

# Criminalizing a “Rough Life”:

*A Study of Systems Involvement Among Incarcerated People in Massachusetts*

A Report on Northeastern University School of Law’s Cradle-to-Prison Pipeline Phase I Jail and Prison Survey Findings 2020

“I feel like we should get a chance to voice our side of the story. We deserve to be heard. Some of us are not criminals, we just had a rough life. Like me for instance, I carry all that weight on my back and it’s hard to let go. All I want is to be heard. I want anyone to listen to my story, my life, because I feel like it could be a window to change this system we have ... it’s not fair to us.”

–C2P Jail and Prison Survey Participant

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## Criminalizing a “Rough Life”:

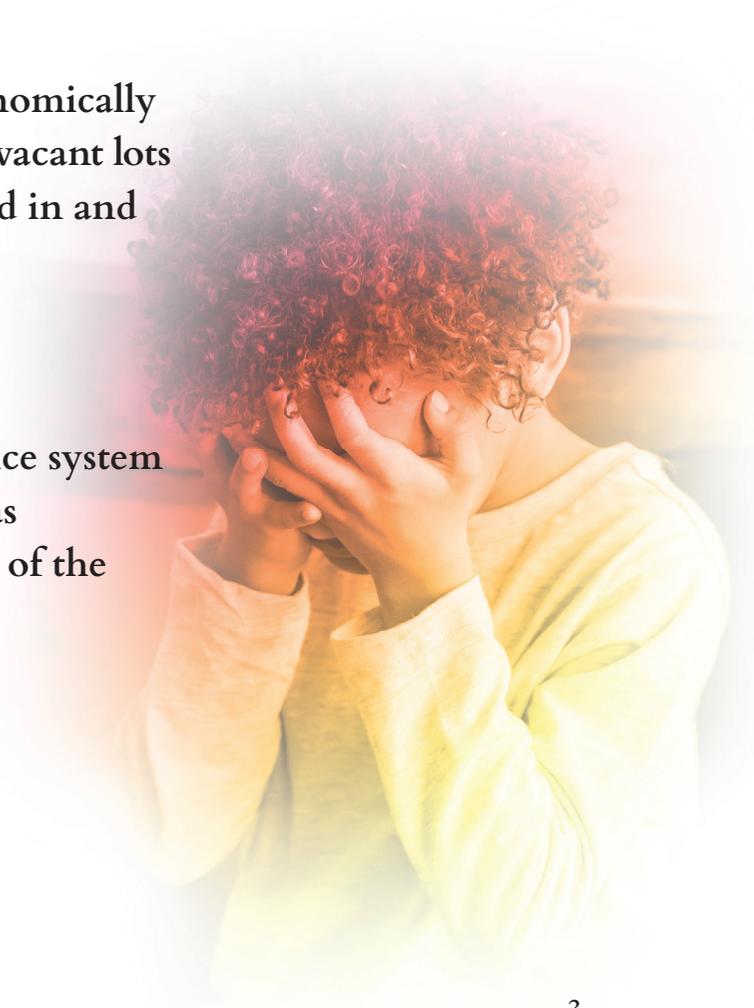
*A Study of Systems Involvement Among Incarcerated People in Massachusetts*

“The Cradle-to-Prison Pipeline ... runs through economically depressed neighborhoods and failing schools; across vacant lots where playgrounds and health facilities should be and in and out of understaffed child welfare agencies.”

–Marian Wright-Edelman<sup>1</sup>

“The racial and ethnic disparities of the juvenile justice system can be seen in the family regulation system which has contributed to the establishment of a juvenile version of the carceral state, a birth to prison pipeline.”

–Jill Lepore, *Baby Doe: A History of Political Tragedy*, *The New Yorker*



## I. Introduction

A recent survey of incarcerated individuals in Massachusetts reveals the ways that the systems designed to identify, protect, and support youth are failing to successfully divert them from the cradle-to-prison pipeline. Northeastern's Cradle-to-Prison (C2P) Phase I Jail and Prison Survey data illustrates how the C2P pipeline operates in Massachusetts and its profound impact on our most vulnerable youth.

The C2P pipeline is a web of legal and social systems -- rooted in structural racism and persisting through childhood and the teen years -- that disproportionately diverts Black, Indigenous, Latinx, and other youth of color, along with LGBTQ youth, toward juvenile and adult incarceration. Beyond the more widely studied and discussed school-to-prison pipeline,<sup>2</sup> the C2P pipeline encompasses early childhood experiences and systems involvement in addition to the school system. The more holistic C2P pipeline is a significant contributor to mass incarceration, in part, because its reach is broad and multi-faceted, and it stems from a narrow policy focus framed by reactive conceptions of public safety and security.

### Northeastern's C2P Jail and Prison Survey Project

Northeastern's C2P Jail and Prison Survey project ("the survey") seeks to gather otherwise unavailable data to better understand the workings of the C2P pipeline in Massachusetts. The survey project stems from an ongoing collaboration between the School of Law's Center for Public Interest Advocacy and Collaboration (CPIAC), the College of Arts, Media + Design (CAMD), the Boston Area Research Initiative (BARI), and the Department of Sociology and Anthropology. Supported by a Tier 1 University grant, the C2P project involves multi-faceted research efforts,

including data collection and mapping of the systems involved in the pipeline, resource collection and sharing,<sup>3</sup> and narratives of the lived pipeline experiences of formerly incarcerated people. Specifically, the survey questions focus on involvement with the child welfare system, special education services, mental health, juvenile justice, and school discipline. The purpose of the survey is to explore the childhood experiences of currently incarcerated individuals to help understand the operation and extent of the cradle-to-prison pipeline in Massachusetts.

The C2P project's early review of publicly available data revealed crucial gaps about key contributors to the pipeline in Massachusetts, including data related to early childhood involvement with the Department of Children and Families (DCF), disability services, school discipline, the juvenile justice system, and court and police juvenile diversion programs. The C2P survey of incarcerated individuals in Massachusetts aims to address these critical data gaps relating to childhood experiences and systems involvement along the cradle-to-prison pipeline.



During the fall of 2020, 262 people completed the survey while incarcerated at the Suffolk County House of Correction in Boston and the Middlesex County House of Correction in Lowell. These survey responses make up the Phase I data collected and analyzed in this report. Of the 262 participants, 66% identified as male, 31% identified as female, and the remaining 3% preferred to self-describe. The survey is completely anonymous and voluntary, with approximately 40% of eligible people participating at each facility. Participants in Phase I received a \$10 incentive to complete the 20-30 minute survey.

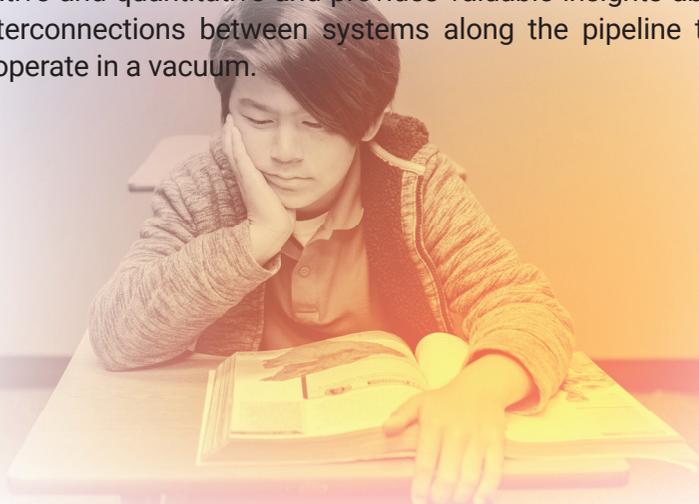
Phase II of the survey was initially delayed in light of COVID-19 public health protocols and facility closures in late fall of 2020, but has resumed at several Massachusetts Department of Corrections facilities as of September, 2021. It is anticipated that 500 - 700 additional surveys will be completed under Phase II of the project.

While over the last 20 years, several studies focusing on the C2P pipeline have been conducted in other states,<sup>4</sup> Northeastern's C2P Jail and Prison Survey is the first and most comprehensive such study undertaken in Massachusetts. The data collected is both qualitative and quantitative and provides valuable insights about the interconnections between systems along the pipeline that often operate in a vacuum.

The incarcerated individuals who participated in Phase I of the survey—along with the formerly incarcerated people who provided feedback on survey content and format as part of a pilot project—were partners and collaborators in the creation of this wealth of data. Their willingness to share lived experiences and opinions of these systems animated the survey and led to invaluable information and insight. The survey features open-ended questions to allow space for these essential narratives. In sum, this survey provides a platform for a meaningful exploration of the cradle-to-prison-pipeline in Massachusetts through those most deeply impacted by it.

Part II of this report provides an overview of the systems along the C2P pipeline which are prominently featured in the survey data and analysis, including the child welfare, school discipline, and juvenile justice systems. This section further discusses related childhood experiences, police contacts, mental health and housing. Part III describes the methodology for the C2P Phase I survey, including a discussion of the pilot survey process, underlying research questions, data collection and analysis methods, and survey participant demographics.

Part IV presents the key findings of the survey, including data analysis of the systems involvement and childhood experiences of currently incarcerated individuals, cross-tabulated by race, gender, and sexual orientation. These findings help illustrate the interconnection of the various C2P pipeline systems to foster a clearer understanding of the pipeline and its impact in Massachusetts. The data presented in this report can and should be used to support interventions and policy reform efforts to dismantle the C2P pipeline.



