



How a Massachusetts Statute  
Forces Unreasonable Sentences

# Mandatory Harm

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## INTRODUCTION

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The passage of the 1994 Crime Bill at the Federal Level ushered in an era of accelerated mass incarceration by establishing heightened criminal sentences, including mandatory minimum sentencing laws.<sup>1</sup> One such law in Massachusetts is Massachusetts General Laws Chapter 269 § 10G, referred to as the Armed Career Criminal Act (ACCA),<sup>2</sup> which requires mandatory minimum prison sentences for persons convicted of an unlawful possession of a firearm offense and who have a previous conviction for an offense defined as a violent crime or serious drug offense.<sup>3</sup> As will be discussed, previous convictions may include juvenile adjudications, and the Massachusetts ACCA does not take into account the reasons that a young person may possess a gun.<sup>4</sup> This 1998 Massachusetts law mirrored the Federal ACCA, 18 U.S.C. § 924(e), and the term ACCA is used by prosecutors, defense attorneys, and judges in Massachusetts to refer to MGL Chapter 269 § 10G. Given renewed interest in updating Massachusetts' gun laws, it is crucial that we understand the legacy of

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<sup>1</sup> Ed Chung, Betsy Pearl, and Lea Hunter, *The 1994 Crime Bill Continues to Undercut Justice Reform—Here's How to Stop It*, Center for American Progress (26 Mar 2019), <https://www.americanprogress.org/article/1994-crime-bill-continues-undercut-justice-reform-heres-stop/>.

<sup>2</sup> An Act Relative to Gun Control in the Commonwealth (M.L.G. Chapter 180 of Acts of 1998, signed July 23, 1998) created restrictions on gun ownership, including creating an ineligibility for any person convicted of a felony from being eligible to possess a weapon. It also added criminal penalties and mandatory minimum sentences for those possessing a weapon without a license, with enhanced mandatory minimums if the defendant had prior convictions or juvenile adjudications. Since this new law mirrors the federal Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e), <https://sgp.fas.org/crs/misc/R41449.pdf>, the term ACCA is used by prosecutors, defense attorneys, and judges in Massachusetts to refer to MGL Chapter 269 § 10G. See, *Commonwealth vs. Franky Perez*, 100 Mass. App. Ct. 7 (2021). While we recognize that there is no specific Massachusetts law entitled "ACCA," we use that term in this brief following the common usage among practitioners.

<sup>3</sup> M.G.L. c. 269 § 10G. The federal ACCA (18 U.S.C. § 924(e)) requires mandatory minimums "for recidivists convicted of prohibited **possession** of a firearm under 18 U.S.C. § 922(g), who have three prior state or federal convictions for violent felonies or serious drug offenses" (emphasis added). Massachusetts General Laws Chapter c. 269 § 10(G) addresses violations to § 10 which is also centered on possession (see M.G.L. c. 269 § 10(G)'s title, "Carrying dangerous weapons; possession of machine gun or sawed-off shotguns; possession of large capacity weapon or large capacity feeding device; punishment").

<sup>4</sup> For more research on this area, see Rachel Swaner, Elise White, Andrew Martinez, Anjelica Camacho, Basaime Spate, Javonte Alexander, Lysondra Webb, and Kevin Evans, *'Gotta Make Your Own Heaven': Guns, Safety, and the Edge of Adulthood in New York City*, Center for Court Innovation (2020), [https://www.innovatingjustice.org/sites/default/files/media/document/2020/Report\\_GunControlStudy\\_08052020.pdf](https://www.innovatingjustice.org/sites/default/files/media/document/2020/Report_GunControlStudy_08052020.pdf); *Guns, Safety, and the Edge of Adulthood*, Citizens for Juvenile Justice (7 Apr 2021), <https://www.cfjj.org/juvenile-justice-forum>; Rainer Harris, *New York City's gang database raises issues of the extent of police surveillance*, WBUR, (21 Dec 2022), <https://www.wbur.org/hereandnow/2022/12/21/nyc-gang-database> (highlighting a study of gun usage in New York City by youth ages 16-24 which found that the primary reason for carrying a gun and gang involvement was concern for personal safety).



federal and state gun laws of the 1990s, and the disproportionate harm caused by their application.

This issue brief analyzes charges issued pursuant to Massachusetts General Laws Chapter 269 § 10G (referred to in this report as either Massachusetts ACCA or 10G) between fiscal years 2019–2022. The charges analyzed include gun possession violations under Sections 10G(a), 10G(b) and 10G(c) of that chapter, summarized in the chart below.<sup>5</sup> The predicate crimes that trigger Massachusetts ACCA charges “largely replicate” those in the Federal ACCA.<sup>6</sup> As a consequence, Massachusetts state courts “often look to the Federal courts for guidance on issues relating to the meaning and scope of” the state’s statute.<sup>7</sup>

### Mandatory Minimum Sentences Based on Prior Violent or Drug Related Convictions or “Strikes”

Number of violent or drug related offenses before current unlawful gun possession conviction	Relevant Statute	Mandatory-minimum sentence	Location where sentence is served
0	M.G.L. c. 269, § 10(a)	1.5–2.5 years	County House of Correction or State Prison
1	M.G.L. c. 269, § 10G(a)	3 years	State Prison
2	M.G.L. c. 269, § 10G(b)	10 years	State Prison
3 or more	M.G.L. c. 269, § 10G(c)	15 years	State Prison

There is growing recognition that mandatory minimums act as coercive practices that perpetuate racial disparities and compel defendants to take plea deals against the threat of decades-long prison sentences.<sup>8</sup> Many defendants who opt for plea deals

<sup>5</sup> *Commonwealth v. Brandon Baez*, 480 Mass. 328 (2018), <http://masscases.com/cases/sjc/480/480mass328.html>. The juvenile predicate offense is the hook for CfJJ’s interest in this matter, as well as its application against youth age 18–24.

<sup>6</sup> *Commonwealth v. Daunte Beal*, 474 Mass. 341, 349 (2016).

<sup>7</sup> *Id.*

<sup>8</sup> Nancy Gertner, *Commentary: a former judge’s call to eliminate mandatory-minimum sentencing laws*, Times Union (8 Jan 2023), <https://www.timesunion.com/opinion/article/Commentary-A-former-judge-s-call-to->

unknowingly forgo their right to be considered for rehabilitative alternatives like treatment for substance use disorder, trauma, and mental illness, which often contribute to recidivism. This is particularly troubling given the “trial penalty,” which refers to the systemic factors that encourage innocent individuals to accept plea deals in order to avoid a potentially worse outcome at trial.<sup>9</sup> Further, the full sentences mandated by these laws can be unjust and disproportionate to the overall circumstances of the defendant’s life as well as the severity and type of offense under which the law is triggered.<sup>10</sup> Some mandatory minimums also do not take into account research on desistance from reoffending.<sup>11</sup> However, much of the “tough-on-crime” legislation is still in use and continues to result in major life consequences for those who come into contact with the criminal legal system multiple times.

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[eliminate-17697670.php](#); *Commonwealth v. Rossetti*, 489 Mass. 589, 621 (2022) (Wendlandt, J., dissenting) (“At a time when we are beginning to understand that statutes imposing mandatory minimum sentences are resulting in the disproportionate incarceration of Black and brown defendants in our Commonwealth, we ought not to further strip judges of discretion in sentencing.”); *Selected Race Statistics*, Massachusetts Sentencing Commission (27 Sep 2016), <https://www.mass.gov/doc/selected-race-statistics/>; Statements by Supreme Judicial Court Chief Justice Ralph D. Gants and Trial Court Chief Justice Paula M. Carey in Response to the Release of Harvard Law School’s Report on Racial Disparities in the Massachusetts Criminal Justice System (29 Sep 2020), <https://www.mass.gov/news/statements-by-supreme-judicial-court-chief-justice-ralph-d-gants-and-trial-court-chief-justice> [<https://perma.cc/JX2W-6PJY>] (describing “Racial Disparities in the Massachusetts Criminal System” report as a “‘must read’ for anyone who is committed to understanding the reasons for [racial] disparities and taking action to end them”).

