

**Special Commission on Structural Racism  
in the Massachusetts Probation Service**

**Final Report**

**June 17, 2022**

## **Commission Membership**

\*Representative Tram T. Nguyen, Co-Chair, Vice Chair of the Joint Committee on Labor and Workforce Development

\*Senator James B. Eldridge, Co-Chair, Chair of the Joint Committee on the Judiciary

\*Representative Marjorie Decker, Chair of the Joint Committee on Public Health

\*Representative Bud Williams, Chair of the Joint Committee on Racial Equity, Civil Rights, and Inclusion

\*Senator Adam Gomez, Chair of the Joint Committee on Children, Families, and Persons with Disabilities

\*Ronald Corbett, Appointed by Governor Charles D. Baker, Jr.

\*Edward J. Dolan, Commissioner, Massachusetts Probation Service

\*Derege Demissie, Esq., Designee, American Civil Liberties Union of Massachusetts

\*Julia H. Cofield, Designee, National Association for the Advancement of Colored People, New England Area Conference

\*Scott Scharffenberg, Executive Director, and Christine Judd, Designee, Roca, Inc.

\*Nichelle Sadler, Designee, UTEC, Inc.

\*Kelly Turley, Designee, Massachusetts Coalition for the Homeless

\*Vanessa Velez, Esq., Designee, Committee for Public Counsel Services

\* Agrees with the report

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## I. STATEMENT FROM THE CHAIRS

The Massachusetts Probation Service is part of the Massachusetts Court System and operates 105 probation departments across the Commonwealth. The Massachusetts Legislature, through *An Act relative to justice, equity and accountability in law enforcement in the Commonwealth*, (Chapter 253 of the Acts of 2020), established a 13-member special commission to study the role of structural racism in the Massachusetts Probation Service and to make recommendations to eliminate any disparities in the treatment of persons of color and to address the role of structural racism in the probation service.

Addressing structural racism is fundamental to the delivery of justice, fairness, and to the very notion of our Commonwealth. We are committed to confronting structural racism across our justice system. We undertook the Commission's responsibilities with the serious attention and effort that they merit.

The Commission held eleven public hearings from June 16, 2021 through November 17, 2021. We heard from numerous stakeholders, including the Massachusetts Probation Service, other members of the Commission and their colleagues, national experts on probation, and the general public. The Commission held two hearings for the public to provide virtual oral testimony and throughout the process also encouraged written testimony.

We have been honored to serve as the Chairs of this Commission, and want to thank the Commission members for their service, especially Commissioner Ed Dolan and his team from the Massachusetts Probation Service for their participation and willingness to engage in this process, the public for their participation and input, and the presenters for their engagement and sharing with us their expertise. The information we gathered was invaluable in building our report. This report is only the beginning of rooting out structural racism in the probation service, which will require continuous intentional and data-informed evaluation, reform, and care.

Sincerely,



Tram T. Nguyen, Co-Chair  
State Representative  
*Eighteenth Essex District*



James B. Eldridge, Co-Chair  
State Senator  
*Middlesex and Worcester District*

## **II. CHARGE OF THE SPECIAL COMMISSION**

### Section 112 of Chapter 253 of the Acts of 2020

(a) There shall be established, pursuant to section 2A of chapter 4 of the General Laws, a special legislative commission on structural racism in the Massachusetts probation service, referred to in this section as the commission. The commission shall make an investigation and study into disparate treatment of persons of color in the probation process and determine the role of structural racism in those disparities.

(b) The special legislative commission shall consist of 13 members: 3 of whom shall be members of the house of representatives to be appointed by the speaker of the house, 1 of whom shall be a member of the Massachusetts Black and Latino Legislative Caucus and 1 of whom shall be a member of the Massachusetts House Asian Caucus; 2 of whom shall be members of the senate to be appointed by the president of the senate; 1 of whom shall be appointed by the governor; 1 of whom shall be the commissioner of probation; 1 of whom shall be the executive director of the American Civil Liberties Union of Massachusetts, Inc. or a designee; 1 of whom shall be the president of the National Association for the Advancement of Colored People New England Area Conference or a designee; 1 of whom shall be the executive director of Roca, Inc. or a designee; 1 of whom shall be the chief executive officer of UTEC, Inc. or a designee; 1 of whom shall be the executive director of the Massachusetts Coalition for the Homeless, Inc. or a designee; and 1 of whom shall be the chief counsel of the committee for public counsel services or a designee.

(c) The special commission shall conduct a thorough review of the probation process to determine if there are disparities in the treatment of persons of color in the probation system and if structural racism is a cause of those disparities. The special commission shall also conduct a thorough review of any disparities in conditions or revocation of probation for persons of color and if structural racism is a cause of those disparities. The special commission shall make recommendations to eliminate any disparities in the treatment of persons of color found in the probation process including policy or legislative changes.

(d) The special commission shall submit its report and recommendations, together with drafts of legislation to carry its recommendations into effect, by filing the same with the clerks of the house of representatives and the senate not later than September 30, 2021.

### Section 21 of Chapter 76 of the Acts of 2021

Notwithstanding any general or special law to the contrary, the special legislative commission established in section 112 of chapter 253 of the acts of 2020 is hereby revived and continued to December 31, 2021. The special legislative commission shall file its report pursuant to

subsection (d) of said section 112 of said chapter 253 with the clerks of the house of representatives and the senate not later than December 31, 2021.

### Section 43 of Chapter 2 of the Acts of 2023

Section 21 of chapter 76 of the acts of 2021 is hereby amended by striking out the words “December 31, 2021”, each time they appear, and inserting in place thereof, in each instance, the following words:- June 30, 2023.

### **III. DEFINING STRUCTURAL RACISM**

We are using a widely cited definition of structural racism formulated by The Aspen Institute Roundtable on Community Change (“Roundtable”), which was established in 1994 and is part of the Aspen Institute, an international nonprofit policy and research organization based in Washington D.C. The Roundtable “helps policymakers, practitioners, and funders develop and implement effective strategies for promoting vibrant, racially equitable communities.” Their work has been supported by well-regarded philanthropic institutions like the Mott Foundation, the Kellogg Foundation, the Rockefeller Foundation, the Ford Foundation, and the Robert Wood Johnson Foundation.<sup>1</sup>

“A system in which public policies, institutional practices, cultural representations, and other norms work in various, often reinforcing ways to perpetuate racial group inequity. It identifies dimensions of our history and culture that have allowed privileges associated with “whiteness” and disadvantages associated with “color” to endure and adapt over time. Structural racism is not something that a few people or institutions choose to practice. Instead it has been a feature of the social, economic and political systems in which we all exist.” - The Aspen Institute Roundtable on Community Change<sup>2</sup>

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<sup>1</sup> The Aspen Institute, *Structural Racism and Community Building*, June 2004, [https://www.aspeninstitute.org/wp-content/uploads/files/content/docs/rcc/aspen\\_structural\\_racism2.pdf](https://www.aspeninstitute.org/wp-content/uploads/files/content/docs/rcc/aspen_structural_racism2.pdf); The Aspen Institute, *Staff Transitions at the Aspen Roundtable on Community Change*, May 16, 2013, <https://www.aspeninstitute.org/news/press-release/staff-transitions-aspen-roundtable-community-change/>. See also, The American Heart Association, *Structural Racism and Health Equity Language Guide*, at 7, March 2022, [https://heart.org/-/media/PHD-Files-2/Science-News/s/structural\\_racism\\_and\\_health\\_equity\\_language\\_guide.pdf](https://heart.org/-/media/PHD-Files-2/Science-News/s/structural_racism_and_health_equity_language_guide.pdf); YWCA USA, *Racial Justice Training Manual*, at 17, June 2017, [https://www.ywca.org/wp-content/uploads/sites/70/RacialJusticeManual\\_v6LoRes.pdf](https://www.ywca.org/wp-content/uploads/sites/70/RacialJusticeManual_v6LoRes.pdf); The American Psychiatric Association, *APA Presidential Task Force on Structural Racism Glossary of Terms*, <https://www.psychiatry.org/psychiatrists/structural-racism-task-force/glossary-of-terms>.

<sup>2</sup> The Aspen Institute, *11 Terms You Should Know to Better Understand Structural Racism*, July 11, 2016, <https://www.aspeninstitute.org/blog-posts/structural-racism-definition>; see also, *Glossary for Understanding the Dismantling Structural Racism / Promoting Racial Equity Analysis*, <https://www.aspeninstitute.org/wp-content/uploads/files/content/docs/rcc/RCC-Structural-Racism-Glossary.pdf>.

#### **IV. INTRODUCTION**

The special legislative commission on structural racism in the Massachusetts probation service (“the Commission”) was tasked with studying the role of structural racism in the Massachusetts Probation Service and making recommendations to eliminate any disparities in the treatment of persons of color and to address the role that structural racism plays in those disparities. Thus, we needed to look beyond individual instances and think about how policies, procedures, and structures within the probation service may reinforce disparate opportunities and outcomes based on race and ethnicity.

To inform its deliberations, the Commission conducted eleven public hearings over the course of six months. Commissioners acknowledged from the outset that disparities do exist and in fact have been the target of reforms implemented by the Massachusetts Probation Service. Their discussions focused on ways to further address those disparities. The Commission examined how probation functions in Massachusetts, how racial disparities may exist in opportunities and outcomes, and how structural racism may create those disparities. Commissioners heard presentations from the Massachusetts Probation Service, the Committee for Public Counsel Services (Public Counsel Division, Private Counsel Division, Youth Advocacy Division, Children and Family Law Division, and Mental Health Litigation Unit), UTEC, Inc., Roca, Inc., and Columbia University’s Justice Lab and Multnomah County Department of Community Justice. The Commission also encouraged and accepted written and oral public testimony and held two virtual hearings for public testimony.

#### **V. SUMMARY OF PROBATION SERVICE IN MASSACHUSETTS**

Massachusetts allows judges to place individuals charged or convicted of a crime on probation, which allows a person to continue living and working in the community under certain conditions specified by the court. Massachusetts law affords judges wide discretion in setting probation conditions. They often rely on reports and recommendations from probation officers in making their decisions.<sup>3</sup>

The Massachusetts Probation Service (“MPS”) is a department of the Massachusetts Court System or Trial Court. It is made up of 105 probation departments, the Office of Community Corrections (“OCC”), the Trial Court Community Service Program, the Electronic Monitoring Center, and the Office of the Commissioner of Probation. MPS partners with local law enforcement and human service agencies to keep communities safe and provide a wealth of programs, initiatives, and resources, such as substance abuse counseling and educational and job training. The agency collaborates on a regular basis with federal, state, and local police; sheriff’s

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<sup>3</sup> G.L. c. 279 § 1

departments; the Parole Board; the Sex Offender Registry Board; and state agencies such as the Department of Mental Health, Department of Transitional Assistance, Department of Children and Families, and the Department of Youth Services. Probation also works closely with local schools. Probation updates and maintains Court Activity Record Information and the Civil Restraining Order Registry. The agency screens applicants during the court intake process to determine indigency or eligibility for a court-appointed attorney. The agency is also charged with the expungement and sealing of records.

