

FINAL REPORT OF THE  
GOVERNOR'S COMMISSION  
ON YOUTH, PUBLIC SAFETY  
AND JUSTICE

---

Recommendations for Juvenile Justice  
Reform in New York State





The Honorable Andrew M. Cuomo  
Governor of the State of New York  
The Capitol  
Albany, NY

Dear Governor Cuomo:

By Executive Order 131 on April 9, 2014, you appointed the Commission on Youth, Public Safety, & Justice and ordered the Commission to “(a) develop a plan to raise the age of juvenile jurisdiction, and (b) make other recommendations as to how New York’s justice systems can improve outcomes for youth while promoting community safety.” It is with great pleasure that we submit this Report, and the unanimously supported recommendations therein, for your consideration in fulfillment of the Commission’s mandate and responsibilities.

As discussed in the Report in detail, the Commission has engaged in a wide-ranging research effort that included focus groups and interviews around the State with members of communities most affected by the juvenile justice system, law enforcement, youth, parents, advocates, county and local officials, and experts in the field. The Commission researched the laws of New York and other states, reviewed relevant research in both adolescent development and juvenile justice, and held hearings across the State at which experts and stakeholders testified. The members of the Commission examined and discussed this voluminous material with the benefits of their unparalleled individual expertise in the field. The Vera Institute of Justice provided remarkable support to the Commission’s work, including technical, research, and drafting assistance. The Commission’s executive director, Jacquelyn Greene, worked tirelessly to develop the Commission’s recommendations and to bring us to a unanimous result.

At a time when public confidence in the criminal justice system demands our attention, the Commission’s recommendations are designed to improve how young people are handled by our criminal justice system but also to improve the effectiveness of that system in protecting our communities. In formulating its recommendations, the Commission not only developed a plan, structure, process and timeline to raise the age of juvenile jurisdiction in New York State, but also identified necessary reforms to improve outcomes for youth, and protect communities more effectively.

The Commission’s members were drawn from law enforcement, probation, advocacy, the court system, and other fields – a diverse group by any measure. The fact that the Commission reached unanimity in supporting these recommendations demonstrates the Commission’s balanced approach to the complex questions it tackled. It is the Commission’s belief that these reforms should generate the same kind of broad-based support across political, geographic, and other lines that they did on the Commission itself.

We appreciate your leadership in appointing this Commission and making these reforms a key priority in the next Legislature’s session. Implementation of the reforms outlined in this Report would make New York the model for the nation in juvenile justice policy by building upon the exceptional reforms already implemented by your administration.

Sincerely,

Jeremy M. Creelan  
Commission Co-Chair

Soffiyah Elijah  
Commission Co-Chair

## ACKNOWLEDGMENTS

---

The comprehensive plan for reform outlined in this report would not have been possible without the support of the many people throughout New York State with expertise and personal experience in both the criminal and juvenile justice systems. The issues addressed by the Commission cut across local governmental and not-for-profit service providers, the court system, state and local correctional and juvenile facility administrators, and the youth and families who come into contact with the system. The Commission is grateful to the many stakeholders who informed its deliberations.

Individuals from several key organizations provided critical data support to the Commission. The Office of Court Administration was consistently helpful in responding to data requests, providing feedback on ideas for reform, and offering editorial support in report development. The research departments in the Division of Criminal Justice Services and the Office of Children and Family Services also provided countless hours of data analysis in support of the Commission's work. The leaders of those departments, Terry Salo and Rebecca Colman, provided tremendous service in support of this Commission. The Commission could not have completed its work without this support and is grateful for the many hours of dedication and high level of expertise of all the state research staff that supported this effort.

In addition, hundreds of people across New York State and nationally provided input for the Commission's consideration through regional focus groups, individual interviews, and public testimony at Commission hearings. This input provided a foundation to support the actionable recommendations provided in this report. The Commission is particularly grateful to the young people who had justice system involvement and to the families of young people with system involvement for their willingness to share deeply personal, and sometimes tragic, experiences with the Commission and its staff.

Much of the work of the Commission was coordinated by the Vera Institute of Justice. With particular support from Theresa Sgobba, Krista Larson, Jennifer Ferone, and Christian Henrichson, efforts at Vera enabled the Commission to gather the best information available regarding national practice, raise the age experiences in other states, stakeholder feedback across New York, and the impact that proposed changes are likely to have on system processing. The Commission is grateful for the support of the Vera Institute of Justice in developing these recommendations. The Commission also wishes to thank the generous foundation support that helped to make this report possible. Finally, Jenner & Block LLP provided hundreds of hours of excellent pro bono work to develop the report.



## COMMISSION MEMBERS

---

**Jeremy M. Creelan**, Jenner & Block, Partner (Co-Chair)

**Soffiyah Elijah**, Correctional Association of New York, Executive Director (Co-Chair)

**Juan Cartagena**, Latino-Justice PRLDEF, President & General Counsel

**Joel Copperman**, CASES, CEO & President

**Janet DiFiore**, District Attorney, Westchester County

**Elizabeth Glazer**, New York City Mayor's Office of Criminal Justice, Director

**Michael Hardy**, National Action Network, Executive Vice President & General Counsel

**Melanie Hartzog**, Children's Defense Fund-New York, Executive Director

**Steven Krokoff**, Chief of Police, City of Albany

**Joseph Mancini**, Director of Probation, Schenectady County

**Hon. Lawrence K. Marks**, New York State Unified Court System, First Deputy Chief Administrative Judge

**Anthony J. Picente, Jr.**, County Executive, Oneida County

**Allen Riley**, Sheriff, Madison County

**Elaine Spaul**, Center for Youth, Executive Director, and Rochester City Council Member

**Emily Tow Jackson**, The Tow Foundation, Executive Director

**Cyrus R. Vance, Jr.** District Attorney, New York County

**Jacquelyn Greene**, Commission on Youth, Public Safety and Justice, Executive Director

# TABLE OF CONTENTS

---

<b>ACKNOWLEDGMENTS .....</b>	<b>II</b>
<b>COMMISSION MEMBERS .....</b>	<b>IV</b>
<b>TABLE OF CONTENTS .....</b>	<b>V</b>
<b>INTRODUCTION .....</b>	<b>1</b>
<hr/>	
EARLY REFORMS .....	3
THE FAMILY COURT ACT .....	4
1970S REFORMS .....	4
THE JUVENILE OFFENDER ACT .....	5
RECENT REFORMS: 1980S–2000S .....	5
THE CUOMO ERA .....	6
THE COMMISSION’S WORK.....	8
<b>CHAPTER 1: A SNAPSHOT OF THE CURRENT SYSTEM .....</b>	<b>10</b>
<hr/>	
<b>CASE PROCESSING FOR OFFENSES COMMITTED BY 16- AND 17-YEAR-OLDS ..</b>	<b>10</b>
Arrest .....	10
Arraignment.....	11
Pretrial Detention or Bail.....	11
Superior Court and Local Criminal Court Trial.....	11
Sentencing .....	12
Youthful Offenders.....	12
<b>THE JUVENILE JUSTICE SYSTEM (AGES 15 AND UNDER).....</b>	<b>13</b>
Arrest .....	13
Detention .....	13
Probation Intake.....	14
Family Court Referral.....	14
Disposition.....	15
Persons In Need of Supervision (PINS).....	15
Juvenile Offenders .....	16



**CHAPTER 2: BEST PRACTICES IN ADOLESCENT JUSTICE..... 17**

---

ADOLESCENTS ARE DIFFERENT FROM ADULTS: BRAIN SCIENCE AND CULPABILITY ..... 17

BRAIN SCIENCE AND RESEARCH IN PRACTICE: THE U.S. SUPREME COURT ..... 19

PRINCIPLES OF EFFECTIVE ADOLESCENT JUSTICE PRACTICE..... 19

    Risk, Need, Responsivity..... 20

    Effective Program Models ..... 23

**CHAPTER 3: RAISING THE AGE OF JUVENILE JURISDICTION ..... 28**

---

THE UPPER AGE OF JUVENILE JURISDICTION ..... 28

RECENT “RAISE THE AGE” REFORM EFFORTS IN OTHER STATES ..... 29

    Connecticut..... 29

    Illinois..... 31

    Recent “Raise the Age” Efforts in Other States..... 32

    Statutory changes necessary to raise the age of juvenile jurisdiction ..... 33

LOWER AGE OF DELINQUENCY JURISDICTION ..... 34

    National Context..... 35

ENSURING COORDINATED AND EFFECTIVE IMPLEMENTATION ..... 37

**CHAPTER 4: ARREST AND DIVERSION ..... 39**

---

PARENTAL NOTIFICATION AND POLICE QUESTIONING ..... 39

VIDEOTAPING QUESTIONING..... 43

REDUCING UNNECESSARY BARRIERS TO PRE-COURT DIVERSION ..... 44

    A. Orders of Protection..... 47

    B. The Two-Month Deadline for Adjustment..... 47

    C. Cases Removed from Criminal Court Cannot Be Adjusted..... 47

    D. Probation Departments Are Not Required to Seek Adjustment for Low-Risk Cases..... 48

DEVELOPING AN EFFECTIVE CONTINUUM FOR COMMUNITY-BASED DIVERSION SERVICES ..... 49

    Facilitating family engagement in diversion process..... 53

**CHAPTER 5: COURT PROCESS..... 55**

CURRENT 16- AND 17-YEAR-OLDS CRIMINAL JUSTICE SYSTEM PROCESSING ..56

CURRENT JUVENILE CASE PROCESSING ..... 58

FAMILY COURT CAPACITY AND REGIONAL VARIATION ..... 62

MISDEMEANORS AND NON-VIOLENT FELONIES..... 64

CURRENT JUVENILE OFFENDER CASE PROCESSING..... 65

SERIOUS CRIMES OF VIOLENCE COMMITTED BY 16- AND 17-YEAR-OLDS ..... 70

NATIONAL COURT PRACTICES FOR SERIOUS OFFENSES..... 71

REFORMING THE CRIMINAL PROCESS FOR SERIOUS CRIMES OF VIOLENCE .... 74

**CHAPTER 6: REMOVING YOUTH FROM ADULT JAIL AND PRISON FACILITIES ..... 78**

THE RISKS AND HARMS OF INCARCERATING YOUTH IN ADULT FACILITIES ..... 78

    Research on youth outcomes in adult facilities..... 78

    New York stakeholders’ perspectives on youth in adult facilities..... 79

CURRENT NEW YORK STATE PRACTICE—PRETRIAL CONFINEMENT ..... 81

    Housing..... 81

    Solitary confinement..... 81

    Staffing ..... 82

    Education ..... 82

    Recreation/Programming ..... 82

    Health Care ..... 83

CURRENT NEW YORK STATE PRACTICE—SENTENCES TO CONFINEMENT..... 83

    Housing..... 83

    Solitary Confinement..... 84

    Staffing ..... 85

    Education ..... 85

    Recreation/Programming ..... 86

    Health Care ..... 88

FISCAL AND LOGISTICAL CHALLENGES OF MOVING YOUTH TO JUVENILE FACILITIES ..... 91

    Cost..... 91

Capacity—Juvenile Detention .....	91
Capacity—Juvenile Placement (post-disposition confinement) .....	94
<b>STRATEGIES TO REDUCE UNNECESSARY CONFINEMENT .....</b>	<b>95</b>
Low-risk youth who commit misdemeanor offenses .....	95
Technical Violations of Probation .....	97
Weekend Detention Stays Pending Arraignment.....	98
Status Offenders (Persons In Need of Supervision—PINS).....	99
<b>CHAPTER 7: EFFECTIVE DISPOSITION SERVICES AND FACILITIES .....</b>	<b>107</b>
SENTENCING FOR YOUTH WHO REMAIN IN CRIMINAL COURT .....	107
ENHANCEMENTS TO COMMUNITY-BASED SUPERVISION BY PROBATION ....	109
ENHANCEMENTS TO OUT-OF-HOME CUSTODIAL SETTINGS .....	115
An Overview of Juvenile Placement Settings.....	115
Voluntary Agencies .....	115
State-Operated Facilities.....	116
Supporting Youth with Specialized Needs .....	118
Meeting Significant Mental Health Needs: August Aichhorn .....	118
Meeting Needs of LGBT Youth .....	119
Meeting the Specialized Needs of Girls.....	120
Replicating National Best Practice in Residential Care.....	120
EFFECTIVE INTERVENTIONS FOR YOUTH WHO AGE INTO DOCCS FACILITIES	123
<b>CHAPTER 8: RE-ENTRY .....</b>	<b>127</b>
RE-ENTRY BEST PRACTICE .....	127
MOVING NEW YORK TO BEST PRACTICE IN ADOLESCENT RE-ENTRY .....	127
Implementing a Risk, Need, Responsivity Framework to Support Successful Re-entry.....	128
Achieving Continuity of Case Planning and Service Implementation.....	129
Coordination of Re-entry Supports and Attachment to Pro Social Supports.....	130
Access to Appropriate Housing Resources at Discharge from Placement .....	131

<b>CHAPTER 9: ADDRESSING COLLATERAL CONSEQUENCES OF A CRIMINAL RECORD .....</b>	<b>132</b>
THE ENDURING IMPACT OF A CRIMINAL CONVICTION—COLLATERAL CONSEQUENCES .....	132
STRENGTHENING YOUTHFUL OFFENDER PROTECTIONS.....	134
PROVIDING RECORD RELIEF FOR ONE-TIME ADOLESCENT MISTAKES—SEALING CRIMINAL RECORDS.....	137
ACCURATE MAINTENANCE OF JUVENILE RECORDS .....	142
<b>CHAPTER 10: PROJECTED CASE PROCESSING .....</b>	<b>144</b>
<b>CONCLUSION.....</b>	<b>150</b>
<b>APPENDIX A .....</b>	<b>154</b>
<b>LIST OF INDIVIDUALS WHO PROVIDED TESTIMONY TO THE COMMISSION .....</b>	<b>155</b>
<b>LIST OF NEW YORK STATE STAKEHOLDER FOCUS GROUPS &amp; INDIVIDUAL INTERVIEWS .....</b>	<b>156</b>
<b>APPENDIX B.....</b>	<b>160</b>

---

## INTRODUCTION

---

*Our juvenile justice laws are outdated. Under New York State law, 16-and 17-year-olds can be tried and charged as adults. . . . It's not right; it's not fair.*

*We must raise the age.<sup>1</sup>*

*Governor Cuomo, State of the State Address, January 8, 2014*

Governor Cuomo signed Executive Order 131 on April 9, 2014, to establish the Commission on Youth, Public Safety and Justice. He instructed this Commission to develop a concrete plan to raise the age of juvenile jurisdiction in the most effective and prudent manner possible, and to make other specific recommendations as to how New York State's juvenile and criminal justice systems could better serve youth, improve outcomes, and protect communities. The Commission was ordered to complete its work by December 31, 2014.

Why “raise the age” now? Numerous developments have converged in recent years to forge a growing consensus for this and related reforms to New York State's juvenile justice system. In brief, at least seven key developments have brought us to this point where reform is both necessary and possible. Each of these developments is explored in greater detail in this report.

First, experiences in states like Connecticut and Illinois that have raised the age of criminal responsibility recently have demonstrated that recidivism and juvenile crime rates overall can be lowered through evidence-based interventions that steer nonviolent youthful offenders out of the justice system and into family, mental health, or other needed services. These experiences have helped to reduce opposition to reform in this area by showing that public safety can actually be enhanced by such changes. As discussed more fully in Chapter seven, analysis of the efficacy of certain interventions shows substantial recidivism reductions among high risk offenders in New York State. In fact, analysis completed in support of this Commission found that implementation of a range of evidence-based services used in juvenile justice for New York's population of 16- and 17-year-old offenders would eliminate *between 1,500 and 2,400 crime victimizations every five years* as a result of these recidivism reductions.

Implementation of a range of evidence-based services for New York's population of 16- and 17-year-old offenders would eliminate *between 1,500 and 2,400 crime victimizations every five years.*

<sup>1</sup> Andrew M. Cuomo, “2014 State of the State Address” (speech, Albany, NY, January 8, 2014), transcript. <<http://www.governor.ny.gov/news/transcript-governor-cuomos-2014-state-state-address>> (11 December 2014).

Second, extensive research on the significant negative impacts of incarceration on adolescents in adult jails and prisons has brought a sense of urgency for reform. Higher suicide rates, increased recidivism, and many other measures all suggest that both offenders and their communities are harmed by placing adolescents into adult jails and prisons.

Third, New York’s unique history of juvenile justice has created a pressing reason for reform now. Despite a proud early history in this area, New York State now stands as one of only two states in the country that have set the age of criminal responsibility at age 16. That single fact has become a rallying cry for the current reform movement in this State, led the State’s Chief Judge to urge legislative action, and inspired the Governor’s initiative to appoint this Commission.

Fourth, the impacts of processing all 16- and 17-year-olds in the criminal justice system fall disproportionately on young men of color. Young men of color are substantially overrepresented among youth who are arrested at age 16 or 17 and who end up incarcerated as a result of the offense. Those impacts are felt not only by the young men themselves, but also by communities of color around the State.

Fifth, scientific research into brain development has revealed only very recently that portions of our brains, including the region governing impulse control, develop far later than expected—after adolescence and as late as one’s early to mid-20s. This research has demonstrated that adolescents do not have fully developed faculties of judgment or impulse control. It has also shown that adolescents respond more fruitfully to efforts to rehabilitate them and put them on the right track. Adolescence is a time of substantial development and provides real opportunity to harness the many assets youth possess in support of a positive life trajectory.

Sixth, the research cited above has, in turn, undergirded several opinions from the U.S. Supreme Court and lower courts restricting the nature and scope of state and local governments’ punishment of adolescent offenders on the ground that such offenders are both less culpable criminally and more susceptible to fruitful rehabilitation because of their still-developing brains. Those decisions have both resulted from and encouraged reform efforts across the country to improve the juvenile justice laws to reduce unnecessary incarceration and improve rehabilitative programming.

Finally, this shifting view of adolescent offenders has coincided with, and arguably been facilitated by, a steady and significant decrease in violent crimes committed by youthful offenders since the 1990s. That reduction in crime has replaced outsized fears of young “super predators” with a more thoughtful focus on targeted criminal justice interventions to reduce recidivism without simply expanding costly incarceration.<sup>2</sup>

For all of these reasons, the Commission has the wind at its back in drafting this plan for raising the age of juvenile jurisdiction and reforming the juvenile justice system in other respects.<sup>3</sup> The Commission’s recommendations reflect a balanced approach that incorporates the wisdom and experiences of law enforcement, probation officers, criminal defense attorneys, policy advocates, service providers, local and State officials, and youth and their parents affected by the current system. Partly as a result of this balanced approach, the Commission’s members support these recommendations unanimously and without reservation.

<sup>2</sup> John J. DiIulio Jr., “The Coming of the Super-Predators,” *Weekly Standard* 1, no. 11 (November 27, 1995): 23; and James Q. Wilson, “Crime and Public Policy,” in *Crime*, ed. James Q. Wilson and Joan Petersilia (Oakland, CA: ICS Press, 1995), 507, quoted in Franklin E. Zimring, *American Youth Violence* (New York: Oxford University Press, 1998), 49.

<sup>3</sup> The phrase “raising the age of juvenile jurisdiction,” contained in the Commission’s charge in Executive Order 131 and used throughout this report, is a shorthand reference to increasing the statutory age at which offenses that would be criminal if committed by an adult are processed in the juvenile delinquency system. It carries the same meaning as “raising the age of criminal responsibility,” as youth who are processed in the delinquency system are not criminally responsible for their actions as a result of their age. The Commission’s specific recommendations regarding which courts should have jurisdiction over certain crimes committed by 16- and 17-year-old offenders are contained in Chapter Five.

In order to facilitate passage of these recommendations and to ensure effective implementation, the Commission has concluded that the added investments and expenses necessary to implement these reforms should be borne by the State to the extent possible and appropriate.

If implemented, these recommendations would make New York State, once again, the nation's leader in sound juvenile justice policy. Not only would New York join the vast majority of states in providing for juvenile jurisdiction to age 18, it would become a leader in the appropriate use of diversion, provision of services shown to reduce recidivism, residential care that is reserved only for those who present a significant risk to public safety and is truly rehabilitative, and opportunity for young people to avoid the lifelong stigma of a criminal record caused by one adolescent mistake.

To understand how New York has compared with other states in this area, it is critical to understand its history. As outlined below, that history began with remarkable efforts to treat youth differently from adults through a more rehabilitative approach, and then took a substantial turn toward a more narrowly punitive approach. Recent reforms spearheaded by Governor Cuomo have put the juvenile justice system back on a balanced course that protects public safety and improves outcomes for youth.

## EARLY REFORMS

In the early 19<sup>th</sup> century, New York State was at the forefront of juvenile justice reforms in the United States. In 1816, Quaker reformers founded the New York Society for the Prevention of Pauperism, a group dedicated to advocating and affecting juvenile justice reforms.<sup>4</sup> Eight years later, the society succeeded in persuading the state legislature to authorize the creation of the New York House of Refuge, the first institution of its kind designed to house and rehabilitate Juvenile Offenders.<sup>5</sup> By 1846, a second house of refuge had been founded in western New York and the legislature had mandated that male Juvenile Offenders under 18 and females under 17 be committed to one of the houses in lieu of adult prison.<sup>6</sup>

Starting in 1899, state legislatures around the country began creating independent courts to deal with Juvenile Offenders.<sup>7</sup> By 1925, every state but two had established its own juvenile courts.<sup>8</sup>

In New York, the legislature first authorized separate Children's Court "parts" within the Superior Court system in 1903.<sup>9</sup> In 1909, the legislature decriminalized most youthful offenses, and began using the term "juvenile delinquency" to describe the acts of youthful offenders.<sup>10</sup> The 1909 law mandated that unless charged with an offense punishable by death, a child under 16 could not be sent to adult prison. Independent juvenile courts finally were established outside New York City in 1922 and within the city in 1924.<sup>11</sup>

Like New York, other states' first wave of juvenile courts initially set the maximum age of Juvenile Offenders at 16.<sup>12</sup> By 1927, however, the majority of states had already raised that age, with 28 states setting the bar at 18

<sup>4</sup> Merrill Sobie, "Pity the Child: The Age of Delinquency in New York," *Pace Law Review* 30, no. 3 (April 1, 2010): 1061, 1066.

<sup>5</sup> *Id.* at 1062.

<sup>6</sup> *Laws of the State of New-York, Passed at the Sixty-Ninth Session of the Legislature* (Albany, NY: C. van Benthuysen and Co., 1846), 150.

<sup>7</sup> Cook County, Illinois, created the first designated juvenile court in the United States in 1899; at least six other states followed suit in 1903. *Id.* at 1063; John P. Woods, *New York's Juvenile Offender Law: An Overview and Analysis*, 9 *Fordham Urban L. J.* 1, 4 (1980).

<sup>8</sup> Paul W. Tappan, *Juvenile Delinquency* (New York: McGraw-Hill, 1949), 172.

<sup>9</sup> Sobie, "Pity the Child," 1068.

<sup>10</sup> NY Penal Law § 2186 (McKinney 1909); and Woods, "New York's Juvenile Offender Law," 4.

<sup>11</sup> Woods, "New York's Juvenile Offender Law," 5.

<sup>12</sup> Sobie ("Pity the Child," 1061, 1064) notes that the 16-year-old cutoff was likely a result of a precedent set by Illinois's first juvenile court, as many state juvenile courts were established with virtually identical laws.

and most other states setting the bar at 17.<sup>13</sup> New York was one of the few states that failed to raise the age during this time, despite criticism from youth advocates and the state’s own crime commission.<sup>14</sup>

## THE FAMILY COURT ACT

In 1961, New York amended the state’s constitution to reorganize its juvenile courts. As part of that reorganization, the 1962 Family Court Act established a single Family Court to manage cases affecting the family, including juvenile delinquency cases, neglected children cases, cases involving persons in need of supervision, and cases involving paternity, custody, adoption, and related issues.<sup>15</sup> The Family Court Act established specific provisions for the handling of delinquency cases, and continues to govern much of juvenile delinquency practice, as detailed throughout this report.

