

REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK



TASK FORCE ON
THE FUTURE OF PROBATION
IN NEW YORK STATE

PHASE II

NOVEMBER 2008

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May 7, 2008

Honorable Judith S. Kaye
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230 Park Avenue, Suite 826
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Dear Judge Kaye:

On behalf of the Task Force on the Future of Probation in New York State, I am pleased to forward for your consideration the Task Force's final report which deals with probation's role with youth and the Family Court. In our first report covering probation's role in the criminal courts, we recommended further study of probation's role in the Family Court and probation's role with respect to victims and restorative justice. This report responds to those issues - and some not strictly probation issues - which bear upon the effectiveness of an enhanced and strengthened role for probation in the juvenile justice system.

If probation is the "workhorse" of the criminal justice system, it can be said with equal conviction that it is the "gatekeeper" to the juvenile justice system, always mindful of its dual responsibility - to seek to protect both the interests of the child and the public's safety. Probation diverts the great majority of youth from formal Family Court proceedings to build on the youth's strengths and needs by mobilizing community resources through life changing and cost efficient methods. And in those critical cases which require the full measure of Family Court's resources and personnel, probation plays a key role in guiding the court in its ultimate disposition in each individual case.

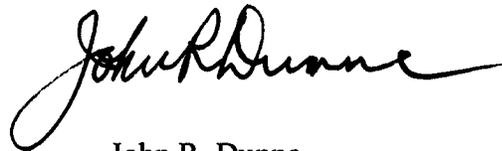
You appointed a panel representing all of the stakeholders in the juvenile justice system who brought great experience, an awareness of current needs, and a combined vision to think "outside the box" for future improvement. While most of the specific recommendations carry fiscal implications, each proposal was evaluated on its merits, rather than simply as means for reducing costs. But the members were keenly aware that any strengthening of juvenile probation practices will require significantly increased levels of funding by both State and local governments - a theme which we last cited as

essential – so that only those probation practices and policies that have been proven, or hold promise to be, effective will be used to rehabilitate youth and end the cycle of crime. We reaffirm our original proposal that the need for a “champion” for probation would be met by transferring the State’s responsibilities currently housed in the Division of Probation and Correctional Alternatives to the Judicial branch of State government, while preserving administrative and operational authority over probation in local probation departments.

You will find in our somewhat expansive report suggestions such as focusing non-criminal youth proceedings away from “Persons in Need of Supervision” to the reality of “Families in Need of Services.” A series of education proposals are advanced to address the increasing incidence of truancy, a reliable predictor of future problem behavior. And we recommend consideration of emerging information and trends, such as training all juvenile justice participants on adolescent brain development and the need for New York to address the national trend to raise the age of criminal responsibility.

The sections of this report are the work of many individual members and are, for the most part, a consensus of the dedicated members of the Task Force. Special recognition goes to our executive counsel, Gretchen Walsh, whose faithful commitment to our mission made this report possible.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John R. Dunne". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

John R. Dunne

cc: Chief Administrative Judge Ann Pfau

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Table of Contents

EXECUTIVE SUMMARY	1
I. INTRODUCTION	1
II. THE ADOLESCENT BRAIN - THE REASON JUVENILE OFFENDERS ARE DIFFERENT	12
III. THE GOVERNOR AND THE LEGISLATURE SHOULD ESTABLISH A COMMISSION TO INVESTIGATE WHETHER NEW YORK SHOULD RAISE THE AGE OF CRIMINAL RESPONSIBILITY TO 18	16
IV. FUNDING PROBATION	20
A. State Funding	20
B. Reimbursement For Supervision.	22
C. Federal Aid	25
D. Recommendations	25
V. UNIFORM RESTORATIVE JUSTICE POLICIES AND PROCEDURES SHOULD BE ADOPTED: OFFENDERS SHOULD BE HELD ACCOUNTABLE TO VICTIMS AND COMMUNITIES	27
Recommendations	28
VI. PROBATION’S ROLE IN THE FAMILY COURT: AREAS FOR IMPROVEMENT	31
A. Probation’s Pre-Adjudicative Role As Gatekeeper to the Family Court	31
1 . Probation’s Authority to Adjust Juvenile Delinquency Cases	31
Recommendations	32
2 . Probation’s Authority to Provide Diversion Services to Alleged Pins Youth	33
Recommendations	38
3. The Need to Continue the Family Court’s Jurisdiction Over Pins Proceedings.	39
Recommendations	41
4. Legislation Should be Enacted Reframing the Person in Need of Supervision (PINS) Proceeding as a Family in Need of Services (FINS) Process	42
B. The Detention Decision.	44
1. Probation’s Role in the Detention Decision.	44
Recommendations	48
C. Probation’s Role In the Disposition Decision: The Pre-Dispositional Investigation/Investigation and Report	48
Recommendations	51-52
D. New York City Based Alternatives-to-Placement for Juveniles.	52
Recommendations	56

E.	Probation’s Supervision Function	56
	Recommendations	59
F.	The Need for Probation Services Post-Placement (Aftercare)	60
	Recommendation	61
VII.	OUTSIDE INFLUENCES AFFECTING THE DELIVERY OF EFFECTIVE PROBATION SERVICES	62
A.	Educational Issues	62
1.	Student Behaviors and School Response.	63
a.	Truancy	63
b.	Persons in Need of Supervision (PINS)	64
c.	Juvenile Delinquency	64
d.	Recently Enacted Laws.....	64
e.	A Missing Link	66
	Recommendations	67
f.	Return from Placement or Detention.....	68
	Recommendations	68
g.	Promising Programs and Practices	68
i.	Educational Advocates.....	68
ii.	School-Based Probation Officers and Social Workers.....	68
	Recommendations	69
B.	Juvenile Justice Professionals Should be Trained on Adolescent Issues.....	70
	Recommendations	73
C.	The Need for Improved Services for Children and Adolescents.....	73
1.	Mental Health	74
a.	Funding for Mental Health Services.....	75
b.	Treatment Options for the Mentally Ill	75
	Recommendations	75
VIII.	OTHER AREAS FOR IMPROVEMENT.....	76
A.	A Model for Change - The Integrated Youth Court.....	76
	Recommendation	78
B.	Legislative Initiatives	78
1.	Defining “Complainant” in Juvenile Delinquency Proceedings.....	78
2.	Preventive Service Funding for Juvenile Delinquency Cases	78
3.	Expanding the Use of Probation in Juvenile Delinquency Proceedings	80

4. Legislative Proposals by the Family Court Advisory and Rules Committee	81
5. Amend the FCA so that Adjustments May Occur for up to Six Months	82
6. Amend the FCA to Remedy Sealing Inconsistencies	82
7. Amend the FCA to Include Enforcement Mechanisms for Orders of Restitution	83
8. Amend the FCA to Codify Existing Family Court Practice of Discharging Youth Early From Probation Term Upon Successful Completion of Treatment	83
9. Amend the Executive Law Regarding Victims' Rights in the Juvenile Justice System	84
C. Juvenile Sex Offenders	84
1. Treatment Options for Juvenile Sex Offenders	84
Recommendations	85
2. Legislation Expanding Sex Offender Registration Laws to Juvenile Sex Offenders is Unwarranted	86
Recommendation	87

APPENDIX A: PROJECTED SAVINGS FROM INCREASING THE USE OF FAMILY THERAPIES WITH NEW YORK YOUTH IN CUSTODY OR ON PROBATION

APPENDIX B: DISPROPORTIONATE MINORITY CONTACTS

APPENDIX C: DEFICIENCIES SHOULD BE ADDRESSED TO RETURN ALL FAMILY COURTS TO A TREATMENT COURT MODEL

APPENDIX D: WESTCHESTER'S YOUNG OFFENDERS UNIT

APPENDIX E: MEMORANDUM DATED JANUARY, 8, 2008 FROM NEW YORK CITY'S DEPARTMENT OF PROBATION

APPENDIX F: DPCA'S LEADERSHIP IN DEVELOPING EFFECTIVE PROBATION PRACTICE PRINCIPLES

APPENDIX G: ADOLESCENT BRAIN DEVELOPMENT STUDIES

APPENDIX H: THE WORK OF THE CRIME VICTIM AND PROBATION WORKGROUP

APPENDIX I: PINS REFORM LEGISLATION

APPENDIX J: PINS LEAD AGENCIES AND PROBATION DEPARTMENTS THAT CONDUCT PINS INTAKE LISTING

APPENDIX K: ALTERNATIVES TO DETENTION

APPENDIX L: ALTERNATIVES TO INCARCERATION

APPENDIX M: OCFS MODEL POLICY ON EDUCATIONAL NEGLECT

APPENDIX N: FUNDING FOR MENTAL HEALTH SERVICES

APPENDIX O: MEMORANDUM DATED JANUARY 12, 2007 FROM FAMILY COURT ADVISORY AND RULES COMMITTEE

Executive Summary

The Task Force on the Future of Probation in New York State entered Phase II in June 2007 by enlisting the assistance of a 17 member *ad hoc* advisory committee, consisting of juvenile justice professionals representing law guardians, former and current Family Court judges, probation supervisors and administrators, district attorneys and presentment agencies, alternatives to detention/incarceration administrators, and policy makers.¹ The *ad hoc* advisory committee members' comments provided the Task Force with a roadmap of the important areas for study. During the ensuing ten months, the Task Force held six full member meetings, public hearings in New York City and Syracuse, two meetings with the Administrative and Supervising Judges of the Family Courts, a meeting with representatives of New York State's Department of Education (SED), and meetings with probation administrators from across the State. During the course of these meetings and public hearings, it became apparent to the Task Force that probation plays a critically important role for young people subject to the juvenile justice system.

The Task Force also learned that the juvenile justice system is currently failing many of our young people because a large number of misdemeanants are being unnecessarily detained in detention facilities and/or placed in residential treatment facilities. These young people, who do not pose a threat to the safety of their communities, are negatively affected by placement in centers, which, according to New York State's Office of Children and Family Services (OCFS) Commissioner Gladys Carrion, are "akin to [adult] prisons."² Their stays in these facilities, however brief, tend to place them on a downward trajectory to deeper involvement with crime. In fact, a study done in 1999 showed that 80% of boys

¹ The Task Force wishes to thank the *ad hoc* advisory committee members, some of whom later became Task Force members, for the input they provided to the Task Force: Amy Albert, Brooklyn Division, Juvenile Rights Practice of the Legal Aid Society; Ruben Austria, SOROS Justice Advocacy Fellow; Patricia Brennan, Deputy Commissioner Family Court Services, New York City Department of Probation; Laurence Busching, Division Chief, Family Court Administration, New York City Law Department; Jack Carter, Director, Law Guardian Program, Appellate Division, Third Department; Robert Chace, Assistant Commissioner, Westchester County Department of Probation; Hon. Carnell Foskey, Supervising Judge, Nassau County Family Court; Jamie Greenberg, Director, Policy Analysis, Office of Strategic Planning and Policy Development, New York State Office of Children and Family Services; Kathleen DeCataldo, Executive Director, Chief Judge Judith Kaye's Permanent Judicial Commission on Justice for Children; Wayne Humphrey, Assistant County Attorney, Westchester County Attorney's Office; Joseph Mancini, Schenectady County Deputy Director of Probation, Chief Administrator, Center for Juvenile Justice; Hon. Gerard Maney, Supervising Judge, Albany County Family Court; James Murphy, District Attorney, Saratoga County; Tamara Steckler, Attorney-in-Charge, Juvenile Rights Practice of the Legal Aid Society; Norma Tyler, Community Correction Representative, New York State Division of Probation and Correctional Alternatives; Linda Valenti, Counsel, New York State Division of Probation and Correctional Alternatives; Mary Winter, Commissioner, Onondaga County Probation Department.

² Syracuse Post Standard, *Juvenile Injustice – Locking Children Up – or Funding Empty Centers – Makes no Sense*, March 16, 2008 at E2, col. 2.

placed in New York State's Office of Children and Family Services (OCFS) facilities re-offended within three years of release. By contrast, research shows that low and moderate risk offenders who receive community-based services are more likely to be rehabilitated and have no further contact with the juvenile justice system. Not only do community-based services provide better outcomes for the offenders, they also significantly reduce costs (e.g., annual placement costs per young person range from \$125,000-\$200,000; daily detention for each young person in New York City costs approximately \$594; highest priced community-based intervention program costs \$20,000 per young person). One group, "Fight Crime Invest in Kids," has projected that if 1,000 of the 2,000 juveniles currently in out-of-home placement were placed in Multidimensional Treatment Foster Care (MTFC), it would reduce their future involvement in crime to such an extent that it would produce an average net savings of \$78,000 per youth and an overall savings of approximately \$75 million (see Appendix A). Of course, these community-based services must be available in order to pursue an alternative-to-detention or alternative-to-placement option. And, sadly, the Task Force heard that in many counties, the needed services are simply unavailable, leaving detention and placement the only options.³

One of the most distressing reports received by the Task Force involved statistics concerning "disproportionate minority contacts" (DMC) in New York State's juvenile justice system (see Appendix B), where children of color are disproportionately represented at all process points (i.e., arrests, detention decisions, prosecutions, and placements). For example, in 2005, 95.5% of detention admissions in New York City were youth of color, and 95% of New York City's youth admissions to OCFS placement facilities were youth of color. As set forth in more detail in Appendix B, the Task Force concludes that while the responsibility to address this unacceptable reality must be shared by multiple agencies, probation can play a leading role in assisting the Family Court and other system participants to design innovative strategies to reduce DMC across all decision points in the juvenile justice system.

Early in 2008, OCFS Commissioner Gladys Carrión announced plans to close six non-secure or limited-secure underutilized residential treatment facilities by year end. OCFS currently spends over \$150 million a year to operate juvenile placement facilities. Commissioner Carrión also reported that nearly a dozen facilities are operating at under 40% capacity. Each bed in these facilities costs taxpayers anywhere from \$140,000 - \$200,000 a year. Commissioner Carrion's proposal would have resulted in cost savings to the State exceeding \$16 million a year. However, the 2008-09 Budget deliberations resulted in the closure of only four facilities with projected annual savings beginning in SFY 2009-2010 of \$7.4

³ The Task Force notes that since this Report's completion, Governor David Patterson announced on September 10, 2008, that he was establishing a Task Force on Transforming Juvenile Justice. The Task Force will be chaired by Jeremy Travis, President of John Jay College of Criminal Justice, and its mission is to explore alternatives to institutionalizing juvenile offenders.

million. A portion of these savings should be redirected to seeding additional community-based programming that has been proven effective.

In a few instances, the Task Force's recommendations evolved over time. For example, despite the overwhelming majority of calls to have Persons in Need of Supervision (PINS) cases removed from the jurisdiction of the Family Court, the Task Force concluded that there is an irreducible residuum of cases that must be heard in Family Court. However, the Task Force further concluded that these cases should no longer be heard under the auspices of PINS proceeding and should be reframed as "Families in Need of Services" in recognition of the fact that non-criminal misbehavior by a young person is primarily an issue of family welfare and child safety, rather than a juvenile justice matter to be dealt with in a coercive, quasi-criminal setting. The Task Force reasoned that the calls to end Family Court involvement stemmed, to a large degree, from the Family Court judges' frustration over enforcing their PINS orders, and that these frustrations would be somewhat ameliorated if judges were authorized to compel the family's cooperation in the ordered therapies. Accordingly, the Task Force strongly recommends that the PINS label be changed to FINS -- Families in Need of Services -- to address the true nature of many juvenile behavior problems.

Another example of an issue on which the Task Force changed its position, during its study, is PINS lead agency designation. The Task Force originally believed that the lead agency designation in each county should be the same (*e.g.*, either the local department of social services [LDSS] or the local probation department) in order to create uniformity in the level of services provided across the State and to ensure a consistent method for data collection so that sound PINS policies could be developed. Most of the comments received during the public hearings suggested that probation should always be designated lead agency based on its relationship with Family Court and the "hammer" that it, unlike LDSS, holds in terms of PINS diversion. The Task Force also heard complaints from some jurisdictions in which PINS diversion was handled by the local department of social services. Nevertheless, upon further reflection, the Task Force concluded that the real issue with PINS diversion and lead agency designation was the availability of funding that flowed from the designation. In some of the counties that designated the probation department as lead agency, the probation department was hindered by the 18% funding reimbursement it received from the State. In comparison, in LDSS lead agency counties, the LDSS was able to use the Community Optional Preventive Services (COPS) funding program, whereby the State reimburses the counties for 65% of the costs of diversion services and the county funds 35% of the costs (hereinafter 65/35 reimbursement rate). In several counties, where the local probation department is the lead agency, the LDSS commissioner has agreed to apply the 65/35 reimbursement rate to the PINS diversion services provided by probation. The Task Force ultimately concluded that the designation of lead agency status should be left to the local authorities who are in the best position to judge the

entity that will most successfully provide diversion services. Regardless of lead agency designation, however, the 65/35 reimbursement rate must be provided for the diversion services.

The Task Force heard many other calls for reform from the various juvenile justice participants who voiced their opinions. Some of the common themes that emerged appear as recommendations in this Report, including: (1) increasing the number of juvenile probation officers so that the ratio of probation officers to probationers is 1:15 for high risk offenders, 1:30 for medium risk offenders and 1:45 for low risk offenders; (2) reducing the use of detention and placement and increasing the availability of probation supervision and community-based services, including proven effective evidence-based treatments; (3) requiring probation departments statewide to employ validated risk assessment instruments in connection with the recommendations they make to the court for detention and disposition decisions; (4) increasing the numbers of juvenile delinquency (JD) and PINS cases that are diverted from formal court proceedings; (5) providing training on adolescent issues for juvenile justice participants; (6) employing educational advocates and school-based probation officers in all probation departments; and (7) increasing the availability of probation supervision at all stages of the proceeding (including aftercare).

At times, given probation's interaction with numerous other juvenile justice entities (*e.g.*, police, presentment agencies, courts, community-based services, local social services departments, schools, and SED), the Task Force veered off the subject of probation and delved into areas that, while critical to probation's function, were not exclusively probationary in nature. Thus, in addition to the calls for juvenile probation reform, the Task Force also heard recommendations for other improvements. For example, changes in how the education system deals with young people placed on probation will necessarily affect the likelihood that the probation term will be successfully completed and reduce the chances for future recidivism. Likewise, the manner in which the school system deals with young people re-entering schools from placement facilities, in terms of the services provided and credit given for classes attended while in placement, affects the likelihood of a successful re-entry from placement.

The Task Force also discussed how New York State is lagging behind on the issue of the appropriate age for presumptive criminal responsibility by continuing to prosecute and incarcerate young people aged 16 and 17 in the adult criminal justice system. New York and North Carolina are the only two remaining states that continue this practice. The Task Force members recognized that if the age were raised to 18, there would be tremendous budgetary impacts on probation because these 16 to 17-year-olds, with very different and special needs, would now be served by the juvenile probation system. For example, it has been estimated that there would be a 200% increase in juvenile intakes in New York City alone. While not all members agreed that a shift in policy was prudent, for many members the difference in

treatment of young people in the Family Court system, including the lower caseloads for probation officers dealing with young people, was reason enough for a recommendation that a commission be formed to investigate the issue.

The Task Force members also concluded that another major defect in probation's ability to effectively serve young people is the inadequacy in resources currently devoted to the Family Courts. The deficiencies in the resources provided are the direct result of the lower stature afforded Family Courts in New York State's court system. While the number of Family Court cases has burgeoned over the past decade, there has been no increase in the number of Family Court judges statewide. Chief Judge Kaye has requested that the Legislature create an additional 39 judgeships so that caseloads may be brought down to a manageable size. With an infusion of enough resources, there could be a return to the original treatment court model on which the Family Court was established, with judges using proven problem-solving principles in dealing with the young people who appear before them (see Appendix C).

The following is a synopsis of the recommendations found in this Report:

Raising the Age of Criminal Responsibility to 18 (pp. 16-19)

In order to best consider policy and practices toward young offenders, the Task Force recommends that the Governor and Legislature establish a commission⁴ to examine the advisability of proposing legislation to expand the Family Court's delinquency jurisdiction to children under 18, with a provision that would allow for the transfer of certain cases to the adult court only after a due process hearing in the Family Court.

Funding Juvenile Probation (pp. 20-26)

1. In order to establish uniform, consistent, reasonable and effective statewide standards for juvenile probation caseload/workloads, available funding must be significantly increased. The total statewide probation expenditure is \$257,000,000. As most local probation departments allocate approximately 20 to 22% of their budget to juvenile probation services, the total statewide expenditure for juvenile probation is roughly \$52,000,000.
2. At \$57,231,000, the 2006-2007 total reimbursement aid to localities represented just 17% of total expenditures. Of this total aid to localities, only a portion of the \$46,584,000 designated "State Aid to Probation" and

⁴ The Task Force notes that since this Report's completion, the Executive Committee of the New York State Bar Association adopted a resolution, submitted by its Committee on Children and the Law, requesting that the Governor and Legislature establish and fund a commission to determine whether the jurisdictional age of juvenile delinquency should be raised in New York State.

the \$1,211,000 designated “Juvenile Intensive Supervision” was available statewide for juvenile probation service delivery. Thus, the current total annual state reimbursement for juvenile probation services is approximately \$10,000,000.

3. The state child welfare system, which provides services to many of the same youth served by probation, allows for a 65/35% reimbursement rate to LDSS’s. It is strongly recommended that juvenile probation services be reimbursed utilizing the same 65/35% reimbursement rate as child welfare. If this reimbursement rate were applied, it would increase statewide reimbursement to localities to between \$35,000,000 and \$40,000,000 for juvenile probation services. However, it is recommended that a separate funding stream be developed to fund probation expenditures for adjustment, diversion and alternatives-to-detention and placement services for alleged and adjudicated PINS and JD youth. A separate funding stream would permit the tracking of State and local expenditures used to provide community-based services, and a comparison with detention and placement costs to determine whether the community-based services were successful in decreasing State and local detention and placement costs. In addition, a separate funding stream would allow local probation departments to use alternative assessment and case management tools designed for this population that are already in use in many, if not most jurisdictions.
4. Commissioner Carrión eliminated in the SFY 2008-2009 budget process, four OCFS residential facilities, for a projected annual savings of \$7.4 million in 2009-2010. If the State and localities were able to share a portion of these projected savings, such funds could effectively be appropriated to offset reimbursement increases for juvenile probation service delivery statewide.

Victims and Restorative Justice (pp. 27-30)

To ensure that victims are fully informed of their array of rights including the adjustment process, victim impact statements, available services and programs for victims and restitution, the Task Force recommends that the Division of Criminal Justice Services, in conjunction with the Crime Victims’ Board and in further consultation with representatives from the New York State Division of Probation and Correctional Alternatives (DPCA), probation departments, presentment agencies, the New York State Office of Court Administration (OCA) and OCFS, develop a pamphlet for distribution to victims by the presentment agencies.

Other recommendations to improve the juvenile justice systems’ treatment of victims include the adoption of uniform standards by all juvenile justice participants that address, among other things: (1) the need to have victim safety

(including orders of protection) a part of each supervision plan for probation and aftercare agencies; (2) the obligation of law enforcement to promptly return property being held for evidentiary purposes; (3) the need to assist victims in advising their employers or schools of the need for their cooperation in the case; and (4) the establishment of a victim notification system in the juvenile justice system. Finally, the Task Force recommends various legislative proposals such as: (1) amendments to the Family Court Act §§ 304.2(1) and 352.3 to authorize the issuance of temporary and final orders of protection to “designated witnesses” in juvenile delinquency cases; (2) legislation to establish probation as the designated agency to collect and enforce orders of restitution in Family Court; and (3) amendments to the Fair Treatment Standards in Executive Law, Article 23, to delineate whose responsibility it is to address particular victims’ rights and protections with respect to the juvenile justice system.

Improvements to Adjustments of Juvenile Delinquency Cases (pp. 31-33)

1. Probation departments should be given access to funding for adjustment services of JD’s at risk for placement at a rate of 65% state/35% local funding – the same funding level provided in many counties for PINS diversion services;
2. Local probation departments, equally responsible with the police, should exercise their discretion in appropriate circumstances (e.g., low level offenses involving low risk youth) and consent to adjustments where the crime does not involve a specific victim (e.g., drug and graffiti cases) and the only complainant is the arresting police officer;
3. The Family Court Act should be amended to define “victims” and “complainants” to make clear that the victim is the complainant for the purposes of obtaining consent to an adjustment when the crime involves a specific victim; and
4. The general consensus was that the Family Court Act should be amended to extend the statutory period of adjustment from 120 to 180 days without the need for court intervention. Three members of the Task Force opposed this recommendation on several grounds including subjecting juveniles who have not yet been adjudicated to periods of supervision that may be equal to those of probationers.

Improvements to PINS Diversion Efforts (pp. 33-38)

1. Despite the dissatisfaction with PINS diversion in several upstate counties, the Task Force believes that diversion without court involvement is necessary because: (a) it prevents a large number of PINS cases from being referred to Family Court; and (b) the majority of counties where an investment has been made in appropriate services find diversion

successful in treating young people and keeping their cases out of the court system;

2. The Task Force believes that the decision whether to designate probation or LDSS as lead agency should continue to be left to local authorities who are best able to determine which entity will most successfully provide diversion services. However, the Task Force recommends that 65/35 funding be available regardless of whether diversion services are provided by the LDSS or the local probation department to promote statewide uniformity in PINS diversion services;
3. DPCA should assist OCFS in identifying the relevant indicators and establishing a PINS data reporting system that is uniform and will allow for a meaningful exchange of data for the future development of sound PINS diversion strategies; and
4. If additional state funding is realized, DPCA should sponsor at least one evidence-based program for PINS diversion in every county.

Family Court Should Maintain Limited Jurisdiction Over PINS Proceedings (pp. 39-41)

1. PINS cases should continue to be part of the Family Court system only in the irreducible residuum of situations where voluntary mechanisms simply do not work and should focus on “Families In Need of Services” to accurately reflect both the circumstances that typically underlie these matters and the proper focus of efforts to address those circumstances most effectively; and
2. There must be a continuation and enhancement of probation services aimed at reversing the behaviors that result in PINS proceedings in the first instance.

Improvements for Probation’s Role in the Detention Decision (pp. 44-48)

1. The Task Force recommends that all counties be required to employ a validated risk assessment instrument/detention screening tool to assist the court’s detention decision by providing objective data from which the court may weigh the risk of re-offending and failure to appear. The use of the detention screen will ensure that only those classified as high risk are recommended for secure or non-secure detention, with moderate-risk youth being referred to services.
2. To reduce the number of police admissions to detention when the Family Court is not in session, the Task Force recommends that: (1) the court

system monitor the new system of arraigning juveniles arrested in any one of the five boroughs over the weekend in Manhattan Criminal Court and consider expanding the capacity for weekend arraignments statewide; and (2) police consider the use of temporary respite services when available for low and moderate risk alleged JD's as an alternative-to-detention.

The Pre-Dispositional Investigation/Investigation and Report (pp. 48-52)

While 55 counties utilize the YASI screening tool, many still do not use it in the preparation of their Pre-dispositional Investigations (PDI's)/Investigations and Reports (I&R's). Because there is no uniformity across local probation departments, the Task Force believes that DPCA must promulgate regulations requiring that local probation departments use validated risk assessment instruments in connection with the preparation of PDI's/I&R's and their development of diversion and supervision case plans.

In addition, in order to implement appropriate standards for PDI/I&R preparation across all probation departments statewide, increased state funding must be made available. The Task Force's 2007 Report recommended that additional probation officers be hired so that annual PDI/I&R workloads are limited to a maximum of 240 per probation officer. The Task Force now concludes that this figure is too high and recommends the following annual workload standards: (1) 100 PDI's/I&R's per probation officer for jurisdictions electing to implement predisposition supervision; and (2) 160 PDI's/I&R's per probation officer for jurisdictions without predisposition supervision. It is envisioned that if the additional state funding recommended in this Report is attained, there will be sufficient staffing in probation departments throughout the State to achieve these workload standards.

The Task Force further recommends that jurisdictions consider the following areas to improve the PDI/I&R process:

1. Predisposition supervision pending final disposition that would provide the probation officer with additional contacts with the respondent, family and collateral resources thereby enhancing the officer's ability to assess the interests and needs of the respondent, conduct initial case planning and attend to the protection of the community;
2. An assessment of the respondent should be conducted through forensic evaluations, the execution of a validated risk assessment instrument, or a combination of both; and
3. Field visits to the respondent's residence/neighborhood/school and attendance at staffing/planning conferences at detention facilities, schools or other community-based agencies to obtain additional insight and

perspective in determining respondent's risk, strengths, initial case planning needs and appropriate dispositional recommendations.

Community-Based Alternatives-to-Placement for Juveniles (pp. 52-56)

1. Develop a comprehensive funding strategy to support and increase the availability of post-disposition services, building on the strengths of existing proven programs and supporting new evidence-based initiatives;
2. Expand the use of the 65/35 reimbursement formula to cover preventive services for young people with delinquency cases at multiple points in case processing; and
3. Increase the use of Adjudgments in Contemplation of Dismissal (ACD's) and Conditional Discharges as a disposition for low-risk youth, utilizing community-based organizations to provide post-disposition services.

Improvements to Probation's Supervision Function (pp. 56-60)

1. A probation officer's caseload size should be limited to no more than 15 high-risk probationers, 30 medium-risk probationers, or 45 low-risk probationers. A portion of the \$75 million in additional state funding called for in the 2007 Report was allocated to achieve these caseload sizes; however, the 2007 Report recommended a maximum caseload size of 60 low-risk probationers. While the Task Force is now seeking to reduce a probation officer's caseload for low risk probationers to no more than 45 probationers, it is envisioned that if the additional funding provided in this Report is attained, probation departments will be sufficiently resourced for these optimal caseloads;
2. To the extent feasible, probation departments statewide should institute specialized caseloads so that probation officers are not supervising adult probationers at the same time they are supervising young people;
3. Because it is often unnecessary and counterproductive to continue probation supervision after the successful completion of an alternative-to-placement program, the Legislature should amend the Family Court Act to expressly authorize a court's early discharge of probationers from their probation term. While this change merely codifies existing practice among some of the Family Court judges, it would nevertheless be helpful to have the statutory authority for this practice. New York City's DOP and Criminal Justice Coordinator take exception insofar as this recommendation suggests that probation supervision adds no value beyond that provided by an alternative-to-placement program;

4. Although there was not complete consensus among the Task Force members, most believe that the concern over the generation of *Rosario* material should not cause probation departments to refrain from notifying the court in the event of a probationer's re-arrest. It is counterintuitive to withhold re-arrest information from the court until the presentment of the new JD petition arising from the re-arrest. Accordingly, most of the Task Force members agreed that a rule similar to the one being proposed by DPCA, which requires that the court be notified within 7 days of probation's knowledge of a re-arrest, be adopted with regard to re-arrests of youth adjudicated in the Family Court. The New York City Legal Aid Society's Juvenile Rights Division is opposed to such a mandatory notification requirement, and New York City's Department of Probation and Criminal Justice Coordinator believe that mandatory notification should be limited to re-arrests involving felonies and A misdemeanors;
5. Probation departments should refrain recommending placement because of school failure, and courts should refrain from ordering placement based on school failure; and
6. Because a continuum of services is so critical to a youth's success, the Task Force recommends that legislation be enacted authorizing probation supervision at all stages of the proceeding (*i.e.*, pre-fact finding, between fact-finding and disposition, and following placement).

Probation's Role in Post-Placement Supervision (pp. 60-61)

The State should fund probation's provision of high quality, evidence-based, community-based aftercare for all delinquents leaving OCFS or private placement.

Educational Recommendations

The Task Force recommends that probation departments (p. 67):

1. develop relationships with school districts to collaborate in the provision of programming for probation-involved youth;
2. strive to have access to and a greater understanding of school performance issues than a mere review of a child's attendance record so that probation and the schools may identify the extent of educational or other issues that need to be remedied to meaningfully address attendance issues;
3. avoid the recommendation for placement in the event of school failure; and
4. develop training to assist the probation officers' understanding of the Individual Education Plan (IEP) and Special Education Laws.

The Task Force recommends that the New York State Education Department (SED) (pp. 67-68):

1. promulgate regulations which (a) establish guidelines and requirements for truancy prevention and intervention programs, (b) require district implementation, and (c) provide state funding to districts to ensure that programs are available statewide;
2. require reporting on PINS referrals by district and by allegation, and annually report the data;
3. work with districts with high PINS referrals to improve diversion, and work with youth and families before referrals are made;
4. promulgate regulations that set forth appropriate circumstances for PINS referrals by school districts for truancy and incorrigibility;
5. require reporting of student arrests on school property and criminal or JD complaints by district and allegation, and annually report the data;
6. work with districts regarding arrests and criminal and JD referrals to improve diversion, and work with youth and families before such actions are taken;
7. promulgate regulations that establish guidelines and requirements regarding appropriate circumstances for student arrests and criminal and JD complaints regarding students;
8. promulgate regulations that establish guidelines and requirements for implementation of best practices to ensure academic success of young people who have fallen behind, and monitor the availability and success of those programs;
9. promulgate regulations requiring local school districts to provide appropriate and adequate alternative schools that offer individualized education services to young people who have fallen behind or who are in need of an alternative setting to succeed;
10. establish standards for schools to credit students with courses taken during placement that meet required criteria; and
11. monitor local school districts to ensure timely re-enrollment of young people returning to school after placement, and provide parents/legal guardians with a mechanism for immediate appeal to SED in the event of a school district's failure to allow for the student's re-enrollment.

Other Recommendations Regarding Probation's Role in the Schools (pp. 69-70)

1. State funding should be made available to give all 58 probation departments access to educational advocacy services to: (a) engage in prevention efforts; (b) serve on other cross-system teams; (c) provide guidance in developing practices to reduce truancy, drop-outs and suspensions; (d) provide advocacy training for probation officers concerning the educational rights of children and

the services available through the school systems in the communities; (e) monitor and assist youth either receiving diversion services or on probation in abiding by their conditions of probation; and (f) assist young people who are re-entering schools after placement. The amount of educational advocacy services per county should be dependent upon need;

2. All probation departments should be fully funded to provide for school-based probation officers who would: (a) serve as an on-site presence to assist probationers in abiding by their conditions of probation, (b) offer assistance to young people re-entering school after placement, and (c) provide guidance to the school in developing practices to reduce truancy, drop-outs, and suspensions;
3. Each school district, in consultation with local probation and law enforcement, should perform an appraisal of the number of school-based probation officers, social workers and school safety agents needed for a given school or school district. This is a sensitive and important issue which must be addressed with student and public safety considerations in mind; and
4. Each school district should designate an attendance officer who would be responsible for truancy coordination (e.g., tracking and reporting) for the district.

Training for All Participants in the Juvenile Justice System (pp. 70-73)

1. Together DPCA and OCFS should develop, and with adequate funding, deliver a curriculum of mandatory specialized training for juvenile probation officers and other participants in the juvenile justice process to ensure that decisions involving young people subject to the juvenile justice system are coordinated. Topics should include adolescent brain development, mental health, accessing family services, substance abuse and advocacy, interfacing with schools, sexuality and power sharing; and
2. The Judicial Institute and the Office of Court Administration should continue their training of Family Court judges and non-judicial employees. OCA, with input from juvenile justice stakeholders, should develop a new model form for orders of probation conditions that may be used by Family Court judges in their disposition orders to ensure that unrealistic conditions of probation are avoided.

Improving Available Community-Based Services (pp. 73-75)

1. Hire resource coordinators in the Family Courts whose job would be to inform judges as to the available services in a community and assist judges in identifying and referring children to appropriate service providers;

2. Train probation officers regarding available mental health services and the procedures for accessing such services;
3. Increase “respite” and housing opportunities for diversion and court-involved young people; and
4. Increase non-institutional services for special populations such as fire setters and sex offenders.

Integrated Youth Courts (pp. 76-78)

A pilot program has been initiated to establish an Integrated Youth Court⁵ structured to address the myriad issues that arise from prosecuting young people under 18 as adults. Its progress should be monitored and, if successful, replicated elsewhere in the State.

Legislative Initiatives (pp.78-84)

1. Amend the Family Court Act (FCA) to re-frame PINS proceedings as FINS – “Families in Need of Services” – to formalize recognition of non-criminal misbehavior by minors as primarily an issue of family welfare and child safety, rather than a juvenile justice matter to be dealt with in a coercive, quasi-criminal setting (pp. 42-44);
2. Amend the FCA to define complainant as the victim of the crime so that to the extent a victim is involved, the victim’s consent is obtained prior to an adjustment;
3. It is strongly recommended that juvenile probation services be reimbursed utilizing the same 65/35% reimbursement rate as child welfare. However, it is recommended that a separate funding stream be developed to fund probation expenditures for adjustment, diversion, alternatives-to-detention and alternatives-to-placement services for alleged and adjudicated PINS and JD youth. A separate funding stream would permit the tracking of State and local expenditures used to provide community-based services, and a comparison with detention and placement costs to determine whether the community-based services were successful in decreasing State and local detention and placement costs. In addition, a separate funding stream would allow local probation departments to use alternative assessment and case management tools designed for this population and already in use in many, if not most, jurisdictions;
4. Amend the FCA to provide the statutory framework for probation supervision during three additional time periods: pre-fact-finding, between fact-finding and disposition (interim), and post-placement (aftercare);

⁵ The Task Force notes that since this Report’s completion, the Integrated Youth Court, which will be presided over by Judge William Edwards, opened on September 22, 2008.

5. The majority of Task Force members recommend that FCA § 308.1(9) be amended to extend the statutory period of adjustment to six months without the need for court intervention. There were strong objections, voiced by three members of the Task Force representing New York City's DOP, New York City's Criminal Justice Coordinator, and the New York City Legal Aid Society's Juvenile Rights Division. These members opposed the recommendation because it would expose juveniles who have not been adjudicated to periods of supervision that may be the equivalent of post-adjudication probation terms;
6. The inconsistencies found in FCA §§ 381.2, 375.1, and 381.2 should be reconciled and the same sealing provisions applicable to JD's should be added to the provisions governing PINS youth;
7. Serious consideration be given to the legislative proposals proposed by the Family Court Advisory and Rules Committee (see Appendix O), that would, among other things, enhance probation supervision by authorizing the use of electronic monitoring⁶ for juvenile delinquents as an alternative to detention, and permitting Family Court Judges to place juveniles in an intensive services probation program for all or part of the period of supervision as an alternative to placement in juvenile delinquency and PINS proceedings. In the event these proposals are enacted, sufficient funding should be appropriated so they do not result in unfunded mandates;
8. The FCA should be amended to contain provisions similar to Criminal Procedure Law (CPL) § 420.10(8) and Penal Law (PL) § 60.27(8). CPL § 420.10(8) requires the chief elected official in each county, and in New York City, the mayor, to designate an entity (*i.e.*, the restitution collection agency) responsible for the collection and administration of restitution payments. To reimburse the restitution collection agency for the expenses associated with collection and administration, PL § 60.27(8) requires that, if the court's disposition includes restitution, the court must also charge defendant a surcharge of 5% of the amount of restitution ordered, which is to be paid to the restitution collection agency designated under CPL § 420.10(8). This way, if the local probation department is designated the entity responsible for enforcing the order of restitution, it will be reimbursed for the expenses by this 5% surcharge ordered by the Family Court;
9. The majority of Task Force members agreed that it would be useful to encourage Family Court judges, under proper circumstances (*e.g.*, successful

⁶ New York City's DOP and Criminal Justice Coordinator have serious concerns about the efficacy and utility of electronic monitoring (EM) in the vertical urban environment of the City, surrounded by large bodies of water, factors which may distort the GPS signals EM relies upon. Also, they believe that "EM only provides an after the fact accounting of an individual's whereabouts. It should not be characterized as 'house arrest' as that would create a false and unwarranted sense of public safety on the part of the public." Also, insofar as this recommendation applies to juveniles who have not been adjudicated, New York City's DOP and Criminal Justice Coordinator believe "it more onerous than the requirements placed upon adjudicated delinquents."

completion of an alternative-to-placement program) to order the early discharge of young people from their probation terms. Because not all Family Court judges exercise this discretion, the Legislature should amend the Family Court Act to expressly authorize the court's early discharge of a probationer from the probation term; and

10. To ensure juvenile justice agencies' compliance with the requirements concerning victim's rights and restorative justice set forth in this Report, the Task Force recommends that the Fair Treatment Standards in the Executive Law, Article 23, be amended to delineate whose responsibility it is to address particular victims' rights and protections with respect to the juvenile justice system.

Juvenile Sex Offenders (pp. 84-87)

1. The Office of Mental Health, Office of Sex Offender Management and DCJS should develop guidelines regarding the most effective licensed treatments available for juvenile sex offenders. Local probation departments should be advised that the use of adult sex offender treatment is inappropriate and ill-advised for the juvenile sex offender population;
2. The Task Force recommends that rather than continuing to invest in residential treatment facilities, the State should provide funding to the counties to seed effective local evidence-based treatment options for their juvenile sex offender population; and
3. Legislative proposals that would seek to expand the Sex Offender Registration Laws to the juvenile sex offender population are unwarranted. Given the low rate of recidivism (2-10%) in that population, these laws are unnecessary for the public's safety and run counter to the confidentiality and rehabilitative purposes underlying the juvenile justice system. Therefore, even in the face of losing federal funding, the Task Force recommends that New York continue to exclude young people from community notification laws. The Task Force proposes for consideration, as an alternative to the community-notification laws, the enactment of a "time-conditional record sealing" law. This would permit law enforcement to have access to the juvenile criminal records if an adolescent with a sex offense goes on to commit another offense as an adult and factor the risk of recidivism into a subsequent judicial determination.

I. INTRODUCTION

Phase II of the Task Force on the Future of Probation in New York State focused on probation's role in the Family Court. At the first meeting of Phase II in July 2007, Chief Judge Judith S. Kaye addressed the members by stressing the importance of the Task Force's work because 40% of probation's workload involves the Family Court and issues relating to families have always been a priority to her. She challenged the Task Force to make recommendations that would achieve genuine reform, which she would devote her time and energy to implement.

Probation has been described as the "workhorse of the juvenile justice system."¹ In many respects, the challenges faced by probation officers servicing young people are greater than those faced by probation officers servicing adults. Many young people are in the throes of adolescence and suffer from multiple problems including special education needs, drug dependency, mental health conditions, personal poverty, and impoverished communities. The families they come from are often families in distress, living at the margins of our communities. The importance of the mentoring/motivational component of probation cannot be overemphasized because many lack stable family homes and positive role models, which contribute to both their behavior and their delinquency. On the positive side, research has shown that with proper intervention, many young offenders hold the greatest promise for successful rehabilitation and will not return to the criminal justice system.

Each year, probation officers handle approximately 80,000 Family Court matters, commonly referred to as "Family Court Intakes," involving juvenile delinquency (JD), Person In Need of Supervision (PINS), support, paternity, adoption, visitation, family offense and related matters. Without probation functioning as the gatekeeper to the Family Court through its threshold intervention and diversion of the vast majority of these intakes from formal court proceedings, the court processes would quickly become overwhelmed. Because the majority of probation's Family Court work involves PINS and JD's, and because of Phase II's limited timeframe, this Report is limited to recommendations concerning JD's and PINS. The Task Force recognizes that there are critical issues to be reviewed concerning probation's role in custody, visitation, support and family offense proceedings, but the recommendations for these areas will have to be addressed at some future date.

Probation's role in JD proceedings is governed by statute. A juvenile delinquent is statutorily defined as a "person over seven and less than sixteen years of age, who, having committed an act that would constitute a crime if committed by an adult, (a) is not criminally responsible by reason of infancy, or (b) is the defendant in an action ordered removed from a criminal court to the family court pursuant to article seven hundred twenty-five of the Criminal Procedure Law."² However, the Family Court's JD

¹ P. Torbet, *Juvenile Probation: The Workhorse of the Juvenile Justice System*, U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, *Juvenile Justice Bulletin* (March 1996).

² Family Court Act (FCA) § 301.2(1).

jurisdiction does not extend to all crimes committed by young people under the age of 16. In 1978, as part of the Omnibus Crime Control Act and in reaction to a perceived epidemic of violent crimes committed by juveniles, the Legislature divested the Family Court of original jurisdiction over certain offenses involving 13-15 year olds in favor of original jurisdiction in the adult criminal court. These “juvenile offenders” consist of 13-15-year-olds who are accused of committing any of a number of specific serious violent felonies. As a general matter, these juvenile offenders remain in the adult criminal justice system unless the judge directs, based on the District Attorney’s request, that the case be removed to the Family Court.

Much of probation’s work in the Family Court involves intake³ – the case review by probation staff to determine eligibility for immediate adjustment (*i.e.*, arranging a settlement between the complainant and young person), diversion programming (*i.e.*, making available community resources that are tailored to meet the needs of the young person and family), or referral to the entity responsible for prosecuting alleged JD’s – the presentment agency (*i.e.*, New York City’s Law Department and local county attorneys). During the intake period (a period of 60 days, which may be extended with court approval for an additional 60 days), the intake probation officer interviews all concerned parties including the arresting officer, the young person, the complainant, and family members or legal guardians to determine whether the case should be referred to formal court proceedings or held open for a period of adjustment. During the adjustment period, the young person may be required to make restitution and is often referred for services and probation monitoring. Pursuant to Family Court Act (FCA) § 308.1(7), adjustments involving JD complaints require the consent of the complainants because the probation department may not prevent complainants from requesting that the presentment agency prosecute an alleged offender in a JD proceeding. In addition, certain designated felony offenses may not be adjusted without the consent of the court and/or the presentment agency.⁴

The ability of probation to adjust complaints with the consent of the complainant at intake means that it has tremendous discretion in seeking to limit JD proceedings to only those cases deemed “appropriate” for formal prosecution. In 2007, New York City’s Department of Probation (DOP) conducted more than 10,000 intakes, approximately one-third of which were adjusted. During this same year in the counties

³ The FCA specifies that “[r]ules of court shall authorize and determine the circumstances under which the probation service may confer with any authorized person seeking to have a juvenile delinquency petition filed, the potential respondent and other interested persons concerning the advisability of requesting that a petition be filed” (FCA § 308.1[1]). The relevant rules of the court require probation to conduct preliminary conferences when the juvenile, complainant or victim or other interested persons appear at a probation services pursuant to FCA §§ 305.2[4][a], 307.1 or 320.6. The preliminary conference is also known as the intake conference or probation intake.

⁴ FCA § 308.1(3) and (4) prohibit adjustments involving certain designated felony offenses without court approval. In cases where there is a combination of a current specified non-designated felony offense and the adjustment of a prior offense, probation must obtain the approval of both the court and presentment agency.

outside New York City, there were approximately 16,000 JD intakes⁵ with more than 50% adjusted without formal Family Court proceedings.⁶ Adjustment necessarily drives workload, because each case must be supervised by a probation officer during the adjustment phase, which may last up to 120 days. As the use of adjustment increases, the need for additional probation staff increases as well.

In the event an adjustment fails or is otherwise unavailable, the next step is the presentment agency's determination whether to file a JD petition. If the presentment agency chooses to prosecute, the youth is arraigned and no admission is entered, the JD petition proceeds to a fact-finding hearing. At the conclusion of the fact-finding hearing, the court determines if the respondent committed the delinquent act based upon proof beyond a reasonable doubt. In the event of a delinquency finding, the court will order the probation department to conduct an investigation into the circumstances surrounding the crime and the delinquent's legal and personal history, and prepare a report to be submitted to court prior to the dispositional hearing. The report⁷ includes the probation officer's recommendation for disposition.

Depending on the county, if an adjudicated JD or PINS youth is placed on probation, probation supervision may be provided by assigned juvenile probation officers whose caseloads are generally smaller than adult probation caseloads and limited to young people. In contrast, for young people prosecuted and placed on probation in the criminal courts (*i.e.*, offenders over the age of 16 and 13 to 15-year-old juvenile offenders), it is usually the local probation department's adult division that will provide supervision. In addition to higher caseloads,⁸ probation officers supervising adult caseloads may be less familiar with appropriate community-based services and evidence-based treatment options for adolescent offenders.⁹ As set forth in Section III, *infra*, given the scientific research on adolescent brain development and the greater

⁵ The source of all probation workload statistics cited throughout this Report is the New York State Division of Probation and Correctional Alternatives (DPCA) Monthly Report of Family Workload in Probation Departments.

⁶ *Id.*

⁷ Depending on the jurisdiction, the reports are referred to as pre-disposition investigations (PDI's) or investigations and reports (I&R's).

⁸ As Mary Winter, Commissioner of Probation, Onondaga County Probation Department, explained in her written submission to the public hearings, "[c]urrently, our 16 and 17-year-olds are offered probation services in large criminal court caseloads of 80-100. These kids do not act or look differently from our 15-year-olds. They are difficult to handle and often get lost in our system and unfortunately, they often fail – or do we fail them? ... We are fortunate to have evidence-based programs such as Multisystemic Therapy that is used worldwide to reduce recidivism and violence-prone behavior with 17 and 17-year-olds – by as much as 70%. But in New York State, we don't use these programs for this age group."

⁹ There has been an effort in some counties to refer these probationers to the juvenile divisions of probation departments. For example, Westchester County's Department of Probation has instituted a pilot project – a Youth Probation Services Department - to provide juvenile, rather than adult, probation supervision to some of these offenders (see Appendix D).

success rates in rehabilitating young people, for some Task Force members, the difference in the services provided by probation to young people prosecuted in the criminal court as compared to the Family Court is one of the reasons to support the movement to raise the age of criminal responsibility to 18. At a minimum, with regard to probation's supervision over adjudicated PINS and JD's, the Task Force believes that specialized caseloads (*i.e.*, caseloads limited to young people) are preferable to mixed caseloads, and recommends that, whenever feasible, jurisdictions adopt specialized caseloads.¹⁰

Approximately one-third of JD petitions result in post-adjudication supervision. With regard to all new intakes during 2006, probation supervised approximately 2,200 JD cases at the pre-adjudication stage and 12,000 JD cases at the post-adjudication stage.¹¹

Unlike a JD proceeding, which is initiated by an arrest, a PINS proceeding is usually brought by a parent or legal guardian¹² who is unable to control his/her child, or by a school, based on allegations of truancy and ungovernable behavior. A PINS petition may be brought against "a person less than eighteen years of age who does not attend school in accordance with the provisions of part one of the article sixty-five of the education law or who is incorrigible, ungovernable or habitually disobedient and beyond the lawful control of a parent or other person legally responsible for such child's care, or other lawful authority, or who violates the provisions of section 221.05 of the penal law [unlawful possession of marijuana]."¹³

In 2000, the Legislature changed the definition of PINS from children under the age of 16 to children under the age of 18 to ensure "parents ... have available through Family Court, a means to control their child."¹⁴ Since passage of the PINS Diversion and Detention Reform Law in 2005, PINS diversion efforts (*i.e.*, the pre-petition process of obtaining the needed services for the young person and/or his/her family in order to divert the PINS case from formal court proceedings) must occur as part of preliminary procedure, and a PINS petition may not be filed unless there are documented diligent

¹⁰ Although the Task Force reached consensus on most of the major recommendations in this report, and while all recommendations cited in the Report were supported by a majority of Task Force members, some of the recommendations received less than unanimous support. Accordingly, it should not be assumed that every recommendation in the Report reflects the views of all Task Force members.

¹¹ Source: DPCA Monthly Report of Family Workload in Probation Departments.

¹² However, PINS petitions may also be brought by peace officers, police officers, legal guardians or "any person who has suffered injury as a result of the alleged activity of a person alleged to be in need of supervision, or a witness to such activity" (FCA § 733). Schools often file PINS petitions and in some jurisdictions, schools may threaten parents with educational neglect proceedings to get the parents/legal guardians of truant children to file the PINS petitions.

¹³ FCA § 712 (a).

¹⁴ Senate Memo in Support of L 2000, ch 596, 2000 McKinney's Session Law of NY at 1994.

efforts made by the parents, school and/or service provider at diversion. From 2003 to 2006, the number of PINS intakes at probation decreased by 47%, which was due, in part, to the transfer in 15 counties (including New York City) of PINS diversion service responsibility to local departments of social services (LDSS).