MPS's mission statement is to "[i]ncrease community safety, reduce recidivism, contribute to the fair and impartial administration of justice, support victims and survivors[,] and assist individuals and families in achieving long-term positive change." MPS adopted a diversity pledge for its employees to take, which states that MPS "stands against structural and systemic bias, racism, discrimination in all of its forms, and harassment by intentionally building a more diverse and inclusive workplace where we value all of our employees for their talents, abilities, and the unique qualities they bring to the Service. We commit to bringing these same values - diversity, equity, and inclusion - to our work, our partners in the justice system, and the communities we serve."

MPS functions within five of the seven court departments (Superior, District, Municipal, Juvenile, and Probate Courts; not present in the Land and Housing Courts). MPS also supports the operation of all 53 specialty court sessions throughout the Commonwealth. MPS operates six specialized units: 64 staff in Electronic Monitoring ("ELMO") monitoring people who have been court ordered to GPS and/or Remote Alcohol Testing; 7 staff in the Warrant Management Unit working on reduction of after-hours warrants; the Victim Services Unit which provides assistance with safety planning, referrals to appropriate resources, court accompaniment, and crisis intervention to victims and survivors of crime; the Administrative Supervision Unit which supervises first and second offense OUIs; the Education and Training Division which is committed to providing an inclusive culture of positive change through a collaborative model of education and development, is informed by national initiatives and evidence-based practices, and strives to foster a continuous learning environment that is responsive to the diverse needs of the staff and communities they serve; and the Records Unit which handles identity management, sealing, and expungement.

MPS also operates 19 Community Justice Support Centers ("CJSC") across the state. Individuals attend CJSC to participate in programs designed to improve their lives and avoid further criminal justice involvement. Each CJSC offers about 15 different programs, including cognitive behavioral treatment for Substance Use Disorder ("SUD") and to improve decision making, employment counseling, and Adult Basic Education, GED/HiSET, and post-secondary preparation. MPS also manages the Community Service Program, which facilitates prosocial activities consistent with evidence-based practice, for the entire trial court.



There are approximately 60,000 people under probation supervision in Massachusetts. Probation supervision in criminal courts consists of: administrative supervision, which is primarily focused on offender compliance actions and taking action for non-compliance (35%); risk/need supervision of felony, misdemeanor, and delinquency cases (30%); pretrial supervision, which is an evolving area of practice combining supervision and services (29%); and driving under the influence of liquor (“DUIL”) supervision (6%).<sup>4</sup>

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<sup>4</sup> Data provided by MPS, which it gathered from its Research Department Tableau Public Dashboard: <https://public.tableau.com/app/profile/mpsresearchdept>. Data represents July 2020 caseload data from the Superior, District, BMC, and Juvenile court departments and the Administrative Supervision Unit.

## **VI. DISPARITIES IN THE TREATMENT OF PERSONS OF COLOR IN THE PROBATION SYSTEM (1ST CHARGE)**

### **Ongoing Efforts of MPS on Diversity, Equity, and Inclusion and Cultural Competency and Proficiency of Its Workforce**

From the start of the Commission’s work, Probation Commissioner Edward Dolan indicated that he and his office are committed to eliminating structural and systemic racism. MPS’s Diversity, Equity, and Inclusion (“DEI”) strategy to achieve equal access to justice and ensure fair, equitable, and just outcomes for the diverse communities that it serves includes building a diverse workforce reflective of those communities, consistently communicating its commitment to equity and inclusion as core values, and examining its policies and practices and their impact on outcomes. Commissioner Dolan welcomed the Commission’s assistance and recommendations to further their efforts. Many of those who presented to the Commission remarked on the improvements at MPS under Commissioner Dolan’s management and asked the Commission to build and expand upon MPS’s earlier and ongoing work, which is described in more detail below.

#### **A. Recruitment, Hiring, and Promotion**

A diverse MPS workforce that reflects the communities served is essential to the equitable treatment of persons of color in the probation system, to the equitable administration and enforcement of probation conditions, and to the equitable employment of discretionary violation notices. MPS employees who supervise, manage, and make decisions about probationers and who come from the same or similar racial, ethnic, or language backgrounds as the probationer will be better positioned to understand the racial, cultural, language, and other barriers that confront the probationer. They can better tailor services and treatments to meet the probationer’s needs, counteract recidivism, and maximize the probability of success.

In 2016, MPS, as part of the larger Trial Court Strategic Plan 2.0, began the work of self-examination as it relates to DEI as core organizational principles and values. As part of this effort, MPS undertook an examination of the diversity that existed across its workforce, reviewed its recruitment, hiring, and promotional practices, and expanded its efforts in building workforce diversity and cultural competence. Among other things, the 2016 MPS Strategic Plan 2.0 (the “Plan”) aims for an intentional approach to workforce diversity and cultural competence. These efforts have led to increases in racial and ethnic diversity of its workforce and improvements to system-wide DEI training.

MPS worked with the Trial Court’s Office of Court Management and an outside firm IOS Solutions to increase diversity in its hiring and promotion. MPS is creating a data model that will

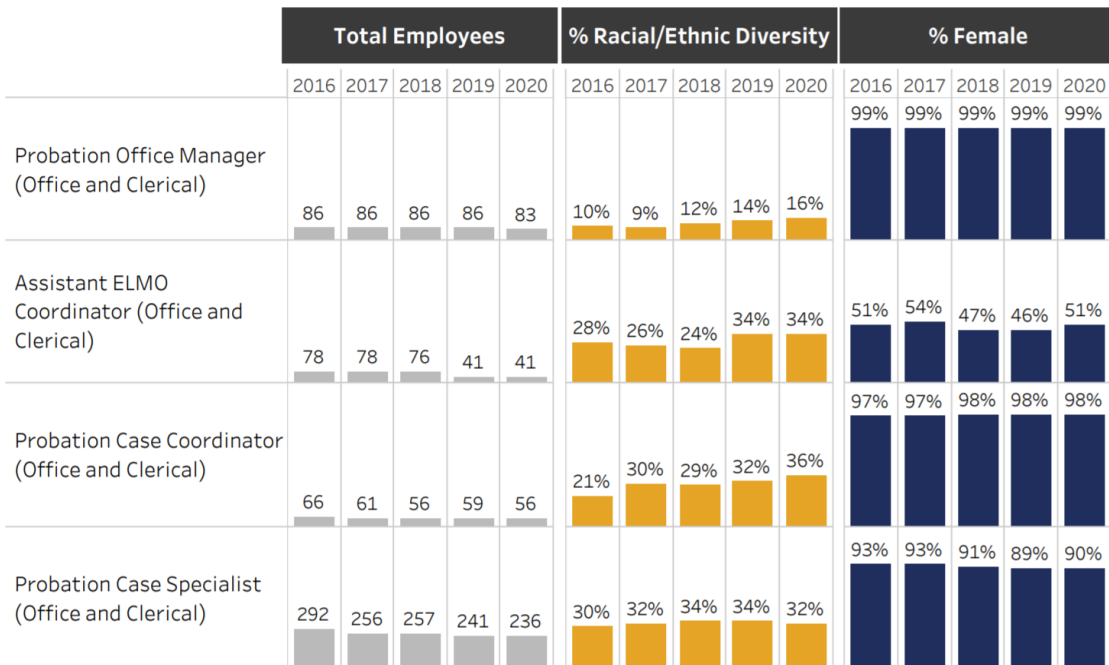
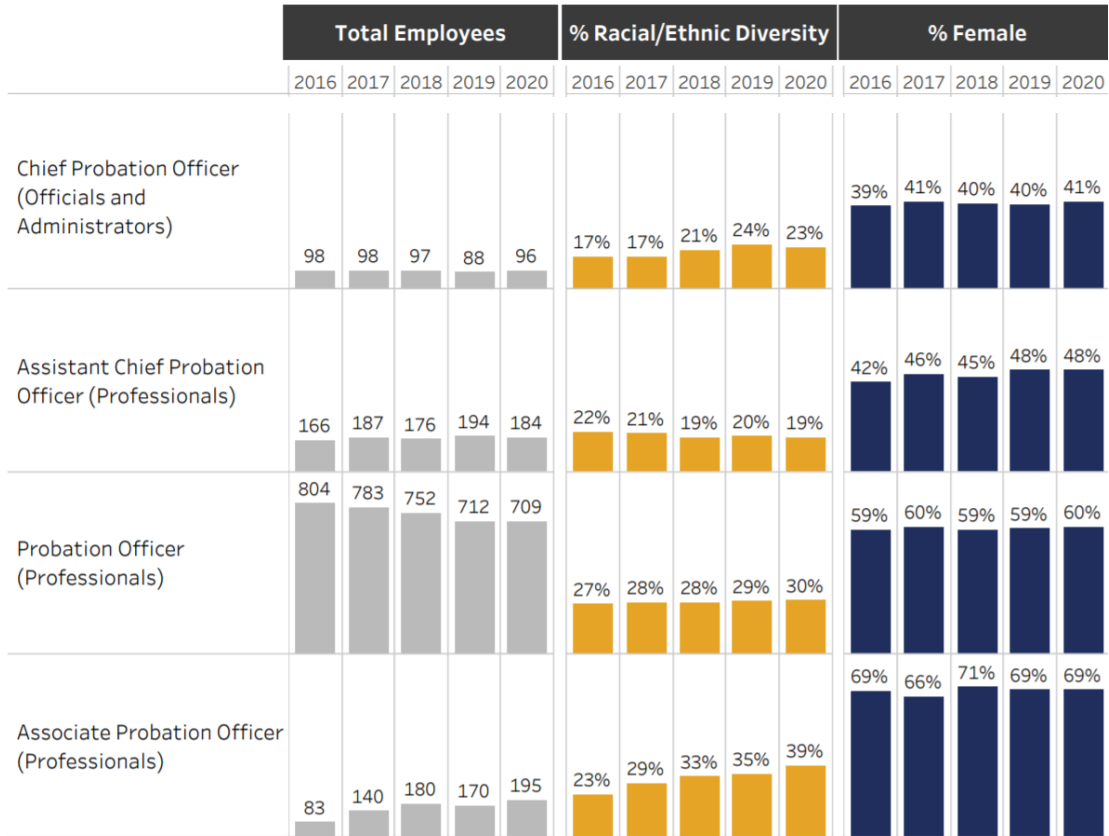
assess its progress towards diversifying its workforce. MPS's Human Resources team leads the organization's efforts to strengthen recruitment across different communities. MPS reaches out to community-based organizations and outlets to advertise employment opportunities. MPS noted that it is difficult to get a diverse candidate pool in some areas of the state (e.g., the Berkshires). Candidates are screened by the Office of Diversity, Equity, and Inclusion and the Office of Workplace Rights and Compliance. Interview panels include diverse employees.

In June 2020, MPS had a total workforce of 1,845 employees. Each probation office has a Chief Probation Officer ("CPO"), one or more Assistant Chief Probation Officers ("ACPOs"), several Probation Officers ("POs"), and several Associate Probation Officers ("APOs"). MPS also employs a number of clerical or support staff including Probation Office Managers, Probation Operations Supervisors, Probation Case Coordinators, and Probation Case Specialists. The Trial Court's 2020 Annual Diversity Report shows that MPS's racial and ethnic diversity at the end of 2020 was 23% for CPOs, 19% for ACPOs, 30% for POs, 39% for APOs, 16% for Probation Office Managers, 34% for Assistant ELMO Coordinators, 36% for Probation Case Coordinators, and 32% for Probation Case Specialists.<sup>5</sup>

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<sup>5</sup> Massachusetts Trial Court, *Annual Diversity Report Fiscal Year 2020*, at 9-10, December 2020, <https://www.mass.gov/doc/massachusetts-trial-court-annual-diversity-report-fiscal-year-2020/>.

