

WHAT IS WRONG WITH THE 'SAFE HOMES' INITIATIVE?

In his State of the City address on January 15, 2008, Mayor Thomas Menino proposed funding a new "Community Learning" program that would help ensure that young people in Boston have productive futures. The American Civil Liberties Union of Massachusetts (ACLU) commends his vision of uniting the efforts of public schools, branch libraries and community groups to unlock "the vast potential of Boston's children" and decrease youth violence.

But we have serious concerns about another program aimed at youth that has been put forward by the Mayor and Boston Police Department (BPD): the "Safe Homes" Initiative involving "no warrant" searches.

The BPD says the program will send a team of at least three police officers to visit homes in certain city neighborhoods, possibly with members of the clergy, who will ask for consent to search the bedrooms of young people. The searches will be conducted in response to community tips in order to get "illegal guns" out of homes.

All people have the right to feel and be safe in their homes and neighborhoods. We have no doubt that this program is well intentioned and rises out of the urgent goal of reducing the violence that exists in our City.

But "Safe Homes" is an effort at a "quick fix" solution that could do more harm than good. We oppose this program on the following grounds:

1. It conflicts with the fundamental constitutional right to be free from unreasonable government searches.
2. It exposes families to potentially serious negative consequences, and could deprive young people of productive futures.
3. It is unlikely to be effective, based on existing evidence.
4. It could be counterproductive in public safety terms, undermining relations of trust which must be cultivated if "community policing" is to be successful.

1. It conflicts with the fundamental constitutional right to be free from unreasonable government searches.

In a free society, police generally need a warrant before searching a home, and a warrant must be based on probable cause to believe a crime has been committed and that evidence of that crime will be found in the place to be searched. The warrant requirement can be waived if the person whose rights are at stake gives consent that is knowing and voluntary. The consent on which the Safe Homes program appears to rest is unlikely to be either knowing or genuinely voluntary.

Even assuming that language is not a barrier to understanding, few people are able to say no when confronted at their door by three police officers and possibly a member of the clergy.

The "Consent to Search and Seize" form that police will present at the door for the resident's signature may further confuse and intimidate people, who have expressed fears that there will be retaliation against them if they refuse to allow the police to conduct a search. Statements by the police that they will not retaliate do little to ensure that consent is not the result of this kind of fear, especially at a time when fears associated with law enforcement on the doorstep have been inflamed by immigrant raids in various Boston neighborhoods.

And who will be asked to give permission for a search? The law does not allow a third party to consent to a warrantless search. If a parent is not at home and the door is answered by another relative, or someone who is not a family member, such as a baby sitter, the police have given no guarantee that they will not request permission to enter and search the home.

The police have been vague about what they will do with information obtained or items seized during a search, making it likely that many people will give consent to a search without knowing the possible consequences, some of which could be extremely harmful to families.

2. It exposes families to potentially serious negative consequences.

The Boston police will not ensure that residents really understand that the following are among the possible consequences if they consent to a search:

- Arrests may be made of someone who lives in the home, relating to weapons, drug possession, or possession of other items.

- These arrests could lead to federal prosecution, which often carries a longer prison sentence without the possibility of parole.

- Any arrest may also carry immigration consequences, up to and including deportation if an individual is found guilty of a deportable offense.

- The family may lose its home in public housing, depending on information obtained during a search of the home.

- Information gained in the course of the search may lead to the filing of a "51A report" with the Department of Social Services alleging abuse or neglect.

- Students may be suspended or expelled from school based on the results of a search of the home and information obtained there. The police state that they will not automatically share the information that they have found firearms in a youth's home with his school. But the BPD has not promised to keep the information confidential and has said that they will inform school authorities if they believe it is in the interest of public safety to do so. Nothing has been said about the sharing of information through Juvenile Justice Roundtable meetings, where it would be communicated to school administrators, police officers, the district attorney and other participants. There are no assurances that a child will not be pushed out of school as a direct or indirect result of the search.