In 43 counties, the probation department performs the PINS intake function and, therefore, probation is on the front line when it comes to engaging young people, families, schools, and service providers in PINS diversion efforts. Compared to JD intakes, a greater proportion of PINS intakes are diverted from formal court proceedings. For example, in 2006, approximately 70% of the 12,723 PINS intakes that were opened were diverted from formal Family Court proceedings. If probation's PINS diversion efforts fail after sufficient due diligence at diversion, there is no further bar to the institution of the PINS proceeding. In some counties, probation may assist parents (who are frequently unrepresented by counsel) in the preparation of a PINS petition. Probation is also called upon to perform the investigations and reports (I&R's) ordered in PINS proceedings. With regard to new intakes during 2006, probation had a supervisory role in over 1,000 PINS pre-adjudicatory supervision and 3,000 PINS post-adjudicatory supervision cases. These figures represent a 40% reduction in recent years in the number of PINS cases over which probation has had supervisory authority. While the number of PINS youth in residential treatment facilities has been on the decline, New York has historically placed greater numbers of PINS youth than other states. For example, "[i]n 2003, 22 percent of all youth in out-of-home placement or in custody ... [in New York State] were PINS youth. This was far higher than what was reported for almost all other states in the country. In fact, 41 out of 50 states reported that less than 10 percent of their youth were being held in custody on PINS-type of offenses."¹⁵

Each county has its own probation department and decisions over funding, staffing, and services are made at the local level. Consequently, there are variations in juvenile probation department practices across the State and no uniformity regarding: (1) caseload sizes; (2) timeframes for completion of I&R's; (3) availability of intervention services; (4) collaboration between the local probation department and the other participants in the juvenile justice process (e.g., local social services, schools, and other service providers); and (5) procedures employed for collection and disbursement of victim restitution. This Report makes recommendations aimed at creating uniformity across the State in terms of juvenile probation practice and availability of necessary treatment providers.

As outlined in the Task Force's 2007 Report, probation's ability to service the Family Court has been hindered by the reduction in the State's share of funding county probation department operations over the past two decades from 47% of their total budgets to the current level of approximately 18%. To remedy this downward spiral, the 2007 Report recommended that funding be increased to the 50% reimbursement

¹⁵ Fight Crime: Invest in Kids New York, *Getting Juvenile Justice Right in New York: Proven Interventions Will Cut Crime and Save Money* (Getting Juvenile Justice Right in New York) at 16.

provided for by statute, which would amount to an additional \$75 million annually, to be phased in over three years. These extra dollars would fund, *inter alia*, the hiring of additional probation officers to prepare the Family Court pre-dispositional investigations (PDI's)/investigations and reports (I&R's) and the reduction of individual caseload sizes.

The cost of providing probation supervision to young people is a fraction of the cost associated with institutional confinement (*i.e.*, youth committed to the custody of juvenile residential facilities after a delinquency adjudication). In New York City, annual community-based probation services cost taxpayers approximately \$2400 per probationer, a small percentage of the approximately \$125,000 a year it costs to place the young people in a facility operated by OCFS.¹⁶ The cost of temporary detention (*i.e.*, the holding of a young person after arrest in a juvenile detention facility pending hearing) in one of New York City's Department of Juvenile Justice (DJJ) facilities is \$594/day.¹⁷

Probation is widely regarded as a cost-effective and appropriate alternative to institutional placement for young people. Indeed, juvenile probation work may have a significant effect on whether young people continue on a trajectory into the criminal justice system or become contributing, productive members of society. Common sense (as well as research) tells us that young people who stay in the community and in school have a better opportunity to develop and maintain strong family connections, and avail themselves of school and community supports, thereby enhancing their overall ability to benefit from services. Nevertheless, policymakers and administrators continue to allocate most resources to confinement rather than the more effective alternative of community-based interventions.¹⁸

Numerous studies have shown that detention and placement do not further juvenile justice goals of rehabilitation, including reducing recidivism. For example, a study commissioned by the New York State Division of Criminal Justice Services (DCJS) in 1999 showed that 81% of boys discharged from OCFS facilities, and 45% of girls discharged from OCFS facilities, were rearrested within 36 months of discharge.¹⁹

¹⁶ "[O]f the almost 50,000 juvenile arrests in New York State in 2001, there were approximately 15,000 admissions to detention facilities pretrial, and following trial, 2,500 juvenile delinquents were in state custody in 2005" (Getting Juvenile Justice Right in New York at 5).

¹⁷ New York City's Independent Budget Office Fiscal Brief (December 2007).

¹⁸ The Task Force notes that since this Report's completion, on September 10, 2008, Governor David Patterson announced the formation of the Task Force on Transforming Juvenile Justice. The Task Force, chaired by Jeremy Travis, President of John Jay College of Criminal Justice, will be exploring alternatives to institutionalizing juvenile offenders.

¹⁹ Whether detention and placement facilities have criminogenic effects is debatable. One study found that after controlling for risk factors, placement was not significantly related to recidivism. (J. Lin, *Exploring the Impact of Institutional Placement on the Recidivism of Delinquent Youth* [March 2007] [Lin Report] at 92 [available at <http://www.ncjrs.gov/App/Publications/Abstract.aspx?ID=239255>]). However, a number of other studies have found that by comparing the same groups of youth, the youth who received treatment in their communities had significantly lower recidivism rates than their counterparts who were placed. For example, a study concerning Ohio's RECLAIM Community-Based Interventions (RECLAIM

New York City reports that 46% of the young people detained in DJJ facilities return to the facilities.²⁰ Researchers have found that a stay in a detention facility increases the likelihood that young people will further penetrate the juvenile justice system.²¹ One New York study found that “[a] much larger proportion of youth receiving placement recommendations are detained during trial (84.8 vs. 18.9%)”²² and that “[p]re-trial detention was the most powerful predictor of a placement recommendation [as well as a placement disposition], with youth who were detained before disposition much more likely than non-detained youth to be recommended for placement.”²³

In 2005, New York State’s Division of Probation and Correctional Alternatives (DPCA) analyzed data that had been gathered through the Youth Assessment and Screening Instrument (YASI) involving over 30,000 youth served in probation departments across the State between calendar years 2001-2004. The analysis revealed that approximately one-third of all PINS and JD youth seen were at an overall high risk of recidivism, which also placed them at higher risk of detention and/or residential placement.²⁴

interventions) showed a reduction in the recidivism rate of low risk offenders by 25% (29% recidivism rate for low risk offenders placed in local custody versus 4% recidivism rate for low risk offenders treated in community with RECLAIM interventions), 32% reduction in the recidivism rate of medium risk offenders (40% recidivism rate for medium risk offenders placed in local custody versus 8% recidivism rate for medium risk offenders treated in community with RECLAIM interventions) and a 21% reduction in recidivism rates for high risk offenders (43% recidivism rate for high risk offenders placed in local custody versus 22% recidivism rate for high risk offenders treated in community with RECLAIM interventions). However, with regard to very high risk offenders, the study found an increase of 7% in the recidivism rate with the offenders treated in the community as opposed to those being placed in local custody (37% recidivism rate for very high risk offenders placed in local custody versus 44% recidivism rate for very high risk offenders treated within the community with RECLAIM interventions). (Lowenkamp & Latessa, *Evaluation of Ohio’s Reclaim Funded Programs, Community Corrections Facilities, and DYS Facilities* [2005] available at <http://www.dys.ohio.gov/dysweb/Reclaim/DYSRECLAIMreportAugust17.pdf>; see also studies cited in *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities* [Justice Policy Institute 2007]).

²⁰ New York City’s Independent Budget Office Fiscal Brief (December 2007). These youth are returned either because of new arrests or because of violations of probation, which may include technical (non-offense type) violations.

²¹ B. Holman & J. Ziedenberg, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*. A Justice Policy Institute Report (2006) (“Dangers of Detention”).

²² Lin Report at 92.

²³ Lin Report at 104, 117 and 125.

²⁴In identifying the necessary targets for intervention to prevent future crime, the data revealed that:

- Sixty-seven percent (67%) of JD youth and seventy-eight percent (78%) of the PINS youth were at moderate or high risk for recidivism due to family issues;
- Sixty-five percent (65%) of JD youth and sixty-four percent (64%) of PINS youth were at high risk for recidivism due to mental health concerns. This was driven primarily by risk of violence indicators;
- Fifty-seven percent (57%) of JD youth and seventy-four (74%) percent of PINS youth were at moderate or high risk for recidivism due to school issues;

During the public hearings, the Task Force heard that there has been a shift in policy in many probation departments, which now advocate placement only in very select cases. And there has been a decline in the use of placements and detention statewide; between 2005 and 2006, the overall statewide detention rate decreased 12% from 13,292 to 11,625. Placement rates for PINS decreased 10% from 784 to 707. JD placement rates with OCFS decreased 6% from 1917 to 1798.

In New York City, prior to 2002, approximately 1,400 JD's were placed either in private residential facilities paid for by LDSS's or OCFS residential facilities. More than half had committed misdemeanor offenses and nearly half involved nonviolent offenses. From 2000-2007, the number of juvenile delinquent misdemeanor arrests in New York City increased from 3424 to 6701, whereas the number of felony arrests decreased from 5977 to 5268. As reported by New York City's Department of Probation (DOP), "juvenile felony arrests were on the decline as the number of misdemeanors rose over the preceding nine years, yet the number of youth sent to placement remained constant. Various juvenile justice stakeholders were relying on out-of-home placement to meet the many family and educational needs of the juveniles involved in delinquency cases because of the limited continuum of sentencing options and services in the community."²⁵ A recent *New York Times* article reported that a Family Court judge's decision whether to return the young person to the community as part of a probationary sentence or to place the young person in an upstate residential facility would "depend as much on the gravity of the crime as on the stability of the child's family."²⁶ Likely due to the decrease in felony arrests, New York City has reduced the number of young people placed from 2004-2007 by 30%, and increased the use of alternatives-to-placement.

Data gathered by the New York State Unified Court System's Unified Case Management System (UCMS) show the number of placements in residential treatment facilities based on misdemeanor or less (violation or infraction) findings/admissions in New York City has remained relatively constant at approximately 60% of the total number of placements for the years 2005, 2006 and 2007.²⁷ For youth sent to

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- Thirty percent (30%) of PINS youth and twenty-seven percent (27%) of JD youth exhibited assaultive behaviors; and
 - Sixteen percent (16%) of JD youth and twenty-one (21%) of PINS youth were at moderate or high risk of recidivism due to alcohol or drug use (Source: DPCA 2005).

²⁵ Memorandum from New York City's DOP to the Task Force on the Future of Probation in New York State dated January 8, 2008 (attached as Appendix E).

²⁶ L. Kaufman, *A Home Remedy for Juvenile Offenders: Keeping Youths With Their Families for Treatment, the City Sees Results*, *The New York Times* (Feb. 20, 2008) at B4.

²⁷ UCMS data shows that the number of placements on original JD petitions in New York City in 2005 was 1121, 39% were felony admissions/findings and 61% were misdemeanor or less admissions/findings. In 2006, there were 1036 placements, 38% were felony admissions/findings and 62% were misdemeanor or less admissions/findings. Finally in 2007, there were 760 placements, 40% were felony admissions/findings and 60% were misdemeanor or less admissions/findings.

temporary detention in New York City, between 41% and 44% had petitions with a top charge of a misdemeanor or less (violation or infraction). Other data gathered by the Vera Institute over a three-month period suggest that the number of youth detained and placed based on low level offenses may be less. Out of a sample of 1,782 youth who went through probation intake on juvenile delinquency charges between May and August 2006 (prior to the implementation of New York City's Risk Assessment Instrument): (1) only 25% of those sent to placement had misdemeanor arrest charges (45 of 180); and (2) only 30% of those ever detained at DJJ had misdemeanor arrest charges (198 of 661). The research also showed that: (1) only 7% of those sent to placement had misdemeanor arrest charges and were classified as "low risk" on New York City's Risk Assessment Instrument (13 of 180); and (2) only 12% of those ever detained had misdemeanor arrest charges and were classified as "low risk" on New York City's Risk Assessment Instrument (81 of 661).

While New York City's placements have steadily decreased, its use of detention has increased and now "[n]early half of arrested juveniles ... [in New York City] will spend at least some time in ... [pre-disposition] detention, while roughly 8% will end up confined in a state facility."²⁸ According to New York City's 2007 Independent Budget Office Fiscal Brief, the 15% increase in admissions to DJJ facilities from 2003 through 2007 is largely attributed to "direct police admits, which occur when Family Court is not open. Police admissions have risen from 1,769 in 2003 – or about 42 percent of total admissions of juvenile delinquents to secure detention – to 3,022 in 2007, or 64 percent of total admissions of juvenile delinquents to secure detention."²⁹ From 2005-2008, for counties outside New York City, the number of police admissions to secure and non-secure detention decreased from 2676 to 2078.³⁰ As set forth in Section VI (B) *infra*, to reduce the number of police admissions to detention facilities, the Task Force recommends that: (1) the court system monitor the new system of arraigning juveniles arrested in New York City over the weekend in Manhattan Criminal Court and consider expanding the capacity to arraign juveniles over the weekend statewide; and (2) police use respite rather than detention whenever possible to ensure both the youth's appearance in Family Court and public safety.

This Report will examine the positive outcomes for at-risk juveniles and the long term savings due to using placement and detention only as last resorts, and by reinvesting those savings in community-based alternatives-to-placement and detention, which should include effective cognitive behavioral therapies (e.g., Multisystemic Therapy [MST],³¹ Functional Family Therapy [FFT],³² Aggression Replacement Therapy

²⁸New York City's Independent Budget Office Fiscal Brief (December 2007) at 12.

²⁹ *Id.* at 5.

³⁰ Source: OCFS (2008).

³¹"One MST study followed juvenile offenders until they were, on average, 29 years old. Individuals who had not received MST were 62 percent more likely to have been arrested for any offense (81 percent vs. 50 percent), and more than twice as likely to be arrested for a violent offense (30 percent vs. 14 percent)" (Getting Juvenile Justice Right in New York at 13).

[ART], Adolescent Transitions Program [ATP], Brief Strategic Family Therapy [BSFT], Multi-dimensional Treatment Foster Care [MTFC] and Strengthening Families [SF]). Research has shown that these therapies change the negative patterns of behavior by teaching young people the skills needed to reduce aggression, substance abuse and criminal behavior. In terms of the potential long-term savings, “[a]nalysis shows that research-based approaches for cutting juvenile aggression and substance abuse problems reduce current custody costs and future crime so much that they can save an average of \$15,000 to \$75,000 per delinquent.”³³ One group, Fight Crime Invest in Kids, has projected that if 1,000 of the 2,000 juveniles currently in out-of-home placement were placed in MTFC, it would reduce their future involvement in crime to such an extent that it would produce an average net savings of \$78,000 per youth or a total overall savings of approximately \$75 million (see Appendix A).

The majority of young people in contact with probation also require services from other systems to address multiple and complex family, school, mental health, aggression, and/or substance abuse concerns. Probation is integral to the relationship among young people, their families, and service providers because of probation’s ability to engage the Family Court to improve outcomes. The mission of probation departments statewide should be to develop and fund community-based programming for juveniles and provide individualized supervision and treatment options that will hold young people accountable within a sound framework of public safety. Individual case plans must be flexible, providing an adjustable system of response (*i.e.*, the ability to rethink and retool service options when and if the young person fails) including graduated sanctions prior to a violation of probation petition being filed. A spectrum of balanced and specialized intervention strategies responsive to both the needs of the young person and the community sends a strong message that there is a belief in the young person’s potential and that the community’s safety is being protected. A continuum of programs will enable the court to use alternative strategies for addressing the needs of young people in both pre- and post-adjudication stages of a case. The Task Force’s investigation and research leads to the recommendation that local resources for probation and community-based services be increased to provide for a broader than currently existing array of in-community services, and the integration of those services for an appropriate systemic treatment of each young person requiring assistance.

In addition to increased funding and programming, as part of developing truly coordinated systems of care, all agencies, services and private and government institutions involved in juvenile justice must institute strategies to communicate and share data regarding assessment, treatment, and outcomes enabling each entity to follow the young person’s contacts across the systems (*e.g.*, juvenile justice, health, and

³² “It cuts re-arrests in half in one study (26 percent vs. 50 percent) and out-of-home placements by three quarters in another study (18 percent vs. 72 percent)” (Getting Juvenile Justice Right in New York at 13). Florida found that its MST and FFT programs reduced repeat arrests by 45% (FFT) and 48% (MST) (*id.* at 20).

³³ Getting Juvenile Justice Right in New York at 3.

human services). This communication must include regular reviews of the data, evaluation, and quality assurance.

The Task Force believes that juvenile probation officers perform a vital role in the future of young people who have come into contact with the juvenile justice system. The effectiveness of the probation officers' services is dependent upon both their ability to hold young people accountable for their actions and their ability to assess the risks and strengths of the young people so that a final case plan is tailored to achieve success.

Finally, we agree with the view expressed by Marian Wright Edelman, founder and President of the Children's Defense Fund, that "every adult who works with children in our education, health care, child welfare and juvenile justice systems should love and respect children or go do something else."³⁴ The men and women in New York State's probation system have a long record of distinguished service committed to public safety and to the young people subject to the juvenile justice system. The Task Force is confident that they can and will meet the challenges set forth in this Report.

³⁴ M. Edelman, *A Call to Action: The Cradle to Prison Pipeline Crisis*, NYS Bar Association Journal (January 2008).

II. THE ADOLESCENT BRAIN – THE REASON JUVENILE OFFENDERS ARE DIFFERENT

Scientists once believed that the brain was almost fully developed by age 6 – the age by which the brain has grown to 95% of its adult size.³⁵ It was also thought the brain underwent its most rapid development of neural connections between birth and age three. As a result, “psychologists attributed the intense, combustible emotions and unpredictable behavior of teens to ... [the] hormonal assault of puberty.”³⁶ While the influence of hormones continues to hold its place in explaining teen behavior,³⁷ recent medical studies, discussed more fully in Appendix G, have shown that there may be a biological reason for the differences found in the decision-making capabilities of an adolescent as compared to those of an adult. These studies, which used MRIs to track brain development, found that the prefrontal cortexes of adolescents’ brains did not complete their development until the young people had reached their early twenties. These findings are particularly salient given that the prefrontal cortex is the area of the brain responsible for reasoning, impulse control, cost-benefit calculations, good judgment and working memory (*i.e.*, the ability to connect past experiences with new information and link potential consequences with different scenarios).

Because of the immature prefrontal cortex, studies have found that an adolescent’s “behavior is highly influenced by the limbic and amygdala³⁸ regions of the

³⁵ *The Adolescent Brain: A User’s Manual*, ATPE News (Fall 2007).

³⁶ *What Makes Teens Tick; A flood of hormones, sure. But also a host of structural changes in the brain. Can those explain the behaviors that make adolescence so exciting – and so exasperating?* (“*What Makes Teens Tick*”) Time Magazine (May 10, 2004).

³⁷ In addition to the estrogen and testosterone being produced by the testes and ovaries (for boys there is a tenfold increase in the production of testosterone, a hormone associated with aggressiveness, during adolescence see *Cruel and Unusual Punishment: The Juvenile Death Penalty - Adolescence, Brain Development and Legal Culpability*, ABA Juvenile Justice Center [January 2004]), new research shows testosterone-like hormones being released by the adrenal glands located near the kidneys during this same period. The adrenal sex hormones are found to be extremely active in the brain, especially in the brain’s emotional center – the limbic system. They attach themselves to receptors and influence the serotonin and other neurochemicals that regulate mood and excitability. As a result, “adolescents tend to seek out situations where they can allow their emotions and passions to run wild” while at the same time, the parts of the brain that put the brakes on risky behavior are still under construction. (*What Makes Teens Tick*).

³⁸ In a study at Harvard University’s McLean Hospital, it was confirmed that in teenagers, the amygdala (the part of the brain that controls gut reactions and impulses) compensates for the less developed prefrontal cortex. In this study, adults and teens were shown photos of a human face and asked to identify the emotion expressed. It was found that younger teenagers were more likely to identify inaccurately a fearful expression as anger, and that in identifying the emotion, younger teens more often activated the amygdala, while older teens and adults used their frontal lobes. “This research suggests that early adolescents aren’t able to fully activate the more logical areas of their brains, which could lead them to misinterpret their interactions with others” (*The Adolescent Brain: A User’s Manual*, ATPE News [Fall 2007]).

brain associated with impulse and aggression.”³⁹ Consequently, adolescents are more volatile, more prone to risk-taking behavior, less capable of governing impulses, and more susceptible to peer pressure.⁴⁰

Adolescence, most often considered the period between the ages of 12-18, is the transitional period between childhood and adulthood. With the earlier onset of puberty and children continuing to reside in the family home until an older age than previous generations, this period has lengthened over the decades and today ranges from about age 10 to the early twenties.⁴¹ While children at the latter stages of adolescence (ages 15-18) often appear adult-like, many adult privileges (e.g., right to vote, serve on a jury, purchase alcohol, marry without parental consent, and enter into contracts) are withheld based on society’s view that adolescents lack the maturity to handle them until they have reached at least the age of 18, and for some privileges, age 21. Therefore, it is generally accepted in the law that “[juveniles] are more vulnerable, more impulsive and less self-disciplined than adults ... [and] may have less capacity to control their conduct and to think in long-range terms than adults ...,” characteristics that explain “[t]he reasons why juveniles are not trusted with the privileges and responsibilities of an adult
.....”⁴²

The legal justification for treating adolescents differently from adults was most recently addressed in 2005 when the U.S. Supreme Court, in *Roper v Simmons* (543 US 551 [2005]), reviewed the constitutionality of the death penalty for offenders who committed their crimes while under the age of 18. In holding the death penalty violative of the Eighth Amendment’s prohibition against cruel and unusual punishment, Justice Kennedy, writing for the majority, identified the following three differences between adolescents and adults:

First, as any parent knows and as the scientific and sociological studies ... tend to confirm ‘[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions

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³⁹ *Adolescent Brain Development: A Critical Factor in Juvenile Justice Reform*, Physicians for Human Rights (www.physiciansforhumanrights.org/juvenile-justice/factsheets/braindev.pdf).

⁴⁰ A. Haider, *Roper v Simmons: The Role of the Science Brief*, 3 Ohio State Journal of Criminal Law 369, 372 (2006).

⁴¹ For example, the Center for Disease Control defines adolescents as anyone between the ages of ten and twenty-four years of age (Virginia Department of Health – Office of Family Health Services, 2005); see also J. Arnett, *Emerging Adulthood: A Theory of Development from the Late Teens Through the Twenties*, 55 Am. Psychologist 469, 476 [2000]; M. Beckman, *Crime, Culpability and the Adolescent Brain*, Science Magazine [June 30, 2004] [noting that brain researchers find brain maturation to max out anywhere between age 20-25].

⁴² *Thompson v Oklahoma*, 487 US 815, 834-35 (1988).

The second area of difference is that juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure ... This is explained in part by the prevailing circumstances that juveniles have less control, or less experience with control, over their own environment.

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The third broad difference is that the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed.⁴³

Researchers find adolescents to be risk takers⁴⁴ to a greater degree than adults because they undervalue the consequences of their actions and overvalue impulsivity, fun-seeking, and peer approval. Indeed, “it is statistically normative for adolescents to engage in some form of illegal activity⁴⁵ ... But ... [because] levels of planning and thinking about the future increase as adolescents grow older ... the same person who engages in risky or even criminal behavior as an adolescent may moderate or desist from these behaviors as an adult. Indeed, most do.”⁴⁶

The decision-making deficiencies do not result from an adolescent’s “inability to distinguish right from wrong. Nor is it a function, as early studies suggested, of an inability to conduct any cost-benefit analysis at all. Rather, the difference lies in ... [their] inability to perceive and weigh risks and benefits *accurately* ... They focus more on opportunities for gains and less on protection against losses. They put greater emphasis on short-term consequences than adults and discount future consequences more than adults.”⁴⁷

The underlying premise of the criminal justice system is that a person understands the consequences of his/her actions so that he/she may be held

⁴³ *Roper*, 543 US at 569-70.

⁴⁴ For example, due to the risk-taking nature of adolescents, “[f]rom early to late adolescence, death rates increase by more than 200% – the single largest increase between any two age groups” (American Psychological Association Brief at 5). Another study has found that “[r]isk-taking of all sorts – whether drunk driving, unprotected sex, experimentation with drugs, or even criminal activity – is so pervasive that ‘it is statistically aberrant to refrain from such [risk-taking] behavior during adolescence’ (L.P.Spear, *The Adolescent Brain and Age-Related Behavioral Manifestations*, 24 *Neuroscience & Biobehav. Revs.* 417, 421 [2000]).

⁴⁵ “When ‘crime rates are plotted against age, the rates for both prevalence and incidence of offending appear highest during adolescence’” (American Psychological Ass’n Brief at 5 [quoting Terrie E. Moffitt, *Natural Histories of Delinquency*, in *Cross-National Longitudinal Research on Human Development and Criminal Behavior* 3,4 [Elmar G.M. Weitekamp & Hans-Jurgen Kerner eds., 1994]).

⁴⁶ Brief submitted by the American Psychological Association in *Roper v Simmons*, 543 US 551(2005) at 6-7.

⁴⁷ Brief submitted by the American Medical Association, *et al.* in *Roper v Simmons*, 543 US 551(2005) at 5-6.

accountable for them. Based on the foregoing scientific evidence, it is just and proper for the juvenile justice system to separate and treat juvenile offenders differently from their adult counterparts since there is no clear demarcation as to the age at which an adolescent fully understands the consequences of his/her actions. “[A]dolescents as a group are less able to make good decisions based on mature levels of judgment,⁴⁸ and as a result are less responsible for their actions, and ... are more likely to be receptive and responsive to treatment, thereby rendering them more likely to benefit from rehabilitations.”⁴⁹ The effectiveness of rehabilitation cannot be overemphasized since “studies suggest that because youth are more readily changeable, interventions that enhance their understanding and skills are most effective in changing their behavior and improving future community safety as opposed to strictly punitive responses.”⁵⁰

As described more fully in Appendix C, the Family Court was premised on a rehabilitative/treatment court model. However, based on a number of factors, including increased caseloads with no commensurate increase in Family Court judges and the general low stature afforded to the Family Court, the Task Force heard that in some Family Courts, there has been a shift away from the original treatment court model. As set forth in Appendix C, the Task Force recommends that the current legislative proposal to add 39 Family Court judgeships statewide, as well as other proposals to increase the resources of the Family Courts, be adopted so that all Family Courts may operate pursuant to a treatment court model (similar to the problem-solving courts that currently exist – *e.g.*, drug courts, DV and IDV courts, mental health courts and sex offender courts). The Task Force believes that the Family Court is the legal forum best-suited to effectuate a rehabilitative model since it “brings parents, social workers, probation officers, schools, service providers, and members of the community into a problem-solving environment to address some of society’s most enduring problems.”⁵¹

⁴⁸ These authors explained the reasons for the immature judgment as the developing brains’ susceptibility to the neurological effects of external influences such as peer pressure, and that adolescents “are cognitively less able to select behavioral strategies associated with self-regulation, judgment and planning that would reduce the effects of environmental risk factors for engaging in such behaviors” (Gruber, Yurgelun-Todd, *Neurobiology and the Law: A Role in Juvenile Justice?* 3 Ohio State Journal of Criminal Law 321, 330 [2005]).

⁴⁹ *Id.*

⁵⁰ National Council of Juvenile and Family Court Judges, *Juvenile Delinquency Guidelines* at 21.

⁵¹ *Id.* at 22.

III. THE GOVERNOR AND LEGISLATURE SHOULD ESTABLISH A COMMISSION TO INVESTIGATE WHETHER NEW YORK SHOULD RAISE THE AGE OF CRIMINAL RESPONSIBILITY TO 18

Many Task Force members believe that New York State's justice system cannot be improved unless we acknowledge and address in every aspect of the adjudicatory process the developmental differences of adolescents under 18 years of age. This includes the age by which offenders should be presumptively viewed as criminally responsible. Probation policy and practice must be aligned with evidence-based models which focus on rehabilitation of young offenders.⁵² Raising the age of criminal responsibility to 18 years of age is a critical element that must be examined.⁵³

New York is rapidly becoming isolated in the way it treats its adolescent offenders. Currently, only two other states fix the age of criminal responsibility at 16 -- Connecticut and North Carolina.⁵⁴ Connecticut has already recognized the need to address specific issues relating to adolescent offenders by passing legislation that will raise the age of criminal responsibility to 18, effective January 1, 2010. North Carolina is also considering legislation that would raise its age of criminal responsibility.

Many of the factors associated with the trend to expand the delinquency jurisdiction of the Family/Juvenile Court to 16 and 17-year-olds are contained in the U.S. Supreme Court's decision outlawing the death penalty for anyone younger than 18. In *Roper v. Simmons* (543 US 551 [2005]), the Court noted in March 2005:

Three general differences between juveniles under 18 and adults demonstrate that juvenile offenders cannot with reliability be classified among the worst offenders. First .. [a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are understandable among the young [Second] ... juveniles are more vulnerable

⁵² Currently, the adult branch of New York City's DOP supervises 16 and 17-year-olds, as well as 14 and 15-year-olds sentenced as juvenile offenders. In the 2007 Report, the Task Force noted certain areas for improvement which included the idea "that youth under the age of eighteen receive probation supervision based on the juvenile service provision model, since the needs of the adolescent population are the same regardless of the locus of the prosecution" (2007 Report at 52). In furtherance of this recommendation, and as set forth in more detail in Appendix D, on June 4, 2007, Westchester County's Department of Probation established a Young Offender Unit to tailor sentencing requests and supervision of 13-17 year old misdemeanants and felons based on age-specific modalities, including the employment of mental health, educational, substance abuse education/treatment, forensic evaluations, and resources available to individuals age 18 and under. The unit currently supervises 120 cases (65 felonies and 55 misdemeanors), and it is envisioned that the unit will increase in size over time.

⁵³ There were a number of Task Force members who were opposed to taking a position on whether such legislation should be enacted, believing that this matter was beyond the Task Force's charge, but were in favor of the establishment of a commission to investigate the issue.

⁵⁴ At present, 37 states and the District of Columbia maintain the upper age limit of 18, while 10 states use an upper age limit of 17. Connecticut recently passed legislation raising the age to 18, which will become fully effective in 2010. North Carolina's Sentencing and Policy Advisory Study Commission has recommended that North Carolina raise the age to 18.

or susceptible to negative influences and outside pressures, including peer pressure [Third] ... the character of a juvenile is not as well formed as that of an adult These differences render suspect any conclusion that a juvenile falls among the worst offenders From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed For the reasons we have discussed ... a line must be drawn The age of 18 is the point where society draws the line for many purposes between childhood and adulthood.⁵⁵

Critical both to the Supreme Court's reasoning and to evolving national best practices are recent developments in neuroscience suggesting that teenagers are neither competent to stand trial under the same circumstances as adults nor as blameworthy for their actions.

Incorporating 16 and 17-year-old young people, as well as 13, 14 and 15-year-olds charged as juvenile offenders, into the Family Court also makes sense when we compare the recidivism rates of young people processed in the juvenile system to those handled in the adult system. Studies have found that young people processed in the adult system are likely to re-offend more quickly and at higher rates.⁵⁶ Most recently, a study conducted by the Centers For Disease Control and Prevention found that teens transferred to the adult justice system are 34% more likely to be arrested again.⁵⁷ The juvenile justice system, however, is typically characterized by higher staff-to-youth ratios, staff who are philosophically oriented toward treatment and rehabilitation, and programming that facilitates the development of social competencies and reduces the risk of recidivism.

⁵⁵ *Roper*, 543 US at 569-70.

⁵⁶ D. Frazier, C. Lanza-Kaduce, L. Winner, *The Transfer of Juveniles to Criminal Court: Does it Make a Difference?* *Crime and Delinquency*, 42(2), 171-191; M. Mason and S. Chang, *Re-arrest Rates Among Youth Sentenced in Adult Court: An Evaluation of the Juvenile Sentencing Advocacy Project*, Miami – Dade County Public Defender (2001) (http://www.pdmiami.com/JSAP_2001_Impact_Evaluation.pdf); R. Reding, *Examining Legal Issues: Juvenile Offenders in Criminal Court and Adult Prison* (Corrections Today 1999); J. Fagan, *Separating the Men From the Boys: The Comparative Advantage of Juvenile versus Criminal Court Sanctions on Recidivism among Adolescent Felony Offenders*, in *Guide for Implementing the Comprehensive Strategy for Serious, Violent and Chronic Juvenile Offenders*, Edited by J. Howell et al. (Thousand Oaks, CA, Sage Publications, Inc.); J. Butts & O. Mitchell, *Brick by Brick: Dismantling the Border between Juvenile and Adult Justice* (study found juveniles sent to adult prisons are more likely to re-offend than juveniles who commit the same type of crime but are sent to juvenile facilities).

⁵⁷ A. McGowan, et al., *Effects on Violence of Laws and Policies Facilitating the Transfer of Juveniles from the Juvenile Justice System to the Adult Justice System; A Systemic Review*, 32 *Am J Prev Med* S7 (April 2007); see also R. Pierre, *Adult System Worsens Juvenile Recidivism, Report Says*, *Washington Post* (Nov. 20, 2007) at A14; *Report: Teens More Likely to Reoffend*, *Huron Daily Tribune* (Feb. 2, 2008) (17-year-olds housed in Wisconsin's adult prisons were re-incarcerated at nearly twice the rate of offenders released from juvenile institutions).

Admittedly, this is a serious policy matter and a sensitive political issue. Increasingly, probation is supervising a different population of young and violent offenders. Consider the recently disclosed information from DPCA that in 2007, adult probationers (16 and older) committed 18 homicides, eight of which were committed by young offenders aged 16-21. During the first five weeks of 2008, seven homicides were committed by probationers, five of which were committed by young offenders aged 16-21. This is of grave concern for all involved in juvenile justice and possible evidence that probation's treatment of late-teenagers requires methods different from those utilized with adult criminals. As Gladys Carrión, Commissioner of New York State's OCFS recently declared: "Our approach to addressing the needs of these children must draw on current research on adolescent brain development and the undeniable fact that young people have the ability to change their behavior. That means providing them with intervention and support ... for a successful transition to adulthood."⁵⁸

The Task Force did not reach consensus on the issue of whether New York State should follow the national trend and raise the age to 18. All members agreed that it is deserving of further study. The members who were opposed argued, *inter alia*: (1) 16 and 17-year-olds may have greater rights in the adult system due to the lack of an immediate arraignment requirement in the FCA and the longer time period it takes to dispose of cases in the Family Court as compared to the criminal courts; (2) the age increase would move the 16 and 17-year-olds to detention facilities operated by localities and would endanger the young people currently housed there; and (3) shifting 16 and 17-year-olds to the juvenile justice system would have profound workload effects. With regard to the last argument, it has been estimated that the addition of 16 and 17-year-olds would cause a 200% increase in juvenile intakes in New York City alone.

The members who were in favor of endorsing New York State's raising the age to 18 cited the recent research on the adolescent brain and other research showing that youth processed in the adult system are likely to re-offend more quickly and at higher rates, have increased rates of suicide and greater vulnerability to depression, sexual exploitation and physical assault.⁵⁹ These members also pointed to the long term cost savings that would accrue by having 16 and 17-year-olds processed in the juvenile justice system.

In order to best consider policy and practice toward young offenders, the Task Force recommends that the Governor and the Legislature establish a commission⁶⁰ to

⁵⁸ SYRACUSE POST STANDARD (Internet copy), Tuesday, Feb. 5, 2008.

⁵⁹ M. Forst et al., *Youth in Prisons and Training Schools: Perceptions and Consequences of the Treatment-Custody Dichotomy*, Juvenile and Family Court, vol. 4 (1989) (offenders who enter the adult prison under the age of 18 are five times more likely to be sexually assaulted, twice as likely to be beaten by staff, and 50% more likely to be attacked with a weapon than are minors in juvenile facilities).

⁶⁰ The Task Force notes that since this Report's completion, the Executive Committee of the New York State Bar Association adopted a resolution, submitted by its Committee on Children and the Law,

examine the advisability of legislation to expand the Family Court's delinquency jurisdiction to children under 18, with a provision that would allow for the transfer of certain cases to the adult court only after a due process hearing in the Family Court. The commission would also be required to evaluate all the potential effects that would flow from this legislation. For example, because probation officers servicing youth have smaller caseloads than their adult counterparts, probation departments would have to create additional probation officer positions. Furthermore, older youth tend to require more services, so raising the age to 18 would likely require an increase in community-based services.

requesting that the Governor and Legislature establish and fund a commission to determine whether the jurisdictional age of juvenile delinquency should be raised in New York State.

IV. FUNDING PROBATION

A. State Funding

In the 2007 Report, which focused on probation's role in the New York State's adult criminal courts, the Task Force reached "the inescapable conclusion that, due to a long, unyielding history of state funding cuts, the current status of probation in New York is a bleak one."⁶¹ One year later, that conclusion is equally applicable to funding levels for services which local probation departments provide to Family Courts and the young people they serve.

That Report went on to declare that:

In New York State, one of probation's most daunting constraints is a startling lack of resources. National academic and policy experts on probation and community corrections have said for years that probation is the most under-funded part of the criminal justice system;⁶² New York probation certainly illustrates that point.

Few, if any New York probation departments are funded adequately in terms of having reasonable caseload sizes for either adult or juvenile probationers. Many lack the necessary resources to pay for the essential community based services needed to prevent recidivism such as drug treatment, job and vocational training and placement, and mental health services. Again and again, the Task Force heard from probation directors and other experts that almost all probation departments constantly struggle to control caseload size and triage necessary services with little to no budget growth. Average caseloads for probation officers are frequently well over a hundred to one, far above any acceptable national standard. While this state of affairs is a national phenomenon, it is especially pronounced in New York State, where over the last two decades the State has systematically disinvested in probation.

* * *

In 1986, New York State was reimbursing county probation departments almost 47% of their total budgets. Historically, the State provided almost half of county probation budgets since almost half of the adults on probation were convicted felons ... and local probation departments were viewed by the State as saving it the tremendous cost of housing these offenders. For the State, probation offers the largest alternative sentence to prison

In the late 1980's, this all started to change. The State gradually and continually reduced support for local probation departments. Today, reimbursement to local probation departments hovers around 18%, a staggering withdrawal of aid over

⁶¹ 2007 Report at 2.

⁶² Petersilia 1997, Clear 2005.

the last 20 years. The cumulative loss in state aid over this period is difficult to calculate but in the last year alone, the State would have provided almost \$130 million to counties as opposed to the \$52 million (the amount that now goes directly to local probation departments) it actually provided. Over the last two decades, the State has provided less funding each year and counties have lost some hundreds of millions of dollars in state aid.

It is difficult to identify the reasons behind this ongoing disinvestment. No similar pattern in state funding to prisons, parole or state police is evident. In the final analysis, it is most likely the case that the State systematically reduced funding to local probation departments simply because it could. That is, state policy and budget officials assumed that if they withdrew aid from local probation departments, then the local county executives, mayors and legislators would have to make up the funding shortfalls with local tax levy dollars. As the State has withdrawn funds from probation, local officials have struggled to make up the budget shortfalls the State created. Even in tightly constrained local budgets, county officials recognize the importance of having at least minimally functioning probation departments to supervise thousands of probationers in their communities and of having at least some ability to provide timely ...reports to state courts. The probation funding story then is a classic one of the State simply forcing costs down to a county level and of reaping some small state budget savings.

The problem with this situation, however, is that most counties have not made up the entire shortfall from the State. As a result of declining state reimbursement, almost all the new money counties have put into probation over the last two decades has covered budget deficits in local departments. Thus, over time, counties have been unable to adequately fund their departments as the number of probationers has risen, and the cost of technology and information system infrastructure has grown.⁶³

State aid to probation consists of reimbursement to counties and New York City for their “eligible expenditures” which include “clerical costs and maintenance and operation costs as well as salaries of probation personnel”⁶⁴ and such other services as are contained in Rule 345 promulgated by the Director of DPCA. It is those expenses for which 18% reimbursement is made.

In fiscal year 2006-2007, probation departments’ total “eligible expenditures” were \$257,000,000. State funding for those probation services for fiscal year 2006-2007 totaled \$57,231,000 and is broken down as follows:

⁶³ 2007 Report at 11-12.

⁶⁴ Executive Law § 246(3).

Fiscal Year 2006-2007 State Funding for Probation Services

State Aid to Probation*	\$46,584,000
Intensive Supervision	5,996,000
Intensive Supervision-Sex Offenders*	1,300,000

DNA Collection*	1,000,000
Juvenile Intensive Supervision	1,211,000
Probation Eligible Diversion	<u>1,140,000</u>
	\$57,231,000

*All counties receive this funding. The other funding streams are allocated to those counties that operate the special programs listed.

Because only two of the above items are relevant to juvenile probation (*i.e.*, State Aid to Probation and Juvenile Intensive Supervision Program), the current funding available to probation departments statewide for funding juvenile probation is a portion of \$46,585,000⁶⁵ and \$1,211,000.

B. Reimbursement for Supervision

The “Juvenile Intensive Supervision” program was discontinued in 2007 and has been replaced, at approximately the same level of funding, by a new “Juvenile Risk Intervention Services Coordination” (J-RISC) program that combines intensive supervision with use of the full YASI instrument as well as youth and evidence-based interventions that have been proven effective. The program targets both PINS and JD youth who are at high risk of recidivism and is currently being introduced in seven counties (*i.e.*, Monroe, Onondaga, Dutchess, Niagara, Orange, Oswego and Schenectady). A full description of the J-RISC program is set forth in Appendix F.

The Task Force recommends that funding for juvenile probation and community-based services should be significantly increased in the areas of diversion services, alternatives-to-detention (ATD), intensive supervision, evidence-based treatments such as MST, FFT, ATP, BSFT, ART, MTFC and alternatives-to-placement (ATP). Failure to fund juvenile probation programs sufficiently will continue to result in increased petition filings, over-reliance on juvenile detention and, ultimately, juvenile placement.

Reliance on a State fiscal policy that favors detention and placement is neither cost-efficient nor effective. In New York City, “the per diem cost per youth in secure detention exceeds \$594... and the annual placement cost per youth in OCFS placement is approximately \$120,000. In comparison, the average annual cost for ATI/ATP for

⁶⁵ Approximately 22% of New York City DOP’s budget is allocated to juvenile probation. Thus, if all probation departments have similar budgets, the annual funding by the State for juvenile probation is about \$10 million a year.

even the most expensive program (e.g., New York City's Esperanza program) is approximately \$26,250."⁶⁶

The State's current funding of detention and placement and the gross underfunding of probation create disincentives to develop local alternatives that can produce better outcomes for youth as well as broad system savings. As set forth in the Introduction, research indicates that the incidence of recidivism is lower for youth in alternatives-to-placement programs than for youth in placement, possibly because youth in alternatives-to-placement are able to maintain ties to their families, communities and educational continuity.

In addition to the 18% funding limited to eligible expenditures, the State makes funding available for certain programs that involve probation's participation or for other programs which vitally affect probation's work with young people.

One example is the cost of local temporary detention facilities. At the initial hearing following a PINS or JD charge, the Family Court judge must determine whether to release the young person to his/her family or to place him/her in a local youth detention facility. Young people may also be detained pending arraignment when the Family Court is not in session, where a parent to whom the young person may be released cannot be located. Under existing law, the State and the locality share the total annual cost of \$120 million on a 50/50 equal share basis. Although former Governor Spitzer's budget for the State fiscal year (SFY) 2008-09 proposed to eliminate all state funding for local juvenile detention facilities, the enacted budget for SFY 2008-09 reduces the State share of detention placement costs by 2%, part of an across the board 2% reduction in Local Assistance funding.⁶⁷ The official budget message stated that the elimination was intended to "encourage local governments to increase reliance on less costly and more effective community-based alternatives that offer more comprehensive services to address the needs of vulnerable youth." This expectation appears to be consistent with the experience of some New York counties and other jurisdictions around the country that have found that, under the right circumstances, detention reforms can be safely used to redirect and supervise the large number of young delinquents who are not a serious threat to their communities. But this expectation is predicated on having local programs in place that effectively reduce detention utilization – programs that take time and require additional funding to initiate. There will always be a certain number of young people who pose a significant risk to the public's safety, thereby requiring that they be placed in facilities outside of their communities.

In further keeping with what is clearly a local, state and national policy to limit out-of-home placement for only the most serious offenders, state and federal funding continues to be available for programs that divert certain youth away from placement

⁶⁶ New York City's Independent Budget Office's Fiscal Brief (December 2007) at 9.

⁶⁷ *Highlights of the Office of Children and Family Services SFY 2008-2009 Enacted Budget*, OCFS (April 2008).

and into programs of intensive interventions. In 2002, New York State enacted Child Welfare Financing provisions⁶⁸ that provided local social services departments with 65% reimbursement for many child welfare costs, including preventive services.⁶⁹ Pursuant to Social Services Law § 409, preventive services may take numerous forms.

There are two categories to access this child welfare funding formula, Community Optional Preventive Services (COPS) and Mandated Preventive Service (MPS). COPS funding is directed to youth facing potential foster care placement and MPS funding is directed to youth facing immediate risk of foster care placement. In the probation service delivery continuum, COPS funding is appropriate for probation diversion services and MPS funding for formally adjudicated youth appearing before the Family Court.

There is presently no statutory cap on the total reimbursement amount a county can receive under this financing. It is common practice for the LDSS to contract with its probation department to provide preventive diversion services using child welfare preventive services funding. There are limitations to using this funding stream. By statute, these preventive services dollars may not be used to fund juvenile programs and staff of the local probation department that existed in 2002, when the child welfare financing provisions were enacted. In addition, there are administrative requirements associated with MPS, including required family assessment and services plans that are entered into the child welfare computer system known as CONNECTIONS, which constitute a considerable administrative burden for probation.

Preventive

If the Family Court ultimately decides that a JD's must be placed, it may be with the OCFS which operates a variety of facilities classified variously as "secure", "limited secure", and "non-secure" group homes and foster homes. The annual costs of which are:

Non-secure \$109,000

Limited Secure \$126,000

Secure \$143,000

⁶⁸ Social Services Law § 153-k.

⁶⁹ "Preventive services" are defined in Social Services Law § 409 as

supportive and rehabilitative services provided to children and their families for the purpose of averting an impairment or disruption of a family which will or could result in the placement of a child in foster care; enabling a child who has been placed in foster care to return to his family at an earlier time than would otherwise be possible; or reducing the likelihood that a child who has been discharged from foster care would return to such care.

Placement costs for JD's are shared by the State and localities on a 50/50 basis. For JD's not placed in OCFS's care and custody or in an OCFS operated facility/program who are however deemed in need of placement, and PINS youth, local social services districts receive a State Foster Care Block Grant, which along with federal funding for some eligible youth/families, is intended to reimburse localities for their foster care expenditures. However, once the Block Grant amount has been expended by a social services district, the complete cost of any further placements fall 100% on the locality, except where the child is found to be eligible for Title IV-E of the Social Security Act (42 U.S.C. § 672[c]) reimbursement, in which case the locality is responsible for half of the placement costs that exceed their Block Grant allocation.

C. Federal Aid

Title IV-E of Social Security Act (42 U.S.C. § 672[c]) funds 50% of the state and local costs for placing JD and PINS youth in out-of-home, non-secure facilities with foster parents or a voluntary agency. These funds are administered by the local social services district and, unlike the state federal block grant, have no cap on the total dollars a district may receive. In addition, incentive funds are available to reduce the number of days in foster care. Thus, in the case of Title IV-E eligible young people, each of the state and local shares becomes 25% of foster care. In 2006, New York received almost \$500 million under this funding stream to offset the cost of placement of abused and neglected children and placement of PINS and JD youth in non-secure settings.

D. Recommendations

1. In order to establish uniform, consistent, reasonable and effective statewide standards for juvenile probation caseload/workloads, available funding must be significantly increased. The total annual statewide probation expenditure is \$257,000,000. As most local probation departments allocate approximately 20 to 22% of their budget to juvenile probation services, the total annual statewide expenditure for juvenile probation is roughly \$52,000,000.
2. At \$57,231,000, the 2006-2007 total reimbursement aid to localities represented just 17% of total expenditures. Of this total aid to localities, only a portion of the \$46,584,000 designated "State Aid to Probation" and the \$1,211,000 designated "Juvenile Intensive Supervision" was available statewide for juvenile probation service delivery. Thus, the current total annual state reimbursement for juvenile probation services is approximately \$10,000,000.
3. The state child welfare system, which provides services to many of the same young people served by probation, allows for a 65/35% reimbursement rate to LDSS's.⁷⁰ It is strongly recommended that juvenile probation services be

⁷⁰ However, the Child Welfare Financing funding was also subject to the overall 2% reduction in Local Assistance as part of the enacted Budget, reducing the State reimbursement for these services to approximately 63%.

reimbursed utilizing the same 65/35% reimbursement rate as child welfare. If this reimbursement rate were applied, it would increase statewide reimbursement to localities to between \$35,000,000 and \$40,000,000 for juvenile probation services. However, it is recommended that a separate funding stream be developed to fund probation expenditures for adjustment, diversion and alternatives-to-detention and placement services for alleged and adjudicated PINS and JD youth. A separate funding stream would permit the tracking of State and local expenditures used to provide community-based services and a comparison with detention and placement costs to determine whether the community-based services were successful in decreasing State and local detention and placement costs. In addition, a separate funding stream would allow local probation departments to use alternative assessment and case management tools designed for this population and already in use in many, if not most jurisdictions.

4. Additionally, in the enacted 2008-2009 budget, OCFS Commissioner Gladys Carrión eliminated four OCFS residential facilities for an overall reduction of 159 residential beds. For SFY 2008-09, a savings of \$1.55 million is projected and is expected to grow to \$7.4 million in SFY 2009-2010.⁷¹ In addition to OCFS's current targets for reinvestment of these savings (*i.e.*, educational services and aftercare services for youth placed in OCFS facilities, and continued investment in evidence-based community initiatives designed to reduce length of stay in OCFS facilities and divert non-violent youth from OCFS placements), if the State and localities were able to share a portion of the projected savings, these funds could be appropriated to offset reimbursement increases for juvenile probation service delivery statewide.

⁷¹ *Highlights of the Office of Children and Family Services SFY 2008-2009 Enacted Budget*, OCFS (April 2008).

V. UNIFORM RESTORATIVE JUSTICE POLICIES AND PROCEDURES SHOULD BE ADOPTED: OFFENDERS SHOULD BE HELD ACCOUNTABLE TO VICTIMS AND COMMUNITIES

When an offense is committed, the offender assumes an obligation to the individual victim and the community where the offense took place. The juvenile justice system must aid in creating a belief that justice is restored to both the victim and the community. Part of holding offenders accountable includes providing immediate and relevant consequences for the offending behavior. The importance of holding offenders accountable to their victims is outlined in *Juvenile Probation: The Balanced Approach* (National Council of Juvenile and Family Court Judges) where authors Dennis Maloney, Dennis Romig, and Troy Armstrong introduce the balanced approach to juvenile probation. Beginning with the recognition that there are three main principles of juvenile justice, this approach requires that probation services incorporate a balance among:

1. Protecting public safety by effectively monitoring the behavior of young offenders;
2. Holding offenders accountable for their offenses and to their victims; and
3. Facilitating the young person's competency development via rehabilitative and skill building services.

From a restorative perspective, accountability occurs when offenders take responsibility for the crime, understand the harm it has caused the victim, and take action to make amends to the victim by restoring the loss to the degree possible. When victims and communities have an active role in the sanctioning process, they recommend obligations and monitor, mentor and ensure compliance. The response to crime should meet the needs of the victim, community, and the offender, involving each in the justice process to the greatest extent possible. This approach is also called "fast track accountability."

The goals associated with this approach are:

- To provide the victim, if he or she so chooses, and the neighborhood with the opportunity to converse with the offender in a safe and productive manner;
- To provide an opportunity for an offender to take responsibility and make amends;
- To provide citizen ownership of and involvement with the justice system;
- To provide a response to crimes without specific victims; and
- To provide a timely, non-judicial response to non-violent offenses.

These goals could be satisfied if all juvenile justice participants adopted uniform standards (policies and procedures) that, among other things, view crime victims as stakeholders entitled to receive fair treatment. While the Executive Law §§ 640, *et seq.*, currently provides a framework for fair treatment standards for crime victims, these laws have not been applied consistently to crime victims in the juvenile justice system. Furthermore, even in the adult system, because these laws are rarely enforced, they are relatively ineffectual in practice. Fair treatment standards, as established by

Executive Law, are required to be extended to all crime victims, whether the crime is committed by an adult or a juvenile. This mandate becomes even more urgent when one recognizes that the majority of victims of juvenile crime are children themselves. Currently, many local probation departments offer significant services to victims by explaining the period of probation, ensuring that victim safety is part of the supervision plan (e.g., order of protection), and enforcing the restitution ordered.