Racial/ethnic diversity for the end of fiscal years 2016 to 2020<sup>6</sup>



<sup>6</sup> Ibid. Graph edited to remove positions outside of MPS.

Probation Service, June 2020 Data<sup>7</sup>

<b>Top 5 Job Titles, % Racial/Ethnic Diversity, Female</b>					
	Total	Racial/ Ethnic Diversity	% R/E Diversity	Female	% Female
<b>Massachusetts Probation Service</b>	1,845	530	28.7%	1,205	65.3%
Chief Probation Officer	96	22	22.9%	39	40.6%
Assistant Chief Probation Officer	184	35	19.0%	88	47.8%
Probation Officer	709	212	29.9%	427	60.2%
Associate Probation Officer	195	76	39.0%	135	69.2%
Probation Case Specialist	236	75	31.8%	212	89.8%

On September 17, 2021, MPS provided the Commission with an update on its workforce diversity numbers. Its total workforce is about 30% people of color. There are 102 CPOs, of which 21.3% are people of color; with 76.5% White, 12.2% Black, 7.1% Hispanic, 2% Asian, and 2% other. There are 21 First ACPOs, of which 21.1% are people of color; with 78.9% White, 10.5% Black, 5.3% Hispanic, and 5.3% Asian. There are 153 ACPOs, of which 20.1% are people of color; with 75.8% White, 11.4% Black, 7.4% Hispanic, 1.3% Asian, and 4% other. There are 687 POs, of which 28.7% are people of color; with 70.6% White, 16.4% Black, 10.5% Hispanic, 1.8% Asian, and 0.8% other. There are 203 APOs, of which 41.6% are people of color; with 55.3% White, 20.3% Black, 19.3% Hispanic, 2% Asian, and 3% other. Finally, there are 517 clerical and support staff, of which 29.4% are people of color; with 66.3% White, 11.4% Black, 14.6% Hispanic, 3.4% Asian, and 4.3% other.<sup>8</sup>

Testimony indicated that while the workforce has become more diverse, management level positions are still predominantly held by White officers. From 2017 to 2021, there were 50 promotions to CPO, and 9 were persons of color (18%). In 2017, 2 of the 12 promotions to CPO were persons of color; in 2018 they were 4 of 8, in 2019 they were 2 of 8, in 2020 they were 1 of 13, and in 2021 no persons of color were promoted to CPO out of 9 promotions. During that same five-year period, there were 116 promotions to ACPO, and 21 were persons of color (18%). MPS stated that they are receiving a more diverse group of applicants, but promotion from within remains a work in progress, and not every court location is as diverse as they would like for it to be.<sup>9</sup>

<sup>7</sup> Ibid at 22.

<sup>8</sup> Data provided by MPS. The information in this report reflects what was collected and provided to us. Sometimes MPS gathered data on “Hispanic” individuals, but other times it collected data on “Hispanic or Latino” individuals.

<sup>9</sup> Ibid.

Organizations should strive to have “consistently diverse candidate pools for positions at every level.” They can enhance recruitment and support pipelines to employment by building relationships with community organizations and professional associations focused on diverse representation in various fields, ensuring that qualifications for positions do not unnecessarily screen out applicants, and investing in intentional and targeted pipeline models that focus on communities historically underrepresented in post-secondary institutions.<sup>10</sup>

## B. Training and Workforce Development

Since 2017, MPS has implemented several workforce development and governance tactics that are relevant to improving its racial and ethnic diversity and cultural competency. These include Workforce Diversity and Cultural Competence Training (2017-present); recruitment of Cultural Proficiency Champions with at least one in each probation department (2017-present); Cultural Appreciation Week (2017-present); leadership development and increased education and training around DEI (2019); conversations on race and racial justice (2020-present); leadership peer-to-peer conversations (2020-present); and bringing in experts and consultants to make improvements to DEI and its approach to racism and other forms of hate, bias, and discrimination in MPS’s staff relations as well as with its clients (2021-present).<sup>11</sup>

Efforts have continued through COVID with the development and introduction of the Racial and Ethnic Disparity training curriculum as well as targeted training at the executive and management levels to better build workforce inclusion across MPS’s core functions and practices. The Racial and Ethnic Disparity curriculum, provided to senior staff, looks at the history of racial and ethnic disparities (slavery, segregation, redlining, etc.) and how they manifest today. MPS plans to roll out this training more broadly.

The training that is required for an employee depends on their position. New hires receive an average of 30 hours of core online and in-person training, plus position-based and court-specific mandatory training. The aim is for all training to be relevant and applicable to the employee’s work. Training teaches evidence-based practices and utilizes interactive scenario-based case studies. Courses are supplemented with local-level coaching to address gaps and remedy deficiencies. Office management may also make elective training available where appropriate. Contractual continuing education requirements vary by position; the minimum for most positions is 22.5 hours per year. MPS uses a Learning Management System to track employees’ completion of internal and external training. Leadership will follow up with individuals who have not met their contractual requirements.

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<sup>10</sup> Multnomah County, *Multnomah County Workforce Equity Strategic Plan*, at 16, January 31, 2019, <https://www.multco.us/diversity-equity/multnomah-county-workforce-equity-strategic-plan>.

<sup>11</sup> Per MPS, Cultural Appreciation Week is the Trial Court’s signature event in promoting equal access to justice for all in a safe and dignified environment with policies and practices that strengthen and support DEI.

Former MPS employees of color testified that they were held to a different standard than their White counterparts and faced discrimination and unfair treatment from their managers. For example, two employees of color were conversing in Spanish, and their office manager asked them if they had work to do, but never questioned similar behavior by White employees. One person testified that their office desk was relocated to isolate them. Additionally, employees who speak multiple languages often have to do some of their colleagues' work on cases that involve probationers whose primary language is not English. These multilingual employees also testified that much less qualified White colleagues were promoted over them. Some former employees of color testified that they were not given sufficient training, resources, and opportunities to succeed in performing their duties.

MPS does not measure the outcome of training. It wants staff to internalize DEI training and understand their shared set of values and approach. It seeks to achieve this through a coaching model where supervisors coach and directly engage to help redirect staff. This is a work in progress. MPS aims to treat people on probation with dignity and respect, like how they would treat customers. MPS indicated that it has been developing and finalizing an end survey for probationers to provide feedback.

According to national experts, it is important for caseworkers to show respect for the people that they supervise and treat them as individuals. Caseworkers should be trained to fit programs and funding to the probationer, rather than asking probationers to fit themselves to the programs and funding. Additionally, staff should be trained on equity, brain science, and trauma. They should understand the root causes that led the individual to criminal behavior, before setting expectations for them. Commissioner Dolan agreed that staff need to understand trauma and all factors shaping behavior in order to work effectively with probationers. Per MPS, it already offers training on equity, brain science, and trauma and can continue and strengthen those efforts. Furthermore, MPS noted that its Risk/Need/Responsivity approach (see section VII) is designed to better understand the person on probation and create a treatment plan that meets their needs.

### **Misconduct and Discipline**

MPS has a process for addressing allegations of bias, racism, mistreatment, and other behaviors and practices that may be cause for disciplinary action. Employees are informed how the process works. Allegations are referred to an independent investigator, the Executive Director of the Trial Court's Office of Workplace Rights and Compliance (the "Director"). Employees can go directly to this person with their concerns. The Director also conducts some of the training for MPS employees. Their office investigates allegations and makes recommendations to the Commissioner of Probation, who then decides what to do after consulting with their executive team. Sometimes, the Director will do mediation, recommend additional training, or recommend

dismissal. Commissioner Dolan made it clear that he wants to know when someone is acting inappropriately and would be responsive. He advised that probationers or their attorneys may initiate a grievance or complaint regarding inappropriate MPS employee behavior through the administrative hearing process offered through the Office of Court Management. People who testified during the public hearing asked for a formal complaint process for probationers, attorneys, judges, and other outside parties to submit complaints and ensure accountability.

### **Community Support Services**

Often, individuals on probation have a number of basic needs that are not being met and must be addressed in order for them to have more stability and a better chance at succeeding. These include food, clothing, shelter, physical and mental health care, SUD treatment, education, and employment. MPS engages with community service providers and organizations to address these underlying issues that lead to criminal behavior and are sometimes what contributes to the person ending up on probation.

Pretrial services are a significant and developing practice area. MPS has been developing programs to minimize unnecessary pretrial detention; provide e-reminder notifications to reduce risk of accidental defaults; present data to policymakers in non-identifying aggregate format; establish broad-based system of collaboration enabling comprehensive policy, guidelines, and practices to improve pretrial services; and develop supervision standards and training to support field work.

MPS identified building trust in both MPS and affiliated services as an area for improvement, because many of their services are voluntary. People need to believe that they will benefit from them. MPS created informational videos featuring people from communities of color who attest to the services. Also, MPS has started contracting with vendors who can demonstrate cultural competency and engagement in diverse communities. People who testified indicated that more of these organizations and services should be run and provided by people of color, for the same reasons that it is important to employ a more diverse workforce.

MPS's tactics under the Trial Court's Strategic Plan 3.0, which was issued in July 2019, were to build on its ability to expand and improve services and service outcomes across the diversity and socio-economic spectrum for court-involved individuals through its Behavioral Health Initiative for the Justice Involved ("BH-JI"), expanded transitional housing, and the introduction of the CJSC model. Probation aims to match individuals to programs in a culturally competent way and hold providers accountable once they have the data capabilities to do so.<sup>12</sup>

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<sup>12</sup> CJSCs were formerly called community correction centers.



BH-JI, funded by the legislature, was implemented as part of the findings and recommendations of the Council of State Governments' ("CSG") Justice Reinvestment Initiative, a review of the Massachusetts criminal justice system. One of the major recommendations from the review was to improve access to behavioral health services for people involved in the justice system. It was initially funded at \$1 million and set up in Middlesex and Worcester in partnership with MassHealth and utilizing vendors Advocates, Inc. of Framingham and Open Sky Community Services of Worcester. BH-JI is a voluntary program that provides dedicated access to medical and behavioral health appointments, helps with housing placement including transitional housing and sober beds managed by MPS, and provides reentry kits that include tablet or phone, toiletries, clothes, and more.<sup>13</sup>

BH-JI began accepting referrals in September 2019 and as of December 31, 2021, there have been 2,135 referrals made and 1,362 people enrolled in the program. Program requirements are that the patients be MassHealth eligible and have a diagnosis of a mental health issue or SUD, following an evaluation by the vendor. MPS makes up 40% of the referrals, with the remainder being made by the Department of Corrections, Parole, and the Worcester and Middlesex Houses of Corrections. BH-JI program demographics for race are 73.7% White, 16.1% Black/African American, 1% Native American, 0.3% Asian, and 8.9% unknown. For ethnicity, 75% are not of Hispanic or Latino origin, 11% are Puerto Rican, and 14% are of other Hispanic or Latino origin. Enrollees' preferred language was 95.6% English, 2.2% Spanish, 0.7% ASL, and 1.4% other. Program participants typically become more regularly engaged with outpatient treatment. Outcomes analysis indicated that more of this treatment would lead to fewer people ending up in higher cost acute care settings. Funding has since increased to \$5 million, as data shows that it has been successful and should be expanded statewide. MPS identified trust as the major challenge to getting more people of color enrolled in the program. The vast majority of people who were referred to BH-JI, but did not enroll, are people who decline the program. They are likely suspicious of being referred by MPS or one of the other referring entities. Advocates, Inc. made a recruitment and education video to build trust and encourage more people to enroll.<sup>14</sup>

There are 19 CJSCs across the state, which are an alternative to incarceration or jail, and provide community reentry support services. These centers utilize evidence-based and treatment-oriented programming. MPS manages several vendors who provide SUD testing, as a component of recovery management, with about 168,000 samples collected annually (pre-COVID). MPS also manages four transitional housing locations with 153 beds total, providing full-service case management and structured support, including shelter, clothing, clinical support, medical

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<sup>13</sup> Council of State Governments Justice Center, *Justice Reinvestment in Massachusetts: Policy Framework*, at 5, February 2017, <https://csgjusticecenter.org/publications/justice-reinvestment-in-massachusetts-policy-framework/>.