- If a school police officer is aware that drugs, or a knife, or something suggesting "gang affiliation" was found in a youth's home and he shares that information with a school administrator, that administrator may assert that she has the requisite reasonable suspicion to search that youth every day when he comes to school. Even if nothing is found, a child who is searched every day may become alienated from school, increasing the risk that he or she may eventually drop out of school. According to a recent study by the Parthenon Group, Boston's dropout rate is dismal, with 1,900 students dropping out in the 2005-6 academic year and a further 1,900 students "almost certain to drop out," because they have fallen behind in school.

- If a firearm discovered as a result of a "no warrant" search is linked to a crime with which the youth is charged or if anything else found in

the home leads to felony charges, the youth may be suspended from school pending resolution of the charges against him if the principal determines that his continued presence in school would have a substantial detrimental effect on the general welfare of the school. By the time a youth is found innocent of the charges, he may have missed months of school, making it difficult for even the most motivated student to complete his work successfully. If he is convicted or admits guilt as part of a plea and the principal makes a similar determination regarding the effect of his presence in school, he may be expelled.

- The program is likely to exacerbate the dual problems of overrepresentation of youth of color in the juvenile justice system, and the funneling of young people out of the Boston Public Schools and into the Department of Youth Services. Unless Boston Police are willing and able to guarantee that "no warrant" searches will not lead to school exclusion or disciplinary transfers, parents should be informed of these possible consequences when asked for consent to enter their homes.

3. It is unlikely to be effective, based on existing evidence.

The BPD states that it has modeled its "consent to search" program on the St. Louis Firearm Suppression Program (FSP) under which police would respond to reports from neighbors or a request from a parent by visiting a home and asking to search for weapons belonging to juveniles.

In the first phase of the FSP program (1994-1996), adult residents were given a "Consent to Search and Seize" form to sign and assurances that there would be no criminal prosecutions if illegal guns were found.

According to a National Institute of Justice (NIJ) Research Report, *Reducing Gun Violence: The St. Louis Consent-to-Search Program* (November 2004), the program was never adequately evaluated. However, although phase one records were lost, anecdotal evidence suggests that "in its first year of operation, the program enjoyed spectacular success," with a reported 98 percent of those approached consenting to be searched and guns found in half of the homes that were searched, amounting to 510 in all. The program was temporarily suspended after the police chief

responsible for it resigned.

In its second nine-month phase, FSP consent searches took a back seat to the use of search warrants and arrests when guns were found. Gone was the promise that there would be no prosecutions. With very few guns found, the program was discontinued in 1998.

In 1999 it was re-introduced with federal funding. The original consent-to-search form was restored, and police acted in partnership with African-American church leaders who were supposed to counsel parents and young people. Both the proportion of those granting consent (50%) and the number of guns seized (29) were dramatically lower in phase three than they had been in phase one of the program.

The NIJ Research Report spells out the problems inherent in the St. Louis program: at various stages it was undermined by uncommitted leadership, officer resistance, program isolation, the lack of community support, the lack of training, its inherent fragility, the absence of follow up, the possibility of police acting on poor or inaccurate information.

The lesson the BPD should take from St. Louis is that the program was only successful in obtaining significant numbers of guns when arrest and prosecution were off the table (phase one). This will not be the case in Boston, where only "limited immunity" is promised for unlawful gun possession, but criminal charges may be brought if a seized weapon is linked to a crime.

This makes it likely that "Safe Homes" will be as ineffective as the St. Louis program appeared to be in its second and third phases.

4. It could be counterproductive in public safety terms.

Additional problems with the St. Louis program were highlighted in *The Future of Children: Children, Youth and Gun Violence* produced by the David and Lucile Packard Foundation (Volume 12 – Number 2, Summer/Fall 2002).