The delegates to the 1961 Constitutional Convention debated the question of raising the age of juvenile jurisdiction above 16.<sup>16</sup> The Convention did not reach a consensus and thus kept the upper age of juvenile jurisdiction at 15. The legislative committee explicitly stated, however, that the decision to limit juvenile delinquency to persons 16 and younger was “tentative and subject to change” upon the completion of a study by a legislative committee and the submission of new legislation in 1963.<sup>17</sup> The subsequent study that was expected to confirm legislative proposals for a new age for juvenile jurisdiction failed to offer recommendations, and in its concluding paragraph deferred the issue to future study, advice, and recommendations.<sup>18</sup>

## 1970s REFORMS

In response to rising crime rates in the 1970s, the state legislature continued to reform New York’s juvenile justice system. The Juvenile Justice Reform Act of 1976 required that Family Courts adjudicating delinquency cases consider not only the best interests of the juvenile, but also the need to protect the community.<sup>19</sup> The legislation also introduced a new class of crime, known as a Designated Felony Act (DFA). That legislation defined DFAs as acts committed by 14- or 15-year-olds that, if committed by an adult, would constitute murder, attempted murder, manslaughter, robbery, kidnapping, arson, burglary, assault, rape, or sodomy. A new, longer form of placement, known as “restrictive placement,” was established for juveniles convicted of DFAs with new requirements for mandatory minimum periods of time in a secure juvenile facility.<sup>20</sup>

Additional reforms under the Juvenile Reform Amendment of 1978 expanded the types of acts that constituted DFAs to include certain acts committed by 13-year-olds, and less severe acts—including even nonviolent acts under certain circumstances—if the juvenile had a prior conviction.<sup>21</sup>

<sup>13</sup> See Herbert H. Lou, *Juvenile Courts in the United States* (Chapel Hill: University of North Carolina Press, 1927).

<sup>14</sup> For example, a 1931 New York State Crime Commission report sharply criticized the punishment of 16-year-olds in the adult courts. Harry M. Shulman and William Lewis Butcher, *The Youthful Offender: A Statistical Study of Crime Among the 16–20 Year Age Group in New York City* (Albany, NY: New York State Crime Commission, 1931), 150–52.

<sup>15</sup> N.Y. FAM. CT. ACT, NY Laws chapter 686 § 115 (1962); and Woods, “New York’s Juvenile Offender Law,” 8.

<sup>16</sup> Sobie, “Pity the Child,” 1071.

<sup>17</sup> NY Joint Legislative Committee on Court Reorganization, *The Family Court Act Report 110* (1962) (“This section follows existing state law in limiting juvenile delinquency to persons under sixteen years of age. This decision is tentative and subject to change upon completion of a study of the Youthful Offender Act and the Wayward Minor Law and observation of the functioning of the new court with the program of law guardians established under Article 1. The Joint Legislative Committee on Court Reorganization plans to complete the study and submit legislation in 1963”); *see also* Sobie at 1071.

<sup>18</sup> Sobie, “Pity the Child,” 1072–73.

<sup>19</sup> NY Family Court Act § 301.1.

<sup>20</sup> Woods, “New York’s Juvenile Offender Law,” 17–19.

<sup>21</sup> NY Family Court Act § 301.2(8) provides the following current list of designated felony offenses: i) defined in sections 125.27 (murder in the first degree); 125.25 (murder in the second degree); 135.25 (kidnapping in the first degree); or 150.20 (arson in the first degree) of the



## THE JUVENILE OFFENDER ACT

Although these reforms heightened the severity of punishment available in New York’s juvenile justice system, the law still did not allow punishment beyond a five-year “placement” for murderers younger than 16. That changed in the latter half of 1978. A series of well-publicized murders by a 15-year-old named Willie Bosket Jr. and another murder committed by a 13-year-old spurred Governor Hugh Carey to call a special emergency legislative session. The Juvenile Offender Act, passed in July 1978, created a new category—the “Juvenile Offender”—comprised of 14- or 15-year-olds responsible for committing any of 14 specified violent crimes, and 13-year-olds responsible for second-degree murder.<sup>22</sup> The new law mandated adult treatment of these youth at arrest and case processing in criminal court as adults absent findings of certain mitigating factors that a juvenile should be sent to Family Court in the interests of justice.<sup>23</sup> Provisions were enacted to allow these cases to be removed to the Family Court setting under certain conditions that will be addressed more fully in Chapter Five.<sup>24</sup>

If the youth is convicted in criminal court as a Juvenile Offender, New York Penal Law specifies sentencing ranges that are less severe than for adults but more severe than those available for juveniles convicted of DFAs in Family Court.<sup>25</sup> Juvenile offenders are placed in secure juvenile facilities, and may remain there until they turn 21, at which point they must be transferred to adult prisons (assuming they have time remaining on their sentences).<sup>26</sup>

## RECENT REFORMS: 1980s–2000s

Since 1978 and until Governor Cuomo took office, reforms to New York’s juvenile justice system were few and far between. Beginning in 1996, bills were consistently introduced to raise the maximum age of Persons in Need of Supervision (PINS). PINS youth are youth who have not engaged in any criminal activity but who are “beyond the lawful control” of their parents, exhibiting behaviors like truancy, running away, and “incurability.” The legislature finally raised the PINS age from 16 to 18 in 2001 after coordinated, heavy lobbying by children’s advocacy groups.<sup>27</sup> In passing this bill, it was noted that it would align New York with the national trend and finally eliminate the “bizarre and incongruous situation” where New York children as

---

penal law committed by a person thirteen, fourteen or fifteen years of age; or such conduct committed as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law; (ii) defined in sections 120.10 (assault in the first degree); 125.20 (manslaughter in the first degree); 130.35 (rape in the first degree); 130.50 (criminal sexual act in the first degree); 130.70 (aggravated sexual abuse in the first degree); 135.20 (kidnapping in the second degree) but only where the abduction involved the use or threat of use of deadly physical force; 150.15 (arson in the second degree) or 160.15 (robbery in the first degree) of the penal law committed by a person thirteen, fourteen or fifteen years of age; or such conduct committed as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law; (iii) defined in the penal law as an attempt to commit murder in the first or second degree or kidnapping in the first degree committed by a person thirteen, fourteen or fifteen years of age; or such conduct committed as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law; (iv) defined in section 140.30 (burglary in the first degree); subdivision one of section 140.25 (burglary in the second degree); subdivision two of section 160.10 (robbery in the second degree) of the penal law; or section 265.03 of the penal law, where such machine gun or such firearm is possessed on school grounds, as that phrase is defined in subdivision fourteen of section 220.00 of the penal law committed by a person fourteen or fifteen years of age; or such conduct committed as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law; (v) defined in section 120.05 (assault in the second degree) or 160.10 (robbery in the second degree) of the penal law committed by a person fourteen or fifteen years of age but only where there has been a prior finding by a court that such person has previously committed an act which, if committed by an adult, would be the crime of assault in the second degree, robbery in the second degree, or any designated felony act specified in paragraph (i), (ii), or (iii) of this subdivision regardless of the age of such person at the time of the commission of the prior act; or (vi) other than a misdemeanor committed by a person at least seven but less than sixteen years of age, but only where there have been two prior findings by the court that such person has committed a prior felony.

<sup>22</sup> NY Penal Law § 10.00(18) (McKinney Supp. 1979); and N.Y. CRIM. PROC. LAW §180.75(4–6).

<sup>23</sup> Woods, “New York’s Juvenile Offender Law,” 25–26.

<sup>24</sup> Depending on the crime at issue, the court may remove the proceeding to Family Court if it finds that doing so would be in “the interests of justice.” NY Criminal Procedure Law §210.43(1).

<sup>25</sup> NY Penal Law § 70.05.

<sup>26</sup> NY Executive Law § 508(6).

<sup>27</sup> Act of October 29, 2001, NY Laws § 2777, 2824; “Person in Need of Supervision,” definition, chapter 596 (S. 674-B), *Session Law News of New York* (McKinney, 2000); and New York Bill Jacket, S. 674, chapter 596 (2000).

old as 20 would be returned by police to parents *in other states* if they had run away but would not be returned if they were 17 and from New York.<sup>28</sup> It was also noted that raising the age of criminal responsibility to 18 remained an important, unresolved issue, but that this was a first step in addressing the concerns of the treatment of 16- and 17-year-olds within the justice system.<sup>29</sup>

In 2009, reforms to the State's approach to juvenile institutional incarceration became a central focus of attention. Governor Paterson convened a Task Force on Transforming Juvenile Justice. That Task Force released its findings in 2009 with numerous recommendations, including to reform institutional placement in New York to improve outcomes for juveniles.<sup>30</sup> That reform effort has produced many of the essential strides taken to improve the State's juvenile facilities.

## THE CUOMO ERA

The leadership of Governor Cuomo has brought New York's juvenile justice system to the forefront of progressive reform in the last four years. By restructuring fiscal incentives to support community-based services, reforming residential placement for New York City youth through the Close to Home Initiative, and requiring that probation departments use validated risk assessment tools to determine the most appropriate approach to handling juveniles in the system, the Governor has firmly embedded what works with young people into the structure of New York State's juvenile justice system.

Prior to Governor Cuomo's first year in office, costs to support the pretrial detention of youth alleged to be delinquent were supported by 50 percent state reimbursement for each youth detained. The State's reimbursement was available irrespective of the appropriateness of the detention and for as many youth as local detention decision-makers chose to detain. At the same time, much less costly community-based programs that allow youth to remain safely in the community during court processing were inconsistently funded, with no permanent state funding mechanism in place.

The Governor spearheaded reform of this system to realign the fiscal incentives to encourage the appropriate use of detention and give localities greater capacity to develop community-based alternatives to detention. Enacted as part of the State Fiscal Year 2011–2012 budget, Chapter 58 of the laws of 2011 created the Supervision and Treatment Services for Juveniles Program (STSJP), establishing a permanent funding stream for community-based alternatives to detention and placement of juveniles. In addition, the previously open-ended detention funding stream was transitioned to a capped allocation to provide an upper limit on State support for detention services. The legislation also created a new fiscal-incentive structure to support robust development of community-based alternative-to-detention services. While detention costs continued to be supported by the State at 49 percent of the costs, the STSJP allows a higher reimbursement rate of 62 percent. In addition, localities are allowed to shift funding from their detention allocation to their STSJP allocation, providing an opportunity to receive a higher level of State reimbursement for community-based programming.<sup>31</sup>

In 2012, the Governor obtained passage of the transformative Close to Home Initiative. Prior to Close to Home, New York City youth sent to placement as a result of a delinquency finding were often sent hundreds of miles away from their home communities to serve their time in a facility operated by the Office of Children and Family Services (OCFS). This structure made connection with family and community-based resources that could offer enduring

<sup>28</sup> New York Bill jacket, S. 674, chapter 596 (2000).

<sup>29</sup> Ibid.

<sup>30</sup> See <http://www.vera.org/sites/default/files/resources/downloads/Charting-a-new-course-Executive-summary-recommendations.pdf>.

<sup>31</sup> NY Executive Law § 529(b)(1)(a).

supports at re-entry—both critical to effective juvenile justice interventions—largely impossible. Close to Home allows all youth who do not require a secure level of care to remain in the custody of the New York City Administration for Children’s Services (ACS) and serve placement terms in small, evidence-based programs within, or very near to, New York City.<sup>32</sup> The Close to Home Initiative is discussed in more detail in Chapter Seven.

Finally, Governor Cuomo has focused on providing tools for objective decision making in juvenile processing based on likely risk to public safety. The detention financing reform initiative and the Close to Home initiative each included new requirements for the use of validated risk assessment instruments in determinations of both detention and placement.

In particular, New York State Executive Law § 530 now requires all counties to use an empirically validated detention risk assessment instrument (DRAI) to inform detention decisions in delinquency cases. The purpose of the DRAI is to classify youth into groups that vary in their likelihood of reoffense or failure to appear in court during the pendency of their case (the statutorily defined criteria for making detention decisions). Youth who score as high risk are typically appropriate for detention; moderate-risk cases may be best served by a referral to an alternative-to-detention program; and low-risk cases are typically recommended for release to the community with no formal court supervision. When used consistently and effectively, a DRAI should reduce inappropriate use of detention and improve youth outcomes by:

1. Providing juvenile justice stakeholders with an objective and standard way to measure a youth’s risk of reoffending or failure to appear;
2. Promoting consistency and transparency in decision making—*i.e.*, similar outcomes for similarly situated cases—by applying legally relevant criteria in a uniform manner;
3. Reducing racial and ethnic disparities that may exist in detention decisions by encouraging objectivity and transparency; and
4. Allocating limited system resources more efficiently, by directing the most intensive interventions to those youth at highest risk, while using less costly and less restrictive alternatives for lower-risk cases.

New York State currently has two DRAIs in use: the OCFS DRAI for counties outside of New York City, which was implemented in October, 2013, and the New York City DRAI, which has been used within the five boroughs since 2007. Each instrument has been validated on the delinquency population and provides detention decision-makers with potent and objective risk information to inform their decision whether or not to detain a youth.<sup>33</sup>

There is also a risk assessment instrument that will guide decision making regarding dispositional outcomes in Family Court under development by OCFS. This will become a required part of the pre-dispositional investigation, used to inform dispositional decisions in Family Court. The tool will inform decisions about whether to maintain a youth in the community on probation supervision or to send the youth to a residential setting, as well as the level of residential care needed. Each of these recent reforms has strengthened the juvenile justice system’s capacity to respond to youth in an evidence-based way, supporting the community-

<sup>32</sup> N.Y. Laws of 2012, chapter 57 (A-9057D).

<sup>33</sup> OCFS Sponsored Detention Diversion Programs, unpublished data prepared by OCFS for this Commission. June 2014.

based and placement resources necessary for success and linking critical decisions about the use of confinement to the actual risk to public safety.

The age of juvenile jurisdiction remains the one major area in which New York State still lags. The Commission recommendations that follow provide a framework to make New York the national leader once again in juvenile justice.

## THE COMMISSION'S WORK

With the aim of restoring New York to a place of leadership in juvenile justice, the Commission has completed a comprehensive review of relevant evidence. Chief among the Commission's concerns was to ensure that members not only reviewed the applicable laws and practices from New York and other states, but also that they heard directly from key stakeholders and those affected by the current system: young offenders, parents, victims of crime, police officers, probation officers and administrators, social service administrators, not-for-profit providers, state agency officials, staff at OCFS and the Department of Corrections and Community Supervision (DOCCS) facilities for juveniles and adults, respectively, and many others touched by the system.

The Commission held nine meetings of the full Commission including one public hearing in New York City and another in Rochester. The hearings and meetings allowed for testimony from stakeholders, representatives from Connecticut and Illinois—states that recently raised the age of juvenile jurisdiction, academic experts, attorneys who represent children, representatives from law enforcement and advocacy organizations, and members of the public, including youth affected by the justice system and family members of affected youth.<sup>34</sup> In addition, numerous meetings were held with various constituency groups, such as Family Court judges, the District Attorneys Association, and commissioners of local departments of social services, to inform the Commission's deliberations.

To gather a more nuanced, qualitative understanding of juvenile and criminal justice practice across New York State, including local variations in practice and challenges, and to gain the perspective of various key stakeholders, the Commission convened a series of structured focus groups and interviews across the state. Specifically, seven focus groups statewide were held with representatives of the nine New York State Regional Youth Justice Teams.<sup>35</sup> These focus groups included a diverse mix of juvenile justice stakeholders, including police, judges, defense attorneys, prosecutors, detention officials, social service agency staff and officials, probation department staff and officials, advocates, service providers, and individuals with prior system involvement. In addition, the Commission held one focus group of voluntary agency residential care providers gathered by the New York Council of Family and Child Caring Agencies; three focus groups with youth affected by the criminal justice system, one in Rochester and two in New York City; three focus groups of affected family members, one in Albany and two in New York City; and individual interviews with system and community stakeholders.<sup>36</sup>

Members of the Commission also visited both juvenile and adult detention and prison facilities around the state: OCFS' Brookwood Secure Center and Columbia Secure Center for Girls, Capital District Secure

<sup>34</sup> A list of individuals who testified at public hearings is included in Appendix A.

<sup>35</sup> The nine Regional Youth Justice Teams represent the following regions and counties: *Capital Region* [Albany, Columbia, Delaware, Greene, Rensselaer, Saratoga, Schenectady, Warren, and Washington], *North Country* [Clinton, Essex, Franklin, Hamilton, Jefferson, Lewis, and St. Lawrence], *Central New York* [Broome, Cayuga, Chenango, Cortland, Madison, Onondaga, Oswego, Tioga, and Tompkins], *Finger-Lakes* [Chemung, Genesee, Livingston, Monroe, Ontario, Orleans, Schuyler, Seneca, Steuben, Wayne, Wyoming, and Yates], *Western New York* [Allegany, Cattaraugus, Chautauqua, Erie, and Niagara], *Mid-Hudson* [Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster, and Westchester], *Long Island* [Nassau and Suffolk], *Mohawk* [Oneida, Otsego, Fulton, Montgomery, Herkimer, and Schoharie], and *New York City* [Bronx, Kings, New York, Queens, and Richmond].

<sup>36</sup> A full list of focus groups and interviews is included in Appendix A

Juvenile Detention Center, Rikers Island jail, Albany County Correctional Facility, and Greene Correctional Facility. In addition, members of the Commission visited the August Aichhorn Center for Adolescent Residential Care in Brooklyn for youth in need of mental health treatment.

The Commission reviewed extensive data regarding current practices in each region of the state from arrest through re-entry, as well as the statutes and regulations that govern those practices. The Commission reviewed juvenile justice statutory reforms and best practices across the country, with an especially thorough analysis of nine states determined to be comparable to New York in size, structure, or proximity or particularly notable in some way regarding juvenile justice practice, through statutory analysis and interviews conducted with key stakeholders in each state.<sup>37</sup> The Commission also reviewed research pertaining to the impact of various legal practices, as well as research on adolescent development, risk assessment, and best practices in effective programming for court-involved youth, including practices regarding secure custody and services for specialized populations.

Finally, the Commission received information from a system-impact analysis that projected the flow of youth through the juvenile and criminal justice systems with different reform options implemented. A full description of the modeling methods and results is included in Chapter Ten.

Together, these efforts produced the foundation for the Commission's recommendations. Those recommendations target the most pressing problems that must be solved in the juvenile justice system, and do so with careful regard to both public safety of the community and improving outcomes for young offenders and their families. Indeed, when implemented fully, the recommendations are expected to serve both objectives equally and well.

At their core, the Commission's recommendations answer the key question at hand: when New York State raises the age of juvenile jurisdiction in statute, how should the system be reformed to ensure the best outcomes for public safety and for youth at each stage in the process? That single question necessarily spawns the subsidiary questions answered in the chapters that follow, which address the handling of 16- and 17-year-olds at arrest, during pretrial probation assessment and possible adjustment or detention, during pretrial and trial proceedings in court, through sentencing or disposition by the court, placement in appropriate facilities, re-entry to the community, and, finally, through the collateral consequences in later life created by a criminal conviction or adjudication as a youth.

The reform package recommended in this report is both comprehensive and readily achievable. With Governor Cuomo's leadership and that of the legislature, New York State can set the bar nationally for sound juvenile justice policy for future generations.

<sup>37</sup> Those states deemed most comparable for study were Massachusetts, New Jersey, Pennsylvania, California, Texas, Illinois, Florida, Connecticut, and Ohio.

## CHAPTER 1: A SNAPSHOT OF THE CURRENT SYSTEM

This chapter provides an overview of the basic structure of the current system for handling 16- and 17-year-olds and juveniles charged with a crime or juvenile delinquency offense, respectively. The chart below provides an overview of the major difference between case processing for 16- and 17-year-olds, youth processed as juvenile offenders or as juvenile delinquents, and youth processed for behaviors that are not criminal in nature (PINS).

	PINS	Juvenile Delinquent	Juvenile Offender	Adult
<b>Age</b>	<b>&lt;18</b>	<b>7-15 yrs</b>	<b>13-15 yrs</b>	<b>16+</b>
Offense Type	Non-criminal offenses	Offense that would be a crime if over age 15	Serious offenses, defined by penal law	Criminal offense or violation
Diversion Options	Mandatory pre-petition diversion	Pre-petition for many cases	No opportunity prior to court involvement	No opportunity prior to court involvement
Jurisdiction	Family Court	Family Court	Criminal court with option of Family Court removal	Criminal court
Detention	Youth facility— non-secure only	Youth facility— non-secure only	Youth facility— secure only	County jail
Confinement	Local DSS custody (voluntary agency(VA))	Local DSS custody (VA) OCFS custody (VA or range of OCFS security)	OCFS custody-secure center	County jail < 1 yr Prison 1 year+
Criminal Record	N/A	No	Yes—sealed if disposed through acquittal, dismissal, a violation, or youthful offender status	Yes—sealed if disposed through acquittal, dismissal, a violation, or youthful offender status
Youthful Offender Status Option	N/A	N/A	Yes	Yes

### CASE PROCESSING FOR OFFENSES COMMITTED BY 16- AND 17-YEAR-OLDS

New York’s criminal court system has jurisdiction over persons 16 and 17 years old alleged to have committed any crime, regardless of its severity.<sup>38</sup>

#### Arrest

Police officers may arrest 16- and 17-year-olds without a warrant if the officer has reasonable cause to believe that a crime was committed.<sup>39</sup> Under the law, there is no requirement that the police attempt to contact such youth’s parent or legal guardian to notify them of the arrest, and parental or guardian consent for, or presence during, police questioning is not required.

<sup>38</sup> Given the complexity of the adult court structure and the variation of that structure between New York City and the rest of the state, this report will refer to the adult court process as criminal court. This term is meant to encompass the various courts described in this section of the report in the roles that they play in court processing of adult offenders.

<sup>39</sup> NY Criminal Procedure Law §140.10.

After arrest, the youth is booked at the local police station, and fingerprints and photographs are taken and sent to the computerized criminal record index maintained by the Division of Criminal Justice Services (DCJS).<sup>40</sup> Upon arrest, the officer may issue an appearance ticket in misdemeanor cases or lower-level felony cases, releasing the youth and advising him or her when to appear in court.<sup>41</sup> If an appearance ticket cannot be issued, as in the case of a serious felony offense, or if the officer chooses not to issue an appearance ticket, the youth is held in adult lockup as his or her case proceeds. In all cases, the police then refer the case to the district attorney for review, who may decline to prosecute or file the case and proceed to arraignment.

### **Arraignment**

In the adult system, the youth is brought before a judge in the local criminal court for arraignment, usually within 24 hours of arrest. During the arraignment process, the court notifies the youth of the charges filed against him or her, in addition to his or her right to counsel. Counsel is assigned for youth who cannot otherwise afford counsel in the criminal courts.

Several outcomes may result from arraignment: the case is dismissed; the defendant enters a guilty plea and sentencing proceeds or is adjourned; the judge remands the defendant into custody without bail until the next court date; the judge released the defendant on his or her own recognizance; or the judge sets bail and adjourns the case.

### **Pretrial Detention or Bail**

In the adult system, 16- and 17-year-old youth may post bail.<sup>42</sup> In fact, the issuance of an appearance ticket may be conditional on the posting of a sum of money, known as pre-arraignment bail.<sup>43</sup> For a misdemeanor complaint, the court must order release of the defendant on his or her own recognizance, or set bail.<sup>44</sup> For a felony complaint, the court may, in its discretion, order recognizance or bail, with some exceptions.<sup>45</sup> In cases in which the court does not order recognizance or bail, it must commit the youth to the sheriff's custody.<sup>46</sup> Youth who are 16 or 17 and held during the pendency of their case are held in adult jails.

### **Superior Court and Local Criminal Court Trial**

Criminal cases in New York are adjudicated in local criminal courts and superior courts.<sup>47</sup> Local criminal courts, which include the New York City Criminal Court and outside of New York City the District Courts, City Courts and Town and Village Courts, have trial jurisdiction over misdemeanor and petty offenses (violations and traffic infractions).<sup>48</sup> Local criminal courts also have preliminary jurisdiction (which involves conducting arraignments and preliminary hearings) over felony offenses.<sup>49</sup> Superior courts, which include the Supreme Court and the County Court, have trial jurisdiction over felonies.<sup>50</sup> New York City does not have County Courts, so felonies are tried exclusively in Supreme Court in New York City.<sup>51</sup> Outside of New York City, felonies are mostly tried in County Court but also in Supreme Court in some instances.

<sup>40</sup> NY Criminal Procedure Law §160.10 and § 160.20.

<sup>41</sup> An officer cannot issue an appearance ticket when a person is alleged to have committed a Class A, B, C, or D felony or a specified sexual crime or crime indicating a flight risk. NY Criminal Procedure Law §150.20.