## II. The Cradle-to-Prison (C2P) Pipeline: Racial Disparities in the Child Welfare, School, and Juvenile Justice Systems

The United States prison population has increased fivefold in the last 40 years, with the number of incarcerated women ballooning to fourteen times the 1970's-era incarceration rates.<sup>5</sup> Black and Latinx people are consistently and substantially overrepresented in jail and prison populations throughout the US, including in Massachusetts.<sup>6</sup> While the COVID-19 pandemic resulted in reduced incarceration rates around the country<sup>7</sup> – at least in the short term – it remains unclear whether these lower numbers will last. At the same time, the number of children in foster care in the United States has increased substantially over the last several decades, with Black, Latinx, and Native American children overrepresented at all stages of the child welfare process, from abuse and neglect investigations to home removals.<sup>8</sup>

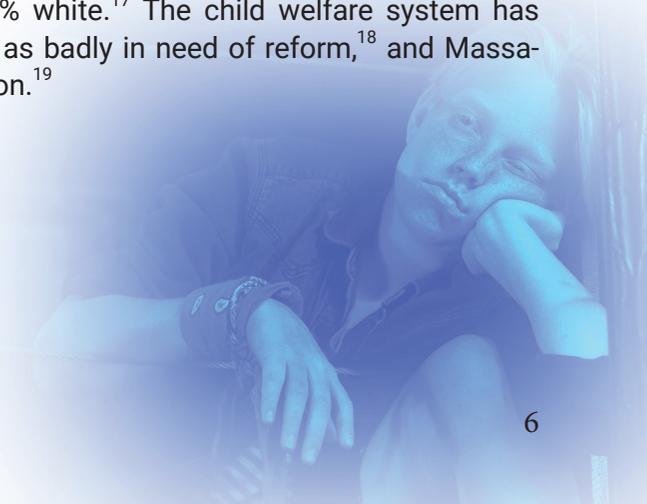
Understanding the C2P pipeline's impact on mass incarceration is critical, as the pipeline is vast and multifaceted and incorporates an array of systems. Some of the systems that feed into the C2P pipeline are the child welfare system, the school system – including school discipline, school-based arrests, law enforcement referrals, and special education services – and the juvenile justice system.

### A. Child Welfare System

While school-to-prison pipeline research has focused much-needed attention on the ways that school discipline, school resource officers (SROs), and school-based arrests can lead to juvenile and adult incarceration, there has been less attention paid to the role of the child welfare system as a feeder to the pipeline. As legal scholar Dorothy E. Roberts has noted, the child welfare system is

“designed primarily to monitor, regulate, and punish poor, Black families.”<sup>9</sup> This criticism has led some advocates and scholars to refer to the child welfare system instead as the “family regulation system.”<sup>10</sup> Existing data shows that the modern child welfare system has a disparate impact on Black, Latinx, and indigenous communities.<sup>11</sup> For example, according to one 2000 study, Black children made up 26% of the foster care population in the United States, but just 14% of the population overall.<sup>12</sup> Black families have also been shown to be investigated for abuse and neglect at higher rates, more likely to have children removed from their homes, and less likely to receive support services.<sup>13</sup> There is also evidence that child welfare cases are often clustered in urban areas with largely Black and Latinx populations.<sup>14</sup>

These racial disparities are decidedly present in Massachusetts as well, with Black and Latinx communities substantially overrepresented in the state's child welfare system. By the end of fiscal year 2020, the population of children that Massachusetts' DCF served was 14% Black, 34% Latinx and 38% white.<sup>15</sup> The racial makeup of the population served by DCF in the 18 and older range is 20% Black, 32% Latinx, and 37% white.<sup>16</sup> In comparison, Massachusetts' total population is 6.5% Black, 12.6% Hispanic, 7.2% Asian, and 67.6% white.<sup>17</sup> The child welfare system has been widely criticized as badly in need of reform,<sup>18</sup> and Massachusetts is no exception.<sup>19</sup>



While the system is designed to protect and support children, it has been repeatedly characterized as a reactionary system that devotes much of its colossal budget to a post hoc response-to-tragedy approach, with insufficient resources directed to meaningful anti-poverty initiatives and supports.<sup>20</sup> Scholars and advocates have noted that a misguided conflation of neglect and poverty has further exacerbated the problem.<sup>21</sup> Other scholars have argued that an influx of funding to the child welfare system over the last several decades has not meaningfully improved outcomes.<sup>22</sup> In spite of the \$30 billion spent nationally on child welfare over the last ten years, along with a spate of new federal statutory mandates and impact litigation efforts, there is no indication that instances of abuse and neglect have been meaningfully reduced.<sup>23</sup>

At the same time, studies have shown that removing children from their homes is profoundly traumatic, with long term mental health impacts.<sup>24</sup> Moving children from place to place while under the care of the child welfare system – or placement instability – exacerbates the trauma as well. Legal scholars and children’s rights advocates have long argued that home removals and foster care or congregate care placements are “catastrophic events” which should be understood as harmful interventions to be used sparingly and avoided where possible.<sup>25</sup>

While historically policy reforms have focused on federal and state legislative mandates that “tinker with procedures after a child has already been separated from a parent,” some scholars and advocates argue that positive child welfare outcomes depend instead on a strong anti-poverty agenda and related supports.<sup>26</sup> Rather than spending the bulk of the child welfare budget on foster care placement, reformers have argued that efforts should instead focus on supporting families to prevent removals before they occur.

While the failures of the child welfare system, including persistent racial disparities with disparate impacts on BIPOC and LGBTQ youth, have been widely studied and discussed, the connection between child welfare involvement and juvenile and adult incarceration has been less robustly explored, particularly in Massachusetts, where such data has been historically unavailable to the public, if collected at all. A 2018 report by Citizens for Juvenile Justice has described the destructive connection between the child welfare and juvenile justice systems as follows:

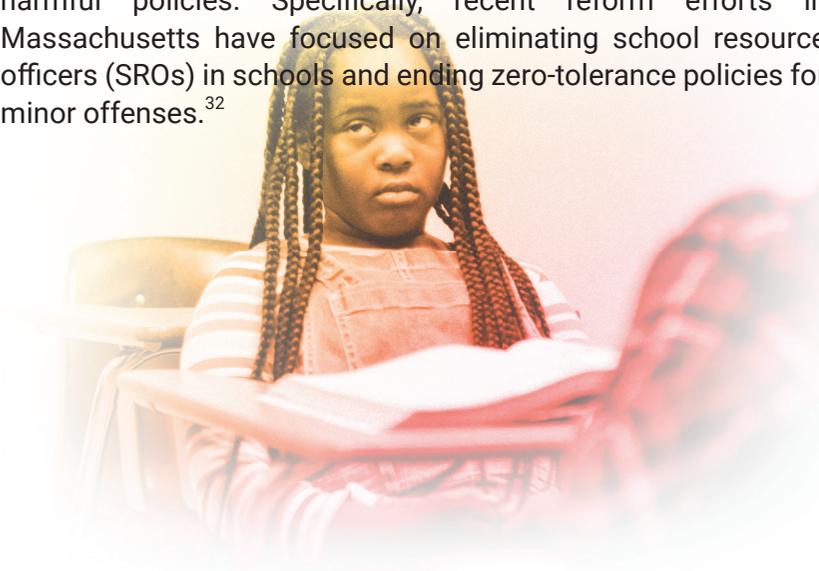
*We start out recognizing [these children] as victims, then fail to help them heal; and eventually punish them for expressing their pain. Most of the young people who end up committed to the Massachusetts Department of Youth Services (DYS) for delinquency had previous or current contact with our Department of Children and Families (DCF), and nearly 40% of the youth in DYS detention have current DCF involvement.<sup>27</sup>*



## B. School Discipline System

The school-to-prison pipeline is widely recognized as a harmful phenomenon, resulting from predominant school policy approaches – including harsh disciplinary measures, zero tolerance policies, and school resource officer (SRO) presence – that criminalizes school experiences and behaviors, especially among BIPOC and LGBTQ youth, and those with mental or physical disabilities.<sup>28</sup> According to Katayoon Majd, Senior Staff Attorney at the National Juvenile Defender Center, “... these two systems—the education and justice systems—have developed a ‘symbiotic relationship,’ effectively working together to lock out large numbers of youth of color from societal opportunity and advantage.”<sup>29</sup> These policies result in disciplinary measures such as suspensions and expulsions that remove children from school, disconnecting them from friends and teachers, and making them more vulnerable to arrest.<sup>30</sup>

The school-to-prison pipeline has been described as “fully operational” in Massachusetts and studies have shown that BIPOC students, and those with disabilities, are impacted most acutely.<sup>31</sup> Legal scholars and children’s rights advocates have promoted reform efforts that focus on eliminating these harmful policies. Specifically, recent reform efforts in Massachusetts have focused on eliminating school resource officers (SROs) in schools and ending zero-tolerance policies for minor offenses.<sup>32</sup>



## C. Juvenile Justice System

The last, and most directly connected, feeder system along the C2P pipeline is the juvenile justice system. Children involved in the child welfare system are substantially more likely to end up incarcerated as juveniles. According to a recent study by Citizens for Juvenile Justice, nearly half of all children detained in Massachusetts Department of Youth Services (DYS) facilities are actively involved in the child welfare system.<sup>33</sup>

While the juvenile justice system is ostensibly intended to address and recognize youth as a population with still-developing brains, legal scholars and advocates have long criticized the system for its tendency to treat juvenile offenders like adults.<sup>34</sup> Additionally, the stark racial disparities in the Massachusetts juvenile justice system are well documented and have been characterized as “one of the highest rates of disparity in the country”.<sup>35</sup>

In 2019, the Juvenile Justice Policy and Data Board noted that racial and ethnic disparities existed at every level of the Massachusetts juvenile justice system.<sup>36</sup> While on a national level and in Massachusetts juvenile commitment rates are decreasing overall, recent studies have shown that Black juveniles are “more than four times as likely to be committed as white juveniles, American Indian juveniles are more than three times as likely, and Hispanic juveniles are 61% more likely.”<sup>37</sup> Additionally, studies show racial disparities persist in every aspect of the juvenile justice system.<sup>38</sup>

Additionally, police contacts as a juvenile or adult can also impact the pipeline. The persistent racial disparities in policing have been widely reported and recognized on a national level, particularly in recent years, and in the wake of the 2019 murder of George Floyd at the hands of Minneapolis police. The racial disparities

in policing in Massachusetts have been extensively studied as well. *Notably, Black, Brown, and Targeted*, a 2014 study of police practices in Boston, conducted by the ACLU of Massachusetts, found that 63% of field interrogations conducted by Boston police officers between 2007-2010 were directed at Black individuals, while Boston's population was just 24% Black.<sup>39</sup>

The study further found that even "after controlling for alleged gang involvement and prior arrests," Black residents of Boston were "more likely to experience repeat police encounters and to be frisked or searched during an encounter."<sup>40</sup> Additional studies have supported that Boston policing is disproportionately in primarily Black neighborhoods.<sup>41</sup>

#### **D. Childhood Trauma**

In addition to the feeder systems discussed above, childhood experiences of trauma more broadly contribute to the C2P pipeline as well. Children can experience trauma at home, at school, and in the child welfare system. As Kate Lowenstein from Citizens for Juvenile Justice describes,

*From birth through their teenage years, children's brains are building skills that are critical for life success. When exposed to trauma, the part of the brain that is developing at that particular age is affected, limiting the child's development.*<sup>42</sup>

Childhood trauma, particularly chronic trauma interferes with neurological development and the ability to integrate emotional and cognitive experiences into a cohesive experience.<sup>43</sup> Without support and stability, these traumatic experiences in childhood and adolescence can develop into mental illness and disabilities in later adolescence and adulthood.