<sup>9</sup> Rebecca Brown, *Why do innocent people end up pleading guilty?*, New York Daily News (10 Feb 2023) <https://www.nydailynews.com/opinion/ny-oped-why-do-innocent-people-end-up-pleading-guilty-20230210-ql5tjpf2ubdl7iufyww4ezcwra-story.html> (“At the Innocence Project, we have come to learn that the false guilty plea, whereby an actually innocent person pleads guilty to a crime they did not commit, is much more commonplace than most people realize. Of the more than 3,000 exonerations of innocent people that have been revealed since 1989, a full 26% pled guilty.”); Samuel R. Sommers and Satia A. Marotta, *Racial Disparities in Legal Outcomes: On Policing, Charging Decisions, and Criminal Trial Proceedings*, 1 Policy Insights from the Behavioral and Brain Sciences 103 (2014) (“[T]he potential for race to influence trial proceedings has been well documented.”).

<sup>10</sup> *Id.*

<sup>11</sup> Edward P. Mulvey and Carol A. Schubert, *Pathways to Desistance*, Center for Research on Health Care (CRHC) Data Center, <https://www.pathwaysstudy.pitt.edu/>.

## The ACCA's Real Impact on Those Charged

In 2017, Erickson Daveiga was a passenger in a car during a routine traffic stop. After resolving the driver's parking violation, police allowed the car to continue on without a traffic citation.\* However, the officers stopped the car again shortly after, though there had been no further traffic violation. During the second stop, the officers observed a gun on the floor of the car and arrested Daveiga on three firearms charges.† He filed a motion to suppress the evidence on the grounds that the second traffic stop was pretextual, but the judge denied his motion, and the Supreme Judicial Court (SJC) denied an interlocutory appeal. Of his three initial charges, Daveiga was convicted of carrying a firearm without a license, which triggered a mandatory minimum as he was now considered an "armed career offender" due to prior arrests for firearms charges.‡ Daveiga was charged by prosecutors under the Armed Career Criminal Act (ACCA), and sentenced to an eight-year prison sentence. After serving 3.5 years, the SJC ruled on appeal that the second police stop that resulted in Daveiga's arrest was unreasonable as the police authority ended when they released the car without a citation after the first traffic stop. Although Daveiga's conviction was overturned, his life had already been upended after serving a partial mandatory minimum sentence that was imposed due to the court's untimely resolution of a case initiated through illegal police behavior.§

\* *Commonwealth v. Erickson Daveiga*, 489 Mass. 342 (2022); *Mass. Supreme Judicial Court Reverses Suppression Denial, Adopts Amicus Coalition Argument*, Charles Hamilton Houston Institute for Race & Justice (24 Mar 2022), <https://charleshamiltonhouston.org/news/2022/03/mass-supreme-judicial-court-reverses-suppression-denial-adopts-amicus-coalition-argument/>.

† Daveiga was charged with carrying a firearm without a license, M.G.L. c. 269 § 10(a), carrying a loaded firearm, M.G.L. c. 269 § 10(n), and possession of ammunition without a firearm identification card, M.G.L. c. 269 § 10(h)(1). *Commonwealth v. Erickson Daveiga*, 489 Mass. 342 (2022).

‡ *Erickson Daveiga v. Commonwealth*, No. 20-P-1160 (Mass. App. Ct. 2021) (Appellant Br. at 8), <https://www.mass.gov/doc/commonwealth-v-erickson-daveiga-sjc-13147/download>.

§ Reporter Staff, *Man's gun conviction overturned after court concludes police shouldn't have pulled over the car he was in*, *Dorchester Reporter* (24 Mar 2022), <https://www.dotnews.com/2022/mans-gun-conviction-overturned-after-court-concludes-police-shouldnt>.



## Common critiques of the Massachusetts ACCA statute and its utilization

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### 1. The Massachusetts ACCA compounds racial disparities:

It is well documented that laws punishing the possession and distribution of drugs disproportionately target residents of color over white residents compared with each group's actual prevalence of use.<sup>12</sup> Residents of color are more likely to be charged with serious drug offenses due to over policing and prosecutorial discretion. Prosecution data from 2013 and 2014, for example, indicated that Black residents were three times more likely than white residents to be charged with possession of narcotics with the intent to distribute and three times more likely to receive an adverse outcome after being charged with this offense<sup>13</sup> In 2019, the recognition of these disparate outcomes led former Suffolk County District Attorney Rachel Rollins to include drug possession with intent to distribute as the only felony offense within her policy to limit the use of criminal sanctions for individuals charged with non-violent offenses.<sup>14</sup> However, the ACCA's persistent use of past drug cases as predicate offenses compounds racial disparities by imposing mandatory minimums on residents of color, who have predicate drug charges at a disproportionate rate based on systemic and social factors. The triggering gun possession offense under the ACCA also reproduces the racial disparities found in charging trends. Stop and frisk and hot-spot policing practices in communities of color lead to an increased likelihood of arrest for carrying a gun and the overrepresentation of residents of color

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<sup>12</sup> The Massachusetts legislature has made some efforts to roll back harsh sentences adopted in the era of the "War on Drugs" through the 2018 Civil Justice Reform Act and the requirement in Chapter 180 of the Acts of 2022 to expand cannabis economic opportunities in communities disproportionately harmed by marijuana criminalization; Benjamin Levin, *Guns and Drugs*, 84 FORDHAM L. REV. 2173 (2016), <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=5194&context=flr>.

<sup>13</sup> Rahsaan Hall & Nasser Eldroos, *Facts Over Fear*, ACLU of Massachusetts (Mar 2019), [https://www.aclum.org/sites/default/files/20180319\\_dtp-final.pdf](https://www.aclum.org/sites/default/files/20180319_dtp-final.pdf); Rachel E. Barkow, *Categorical Mistakes: The Flawed Framework of the Armed Career Criminal Act and Mandatory Minimum Sentencing*, 133 HARV. L. REV. 200, 224 (2019), [https://www.law.nyu.edu/sites/default/files/Rachel%20Barkow\\_Categorical%20Mistakes\\_REMEDIATED.pdf](https://www.law.nyu.edu/sites/default/files/Rachel%20Barkow_Categorical%20Mistakes_REMEDIATED.pdf); Laurence Steinberg, *Give Adolescents the Time and Skills to Mature, and Most Offenders Will Stop*, MacArthur Foundation (2014), <https://www.pathwaysstudy.pitt.edu/documents/MacArthur%20Brief%20Give%20Adolescents%20Time.pdf>.

<sup>14</sup> Felix Owusu, *Presumptive Declination and Diversion in Suffolk County, MA*, Rapport Institute at the Harvard Kennedy School (March 2022), <https://hks.harvard.edu/sites/default/files/Taubman/RIGB/Presumptive%20Declination%20and%20Diversion%20in%20Suffolk%20County%20MA.pdf>.

with gun charges in the legal system. These disparate charging rates are not just present, but even wider than those for drug related charges.<sup>15</sup>

## **2. White defendants may be charged at a lower rate under the Massachusetts ACCA than their Black and Latine individuals**

There are documented racial disparities among prosecutorial decisions to seek mandatory sentencing enhancements.<sup>16</sup> A Report by the Criminal Justice Policy Program at Harvard University found that Black and Latine defendants are “substantially more likely to be incarcerated and receive longer sentences than White defendants when arraigned on the *same charges carrying mandatory minimums*.”<sup>17</sup> However, as noted above, sentencing disparities ultimately begin in differential charging practices for the same or similar conduct between non-white and white defendants.<sup>18</sup> Non-white defendants are more likely than white defendants to receive more severe charges, including charges for offenses carrying mandatory minimum sentences.<sup>19</sup> Anecdotal evidence suggests that this disparity exists in the context of charging under the ACCA; to be clear, this brief is *not* intended to inspire increases in ACCA charging for any racial group.

## **3. Juvenile predicate offenses can trigger a mandatory minimum sentence in Massachusetts**

The Boston Bar Association, as a part of testimony submitted to the Massachusetts Legislature, analyzed data from the Massachusetts Department of Corrections data and reported that between 2001-2020, 42 individuals had their sentence or indictment enhanced based on a predicated juvenile offense, and there were 67 cases in which it was unclear whether the sentence enhancement was based on a predicated juvenile offense.<sup>20</sup> Under M.G.L. Ch.269 §10(d) (another criminal sanction imposing mandatory minimums for certain offenses), 9 individuals received enhanced sentences based on a predicated offense committed as a child and there were 27 cases in which it was unclear. These findings are alarming, as no one should be

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<sup>15</sup> Levin, *supra* note 12; Jeffrey A. Fagan & Garth Davies, *Policing Guns: Order Maintenance and Crime Control in New York*, in GUNS, CRIME, AND PUNISHMENT IN AMERICA 191 (New York University Press, 2003).