In this publication, Jeffrey Fagan, a professor of law and public health at Columbia University Law School, writes as follows about the St. Louis initiative:

"First, the level of perceived coerciveness in these situations is unclear. How voluntary is 'consent' when police officers arrive at the door

and ask permission to search the home?... Second, security and control may not directly increase when neighbors are encouraged to 'snitch' on each other. Police-citizen interactions differ when a parent invites the police to a home, compared to when a citizen refers police to a neighbor's home. The latter situation does little to knit social ties among neighbors and may lead to counterproductive scenarios in which neighbors accuse each other falsely or fail to come to each other's aid when crimes occur nearby" (*Future of Children*, p. 145).

If the police believe parents genuinely want the kind of help offered by the police searching a young person's bedroom or the entire home, they could publicize a phone number where the parent can voluntarily call after having had a chance to think about it, instead of forcing residents to be confronted by three police officers at their doorstep, asking to come in and search.

Because trust and perceptions of legitimacy are essential building blocks for effective community policing, initiatives that threaten to undermine them and that could well set neighbor against neighbor should not be undertaken by the Boston Police Department.

OUR RECOMMENDATIONS FOR REMOVING GUNS FROM HOMES

- Blanket immunity should be part of any "Safe Homes" program.
- To ensure that consent to search is indeed voluntary, police visits to homes should be informational only. Police officers can explain the program either directly or through leaflets, and ask parents to call them back if they would like them to conduct a search.
- Police could hold training sessions that parents could attend if they want to know how to safely search their homes for guns.
- Priority should be given to methods that have had a measure of success in the past - such as gun drop off and buy back programs. According to the Boston Indicators Project, 1,000 weapons were recovered in the "no questions asked" buy back program initiated in the summer of 2006.

WHAT ELSE CAN BE DONE TO REDUCE YOUTH VIOLENCE?

Boston's experience

In the late 1990s Boston experienced a decline in violence that has been termed the "Boston Miracle." The Boston Gun Project's Operation Ceasefire, which combined problem-solving research with a "pulling every lever" approach to dealing with targeted gangs, and increased collaboration between the police, academics and community residents, especially clergy, has been credited with bringing about a two-thirds reduction in youth homicide between 1996 and 2000.

But in the National Institute of Justice's *Reducing Gun Violence: The Boston Gun Project's Operation Ceasefire* (2001), some of program's chief designers concede that unresolved timing issues made it difficult to know how much credit the program can take for the decline in violence. In his article "Children, Youth, and Gun Violence," Jeffrey Fagan points out that "youth gun homicides in Boston had begun declining in 1995, the year preceding the implementation of the Boston Gun Project." He writes that the decline in Boston seems "to have been part of a larger statewide downward trend in youth gun violence" and that "legitimacy continues to be an elusive goal" for the Boston Police where citizens in some neighborhoods feel that they are treated with "disrespect" in spite of their collaboration with the clergy of the Ten Point Coalition (*Future of Children*, p. 137).

The size of the problem

That downward trend in violence was also visible in other cities across the nation by the late 1990s. But the overall statistics remained sobering.

The Centers for Disease Control and Prevention reported in 1997 that the United States faced a firearm-related homicide rate among young people under the age of 15 that is nearly 16 times higher than that in 25 other industrial nations combined (cited in *The Future of Children: Children, Youth and Gun Violence*, page 8). With guns becoming increasingly deadly and available, the authors of the *Future of Children* report contend: "It remains unclear how much police really can do to prevent or reduce youth gun violence" (page 16).

If law enforcement cannot provide the solution, where then can we turn?

"Because poverty, discrimination, and violence are often linked," the *Future of Children* authors

state, "one way to decrease violence is to address economic inequality and social injustice in the United States...some believe this is the only way to reduce gun violence" (page 14).

If we want to devise solutions to the problem of youth violence that are both effective and long lasting, we must attempt to grasp this big picture as a starting point.

Impact of welfare reform

Existing research suggests that the violence afflicting some of Boston's neighborhoods cannot be seen in isolation from the deepening poverty that has for some families been a result of welfare reform. Massachusetts began to transform its welfare system in 1995, a year before the passage of the federal Personal Responsibility and Work Opportunity Reconciliation Act, which set strict time limits on welfare assistance and imposing certain work requirements.