#### **E. Mental Health/Disabilities**

Mental health diagnoses and treatment can have a significant impact on the C2P pipeline as well. In Massachusetts, the Mental Health Advocacy Program for Kids (MHAP) provides mental health support and advocacy to juvenile-justice involved youth.<sup>44</sup> In 2017, 83% of the juveniles served by MHAP were diagnosed with one or more mental illnesses, 89% had experienced a barrier to mental health treatment, and 63% had accessed crisis or emergency mental health care systems in the past year.<sup>45</sup> MHAP's statistics demonstrate the substantial cross-over between the mental health and juvenile justice systems in Massachusetts.

Children and adults with disabilities are also overrepresented in the juvenile justice and adult criminal justice systems. One national study found that those with disabilities have a higher cumulative probability of arrest than those without.<sup>46</sup> Specifically, Black individuals with disabilities experienced the highest cumulative probability of arrest.<sup>47</sup>

All of these systems—child welfare, school, and juvenile justice—bear enormous responsibility for how young people grow up. Collectively, these systems are intended to nurture, protect, and support children. Instead, these systems operate to funnel youth of color, children with disabilities, and LGBTQ youth onto the C2P pipeline.

The C2P survey serves to illuminate the role of these systems in the childhoods of those currently incarcerated in Massachusetts. This body of research seeks to connect and analyze systems that frequently operate in silos.

## II. Study Methodology

### A. Survey Development

Northeastern's C2P Jail and Prison survey began as a student-led, independent study project in February 2020 and grew into a multi-year project overseen by Northeastern Law faculty, and supported by law students and social scientists. The C2P survey was inspired by a 2019 Kansas City Star survey focusing on the foster care experiences of incarcerated people in several midwest states.<sup>48</sup>

Ultimately, a team of over 15 attorneys, professors, legal advocates, and community members collaborated on the C2P survey construction and content.<sup>49</sup> The survey project underwent an Institutional Review Board (IRB) process in early May, 2020, and received final IRB approval on July 27, 2020.

### B. Pilot Survey

In the months leading up to the survey, a pilot survey was conducted with 25 people who had recently been released from a correctional facility in Massachusetts. The pilot survey was designed to test the clarity and content of the questions and to solicit feedback from respondents about the experience of taking the survey. The feedback received was instrumental in the revision process and helped ensure that the final survey was clear and easily digestible.

The pilot survey was conducted in August 2020, and each participant received a \$30 incentive for completing the survey and providing written feedback about its content and structure.<sup>50</sup> Many participants were recruited from Everyday Boston, one of the C2P Project's community partners.<sup>51</sup> The feedback from the

pilot participants informed and shaped the next draft of the survey, resulting in additional narrative and revisions of existing questions. Pilot survey participants reported that the survey took about 20-30 minutes to complete.

### C. Survey Instrument

The final C2P survey instrument contains 66 questions, including primarily multiple-choice and some long-form, narrative questions relating to basic demographic information, along with childhood experiences and systems involvement. Specifically, the survey sought to answer the following research questions:

- Whether, and to what degree, incarcerated individuals have had contact with the Department of Children and Families (DCF) or have been placed into foster care, and whether incarcerated people of color are more likely to have had significant child welfare involvement than incarcerated white people.
- Whether, and to what degree, incarcerated individuals have experienced disciplinary measures in elementary, middle school, and high school, and whether the rates of school discipline are higher among incarcerated people of color than among incarcerated white people; Whether, and to what degree, incarcerated individuals have been diagnosed with, or have received treatment for, behavioral, emotional, cognitive issues; and whether there is a racial gap in treatment and/or diagnosis.
- Whether, and to what degree, incarcerated individuals are more likely than the general public to have experienced ACEs (Adverse Childhood Experiences) factors such as physical, emotional, and exposure to drug and alcohol addiction; and

whether incarcerated people of color demonstrate higher ACEs scores than do incarcerated white people.

- Whether, and to what degree, incarcerated individuals experienced negative contacts with police during their childhood and teen years, and/or were arrested, charged, or prosecuted with crimes before the age of 18, and whether incarcerated people of color have experienced a higher rate of youth police contacts, arrests, and prosecution than incarcerated white people.

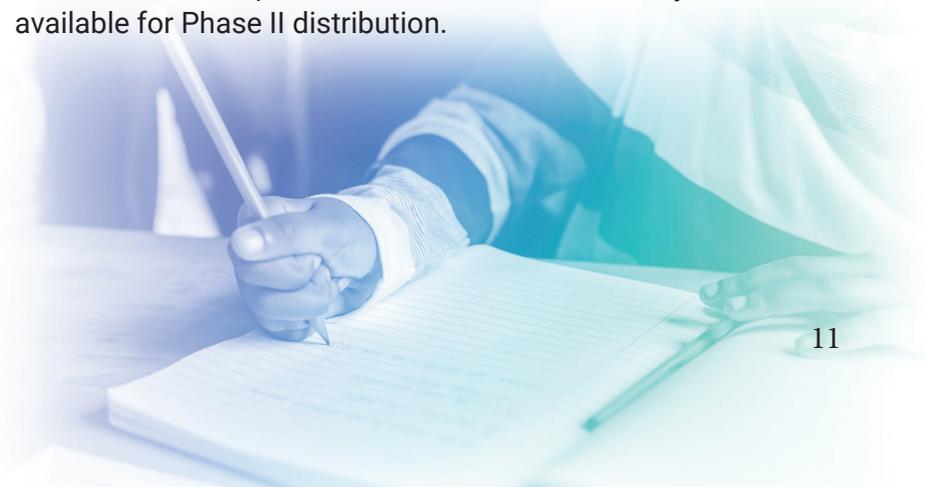
#### **D. Survey Collection**

Two county jail facilities in Massachusetts participated in Phase I of the survey: the Suffolk County and Middlesex County Houses of Correction. The survey collection method was adapted in light of the Covid-19 pandemic and related public safety protocols. While the original plan was to administer the survey through iPads with members of the C2P research team present, in light of the pandemic and inability to conduct in-person interviews, the survey was instead administered in paper form without members of the C2P survey team present.

To encourage participation, the C2P survey team created a short video describing the survey and its purpose to be shared with incarcerated individuals at each facility. Participants were advised that the survey was completely voluntary and confidential. A \$10 incentive was provided to those who successfully completed the survey. This incentive was distributed through either commissary credit or gift cards received at the end of the respondent's detention.

The survey began its first round of collections on October 9, 2020, at Suffolk County House of Corrections and its second round of collections on October 26, 2020, at Middlesex County House of Corrections. The survey instrument was made available to both male and female units. Along with the survey instrument, participants were given an unsigned consent form and a request for incentive form, which were correlated to a survey by number, rather than by name, in order to ensure survey completion while maintaining confidentiality. When each survey was completed, it was placed in an envelope, along with the request for incentive, and inserted into a locked box labeled "Northeastern University School of Law." Staff at each county jail facility assisted with the distribution of survey materials to interested participants. Each facility provided respondents with an opportunity to complete the survey in a common space.

Notably, Phase I of the survey was conducted exclusively in county jail facilities, where participants were typically awaiting trial or serving shorter sentences than those held in Department of Corrections facilities. Additionally, women are overrepresented at 37% in the Phase I survey, as compared to the overall incarcerated population in Massachusetts, where women account for about 25%.<sup>52</sup> It is also possible that Latinx respondents are underrepresented in the respondent group because a Spanish translation of the survey was not available for Phase I distribution. A Spanish translation of the survey was made available for Phase II distribution.



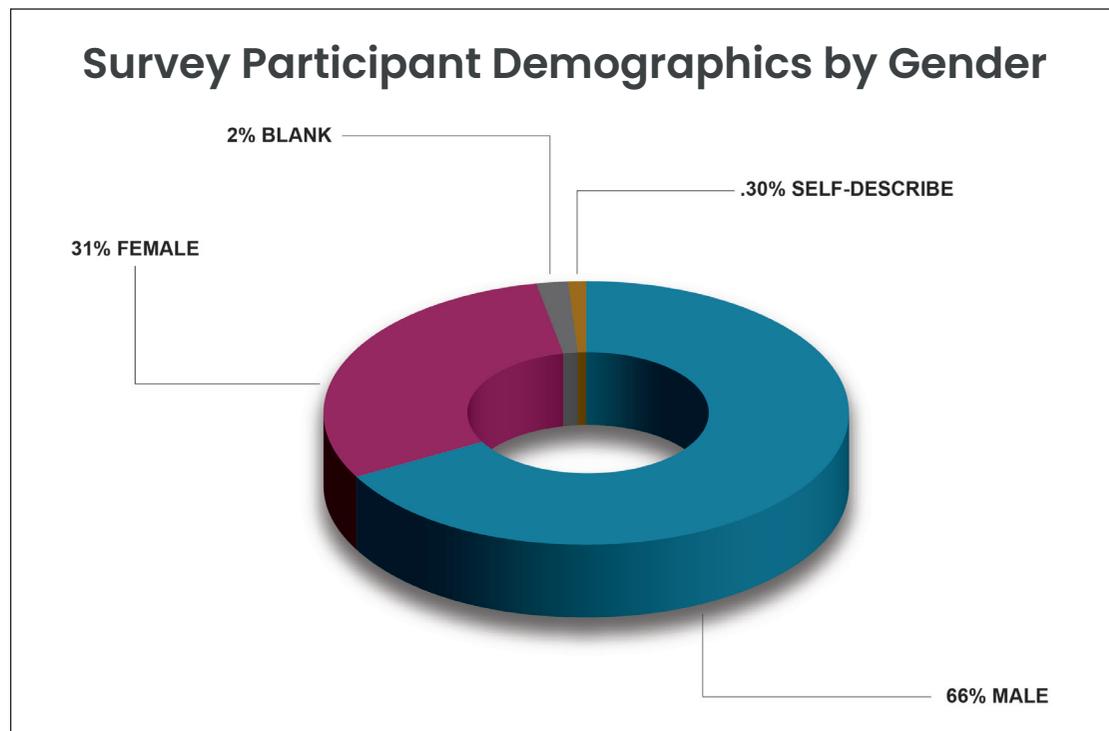
### E. Data and Methods

The data were entered from handwritten survey responses into an electronic Qualtrics form by a team of twelve law students and managed by Northeastern School of Law faculty. Entries were systematically and randomly checked for accuracy. The full sample included 262 respondents. The data were then analyzed using Pivot tables in Microsoft Excel. Basic demographic information was gathered and responses to survey questions were cross-tabulated by gender, sexual orientation, and race. The survey data inevitably embodies the same response bias as many other surveys: the respondent pool primarily includes

people who were affirmatively interested in taking the survey. Additionally, given that the survey was characterized as a study of the cradle-to-prison pipeline, it is also possible that those with more significant systems involvement were more likely to participate in the survey.