<sup>42</sup> NY Criminal Procedure Law §150.30.

<sup>43</sup> NY Criminal Procedure Law §170.10(7).

<sup>44</sup> NY Criminal Procedure Law §530.20(1).

<sup>45</sup> NY Criminal Procedure Law §530.20(2).

<sup>46</sup> NY Criminal Procedure Law §510.10.

<sup>47</sup> NY Criminal Procedure Law §10.10.

<sup>48</sup> NY Criminal Procedure Law §10.30(1) and 1.20(39).

<sup>49</sup> NY Criminal Procedure Law §10.30(2).

<sup>50</sup> NY Criminal Procedure Law §10.20(1).

<sup>51</sup> NY Constitution, article VI, § 10 AND 11.

In both criminal courts and superior courts, youth have the option to plead guilty to the charge, waive their right to a jury trial and proceed, or assert their right to a jury trial.<sup>52</sup> Youth who either plead or are found guilty of the charges against them proceed to sentencing.

Prior to sentencing, pre-sentencing reports, prepared by county probation departments, are prepared for the court in all felony cases, and sometimes in misdemeanor cases.<sup>53</sup> Pre-sentencing reports inform the judge about a youth's background, possible mitigating circumstances of the crime, likelihood of success on probation, and suggested programs for rehabilitation.<sup>54</sup> Even in misdemeanor cases, the court generally cannot pronounce the following sentences without a pre-sentencing report: probation, imprisonment to a term in excess of 180 days, or consecutive sentences of imprisonment with terms aggregating more than 90 days.<sup>55</sup>

### **Sentencing**

Youth who commit crimes at age 16 or 17 face the same possible consequences as adults sentenced in criminal court, including: unconditional or conditional discharge, a fine, probation, a short period of incarceration followed by a period of probation (a split sentence), or a term of imprisonment.<sup>56</sup> Terms of probation supervision are generally three, four, or five years for felony offenses and between one and three years for misdemeanors.<sup>57</sup> Sentences to imprisonment can be determinate (or "fixed term") or indeterminate (range of minimum to maximum term; exact term dependent on Board of Parole decision making). Terms of imprisonment can range from less than one year on certain misdemeanor offenses to life in prison for the most serious felonies.<sup>58</sup> Enhanced sentencing structures are in place for violent felony offenses as well as for second felony and violent felony offenses and for persistent felony and violent felony offenses.<sup>59</sup> All sentences to imprisonment for less than one year are served in adult jails, and all sentences to imprisonment that exceed one year are served in adult prisons.<sup>60</sup> In addition, all pre-trial detention for any period occurs in adult jails.

### **Youthful Offenders**

The Youthful Offender statute is New York State's existing mechanism for reducing the lifelong impact of a criminal conviction for youth ages 18 and under. Available following the conviction of a youth age 15 or under as a Juvenile Offender (described below) and following conviction of a 16-, 17-, or 18-year-old for misdemeanor and most felony offenses, the Youthful Offender status converts the criminal conviction to a confidential noncriminal adjudication.<sup>61</sup> As described in Chapter Nine, courts frequently grant Youthful Offender status to both youth convicted as Juvenile Offenders and older youth convicted in the criminal court.

The Youthful Offender statute also provides for indeterminate sentencing ranges that are shorter than existing adult and Juvenile Offender sentences and allows for community-based sentences. Youthful Offenders serve any sentences of incarceration in either OCFS secure facilities (for Juvenile Offenders) or in adult jails and prisons (for 16-, 17-, and 18-year-olds), just as other offenders of their ages would.

<sup>52</sup> NY Criminal Procedure Law §320.10(1).

<sup>53</sup> NY Criminal Procedure Law §390.20.

<sup>54</sup> NY Criminal Procedure Law § 390.30.

<sup>55</sup> NY Criminal Procedure Law § 390.20(2). The court may waive this requirement in certain circumstances, such as when the parties agree to a sentence of time served or probation, when probation is revoked, or when a report has been prepared in the previous 12 months. It cannot be waived if the court will impose a prison sentence. (N.Y. CRIM. PROC. LAW §390.20(4)).

<sup>56</sup> NY Penal Law § 60.01.

<sup>57</sup> NY Penal Law § 65.00(3).

<sup>58</sup> NY Penal Law § 70.00.

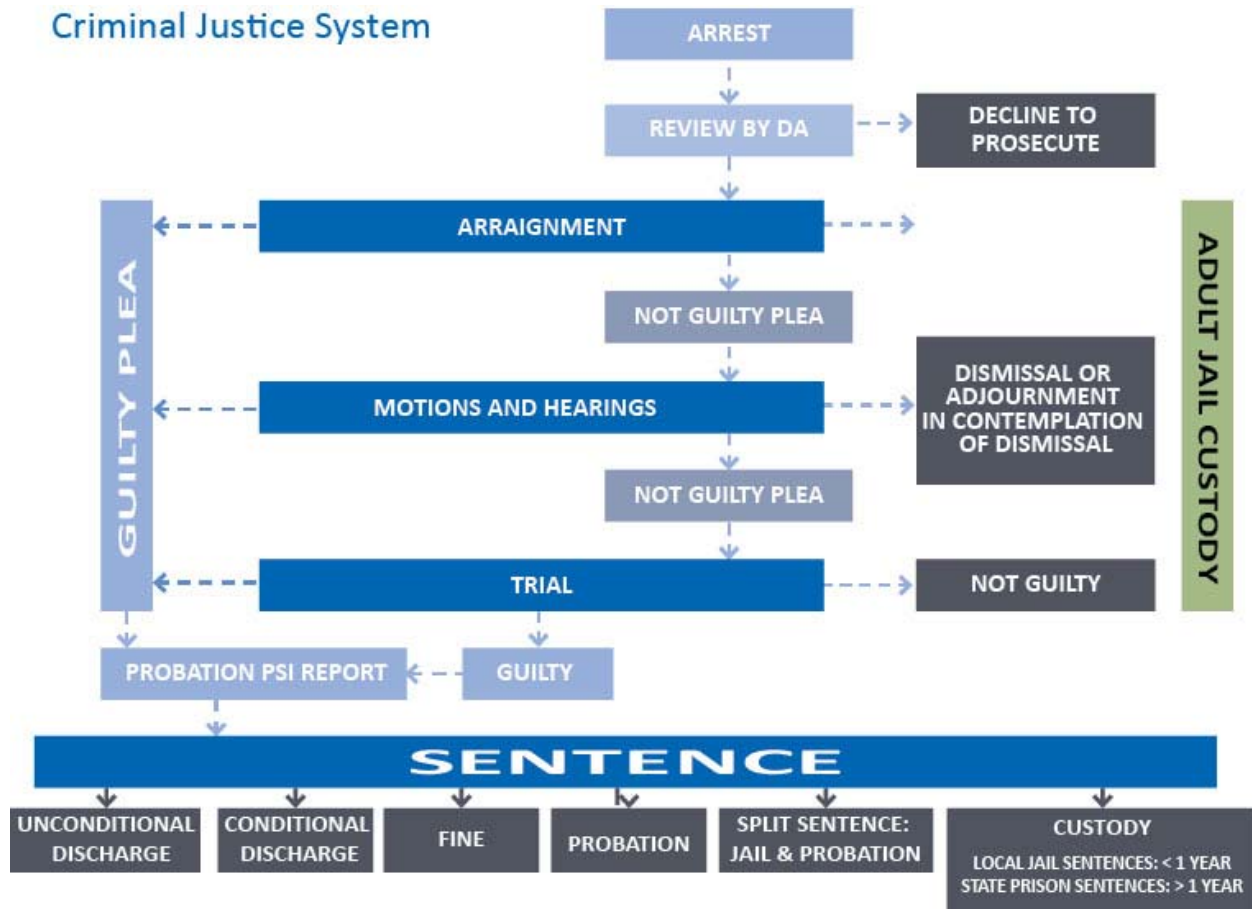
<sup>59</sup> NY Penal Law § 70.02, 70.04, 70.06, 70.08, and 70.10.

<sup>60</sup> NY Penal Law § 70.20.

<sup>61</sup> Article 720 of the Criminal Procedure Law lays out the youthful offender framework. This structure will be described in more detail in Chapter Nine.



## Criminal Justice System



## THE JUVENILE JUSTICE SYSTEM (AGES 15 AND UNDER)

### Arrest

In New York State, youth aged seven to 15 who commit an act that would be a crime if committed by an adult are, in most cases, considered juvenile delinquents.<sup>62</sup> As described in Chapter Five, the exceptions to that rule are those offenses for which 13-, 14-, or 15-year-olds are processed as adults in criminal court, though detained or placed in juvenile facilities, pursuant to the Juvenile Offender statute.

A youth's first contact with the juvenile justice system occurs when that youth comes into contact with the police. Following an arrest, police can release the youth to a parent's or guardian's custody and issue a Family Court appearance ticket (FCAT), which advises the youth and his or her family when he or she must appear in Family Court.<sup>63</sup> If police do not release the youth, they must take the youth directly to Family Court, or, if court is closed, to a detention center.

### Detention

Under certain circumstances, as noted above, a youth may be temporarily placed in juvenile detention following arrest, before appearing before probation or the Family Court.<sup>64</sup> The court may also order detention

<sup>62</sup> NY Family Court Act § 301.2(1).

<sup>63</sup> NY Family Court Act § 307.1.

<sup>64</sup> NY Family Court Act § 305.2.

of a juvenile at any appearance in court, based on an assessment of the risk that the youth may not return to court on the ordered date or that the youth may commit another delinquent act.<sup>65</sup>

### **Probation Intake**

In New York State, 57 counties operate probation departments and the New York City Department of Probation operates probation citywide. Once a youth receives an FCAT, the youth and his parent or legal guardian must appear at probation intake.<sup>66</sup> In most cases, once the youth is at intake, the probation department holds a preliminary conference with the concerned parties, including the victim if possible, and determines if the matter can be diverted from formal Family Court action through “adjustment.”<sup>67</sup>

As explained in detail in Chapter Four, the probation department has the authority to engage this diversion process in most types of cases; however, certain offenses are excluded from adjustment altogether, and in others the court (and possibly the presentment agency, the juvenile prosecutor) must provide written permission for adjustment to occur.<sup>68</sup> Youth outside of New York City are screened for risk and need at probation intake through the use of the Youth Assessment and Screening Instrument (YASI). New York City uses a detention risk assessment instrument to identify risk during its probation intake process.<sup>69</sup> Screening and assessment for behavioral health disorders may also take place at this stage. When a case is appropriate for diversion services, the probation department has up to 60 days to adjust the case, and may request an extension from the Family Court for an additional 60 days.<sup>70</sup> A wide variety of services for juveniles can be provided at this point, directly through probation, by social service agencies, or through the use of community accountability boards.

### **Family Court Referral**

If not adjusted by the probation department, juvenile delinquency cases are referred to the presentment agency, which acts as the prosecutor in juvenile cases. The presentment agency is the office of the county attorney outside of New York City and the Office of Corporation Counsel within New York City. Upon review of the probation referral, the presentment agency decides whether to file a petition (the accusatory instrument containing the charges against the juvenile) with the court.<sup>71</sup> The presentment agency has discretion as to whether to decline prosecution or bring a case to court.

In a juvenile delinquency case, the Family Court process begins with the appointment of counsel followed by an initial appearance by the juvenile. At the first appearance in Family Court, the youth is arraigned on the petition charges, and preliminary matters such as detention status are determined.<sup>72</sup> The court may also conduct a probable cause hearing, which, if conducted, must be conducted within three days of the initial appearance or within four days following the filing of the petition.<sup>73</sup> Motion practice and plea bargaining also take place at this stage, and a court may refer the case back to probation for adjustment services.<sup>74</sup> The case then proceeds to

<sup>65</sup> NY Family Court Act § 320.

<sup>66</sup> NY Family Court Act § 307.1.

<sup>67</sup> NY Family Court Act § 320.6; see also Ashley Cannon, Richard Aborn, and John Bennett, *Guide to Juvenile Justice in New York City* (Citizens Crime Commission of New York City, Inc., May 2010), 20.  
<<http://www.nycrimecommission.org/pdfs/GuideToJuvenileJusticeInNYC.pdf>> (10 December 2014).

<sup>68</sup> NY Family Court Act § 308.1(3) and (4). However, the complainant can request that the case be brought before the presentment agency, which would prevent adjustment at probation intake (NY Family Court Act § 308.1(1); Title 9, NY Codes, Rules, and Regulations § 356.6(b)(1)).

<sup>69</sup> Title 9, NY Codes, Rules, and Regulations § 356.7.

<sup>70</sup> Title 9, NY Codes, Rules, and Regulations § 356.7

<sup>71</sup> NY Family Court Act § 311.1(1).

<sup>72</sup> NY Family Court Act § 320.1.

<sup>73</sup> NY Family Court Act § 325.1.

<sup>74</sup> NY Family Court Act § 320.6.

the fact-finding stage for adjudication of delinquency.<sup>75</sup> There is no jury trial process, although the rules of evidence do apply and any determination must be based on proof beyond a reasonable doubt. If the delinquency allegations charged in the petition are not established beyond a reasonable doubt, the case is dismissed. During the fact-finding stage, the judge may also dismiss the case for many reasons, including instances where allegations are proven but the judge determines that a dismissal would be in “furtherance of justice.”

### **Disposition**

If the allegations of fact are established beyond a reasonable doubt, the court then conducts a dispositional hearing to determine the appropriate sanction or treatment.<sup>76</sup> The court can also dismiss the case at this point, despite the fact-finding, if it is determined that the juvenile does not require “supervision, treatment or confinement.” Alternatively, if the court finds that supervision, treatment, or confinement is necessary, a dispositional order is filed specifying the sanction. Typical dispositions include conditional discharge, probation supervision, and placement.

Probation supervision is the disposition used most frequently in delinquency cases. Ideally, probation supervision includes monitoring, evidence-based services, and sanctions that promote accountability and the development of competencies that reduce risk and increase protective factors for the youth while maintaining public safety. The period of supervision is generally one year, but may be up to two years.

Adjudicated juvenile delinquents can be placed in the custody of OCFS or the Local Department of Social Services (LDSS) for up to 12 months for misdemeanor offenses and for up to 18 months for a felony offense.<sup>77</sup> Longer restrictive placements, for either five or three years, are possible if youth are adjudicated for a statutorily identified list of designated felony offenses.<sup>78</sup> Youth may reside either in OCFS facilities (if in OCFS custody) or in private voluntary agencies (if in OCFS or LDSS custody) during the placement period. OCFS or the LDSS may return to court for an extension of placement if it is deemed that this would be in the best interest of the youth.

### **Persons In Need of Supervision (PINS).**

PINS is a term that refers to youth under the age of 18 who run away, are truant from school, or are beyond the lawful control of their parents. Known as status offenses, PINS behaviors would not be considered crimes if committed by an adult.<sup>79</sup> New York State has statutorily mandated PINS diversion, which requires that diversion services be afforded every child prior to filing of any PINS petition.<sup>80</sup> A petition can be filed only after documenting that diversion services have failed.<sup>81</sup>

Once the case is in court, the case processing is similar to the juvenile delinquency case model: an initial appearance (arraignment on the PINS petition), fact-finding, and the dispositional hearing. There are, however, several differences. PINS cases are usually initiated by parents or school officials, whereas delinquency complaints usually originate as a result of a crime victim complaint. In addition, the use of secure placement as

<sup>75</sup> NY Family Court Act § 340.1–347.1.

<sup>76</sup> NY Family Court Act § 345.1. The Family Court Act outlines a number of disposition options for the court, including conditional discharge, probation supervision, and placement (N.Y. FAM. CT. ACT § 352.2).

<sup>77</sup> NY Family Court Act § 353.3(5).

<sup>78</sup> NY Family Court Act § 353.5(4).

<sup>79</sup> NY Family Court Act § 712.

<sup>80</sup> NY Family Court Act § 735.

<sup>81</sup> Ibid.

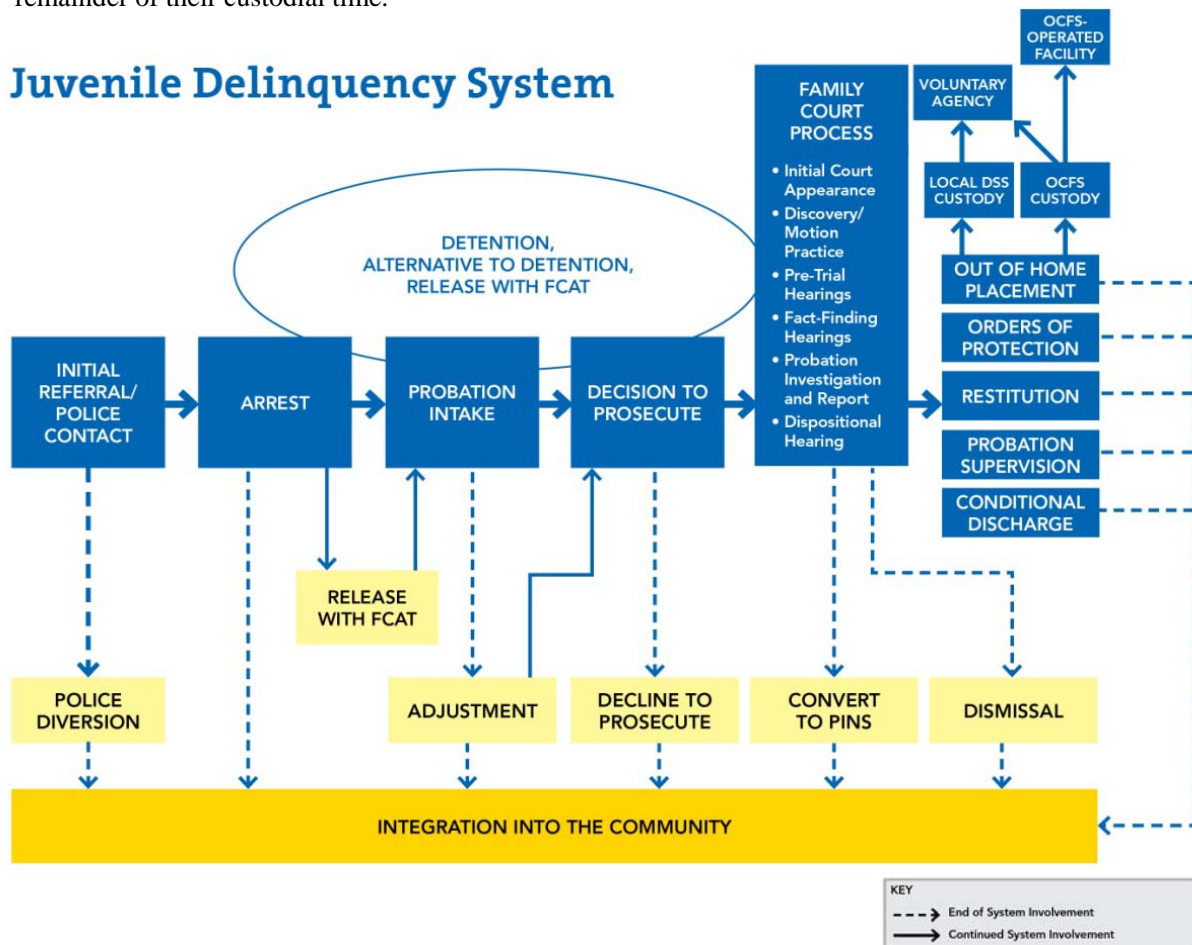
a sanction for PINS youth is prohibited by state law.<sup>82</sup> As discussed in Chapter Six however, several hundred PINS youth are placed in non-secure facilities annually, particularly outside New York City.

### Juvenile Offenders

Under current New York law, a small number of youth, called *Juvenile Offenders*, are young people aged 13, 14, or 15 who are charged with one of a list of 18 of the most serious felony offenses.<sup>83</sup> These youth are processed in the adult criminal court in the first instance.<sup>84</sup> As will be discussed in more detail in Chapter Five, there are several points during case processing when these cases can be removed to the Family Court for juvenile processing. Such a removal usually requires consent by the district attorney and judicial findings that the case warrants removal per the statutory criteria.<sup>85</sup>

Juvenile offender cases that remain in criminal court are processed as adult cases, although sentencing ranges are reduced from adult sentencing ranges.<sup>86</sup> In addition, if youth are confined as Juvenile Offenders, they are held in secure juvenile detention facilities pending trial and sentencing and, if sentenced to imprisonment, they begin their sentences in secure OCFS-operated juvenile facilities.<sup>87</sup> As detailed further in Chapter Five, if their sentences are long enough, Juvenile Offender youth may then be transferred to the adult prison system for the remainder of their custodial time.<sup>88</sup>

## Juvenile Delinquency System



<sup>82</sup> NY Family Court Act § 720.

<sup>83</sup> NY Criminal Procedure Law §1.20(42). The list of Juvenile Offender crimes is also noted in N.Y. Penal Law § 10.00(18).

<sup>84</sup> NY Criminal Procedure Law §180.75.

<sup>85</sup> NY Criminal Procedure Law §180.75(4); and NY Criminal Procedure Law §210.42(2).

<sup>86</sup> NY Penal Law § 70.05.

<sup>87</sup> NY Penal Law § 70.20(4).

<sup>88</sup> NY Executive Law § 508.

## CHAPTER 2: BEST PRACTICES IN ADOLESCENT JUSTICE

---

Reforming the justice system response for 16- and 17-year-olds brings great potential for better public safety outcomes and for improving life opportunities for young people who maintain capacity for course correction. A strong body of research evidence supports the notion that teenagers are different from adults in their capacity to regulate their behavior and are also more susceptible to behavior change. In addition, a rich research base has shown that certain effective intervention strategies reduce repeat offending among adolescent offenders.

This chapter provides an overview of the recent findings on adolescent brain development, details how that science has been incorporated into the nation's jurisprudence through several Supreme Court decisions, describes the principles of effective interventions for adolescents, and provides a description of program models proven effective at improving justice outcomes for 16- and 17-year-olds. These research findings substantially inform the Commission's recommendations.

### ADOLESCENTS ARE DIFFERENT FROM ADULTS: BRAIN SCIENCE AND CULPABILITY

Over the last 15 years, an uncontroverted body of research has emerged demonstrating that the brain does not reach maturation until early adulthood, with certain types of adult cognitive abilities not fully developed until the mid-20s.<sup>89</sup> The differences between adolescents and adults can be categorized into three important areas: self-regulation, particularly in emotionally charged contexts; sensitivity to peer influence and immediate rewards; and ability to make decisions that require an orientation toward the future.<sup>90</sup>

The distinction between these aspects of adult reasoning or decision making and basic cognitive ability is critical.<sup>91</sup> Research shows that even by early adolescence, some cognitive abilities in young people mirror those of adults.<sup>92</sup> However, although cognitive ability guides the process of decision making, other elements of reasoning determine the decision outcomes.<sup>93</sup>

The basic structure of the brain and the order in which each part develops offer clues that may help describe the origin of these differences. A comprehensive report published by the National Academy of Sciences summarizes the imbalance in these systems:

Evidence of significant changes in brain structure and function during adolescence strongly suggests that these cognitive tendencies characteristic of adolescents are associated with biological immaturity of the brain and with an imbalance among developing brain systems. This imbalance model implies dual systems: one involved in cognitive and behavioral control and one involved in socioemotional processes. Accordingly, adolescents lack mature capacity for self-regulation because the brain system that influences pleasure-seeking and emotional reactivity develops more rapidly than the brain system that supports self-control.<sup>94</sup>

<sup>89</sup> B. J. Casey, Rebecca M. Jones, and Todd A. Hare, "The Adolescent Brain," *Annals of the New York Academy of Sciences* 1124 (April 2008): 111–26; Laurence Steinberg, "Adolescent Development and Juvenile Justice," *Annual Review of Clinical Psychology* 5 (April 2009): 47–73; Elizabeth S. Scott and Laurence Steinberg, "Adolescent Development and the Regulation of Youth Crime," *Future of Children* 18, no. 2 (Fall 2008): 15–33; and Beatriz Luna, "Developmental Changes in Cognitive Control Through Adolescence," *Advances in Child Development Behavior* 37 (2009): 233–78.

<sup>90</sup> National Research Council, *Reforming Juvenile Justice: A Developmental Approach*, Richard J. Bonnie, Robert L. Johnson, Betty M. Chemers, and Julie A. Schuck, eds. (Washington, DC: National Academies Press, 2013).