<sup>14</sup> EOHHS, *Behavior Health Initiative Enhances Connection to Community-Based Supports for Individuals Involved with the Criminal Justice System*, <https://www.mass.gov/news/behavioral-health-initiative-enhances-connection-to-community-based-supports-for-individuals-involved-with-the-criminal-justice-system>. Data provided by MPS, tracking Middlesex County and Northern Worcester County. Enrollment video found at <https://www.youtube.com/watch?v=L731h3bQH7k>.

treatment, and education and employment assistance. These housing locations serve persons on probation, parole, pre-release from Massachusetts County Houses of Corrections and the Department of Corrections, and people wrapping up without supervision. The beds are available for up to six months and can be extended as needed. Transitional housing is designed to help people to start off on a solid foundation in their transition back into society after involvement in the justice system.

The four locations are the Brooke House, McGrath House (for women), Western Mass. Reentry Center, and New Bedford Reentry Center. The Brooke House demographics are 42% White, 33% Black/African American, 22% Hispanic/Latino, and 3% other. The McGrath House demographics are 64% White, 16% Hispanic/Latino, 14% Black/ African American, and 6% other. The Western Mass Reentry Center demographics are 55% Hispanic/Latino, 30% White, and 15% Black/ African American. The New Bedford Reentry Center demographics are 41% White, 30% Black/African American, 28% Hispanic/Latino, and 2% other.<sup>15</sup>

MPS and the Massachusetts Parole Board co-finance up to 8 weeks in sober housing, in partnership with the Massachusetts Alliance for Sober Housing. No other rent or fines are charged to residents. Placements were primarily financed with federal CARES Act funding. The sober house assistance program does not provide the robust resources and supports available in the transitional housing program. There are occasional group treatment sessions. The first year of the Sober House Assistance Program initiative was May 2020 to May 2021. It started with 40 individuals and grew to over 100. The average stay per individual is 43 days. About half of them stay for the full eight weeks. Program demographics are 54.4% White, 17% not reported, 14.9% Black/African American, 12.5% Hispanic/Latino, and 1.2% other or multiracial.<sup>16</sup>

The Trial Court was awarded a \$6 million, three year federal grant to strengthen access to treatment and housing through an initiative called Project NORTH. This program helps to provide recovery support navigation in 13 courthouses in communities highly impacted by overdoses; transportation supports to court and court-mandated treatment; housing support for up to 300 court-involved participants, with up to six months of sober housing rent paid by the grant; and virtual support and access to telehealth and telecommuting to court and court-mandated treatment.

MPS contracts with UTEC, Inc. and Roca, Inc. to provide targeted services to high risk 18 to 25 year-old probationers (“emerging adults”). Some challenges faced by these young adults include unemployment, lack of a high school diploma, prior gang affiliation, and various costs like childcare, housing, and transportation. Fines and fees are a significant barrier for these emerging adults, because many of them rely on their family for financial support and do not have the

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<sup>15</sup> Data provided by MPS.

<sup>16</sup> Ibid.

means to pay the fees and fines. These barriers often have a significant impact on communities of color.

Roca works with emerging adults who have experienced extensive trauma and are the primary victims or drivers of urban violence. Its goal is to disrupt cycles of incarceration, poverty, and racism by engaging high risk individuals and systems partners to address trauma, reduce violence, and improve outcomes for young people. Roca emphasized its partnership with MPS and the Hampden District Attorney on an Emerging Adult Court of Hope (“EACH”) initiative for high-risk young adults who often have records and are facing serious charges like home invasion or carrying offenses. The initiative, which started in early 2020, provides a second chance to young adults involved with the justice system in the Springfield District Court. They are placed on probation, provided with wraparound services, and introduced to supportive adults who lift them up towards self-sufficiency and away from incarceration and recidivism. The pilot is progressing and may have promising results.

Additionally, MPS partnered with UTEC on a young adult pilot program operating in Lowell, Lawrence, and Haverhill. This is part of the Justice Reinvestment Initiative recommendations, as a way of addressing a high recidivism rate among the emerging adult population, with about 52% re-arraigned within one year and 76% re-arraigned within three years. The Massachusetts Legislature provided \$1.6 million in the FY22 budget for this pilot, which provides specialized services and resources to emerging adults who are involved in the justice system to help them integrate into the community. Services include providing employment opportunities, educational support, social and emotional learning, parenting and childcare courses, free daycare, meals, and coaching. Individuals are referred to the voluntary program by UTEC street workers and MPS employees. UTEC emphasized the necessity of consistent culturally competent programming, employment opportunities and training, and direct outreach efforts to people within the community. MPS has been supporting UTEC in the work after probation supervision. MPS noted that subsidies for jobs available through the program are a key to success, because they give individuals the opportunity to practice holding a job. The pilot program was deemed successful, and there are plans to expand it to the rest of the Commonwealth.<sup>17</sup>

### **Language Access**

People providing testimony recommended that MPS hire more translators within probation departments to more accurately communicate with probationers of color for whom English is not their primary language, and to ensure that they understand the probation process. They also asked for more resources for programs and social work that are in the probationer’s primary language and are culturally competent. Some testimony indicated that there are required programs for probationers that are not provided in their native languages, especially for Hispanic

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<sup>17</sup> Council of State Governments Justice Center, *Justice Reinvestment in Massachusetts*, at 16.

and Asian individuals. And when these programs are available, they are often located in another part of the state and would require substantial travel that is not feasible for many probationers.

### **Data Limitations**

Accurate, relevant, and timely data is vitally important and helps with tracking the impact of policies and practices over time and making adjustments in order to eliminate disparities in probation.

In 2017, the CSG's Justice Reinvestment Initiative report found that in Massachusetts:

Information about key criminal justice system trends and outcomes is limited due to lack of standardization in existing criminal justice agency data systems and minimal quality assurance measures or requirements. Aggregate statewide data is largely incomplete for most key probation measures, including average time on probation, the number of people who start a probation sentence, and the number of people revoked from probation.<sup>18</sup>

Currently, MPS relies on the Massachusetts Court System ("MassCourts"), which is a court docket system, for its data. This system lacks data standards and validation for entry and management to ensure that information is entered correctly. Some key information, such as race, ethnicity, and start dates for supervision level changes, is not required at all, and too often, these fields are left blank. Typically between 13-20% of the cases will have no data on race or ethnicity, depending on the case type. Per MPS, it is important that individuals self-identify their race and ethnicity. If an individual chooses not to report this information, MPS will respect their wishes, but also encourage more disclosure.<sup>19</sup>

Other key information, such as reasons for probation termination, is commonly entered in an open text field, which limits the ability to properly analyze the data point. MPS has a three-person unit performing research and analysis. Due to the challenges of the current IT infrastructure, analysis is limited to sample-based approaches and periodic evaluations. Also, MPS cannot go back and extract historical data from the MassCourts system; it has to use what is available from prior data extractions. The data limitations have an impact on probation officers' case management capabilities. MPS is limited to aggregate data, which does not allow for detailed analysis to determine where there are outliers among employees or specific probation departments. Better data would allow MPS to identify and address problems through corrective actions such as targeted training or discipline. It would also boost MPS's ability to perform analyses to check for and address disparities in their policies and practices.

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<sup>18</sup> Ibid at 5, 6-7.

<sup>19</sup> Data provided by MPS.

Consistent with CSG’s recommendations, MPS has initiated the process of creating an electronic case management system (“MPS-CMS”) that would allow them to have real-time data available to manage their work effectively as well as conduct evaluations of performance and impact, identify gaps, and take corrective actions. For this, MPS contracted with Gartner International for consulting on the case management frameworks and request for proposal. MPS expects to engage a vendor in Spring 2022 to begin design and development on the MPS-CMS with the expectation that it will take between two and four years to fully implement. Development of the MPS-CMS will allow MPS to fully participate in the larger criminal justice system data coordination effort being undertaken by MPS and the Trial Court with the Executive Office of Public Safety and Security, the Executive Office of Technology Services and Securities, and others.

## **VII. DISPARITIES IN THE CONDITIONS OR REVOCATION OF PROBATION FOR PERSONS OF COLOR (2ND CHARGE)**

Probation officers make discretionary decisions that have a significant impact on the length and severity of an individual’s punishment. Two key decisions made by POs are evaluating individuals using risk assessment tools to determine risk level and level of supervision, among other things, and responding to violations of probation conditions. These decisions involve human discretion, interactions, and interventions, which make them vulnerable to the emergence of racial disparities.<sup>20</sup>

### **Risk Assessment Tools, Supervision, and Conditions**

POs are trained in assessing a defendant/probationer’s Risk/Need/Responsivity (“RNR”). In Massachusetts, this includes assessing actuarial risk and needs using the Ohio Risk Assessment System (“ORAS”) and Ohio Youth Assessment System (“OYAS”), leveraging intrinsic motivations, targeting interventions using the Responsivity Principle, cognitive behavioral treatment modality, positive reinforcement, and engaging ongoing support in natural communities. POs employ the Responsivity Principle to consider bio/psych/social factors (like race, ethnicity, language, gender, age, maturity, cognitive abilities, mental health, etc.) that affect someone’s learning style when matching them to services and interventions.<sup>21</sup>

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<sup>20</sup> Harvard Law School Criminal Justice Policy Program, *Racial Disparities in the Massachusetts Criminal System*, at 75-77, September 2020, <https://hls.harvard.edu/content/uploads/2020/11/Massachusetts-Racial-Disparity-Report-FINAL.pdf>

<sup>21</sup> Guy Bourgon & James Bonta, *Reconsidering the Responsivity Principle: A Way to Move Forward*, Federal Probation Journal, September 2014, <https://www.uscourts.gov/federal-probation-journal/2014/09/reconsidering-responsivity-principle-way-move-forward> (suggests that we should not ignore the characteristics and actions of therapists when matching individuals to services).