### F. Survey Participant Demographics

The first section of the survey sought basic demographic information about race and ethnicity, gender identity, childhood trauma experiences, transgender status, sexual orientation, age, and geographic background of participants.



*Phase I survey respondents are 66% male (174 individuals), 31% female (81 individuals), with one individual indicating that they would prefer to self-describe.<sup>53</sup> Additionally, 2% (5 individuals) of survey participants reported that they identify as transgender.*

figure 1

## Survey Participant Demographics by Race

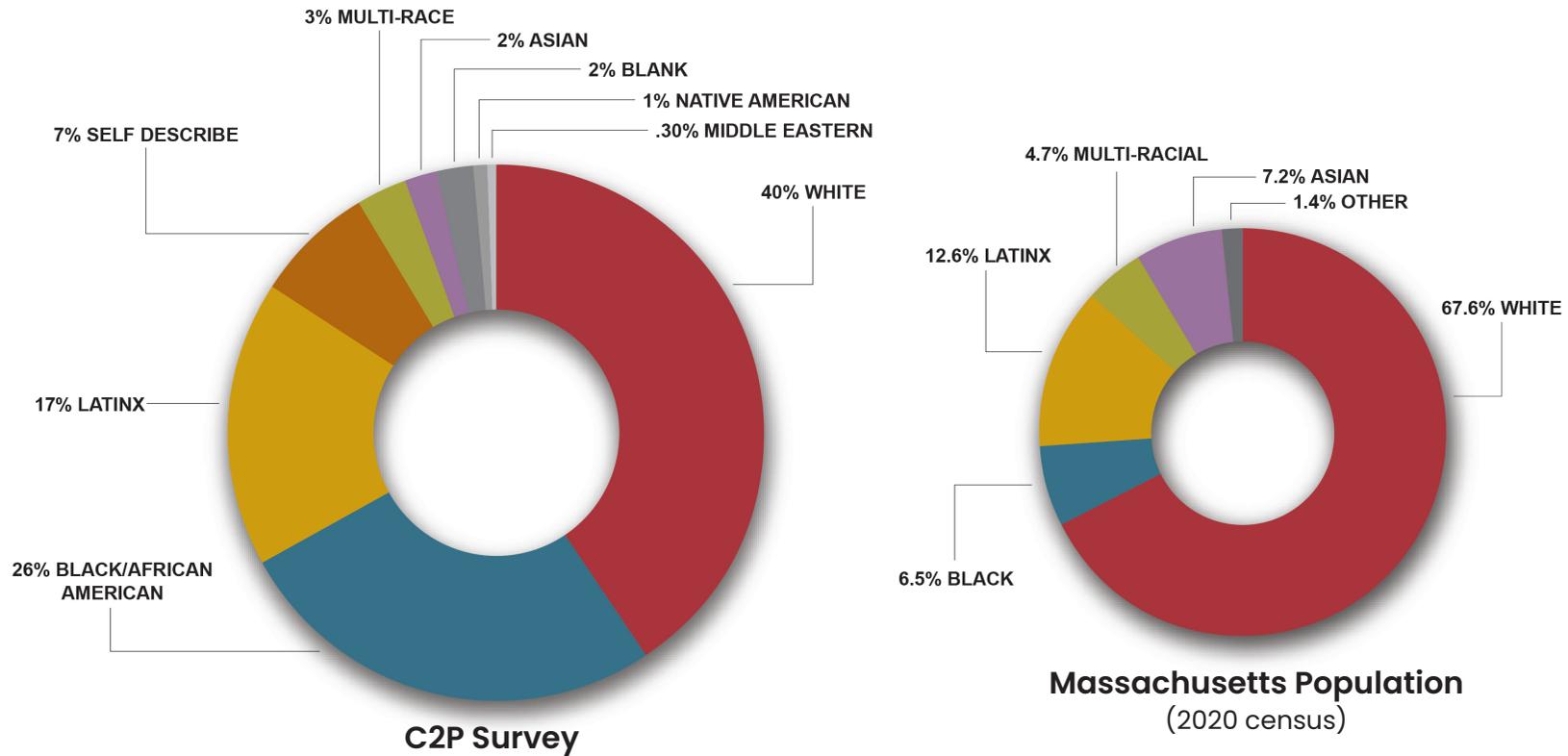


figure 2

The survey participants<sup>54</sup> are 40% white (105), 26% Black/African American (68), 17% Latinx (44), 2% Asian (5), including participants who identified as Native American, Middle Eastern, Multi-Race and North African. In comparison, Massachusetts' total population is 67.6% white, 6.5% Black, 12.6% Hispanic and 7.2% Asian.<sup>55</sup> Black people constituted 26% of the survey participants in county jails, while Black people constituted only 6.5% of Massachusetts' general population demonstrating that Black individuals are overrepresented in the survey sample vis a vis the Massachusetts population.<sup>56</sup> In 2015 and 2017 respectively, Black people constituted 18% of Massachusetts' jail populations and 27% of prison populations.<sup>57</sup> The C2P sample more closely parallels these incarcerated numbers than the Massachusetts general population.

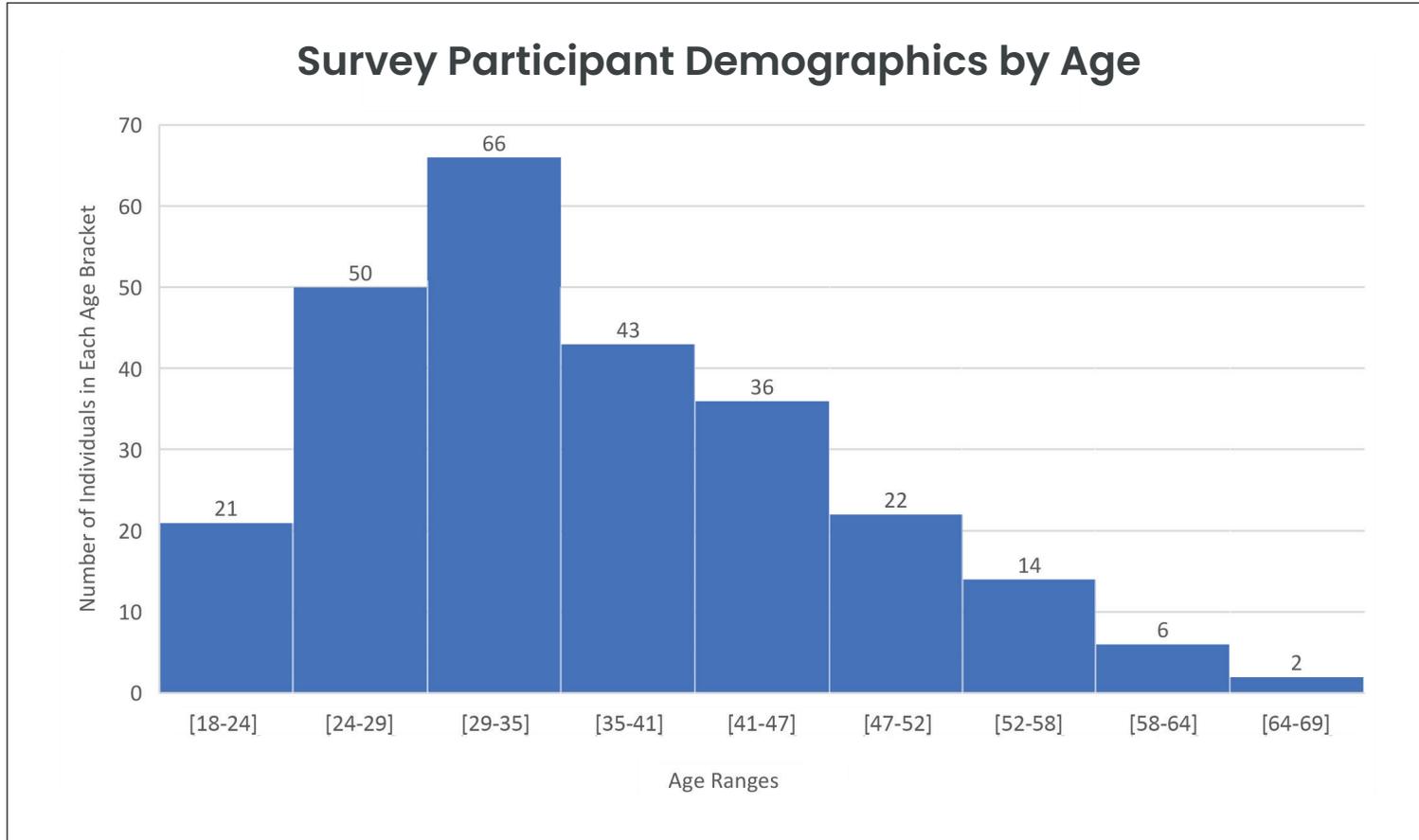


Figure 3

*The respondent group has an average age of 36 years old. The oldest survey respondent is 67 years old and the youngest is 18 years old, representing an age range of 49 years.*