<sup>91</sup> Elizabeth Cauffman and Laurence Steinberg, "Emerging Findings from Research on Adolescent Development and Juvenile Justice," *Victims & Offenders* 7, no. 4 (2012): 434.

<sup>92</sup> *Ibid.*

<sup>93</sup> Scott and Steinberg, "Adolescent Development and the Regulation of Youth Crime," 4.

<sup>94</sup> Scott and Steinberg, "Adolescent Development," 2.

More colloquially, the pediatrician and developmental psychologist Ronald Dahl has quipped that “adolescents develop an accelerator a long time before they can steer and brake.”<sup>95</sup>

Self-regulation, or the ability to control one’s emotions and behavior in the moment in order to achieve longer-term gains, has been shown to increase throughout adolescence and into young adulthood.<sup>96</sup> These skills are especially weak for adolescents when the situation requires them to suppress a response to an emotional cue, especially for adolescent boys.<sup>97</sup> This inability to delay gratification has been proposed by some theorists as an organizing principle related to criminal behavior for people of all ages, and adolescents may be particularly, and developmentally, vulnerable.<sup>98</sup>

Research also reveals that, in addition to delays in the capacity to self-regulate, adolescents have impaired ability to appreciate the long-term consequences of their actions and are highly influenced by the potential for immediate reward.<sup>99</sup> This can be interpreted as an adolescent lack of identification of, or even a tendency actively to seek out, risk. However, studies show that adolescents and adults are similar in their ability to understand a situation’s risks; the distinction lies in how they evaluate risks and rewards.<sup>100</sup> In a decision-making situation, adolescents tend to be more sensitive than adults in valuing what the potential reward may be, and less sensitive to any potential costs.<sup>101</sup>

A particularly compelling reward for adolescents is the approval of their peers: adolescents are more likely to have their behavior influenced by peers than are adults.<sup>102</sup> Research in brain development now documents what has long been conventional wisdom: that adolescents inherently value peer approval above many other rewards, and their “consequent fear of rejection” influences their choices.<sup>103</sup> In fact, the influence of the group is strong for adolescents even in instances when their peers are not overtly suggesting they should engage in a certain action. It has been shown that mere “peer presence” rather than “peer pressure” can create changes in their behavior.<sup>104</sup> As a result, it is perhaps not surprising that adolescents often commit crimes in groups.<sup>105</sup> Though peers may greatly influence adolescents’ behavior while they are young, as they mature and transition to adulthood, they begin to develop a greater sense of autonomy, and the influence of the peer group wanes.<sup>106</sup>

These two differences, immature self-control abilities and sensitivity to immediate reward, converge in the third difference: the impaired ability to make judgments that require future orientation. The ability to appreciate the long-term consequences of a decision, postpone gratification by immediate reward, and resist influences like emotion and peers, develops throughout adolescence and into young adulthood.<sup>107</sup> As Dr. Edward Mulvey stated in his testimony before the Commission, this sound body of substantial research is

<sup>95</sup> Alison Gopnik, “What’s Wrong with the Teenage Mind?” *Wall Street Journal*, January 28, 2012.

<sup>96</sup> National Research Council, *Reforming Juvenile Justice*, 92.

<sup>97</sup> *Ibid.*, 93.

<sup>98</sup> *Ibid.*, 92.

<sup>99</sup> Cauffman and Steinberg, “Emerging Findings,” 434.

<sup>100</sup> Laurence Steinberg, “Risk Taking in Adolescence: What Changes, and Why?” *Annals of the New York Academy of Sciences* 1021 (June 2004): 51–58.

<sup>101</sup> Monique Ernst, et al., “Amygdala and Nucleus Accumbens in Responses to Receipt and Omission of Gains in Adults and Adolescents,” *Neuroimage* 25, no. 4 (June 2005): 1279–91.

<sup>102</sup> Laurence Steinberg and Kathryn C. Monahan, “Age Differences in Resistance to Peer Influence,” *Developmental Psychology* 43, no. 6 (November 2007): 1531–43; and Cauffman and Steinberg, “Emerging Findings,” 434.

<sup>103</sup> Cauffman and Steinberg, “Emerging Findings,” 435.

<sup>104</sup> Patricia Allard and Malcolm Young, “Prosecuting Juveniles in Adult Court: Perspectives for Policymakers and Practitioners,” *Journal of Forensic Psychology Practice* 6 (2006): 65–78.

<sup>105</sup> Asha Goldweber, et al., “The Development of Criminal Style in Adolescence and Young Adulthood: Separating the Lemmings from the Loners,” *Journal of Youth and Adolescence* 40, no. 3 (March 2011): 332–46.

<sup>106</sup> Cauffman and Steinberg, 435.

<sup>107</sup> National Research Council, *Reforming Juvenile Justice*, 95.

proving what every parent knows about adolescents: immature decision making persists throughout adolescence. The brain research provides a strong developmental explanation for this phenomenon.

## BRAIN SCIENCE AND RESEARCH IN PRACTICE: THE U.S. SUPREME COURT

The U.S. Supreme Court has relied on this body of research in three seminal cases related to justice responses to crimes committed by people under 18. In the past 10 years, the U.S. Supreme Court has held in three cases that persons under 18 have diminished culpability and an increased likelihood of being positively rehabilitated back into society.

In 2005, the Court held in *Roper v. Simmons* that the Eighth and Fourteenth Amendments prohibit the imposition of the death penalty on defendants who were under 18 when they committed their crime. The Court stated in its opinion that “once juveniles’ diminished culpability is recognized. . . neither of the two penological justifications for the death penalty—retribution and deterrence. . . provides adequate justification for imposing that penalty on juveniles. . . .”<sup>108</sup> The Court relied on this ruling and extended it in 2010 when it held in *Graham v. Florida* that the Eighth Amendment prohibits a sentencing scheme of life in prison without the possibility of parole for defendants convicted of non-homicide crimes who were under 18 at the time of their crime.<sup>109</sup> And in 2012, the Court established that it is “cruel and unusual punishment,” under the Eighth Amendment, to sentence juvenile homicide offenders to life without the possibility of parole, stressing that Juvenile Offenders have “diminished culpability and greater prospects for reform. . . and [are] more amenable to rehabilitation than adults. . . .”<sup>110</sup>

The Court has found that the ongoing development of adolescent identity makes it “less supportable to conclude that even a heinous crime was evidence of irretrievably depraved character.”<sup>111</sup> This potential for rehabilitation underscores the importance of making intervention decisions for this population using the best evidence available about “what works” in justice system responses.<sup>112</sup>

## PRINCIPLES OF EFFECTIVE ADOLESCENT JUSTICE PRACTICE

Research has demonstrated that institutional confinement grounded in purely punitive principles has little effect on, and in some cases may even increase youth recidivism.<sup>113</sup> Studies have found that confinement in the absence of therapeutic and other developmentally appropriate programming can provide opportunities for youth to learn new delinquent skills and attitudes.<sup>114</sup>

There is strong agreement across studies that programs with a rehabilitative or therapeutic orientation—such as cognitive-behavioral therapy, skill-building, and mentoring programs—are associated with the greatest reductions in recidivism.<sup>115</sup> Interventions yield the most striking results when they target high-risk offenders,

<sup>108</sup> *Roper v. Simmons*, 543 US 551 (2005).

<sup>109</sup> *Graham v. Florida*, 130 S. Ct. 2011 (2010).

<sup>110</sup> *Miller v. Alabama and Jackson v. Hobbs*, 132 S. Ct. 2455 (2012).

<sup>111</sup> Cauffman and Steinberg, “Emerging Findings,” 438.

<sup>112</sup> Arya Neelum, *State Trends: Legislative Changes from 2005 to 2010 Removing Youth from the Adult Criminal Justice System* (Washington, DC: Campaign for Youth Justice, 2011).

<sup>113</sup> Mark W. Lipsey, “The Primary Factors that Characterize Effective Interventions with Juvenile Offenders: A Meta-Analytic Overview,” *Victims & Offenders* 4, no. 2 (April 2009): 124–47; Jeffrey A. Butts, Gordon Bazemore, and Aundra Saa Meroe, *Positive Youth Justice: Framing Justice Interventions Using the Concepts of Positive Youth Development* (Washington, DC: Coalition for Juvenile Justice, 2010); Brent B. Benda and Connie L. Tollett, “A Study of Recidivism of Serious and Persistent Offenders Among Adolescents,” *Journal of Criminal Justice* 27, no. 2 (March–April 1999): 111–26; and Mark W. Lipsey and Francis T. Cullen, “The Effectiveness of Correctional Rehabilitation: A Review of Systematic Reviews,” *Annual Review of Law and Social Science* 3 (December 2007): 297–320.

<sup>114</sup> Justice Policy Institute, *The Costs of Confinement: Why Good Juvenile Justice Policies Make Good Fiscal Sense* (May 2009).

<sup>115</sup> Lipsey, “The Primary Factors.”

and when they aim to address needs such as family problems, negative peer associations, and antisocial attitudes that may underlie delinquent behavior.<sup>116</sup>

### **Risk, Need, Responsivity**

Research has been able to identify standards to which the most effective programs tend to conform, yielding a set of “evidence-based principles” for juvenile justice practice.<sup>117</sup> Three of these, the principles of risk, needs, and responsivity, are collectively referred to as the “RNR model,” and they correspond to the following ideas:<sup>118</sup>

1. **Risk Principle:** According to the risk principle, services and supervision should be provided in direct proportion to an offender’s risk of reoffending, with lower-risk youth receiving less-intensive interventions and higher-risk youth receiving interventions of higher intensity. It also warns against placing youth in settings that are more restrictive than necessary for their actual level of risk, which can yield counterproductive results in terms of increased recidivism.<sup>119</sup> According to this principle, more restrictive programming and supervision should be concentrated on higher-risk youth.
2. **Need Principle:** The need principle states that treatment and programming should be administered to youth based on their assessed criminogenic needs. Criminogenic needs are factors that are related to the risk of reoffending but are amenable to change.<sup>120</sup> Consequently, if a criminogenic need is addressed, it can lower a youth’s risk level. Examples of criminogenic factors are time spent with antisocial peers and truancy.
3. **Responsivity Principle:** Finally, the responsivity principle states that interventions should be tailored to a youth’s learning style, level of motivation, abilities, and strengths. In other words, services should be delivered in the manner to which youth will be most receptive.

Research has consistently shown that programs and practices that are grounded in the RNR model have much larger effects on recidivism than those that are not.<sup>121</sup> In fact, one meta-analysis estimated that programs that depart from these principles have little to no impact on recidivism, while those that conform to them are associated with an average reduction in recidivism of 50 percent.<sup>122</sup>

Implicit in the RNR model is a need for validated assessments that can provide decision-makers with accurate information on the risks and needs of the youth they serve. Accordingly, the use of risk and needs assessments has increased dramatically in the United States over the last several decades. In the 1990s, only 33 percent of

<sup>116</sup> D. A. Andrews, et al., “Does Correctional Treatment Work? A Clinically Relevant and Psychologically Informed Meta-Analysis,” *Criminology* 28, no. 3 (1990): 369–404.

<sup>117</sup> D. A. Andrews and James Bonta, *The Psychology of Criminal Conduct*, fourth ed. (New Providence, NJ: LexisNexis, 2006).

<sup>118</sup> James Bonta and D. A. Andrews, “Risk-Need-Responsivity Model for Offender Assessment and Rehabilitation,” report for Public Safety Canada, 2007.

<sup>119</sup> D. A. Andrews and James Bonta, “Rehabilitating Criminal Justice Policy and Practice,” *Psychology, Public Policy, and Law* 16, no. 1 (2010): 39–55.

<sup>120</sup> By definition, *criminogenic* means associated with criminality or criminal behavior.

<sup>121</sup> Andrews and Bonta, *The Psychology of Criminal Conduct*; Andrews, Zinger, Hoge, Bonta, Gendreau, and Cullen, “Does Correctional Treatment Work?”; Craig Dowden and D. A. Andrews, “What Works in Young Offender Treatment: A Meta-Analysis,” *Forum on Corrections Research* 11, no. 2 (May 1999): 21–24; and Paul Gendreau, Paula Smith, and Sheila A. French, “The Theory of Effective Correctional Intervention: Empirical Status and Future Directions,” in Francis T. Cullen, John Paul Wright, and Kristie R. Blevins, eds., *Taking Stock: The Status of Criminological Theory* (New Brunswick, NJ: Transaction Publishers, 2006), 419–46.

<sup>122</sup> Andrews and Bonta, *The Psychology of Criminal Conduct*.



states used a risk or needs assessment in some capacity in the juvenile justice system; by 2008 that number had increased to 86 percent.<sup>123</sup>

In juvenile justice, risk and needs assessment is the practice of using objective tools to help guide decision making by estimating the likelihood of future delinquent behavior and informing the most appropriate interventions to reduce that risk. These tools include a series of questions—completed by juvenile justice staff through interviews with youth and their family members, record reviews, and other sources of collateral information. Risk assessment can be implemented at different points of juvenile justice processing—for example, to inform early diversion decisions, to inform detention decisions while a case is pending in court, or to guide the appropriate level of supervision services after a delinquency determination is made.

Youth can be evaluated on static risk factors that do not change over time (*e.g.*, age of first arrest) and on dynamic criminogenic need factors that are more amenable to change over time through intervention and programming (*e.g.*, school performance). Based on the responses on the various factors of the tool, youth are given a score classifying them into one of three risk categories: low, medium, or high risk of re-offense. Best practice indicates that the resulting scores should be used in combination with professional judgment and expertise to help guide case planning and case management.<sup>124</sup>

While risk assessment has been shown to be an effective tool to inform decisions about which interventions to use with particular youth, the availability of effective interventions to reduce those risks has also been shown to be a critical aspect of an effective justice response.

In 2010, the Center for Juvenile Justice Reform at Georgetown University published “*Improving the Effectiveness of Juvenile Justice Programs: A New Perspective on Evidence-Based Practice.*”<sup>125</sup> Drawing on findings from a meta-analysis including over 500 studies examining program effects on recidivism outcomes (*i.e.*, rearrest, conviction, return to court supervision, etc.), the report identified best practices in juvenile justice programming.<sup>126</sup>

Research results revealed the following:

***Program intensity should match recidivism risk.*** The authors found that greater reductions in recidivism occurred among youth who were most at risk for recidivating (*i.e.*, youth who had more prior offenses and more serious current and prior offense charges). Thus, they concluded that more intensive programming should be reserved for high-risk youth, and low-risk youth should be channeled into less-intensive and less-costly programs because the overall effects of programs on their subsequent behavior are, on average, minimal, compared to effects among young people in the high-risk category.

<sup>123</sup> Craig S. Schwalbe, “A Meta-Analysis of Juvenile Justice Risk Assessment Instruments: Predictive Validity by Gender,” *Criminal Justice and Behavior* 35 (October 2008): 1367–81; and P. Griffin and M. Bozynski, *National Overviews: State Juvenile Justice Profiles* (Pittsburgh: National Center for Juvenile Justice, 2003).

<sup>124</sup> Gina M. Vincent, Laura S. Guy, and Thomas Grisso, *Risk Assessment in Juvenile Justice: A Guidebook for Implementation* (Models for Change, 2012).

<sup>125</sup> Mark W. Lipsey, James C. Howell, Marion R. Kelly, Gabrielle Chapman, and Darin Carver, *Improving the Effectiveness of Juvenile Justice Programs: A New Perspective on Evidence-Based Practice* (Center for Juvenile Justice Reform, 2010). <<http://cjjr.georgetown.edu/pdfs/ebp/ebppaper.pdf>> (23 July 2014).

<sup>126</sup> A meta-analysis allows researchers to evaluate average program effects on a given outcome by pooling data across multiple studies. This enables researchers to make general claims about a given type of program (*e.g.*, diversion) on particular outcomes (*e.g.*, rearrest). The types of programs included in this meta-analysis varied; some were diversion programs, but not all. Nevertheless, the methodological approach allowed the researchers to look at effect by program type, and they found no differences in any of the best practice domains specified in the text.

***Therapeutic programming achieves greater reductions in recidivism than interventions organized around control and supervision.*** In this analysis, the authors found that programs generally assume one of two philosophical approaches to reducing future juvenile justice involvement: therapeutic (i.e., counseling, mentoring, support services) or control-oriented (i.e., programs seeking to instill discipline or providing intensive supervision and monitoring). Categorizing programs as such, they found that, regardless of risk level, interventions classified as therapeutic yielded greater reductions in recidivism than programs designed only to discipline or control young people’s behavior.

***Generic program types as well as “brand-name” programs show evidence of success.*** Programming used with youth who have been arrested ranges from locally developed models of intervention to model programs that are rigorously evaluated and proprietary in nature and known nationally by their brand names.<sup>127</sup> Through their analysis, the authors identified a range of service types correlated with reductions in recidivism risk. The authors caution that brand-name services are not necessarily better than generic services, citing results that generic family counseling was often equally as effective as Functional Family Therapy, a well-established, evidence-based response to juvenile justice involvement. They asserted that program and service alignment with needs was more important than the level of program notoriety. The authors state “a model program should generally be a good choice, provided that one is available and can be implemented with fidelity.”<sup>128</sup>

***Program implementation affects success.*** Findings showed that the effectiveness of program implementation affected participants’ recidivism outcomes. First, the authors found that the amount of programming and services young people received was correlated with recidivism outcomes. Making a parallel to medicine, they argued that insufficient program “dosage” may reduce program effectiveness such that youth who do not receive a full dose of programming may experience less of a reduction in recidivism than those who receive the program in its entirety, or may experience no reduction in recidivism at all. Second, they found that quality of service provision influenced recidivism outcomes. Specifically, results showed that youth in programs with high dropout rates, frequent staff turnover, poorly trained personnel, and incomplete service delivery experienced lower reductions in recidivism risk than youth who participated in well-implemented programs. Therefore, ongoing quality assurance regarding program implementation is critical.

This research provides a framework for developing interventions that are likely to reduce recidivism among youth. In addition, a robust body of research supports evidence-based interventions to divert juvenile cases from court processing, as a response to findings of delinquency, and to ensure successful re-entry following a period of out-of-home placement. The following programs, when implemented with fidelity to their model, have been shown to reduce recidivism among teenagers, including 16- and 17-year-old youth.<sup>129</sup>

<sup>127</sup> Brand-name model programs include nationally known evidence based interventions such as Multisystemic Therapy, Functional Family Therapy, and Aggression Replacement Training.

<sup>128</sup> Lipsey, “The Primary Factors,” 26.

<sup>129</sup> Because most states already include 16- and 17-year-olds in their juvenile justice systems, most of the research analyzing program efficacy includes these older youth in the population served.

## **Effective Program Models**

Strong evidence has shown that a number of community-based interventions are effective in reducing recidivism rates, while also improving mental health and family functioning outcomes. These interventions have been 1) rigorously validated through experimental studies, 2) found to have significant deterrent effects, 3) successfully replicated in multiple locations, and 4) have sustained outcomes for at least one year.

### **MULTISYSTEMIC THERAPY**

Two proven interventions are Multisystemic Therapy and Family Functional Therapy.<sup>130</sup> Unique to these approaches is the fact that they both identify and address key risk factors in a juvenile's life. They also present flexibility in modalities that allow therapists to tailor interventions to a youth and his family's strengths and weaknesses. These interventions also maintain a strict quality assurance through training of providers, well-specified protocols, and routine monitoring of outcomes.<sup>131</sup>

MST is a home-based therapy in which the therapist works several times a week with the entire family to meet a youth's treatment needs. Under the MST model, therapists are available 24/7 to the family. They concentrate on parental and family engagement and encourage the family to take the lead in setting treatment goals. Ultimately, the therapist guides the family toward accomplishing the identified goals. The average length of treatment under the MST model is four months.

The target population for MST is youth aged 12 to 17, including violent and chronic offenders charged with serious criminal offenses. MST has demonstrated a number of measurable outcomes: 25–70 percent reductions in long-term rearrest rates; 47–64 percent reductions in out-of-home care stays for youth; improved family functioning; increased school attendance; decreased psychiatric and substance abuse symptoms; and reduced offending by siblings.<sup>132</sup>

### **FUNCTIONAL FAMILY THERAPY**

FFT is a family-based intervention model that begins with engagement and assessment of the youth's problem behaviors and the relationships within the youth's family which are the context for those behaviors, and each are addressed with family therapy interventions. The intensity of contact can range from eight to 30 sessions over the course of three months, depending on the severity of the behavioral and relational issues.

FFT's target population is youth aged 11 to 17, including youth who are at risk for delinquency, violence, substance use, or other behavior problems, and those who have been charged with a delinquent offense. FFT has demonstrated 20–60 percent reductions in recidivism rates, a significant reduction in sibling reoffending, and a reduction in youth's marijuana usage.<sup>133</sup>

<sup>130</sup> Frank Tedeschi, Jennifer Havens, Sylvia Rowlands, Raising the Age of Adult Court Jurisdiction in New York State: Recommendations for the Mental Health Care of 16- and 17-year-old Juvenile Offenders. Unpublished memo to the Commission, September 1, 2014, 1.

<sup>131</sup> *Ibid.*, 2.

<sup>132</sup> Scott W. Henggeler, Gary B. Melton, and Linda A. Smith, "Family Preservation Using Multisystemic Therapy: An Effective Alternative to Incarcerating Serious Juvenile Offenders," *Journal of Consulting and Clinical Psychology* 60, no. 6 (1992): 953–61; Charles M. Borduin, et al., "Multisystemic Treatment of Serious Juvenile Offenders: Long-Term Prevention of Criminality and Violence," *Journal of Consulting and Clinical Psychology* 63, no. 4 (1995): 569–78; and Jane Timmons-Mitchell, et al., "An Independent Effectiveness Trial of Multisystemic Therapy With Juvenile Justice Youth," *Journal of Clinical Child and Adolescent Psychology* 35, no. 2 (2006): 227–36.

<sup>133</sup> Donald A. Gordon, et al., "Home-Based Behavioral-Systems Family Therapy with Disadvantaged Juvenile Delinquents," *American Journal of Family Therapy* 16, no. 3 (1988): 243–55; and Thomas L. Sexton and Charles W. Turner, "The Effectiveness of Functional Family Therapy for Youth with Behavioral Problems in a Community Practice Setting," *Journal of Family Psychology* 24, no. 3 (June 2010): 339–48.

## **COGNITIVE BEHAVIORAL THERAPY (CBT)**

CBT is not one program model, but rather a theoretical approach to treatment in which the therapist focuses on addressing a youth's emotions and behaviors by creating changes in his or her thought processes. It is action-oriented because the client is often tasked with using specific strategies to address problems. CBT has been adapted to address specific problems such as substance abuse, trauma, and depression. Some programs are highly structured and use prescriptive manuals to guide treatment while others rely on the individual therapist's approach.

Research has shown that CBT has produced a 2.5 percent average reduction in juvenile recidivism rates. Additionally, CBT has been shown to correlate with improvements on problem-specific metrics (e.g., anxiety levels, depression, substance abuse, social functioning, etc.).<sup>134</sup>

## **BRIEF STRATEGIC FAMILY THERAPY (BSFT)**

The BSFT model provides family therapy sessions that address problematic behaviors in youth as well as the relationships among other family members. Therapy focuses on improving the parent-child interaction, providing parental training, and improving skills in conflict resolution and communication strategies. BSFT is typically delivered in 12–16 family sessions. The targeted youth population ranges in age from 12 to 18.

Research indicates that in comparison with control groups, BSFT intervention provides more engagement in therapy, reduction in conduct problems, reduction in socialized aggression, reduction in substance use, and better family functioning.<sup>135</sup>

## **AGGRESSION REPLACEMENT TRAINING (ART)**

ART is a cognitive behavioral intervention program that addresses social skill competencies, moral reasoning, anger management, and reducing aggressive behavior. The program runs for 30 hours across a 10-week period. Therapists administer the program three times per week in groups of 8-12 youth. ART's target population is youth aged 11-17. Youth who participate in ART are typically chronically aggressive youth. This group can include incarcerated youth and youth with clinical behavioral disorders.