Recommendations

1. The Task Force recommends that uniform standards be adopted by all juvenile justice participants that address the following critical areas:
 - a. Information - All victims should receive accurate and complete information about the juvenile justice system, including information regarding adjustment, detention standards, orders of protection, and dispositional options. Victims should be informed about “the role of the victims in the [juvenile] justice process, including what they can expect from the system as well as what the system expects from them” and “stages in the [juvenile] justice process of significance to a crime victim.”⁷² All victims should receive information about appropriate and available services and programs, including hotlines, victim/witness assistance programs, rape crisis centers, elderly victim services, domestic violence shelters and crime victim compensation.⁷³ Competent and culturally sensitive interpreters should be made available whenever needed. Because the language of Executive Law § 640 makes clear that the Fair Treatment Standards for Crime Victims was intended to include not only the criminal justice system, but also the juvenile justice system, it is appropriate that the Division of Criminal Justice Services, in conjunction with the Crime Victims Board, and in further consultation with representatives from DPCA, probation departments, presentment agencies, the Office of Court Administration (OCA) and OCFS, develop a pamphlet for distribution to victims by the presentment agencies.
 - b. Appropriate facilities - All victims and other witnesses should, where possible, be provided a secure waiting area that is separate from other witnesses and interviewed in a private setting.⁷⁴
 - c. Consultation – Presentment agencies should consult victims and appropriate family members (if victim is a child or deceased) in order to obtain the victim’s views regarding disposition.⁷⁵ Presentment agencies should also apprise victims of their right to make victim impact statements to the court. Such statements

⁷² Executive Law §§ 641(1)(c) and (d).

⁷³ Executive Law § 641(1).

⁷⁴ Executive Law § 642(2), (2-a).

⁷⁵ Executive Law § 642(1).

should include “the victim’s version of the offense, the extent of injury or economic loss or damage to the victim and the views of the victim relating to disposition including the amount of restitution sought by the victim.”⁷⁶

d. Notification – Police departments should notify victims and appropriate family members about the arrest of the juvenile, and presentment agencies should notify victims and appropriate family members about the initial appearance of the juvenile in court, the release of the juvenile pending judicial proceedings, and proceedings involving the accused including the entry of an admission, fact-finding, disposition, and minimum and maximum periods of probation or placement terms.⁷⁷ The victims must also be provided, without charge, a copy of a police report of the crime.⁷⁸ Victims should be notified about any orders providing for restitution and provisions for enforcing such orders.⁷⁹

e. Enforcement of Restitution – As set forth in more detail in Section VIII B(7), *infra*, the FCA should be amended so that if the local probation department is designated the entity responsible for collecting and enforcing the order of restitution, it will be reimbursed for the expenses incurred with the surcharge imposed by the Family Court.

f. Return of property - “Law enforcement agencies and [presentment agencies] shall promptly return property held for evidentiary purposes unless there is a compelling reason for retaining it relating to proof at trial.”⁸⁰

g. Assistance with employers - Victims who so request shall be assisted by law enforcement agencies and presentment agencies in informing their employers (or schools) about the need for the victim’s cooperation in the case.⁸¹

h. Safety planning - Agencies, including probation departments and presentment agencies, should assist victims with safety planning, including advising them of orders of protection, provisions for enforcement and statutes governing violations. Victim safety should be part of each supervision plan for probation and aftercare agencies.⁸²

⁷⁶ FCA § 351.1(4).

⁷⁷ Executive Law §641(3).

⁷⁸ Executive Law §646(1).

⁷⁹ FCA §353.6, Executive Law §641(3)(d).

⁸⁰ Executive Law §642(3).

⁸¹ Executive Law §642(4).

⁸² Executive Law §641(2).

i. Other items - Additional steps should be taken to promote victim safety and empowerment, including the establishment of a notification system, similar to the VINE⁸³ system for adults. Such a system would inform victims about the detention or placement status of offenders as well as provide information concerning any escape from custody. While there are confidentiality concerns that must be addressed concerning juveniles, it is envisioned that technology should provide the means to prevent dissemination of such information beyond those immediately concerned and entitled to such information. Finally, FCA §§ 304.2(1) and 352.3 should be amended to authorize the issuance of temporary and final orders of protection to “designated witnesses” in juvenile delinquency cases, so that these eyewitnesses are afforded the same protections as eyewitnesses to crime committed by adult offenders.

j. The Task Force recommends that the Fair Treatment Standards in the Executive Law, Article 23 be amended to delineate whose responsibility it is to address particular victims’ rights and protections with respect to the juvenile justice system to ensure juvenile justice agencies’ compliance with the requirements concerning victim’s rights and restorative justice.

2. The Task Force acknowledges the extensive work being performed by the Crime Victim and Probation Workgroup (Appendix H), and awaits its future recommendations.⁸⁴

⁸³ The Victim Information Notification System (VINE) allows victims to be notified about the offender’s release from jail and any upcoming parole hearings.

⁸⁴ The Task Force notes that since this Report’s completion, the Crime Victim and Probation Workgroup issued its recommendations which were distributed to all Probation Administrators in July 2008.

VI. PROBATION'S ROLE IN THE FAMILY COURT: AREAS FOR IMPROVEMENT

A. Probation's Pre-Adjudicative Role as Gatekeeper to the Family Court

1. Probation's Authority to Adjust Juvenile Delinquency Cases

One of probation's most important roles is protector of the public's safety. The juvenile justice system must be involved in more than punishment and control; it must endeavor both to prevent crime and delinquency and to effect positive behavior change. In Family Court, a means for achieving that goal can begin at the probation intake of JD cases because it is the first step in the delinquency process. Probation intake may be the most crucial point in the juvenile justice system because it is the point at which probation officers have some discretion to decide who enters the juvenile justice system and under what conditions.

With some exceptions, during intake of cases involving those charged as JD's, local probation departments may engage in an "adjustment process" by working with the victim, alleged delinquent, and his or her family for a period of 60-120 days in an attempt to "settle" the case without formal court intervention. The intake probation officer cannot prevent a complainant from requesting that the presentment agency file a JD petition and, therefore, the adjustment process requires the consent of the complainant in all cases. However, as set forth in more detail *infra*, because the Family Court Act fails to define the term complainant, local probation departments differ in their interpretation of the term – some deem the victim to be the complainant whereas others deem the arresting police officer to be the complainant. Another difference in practice is the person from whom consent to an adjustment must be obtained in the case of a crime without a specific victim (*e.g.*, graffiti and drug cases). For some probation departments, the arresting officer is deemed the complainant from whom consent to an adjustment must be obtained. In other probation departments, because the probation department and police department are equally responsible governmental agencies, the probation department consents to the adjustment on behalf of the police department (arresting officer). The Task Force finds that uniformity can and should be achieved and recommendations are set forth *infra* to further that goal.

During the adjustment process, the JD complaint is often resolved without the necessity for Family Court action, and the young person may: (1) receive referrals for services; (2) satisfy any restitution owed; and (3) receive probation monitoring. Probation must obtain the consent of the court, and in some cases the presentment agency, with regard to adjustments involving young people who have committed certain more serious offenses (*e.g.*, JO's) or have had prior cases adjusted.

Last year, New York City's DOP conducted more than 10,000 intakes and adjusted approximately one-third. Probation's work occurs under considerable time pressure and largely without control over the type and number of cases that it receives daily. In an effort to maximize intake's effectiveness, New York City's DOP implemented the following initiatives:

- To guide staff discretion and ensure that adjustment is properly used, DOP clarified written procedures and criteria for intake decision-making and trained staff.
- To enhance the preparation and assembly of cases, DOP ensured that the arrest paperwork arrives as early as possible, and that both NYPD and DJJ provide lists of new intake cases before the workday commences.
- To increase informed decision-making, DOP provided its intake staff with easy access to essential databases: legal history, arrest history, and school information.
- To assist in communication, DOP provided a Complainant/Victim script to intake staff who found that victims were largely unfamiliar with the juvenile justice process and, therefore, unprepared to hear from a probation officer about a juvenile crime. DOP found that the intake probation officer's ability to clearly communicate with the victim is essential and can influence the victim's decision.
- To increase the number of adjustments, DOP established a new process with the presentment agency (*i.e.*, New York City's Law Department) wherein it can "Refer Back" cases for adjustment if the victim has a change of heart on the issue of pursuing court involvement. DOP notes those cases where it would have adjusted if the victim were willing at the outset. For a variety of reasons, this frequently happens, thereby increasing the rate of adjustments.
- To create uniformity in the adjustment process, DOP established specialized assignments at intake to "Adjustment Probation Officers" whose responsibility it is to supervise those juveniles diverted for the statutorily permitted 60-120 days.
- To facilitate diversion services during the adjustment period, the Resource Development Unit (RDU) assembled an inventory of service providers that the adjustment PO can use in these diversion cases (*e.g.*, mediation, community service, restitution, anger management, mentoring, and educational advocacy).

Recommendations

Given the high number of intakes that are adjusted (*i.e.*, depending on the jurisdiction, probation is able to adjust between 20% and 60% of all intakes), the Task Force views adjustment to be a critical function performed by probation and makes the following recommendations for its enhancement:

1. As set forth more fully in Sections IV and VIII (B)(2), probation departments should be given access to funding for adjustment services of JD's at risk for placement at a rate of 65% state/35% local funding – the same funding level provided in many counties for PINS diversion services.

2. Local probation departments, equally responsible with the police, should exercise their discretion in appropriate circumstances (e.g., low level offenses involving low risk youth) and consent to adjustments where the crime does not involve a specific victim (e.g., drug and graffiti cases) and the only complainant is the arresting police officer.
3. The FCA should be amended to define “victims” and “complainants” to make clear that the victim is the complainant for the purposes of obtaining consent to an adjustment when the crime involves a specific victim.
4. As set forth in greater detail in Section VIII(B)(5) *infra*, although the Task Force members were not unanimous with regard to this recommendation, most believe that because it is difficult to adjust certain cases within the statutory 120-day timeframe, FCA § 308.1(9) should be amended to extend the statutory period of adjustment to six months without the need for court intervention. Three Task Force members, representing New York City’s DOP, New York City’s Criminal Justice Coordinator, and New York City’s Legal Aid Society’s Juvenile Rights Division, believe that the extension is unnecessary because with the 120-day period, probation has sufficient time to make referrals to the young person and family for services. In addition, they believe an extension is unwarranted and “is more like a sentencing provision than an adjustment provision. It attempts to increase the adjustment time to 6 months without court approval for an alleged juvenile delinquent, never formally charged. By increasing the time period, it increases the possibility that behavior that is not a risk to public safety (truancy, curfew) will drive the matter deeper into the justice system. We think this neither fair nor wise. Currently, the FCA requires judicial approval to extend the adjustment period from two months to four months. Extending this period to six months, without judicial approval, seems inconsistent with later recommendations about authorizing a judge to discharge a probationer prior to the end of the probation supervision term. We should not expose juveniles who have not been adjudicated to periods of supervision that may be the equivalent of probation terms. New York City is committed to increasing the use of adjustment, with the adjustment rate nearly tripling from less than 10% in 2002 to 29% in 2007. But in the absence of any research about the efficacy of adjustment, it seems unwise to keep cases in legal limbo longer than necessary.”

2. Probation’s Authority to Provide Diversion Services to Alleged PINS Youth

Similar to their authority to adjust JD cases, probation departments are statutorily required to try to divert PINS cases from formal Family Court proceedings through the use of diversion services provided to the young person and his/her family. The FCA defines a Person in Need of Supervision (PINS) as “[a] person less than eighteen years of age ... [1] who does not attend school in accordance with the provisions of part one of article sixty-five of the education law or ... [2] who is incorrigible, ungovernable or habitually disobedient and beyond the lawful control of a parent or other person legally responsible for such child’s care, or other lawful authority, or ... [3] who violates the

provisions of section 221.05 of the penal law [unlawful possession of marijuana].⁸⁵ PINS proceedings may be initiated by petitions filed by parents, legal guardians, schools, peace officers or police officers or “any person who has suffered injury as a result of the alleged activity of a person alleged to be in need of supervision, or a witness to such activity.”⁸⁶ PINS petitions are often filed by families seeking to control their unruly teenage children. The Task Force repeatedly heard during the public hearings that parents and legal guardians often file PINS petitions in response to school districts’ threats to initiate educational neglect proceedings against them because of their truant children.

In 2000, largely as the result of lobbying efforts of parent groups, the Legislature enacted amendments to the PINS law affecting probation’s role. The age of a PINS, that had once been served until reaching 16-years-of-age, was raised to 18-years-of-age. A study conducted by the Vera Institute of Justice in 2001 projected that the number of PINS petitions would double as a result of the age increase. Many people were also concerned that the legislative change would result in more placements.

In anticipation of the new legislation, which was to become effective November 1, 2001, local county probation departments began to prepare for the projected influx of cases. Some probation directors (e.g., the Departments of Probation in Westchester and Orange Counties) were fortunate enough to convince the Commissioners of their LDSS and or other key county budget decision-making officials to contribute financially to the projected increase in PINS cases by funding additional probation intake positions to manage the new cases, as well as increasing the reimbursement available for diversion services from 18% to the 65/35 funding formula. In New York City, DOP and the Administration for Children Services (ACS) established the Family Assessment Program (FAP) – a program designed to connect families in crisis with appropriate services in a timely manner. A 2005 Vera Institute Study of the FAP found “probation PINS intakes had dropped by more than 80%; the number of PINS youth petitioned to Family Court was down by more than half; and out-of-home placements for PINS youth had decreased by more than 20 percent.”⁸⁷ Patricia Brennan, Deputy Commissioner of DOP, advised the Task Force that when probation was responsible for PINS cases, it often took six weeks to get an appointment with probation and services were delayed during this time period whereas with FAP, the troubled youth and the family are able to receive community-based services immediately (same day).

Other probation departments had to manage with their existing resources. In addition, while some counties attempted to address the service needs of this new 16 to17-year-old PINS population, the majority of counties provided little new programming or placement options for them, which caused frustration for many Family Court judges.

⁸⁵ FCA § 712.

⁸⁶ FCA ' 733.

⁸⁷ R. Choudhry, *The Family Assessment Program: Trajectories and Effects* (Vera Institute of Justice December 2007) (available at www.vera.org/publication_pdf/415-798.pdf).

The end result for many local probation departments and LDSS's was that the diversion attempts for these PINS cases were unsuccessful because they were unable to institute the changes needed to stabilize the young person and the family. Although the projection of a two-fold increase in cases never materialized, the cases involving 16 to 17-year-olds continued to be the most difficult for many of the local probation departments and the Family Courts because of the lack of services.

In 2005, further amendments (L 2005, ch. 57) expanded requirements for services⁸⁸ to be provided to children and families as a means of preventing unnecessary petition filings and costly out-of-home placements. Coined "PINS Diversion and Detention Reform," the law: (1) delineated new criteria for determining "diligent efforts" in PINS cases by requiring that the diversion efforts made by parents and school systems on behalf of the troubled youth be documented prior to a petition being filed;⁸⁹ (2) removed the fixed adjustment time periods,⁹⁰ which limited how long a young person and the family could receive diversion services before a petition was filed; and (3) required that there be a determination that there was no substantial likelihood "that the youth and his or her family will benefit from further [diversion] attempts"⁹¹ prior to a petition being filed. In addition to requiring that the counties designate their local probation department or LDSS to be "lead agency" for PINS diversion services,⁹² the law also required counties to have an immediate response to families in crisis through the provision of respite and other nonresidential crisis services. An overview of the 2005 amendments to the PINS law prepared by OCFS is attached as Appendix I.

The Task Force finds benefits of the 2005 law to include: (1) the requirement that the various "stakeholder" participants (*i.e.*, probation departments, DSS, schools, preventative service agencies, drug evaluation and treatment agencies) collaborate in the diversion efforts, which had not been present in some counties prior to the legislation; (2) the requirement that parents and schools cooperate in the diversion process or be barred from bringing the PINS proceeding; (3) the facilitation of the provision of the much sought-after services that would otherwise be unavailable during

⁸⁸ Pursuant to FCA §712(i), diversion services are defined as "[s]ervices provided to children and families pursuant to section seven hundred thirty-five of this article for the purpose of avoiding the need to file a petition or direct the detention of the child. Diversion services shall include: efforts to adjust cases pursuant to this article before a petition is filed, or by order of the court, after a petition is filed but before fact-finding is commenced; and preventive services provided in accordance with section four hundred nine-a of the social services law to avert the placement of the child into foster care, including crisis intervention and respite services."

⁸⁹ The importance of the lead agency's documentation of diligent efforts cannot be overemphasized. For example, in *Matter of James S. v Jessica B.* (9 Misc3d 229 [2005]), the Suffolk County Family Court dismissed a PINS petition because there was no documentation of the attempts made to engage the youth and the family in diversion services.

⁹⁰ See former FCA §§ 734 and 735.

⁹¹ FCA § 735[f].

⁹² FCA §§ 712, 728, 735.

the PINS diversion process due long wait times; (4) the decrease in PINS referrals to petition, court filings and placements; and (5) the reduction in detention use and length of stays in most jurisdictions. Some of the adverse effects of the new law include: (1) because LDSS's have no obligation to report PINS data to DPCA and because the indicators and manner in which the LDSS's report data to OCFS differs from the indicators and manner in which the probation departments report data to DPCA, consistent statewide indicators on PINS diversion are unavailable for good policy to be developed; (2) because of longer intake times, probation officers or other PINS diversion providers may have increased caseloads; (3) the extended period has caused some judges to criticize the new PINS law as causing undue delay of the Family Court referral;⁹³ (4) LDSS's and local probation departments sometimes differ over which cases qualify as PINS under the law; LDSS's sometimes use PINS to resolve neglect issues and to access detention;⁹⁴ and (5) the ability of the probation departments that have been designated lead agency to obtain the 65/35 funding is dependent upon the position taken by the LDSS Commissioner and/or other key budget officials (*i.e.*, LDSS's and/or other key officials should be willing to fund the diversion services because the sources are the same regardless of whether the lead agency is LDSS or probation).

In 2008, 36 local probation departments serve as lead agency for diversion services and in 43 counties, probation actually performs the intake function. LDSS's serve as lead agency in 21 counties (treating New York City as a single LDSS) across the State. (A chart depicting the lead agency status for all the counties is attached as Appendix J). In the LDSS lead agency counties, the local probation department may be involved in assisting parents in the preparation and filing of the PINS petition.

Lead agency designation may have an effect on the State reimbursement provided for diversion services because the State reimburses an LDSS for preventive services at a rate of 65% with counties paying 35%, whereas most local probation departments receive only 18% in state reimbursement for the preventive services they provide. While some LDSS commissioners and/or other key county budget decision-making officials have remedied this disparity by allowing their probation departments to tap into the 65/35 preventive service dollars, others have not.

⁹³During the Syracuse public hearing, Judge Biagio DiStefano, a three-hat judge (Surrogate's, County and Family Court) from Madison County, stated that numerous Family Court judges were dissatisfied with the PINS diversion process in their counties based on the 1 to 1 ½ year delay in a petition being filed. According to Judge DiStefano, at that point, the child may have missed a year of school and the judge is left with few options for the young person.

⁹⁴ Burt Marshall, Director of Niagara County Department of Social Services, stated that when PINS diversion fails and the child requires placement, they seek the placement to be made pursuant to a PINS order rather than an order issued during a neglect proceeding. Otherwise, if the child is placed pursuant to a neglect order and the parent completes the stipulations required by the Family Court, the Family Court will be required to return the child to the home even if the child is still engaging in the status behavior. According to Mr. Marshall, the newly-stabilized home will likely experience a setback based on the child's premature return.

Based on the Task Force's meetings with administrative judges and supervising judges of the Family Courts, the *ad hoc* advisory committee members, and testimony received in the public hearings, the Task Force is convinced that PINS diversion works well and is necessary not only to prevent the unfair prosecution of young people who have not committed criminal offenses, but also to prevent the Family Court from being inundated with the more than 12,000 PINS intakes opened each year.⁹⁵ Although the Task Force heard from Madison County three-hat Judge Biagio DiStefano (Family, Surrogate's and County), that there were numerous Family Court judges upstate who were opposed to PINS diversion, the Task Force also heard from other Family Court judges who voiced their support of PINS diversion. For example, Oneida County Family Court Judge James Griffith stated that his county has an 85% success rate with PINS diversion in terms of reducing the need for court involvement and breaking the cycle of unsafe behavior. Other Family Court judges expressed similar views regarding the success of PINS diversion efforts in their counties. In a written submission to Task Force, Monroe County Family Court Judge Joan Kohout stated that "[d]iversion programs are effective and economical ways of keeping children out of the juvenile justice system." Judge Griffith advised the Task Force that eleven Family Court judges provided comments prior to the public hearings; seven were satisfied with PINS diversion efforts and four were not. According to Judge Griffith, the only common denominator of the judges who were dissatisfied was that they were all from counties where mandatory PINS diversion had been newly-introduced to the district.

Reasons cited for the judges' dissatisfaction with PINS diversion included: (1) the delay in the filing of the PINS petition, which sometimes extended for a year or more over which period the alleged PINS may have been out of school, leaving few options for the judge; and (2) in counties where LDSS is lead agency, some of the judges believe that the LDSS's do not have the "hammer" that probation has⁹⁶ and that the LDSS's have not dedicated sufficient resources to PINS diversion.

In a written submission to the Task Force's public hearing in Syracuse, Burt Marshall, Director of the Niagara County Department of Social Services argued that LDSS should always be lead agency in PINS cases for the following reasons:

- LDSS is responsible for the costs associated with placing young people in LDSS facilities and, therefore, it should have more input into the

⁹⁵ A 2005 Vera Institute Study of the New York City FAP found "probation PINS intakes had dropped by more than 80%; the number of PINS youth petitioned to Family Court was down by more than half; and out-of-home placements for PINS youth had decreased by more than 20 percent" (R. Choudhry, *The Family Assessment Program: Trajectories and Effects* [Vera Institute of Justice December 2007] available at www.vera.org/publication_pdf/415-798.pdf). "Orange County cut PINS cases under probation supervision by 43 percent and youth placed outside their homes by 31 percent, while Onondaga County cut PINS placements by 95 percent, from 67 cases in 1995 to 5 in 2003" (Getting Juvenile Justice Right in New York at 16).

⁹⁶ For example, Monroe Family Court Judge Joan Kohout stated in her written submission to the Task Force that probation should be lead agency for PINS diversion "because it is accountable to the court and mandated to focus on public safety as well as the needs of the respondent."

disposition of these cases.⁹⁷

- LDSS would provide a better linkage to preventive services. LDSS receives more state reimbursement (65/35) than probation (18%). Therefore, young people and their families would be better served if either PINS were handled by LDSS staff or by probation staff located under the auspices of the LDSS.
- Given the “fine line” between “neglect” and PINS, PINS are better served in LDSS since probation does not make immediate contact with families when they receive a referral whereas Child Protective Services (CPS) contacts the family as soon as a referral is made.
- Resources are wasted when LDSS case workers, LDSS attorneys, County Attorneys and probation officers all appear on the same case in Family Court.

Recommendations

1. Despite the dissatisfaction with PINS diversion in several upstate counties, the Task Force believes that diversion without court involvement is necessary because: (a) it prevents a large number of PINS cases from being referred to Family Court; and (b) the majority of counties where an investment has been made in appropriate services find diversion successful in treating young people and keeping their cases out of the court system.
2. The Task Force believes that the decision over whether to designate probation or LDSS as lead agency should continue to be left with local authorities who are best able to determine which entity will most successfully provide diversion services. However, the Task Force recommends that the 65/35 funding be available regardless of whether the diversion services are provided by LDSS or the local probation department to promote statewide uniformity in PINS diversion services.
3. DPCA should assist OCFS in identifying the relevant indicators and establishing a PINS data reporting system that is uniform and will allow for a meaningful exchange of data for the future development of sound PINS diversion strategies.
4. If additional state funding is realized, DPCA should fund at least one evidence-based program for PINS diversion in every county.
5. As set forth more fully below, legislation should be proposed changing PINS to FINS -- Families in Need of Services -- to indicate that most PINS cases involve family issues, and to promote the cooperation of all members involved. Additional programming should be made available to better engage

⁹⁷ Judge DiStefano took a contrary position by stating that “[g]iving this to the Department of Social Services, who are concerned about whose nickel is going to be spent if this kid gets placed by the Court is like putting a fox in charge of the chicken coop. They are never going to send the case to Family Court because, why should they? If they did, the kid might get placed. If the kid gets placed they are going to have to pay for it. The diversion goes on forever” (Transcript of Syracuse Hearing at 182-183).

parents/guardians so that they take responsibility for their child's behavior. (Parents need to make changes, too!).⁹⁸

6. As set forth more fully in the following section, PINS cases should not be a part of the Family Court system, except in exceptional circumstances.

3. The Need to Continue the Family Court's Jurisdiction Over PINS Proceedings

In assessing the function of probation in PINS matters, a fundamental threshold issue that must be addressed is whether these cases should continue to be Family Court proceedings at all. The complexity of the problem may be found in David Steinhart's *Status Offenses*:

There is wide public and professional disagreement about the proper role of the juvenile courts in status offense cases. On one side of the debate are children's advocates and youth service providers who argue that status offenders should receive treatment for family problems and that criminal justice sanctions, particularly incarceration, are not appropriate. On the other side are frustrated parents who want the juvenile court to discipline defiant children, law enforcement officers who want to be able to detain truants and runaways, and juvenile court judges who want incarceration as a sanction to enforce their court orders.⁹⁹

The issue has a long history. In 1967, as an element of its reform agenda for the juvenile courts, the President's Commission on Law Enforcement and Administration of Justice recommended that "[s]erious consideration, at the least, should be given to complete elimination of the court's power over children for noncriminal conduct."¹⁰⁰ Similarly, a joint commission of the Institute of Judicial Administration and the American Bar Association indicated that the removal of status offense proceedings from juvenile courts would result in increased efficiency of court administration by reducing the dockets by as much as one-third to one-half, allowing the court to focus its attention on more serious juvenile offenders.¹⁰¹ The IJA/ABA Joint Commission also expressed its concern that it was "unjust to stigmatize juveniles for youthful misbehavior that is

⁹⁸ At the Syracuse public hearing, Leslie Barnes, the Assistant Probation Administrator, Monroe County Department of Probation, testified that one of her first decisions was to change the name of her division from the "Juvenile Services Division" to the "Family Services Division" to acknowledge that the youth who enter the juvenile justice system do not live or work in a vacuum. If the Division hoped to change the behavior of the youth, it had to work with the youth, their families and the community (Transcript of Syracuse Hearing at 38).

⁹⁹ David J. Steinhart, *Status Offenses*, 6 *The Future of Children* 86, 86 (1996).

¹⁰⁰ President's Commission on Law Enforcement and the Administration of Justice, *Task Force Report: Juvenile Delinquency and Youth Crime* 25, 27 (1967).

¹⁰¹ See Hon. Orman W. Ketcham, *National Standards for Juvenile Justice*, 63 *Va. L. Rev.* 201, 205 (1977).

acceptable for adults only a few years older” and that previous attempts by the courts to address and correct such conduct had proven widely unsuccessful.¹⁰²

There were findings that, rather than maintain the court's authority to address noncriminal juvenile misconduct, the most viable alternative available was the creation of community-based youth service organizations, which would be better equipped to provide much-needed counseling and rehabilitation services.¹⁰³ Ultimately, it was concluded that the juvenile court's involvement with status offenders should be a “last resort.”¹⁰⁴

Conversely, it has been argued that juvenile courts should not be relieved of their jurisdiction over status offenders because there is a real need for the court to maintain its ability to contend with those young people who are in need of assistance but unlikely to seek it.¹⁰⁵ The Coalition for Juvenile Justice determined that, while social service agencies should serve as the primary resource for at-risk young people and their families, the juvenile court should preserve its authority to order treatment or participation in a program “where services have been offered but not utilized or where a young person’s behaviors pose a significant threat to his or her own safety.”¹⁰⁶ By 1980, the ABA’s House of Delegates tabled “as too controversial”¹⁰⁷ consideration of proposed *Standards Relating to Noncriminal Misbehavior* which recommended ending court jurisdiction of status offenses.¹⁰⁸

Such divergent arguments continue to resonate today, as vividly reflected in the views shared with the Task Force during its public hearings and roundtables.¹⁰⁹ The

¹⁰² *Id.* at 205.

¹⁰³ See Robert L. Harris, *California's Predelinquency Statute: A Case Study and Suggested Alternatives*, 60 Cal. L. Rev. 1163, 1184 (1972).

¹⁰⁴ *Id.* at 1185.

¹⁰⁵ See E. Douglas, *et al.*, *Children and the Law: Doctrine, Policy and Practice*, 1027 (2000), citing Hon. Lindsay G. Arthur, *Status Offenders Need a Court of Last Resort*, 57 B.U. L. Rev. 631, 632-634 (1977).

¹⁰⁶ *Id.*, quoting Coalition for Juvenile Justice, *A Celebration or Wake?: The Juvenile Court After 100 Years* 48 (1998).

¹⁰⁷ IJA/ABA, *Juvenile Justice Standards Annotated* 303 (1996).

¹⁰⁸ *Id.* at 305.

¹⁰⁹ The Task Force heard from probation administrators as well as Family Court judges that PINS cases do not belong in the Family Courts. For example, Mary Winter, Probation Commissioner, Onondaga County Department of Probation, and Jane Goldner, Probation Director, Cortland County Department of Probation, both expressed the view that PINS cases do not belong in an adversarial setting such as the Family Court because the issues are not criminal. Instead, the cases involve issues such as child development, mental health, substance abuse, and family dynamics, which are best served in the community. The vast majority of Family Court judges who shared their views similarly expressed the opinion that PINS cases do not belong in the Family Court. For many Family Court judges, PINS cases are the most frustrating not only because most of the PINS cases involve young people between the ages

reluctance to subject children to coercive sanctions for noncriminal conduct is certainly understandable. Family Court's management of status offense proceedings have been, by no means, perfectly responsive to the needs of the child or the family. Family Court's intervention has been perceived as ineffectual in controlling rebellious behavior, often exacerbating the conduct and even drawing the court into a contest of wills as the court seeks to vindicate its authority. Frequently, the conduct resulting in a PINS petition is less a reflection of the child's ungovernable propensities than of dysfunction within the family. It has been stated that "the only rational way to approach the overall problems of delinquency is to deal not only with [the child's] behavior but also with the [societal] conditions that underlie [the] behavior."¹¹⁰ Beyond these considerations, it is apparent that the movement to divert PINS proceedings from the Family Court process, detailed elsewhere in this report, has been most successful not only in reducing the need for court involvement, but also in connecting children and families with the resources that can help them break the cycle of unsafe and self-destructive behavior.

Recommendations

1. PINS cases should continue to be part of the Family Court system only in the irreducible residuum of situations where voluntary mechanisms simply do not work.
2. There must be a continuation and enhancement of probation services aimed at reversing the behaviors that result in PINS proceedings in the first instance.
3. The Legislature must give serious consideration to re-framing PINS proceedings as FINS – "Families in Need of Services" - process. This change would more accurately reflect both the circumstances that typically underlie these matters and the proper focus of efforts to address those circumstances most effectively. Adoption of the FINS model would formalize recognition of non-criminal misbehavior by minors as primarily an issue of family welfare and child safety, rather than a juvenile justice matter to be dealt with in a coercive, quasi-criminal setting.¹¹¹

of 16 and 17 for whom few services are available, but also because judges are unable to enforce their dispositional orders through contempt. Two Appellate Divisions have held that a violation of a PINS dispositional order cannot be converted into a juvenile delinquency petition (*i.e.*, based on the crime of contempt), which would then provide the judge with the ability to place the PINS youth in a secure facility (*Matter of Edwin G.*, 296 AD2d 7 [2002]; *Matter of Jasmine A.*, 284 AD2d 452 [2001]).

¹¹⁰ Harris at 1183.

¹¹¹ See *e.g.* NM Stat Ann, § 32A-3B *et seq.* (called the "Family in Need of Court-Ordered Services Act" or "FINCOS").

4. Legislation Should be Enacted Reframing the Person in Need of Supervision (PINS) Proceeding as a Family in Need of Services (FINS) Process

The success of New York State's PINS diversion initiative in addressing noncriminal misbehavior of children has been documented elsewhere in this report. To consolidate and build on this success, the Task Force recommends that the Legislature amend the statutory framework of PINS proceedings to establish in its place a Families in Needs of Services, or FINS, process.

As with PINS diversion, the overall purposes of replacing the PINS proceeding with a FINS process would be to reduce the incidence and impact of noncriminal misbehavior of children, and to address the conduct of the child by meeting the needs of the family. The change would underscore the importance to redirecting attention and resources away from simply punishing the child's misbehavior, to instead examining and responding to the complex family dynamics out of which that behavior often arises. At the same time, the FINS model could offer service providers and Family Court additional tools to encourage full involvement of all participants in the process, not merely the young people.

In jurisdictions where the FINS model has been adopted,¹¹² a central objective has been to provide children and families with enhanced pre-court, early intervention services. In New York State, this objective has already been largely achieved through PINS diversion reform. Introduction of the FINS concept here would confirm the State's commitment to this approach and highlight its demonstrated advantages over interventions centered primarily in the judicial process.

Transition to FINS in New York State would serve other important purposes as well. Perhaps most significantly, adoption of the FINS paradigm would explicitly recognize noncriminal misbehavior by a young person as primarily an issue of family welfare and child safety, rather than as a juvenile justice matter to be dealt with in a coercive, quasi-criminal setting. Such an approach is supported by New York State's experience with PINS diversion and the success of comparable initiatives elsewhere, as well as by the recent research on adolescent brain development discussed in Section II of this Report. Moreover, the change in terminology from PINS to FINS would more accurately reflect both the circumstances that frequently underlie noncriminal misbehavior and the proper focus of efforts to deal with those circumstances most effectively. The new terminology could also deter misapplication of PINS jurisdiction in pursuit of broader, unrelated law enforcement goals.¹¹³

¹¹² Jurisdictions include Arkansas, Connecticut, Florida, Louisiana and New Mexico (J. Kendall, *Families in Need of Critical Assistance: Legislation and Policy Aiding Youth Who Engage in Noncriminal Misbehavior* [ABA: 2007]).

¹¹³ See, e.g., R. Girod, *Operation Linebacker: using status offenses to reduce crimes in communities - Police Practice*, The FBI Law Enforcement Bulletin (July 1999).

Another significant characteristic of FINS statutes in other jurisdictions is clear judicial authority to assure engagement of all participants in intervention efforts when voluntary measures are inadequate. Under current PINS provisions, Family Court is authorized to impose a range of sanctions for non-compliance upon the child. Consideration of a FINS model would provide an opportunity to examine whether New York's current provisions for securing the cooperation of parents and service providers are adequate as well.

For example, some FINS statutes empower courts met with a refusal to cooperate in services to direct participation by parents, as well as children, when voluntary measures prove unavailing. In Arkansas, disposition of a FINS proceeding¹¹⁴ may include an order for family services and require parents to attend parental responsibility training, perform community service or, in narrowly defined circumstances involving truancy, pay a fine "to impress upon the parents, guardians, or persons in loco parentis the importance of school or adult education attendance"¹¹⁵ In Florida, the court may order parental participation in services, payment of a fine and performance of community service.¹¹⁶ At the periodic judicial review of a dispositional order in a family in need of court-ordered services matter in New Mexico, "[t]he parent, guardian or custodian of the child shall demonstrate to the court the family's effort to comply with the plan for family services approved by the court in its dispositional order"¹¹⁷ All three states authorize the use of the court's contempt power as a last resort.¹¹⁸

By contrast, the FCA precludes the filing of a PINS petition by a parent responsible for a child when the parent fails to consent to or participate in diversion services.¹¹⁹ Once a petition has been filed, the Family Court may order additional diversion attempts and direct parents to participate in diversion services.¹²⁰ In addition, the Family Court may issue an order of protection requiring participation in family counseling or other professional counseling and other services including alternative dispute services "by a person *who is before the court* and is a parent"¹²¹ – a phrase reflecting ambiguity about the court's jurisdiction over parents in such circumstances.¹²²

¹¹⁴ Ark. Code Ann. § 9-27-332.

¹¹⁵ Ark. Code Ann. § 9-27-332 (a)(7)(B).

¹¹⁶ Fla. Stat. Ann § 984.22.

¹¹⁷ N.M. Stat. Ann. § 32-A-3B-19(C).

¹¹⁸ Ark. Code Ann. § 9-27-332; Fla. Stat. Ann § 984.22(6); N.M. Stat. Ann. § 32-A-3B-19(G)(7).

¹¹⁹ FCA § 735(g)(i).

¹²⁰ FCA § 742(b).

¹²¹ FCA § 759(a) (emphasis added).

¹²² Besharov, Practice Commentaries, McKinney's Cons Laws of NY, Book 29A, FCA § 759, at 141-142.

In discussing this aspect of FINS statutes, the Task Force does not advocate punishment of parents as a primary response to youthful noncriminal misbehavior. Again, the aim of the FINS process is to engage the entire family in an earnest effort to confront the circumstances giving rise to such behavior, without unnecessary resort to judicial intervention. Indeed, the primary impact of strengthened court authority over parents would no doubt be to encourage their participation in voluntary remediation efforts. Availability of unambiguous, carefully-calibrated judicial authority over parents would improve the climate for success of pre-court, early intervention services.

Finally, a FINS statute could remove any possible uncertainty about the capacity of Family Court to direct public agencies to provide the services required to meet the needs of the child and family. Family Court already possesses significant power to direct public agencies "to render such assistance and cooperation as shall be within [their] legal authority"¹²³ Moreover, as noted above, the FINS process contemplates primary reliance on voluntary services, with limited court involvement. Nonetheless, a FINS statute that gives Family Court clear authority to require all participants – the child, the family and service providers – to remain committed to the treatment process provides the best framework for voluntary measures to succeed.¹²⁴

B. The Detention Decision

1. Probation's Role in the Detention Decision

The probation system is uniquely positioned and often called upon by judges to make recommendations regarding a young person's need for detention. Detention involves the holding of a young person after arrest in a juvenile detention facility, which may occur at any time between taking a youth into custody and disposition of the matter by the court. Over-reliance on detention is costly and significant and remains an issue in New York State. At a cost of \$594 per day for secure detention and \$775 per day for non-secure detention, New York City alone spent \$61.4 million in 2007 on 5,172 admissions to secure detention, and \$18.2 on 712 admissions to non-secure detention. The total cost of detaining young people in New York City in 2007 was \$79.6 million – half of which was reimbursed by the State. In 2008, detention expenditures are expected to rise to a total of \$84.1 million.

Pre-hearing juvenile detention is the appropriate response when "there is a substantial probability that [the young person] will not appear in court ... or there is a serious risk he/she may before the return date commit ... a crime."¹²⁵ The Task Force agrees there is a need to detain young people who pose a risk to the public safety or who are unlikely to appear in court. However, it is counter-indicated for the vast majority of young people. Research findings suggest that a detention facility may increase the

¹²³ FCA § 255.

¹²⁴ La. Ch. C. Art. 779(C).

¹²⁵ FCA § 320.5(3).

chances that a young person will become more deeply involved in the juvenile justice system.¹²⁶ Particularly, placing younger and nonviolent children with older, more aggressive young people is likely to result in the opposite of the intended effect; the less violent young person may be placed in physical danger and/or learn that violence is a desired course of conduct. Detained young people are also thought to be at greater risk of suicide attempts, stress-related illnesses and psychiatric problems.¹²⁷

Prior to the introduction of validated risk assessment instruments/detention screens in some jurisdictions, a probation officer's recommendation concerning detention was usually based upon subjective factors, such as the probation officer's opinion as to the stability of the family unit. However, as the Task Force heard from numerous juvenile justice professionals during the course of the public hearings, the use of the detention screen in some jurisdictions has increased the objectiveness of the detention decision. The use of objective detention screening tools that measure risk of flight and imminent risk to public safety to inform detention decisions and guide effective use of alternatives to detention are two areas that require further attention to reduce custody decisions. The use of an objective risk assessment instrument also provides a framework to measure the extent to which race and ethnicity play a role in detention decisions, and should help to reduce the exceptionally high level of disproportionate minority confinement (DMC) in New York State (see Appendix B).

While most jurisdictions are not yet using detention screens, they are becoming increasing more available. DPCA has developed an eleven-item Detention Screen as part of the Youth Assessment and Screening Instrument (YASI)¹²⁸ protocol. It will be made available to all (currently 55) participating counties during 2008 as part of a statewide release of the YASI web-based software for use by probation and other agencies to assist the court in making detention decisions. The YASI Detention Screen asks about the present case status, pending and prior complaints and adjudications and their level of seriousness, outstanding warrants, prior and current failures to appear, violations of dispositions and their level of seriousness, and other relevant factors, such as suicidal and homicidal ideations or plans, parental refusal to take custody, homelessness, and previous runaways.

New York City's DOP uses the Juvenile Detention Risk Assessment Instrument ("RAI") developed by the Vera Institute, which is a questionnaire filled out by the

¹²⁶ The Dangers of Detention.

¹²⁷ K. Abram, et al., *Suicidal Ideation and Behaviors Among Youths in Juvenile Detention*, J. Am. Acad. Child Adolescent Psychiatry (Jan. 2008).

¹²⁸ The content of the YASI Detention Screening Tool was assembled after a review of existing detention screening devices used in other jurisdictions that were designed for similar purposes (e.g., risk of flight or serious re-offending). The major components include previous failures of supervision; failure to appear in court; serious violent offending; and number of outstanding matters. In addition, the tool includes other important considerations such as suicidal indications, and appropriateness of parental custody arrangements for managing the risk posed by a youth being considered for placement in detention.

probation intake officer. The RAI¹²⁹ obtains information on the current charge, the young person's prior juvenile justice history and school attendance. Those who are classified low-risk are eligible to be released to their home, those classified moderate-risk are eligible for an alternative-to-detention ("ATD"), which allows the young person to remain in the community while being supervised. The New York City ATD initiative is expected to serve 1,800 youth annually at a cost of \$2.4 million, which is clearly more cost-effective than detention. By contracting nonprofit organizations to provide community monitoring and after school supervision, New York City will reduce the high costs of detention admissions. Youth classified as high-risk are recommended to secure or non-secure detention, ensuring that confinement is still used for youth who represent a threat to public safety.

While OCFS continues to promote program development at detention facilities, including more readily available clinical services, all things being equal, it is believed that long-term outcomes for young people will be improved by ATD programs. As set forth in more detail in Appendix K, existing programs in New York City and in select upstate counties are better able to meet a young person's mental health needs, promote stronger family connections/support, and there is some evidence that they reduce recidivism rates.

Currently there are approximately 1100 detention beds statewide, about equally divided between secure and non-secure programs, although there are 12 secure facilities and 58 non-secure facilities. In 2006, the average length of stay in non-secure facilities was 14 days, while in secure facilities it was 18.2 days. By contrast in New York City in 2007, the average length of stay in non-secure detention was 33 days and 20 days in secure detention. As noted in the Introduction to this Report, New York City's 2007 Independent Budget Office Fiscal Brief states that there has been an increase in New York City in the number of police admissions to secure detention facilities from 1,769 in 2003 to 3,022 in 2007.¹³⁰ From 2005-2006, the number of police admissions to secure and non-secure detention outside of New York City decreased from 2676 to 2078.¹³¹ These admissions usually occur either because the Family Court is not open or the police are unable to contact a family member/legal guardian so that the child may be returned to his/her care. It should be noted that the length of stay for police admits is often very brief, with 60% released within a day or two. A bigger determinant of the size of the detention population is the length of stay in detention.

¹²⁹ The RAI measures the risk of failure to appear based on the following factors: (1) whether the youth has an open JD warrant; (2) whether the youth has a prior JD or PINS warrant; (3) whether an adult appeared on behalf of the juvenile at probation intake; and (4) whether the youth's attendance at school was less than 30% in the last full semester. The RAI measures the risk of being re-arrested based on the following factors: (1) whether the youth has an unsealed prior arrest; (2) whether the youth has an unsealed prior felony arrest; (3) whether the youth has a prior JD adjudication; (4) whether the youth has a prior designated felony adjudication; (5) whether the youth is currently on JD probation; and (6) whether school attendance was 80% or more in the last full semester.

¹³⁰ New York City Independent Budget Office Fiscal Brief (December 2007) at 5.

¹³¹ Data: OCFS (2008).

And length of stay is affected by the time it takes the court to commence the fact-finding hearing and achieve a speedy disposition. The FCA prescribes the maximum number of days between the initial appearance and the fact-finding hearing for respondents being held in detention (*i.e.*, 3-14 days), but that time period may be adjourned for 3 days upon the motion of the court or the presentment agency, and for 30 days upon the motion of the respondent.¹³² Furthermore, FCA § 350.1(1) also prescribes the maximum number of days that a youth may be held in detention pending disposition by requiring that the dispositional hearing occur within 10 days of the adjudicative order. The Family Court may adjourn the dispositional hearing for an additional 10 days upon its own motion or the motion of the presentment agency, for a period not to exceed 30 days upon the motion of the respondent.¹³³ UCMS data shows that the number of days from filing to fact-finding and from filing to disposition has been on the decline in recent years, but, on average, it still takes almost four months for a JD case in New York City to reach disposition. In the event the Legislature approves a Senate Judiciary Bill recently introduced, which proposes to add 39 Family Court judgeships statewide, it is envisioned that these timeframes will decrease even further.

Since enactment of the PINS Reform Law in 2005, the State has seen a reduction in non-secure detention beds; however, secure facilities have not been affected. It is the goal of the Task Force to encourage a decline in the number of secure detention beds and a reduction in their use in non-essential circumstances through the expansion of proven models of alternatives-to-detention, including the use of MST, FFT, and MDFC.

Respite services¹³⁴ are a possible shorter-term program alternative to detention for certain non-violent alleged offenders who are likely to be placed in detention simply because they don't have a home to return to that day (*i.e.*, either because the home is not particularly safe or stable or because the family is fearful of the alleged offender's return to the home). Onondaga County is attempting to divert such young people from detention programs by exploring whether a runaway and homeless youth program can meet the young person's need for safe and stable shelter and food for a short time period. The County has requested that OCFS approve the initiative as preventive respite so that the program may be properly funded. Utilizing respite as an alternative-to-detention for non-violent arrested young people, where that is an appropriate and safe approach, is the logical extension to the PINS Reform Law of 2005, where every county is required to develop respite beds as an alternative-to-detention.

¹³² FCA § 340.1 (1), (4).

¹³³ FCA § 350.1 (3).

¹³⁴ Respite is defined as the "provision of brief and temporary care and supervision of children for the purpose of relieving parents or foster parents of the care of such children or foster children when the family or foster family needs immediate relief in order to be able to maintain or restore family functioning" (18 NYCRR 435.2[d]).

Recommendations

1. The Task Force recommends that all counties be required to employ a validated risk assessment instrument/detention screening tool to assist the court's detention decision by providing objective data from which the court may weigh the risk of re-offending and failure to appear. The use of the detention screen will ensure that only those classified as high-risk are recommended for secure or non-secure detention, with moderate-risk youth being referred to services. While the risk assessment instrument/detention screen should not be used as the sole determinant in preparing recommendations to the court, it is a significant aid to the court in assessing both a young person's risk of flight and risk of re-offending pending disposition of the matter before the court.
2. To reduce the number of police admissions to detention when the Family Court is not in session, the Task Force recommends that: (1) the court system monitor the new system of arraigning juveniles arrested in New York City over the weekend in Manhattan Criminal Court and consider expanding the capacity to arraign juveniles over the weekend statewide; and (2) police consider the use of temporary respite services when available for low and moderate-risk alleged JD's as an alternative-to-detention.¹³⁵

C. Probation's Role in the Disposition Decision: The Pre-Dispositional Investigation/Investigation and Report

Except with regard to certain designated felony offenses, the Family Court Act requires a court, in any disposition decision, to order "the least restrictive available alternative ... which is consistent with the needs and best interests of the respondent and the need for the protection of the community."¹³⁶ This mandate requires not only the Family Court judge's thorough knowledge of the facts of the offense, but also the unique circumstances of the respondent so that the dispositional order takes into consideration both his/her best interests and the protection of the community. A quality Pre-Disposition Investigation (PDI), sometimes referred to as the Investigation & Report (I&R), provides the court with the information necessary to make the proper disposition decision (*i.e.*, placement or probation). It also contains the probation officer's recommendation for disposition, serves to confirm (or refute in rare cases) an agreed-to disposition associated with an admission, and provides a very useful body of information for the residential facility if there is a placement disposition. The PDI/I&R

¹³⁵ Other counties, such as Onondaga County, were able to "work through the line police officers' desire to use detention" by having their Police Chief and several middle managers sit on a steering committee that was charged with risk assessment development during the two-year detention reform project headed by the Vera Institute (Transcript of Syracuse Hearing at 22-24). The Erie County Probation Department had a problem with their police bypassing the probation department's intake function by taking alleged JD's directly to detention. The Department rectified the problem by educating law enforcement through various conversations and meetings (Transcript of Syracuse Hearing at 114).

¹³⁶ FCA § 352.2(2)(a).

provides the critical first step to support both judicial decision-making and effective community-based interventions for young offenders. During 2006, local probation departments conducted approximately 12,600 investigations and reports for the Family Court.

Throughout the meetings with the administrative judges and supervising Family Court judges and the public hearings, the Task Force heard how Family Court judges routinely follow probation's recommendation for disposition. And the research in this area confirms the strong correlation between the probation officer's recommendation and the court's disposition. For example, in one study involving approximately 780 adjudicated JD's in New York City in 2000, when the probation officers "recommended probation, judges gave probation sentences 94% of the time; when [the probation officers] recommended placement, judges gave placement sentences 74% of the time."¹³⁷ Other studies have found that throughout New York State, "in the vast majority of cases ... judges' decisions align with [the probation officers'] recommendations."¹³⁸

A Family Court ordered PDI/I&R,¹³⁹ which probation conducts after adjudication of a young person and prior to disposition, is every bit as important to the juvenile justice system as the pre-sentence report is to the criminal court, which has been described by the New York Court of Appeals as possibly "the single most important document at both the sentencing and correctional levels of the criminal process."¹⁴⁰ As Professor Merrill Sobie describes in his practice commentaries to FCA § 351.1, "[t]he most important tool in determining an appropriate disposition is ordinarily the probation investigation report."¹⁴¹ Indeed, FCA § 351.1(2) requires the court to order a probation investigation in every JD case that has reached the dispositional phase of the proceeding. DPCA Rule Part 350 of Title 9 NYCRR, Investigations and Reports, requires that the process be "fair, factual, analytical, pertinent, and relevant to the objective of the report." The writer shall distinguish between fact and professional assessment and between their own observations and those from all other sources. The sources of all relevant information shall be reported. The report should include: legal history (Family Court and criminal court), description of current act/offense, arresting officer statement, respondent statement, victim statement, social circumstances/family

¹³⁷ Lin Report at 5.

¹³⁸ Lin at 24 (*citing* Carter and Wilkins 1967; Rush 1992; Susman 1973).

¹³⁹ While probation is also called upon by the Family Court to produce PDIs/I&R's for abuse, neglect, custody, visitation and adoption proceedings, the Task Force chose to limit its focus to PDI's/I&R's in JD and PINS proceedings.

¹⁴⁰ *People v Hicks*, 98 NY2d 185, 189 (2002); FCA § 352.2(2)(a).

¹⁴¹ Sobie, Practice Commentaries, McKinney's Cons Laws of NY, Book 29A, Family Court Act 351.1 at 297.

and environment, education and employment, physical and mental health, evaluative analysis and recommendation.¹⁴²

During the PDI/I&R process, the probation officer may also be required to facilitate clinical evaluations (e.g., psychiatric and psychological assessments) and/or alcohol or drug tests that are ordered by the court, or obtain a court order for such clinical evaluations if the investigation identifies a need for them. All young people who are likely to be placed in a residential treatment facility must undergo diagnostic assessments.