<sup>16</sup> Elizabeth Tsai Bishop, Brook Hopkins, Chijindu Obiofuma, Felix Owusu, *Racial Disparities in the Massachusetts Criminal System*, The Criminal Justice Policy Program at Harvard Law School, at 59 (2020), <https://hls.harvard.edu/wp-content/uploads/2022/08/Massachusetts-Racial-Disparity-Report-FINAL.pdf>.

<sup>17</sup> *Id.* at 2.

<sup>18</sup> *Id.* at 64.

<sup>19</sup> *Id.*

<sup>20</sup> Testimony of the Boston Bar Association to Senator Michael Rodrigues, *Re: Preventing the imposition of mandatory minimum sentences based on juvenile adjudications (S.2670)*, (Jun. 1, 2022).

subjected to a mandatory minimum sentence based on incidents committed during their childhood.<sup>21</sup> This practice also exacerbates systemic inequalities given the overrepresentation of Black and Latine youth in the Juvenile Justice System.<sup>22</sup>

#### **4. ACCA and mandatory minimum charges can be used as a prosecutorial cudgel at both the federal and state level**

Under Federal Sentencing Guidelines, the length of a sentence is equated to the severity of the offense and takes into account additional details, such as the defendant's prior conduct and criminal history and risk of recidivism.<sup>23</sup> The Massachusetts ACCA, on the other hand, require the imposition of a minimum sentence based strictly on the conviction/adjudication of certain crimes, failing to take the unique circumstances of each defendant into account.<sup>24</sup> This means that defendants who would receive different sentences if their charges were evaluated according to Federal Guidelines receive the same mandatory minimum under the ACCA's statutory scheme.<sup>25</sup> For example, the Federal and Massachusetts ACCA impose a minimum 15-year sentence for persons previously convicted of three "violent crimes" or serious drug offenses, whereas the median sentence served for any offense defined as a violent crime in the U.S. is 2.4 years.<sup>26</sup> These sentencing inconsistencies created by the ACCA give huge bargaining power to prosecutors in leveraging defendants to plead guilty to lesser charges and receive a lower maximum sentence rather than to take the case to trial.<sup>27</sup> For example, one defense attorney reported that even if a motion to suppress might be winnable, some ADAs will say

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<sup>21</sup> *Id.*

<sup>22</sup> Department of Research and Planning of the MA Trial Court, *Commonwealth of Massachusetts Disproportionate Minority Contact Statewide Assessment Report*, Submitted to the Juvenile Justice Advisory Group (October 2018); *Racial and Ethnic Disparities at the Front Door of Massachusetts' Juvenile Justice System: Understanding The Factors Leading To Overrepresentation Of Black And Latino Youth Entering The System*, Massachusetts' Juvenile Justice Policy and Data Board (November 2022), <https://www.mass.gov/doc/racial-ethnic-disparities-at-the-front-door-of-massachusetts-juvenile-justice-system-understanding-the-factors-leading-to-overrepresentation-of-black-and-latino-youth-entering-the-system/download>.

<sup>23</sup> Ethan Davis, *The Sentence Imposed Versus the Statutory Maximum: Repairing the Armed Career Criminal Act*, 118 YALE L.J. 369, 372 (2008), [https://www.yalelawjournal.org/pdf/736\\_1br8tch8.pdf](https://www.yalelawjournal.org/pdf/736_1br8tch8.pdf).

<sup>24</sup> *Johnson v. United States*, 576 U.S. 591 (2015); *Beal*, 474 Mass. At 349 (extending the U.S. Supreme Court's ruling in *Johnson* to the Massachusetts ACCA) ("In terms of its definitions of predicate crimes, the Massachusetts ACCA 'largely replicates' the Federal ACCA, and, as a consequence, we often look to the Federal courts for guidance on issues relating to the meaning and scope of this statute.").

<sup>25</sup> *Id.*; Jennifer Lee Barrow, "Recidivism Reformation: Eliminating Drug Predicates." 135 HARV. L. REV. F. 418 (2022), <https://harvardlawreview.org/forum/no-volume/recidivism-reformation-eliminating-drug-predicates/>; *Taylor v. United States*, 495 U.S. 575, 600, 602, <https://casetext.com/case/taylor-v-united-states-3>.

<sup>26</sup> Barrow, *supra* note 25.

<sup>27</sup> *Id.*; Davis, *supra* note 23.



that if the defense argues the motion to suppress, they would no longer offer a plea deal.<sup>28</sup> There is also significant variation in the discretion used by prosecutors in charging mandatory minimums. The Federal Sentencing Commission found that in FY16, prosecutors in one judicial district pursued sentencing enhancements for drug offenses nearly 75% of the time, whereas there were nineteen judicial districts in which prosecutors did not pursue any enhancements for similarly chargeable cases.

## 5. The ACCA has an overbroad definition of violence

This is evidenced by its inclusion of simple assault and battery among predicate violent offenses. The ACCA does not look at the previous conduct of the defendant but only at the elements of predicate convictions to determine an imposition of a mandatory minimum.<sup>29</sup> As a result, predicate offenses with non-violent intent or conduct trigger mandatory minimum sentences though the defendant's past behavior may indicate that they do not pose a threat to public safety.<sup>30</sup> This reasoning was used in *Commonwealth v. Ezara L. Wentworth*, when defense counsel argued unsuccessfully that crimes of simple assault and battery and unarmed robbery cannot qualify as predicate offenses under the ACCA.<sup>31</sup> Though the court rejected this argument under SJC precedent and found that the defendant had engaged in violence in his prior conviction, the case offers an example of complications that arise out of the ACCA's broad categorization of violence.

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<sup>28</sup> See also, *Coerced Pleas*, Innocence Project, [https://innocenceproject.org/coerced-pleas/#:~:text=In%20a%20criminal%20case%2C%20a,facing%20a%20potentially%20harsher%20sentence:](https://innocenceproject.org/coerced-pleas/#:~:text=In%20a%20criminal%20case%2C%20a,facing%20a%20potentially%20harsher%20sentence;) Somil Trivedi, *Coercive Plea Bargaining Has Poisoned the Criminal Justice System. It's Time to Suck the Venom Out.*, American Civil Liberties Union (13 Jan 2020), <https://www.aclu.org/news/criminal-law-reform/coercive-plea-bargaining-has-poisoned-the-criminal-justice-system-its-time-to-suck-the-venom-out>.

<sup>29</sup> *Johnson*, 576 U.S.; *Beale*, 474 Mass.; *Borden v. United States*, 141 S.Ct. 1817 (2021) ("An offense qualifies as a violent felony under ACCA's elements clause if it necessarily involves the use, attempted use, or threatened use of physical force against the person of another.") (internal quotation marks omitted); *Commonwealth v. Eberhart*, 461 Mass. 809 (2012) (stating that courts are to employ a modified categorical approach if the statute under which the defendant was convicted encompasses multiple crimes, not all of which are "violent crimes").

<sup>30</sup> Brief for Public Counsel Services as Amicus Curiae, p. 30, *Commonwealth v. Ezara L. Wentworth*, 482 Mass. 664 (2019), [https://www.ma-appellatecourts.org/pdf/SJC-12633/SJC-12633\\_04\\_Amicus\\_CPCS\\_Brief.pdf](https://www.ma-appellatecourts.org/pdf/SJC-12633/SJC-12633_04_Amicus_CPCS_Brief.pdf).

<sup>31</sup> *Id.*

## Dataset Description and Limitations

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The dataset used in this report consists of records collected from the Massachusetts Trial Court, Department of Research and Planning's public-facing datasets.<sup>32</sup> Each record in the dataset represents a single criminal case that was filed in the Boston Municipal Court or Massachusetts District Court department from 2019 to 2022, though the length of sentence for the more serious ACCA cases would take place in Superior Court.<sup>33</sup> Each individual has its own defendant ID and can appear more than once in the dataset. Additionally, the datasets consist of other details related to the case including Case ID, the year the case was filed, the age of the defendant when the case was filed, the gender and race of the defendant, the police agency related to the case, charge description and the degree of offense (i.e., whether the charge was a felony or misdemeanor). The total number of charges filed against the defendant and the total number of charges by offense type are also presented.

Note that the data represent charges that were processed by the Trial Court, and do not necessarily represent convictions. The data leave much additional information about these charges unknown. For example, the data do not show how many cases were pled or went to trial, or for some cases, how many cases went to trial that resulted in a later plea. The latter occurred in the case of Erickson Daveiga, who went to trial, lost, and pled to a lesser charge.<sup>34</sup> He was charged under M.G.L. c. 269 § 10G(b) but took a plea for a shorter sentence (8 years) under M.G.L. c. 269 § 10G(a).<sup>35</sup> As noted in Finding 6 below, CfJJ reviewed DA data from the DAMION data management system for consideration in this brief. However, inconsistencies in data entry practices between counties made an analysis of the DAMION data unreliable.

