in order to quickly identify all students with IEPs who are in correctional facilities and provide educational services in line with those IEPs.
- DESE/SEIS should lead the effort to establish data sharing mechanisms between HOCs and DESE, as well as the DOC and DESE, to facilitate the quick identification of youth with IEPs (similar to the agreement DESE already has with DYS).
- DESE/SEIS should take full responsibility for the provision of education services — including special education services — directly to students at HOCs and DOC.
- DESE should ensure, via legislation and regulation, that HOCs follow DESE guidelines for the identification of young people with special needs.
- DESE should ensure, through adequate oversight, that high school credit is granted to youth who attend classes at HOCs and DOC.

Recommendation 4. HOCs and DOC should create a dedicated education budget and prioritize educational programming to ensure all school aged youth (up to their 22nd birthday) have access to school every weekday and incentivize educational participation through goodtime credit.

The HOCs and DOC both spend most of their budgets on correctional officers and only between 1 and 5% of their budgets on programming. An intentional orientational shift that prioritizes educational programming for every single youth in custody at HOCs and DOC could be funded through creating a dedicated education budget. Further, the State Legislature (and/or DOC/HOCs through regulation) could spur demand for education by increasing the amount of “goodtime” off people receive for participating in educational programming.

HOCs and DOC could further prioritize education in their facilities by:

- integrating an education needs assessment and planning into the intake process,
- ensuring that education access not be limited by classification or housing status,
- evaluating teacher training and staffing level, as well as curriculum development,
- ensure that youth can receive high school credit toward graduating from their home school district,
- coordination of curriculum so that high school credit is approved by LEAs, and
- increasing access to higher education in jails and prison.

Recommendation 5. The Office of the State Auditor should consider investigating educational obligations and practices for school-aged youth (18 to 21) at HOCs and DOC in the spirit of increasing accountability for legal obligations.

As noted in Recommendation 1 above, we believe that the Massachusetts Legislature should raise the age to include 18- to 20-year-olds in the juvenile court, and by extension within DYS custody when detained or committed. Since this proposal, even if approved, will take up to five years to be fully implemented, and given the lack of meaningful improvement in access to credit-bearing high school education or special education for 18- to 21-year-olds in the HOCs or DOC, we recommend that the Office of the State Auditor evaluate education provision at HOCs and DOC for both DESE and HOC/DOC compliance with Massachusetts education laws. This could include consideration of teacher licensing, curricular compliance, and processes to identify all youth in their custody with IEPs in place.

These concerns are neither new in Massachusetts, nor specific to the Commonwealth. Federal litigation in the early 1980s revealed that Massachusetts' adult correctional institutions have long shirked their responsibility toward providing FAPE for children with disabilities. In New Jersey, four years of litigation recently led to a settlement against the state agencies for non-provision of special education to incarcerated young people.⁹³

V. Appendix: Data Analysis Details

Raw Data

Total column is from data provided by directly from county HOC's. Data contained info regarding admitted 18-20-year-old individuals pretrial and sentenced. For example, the value 4 for *Total* for *Berkshire_2018* means that in FY 2018, Berkshire HOC's had an average of 4 individuals monthly aged 18-20-years-old between September and June.

Actual numbers are from *Student Staff Comparison_Jan-2021_Redacted 5.14.2021 update*

	2018	2019	2020
Barnstable	0	0	0
Berkshire	3.7	4.1	3.3
Bristol	4.6	4	6.7
Essex	2.9	0.3	0.2
Franklin	2.7	2.8	1.2
Hampden	3.4	2.4	2.5
Hampshire	1.2	0.7	0
Middlesex	4.6	4.1	3.2
Nashua	0	0	0
Norfolk	0	0	0
Plymouth	3.2	1.6	1.9
Suffolk	10.8	9.8	5
Western Mass Reg			
Women's Correctional Center	0	0	0
Worcester	5.6	4.9	4.6
Total	42.7	34.7	20.6

	Total	51_Model	38_Model	Actual
Berkshire_2018	4	3	2	3.7
Berkshire_2019	5	3	2	4.1
Berkshire_2020	4	3	2	3.3
Franklin_2018	3	2	2	2.7
Franklin_2019	5	3	2	2.8
Franklin_2020	4	2	2	1.2
Middlesex_2018	33	17	13	4.6
Middlesex_2019	32	17	13	4.1
Middlesex_2020	28	15	11	3.2
Norfolk_2018	13	7	5	0
Norfolk_2019	17	9	7	0
Norfolk_2020	11	6	5	0
Worcester_2018	40	21	16	5.6
Worcester_2019	28	15	11	4.9
Worcester_2020	20	11	8	4.6
TOTAL_2018	93	48	36	16.6
TOTAL_2019	87	45	34	15.9
TOTAL_2020	67	35	26	12.3