The probation officer will also conduct interviews of the respondent and the family and may conduct observations in the home, though a home visit is not required under current regulations except in custody and visitation cases. The PDI's/I&R's for juvenile delinquency cases enable a Family Court judge to more effectively address the risks, needs, strengths and protective factors¹⁴³ of the adjudicated offenders, increase offender accountability, attend to victims' needs, and provide for heightened protection of the community. If the young person is deemed an appropriate risk, the information in the PDI/I&R allows the court and the other juvenile justice participants to develop case plans that best address the needs of the probationer (e.g., referrals to the most appropriate community-based interventions available) and the safety of the community at large, while also establishing a plan for graduated sanctions in the event of noncompliance.

Throughout the public hearings and meetings with the administrative judges and the supervising judges of the Family Courts, the Task Force heard that depending on the county, for cases involving respondents at liberty, the turnaround time on PDI's/I&R's can take 60 days or more.¹⁴⁴ In New York City, when a respondent has

¹⁴² The Evaluation Analysis includes the probation officer's assessment and conclusions that support the recommendation. The section also includes an analysis of legal history including present offense, impact of present offense/act on the victim(s) and an analysis of past and present behavior, current social circumstances, school and education/special education needs, respondent/family attitudes, risk factors, protective factors, strengths, criminogenic need areas, availability of protective factors and resources to address criminogenic risk and needs, and assessment of potential for lawful behavior.

¹⁴³ The risk and protective factors are "the conditions, attitudes, and behaviors that can predispose children to later involvement in delinquency and those that can buffer negative influences and help build resilience in youth" (Office of Juvenile Justice and Delinquency Prevention's 2002 Report to Congress, *Title V Community Prevention Grants Program* at 4). Risk factors include: (1) community (e.g., impoverished and high crime neighborhoods); (2) school (lack of commitment and early academic failure); (3) family (family conflict and management problems); (4) peer group (association with peers involved in delinquent behavior); and (5) individual (alienation and rebelliousness). "Protective factors are usually associated with prosocial relationships and healthy bonding with parents, peers, school, or the community" (*id.* at 5).

¹⁴⁴ FCA § 350.1(1) requires that for juveniles awaiting disposition in a detention facility, the dispositional hearing (and therefore the PDI/I&R) must occur within 10 days of the adjudicative order. Upon good cause shown, the Family Court may adjourn the dispositional hearing for an additional 10 days upon its own motion or the motion of the presentment agency, or for a period not to exceed 30 days upon the motion of the respondent (see FCA § 350.1[3]).

been remanded to detention, DOP completes the I&R within the statutorily required ten-day time period. For cases involving respondents at liberty, New York City's Family Courts usually order that the PDI/I&R be completed within four to six weeks to accommodate, among other things, the schedules of the attorneys, witnesses and court.

The Task Force heard that probation officers often take 30-days to complete a PDI/I&R, particularly when school records must be obtained and clinical evaluations performed. While a 30-day period between fact-finding and disposition may be necessary, time periods that extend beyond this time frame are not in the best interests of the young person, especially when the young person is not receiving services or under probation's supervision. The Task Force's 2007 Report recommended an annual workload standard of 240 PDI's/I&R's per probation officer. Upon further research and reflection, the Task Force now considers that workload figure to be too high and recommends annual workloads of no more than 100 PDI's/I&R's per probation officer for jurisdictions using predisposition supervision, and 160 PDI's/I&R's for jurisdictions not using predisposition supervision.

As noted earlier, validated risk assessment instruments are invaluable in their ability to obtain objective information concerning a young person's risk for recidivism, criminogenic needs and protective factors that buffer those risks. Clinical evaluations identify a young person's risks and needs, but are not always ordered. In most cases, the information gleaned from a risk assessment instrument is essential to the preparation of a case plan for disposition. New York City's DOP uses a risk assessment instrument called the Probation Assessment Tool (PAT) developed by the Vera Institute in the preparation of its pre-disposition investigations. According to Patricia Brennan, Deputy Commissioner DOP, DOP reduced the number of juveniles receiving a recommendation for placement by 50% by using the PAT.¹⁴⁵

Recommendations

While 55 counties utilize the YASI screening tool, many still do not use it in the preparation of PDI's/I&R's. Because there is no uniformity across local probation departments, the Task Force believes that DPCA must promulgate regulations requiring that local probation departments use validated risk assessment instruments in connection with the preparation of PDI's/I&R's and their development of diversion and supervision case plans.

In addition, in order to implement appropriate standards for PDI/I&R preparation statewide, increased state funding must be made available. The Task Force's 2007 Report recommended that additional probation officers be hired so that annual PDI/I&R workloads are limited to a maximum of 240 per probation officer. The Task Force now concludes that this figure is too high and recommends the following annual workload standards: (1) 100 PDI's/I&R's per probation officer for jurisdictions electing to

¹⁴⁵ Transcript of New York City Hearing at 76.

implement predisposition supervision; and (2) 160 PDI's/I&R's per probation officer for jurisdictions without predisposition supervision. It is envisioned that if the additional state funding recommended in Section IV is attained, there will be sufficient staffing in probation departments to achieve these workload standards.

The Task Force further recommends that jurisdictions consider the following areas to improve the PDI/I&R process:

1. Predisposition supervision pending final disposition that would provide the probation officer with additional contacts with the respondent, family and collateral resources thereby enhancing the officer's ability to assess the interests and needs of the respondent, conduct initial case planning and attend to the protection of the community;
2. An assessment of the respondent should be conducted through forensic evaluations, the execution of a validated risk assessment instrument or a combination of both; and
3. Field visits to the respondent's residence/neighborhood/school and attendance at staffing/planning conferences at detention facilities, schools or other community-based agencies to obtain additional insight and perspective in determining respondent's risk, strengths, initial case planning needs and appropriate dispositional recommendations.

D. New York City Based Alternatives-to-Placement for Juveniles

Nowhere is the failure of incarceration more evident than in the State's juvenile justice system, which often produces poor outcomes at very high costs. The total annual cost of out-of-home placements rose to \$158.8 million in New York State. In New York City, \$108.7 million is budgeted for the cost of out-of-home placements. It costs \$140,000 to \$200,000 annually to place one juvenile, with an average cost of \$125,000 for a 10 ½ month stay in an OCFS facility.¹⁴⁶ Yet 50% of youth admitted to OCFS facilities re-offend within 9 months of release, and 81% of boys re-offend within 3 years of release.

The Task Force notes that, based on available research, incarcerating young people not only increases the costs associated with juvenile justice, but also has demonstrated an inability to promote successful rehabilitation or to reduce the likelihood of recidivism. And the difference in cost is substantial. As noted in New York City's 2007 Independent Budget Office's Fiscal Brief, "a youth found to be a juvenile delinquent on multiple counts and placed in a contract facility could cost as much as \$154,489 to the juvenile justice system by the time he or she is released. In contrast, a

¹⁴⁶ OCFS Annual Report (2005).

youth assigned to an alternative-to-detention program, prosecuted on a single charge, and then placed in Enhanced Supervision, would have cost approximately \$6,971.”¹⁴⁷

OCFS’s Commissioner, Gladys Carrión, has publicly declared that New York State’s juvenile justice is broken and needs to be fixed. In particular, Commissioner Carrión has identified several areas in need of dramatic reform: (1) the focus in the state residential facilities has been on safety and control and not on providing the services young people need to address trauma, addiction, or deficits in education or self-esteem;¹⁴⁸ (2) there is a severe overrepresentation of youth of color in OCFS facilities;¹⁴⁹ 86% of youth in OCFS facilities are African-American, Hispanic, and Native American young people (a complete review of the extent of issues associated with the Disproportionate Minority Contacts [DMC] found in New York State’s juvenile justice system and recommendations for reform are included in Appendix B);¹⁵⁰ (3) given that 70% of the youth placed with OCFS come from New York City, the location of the facilities far from the home communities negatively affects the ability of the juvenile justice system to coordinate family support and community reintegration.

Despite these sobering realities, there are encouraging signs that more effective and cost-efficient New York City community-based alternatives can help to reduce this trend. The number of young people from New York City receiving dispositions resulting in placement has declined from 1,300 in 2003 to 952 in 2007.¹⁵¹ The decline may partially be the result of a decline in major juvenile felony arrests in New York City, which have fallen by 22.9% over the last ten years, from 5,796 in 1997 to 4,469 in 2007. Given these numbers, one might attribute the decrease in placements solely to a decrease in serious juvenile crime. However, the number of juvenile felony arrests actually increased slightly from 2002 to 2006, the same period during which placements have fallen. As the most serious offenders remain likely to be placed in OCFS custody, it is possible that the decrease in placements may also be attributed to concerted efforts made to increase post-disposition alternatives-to-placement for youth adjudicated in Family Court. Over the last few years, New York State has increased resources to divert youth facing placement to community-based alternatives. These initiatives target youth who are not necessarily high-risk to re-offend, but who are at risk of placement due to a

¹⁴⁷ New York City’s Independent Budget Office Fiscal Brief (December 2007) at 12. These costs include the costs involved with each step of the juvenile delinquency process (e.g., \$420 per arrest, \$520 per intake, \$1,890 for Law Department prosecution, etc.).

¹⁴⁸ In 2006, OCFS’s Division of Rehabilitative Services found that nearly three out of four young people screened had substance abuse needs, 49% had mental health needs, 42% had health needs and 22% had special education needs.

¹⁴⁹ OCFS Division of Rehabilitative Services *2006 Annual Report Division of Rehabilitative Services*.

¹⁵⁰ OCFS Annual Report (2005). In 2005, 62% of admits were African-American youth and only 13% of admits were non-Hispanic white; youth who identify as Hispanic may either be designated White or African-American.

¹⁵¹ New York City’s Independent Budget Office Fiscal Brief (December 2007).

multiplicity of needs (e.g., family issues, mental health, substance abuse, education, etc.).

Two New York City DOP initiatives have increased the juvenile justice system's ability to effectively supervise youth in the community. The Enhanced Supervision Program (ESP) provides community-based, family-centered services to juvenile probationers and caps ESP Probation Officers' caseload at 25 youths. The ESP program served 554 juveniles in 2007 at a cost of \$1.5 million. New York City has budgeted approximately \$1.9 million for the ESP program in 2008. The Esperanza program, a collaborative initiative between New York City's DOP and the Vera Institute of Justice, provides four to six months of intensive services to placement-bound youth using a therapeutic model based on multi-systemic therapy (MST). Since its inception in 2003 through December 31, 2007, the Esperanza program has enrolled 631 youth as a diversion from placement. Of these youth, 371 have successfully completed the program (58.8%), 49 are still active (7.8%), 200 were unsuccessfully terminated (31.7%), and 11 (1.7%) were terminated for other reasons.¹⁵² In 2007, \$4.2 million was spent to divert 160 placement-bound juveniles. New York City has budgeted \$3.1 million for the Esperanza program in 2008.

In 2007, New York City's Administration for Children's Services launched the Juvenile Justice Initiative (JJI), an alternative-to-placement program that targets youth in the foster care system. The ACS initiative qualifies for the 65% reimbursement from OCFS under Social Services Law § 409. In 2007, \$11 million was budgeted for a total of 550 program slots, 380 to serve youth who are placement-bound as the result of a delinquency case, and 150 to serve youth returning from OCFS custody.¹⁵³ The program uses several evidence-based interventions including MST and FFT, which, according to Ronald E. Richter, New York City's Family Services Coordinator, "helps parents learn how to supervise and manage their adolescents so they act responsibly instead of engaging in dangerous behaviors."¹⁵⁴ A *New York Times* article reports that "in the year since the program began, fewer than 35 percent of the 275 youth who have been through it have been rearrested or violated probation."¹⁵⁵

Not to be overlooked are the network of non-profit organizations providing community-based alternatives-to-incarceration programs which have successfully served court-involved youth for years. Organizations like CASES, the Center for Community Alternatives, the Dome Project, the Andrew Glover Youth Project, and programs like BronxConnect (Urban Youth Alliance), Youth & Congregations in Partnership (Brooklyn District Attorney's Office), and Uth Turn (New York Theological

¹⁵² M. Horn, *City of New York Department of Probation Juvenile Operations Deputy Mayor Briefing 2008*.

¹⁵³ New York City's Independent Budget Office Fiscal Brief (December 2007)

¹⁵⁴ L. Kaufman, *A Home Remedy for Juvenile Offenders; Keeping Youths With Their Families for Treatment, the City Sees Results*, *New York Times* Feb. 20, 2008 at B4.

¹⁵⁵ *Id.*

Seminary) are trusted by the courts to provide community-based services to adjudicated youth as an alternative to pre- and post-disposition confinement. These programs, which usually provide 12 months of community-based support and monitoring report recidivism rates from 7% to 36% and often cost less than \$10,000 per youth annually. A detailed review of the various alternative-to-incarceration programs available in New York City, including known data on success rates and cost-per-youth is found in Appendix L attached to this Report.

Given the research showing as high as an 80% recidivism rate for male youth placed in OCFS facilities, the success of existing alternative programs, and the reduction in state placements, it comes as no surprise that OCFS has moved to reduce the number of beds in placement facilities. In 2009, four non-secure/limited secure OCFS residential facilities will be closed. For SFY 2008-09, a savings of \$1.55 million is projected. The annual savings is expected to grow to \$7.4 million in SFY 2009-2010.¹⁵⁶ OCFS intends to redirect the dollars saved into alternative programs that have proven effective, especially those located in the home communities of youth in order to strengthen connections with their families, schools, and the other significant adults in their lives.

Based on the various meetings, investigations and public hearings, the Task Force finds the following to be the guides for PINS and JD dispositions:

- For low- and moderate-risk youth, keeping these youth in the community with appropriate services and supervision, rather than ordering placement, produces improved long-term outcomes for both the youth and the public's safety;
- Investing in community-based organizations that provide services for youth in their home communities is preferable to paying the high cost of placements in facilities outside of the community; and
- Diverting youth to community-based alternatives to help reduce the very high levels of DMC in New York.

The Task Force was also struck by the dilemma of high-need youth who are placed on probation without provisions for necessary services. In New York City, youth must be placement-bound in order to qualify for funded evidence-based services like MST and FFT. Youth who are not high-risk to re-offend, but are chronically truant or abusing substances remain at risk of placement, not for committing another crime, but for violating probation. Even youth who receive high-end services like MST or FFT face the challenge of maintaining the positive gains made through these programs once the term of service expires. Youth who receive 4-6 months of intensive therapy may do well during the service term, but struggle when their probation supervision extends for up to 24 months. A legislative amendment to the FCA codifying existing practice would assure that courts understand that they are authorized to issue an early discharge of the

¹⁵⁶ *Highlights of the Office of Children and Family Services SFY 2008-2009 Enacted Budget*, OCFS (April 2008).

probationary sentence once the youth has successfully completed the alternative-to-placement and is no longer deemed high-risk to re-offend.

Recommendations

1. Develop a comprehensive funding strategy to support and increase the availability of post-disposition services, building on the strengths of existing proven programs and supporting new evidence-based initiatives;
2. Expand the use of the 65/35 reimbursement formula to cover preventive services for young people with delinquency cases at multiple points in case processing;
3. As set forth in further detail in Section VII(B)(8), *infra*, because it is often unnecessary and counterproductive to continue probation supervision after the successful completion of an alternative-to-placement program, the Legislature should amend the FCA to expressly authorize a court to order the early discharge of the probationer from the probation term. While this change merely codifies existing practice among some of the Family Court judges, it would nevertheless be helpful to have the statutory authority for this practice. New York City's DOP and Criminal Justice Coordinator take exception to this recommendation insofar as it suggests that probation supervision adds no value beyond that provided by an alternative-to-placement program;¹⁵⁷ and
4. Increase the use of Adjudgments in Contemplation of Dismissal (ACD's) and Conditional Discharges as a disposition for low-risk youth, utilizing community-based organizations to provide post-disposition services.

E. Probation's Supervision Function

One of probation's main functions is its role in supervising offenders in accordance with a Family Court's probation disposition. This supervision involves, among other things, the probation officer ensuring the public's safety by requiring that the probationer comply with all of the conditions of probation, and, in the event of a violation, the probationer is held accountable. Probation also provides pre-adjudication supervision.¹⁵⁸ During 2006, local probation departments were responsible for providing pre-adjudication supervision in approximately 2,200 JD and 1,000 PINS proceedings. With regard to post-adjudication supervision, local probation departments were responsible for supervising 12,000 JD and 3,000 PINS cases.

The Task Force learned that Family Court judges are generally satisfied the supervision services provided. Family Court judges differed on whether they wished to be notified with regard to technical violations, or whether they would defer to the

¹⁵⁷ As noted *infra*, New York City's Legal Aid Society's Juvenile Rights Division takes issue with this recommendation as well.

¹⁵⁸ Although not specifically authorized by statute, some Family Courts order pre-adjudication supervision, which involves either (1) the youth being supervised by probation as an alternative-to-detention, or (2) the youth being supervised during the period between fact-finding and disposition when the probation officer is preparing the PDI/I&R.

probation department's handling of technical violations with graduated sanctions. In addition, some Family Court judges were dissatisfied with the reporting/filing of violations of probation, especially where there has been a re-arrest. In some counties, probation departments are discouraged by the presentment agencies from filing VOP's in the event of a re-arrest so that *Rosario* material¹⁵⁹ is not generated during the investigation on the probation violation. While the current VOP rule does not require notification of an arrest, a new rule proposed by DPCA would require court notification within seven business days of arrest. Most members believe that at a minimum, a judge should be notified of the re-arrest of a JD who the Family Court judge has placed on probation. However, three Task Force members representing New York City's Department of Probation, New York City's Criminal Justice Coordinator, and the New York City Legal Aid Society's Juvenile Rights Division (JRD) do not agree with an across-the-board requirement that probation notify the Family Court judge in the event of a re-arrest.

JRD was opposed because "[t]he New York City juvenile justice system is successfully working toward youth being maintained in their communities as opposed to detention and placement. It is imperative that those providers most familiar with the youth determine the level of court intervention necessary, so that they are able to work more effectively with youth in providing a continuum of appropriate services as required. Mandating court intervention, which is effectively what this provision will do in New York City, will disrupt the relationship between the provider and the youth and not allow for appropriate discretion to be exercised." New York City's DOP originally objected to the Task Force's first proposal, which would have required the filing of a violation of probation in the event of a re-arrest because DOP has an affirmative obligation to continue to work with the probationer and "chooses to exercise discretion on the issue of re-arrests and violations, depending upon the nature of the re-arrest and intervene by way of graduated sanctions." In addition, DOP reasoned that such a recommendation conflicted with the Office of Juvenile Justice Delinquency Prevention's National Council of Juvenile and Family Court Judges in, *Improving Court Practice in Juvenile Delinquency Cases*, which provides that "[f]iling both a petition for an alleged new criminal act and a probation violation alleging that the youth violated probation by committing the alleged act is duplicative and uses unnecessary additional resources."¹⁶⁰ When the Task Force changed its recommendation from requiring that probation departments file a VOP petition to requiring that probation departments notify the court of the re-arrest within seven days, New York City's DOP continued to object to the recommendation since "[t]here was no discussion as to what that notice would entail, what burden it will place on probation and an already over-burdened court calendar." New York City's DOP and New York City's Criminal Justice Coordinator believe that a mandatory reporting requirement should be limited to felonies and A misdemeanors to

¹⁵⁹ Pursuant to the New York Court of Appeals' holding in *People v Rosario* (9 NY2d 286 [1961]), the prosecution has a duty to turnover all pretrial statements of prosecution witnesses to afford the defendant a fair opportunity to use the prior statements for impeachment purposes. The failure of the prosecution to turnover such statements constitutes *per se* reversible error.

¹⁶⁰ *Juvenile Delinquency Guidelines* at 195.

reduce the risk of unnecessary confinement for low level behavior (e.g., B misdemeanors and violations).

Post-adjudication supervision caseload sizes vary from county-to-county, but the average caseload for a juvenile probation officer is 40 cases. The Task Force's 2007 Report found that the ideal caseloads for juvenile supervision per probation officer would be 15 high-risk probationers, 30 medium-high-risk probationers, and 60 low-risk probationers. Should the additional funding envisioned by the 2007 Report materialize, these reduced caseload sizes will give POs more time to: (1) work with youth and families to develop and modify case plans; (2) conduct reassessments and provide feedback on progress toward case plan objectives; (3) meet with probationers in their homes and at school; (4) motivate and engage youth and their families in interventions to change attitudes and build skills; and (5) employ graduated sanctions.

This Report contains numerous recommendations that would improve probation's supervision function. For example, the use of validated risk assessment instruments for I&R's/PDI's and the requirement that all juvenile justice participants receive mandatory training on adolescent issues would improve both the effectiveness (through the use of proven treatment options) and flexibility (through the use of graduated sanctions) of case plans. Such training would also provide probation officers with different methods of communicating with probationers to spur positive behavior changes (e.g., motivational interviewing). The use of education advocates and school-based probation officers would assure that the educational plans are effectuated and that nothing is done to undermine the probationer's successful completion of the probation term (e.g., IEP's are followed and that schools refrain from "pushing out" low performing students by encouraging drop out or causing school failure through suspensions and/or expulsions).¹⁶¹ Probation departments and the courts should not recommend/order placements based on school failure unless remedial actions were undertaken prior to the failure. Finally, the availability of improved services and the identification of these services by resource coordinators and/or social workers would assist probation departments in their development of case plans designed to meet the risks and needs of the probationer.

¹⁶¹ The No Child Left Behind Act (NCLB) "has had a profound influence on school's incentive structure. NCLB requires that states set academic improvement goals based on standardized test scores and graduation rates ... However, test score accountability has been enforced much more strictly than graduation rate accountability. School administrators are keenly aware that a school is better off if low-performing students drop out (including most severely truant students) than if they take standardized tests and reduce the school's chances of earning Annual Yearly Progress (Losen, 2004). A review of the records of New York City Public Schools found that over 160,000 students were discharged between 1997 and 2001; the figure represents the number of students who were dropped from the rolls by the schools, not necessarily those who dropped out voluntarily ... The author hypothesizes that many of these students were forcibly dropped as part of an effort by schools to avoid being identified as low-performing (Gotbaum, 2002)" (National Center for School Engagement, *Pieces of the Truancy Jigsaw: A Literature Review* [January 2007] at 8).

Recommendations

1. A probation officer's caseload size should be limited to no more than 15 high-risk probationers, 30 medium-risk probationers, or 45 low-risk probationers. A portion of the \$75 million in additional state funding called for in the 2007 Report was allocated to achieve these caseload sizes; however, the Report recommended a maximum caseloads of 60 low-risk probationers. While the Task Force is now seeking to reduce caseloads for low-risk probationers to no more than 45 probationers, it is envisioned that if the additional funding recommended in this Report is attained, probation departments will be sufficiently resourced for these optimal caseloads;
2. To the extent feasible, probation departments statewide should institute specialized caseloads so that probation officers are not supervising adult probationers at the same time they are supervising young people;
3. Because it is often unnecessary and counterproductive to continue probation supervision after the successful completion of an alternative-to-placement program, the Legislature should amend the Family Court Act to expressly authorize a court's early discharge of probationers from their probation terms. While this change merely codifies existing practice among some of the Family Court judges, it would nevertheless be helpful to have the statutory authority for this practice. New York City's DOP and Criminal Justice Coordinator take exception insofar as this recommendation suggests that probation supervision adds no value beyond that provided by an alternative-to-placement program; and
4. Although there was not complete consensus among the Task Force members, most believe the concern over the generation of *Rosario* material should not cause probation departments to refrain from notifying the court in the event of a re-arrest. It is counterintuitive to withhold re-arrest information from the court until the presentment of the new JD petition arising from the re-arrest. Accordingly, most of the Task Force members agreed that a rule similar to the one being proposed by DPCA, which requires that the court be notified within 7 days of probation's knowledge of a re-arrest, be adopted with regard to re-arrests of youth adjudicated in the Family Court. The New York City Legal Aid Society's Juvenile Rights Division is opposed to such a mandatory notification requirement. New York City's DOP and New York City's Criminal Justice Coordinator believe that mandatory notification requirements should be limited to re-arrests involving felonies and A misdemeanors;¹⁶²

¹⁶² Furthermore, New York City's DOP and Criminal Justice Coordinator believe that the DPCA rule change only applies to adults. While the rule as currently drafted appears to apply only to criminal court proceedings, DPCA's counsel, Linda Valenti, Esq., has stated that the group's intent is to have the rule apply to Family Court proceedings as well.

5. Probation departments should refrain recommending placement because of school failure, and courts should not order placement dispositions based simply on school failure; and
6. Because a continuum of services is so critical to a youth's success, the Task Force recommends that legislation be enacted authorizing probation supervision at all stages of the proceeding (*i.e.*, pre-fact-finding, between fact-finding and disposition, and following placement).

F. The Need for Probation Services Post-Placement (Aftercare)

While residential placement facilities provide youth and their families with treatment during placement, positive change may be difficult to maintain after the placement has ended without adequate community support. Research shows that skills are best learned in the setting in which they will be used. In residential programs, youth learn skills to function within that setting, not within their community or family. As noted earlier in this Report, a 1999 OCFS study found that juveniles discharged from placement are at a higher risk of recidivism without appropriate supports and intervention. Well thought-out, evidence-based aftercare programs that provide coordinated and meaningful monitoring and treatment interventions will serve to increase the chances of a young person's successful reintegration into the community. Community restraint research indicates that surveillance and monitoring through drug testing, verification of employment and/or schooling, intensive supervision and electronic monitoring, coupled with an appropriate graduated sanction system and necessary services can prevent recurrence of delinquent activity. Intervention efforts should include cross-system collaboration among various agencies (*e.g.*, schools, police, mental health/substance abuse agencies, and LDSS's) and high levels of structure, clear expectations both for the young person and the providers as well as intervention and community restraint to target changes in behaviors while protecting the community from further harm. Probation departments are an untapped and very valuable resource in assisting with the development of effective aftercare services for the successful transition of youth back into their homes and communities. Unfortunately, in many communities, this collaboration and planning are insufficient to assist a youth and their family when returning from a placement into the community

One example of a collaborative probation model is Schenectady County's Department of Probation, which is implementing an aftercare program for young people placed in residential settings in the care and custody of the LDSS in 2008.¹⁶³ The County's experience and success in planning and collaborating began in 2003, when the County restructured juvenile services to create an integrated Juvenile Justice Center (Center) where probation officers, DSS caseworkers, a psychologist and a substance abuse specialist are co-located. One of the primary goals of the Center is to identify and address risk and protective factors to prevent PINS activity in the first place and to prevent the re-occurrence of PINS and JD behaviors. The Center is well positioned to

¹⁶³ The Task Force was advised that Westchester County's Department of Probation employs a single point of return after placement to plan for the young person's needs upon his/her return from placement.

provide a comprehensive aftercare program for youth returning from placement through a combination of surveillance/supervision and provision of necessary services.

In Schenectady County, there are currently many youth-focused intensive programs that function within a community setting. For example, Youth Advocacy Program, in-home prevention services provided by Berkshire Farms, Northeast Parent & Child Society and Parson's Child and Family Services. Through collaboration with the local children's mental health clinic, Functional Family Therapy (FFT), will also be available to aftercare program participants. Additionally, in-house prevention and intervention programs will include Aggression Replacement Training (ART), structured youth development activities, employment and parenting effectiveness-training. The County also has teams of probation officers and caseworkers assigned to each school to engage the school to which the youth will be returning in developing an appropriate school placement prior to the youth's return. Schenectady County plans to pilot this initiative to determine if it will reduce recidivism rates and return the youth home earlier than the standard one year term of placement. The goal will be to reduce longer institutional stays by providing effective aftercare programming and planning.

While it is clear that providing a collaborative and structured approach will benefit youth and their communities, this type of program model requires a special commitment from each of the service entities involved. All aftercare programming participants must be fully committed to truly "coaching" each youth through the process, with a recognition that many youth will not comply 100% of the time; the goal is to provide enough support so that youth who are struggling know they can work towards successful completion without fear of being treated in a punitive manner. At a minimum, a successful aftercare collaboration requires: (1) the building of a trusting relationship in which the youth understands what is required of him/her; and (2) an understanding of all phases of adolescent social and brain development. This will lead to realistic expectations on the part of the youth as well as the service providers assigned to assist him/her. It is only with a clear mindset as to the purpose of aftercare – to successfully transition youth into community settings in a collaborative, coordinated and supportive way – that aftercare will be successful for the majority of youth served.

Under existing practice, OCFS is principally responsible for providing aftercare services. OCFS has entered into contracts with several county probation departments to provide aftercare supervision and services on its behalf and has expressed a willingness to expand on the successes of this practice.

Recommendation

The State should fund probation's provision of high quality, evidence-based, community-based aftercare for all delinquents leaving State (OCFS) or private placement.

VII. OUTSIDE INFLUENCES AFFECTING THE DELIVERY OF EFFECTIVE PROBATION SERVICES

A. Educational Issues

Education issues contribute to and influence many aspects of local probation departments' work with young people before the Family Court, and with young people at risk of being subject to the Family Court. The school issues that arise include long-standing absenteeism and/or truancy, and a youth's disconnectedness from school and/or a lack of a belief that he/she can succeed in school. When there is no pre-planning prior to placement, a young person's re-entry to the home may cause significant issues, including the home school's failure to credit courses taken during placement and delays in re-enrollment.

There are 730 individual school districts in New York State. In New York City, there is one over-arching district, the New York City Department of Education, although there are smaller local governing bodies called community school districts in the individual boroughs. Outside of New York City, counties have a number of school districts within their jurisdiction, from two in Yates to approximately 70 in Suffolk County.

Many young people involved with probation have either unidentified special education needs or unmet needs in the schools they attend. A large percentage of children and adolescents are performing far below their grade level, and there are insufficient remedial services for this population. Probation officers are placed in the difficult position of requiring young people to comply with the requirements of school that far exceed their abilities. It also appears that some probation departments limit their contact with schools to monitoring their probationers' attendance. While important, this limited contact sometimes misses the deeper problems that need to be remedied to meaningfully address attendance issues. Schools must be encouraged to work collaboratively with probation departments to find solutions for failing students to avoid the over-referral of students into the juvenile justice system.

Many young people are considered over-aged and under-credited (OA-UC) by the school system. An OA-UC student is defined as a student who is at least 2 years behind his or her expected age and credit accumulation in high school.¹⁶⁴ Alternate types of education, such as vocational and other non-traditional education options, should be made available to young people for whom a traditional academic track is simply unrealistic and attendance at such alternative program should satisfy the requirements for school attendance set forth in the probationary disposition.

In New York City, there are currently 140,000 OA-UC youth between the ages of 16-21 who have either dropped out or who are significantly off-track for graduation. Approximately half of these children (e.g., 70,000) are enrolled in New York City's high schools, constituting approximately 20% of the high school population. Since 2005, New York City's Department of Education has been experimenting with several options to increase the 19% graduation rate of this OA-UC population through "Learning to Work"

¹⁶⁴ New York City Department of Education's Presentation to the Permanent Judicial Commission on Justice for Children, *Bringing Disengaged Youth to Graduation* (DOE Presentation) (March 4, 2008) at 5.

services combined with one or more of the following: (1) small transfer schools; (2) Young Adult Borough Centers (YABC) where students go to local high schools at night; and (3) Blended GED Programs. The number of youth served in these programs was 9,809 for 2006-2007, a fraction of the 70,000 OA-UC population, but a step in the right direction. The graduation rates have increased to as much as 56% for those students enrolled in transfer schools, and 39% for those students enrolled in YABC programs.¹⁶⁵

1. Student Behaviors and School Response

a. Truancy

Truancy is usually defined as an unexcused absence from school or class. While New York State's Education Department (SED) collects statistics on attendance, there is no methodology for data gathering on truancy. In large part, this may be due to SED's failure to define and promulgate regulations regarding truancy. The following factors have been identified as contributing to truancy: attitudes on the part of teachers and administrators; school inflexibility in response to cultural or learning styles of students; inappropriate class placements, school inconsistency in response to chronic absenteeism; and lack of meaningful consequences for young people who are not in school.¹⁶⁶ It is now well-documented that truancy is an early indicator of later delinquency, educational failure and withdrawal from school.¹⁶⁷ Truancy has also been linked to substance abuse and gang activity.¹⁶⁸ To address drop-out issues, SED funds Liberty Partnership programs, which involve 54 programs statewide.

- *SED does not collect data on truancy and there are no SED mandated programs or recommended responses to truancy.*

¹⁶⁵ See DOE Presentation. New York City's school district is the largest in the United States with over 1.2 million students. Because New York City has such a large, diverse population, including many disadvantaged families, only 50% of students graduate high school in four years and just 1/3 graduate with a Regents diploma. For students of color entering high school in 1998, a slim 9% graduated in four years with a Regents diploma. To address these low graduation and college-preparedness rates, Mayor Bloomberg and Chancellor Klein of New York City's Department of Education have initiated several aggressive reforms. One reform provides support for the establishment of new, smaller schools (no greater than 500 students) that have been found to have lower dropout, higher graduation, and higher attendance rates, as well as stronger test scores and greater numbers of students going to college. The City's goal is to have 100,000 students (1/3 of the City's high school population) served by these smaller high schools.

¹⁶⁶ Baker, M., Sigmon, J.N., Nugent, M.E., *Truancy Reduction: Keeping Students in School*, Juvenile Justice Bulletin, OJJDP (September 2001).

¹⁶⁷ Hurzinger, D., Loeber, R., Thornberry, T.P. and Cotheren, L., *Co-Occurrence of Delinquency and Other Problem Behaviors*, Juvenile Justice Bulletin, OJJDP (November 2000).

¹⁶⁸ M. Baker et al., *Truancy Reduction: Keeping Students in Schools*, Juvenile Justice Bulletin, OJJDP (September 2001) (*citing* Bell, Rosen and Dynlacht, 1996; Dyfoos, 1990; Gary, 1996; Rohrman, 1993).

b. Person in Need of Supervision (PINS)

A school may refer a young person less than 18 years of age for PINS diversion services (and ultimately for PINS petition filing) based on non-criminal behaviors such as truancy or incorrigibility. Schools often use the threat of educational neglect petitions to encourage parents to initiate PINS proceedings. In 2005, the statutory framework for PINS was amended to mandate the provision of specific diversion services and generally to require both parents and school systems to work more with the young person in diversion to prevent a PINS petition from being filed. In the event diversion fails and the PINS proceeds to a Family Court fact-finding and dispositional hearing, the disposition often includes the requirement that the adjudicated PINS youth regularly attends school.

- *SED does not require school districts to report data regarding PINS referrals and does not collect statewide data regarding each school district's PINS practice. SED has no recommended policies regarding PINS referrals for students.*

c. Juvenile Delinquency

A young person under age 16 may have a juvenile delinquency petition filed by a school against him or her, based upon actions taken on school property.

- *SED does not require school districts to report data regarding JD complaints filed by school district personnel or regarding incidents that occur on school property. SED does not collect statewide data regarding school district practice and has no recommended policies regarding JD's filed against students.*

Students over the age of 16 may have a criminal complaint filed against them based upon the same behavior as a JD.

- *SED does not require school districts to report data regarding criminal complaints filed by school district personnel or regarding incidents that occur on school property. SED does not collect statewide data regarding school district practices and has no recommended policies regarding criminal complaints filed against students.*

d. Recently Enacted Laws

Safe Schools Against Violence in Education Act (SAVE) (Chapter 181 of the Laws of 2000) – To address issues of school safety and violence prevention in schools in New York State, SAVE was enacted in 2000. Under SAVE requirements, schools must report “violent or disruptive incidents” on school property that occurred in the prior school year. Defined by the regulations of the Commissioner of Education, a violent or disruptive incident is very broad, encompassing weapons’ possession (including firecrackers), personal injury and intimidation, sexual offenses and use, possession or

sale of drugs or alcohol.¹⁶⁹ Also, each school district must adopt a code of conduct. SED defines what must be covered in the conduct code, but does not provide any guidance regarding parameters of acceptable or unacceptable behavior.¹⁷⁰

Model Policy on Educational Neglect – In August 2006, Social Services Law § 34-a was amended to require the Commissioners of OCFS and SED to “develop model practices and procedures for local social services districts and school districts regarding the reporting and investigation of educational neglect.”¹⁷¹ The law also requires the social services districts and school districts to submit policies and procedures regarding the reporting of educational neglect by each school district and the investigation of educational neglect allegations by CPS. The Model Policy was announced on February 28, 2008 and a copy of the policy as found on OCFS’s website is attached at Appendix M. The Model Policy is intended to set forth the essential elements that should be found in the local school district’s policies and procedures. The Policy states “Educational Neglect ... is considered to be the failure of a parent to ensure that child’s prompt and regular attendance in school or the keeping of a child out of school for impermissible reasons resulting in an adverse affect on the child’s educational progress or imminent danger of such an adverse effect.” The Policy requires that the school district adopt an attendance policy that includes: (1) what constitutes excused versus unexcused absences (which include portions of the day to incorporate tardiness and early departures); (2) what constitutes excessive absence from school;¹⁷² and (3) contact with the parent to determine the parent’s awareness of the excessive absences and to offer assistance as appropriate. In addition to guidelines regarding a school district’s reporting of educational neglect, the policy also sets forth guidelines for what constitutes educational impairment or harm or imminent danger of harm to the child within the meaning of FCA § 1012(f)(i)(A).

No Child Left Behind Act – The Federal No Child Left Behind Act of 2001¹⁷³ (NCLB) is meant to ensure all students achieve academic proficiency. Annual state and school district report cards are issued to inform parents and communities about state and school progress in achieving the goals of academic proficiency for each child in certain academic areas. Schools that do not make progress must provide supplemental services, such as free tutoring or after-school assistance, and take other corrective actions.

¹⁶⁹ 8 NYCRR § 100.2(gg).

¹⁷⁰ 8 NYCRR § 100.2(1).

¹⁷¹ Social Services Law § 34-a(8).

¹⁷² New York City’s Board of Education has an internal protocol regarding educational neglect, which provides that “[i]f a student misses ten consecutive days of school or twenty days of school within a four month period, the school is required to ‘look into’ why the student has been absent” (Appendix M at 4).

¹⁷³ PL 107-110; 20 U.S.C. § 6301 *et seq.*

The confluence of the “zero tolerance policies”¹⁷⁴ regarding student conduct infractions and school district accountability for individual student achievement caused by the NCLB (see *supra*) has created a climate that makes it easier and more advantageous for a school district to “push-out” lower performing students. The Task Force heard over and over again anecdotal evidence that this is indeed occurring in school districts across the State.¹⁷⁵ While SED does not track expulsions on a general basis, it does track the disproportionality of suspensions and expulsions concerning students covered by the Individuals with Disabilities Education Act (“IDEA”).¹⁷⁶ If a school district is found to have a high disproportionality rate, 15% of the district’s IDEA money must be used to address the disproportionality problem through the establishment of academic and behavioral programs. SED has also initiated a new program designed to reduce the number of suspensions and expulsions based on disciplinary problems. “Positive Behavioral Interventions and Supports” (PBIS) is a system-wide approach designed to prevent and respond to school and classroom discipline problems. Among other things, teachers and administrators are trained to teach and promote positive behavior in all students, to identify students in need of mental health services, and to facilitate their access to mental health services.¹⁷⁷

e. A Missing Link

Improving outcomes for youth requires that SED provide leadership and guidance to local school districts in the areas of truancy, PINS and JD and criminal complaints against students. SED must provide guidelines and mandatory policies including school districts having to comply with reporting requirements. The necessary emphasis on student safety must be balanced by procedures that ensure that students are treated uniformly and fairly by individual school districts, probation departments and the courts. In this way, it can be determined which districts are using PINS, JD’s, and criminal complaints to rid themselves of students who may be contributing to lower “school scores.” Criminalizing children and sending them away cannot be permitted as an appropriate response, except in the most extreme of circumstances. Collaboration must be increased between local school districts, probation, and the Family Courts to keep young people in their communities and schools so that they receive the education that they need to become productive adults.

¹⁷⁴ See R. Skiba, et al., *Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations, A Report to the American Psychological Association Zero Tolerance Task Force* (2006), for evidence that the removal of large numbers of disruptive students under zero tolerance policies has not guaranteed safer schools.

¹⁷⁵ See Transcript of New York City Hearing at 15-16, 20, 28-29, 53, 83, 87; Transcript of Syracuse Hearing at 18, 35, 55-56, 134-135, 152. School push-outs not only include suspensions and expulsions, but also include constructive push-outs such as warehousing students in the school’s auditorium on abbreviated schedules or failure to provide a student with the academic supports they need. For a full recitation of the types of push-out activities engaged in by schools, which include constructive push-outs (see Advocates for Children, *Push out Update* [February 2008]).

¹⁷⁶ See <http://eservices.nysed.gov/sepubrep/>.

¹⁷⁷ *Id.*

Recommendations

The Task Force recommends that SED:

1. promulgate regulations which: (a) establish guidelines and requirements for truancy prevention and intervention programs, (b) require district implementation and (c) provide state funding to districts to ensure that programs are available statewide;
2. require reporting on PINS referrals by district and by allegation, and annually report the data;
3. work with districts with high PINS referrals to improve diversion, and work with youth and families before referrals are made;
4. promulgate regulations that set forth appropriate circumstances for PINS referrals by school districts for truancy and incorrigibility;
5. require reporting of student arrests on school property and criminal or JD complaints by district and allegation, and annually report the data;
6. work with districts regarding arrests and criminal and JD referrals to improve diversion, and work with youth and families before such actions are taken;
7. promulgate regulations that establish guidelines and requirements regarding appropriate circumstances for student arrests and criminal and JD complaints regarding students;
8. promulgate regulations that establish guidelines and requirements for implementation of best practices to ensure academic success of young people who have fallen behind, and monitor the availability and success of those programs; and
9. promulgate regulations requiring local school districts to provide appropriate and adequate alternative schools that offer individualized education services to young people who have fallen behind or who are in need of an alternative setting to succeed.

The Task Force recommends that probation departments:

1. develop relationships with school districts to create collaboration in the provision of programming for probation-involved youth;
2. strive for a greater understanding of school performance issues rather than a mere review of a youth's attendance record so that attendance issues may be meaningfully addressed;
3. avoid the recommendation for placement in the event of school failure; and
4. develop training to assist the probation officers' understanding of Individual Education Plan's (IEP's) and the Special Education laws.

f. Return from Placement or Detention

Re-enrollment of young people in school after placement – short-term detention or long-term out-of-home placement in an OCFS facility or residential treatment center – continues to be a problem statewide, despite SED policy requiring that school districts promptly enroll or admit these young people.¹⁷⁸ In addition to the delays experienced in re-enrollment, school districts often will not credit the student for courses taken during placement. In 2004, a class action lawsuit was brought against New York City and SED in United States District Court for the Eastern District of New York regarding young people attempting to re-enroll in school after an out-of-home placement. Issues raised include denial of the students' constitutional right to a basic education, the lack of a system for tracking and monitoring the enrollment and transfer of students returning to schools, the lack of adequate notice of the students' rights, and an explanation of the procedure by which they can return to community schools. The lawsuit is pending and is currently in the discovery stage.

Recommendations

1. SED should monitor local school districts to ensure timely re-enrollment of young people returning to school after placement, and provide parents/legal guardians with a mechanism for immediate appeal to SED in the event of a school district's failure to re-enroll students after placement; and
2. SED should establish standards for schools to credit students with courses taken during placement that meet required criteria.

g. Promising Programs and Practices

(i) Educational Advocates – Educational advocates are specially trained personnel familiar with education systems and requirements who represent youth and families and act as a liaison between the probation department and school district personnel. The educational advocates also train probation officers in the educational rights of students. The use of educational advocates in probation departments has been shown to increase communication between schools and probation, provide easier access to school records, and increase collaborative efforts between probation departments and school officials to keep young people in school and in the community.

(ii) School-Based Probation Officers and Social Workers – The co-location of probation officers in middle and high schools to work with young people receiving diversion services or on probation has been proven effective in decreasing further involvement in improper conduct.¹⁷⁹ School-based probation officers set limits and

¹⁷⁸ 8 NYCRR § 100.2(ff).

¹⁷⁹ Juvenile Sanctions Center, School-based Probation: An Approach Worth Considering. Vol. 1 No. 3 (2003).

expectations for young people on probation, work to reduce in and out-of-school suspensions, tardiness, absenteeism and dropout rates, help young people on probation obtain appropriate services, facilitate re-entry of young people into school after placement, and assist school officials in decisions that are made concerning these young people. These intermediaries should not be confused with police department employees who are stationed within many public school buildings (particularly in New York City) as “school safety agents” to keep order. These employees of the New York City police department have “peace officer” status, not “police officer,” and have the authority to charge students for incidents of disruptive or other behavior arising on school property.

During the course of hearings and roundtables, the Task Force heard how all school districts used to have social workers on site to assist probation officers in obtaining services for young people on probation and to identify “at-risk” children (e.g., issues involving truancy, mental health, improper class placement, the family, and/or unattended special education needs) and obtaining wrap-around services to address the students’ and families’ needs. As the Task Force heard repeatedly during the public hearings, it is exceedingly difficult to address chronic truancy at the high school level because, by that time, the student is completely disconnected from school. Because of budgetary constraints, the vast majority of school districts no longer employ social workers. The Task Force believes that a return to this practice would improve the provision of early intervention services to at-risk children identified in elementary and middle school.

Recommendations

1. The Task Force recommends that state funding be made available to give all 58 probation departments access to educational advocacy services to: (a) engage in prevention efforts; (b) serve on other cross-system teams; (c) provide guidance in developing practices to reduce truancy, drop-outs and suspensions; (d) provide advocacy training for probation officers concerning the educational rights of children and the services available through the school systems in the communities; (e) monitor and assist youth either receiving diversion services or on probation in abiding by their conditions of probation; and (f) assist young people who are re-entering schools after placement. The amount of educational advocacy services per county should be dependent upon need;
2. All probation departments should be fully funded to provide for school-based probation officers who would: (a) serve as an on-site presence to assist probationers in abiding by their conditions of probation, (b) offer assistance to young people re-entering school after placement, and (c) provide guidance to the school in developing practices to reduce truancy, drop-outs, and suspensions;
3. Each school district, in consultation with local probation and law enforcement, should perform an appraisal of the number of school-based probation officers, social workers and school safety agents needed for a given school or school

district. This is a sensitive and important issue which must be addressed with student and public safety considerations in mind; and

4. Each school district should designate an attendance officer who would be responsible for truancy coordination (e.g., tracking and reporting) for the district.

B. Juvenile Justice Professionals Should be Trained on Adolescent Issues

Based on the recently published research on adolescent brain development and the fact that children are dependent upon adults for many of their needs, the Task Force finds it unrealistic to expect young people to comply with the same conditions of probation imposed on adults. The probation officers' recommendations for disposition and the Family Courts' orders of disposition should emphasize conditions that are related to the presenting problem, with a focus on the probationer's progress rather than setting hard and fast rules that are unlikely to be adhered to.

The Task Force believes that one of the reasons for the disconnect between reality and the expectations set forth as conditions of probation is the failure to provide training on adolescent issues to all participants in proceedings involving young people. This conclusion is based on the members' own observations as well as the comments received from members of the *ad hoc* advisory committee, the administrative and supervising judges of the Family Courts, and the juvenile justice professionals who testified at the public hearings. Furthermore, many decisions made by other juvenile justice participants – such as the initial charging and detention decisions made by police¹⁸⁰ and the presentment agency's decision whether to prosecute – should be made with a full understanding of the many developmental issues unique to adolescents. The Task Force finds that training on adolescent issues is necessary so that normal adolescent behavior is not prosecuted in the context of a PINS or JD proceeding. Accordingly, the Task Force recommends that training be provided to all integral juvenile justice participants (e.g., police officers, judges, presentment agency prosecutors, law guardians, probation officers, social workers, school administrators and service providers) on adolescent issues such as brain development, mental health, psychiatric status, substance use/abuse history, history of abuse, neglect or other trauma,¹⁸¹ educational needs and genetic predisposition to psychiatric or developmental

¹⁸⁰ A Working Group Report from a conference entitled *Family Court in New York City in the 21st Century: What Are Its Role and Responsibilities* and hosted by the Justice Center of the New York County Lawyers' Association, "reasoned that police-teen interaction and the traditionally negative responses of both parties were partially responsible for the exorbitant number of JD and PINS cases filed. By directing law enforcement to community resources and jointly exploring methods to assist teens rather than incarcerate them, the system could encourage early prevention instead of early court interaction" A. Spiwak, *Children Who Break the Rules: Juvenile Delinquency and Status Offenses*, 40 Colum. J. L. & Soc. Probs. 467, 471 (Summer 2007) (NYCLA Working Group Report).

¹⁸¹ One study which compared victimization and delinquency found that almost 50% of the sexually assaulted boys reported engaging in delinquent acts, compared with only 16.6% of those not sexually assaulted; the girls' rate was 19%, four times higher than the delinquency rate of girls who had not been sexually assaulted. Almost 47% of physically assaulted boys reported engaging in delinquent acts as compared with almost 10% of boys who were not physically assaulted. Twenty-nine percent of physically assaulted girls reported engaging in delinquent acts as compared with 3% of non-assaulted girls. About

disorders. Such training will provide the professionals with an understanding of the contextual factors underlying the young person's behavior so that the decisions made (e.g., arrest, prosecution, detention, conditions of probation, etc.) are tailored to address the underlying risks and needs while achieving juvenile justice goals.

The National Council of Juvenile and Family Court Judges (National Council) has stated that given the central role probation officers play, handling everything from intake and diversion, detention intake, courtroom case management, pre-disposition investigations, and probation supervision, they "must be well trained and extremely knowledgeable about juvenile law, juvenile delinquency court process, cultural issues, needs and risk screening, educational systems and issues, substance abuse, mental health, family violence and other trauma issues, behavior management, liability issues, child and adolescent development, family systems, the relationship between prior victimization and offending behavior, how to identify signs of prior victimization, and many other areas."¹⁸² Indeed, training is one of the sixteen Juvenile Delinquency Guidelines adopted by the National Council. The Guidelines are best practice protocols of evidence-based practices to be used, if possible, in juvenile delinquency proceedings. Guideline 16 provides:

All participants in the juvenile delinquency court system should be trained in child and adolescent development principles, cultural differences, mental health, substance abuse, and learning issues, and community systems and services ... as well as current research on effective interventions. Training should enhance the system participant's ability to build consensus, promote collaboration within the system and within the community, and provide effective outcomes. Training should identify system barriers and review process results and goal achievements in order to identify outcomes, and to design, implement, and determine the impact of system improvements. The focus of the training should not only be on knowledge transfer, but also attaining demonstrable skills so that system participants not only know what to do, but how to do it.¹⁸³

Although the training for Family Court probation officers developed by DPCA and known as the "Fundamentals of Probation Practice" provides probation officers with a foundation for evidence-based probation practice, including a section in the training on adolescents, due to time limitations, the program does not provide the in-depth training on adolescent issues that is essential to the effective provision of probation services.

32% of boys who had witnessed violence reported engaging in delinquent acts as compared with 6.5% of boys who did not witness violence. About 17% of girls who witnessed violence reported delinquent behavior as compared with 1.4% of girls who did not witness violence (D. Kilpatrick, B. Saunders and D. Smith, *Youth Victimization: Prevalence and Implications*. National Institute of Justice: Research in Brief. U.S. Dept. of Justice, Washington D.C. [2003]).

¹⁸² *Juvenile Delinquency Guidelines* at 33.

¹⁸³ *Id.* at 28.

Similarly, although the Unified Court System has provided some training on adolescent issues,¹⁸⁴ a curriculum targeted for all Family Court judges is currently being developed with training anticipated to occur throughout 2008. This training, which is being developed under a grant from the U.S. Justice Department's Office of Juvenile Justice and Delinquency Prevention, is designed to heighten awareness of the unique issues affecting young people and their families. The training will focus on adolescent development, psychology and cognitive behavior, evidence-based treatment, special education, juvenile substance abuse and juvenile treatment courts, and program development and evaluation. The goal is to apply problem-solving principles and approaches to more traditional courtroom settings and help Family Court judges understand and apply successful problem-solving techniques¹⁸⁵ – case management, integration of social and treatment services, team approach to decision making – to the full range of Family Court matters involving children.

The Task Force finds that many Family Court probation officers strive to provide probation services that are in the best interests of young people consistent with public safety considerations.¹⁸⁶ A holistic approach should be taken across all departments, with case planning goals to reduce the risk of recidivism through cognitive-behavioral intervention, accountability and restorative measures. To foster this approach, specialized training on adolescent issues should be made available to all juvenile justice participants.