ORAS is a risk/need assessment system developed by the University of Cincinnati Corrections Institute to assess adult individuals at various decision points in the criminal justice system and score them on criminogenic risk/need, which is then utilized in planning intervention treatment aimed at reducing recidivism. MPS probation officers use ORAS to assess an individual's needs; categorize them as low, moderate, high, or very high risk level; and assign them a level of supervision based on their score. Risk/Need probation includes regular in-person check-ins, GPS tracking, and/or other forms of supervision. MPS does not see itself in the sanction business; providing positive incentives is more successful than punishing someone to get them to comply. It uses information gathered from ORAS to do case planning and management, and be responsive to basic needs like food, clothing, shelter, medical and mental health care, SUD treatment, education, and employment. MPS has its risk assessment tools evaluated for bias around every three years. It was first validated in 2018, and will be re-evaluated soon.<sup>22</sup>

Racial disparities can create racially inequitable outcomes at several points in the justice system process including community resources (housing, employment, healthcare, etc.), police behavior, charging decisions, diversion availability, pretrial decisions, sentencing decisions, risk assessment inputs, conditions, program availability, graduated sanctions usage, violation filings, detention decisions, and revocation decisions. Racial/ethnic disparities in the probation process include experiencing supervision in the first place, length of supervision, technical violations filed, and probation failure for technical violations and new arrests. Additionally, sociological research suggests other likely disparities, for example, having resources available that bolster condition compliance and the interaction between policing and supervision.<sup>23</sup>

Harvard Law School conducted a study of racial disparities in the Massachusetts Criminal System (“Harvard study”). Its report raises concerns about the subjectivity and hypothetical nature of ORAS. For example, POs have to determine “whether the person they are assessing is likely to walk away from a fight or is generally concerned for others.” It also identifies that “several of the risk factors are things entirely out of the control of the person being assessed, like whether drugs are available in their neighborhood or their parents’ criminal record.” It also found that “people are sometimes assigned to higher or lower levels of supervision than would be warranted by their assessment score, indicating yet another level of discretion in the supervision assignment process” that can create racial disparities.<sup>24</sup>

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<sup>22</sup> University of Cincinnati Corrections Institute, *Assessments*, <https://cech.uc.edu/about/centers/ucci/products/assessments>. Harvard Law School, *Racial Disparities in the Massachusetts Criminal System*, at 75.

<sup>23</sup> Jake Horowitz & Connie Utada, *Community Supervision Marked by Racial and Gender Disparities*, PEW Charitable Trusts, December 6, 2018, <https://www.pewtrusts.org/en/research-and-analysis/articles/2018/12/06/community-supervision-marked-by-racial-and-gender-disparities>. Michelle Phelps, *Mass Probation: Toward a more robust theory of state variation in punishment*, *Punishment & Society Journal*, May 10, 2016, <https://journals.sagepub.com/doi/10.1177/1462474516649174>.

<sup>24</sup> Harvard Law School, *Racial Disparities in the Massachusetts Criminal System*, at 76-77.

This is consistent with national data, which shows that the likelihood of probation supervision and revocation are disproportionately experienced by Black individuals, particularly men. Black people experience disparities at twice the rate compared to White people. Research suggests that Black and Latino probationers may remain on supervision longer than similarly situated White probationers. This disparity poses an increasing disadvantage over time in terms of likelihood of violations and revocation. Differences in risk assessment scores and criminal history are major contributors to racial disparities. Probation is more likely to be a true alternative to imprisonment for White and female defendants.<sup>25</sup>

People who provided testimony also raised concerns about the risk assessment tools, and asked that the use of ORAS be reexamined to determine its disparate impact on people of color. Disparities could exist in who gets screened, how people are classified, who gets overrides, who gets re-assessed for a downward departure, and who recidivates. Testimony indicated that risk assessment does not allow POs to understand the greater context around some of the issues, which leads to greater disparities for people of color because they are more likely to have justice system involvement and those with greater records get a higher risk assessment, resulting in harsher supervision and conditions.

Testimony pointed out the harm to people of color from over supervision and from probation and pretrial conditions that are degrading and destabilizing, making it incredibly difficult for a probationer to live a stable life, hold a job, and support their family. Additionally, conditions can be infantilizing or unreasonable, for example, prohibiting probationers from moving or subjecting them to ankle monitoring that limit their ability to get to work. Harsh conditions can prevent people from being employed and incarcerate people de facto in their own communities. With drug screening, there is limited flexibility for scheduling them, which makes it harder for people to maintain employment. Fines are particularly problematic, because probationers are often already struggling financially; and fines not only impact the individual, but their families too. Expert testimony indicated that Oregon eliminated supervision fees statewide and has been intentional about addressing electronic monitoring disparities and policies that perpetuate them. It was also recommended to collect data at various points in the process to identify disparities for racial groups that are similarly situated.

### **Violation of Probation and Revocation**

Probation officers have discretion on how to respond to a violation of probation (“VOP”). Typically, MPS wants to keep individuals in the community with support and services to help

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<sup>25</sup> Ibid. Jessica Eaglin & Danyelle Solomon, *Reducing Racial and Ethnic Disparities in Jails: Recommendations for Local Practice*, NYU School of Law Brennan Center for Justice, 2015, <https://www.brennancenter.org/sites/default/files/publications/Racial%20Disparities%20Report%20062515.pdf>. Sara Steen & Tara Opsal, *Punishment on the Installment Plan: Individual Level Predictors of Parole Revocation in Four States*, *The Prison Journal*, September 2007, <https://journals.sagepub.com/doi/pdf/10.1177/0032885507304526>.

them complete supervision and stay out of jail. POs have discretion to bring technical (non-criminal) VOPs before a court for non-compliance with probation conditions. It is an evidentiary process with decisions made by a judge with input from the PO. Probationers have a right to counsel for a violation hearing. Filing a VOP can lead to a violation being found, violation being withdrawn, probation being modified and continued, or probation being revoked. Per MPS, the arc of recovery is not linear and people have setbacks, and often POs will file a VOP to get the individual back before a judge and restructure conditions (for example, by asking for higher level of care in a residential setting). Per the Harvard study, intermediate punishments “can still be quite punitive.” With technical VOPs, human discretion, interactions, and interventions are some of the factors that can cause or exacerbate disparities. POs also file criminal VOPs, where there is a new criminal complaint issued against the probationer. In these instances, the PO is required to file a VOP notice.<sup>26</sup>

Massachusetts has significantly lower probation revocation than in many other states. Whereas 55% of all prison admissions in Georgia and 61% in Rhode Island are due to probation revocation, in Massachusetts they account for 19% of admissions. According to 2017 data, 10% of state prison admissions in Massachusetts were due to supervision violations, the lowest number nationally.<sup>27</sup>

Having reduced its use of technical VOP notices, MPS has then been analyzing data to determine whether the impact is equitable and whether their discretion harms certain groups more than others. To do this in the long term, MPS needs robust real-time data from an electronic case management system. In the short term, MPS reviewed a sample from manual data pulled of 2019 technical VOPs filed and then compared that to the overall caseload population from a July 2021 data extract to check if there is a disproportionate impact on communities of color.<sup>28</sup>

The 2019 sample has demographic data for 35,194 cases reflecting 18,283 administrative cases, 806 pre-trial probation cases (excluding Conditions of Release), and 16,105 risk/need cases. There were 14,423 technical violations filed for 11,164 individuals. The 2019 case types were

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<sup>26</sup> Harvard Law School, *Racial Disparities in the Massachusetts Criminal System*, at 75.

<sup>27</sup> Council on State Governments Justice Center, *Confined and Costly: How Supervision Violations Are Filling Prisons and Burdening Budgets*, June 18, 2019, <https://csgjusticecenter.org/publications/confined-costly/>. PEW Charitable Trusts, *Probation and Parole Systems Marked by High Stakes, Missed Opportunities*, September 25, 2018, <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/09/probation-and-parole-systems-marked-by-high-stakes-missed-opportunities>.

<sup>28</sup> MPS did a manual data pull of 2019 technical violations, because during the ongoing COVID pandemic, much fewer violations were filed in 2020. The 2019 data should be more reflective of normal practice. The 2019 data is limited, because not every case type could be captured for overall demographic analysis; demographic data was missing for DUI, OCC, and other pre-trial supervision categories. MPS cannot go back and extract historical data from the MassCourts system. Being inclusive of many different case types is important, because certain ones have an over- or under-representation of certain demographics. MPS used the overall caseload population from a July 2021 data extract to make the comparison. They compared the case types available for analysis in the 2019 data with the same ones in the 2021 data. Only 30 individuals identified as “American Indian/Alaska Native.”



compared with the same ones from the 2021 data. There is little difference in demographics between 2019 and 2021.

## Demographic Analysis 2019 vs 2021

A comparison of the two years can be seen below. There was little difference.

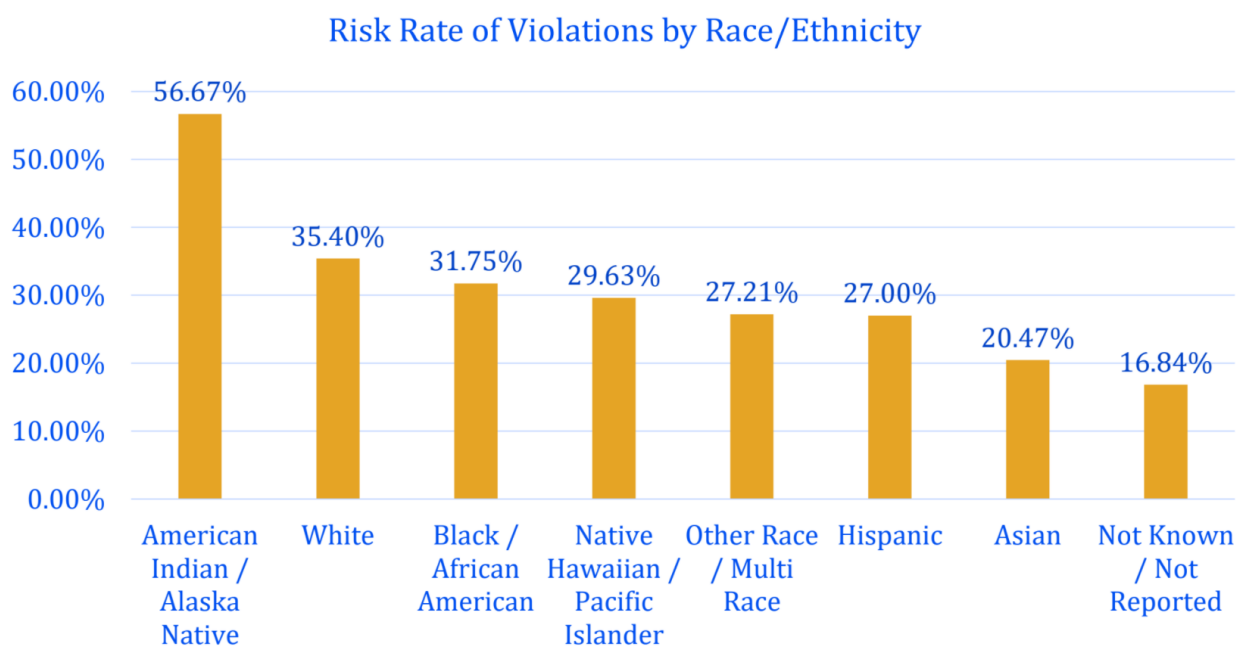
2019 Race	2019 Percent	2021 Percent
Native Hawaiian / Pacific Islander	0.1	0.1
American Indian / Alaskan Native	0.1	0.1
Asian	1.2	1.5
Other Race / Multi-Race	1.4	2
Not known / Not reported	13.5	13.2
Black / African American	17.8	18
White	65.9	65.1
Total	100	100

A comparison of Ethnicity values also show little difference. However, 2021 has less missing data.