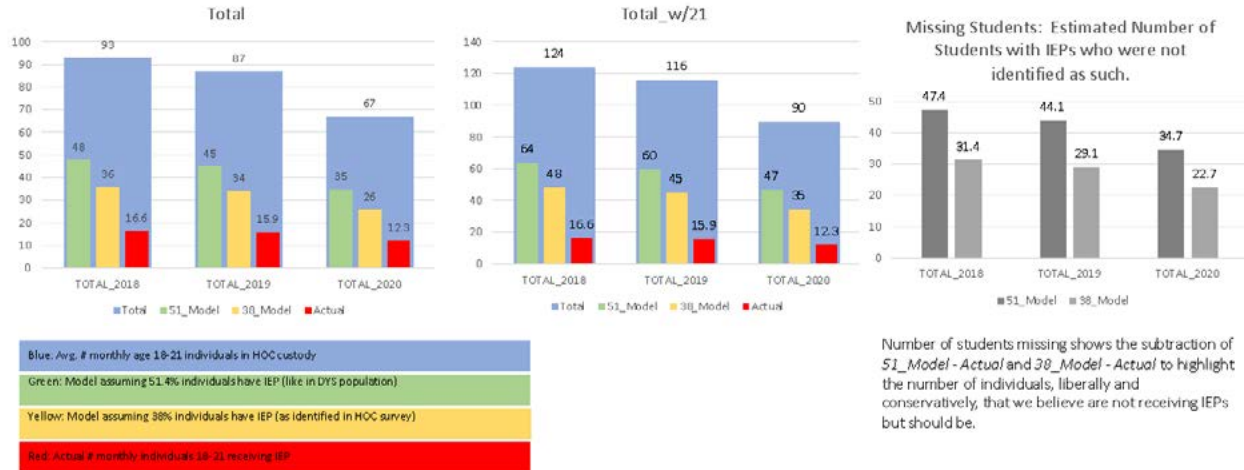
w/ 21-year-olds

Data provided was only for 18-20-year-olds so conservatively estimated the number of 18-21-year-olds

	Total	51_Model	38_Model	Total_w/_21	51_w/_21	38_w/_21	Actual
Berkshire_2018	4	3	2	6	4	3	3.7
Berkshire_2019	5	3	2	7	4	3	4.1
Berkshire_2020	4	3	2	6	4	3	3.3
Franklin_2018	3	2	2	4	3	2	2.7
Franklin_2019	5	3	2	7	4	3	2.8
Franklin_2020	4	3	2	6	4	3	1.2
Middlesex_2018	33	17	13	44	23	17	4.6
Middlesex_2019	32	17	13	43	23	17	4.1
Middlesex_2020	28	15	11	38	20	15	3.2
Norfolk_2018	13	7	5	18	10	7	0
Norfolk_2019	17	9	7	23	12	9	0
Norfolk_2020	11	6	5	15	8	6	0
Worcester_2018	40	21	16	54	28	21	5.6
Worcester_2019	28	15	11	38	20	15	4.9
Worcester_2020	20	11	8	27	14	11	4.6
TOTAL_2018	93	48	36	124	64	48	16.6
TOTAL_2019	87	45	34	116	60	45	15.9
TOTAL_2020	67	35	26	90	47	35	12.3

Sub-total from Counties that Responded to CfJJ Public Records Request: Berkshire, Franklin, Middlesex, Norfolk, Worcester

Subtotal from select HOC data w/ 21-year-old estimation



Calculating Proportion of State our HOC Data Represents

Boxes with this color are calculations, others are pulled data

FY 2019 County Supervised Average Daily Population Data								
	Berkshire	Franklin	Middlesex	Norfolk	Worcester	Our Total	Massachusetts Total	Our Data's % of MA Total
July	196.35	225.10	815.19	430.00	915.84	2582.48	9443.91	27.34
August	180.65	233.03	797.26	455.68	955.71	2622.32	9694.97	27.04
September	180.17	240.07	800.73	462.37	955.71	2639.04	9714.48	27.16
October	177.58	234.26	793.16	450.87	958.29	2614.16	9663.39	27.05
November	174.10	216.27	797.23	437.03	969.53	2594.17	9434.76	27.49
December	173.68	212.42	795.74	460.81	936.03	2578.68	9193.68	28.04
January	177.26	222.74	777.13	464.06	934.32	2575.52	9201.18	27.99
February	170.21	221.89	789.29	482.04	953.00	2616.43	9181.039	28.49
March		223.29	804.26	505.97	895.81	2429.32	9013.26	26.95
April	182.07	217.83	781.23	514.23	906.20	2601.57	9235.93	28.16
May	173.55		778.55	487.26	909.81	2349.16	8952.77	26.23
June	211.83	134.07	749.27	486.63	906.57	2488.37	9311.41	26.72
Avg	181.59	216.45	789.92	469.75	933.07	2590.77	9336.735928	27.75

Multiplicative factor: 3.604

Our data corresponds to 27.75% of Massachusetts supervised inmate population according to 2019 Monthly county population reports (<https://www.mass.gov/lists/county-population-reports#fy2022-county-population-reports>)
 $100/27.75 = 3.604$



Citizens for Juvenile Justice
44 School Street Suite 415
Boston, MA 02108

cfjj.org