Outcome studies on ART have shown a number of positive changes in youth, including a 16–24 percent reduction in felony recidivism rates, improvement in social skills and moral reasoning, and improvement in youths' identified problem behaviors.<sup>136</sup>

<sup>134</sup> Washington State Institute for Public Policy, "Benefit-Cost Results: Cognitive Behavioral Therapy," 2014, <<http://www.wsipp.wa.gov/BenefitCost>> (11 December 2014); and Steve Aos, Marna Miller, and Elizabeth Drake, *Evidence-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs, and Crime Rates* (Olympia, WA: Washington State Institute for Public Policy, 2006), <<http://www.wsipp.wa.gov/ReportFile/952>> (11 December 2014).

<sup>135</sup> National Registry of Evidence-Based Programs and Practices, "Intervention Summary: Brief Strategic Family Therapy," <<http://www.nrepp.samhsa.gov/ViewIntervention.aspx?id=151>> (11 December 2014).

See also generally National Institute of Justice, "Program Profile: Brief Strategic Family Therapy," <<http://www.crimesolutions.gov/ProgramDetails.aspx?ID=245>> (11 December 2014); Michael S. Robbins, et al., "Brief Strategic Family Therapy Versus Treatment as Usual: Results of a Multisite Randomized Trial for Substance-Using Adolescents," *Journal of Consulting and Clinical Psychology* 79, no. 6 (December 2011): 713–27; J. Douglas Coatsworth, Daniel A. Santisteban, Cami K. McBride, and José Szapocznik, "Brief Strategic Family Therapy Versus Community Control: Engagement, Retention, and an Exploration of the Moderating Role of Adolescent Symptom Severity," *Family Process* 40, no. 3 (Fall 2001): 313–32; and Daniel A. Santisteban, Angel Perez-Vidal, J. Douglas Coatsworth, William M. Kurtines, Seth J. Schwartz, Arthur LaPerriere, and José Szapocznik, "The Efficacy of Brief Strategic Family Therapy in Modifying Hispanic Adolescent Behavior Problems and Substance Use," *Journal of Family Psychology* 17, no. 1 (March 2003): 121–33.

<sup>136</sup> Washington State Institute for Public Policy, *Outcome Evaluation of Washington State's Research-Based Programs for Juvenile Offenders*, 2004, <<http://www.wsipp.wa.gov/rptfiles/04-01-1201.pdf>> (11 December 2014); and Knut Gundersen and Frode Svartdal, "Aggression Replacement Training in Norway: Outcome Evaluation of 11 Norwegian Student Projects," *Scandinavian Journal of Educational Research* 50, no. 1 (February 2006): 63–81.

## RESTORATIVE MEDIATION AND COMMUNITY SERVICE

Under these programming models, youth are given the opportunity to “give back,” either directly to the person they have harmed or to their community. Through restorative mediation, the victim and the youth charged with the offense work with a mediator to determine an appropriate plan for the youth to make restitution. In community service, the youth contributes to address communal needs as a form of restitution. Both programs focus on the needs of the victim, the youth charged with the offense, and the community, while de-emphasizing punishment.

The types of programs and populations that encompass restorative mediation and community service can vary. Victim-offender mediation and community service have shown a reduction in recidivism rates in participants.<sup>137</sup> In one study, victim-offender rehabilitation programs’ participants showed recidivism reductions of at least 10 percent in five out of six sites. “Recidivism rates ranged from 21 percent to 105 percent lower than those of the comparison groups at these five sites.”<sup>138</sup> A national study of restitution effects found,

Within two of the counties, program participants had fewer contacts with law enforcement than control groups sentenced to probation. Within the remaining counties, there was no recidivism difference between youth entering restitution and youth entering probation. The cost of restitution was less than that of probation, so no difference is still deemed a positive finding.<sup>139</sup>

## SUBSTANCE ABUSE TREATMENT

Substance abuse treatment programs may include a variety of models, including therapeutic communities, residential treatment, cognitive behavior therapy, multidimensional family therapy, and group and individual counseling. Some programs have been evaluated rigorously and are considered “evidence-based,” and others rely on traditional models of counseling that have been subjected to little outcome evaluation.<sup>140</sup> Programs have as their primary goal assisting youth with stopping or reducing their substance use, but many also address “co-occurring” mental health disorders. Outcomes for substance abuse programs vary depending on the type of program. Those that involve family, use CBT, and use techniques to enhance the motivation of the client to change have yielded the best results in terms of reductions in substance use.<sup>141</sup> Additionally, in one study, “only interventions with family involvement produced statistically significant reductions in nondrug offending (compared to treatments without family involvement).”<sup>142</sup>

<sup>137</sup> Washington State Institute for Public Policy, *Outcome Evaluation of Washington State’s Research-Based Programs for Juvenile Offenders*, 2004, <<http://www.wsipp.wa.gov/rptfiles/04-01-1201.pdf>> (11 December 2014); and Knut Gundersen and Frode Svartdal, “Aggression Replacement Training in Norway: Outcome Evaluation of 11 Norwegian Student Projects,” *Scandinavian Journal of Educational Research* 50, no. 1 (February 2006): 63–81; and James Rieland, “Balanced and Restorative Justice in Allegheny County Juvenile Court,” Allegheny County Juvenile Court, Pittsburgh, 2003.

<sup>138</sup> Audrey Evje and Robert C. Cushman, “A Summary of the Evaluations of Six California Victim Offender Rehabilitation Programs,” report by the Judicial Council of California, Administrative Office of the Courts, 2000.

<sup>139</sup> Anne L. Schneider, “Restitution and Recidivism Rates of Juvenile Offenders: Results from Four Experimental Studies,” *Criminology* 24, no. 3 (August 1986): 533–53.

<sup>140</sup> Howard A. Liddle, Gayle A. Dakof, Kenneth Parker, Guy S. Diamond, Kimberly Barrett, and Manuel Tejada, “Multidimensional Family Therapy for Adolescent Drug Abuse: Results of a Randomized Clinical Trial,” *American Journal of Drug and Alcohol Abuse* 27, no. 4 (2001): 651–88; Howard A. Liddle and Cynthia Rowe, “Multidimensional Family Therapy for Adolescent Drug Use,” *Addictions Newsletter* 7, no. 2 (Spring 2000); and Ken C. Winters, Andria M. Botzet, and Tamara Fahnhorst, “Advances in Adolescent Substance Abuse Treatment,” *Current Psychiatry Reports* 13, no. 5 (2011): 416–21.

<sup>141</sup> Mark W. Lipsey, Emily E. Tanner-Smith, and S. J. Wilson, *Comparative Effectiveness of Adolescent Substance Abuse Treatment: Three Meta-Analyses with Implications for Practice* (Nashville, TN: Peabody Research Institute, 2010); Washington State Institute for Public Policy, “Benefit-Cost Results: Substance Abuse,” 2014, <<http://www.wsipp.wa.gov/BenefitCost>> (11 December 2014); and Drug Strategies, *Treating Teens: A Guide to Adolescent Drug Programs* (Washington, DC: Drug Strategies, 2003).

<sup>142</sup> Laurie Chassin, et al., “Substance Use Treatment Outcomes in a Sample of Male Serious Juvenile Offenders,” *Journal of Substance Abuse Treatment* 36, no. 2 (March 2009): 183–94.

## MENTORING

Mentoring can be structured through an individual match between a youth and an adult mentor or in a group setting where a number of youth interact with a number of adult mentors. Mentors spend time with the youth, and may address specific goals regarding school, work, or communication, and/or participate in recreational activities.<sup>143</sup> Programs usually serve youth ranging in age from 6 to 18 and often target youth who are at risk for delinquency, violence, substance use, or other behavior problems.<sup>144</sup>

Mentoring programs have been shown to: contribute to a reduction in crime and delinquency, with the ranges varying depending on the type of program; a reduction in the use of alcohol and drugs by youth; positive effects on education; and positive effects on social skills and peer relationships.<sup>145</sup> In one study, young, high-risk males on probation showed a decrease of 73 percent in recidivism.<sup>146</sup> In another, mentored youth had lower rates of recidivism than control groups up to 12 months after commencement of programming. After three years, although the difference between mentored youth and control groups shrinks, mentored youth still maintain lower rates of recidivism.<sup>147</sup>

## YOUTH OR TEEN COURT

Youth or teen courts function as a peer-based accountability mechanism outside of the formal court structure. Youth volunteers are trained to operate as jurors, lawyers, and judges in these courts, under the supervision of adult staff. Most of these courts operate to decide on a consequence after the youth has admitted guilt, and typical sentences may include restorative justice responses such as restitution, community service, or public awareness projects. Youth courts usually work with teenagers who have committed various low-level offenses and who are legally eligible for diversion.<sup>148</sup>

Outcomes in youth courts vary depending on the specific court. Many demonstrate decreased recidivism rates, decreased substance abuse, and increased pro-social attitudes.<sup>149</sup> A six-month follow-up analysis of recidivism in four U.S. states showed that youth engaged with teen courts had a six percent to nine percent recidivism rate, while a control group of similar youth processed within the juvenile justice system in the traditional manner had an overall rate of 18 percent.<sup>150</sup>

The range of programs described above is largely not available under the current structure that processes all 16- and 17-year-olds in criminal court. While the Family Court process is linked to effective programming at probation diversion, through alternative-to-detention programs while cases are pending in court, and as

<sup>143</sup> Jean E. Rhodes, et al., "A Model for the Influence of Mentoring Relationships on Youth Development," *Journal of Community Psychology* 34, no. 6 (2006): 691–707.

<sup>144</sup> David L. DuBois, et al., "Effectiveness of Mentoring Programs for Youth: A Meta-Analytic Review," *American Journal of Community Psychology* 30, no. 2 (April 2002): 157–97.

<sup>145</sup> Patrick Tolan, David Henry, Michael Schoeny, Arin Bass, Peter Lovegrove, and Emily Nichols, "Mentoring Interventions to Affect Juvenile Delinquency and Associated Problems: A Systematic Review," *Campbell Collaboration Library of Systematic Reviews* 9, no 10 (2013). doi:10.4073/csr.2008.16. <<http://campbellcollaboration.org/lib/project/48/>> (11 December 2014); David L. DuBois, Nelson Portillo, Jean E. Rhodes, Naida Silverthorn, and Jeffrey C. Valentine, "How Effective Are Mentoring Programs for Youth? A Systematic Assessment of the Evidence," *Psychological Science in the Public Interest* 12, no. 2 (2011): 57–91; and Roger E. Thomas, Diane Lorenzetti, and Wendy Spragins, "Mentoring Adolescents to Prevent Drug and Alcohol Use," *Cochrane Database of Systematic Reviews*, no. 11 (November 2011). doi:10.1002/14651858.CD007381.pub2.

<sup>146</sup> Richard H. Moore, "Effectiveness of Citizen Volunteers Functioning as Counselors for High-Risk Young Male Offenders," *Psychological Reports* 61, no. 3 (January 1988): 823–30.

<sup>147</sup> Elizabeth K. Drake and Robert Barnoski, *Recidivism Findings for the Juvenile Rehabilitation Administration's Mentoring Program: Final Report* (Olympia, WA: Washington State Institute for Public Policy, 2006).

<sup>148</sup> William R. Shaw, "Something Old, Something New: A Personal Story of Youth Court Origins," *New York Bar Association Journal* 83, no. 1 (January 2011): 15–17.

<sup>149</sup> Washington State Institute for Public Policy, "Benefit-Cost Results: Teen Court," 2014 <<http://www.wsipp.wa.gov/BenefitCost>> (11 December 2014); and Aos, Miller, and Drake, *Evidence-Based Public Policy Options*.

<sup>150</sup> Jeffrey A. Butts, Janeen Buck, and Mark B. Coggeshall, *The Impact of Teen Court on Young Offenders* (Washington, DC: Urban Institute, 2002)

dispositional options for youth who are ultimately adjudicated delinquent, 16- and 17-year-olds rarely obtain access to these kinds of interventions in the current system. The Commission believes that connection of 16- and 17-year-olds to these kinds of interventions known to reduce recidivism is a critical outcome that should result from raising the age.

## CHAPTER 3: RAISING THE AGE OF JUVENILE JURISDICTION

---

Setting the age for juvenile jurisdiction is the threshold issue for the Commission. It involves:

- ▶ Establishing an upper age for delinquency jurisdiction;
- ▶ Establishing a lower age for delinquency jurisdiction; and
- ▶ Developing a timeline and structure for implementation.

Analysis supporting the Commission’s recommendations as to what both the upper and lower ages should be for juvenile jurisdiction included an examination of other states’ practices and an even more detailed investigation into the experience in certain states that recently raised their age. Lessons from other states were also culled to develop a recommendation on timing for implementation. Finally, the Commission reviewed available research on the capacity for the very young to participate as a defendant in court, the current population of very young youth adjudicated delinquent in New York, and available alternatives to delinquency processing to inform a recommendation on the lower age for juvenile jurisdiction.

This chapter details the national landscape of both upper and lower ages of juvenile court jurisdiction, provides an overview of the way all states continue to carve out the most serious offenses for criminal system processing, describes lessons learned from recent reform experiences in other states, outlines necessary statutory changes to raise the age, provides a basis and framework for removing delinquency jurisdiction for the very young, and suggests a structure to ensure that implementation is effective and coordinated across the many system stakeholders.

### THE UPPER AGE OF JUVENILE JURISDICTION

New York remains one of only two states in the nation that set the age of criminal responsibility at 16, prosecuting all 16- and 17-year-olds as adults no matter the alleged offense.<sup>151</sup> This means that any 16- or 17-year-old arrested for a criminal offense must be processed in the adult criminal justice system with no opportunity for juvenile treatment of his or her case. Criminal justice processing generates a variety of negative impacts for 16- and 17-year-olds, including the absence of interventions shown to be effective with teenagers. New York’s age of criminal responsibility also creates the challenges of arrest without the counsel of a parent, immediate movement to court processing without opportunity for probation diversion, incarceration in adult jails and prisons, and the potential for a lifelong criminal record for 16- and 17-year-olds, as discussed in the chapters that follow. The Commission finds compelling evidence to support an increase in the age of juvenile jurisdiction to 18 for most crimes.

The bright line for criminal court processing at age 16 is substantially out of sync with national norms and recent trends to bring the justice system response to adolescents in line with the research about what works with young offenders. Recent experiences in Illinois and Connecticut have shown that 16- and 17-year-olds can be successfully incorporated into the juvenile justice system without generating unmanageable system impacts and to the benefit of public safety.

Forty states and Washington, DC, set the age of juvenile jurisdiction at 18, and eight states draw the line at 17.<sup>152</sup> Since 2010, five states have passed legislation raising the age of juvenile court jurisdiction to allow older youth who were previously tried automatically in the adult court system to be processed in the juvenile justice system.<sup>153</sup> In addition, from 2005 to 2014, 12 states enacted laws narrowing the number of youth whose cases are processed in adult court.<sup>154</sup>

<sup>151</sup> Office of Juvenile Justice and Delinquency Prevention (OJJDP), *Statistical Briefing: Juvenile Justice System Structure & Process, Jurisdictional Boundaries* (Washington, DC: OJJDP, 2002).

<sup>152</sup> *Ibid.* While its current age of criminal responsibility is 17, New Hampshire raised the age in the 2014 legislative session to 18, effective July 1, 2015.

<sup>153</sup> Connecticut, Illinois, Massachusetts, Mississippi, and New Hampshire. See Carmen Daugherty, *State Trends: Updates from the 2013–2014 Legislative Session* (Washington, DC: Campaign for Youth Justice, 2014), 2. (Hereafter, referred to as *State Trends: 2013–2014*.)

<sup>154</sup> Arizona, Colorado, Connecticut, Delaware, Illinois, Nevada, Indiana, Utah, Virginia, Washington, Ohio, and Nebraska. *Ibid.*



Despite this trend toward processing the majority of youth in juvenile court, every state and Washington, DC, carve out offenses that are “transferred” to or processed in the first instance in adult criminal court. As described more fully in Chapter Five, these laws vary in mechanism (e.g., some states define categories of offenses that automatically originate in adult court; some states require a judge or prosecutor to determine which cases are sent from the juvenile to the adult court) as well as in scope (e.g., the number of offenses eligible for transfer, the ages at which youth are eligible for transfer).

At one end of the spectrum, California law gives juvenile court judges the discretion to transfer a youth to adult court for “any criminal offense.”<sup>155</sup> At the other end, New Mexico only statutorily excludes youth aged 15 and over who are charged with first-degree murder from juvenile court jurisdiction.<sup>156</sup> New York, when placed in this national context, draws the most extreme line by processing *all* offenses committed by 16- and 17-year-olds in criminal court.

As detailed in Chapter Five, the Commission concludes that New York State should provide interventions known to be effective for youth in a juvenile justice context for most 16- and 17-year-old youth while maintaining criminal court jurisdiction for the most serious crimes of violence.<sup>157</sup> The available evidence suggests that this balanced approach would reduce crimes committed and improve the prospects for youth to lead productive lives. How to most effectively operationalize this shift can be informed by experiences of recent states that have similarly “raised the age.”

## RECENT “RAISE THE AGE” REFORM EFFORTS IN OTHER STATES

As noted, five states (Connecticut, Mississippi, Illinois, Massachusetts, and New Hampshire), recently passed legislation to raise the age of juvenile jurisdiction.<sup>158</sup>

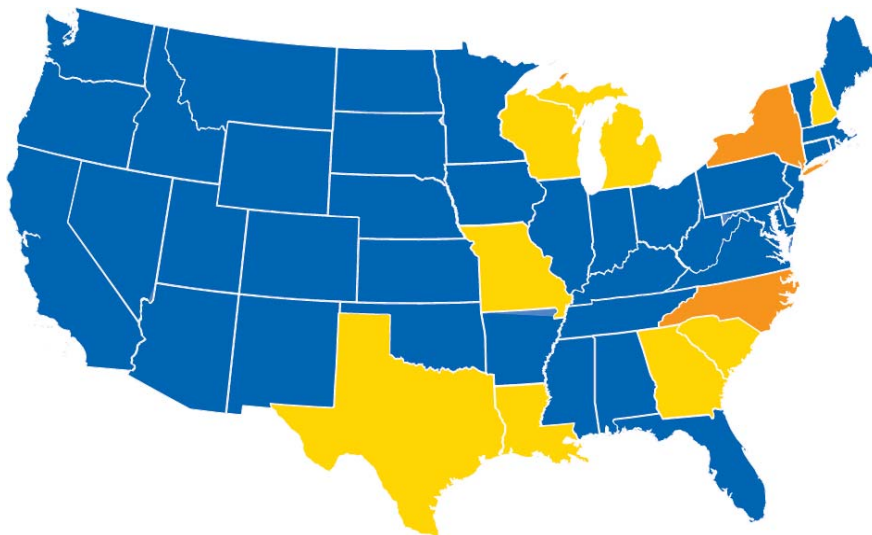
### Connecticut

As early as 2003, concerned stakeholders began conversations regarding how to raise the age of juvenile jurisdiction in Connecticut, which, at the time, had a standard like New York’s that handled all 16- and 17-year-olds in adult court.<sup>159</sup>

Opponents raised public safety concerns that the juvenile justice

## The Age of Criminal Responsibility Nationally

Age 16	New York and North Carolina
Age 17	Georgia, Louisiana, Michigan, Missouri, New Hampshire,* South Carolina, Texas, and Wisconsin
Age 18	Remaining 40 States and DC



\* New Hampshire will become 18 in July, 2015.

<sup>155</sup> Welf. & Inst. Code, Div. 2, Pt. 1, Ch. 2, Sec. 7

<sup>156</sup> New Mexico does allow for adult sanctioning of youth 14 and older who are adjudicated in juvenile court for the following broader range of crimes, while still defining that youth as a delinquent child: any felony committed by a juvenile with three previous felony adjudications arising from separate incidents within the preceding three years; first- or second-degree murder; assault with intent to commit a violent felony; kidnapping; aggravated battery; aggravated battery on a peace officer; aggravated battery on a household member; criminal sexual penetration; robbery; shooting at a dwelling or occupied building or shooting at or from a motor vehicle; dangerous use of explosives; abuse of a child that results in great bodily harm or death; aggravated burglary; or aggravated arson.

<sup>157</sup> A full discussion of this proposal is detailed in Chapter Five.

<sup>158</sup> In addition to New York, three states (Texas, North Carolina, and Wisconsin) are engaging in efforts, with varying degrees of success, to raise the age of juvenile court jurisdiction. See *State Trends: 2013–2014*, p. 2.

<sup>159</sup> Justice Policy Institute, “Juvenile Justice Reform in Connecticut: How Collaboration and Commitment Have Improved Public Safety and Outcomes for Youth,” Washington, DC: February, 2013. <[http://www.justicepolicy.org/uploads/justicepolicy/documents/jpi\\_juvenile\\_justice\\_reform\\_in\\_ct.pdf](http://www.justicepolicy.org/uploads/justicepolicy/documents/jpi_juvenile_justice_reform_in_ct.pdf)> 5 December 2014).

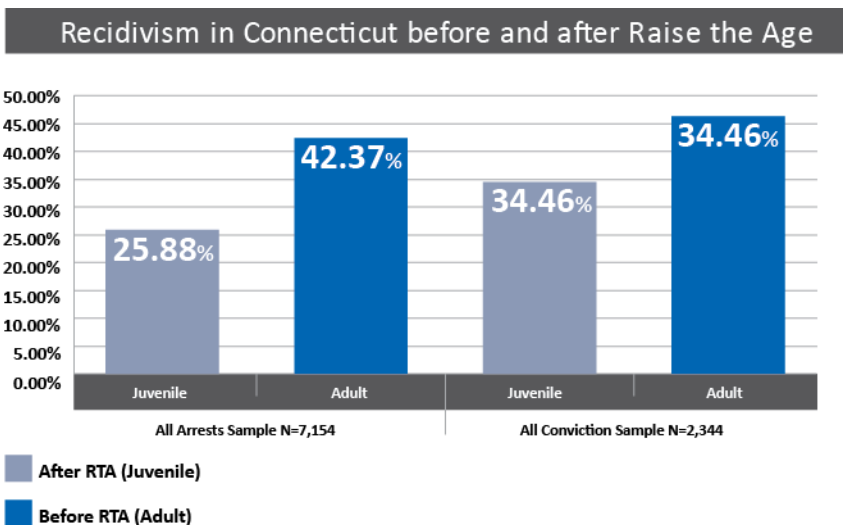
system was not equipped to handle the older adolescents, who would not be held accountable for their delinquent actions, and that the juvenile crime rate would skyrocket. System stakeholders feared that bringing 16- and 17-year-olds under juvenile jurisdiction would overload the juvenile justice system with a doubling of the juvenile population from 10,000 to 20,000 youth.

Following years of debate, stakeholder education, and compromise, the Connecticut legislature approved legislation in 2007 to raise the age of juvenile jurisdiction to 18, and set an effective date of January 2010.<sup>160</sup> When faced with a budget crisis, however, the legislature subsequently amended the law and prescribed a phased-in approach by which 16-year-olds entered the juvenile justice system in January 2010 as originally planned, and 17-year-olds entered the juvenile justice system in July 2012.<sup>161</sup> As a compromise, legislators left in place automatic transfer mechanisms that excluded the most serious violent offenders from juvenile court jurisdiction.<sup>162</sup>

The results are in from the Connecticut raise the age experience and refute the early fears about an increase in the numbers of young people who would flood the juvenile justice system. A comprehensive package of reforms that invested in robust, community-based diversion services and alternatives to confinement prevented the worst-case scenario, and these evidence-based programs have yielded even better results with the older adolescents than with their younger counterparts.

William H. Carbone, the Senior Lecturer and Director of Experiential Education at the Henry C. Lee College of Criminal Justice and Forensic Science at the University of New Haven, presented data to the Commission that show declines in arrests and court referrals following that state’s reforms. In addition, admissions to detention pending trial did not increase at anywhere near the expected levels, and, in fact, Connecticut was able to close a detention facility after its reforms. The concerns regarding the flooding of Connecticut’s long-term placement system also proved unwarranted; despite the inclusion of the older adolescents in the juvenile population, the number of commitments to state facilities has only marginally increased.<sup>163</sup> These results are attributed, at least in part, to Connecticut’s significant investment in effective diversion policies and programs.<sup>164</sup> Taken together, these results demonstrate that the juvenile justice system, when equipped with the right array of evidence-based programs, can effectively serve the older adolescent population without overwhelming the existing system.

The results of a recent study on the impact of shifting cases involving 16-year-olds to the



<sup>160</sup> Neelum Arya, *State Trends: Legislative Changes from 2005 to 2010—Removing Youth from the Adult Criminal Justice System* (Washington, DC: Campaign for Youth Justice, 2011), 29–30. (Hereafter, referred to as *State Trends: 2005–2010*.)