2019 Ethnicity	2019 Percent	2021 Percent
Hispanic or Latino	17.3	17.7
Not known / Not report	40	36.6
Non Hispanic or Latino	42.8	45.7
Total	100	100

MPS did a risk rate (also called “relative rate index”) analysis to make ‘within population’ demographic comparisons. The risk rate is calculated by dividing the number of probation violators of a certain group by the number of those individuals who are supervised. Probationers identifying as “American Indian/Alaska Native” had the highest risk rate at 57%. White probationers had the next highest risk for violations with 35% of them having a violation filed. They were followed by Black/African American at 32%, Native Hawaiian/Pacific Islander at 30%, Hispanic at 27%, other or multiracial at 27%, Asian at 20%, and not known/reported at 17%.

## Violation Pattern Analysis- Risk Rate

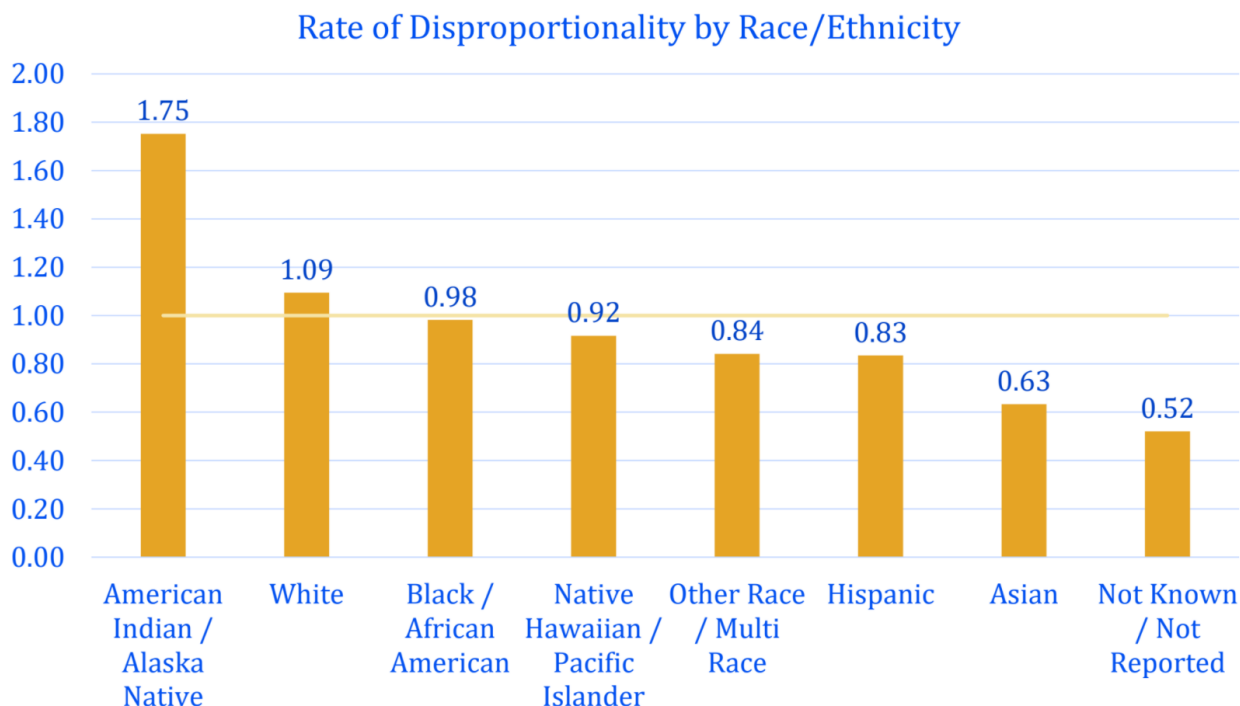


*\*There are only 30 individuals within American Indian/Alaskan Native sample*

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MPS then determined the Rate of Disproportionality, which shows the rate of one group’s violations given the proportion of them in the caseload (the “reference population”). This is calculated by finding the rate of violations for a group and dividing that by the overall percentage of that group in the caseload. Disproportionality occurs when the percentage of persons of a certain race or ethnicity in the violation-filed population differs from the percentage of persons of the same group in the reference population. MPS looked at groups that would be represented in violations equal to their rate in overall caseload. The orange line in the following figure is a reference line. The analysis shows the highest disproportionality for the “American Indian/Alaska Native” race/ethnicity group at 1.75, meaning that these probationers had a violation at almost twice the rate of their presence in the caseload. The data for Black/African Americans was fairly close to being equally represented. The data indicated that other people of color were less likely to have a VOP filed compared to their percentage of the caseload.

## Violation Pattern Analysis- Disproportionality



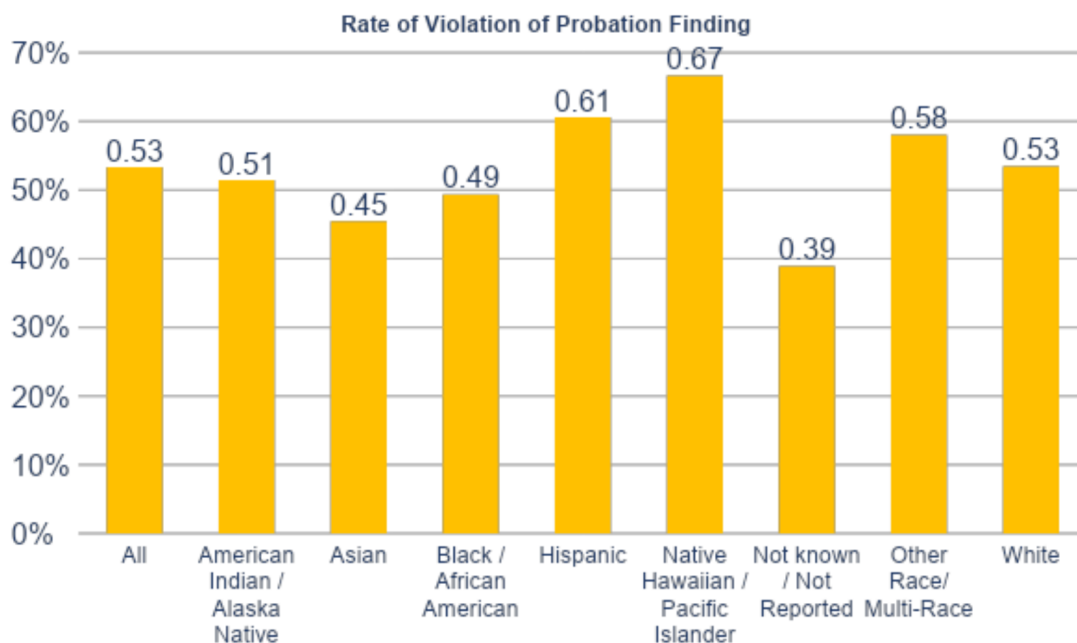
*\*There are only 30 individuals within American Indian/Alaskan Native sample*

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Additionally, MPS did an outcome analysis of technical and criminal VOPs. The 2019 sample included 20,894 technical and criminal violations filed by MPS. Analysis was done for violations and not individuals, who could have multiple violations. Sometimes multiple violations are filed for an individual at the same time. The analysis looked at three outcome categories: violation found, probation modified/continued, and probation terminated/revoked. In cases where a violation was found, there were three identities that had a higher risk rate than the 53% average across all identities: Native Hawaiian/Pacific Islander at 67%, Hispanic at 61%, and other or multiracial at 58%. MPS then looked at whether there is disparity for people of color with violations compared to their White counterparts. The data for the White group was indexed at 1 and higher or lower than that suggested greater or lesser disparities than their White counterparts, respectively. Here, MPS's analysis indicated disparities for the same three identities: Native Hawaiian/Pacific Islander, Hispanic, and other or multiracial.<sup>29</sup>

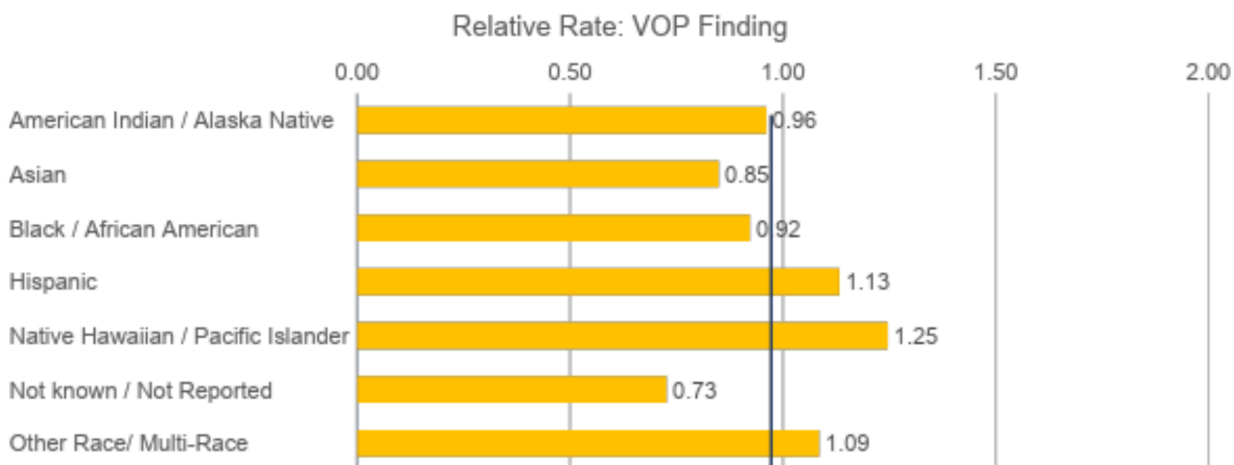
<sup>29</sup> The sample is limited and does not capture various pre-trial cases. Case types include administrative probation, OCC, risk/need probation, and DUII.

## Violation Pattern Analysis- Risk Rate



American Indian/Alaska Native only had 35 cases in this sample. Native Hawaiian and Pacific Islander only had 15 cases in this sample

## Violation Outcome Analysis- Disproportionality- Violation Found

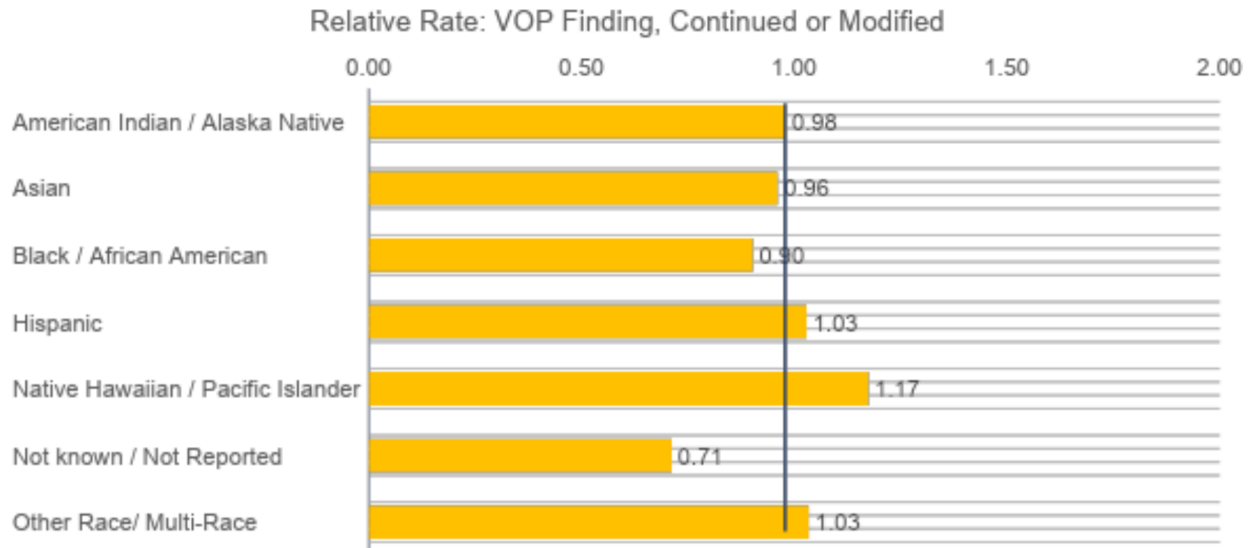


The second category looked at cases where probation was continued (with or without modification), and indexed as before. The outcome is a generally favorable one where people are

kept on probation. Thus, values significantly under 1 will be of concern. Here, MPS’s analysis showed disparities for two identities: Black/African American and not known/reported.