¹⁸⁴ For example, there was a seminar on the adolescent brain offered during the 2007 summer judicial training session and the January 2008 non-judicial training at New York State Judicial Institute (JI). On June 4-6, 2007, the JI in collaboration with Stony Brook University's School of Social Welfare Child Welfare Training Program, held a training seminar entitled "Developing Accountability in the Lives of Youth" ("DAILY") for all juvenile justice participants. The program is designed to encourage the establishment of Juvenile Intervention/Treatment Courts and the use of evidence-based assessments and treatments to intercept the troubled youth before he/she is removed from the community.

¹⁸⁵ Over the past decade, the Unified Court System has been a leader in the effort to develop problem-solving court principles and implement them in specialized courts. Many of the lessons learned and innovations that have proven successful in those courts should also be applied to traditional courtroom settings. While problem-solving court principles differ according to the issue being addressed, they often share common qualities such as: intensive case-management, a team approach to decision making, integration of social and treatment services, judicial supervision of the treatment process, community outreach, direct interaction between defendants and the judge, a proactive role for the judge inside and outside the courtroom, increased communication and information sharing among relevant agencies, and ongoing education and training for judges, court staff and partners.

¹⁸⁶ This view of probation's blended role was echoed by many of the juvenile justice participants who commented on the issue. For example, Leslie Barnes, Assistant Probation Administrator, Monroe County Department of Probation, stated that she saw probation officers as a true blend of law enforcement and social work and that it was her belief that "[n]o matter what stage of the system the youth is involved in, an officer's role is not just to catch youth doing something wrong ... but it is also important we are trying to catch someone doing something right by being a positive role model and helping to connect our youth and families to the communities" (Transcript of Syracuse Hearing at 40-41).

Recommendations

1. Together DPCA and OCFS should develop, and with adequate funding, deliver a curriculum of mandatory specialized training for juvenile probation officers and other participants in the juvenile justice process to ensure that decisions involving young people subject to the juvenile justice system are coordinated. Topics should include adolescent brain development, mental health, accessing family services, substance abuse and advocacy, interfacing with schools, sexuality and power sharing. In addition to knowledge transfer, the training should include practical applications to ensure that participants attain demonstrable skills; and
2. The Judicial Institute and the OCA should continue their training of Family Court judges and non-judicial personnel. OCA, with input from juvenile justice stakeholders, should develop a new model form for orders of probation conditions that may be used by Family Court judges in their disposition orders to ensure that unrealistic conditions of probation are avoided.

C. The Need for Improved Services for Children and Adolescents

The needs of children and adolescents in the Family and Criminal Court System have become more complicated over the past twenty years, as this population often faces the effects of generational drug and alcohol abuse and family dissolution in their communities. In 2006, OCFS's Division of Rehabilitative Services found that approximately 86% of the young people screened had at least one special service need and 65% were identified as having more than one need. Of the young people screened, nearly three out of four young people had special service needs for substance abuse, 49% had mental health needs, 42% had health needs, 22% had special education needs, 7% had sex offender needs and 2% were identified as developmentally delayed.¹⁸⁷ The New York City Department of Juvenile Justice cited an even higher rate of occurrence of mental health needs – *i.e.*, 67% of young people received mental health services.¹⁸⁸

Testimony consistent with these statistics was provided by probation departments throughout New York State. The areas of need that were cited most often were education, mental health, vocational training and housing.¹⁸⁹ Additionally, services

¹⁸⁷ OCFS Division of Rehabilitative Services, *2006 Annual Report Division of Rehabilitative Services*.

¹⁸⁸ Fiscal 2007 Mayor's Management Report, *Department of Juvenile Justice*, at 142.

¹⁸⁹ There are two categories of adolescent probationers who most often find themselves in need of housing. First, court-involved young people often live in overstressed households involving issues such as poverty, substance abuse, mental health conditions, overcrowded households or family discord. Sometimes, families simply need a respite period, during which time the child and family may receive services to allow for a successful reunification. Finally, older adolescents sometimes need a more permanent housing opportunity where they can learn independent living skills and have access to services. This housing opportunity would provide critical services to young people while integrating them into the community thereby improving their long-term outlook.

for special populations including sex offenders and fire setters were reported to be lacking in most counties. Smaller counties described high levels of need which go unmet because county budgets do not have sufficient resources for specialized services. As a result, children in need of these services fall into the detention and placement system as a default position, where their needs continue to go unmet.

1. Mental Health

Statistics demonstrate that one-half to two-thirds of court-involved young people in New York State have mental health needs.¹⁹⁰ All of the probation department commissioners who testified noted the increased level of mental health problems among the juvenile population under their supervision. However, many youth involved with probation have undiagnosed mental health needs. Others have identified needs that go unmet in the community.

Evidence suggests that many young people involved with the juvenile justice system have experienced traumatic events and suffer from Post Traumatic Stress Disorder (PTSD).¹⁹¹ When trauma occurs early in childhood, critical aspects of brain and personality development may be disrupted and the ability to self-regulate, which is critical to success in late childhood and adolescence, can be compromised. When exposed to trauma or mistreatment, a young person may cope by resorting to indifference, defiance, or aggression as self-protective reactions. It is often these behaviors that bring young people into the juvenile justice system.

Because behaviors associated with trauma often look very similar to common delinquent behaviors, it is important for juvenile justice staff to recognize that there are multiple pathways to similar symptom patterns.¹⁹² Various tools have been developed and are used in some jurisdictions to identify and respond to the mental health needs of young people in the juvenile justice system. These tools include the Massachusetts Youth Screening Instrument (MAYSI-2) and a voice activated computerized version of the Diagnostic Interview Schedule for Children (V-DISC). DPCA should expand the use of these tools through training and support.

a. Funding for Mental Health Services

As with many areas of healthcare in New York City, there is a great need to increase the accessibility and affordability of mental health services to the Medicaid, uninsured and working poor populations of New York City. In many instances, it is these individuals who require the most needed and timely mental health services. But due to

¹⁹⁰ See L. Teplin, et al., *Psychiatric Disorders of Youth in Detention*, U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention (April 2006).

¹⁹¹ Studies conducted among young people in the juvenile justice system have found that the incidence of PTSD among young people is similar to young people in the mental health and substance abuse systems, but up to eight times higher than comparably aged young people in the general population. The prevalence of PTSD is higher among incarcerated female delinquents (49%) than among incarcerated male delinquents (32%), and higher than among young people in the community (<10%). (Ford, et al., *Trauma Among Youth in the Juvenile Justice System: Critical Issues and Directions* [June 2007] [available at www.ncmhjj.com]).

¹⁹² *Id.*

the complexities of the Medicaid and other insurance systems set forth in Appendix N, it becomes discouraging and sometimes impossible to receive the proper treatment and care.

b. Treatment Options for the Mentally Ill

Evidence-based best practices have been developed that show promising results in treating court-involved young people with mental health disorders. These programs result in reduced long-term rates of recidivism, decreased psychiatric symptomology, reduced rates of out-of-home placement, and significant long-term taxpayer savings. These treatments include MST, FFT and MTFC. These programs are in use in some parts of the State, but do not reach the number of young people who actually need them. Many probation officers are unaware of the range of services available for children and adolescents and do not know the processes for making services available to those in need. The probation system and the mental health system need to work more collaboratively so that children's and adolescents' needs are fully met.

For instance, it is essential that probation works with the children's single point of access (CSPOA). CSPOA is funded by the New York State Office of Mental Health, is a centralized referral system for seriously emotionally disturbed children and adolescents, aged 5-17, who need intensive mental health services to remain at home or in their community. CSPOA refers children and adolescents to high-end intensive community services such as case management, home and community-based services, community residence and family-based treatment. For young people with more intensive mental health needs, residential placements are indicated in residential treatment facilities (RTF) that are funded by the New York State Office of Mental Health. Once the need is identified, it would greatly facilitate treatment if probation departments had the funding to obtain meaningful mental health evaluations and the training to refer young people in need to such residences.

Recommendations

1. Hire resource coordinators in the Family Courts whose job would be to inform judges as to the available services in a community and assist judges in identifying and referring children to appropriate service providers;
2. Train probation officers regarding available mental health services and the procedures for accessing such services;
3. Increase "respite" and housing opportunities for diversion and court-involved young people; and
4. Increase non-institutional services for special populations such as fire setters and sex offenders.

VIII. OTHER AREAS FOR IMPROVEMENT

A. A Model for Change - The Integrated Youth Court

The concept of an Integrated Youth Court in Westchester County originated almost a decade ago when Family Court Judges Janet DiFiore and Joan Cooney began a dialogue regarding how to provide “age appropriate” interventions to youths prosecuted in criminal courts, where available interventions are different from those available for adolescent respondents in the Family Court. This concept was shared with their colleagues throughout the Westchester County criminal justice community. As a result of the political climate at that time, the conversation did not then grow into a court initiative. However, in 2006, when former Judge DiFiore became the District Attorney, she and Probation Commissioner Rocco A. Pozzi once again began discussing the merits of an Integrated Youth Court. Commissioner Pozzi and District Attorney DiFiore were then appointed to the Task Force.

Based on these inter-agency discussions and the findings contained in the 2007 Report, by letter dated May 17, 2007, Commissioner Pozzi wrote to Judge Francis Nicolai, Administrative Judge, Ninth Judicial District, requesting his support for an Integrated Youth Court, and stating:

Unfortunately, in today’s world many adolescents (13-18 years of age) make poor choices that result in their involvement in the Criminal Justice System With the exception of three states, these adolescents would be processed in the Juvenile Justice System which has historically been based on a model cognizant of the continuing developmental growth needs of adolescents. In 1993, confirmed by research data, the United States Supreme Court recognized that “a lack of maturity and an underdeveloped sense of responsibility are found in youth more than in adults and are more understandable among the young. ... criminal courts administer justice to young offenders in the same manner as to adult offenders and this frequently results in dispositions that are not sufficiently individualized for emotionally, intellectually, cognitively and morally developing adolescents. These qualities often result in impetuous and ill-conceived actions and decisions”....Therefore, despite their dealing with the same familial and life issues/struggles as the adolescents that appear in Family Court, the JO and YO mandatory/eligible (13-18) adolescents subject to criminal court probation supervision do not have the benefit of the same rehabilitative programming and resources as juveniles supervised by Family Court probation. I firmly believe that a first step in changing this inequity is for OCA to initiate an ***Integrated Youth Court*** in Westchester County.

An Integrated Youth Court would curtail probation receiving orders on the same adolescent from both criminal and Family Courts. This situation is occurring when a 16-18 year old being prosecuted in criminal court presents PINS behavior and the parent files for PINS diversion. When this occurs, one can see the disparate expectations and focus of the courts. While duplication of some

services exists, the court orders can be in conflict with one another regarding educational, curfew, and family responsibility mandates.

In 2007, the Unified Court System convened an interdisciplinary working group to begin planning an Integrated Youth Court (“IYC”) in Westchester. As a result of the work of this group, a model for the court was developed: the IYC will be set up in Family Court and in County Court to hear cases involving young people who are both a defendant in a criminal case and a respondent in a JD or PINS case. JD and PINS cases will be assigned to the IYC Part in Family Court, and the presiding judge in the IYC will hear those cases as an acting Family Court judge. Criminal cases will be transferred to the IYC Part in County Court, where the IYC judge will hear them as an acting County Court judge.

Key principles of the IYC include: first, a judge with expertise, sensitivity to the issues confronting adolescents in the criminal justice system, and an enhanced awareness of applicable law and available remedies and resources; second, greater consistency in case dispositions for adolescent litigants in their multiple family and criminal cases, as well as improved overall use of resources and remedies to address offenses and underlying problems. Having available the full array of Family Court and criminal court remedies will enable the IYC judge to take complementary approaches in resolving a young person’s multiple cases. Third, stakeholder agencies will assign dedicated staff to the court.

Finally, the approaches of criminal courts and Family Court to adolescent litigants are substantially different, with many more services available in Family Court cases. Resolving cases separately in these courts without information about the other related cases could give rise to inconsistent or contradictory dispositions that could, in combination, serve to dilute the effectiveness of either approach. However, with one judge presiding in both case types, each case can be resolved in a way that most efficiently and effectively responds to the circumstances of the defendant and the alleged offenses. A goal of the IYC is to improve outcomes for young people entering the courts and for their communities.

In order to provide legal support for the IYC and to allow for the IYC judge to transfer eligible criminal cases to the court, Chief Judge Judith S. Kaye and Chief Administrative Judge Ann T. Pfau enacted rules. Rules 45 of the Chief Judge and 145 of the Chief Administrator were signed into effect on May 5, 2008. The rules set forth the broad outlines of the pilot IYC in Westchester County. Currently, the planning group is developing the details of the court’s operations in accordance with those rules, with the goal of opening the court in September.¹⁹³

¹⁹³ The Task Force notes that since this Report’s completion, the Integrated Youth Court, which will be presided over by Judge William Edwards, opened on September 22, 2008.

Recommendation:

A pilot program has been initiated to establish an IYC structured to address the myriad issues that arise for young people in the criminal justice system. Its progress should be monitored and if successful, replicated elsewhere in the State.

B. Legislative Initiatives

Since its inception, probation has continually evolved in order to meet the needs of the community it serves. In that spirit, in addition to the recommendation for legislation changing PINS to FINS, the Task Force recommends several legislative proposals to improve the effectiveness of probation services for young people and families throughout the State. These initiatives will also strengthen the juvenile justice system's ability to appropriately balance the risks, needs and best interests of juvenile respondents with the needs of the victim and the community.

1. Defining "Complainant" in Juvenile Delinquency Proceedings

As previously noted, there are differences in how counties interpret "complainant" because nowhere is it defined in FCA § 301.2. In some counties, it is the arresting police officer who is deemed the complainant, even in cases in which victims are involved, so consent for an adjustment is obtained from the police officer. The Task Force believes that FCA § 301.2 should be amended to include the definition of a complainant, which would provide that in the event of an offense involving a victim, the complainant should always be deemed the victim. This amendment would ensure that the person from whom the consent to an adjustment is obtained is always the victim, except in the event of crimes without a specific victim, in which case probation departments should be permitted to consent to the adjustment on behalf of the police departments.

2. Preventive Service Funding for Juvenile Delinquency Cases

Securing consistent funding for services has been identified by the Task Force as a recurring problem for local probation departments statewide. In light of the advantages of diverting a larger percentage of young people from detention and residential placement, in combination with the shrinking state financial reimbursement level for local probation work, some localities have tapped into child welfare preventive services funding to help fund PINS diversion work.¹⁹⁴ But the same does not hold true for JD adjustment and alternatives-to -placement costs.

¹⁹⁴ According to OCFS, New York State's total gross child welfare cost is \$1.2 billion, a significant portion of which is for preventive service funding. Funding for preventive services is reimbursable in part from the federal government pursuant to 42 USC § 625(a)(1)(B) (Social Security Act, Title IV-B), which describes "public social services" directed at, *inter alia* "preventing or remedying, or assisting in the solution of problems which may result in the neglect, abuse, exploitation or delinquency of children." New York State currently receives approximately \$35 million in Title IV-B federal funding, so the federal government actually funds a small percentage of New York State's overall preventive services budget.

“Preventive services” are defined in Social Services Law § 409 as

supportive and rehabilitative services provided to children and their families for the purpose of averting an impairment or disruption of a family which will or could result in the placement of a child in foster care; enabling a child who has been placed in foster care to return to his family at an earlier time than would otherwise be possible; or reducing the likelihood that a child who has been discharged from foster care would return to such care.

An LDSS is required to provide preventive services in the following situations: (1) where a child is at risk of being placed in foster care; (2) to reduce the amount of time spend by a child in foster care; or (3) where a child is the subject of a PINS petition or is at risk of being subject to a PINS petition and the social services’ official determines that the child is at risk for placement into foster care.¹⁹⁵

Although PINS cases are identified as being eligible for preventive services funding in SSL § 409-a(1)(a), the provision does not specifically include youth who are subject to (or at risk of being subject to) a JD petition as being eligible for preventive service monies. In PINS cases, the diversion services can be considered “community optional preventive services” (COPS). COPS is available for young people who are not at immediate risk of being placed in foster-care and do not require certain costly administrative requirements, such as the aforementioned family assessment and service plans and opening the case in the CONNECTIONS system. Thus, the advantage for providing COPS, as compared to mandated preventive services, is that the administrative requirements are typically waived.¹⁹⁶ Given the existing statutory framework for how juvenile delinquency matters are handled (in many cases diversion services are provided after a petition is filed) and given OCFS’s position that COPS is not available for diverting a young person charged with juvenile delinquency from detention or residential placement, without a statutory amendment, the COPS dollars are not be available to fund JD preventive services.

At a time when fiscal restraint at both the state and local levels is increasingly important, diversion services can be looked at in two distinctly different ways. On one hand, local and state budget officials can view increased spending for preventive or diversion services as simply increasing the overall expenditure amount in a realm that can be viewed as discretionary. However, even the most expensive evidence-based preventive and diversion programs (e.g., Esperanza and ESP) are considerably less expensive than placement in OCFS facilities or foster care. And given the very high recidivism rate data, albeit a decade old, in relation to young people being returned to placement or incarcerated as adults within three years after having been discharged

¹⁹⁵ Social Services Law § 409-a(1)(a).

¹⁹⁶ Specifically, federal and state statutory provisions require the entry of data in the child welfare information system known as CONNECTIONS, including child welfare family assessment and service plans and updates, which is viewed by many localities as a costly administrative burden and at least partly redundant with use of the YASI or other probation-focused assessment tools.

from OCFS facilities, it is only sensible that less costly alternatives be tried when it is professionally assessed that an evidence-based diversion program could result in a positive outcome without unduly jeopardizing family members or community safety.

The state child welfare system, which provides services to many of the same youth served by probation, provides for a 65/35% reimbursement rate to LDSS's.¹⁹⁷ It is strongly recommended that juvenile probation services be reimbursed utilizing the same 65/35% reimbursement rate as child welfare. However, it is recommended that a separate funding stream be set up to fund probation expenditures for adjustment, diversion and alternatives-to-detention and placement services for alleged and adjudicated PINS and JD youth. A separate funding stream would permit the tracking of State and local expenditures used to provide community-based services, and a comparison with detention and placement costs to determine whether the community-based services are successful in decreasing State and local detention and placement costs. In addition, a separate funding stream would allow local probation departments to use alternative assessment and case management tools designed for this population and already in use in many, if not most jurisdictions.

3. Expanding the Use of Probation in Juvenile Delinquency Proceedings

The Family Court may order a period of probation under the FCA as part of its order of disposition of a JD petition.¹⁹⁸ Throughout the course of the Task Force's hearings and meetings, the Task Force heard the need for a continuum of services for the young people subject to the juvenile justice system. However, the Family Court Act does not specifically authorize probation supervision during the Family Court proceeding or upon re-entry to the community after placement, even though the Family Courts in some jurisdictions order supervision as an alternative-to-detention and during the time between fact-finding and the disposition.

The Task Force recommends that the FCA be amended to provide the statutory framework for probation supervision during three additional time periods: pre-fact-finding, between fact-finding and disposition (interim), and post-placement (aftercare). This amendment would allow Family Court judges to consider probation supervision as a viable alternative-to-detention at the initial appearance (FCA §§ 320.4 and 320.5). Additionally, this amendment would provide young people and families with a supervision continuum during the pendency of a case, thus enhancing probation's impact and effectiveness. Post-placement supervision will also provide comprehensive services to assist young people as they re-enter their communities. Recognizing that these additional categories of supervision would significantly increase probation's

¹⁹⁷ However, the Child Welfare Financing funding was also subject to the overall 2% reduction in Local Assistance as part of the enacted Budget, reducing the State reimbursement for these services to approximately 63%.

¹⁹⁸ See FCA §§ 352.2(b) and 353.2.

workload, the Task Force urges that possible funding sources be examined, including independent contracts with OCFS for aftercare services provided by probation departments.

4. Legislative Proposals by the Family Court Advisory and Rules Committee

By letter dated January 12, 2007, the Family Court Advisory and Rules Committee of OCA¹⁹⁹ conveyed its concern regarding the acute need for the enhancement of resources for probation services in the Family Court. The Committee recommended that funding for probation services be increased, particularly in the areas of diversion services, intensive supervision and alternatives-to-detention to maximize the use of probation's limited financial resources while reducing the use of detention and costly out-of-home placements. The Committee also proposed legislative amendments that would, among other things, enhance probation supervision by authorizing the use of electronic monitoring for juvenile delinquents as an alternative-to-detention,²⁰⁰ and permitting Family Court Judges to place juveniles in an intensive services probation program for all or part of the period of supervision as an alternative-to-placement in juvenile delinquency and PINS proceedings. Other proposed legislation would: (1) establish a judicial allocution procedure for accepting admissions in PINS proceedings analogous to the allocution required in JD proceedings; (2) delineate procedures for violations of orders of suspended judgment and violations of probation in PINS proceedings similar to the requirements established in JD proceedings; (3) authorize probation's access to the statewide automated order of protection and warrant registry; (4) authorize courts to call upon probation departments to perform investigations in family offense matters; and (5) authorize the issuance of civil and criminal penalties for the unauthorized disclosure of information from the statewide automated registry of orders of protection and warrants. These proposals are attached as Appendix O. The Task Force thanks the Family Court Advisory and Rules Committee and, in particular, its Counsel, Janet Fink, Esq., for providing the Task Force with its legislative initiatives, which the Task Force believes should receive serious

¹⁹⁹ The Family Court Advisory and Rules Committee is one of the standing advisory committees established by the Chief Administrative Judge of the Courts pursuant to Judiciary Law § 212(1)(q) and FCA § 212(b). The Committee recommends to the Chief Administrative Judge proposals in the areas of Family Court procedure and family law that may be incorporated into the Chief Administrative Judge's legislative program.

²⁰⁰ The Legislature recently adopted a bill that authorizes a court, in its discretion and where applicable (*i.e.*, where such electronic monitoring equipment is available), the use of electronic monitoring as an alternative-to-detention if the court finds that the electronic monitoring "would significantly reduce the substantial probability that the respondent would not return to court on the return date or the serious risk that the respondent may before the return date commit an act that if committed by an adult would constitute a crime" (S 6807-C/A 9807-C; Delivered to Governor, April 11, 2008). The bill also amends FCA § 320.5 by stating that "[t]he court shall not direct detention unless available alternatives to detention, including conditional release, would not be appropriate, and the court finds that unless the respondent is detained: (i) there is a substantial probability that he or she will not appear in court on the return date; or (ii) there is a serious risk that he or she may before the return date commit an act which if committed by an adult would constitute a crime."

consideration and, in the event they are enacted, that sufficient funding be appropriated so they do not result in unfunded mandates. New York City's DOP and Criminal Justice Coordinator have serious concerns about the efficacy and utility of electronic monitoring (EM) in the vertical urban environment of the City, surrounded by large bodies of water, factors which may distort the GPS signals upon which EM relies. Also, they believe that "EM only provides an after-the-fact accounting of an individual's whereabouts. It should not be characterized as 'house arrest' as that would create a false and unwarranted sense of public safety on the part of the public." Also, insofar as this recommendation applies to juveniles who have not been adjudicated, New York City's DOP and New York City's Criminal Justice Coordinator believe "it more onerous than the requirements placed upon adjudicated delinquents."

5. Amend the FCA so that Adjustments May Occur for up to Six Months

The Task Force heard from many probation departments throughout the State that the current four month timeframe is too short to adjust some of the more difficult cases (e.g., fire setters and sex offenders), and that if probation had the ability to extend the adjustment period for an additional two months, more alleged JD's would receive adjustment rather than referral to Family Court. To support this recommendation, some probation administrators relied on the amendment to the PINS law, which removed an outer limit of time for diversion services so that they may continue for as long as the probation department or LDSS views the diversion efforts fruitful.²⁰¹ Although the majority of Task Force members agree and recommend that the adjustment period should be extended to six months, as set forth in detail in Section VI(A)(1) *supra*, there were strong objections, voiced by three members of the Task Force representing New York City's Department of Probation, New York City's Criminal Justice Coordinator and New York City Legal Aid Society's Juvenile Rights Division. These members view the recommendation for an extension both unnecessary and unwarranted because it "is inconsistent with the recommendation that probation be terminated at the conclusion of treatment services. We should not expose juveniles who have not been adjudicated to periods of supervision that may be equal to those of probationers." Nevertheless, given the tremendous support for this extension voiced by members of the probation community based on their belief that the additional time will increase the number of successful adjustments, the Task Force recommends that the FCA § 308.1(9) be amended to extend the statutory period of adjustment to six months without the need for court intervention.²⁰²

6. Amend the FCA to Remedy Sealing Inconsistencies

While Article 3 of the FCA establishes sealing provisions for alleged and certain adjudicated juvenile delinquents, inexplicably, Article 7 of the FCA contains no similar statutory provisions. This omission is unfair and ought to be rectified as it does not

²⁰¹ Transcript of Syracuse Public Hearing at 58.

²⁰² This is in accordance with legislation currently being proposed by DPCA (see DPCA #09-088, Departmental #267 § 1).

serve the best interests of youth and can result in alleged and/or adjudicated PINS being treated more harshly than their JD counterparts.

FCA § 381.2 also governs use of juvenile delinquency records in other courts. Subdivision one prohibits certain information from being admissible against a youth's interests in any other court. An exception to this rule appears in subdivision two which provides that in imposing a sentence upon an adult after conviction, another court may receive and consider the records and information on file with the Family Court unless such records have been sealed pursuant to FCA § 375.1. Inexplicably, it does not reference FCA § 375.2, which provides for a motion to seal after a finding. Similarly, FCA §381.2 which governs use of police records only references FCA § 375.1 and not § 375.2. FCA § 783, which governs use of Article 7 records, contains no sealing reference nor does FCA § 784, which governs use of police records relating to the arrest and disposition of any person under Article 7.

The aforementioned statutory provisions should be reconciled and made consistent with expansion of confidentiality to include PINS' records sealing and sealing after a finding.

7. Amend the FCA to Include Enforcement Mechanisms for Orders of Restitution

The FCA should be amended to contain provisions similar to Criminal Procedure Law (CPL) § 420.10(8) and Penal Law (PL) § 60.27(8). CPL § 420.10(8) requires the chief elected official in each county, and in New York City, the mayor, to designate an entity (*i.e.*, the restitution collection agency) responsible for the collection and administration of restitution payments. To reimburse the restitution collection agency for the expenses associated with collection and administration, PL § 60.27(8) requires that if the court's disposition includes restitution, the court also must also charge defendant a surcharge of 5% of the amount of restitution ordered, which is to be paid to the restitution collection agency designated under CPL § 420.10(8). This way, if the local probation department is designated the entity responsible for enforcing the order of restitution, it will be reimbursed for the expenses incurred with the 5% surcharge ordered by the Family Court.

8. Amend the FCA to Codify Existing Family Court Practice of Discharging Youth Early From Probation Term Upon Successful Completion of Treatment

Throughout the course of the hearings and roundtables, the Task Force heard how probation terms that extend beyond the services provided are often counterproductive since they subject young people to continued supervision without the necessary supports. New York City's DOP and Criminal Justice Coordinator take the position that this assertion is inconsistent with the recommendation concerning increasing the adjustment period and state "If further probation involvement has value there, why not here?" While the Task Force originally considered recommending that

the probation term always coincide with the services period, it ultimately decided that the determination over when supervision ends should remain within the Family Court judge's discretion. However, to encourage Family Court judges, under proper circumstances (e.g., successful completion of an alternative-to-placement program), to order the early discharge of young people from their probation terms, the Task Force recommends that the Legislature amend the FCA to expressly authorize a court to order the early discharge from the probation term, which would codify existing practice among some (but not all) Family Court judges.

9. Amend the Executive Law Regarding Victims' Rights in the Juvenile Justice System

To ensure juvenile justice agencies' compliance with the requirements concerning victim's rights and restorative justice set forth in Section V, *supra*, the Task Force recommends that the Fair Treatment Standards found in the Executive Law, Article 23, be amended to delineate whose responsibility it is to address particular victims' rights and protections with respect to the juvenile justice system.

C. Juvenile Sex Offenders

1. Treatment Options for Juvenile Sex Offenders

New York State spends more than \$2 million a year on sex offender treatment programs for young people in placement facilities. OCFS recently hired six social workers who specialize in children who have been sexually offended. The programs involve 24-hour supervision with intensive therapy and onsite education. In some counties, there has been a movement away from placement to community-based services. For example, in 1995 in Westchester County, 80-85% of juvenile sex offenders were placed because there were no services available in the community to treat them. Now, only 15% are placed with 85% receiving treatment in the community. In Westchester, the determination over whether to place or treat in the community is based on risk assessments performed by Westchester Jewish Community Services. As noted by Jim Cannon, Supervising Probation Officer Westchester County Department of Probation (the Department), the juvenile sex offender treatment programs are the only services the Department buys with county dollars since the other programs are brokered through the Department.²⁰³ The Westchester County Department of Probation's model of relying primarily on outpatient community-based treatment is preferred in the research community since "no published study ... has ever shown that residential treatment programs ... are more effective and less costly than outpatient programs."²⁰⁴

²⁰³ Transcript of New York City Public Hearing at 52.

²⁰⁴ M. Jones, *How Can You Distinguish a Budding Pedophile From a Kid With Real Boundary Problems* (New York Times Magazine, July 22, 2007) (Jones).

As noted in a recent *New York Times Magazine* article:

Whether residential or outpatient, the treatment philosophies among the programs vary widely. Some focus on family dynamics and teaching boundaries and understanding social cues, as well as helping immerse juveniles in mainstream activities. Other programs embrace the model ... in which youths are treated much like adult offenders.²⁰⁵

Most experts agree that the adult sex offender treatment model is inappropriate because “research over the past decade has shown that juveniles who commit sex offenses are in several ways very different from adult sex offenders – Kids are not short adults.”²⁰⁶ Elizabeth Letouneau, a professor at the Medical University of South Carolina and the head of a current federal study investigating the value of certain therapies over others, has explained the difference between adult and juvenile sex offenders as follows:

most adolescents don’t have the sexual deviancy that prompts an adult predator to offend repeatedly. If you’re an adult child molester, you’re violating clear age and legal boundaries. You’re crossing over a lot of lines, so you have to be highly motivated ... Kids typically don’t cross as many lines when they offend; they do stupid things all the time because their brains aren’t developed. As a result of the lack of frontal lobe development (responsible for impulse control, moral reasoning and regulating emotions), instead of being compulsive like pedophiles, adolescents tend to be impulsive, which means tactics like grooming, in which an offender woos a child for weeks or months before a sexual assault, tend not to apply to the majority of juveniles.

Recent research shows MST to be more effective than either individual psychotherapy or other more adult-oriented treatments such as relapse prevention. While MST is expensive, its cost is a fraction of the cost of placement in a residential treatment facility.

Recommendations

1. The Office of Mental Health, the Office of Sex Offender Management and DCJS should develop guidelines regarding the most effective licensed treatments available for juvenile sex offenders. Local probation departments should be advised that the use of adult sex offender treatment is inappropriate and ill-advised for the juvenile sex offender population.
2. The Task Force recommends that rather than continuing to invest in residential treatment facilities, the State should provide funding to the counties to seed local

²⁰⁵ *Id.*

²⁰⁶ *Id.*

evidence-based treatment options for their juvenile sex offender population that have been proven effective.

2. Legislation Expanding Sex Offender Registration Laws to Juvenile Sex Offenders is Unwarranted

For adult sex offenders, serving out a prison sentence does not end their involvement with the criminal justice system because of, *inter alia*, annual registration requirements found in the Sex Offender Registration Act and the possibility for continued civil confinement. Based on research showing adult sex offenders to be at a high risk for future offending, with recidivism rates ranging from 25% to 50% or higher for the serious offenders, these laws are designed to ensure public safety.²⁰⁷ This same premise, however, does not hold true for juvenile sex offenders. Numerous studies have found the recidivism rate for juvenile sex offenders to be under 10%.²⁰⁸ Indeed, one recent study involving the 10-year tracking of sex offenders under the age of 13 found a recidivism rate of 2%.²⁰⁹ Despite the lack of any data supporting a high risk of recidivism for juvenile sex offenders, there has been a recent movement both nationally and in New York State to pass legislation requiring 13, 14 and 15-year-olds convicted of violent sex offenses to register as sex offenders. President Bush recently signed into law a federal Internet sex registry that allows law enforcement and the public to track convicted sex offenders aged 14 and older who engage in certain sexual acts with children younger than 12. According to a *New York Times* article, “[w]ithin the next two years, states that have excluded adolescents from community-notification laws may no longer be able to do so without losing federal money.”²¹⁰ However, not only are these registration laws unnecessary for the public’s protection (and possibly constitutionally infirm), they also “undercut a central tenet of the juvenile justice system,” namely, the sealing of the young person’s records from the public’s view to facilitate rehabilitation. Instead, the public’s access to the name and address of juvenile sex offenders will likely cause these young people to be labeled and ostracized by their peers and neighbors. While the long term effects of these laws have yet to be documented, these laws may increase the likelihood of future criminal activity since, as noted by Elizabeth Letourneau, “If kids can’t get through school because of community notification, or they can’t get jobs, they are going to be marginalized. And marginalized people ... commit more crimes.”²¹¹

²⁰⁷ *Id.*

²⁰⁸ *Id.*; G. Parks, *Risk Factors for Recidivism Among Adolescent Sexual Offenders* (2006) available at www.atsa.com/pdfs/parks_strat.pdf (“Results supported previous research indicating that most adolescents who sexually offend do not continue offending into adulthood”).

²⁰⁹ Jones.

²¹⁰ *Id.*

²¹¹ *Id.*

With regard to the Sex Offender Registration Act, the State has imposed significant burdens on probation departments without providing any additional financial resources to shoulder this burden. If the juvenile sex offender population were added, it would again be an unfunded mandate left to local probation departments to manage.

Recommendation

Legislative proposals that would seek to expand the Sex Offender Registration Laws to the juvenile sex offender population are unwarranted. Given the low rate of recidivism (2-10%) in that population, these laws are unnecessary to the public's safety and counter to confidentiality/rehabilitative purposes underlying the juvenile justice system. Therefore, even in the face of losing federal funding, the Task Force recommends that New York continue to exclude young people from community-notification laws. Finally, the Task Force believes that a satisfactory alternative to the community-notification laws would be the enactment of a "time-conditional record sealing" law. This law would permit law enforcement to have access to the juvenile criminal records if an adolescent with a sex offense goes on to commit another offense as an adult, and factor the risk of recidivism into a subsequent judicial determination.

PROJECTED SAVINGS FROM INCREASING THE
USE OF FAMILY THERAPIES WITH NEW YORK
YOUTH IN CUSTODY OR ON PROBATION

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Savings for youth in custody:

Over 2,000 juveniles were in out-of-home custody following trial in 2005.ⁱ

At least half of those juveniles, 1,000 youths, could be placed in Multidimensional Treatment Foster Care (MTFC),ⁱⁱ reducing their future involvement in crime so much, it would produce a net savings, on average, of \$78,000 per youth.ⁱⁱⁱ For the 1,000 youth who could be redirected to MTFC each year, that would equal roughly **\$75 million dollars** in savings.

Savings for youth on probation:

There were over 12,000 New York juvenile delinquents on probation for crimes (not just status offenses) following trial in 2006.^{iv}

A third of those juvenile delinquents on probation are at high risk of re-offending, according to state risk assessments.^v That would make them eligible for either Functional Family Therapy (FFT), or Multisystemic Therapy (MST). MST is somewhat more intense than FFT, and thus more costly. It has been shown to reduce crime so much it produces a net savings, on average, of \$18,000 per youth. FFT, which is often used with somewhat less serious repeat offenders, and is therefore less expensive to operate, cuts crime so much it produces a net savings, on average, of \$32,000 per youth.

In practice, the careful use of risk assessment tools would determine exactly how many youth should be directed to FFT and how many should receive MST. But, for the purpose of this exercise, we will assume that half of the youth would be directed to FFT and half to MST. A third of 12,000 is 4,000 high-risk youth on probation. If half of those, 2,000 youth, receive MST that would save over **\$35 million**. The 2,000 assigned to FFT every year would save **\$65 million**.

The total savings for youth in custody redirected to MTFC (\$75 million) when added to the savings from using MST (\$35 million) and FFT (\$65 million) for high-risk youth on probation would total \$175 million.^{vi}

i Rice, E., (2006). 2005 Annual Report: Division of Rehabilitative Services. New York State Office of Children and Family Services. There were 2,079 youth in out-of-home placements through the Office of Children and Family Services in 2005. Of those youth, 144 were in secure confinement, and would not be candidates for treatment foster care, and 4 were already in foster care. That leaves 1,931 youth.

ii Based on a discussion with Gerard Bouwman, President of TFC Consultants, the agency that replicates MTFC, well more than half of the youth who are not in secure placement would be eligible for MTFC. For the purposes of this rough estimate, we assume that would mean 1,000 youth facing custody in New York.

iii Aos, S., Miller, M. & Drake, E. (2006). Evidence-based public policy options to reduce future prison construction, criminal justice costs, and crime rates. Olympia, WA: Washington State Institute for Public Policy. Retrieved on April 23, 2007 from <http://www.wsipp.wa.gov/>.

iv From a memo to Fight Crime: Invest in Kids prepared by Norma Tyler, Community Correction Representative, Division of Probation and Correctional Alternatives, July 10, 2007.

v From a memo to Fight Crime: Invest in Kids prepared by Norma Tyler, Community Correction Representative, Division of Probation and Correctional Alternatives, July 10, 2007.

vi Technically, the savings are not annual savings, because they are realized over many years. But the analysts have assigned less value to the savings that are realized in later years than savings realized in more recent years, therefore the 175 million savings figure is expressed in current dollar savings – not just totaled up from all the savings over time. This allows for governments or private investors to compare different investment options even if the time frames vary over which the savings from each option will be realized. It expresses the investment in terms of what it is currently worth today. So in this case, a year's worth of diverting New York juvenile offenders will save 175 million more – in current dollars – than placing the kids in regular probation or lock-up.

DISPROPORTIONATE MINORITY CONTACTS

DISPROPORTIONATE MINORITY CONTACTS

More Must be Done to Reverse the Overrepresentation of Minorities in the Juvenile Justice System

The federal Juvenile Justice and Delinquency Prevention Act (JJDP A)¹ was passed in 1974 to put in place protections for youth involved in the juvenile justice system. Since then, its subsequent reauthorizations have placed increased focus on racial disparities in juvenile justice processing. In 1988, the JJDP A required states that receive formula grant program funding to determine whether the proportion of juvenile minorities in confinement exceeds their proportion of the general youth population, and if so, to develop corrective strategies. States that fail to adequately address DMC can jeopardize up to 20% of their formula grant funding under Title II of the JJDP A. In 1992, Congress elevated the reduction of disproportionate minority confinement (DMC) to one of four core protections of the Act. The JJDP A is currently up for reauthorization and there may be new provisions requiring states to reach numerical targets in reducing DMC as a condition of receiving formula grant program funding.

The original language of the JJDP A required states to address the disproportionate *confinement* of youth in detention and placement facilities. In 2002, the language changed from *confinement* to *contact*, emphasizing that the overrepresentation of youth of color in the juvenile justice system stemmed from racial disparities at multiple decision-making points from arrest to placement and emphasizing shared accountability across multiple stakeholders. Recognizing Probation’s role as the “gatekeeper” to the Family Court System, the Probation Task Force believes that probation, in concert with the other participants in the juvenile justice system, can be a leader in addressing disproportionate minority contact (DMC) in New York’s juvenile justice system. While probation alone cannot remedy the vast racial disparities in juvenile justice processing, its influence and interconnectedness with other key decision makers (Family Court judges, prosecutors) provides an opportunity for a leadership role in this important undertaking.

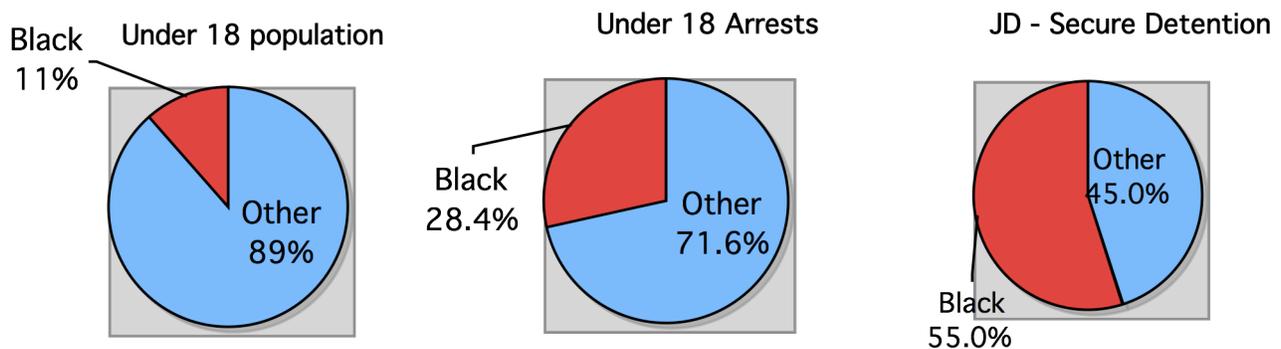
New York State’s juvenile justice system demonstrates widespread racial disparities in juvenile justice, with youth of color vastly overrepresented at nearly every stage of processing. The 2007 report “Widening the Lens: A Panoramic View of Juvenile Justice in New York State” by the New York State Task Force on Juvenile Justice Indicators found widespread evidence of disproportionate minority confinement at multiple points in juvenile justice processing.

¹ “Established in 1974 and most recently authorized in 2002 with bipartisan support, the JJDP A is based on a broad consensus that children, youth and families involved with the juvenile and criminal courts should be guarded by federal standards for care and custody, while also upholding the interests of community safety and the prevention of victimization. The Juvenile Justice and Delinquency Prevention Act (JJDP A) provides for: (1) a nationwide juvenile justice planning and advisory system spanning all states, territories and the District of Columbia; (2) federal funding for delinquency prevention and improvements in state and local juvenile justice programs and practices; and (3) operation of a federal agency (the Office of Juvenile Justice and Delinquency Prevention) dedicated to training, technical assistance, model programs, and research and evaluation, to support state and local efforts.” Source: <http://act4jj.org/about.html>

According to the report:

The indicators reveal that from the point of arrest to the point of detention, the proportion of black youth in the system increases. As figure 7 shows, black youth accounted for 55 percent of all JD secure admissions in 2004, even though they represented 29 percent of juvenile arrests and only 11 percent of the state under-18 population. (All three of these figures exclude New York City.)²

Figure 7: Comparative racial breakdown (excluding New York City)³



The New York City data – not included in the aforementioned report due to different methods of compilation - demonstrates even more striking racial disparities.⁴ Data from the NYPD and the NYC Department of Juvenile Justice on the breakdown of arrests and detention by race and ethnicity. These numbers show that in New York City, youth of color are overwhelmingly overrepresented in the juvenile justice system.

Arrests

² Widening the Lens: A Panoramic View of Juvenile Justice in New York State; New York State Task Force on Juvenile Justice Indicators, February 2007, p. 8

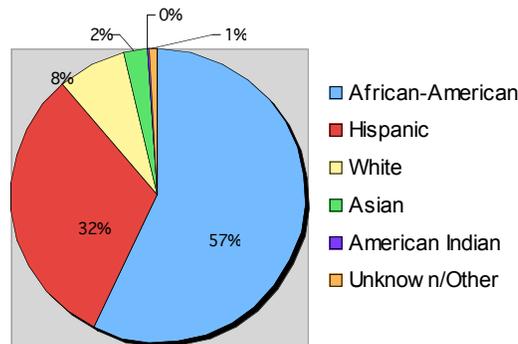
³ Charts reproduced from p.8 of the report named above.

⁴ The report gives the following explanation: “One limitation to be noted early on is that 2004 arrest and detention data for New York City is not included in this report. A key organizing principle of the Task Force’s work was that data should be comparable across different counties. For this reason, the Task Force selected indicators drawn from statewide data systems; this ensures that data for all counties conform to a tightly standardized structure. The New York City Police Department and the New York City Department of Juvenile Justice both collect extensive and high quality juvenile arrest and detention data. However, at the time this report was produced, neither agency was using data systems that matched the statewide reporting systems. Because of the structural difference, the New York City agencies’ data are not included here.” (p. 1).

⁴ Source: New York Police Department 2005, reported in the New York State 2006-2008 Three Year Comprehensive State Plan for the Juvenile Justice & Delinquency Prevention Formula Grant Program, p. 77

Juvenile arrest data from the NYPD for 2005 shows that youth of color make up the vast majority of arrests in New York City. Out of 11,151 arrests in 2005, 6,394 (57.5%) were African American youth, 3,256 (31.5%) were Latino youth, 841 (7.5%) were White youth, 271 (2.5%) were Asian youth, 25 were American Indian and 94 were classified as Unknown/Other (both less than 1%).⁵ If we assume the Unknown/Other category (0.84%) are non-white youth, then 92.5% of youth arrested in New York City in 2005 were youth of color.⁶

NYC Juvenile Arrests 2005

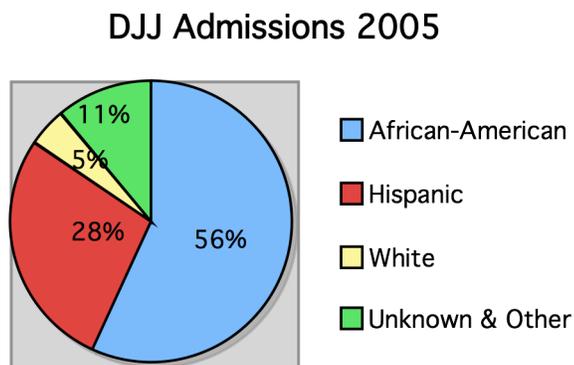


⁵ Source: New York Police Department 2005, reported in the New York State 2006-2008 Three Year Comprehensive State Plan for the Juvenile Justice & Delinquency Prevention Formula Grant Program, p. 77

⁶ The Unknown/Other category accounts for 0.84% of youth arrests.

Detention

Detention admission data from the NYC Department of Juvenile Justice shows that the overrepresentation of youth of color continues in admissions to facilities. Out of 4,324 admissions to DJJ Custody in 2005, 2,463 (57%) were African American youth, 1,191 (27.5%) were Latino youth, 189 (4.5%) were White youth, 76 (1.7%) were classified as Other, and 405 (9.5%) were classified as Unknown. If we again assume that the Unknown and Other categories are non-white youth, then 95.5% of youth admitted to DJJ custody in New York City in 2005 were youth of color.⁷

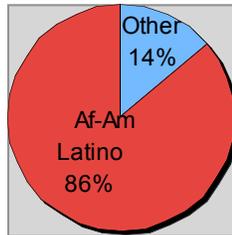


Placement

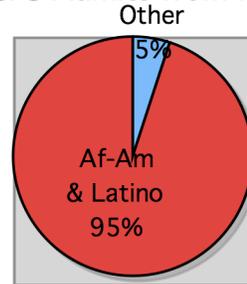
⁷It is possible that the Unknown and Other Category may include some white youth. However, visits to facilities and conversations with systems stakeholders suggest that the population admitted to DJJ custody is almost exclusively youth of color.

The overrepresentation of youth of color is just as evident when it comes to state placements. The 2004 data show that of 2,104 admits to OCFS custody, 1,347 (64%) of these were Black youth (including data on NYC youth).⁸ However, a closer look at the numbers reveals even more disparities when it comes to youth of color. OCFS reports that 86% of youth currently in state custody are African-American and Latino youth.⁹ Furthermore, approximately 60% of all state placements come from New York City, and OCFS reports that 95% of youth admissions from New York City are African-American and Latino youth

OCFS Population 2007



OCFS Admits from NYC 2007



These numbers indicate clearly that the juvenile justice system in New York State suffers from a severe overrepresentation of youth of color – particularly African American and Latino youth from New York City. While the responsibility to address this unacceptable reality must be shared by multiple agencies, probation can play a leading role in assisting the Family Court and other system stakeholders to design innovative strategies to reduce disproportionate minority contact (DMC) across multiple decision making points in the juvenile justice system.

The New York State Division of Criminal Justice Services has established a DMC compliance management effort that includes “strategic planning, outreach and training, technical assistance and statistical monitoring.”¹⁰ DCJS employs a full-time DMC coordinator and has funded DMC arrest diversion projects in four upstate cities: Albany, Syracuse, Rochester, and Niagara Falls. The diversion programs are “collaborations between local police and human service agencies to divert young offenders who are about to be arrested for a misdemeanor crime into a service program outside of the traditional juvenile justice system.”¹¹

⁸ Widening the Lens: A Panoramic View of Juvenile Justice in New York State; New York State Task Force on Juvenile Justice Indicators, February 2007, p. 36

⁹ **NEW YORK STATE OFFICE OF CHILDREN & FAMILY SERVICES, FACT SHEET ON CLOSINGS, REDUCTIONS & MERGERS OF UNDERUTILIZED RESIDENTIAL FACILITIES** released January 11, 2007.

¹⁰ New York State Division of Criminal Justice Services, New York State 2006-2008 Three Year Comprehensive State Plan for the Juvenile Justice & Delinquency Prevention Formula Grant Program, at 58.

¹¹ Id.

The Probation Task Force recognizes these promising initiatives and believes they should be examined with recommendations to replicate successful practices. At the same time, the Probation Task Force strongly recommends greater efforts to reduce racial disparities in the counties that supply the vast majority of youth of color into the juvenile justice system: the five boroughs of New York City. As demonstrated earlier, 60 percent of all state placements come from New York City and 95% of these are African American and Latino youth.

Several counties participating in the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative (JDAI), demonstrate that it is indeed possible to reduce racial disparities in juvenile justice. In Santa Cruz, CA, intentional efforts to reduce DMC in juvenile detention resulted in a substantial reduction in the number of Latino youth in juvenile hall. The Casey Foundation reports:

[B]efore Santa Cruz began its work to reduce DMC, 64 percent of youth in juvenile hall were Latino (versus 34 percent Latino youth in the general population). After eight years of concerted effort, the juvenile hall population dropped to 53 percent Latino in 2005 even while Latinos' share of the total youth population had surged to 41 percent.¹²

A study revealed that probation violations and bench warrants were a major contributor to Latino youth returning to detention. Santa Cruz county used the results of this study "to improve its bench warrant process by having bilingual staff assist youth and their families in setting a new court date when youth fail to appear for a court date, rather than having the youth arrested and booked on a bench warrant."¹³ As noted in the Report *Getting Juvenile Justice Right in New York: Proven Interventions Will Cut Crime and Save Money*:

Juvenile delinquents often end up in detention because they miss court dates. Often, the delinquents purposely ignore the court date and a new warrant for their arrest and detention should be issued. But other times it is not that purposeful. One solution that works is to do what doctor's and dentist's offices frequently do: have court or detention staff call the juvenile's house with a reminder shortly before the court date. If a court date is missed, have court personnel quickly check on why that happened may, at least in some cases, cut short the automatic process of issuing a court order and sending police out to arrest and detain the delinquent juvenile.¹⁴

¹² Mendel, Richard A.; *Beyond Detention: System Transformation through Juvenile Detention Reform* (Beyond Detention). The Annie E. Casey Foundation at 63.

¹³ *Id.* at 66.

¹⁴ *Getting Juvenile Justice Right in NY* at 17 (citing Mendel, D. *And the Walls Keep Tumbling Down* (2003) <http://www.aecf.org/publications/advocacy/spring2003/pdf/walls.pdf>); *Juvenile Detention Alternatives Initiative* (July 2006) *Five New Jersey JDAI sites Deliver Stunning Results*. JDAI News; John D. and Catherine T. MacArthur Foundation (Fall 2005). *Juvenile Justice: New Models for Reform*. MacArthur Newsletter. Retrieved October 2, 2006).

The proposed introduction of case managers in Family Courts should provide the manpower to employ this reminder call to the respondents scheduled to appear in Family Court.

In Multnomah County, OR, the Communities of Color initiative directed funds from the Oregon Youth Authority (OYA) to “local service providers for culturally relevant case management, treatment, educational and mentoring services” run by neighborhood organizations in African American and Latino communities. According to the Casey Report:

Despite the fact that more than half of all participants enter the program with five or more prior criminal referrals, just one-tenth of youth served by Communities of Color were committed to correctional facilities in 2004. Seventy-seven percent of youth had no new criminal referrals while participating in Communities of Color, and 68 percent had no referrals in the six months after leaving the program. The program has been a key part of reducing the number of African-American youth committed from Multnomah to state training schools from 55 in 1997 to 12 in 2005 – meaning that African American youth saw an even greater reduction in correctional placements (78 percent) than did the overall Multnomah youth population (74 percent).¹⁵

Addressing disproportionate minority contact (DMC) in the juvenile justice system is challenging and requires a firm commitment to ending racial disparities, a willingness to produce and share data, and the ability to engage multiple stakeholders in collaborative decision making.