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<sup>32</sup> *Criminal Court Reports and Dashboards*, Mass.gov (last update June 2, 2023), <https://www.mass.gov/info-details/criminal-court-reports-and-dashboards#data-files-with-extracts-of-case-information->.

<sup>33</sup> The data lists Boston Municipal Court or other District Courts as the courts in which the cases were charged; however, we know that the cases are coming from Superior Court based on the length of sentences. Bishop et. al., *supra* note 16 at 41.

<sup>34</sup> *Mass. Supreme Judicial Court Reverses Suppression Denial, Adopts Amicus Coalition Argument*, Charles Hamilton Houston Institute for Race & Justice (24 Mar 2022), <https://charleshamiltonhouston.org/news/2022/03/mass-supreme-judicial-court-reverses-suppression-denial-adopts-amicus-coalition-argument/>.

<sup>35</sup> *Id.*

## KEY FINDINGS

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### Finding 1 | Almost half of all Massachusetts ACCA charges were filed under the “3 prior strikes” statute (i.e., as M.G.L. c. 269 § 10G(c) violations), which mandates a minimum imprisonment of 15 years for defendants.

As displayed in Figure 1, 41% of the 95 records are charges filed under Section 10G(c), 33% are filed under Section 10G(b) and the remainder are filed under Section 10G(a).

For persons previously convicted of one violent crime or serious drug offense, a 10G(a) violation must be punished with imprisonment between 3 to 15 years. For persons previously convicted of *two* violent crimes or serious drug offenses or even one violent crime and one serious drug offense from separate incidences, a 10G(b) violation results in mandatory imprisonment between 10 to 15 years. A 10G(c) violation applies to persons previously convicted of *three* violent crimes or serious drug offenses or offenses of any combinations totalling up to three from separate incidents and results in mandatory imprisonment between 15 to 20 years.

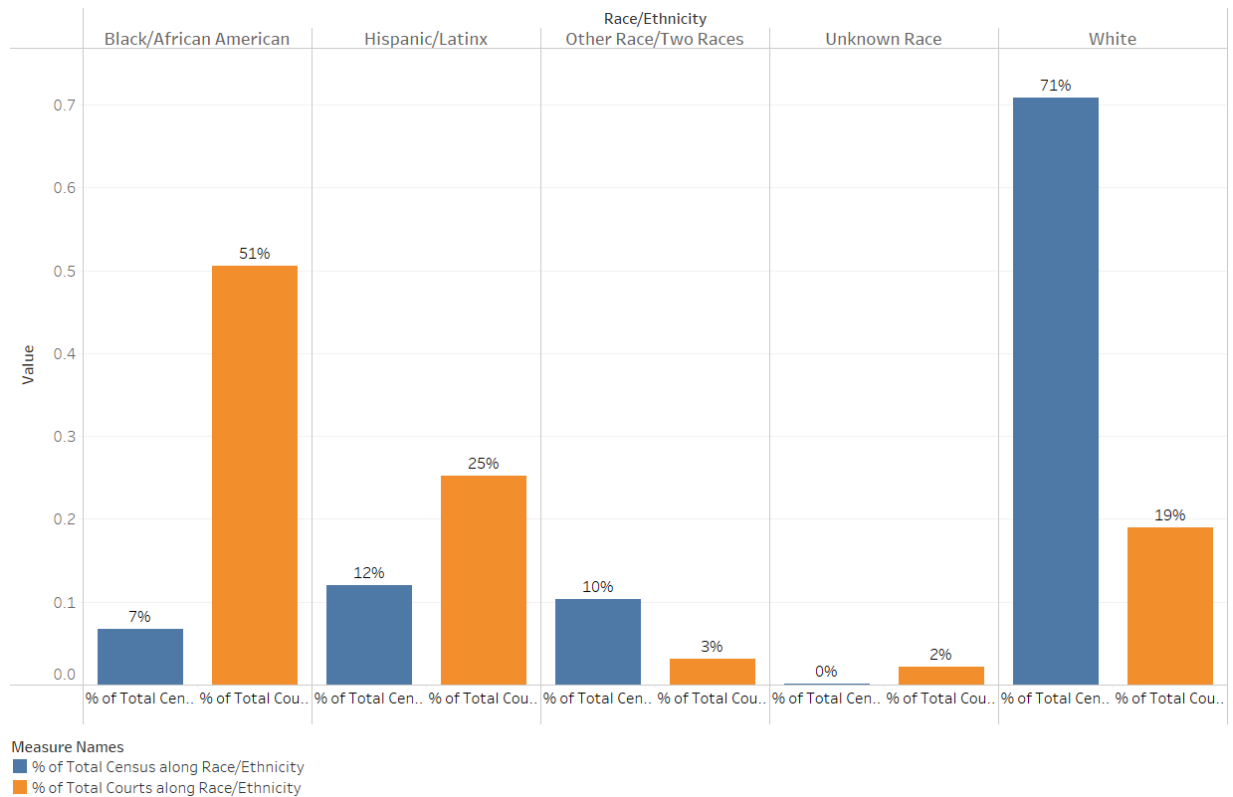
Charge Action Description	
FIREARM VIOL WITH 1 PRIOR VIOLENT/DRUG CRIME c269 §10G(a)	26%
FIREARM VIOL WITH 2 PRIOR VIOLENT/DRUG CRIMES c269 §10G(b)	33%
FIREARM VIOL WITH 3 PRIOR VIOLENT/DRUG CRIMES c269 §10G(c)	41%

**Figure 1.** Percentage of charges filed under each subparagraph of Ch. 269 §269 10G

### Finding 2 | Black and Latine defendants account for over 75% of Massachusetts ACCA cases, revealing significant racial disparities among defendants who receive mandatory minimums under these statutes.

Examining the distribution of charges filed by race, Black and Latine defendants are overrepresented in the criminal case files compared to their population distribution within the Commonwealth. Although Black individuals make up just 7% of the Massachusetts population, they account for more than half (51%) of the filed ACCA cases. Latine individuals make up 12% of the Massachusetts population, yet they account for more than one-quarter (25%) of the Commonwealth’s 10G cases. White people make up the highest proportion of the state population (71%), yet they are underrepresented in ACCA filings, only accounting for 19% of the cases filed.

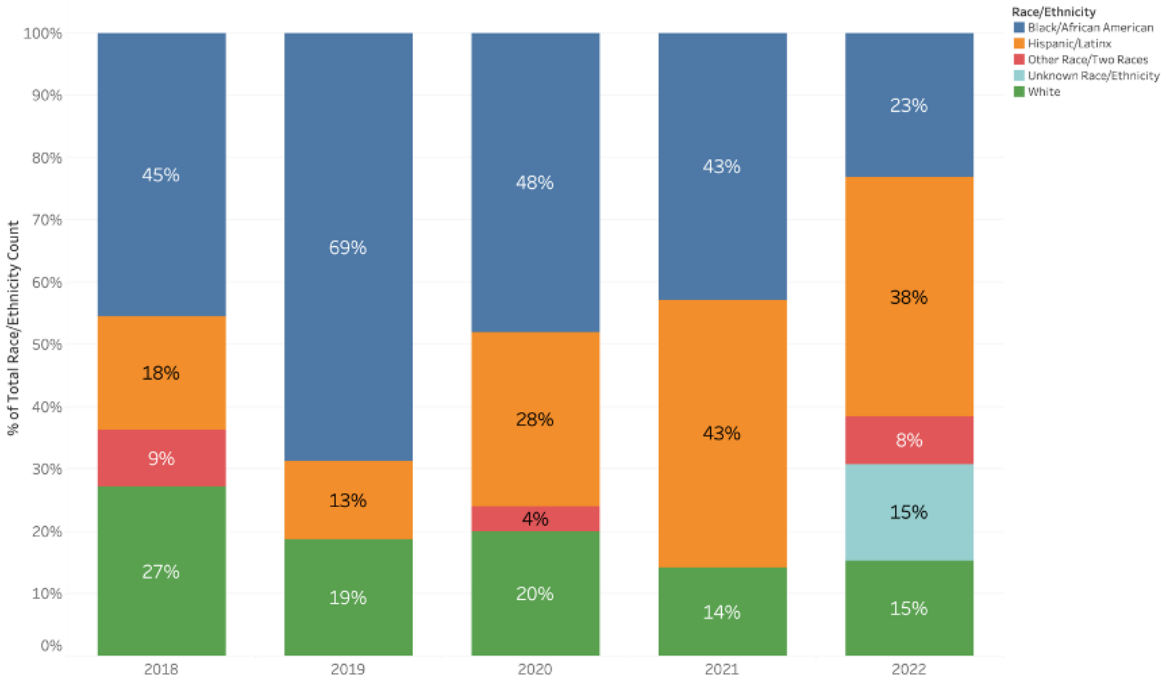




**Figure 2a.** ACCA charges filed by race with population estimates for Massachusetts for 2018–2022.<sup>36</sup>

Figure 2b demonstrates that Massachusetts ACCA cases have continued to fall heavily on Black and Latine defendants. Among the total cases filed in FY19, Black individuals made up 69% of defendants, 13% were Latine and 19% were White. In FY20, 48% of these cases involved Black defendants, 28% were Latine, and 20% were White. In FY21, the percentage of cases filed against Black defendants decreased to 43%. *However, filings for Latine defendants increased to 43% of the total.*