According to *After Welfare Reform: A Snapshot of Low Income Families in Boston*, produced by the Wiener Center for Social Policy at Harvard's Kennedy School of Government (September 2004), "A large percentage of low-income households experience a severe burden trying to make ends meet" (the report is at <http://www.innovations.harvard.edu/showdoc.html?id=4909>).

A three-city study of Boston, Chicago and San Antonio has found that half of the African-American families in the study were unable to find work or hold jobs and were as a result increasingly impoverished (*Welfare Reform in the mid-2000s: How African-American and Hispanic Families in Three Cities are Faring*, by Andrew Cherlin and Bianco Frogner, John Hopkins University, Nov. 2007). If employed, they had "at best a modest decline" in poverty.

There is to date no study examining whether a relationship exists between the rise of violent crime in Boston over the last few years and the impact of welfare reform's time limits. But providing employment and education has been demonstrated to correlate with lower crime rates, according to a July 2007 report by the Justice Policy Institute, *Gang Wars: The Failure of Enforcement Tactics and the Need for Effective Public Safety Strategies*. The report links enhanced public safety to an increase in the rate of employment and the size of the wage packet, as well as increased graduation rates.

Locked out of the workplace

According to a Mass Inc report, *Mass Jobs: Meeting the Challenges of a Shifting Economy* (November 28, 2007), Massachusetts still has about 100,000 fewer jobs that it did in 2001, ranking next to last in job creation between 2001-2006.

Increasing numbers of former inmates are meanwhile returning to Boston, where they are unable to find employment. *The Fourth Biennial Report* of the Boston Foundation's Boston Indicators Project, 2004-2006, (<http://www.tbf.org/indicatorsproject>) states that between 1980 and 2002, the state inmate population tripled (from 2,754 to 9,150), and that between 250 and 300 people leave the Suffolk County House of Correction each month, 70 percent of whom return to Roxbury, Mattapan and Dorchester.

Prisoner Re-entry in Massachusetts, a Research Report by the Urban Institute and Justice Policy Center (March 2005), details the problems they face when they return to Boston neighborhoods that have "a poverty rate more than twice that of the state of Massachusetts as a whole" and a higher unemployment rate. These problems are compounded by the Criminal Offender Record Information (CORI) system, which severely restricts work options for former prisoners.

Court-involved young people with juvenile records - including young people who have been acquitted of charges or whose cases have been dismissed - have been barred from training opportunities and summer youth employment programs. Barriers to employment and the lack of other services contribute to a recidivism rate of more than 60 percent.

Cuts in programs that matter

The report submitted to the Boston City Council on June 13, 2006 by its Special Committee on Youth Crime Prevention details the major budget cuts affecting Boston's youth programs that deal with violence, its community-based services, and summer job opportunities at a time when the number of high school students was increasing to more than 26,000. This is the largest teen population in Boston in a decade.

Soaring school drop out rate

Both the Boston Indicators Project and the Boston City Council report attribute the steep high school drop out rate - which is three times higher

than the rate for the state as a whole - in part to the emphasis on the MCAS exam, and the extent to which, in the words of the Boston Indicators Project, "the arts, physical education, language studies and other broader school offerings have suffered."

Young people are too often bored in schools with a narrow curriculum, inadequate resources and teachers who may be poorly prepared. When young people drop out, or are pushed out of their schools by "zero tolerance" disciplinary policies, there are few community programs in Boston to absorb their energies and keep them on track both socially and educationally. Parents might not always be in a position to provide their children with the support they need.

The Boston Indicators Project states that "working parents face pressures that impede their involvement in children's education. Parents report that the challenges of multiple jobs, lengthy commutes, language deficiencies, family stresses and poverty prevent full participation in their children's learning experiences."