The Juvenile Detention Alternatives Initiative found the following were necessary to successfully reduce DMC:

1. A high level of sophistication in data collection and analysis that frames the problem objectively, creates a more neutral context for discussion, and provides a mechanism for measuring progress;
2. Strong, multilevel leadership to facilitate meaningful organizational and cultural change in how their systems process juvenile cases; and
3. A well organized and well-articulated implementation plan that includes targeted objectives, specific agenda, and goal-oriented work plants to confront structural, systemic injustice.¹⁶

¹⁵ Beyond Detention at 70.

¹⁶ Id at 64.

Recommendations

1. All agencies involved in processing youth through the juvenile justice system should develop uniform methods to collect data on decision-making points that can be disaggregated by race, ethnicity, gender, geography, and offense.
2. Agencies should share this data with one another, and with non-traditional community stakeholders, through routine management reports that highlight the disparities and the opportunities for intervention.
3. System stakeholders should collaboratively analyze disparities and design solutions, along with community stakeholders, to develop interventions that will reduce disproportionate minority contact.

DEFICIENCIES SHOULD BE ADDRESSED TO
RETURN ALL FAMILY COURTS TO A
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The Family Court – The Original Treatment Court

The history of New York State’s Family Court can be traced back to common law jurisprudence under which children age 7 and younger were believed to be below “the age of reason” and not held criminally responsible for their actions (the “infancy” defense). As for children between the ages of 7 and 14, there was a presumption that they lacked criminal responsibility for their actions which could be rebutted by the prosecution. Young people over the age of 14 were held responsible for their criminal behavior in the same manner as adults. Up until the 19th century, children were tried and imprisoned along with the adult criminal population. During the 1800s, there was a movement instigated by the Quakers to set up separate facilities for juveniles convicted of crimes, however, juveniles continued to be tried along with the adult population in criminal courts.

The movement to create a court with separate jurisdiction over juvenile offenders began in Illinois in 1899 through the enactment of the Illinois Juvenile Court Act of 1899 (1899 Ill. Laws 132 *et seq.*). The Juvenile Court was vested with jurisdiction “to regulate the treatment and control” of children who had been neglected, abused or alleged to have committed acts of juvenile delinquency. The Act’s purpose was to improve the manner in which criminal justice entities intervened on behalf of children as *parens patriae*¹ - the British doctrine providing the State with “the inherent power and responsibility to provide protection for children whose natural parents were not providing appropriate care or supervision...the focus...[being] on the welfare of the child.”²

The Act emphasized the court’s rehabilitative rather than punitive purpose; provided that juvenile records be kept confidential and separate from adult records in an effort to reduce any stigma attached thereto; prohibited children from being incarcerated with adults; barred children from being detained in jail and allowed for more informal court procedures. As observed by Franklin E. Zimrig, a professor at the University of California, Berkley School of Law and a recognized expert in criminal justice and family law, removing children from the adult criminal court system through this “child-centered justice system” had dual purposes - diversion, (i.e., “sav[ing] kids from the savagery of the criminal courts and prisons” and intervention (i.e., “rescu[ing] children from a life of crime and truancy” by putting them on “the right societal track by means of positive programs, counseling and treatment”).³ The Honorable Julian Mack, one of the original judges assigned to the Illinois Juvenile Court, described the court’s role as follows:

¹ H. Snyder & M. Sickmund, *Juvenile Justice: A Century of Change*, U. S. Department of Justice, OJJPD. 1999 National Report Series, Juvenile Justice Bulletin, December 1999 at 2.

² *Id.* at 29.

³ F. Zimrig, *The Common Thread: Diversion in Juvenile Justice*, 88 Calif. L. Rev. 2477, 2480 - 2483.

[t]he child who must be brought into court should, of course, be made to know that he is face to face with the power of the state, but he should at the same time, and more emphatically, be made to feel that he is the object of care and solicitude. The ordinary trappings of the courtroom are out of place in such hearings. The judge on a bench, looking down upon the boy standing at the bar, can never evoke a proper sympathetic spirit. Seated at a desk, with the child at his side, where he can on occasion put his arm around his shoulder and draw the lad to him, the judge, while losing none of his judicial dignity, will gain immensely in the effectiveness of his work.⁴

In 1901, New York followed Illinois' lead and created the State's first specialized children's parts in (L.1901 c. 466) which were initially limited to the misdemeanor Court of Special Sessions in New York City. *The New York Times* described the integral role that the bench would play in this specialized part:

[i]ts keynote, after all, is that whoever sits on its bench would be more than a Judge in the ordinary sense, that he shall have wise farsightedness as applied to youth, be able to see at a glance what may be made of a boy or girl, and able to inspire those who have gone wrong with the determination to make good men and women of themselves.⁵

By 1925, the movement for a separate juvenile court, spurred by the State of Illinois, had spread nationwide to 46 states, 3 territories and the District of Columbia. Furthermore, probation had become well established as a critical and integral component of the juvenile court function. The concept of using probation was originally introduced in Massachusetts in 1843 by John Augustus, "the father of probation." By 1869, Massachusetts had become the nation's leader in the development of juvenile probation by assigning probation officers from the State Board of Charities to provide in-court services for children. The officers were present at juvenile trials to recommend dispositions and provide foster care placements.⁶ Juvenile probation was embraced as a means of mitigating the harshness of penalties for children.⁷

New York, which had enacted an adult probation statute in 1901, expanded its application to juvenile proceedings later that same year.⁸ In 1903, the New York State Legislature authorized the appointment of probation officers to assist the judiciary in

⁴ Mack, 1909, 23 Harvard L. Rev. 23:104-122

⁵ *New York Times*, "New York's New Children's Court", August 24, 1902.

⁶ M. Sobie, *The Creation of Juvenile Justice: A History of New York's Children's Laws*, New York Bar Foundation, at 107.

⁷ J. Petersilia, *Probation in the United States, Part 1, Perspectives*, Spring 1998 (American Probation and Parole Association).

⁸ M. Sobie, *The Creation of Juvenile Justice: A History of New York's Children's Laws*, New York Bar Foundation, at 107.

determining juvenile cases, to be chosen from among the officers of a Society for the Prevention of Cruelty to Children or any charitable or benevolent institution. Officers “(who were unsalaried) were empowered to investigate and supervise children who appeared before the court and were further mandated ‘to represent the best interests of the child.’”⁹ The role of probation, therefore, was to “assist the court in marshaling the relevant evidence and then, if necessary, to provide supervision for children who would not ordinarily be placed.”¹⁰ Probation became integral to the functioning of juvenile court proceedings. As observed by the Honorable Thomas Murphy, the presiding justice over the Children’s Part in Buffalo in 1904, “[t]he best results of the juvenile court are the fruits of probation, the keystone of the system.”¹¹

By amendment to article 6 of the New York Constitution and legislative enactment in 1962, New York State established its Family Court. The Family Court Act, which in addition to providing expanded jurisdiction to the newly formed court, also addressed the informality of juvenile court proceedings by instituting procedural and substantive due process safeguards such as the assignment of counsel, known as law guardians, in certain proceedings, the right to discovery and the presentation of evidence regarding the child’s best interest and the right to appeal. The foresight of the 1962 Act preceded the series of landmark decisions by the U.S. Supreme Court which ultimately imposed due process safeguards on the juvenile courts in the late 1960’s and 1970’s, such as *Kent v United States* (383 US 541 [1966]), holding that young people transferred to adult courts were entitled to a hearing, meaningful representation and a statement of reasons for the transfer; *In re Gault* (387 US 1 [1967]), holding that a youth subject to delinquency proceedings has the right to notice and an opportunity to be heard, to counsel, to cross-examine witnesses and the right against self incrimination; *In re Winship* (397 US 385 [1970]) (holding that a juvenile must be proved guilty beyond a reasonable doubt) and *Breed v Jones* (421 US 519 [1975]), holding that transferring a young person to adult court being adjudicated a delinquent is prohibited by the double jeopardy clause of the U.S. Constitution.

Over the years, the jurisdiction of Family Court has expanded and it is now a hybrid of the former Children’s Courts, the domestic violence parts of the local criminal courts, the Domestic Relations Courts of New York City, and the paternity parts of the former Court of Special Sessions. The Family Court has jurisdiction over adoption, child abuse and neglect, juvenile delinquency, Persons in Need of Supervision (PINS), foster care, paternity, child and spousal support as well as concurrent jurisdiction with the state Supreme Court over child custody and visitation, post-divorce modification and enforcement. As noted by Professor Sobie, “the framer’s intent, which was largely

⁹ *Id.* at 108, citing L.1901, c.627.

¹⁰ *Id.* at 111.

¹¹ T. Murphy, *History of The Juvenile Court in Buffalo*, International Penal and Prison Commission, *Children’s Courts in the United States: Their Origin, Development and Results*, US Government Printing Office, 1904).

achieved, was the formation of an omnibus tribunal capable of adjudicating every justiciable family related issue.”¹²

The Family Court is the court system’s first example of a “treatment focused” court that integrated intensive judicial oversight, social and treatment services, community outreach, and constant communication and information sharing among the various juvenile justice participants (*i.e.*, the “stakeholders”, viz. judges, law guardians, presentment agency, probation, and treatment providers) as a means of case resolution. However, the Task Force heard from several administrative judges and supervising judges of the Family Court that in some Family Courts, due to crushing caseloads,¹³ there has been a shift away from this model. It was their opinion that the pendulum should swing back to the Juvenile Court treatment model. The treatment court model itself has served as a blueprint for the development of other problem-solving courts over the past 15 years. These courts include Drug Treatment Court, Community Court,¹⁴ Mental Health Court, Sex Offender Court, Domestic Violence and Integrated Domestic Violence court. Each of the problem solving courts draws upon some aspect of Family Court’s interdisciplinary structure and treatment centered approach. There are now over 250 statewide, which also serves as an attestation to Family Court’s critical role in our judicial system.

One such Community Court, the Harlem Youth Justice Center,¹⁵ seeks to address crimes involving young people in East and Central Harlem and works intensively with young people who have engaged in delinquent behavior by providing them with the skills they need to make better life choices. There are two forums within the Harlem Community Court: (1) the Youth Court,¹⁶ which is staffed with teenagers from the neighborhood who have been trained to act as judge, jury, prosecutor and defense attorney, and which handles cases involving, *inter alia*, low level cases of truancy, shoplifting and public drinking; and (2) the Juvenile Intervention Court (JIC), which is presided over by a judge, and which handles cases involving non-violent drug and

¹² M. Sobie, *The Family Court: A Short History* (March 2003) accessible at www.nycourts.gov

¹³ As discussed in more detail *infra*, the Family Court is currently facing numerous challenges based on the additional legislative mandates, such as the Adoption and Safe Families Act and the Permanency Law, that have been implemented without any increase in the number of Family Court judges.

¹⁴ Community Courts usually adjudicate cases involving quality of life/minor offenses and provide judges with sentencing options that require defendants to repay the community for their criminal behavior while addressing the underlying problems causing the criminal behavior.

¹⁵ The Harlem Youth Justice Center, established by the Center for Court Innovation, is funded through a partnership of public and private funding from public entities such as the Unified Court System, the New York State Attorney General, NYC DOP, and U.S. Department of Justice and from numerous private not-for-profit organizations. A complete listing of providers can be found on the website for the Center for Court Innovation at www.courtinnovation.org.

¹⁶ Additional youth courts established through joint public-private partnerships between the Center for Court Innovation, the Unified Court System and other private entities, have been established in Far Rockaway and Red Hook.

property offenses.¹⁷ Another problem-solving court, the Bronx Juvenile Accountability Court, works with young people between the ages of 10 and 15 who have committed delinquent acts and have been sentenced to intensive probation supervision rather than placement in an OCFS facility. The young people are required to submit to drug tests, participate in social services and report to court regularly with their progress. In addition, families are required to appear in court and may be required to attend family counseling to learn how to manage their children's adolescent behavior.

Although the Family Court was designed in the 1960's with a great deal of thought and care, time has changed the needs of the community and what was considered relevant at the time is no longer appropriate. While the "best interests of the child" remains a valid guiding standard for corrective decisions, to describe the role of the Family Court as "*in loco parentis*," or in place of the parent, ignores the reality that parents and the entire family, however it may be defined in contemporary terms, must be involved in addressing a youth's behavior. In this regard, the role of the Family Court should be in union with the parents "*in uno cum parentibus*." It may well be that family involvement and diversion efforts will not succeed in all cases. But to have the court usurp the fundamental family responsibility should be reserved for those relatively few cases which require formal petition proceedings.

Recommendations

1. The Task Force believes that the Family Court is truly the court system's original treatment court and that probation is an essential participant in this function. Resources must be infused to allow the Family Court to utilize consistently successful problem-solving principles in addressing the needs of the young people who enter.
2. The Family Court's role in PINS and JD proceedings should no longer be regarded as *in loco parentis* – in the place of the parent. Instead, the Family Court's role in such proceedings should be viewed as *in uno cum parentibus* - in union with the parents.

¹⁷The sanctions imposed include treatment and community service. The cases also involve intensive judicial monitoring through the use of graduated sanctions such as increased court appearances to report on progress and curfew checks to hold offenders accountable

Deficiencies in the Family Court

a. Caseload and Appearances: Not Enough Judges

The New York State Family Court, and each of the many agencies and institutions that work in this forum, face enormous challenges. It was projected that the annual filings in Family Court would approach 700,000 in 2007.¹⁸ In 2005, there were 665,970 filings in Family Court and only 127 judges. If the cases were divided equally among the judges, each judge would have a caseload of 5,244.¹⁹ However, this raw average does not truly reflect the actual case load sizes. UCMS data from New York City has 700 as the average caseload size per Family Court judge, but because the permanency hearings were not included in that number, the caseloads are actually much higher. In Kings County, where the permanency cases are included in the average, the estimated number of cases assigned per judge in 2006 was approximately 1300.

The requirements found in the Federal Adoption and Safe Families Act of 1997 have had profound effects in foster care, JD, PINS, child abuse and neglect and termination of parental rights proceedings. There are more frequent judicial reviews, more extensive monitoring and documentation of children's progress toward permanence, and expedited filings of proceedings. Similarly, the work of New York's Family Court judges has also changed significantly as a result of the landmark 2005 child welfare permanency legislation, which requires that children in foster care receive immediate and ongoing attention, including hearings every six months until permanent placement is achieved. The permanency legislation has caused the average number of Family Court appearances to increase by nearly 60 percent. These requirements, among others, have caused there to be approximately two million appearances a year on Family Court calendars.

In her February 2007 State of the Judiciary message, Chief Judge Kaye stated that New York is “desperately short of judicial resources” and requested that the Legislature create 39 new judgeships “essential to meet the critically important needs of New York’s families and children.” There are 153 judges assigned to the Family Courts statewide: 47 judges in New York City and 106 in the courts outside of New York City. Based upon a judicial needs assessment conducted in early 2007, the Office of Court Administration determined that there is an urgent need for a bare minimum of 39 additional Family Court Judges. The assessment concluded that certain legislative mandates, as well as the 100% increase in neglect and abuse filings in 2006 resulting from the highly publicized Nixmary Brown case, had caused a critical deficiency in Family Court judges.

¹⁸ In 2005, there were 665,970 filings in Family Court and only 127 judges. If the cases were divided equally among the judges, each judge would have a caseload of 5,244 (Twenty-Eight Annual Report of the Chief Administrator of the Courts (2005), available at http://www.nycourts.gov/reports/annual/pdfs/2005annual_report.pdf at 6-7. However, this raw average does not truly reflect the actual case load sizes. UCMS data from New York City has 700 as the average caseload size per Family Court judge, but because the permanency hearings were not included in that number, the caseloads are actually much higher. In Kings County, where the permanency cases are included in the average, the estimated number of cases assigned per judge in 2006 was approximately 1300.

A recent New York County Lawyers' Association conference on reform in the Family Court confirmed the need for an increase in Family Court judges when it recommended two changes it deemed to be absolutely essential to the Family Court's survival -- "an increase in the number of judges available to preside in the Family Court, and a decrease in the Court's caseload."²⁰ In response to Chief Judge Kaye's request for 39 new Family Court judgeships, the State Assembly's Judiciary Committee has proposed a bill, A10615/S7587, which would create 14 Family Court judgeships in New York City and 25 Family Court judgeships throughout the rest of the State. The 25 judgeships outside New York City would be filled in the general election of 2009, with the elected judges taking the bench on January 1, 2010. With regard to New York City's Family Court judgeships, the Bill gives Mayor Bloomberg the right to make seven of the new appointments and defers the other seven appointments until 2010. The Judiciary's 2008/2009 budget includes a new funding increase of \$1.8 million to establish: (1) case managers – non-judicial professionals who will assess the unique needs of each family so that judges can tailor their orders appropriately, stay in contact with families between appearances, track compliance with court orders, keep the court apprised of progress and help prepare the parties for their next court date; and (2) family resource centers to provide self-represented litigants with free limited-scope legal representation and procedural assistance.

b. Law Guardians

Another factor affecting Family Court functions may be a deficiency in law guardians.²¹ Legislation passed in August 2007 (L.2007, ch. 626)²² added a new section 249-b to the Family Court Act and directed the Chief Administrator of the Courts to promulgate court rules, on or before April 1, 2008, prescribing workload standards for law guardians. As part of the legislative findings, the Legislature stated that "children for whom counsel is appointed are entitled to effective representation. Appropriate standards for such attorneys, referred to in statute as 'law guardians,' are essential to the fulfillment of this right. Currently, in many parts of the state there is a crisis because law guardians are representing too many children at a given time. Therefore, workload standards for such client representation should be developed." Based on a recent survey of 78 young people involved in the Family Court, the law guardians' large caseloads may

²⁰ L. Gans, *Priorities for Family Court Reform*, 40 Colum. J.L. & Soc. Probs. 629 (Summer 2007).

²¹ It should be noted that there is a movement, based in large part on the recommendations made by the Matrimonial Commission and the Statewide Law Guardians Advisory Committee, to replace the term "law guardian" with "attorney for the child" to reflect the status of the attorney as an advocate for the child, rather than as a fiduciary. It should also be noted that in October 2007, the Administrative Board of the Courts adopted new rule 7.2 of the Rules of the Chief Judge, which utilizes the term attorney for the child in place of law guardian, and also sets forth standards of representation for the attorney for the child.

²² This legislation occurred as the result of efforts of the Legal Aid Society's Juvenile Rights Division lawyers who handle New York City's abuse and neglect cases and who have been reported as representing "a minimum of 200 to 250 clients at any one time, more than double the caseload recommended by the consensus of national organizations for effective representation of children" (A. Schepard & T. Liebmann, *The Law Guardian Caseload Crisis*, N.Y.L.J., July 7, 2005 at 3).

have contributed to the “unmistakable, disapproving theme ... [that] emerged from the survey responses: youth believe their lawyers do not maintain sufficient contacts or communicated with them adequately”, which was on average one contact every two months.²³ On April 1, 2008, Chief Administrative Judge Ann Pfau signed an Administrative Order which capped caseloads of law guardians at 150, with a provision allowing for an adjustment after consideration of other factors such complexity of the law guardian’s cases, availability of support staff, and where the cases are in the adjudication process. As a result of this workload standard, OCA estimates that there will be 25-30 new law guardians needed.

c. Specialized Parts

Another effect on Family Court operations has been the specialization of parts. For example, in New York City as well as in other judicial districts, Family Court judges are assigned to one of four specialized parts – Child Protective/Permanency Planning (hearing cases involving child abuse, neglect, termination of parental rights, foster care review, and adoption), Juvenile Delinquency/Pins (hearing cases involving JDs, designated felonies, PINS), Domestic Violence/Custody (hearing cases involving domestic violence, custody, guardianship, visitation and consent to marry) and Support/Paternity (hearing cases involving child support, spousal support, and paternity). Although New York City Family Court judges are given the option of accepting the assignment of all cases involving one family, which is in accordance with the new view of the benefits of the one-judge for one-family assignment system,²⁴ this voluntary procedure does not always result in the assignment of all cases involving a single family to one judge. Thus, while these specialized parts have been instrumental in expediting the resolution of cases, this fragmentation sometimes makes it more difficult to share relevant information among judges for those children who have multiple proceedings pending in the various parts.

d. Priority Lacking

Perhaps the greatest effect on Family Court operations has been the low stature afforded to it in the judiciary’s hierarchy. The Family Court was established as a court inferior to the State Supreme Court and was granted limited jurisdiction and authority. The general view is that “[t]he Family Court ... [has been] a place people want to escape. Judges move from family court to supreme court and federal court, but almost never the other way.”²⁵ The Task Force heard that the same holds true for probation officers assigned to the Family Court – namely, that for many, they are placed in the Family Court initially and once they are fully trained, they are removed from it and placed in the

²³ T. Hughes, A Paradigm of Youth Client Satisfaction: Heightening Professional Responsibility for Children’s Advocates, 40 Colum. J. L. & Soc. Probs. 551, 558-559 (Summer 2007).

²⁴ Such an assignment system is endorsed as a best practice by the National Council of Family Court Judges, Juvenile Delinquency Guidelines.

²⁵ D. Lansner, Abolish the Family Court, 40 Colum. J. L. & Soc. Probs. 637 (Summer 2007).

criminal court. Calls by Chief Judge Judith Kaye and former Chief Administrative Judge Jonathan Lippman for court merger, including the creation of a Unified Family Division, have yet to move forward.²⁶ It is unlikely that court merger will occur anytime soon since with any constitutional amendment, not only would the amendment have to be approved in two successive terms by two separately elected Legislatures, but also it would have to be approved by a public referendum.²⁷ Unless and until the Family Court is viewed as a court of co-equal stature and importance and provided the resources necessary for its operations, all participants in the Family Court will necessarily suffer as additional unfunded legislative mandates are enacted and resources are depleted in favor of courts deemed more important in the judiciary's hierarchy.

Recommendation

Probation's ability to effectively service young people is dependent on a fully functional Family Court. Adequate numbers of judges, law guardians and court staff must be assigned so that probation officers can accomplish the goal of addressing the needs of young people while ensuring that victims are restored and the community at large is protected. The legislature must address the current deficiencies in the Family Court by creating additional Family Court judgeships and providing the funding necessary to address the law guardian workload standards that will be adopted by the Chief Administrative Judge on April 1, 2008.

²⁶ See Hon. Judith Kaye and Hon. Jonathan Lippman, New York State Unified Court System Family Justice Program, 36 Fam. Ct. Rev. 144 (1998).

²⁷ D. Hartifilis, K. McAdoo, Separate But Not Equal: A Call for the Merger of the New York State Family and Supreme Courts, 40 Colum. J.L. & Soc. Probs 657, 664 (Summer 2007).

WESTCHESTER'S YOUNG OFFENDERS UNIT

Westchester County's Young Offender Unit

On June 4, 2007, as a result of a long term belief bolstered by the findings of the Task Force on the Future of Probation in New York State, a Young Offender Unit was established in Westchester County to tailor sentencing requests and supervision of 13-17 year old misdemeanants and felons based on age specific modalities including the employment of mental health, educational, substance abuse education/treatment, forensic evaluations, and other resources available to individuals age 18 and under. It was hoped that the establishment of this unit would be the harbinger for an Integrated Youth Court.

The field based unit is comprised of four senior probation officers and one supervisor recruited from various units in the department and currently supervises 120 cases (65 felonies and 55 misdemeanors). The crimes committed by these probationers include robbery, assault, drug possession, criminal mischief and petit larceny. Probationers whose underlying offense involves DWI or sexual offenses are not considered for supervision by this unit. The smaller than average probation officer caseloads (these probationers would normally be in caseloads that number approximately 100 probationers) allow the officers to maintain close coordination with the school systems and treatment programs serving the probationers. Additionally, the officers are able to establish a better rapport with family members and other people important in the lives of these probationers. The unit's goals are to assist the probationer in attaining the highest, most appropriate level of education and/or job readiness skills and in developing socialization and judgment skills for better life decisions. This is being accomplished through the expertise of a student advocate contracted by the department, close monitoring of progress toward supervision goals, and the employment of Cognitive Life Skills (COG) modalities that develop social awareness and a more positive sense of personal responsibility.

Cases were initially transferred from existing caseloads within the department after being screened by the supervisor to determine eligibility based on case specific needs, time remaining on probation, and age not to exceed eighteen during 2007. It is anticipated that cases will remain in the unit for a minimum of one year and then be transferred to General Supervision Caseloads or to Administrative Caseloads based on the progress made by the probationer toward attainment of case plan goals.

Each officer in the unit has:

- been trained in the use of the "Correctional Offender Management Profiling for Alternative Sanctions" instrument (COMPAS) and in the use of the "Youth Assessment Screening Instrument"(YASI). Although initially believed that YASI would be the Risk/Need tool employed with this population, a comparison of the effectiveness of each instrument will be made to determine which instrument will be utilized to screen more effectively probationers for assignment to the unit and to measure progress toward case plan objectives,
- been certified as a NCTI Cognitive Lifeskills facilitator, and

- worked with supervision officers in Family Court units to learn about available resources, resource contacts, and techniques employed in working with this population.

When the Integrated Youth Court begins operation, it is anticipated that the unit will supervise the crossover cases based on Orders and Conditions derived from enhanced Pre-sentence Investigation Reports, which will offer sentencing recommendations focused on educational needs (advocacy as well as re-entry of those who are not in school), substance abuse education/treatment, forensic evaluations, etc. The program will attempt to balance the criminal court accountability model paradigm and the Family Court model, cognizant of the continuing developmental growth needs of adolescents. Officers assigned to the unit will service the court and will be able to employ supervision strategies that are unique to each court. Because the schedule of compliance sessions with the judge in the Integrated Youth Court has not yet been set, a final decision on the number of cases that the Young Offender Unit can effectively supervise has not been determined. Admittedly, the current unit is not able to provide intensive supervision to all probationers falling in the sixteen to eighteen year old population, but as the effectiveness of the unit is demonstrated, the potential for expansion will be considered.

Procedural issues including confidentiality of Family Court proceedings and of Youthful Offender Releases of Information are yet to be resolved and are currently being addressed on a case by case basis with the sentencing court.

MEMORANDUM DATED
JANUARY, 8, 2008 FROM
NEW YORK CITY'S
DEPARTMENT OF PROBATION

To: Task Force on the Future of Probation in New York State, Senator John Dunne

From: New York City Department of Probation (DOP)

Date: January 8, 2008

RE: Cost Effective Initiatives in New York City to safely reduce the use of out-of-home placements for juveniles

Since 2002, the New York City Department of Probation (DOP) has taken a leadership role in safely reducing the use of juvenile out-of-home placements (confinement) through multi-faceted and collaborative initiatives. The impetus for these initiatives was the result of several factors, including the high cost of placement, the poor outcomes it produced, and the category of youth who were being sent away.

The Issue

Prior to 2002, juvenile justice officials in New York City sent up to 1,400 youth involved in delinquency cases away from their homes and into private and state-run facilities. The people responsible for informing or making these decisions (probation officers, prosecutors, advocates for youth, and judges) had said that placement often was not the right response. They recognized that these juveniles are young—New York State law limits family court jurisdiction to juveniles under sixteen and excludes those charged with certain serious and violent offenses—but many involved felt that there were not enough viable community options for working with these juveniles. Data on this population showed that more than half of all youngsters sent to confinement committed misdemeanors, and nearly half of them committed nonviolent offenses. Additionally, juvenile felony arrests were on the decline as the number of misdemeanors rose over the preceding nine years, yet the number of youth sent to placement remained constant. Various juvenile justice stakeholders were relying on out-of-home placement to meet the many family and educational needs of the juveniles involved in delinquency cases because of the limited continuum of sentencing options and services in the community. Thus placement, which is costly, was being used often as a response to low level delinquency and the juvenile's need for services. The city, state, and federal governments share the cost of placement, with the city covering about half of it at a cost of up to \$80 million dollars per year. Yet, placement within New York State was ineffective at reducing recidivism as 81% of males entering OCFS were re-arrested within three years of release.¹ Based on these factors, DOP worked with other New York City juvenile justice stakeholders to explore ways to safely reduce the reliance of placement for juvenile involved in family court delinquency cases.

¹ A study published by the Division of Criminal Justice Services (DCJS) in 1999 stated the following recidivism rates for youth in OCFS custody: 42% of youth were arrested within six months of release, 50% within nine months, and 81% of males and 45% of females were arrested within three years of final discharge. Frederick, Bruce. "Factors Contributing to Recidivism Among Youth Placed with the New York State Division for Youth." In addition, it costs the City tens of thousands of dollars for each young person who is placed (up to \$80 million dollars per year), with the State picking up the tab for the other half of the cost. All in all, placement is a "solution" that costs somewhere over \$100,000 per youth-divided between the City and State- and succeeds less than 20% of the time in the long run.

The Initiatives

The Department of Probation has reformed several of its internal practices in addressing sentencing reform and the over reliance on placement for juveniles. First, through collaboration with the NYC Law Department and NYPD, they have dramatically increased the number of cases adjusted at intake in an effort to dispose of cases which can be settled outside of court through the use of various graduated responses and sanctions. In 2002, 14% of New York City juvenile cases opened for service were adjusted compared to a 30% adjustment rate in the first three quarters of 2007. Since 2002, DOP has more than doubled the number of adjustments diverting several hundred more juveniles each year.

Second, the Probation Department focused on developing a more strengths-based approach to the investigation and decision making process for juveniles in their disposition (sentencing) phase. They instituted an objective and research-based risk assessment tool to help guide the Probation Officers' sentencing recommendations for the court. Recommendations for out-of-home placement decreased to 18% in the first three quarters of 2007 compared to roughly 50% recommendations for placement in 2000.

Third, in response to the lack of community-based sentencing options for juveniles in New York City, DOP added two intensive supervision programs to the continuum of dispositions (sentences) in Family Court.

- The Enhanced Supervision Program (ESP) is a program run by the Department of Probation specifically designed to divert placement-bound juveniles from State or contracted facilities. Juveniles eligible for intensive supervision are placed on Probation through ESP where ESP probation officers (POs) ensure that the youth is program compliant, attending school, performing community service and involved in pro-social activities. Wrap-around funding is available to the POs for quick purchase of necessary services to help stabilize youth and help prevent emergencies when needed. From January 2005 to November 2007, ESP has worked with 1461 juveniles in the community, with roughly a 65% completion rate.
- The Esperanza program was created in partnership with the Department of Probation based on best practices working with juvenile offenders. The program assigns Esperanza counselors to work with youth and their families within the home and community, providing intensive individual and family counseling along with case and crisis management. It works to improve the level of family functioning including increased levels of supervision by caregivers and enhanced communication between family members. Esperanza ensures that the youth is program compliant and promotes school engagement and involvement in pro-social activities. Upon completing the program, Esperanza youth remain with a probation officer who has been a member of their therapeutic team from the first day of sentencing. From May 2003 through December 2007, Esperanza has successfully completed 371 youth and their cumulative program completion rate is 64%.

- Additionally, the Department of Juvenile Justice (DJJ) and the Administration for Children Services (ACS) have recently launched new programming to provide additional alternatives for juveniles involved in Family Court. DJJ's Collaborative Family Initiative (CFI) is a discharge planning program that provides re-entry supports to youth in detention with known mental health issues. Since its inception in 2007, over 60 youth and families are currently engaged as it works to fill its 100 slots. The Juvenile Justice Initiative (JJI) is an additional sentencing option developed by ACS which provides either MST (Multi-Systemic Therapy) or Blue Sky (Functional Family Therapy, MST or Multi-Dimensional Treatment Foster Care) services to youth who were diverted from placement. About 90% of these youth were released from detention to participate in the JJI program. In the first three quarters of 2007 since its inception, JJI has enrolled 208 youth.

Additional Outcomes and Cost Savings

In the past four years from 2002 to 2006, since DOP has launched its several initiatives, out-of-home placements have decreased by 11% despite a 25% increase in juvenile arrests during the same time period. In the first five months of 2007, placement admissions continued to decrease resulting in a 27% reduction comparing the same five month period of 2006.² This continuous decrease in placement admissions can be, in part, attributed to the Department's increase in adjustments, decrease in placement recommendations, and additional community-based supervision sentencing options. The Independent Budget Office (IBO) states in a July 2006 report that "two new [alternative programs – ESP and Esperanza] are now saving the City considerable expense and may prove to be more effective at rehabilitation than the institutional approach." The City's Office of Management and Budget has projected \$43 million in savings over the next 4 years as a result of declining placement rates. Additional investments and continued initiatives aimed at sentencing reform and reducing out-of-home placement may produce even greater cost savings. A more recent IBO report from December 2007 states that "detention and placement upon disposition still consume 75% of the resources the city spends on arrested juveniles." If state-run and private placement admissions continue to decline, the City and State may incur even further cost savings if fewer resources and placement facilities are needed to maintain a lower juvenile population.

² The most recent placement admissions data that is available from the Office of Children and Family Services (OCFS) is the first five months of CY2007.

DPCA'S LEADERSHIP IN DEVELOPING
EFFECTIVE PROBATION PRACTICE PRINCIPLES

DPCA’s Leadership in Developing Effective Probation Practice Principles

When considering what is effective in reducing crime and cost-benefits, there is a large body of research with conclusive evidence that using evidence-based programs and practices offers excellent positive returns on investment toward reducing crime. This is particularly striking when considered against the heavy *negative* returns on investment toward reducing crime caused by reliance on existing (often ineffective) community-based services, detention and out-of-home placements. For example, at first glance Scared Straight programs appear to be a value at \$54 per youth, but there is conclusive research that Scared Straight programs increase risk of recidivism significantly, with a negative cost-benefit exceeding \$11,000 per youth. Other programs have demonstrated measurable positive results, shifting cost-benefit into the “black”. For example, Functional Family Therapy costs approximately \$2,100 per youth to deliver, and yields an estimated \$16,500 in benefits. Multi-Systemic Therapy costs about \$6,000 to deliver, and provides \$15,000 in benefits. Aggression Replacement Training costs \$700 to deliver, and yields nearly \$10,000 in benefits.¹ Other programs, such as Brief Strategic Family Therapy (BSFT), do not have readily available cost-benefit analyses, but have been rated as effective by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) and as promising by the Center for the Study of the Prevention of Violence (CSPV).

Research has shown that these therapies change the negative patterns of behavior by teaching the youth the social skills they need to reduce their aggression, substance abuse or other criminal behavior. “Analysis shows that research-based approaches for cutting juvenile aggression and substance abuse problems reduce current custody costs and future crime so much they can save an average of \$15,000 to \$75,000 per delinquent” (Fight Crime: Invest in Kids New York, *Getting Juvenile Justice Right in New York: Proven Interventions Will Cut Crime and Save Money* [Getting Juvenile Justice Right in New York] at 3).

Probation Screening, Assessment, and Case Planning

The cornerstone of EBP is assessment—identifying the highest-risk offenders, their criminogenic needs and allocating resources. Targeting high-risk youth with appropriate interventions leads to a reduction in recidivism. Until recently, probation departments in New York State did not have uniform, validated risk and need assessment tools available to them. Without access to validated screening and assessment tools, traditional probation practice emphasized quantity rather than quality of contacts between the officer and probationer. Under DPCA’s leadership, evidence-based practice principles, valid screening and assessment tools, and effective case planning and reassessment tools are increasingly being utilized in probation departments across New York State counties. These specific research-based approaches are improving the probation system’s ability to maintain public safety efforts while reducing costs and improving outcomes for children and families that have net benefits to society as a whole.

¹“Benefits and Costs of Prevention and Early Intervention”, Steve Aos et al, September 2004, Washington State Institute for Public Policy, 110 Fifth Avenue SE, Suite 214, PO Box 40999, Olympia, Washington

Screening and assessment tools allow probation to actuarially identify youth with moderate and higher criminogenic needs at the earliest point of contact with the juvenile justice system, thereby relieving pressure from the courts and the placement system. Targeting these moderate and higher risk youth for effective services in the community assists in reducing youth risk of recidivism, while providing interventions within the context of the their families and communities to reduce those risks and needs and alleviate if not minimize their likelihood of engaging in future PINS and delinquency (criminal) behavior

To measure the risk of recidivism of youth at probation, NYS has adopted the Youth Assessment and Screening Instrument (YASI) tools, software and protocols for use at intake, investigation, and supervision. Fifty-four (54) counties are using YASI. To actuarially determine a youth's risk of flight and risk of serious reoffending pending disposition of a matter before the court, detention screening tools have also been developed. Finally, NYS has made available to some interested jurisdictions the Voice-Diagnostic Interview Schedule for Children (V-DISC), a comprehensive, structured interview that covers 36 mental health disorders for children and adolescents, using DSM-IV criteria.

Probation Training and Technical Assistance

The desired changes in culture have required a shift in training and technical assistance to ensure that practice evolves along with evidence-based principles and tools. While few would disagree with the idea that probation has an important function in helping protect the public through the provision of services to youth and families, some probation officers, supervisors, and managers believe that the key role of probation is to monitor compliance with probation conditions and to hold the offender accountable for any digression from their court ordered supervision. While the monitoring of accountability and referral for service functions are critical components of what probation officers are expected to do, the research now provides firm support for a balanced approach to ensure not only public safety, but also accountability (taking responsibility for one's actions-a goal that goes beyond punishment and sanctions), and competency development (opportunity for skill building).

To support the change in practice, a new DPCA curriculum for the Fundamentals of Probation Practice (FPP) was developed in 2005 for all newly-hired probation officers. The FPP 70-hour curriculum has been accredited by the American Probation and Parole Association. In presenting to State Director Robert MacCarone a Certificate of Accreditation at the APPA 2008 Winter Training Institute, Karen Dunlap, APPA Training and Accreditation Chair, stated, "I am very impressed by the work of this agency. The training required for the faculty on adult learning, the continuing case studies, and the final presentations of the case plans by the participants are all excellent and exceed the standard I have seen in past applications."

While the traditional probation role, which tends to highlight offender accountability, is not abandoned in the new curriculum, there is strong emphasis on the active role of the probation officer as agents of change, helping offenders develop new attitudes and skills to reduce the likelihood of becoming re-involved in status offending and delinquent behavior. This approach expands the work of the probation officer from “managing risk” to intentionally working to “reduce risk”.

The idea that the probation system, and in particular the probation officer, has a role in helping the offender “change” is admittedly complex - *and frequently not an easy task*. It requires that the probation system and the probation officer possess the ability and capacity to:

- Administer accurate and thorough assessments
- motivate the offender to change
- conduct effective case planning
- select appropriate and timely interventions
- link the offender to the right types of services within probation and in the broader community
- monitor change and take appropriate action to sustain growth or reinitiate appropriate behavioral patterns

Rule Revision

Over the last three years, DPCA has put considerable effort into updating and revising rules with input from representatives from probation departments from a mix of small, medium, and large jurisdictions across the state. The new rules that have been the focus of this effort govern Investigations and Reports (promulgated), PINS Preliminary Procedure (published in State Register), JD Preliminary Procedure (in drafting), Violations of Probation (recently distributed for comment), and Case Record Management (promulgated). This rule revision work has incorporated into rule changes in law, evidence-based principles, and best probation practices.

Probation Information Management Technology

In today’s complex work environment it is important that public agencies incorporate the use of technology to increase effectiveness and efficiency. Historically, the lack of a statewide probation case management system, affordable to counties, led to the proliferation of various incompatible proprietary solutions or no solution at all for some counties. NYS has worked over the past several years to provide probation departments with an automation system, and is currently working to integrate actuarial screening and assessment tools into that system.

Probation Juvenile Risk Intervention Services Coordination Project

Between Calendar Years 2005 and 2006 overall statewide detention rates *decreased* by 12%, from 13,292 to 11, 625. Placement rates for PINS *decreased* by 26%, from 784 to 707. Juvenile Delinquent (JD) placement rates with OCFS *decreased* by 6%, from 1917 to 1798, while JD placement rates with local departments of social services (LDSS) *increased* 118%.

Treatment efforts in general have failed to address the complexity of youth needs, being individually-oriented, narrowly focused, and delivered in settings that bear little relation to the problems being addressed (e.g., residential treatment centers, outpatient clinics). Given overwhelming empirical evidence that serious antisocial behavior is determined by the interplay of individual, family, peer, school, and neighborhood factors, it is not surprising that treatments of serious antisocial behavior have been largely ineffective. Restrictive out-of-home placements, such as residential treatment, psychiatric hospitalization, and incarceration, fail to address the known determinants of serious antisocial behavior and fail to alter the natural ecology to which the youth will eventually return. Furthermore, mental health and juvenile justice authorities have had virtually no accountability for outcome, a situation that does not enhance performance. The ineffectiveness of out-of-home placement, coupled with extremely high costs, has led many youth advocates to search for viable alternatives. Evidence-based treatments such as Aggression Replacement Training, Brief Strategic Family Therapy, Functional Family Therapy, MultiSystemic Therapy, Strengthening Families, and other model and promising programs have well-documented capacities to address the aforementioned difficulties in providing effective services for juvenile justice involved youths.

Evaluations of model evidence-based programs have demonstrated reductions of 25-70% in long-term rates of re-arrest for serious juvenile offenders. Rates of foster care or institutional placement have been reduced at least 25 percent and as much as 60 percent in comparison to the randomly assigned or matched alternative treatments. Additional benefits tend to include extensive improvements in family functioning and decreased mental health problems. One study also demonstrated a positive three year follow-up effect on siblings.

Under DPCA's leadership, the probation system has made excellent progress toward the incorporation of evidence-based principles into probation practice across the state, including actuarial screening and assessment to identify the high-risk cases (and triage away the low-risk cases), and to develop case plans that target the dynamic risks of recidivism. DPCA has moved to implement evidence-based practice by de-funding the former Juvenile Intensive Supervision Program (JISP) and establishing a new Juvenile Risk Intervention Services Coordination (JRISC) program that couples intensive supervision with cognitive behavioral programming. A JRISC RFF was developed by DPCA and seven counties were awarded contracts: Monroe, Onondaga, Dutchess, Niagara, Orange, Oswego, and Schenectady. The JRISC model was built on evidence-based practice *principles and strategies*:

- Use of YASI actuarial assessment tools and case planning protocols that 1) identify appropriate high risk PINS and JD youth for participation in J-RISC, and 2) develop case plans that target the appropriate risk factors for intervention, and supporting intervention efforts through incorporation of protective factors.
- Implementation of one or more evidence-based programs to reduce specific dynamic risk domains (family, school, community/ peer, individual, mental health, attitudes and skills); and selection of one or more interventions that have been demonstrated through research to be effective, as determined by The Office of Juvenile Justice and Delinquency Prevention (OJJDP), or the Center for the Study and Prevention of Violence (CSPV).
- Evaluation to measure individual youth progress toward reducing dynamic risk of recidivism levels among J-RISC participants.
- Quality Assurance work from the outset for planning, implementation, and evaluation.
- Collaboration with service providers.
- Needs assessment based on aggregate data (i.e. Communities that Care survey data, youth arrest/petition data, YASI risk and needs data) of the PINS and JD populations
- Blueprint Model and Promising Interventions that address family functioning and violence prevention for adolescent youth who come in contact with the juvenile justice system, including: Functional Family Therapy, Multi-Systemic Therapy, and Brief Strategic Family Therapy. Aggression Replacement Training (ART) may be *combined* with one or more evidence-based programs, where the intervention target is youth aggression, attitudes, and/or cognitive “thinking” skills.
- Emphasis on meeting the needs of high risk PINS and JD youth and families within their home, school, and community environments. This incorporates system of care principles where the interventions and core processes are focused on youth risk of recidivism, meeting criminogenic needs, increasing protective factors. All interventions must focus on youth and family engagement, be culturally competent, and demonstrate a collaborative partnership with service provider agencies.

JRISC incorporates the following *assumptions*:

- NYS would prefer to keep juveniles at home in the community then have them in placement, which comes at high social and economic costs
- Except in cases where juveniles present unacceptable levels of risk to themselves or community safety, keeping juveniles in the community with appropriate services and supervision improves long-term outcomes for juveniles and public safety
- Investing in effective (evidence-based) services for youth in their home communities is preferable to paying the high cost of placements in facilities outside of the community

- The overall improvement in NYS placement rates has occurred due to the continued efforts of the state and local systems for social services, probation, and the courts.
- Progress cannot be sustained unless NYS invests in developing evidence-based services at the community level, which requires collaborative fiscal planning among the Division of Budget, DPCA, and OCFS

Probation Resource Limitations

The variation across counties in resources devoted to probation, in part due to reduced state reimbursement rate for local probation expenditures, has all too often resulted in high caseloads, high placement rates, and lack of comprehensive intervention services.

Inadequate funding has made it difficult for local departments to fully embrace and implement evidence-based practices. Some department and probation officers object to mandated use of a uniform assessment tool, citing already extensive caseloads and time constraints. Also, a few jurisdictions, in their quest to collaborate with other systems, use tools that do not actuarially predict the future risk of recidivism nor do they specifically identify the criminogenic needs that must be addressed in order to reduce that risk.

Community supervision of probation-involved youth provides the opportunity to address factors leading to delinquent behavior early in an adolescent's life and reduces the likelihood of continued contact with the justice system. Unfortunately, limited availability of appropriate programs and services for youth, such as FFT, MST, and ART, as described earlier, exacerbates issues that the probation system faces when dealing with this population. Adequately addressing the needs of this population may be one of the best approaches to maximizing long-term savings through probation services.

In conclusion, it is important to acknowledge all the work that has been done by probation over the years. It is also important that at both state and local levels, probation, the family courts, and the other child serving systems continue to provide leadership to adopt and implement the best of existing tools and resources, expanding them as needed, and develop integration strategies at key points across systems.

ADOLESCENT BRAIN DEVELOPMENT STUDIES

ADOLESCENT BRAIN DEVELOPMENT STUDIES

Recent findings of studies conducted over the past decade at Harvard Medical School, the National Institute of Mental Health and UCLA,¹ which involve the tracking of brain development every two years with MRI scans, show that the frontal lobe of the brain called the pre-frontal cortex² undergoes a second stage of development during early adolescence that lasts through a person's early twenties. Through these brain mapping studies, researchers have discovered that the teenage brain undergoes intense overproduction of gray matter (the brain tissue controlling thinking) in early adolescence, and then goes through a period of pruning, whereby gray matter is discarded at a rate of approximately 1% a year. Synaptic pruning is the process by which the connections within the gray matter are refined, and it is believed that the brain follows a strict "use or lose" policy with regard to gray matter. At the same time that the gray matter is being pruned, there is a process of myelination occurring. Myelination involves myelin (fatty white tissue) being wrapped around brain cell axons. The myelin serves as insulation for the brain's circuitry and makes the brain's operation more reliable and efficient. The process results in a more efficient pre-frontal cortex, and in conjunction with myelination, a more extensively connected cortex.³

Another Report concludes that "it has been well established that reductions in gray matter presumably reflect, in part, increased myelination, which may be associated with age related improvements in cognitive processing (Yurgelun-Todd et al., 2002) ... Yurgelun-Todd and colleagues examined whether greater volume of white matter would be associated with better performances on a battery of standard neurocognitive tests ... and found that ... greater volumes of white matter and concomitantly reduced gray matter volume was associated with more efficient and rapid processing of information and generally stronger verbal skills"⁴ A further study emphasizes that

[o]ne specific frontal region within which increases in myelination have been observed is the anterior cingulate cortex, an area known for its prominent role in the mediation and control of emotional, attentional, motivational, social and cognitive behaviors (Vogt, Finch & Olson 1992). A significant positive

¹ Giedd et al. (1999); Sowell et al. (1999).

² Frontal cortex plays major role in the performance of executive functions including short term or working memory, motor memory, motor set and planning, attention, inhibitory control and decision making (Lezak, 2004; Goldberg, 2001; Luria, 1966).

³ *Cruel and Unusual Punishment: The Juvenile Death Penalty - Adolescence, Brain Development and Legal Culpability*, ABA Juvenile Justice Center (January 2004); American Psychological Ass'n Brief at 11.

⁴ *Id.* at 325.

relationship between age and total anterior cingulate volume (which has been attributed to increases in white matter) has been well documented (Casey, Trainor, Giedd, Vauss, Vaituzis et al. 1997). It is thought that this relationship may reflect improved cortical-cortical and cortical-subcortical coordination. The projections from both cortical and subcortical regions to the cingulate observed in adult subjects are known to contribute to the coordination and regulation of cognitive and emotional processes.”⁵

Electroencephalogram (EEG) research similarly shows that the frontal executive regions mature from age 17 to 21 - an age well past the conclusion of the maturation process in other brain regions.⁶

Studies have long emphasized the importance of the pre-frontal cortex to decision-making. For example, as reported in one study,

[p]atients with damage to the prefrontal cortex show impaired judgment, organization, planning and decision making (Studd & Benson 1984), as well as behavioral dis-inhibition and impaired intellectual abilities (Luria 2002). Despite the fact that selective aspects of executive function may appear intact in patients with frontal lobe damage, when coordination of a number of functions is required, either in a testing or real life situation, patients with frontal damage are often unable to perform the task (Stuss & Alexander 2000; Elliot 2003). Again this underscores the significance of the frontal cortex in the generation and coordination of multiple processes that result in appropriate, goal driven behaviour⁷

And “[t]he mental representations of ‘insight,’ ‘judgment,’ ‘winning,’ and ‘goals’ are all supported by this brain region.”⁸

Scott and Steinberg (2003) claim that the difference between adolescent and adult decision making is the inability of adolescents to imagine the consequences of a new act or acts performed under new circumstances. A study performed by Casey et al. 2000 demonstrated an increase volume of cortical activity in younger adolescents, who performed less well on tasks of cognitive control and attentional modulation. They

⁵A Baird, *Adolescent Moral Reasoning: The Integration of Emotion and Cognition* at 328-329.

⁶W. Hudspeth & K. Pribram, *Psychophysiological Indices of Cerebral Maturation* 21 Int'l J. Psychophysiology 19 (1990) cited in American Psychological Ass'n Brief at 12.

⁷D. Fishbein, *Adolescent Brain Development*. RTI International. Presentation Given at The Federal Advisory Committee on Juvenile Justice (May 9, 2006, Washington D.C.).

⁸S. Gruber, D. Yurgelun-Todd, *Neurobiology and the Law: A Role in Juvenile Justice?*, 3 Ohio State Journal of Criminal Law at 322 (2006).

found that this pattern of greater brain activity in children relative to adults was suggestive of gradual decrease in the brain tissue required to perform the task.

Because of the immature prefrontal cortex, an adolescent's "behavior is highly influenced by the limbic and amygdala regions of the brain associated with impulse and aggression."⁹ A study at Harvard University's McLean Hospital confirmed that the amygdala compensates for the less developed prefrontal cortex in teenagers. In this study, adults and teens were shown photos of a human face and asked to identify the emotion expressed. It was found that younger teenagers were more likely to identify inaccurately a fearful expression with anger, and that in identifying the emotion, younger teens more often activated the amygdala (the part of the brain that controls your gut reactions and impulses), while older teens and adults used their frontal lobes. "This research suggests that early adolescents aren't able to fully activate the more logical areas of their brains, which could lead them to misinterpret their interactions with others."¹⁰

A summary of the significance of all of these research findings has been set forth as follows:

[t]he process of decision-making is surprisingly complex as it relies heavily on an interconnected neural system. In fact, individuals must be able to complete multiple processes for even the most seemingly simple decisions. This includes the perception of the stimuli as well as the situation, 'holding' the set of response options online, assessing the implication of each option, and finally, the selection of the best option for the given situation (Braver & Bongiolatti, 2002). The higher order or executive components which are involved in this process include selective attention and short-term storage of information, inhibition of response to irrelevant information, initiation of response to relevant information, self-monitoring of performances, and changing internal and external contingencies in order to move towards the ultimate goal. These executive functions have all been attributed to functions mediated by the frontal cortex (Diffner et al. 2000; Killgore & Yrugelun-Todd, 2005; Rubia et al. 2000). Further, the documentable differences in processing affective and cognitive stimuli reported between adolescents and adults underscore the likelihood that both social and emotional influences, as well as processing abilities, affect juveniles' behavior and their ability to make decisions. It follows, therefore, that if a juvenile's frontal cortex is not fully mature, he or she may make bad decisions reflective of an inability to adequately consider options and appreciate consequences.¹¹

⁹*Adolescent Brain Development: A Critical Factor in Juvenile Justice Reform*, Physicians for Human Rights.