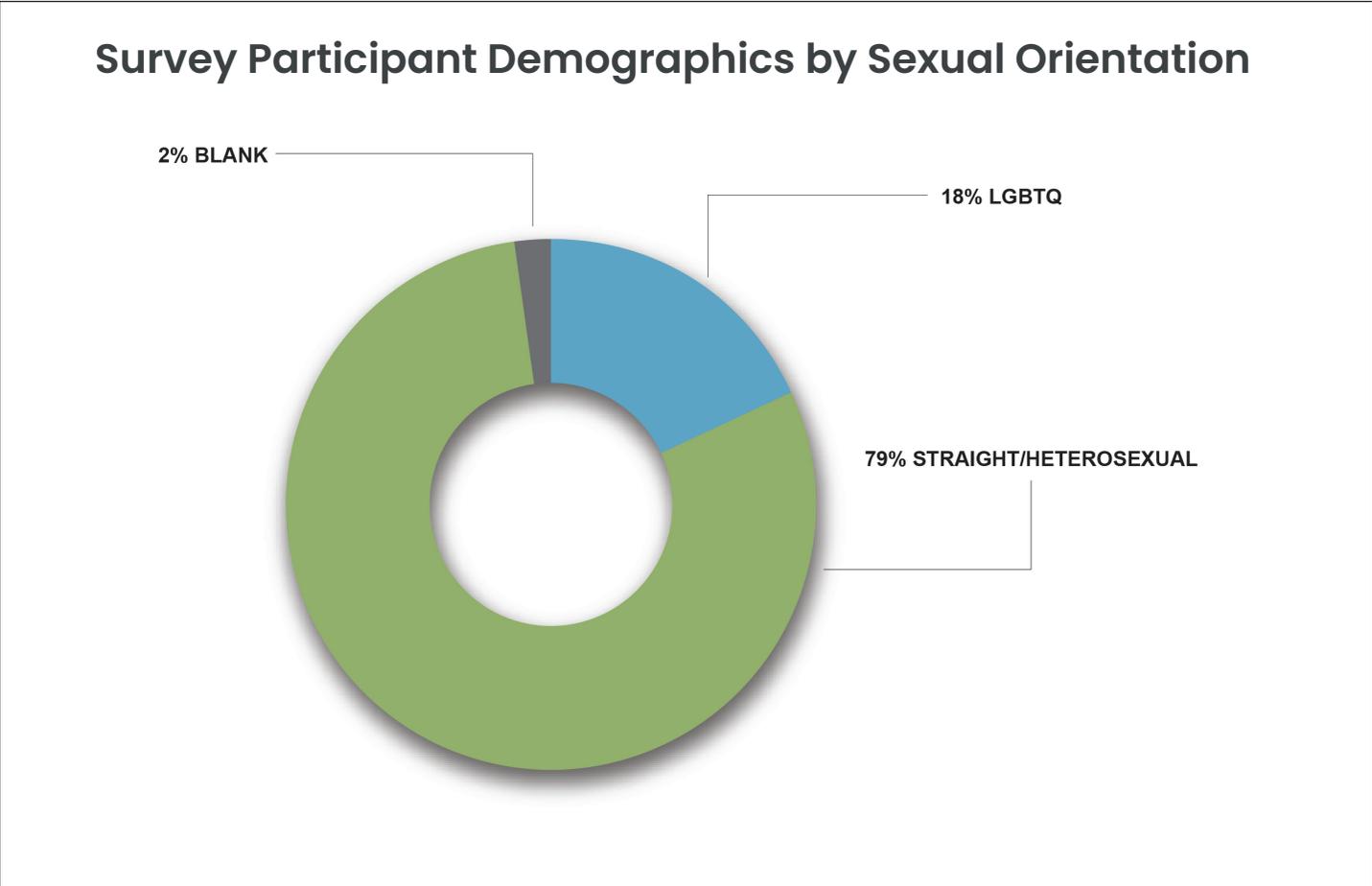


Figure 4

*Eighty-percent of survey participants reported being straight/heterosexual, while 12% identified as bisexual, and 3% identified as lesbian/gay. Six individuals indicated that they would prefer to self-describe. In comparison, five percent of Massachusetts' total population identifies as LGBTQ.<sup>58</sup>*

## IV. Key Findings

The data collected from the Phase I survey respondents suggest that the systems designed to protect and support youth in Massachusetts – including the child welfare, school, and juvenile justice systems – have failed to effectively divert them from the C2P pipeline. For example, the data supports that youth who are removed from their homes, those who are disciplined in school, and those who are placed on individual education plans (IEPs) are overrepresented among survey participants. Further, the data shows that Black and Latinx individuals are overrepresented in these C2P pipeline feeder systems and, ultimately, in jail and prison populations as well. Notably, LGBTQ youth appear to be overrepresented in the child welfare and school discipline systems as well. Below is a summary of the key findings from the Phase I survey data.

**Finding #1** Nearly one-third of survey participants were removed from their homes as children, with higher rates among Latinx and Black participants.

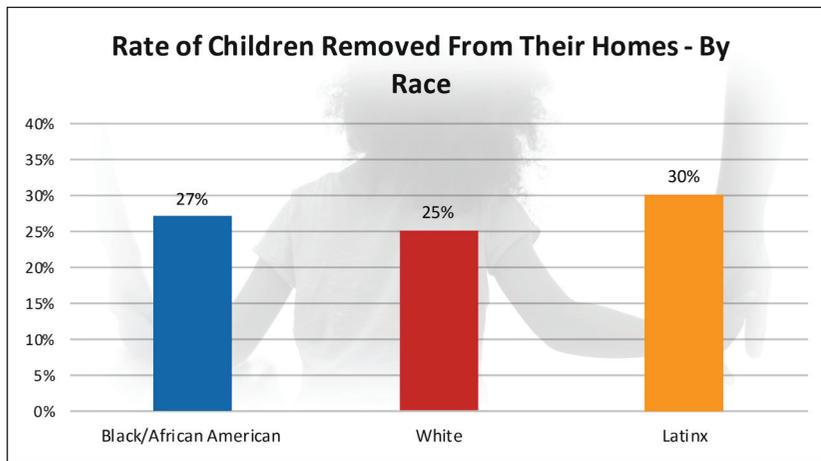


figure 5

*"I was in foster care for 2 weeks before I ran away. I was left in my own urine for 3 days before that."<sup>59</sup>*

*Twenty-eight percent of the respondent group were removed from their home by a social service agency (DCF in Massachusetts) and placed into state care.*

*Thirty percent of Latinx respondents were removed from their home by a social services agency as children. Additionally, 27% of Black/African American respondents have experienced a home removal by a social service agency. In contrast, 25% of white respondents have experienced a home removal.*



**Finding #2** Female and LGBTQ participants are more likely than straight male participants to have been removed from their homes as children.

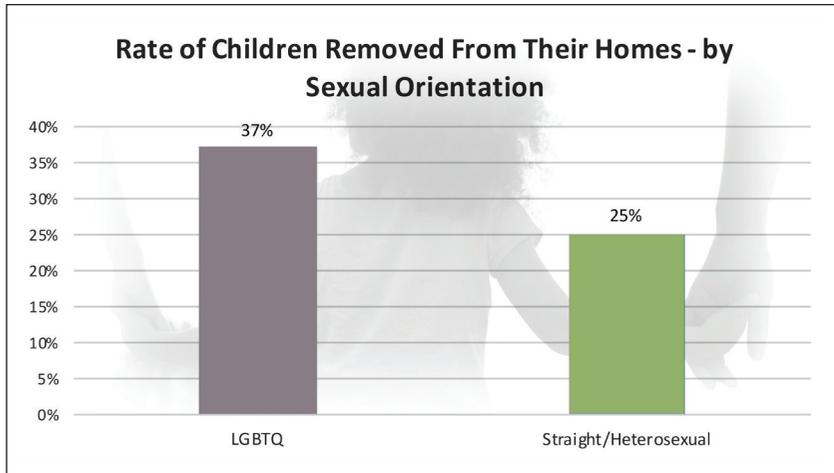


Figure 6

Twenty-four percent of male<sup>60</sup> respondents have experienced a home removal. 36% of female respondents have experienced a home removal. Even more dramatic, 37% of LGBTQ<sup>61</sup> respondents have experienced a home removal. In contrast, 25% of straight/heterosexual respondents have experienced a home removal. Nearly one third of survey respondents were removed from their homes as children, with higher rates with Black and Latinx respondents.

**Finding #3** Close to 40% of the survey participants were on an IEP<sup>62</sup> while in school.

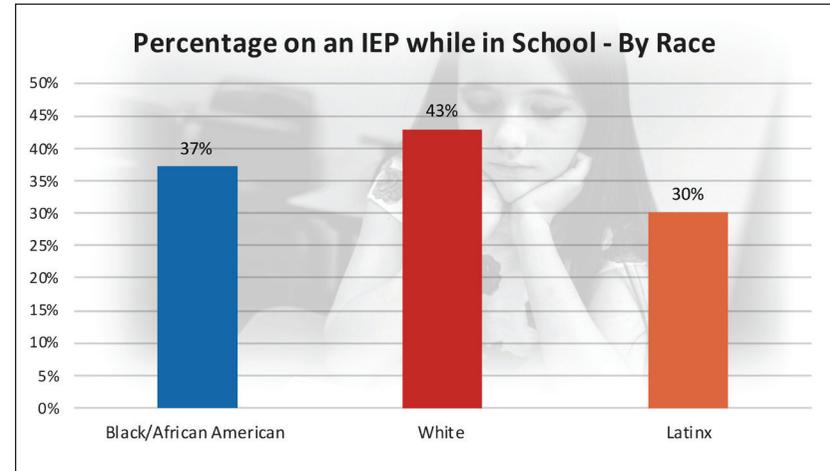


Figure 7

*“Got sent to an alternative school w/ smaller classrooms for more “individualized” learning. But sending kids who all have bad behavioral problems was a bad combo for me. I got in more trouble which led to me dropping out.”<sup>63</sup>*

Thirty-eight percent of the respondent group was on an individualized education plan (IEP) while in school.

Forty-three percent of white respondents were on an IEP while in school. Thirty-eight percent of Black/African American respondents were on an IEP while in school. Thirty percent of Latinx respondents were on an IEP while in school. This disparity suggests that white students are identified as requiring support and services at a higher rate, while Black and Latinx youth who may need similar support are under-identified.<sup>64</sup>

The rate of participation in IEP plans does not vary significantly across gender and sexual orientation lines.

**Finding #4** Eighty percent of survey participants were suspended from school prior to their incarceration, with higher rates reported among Black participants.