<sup>161</sup> Two statutorily mandated oversight bodies—the Connecticut Juvenile Justice Alliance (CTJJA) and the Juvenile Jurisdiction Planning and Implementation Coordinating Council (JJPICC)—coordinated key conversations and meetings both during and following passage of Connecticut’s “raise the age” process.

<sup>162</sup> The case of any child at least 14 charged with a capital felony, a Class A or B felony, or arson murder (defined as causing the death of another person while committing an act of arson), originates in juvenile court but is “automatically” transferred to superior court for arraignment. The juvenile court has no role other than to affirm that the child was at least 14 at the time of alleged commission and to appoint counsel if the child is indigent; the state’s attorney need not make a motion for transfer, and the child’s counsel is not permitted to make any argument or file any motion to oppose the transfer. If the state’s attorney requests it, the case of a child at least 14 charged with an unclassified felony or a Class C or D felony, must also be transferred to superior court, provided the court finds (without notice, a hearing, or any participation on the part of the child or his or her counsel) probable cause to believe the child committed the offense alleged.

<sup>163</sup> William H. Carbone, “Juvenile Justice Reform: The Connecticut Experience” (presentation, New York State Raise the Age Commission, New York, June 23, 2014). More detail on the arrest declines in Connecticut is presented in Chapter Ten, and additional detail on the reduced impact on detention and placement is provided in Chapter Eight.

<sup>164</sup> Additional detail on the Connecticut diversion efforts is provided in Chapter Four.

juvenile system in Connecticut, shown here, found that this reform also enhanced public safety. The study compared a matched sample of 16-year-olds processed as adults prior to the reform with those processed in the juvenile system as a result of the reform. Recidivism rates were significantly higher for those youth processed in the adult system, among both those who were arrested and those whose cases resulted in conviction.<sup>165</sup>

## Illinois

The concerns that preceded reform of the age of juvenile jurisdiction in Illinois mirrored those in Connecticut. As in Connecticut, those fears, related to threats to public safety and untenable levels of system expansion, were not realized after the reform. In 2010, Illinois passed legislation that removed 17-year-old misdemeanants from the criminal justice system and sent those cases to the juvenile court system.<sup>166</sup> The legislation statutorily required the Illinois Juvenile Justice Commission to conduct a study to explore the impact of including *all* 17-year-olds under juvenile jurisdiction.<sup>167</sup> In 2012, the resulting report detailing the impact of the 2010 legislation concluded that crime did not increase and that public safety was *not* adversely affected by including 17-year-old misdemeanants under juvenile jurisdiction.<sup>168</sup> Data provided in the report also showed that the anticipated significant increase in juvenile justice system workload did not materialize as initially projected.<sup>169</sup>

The report recommended that Illinois pass legislation to allow all 17-year-olds to fall under juvenile court original jurisdiction, with exceptions for youth charged with serious violent crimes.<sup>170</sup> As a result, felony-level 17-year-old offenders were included in the reforms in January 2014.<sup>171</sup> The Illinois mechanisms for transfer to adult court, which continue to carve out some youth cases for criminal court processing, remained the same when the age was raised.<sup>172</sup> The subset of cases that can still be transferred out of juvenile court, the minimum age of youth to whom the mechanism can be applied, and the crimes that trigger the transfer options are detailed here.

Stakeholders interviewed in the course of this Commission’s work commented that the phased approach (first adding misdemeanors and then felonies committed by 17-year-olds) used in

Illinois Crimes that Must Originate in Criminal Court for 16- and 17-Year-Olds
Escape or bail bond violation while subject to prosecution in criminal court.
First degree murder committed during the course of aggravated criminal sexual assault, criminal sexual assault, or aggravated kidnapping (but not including murder for which a child is merely held accountable).
First degree murder.
Aggravated criminal sexual assault, armed robbery with a firearm, aggravated vehicular hijacking committed with a firearm, or aggravated battery with a firearm in which the juvenile personally discharged the firearm.
Various acts qualifying as "unlawful use of weapons" (including carrying a concealed firearm, possessing a firearm in public, and selling, manufacturing, purchasing, or possessing any of a list of outlawed weapons) where the violation occurs on school grounds.
Illinois Crimes that Must be Transferred from Juvenile Court to Criminal Court for 16- and 17-Year-Olds
Any felony committed to further the criminal activities of an organized gang by a minor with a previous felony adjudication or conviction, as long as either the current or the previous felony is a forcible felony; any offense that would otherwise qualify for presumptive transfer (see below), if the child has a previous felony adjudication or conviction; aggravated discharge of a firearm on or near school property
Illinois Crimes with a Presumption for Waiver from Juvenile to Criminal Court for 16- and 17-Year-Olds
Class X felony other than armed violence; aggravated discharge of a firearm; armed violence with a firearm in connection with a class 1 or 2 felony committed in furtherance of the criminal activities of an organized gang; armed violence with a firearm in connection with a violation of any of various drug laws; and armed violence with a machine gun or other restricted weapon.
Class X felony violations of the Illinois Controlled Substances Act committed on school property, in a school conveyance, at a school activity, or near a school, or on or near public housing property; violations of the Illinois Controlled Substances Act committed on school property, in a school conveyance, at a school activity, or near a school, and involving delivery or intended delivery to persons under 17.

<sup>165</sup> Both of these findings are statistically significant and hold up in multivariate regression controlling for offense type/seriousness, prior record, gender, and race of the youth. See M. Kurlychek and E. Fowler, “Raise the Age: Evaluating Connecticut’s Experience” (unpublished manuscript, Microsoft Word file, 2014).

<sup>166</sup> Raising the Age to 18 for Juveniles Charged with Misdemeanors, IL PA 95-1031, 110<sup>th</sup> Cong. (2008). *State Trends: 2005–2010*, 30.

<sup>167</sup> Raising the Age of Juvenile Court Jurisdiction, IL PA 096-1199, 111<sup>th</sup> Cong. (2010).

<sup>168</sup> Illinois Juvenile Justice Commission, *Raising the Age of Juvenile Court Jurisdiction: The Future of 17-Year-Olds in Illinois’ Justice System* (Chicago: Illinois Juvenile Justice Commission, 2013).

<sup>169</sup> *Ibid.*, 30. Additional information on arrest trends is included in Chapter Ten. Additional information on detention and placement trends is included in Chapter Six.

<sup>170</sup> *State Trends: 2005–2010*, 30.

<sup>171</sup> *State Trends: 2005–2010*, 30; Carmen Daugherty, *State Trends—Legislative Victories from 2011–2013: Removing Youth from the Adult Criminal Justice System* (Washington, DC: Campaign for Youth Justice, 2013), 4. (Hereafter, referred to as *State Trends: 2011–2013*.)

<sup>172</sup> Illinois introduced legislation in the last legislative session—H.B. 4538, 98<sup>th</sup> Gen. Assemb., 2<sup>nd</sup> Reg. Session (Ill. 2014)—which would eliminate automatic, mandatory, and presumptive transfers to adult prosecution, making all transfers discretionary. More information on the types of transfer mechanisms used nationally can be found in Chapter Five.

Illinois gave additional time to build support among key stakeholders. Between the phases, however, as is also noted in the Illinois Commission’s report, there was some confusion among system officials as to which statute to apply to 17-year-olds.<sup>173</sup> As a result, Illinois representatives who presented their data to this Commission did not recommend phasing in implementation by type of crime.<sup>174</sup>

Some of the reduced impact on the juvenile placement system in Illinois following these reforms has been attributed to a financing incentive program called Redeploy Illinois.<sup>175</sup> Under Redeploy Illinois, the state increased funding to support community-based services as an alternative to out-of-home placement, setting a requirement that participating localities would reduce their use of state-operated placements by 25 percent. Localities have exceeded that requirement following implementation of the program, with participating sites reducing state commitments by 64 percent. Youth outcomes have also been positive with 73 percent of youth completing the community-based program and 66 percent of those youth categorized as successfully meeting most of their goals. Fewer than 13 percent of youth were terminated from the program because they had committed a new offense while in the program.<sup>176</sup> In addition, 61 percent of youth who completed the community-based program were not incarcerated during the three years following discharge from the program. This overall reduction in the use of placement facilitated the inclusion of the older youth in the placement system without overwhelming it.

Results from Illinois and Connecticut provide a promising model for raising the age without threatening public safety or overwhelming the juvenile system. Implementation of appropriate diversion structures, with resources to support effective community-based interventions, coupled with an increase in the age of juvenile jurisdiction, can reduce crime while eliminating the stigma of a criminal record for young people.

**Recent “Raise the Age” Efforts in Other States**  
 Three other states have also recently passed legislation to raise the age of juvenile jurisdiction as detailed on the right. Their reforms are too recent to offer significant outcome information at this time.

State		Effective Date
Mississippi	Senate Bill 2969 raised the age of criminal responsibility from 16 to 17 for misdemeanor offenses and felony offenses which do not trigger transfer to adult court. <sup>a</sup>	July 2011
Massachusetts	House Bill 1432 raised the age of criminal responsibility in Massachusetts from 17 to 18. All juvenile cases (for youth 17 and under) originate in juvenile court, unless the charge is first or second degree murder. <sup>b</sup>	September 2013
New Hampshire	House Bill 1624 raised the age of criminal responsibility from 17 to 18. Requires that cases originate in juvenile court, but does not eliminate the waiver of youth charged with serious violent crimes to adult court. <sup>c</sup>	July 2015

<sup>a</sup> Miss. Code Ann. § 43-21-151 Any act attempted or committed by a child, which if committed by an adult would be punishable under state or federal law by life imprisonment or death, will be in the original jurisdiction of the circuit court. Any act attempted or committed by a child with the use of a deadly weapon, the carrying of which concealed is prohibited by Section 97-37-1, or a shotgun or a rifle, which would be a felony if committed by an adult, will be in the original jurisdiction of the circuit court.

<sup>b</sup> H. 1432, 2013 Leg. 188th Sess. (Mass. 2013).

<sup>c</sup> Section 169-B:35-a(1)(c) of New Hampshire’s Public Safety and Welfare Law defines “Violent crime” as a “capital, first-degree or second-degree murder, attempted murder, manslaughter, aggravated felonious sexual assault, felonious sexual assault, first-degree assault, or negligent homicide committed in consequence of being under the influence of intoxicating liquor or controlled drugs, as these crimes are defined by statute.”

<sup>173</sup> Ibid.

<sup>174</sup> Candice Jones and Stephanie Kollmann, “Presentation to the New York State Commission on Youth, Public Safety & Justice: Raising the Age of Juvenile Court Jurisdiction in Illinois” (presentation, New York State Raise the Age Commission, New York, June 23, 2014).

<sup>175</sup> Redeploy Illinois provides services to youth between the ages of 13 and 18, who are at high risk of commitment to the Department of Juvenile Justice. Participating counties receive funds to build a continuum of care for youth in the juvenile justice system. Counties link youth to a wide array of needed services and supports within the community, as determined through an individualized needs assessment. Services are provided in the least restrictive manner possible and can include case management, court advocacy, education assistance, counseling, and crisis intervention. See Redeploy Illinois’ homepage, <<http://www.redeployillinois.org>> (5 December 2014).

<sup>176</sup> See Illinois Department of Human Services, “Redeploy Illinois Annual Report 2012–2013,” Chicago: March, 2014, <<https://www.dhs.state.il.us/page.aspx?item=70551>> (5 December 2014).

### **Statutory changes necessary to raise the age of juvenile jurisdiction**

The age of juvenile jurisdiction is set by both the New York State Penal Law definition of infancy and the definition of *juvenile delinquent* in the Family Court Act. Section 30.00 of the penal law currently defines the defense of infancy in this way:

Except as provided in subdivision two of this section [which carves out the Juvenile Offender crimes], a person less than sixteen years old is not criminally responsible for conduct.

In addition, section 301.2 of the Family Court Act defines a juvenile delinquent as follows:

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 for such conduct by reason of infancy, or (b) is the defendant in [a Juvenile Offender action removed to Family Court].

Both of these statutes must be changed to reference the age of eighteen instead of sixteen in order to bring New York State in line with the national standard on juvenile jurisdiction and the research on what is most effective in reducing youth crime. As the recent raise the age experiences in Connecticut and Illinois illustrate, these statutory changes then require other reforms, such as diversion and post-disposition programs and structures, to address the handling of 16- and 17-year-olds. The Commission finds these additional reforms critical to the reform effort and provides a detailed discussion of each reform in the chapters that follow.

#### **RECOMMENDATION:**

### **Raise the age of juvenile jurisdiction to 18, consistent with other states.**

Based on careful consideration of the full range of information and testimony received, the Commission recommends New York adopt legislation to raise the age of juvenile jurisdiction to 18. New York currently lags behind the national trend to process most offenses involving minors in juvenile court. Moving 16- and 17-year-olds under juvenile jurisdiction would align New York's justice system with other states, with recent evidence on the most effective approaches to reducing juvenile recidivism, and with the brain science research. Also consistent with other states, and as discussed in Chapter Five in detail, the Commission recommends reformed criminal court processing for young people charged with certain crimes of violence.

To ensure that all system stakeholders have time to prepare adequately for the effects of the reforms proposed in this report, a planning and preparation period would be essential in advance of the effective date of most sections of the legislation. As such, the Commission recommends that after passage in 2015, the legislation define a period of implementation preparation that would extend for the remainder of 2015 and the entirety of 2016. Following that period, the age of juvenile jurisdiction should be raised to 17 in 2017, and to 18 in 2018. All of these steps should be contained in the single reform legislation passed in 2015. This phased approach follows the effective roadmap used in Connecticut.

## LOWER AGE OF DELINQUENCY JURISDICTION

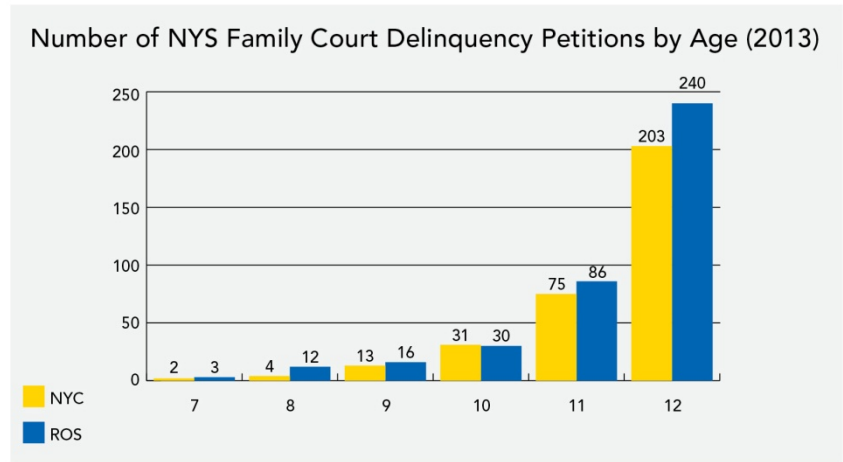
New York is also unique in setting seven as the minimum age for juvenile jurisdiction.

Very young children represent a tiny proportion of the overall juvenile justice population in New York. Outside of New York City, youth aged 10 and under accounted for 215, or 2.3 percent, of the 9,383 delinquency arrests, and youth ages 10 to 12 accounted for 1,230, or 13.1

percent, of delinquency arrests.<sup>177</sup> In New York City, there were 41 arrests for youth ages 7 to 10 (less than 1 percent of all 7,304 delinquency arrests), 115 arrests of 11-year-olds (1.6 percent of total), and 361 arrests of 12-year-olds in 2013 (4.9 percent of total).<sup>178</sup>

Children under age 12 also make up a very small percentage of the overall juvenile delinquency case volume in Family Court. A total of 272 initial juvenile delinquency petitions were filed in 2013 for children ages 11 and under, as compared to 443 petitions for 12-year-olds and the vast majority of petitions (6,925) for youth ages 13 to 15.<sup>179</sup>

As shown below, very few of the cases involving very young children result in out-of-home placement.<sup>180</sup>



2013 Family Court Dispositions for Youth 11 and under (Statewide)		
	Probation	Placement
Felony	37	13
Misdemeanor	13	5
TOTAL	50	18

<sup>177</sup> Uniform Crime Reporting System, prepared by DCJS OJRP on 4/29/2014. Outside of New York City, 54 percent of the arrests of youth 12 and under were for larceny, criminal mischief, or simple assault.

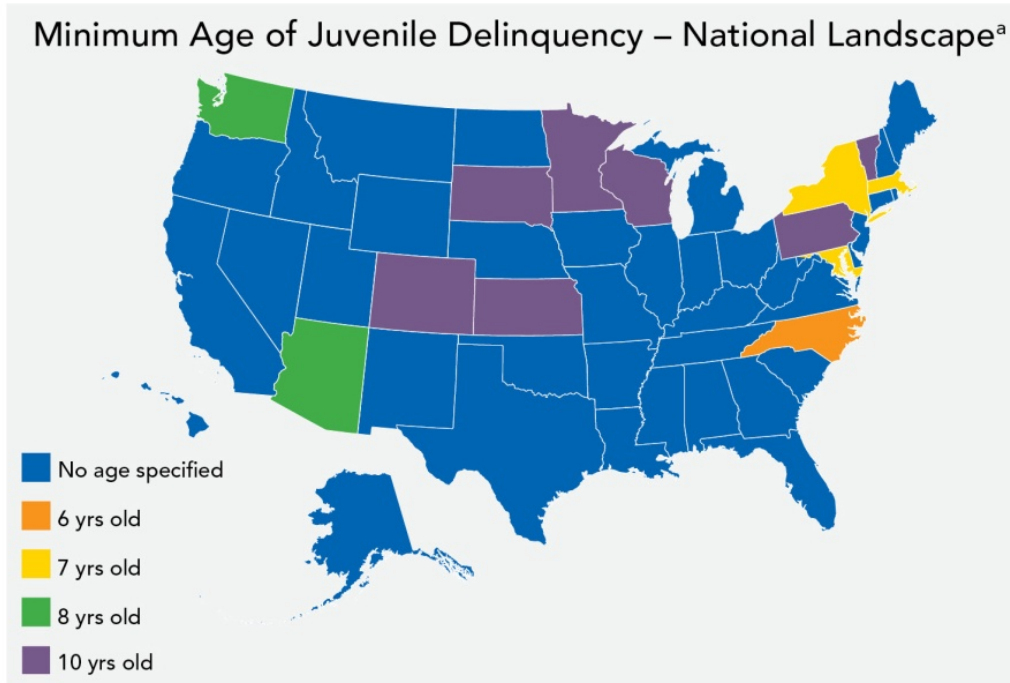
<sup>178</sup> New York City arrest data include only those cases that were formally arrested and not adjusted by police officers. In New York City, aggravated assault, larceny, robbery, and criminal mischief accounted for 62 percent of the arrests of youth 12 and under.

<sup>179</sup> DCJS-OCA Juvenile Delinquent Family Court Database, prepared by the Division of Criminal Justice, Office of Justice Research and Performance (OJRP), April 29, 2014.

<sup>180</sup> Ibid.

### National Context

New York is one of only 16 states that set a statutory lower age of juvenile jurisdiction. Of those states, only four set the bar as low or lower than New York's seven-year-old threshold. North Carolina is alone in setting the lower age of juvenile delinquency jurisdiction at six. New York, Massachusetts, and Maryland all set it at age seven. Arizona and Washington set the age at eight years old, and there are 11 states that set it at age 10. The remaining states do not specify a lower age of jurisdiction.



a. Juvenile Justice Geography, Policy, Practice & Statistics (JJGPS), <http://www.jjgps.org/jurisdictional-boundaries#age-boundaries?year=2012&ageGroup=1>

In practice, however, states that do not specify a minimum age for delinquency jurisdiction by statute still establish a lower age threshold for delinquency jurisdiction. The Commission examined this practice in five comparable states that do not set a statutory age for the onset of delinquency jurisdiction. When states do not specify a lower age, the practical minimum age can vary depending on prosecutorial and judicial discretion.<sup>181</sup> Further, most of those states adopt standards in other areas of law, such as competency determinations, that prescribe a juvenile's involvement in the justice system. Such standards provide a useful point of comparison to determine how comparable states treat very young children who come into contact with the justice system.

<sup>181</sup> Sarah Bryer, interview by author, at the Vera Institute of Justice, New York, May 9, 2014.

**Minimum Age for Delinquency Jurisdiction in Selected States that Do Not Specify an Age in Statute**

California <sup>182</sup>	To be declared a ward of a California court, a child must “appreciate the wrongfulness” of his/her conduct <sup>183</sup> and California courts presume that applies to juveniles <b>fourteen</b> and older. <sup>184</sup> To try a child under fourteen in a family court, the state needs “clear proof” that the child can understand the wrongfulness of his conduct. <sup>185</sup>
Ohio <sup>186</sup>	Ohio Rules of Evidence establish that children <b>under ten</b> are presumed incompetent to act as witnesses. <sup>187</sup> In addition, to be competent to stand trial in Ohio, a child must “underst[and] the nature and objective of the proceedings against him.” <sup>188</sup> Ohio courts have developed criteria for making juvenile competency determinations, including the child’s age, cognitive and intellectual development, and the complexity of the case. <sup>189</sup> Case law suggests that courts rarely engage in such determinations when children are younger than <b>fourteen</b> . <sup>190</sup>
Illinois	Illinois police do not record arrests for children <b>under ten</b> . <sup>191</sup> Legislation has recently been introduced in Illinois to raise the lower age of detention from ten to thirteen. <sup>192</sup> Stephanie Kollman, a Children and Family Justice Clinical Fellow at Northwestern Law, suggested to the Commission that very young children would likely be found unfit to stand trial in Illinois. Ms. Kollman reported that, in Illinois, arresting a child under ten would likely result in contact with the Department of Social Services rather than a juvenile court. <sup>193</sup>
Florida	Practitioners interviewed for the Commission reported that <b>twelve</b> is “universally accepted” as the lower age. <sup>194</sup> One practitioner with decades of experience in the Florida juvenile justice system reported that he could not remember seeing a child eleven or younger in juvenile court in the past thirty years. Further, he stated that he is employed by a company that runs twenty-four custodial institutions for juveniles in Florida and said that guidelines for his facilities do not permit acceptance of children under twelve. <sup>195</sup>
New Jersey	A well-established rule of the common law provides that children <b>under seven</b> are incapable of entertaining a criminal intent. <sup>196</sup> There is a rebuttable presumption of incapacity for youth between 7 and 14 that they are not capable of criminal intent. <sup>197</sup> There is a presumption of capacity for youth above the age of 14, and it is the defendant’s burden to prove otherwise. <sup>198</sup>

<sup>182</sup> CA Welfare and Institutions Code §§ 601- 608.

<sup>183</sup> *In re Gladys R.*, 464 P.2d 127, 132 (Cal. 1970).

<sup>184</sup> *In re James B.*, 135 Cal. Rptr. 2d 457, 464 (Cal. App. 4 Dist. 2003); *see also In re Cindy E.*, 147 Cal. Rptr. 812, 814 (Cal. App. 1978) (“[I]t is only reasonable to expect that generally the older a child gets and the closer she approaches the age of 14, the more likely it is that she appreciates the wrongfulness of her acts.”).

<sup>185</sup> *Id.*

<sup>186</sup> Ohio R. Code § 2151.23(A)(1).

<sup>187</sup> OHIO R. EVID. 601 (establishing that “children under ten years of age, who appear incapable of receiving just impressions of the facts . . . or of relating them truly” cannot testify as witnesses); *State v. Boerio*, 2009 Ohio 5181 (Ohio Ct. App., Lucas County, Sept. 30, 2009) (outlining a presumption of competence to testify for children over age ten).

<sup>188</sup> *In re D.G.*, 2014 Ohio 650, 26 (Ohio Ct. App., Ross County, Feb. 19, 2014).

<sup>189</sup> *In re D.G.*, 2014 Ohio 650, 26 (Ohio Ct. App., Ross County, Feb. 19, 2014).

<sup>190</sup> *See, e.g., In re Kristopher F.*, 2007 Ohio 3259 (Ohio Ct. App., Stark County, June 27, 2007) (age 16); *In re McWhorter*, 1994 Ohio 5421 (Ohio Ct. App., Butler County, Dec. 5, 1994) (age 14).

<sup>191</sup> Notes from Vera Institute of Justice May 15, 2014 Interview with Elizabeth Clarke - Founder of Juvenile Justice Initiative – Illinois.