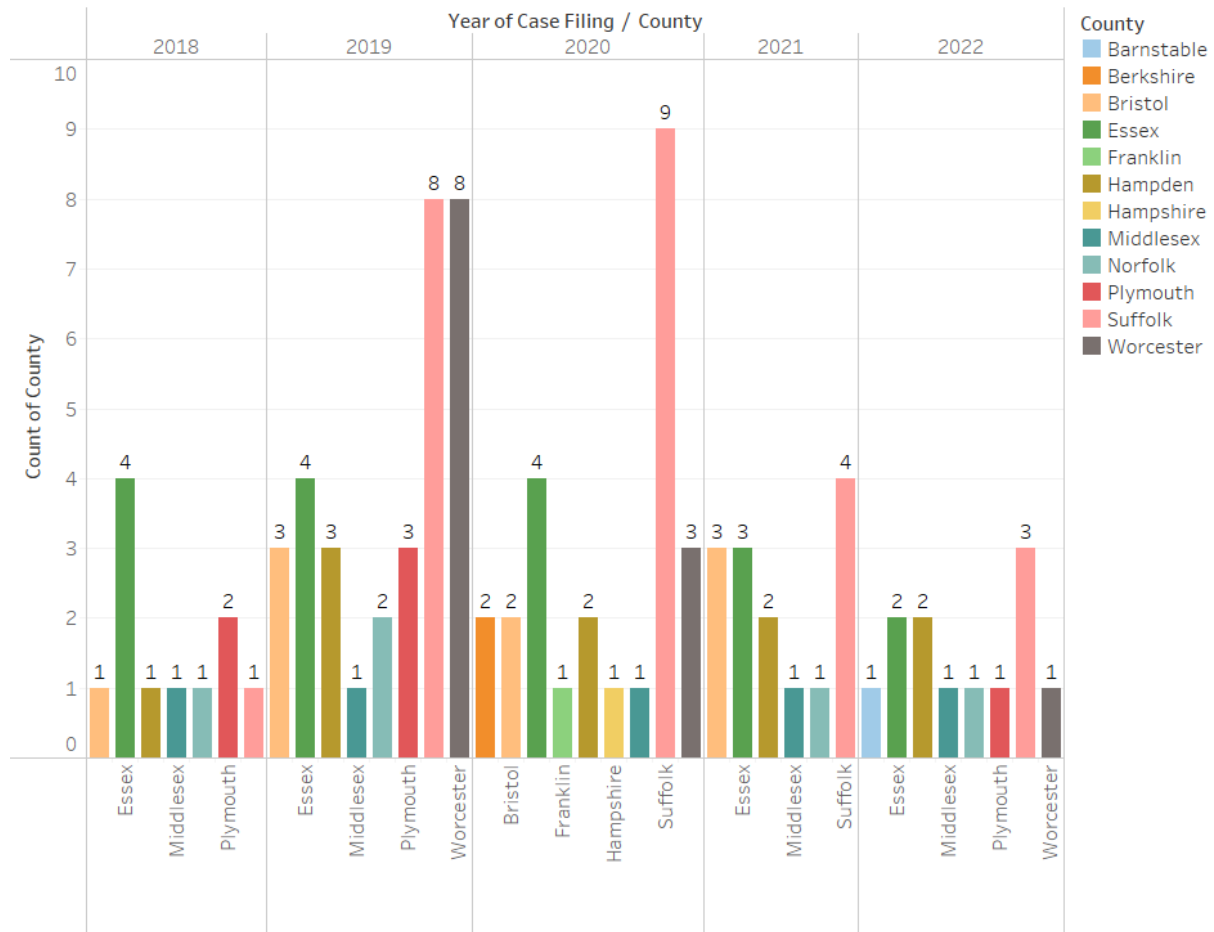
<sup>36</sup> Massachusetts, Data USA, [https://datausa.io/profile/geo/massachusetts?pums5RacesResident=pums5Race9#race\\_and\\_ethnicity](https://datausa.io/profile/geo/massachusetts?pums5RacesResident=pums5Race9#race_and_ethnicity).



**Figure 2b.** Massachusetts ACCA case filings by race FY2018–2022

Note that in 2021 only six Massachusetts counties filed ACCA cases (Figure 2c), resulting in a decrease in the number of cases that year—there were 25 cases in 2020 and 14 in 2021. This decrease may contribute to increased representation of Latine defendants among state ACCA cases that year. That said, the downward trend in the number of ACCA cases continued in 2022 (only 12 cases were filed that year across eight counties), yet rates were again comparable to previous years, with 51% of cases filed against Black defendants, 25% against Latine, and only 19% against White defendants.