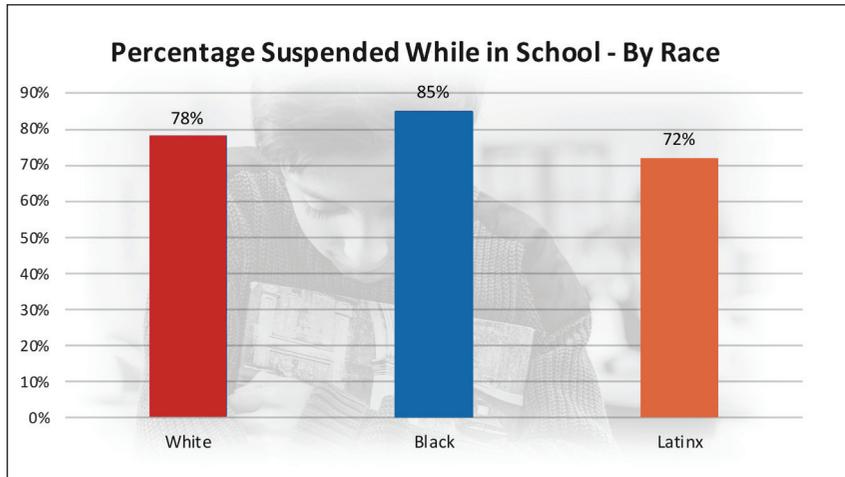


Figure 8

*“I was never given a chance academically to be challenged because of bad behavior... usually kids with behavior problems had bad grades... I had all As and Bs but I had behavioral problems. Therefore I was put in behavioral problems classes where academically I was basically bored and not challenged.”<sup>65</sup>*

Eighty percent of the total respondents have experienced a suspension in elementary school, middle school, or high school. In the 2018-19 school year, the Massachusetts Department of Elementary and Secondary Education found that less than 4% of the total student population experienced discipline.<sup>66</sup>

Seventy-eight percent of white respondents were suspended while in school. Moreover, 85% of Black/African American respondents were suspended while in school. In comparison, 72% of all Latinx

respondents experienced a suspension while in school. Thirty-eight percent of survey participants were expelled while in school, with higher rates reported among Black participants.

**Finding #5** Thirty-eight percent of survey participants were expelled while in school, with higher rates reported among Black participants.

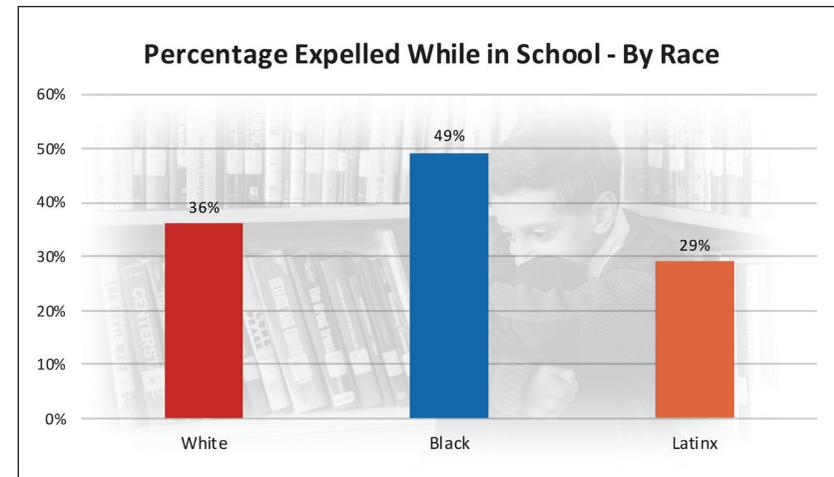


Figure 9

*“I love school. I just wish they were more picky about the school resource officers and required them to take trainings on child care/development. I also wish that one day the state won’t be able to press charges on juveniles (kids) in school or out, without the victim pressing charges. Kids will be kids. Let’s not label them criminals for fights.”<sup>67</sup>*

Thirty-eight percent of survey respondents were expelled from school. This is an extremely high percentage, particularly when compared to the 2018-19 DESE figures demonstrating a 4% discipline rate referenced above.

Thirty-six percent of white respondents were expelled from school. More stark still, 49% of Black respondents have experienced an expulsion while in school. 29% of Latinx respondents have experienced an expulsion while in school.

Expulsion statistics do not vary significantly by gender or sexual orientation.

**Finding #6** Fifty percent of survey participants were arrested as juveniles under the age of 18, with higher rates reported among Black and Latinx participants.

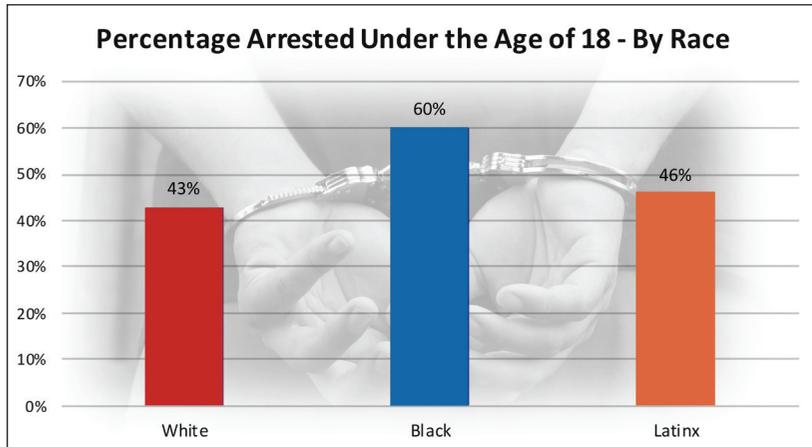


Figure 10

*“When I was 12, we moved to a white area and one day when I walked to the library a police cruiser stopped me and asked me a list of questions, such as where am I from, what I was doing here, and when I became hesitant to answer, he threatened to arrest me. I was 12 and never been in trouble at the time.”<sup>68</sup>*

Fifty percent of survey participants were arrested while under the age of 18. In comparison, in Massachusetts, only 3,472 youth (less

than 1% of Massachusetts’ total population) were arrested in 2018.<sup>69</sup> The annual number of youth arrests in Massachusetts has declined in the last eight years, from 11,042 in 2010 to 3,472 in 2018.<sup>70</sup>

Forty-three percent of white survey participants were arrested while under the age of 18. Notably, the rate of juvenile arrests was significantly higher among Black/African American participants, 60% of whom were arrested while under the age of 18. Forty-six percent of Latinx respondents were arrested while under the age of 18.

The rate of juvenile arrests does not vary significantly across sexual orientation and gender lines.

**Finding #7** Forty-four percent of survey participants have experienced homelessness.

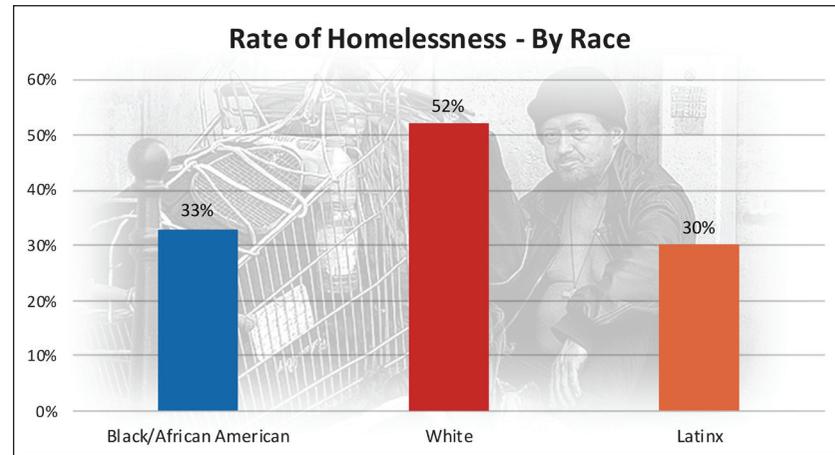


Figure 11

*“Due to surgery (back) I lost in order... my job, my car, my child, my house, housing due to incarceration (Section 8)”<sup>71</sup>*

*“I suffered from 6 grand-mal seizures and traumatic brain injury last year and lost everything”<sup>72</sup>*

*“Due to doing this 60 days for a crime I didn’t commit”<sup>73</sup>*

Forty-four percent of the respondent group have experienced homelessness in their lives. Thirty-three percent of Black/African American and thirty percent of Latinx respondents have lost their housing. These rates are slightly lower than the 52% of white respondents who reported having lost their housing. Finally, fifty percent of LGBTQ respondents and 42% of straight respondents reported having lost their housing.

**Finding #8** Twenty-one percent of survey participants experienced a school-based arrest.

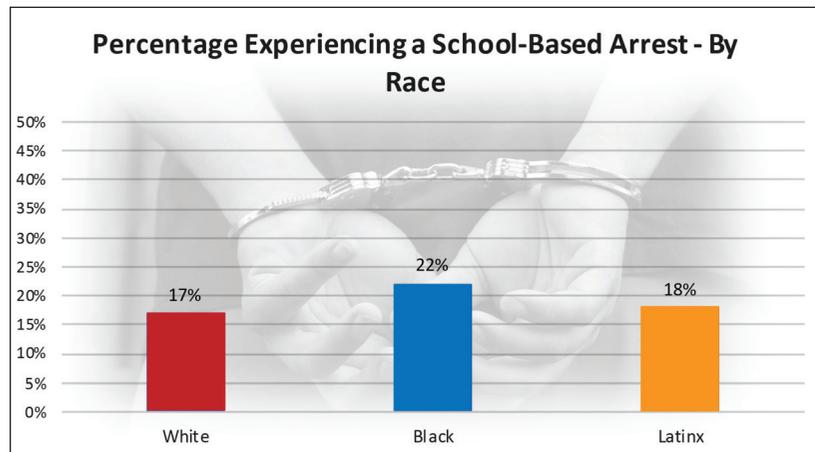


Figure 12

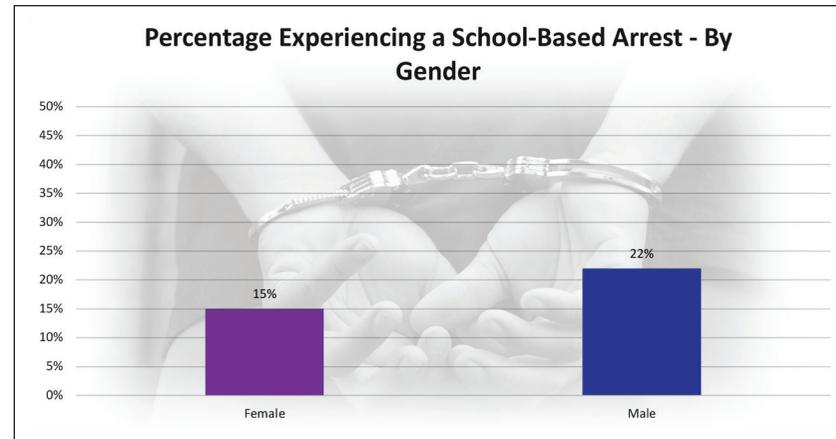


Figure 13

*“In Middle School I started a new school in Plymouth, I was in the bathroom and some girl started with me and we got into a fight & I was charged and expelled.”<sup>74</sup>*

Twenty-one percent of survey participants experienced a school-based arrest, with 17% of white respondents, 22% of Black/African American respondents, and 18% of Latinx respondents reporting having experienced a school-based arrest.