¹⁰*The Adolescent Brain: A User's Manual*, ATPE News (Fall 2007).

¹¹S. Gruber & D. Yrugelun-Todd, *Neurobiology and the Law: A Role in Juvenile Justice?* 3 Ohio State Journal of Criminal Law 321, 325 (2006).

THE WORK OF THE
CRIME VICTIM AND PROBATION
WORKGROUP

The Work of the Crime Victim and Probation Workgroup

In June of 2006, the State Director of DPCA established a Crime Victim and Probation Workgroup to develop a comprehensive probation policy addressing the needs of crime victims in New York State. During the past 18 months, the Workgroup has met regularly and examined in detail the needs of crime victims and how probation can work more effectively to address those needs. The Workgroup will conclude its expansive work in early 2008. Final recommendations will be made to the State Director, with a final report to follow thereafter. The Workgroup recognizes that many positive things relative to victims are being accomplished by probation departments across the State but that, in general, there needs to be a greater emphasis placed on the needs of victims. The Workgroup will be advancing two major recommendations that it believes will have system-wide impact. The first is to recommend support for the concept of "Parallel Justice" developed by noted crime victim expert, Susan Herman. The second addresses how state-wide systems can be utilized to ensure that victim restitution is collected more effectively.

The concept of "Parallel Justice" is a recognition that there is an inequity in the levels of service provided to offenders and victims throughout the justice system. In addition to the traditional offender based response to crime, a parallel system geared to the needs of the victim should also exist. The elements of the offender and victim systems will differ, but both should begin when a crime is committed and continue simultaneously. The workgroup also recognizes the need to establish more effective restitution collection processes, similar to the Vermont Model or New York State's successful child support-collections model that utilizes the authority of the state to assist in the collection of restitution obligations.

In addition to these major system-wide recommendations there will be many operational level recommendations made to probation departments all geared toward improving services to victims. These recommendations will encompass several areas:

- Increased commitment within probation departments to help victims rebuild their lives;
- Safety planning to help prevent repeat victimization;
- Improvement of existing forums for victims to relay the events of the offense and the victims' needs;
- Development of mechanisms to ensure priority access for victims whenever possible to social services;
- Assisting localities with the development or improvement of emergency, transitional, and ongoing services to crime victims;
- A focus on the fair and respectful treatment of victims within the criminal justice system;
- Enforcement of restitution orders;
- Recognition that the impact of crimes on victims may require special allowances within the system process for victims; and
- Opportunities for victims to provide feedback to probation departments on a regular basis.

PINS REFORM LEGISLATION

Office of Children & Family Services

PINS Reform Legislation

Chapter 57 of the Laws of 2005

PINS REFORM LEGISLATION SUMMARY

Effective April 1, 2005

Counties and the City of New York

- Each county and the City of New York is mandated to provide diversion services to youth at risk of becoming the subject of a Person In Need of Supervision (PINS) petition and their families. [FCA 712 and 735(a)]
- Each county and the City of New York must designate either the local social services district (LDSS) or probation department as "lead agency" for the provision of PINS diversion services. [FCA 735(a)]
- Each county and the City of New York must offer PINS diversion services designed to provide an immediate response to families in crisis and must identify and use appropriate alternatives to detention. [FCA 712, 735(d)]
- LDSS multi-year consolidated plans or integrated county plans ("child and family services plans" as of 2008), as applicable, must include a diversion services portion that will be jointly established and approved by OCFS and the Division of Probation and Correctional Alternatives (DPCA). LDSS and local probation department must establish cooperative procedures for diversion services. [SSL 34-a (4)(b)] Executive Law (ExL) 243-a, relating to Adjustment Services Planning by probation departments, is REPEALED.

Social Services Districts/ Probation Departments as Designated Lead Agency

- In providing diversion services, the lead agency must:
 - Convene a conference with person(s) seeking to file a PINS petition, the youth (potential respondent), and his/her family concerning diversion services;
 - Diligently attempt to prevent the filing of a PINS petition and/or placement as a PINS into foster care;
 - Assess whether youth may benefit from residential respite (with consent of parent); and
 - Determine whether alternatives to detention are appropriate. [FCA 735 (b)]

- Determine (and document) whether to continue diversion services or whether there is no substantial likelihood that the youth and his/her family will benefit from further diversion attempts. There is no time limited restriction on diversion services. [FCA 735 (c)]
- Where a school district or Local Educational Agency (LEA) seeks to file a PINS petition, review efforts made by the school district or LEA to improve the youth's attendance and/or conduct in school, engage school/LEA in further efforts if beneficial to youth. [FCA 735 (d)]
- Advise the potential petitioner when diversion efforts terminate and whether such efforts were successful. Provide necessary documentation to the Family Court (FCT) and potential petitioner where there is no bar to filing a PINS petition. [FCA 735(g)]
- Where a PINS petition is filed, report to FCT regarding diversion attempts. FCT may order additional diversion efforts and may order youth and parent to participate. [FCA 742(b)]
- Lead agency (and any diversion services provider) may not use any statement made by a respondent youth against him/her at a fact-finding hearing or if transferred to a criminal court prior to conviction. [FCA 735(h)]
- A PINS placed with LDSS post-disposition, may remain in detention for no more than 15 days after disposition (previously was 30 days outside of NYC). OCFS may approve a 15-day extension upon written documentation by LDSS that the youth is in need of specialized treatment and the diligent efforts made by LDSS to locate an appropriate placement. [FCA 756(c), SSL 398(3)(c)]

Peace and Police Officers

- Peace and police officers may not bring runaways to non-secure detention unless unable to or unsafe to return youth home. [FCA 718(b)]
- Peace and police officers taking a PINS youth into custody may take the youth to FCT only where the officer affirms that he/she attempted and was unable to: (i) release the youth to his/her parents to be produced before the lead agency; (ii) take the youth to lead agency; or (iii) take the youth to an approved runaway program or other respite/crisis program. [FCA 724(b)]

Family Court Judges/Clerks

- FCT may not order pre-petition detention for an alleged PINS unless the court determines there is no substantial likelihood that the youth and his/her family will continue to benefit from diversion services and all available alternatives to detention are exhausted. [FCA 728(d)]
- No PINS petition may be filed without documentation by the lead agency that diversion

services were terminated because there is no substantial likelihood of further benefit.

- A parent may not file PINS petition where diversion was terminated as unsuccessful because of the parent's lack of cooperation.
- Any PINS petition filed by a school district or LEA must include the steps taken by school district or LEA to improve the school attendance or conduct of the respondent [FCA 732(a)] and document provision of diversion services [FCA 732(d) and 735]
- A PINS respondent may be remanded to non-secure detention only if the FCT determines that there is a substantial probability that he/she will not appear in court on the return date and all available detention alternatives have been exhausted. [FCA 739(a)] Serious risk of committing a crime is no longer grounds or basis to remand a PINS to detention.
- Where a PINS petition is filed, the lead agency must make a written report to FCT regarding diversion attempts. [FCA 742(a)]
- FCT may order additional diversion efforts. [FCA 742(b)]
- FCT may order the youth and parent to participate in additional diversion services. [FCA 742(b)]
- FCT may include alternative dispute resolution and other services as a condition of a PINS order of protection. [FCA 759(f)]

School Districts and Local Educational Agencies (LEA)

- Any PINS petition filed by a school district or LEA must include the steps taken by school district or LEA to improve the school attendance or conduct of the respondent. [FCA 732(a)]

Non-Secure Detention Providers

- Peace and police officers may not bring runaways to non-secure detention unless unable to or it is unsafe to return youth home. [FCA 718(b)]
- A PINS respondent may be remanded to non-secure detention only where there exists a substantial probability that he/she will not appear in court on the return date and all available detention alternatives have been exhausted. [FCA 739(a)] Serious risk of committing a crime is no longer grounds to remand a PINS to detention.
- A PINS placed with LDSS may remain in detention for no more than 15 days after placement. OCFS may approve a 15 day extension upon written documentation by LDSS that the youth is in need of specialized treatment and diligent efforts by LDSS to locate an appropriate placement. [FCA 756(c)]

Runaway and Homeless Youth Programs

- Approved runaway programs and transitional independent living support programs (TILSP) would be permitted to provide crisis intervention and respite services to youth in need of crisis intervention or respite services. Respite services may be provided for up to 21 days. [ExL 532-a (3), (4), (5) and (6)]
- Increases from 12 to 18 months the maximum period that a youth may stay in a TILSP. [ExL 532-a (6)]
- Permits a TILSP to continue to provide services to homeless youth not yet 18 but who has reached the 18 month maximum until he/she is 18 or for up to an additional 6 months if the youth is still less than 18. [ExL 532-d (f)]

PINS LEAD AGENCIES AND PROBATION
DEPARTMENTS THAT CONDUCT
PINS INTAKE LISTING

PINS Lead Agencies and Probation Departments that Conduct PINS Intake Listing

	A	B	C	D	E
1	PINS	Lead Agency		Probation Conducts PINS Intake	
2	COUNTY				
3	Albany	1 Probation		1 yes	
4	Allegany	1 Probation		1 yes	
5	Broome	1 Probation		1 yes	
6	Cattaraugus	LDSS		1 yes	
7	Cayuga	1 Probation		1 yes	
8	Chautauqua	1 Probation		1 yes	
9	Chemung	LDSS		no	
10	Chenango	LDSS		no	
11	Clinton	LDSS		1 yes	
12	Columbia	1 Probation		1 yes	
13	Cortland	1 Probation		1 yes	
14	Delaware	LDSS		no	
15	Dutchess	1 Probation		1 yes	
16	Erie	LDSS		1 yes	
17	Essex	1 Probation		1 yes	
18	Franklin	1 Probation		1 yes	
19	Fulton	LDSS		no	
20	Genesee	1 Probation		1 yes	
21	Greene	1 Probation		1 yes	
22	Hamilton	1 Probation		1 yes	
23	Herkimer	LDSS		1 yes	
24	Jefferson	LDSS		no	
25	Lewis	LDSS		no	
26	Livingston	1 Probation		1 yes	
27	Madison	LDSS		no	
28	Monroe	1 Probation		1 yes	
29	Montgomery	DSS		no	
30	Nassau	LDSS		1 yes	
31	New York City	LDSS		no	
32	Niagara	1 Probation		1 yes	
33	Oneida	1 Probation		1 yes	
34	Onondaga	1 Probation		1 yes	
35	Ontario	1 Probation		1 yes	
36	Orange	LDSS		1 yes	
37	Orleans	1 Probation		1 yes	
38	Oswego	LDSS		no	
39	Otsego	1 Probation		1 yes	
40	Putnam	LDSS		1 yes	
41	Rensselaer	1 Probation		1 yes	
42	Rockland	1 Probation		1 yes	
43	Saratoga	1 Probation		1 yes	
44	St. Lawrence	1 Probation		1 yes	
45	Schenectady	1 Probation		1 yes	
46	Schoharie	1 Probation		1 yes	
47	Schuyler	LDSS		no	
48	Seneca	1 Probation		1 yes	
49	Steuben	1 Probation		1 yes	
50	Suffolk	1 Probation		1 yes	
51	Sullivan	LDSS		no	
52	Tioga	LDSS		no	
53	Tompkins	1 Probation		1 yes	
54	Ulster	1 Probation		1 yes	
55	Warren	1 Probation		1 yes	
56	Washington	LDSS		no	
57	Wayne	1 Probation		1 yes	
58	Westchester	1 Probation		1 yes	
59	Wyoming	1 Probation		1 yes	
60	Yates	LDSS		no	
61	TOTAL	36		43	
62	Note: shaded rows denote counties where DSS is lead but Probation Department conducts intake				

ALTERNATIVES TO DETENTION

ALTERNATIVES TO DETENTION

Alternatives to Detention (Pre-Disposition)

In 2007, New York City began implementation of a continuum of pre-disposition alternatives for young people who were the subject of juvenile delinquency proceedings in response to the closing of the NYC Department of Probation's Alternative-to-Detention (ATD) program. The ATD program was the only official pre-disposition alternative-to-detention for court-involved juveniles and served approximately 1,000 young people annually. During the 18-month period between the closing of ATD and the opening of new programs, the number of detention admits, which had hovered at slightly over 5,000 for the last few years had increased to nearly 6,000 in 2006.¹ With the cost of detention increasing to \$594 per day in FY 2007, half of which is reimbursed by the State, there was clearly a dire need for alternative to detention programming and accurate targeting of the at risk juvenile population.

Juvenile Detention in New York City

- The number of young people admitted to detention has increased from 5,252 in FY 2005 to 5,973 in FY 2006 to 5,884 in FY 2007.²
- The cost per day of detaining young people has increased from \$439 in FY 2005 to \$476 in FY 2006 to \$551 (\$594?) in FY 2007.³
- As set forth in the graph below, the readmission rate to DJJ facilities from years 2003-2007 has remained relatively constant at 46%.⁴
- Young people admitted to detention are primarily young people of color from the city's poorest neighborhoods. Young people from only 15 of the city's 59 community districts account for 55% of admissions to secure detention.⁵

Opportunities

The new continuum provides for a range of pre-disposition alternatives for court-involved juveniles. Some of the benefits of the new programming are as follows:

¹ The Management Report (<http://www.nyc.gov/html/ops/downloads/pdf/mmr/djj.pdf>) shows the number of detention admits as 5,138 in FY 03, 5,047 in FY 04, 5,252 in FY 05, 5,973 in FY 06 and 5,884 in FY 07.

² Mayors Management Report 2007, NYC Department of Juvenile Justice (<http://www.nyc.gov/html/ops/downloads/pdf/mmr/djj.pdf>)

³ *Id.*

⁴ *Id.*

⁵ While African American and Hispanic youth account for 57% of the city's youth population, they accounted for 95% of admissions to secure detention in 2001 according to data collected by the Department of Juvenile Justice in 2004.

- There are now multiple pre-disposition options for juveniles ranging in levels of supervision and restriction based on assessment of their risk of re-offending or failure to appear for court. The levels of supervision are as follows:
 1. **Court Appearance Notification & Family Outreach:** juveniles deemed low-risk are sent home under family supervision only; court personnel [**Michelle Sviridoff of John Feinblatt’s office stated that this should be a pre-trial services or a probation function – not a court function**] conduct outreach to families prior to court dates to ensure attendance.
 2. **Community Monitoring:** juveniles deemed medium-low risk are assigned to supervision by community-based programs that monitor curfew, school attendance, and ensure attendance at court dates.
 3. **Afterschool Supervision:** juveniles deemed medium risk are assigned to the same community-based programs which monitor the above but also provide 5 days/week of afterschool programming that youth are mandated to attend.
 4. **Intensive Community Monitoring:** youth deemed medium-high risk are assigned to Probation’s ICM unit, which provides a higher level of supervision and monitoring.
 5. **Detention:** youth deemed high risk are sent to either secure or non-secure detention.

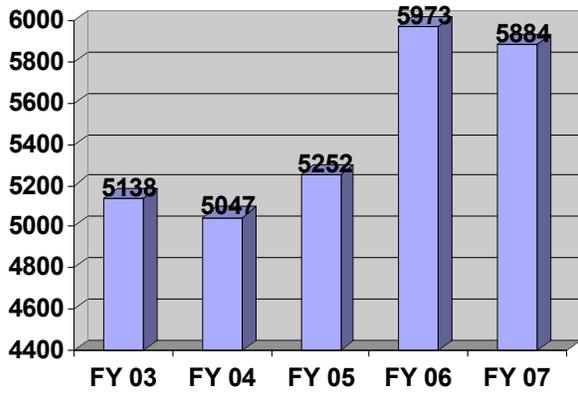


- Placement in the pre-disposition alternatives is guided by a validated risk assessment instrument (RAI) that measures risk of **re-offending** and failure to appear.
- Community-based organizations with a history of serving court-involved youth have been given contracts to provide pre-disposition services to over 1,000 juveniles annually.
- A schedule of graduated responses and sanctions has been developed to **address program responses to violations**.

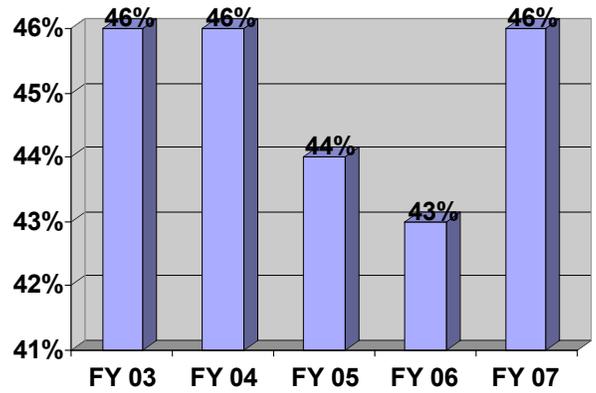
Challenges

- The increase in pre-disposition alternatives will likely result in more youth who the courts will see as eligible for some sort of post-disposition community-based alternative. While there is funding available for placement-bound youth through the Esperanza initiative and the Juvenile Justice Initiative, many of the youth who successfully complete the ATD program will not be placement bound. Many are expected to receive a disposition of probation. However, they will still need support and services to successfully make it through their time on probation. Many of these youth are very high-need *and high risk* and, without services in place, they are likely to face probation violations. There is currently no funding stream that provides for services to youth who are **not** placement-bound, but remain in the community. It is critical that New York City develop strategies to increase programmatic options for youth who successfully complete pre-disposition alternatives, but still require post-disposition services.

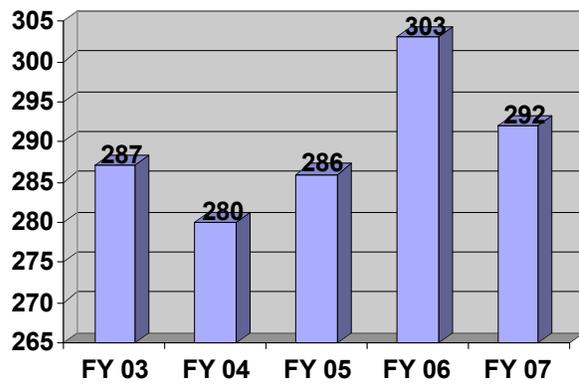
NYC Admissions to Detention



Re-admission Rate



Avg. Daily Population (Secure)



Cost per Day



*Source: Mayor's Management Report 2007,
NYC Department of Juvenile
Justice*

ALTERNATIVES TO INCARCERATION

ALTERNATIVES TO INCARCERATION

a. Placement of New York City Youth

- The number of young people from New York City placed in OCFS facilities as a final disposition has slightly declined from 1,257 in 2004 to 1,194 in 2005 to 1,094 in 2006.¹
- The cost of an average 10 ½ month OCFS placement is \$125,000 per young person.²
- A 1999 DCJS study found that 50% of young people were re-arrested within 9 months of release from OCFS custody and 81% of boys re-offended within 36 months of release.
- Young people of color are overrepresented in OCFS facilities; 86% are African-American, Hispanic, and Native American young people.³

b. Costs of Community-Based Alternatives

- The cost of community-based alternatives-to-incarceration programs is significantly lower than the cost of placement. Even the most intensive programs like Esperanza, which use evidence-based models like Multi-Systemic Therapy (MST), cost approximately \$26,260 per young person over an average period of twelve months.
- Community-based alternative-to-incarceration programs like BronxConnect, CASES, and the Center for Community Alternatives report recidivism rates of 17 to 36% and cost less than \$10,000 annually per young person.

c. New York City's Alternatives to Incarceration (Post-Disposition)

Currently in New York City a number of non-profit social service organizations supported through a range of funding formulas provide alternative-to-incarceration services as a post-disposition alternative. The Esperanza program, which serves placement-bound young people, is totally supported through city funding. The \$17,000 cost of the new Juvenile Justice Initiative, which serves foster care youth who are placement-bound, is supported through a 65-35 split, with OCFS paying for 65% of the cost and the City's Administration for Children's Services paying the remaining 35%. This program uses several evidence-based interventions including MST and FFT, which, according to Ronald E. Richter, New York City's Family Services Coordinator, "helps parents learn how to supervise and manage their adolescents so they act responsibly

¹ Unofficial data from the New York City Department of Probation.

² OCFS Annual Report 2005.

³ OCFS Annual Report 2005; In 2005, 62% of admits were African-American youth and only 13% of admits were non-Hispanic white; youth who identify as Hispanic may either be designated White or African-American .

instead of engaging in dangerous behaviors.”⁴ A New York Times article reports that “in the year since the program began, fewer than 35 percent of the 275 youths who have been through it have been rearrested or violated probation.”⁵ There are several nonprofit organizations that contract with New York City’s Mayor’s Office of the Criminal Justice Coordinator to provide alternative-to-incarceration services for young people including CASES, the Center for Community Alternatives, and Urban Youth Alliance’s BronxConnect program. These organizations use service delivery models that have proven effective in reducing re-arrests and placements. Finally, there are community-based organizations that rely on private funding such as the Andrew Glover Youth Program, New York Theological Seminary’s Uth Turn Program and The DOME Project. All of the above-mentioned programs typically provide comprehensive services for periods of 6 to 12 months and include at least several of the following: court reporting, mental health services, assessment, youth development programming, case management, substance abuse services, educational services, anger management classes.

Opportunities

- There is already a network of alternative-to-incarceration programs in place that are routinely utilized by the courts and are recognized and trusted by various stakeholders, including Family Court judges, public defenders, prosecutors, and probation officers.
- These programs have demonstrated success in reducing re-arrests, violations of probation, and placement while young people are under the court ordered mandate to participate, and a 3-year recidivism study of graduates of community-based alternative-to-incarceration programs is currently underway. Preliminary data on the Enhanced Supervision Program (ESP) indicates that 65% of young people successfully complete probation and that in 2007, 14% of ESP young people were re-arrested. Preliminary data on Esperanza indicates that 65% successfully complete the program and that 74% of Esperanza young people have remained out of placement within 9 months of release.⁶
- There are numerous other community-based organization that do not yet provide a formal alternative-to-incarceration, but are often utilized by probation, Legal Aid, or other stakeholders to provide some level of service in accordance with a dispositional order.

Challenges

- There is limited city and state funding for such initiatives, with only the Juvenile Justice Initiative supported through the 65-35 formula with OCFS.

⁴ L. Kaufman, *A Home Remedy for Juvenile Offenders; Keeping Youths With Their Families for Treatment, the City Sees Results*, NYT Feb. 20, 2008 at B4.

⁵ Id. at B4

⁶ CITATION

- There are very few funding sources which provide enough funds to underwrite the most intensive evidence-based services such as Functional Family Therapy (FFT) and Multi-Systemic Therapy (MST).
- When young people are placed on probation without effective services, or when the probation period extends beyond the service delivery period, young people are at a high risk of violating probation and may still face placement.

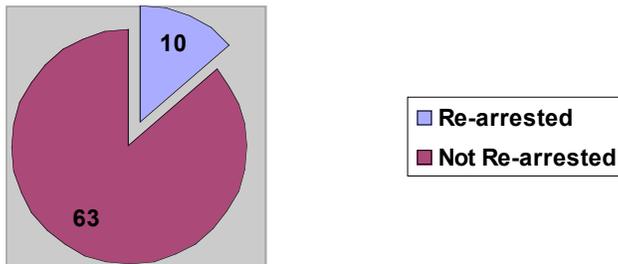
Recommendations

1. Develop a Graduated Supervision Option for young people for the Post-Disposition period that is similar to the one that is used in New York City during the Pre-Disposition period.
2. Develop a comprehensive funding strategy that would support post-disposition alternatives using evidence-based practices according to the levels of risk and need.
3. Increase the use of the 65/35 reimbursement formula to support more community-based alternatives to placement for young people.
4. Match the duration of the probation term to the duration of the service provision so that young people may successfully complete their probation disposition.
5. Increase the use of ACDs and Conditional Discharges as a disposition for young people, utilizing community-based organizations to provide post-disposition services.

BronxConnect Alternative-to-Incarceration Program Data on Family Court Youth 2001 – 2004

The following data is drawn from a sample of 73 youth, primarily juveniles adjudicated delinquent from the Bronx Family Court who were mandated to BronxConnect for 12 months as part of a dispositional alternative, between May 2001 and May 2004.

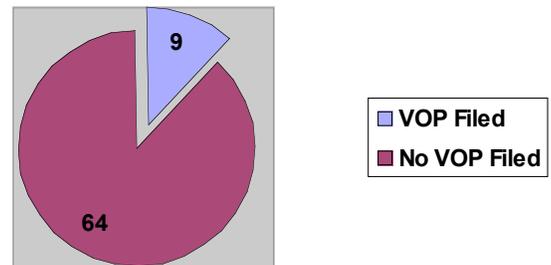
Re-arrests



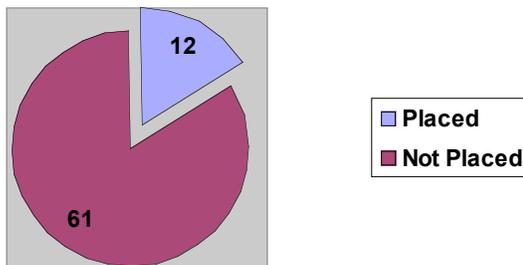
Only 10 participants (14%) were re-arrested during their 12 month period of participation in BronxConnect.

Violations of Probation

Only 9 participants (12%) had violations of probation filed during their 12 month period of participation in BronxConnect.



Placements



Only 12 participants (16%) received an out-of-home placement as a result of either a re-arrest or violation of probation. Sixty one participants (84%) completed their 12-month dispositional mandate to BronxConnect and avoided an out-of-home placement.

SOURCE: Data collected on youth served by the BronxConnect program during a 3 year research demonstration with Public/Private Ventures. * Preliminary data from the last three years on juvenile and young adult felony offenders shows that BronxConnect continues to maintain approximately a 75% success rate in preventing placement.

OCFS MODEL POLICY
ON EDUCATIONAL NEGLECT

New York State Office of Children and Family Services

For Release: February 28, 2008

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Model Policy on Educational Neglect

Introduction

In August of 2006, Section 34-a of Social Services Law (SSL) was amended to require the commissioner of the Office of Children and Family Services (OCFS), in conjunction with the commissioner of the State Education Department (SED), to develop model practices and procedures for local social services districts and school districts regarding the reporting and investigation of educational neglect. The law further requires the local social services districts, in conjunction with local school districts within in its district, to develop and submit written policies and procedures regarding the reporting of educational neglect by each school district and the investigation of educational neglect allegations by local child protective services (CPS).

Reporting and investigation of suspected cases of educational neglect present a range of complex issues and challenges for local social services districts and school districts. It is in the best interest of these agencies, and the children they serve, to collaborate in addressing these concerns. The written policies and procedures will vary from locality to locality given the diversity that exists in our state. Within this document, both OCFS and SED have identified a common ground – the essential elements that should be evident in the local policies and procedures. It is important to recognize that from the process of reporting, which is primarily a school-based responsibility, and throughout the process of investigation, which is the purview of CPS, there will be numerous opportunities for timely intervention involving students, parents, school officials and CPS staff. Hopefully, this collaborative approach will lessen the need for Family Court referral and action.

Each local social services district should:

- Invite and encourage all school districts to identify at least one representative to participate in the development of the policy and procedures regarding the reporting and investigation of educational neglect.
- Develop a policy and procedure related to the identification and reporting of educational neglect in conjunction with local school districts.
- Develop a policy and procedure regarding investigating educational neglect in conjunction with local school districts.
- Develop a process for the review and update of policies and procedures regarding the reporting and investigation of educational neglect in conjunction with local school districts.

The local school districts should:

- Identify at least one representative from the school district to collaborate with local social services districts in the development of the policy and procedures regarding the reporting and investigation of educational neglect.

- Inform all school staff of the policy and procedures for reporting and investigating educational neglect.
- Develop a policy and procedure regarding the reporting of educational neglect by the school district and the investigation of educational neglect allegations by child protective services in conjunction with the local department of social services.

The statute permits the development of individual policies and procedures between each social services district and each school district. However, the statute does not preclude social services districts and school districts within a county exploring the development of uniform countywide policies and procedures on reporting and investigation for educational neglect issues. It might, for example, be possible to develop uniform policies and procedures with addenda to address differences among different school districts on issues such as attendance policies (as discussed further below). Please note that the initial policies and procedures must be submitted to OCFS for review and approval. Once the initial policies and procedures have been approved, substantive changes to such policies and procedures must also be reviewed and approved by OCFS.

Section 1012 (f) the Family Court Act (FCA) identifies a “neglected” child as a child less than eighteen years of age

(i) whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his parent or other person legally responsible for his care to exercise a minimum degree of care

(A) in supplying the child with adequate food, clothing, shelter **or education in accordance with the provisions of part one of article sixty-five of the education law**, or medical, dental, optometrical or surgical care, though financially able to do so or offered financial or other reasonable means to do so; (emphasis added)

Please note that the term “parent or other person legally responsible for his care” as used in the FCA refers to the parent, custodian, legal guardian or other person legally responsible for the child. References in this document to the “parent” should be understood to also include custodians, legal guardians and other persons legally responsible for a child. (See Section 1012(a) and (g) of the FCA.)

Per Part One of Article 65 of the New York State Education Law, Section 3205(1)(c), the following age requirements apply:

- A child must attend full time school instruction in September if he/she turns six years old on or before the first day of December of that school year. Please note: The school year begins on July 1st and runs through June 30th. ¹

¹ Syracuse exception regarding kindergarten instruction: Section 3205(2)(c) of the Education Law provides that the board of education of the Syracuse City School district may require minors who are five years old on or before December 1st to attend kindergarten instruction. However, these provisions do not apply to children whose parents chose not to enroll them in school until the following September, who are enrolled in non-public schools, or who receive home instruction.

-
- A child who becomes six years old after the first of December must attend full time school instruction from the first day of session in the following September.
 - A child must attend full time school instruction until the last day of session in the school year in

which the minor becomes 16 years of age. New York State Education Law, Section 3205(3), provides that the board of education in a school district may require minors from 16 to 17 years of age, who are not employed, to attend full time day instruction until the last day of the session in the school year in which the student becomes 17 years old.

- A child who has completed a four year high-school course of study is not required to attend school regardless of age.
- A child who has applied and is eligible for a full-time employment certificate may be permitted to attend school part-time not less than 20 hours per week.

Reporting

For purposes of this document, Educational Neglect is considered to be the failure of a parent to ensure that child's prompt and regular attendance in school or the keeping of a child out of school for impermissible reasons resulting in an adverse affect on the child's educational progress or imminent danger of such an adverse affect.

Attendance - There are both excused and unexcused absences from school. Such absences may occur for either a portion of the day or the entire school day. It is the responsibility of the parent to establish the legitimate nature of the absence to the satisfaction of the school principal or person designated by the principal to oversee school attendance. Each local school district must include in its comprehensive attendance policy its determination of which pupil absences, tardiness and early departures will be excused and which will not be excused and provide an illustrative list of what will be considered excused and unexcused absences and tardiness, as required in the SED regulations at 8 N.Y.C.R.R. §104.1(i)(2)(iii). The school district policy on excused and unexcused absences should be incorporated into the local policy on reporting and investigation of educational neglect so that there will a common understanding between CPS and the school district of what constitutes excused and unexcused absences.

There are three elements necessary for acceptance of a report of educational neglect based on absenteeism, as identified in guidance established at the Statewide Central Register for Child Abuse and Maltreatment (SCR):

1. Excessive absence from school by the child. Confirmation that the absences are unexcused is an issue for the CPS investigation and a decision on this issue is not required at the point of making a report. However, any information the school has as to whether the absences are excused or unexcused should be provided to the SCR AND
2. Reasonable cause to suspect that the parent is aware or should have been aware of the excessive absenteeism and that the parent has contributed to the problem or is failing to take steps to effectively address the problem (in other words, failure to provide a minimum degree of care) AND
3. Reasonable cause to suspect educational impairment or harm to the child or imminent danger of such impairment or harm.

Excessive Absence: What constitutes excessive absence from school is a determination to be made by the school district. Guidelines for making that determination should be included in the policy or procedure for reporting and investigating educational neglect. The law is not specific as to the number of absences that would provide reasonable cause to suspect that a child may be educationally neglected. School districts may decide on a number of absences that would trigger a report to the SCR or a number of absences that would trigger further inquiry by the school district to determine if a report to the SCR is warranted. The number does not have to be absolute; the number of absences that is potentially

problematic may vary among different children, and the policy may take this into consideration. As one example, the New York City (NYC) Board of Education has adopted an internal protocol regarding educational neglect. If a student misses ten consecutive days of school or twenty days of school within a four month period, the school is required to “look into” why the student has been absent.

The policy should also specify that any guidelines established in the policy are meant for guidance and should never be interpreted to preclude a mandated reporter in the school from making a report to the SCR if the mandated reporter believes that he or she has reasonable cause to suspect child abuse or maltreatment, even if the conditions set forth in the guidelines have not been met.

Role of Parent: The role of the parent must be considered. School officials should contact the parent in accordance with its district attendance policy (see 8 N.Y.C.R.R. §104.1(i)(2)(vii)) to determine the parent’s awareness of the excessive absences and to offer assistance as appropriate. It is recommended that at least one attempt to contact the parent be made verbally and at least one in writing. In cases where the school advises that a parent has been unable to be contacted, has been uncooperative with school officials, or cannot provide an explanation for a child’s absences and other criteria for educational neglect can be met, that would establish reasonable cause to suspect that a parent is aware of the absence and has not taken reasonable steps to address the problem.

Educational impairment or harm: There must be concern that the absences have had an adverse effect on the child’s educational progress or are creating a danger of such an adverse effect. Certainty of an adverse effect or risk of an adverse effect is not required for a report to be accepted by the SCR; there only needs to be reasonable cause to suspect an adverse effect or risk thereof. Whether there is actually such impairment or risk is an issue for investigation by CPS.

Other considerations: The reporting of educational neglect by schools may also result in the reporting of other forms of abuse or maltreatment. Student absenteeism, whether excessive, unexcused or not, may be an indicator of other forms of underlying abuse or maltreatment in the home. As in all calls received by the SCR, the interviewer will be asking a series of open-ended questions to determine whether the caller/reporter/source has concerns that would result in ANY reasonable suspicion of abuse or maltreatment. With respect to the reporting of other forms of abuse and neglect, school district staff must follow their district’s policies and procedures regarding the same as adopted in accordance with Education Law Section 3209-a.

Home Schooling: The SED regulations at 8 N.Y.C.R.R. §100.10 set forth requirements applicable to home instruction of children, including procedures for resolving disagreements between a school district and parent as to whether the parent’s plan for home instruction (the “individualized home instruction plan” or “IHIP”) meets the requirements of the Education Law and regulations. These regulations should be consulted before considering whether an educational neglect report to the SCR is warranted. Failure to comply with these regulations coupled with the child not attending school could be a basis for a report to the SCR.

Procedure for making reports.

Pursuant to changes in the mandated reporter law in 2007, the report to the SCR must be made by a mandated reporter who him or herself has reasonable cause to suspect abuse or maltreatment. The ability to make reports to the SCR by designating a person in the school to make all such reports on behalf of the school no longer exists. However, once the report has been made, the mandated reporter who made the report must advise the person in charge of the school or that person’s designee that the report was made and of the information that was reported to the SCR, including the names and contact

information of other persons in the school believed by the reporter to have direct knowledge of the alleged abuse or maltreatment. The person in charge or designee then becomes responsible for all subsequent administration involving the report, including completing and submitting the written report (form LDSS 2221A). This responsibility may also involve making an additional call to the SCR if there is additional information concerning the report to be submitted.

Mandated reporters making reports to the SCR should, to the extent possible, confirm necessary demographic information prior to making the report to the SCR, as well as any other information the source may have that would indicate that there may be other forms of abuse or neglect present in the household in addition to educational neglect. If the mandated reporter making the report is unable to do so, it would become the responsibility of the person in charge of the school or designee to obtain this information and provide it to the SCR.

The mandated reporter phone number is **1-800-635-1522**.

The Child Abuse Specialist at the SCR will ask the reporter/source the following questions for all reports made to the SCR:

- Name(s), dates of birth, address(es) for all children and parents in the household.
- Name, title and contact information for the reporter of the information.
- Name, title and contact information for any other persons in the school who may have direct knowledge of the alleged educational neglect or other alleged child abuse or maltreatment.
- If the child attends school at the caller/reporter's location. This information will be included to assist the CPS investigator in assessing the safety of the child within 24 hours.
- If the child is not in attendance at the same location as the caller/reporter, it is important for that to be identified. The caller/reporter should have the correct street address of the school the child attends, as well as the mailing address for the school if different.
- Alternative contact information (hours of contact, phone number or alternative contact person) for the reporter to assist local CPS in gathering critical information necessary to assess the safety and ongoing risk of the child and any other children in the household. (CPS is responsible to assess the safety of every child in the household, not just children reported as abused or maltreated.)

The Child Abuse Specialist at the SCR will ask the reporter/source the following additional questions for reports made to the SCR involving possible educational neglect:

- Information related to any allegation of educational neglect and/or other allegations of abuse or maltreatment for any child in the family or child residing in the household to the knowledge of the reporter.
- Information on the number of absences from school, whether the absences are excused or unexcused (if known) and the suspected effect on the child's educational progress.
- Information related to the awareness of parent of the absenteeism and any efforts taken by the school to provide notification of the excessive absenteeism.

Investigation Considerations

Educational Impairment/Harm to the Child

Educational impairment or harm or imminent danger of harm may be difficult to prove until the harm

has actually occurred. Harm may be presumed if another child in similar circumstances has already experienced harm, or would be likely to experience harm under similar circumstances, or there is a reasonable belief that the child would be harmed if the circumstances continued. The most important aspect of preventing potential harm of educational neglect is early intervention. The reporting of educational neglect at the time of the initial identification of potential harm is critical to be able to address the issue with the family and to take necessary actions that will ensure satisfactory completion of the child's grade level and successful school experience. The investigation is where the CPS investigator will address the issues with the parent with the objective of resolving any problems that exist so the problems do not recur. The school should also be involved in the resolution of issues related to educational neglect.

To put into practice the definition of educational impairment or harm is a difficult task. Each child is different and the potential for educational harm is different according to the age, developmental abilities and intellectual capacity of the child, as well as the knowledge of, or potential encouragement by the parent of the absenteeism. Each instance of absenteeism must be evaluated in relation to the standards noted above: the parent's awareness of the excessive absenteeism, the steps taken and efforts made by the parent to address the absenteeism, and the actual or potential harm to the child.

Investigating Educational Neglect

SSL Section 424 and 18 NYCRR Part 432 identify the specific responsibilities and duties of CPS concerning reports of suspected child abuse or maltreatment. These duties include the requirement to be able to receive all reports 24 hours a day, seven days a week and to initiate an investigation within 24 hours of the receipt of a report of suspected abuse or maltreatment to assess the immediate safety to the child(ren). This applies to all reports of suspected child abuse and maltreatment, including educational neglect reports.

Determination of Some Credible Evidence

CPS must have "some credible evidence" that the child has been harmed or is in imminent danger of being harmed as a result of the parent's failure to exercise a minimum degree of care in regard to the child in order to determine a report of child abuse or maltreatment as "Indicated". (Section 412(12) of the SSL and Section 1012 of the FCA) An "Indicated" determination must include identification of the specific harm or impact on the child and confirmation that the parent, by acting or failing to act, was responsible for the harm or imminent danger of harm of the child.

Making a determination that there is, or is not some credible evidence that educational neglect exists is a process that includes multiple steps on the part of the CPS worker. The school must provide the CPS worker with all documentation that will assist the CPS worker in completing the investigation and making the determination of "Unfounded" or "Indicated". (Pursuant to Section 412(11) and (12) of the SSL, an "unfounded" report is one for which some credible evidence cannot be found to substantiate the allegations of abuse or maltreatment. An "indicated" report is one for which some credible evidence can be found to substantiate the allegations.) For this reason, it is important to document not only the child's educational progress but also efforts made to contact the parent, advise the parent of the absenteeism and to engage the parent in addressing the issue. These records must be made available to the CPS worker during the course of the investigation.

The Office of Children and Family Services (OCFS) offers the following guidance, which is not intended to be exclusive criteria, to assist in determining if a report of educational neglect should be indicated.

1. Use the school district's definition of what constitutes excessive absence from school. Unexcused absenteeism that reaches or exceeds that level would be considered excessive absence.

2. Identify the impact or potential harm on the child. Does the extent of unexcused absenteeism place the child in jeopardy of:

- Failing a course?
- Failing the grading period?
- Failing the semester?
- Failing the school year?
- Failing to acquire basic skills commensurate with the grade level?
- An inability to make up past work that is essential to passing the course or being promoted to the next level?
- Receiving a grade that reflects a significant decrease in performance from one marking period to the next?
- Not meeting the goals identified in the child's Individualized Education Program (IEP)?

3. Identify the vulnerability of the child in relation to potential harm.

- Is this a child with special needs for whom excessive unexcused absences may place the child in potential harm?
- Is this child of an age whereby the educational foundation necessary for the child to progress in school is jeopardized by the unexcused absenteeism?
- Does the child have past experience of criminal behavior that has occurred during the time of unexcused absenteeism?

4. Has the parent contributed to the problem or failed to provide a minimum degree of care?

- Has the school been provided with notes from the parent identifying the reason for all absenteeism?
- Are the reasons provided reasonable and consistent with the school district's attendance policy?
- Has the school been provided with notes from the physician or other health care provider in accordance with school policy?
- Has the school obtained information from reliable sources that the parent is complicit or encouraging unexcused absences?

5. What effort has the school made to apprise the parent of the absenteeism?

- It is recommended that schools have documentation of a minimum of one written letter sent to the parent advising them of the absenteeism.
- It is recommended that schools have made a minimum of one phone call (where possible) to the parent advising them of the absenteeism.
- Note: The local school district attendance policy must include a description of the notice to be provided to the parent where the children are absent, tardy or depart early without proper excuse, as required by 8 N.Y.C.R.R. §104.1(i)(2)(vii).

Interviewing the Child at School

When allegations or circumstances included in a report or factors arise during an investigation make it advisable to interview the child(ren) apart from the family, the school should cooperate with CPS in the investigative process (SSL, Section 425(1), which provides that agencies of the State and local governmental entities must provide OCFS and local CPS with such assistance and data as are necessary to enable them to fulfill their CPS responsibilities).

Interviewing a child in his/her school setting is predicated upon ongoing cooperation and dialogue with school authorities so that both the CPS caseworker and the school authorities understand each other's policies, responsibilities and procedures. The school district and social services district may want to develop procedures setting forth how and when interviews of children will be conducted at school.

The circumstances or allegations which may, but do not necessarily, prompt a decision by CPS to interview a child at school, include but are not limited to:

- bruises inflicted by parents;
- unusual punishments;
- unattended illness;
- child fearful of returning home; and
- sexual abuse.

In general, circumstances where a child may be in imminent danger, where time is a factor, or where other considerations exist (for example, the child expresses a need to speak privately with the CPS caseworker) may make it advisable for CPS to interview a child at school. This could occur prior to or following CPS interviewing the parents.

In making the decision whether to interview the child at school, it should be kept in mind also that interviewing a child in school may have negative consequences such as:

- disrupting the child's school routine;
- calling special attention to an allegation about a problem at home which in fact may not be a problem or may not be sufficiently significant to warrant such extraordinary attention; and
- upsetting the parent to the extent that the parent's communication will become extremely guarded out of suspicion or fear, or completely cut off.

SED and OCFS agree that interviews with children both when the school is and is not the source of the report are permissible. SED and OCFS agree that a school official should generally be present during the interview. However, the school official and CPS may decide the school official could be absent during the interview when the school official and the CPS caseworker agree that the presence of the school official is not essential to protect the interests of the pupil, and the absence of the school official may increase the likelihood that the caseworker can accomplish the purposes of the interview.

Other Considerations

In developing local school district and local social services district policies regarding the reporting of suspected child abuse and maltreatment, including educational neglect, the following statutory requirements must be considered.

Mandated reporting - Chapter 193 of the Laws of 2007 clarified the identification of a school official within the context of who is a mandated reporter. The definition of a school official now **“includes, but is not limited to school teacher, school guidance counselor, school psychologist, school social worker, school nurse, school administrator, or other school personnel required to hold a teaching or administrative license or certificate”**. (emphasis added)

That law also amended Section 413(1) (b) of the SSL to provide that a school may not take any retaliatory personnel action, as such term is defined in paragraph (e) of subdivision one of section seven hundred forty of the labor law, against an employee because such employee believes that he or she has reasonable cause to suspect that a child is an abused or maltreated child and that employee therefore makes a report to the SCR. No school or school official may impose any conditions, including prior approval or prior notification, upon a member of their staff who is a mandated reporter.

Section 3209-a of the Education Law addresses child abuse prevention in schools and provides that each school district shall develop, maintain and disseminate written policies and procedures pursuant to title six of article six of the social services law and applicable provisions of article ten of the family court act regarding the mandatory reporting of child abuse or neglect, reporting procedures and obligations of persons required to report.

Section 419 of the SSL provides that persons who in good faith make reports to the SCR and/or cooperate in CPS investigations have civil and criminal immunity from any liability that might otherwise result from such actions. The statute further provides that good faith is presumed where the person was acting in the discharge of his or her duties and within the scope of his or her employment, and that the actions did not result from willful misconduct or gross negligence.

Section 420 of the SSL provides that a mandated reporter who willfully fails to fulfill the mandated reporter responsibility is guilty of a class A misdemeanor (punishable by up to a year in jail, a fine of up to \$1,000, or both). The statute further provides that a mandated reporter who knowingly and willfully fails to fulfill the mandated reporter responsibility is civilly liable for the damages proximately caused by such failure.

Confidentiality – Section 422(4)(A) of the SSL provides that records or reports made to the SCR and CPS records are confidential and are available only as provided for in that statute. This applies to records in the possession of CPS and does not apply to school records, as such. However, if the school obtained copies of any CPS records (for example, as a service provider to the child), the confidentiality provisions of Section 422(4)(A) of the SSL would apply and the school would be prohibited from redisclosing the CPS records. Information that would identify the source of a report to the SCR is subject to a heightened level of confidentiality and is available to only a few of the list of those who otherwise have access to SCR and CPS records (for example, law enforcement agencies and courts). The subject of the report to the SCR and other persons named in the report have access to the report made to the SCR but do not have access to source information from such report absent permission from the source to reveal the source’s identity or a court order giving them such access.

Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C. §5106a) - The Federal Child Abuse Prevention, Adoption and Family Services Act of 1988 amended CAPTA by providing that a State must enact laws that require the reporting of known instances of child abuse and neglect in order to receive grants for abuse prevention and treatment programs. The Director of the Family Policy Compliance Office in the United States Department of Education has determined that Congress intended to supersede the Family Educational Rights and Privacy Act (FERPA) and allow reports of child abuse and neglect to take place, including disclosure of personally identifiable information from education records, without parental consent. (See, Letter from Rooker to Baise (November 29, 2004) at <http://www.ed.gov/policy/gen/guid/fpco/ferpa/library/baiseunmslc.html>).

OCFS has verified that New York State’s laws and regulations regarding child abuse and neglect comply with CAPTA.

[Back to news main page](#)

FUNDING FOR MENTAL HEALTH SERVICES

FUNDING FOR MENTAL HEALTH SERVICES

Reimbursement:

Medicaid: Article 31 Mental Health agencies receive the most beneficial reimbursement from Medicaid fee-for-service if they are a Court Ordered Protective Services (COPS) agency. Although Medicaid fee-for-service is the most lucrative payer for Article 31 agencies, non-COPS agencies rarely receive reimbursement from this payer in an amount that covers the cost of services provided. Furthermore, because of the intensity of the mental health services required by the COPS agencies, in many instances these enhanced rates of reimbursement do not cover costs as well.

Medicaid Managed Care: The reimbursement rates paid by Medicaid managed care plans are seriously inadequate. There is no way to cover the cost of the services provided under this form of reimbursement methodology whether the rates are capitated or fee-for-service.

Private Insurance: Once again, the reimbursement rates are inadequate to cover the cost of services provided. It is virtually impossible for an Article 31 Mental Health agency to survive on the rates paid by commercial insurance plans (e.g., Oxford, Blue Cross, et al.)

Uninsured Patients:

As with most areas of healthcare in New York, the uninsured patients suffer the most when it comes to receiving quality and timely mental health care. The cost to the uninsured, even after the application of the sliding fee scale remains an unaffordable option. Thus, the uninsured are discouraged from receiving proper care due to cost. Furthermore, due to the tight budgets that are made tighter by the aforementioned reimbursement models, many agencies are forced to turn the uninsured away as the agency cannot afford to see these patients due to a lack of any type of uncompensated care pool.

Waiting Lists:

It appears that all mental health providers have a waiting list, some longer than others due to limited numbers of providers. Waiting times range from one to six months. Within this waiting list pyramid are three kinds of waiting lists: (1) those waiting to get an intake appointment, (2) those waiting to see a psychiatrist, and (3) those on medication management waiting to be assigned to a therapist. Many mental health agencies and hospitals cut down on the waiting for intake appointment by utilizing the model where clients get a psychiatric evaluation completed as quickly as possible and then spend an inordinate amount of time waiting for assignment to a therapist (the wait time depends on one's linguistic abilities and generally Spanish only speaking clients tend to wait the longest due to limited number of bilingual therapists). The exception is if someone is a

COPS client coming straight out of psychiatric inpatient. These patients are supposed to be seen by COPS agencies within 72 hours. While the initial examination is usually accomplished, sometimes they also wait for a therapist, like everyone else.

In addition, the patient must be notified if the wait time is greater than 30 days. If so, the patients are given other agencies as viable options. However, the irony is that they inevitably will have extended wait times no matter where they go. Once again, the loser in the system is the patient.

Medicaid Neutrality Cap:

Perhaps the most discouraging deterrent to Article 31 mental health agency is Medicaid Neutrality Cap. Basically, the Office of Mental Health has dictated an arbitrary amount of dollars an agency may receive for providing mental health services. *If an agency were to exceed this cap, the mental health providers would not be able to be reimbursed and would essentially be providing services for free.* This is one of the few areas in which such a cap exists and, based on the problems noted above, needs to be rescinded. The Governor has proposed it be lifted.

MEMORANDUM DATED JANUARY 12, 2007
FROM FAMILY COURT ADVISORY
AND RULES COMMITTEE



STATE OF NEW YORK
UNIFIED COURT SYSTEM
25 BEAVER STREET
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JONATHAN LIPPMAN
Chief Administrative Judge

MICHAEL COLODNER
Counsel

January 12, 2007

Hon. John Dunne, Chair
Task Force on the Future of Probation
Attention: John Amodeo, Esq., Counsel
New York State Office of Court Administration
Empire State Plaza, Agency Building #4, Suite 2001
Albany, NY 12223

RE: Family Court Probation

Dear Senator Dunne:

As Counsel to the Family Court Advisory and Rules Committee of the New York State Unified Court System, I am writing to convey the Committee's concerns regarding the acute need for an enhancement of resources for probation in the Family Courts. The Family Court Advisory and Rules Committee is one of the standing advisory committees established by the Chief Administrative Judge pursuant to section 212(1)(q) of the Judiciary Law and section 212(b) of the Family Court Act. The Committee, co-chaired by Hon. Sara Schechter, Judge of the Family Court, New York County, and Peter Passidomo, Chief Family Court Magistrate, includes experienced Family Court judges and clerks, court attorney-referees, practitioners, law school professors and support magistrates. These experts, drawn from throughout New York State, bring a variety of front-line perspectives to the myriad issues relating to the Family Court. The Committee recommends proposals in the areas of Family Court procedure and family law as part of the annual legislative program of the New York State Unified Court System, prepares suggested revisions to court rules and forms, sponsors roundtable discussions in collaboration with other professionals in the field and reviews and comments on pending legislative and policy matters. The Committee's Juvenile Justice Subcommittee, chaired by Hon. Joan S. Kohout, Judge of the Family Court, Monroe County, has formulated proposals that would enhance probation monitoring of PINS and juvenile delinquent youth with the aim of reducing the use of detention and costly out-of-home placements.