Lack of trust between community and police

All these factors in combination make it difficult for many young people in Boston to envisage a positive future for themselves, and they provide an environment in which violence can easily take root. Matters are not helped by the "strained police and youth relationship" cited by the Boston City Council report.

In *Creating an Effective Foundation to Prevent Youth Violence: Lessons Learned from Boston in the 1990s* (Rappaport Institute for Greater Boston, September 2005, pg.7), Anthony Braga and Christopher Winship, both of Harvard's Kennedy School of Government, write that "trust and accountability are essential in launching a meaningful collaborative response to complex youth violence problems" and that police need to overcome "the corrosive problem of distrust."

Reforms that address root causes

The ACLU of Massachusetts believes that the "Safe Homes" Initiative will compound feelings of distrust between community members and law enforcement. What kind of policies and programs should, in our opinion, be undertaken to build safe communities? We share many of the sentiments expressed in *Rethinking Justice in Massachusetts*:

Public Attitudes toward Crime and Punishment (produced by the Crime & Justice Institute and Doble Research Associates, November 3, 2005).

Large majorities of the Commonwealth's residents favor focusing on the underlying causes of crime. They want the emphasis put on prevention and rehabilitation, rather than on longer sentences and more incarceration. Some two-

thirds would support education, job training and substance abuse treatment for inmates, even if that means a tax increase.

The same percentage want more job and vocational training, family counseling, and more neighborhood activity centers for young people. They think using resources in this way will save money in the long run.

OUR RECOMMENDATIONS

We recognize that it will not be possible in the short term to dismantle the social and economic inequities that contribute to youth violence. But immediate concrete steps can be taken to engage youth in productive ways and build community.

- **Create a functioning police civilian review board.**

One way to build "trust and accountability" is to ensure strong civilian oversight and a review of police misconduct complaints. Over the past year, there has been little sign of activity from the "Civilian Review and Mediation Program" whose three members were appointed by the Mayor at the beginning of 2007 with very limited powers and without the openness and independence that is essential for a civilian review board to work and win public trust. In its place, an effective civilian review board should be created that is transparent, increases communication with the public, and gives the community a meaningful role in complaint review and oversight.

- **Make schools and the community places where young people want to be and learn.**

Just as it is important to increase communication with the public about law enforcement issues, so it is vital to involve schools in programs that improve communication, address the root causes of conflicts, and engage in problem-solving. Approaches such as the creation of restorative justice circles in Boston's schools may prove more effective than zero tolerance disciplinary policies in ensuring school safety. This can be one step in humanizing school environments and infusing students with a strong sense of collective responsibility. Transforming the curriculum and other reforms such as the Mayor's "Community Learning" initiative can keep students more fully involved in the learning process. They require moving be-

yond the narrow MCAS regime and creating an interactive and engaging learning environment.

- **Reform the CORI system.**

There should be a thorough overhaul of the Criminal Offender Record Information (CORI) system so that thousands of people are not barred from work or housing because they have a CORI record.

- **Fund effective community-based services and programs.**

Rather than earmarking funds for programs like "Safe Homes," funding should be set aside for approaches that – based on evidence – actually work to reduce recidivism and youth violence. The Justice Policy Institute's *Gang Wars: The Failure of Enforcement Tactics and the Need for Effective Public Safety Strategies* (July 17, 2007) cites programs that have been thoroughly evaluated with positive results, including multisystemic therapy (which provides intensive services, counseling, and training to young people) and functional family therapy.

- **Reform the Massachusetts juvenile justice system.**

An initial report compiled by the ACLU reveals that Massachusetts' youth of color have been over-represented at every point in the Commonwealth's juvenile justice system (*Disproportionate Minority Confinement in Massachusetts: Failures in Assessing and Addressing the Overrepresentation of Minorities in the Massachusetts Juvenile Justice System*, May 2003). A follow-up study documenting the continuing problem and steps the Commonwealth is taking to address it will be released by the ACLU early in 2008.