The rate of school-based arrest is slightly higher for males respondents at 22%, than for female respondents, 15% of whom have experienced a school-based arrest. Additionally, 15% of LGBTQ respondents and 22% of straight/heterosexual respondents reported having experienced a school-based arrest.

## V. Conclusion

The data collected through Northeastern's Cradle-to-Prison Phase I Jail and Prison survey begin to illuminate the workings of the C2P pipeline in Massachusetts. The survey data supports the conclusion that the systems designed to identify, protect, and support vulnerable children in the Commonwealth -- especially the child welfare, school discipline, and juvenile justice systems -- are failing to effectively divert Massachusetts youth from the C2P pipeline. Notably, people who were removed from their homes at the hands of DCF or another state child welfare agency are substantially overrepresented among survey participants. People who experienced school discipline measures including suspension, expulsions, and school-based arrests are significantly overrepresented in the surveyed population as well. These disparities suggest that, in many cases, these systems operate to hold vulnerable children within the pipeline, rather than meaningfully diverting them.

Additionally, at virtually every marker along the pipeline, Black and Latinx survey participants report higher rates of systems involvement. For example, Black and Latinx survey respondents reported higher rates of home removal, school discipline, and juvenile arrest. These findings suggest a need for further exploration and reform of the C2P pipeline systems in Massachusetts to ensure that they operate to protect and support vulnerable youth as they were designed to do.



## Endnotes

- 1 Marian Wright-Edelman, *Justice for America's Children*, Foreword to *Juvenile Justice Policy: Advancing Policy, Research & Practice*.
- 2 See, e.g., Artika R. Tyner, *The Tangled Web of Mass Incarceration: Addressing the School-to-Prison Pipeline Through A Restorative Justice Approach*, 17 U. St. = Thomas L.J. 59 (2020); Judith A.M. Scully, *Examining and Dismantling the School-to-Prison Pipeline: Strategies for A Better Future*, 68 Ark. L. Rev. 959 (2016); Barbara Fedders & Jason Langberg, *School-Based Legal Services As A Tool in Dismantling the School-to-Prison Pipeline and Achieving Educational Equity*, 13 U. Md. L.J. Race, Religion, Gender & Class 212 (2013).
- 3 For a more complete exploration of Northeastern's ongoing C2P Project, see *Mapping the Cradle to Prison Pipeline*, <https://www.cradle2prison.info> (last visited September 2, 2021).
- 4 See Kansas City Star, *State Care of Another Kind*, <https://www.kansascity.com/news/special-reports/article238317943.html> (describing 2019 survey project collecting data from 6,000 incarcerated people in prisons in Kansas and surrounding states); Sydney L. Goetz, *From Removal to Incarceration: How the Modern Child Welfare System and Its Unintended Consequences Catalyzed the Foster Care-to-Prison Pipeline*, 20 U. MD. L.J. Race, Religion, Gender & Class 289, 294 (2020) (discussing the 2011 Midwest Evaluation of the Adult Functioning of Former Foster Youth or "the Midwest Study", based on observations of children aging out of foster care systems in Illinois, Iowa, and Wisconsin).
- 5 DeAnna Baumle, *Creating the Trauma-to-Prison Pipeline: How the U.S. Justice System Criminalizes Structural and Interpersonal Trauma Experienced by Girls of Color*, 56 Fam. Ct. Rev. 695, 695 (2018).
- 6 See, e.g., Racial Disparities in the Massachusetts Criminal System: A Report by the Criminal Justice Policy Program, Harvard Law School, <https://hls.harvard.edu/content/uploads/2020/11/Massachusetts-Racial-Disparity-Report-FINAL.pdf> (last visited Aug. 4, 2021).
- 7 See Vera Institute of Justice, COVID-19: Criminal Justice Responses to the Coronavirus Pandemic, <https://www.vera.org/projects/covid-19-criminal-justice-responses/covid-19-data> (last visited Aug. 2, 2021) (documenting "modest" decreases in incarceration rates since COVID-19).
- 8 Miriam Aroni Krinsky, *Disrupting the Pathway from Foster Care to the Juvenile Justice System: A Former Prosecutor's Perspective on Reform*, 48 Fam. Ct. Rev. 322, 324 (2010) (noting that the 500,000 children in foster care as of 2010 was almost double the number from the 1980's).
- 9 Dorothy E. Roberts, *Child Welfare and Civil Rights*, 2003 U. Ill. L. Rev. 171 (2003).
- 10 *Id.*
- 11 See, e.g., Tanya A. Cooper, *Racial Bias in American Foster Care: The National Debate*, 97 Marq. L. Rev. 216, 224 (2013) (noting that in 2013 Black children represented 26% of children placed in foster care, but just 13.9% of the overall population of US children; Native American children represented 2% of all children in foster care, but less than 1% of the general population); Roberts, *supra* note 9, at 227 (per Child Welfare League of American, a Black child four times as likely as a white child to be in foster care as of 2000).
- 12 See also, Ellen Marrus, *Education in Black America: Is it the New Jim Crow?*, 68 Ark. L. Rev. 27, 30 (2015) (citing 2004 study confirming overrepresentation of Black youth in the child welfare system).
- 13 Sydney L. Goetz., *From Removal to Incarceration: How the Modern Child Welfare System and Its Unintended Consequences Catalyzed the Foster Care-to-Prison Pipeline*, 20 U. MD. L.J. Race, Religion, Gender & Class 289, 298 (2020).
- 14 See, e.g., Roberts, *supra* note 9, at 227 (noting Chicago study demonstrating that most child protection cases clustered in zip code areas with predominantly Black populations).
- 15 See Massachusetts Department of Children and Families, DCF Annual Report FY 2020 (2020), available at: <https://www.mass.gov/doc/dcf-annual-reportfy2020/download> (last visited September 17<sup>th</sup>, 2021).
- 16 *Id.*
- 17 U.S. Census Bureau (2020), reported by WBUR Boston, available at: <https://www.wbur.org/news/2021/08/12/massachusetts-more-diverse-census-data> (last visited September 17, 2021).

- 18 See, e.g., Claire Huntington, *Mutual Dependency in Child Welfare*, 82 Notre Dame L. Rev. 1485, 1486 (2007) (arguing that child welfare system’s post hoc approach to child welfare is at odds with its stated purpose and not effective).
- 19 See, e.g., Massachusetts Law Reform Institute, *If Not Now, When? A Call to Action for Systemic Child Welfare Reform in Massachusetts*, June 2014, <https://www.mlri.org/publications/if-not-now-when/> (last visited Aug. 2, 2021) (advocating need to invest in “front-end services to keep children safely at home and prevent DCF involvement and out-of-home placements whenever possible”).
- 20 Huntington, *supra* note 18, at 1489-94) (noting other legal scholars, including Dorothy Roberts and Marsha Garrison, who have advocated for a preventative approach); Cooper, *supra* note 11, at, 228 (referencing three 1996 studies finding that 30% of American children in foster care were separated from their families because their parents lacked safe and affordable housing).
- 21 See Baumle, *supra* note 5, at 701 (discussing conflation of neglect and poverty in context of Black girls in the juvenile system).
- 22 See, e.g., Viviek Sandaran, *Rethinking Foster Care: Why Our Current Approach to Child Welfare Has Failed*, 73 S.M.U. L. Rev. F. 123, 123-24 (2020) (noting lack of meaningful improvement of outcomes in spite of the Children’s Bureau budget of \$8 billion).
- 23 *Id.* at 125-29 (arguing that an increased budget, new federal statutory mandates, and impact litigation efforts have not resulted in improved child welfare outcomes).
- 24 *Id.* at 131 (noting connection between home removal and trauma among children). Nkechi Taifa & Catherine Beane, *Integrative Solutions to Interrelated Issues: A Multidisciplinary Look Behind the Cycle of Incarceration*, 3 Harv. L. & Pol’y Rev. 283, 288-89 (discussing parental separation as an incarceration risk factor (2009).
- 25 *Id.* at 135 (identifying the need to recognize home removal as a harmful intervention as a “requirement for meaningful” change in the child welfare system).
- 26 See, e.g., Sandaran, *supra* note 22, at 138 (noting that “our targeted child welfare spending...demonstrates a disinterest in trying to prevent child maltreatment” with the overwhelming majority of budget dollars being spent on foster care as opposed to preventative measures).
- 27 Citizens for Juvenile Justice, *Shutting Down the Trauma to Prison Pipeline Early, Appropriate Care for Child-Welfare Involved Youth*, 2018. <https://www.cfjj.org/trauma-to-prison> (last visited September 17, 2021).
- 28 Heather Cobb, *Separate and Unequal: The Disparate Impact of School-Based Referrals to Juvenile Court*, 44 Harv. C.R.-C.L.L. Rev. 581 (2009).
- 29 Katayoon Majd, *Students of Mass Incarceration Nation*, 54 How. L.J. 343, 358 (2011).
- 30 See Citizens for Juvenile Justice, *The School-to-Prison Pipeline*, <https://www.cfjj.org/school-to-prison-pipeline> (last visited September 17, 2021) (“Youth are more than twice as likely to be arrested during periods when they are suspended and expelled from school” whether or not they had a prior history of arrest).
- 31 *Id.* (“Black students are almost four times and Latino students three times as likely to be suspended as their white peers. Students with disabilities are suspended at three times the rate of their non-disabled peers.”).
- 32 See, e.g., Mass. Changes Rules on Police In Schools As Boston Weights Options, GBH New, May 26, 2021, <https://www.wgbh.org/news/education/2021/05/26/mass-changes-rules-on-police-in-schools-as-boston-weighs-options> (last visited Aug. 4, 2021).
- 33 Citizens for Juvenile Justice, *Shutting Down the Trauma to Prison Pipeline Early, Appropriate Care for Child-Welfare Involved Youth*, available at: <https://www.cfjj.org/trauma-to-prison> (last visited September 17, 2021).
- 34 Salma S. Safiedine, Jeannie Chung, Hannah Leyla Gokaslan, *Policy Reform in the Juvenile Justice System Arena*, 33 Sum. Crim. Just. 8 (2018) (arguing that “because the adolescent brain is malleable and more susceptible to positive feedback than a fully developed brain, the juvenile justice system should focus on diversion, intervention, and rehabilitation programs, rather than the stricter punishment-orientation of the adult system”).
- 35 See, e.g., Jay Blitzman, *It’s Time to Raise the Age: Good for Youth, Costs Less, and Better Protects Public Safety*, Commonwealth Magazine, June 12, 2020, <https://commonwealthmagazine.org/opinion/its-time-to-raise-the-age/> (last visited Aug. 19, 2021) (noting that “racial and ethnic disparities exist in both the juvenile and criminal justice systems, but, according to a 2016 Prison Policy Initiative study, African Americans are six times more likely to ender Massachusetts jails and prisons than whites. This is one of the highest rates of disparity in the country”).
- 36 Jay Blitzman, *We Need Truth and Reconciliation: It’s Time to Act on School-to-Prison Pipeline*, Commonwealth Magazine, Sept. 27, 2020, <https://commonwealthmagazine.org/opinion/we-need-truth-and-reconciliation/> (last visited Aug. 19, 2021).