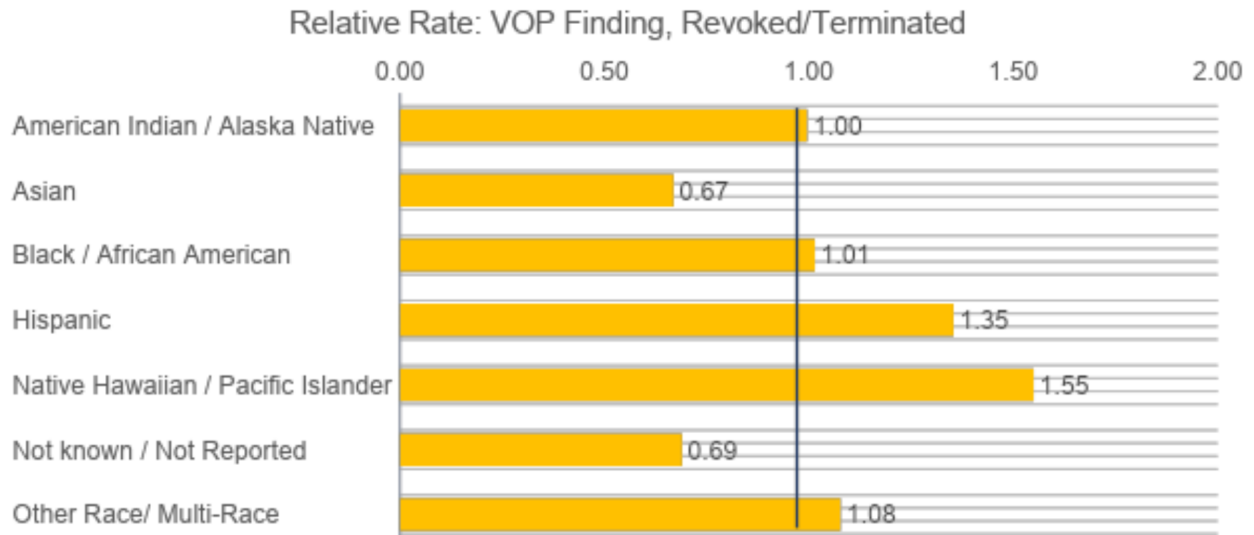
## Violation Outcome Analysis- Disproportionality- Probation Continued/Modified

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The third category looked at cases where probation was revoked or terminated, and indexed as before. Revocation is a negative outcome, which means that values significantly over 1 are of concern. MPS’s analysis showed disparities for three identities: Native Hawaiian/Pacific Islander, Hispanic, and other or multiracial.

## Violation Pattern Analysis- Disproportionality- Probation Terminated/Revoked



MPS reiterated that the data is sample-based, statistically valid, but clearly limited. There is a significant amount of missing demographic data. MPS also stresses that “the Relative Rate analysis is only a tool to tell us where disparity occurs, not why. So there may be a host of other variables that are not factored into this calculation.”

Several people testifying asked MPS to develop a graduated system of non-revocation response to violations and impose the least restrictive response consistent with public safety. Per Commissioner Dolan, a number of Probation Services across the country are moving away from menu driven or automatic responses to violations because they are inconsistent with a behavior change approach that incorporates Responsivity, stages of change, and the cognitive science of human behavior. He indicated that “menus” and matrices tend to be punitive and formulaic responses to behavior that discount the context and complexity of the population under MPS supervision. Instead, MPS prefers to employ the use of positive incentives and disapproval, which MPS trains on, as tools to encourage positive behavior change.

### **Substance Use Testing Program**

MPS and OCC provide free drug testing to probationers to ensure compliance with treatment plan and probation conditions. It is used in combination with a person’s self-reporting of substance use, because the person could be unaware of the actual composition of the substance. Drug testing is also appropriate for people who would face negative consequences if substance use is detected, since those individuals may be less inclined to self-report.

From January through June 2021, there were a total of 72,343 tests administered for between 7,500 to 8,500 individuals per month. The positive test rate was 41% and driven largely by marijuana, alcohol, amphetamines, and dilution of the sample with water to avoid detection. A demographic snapshot of probationers who were drug tested shows that they were 57% White, 17% Hispanic, 13.5% unknown, 10.5% Black, 1% Asian/Pacific Islander, 1% multiracial, and less than 1% Native American. Per MPS, it is not necessarily seeing an overrepresentation of different groups. Data was not provided on demographics for people who are tested multiple times or for the duration of testing period.<sup>30</sup>

## Substance Use Testing

Demographic Snapshot of Substance Use Testing- as of 9/1/2021

Gender				
	MPS	OCC	Total	%
Female	1527	41	1568	21%
Male	5652	196	5848	79%
<b>Grand Total</b>	<b>7179</b>	<b>237</b>	<b>7416</b>	<b>100%</b>

Race/Ethnicity				
	MPS	OCC	Total	%
Asian Pacific Islander	64	3	67	1%
Black	750	35	785	10.5%
Caucasian	4104	127	4231	57%
Hispanic	1217	41	1258	17%
Multiracial	54	2	56	1%
Native American	17	1	18	<1%
Unknown	973	28	1001	13.5%
<b>Grand Total</b>	<b>7179</b>	<b>237</b>	<b>7416</b>	<b>100%</b>

Generally, 12-13% of the tests are positive for marijuana, 12-13% for alcohol, and the remainder for more serious drugs like amphetamines, fentanyl, cocaine, and illegal prescribed medications like benzodiazepines (“benzos”). When someone struggles with relapse, MPS will intervene by filing a technical VOP to bring the person back before a judge to revise their treatment plan and increase drug testing. Per MPS, marijuana positives do not lead to serious consequences. MPS did an analysis of the November 2019 jail population in Middlesex County and found that there were 8 out of 420 incarcerated individuals who had drug testing violations. All 8 had multiple failures of probation and were brought back before the court for abandoning treatment and probation, not for failing one drug test.<sup>31</sup>

<sup>30</sup> Data provided by MPS.

<sup>31</sup> Ibid.

## **Children and Family Cases**

Testimony was provided about MPS's role in child welfare or state intervention in family cases, such as "Care and Protection" and Child Requiring Assistance ("CRA") cases. The testimony comes from the perspective of CPCS, based on the limited number of cases that its Children and Family Law Division handles. A PO is usually the first contact that the family will have in both of these types of cases, and the PO will continue to be involved, exercise discretion, and make recommendations to the court at crucial decision points in a case. Per CPCS's testimony, racial bias and inequity can arise in their exercise of discretion. POs can decide whether to advance cases to bring them before a judge; make reports and recommendations to the court, including their opinion on the child/family's needs and whether the child/family is cooperating, meaningfully engaging in services, and making progress; and conduct home assessments and recommend whether a child should remain in their home, be removed from their home and placed with the Department of Children and Families, be allowed to return home, or be allowed to live with a relative/community member whose home was assessed.

According to CPCS, judges often ask POs to conduct home studies, one of their most crucial roles in Care and Protection and CRA cases. From CPCS's perspective, based on the limited cases it manages, POs often do not give notice to the family that they are coming, and often meet them without their attorney present and without an interpreter. Per anecdotal testimony, in many instances POs report on their conversations to the judge without warning the person and without giving them an opportunity to call their lawyer. Additionally, CPCS indicated that POs have discretion to provide the child/family's counsel with advanced notice about their findings to allow counsel to work with their client and the PO to address concerns and avoid removal or other negative consequences. Testimony alleged that the PO's assessments and recommendations can drive and shape the outcome of a case and that home studies are often delayed, sometimes due to the PO's workload, which exacerbates trauma for children, particularly children of color. CPCS added that many families have multi-system involvement, where there is also a criminal case, either concurrently or separately, and what happens in those cases will impact the outcome of children and family cases.

## **Earned Compliance Credits**

The Justice Reinvestment Initiative made it possible for individuals on probation to earn compliance credits, which "reduce the length of post-disposition probation supervision". Under G.L. c. 276 § 87B, by complying with court-ordered terms of post-disposition probation supervision, a person can earn credits that count toward early termination of probation supervision. To be eligible, the person must have started probation supervision on or after January 13, 2019. A person whose supervision is for a sex offense is not eligible to earn compliance credits. While the statute does not cover juveniles, a judge may include similar early



termination incentives for them. As required by law, MPS has incorporated earned compliance credits into their calculation of the supervision termination date.<sup>32</sup>

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<sup>32</sup> Council of State Governments, *Justice Reinvestment in Massachusetts*, at 14-15. See also, PEW Charitable Trusts, *To Safely Cut Incarceration, States Rethink Responses to Supervision Violations*, July 16, 2019, <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2019/07/to-safely-cut-incarceration-states-rethink-responses-to-supervision-violations>.

## VIII. CONCLUSION AND RECOMMENDATIONS

The Commission makes the following recommendations based on its investigation and study into racial and ethnic disparities in the probation system of the Commonwealth of Massachusetts. These recommendations are tailored to directly address and eliminate disparities in the treatment of persons of color and disparities in probation conditions and revocation for persons of color, which are found in the probation process as the result of structural racism.

### A. Data Collection

**Recommendation #1. MPS should continue the design, development, and implementation of a case management system to meet its operational needs, measure and monitor racial/ethnic disparity metrics at all decision points, and take steps to directly address and eliminate those disparities. MPS should collect and annually publish data on the following broken down by race, ethnicity, and language:**

- Data metrics related to field contacts, population demographics, risk profiles, supervision levels, conditions, recidivism, risk assessment scores, case workload over time, length and intensity of supervision, disparities at different decision points for supervision, measures of supervision success, violation responses, sanctions, and revocations
- Data related to children/families involved in child welfare cases, home study outcomes, care and protection petition outcomes, CRA application outcomes, and data related to multi-system involved youth who are involved in a care and protection, CRA, and delinquency case

It is crucial that MPS has a strong data collection and management system in place to quantify disparities and then address the harms of structural racism in the probation system on people of color. Better data and analyses will help to uncover where additional disparities exist. MPS recognizes this vital need and is working to implement a robust MPS-CMS.