<sup>192</sup> HB 4988 98<sup>th</sup> Gen. Assemb., 2<sup>nd</sup> Reg. Session (Ill.2014)

<sup>193</sup> Elizabeth Clarke Interview.

<sup>194</sup> Notes from Vera Institute of Justice June 18, 2014 Interview with Peter Plant – Senior Vice President for Education and Policy Development, G4S Youth Services, LLC – Florida.

<sup>195</sup> *Id.*

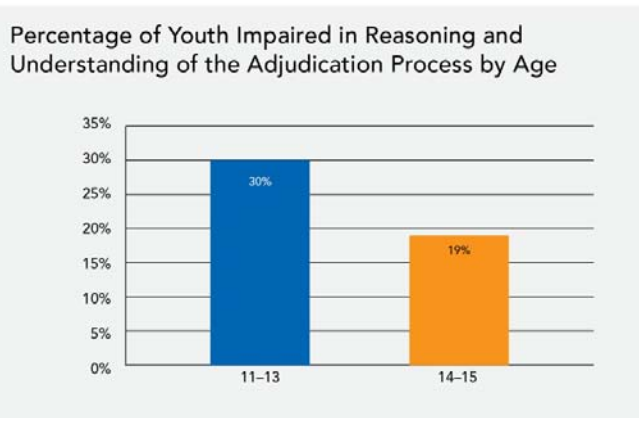
<sup>196</sup> *State v. Monahan*, 15 N.J. 34, 48 (1954)

<sup>197</sup> *Id.* at 48. This presumption is rebuttable by a “showing of sufficient intelligence to distinguish between right and wrong, and to understand the nature and illegality of the particular act.” *Id.* There are a fair number of cases that have applied this rebuttable presumption rule for 7-14 year olds. *E.g., State. v. H.A.*, No. A-4039-05T2, 2006 WL 3475607, at \*7 (N.J. Super. Ct. App. Div. Dec. 4, 2006) (unreported).

<sup>198</sup> *Id.* at 48.



Processing very young children even in Family Court, rather than through service-oriented interventions, raises significant concerns about a young child’s capacity to understand and exercise his or her rights in a meaningful way. In recent years, legal experts and social scientists have raised questions about the capacity of very young children to stand trial.<sup>199</sup> A 2003 study found that children ages 11 to 13 “demonstrated significantly poorer understanding of trial matters, as well as poorer reasoning and recognition of the relevance of information for a legal defense, than did 14- and 15-year-olds.”<sup>200</sup>



While the volume of very young children in the juvenile justice system is small and their capacity to participate as a defendant in a trial is questionable at best, it is important to ensure that there are alternate resources available to localities to work with very young children who are engaged in delinquent behavior. The existing service system for PINS—youth who have not committed any crime but are not going to school, are running away, or are out of control of their parents—is one option for intervening in these cases. Described more fully in Chapter Six, the existing PINS system includes mandatory community-based diversion intervention before sending a case to Family Court.<sup>201</sup> These interventions could also be used for the very young children who are currently being brought to court for juvenile delinquency. In addition, Chapter Six of this report recommends the creation of family support centers to provide a rapid and intensive community-based response for children and families in crisis. This enhanced service structure should also be used for more intense interventions that may be needed for very young children engaging in delinquent behavior.

**RECOMMENDATION:**  
**Raise the lower age of juvenile jurisdiction to 12, except for homicide offenses, which should be raised to 10.**

The Commission recommends that New York raise the age of juvenile delinquency from seven to 12 for all offenses except homicide. For homicide offenses, the age of juvenile delinquency should be raised to 10. Raising the age of juvenile delinquency in this manner is consistent with social science research regarding young children’s limited ability to fully appreciate and participate in judicial proceedings, and consistent with national practice regarding the capacity of very young children to participate meaningfully as defendants in a trial.

New York State data shows that the number of youth under 12 who are currently involved in delinquency proceedings is small, and this is a group that can clearly benefit from services and supports to address their unmet needs and improve their future prospects. The Commission recommends the state implement more effective interventions for this group to be accessed through the existing PINS diversion systems and the proposed Family Support Center structure (to be discussed more fully in Chapter Six).

**ENSURING COORDINATED AND EFFECTIVE IMPLEMENTATION**

The Commission’s research into other states’ “raise the age” reform initiatives revealed that successful implementation of such reforms depends upon one or more government agencies or officials having clear responsibility for such implementation. In New York State, the Governor’s commitment to these reforms provides an auspicious foundation for their success. Various State agencies must be involved in implementation of these

<sup>199</sup> Thomas Grisso, et al., “Juveniles’ Competence to Stand Trial: A Comparison of Adolescents’ and Adults’ Capacities as Trial Defendants,” *Law and Human Behavior* 27, no. 4 (2003): 333–63.

<sup>200</sup> *Ibid.*

<sup>201</sup> NY Family Court Act § 735.

proposed reforms, including OCFS, DOCCS, DCJS, and the Governor’s Office itself. Services and interventions critical to the reform must be supported at local community-based providers and not-for-profit residential agencies across the State. County executives, district attorneys, county attorneys, and the various courts at issue must also be involved. Finally, the Chief Judge of the Court of Appeals and the Office of Court Administration would play a critical role in the reform process.

Coordination and leadership of efforts across these many entities is critical to successful implementation. Accordingly, the Commission recommends that the Governor appoint one or more individuals with expertise in juvenile justice and a commitment to these reforms to help coordinate their implementation. The responsible official(s) would need the support and cooperation of all of the agencies and entities involved.

*RECOMMENDATION:*

The Governor should appoint one or more individuals with expertise in juvenile justice and a commitment to these reforms to help coordinate their implementation.

## CHAPTER 4: ARREST AND DIVERSION

---

Whether New York treats a youth as an adult or as a juvenile at the first stages of interaction with the justice system—at and immediately after arrest—has lasting consequences. In considering the issues related to arrest and diversion, the Commission addressed three key issues:

- ▶ Which protections should 16- and 17-year-olds have at arrest given their developmental immaturity and the need for reliable statements to police;
- ▶ How can diversion structures provide effective interventions to moderate- and high-risk youth while also ensuring that low-risk youth are not drawn unnecessarily into a web of programmatic requirements that may increase recidivism; and
- ▶ Which barriers to appropriate diversion can be eliminated so that only those cases that present a meaningful risk to public safety proceed to the court process?

These questions are critical for two reasons. First, as discussed in Chapter Two, research has demonstrated that low-risk youth who are drawn into “deep end” interventions (like out-of-home placement or intensive, community-based programming) actually are more likely to reoffend than if such interventions are not used. The current adult system processing of 16- and 17-year-olds effectively weeds low-level cases out of the system before conviction and significant intervention, with 59 percent of 16- and 17-year-old arrests not prosecuted at all or resulting in dismissal.<sup>202</sup> Any shift to a juvenile structure for case processing must continue to dispose of cases for youth who do not commit serious offenses or otherwise present a significant risk to public safety without substantial system interventions.

Second, the cost of diversion is much lower than that of juvenile detention or out-of-home placement. Modeling performed by the Commission suggests that diversion interventions can be provided for an average cost of \$3,000 per case while the cost of out-of-home placement can reach over \$200,000 per child annually. When coupled with the research showing that many of the diversion interventions have a positive impact on public safety and youth outcomes, this cost comparison makes obvious the need for effective diversion tools in cases that do not present a meaningful risk to public safety.

This chapter outlines reforms recommended to support parental notification and questioning location practices at arrest that reflect the special vulnerabilities of 16- and 17-year-olds, as well as national standards of practice; describes how videotaping interrogations of 16- and 17-year-olds can support the reliability of their statements to the police; provides recommendations to reduce unnecessary barriers to pre-court diversion (known as probation adjustment); and details the need for an effective continuum of community-based services to reduce reoffending among youth whose cases are diverted.

### PARENTAL NOTIFICATION AND POLICE QUESTIONING

In New York, police may arrest or take an adult, including 16- and 17-year-olds, into temporary custody without a warrant if they have reasonable cause to believe that the person committed a crime.<sup>203</sup> The same standard applies to juveniles, who are defined as young people who commit an offense at age 15 years or under.<sup>204</sup>

In 2013, there were 33,404 arrests of 16- and 17-year-olds in New York State.<sup>205</sup> In the same year, there were just over 17,000 arrests of juveniles statewide.<sup>206</sup>

<sup>202</sup> Division of Criminal Justice Services, *Computerized Criminal History* (Albany: Division of Criminal Justice Services, 2014). Prepared by the New York State Division of Criminal Justice Services on March 14, 2014. Court processing data for 16- and 17-year-old cases is presented in detail in Chapter Five.

<sup>203</sup> NY Criminal Procedure Law §140.10.

<sup>204</sup> NY Family Court Act §305.2(2). Although the NY Family Court Act refers to “child under the age of sixteen,” we use the phrase “15 or under” to distinguish from youth aged 16 or 17.

Arrests of 16- and 17-year-olds fall disproportionately on youth of color. Black and Hispanic youth make up 33 percent of 16- and 17-year-old youth statewide, but 72 percent of all arrests and 77 percent of all felony arrests.<sup>207</sup> Protections afforded at arrest are therefore especially important for youth of color across New York State.

The two significant arrest issues that substantially differ between the juvenile and adult systems are parental notification and location of questioning. Police are under no statutory obligation to notify the parent or guardian of a 16- or 17-year-old upon arrest. Youth may remain in police custody or jail for hours or days without a caregiver's knowledge of their whereabouts, and may be detained in police lockups with adults.

By contrast, if an officer arrests a juvenile 15 years or younger, the officer must make an immediate attempt to notify a parent or another person legally responsible for the young person's care.<sup>208</sup> Under the Family Court Act, the officer must make "every reasonable effort" at notification prior to questioning or bringing the juvenile to Family Court.<sup>209</sup> While the Family Court Act stops short of requiring that parents be present during questioning of their children, it does require *Miranda* warnings for the child and his or her parent, if present, prior to questioning.<sup>210</sup> In addition, the statute requires the suitability of questioning a youth alleged to be a juvenile delinquent and the reasonable duration of that questioning to be determined after taking the age of the child, the presence or absence of a parent, and the required parental notification into consideration.<sup>211</sup>

Parental notification is also required for youth who commit an offense under age 16 and who are charged as adults under the Juvenile Offender law. The Criminal Procedure Law provides that the police must immediately notify a parent or other person legally responsible for the care of the youth or the person with whom the youth is domiciled that the young person has been arrested, and the location of the facility where he is being detained.<sup>212</sup>

The Family Court Act also restricts the types of environment in which youth may be questioned. An officer may question a juvenile only in spaces approved by the Office of Court Administration (OCA) or, with consent of the parent, in the juvenile's home.<sup>213</sup> OCA-approved juvenile questioning rooms must be office-like settings with a separate entrance for youth or a procedure to avoid mingling youth with adult detainees.<sup>214</sup> Juveniles are also protected by the federal Juvenile Justice and Delinquency Prevention Act (JJDP), which provides that juveniles must be sight- and sound-separated from adult detainees in any adult lockup and that they cannot be held there for more than a total of six hours.<sup>215</sup>

None of these protections are currently afforded to 16- and 17-year-olds at arrest. Instead, 16- and 17-year-olds are questioned and detained alongside other adult offenders in police lockups.

Police interrogation of a youth is an extremely important moment in a youth's involvement with the justice system, with consequences that can shape the youth's life and threaten the soundness of the outcome. Yet research suggests

---

<sup>205</sup> Division of Criminal Justice Services, *Computerized Criminal History* (Albany: Division of Criminal Justice Services, 2014). Prepared by the New York State Division of Criminal Justice Services on July 29, 2014.

<sup>206</sup> New York State Division of Criminal Justice Services. "Juvenile Arrests, 2009-2013," New York, August, 2014. <<http://www.criminaljustice.ny.gov/crimnet/ojsa/jj-reports/juvenile-arrests-2009-2013.pdf>> (5 December 2014). New York City reported 7,604 arrests of young people 15 years or under for juvenile delinquency in 2013, and 9,449 juvenile arrests were reported outside of New York City. It is important to note that New York City does not include any low-level juvenile arrests that result in a juvenile report (a police diversion with no further action) in its juvenile arrest numbers.

<sup>207</sup> Division of Criminal Justice Services, *Computerized Criminal History* (Albany: Division of Criminal Justice Services, 2014). Prepared by the New York State Division of Criminal Justice Services on November 18, 2014.

<sup>208</sup> NY Family Court Act § 305.2(3).

<sup>209</sup> NY Family Court Act § 305.2(4).

<sup>210</sup> NY Family Court Act § 305.2(7).

<sup>211</sup> NY Family Court Act § 305.2(8). This provision reads as follows: "In determining the suitability of questioning and determining the reasonable period of time for questioning such a child, the child's age, the presence or absence of his parents or other persons legally responsible for his care, and notification pursuant to subdivision three shall be included among relevant considerations."

<sup>212</sup> NY Criminal Procedure Law §140.20(6).

<sup>213</sup> NY Family Court Act § 305.2(4)(b).

<sup>214</sup> Title 22, NY Codes, Rules, and Regulations § 205.20.

<sup>215</sup> State Plans, 42 U.S.C. § 5633(a)(13), 107<sup>th</sup> Cong. (2002).

that youth are substantially more likely to waive their rights and to make incriminating statements that may, if untrue, compromise the soundness of the outcome. Studies have found that youth invoke their *Miranda* rights (right to remain silent or right to consult an attorney) in about 7 percent of cases.<sup>216</sup> By contrast, adults have been found to invoke such rights in approximately 20 percent of cases.<sup>217</sup> A recent comprehensive study of taped interrogations for 16- and 17-year-olds charged with felonies found that 88 percent of these youth made incriminating statements, with 58 percent of youth confessing within a few minutes of waiving *Miranda* rights and another 30 percent providing statements of some evidentiary value. By contrast, only 64 percent of adults made incriminating statements in the same interrogation setting.<sup>218</sup>

Substantial research has also demonstrated that youth have significant difficulties in understanding *Miranda* warnings due to the warnings' excessive lengths,<sup>219</sup> the required reading comprehension that is beyond most youth's ability,<sup>220</sup> the use of unknown legal terms,<sup>221</sup> and basic misunderstandings of rights (such as the common perception that non-cooperation with police or invoking rights may lead to punishment by judges).<sup>222</sup>

<sup>216</sup> Barry C. Feld, "Real Interrogation: What Actually Happens When Cops Question Kids," *Law & Society Review* 47, no. 1 (2013): 12.; Jodi L. Viljoen et al., "Legal Decisions of Preadolescent and Adolescent Defendants: Predictors of Confessions, Pleas, Communication with Attorneys, and Appeals," *Law and Human Behavior* 29, no. 3 (2005): 253–77; and Thomas J. Grisso and Carolyn Pomictor, "Interrogation of Juveniles: An Empirical Study of Procedures, Safeguards, and Rights Waiver," *Law and Human Behavior* 1, no. 4 (1977): 321–342. 15.2 percent of youth exercised *Miranda* rights immediately and another 4.5 percent after some interrogation. See Jessica Owen-Kostelnik et al., "Testimony and Interrogation of Minors: Assumptions about Maturity and Morality," *American Psychology* 61, no. 4 (2006): 286–304; and Allison D. Redlich et al., "Pre-adjudicative and Adjudicative Competence in Juveniles and Young Adults," *Behavioral Sciences & the Law* 21 no. 3 (2003): 393–410. Ten to 20 percent of youth exercise *Miranda* rights. See Judith B. Jones, *Access to Counsel*, Juvenile Justice Bulletin (Washington, DC: U.S. Department of Justice, OJJDP, June 2004), <<https://www.ncjrs.gov/pdffiles1/ojjdp/204063.pdf>> (5 December 2014); and Alan Goldstein and Naomi E. Sevin Goldstein, *Evaluating Capacity to Waive Miranda Rights* (New York: Oxford University Press, 2010).

<sup>217</sup> Three separate studies—one in the United Kingdom and two in the United States—have observed that approximately 80 percent of suspects waived their *Miranda* rights. See Paul Softley, "Police Interrogation: An Observational Study in Four Police Stations," *Home Office Research Unit Report* (1980): 28, 29; Richard A. Leo, "Inside the Interrogation Room," *Journal of Criminal Law and Criminology* 86 (1996): 266, 276; and Paul G. Cassell and Bret S. Hayman, "Police Interrogation in the 1990s: An Empirical Study of the Effects of *Miranda*," *UCLA Law Review* 43 (1996): 839, 859. See also Mark A. Godsey, "Reformulating the *Miranda* Warnings in Light of Contemporary Law and Understandings," *Minnesota Law Review* 90 (2006): 781, 792 ("Modern studies demonstrate that roughly 80% of suspects waive their *Miranda* rights and talk to the police").

<sup>218</sup> Percentages do not equal 100 due to rounding. See Barry C. Feld, *Law and Society Review*, 47: p. 17–18. Among adults, 76 percent made incriminating admissions. See Richard A. Leo, *The Impact of Miranda Revisited*, 86 J. CRIM. L. & CRIMINOLOGY 621 (1996) (76% of adults made incriminating admissions); and Michael Wald et al., *Interrogations in New Haven: The Impact of Miranda*, 76 YALE L.J. 1519 (1967) (64% of adults made incriminating admissions).

<sup>219</sup> At over 175 words, 65 percent of *Miranda* warnings are "very long." See Richard Rogers et al., "Juvenile *Miranda* Warnings: Perfunctory Rituals or Procedural Safeguards?" *Criminal Justice and Behavior*, 39 (2012): 229.

<sup>220</sup> Most—92 percent—of *Miranda* warnings were above a sixth-grade level, which was above most interrogated youth's reading levels. *Ibid.* Seventy percent of all prison inmates read at or below the sixth-grade level, and 20–70 percent of juveniles in delinquency proceedings are estimated to have learning disabilities as compared to five percent in the general population. See Allison D. Redlich, "The Susceptibility of Juveniles to False Confessions and False Guilty Pleas," *Rutgers Law Review* 62, no.4 (2010): 943, 953 (citing National Center for Education Statistics, "Literacy Behind Prison Walls," U.S. Department of Education Office of Educational Research and Improvement, 20–23 (1994), <<http://nces.ed.gov/pubs94/94102.pdf>> (5 December 2014) (finding that 70 percent of all prison inmates read at or below the sixth-grade level and 20–70 percent of juveniles in delinquency proceedings are estimated to have learning disabilities as compared to 5 percent in the general population). See also Richard Rogers et al., "Development and Initial Validation of the *Miranda* Vocabulary Scale," *Law and Human Behavior* 33, no. 5 (2009): 381, 386–88; Jeffrey L. Helms, "Analysis of *Miranda* Reading Levels Across Jurisdictions: Implications for Evaluating Waiver Competency," *Journal of Forensic Psychology Practice* 3, no. 1 (2003): 25, 29–34; and Richard Rogers et al., "The Language of *Miranda* Warnings in American Jurisdictions: A Replication and Vocabulary Analysis," *Law and Human Behavior* 32, no. 2 (2008): 124.

<sup>221</sup> Sixty-three percent of juveniles (compared to 37 percent of adults) misunderstood at least one key word (such as "consult," "attorney," "interrogation," "appoint," "entitled," and "right") in a *Miranda* warning. See Thomas Grisso, "Juveniles' Capacities to Waive *Miranda* Rights: An Empirical Analysis," *California Law Review* 68, no. 6 (1980): 1134, 1151–54; Richard Rogers et al., "The Language of *Miranda* Warnings in American Jurisdictions: A Replication and Vocabulary Analysis," *Law and Human Behavior* 32, no. 2 (2008): 124, 130; and Alan Goldstein and Naomi E. Sevin Goldstein, *Evaluating Capacity to Waive Miranda Rights* (New York: Oxford University Press, 2010). See also *Gallegos v. Colorado*, 370 U.S. 49, 54 (1962), stating that: "[A] 14-year-old boy, no matter how sophisticated, is unlikely to have any conception of what will confront him when he is made accessible only to the police. That is to say, we deal with a person who is not equal to the police in knowledge and understanding of the consequences of the questions and answers being recorded and who is unable to know how to protect his own interests or how to get the benefits of his constitutional rights.... Without some adult protection against this inequality, a 14-year-old boy would not be able to know, let alone assert, such constitutional rights as he had."

<sup>222</sup> Sixty-two percent of detained juveniles thought they could be punished for maintaining silence. See Thomas Grisso, "Juveniles' Capacities to Waive *Miranda* Rights: An Empirical Analysis," *California Law Review* 68, no. 6 (1980): 1134, 1158.

Even if they understand the actual *Miranda* waivers, youth often lack the reasoned judgment to consider their long-term interests and invoke *Miranda* protections. A police interrogation is inherently compelling.<sup>223</sup> Youth are especially vulnerable in interrogations—even if they comprehend their rights—because they are more likely than adults to comply with authority figures,<sup>224</sup> tell police what they think they want to hear,<sup>225</sup> respond to negative feedback,<sup>226</sup> give in to the short-term urge to end an interrogation by cooperation or admission,<sup>227</sup> and succumb to impulsive decision-making without considering long-term consequences.<sup>228</sup>

For all of these reasons, the typical *Miranda* warnings alone may be insufficient to ensure that youth make informed decisions. The presence of a parent or guardian can greatly assist youth in the otherwise precarious moments of a police interrogation.

In the Commission’s focus groups, caregivers of 16- and 17-year-olds who had been taken into police custody described intense anxiety and fear, as well as not knowing the whereabouts of their children, sometimes for days, before they were released from custody. Other parents noted that although they knew that their 16- or 17-year-old had been arrested, they were frustrated at having been excluded from the process. Some explained that their children had made statements to the police before the parents had had an opportunity to obtain an attorney for their child.

The Commission looked closely at the parental notification requirements in the nine comparable states identified for this analysis and found that all of them prescribe a standard of effort, at the point of arrest, to notify a parent or caregiver of any youth

Policies in Comparable States on Police Questioning of 16- and 17-Year-Olds in Custody Without a Parent Present	
State	Questioning of 16- and 17-year-olds in Police Custody without Parent
California	Permitted <sup>a</sup>
Connecticut	Permitted – 16- and 17-year-olds may waive their own <i>Miranda</i> Rights, but must be given option of having parent present. <sup>b</sup>
Florida	Permitted <sup>c</sup>
Illinois	Permitted <sup>d, e, f, g</sup>
Massachusetts	Permitted – but must have a parent explain waiver of <i>Miranda</i> rights, unless youth meets a standard of intelligence, knowledge and sophistication. <sup>h</sup>
New Jersey	Permitted <sup>i</sup>
Ohio	Permitted <sup>j</sup>
Pennsylvania	Permitted <sup>k</sup>
Texas	Permitted <sup>l</sup>

<sup>a</sup> Youth must be given the opportunity to call a parent or guardian. Welf. & Inst. Code, § 627(b). But there is no comparable statutory or constitutional right for parents to be present during police interrogation. See *People v. Lessie*, 104 Cal.Rptr.3d 131, 141 (Cal. 2010) (noting that absence of parental presence may nonetheless be a factor whether youth’s waiver of *Miranda* rights was voluntary under totality of the circumstances).

<sup>b</sup> Conn. Gen. Stat. § 46b-137(a).

<sup>c</sup> *Ramirez v. State*, 739 So.2d 568, 578-79 (Fla. 1999) (noting that though there is no statutory right to have parent or guardian present, the absence of parental presence or prior communication may nonetheless be a factor whether youth’s waiver of *Miranda* rights was voluntary under totality of the circumstances).

<sup>d</sup> 705 ILCS 405/5-405.

<sup>e</sup> *People v. Griffin*, 763 N.E.2d 880, 261 (Ill. 2002).

<sup>f</sup> See 705 ILCS 405/5-401.5 (failing to include such a requirement for the admissibility of minors’ testimony).

<sup>g</sup> *People v. Griffin*, 763 N.E.2d 880 (Ill. 2002).

<sup>h</sup> *Com. v. A Juvenile* (No. 1), 389 Mass. 128, 133-34 (Mass. 1983).

<sup>i</sup> *State v. Presha*, 163 N.J. 304, 315, (2000).

<sup>j</sup> *In re Howard*, 694 N.E.2d 488, 493 (Ohio Ct. of App. 1997) (juveniles do not have right to parent presence for police interrogation).