## Year by Cases

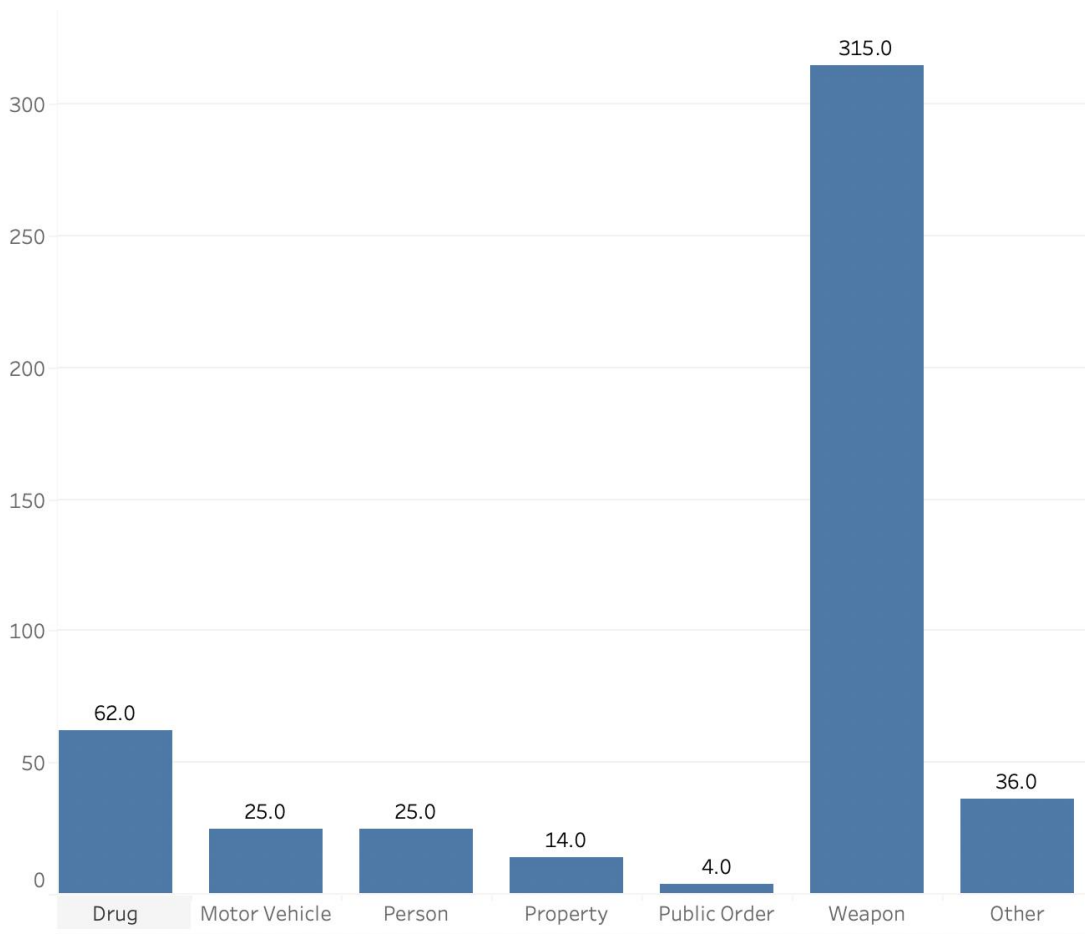


**Figure 2c.** Massachusetts ACCA case filings by county FY2018–2022

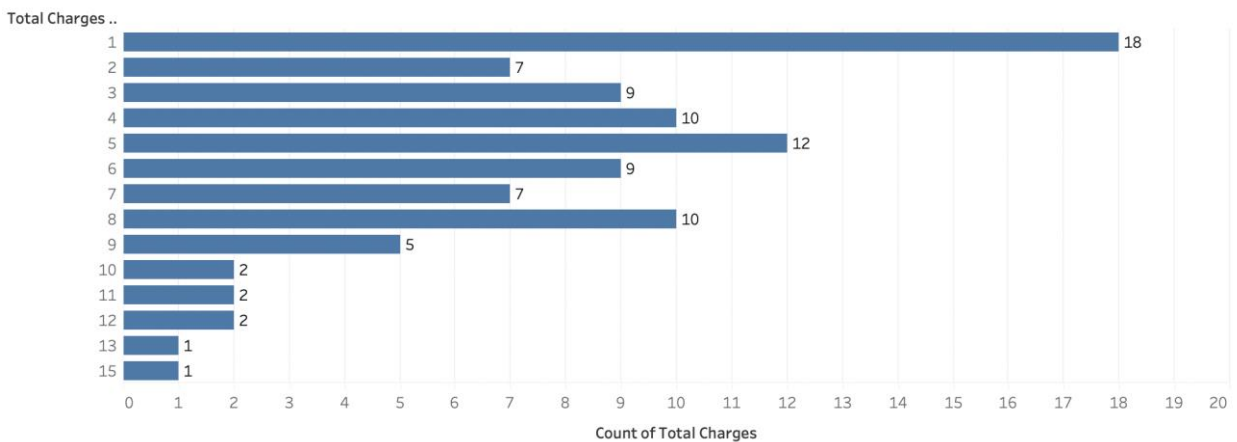
### Finding 3 | All defendants facing mandatory minimum sentences under the 10G statutes have weapons charges against them, and those aged 25 to 44 are the most likely to receive Massachusetts ACCA case filings.

Nearly all prosecuted under these statutes are facing multiple offenses, with most cases being for weapons charges and a few drug charges. All 95 defendants have weapons charges filed against them, though the data do not reveal the type of weapon nor how many of these charges were for carrying (rather than discharging) a firearm.



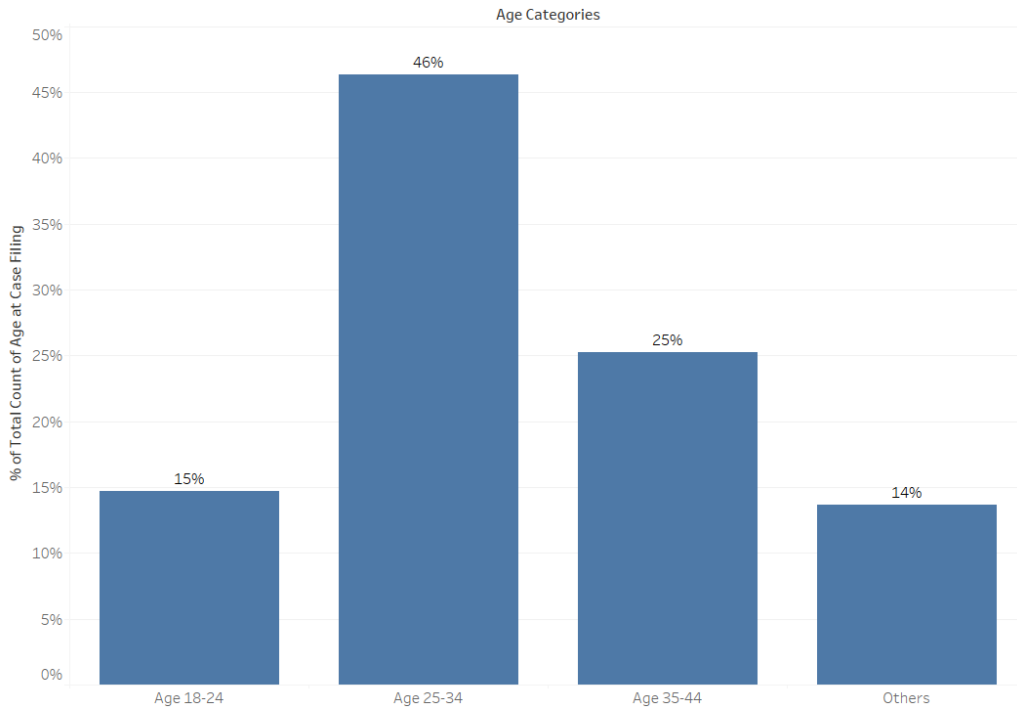


**Figure 3a:** Total charges filed by offense type (note that one person may have multiple charges)



**Figure 3b:** Frequency of charges per case

Almost half of the defendants who received Massachusetts ACCA case filings were between the ages of 25-34 and 24% (24 out of 95) were between the ages of 35 to 44. This reveals that 25 to 44-year-olds are the most likely to face mandatory minimums under the 10G statutes.

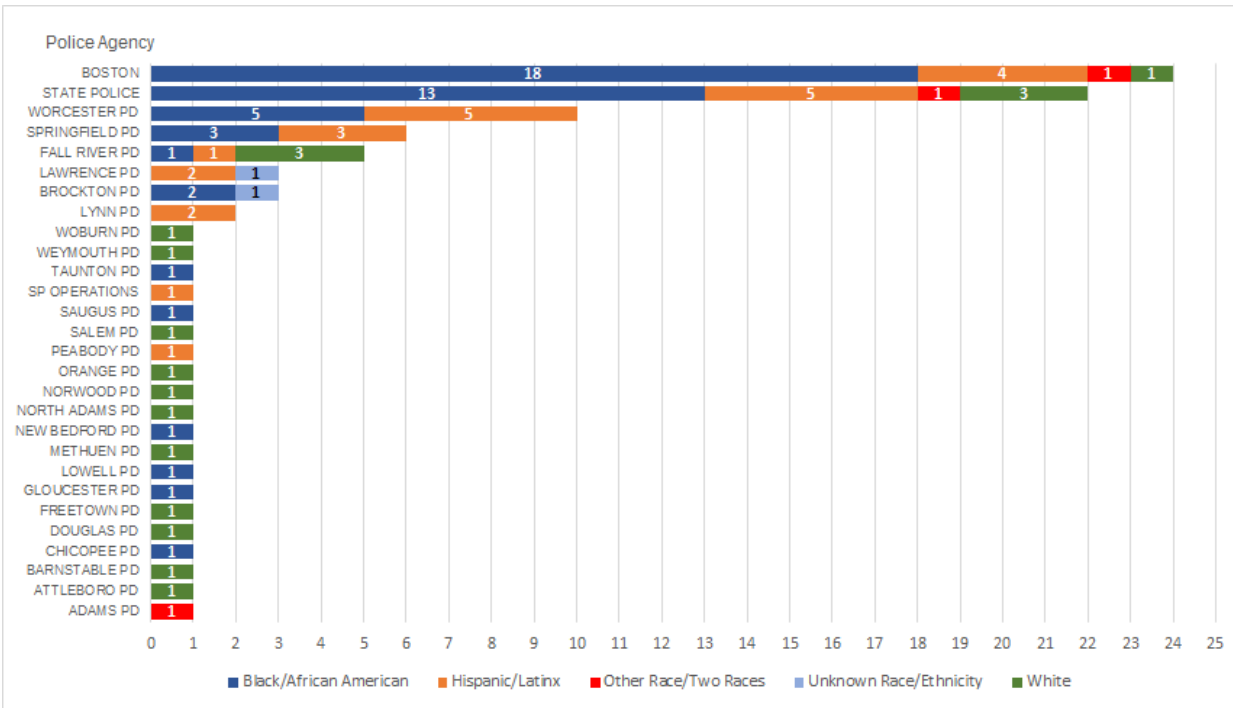


**Figure 3b:** Total cases filed for different age groups

**Finding 4 | Almost half of all cases were filed by the Boston Police Department and the State Police, with Black and Latine residents overrepresented in cases filed by individual municipalities.**