MPS should ensure that it collects race/ethnicity data from every probationer, and if the probationer chooses not to disclose it should be indicated as so.

As part of its ongoing evaluation, MPS should delve deeper to determine the extent to which there are racial/ethnic disparities where defendants/probationers are “similarly situated” and make changes where the most significant disparities occur. Additionally, data should be analyzed at the office-level to determine if there are disparities that may not be organization-wide but exist in a particular office.<sup>33</sup>

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<sup>33</sup> Some Commissioners suggested that MPS should make an annual assessment of the data broken down by each probation officer and then review the data for potential disparities among officers within the same office, but we could not reach a consensus on this.

Additionally, annually-published data of MPS's organizational diversity should include a regional breakdown of race/ethnicity of hirings and promotions to identify regional disparities.

Per MPS, preliminary estimates indicate that the MPS-CMS will cost at least \$15 million for the initial design, development, testing, implementation, and training.

## **B. Recruitment, Hiring, Promotion, Community Engagement**

**Recommendation #2. MPS should continue to increase the representation of communities of color across all levels of probation personnel and with a preference for people who speak multiple key languages from the community served.**

The Commission found that MPS does not have enough racial/ethnic diversity across all employment levels and should recruit, hire, and promote more people of color. Also, the most effective and direct way to overcome language access barriers is to hire more employees who work directly with defendants/probationers and are able to speak their preferred language.

MPS should strive to have consistently diverse candidate pools for positions at every level. It should enhance recruitment and support pipelines to employment by building relationships with community organizations and professional associations focused on diverse representation in various fields, ensure that the hiring process does not unnecessarily screen out diverse applicants, and invest in intentional and targeted pipeline models that focus on communities historically underrepresented in post-secondary institutions.

MPS should continue to actively and intentionally recruit in communities of color, including working with college and graduate-level affinity student associations and vocational programs.

MPS should provide ongoing support to and build a pipeline for employees of color, which includes mentorship, professional development, a dedicated management track program for promotion, listening sessions, and training exclusively designed for personnel of color.

**Recommendation #3. MPS should offer paid internships to promote a career at MPS for members of communities disproportionately impacted by the justice system.**

Offering paid internships to young people from communities most impacted by the criminal justice system would help develop and identify talented applicants and address socio-economic barriers that otherwise prevent them from working at MPS. In the long-term, MPS will strengthen trust within those communities by having more of its members working from within

to ensure that the probation system is fair and equitable. MPS noted that it would cost \$936,000 annually to provide 50 part-time internships at \$18 per hour for 20 hours per week.

**Recommendation #4. MPS should identify and work with more agencies run by people of color and affinity organizations serving specific diverse populations in the probation office's community.**

MPS should continue work supportive of the development of culturally responsive treatment and other community supports, ensure that the purchase of service process supports diversity of providers as well as culturally-competent services, and develop a pretrial services model that effectively brokers services and supports in socio-economically disadvantaged neighborhoods and communities across the Commonwealth with a goal of reducing deeper criminal justice system involvement.

This will help ensure equitable access to key stabilization supports and resources, including those for food, housing, clothing, medical and behavioral health care, substance use disorder treatment, education, and employment.

**Recommendation #5: Community Investment Recommendations**

There are significant wealth disparities across racial/ethnic identities and in underserved communities in Massachusetts. Meeting basic needs, like dedicated housing, behavioral health services, employment, and child care services, helps to address inequities in the availability of these resources. The Legislature has made significant investments in community services and programs that address historical inequities in access to critical resources. Continuing to provide key investments can reduce the impact of disparities on communities of color.<sup>34</sup>

- Emerging Adults: The young adult pilot program operating in Lowell, Lawrence, and Haverhill has been successful in reducing recidivism by providing transitional employment to emerging adults and should be expanded. MPS indicated that the existing program would need level funding at \$1.6 million and additional employment and education support would cost \$2 million. Low-wage and/or intermittent work does not reduce the likelihood of reoffending. Transitional employment programs should connect probationers to long-term, unsubsidized employment, and feature programming designed to address criminogenic risks.
- Housing: Expanding transitional housing and adding sober home beds would allow MPS to address critical housing and treatment needs for people of color on probation. The Massachusetts Legislature provided \$13.1 million for transitional housing in FY22 (\$9.6

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<sup>34</sup> Ana Muñoz, Marlene Kim, et al., Federal Reserve Bank of Boston, *The Color of Wealth in Boston*, March 25, 2015, <https://www.bostonfed.org/publications/one-time-pubs/color-of-wealth.aspx>.

million in the FY22 budget plus \$3.5 million in prior appropriations continued). MPS indicated that this money will help to continue the current four locations as well as expand the program to other geographic locations like Plymouth, Worcester, and Lowell in the near future. MPS estimates that transitional housing will cost at least \$11 million annually, and that the recovery housing and stabilization program, which is the sober home program through the Massachusetts Alliance for Sober Housing, will cost \$900,000 annually. Transitional housing is associated with reduced recidivism, but it needs to meet certain standards. Housing plans are not one-size-fits-all and should consider individualized risk and needs.

- Behavioral Health: MPS indicated that the BH-JI program, which improved access to behavioral health services for people involved in the justice system through MassHealth, will cost \$6 million annually. MPS's outcomes analysis showed that more of this treatment would lead to fewer people ending up in higher cost acute care settings. Overall, supportive services and programs need to be tailored to the individual to be effective. Considering the risk levels, needs, and responsiveness of individuals allows for the most appropriate plan and increases the chance of success.

**Recommendation #6. MPS should continue to improve policies and practices to improve language access and reduce the impact of language access barriers. This includes hiring more POs who speak the probationer's primary language, looking into hiring interpreters where they have difficulty hiring enough POs who speak those languages, and expanding on having materials translated and available in key languages for the population served in each probation office.**

To increase language access and better serve probationers of color with limited English proficiency, MPS should hire more probation officers who speak those languages and work directly with the population served.

MPS utilizes Video Remote Interpreting for centralized interpreters in remote locations to provide services for language and ASL interpretation. Per MPS, this technology has proven to greatly increase staff time and efficiency. Video Remote Interpreting, which serves many other justice system entities and law enforcement, has an annual cost of \$7.1 million.

In addition to the remote spoken language interpretation service that MPS employs, it should determine if particular probation offices should hire interpreters to assist the population that they serve. This could help offices that serve a large population that speaks a particular language where there are not yet enough POs who speak that language to directly handle those cases. This would also alleviate the burden shouldered by employees of color who speak multiple languages and have been helping their colleagues with their cases.

**Recommendation #7. MPS should affirmatively communicate with employees, with system stakeholders, and at the community-level a greater understanding of the values, mission, and approach of MPS and its work to foster greater trust, confidence, and understanding.**

Clear and effective communication will further MPS's efforts to strengthen workforce culture and ensure that policies, procedures, and practices are faithfully and consistently adhered to.

### **C. Accountability**

**Recommendation #8. MPS should develop a formal complaint process for probationers, attorneys, judges, and other parties to hold MPS employees accountable for inappropriate behavior. The steps should be clearly explained and provided in writing to stakeholders, including to probationers in their preferred language.**

A formal complaint process for third parties will help MPS identify and directly address inappropriate behavior or patterns of behavior that disproportionately harm people of color.

**Recommendation #9. MPS should continue to enhance staff cultural competency and sensitivity training.**

MPS should continue its work to ensure that staff are trained to be culturally competent and culturally sensitive. Training should include more nuanced information that is immediately applicable to the employee's day-to-day work, such as learning about social cues, like eye contact and tone of voice, of other cultures. MPS should continue to improve education and training on implicit and explicit bias. Probation offices should provide employees with education and training from diverse members of the community that the probation office serves to understand the challenges facing the community. MPS should build upon and ensure that curriculum will provide system-wide training on awareness and understanding of the impact that disparities have on equal access to justice, community safety, and public welfare.

**Recommendation #10. MPS should measure the outcome of training by soliciting feedback from the individuals whom MPS serves.**

Feedback from probationers will help ensure that policies, procedures, and practices are consistently followed throughout MPS, across the Commonwealth. Feedback would also strengthen MPS's ability to identify, directly address, and eliminate disparities.

**Recommendation #11. MPS should evaluate and address disparities with the service providers that it contracts with or makes referrals to, and with other entities that it works with.**

MPS should ensure that service providers, vendors, and other entities are culturally competent, have sufficient protections to safeguard against racial/ethnic disparities and/or biases, and do not in fact disproportionately harm defendants/probationers of color.

#### **D. Probation Conditions and Revocation**

##### **Recommendation #12. Massachusetts should eliminate probation supervision and surcharge fines/fees.**

The Commission found that supervision and surcharge fines/fees exacerbate racial/ethnic disparities and make it harder for families with justice system involvement to lift themselves out of poverty.

##### **Recommendation #13. MPS should continue to review, test, and validate decision support and assessment tools and their application to directly address and eliminate racial/ethnic disparities and biases in probation practice and decision making.**

MPS should continue efforts to implement evidence-based policies, procedures, and practices proven to reduce recidivism and ensure that they do not exacerbate racial/ethnic disparities. In particular, MPS should review its assessment tools and their implementation practices to ensure that all of the factors considered are necessary and are not used in a way that would exacerbate racial/ethnic disparities. For example, MPS should ensure that its application of ORAS does not contribute to racial/ethnic disparities in screening, scoring, permitting overrides, re-assessing cases for downward departure, or recidivism. Additionally, MPS should ensure that its practice of conducting home studies focuses on objective conditions and contains non-judgmental statements of fact. MPS should review its policies, procedures, and practices to determine whether providing counsel with notice when it conducts a home study and/or allowing those involved to consult their attorney would address racial/ethnic disparities, especially for people whose primary language is not English and/or people who do not fully comprehend the legal system and implications of home visits, without conflicting with the purpose of home studies and ensuring child welfare.

##### **Recommendation #14. MPS should ensure that its exercises of discretion at various decision points, including recommending conditions and responding to violations, do not disproportionately harm people of color.**

MPS should directly address and eliminate racial/ethnic disparities in these decisions. Conditions of probation should not be recommended by MPS unless the conditions specifically address the particular characteristics of the person and the alleged offense for which they are on probation.

MPS should use the least restrictive sanction that is consistent with public safety and positive incentives should be prioritized over sanctions.

How MPS exercises its discretion can contribute to racial/ethnic disparities in the justice system. Adverse justice system consequences disproportionately harm people of color given gaps in wealth/assets and the availability of community resources and services that are run and/or serviced by people of color and in the defendant/probationer's preferred language.



## **IX. LIST OF ACRONYMS**

ACPO	Assistant Chief Probation Officer
APO	Associate Probation Officer
BH-JI	Behavioral Health Initiative for the Justice Involved
CJSC	Community Justice Support Center
CPO	Chief Probation Officer
CRA	Child Requiring Assistance
CSG	Council of State Governments
DEI	Diversity, Equity, and Inclusion
DUIL	Driving Under the Influence of Liquor
ELMO	Electronic Monitoring
MPS	Massachusetts Probation Service
MPS-CMS	Massachusetts Probation Service Case Management System
OCC	Office of Community Corrections
ORAS	Ohio Risk Assessment System
OYAS	Ohio Youth Assessment System
PO	Probation Officer
RNR	Risk/Need/Responsivity
SUD	Substance Use Disorder
VOP	Violation of Probation