- 37 Safiedine, *supra* note 34, at 8.
- 38 *Id.*
- 39 *Black, Brown, and Targeted: A Report on Boston Police Department Street Encounters from 2007-2010*, The American Civil Liberties Union Foundation of Massachusetts (Oct. 2014). <https://www.aclum.org/sites/default/files/wp-content/uploads/2015/06/reports-black-brown-and-targeted.pdf> (last visited Aug. 19, 2021).
- 40 *Id.*
- 41 *See, e.g., Too Blue: A Vision for Non-Police Responses to Community Incidents in Boston*, 2018 <https://www.cfjj.org/too-blue-report> (last visited September 17, 2021).
- 42 Citizens for Juvenile Justice, *Shutting Down the Trauma to Prison Pipeline Early, Appropriate Care for Child-Welfare Involved Youth*, available at: <https://www.cfjj.org/trauma-to-prison> (last visited September 17, 2021).
- 43 Bessel A. van der Kolk, *Developmental Trauma Disorder: A new, rational diagnosis for children with complex trauma histories*, available at: [https://traumaticstressinstitute.org/wp-content/files\\_mf/1276541701VanderKolkDvptTraumaDis.pdf](https://traumaticstressinstitute.org/wp-content/files_mf/1276541701VanderKolkDvptTraumaDis.pdf) (last visited September 17, 2021).
- 44 The Mental Health Advocacy Program for Kids is an initiative out of Health Law Advocates: Lawyers Fighting for Health Care Justice. More information available at: <https://www.healthlawadvocates.org/initiatives/mhapforkids> (last visited September 17, 2021).
- 45 Citizens for Juvenile Justice, *Shutting Down the Trauma to Prison Pipeline Early, Appropriate Care for Child-Welfare Involved Youth*, citing Massachusetts Health Policy Commission. Behavioral Health-Related Emergency Department Boarding in Massachusetts, November 2017. <http://www.mass.gov/anf/budget-taxes-and-procurement/oversight-agencies/health-policy-commission/publications/20171113-hpc-ed-boarding-chart-pack.pdf> (last visited September 17, 2021).
- 46 Erin J. McCauley, *The Cumulative Probability of Arrest by Age 28 Years in the United States by Disability Status, Race/Ethnicity, and Gender*, *Am J Public Health* v. 107(12) (Dec 2017), available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5678390/> (last visited September 17, 2021).
- 47 *Id.*
- 48 The Kansas City Star asked 5,889 inmates from 12 states about their foster care experiences. The results demonstrated a significant connection between the child welfare system and the adult jail and prison systems. The Kansas City Star’s survey was an inspiration to pursue a similar survey design, expanding the focus to include the entire cradle to prison pipeline. The Star’s report is available here: <https://www.kansascity.com/news/special-reports/article238206754.html> (last visited September 17, 2021).
- 49 This advisory group included Hon. Jay D. Blitzman, Esq. (retired Massachusetts Juvenile Court Judge), Matt Cregor, Esq. (Staff Attorney at Mental Health Legal Advisors Committee), Joshua Dankoff, Esq. (Director of Strategic Initiatives at Citizens for Juvenile Justice), Christina Freitas, Esq. (Name Partner at Freitas & Freitas), Deb Freitas, Esq. (Name Partner at Freitas & Freitas), Marisol Garcia, Esq. (Senior Director at Health Law Advocates), Tad Hirsch, PhD, Msc, MDes (Professor of Art + Design at Northeastern University), Daniel Losen, Esq., m.Ed. (Director of the Civil Rights Project at UCLA), Kate Lowenstein, Esq., M.S.W (Multisystem Youth Project Director at Citizens for Juvenile Justice), Jack McDevitt, PhD (Professor and Director at Northeastern University), Erin O’Sullivan, Esq. (Senior Counsel at The EdLaw Project), Kristine Polizzano (Juvenile Justice Specialist at The Child Advocate), Gordana Rabrenovic, PhD (Associate Professor and Director at Northeastern University), Leon Smith, Esq. (Executive Director at Citizens for Juvenile Justice), and Sarah Spofford, Esq. (Staff Counsel at CPCS Youth Advocacy Division).
- 50 This incentive for pilot survey participants was higher than the \$10 provided for the final survey to account for the additional time commitment involved in both taking the survey and providing feedback about its content and format.
- 51 *See* Everyday Boston <https://www.everydayboston.org> (last visited September 17, 2021).
- 52 *See* Vera Institute, *Incarceration Trends in Massachusetts* <https://www.vera.org/downloads/pdfdownloads/state-incarceration-trends-massachusetts.pdf> (last visited, September 17, 2021).
- 53 The survey question on transgender status was separate from the question about gender identification. The respondents who identified as transgender were also counted as “male,” “female” or “prefer to self-describe”.
- 54 In reporting the race demographic data, the survey team used a prioritization model to ensure that double-counting would not occur. The racial break downs reported by survey respondents are noted below: Asian - 4; Asian and white - 1; Black/African American - 53; Black/African American and Latinx -2; Black/African American and Multi-race - 1; Black/African American, Multi-Race and Latinx - 1. Black/African American, Multi-Race, Latinx, Prefer to self-describe - 1; Black/African American and

- Native American -3 ; Black/African American and Prefer to self-describe - 1; Black/African American and white - 2; Black/African American, white and Latinx - 1; Black/African American, white and Multi-Race - 2; Black/African American, white and Native American - 1; Latinx - 38; Latinx and Prefer to self-describe - 1; Middle Eastern/North African - 1; Multi-Race - 6; Multi-Race and Latinx - 2; Multi-Race and Prefer to self-describe - 3; Native American - 3; Prefer to self-describe - 18; white - 105; white and Latinx - 2; white, Latinx and Prefer to self-describe - 1; white, Multi-Race and Latinx - 1; white and Native American -1.
- 55 U.S. Census Bureau (2020), reported by WBUR Boston, available at: <https://www.wbur.org/news/2021/08/12/massachusetts-more-diverse-census-data> (last visited September 17, 2021).
- 56 Black people constituted 26% of the survey participants in county jails, while Black people constituted only 6.5% of Massachusetts’ general population.
- 57 Vera Institute, *Incarceration Trends in Massachusetts* (2019), available at: <https://www.vera.org/downloads/pdfdownloads/state-incarceration-trends-massachusetts.pdf> (last visited September 17, 2021).
- 58 The Boston Foundation, *Equality and Equity: Advancing the LGBT Community in Massachusetts* (2018), available at: <https://fenwayhealth.org/wp-content/uploads/Massachusetts-LGBT-Equality-Indicators-Report-5-31.pdf> (last visited September 17, 2021).
- 59 C2P Survey Respondent 500.
- 60 Statistics provided for male/female groups control for race and sexual orientation. All races and sexual orientations are considered in these counts.
- 61 This LGBTQ group includes those who identify as asexual, bisexual, lesbian, gay and those who prefer to self-describe.
- 62 In the United States, children in public schools receive special education services through the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act of 1973. IDEA provides for individualized education plans (IEPs) and Section 504 provides for 504 plans. Both IEPs and 504 plans are educational plans set in place to support a student with disabilities in an educational setting. There are some technical differences between the two, but they are set out for similar purposes. The Survey accesses disability and special education experiences through questions about individual education plans and 504 plans.
- 63 C2P Survey Respondent 20.
- 64 See The Hechinger Report, *New studies challenge the claim that black students are sent to special ed too much - two quantitative studies find that Black students are under-identified for disabilities at school* (2019), available at: <https://hechingerreport.org/new-studies-challenge-the-claim-that-black-students-are-sent-to-special-ed-too-much/> (last visited September 17, 2021).
- 65 C2P Survey Respondent 447.
- 66 The Department of Elementary and Secondary Education provides that there were 976,789 students enrolled in the 2018-19 school year, with only 41,501 students receiving discipline, translating to 4% of students experiencing discipline. This “discipline” figure includes in-school suspensions, out-of-school suspensions, and expulsions.
- 67 C2P Survey Respondent 466.
- 68 C2P Survey Respondent 517.
- 69 Office of the Child Advocate, *Data about Youth Arrests* (2020), available at <https://www.mass.gov/info-details/data-about-youth-arrests> (last visited September 17, 2021).
- 70 *Id.*
- 71 C2P Survey Respondent 39.
- 72 C2P Survey Respondent 91.
- 73 C2P Survey Respondent 536.
- 74 C2P Survey Respondent 157.