The Massachusetts ACCA statute is not applied evenly across the Commonwealth. While twenty-eight police agencies arrested individuals who were then charged by prosecutors under the ACCA, Boston Police Department and the State Police arrests account for almost half of all the cases filed. Further, there is a gross racial imbalance among state ACCA case filings. **Boston and Worcester Police initiated charges that were then filed by District Attorneys as ACCA cases against Black and Latine individuals in all but one case, and 86% (19 out of 22) of charges pursued by the State Police are against Black, Latine, or multi-racial individuals (Fig 4a).** Most police departments only filed one case that ended up as ACCA charges, but Black and Latine defendants were

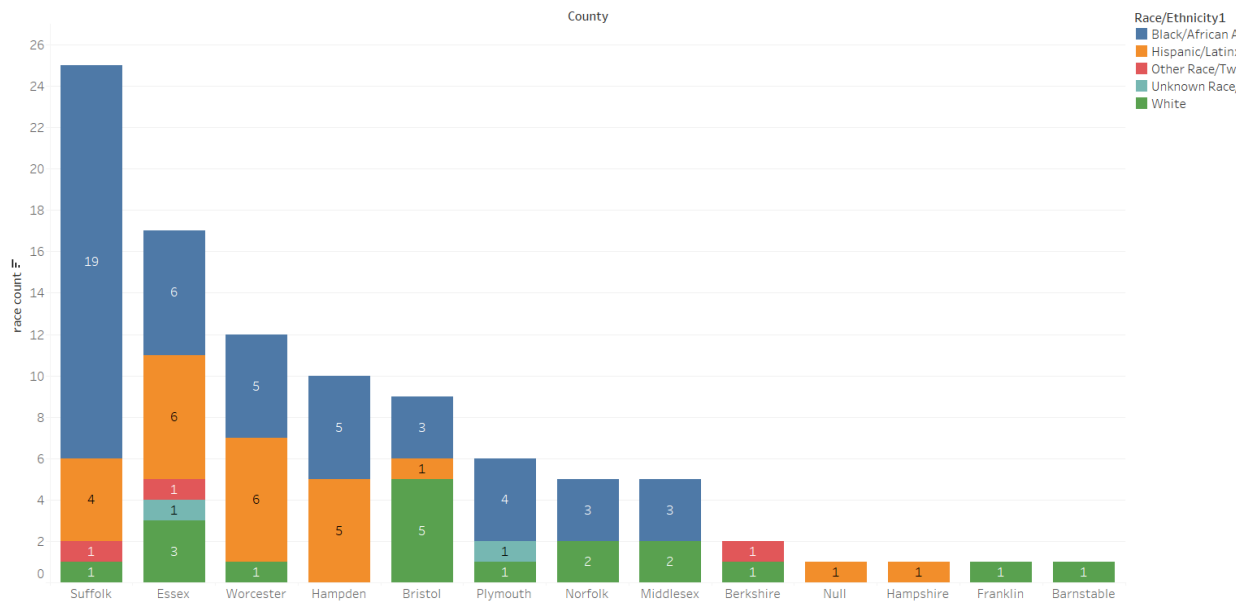
overrepresented in this subset. Of the twenty individual ACCA charges, 45% (9 out of 20) were against Black and Latine individuals, despite Black and Latine individuals making up less than 25% of Massachusetts' population. Note that nearly all (96.8%) ACCA cases between FY19-FY22 were filed against male defendants.



**Figure 4a:** Arresting police agency leading to ACCA cases, by race/ethnicity of individuals arrested.

County-level data also reveal stark racial disparities, with Hampden, Hampshire, Suffolk, Essex and Worcester counties filing all or most cases against Black and Latine individuals (Figure 4b).

Racial and Ethnic Distribution of ACCA cases by County



**Figure 4b:** Number of individuals with ACCA charges by county and race/ethnicity

**Finding 5 | Other data sources reveal that some people charged under Section 10G receive enhanced sentences based on predicate offenses committed when the defendant was a child.**

The Boston Bar Association (BBA) analyzed DOC data and reported that between 2001-2020, 42 individuals had their sentence or indictment enhanced based on a predicated juvenile offense, and that there were 67 cases in which it was unclear whether the sentence enhancement was based on a predicated juvenile offense.<sup>37</sup> Under M.G.L Ch.269 §10(d) (another criminal sanction imposing mandatory minimums for certain offenses) 9 individuals received enhanced sentences based on a predicated offense committed as a child and there were 27 cases in which it was unclear.

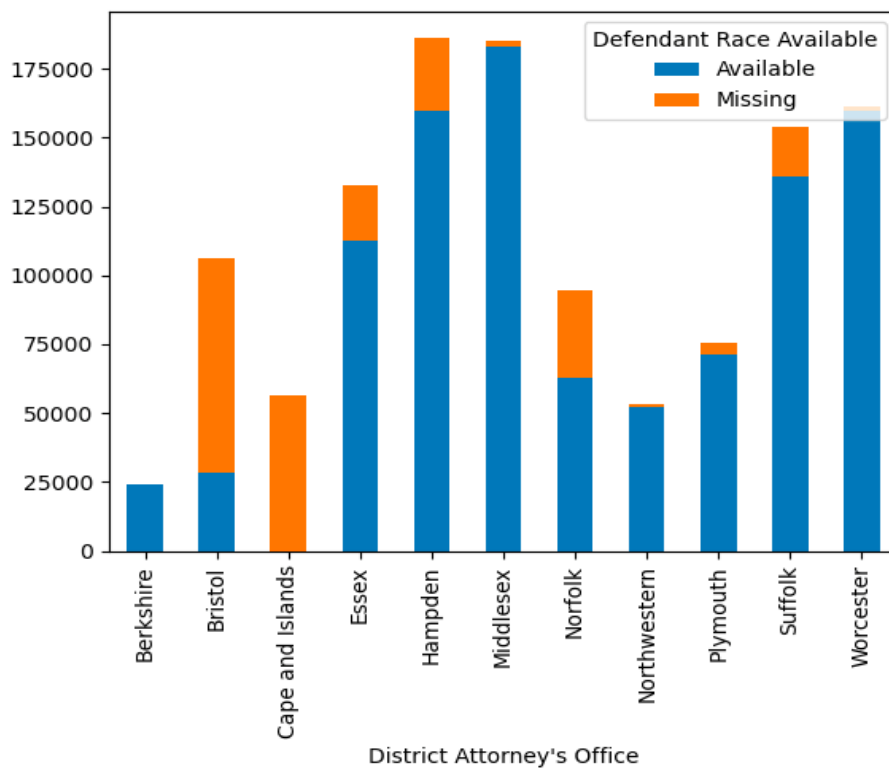
These findings are alarming, as no one should be subjected to a mandatory minimum sentence based on incidents committed during their adolescence. However, these numbers may be even higher as the data cited in the BBA testimony did not include defendants who were no longer incarcerated, and the juvenile predicate may have been charged but later dismissed pursuant to a motion or plea agreement.<sup>38</sup>

<sup>37</sup> Testimony of the Boston Bar Association, *supra* note 20.

<sup>38</sup> Jessica L. LaClair, Esq. email correspondence to author (Apr. 5, 2023).

**Finding 6 | Data from the District Attorney Management Information Office Network (DAMION) is plagued with inconsistent entries and unstandardized classifications of charges and sanctions, making analysis of the data infeasible.**

In March 2023, CfJJ reviewed data on 10G cases compiled by DAMION, which was extremely difficult to analyze as we found many duplicate entries in the dataset as well as ambiguity and variation in the classification of charges and sanction county-by-county. Further, many counties had missing values. Nearly all of Bristol’s entries were missing data on defendant’s race (Figure 6). As a result, we had low confidence in our ability to draw accurate conclusions from the data and have omitted the DAMION data from this report.