We recognize that the Task Force on the Future of Probation has primarily focussed upon probation in criminal cases. However, our Committee cannot overemphasize the importance of probation in the Family Courts. Our members see daily evidence of the strains that limited resources have placed upon local probation departments and, at the same time, are aware of the tremendous potential that properly supported probation departments could have in serving youth and families before the Family Courts and, importantly, in promoting public safety through effective community supervision. Probation can play (and, where sufficiently funded, has played) a significant role in providing youth with effective alternatives to costly detention and placements and, ultimately, in preventing them from graduating into the adult criminal justice system. Moreover, some county probation departments have been able to provide additional essential services to the Family Court, including supervision of adult domestic violence offenders and child support violators, as well as assistance in performing custody evaluations and petition preparation. However, as State aid has decreased sharply in recent years to a recent low of 17%, the statewide disparities in the capacity of local probation departments to provide a uniform range of all of these critically important Family Court services have widened.

The Committee recommends that funding for juvenile probation should be significantly increased, particularly in the areas of diversion services, intensive probation supervision and alternatives to detention in order to most effectively use limited financial resources to assist children and promote public safety. The failure to sufficiently fund juvenile probation programs has resulted in an increase in filings in Family Court, increased numbers of expensive out-of-home placements and the potential for future involvement in the adult criminal justice and mental health systems. Our recommendations are explained briefly below.

1. Diversion Programs for Juvenile Delinquents and Persons in Need of Supervision:

- Probation is the lead agency in most counties for PINS diversion and the statutory agency to supervise juvenile delinquency diversion, but state funding has not been sufficient –certainly not uniformly sufficient in all parts of the State.
- Diversion programs have been demonstrated to be effective and economical ways of keeping children out of the juvenile justice system.
- The 2005 PINS reform legislation [Laws of 2005, ch. 57, Part E] now requires local probation departments to provide diversion services to all children under 18 years old "at risk" of being a PINS. Although diversion was formerly a local option –and although a few years ago the maximum PINS age extended from 16 to 18 – the resources allocated to localities to meet these added responsibilities have not kept pace.

2. More Intensive Probation Services are Needed to Reduce Reliance on Out-of-Home Placements

- Today's juveniles have increased needs, particularly for mental health and substance abuse treatment. The complexity of the problems they present are all too often beyond the capacity of probation departments to address under current funding constraints.

- Intensive and Enhanced Probation services have proven to be effective alternatives to expensive out-of-home placements has been clearly demonstrated recently in New York City. *See* "Alternative to Jail Programs for Juveniles Reduce City Costs," *Inside the Budget*, #148 (NYC Independent Budget Office; July 11, 2006). Nationally, such programs are recognized as providing cost-effective, safe alternatives to residential placement. *See generally*, Home-based Services for Serious and Violent Offenders, Center for the Study of Youth Policy (Oct., 1994); M. Jones and B. Krisberg, *Images and Reality: Juvenile Crime, Youth Violence and Public Policy*, National Council on Crime and Delinquency (June, 1994), p. 37; *Comprehensive Strategy for Serious, Violent and Chronic Offenders: Program Summary*, U.S. Dept. of Justice, Office of Juvenile Justice and Delinquency Prevention (Dec., 1993), p. 21.

- Evidence- based intensive in-home services, such as Functional Family Therapy and Multisystemic Therapy, provide effective assistance to juveniles and their families. *See* Peter W. Greenwood, *Changing Lives: Delinquency Prevention as Crime-Control Policy* (Univ. Chicago Press, 2006). The NYS Office of Children and Family Services has provided some resources for localities to replicate these programs, but local probation departments need a uniform funding base to be able to provide these services on a comprehensive basis statewide to juveniles who need them.

- There is no substitute for frequent Probation contacts, particularly for high risk juvenile delinquents. Programs providing curfew checks, daily contacts and Probation meetings held at school have all been effective and provide promising results in reducing disproportionate minority placement. *See* U.S. Dept. Of Justice Office of Juvenile Justice and Delinquency Prevention, *Disproportionate Minority Contact Technical Assistance Manual* (3rd Ed, pages 4-8)

- The Family Court Advisory and Rules Committee has proposed legislative amendments that would enhance probation supervision by authorizing the use of electronic monitoring for juvenile delinquents and, in both juvenile delinquency and PINS cases, specifically permitting Family Court Judges to place juveniles in a Intensive Probation program for all or part of the period of supervision as an alternative to placement. These proposals are set forth in an appendix to this letter.

3. Specialized Programs Work and Should be Encouraged

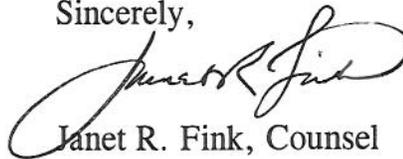
- Specialized caseloads for children with substance abuse problems involving close monitoring by Probation and treatment providers.
- Intensive juvenile sexual offender programs providing treatment to the offender and family can avoid placements for these high risk youths.
- School based Probation where youth meet with their Probation Officer allows Probation Officers to intervene quickly to ameliorate school problems
- Specialized domestic violence probation programs, such as those that have been utilized effectively in Westchester County.¹

4. Probation Based Alternatives to Detention Should be State Funded

- Detention is used in Family Court to assure attendance of PINS youth and additionally for preventive detention of juvenile delinquent youth.
- The use of expensive detention beds can be safely reduced by the implementation of alternative to detention programs run through Probation, including school attendance monitoring, pretrial supervision and referrals to services. The use of Probation to provide alternatives to detention assures accountability to the court.
- Unfortunately, although 50% of detention costs are generally reimbursed by the State, there is no dedicated State funding stream for alternatives to detention. As noted, the Family Court Advisory and Rules Committee has submitted a statutory amendment to specifically authorize the use of Electronic Monitoring for alleged juvenile delinquents as an alternative to detention and placement, which is set forth in an appendix to this letter.

We would be happy to discuss any of these issues further with you and wish to express our appreciation for the opportunity to express our concerns about Family Court probation to the Task Force on the Future of Probation.

Sincerely,



Janet R. Fink, Counsel

Family Court Advisory and Rules Committee

¹ With reference to domestic violence, the Committee has proposed legislation to authorize probation departments to access the domestic violence registry for the purpose of preparing pre-sentence and pre-disposition reports in Family Court and criminal cases. This proposal is set forth in the appendix.

APPENDIX:
THREE PROBATION-RELATED LEGISLATIVE PROPOSALS:
FAMILY COURT ADVISORY AND RULES COMMITTEE
JANUARY, 2007

I. Judicial authority to order intensive probation supervision and electronic monitoring in juvenile delinquency proceedings (F.C.A. §§353.2, 353.3; Exec. L. §243)

As public concern about youth crime remains at a high level, the juvenile justice system must be able to respond effectively -- protecting society, as well as juveniles themselves, by instilling the skills and commitment necessary for them to develop into productive, law-abiding adults. The Family Court Act places upon the Family Court the grave responsibility of issuing appropriate orders of disposition, achieving the delicate balance between the juveniles' "needs and best interests" and the "need for protection of the community." Family Court Act §§141, 301.1. The Court is only able to discharge this duty if it has sufficient options to fashion dispositional orders that will accomplish that delicate balance. In an era of increasingly severe fiscal constraints, localities must be encouraged to develop cost-effective alternatives both to pre-dispositional detention and placement.

The Family Court Advisory and Rules Committee has developed a proposal that would enhance the capacity of the Family Court to ensure that juveniles released prior to disposition would be rigorously monitored and that after disposition, probation supervision would provide effective intervention, not merely perfunctory, intermittent "contacts." The measure would establish a regulatory framework to establish meaningful alternatives to detention and to increase the likelihood that youth placed on probation receive the supervision and services required to correct and redirect anti-social patterns of behavior.

First, in determining whether an accused juvenile delinquent should be detained prior to disposition, the Family Court would be required to consider whether there are available, appropriate alternatives to detention, a corollary to the existing mandate to consider whether reasonable efforts have been made to prevent the need for detention, similar to the recent amendment to the Persons in Need of Supervision statute [Family Court Act §720(5)(a)]. Where the Court determines that grounds for detention exist under current statutory standards, the Court would have the discretion to release a juvenile on condition of cooperation with a program of electronic monitoring, if such program is available under the auspices of the local probation department and if such a program would obviate the concerns that otherwise would have caused the juvenile to be detained, that is, if electronic monitoring would ensure the juvenile's likely appearance in Family Court or minimize the risk of commission of an act that would be a crime if committed by an adult, as applicable. Such an alternative to otherwise costly detention has been used extensively in the federal system and in other jurisdictions. *See, e.g., Colorado Children's Code, Col. Rev. Stat., Tit. 19, Art. 2, Pt.3, §19-2-302(4)(h).* As a form of conditional release, obviating the necessity of detention, it would be consistent with available detention

alternatives in criminal cases.²

Second, the measure would authorize the Family Court to direct that an adjudicated juvenile delinquent, who would otherwise be placed, be required to participate in an intensive probation supervision program for all or part of the period of probation to the extent available in the county. In light of the requirement in section 303.1(a) of the Family Court Act that Criminal Procedure Law provisions be “specifically prescribed” in the Family Court Act in order to be applicable, this provision would provide the necessary analogue to section 65.10(4) of the Criminal Procedure Law, the statutory response to the decision of the Court of Appeals in People v. McNair, 87 N.Y.2d 772 (1996). See Laws of 1996, ch. 653. A program of electronic monitoring, to the extent available, would be permissible as a component of an intensive supervision regimen, but it would not replace the in-person contacts so vital to the success of probation, particularly as applied to juveniles. Enactment of an authorization for electronic monitoring in New York is long-overdue. Several other states utilize this option as a vital component of a dispositional plan in juvenile delinquency cases³ and the Supreme Court, Appellate Division, Third Department recently endorsed its use as a reasonable condition of probation in a Person in Need of Supervision (PINS) proceeding. See Matter of Kristian CC., 24 A.D.3d 930, 805 N.Y.S.2d 473, 2005 Slip Op. 09380 (3d Dept., 2005), *lve. app. denied*, 6 N.Y.3d 710 (2006).

Finally, the New York State Division of Probation and Correctional Alternatives would be directed to promulgate regulations permitting and guiding the operation by local probation departments of both electronic monitoring and intensive probation supervision programs, addressing such issues as: maximum probation officer caseloads; special training requirements for intensive supervision probation officers; nature and frequency of the probation contacts with the juveniles, schools and other agencies; and the level and type of supervision, treatment and other program components.

Intensive supervision is a critically-needed dispositional alternative. Enhanced state reimbursement has been available for several years for intensive probation supervision for adults, but far smaller amounts have been afforded to juvenile programs. That intensive probation can be an effective means of addressing juvenile justice cases, while at the same time saving considerable sums of money, has been clearly demonstrated recently in New York City. See

² See, e.g., Halikipoulos v. Dillon, 139 F.Supp. 2d 312 (E.D.N.Y., 2001)(requirement of attendance at “Stoplift” education program permissible as condition of bail in State criminal proceedings); People ex rel Tannuzzo v. City of New York, 174 A.D.2d 443 (1st Dept., 1991)(bail set on condition defendant would report to police at 6 P.M. every day, surrender his passport and refrain from re-applying until close of case); People ex rel Moquin v. Infante, 134 A.D.2d 764 (3rd Dept., 1987) (bail set on condition defendant enroll in alcoholic rehabilitation program, not operate a motor vehicle and surrender her driver’s license); People v. Bongiovanni, 183 Misc.2d 104 (Sup. Ct., Kings Co., 1999)(attendance at batterers’ education program is permissible condition of bail).

³ See, e.g., Ariz. Rev. Stat., Tit. 8, ch. 3, Art. 3, §8-341 (1999); Ark. Stat. Ann. Tit. 9, Subtit. 3, Ch. 27, Subch. 3, §9-27-330 (1997); West’s Fla. Stat. Ann. §985.231 (1999); Official Code of Ga. Ann., Tit. 49, Ch. 4A, §49-4A-13 (1999); Baldwin’s Ohio Rev. Code Ann., Tit. XXI, §2151.355 (1999); Rev. Code Wash., Tit. 13, Ch. 13.40, §13.40.210(3)(b)(1999).

“Alternative to Jail Programs for Juveniles Reduce City Costs,” *Inside the Budget*, #148 (NYC Independent Budget Office; July 11, 2006). Nationally, such programs are recognized as providing cost-effective, safe alternatives to residential placement.⁴

Significantly, not only does intensive probation supervision save money, but it may also facilitate access to federal dollars . Funds from the federal child welfare programs can be made available to localities for these programs if the Division of Probation and Correctional Alternatives and local probation departments work in partnership with the New York State Office of Children and Family Services and local social services districts. If intensive supervision services that are provided to youth in order to prevent placement are explicitly included in the statewide plan for child welfare services, federal reimbursement at a rate of 75% would be available as a preventive service under Title IV-B of the Social Security Act. 42 U.S.C.A. §§622, 623 [Social Security Act, Title IV-B].⁵ Federal reimbursement for child welfare services to prevent placement of juvenile delinquents is contemplated, so long as the facilities where the youth would have been placed are eligible for federal foster care funding -- that is, they are not secure detention centers or forestry camps or training schools housing over 25 juveniles. 42 U.S.C. §672(c) [Social Security Act, Title IV-E]. Indeed, in order to increase its eligibility for foster care reimbursement under this section, the New York State Office of Children and Family Services in recent years has moved toward conversion of its facilities to house under 25 residents.

The New York State Legislature has recognized the applicability of the federal mandates to juvenile delinquency cases, including most recently, the *Adoption and Safe Families Act* [Public Law 105-89], by incorporating into State law the requirements that Family Court judges make findings, prior to ordering both detention and placements of juveniles into facilities eligible for federal reimbursement, that "reasonable efforts" have been made to prevent the placements. See Family Court Act §§352.2(2)(b); Laws of 1999, ch. 7; Laws of 2000, ch. 145. Eliminating unnecessary placements of juvenile delinquents will facilitate State compliance with, and concomitant eligibility of funding from, the federal *Adoption and Safe Families Act* and the *Juvenile Justice and Delinquency Prevention Act*, in light of the applicability of the strict permanency planning mandates to all juveniles in placement facilities that are in receipt of federal foster care funding. See Public Law 107-273; V. Hemrich, "Applying *ASFA* to Delinquency and Status Offender Cases," 18 *ABA Child Law Practice* #9: 129, 133 (November, 1999).

⁴ See generally, Home-based Services for Serious and Violent Offenders, Center for the Study of Youth Policy (Oct., 1994); M. Jones and B. Krisberg, *Images and Reality: Juvenile Crime, Youth Violence and Public Policy*, National Council on Crime and Delinquency (June, 1994), p. 37; *Comprehensive Strategy for Serious, Violent and Chronic Offenders: Program Summary*, U.S. Dept. of Justice, Office of Juvenile Justice and Delinquency Prevention (Dec., 1993), p. 21.

⁵ Reimbursable "child welfare services" are defined as "public social services," directed, *inter alia*, at "preventing or remedying, or assisting in the solution of problems which may result in the neglect, abuse, exploitation or delinquency of children." 42 U.S.C. §625(a)(1)(B) [Social Security Act, Title IV-B]. The federal regulations implementing the Act enumerate counseling and other services determined to be "necessary and appropriate," including "intensive, home-based family services." 45 C.F.R. §1357.15.

Even apart from federal or state funding eligibility, investing intensive probation supervision resources in youth who would otherwise be likely to be placed would result in substantial savings of placement dollars, since probation supervision, even with enhanced officer-to-juvenile ratios and electronic monitoring programs, represents but a fraction of the cost of residential placement.⁶ Importantly, however, the proposal does not require such expenditures, as both the electronic monitoring and the intensive probation provisions authorize their utilization only "to the extent available" in a particular locality.

Proposal

AN ACT to amend the family court act and the executive law, in relation to alternatives to detention and conditions of probation in juvenile delinquency cases

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 3 of section 320.5 of the family court act is amended by adding an unlettered paragraph at the end thereof to read as follows:

The court shall not direct detention unless available alternatives to detention would not be appropriate, including, but not limited to, conditional release in accordance with subdivision two of this section. If the court makes a finding, pursuant to paragraph (a) or (b) of this subdivision, that detention is nonetheless necessary, the court may consider whether utilization of electronic monitoring, to the extent available, as a condition of release would address the basis for the finding, that is, significantly reduce the substantial probability that the respondent will not return to court on the return date or the substantial risk that the respondent may before the return date commit an act that if committed by an adult would constitute a crime, as applicable. If the court so finds and if such a program is available in the county, the court may order the probation department to supervise the respondent through a program of electronic monitoring, which shall be implemented in accordance with regulations to be promulgated by the division of probation and correctional alternatives pursuant to subdivision one of section two hundred forty-three of the executive law.

§2. Subdivision 3 of section 353.2 of the family court act is amended by re-lettering paragraphs (e) and (f) as (f) and (g) and adding a new paragraph (e) to such subdivision to read as follows:

(e) cooperate with a program of intensive supervision by the probation department during the period of probation or a specified portion thereof, to the extent available in the county, upon a finding on the record by the court that, absent cooperation with such a program, placement of the respondent would be necessary. Such a program shall be conducted in accordance with regulations to be promulgated by the division of probation and correctional alternatives and may require the respondent, among other conditions, to comply with a program of electronic monitoring to the extent available in the county, as provided by subdivision one of

⁶ By analogy, the New York City "Family Ties" program provided intensive, home-based services to juveniles, thereby enabling them to be placed on intensive probation supervision rather than in residential care. The program demonstrated a net savings of \$11,043,318 in placement costs from its inception in 1989 through the end of 1991, but was eliminated from the City's budget a few years later. See *Family Ties: A Financial Analysis*, N.Y.C. Dept. of Juvenile Justice (June, 1993), p.7.

section two hundred forty-three of the executive law;

§3. Subdivision 6 of section 353.2 of the family court act, as amended by chapter 124 of the laws of 1993, is amended to read as follows:

6. The maximum period of probation shall not exceed two years, which may include intensive probation supervision, in accordance with paragraph (e) of subdivision three of this section, to the extent available up to the term of probation. If the court finds at the conclusion of the original period and after a hearing that exceptional circumstances require an additional year of probation, the court may continue the probation for an additional year.

§4. Subdivision 1 of section 243 of the executive law, as amended by chapter 574 of the laws of 1985, is amended to read as follows:

1. The director shall exercise general supervision over the administration of probation services throughout the state, including probation in family courts and shall collect statistical and other information and make recommendations regarding the administration of probation services in the courts. He or she shall endeavor to secure the effective application of the probation system and the enforcement of the probation laws and the laws relating to family courts throughout the state. After consultation with the state probation commission, he or she shall adopt general rules which shall regulate methods and procedure in the administration of probation services, including investigation of defendants prior to sentence, and children prior to adjudication, supervision, case work, record keeping, and accounting, program planning and research so as to secure the most effective application of the probation system and the most efficient enforcement of the probation laws throughout the state. Such rules shall permit the establishment of a program of intensive probation supervision for juveniles directed to receive such services pursuant to paragraph (e) of subdivision three of section 353.2 of the family court act and shall include, but not be limited to: specification of the maximum caseload levels and training required for intensive supervision probation officers; the frequency and nature of probation contacts with juveniles in the program, schools and other agencies; and supervision, treatment and other services to be provided to such juveniles. Such rules shall further provide for the establishment of a program of electronic monitoring for accused juvenile delinquents who would otherwise be detained prior to disposition pursuant to subdivision three of section 320.5 of the family court act and for adjudicated juvenile delinquents placed on probation on condition of cooperation with a program of electronic monitoring pursuant to paragraph (e) of subdivision three of section 353.2 of the family court act. Such rules shall provide that the probation investigations ordered by the court in designated felony act cases under subdivision one of section 351.1 of the family court act shall have priority over other cases arising under articles three and seven of such act. Such rules shall be binding upon all probation officers and when duly adopted shall have the force and effect of law, but shall not supersede rules that may be adopted pursuant to the family court act. He or she shall keep [himself] informed as to the work of all probation officers and shall from time to time inquire into and report upon their conduct and efficiency. He or she may investigate the work of any probation bureau or probation officer and shall have access to all records and probation offices. He or she may issue subpoenas to compel the attendance of witnesses or the production of books and papers. He or she may administer oaths and examine persons under oath. He or she may recommend to the appropriate authorities the removal of any probation officer. He or she shall transmit to the governor not later than February first of each year an annual report of the work of the division of probation and correctional alternatives for the preceding calendar year, which shall include such information relative to the administration of probation and correctional alternatives throughout the state as may be appropriate. He or she

may from time to time publish reports regarding probation including probation in family courts, and the operation of the probation system including probation in family courts and any other information regarding probation as he or she may determine provided expenditures for such purpose are within amounts appropriated therefor.

§5. This act shall take effect on the ninetieth day after it shall have become a law and shall apply to juveniles found to have committed acts of juvenile delinquency that occurred on or after such effective date, provided, however, that section 4 of this act shall take effect immediately.

II. Dispositional alternatives and violations of orders of probation and suspended judgment in persons in need of supervision proceedings (F.C.A. §§ 743, 754, 757, 776, 779, 779-a)

The increase in the maximum age of jurisdiction for persons in need of supervision (PINS) proceedings, the statutory restrictions placed upon detention and placement of PINS over the age of 16 and, most recently, the major reform in the area of PINS diversion, focused attention upon the critical need to examine and modernize the statutory structure governing these proceedings. *See* Laws of 2000, ch. 596; Laws of 2001, ch. 383; Laws of 2005, ch. 57, Part E. The major recodification effort undertaken by the Temporary State Commission on Child Welfare that resulted in the enactment of a separate juvenile delinquency article (Article 3) in the Family Court Act in 1982 [Laws of 1982, chs. 920, 926] left the legislative framework governing PINS proceedings virtually unchanged since its original enactment as part of the Family Court Act of 1962. The sole amendments to the PINS statute (Article 7 of the Family Court Act) were those repealing juvenile delinquency provisions, and subsequent PINS amendments have solely addressed diversion and criteria for detention and placement. Thus, significant case law affecting PINS proceedings has not been codified; nor has the Legislature clarified which, if any, of the procedural changes incorporated into Article 3 with respect to juvenile delinquents should apply in PINS cases. The Family Court Advisory and Rules Committee proposes that four provisions of Article 7 of the Family Court Act be amended to address these matters.

First, consistent with the requirement in the new PINS statute that dispositions be the “least restrictive available alternative” consistent with the respondent juvenile’s needs and best interests, the Committee’s measure would authorize the Family Court to place an adjudicated person in need of supervision, who would otherwise be placed out of the home, into an intensive probation supervision program, where available, for all or part of the period of probation to the extent such a program is available. The New York State Division of Probation and Correctional Alternatives would be directed to promulgate regulations to guide local probation departments that elect to operate such programs, addressing such issues as: maximum probation officer caseloads; special training requirements for the probation officers carrying out the intensive supervision program; the nature and frequency of the probation contacts with the juveniles, schools and other agencies; and the level and type of supervision, treatment and other program components. Intensive supervision is a critically-needed dispositional alternative, particularly in light of the elimination in 1996 of the Family Court’s authority to place PINS in facilities operated by the New York State Office of Children and Family Services. *See* Laws of 1996, ch. 309. While some State funding has been appropriated for intensive supervision programs for juvenile delinquents since 1994, no such reimbursement was made available in persons in need

of supervision cases, despite the obvious cost-effectiveness of such alternatives to far more expensive placements.

The need for this measure is underscored by the conclusions reached by the Vera Institute of Justice in its two studies, *Changing the PINS System in New York: A Study of the Implications of Raising the Age Limit for Persons in Need of Supervision* (PINS) (Vera Inst., Sept., 2001) and *Changing the Status Quo for Status Offenders: New York State's Efforts to Support Troubled Teens* (Vera Inst., Dec., 2004), that were commissioned by the New York State Office of Children and Family Services. The 2001 study characterized detention and placement as the "most expensive" and "least satisfying" pre-dispositional and dispositional options for the juveniles, their families and the system as a whole – options that have not been demonstrated to improve either the truancy or absconding problems that form the gravamen of most PINS petitions and that have drained resources away from more promising solutions. *Id.*, at p. 34, 38. The 2004 study highlights the efficacy of the use of creative alternatives to detention and placement for PINS.

Second, the Committee's proposal adds a new section 743 to the Family Court Act, establishing a judicial allocation procedure for accepting admissions in PINS cases analogous to the allocation required in juvenile delinquency cases [Family Court Act §321.3]. The Committee's proposal would require the Family Court, before accepting an admission in a PINS case, to ascertain that the juvenile respondent committed the act or acts to which an admission is being entered, is voluntarily waiving his or her right to a hearing and is aware of the dispositional alternatives that may be ordered as a result of the adjudication that is the likely consequence of the admission.

In Matter of Tabitha L.L., 87 N.Y.2d 1009 (1996), the Court of Appeals held that it would be inappropriate to incorporate section 321.3 of the Family Court Act into Article 7 in the absence of specific legislative authorization. It did not determine whether an allocation procedure is constitutionally required, since that issue was not preserved for appellate review. In a subsequent case, Matter of Tabitha E., 271 A.D.2d 719, 720 (3rd Dept., 2000), however, the Appellate Division, Third Department, held it to be reversible error for the Family Court to accept an admission in a PINS proceeding without first advising the respondent of her right to remain silent. *Accord*, Matter of Steven Z., 19 A.D.3d 783 (3^d Dept., 2005); Matter of Matthew RR, 9 A.D.3d 514 (3^d Dept., 2004); Matter of Nichole A., 300 A.D.2d 947 (3rd Dept., 2002); Matter of Jody W., 295 A.D.2d 659 (3rd Dept., 2002); Matter of Shaun U., 288 A.D.2d 708 (3rd Dept., 2001). The Committee submits that considerations of due process -- equally compelling in PINS as in juvenile delinquency cases -- militate in favor of equivalent protections and, therefore, urges the Legislature to enact a provision for PINS cases comparable to the allocation requirement applicable to juvenile delinquency proceedings.

The final two amendments to the PINS statutes would delineate procedures for violations of orders of suspended judgment and violations of probation, drawing upon existing juvenile delinquency procedures. *See* Family Court Act §§360.2, 360.3. Violations of both orders of probation and suspended judgment would require the filing of a verified petition, a hearing at which the juvenile is represented by counsel and a determination by competent proof that the juvenile committed the violation charged without just cause. Periods of dispositions of suspended

judgment and probation would be tolled during the pendency of the violation petition. The juvenile would have to be advised of his or her rights. *See, e.g., Matter of Jessica GG.*, 19 A.D.3d 765 (3d Dept., 2005); *Matter of Ashley A.*, 296 A.D.2d 627 (3rd Dept., 2002).

Upon a finding of a violation, the Family Court would be authorized to adjourn the matter for a new dispositional hearing in accordance with subdivision (b) or (c) of section 749 of the Family Court Act or, at minimum, provide the juvenile with an opportunity to present evidence. *See Matter of Casey W.*, 3 A.D.3d 785 (3d Dept., 2004); *Matter of Josiah RR*, 277 A.D.2d 654 (3rd Dept., 2000). The Court would be permitted to revoke, continue or modify the order of probation or suspended judgment. If the order is revoked, the Court would be required to order a different dispositional alternative enumerated in section 754(a), to state the reasons for its determination and to make the findings required by section 754(b) of the Family Court Act. *See Matter of Nathaniel JJ*, 265 A.D.2d 660 (3rd Dept., 1999), *after remittitur*, 270 A.D.2d 783 (3rd Dept., 2000) (PINS probation violation matter remanded twice for specific findings, first with respect to the reasons for the disposition and second as to the 16-year old respondent's needs, if any, for independent living services).⁷ In matters, such as *Nathaniel J.J.*, in which the juvenile was placed pursuant to Family Court Act §756, these findings would be mandated as well by the federal and state *Adoption and Safe Families Acts* [Public Law 105-89; Laws of 1999, ch.7; Laws of 2000, ch. 145].

Proposal

AN ACT to amend the family court act, in relation to adjudication, dispositional and violation procedures in persons in need of supervision cases

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The family court act is amended by adding a new section 743 to read as follows:
§743. Acceptance of an admission. (a) Before accepting an admission, the court shall advise the respondent of his or her right to a fact-finding hearing. The court shall also ascertain through allocation of the respondent and his or her parent or person legally responsible for his or her care, if present, that the respondent:

- (i) committed the act or acts to which an admission is being entered;
- (ii) is voluntarily waiving his or her right to a fact-finding hearing; and
- (iii) is aware of the possible specific dispositional orders.

The provisions of this subdivision shall not be waived.

(b) Upon acceptance of an admission, the court shall state the reasons for its determination and shall enter a fact-finding order. The court shall schedule a dispositional hearing in accordance with subdivision (b) or (c) of section seven hundred forty-nine of this article.

§2. Subdivision (b) of section 757 of the family court act, as amended by chapter 309 of the laws of 1996, is amended and a new subdivision (e) is added to read as follows:

- (b) The maximum period of probation shall not exceed one year, which may include

⁷ The final appeal in *Matter of Nathaniel JJ*, 274 A.D.2d 611 (3rd Dept., 2000) was dismissed as moot, since the appellant had been released from placement.

intensive probation supervision, in accordance with subdivision (e) of this section, to the extent available, during all or part of the term of probation. If the court finds at the conclusion of the original period that exceptional circumstances require an additional year of probation, the court may continue probation for an additional year.

* * *

(e) If the respondent has been found to be a person in need of supervision, and if the court further finds that, absent intensive probation supervision, the respondent would be placed pursuant to section seven hundred fifty-six of this act, the court may direct the respondent to cooperate with a program of intensive probation supervision during all or part of the term of probation. The local probation department may provide intensive probation supervision to respondents so directed pursuant to this subdivision in accordance with regulations to be promulgated by the state division of probation and correctional alternatives pursuant to subdivision one of section two hundred forty-three of the executive law.

§3. Section 776 of the family court act, as added by chapter 686 of the laws of 1962, is amended to read as follows:

§776. Failure to comply with terms and conditions of suspended judgment. [If a] A respondent [is] brought before the court for failure to comply with reasonable terms and conditions of [a] an order of suspended judgment [issued under this article and if,] shall be dealt with in accordance with section seven hundred seventy-nine-a of this article. If, after a hearing pursuant to such section, the court [is satisfied] determines by competent proof that the respondent without just cause failed to comply with such terms and conditions, the court may adjourn the matter for a new dispositional hearing in accordance with subdivision (b) or (c) of section seven hundred forty-nine of this article. The court may revoke the [suspension] order of suspended judgment and proceed to make any order that might have been made at the time judgment was suspended.

§4. Section 779 of the family court act, as added by chapter 686 of the laws of 1962, is amended to read as follows:

§779. [Failure] Jurisdiction and supervision of respondent placed on probation; failure to comply with terms of probation. [If a] (a) A respondent who is placed on probation in accordance with section seven hundred fifty-seven of this article shall remain under the legal jurisdiction of the court pending expiration or termination of the period of probation.

(b) The probation service shall supervise the respondent during the period of such legal jurisdiction.

(c) A respondent [is] brought before the court for failure to comply with reasonable terms and conditions of an order of probation issued under section seven hundred fifty-seven of this article [and if,] shall be dealt with in accordance with section seven hundred seventy-nine-a of this article. If, after hearing pursuant to such section, the court [is satisfied] determines by competent proof that the respondent without just cause failed to comply with such terms and conditions, the court may adjourn the matter for a new dispositional hearing in accordance with subdivision (b) or (c) of section seven hundred forty-nine of this article. The court may revoke the order of probation and proceed to make any order that might have been made at the time the order of probation was entered.

§5. Section 779-a of the family court act, as amended by chapter 309 of the laws of 1996, is amended to read as follows:

§779-a. [Declaration of delinquency concerning juvenile delinquents and persons in need of supervision.] Petition and hearing on violation of order of probation or suspended judgment. (a) If,

at any time during the period of [a disposition of] probation or suspended judgment, the [court] petitioner, probation service or appropriate presentment agency has reasonable cause to believe that the respondent has violated a condition of the disposition, [it] the petitioner, probation service or appropriate presentment agency may [declare the respondent delinquent and] file a [written declaration of delinquency. Upon such filing, the respondent shall be declared delinquent of his disposition of probation and such disposition shall be tolled. The] violation petition.

(b) The petition must be verified and subscribed by the petitioner, probation service or the appropriate presentment agency. The petition must specify the condition or conditions of the order violated and a reasonable description of the date, time, place and manner in which the violation occurred. Non-hearsay allegations of the factual part of the petition or of any supporting depositions must establish, if true, every violation charged.

(c) Upon the filing of a violation petition, the court [then must promptly take reasonable and appropriate action] shall issue a summons or warrant in accordance with section seven hundred twenty-five of this article to cause the respondent to appear before [it for the purpose of enabling] the court [to make a final determination with respect to the alleged delinquency. The]. Where the respondent is on probation pursuant to section seven hundred fifty-seven of this article, the time for prompt court action shall not be construed against the probation service when the respondent has absconded from probation supervision and the respondent's whereabouts are unknown. The court must be notified promptly of the circumstances of any such probationers.

(d) If a petition is filed under subdivision (a) of this section, the period of probation or suspended judgment prescribed by section seven hundred fifty-five or seven hundred fifty-seven of this article shall be interrupted as of the date of the filing of the petition. Such interruption shall continue until a final determination of the petition or until such time as the respondent reaches the maximum age of acceptance into placement with the commissioner of social services. If the court dismisses the violation petition, the period of interruption shall be credited to the period of probation or suspended judgment.

(e) Hearing on violation. (i) The court may not revoke an order of probation or suspended judgment unless the court has found by competent proof that the respondent has violated a condition of such order without just cause and that the respondent has had an opportunity to be heard. The respondent is entitled to a hearing promptly after a violation petition has been filed. The respondent is entitled to counsel at all stages of the proceeding and may not waive representation by counsel or a law guardian except as provided in section two hundred forty-nine-a of this act.

(ii) At the time of the respondent's first appearance following the filing of a violation petition, the court must:

(A) advise the respondent of the contents of the petition and furnish a copy to the respondent;

(B) advise the respondent that he or she is entitled to counsel at all stages of a proceeding under this section and appoint a law guardian pursuant to section two hundred forty-nine of this act if independent legal representation is not available to the respondent. If practicable, the court shall appoint the same law guardian who represented the respondent in the original proceedings under this article;

(C) determine whether the respondent should be released or detained pursuant to section 720 of this article; and

(D) ask the respondent whether he or she wishes to make any statement with respect to the violation. If the respondent makes a statement, the court may accept it and base its decision upon the statement. The provisions of section seven hundred forty-three shall apply in determining whether a

statement should be accepted. If the court does not accept the statement or if the respondent does not make a statement, the court shall conduct a hearing.

(iii) Upon request, the court shall grant a reasonable adjournment to the respondent to prepare for the hearing.

(iv) At the hearing, the court may receive any relevant, competent and material evidence. The respondent may cross-examine witnesses and present evidence on his or her own behalf. The court's determination must be based upon competent evidence.

(v) At the conclusion of the hearing, the court may adjourn the matter for a new dispositional hearing in accordance with subdivision (b) or (c) of section seven hundred forty-nine of this article. The court may revoke, continue or modify the order of probation or suspended judgment. If the court revokes the order, it shall order a different disposition pursuant to subdivision (a) of section seven hundred fifty-four of this article and shall make findings in accordance subdivision (b) of such section. If the court continues the order of probation or suspended judgment, it shall dismiss the petition of violation.

§6. Subdivision 1 of section 243 of the executive law, as amended by chapter 574 of the laws of 1985, is amended to read as follows:

1. The director shall exercise general supervision over the administration of probation services throughout the state, including probation in family courts, and shall collect statistical and other information and make recommendations regarding the administration of probation services in the courts. He or she shall endeavor to secure the effective application of the probation system and the enforcement of the probation laws and the laws relating to family courts throughout the state. After consultation with the state probation commission, he or she shall adopt general rules which shall regulate methods and procedure in the administration of probation services, including investigation of defendants prior to sentence[,] and children prior to adjudication, supervision, case work, record keeping, and accounting, program planning and research so as to secure the most effective application of the probation system and the most efficient enforcement of the probation laws throughout the state. Such rules shall permit the establishment of a program of intensive probation supervision for juveniles directed to receive such services pursuant to subdivision (e) of section seven hundred fifty-seven of the family court act and shall include, but not be limited to: specification of the maximum caseload levels and training required for intensive supervision probation officers; the frequency and nature of probation contacts with juveniles in the program, schools and other agencies; and supervision, treatment and other services to be provided to such juveniles. Such rules shall provide that the probation investigations ordered by the court in designated felony act cases under subdivision one of section 351.1 of the family court act shall have priority over other cases arising under articles three and seven of such act. Such rules shall be binding upon all probation officers and when duly adopted shall have the force and effect of law, but shall not supersede rules that may be adopted pursuant to the family court act. He or she shall keep [himself] informed as to the work of all probation officers and shall from time to time inquire into and report upon their conduct and efficiency. He or she may investigate the work of any probation bureau or probation officer and shall have access to all records and probation offices. He or she may issue subpoenas to compel the attendance of witnesses or the production of books and papers. He or she may administer oaths and examine persons under oath. He or she may recommend to the appropriate authorities the removal of any probation officer. He or she shall transmit to the governor not later than February first of each year an annual report of the work of the division of probation and correctional alternatives for the preceding calendar year, which shall include such information relative to the administration of

probation and correctional alternatives throughout the state as may be appropriate. He or she may from time to time publish reports regarding probation including probation in family courts, and the operation of the probation system including probation in family courts and any other information regarding probation as he or she may determine provided expenditures for such purpose are within amounts appropriated therefor.

§7. This act shall take effect on the ninetieth day after it shall have become a law; provided, however, that (i) sections 2,3,4 and 5 of this act shall apply to juveniles found to have committed acts that are the bases for adjudicating them to be persons in need of supervision, respectively, that occurred on or after the effective date of such sections, and (ii) section 6 of this act shall take effect immediately.

III. Probation access to the statewide automated order of protection and warrant registry and penalties for unauthorized access to the registry
(Exec. L. §221-a; F.C.A. §835; CPL §§390.20, 390.30)

In enacting the *Family Protection and Domestic Violence Intervention Act of 1994* [Laws of 1994, ch. 222, 224], the New York State Legislature demonstrated its intent to assure a more rigorous response by law enforcement agencies and the courts to domestic violence. Victims of domestic violence are afforded easy access to either or both Family and criminal courts for prosecution of family offense cases. In addition, offenders are subject to mandatory arrest and face heightened consequences for abusive acts in both courts. Local probation departments serving both family and criminal courts, therefore, require sufficient information regarding both the offense and the offender in order to assist the courts in responding effectively to these legislative changes.

One of the most important features of the statute was its establishment of an automated statewide registry of orders of protection and warrants. The registry, which commenced operations on October 1, 1995, ensures that courts and law enforcement officials have available a system that will provide timely and accurate information relating to pending and prior orders of protection and warrants. It currently comprises an enormous and rapidly growing database; according to the Office of Court Administration, as of December 12, 2006, there were 1, 571,061 orders of protection entered onto the registry. However, two significant gaps undermine the statutory framework governing the registry: first, that probation departments are not authorized to utilize the registry in conducting investigations, and, second, that the registry lacks critical safeguards to prevent unauthorized access to the sensitive information contained in its database.

The Family Court Advisory and Rules Committee is proposing legislation expressly authorizing local probation departments to obtain access to necessary information on the statewide registry and imposing penalties for unauthorized access. Information regarding an individual's history of such orders may be essential, not only for the resolution of family offense cases, but also for custody, visitation, juvenile delinquency, persons in need of supervision (PINS) and criminal proceedings. Significantly, the proposal authorizes the courts to call upon local probation departments to perform investigations that will assist the courts in their disposition of family offense matters, and enables probation departments to obtain access to domestic violence registry information for these and other pre-dispositional investigations.

The family offense article of the Family Court Act implies, but does not explicitly authorize,

involvement by probation departments in gathering information in aid of the Family Court's dispositions. While dispositional hearings "may commence immediately" upon completion of a fact-finding hearing, the article provides that the dispositional hearing may be adjourned by the Court "to enable it to make inquiry into the surroundings, conditions, and capacities of the persons involved in the proceedings." Family Court Act §§835(a), 836(b). Although not delegating the duty to make that inquiry to probation, subdivision (b) of section 835 of the Family Court Act provides that "[r]eports prepared by the probation service for use by the court at any time prior to the making of an order of disposition shall be deemed confidential information," which may "not be furnished to the court prior to the completion of a fact-finding hearing, but may be used in a dispositional hearing."

The Committee's proposal resolves this ambiguity by making explicit the Family Court's discretion to order local probation departments to prepare investigations and reports for use in dispositional proceedings in family offense matters. While not limiting the scope of the information that can be requested in such an investigation, the proposal enumerates four areas of inquiry. First, the measure permits inquiry into "the presence or absence of aggravating circumstances," since the Court may order up to a three-year, rather than a one-year, order of protection where such circumstances, as defined in section 827(a)(vii) of the Family Court Act, have been found. Second, it permits investigation of "the extent of injuries or out-of-pocket losses to the victim which may form the basis for an order of restitution," a dispositional order authorized pursuant to subdivision (e) of section 841 of the Family Court Act. Third, in order to prevent issuance of inconsistent orders and provide insight as to the respondent's record of compliance, the proposal permits inquiry into "the history of the respondent with respect to family offenses and orders of protection in this or other courts." Significantly, if the completion of the fact-finding stage coincides with the first appearance of both parties before the Family Court, this investigation may assist the Court in fulfilling its duty, pursuant to subdivision six of section 821-a of the Family Court Act, to "inquire as to the existence of any other orders of protection between the parties." Fourth, the proposal permits inquiry into whether the respondent is licensed to possess and is in fact in possession of firearms, an inquiry that will aid the Court in setting conditions for orders of protection and, in cases of serious violation, will facilitate enforcement of the laws authorizing and, under certain circumstances, requiring suspension or revocation of firearms licenses and surrender of firearms. *See* Family Court Act §§842-a, 846-a; Laws of 1996, ch. 644.

Additionally, the proposed legislation allows criminal courts to obtain assistance from local probation departments to conduct pre-sentence investigations where relevant to the issuance of an order of protection, including instances in which such investigations are not required under the Criminal Procedure Law. Some family offenses currently require pre-sentence investigations, while others do not. Section 390.20 of the Criminal Procedure Law requires pre-sentence investigations in felony cases and in misdemeanor cases where a sentence of incarceration in excess of 90 days has been imposed, where consecutive incarcerative sentences aggregating in excess of 90 days have been imposed or, unless waived by the parties and the court, where a sentence of probation has been imposed. In all other cases, pre-sentence investigations are purely discretionary as an aid to the court in sentencing. While not altering the courts' discretion with respect to ordering pre-sentence investigations in non-mandated cases, this proposal explicitly adds an authorization for the courts to order such inquiries for the purpose of "issuance of an order of protection" pursuant to section 530.12 of the Criminal Procedure Law.

Where the family offense conviction is not for a felony, which requires a full-scale pre-sentence investigation, the proposal treats family offense convictions, whether for misdemeanors or violations, as misdemeanors eligible for "abbreviated investigations and short form reports," in accordance with section 390.30(4) of the Criminal Procedure Law. While not providing an exhaustive list of permissible areas of inquiry, the proposal enumerates the factors which the court must consider in determining whether an order of protection should issue, pursuant to subdivision (a) of section 530.12 of the Criminal Procedure Law -- specifically, the offender's access to weapons, abuse of controlled substances or alcohol and the offender's history of injury or threat of injury to family members. As in Family Court proceedings, the inclusion of inquiries regarding firearms will enhance the court's ability to frame appropriate conditions for orders of protection and, in cases involving serious violations, will afford the courts information necessary to enforce the provisions regarding firearms license suspension or revocation and firearms surrender. See Criminal Procedure Law §§530.12, 530.14; Laws of 1996, ch. 644; Laws of 1993, ch. 498.

Finally, recognizing the importance of security to the operation of computer systems, the Family Court Advisory and Rules Committee recommends the enactment of civil and criminal penalties for unauthorized disclosure of information from the statewide automated registry of orders of protection and warrants. Enactment of penalties is compelled by the requirement, contained in the federal *Personal Responsibility and Work Opportunity Reconciliation Act of 1996* [Public Law 104-193, §303], for all states to have safeguards in place by October 1, 1997 against unauthorized disclosure of information with respect to paternity establishment or child support, or with respect to the whereabouts of a party for whom a protective order has been issued or as to whom the State has reason to believe physical or emotional harm might result from such disclosure. It is also consistent with the confidentiality requirements of the 2005 amendments to the federal *Violence Against Women Act* [Public Law 109-162; 18 U.S.C. §2265(d) and Subtitle K, §41102], which, *inter alia*, restrict use of registry information to "protection order enforcement purposes."

Much of the information to be contained in the registry is derived from records that would otherwise be shielded from such disclosure. Various forms of confidential, identifying information regarding the parties must be included, particularly where, for example, in matrimonial and Family Court cases, fingerprint identification is not available. The system includes court action information, an indication of the date process was served, the date of expiration of the order and the terms and conditions of the order, and requires that all statutes governing confidentiality of court records apply equally to information on the registry. See Executive Law §221-a. Subdivision one of section 235 of the Domestic Relations Law, matrimonial records must be kept confidential for 100 years and may not be disclosed to non-parties or their attorneys without a court order. Section 166 of the Family Court Act protects Family Court records against "indiscriminate public inspection."⁸ However, while requiring these provisions to be followed with respect to information on the registry, the Legislature provided no sanction against unauthorized disclosure.

Adequate security is a crucial component of any computer system, but it is especially

⁸ Section 205.5 of the *Uniform Rules for the Family Court* gives definition to this statute, enumerating parties, their attorneys, agencies with which children are placed, and, by amendment in 1994, prosecutors insofar as necessary for a pending criminal investigation, as those who are authorized to have access to Family Court records without first obtaining a court order.

important in a system, such as the registry, that contains highly sensitive information, much of it bearing statutory confidentiality protections. Misuse of the information in the registry may not only place intimate information inappropriately before the public eye, but it also may place domestic violence victims and their children in serious jeopardy if data is released to individuals who pose a threat to them. Security protections are also essential in light of the large number of authorized individuals with legitimate access to the system -- law enforcement officials statewide, court officials and others -- who must take seriously their mandate to preserve the confidentiality of the information.

The Committee's proposal would amend section 221-a of the Executive Law to create criminal and civil penalties for unauthorized disclosure of data from the registry.⁹ Under the revised proposal, knowing and willful disclosure of information to individuals not authorized to receive it would subject violators to prosecution for a class A misdemeanor, the same criminal penalty that applies to the unauthorized willful disclosure of statewide child abuse registry and confidential HIV-related information. *See* Social Services Law §422(12); Public Health Law §2783(2). Such violators may be subject to a civil fine of up to \$5,000, as would persons who, through gross negligence, release or permit the release of information from the registry to individuals not authorized to receive it.

Enactment of this measure will significantly enhance the ability of courts, both civil and criminal, to make informed decisions in cases involving domestic violence and will, at the same time, enhance the protection of victims of that violence by protecting the integrity of the statewide order of protection database.

Proposal

AN ACT to amend the family court act, the criminal procedure law and the executive law, in relation to the statewide automated registry of orders of protection and pre-dispositional and pre-sentence investigations in criminal and family courts

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivisions 4 and 5 of section 221-a of the executive law, as amended by chapter 224 of the laws of 1994 and chapter 349 of the laws of 1995, are amended and a new subdivision 7 is added to read as follows:

4. Courts and law enforcement officials shall have the ability to disclose and share information with respect to such orders and warrants consistent with the purposes of this section, subject to applicable provisions of the family court act, domestic relations law and the criminal procedure law concerning the confidentiality, sealing and expungement of records. Designated representatives of a local probation service shall have access to information in the statewide registry of orders of protection and warrants necessary in order to respond to a judicial request for information pursuant to subdivision six of section eight hundred twenty-one-a of the family court act or subdivision six-a of section 530.12 of the criminal procedure law, or to prepare an investigation and report in

⁹ This proposal was revised in 1996 to address the concerns raised by the Governor with respect to similar legislation that was vetoed in 1995 [S 3940, Veto Message #21]. However, the Committee's original 1995 version was again passed by the Legislature and vetoed by the Governor in 1996 [A 9809, Veto Message #11]. No action has been taken on this matter by the Legislature since 1996, notwithstanding the new federal statutory mandates.

proceedings conducted pursuant to sections 351.1, six hundred forty-two, six hundred fifty-six, six hundred sixty-two, seven hundred fifty, eight hundred thirty-five and subdivision (b) of section one thousand forty-seven of the family court act or article three hundred ninety of the criminal procedure law.

5. [In] Except as provided in subdivision seven of this section, in no case shall the state or any local law enforcement official or court official be held liable for any violations of rules and regulations promulgated under this section, or for any damages for any delay or failure to file an order of protection, or to transmit to the law enforcement communication network pertaining to orders of protection or related family court arrest warrants, or for acting in reliance upon such information. For purposes of this subdivision, law enforcement official shall include but not be limited to an employee of a [sheriffs] sheriff's office, or a municipal police department or a peace officer acting pursuant to his or her special duties.

* * *

7. Any person who knowingly and willfully releases or permits the release of any data or information contained in the statewide registry to persons or agencies not authorized by law or regulations to receive it shall be guilty of a class A misdemeanor. Any person who knowingly and willfully or through gross negligence releases or permits the release of any data or information contained in the statewide registry to persons or agencies not authorized by law or regulations to receive it shall be subject to a civil penalty of up to five thousand dollars.

§2. The title and subdivision (a) of section 835 of the family court act, such subdivision as amended by chapter 529 of the laws of 1963, are amended to read as follows:

§835. Sequence of hearings; probation investigations and reports. a. Upon completion of the fact-finding hearing, the dispositional hearing may commence immediately after the required findings are made. In aid of its disposition, the court may adjourn the proceeding for an investigation and report by a local probation service. For the purposes of this article, the probation investigation and report may include, but is not limited to: the presence or absence of aggravating factors as defined in paragraph (vii) of subdivision (a) of section eight hundred twenty-seven of this article, the extent of injuries or out- of-pocket losses to the victim which may form the basis for an order of restitution pursuant to subdivision (e) of section eight hundred forty-one of this article, the history of the respondent with respect to family offenses and orders of protection in this or other courts, whether the respondent is in possession of any firearms and, if so, whether the respondent is licensed or otherwise authorized to be in possession of such firearms.

§3. Subdivision 3 of section 390.20 of the criminal procedure law is amended to read as follows:

3. Permissible in any case. For the purposes of sentence or issuance of an order of protection pursuant to subdivision five of section 530.12 of this chapter, the court may, in its discretion, order a pre-sentence investigation and report in any case, irrespective of whether such investigation and report is required by subdivision one or two.

§4. Subdivision 4 of section 390.30 of the criminal procedure law, as amended by chapter 618 of the laws of 1992, is amended to read as follows:

4. Abbreviated investigation and short form report. In lieu of the procedure set forth in subdivisions one, two and three, where the conviction is of a misdemeanor or family offense, as defined in subdivision one of section 530.11 of this law, other than a felony, the scope of the pre-sentence investigation may be abbreviated and a short form report may be made. The use of abbreviated investigations and short form reports, the matters to be covered therein and the form of the reports shall be in accordance with the general rules regulating methods and procedures in the administration of

probation as adopted from time to time by the state director of probation and correctional alternatives pursuant to the provisions of article twelve of the executive law. No such rule, however, shall be construed so as to relieve the agency conducting the investigation of the duty of investigating and reporting upon:

(a) the extent of the injury or economic loss and the actual out-of-pocket loss to the victim, including the amount of restitution and reparation sought by the victim, after the victim has been informed of the right to seek restitution and reparation, or

(b) in a case involving a family offense, as defined in subdivision one of section 530.11 of this chapter, the defendant's history of family offenses and orders of protection, including violations, in proceedings or actions in this or other courts, the extent of injuries or threats of injury to the complainant or members of complainant's family or household, the use or threatened use of dangerous instruments against the complainant or members of complainant's family or household, whether the defendant is in possession of any firearms and, if so, whether defendant is licensed or otherwise authorized to be in possession of such firearms, the extent to which the defendant poses an immediate and ongoing danger to the complainant or members of the complainant's family or household and any other information relevant to the issue of whether an order of protection, in addition to any other disposition, should be issued in accordance with subdivision five of section 530.12 of this chapter, or

(c) any matter relevant to the question of sentence or issuance of an order of protection that the court directs to be included in particular cases.

§5. This act shall take effect on the ninetieth day after it shall have become a law.