**Figure 6:** Missing race data from DAMION datasets.



# RECOMMENDATIONS

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## Recommendations to the Massachusetts Legislature

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**RECOMMENDATION 1 | The Massachusetts ACCA statute should be eliminated to encourage need-based evaluation of those who are making contact with the criminal legal system multiple times.**

Mandatory minimums under the ACCA are remnants of tough-on-crime policies and should be eliminated, as they are proven to increase the risk for recidivism rather than promote public safety.<sup>39</sup> Factors like substance use disorder and trauma contribute to recidivism, and those who are compelled to take plea deals forfeit the opportunity to be evaluated based on individual need and benefit from rehabilitative services.<sup>40</sup> Other states are beginning to reduce or eliminate mandatory minimums.<sup>41</sup> While we acknowledge that mandatory minimum sentences of up to 15 years could still be imposed in certain cases under the Federal ACCA statute, 18 U.S.C. 922, removing the threat of state prosecution would greatly reduce harms imposed on communities of color in Massachusetts.

**RECOMMENDATION 2 | In the alternative of outright elimination, the Legislature should modify the Massachusetts ACCA statute to include only the 10G(c) violation, remove the condition of a prior serious drug offense from the statute, and remove weapon possession crimes from predicate offenses.**

In the absence of immediately eliminating the Massachusetts ACCA statute, which may not be feasible at this time, the Massachusetts Legislature can still progress towards this goal by modifying the conditions provided by Mass Gen. Laws Ch. 269 § 10G. We recommend narrowing the statute to include only the 10G(c) violation, which results in a mandatory minimum for those with three prior convictions. We also recommend removing the condition of a prior drug offense, as well as removing weapon possessory crimes from the predicate offenses.

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<sup>39</sup> Alison Siegler, End Mandatory Minimums, Brennan Center for Justice, October 18, 2021, <https://www.brennancenter.org/our-work/analysis-opinion/end-mandatory-minimums>; Levin, *supra* note 12; Robert Weiss, *Rethinking Prison for Non-violent Gun Possession*, 112 NW J. OF CRIM. L. AND CRIMINOLOGY 665 (2022), <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=7727&context=jclc>; *Sentences Imposed on Those Convicted of Felony Illegal Possession of a Firearm in Illinois*, Center for Criminal Justice Research, Policy, and Practice (July 2021), <https://www.luc.edu/media/lucedu/ccj/pdfs/firearmpossessionsentencinginillinois.pdf>.

<sup>40</sup> Gertner, *supra* note 8.

<sup>41</sup> *As Federal Support for Curbing Mandatory Minimums Grows, New Report Examines State-Level Reforms and Their Impact*, The Vera Institute. <https://www.vera.org/newsroom/as-federal-support-for-curbing-mandatory-minimums-grows-new-report-examines-state-level-reforms-and-their-impact>

### **RECOMMENDATION 3 | The Legislature should pass legislation to prevent the imposition of mandatory minimums based on juvenile adjudications.**

As stated in previous recommendations, the Massachusetts ACCA is a retributive and outdated statute which should not be used to impose unforgiving and developmentally inappropriate response to youth behavior. The Massachusetts Legislature should work to pass “An Act to Prevent the Imposition of Mandatory Sentences Based on Juvenile Adjudication” during the 2023–24 session, which excludes juvenile cases as a predicate for mandatory minimum sentences.<sup>42</sup>

## **Recommendations to Massachusetts’ District Attorneys**

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### **RECOMMENDATION 4 | District Attorneys should reduce the use of charging defendants under the Massachusetts ACCA and fully refrain charging under these statutes based upon drug offenses.**

Filing charges under the Massachusetts ACCA often results in long, mandatory prison sentences, which at times can be leveraged to induce defendants to plead guilty rather than challenge a case to avoid those significant penalties. Elected DAs should set restrained policies on charging under 10G and should monitor the racial demographics of the people they charge with an eye toward reducing or eliminating racial disparities. District attorneys should completely refrain from using the ACCA statute for cases involving drug offenses, as the use of mandatory minimums for drug offenses continues to treat substance use as a public safety problem rather than the public health problem that it is. Research shows that individuals charged with possession *and* trafficking crimes suffer from some level of substance use disorder. According to a DOJ report, seven in ten people incarcerated in state prisons for drug trafficking reported using drugs, themselves.<sup>43</sup> An American Psychological Association study revealed that many who sold drugs also met the criteria for a substance use disorder.<sup>44</sup> Thus, those charged with multiple drug offenses should be directed towards measures that will effectively address the root causes of

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<sup>42</sup> *An Act to prevent the imposition of mandatory minimum sentences based on juvenile adjudications*, S. 959, 193rd Gen. Assemb., Reg. Sess. (Ma. 2023), <https://malegislature.gov/Bills/193/S959>; H. 1688, 193rd Gen. Assemb., Reg. Sess. (Ma. 2023), <https://malegislature.gov/Bills/193/H1688>.

<sup>43</sup> Christopher J. Mumola & Jennifer C. Karberg, *Drug Use and Dependence, State and Federal Prisoners, 2004*, U.S. Department of Justice (Oct 2006), <https://bjs.ojp.gov/content/pub/pdf/dudsf04.pdf>.

<sup>44</sup> Evan T. Stanforth, Marisa Kostiuik, & Patton O. Garriott, *Correlates of engaging in drug distribution in a national sample*, 30(1) PSYCHOL. OF ADDICTIVE BEHAVIORS 138 (2016), <https://psycnet.apa.org/record/2015-48437-001>.

recidivism, namely treating the underlying substance use disorder, rather than facing incarceration for up to 20 years.<sup>45</sup>

**RECOMMENDATION 5 | District Attorney offices across the Commonwealth need to develop higher data quality standards, including a standardized method of data entry and classification across counties.**

Poor data quality, including unstandardized methods of classifying charges and sanctions, diminished our confidence in including DAMION data on Massachusetts ACCA cases from this report. These challenges have more to do with poor data collection at the DA offices, accessibility at the user level, and a lack of coherent, state-wide norms on data collection. We are aware that there are DAs across the Commonwealth who want more funds for a new data-system.<sup>46</sup> However, District Attorney offices can eliminate barriers to meaningful analysis of their data by developing data entry and data quality standards that are consistently applied across counties.

## Recommendations to Massachusetts' Trial Courts, District Attorneys and Research Partners

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**RECOMMENDATION 6 | The Massachusetts Trial Court and District Attorney Offices should research and address racial disparities in ACCA charging and disposition, possibly with academic partners.**

Given the major racial disparities found in the Massachusetts court system and anecdotal evidence that white people who meet the legal standard for state ACCA filings are not charged, we recommend future research to determine whether the racial disparities in charging under these statutes reflect differential offending patterns, biased decision-making or a deeper systemic racism rooted in criminal legal system. Future studies should include a comparative cohort study of individuals who “qualified” for an ACCA charge but weren’t charged, with a breakdown by race and ethnicity. Note that in addressing these racial disparities, we emphatically *do not* recommend that DAs increase the use of the ACCA statute for White people or for any persons.

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<sup>45</sup> Sessi Kuwabara Blanchard, *Why Drug Dealers are an Under-Utilized Anti-Overdose Resource*, Filter (28 May 2019), <https://filtermag.org/why-drug-dealers-are-an-under-utilized-anti-overdose-resource/>.

<sup>46</sup> Shira Schoenberg, *Audit faults data system used by DAs*, Commonwealth (4 Mar 2021), <https://commonwealthmagazine.org/criminal-justice/audit-faults-data-system-used-by-das/>; Colin A. Young, *As statewide network gets overloaded with body cam data, Mass. DAs want better tech*, WBUR (5 Apr 2023), <https://www.wbur.org/news/2023/04/05/body-camera-massachusetts-data-overload>.

# Acknowledgments

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## Citizens for Juvenile Justice

Founded in 1994, Citizens for Juvenile Justice (CfJJ) is the only independent, non-profit, statewide organization working to improve the juvenile justice system in Massachusetts. As an independent research and policy organization, we are uniquely positioned to understand and advocate for the whole system – Juvenile Justice and the other child- and youth-serving systems that often feed into juvenile justice. We don't represent individual juvenile clients. Instead, we try to change the way the entire system operates. We advocate for smart policies that prevent crime, help youth develop into responsible adults, and use resources wisely. Our work includes advocacy with the legislature and the executive agencies, research, convening and coalition building, public education and media outreach.

CfJJ's mission is to advocate for statewide systemic reform that achieves equitable youth justice. This includes fair and effective systems that promote positive development and successful outcomes for young people. CfJJ works to ensure that Massachusetts includes kids in the juvenile system who are currently consigned to the adult system, keeps kids out of the juvenile system who don't belong there, and treats youth who are in the system fairly and effectively. Our goal is to ensure not just a fair and effective juvenile justice system, but fair and developmentally appropriate child-serving systems that prevent vulnerable youth from entering the juvenile justice system.



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