<sup>k</sup> *Com. v. Williams*, 475 A.2d 1283, 1285-86 (Penn. 1984) (noting that though juveniles do not have right to parental presence, absence of parental presence may be factor whether waiver of *Miranda* rights was voluntary under totality of the circumstances).

<sup>l</sup> See e.g., *Grant v. State*, 313 S.W.3d 443, 449 (Tx. Ct. of App. 2010) (holding interrogation and subsequent admission of youth without parental presence or even the statutorily required parental notification is admissible). Texas has a statutory right for parental access to child but this does not guarantee a right to be present during interrogation. V.T.C.A., Family Code § 61.103.

<sup>223</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966) (finding police interrogations as inherently compelling because police dominate the setting, control the flow of information, and create psychological pressures to comply); Laurel LaMontagne, *Children Under Pressure: The Problem of Juvenile False Confessions and Potential Solutions*, 41 W. ST. U. L. REV. 29 (2013).

<sup>221</sup> Alan Goldstein and Naomi E. Sevin Goldstein, *Evaluating Capacity to Waive Miranda Rights* (New York: Oxford University Press, 2010); Jessica Owen-Kostelnik et al., “Testimony and Interrogation of Minors: Assumptions about Maturity and Morality,” *American Psychologist* 61, no. 4 (2006): 286.

<sup>225</sup> Thomas D. Lyon, “Applying Suggestibility Research to the Real World: The Case of Repeated Questions,” 65 *Law and Contemporary Problems* 1, 117, <<http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1239&context=lcp>> (19 December 2014).

<sup>226</sup> Gisli H. Gudjonsson, *The Psychology of Interrogations and Confessions: A Handbook* (West Sussex, England: Wiley, 2003): 381; Thomas D. Lyon, “The New Wave in Children’s Suggestibility Research: A Critique,” *Cornell Law Review* 84 (1999): 1004, 1042-43.

<sup>227</sup> Alan Goldstein and Naomi E. Sevin Goldstein, *Evaluating Capacity to Waive Miranda Rights* (New York: Oxford University Press, 2010); Jessica Owen-Kostelnik et al., “Testimony and Interrogation of Minors: Assumptions about Maturity and Morality,” *American Psychologist* 61, no. 4 (2006): 286.

<sup>228</sup> Allison D. Redlich, “The Susceptibility of Juveniles to False Confessions and False Guilty Pleas,” *Rutgers Law Review* 62, no. 4 (2010): 943, 953.

aged 16 or 17.<sup>229</sup> In addition, most states allow for notification of a person other than a child's parent if that person is in a caregiving role, including "some other responsible relative,"<sup>230</sup> "some other suitable person or agency,"<sup>231</sup> or the "person legally responsible for his care."<sup>232</sup> All of the comparable states reviewed in detail for the Commission allow for 16- and 17-year-olds to be questioned without a parent present, most using a "totality of the circumstances" test to decide whether statements of 16- and 17-year-olds without a parent present are admissible.<sup>233</sup>

#### RECOMMENDATION:

Expand to 16- and 17-year-olds the current juvenile practice regarding parental notification of arrest and the use of office of court administration-approved rooms for questioning by police.

New York State practice regarding parental notification and questioning of juveniles is consistent with research findings on the need to protect the special vulnerabilities of youth during questioning and with national practice. It is clear that 16- and 17-year-olds should have access to these protections following arrest both to enhance reliability of their statements made to police and to acknowledge that they are not yet fully developed adults. The Commission therefore recommends expanding existing practices for youth 15 and under to 16- and 17-year-olds.

## VIDEOTAPING QUESTIONING

Videotaping interrogations is widely viewed as an effective strategy for improving the reliability of interrogations. Broad support for this practice comes from academic and legal experts as well as from across the spectrum of legal practitioners and law enforcement professionals.<sup>234</sup> The District Attorney's Association of the State of New York and the New York State Association of Chiefs of Police have each issued documents establishing guidelines for electronic

<sup>229</sup> These standards apply to all youth who are under juvenile jurisdiction in the states reviewed. All states except Texas apply their rules to 16- and 17-year-olds because their age of juvenile jurisdiction extends to 18. Texas juvenile court jurisdiction does not cover 17-year-olds, so they are also not covered by the Texas parental notification requirement.

<sup>230</sup> California Welfare and Institutions Code § 626(c).

<sup>231</sup> Connecticut General Statutes § 46b-133 (2012).

<sup>232</sup> Juvenile Court Act of 1987, 705 ILCS 405/5-405(1).

<sup>233</sup> Almost every state governs the admissibility of a confession obtained from a youth during interrogation on the basis of its voluntariness, determined by a "totality of the circumstances" analysis particularly tailored for juveniles. Connecticut is most straightforward: confessions obtained in violation of statutory requirements are not admissible against the youth (§ 46b-137). Illinois case law strongly suggests the application of the "Concerned Adult" doctrine: a factor applied by the courts in determining the voluntariness of juvenile confessions. This factor, considered within a "totality of the circumstances" evaluation, considers whether the juvenile had the opportunity to confer, either before or during the interrogation, with an adult interested in his or her welfare. Such adults include parents, guardians, and juvenile police officers. See *People v. Griffin*, 327 Ill. App. 3d 538, 545, 763 N.E. 2d 880, 261 Ill. Dec. 631 (2002). Similarly, while Florida does not require parents to be present at a juvenile's interrogation, it is a factor considered in the "totality of the circumstances" analysis. See *State v. S.V.*, 958 So. 2d 609, 611, Fla. App. 4th Dist. 2007. Courts must consider "whether the parents were contacted and whether the child had an opportunity to speak with them prior to giving the statement." As previously described, New York's Family Court Act provides a similar structure in requiring consideration of various factors, including the presence of a parent, when determining the suitability of questioning the juvenile. See N.Y. FAM. CT. ACT § 305.2(8).

<sup>234</sup> Saul M. Kassir et al., "Does Video Recording Alter the Behavior of Police During Interrogation? A Mock Crime-and-Investigation Study," *Law and Human Behavior* 38, no. 1 (2014): 73–83; Thomas P. Sullivan, "The Time Has Come for Law Enforcement Recordings of Custodial Interviews, Start to Finish," *Golden Gate University Law Review* 37, no. 1 (2006): 175–90; Saul M. Kassir et al., "Police Interviewing and Interrogation: A Self-Report Survey of Police Practices and Beliefs," *Law and Human Behavior* 31, no. 4 (2007): 381–400; G. Daniel Lassiter et al., "Videotaped Confessions and Interrogations: A Change in Camera Perspective Alters Verdicts in Simulated Trials," *Journal of Applied Psychology* 87 (2002): 867–74; Saul M. Kassir, "Police-Induced Confessions: Risk Factors and Recommendations," *Law and Human Behavior* 34, no. 1 (2010): 3–38; G. Daniel Lassiter et al., "Evaluating Videotaped Confessions: Expertise Provides No Defense Against the Camera-Perspective Effect," *Psychological Science* 18 (2007): 224–26; Thomas P. Sullivan and Andrew W. Vail, "The Consequences of Law Enforcement Officials' Failure to Record Custodial Interviews as Required by Law," *Journal of Criminal Law and Criminology* 99, no. 1 (2009): 215–34; and Thomas P. Sullivan, "The Evolution of Law Enforcement Attitudes to Recording Custodial Interviews," *Journal of Psychiatry and Law* 38, no. 1/2 (2010): 137–75. "Electronic recording of custodial interrogations not only protects the innocent by guarding against false confessions, but increases the likelihood of conviction of guilty persons by developing the strongest and most reliable evidence possible. It aids investigators, prosecutors, judges, and juries by creating a permanent and objective record of a critical phase in the investigation of a crime that can be reviewed for inconsistencies and to evaluate the suspect's demeanor (Thomas P. Sullivan, "Police Experiences with Recording Custodial Interrogation," Northwestern University School of Law, Center on Wrongful Convictions, Number 1 (2004), p. 6). Recording entire custodial interrogations significantly reinforces or enhances cases by creating powerful incriminating evidence, which leads to stronger prosecutorial positions in plea bargaining and a higher proportion of guilty pleas and verdicts (Sullivan 2004, p.12). It has a concomitant effect of reducing the number of motions filed to suppress statements by defendants and the consequent sparing of prosecutors from the need to refute allegations that interrogators engaged in physical abuse, perjury, coercion, or unfair trickery (Sullivan 2004, p. 8)." See The Association of the Bar of the City of New York, "Report on Legislation," New York, February, 2013. <<http://www.nycbar.org/pdf/report/uploads/20071964-CommentonElectronicRecordingofInterrogations.pdf>> (5 December 2014).

recording of interrogations, and the New York State Division of Criminal Justice Services' Municipal Police Training Council has issued a Model Policy on Recording of Custodial Interrogations.<sup>235</sup> The New York State Justice Task Force recently called it “the most critical reform” regarding police practices.<sup>236</sup> This broad-based support rests on several benefits that come from the electronic recording of interrogations such as: increased quality of police interviews; reduced litigation regarding suppression of statements and reduced necessity to defend against claims of misconduct; reduced chance of proceeding against the wrong defendant, leaving the real perpetrator at large; and increased public confidence in the fairness and accuracy of the justice process.<sup>237</sup>

Currently, more than one-third of states and the District of Columbia have adopted electronic recording of interrogations as a statewide practice for some or all felony offenses. Within New York State, at least 43 counties, cities, or smaller jurisdictions already record police interrogations.<sup>238</sup> By all accounts, the practice has proven valuable not only to protect defendants but also to protect police officers against accusations of coercion and other improper practices.

#### RECOMMENDATION:

**Expand the use of videotaping of custodial interrogations of 16- and 17-year olds for felony offenses.**

Electronic recording of interrogations is widely acknowledged as a best practice to bolster reliability of statements and protect the rights of young people in the interrogation setting. The state should support expansion of the recording of custodial interrogations of 16- and 17-year-olds in connection with the investigation of possible felony offenses.

## REDUCING UNNECESSARY BARRIERS TO PRE-COURT DIVERSION

One of the most significant differences between processing youth as juveniles and as adults is access to probation intervention prior to any court involvement. The juvenile justice system provides access to diversion interventions to avoid court involvement through a probation intake and adjustment process that does not exist in the criminal court. The Commission focused on the importance of expanding access to juvenile diversion to 16- and 17-year-olds in order to minimize intervention with low-risk youth, as indicated by the research on what works best with adolescents.

Analysis completed by the Division of Criminal Justice Services for this Commission showed that implementation of a range of evidence-based interventions through probation diversion and probation supervision would also improve public safety across New York State. Implementation of a range of evidence-based programming as described in Chapter Two would likely result in between 1,500 and 2,400 fewer victimizations over a five-year period.<sup>239</sup> This analysis also concluded that investment in these diversion programs is likely to recoup the cost of these programs within five years due to these recidivism reductions.

Recently established pilot Adolescent Diversion Parts (ADP) in certain criminal courts have also started to demonstrate these benefits. Spearheaded by the OCA in nine counties in 2012, these pilots involved implementation

<sup>235</sup> Best Practices Committee of the District Attorneys Association. “New York State Guidelines for Recording Custodial Interrogations of Suspects,” New York, December, 2010 <<http://www.daasny.com/wp-content/uploads/2014/08/Video-Recording-Interrogation-Procedures-Custodial-FINAL-12-8-10.pdf>> (5 December 2014), and New York State Division of Criminal Justice Services. “Electronic Recording of Custodial Interviews: Model Policy,” New York, December, 2013, <[http://www.nychiefs.org/ModelPolicies/MPTC\\_Recording\\_Model\\_Policy\\_Dec\\_2013.pdf](http://www.nychiefs.org/ModelPolicies/MPTC_Recording_Model_Policy_Dec_2013.pdf)> (5 December 2014).

<sup>236</sup> New York State Justice Task Force, “Recommendations Regarding Electronic Recording of Custodial Interrogations,” New York, January, 2012. <<http://www.nyjusticetaskforce.com/ElectronicRecordingOfCustodialInterrogations.pdf>> (5 December 2014).

<sup>237</sup> Thomas O. Sullivan, “Compendium Shows More Jurisdictions Recording Custodial Interrogations,” *National Association of Defense Lawyers: The Champion* 37, no. 3 (2014): 47.

<sup>238</sup> Ibid.

<sup>239</sup> Programming in the estimate included Aggression Replacement Therapy, Brief Strategic Family Therapy, Cognitive Behavioral Therapy, Employment Programs, Functional Family Therapy, Mental Health, Mentoring, Multisystemic Therapy, Restorative (Mediation, Community Service), Substance Abuse, and Youth Court (RTA Programming Portfolio Victimization Addendum, October 8, 2014).



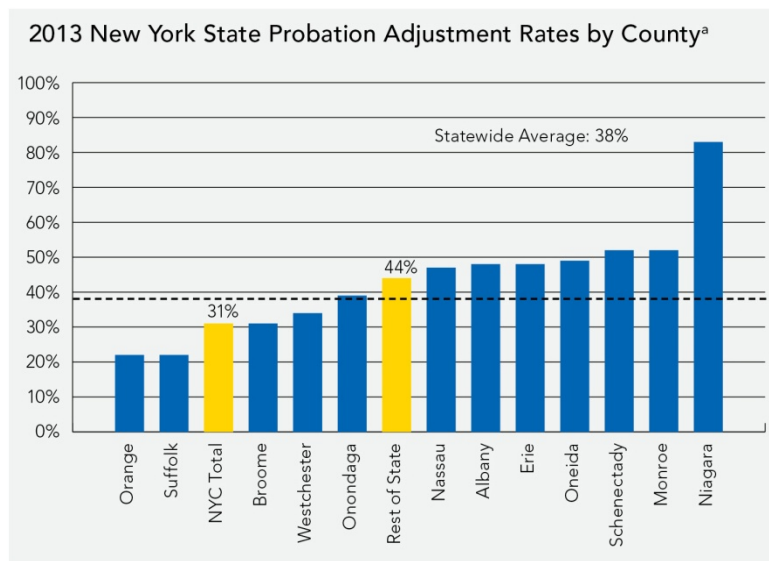
of probation diversion for certain offenses committed by 16- and 17-year-olds and have produced consistently positive results even in just the first year.<sup>240</sup>

The ADP was designed to allow the majority of low-risk offenders to receive dismissals without services, and medium- and high-risk offenders to receive structured diversion services where appropriate. Programs were designed to address lower-level, nonviolent cases. The research on Nassau County’s ADP demonstrated that, compared to the 2011 reference cohort, providing formal pre-court diversion or dismissal opportunities produced more frequent straight dismissals, reduced numbers of incarcerative sentences, and produced no increase in the rate of rearrest. In addition, compared to a 2011 reference group of similarly charged 16- and 17-year-olds, the median case processing time for the ADP group was 49 days, 77 percent shorter than the reference group median of 212 days.<sup>241</sup>

With research and practice pointing to the need for more pre-court diversion opportunities for 16- and 17-year-olds, the Commission found that there are several areas in which access to juvenile diversion can be enhanced for both that cohort and the existing delinquency population.

The Family Court Act provides that local probation departments may divert most delinquency cases prior to filing a court petition, a process referred to as “adjustment.”<sup>242</sup> Current regulations require that local probation departments use an actuarial risk screening instrument to identify the level of youth risk, to target the underlying risk factors that gave rise to the behavior in the adjustment process, and to make referrals to services based on that risk.<sup>243</sup> Regulations also require probation to adjust low-risk youth with minimal intervention and prioritize resources to higher-risk youth.<sup>244</sup> Interventions can include community-based intervention services such as cognitive-behavioral skill-building, family-focused treatment, mental health and substance abuse treatment, school-based interventions, and other evidence-based programs and practices, as well as accountability and control measures.<sup>245</sup>

Over one-third (38 percent) of the delinquency cases received by local probation departments at intake statewide are successfully adjusted.<sup>246</sup> Excluding those cases that are ineligible or unsuitable for adjustment and those cases in which the victim refuses to consent to adjustment, an average of 81 percent of the cases are successfully adjusted



a. DCJS OPCA Probation Workload System, prepared by DCJS OJRP on April 1, 2014.

<sup>240</sup> Division of Criminal Justice Services, Office of Research and Performance, “Nassau County’s Adolescent Diversion Program: A Preliminary Outcome Analysis,” May, 2014. See also Michael Rempel, et al., “The Adolescent Diversion Program: A First Year Evaluation of Alternatives to Conventional Case Processing for Defendants Ages 16 and 17 in New York,” New York, Center for Court Innovation, January, 2013, <[http://www.courtinnovation.org/sites/default/files/documents/ADP\\_Report\\_Final.pdf](http://www.courtinnovation.org/sites/default/files/documents/ADP_Report_Final.pdf)> (5 December 2014).

<sup>241</sup> Division of Criminal Justice Services, Office of Research and Performance, “Nassau County’s Adolescent Diversion Program: A Preliminary Outcome Analysis,” May, 2014.

<sup>242</sup> NY Family Court Act § 308.1(2).

<sup>243</sup> Title 9, NY Codes, Rules, and Regulations § 356.7(a).

<sup>244</sup> Ibid.

<sup>245</sup> Ibid.

<sup>246</sup> In New York City, intensive case planning is not done at probation intake; cases to be adjusted are referred to a specialized probation unit.

statewide.<sup>247</sup> In other words, diversion is usually successful when attempted. Still, adjustment rates vary substantially among counties, as shown above.<sup>248</sup>

The Family Court Act also provides that local probation departments may adjust only those cases that are both *eligible* (not otherwise barred by statute) and *suitable* (based on considerations set forth in the Uniform Rules of the Family Court). Probation is directed to consider a range of factors when making suitability determinations including: age; elements of the offense; likelihood of cooperation and success in timeframe; risk of re-offense or victim harassment during adjustment; history of offending; need for court removal from home; and whether there is an allegation against anyone else for acting jointly with the youth.<sup>249</sup>

The chart below presents the types of cases that are ineligible for adjustment, require judicial approval alone, or require both judicial and presentment agency approval before probation can proceed with adjustment.

Offense-Based Restrictions on the Opportunity for Juvenile Pre-Court Diversion (Adjustment)		
Ineligible for Adjustment	Judicial Approval Required	Judicial & Presentment Approval Required if the youth received a previous adjustment for any listed offenses
Juvenile Offender Cases removed to Family Court	Designated Felonies	Reckless Endangerment 1st Subdivision 1 of Manslaughter 2nd Subdivision 1 of Rape 3rd Subdivision 1 of Criminal Sexual Act 3rd Subdivision 1 of 2 of Sexual Abuse 1st Coercion 1st Burglary 3rd Arson 3rd Robbery 3rd Criminal Possession of a Weapon 1st, 2nd Subdivision 1, 2, 3 or 4 of Criminal Possession of a Weapon 3rd

Adjustment may not be attempted in all cases that are eligible because victims retain the right to request that the presentment agency file a petition in Family Court.<sup>250</sup> This protects victims’ critical right to have the case heard in court rather than being diverted, among other objectives.

In reviewing barriers to the adjustment of appropriate cases, the Commission identified several areas where successful, appropriate adjustment could occur at a higher rate. Of the 7,765 cases petitioned to family court in 2013, over 2,500—one out of three—were for misdemeanor offenses that were not personal (harm to another person), weapons or drug offenses. Moreover, 4,700 cases filed in Family Court resulted in favorable outcomes for youth, including conditional discharge and adjournment in contemplation of dismissal.<sup>251</sup> These numbers suggest that many children currently referred to court could instead be diverted before court without undermining public safety.

Analysis of current case processing of 16- and 17-year-olds supports a similar conclusion. In 2013, 33,000 arrests of 16- and 17-year-olds were disposed and 24,000 of those arrests were for misdemeanor charges. While 16,000 of those misdemeanor arrests were dismissed or not prosecuted, 8,000 were prosecuted in criminal court and were adjudicated

<sup>247</sup> New York State Division of Criminal Justice Services, Office of Justice Research and Performance. “Statewide Juvenile Justice Profile,” New York, August, 2014, <<http://www.criminaljustice.ny.gov/crimnet/ojsa/jj-reports/newyorkstate.pdf>> (5 December 2014).

<sup>248</sup> Note: Only counties with 200 or more total juvenile delinquent cases closed are shown. PWS data for 2013 is preliminary, as of Apr. 1, 2014. Source: New York State DCJS OPCA PWS. Prepared by DCJS OJRP.

<sup>249</sup> Title 22, NY Codes, Rules, and Regulations § 205.22.

<sup>250</sup> NY Family Court Act § 308.1(8).

<sup>251</sup> New York State Division of Criminal Justice Services, Office of Justice Research and Performance. “Statewide Juvenile Justice Profile,” August 7, 2014, <<http://www.criminaljustice.ny.gov/crimnet/ojsa/jj-reports/newyorkstate.pdf>> (12 December 2014).

or convicted for either a misdemeanor or a noncriminal violation.<sup>252</sup> This suggests that for lower-level cases, there remains a significant opportunity for community-based diversion as an alternative to court processing.

Through DCJS, the Commission completed a comprehensive survey of probation departments across the State to identify the key barriers to appropriate diversion of cases and any gaps in critical services to facilitate such diversion. Fifty-five counties and the City of New York responded to the survey, ensuring its value as a source of information for the Commission’s analysis. Probation departments identified the following barriers to appropriate diversion in their responses.

### A. Orders of Protection

Under current law, no mechanism exists for a victim to obtain an order of protection without commencing the delinquency case in the Family Court. Instead, an order of protection can only be ordered at the time of an adjournment in contemplation of dismissal or at case disposition.<sup>253</sup> This means that even in cases whose victims would consent to having a case adjusted without a petition being filed with the court, as long as they could obtain an order of protection, the probation department could not explore adjustment in appropriate cases. Forty-five percent (25) of the 56 counties that responded to this question reported the inability to obtain orders of protection was either “sometimes,” “often,” or “very often” a barrier to adjusting cases.

### B. The Two-Month Deadline for Adjustment

If a probation department chooses to attempt adjustment in an eligible case and victim consent is obtained, the department is allowed only an initial two-month period allowed by statute and an additional two months available with judicial approval.<sup>254</sup> Thirty-six out of the 56 local probation departments that responded to the probation survey identified this limited period for adjustment as “sometimes,” “often,” or “very often” a barrier to adjustment of eligible cases.

### C. Cases Removed from Criminal Court Cannot Be Adjusted

Under current law, probation departments are barred from adjusting cases that have been removed from criminal court. While the universe of designated felony offenses and offenses removed from criminal court to Family Court is extremely serious in nature, current system processing of violent felony offense cases involving 16- and 17-year-olds (which would originate in Family Court under Commission recommendations, as discussed in Chapter Five) shows that many violent felony arrests of 16- and 17-year-olds do not currently result in felony convictions. In fact, analysis by the DCJS showed that 47 percent of violent felony arrests of 16- and 17-year-olds

Time Allowed for Juvenile Pre-Court Diversion in Comparable States		
State	Maximum Length of Time for Diversion Supervision	Extension of Time Permitted
California	6 months	90 day additional period where probation officer may refer youth for prosecution
Connecticut	180 days	None
Florida	12 months <sup>a</sup>	None
Illinois	12 months	None
Massachusetts	90 days <sup>b</sup>	None
New Jersey	18 months	None
Ohio	12 months	None
Pennsylvania	6 months	3 months by court order
Texas	6 months typically (each county administers its pre-trial diversion programs and details vary from county to county)	County specific

<sup>a</sup> No statutes exist specifically for length of maximum youth diversion, but diversion statutes for adults mandate 12 month maximums.

<sup>b</sup> No statutes exist specifically for length of maximum youth diversion, but diversion statutes for adults mandate 90 day maximums.

<sup>252</sup> Division of Criminal Justice Services, *Computerized Criminal History* (Albany: Division of Criminal Justice Services, 2014). Prepared by the New York State Division of Criminal Justice Services on March 2014

<sup>253</sup> NY Family Court Act § 352.3.

<sup>254</sup> NY Family Court Act § 308.1(9)

disposed during 2013 did not result in indictment. Instead, half of those arrests that were not indicted resulted in no conviction at all and the other half resulted in a conviction on a misdemeanor or noncriminal violation.<sup>255</sup> While the Commission expects that most of these cases may not be appropriate for adjustment, in those cases where the offender is determined by the risk assessment tool to have a low risk of reoffending, adjustment may be appropriate.

#### ***D. Probation Departments Are Not Required to Seek Adjustment for Low-Risk Cases***

Current law authorizes but does not require probation departments to attempt adjustment of those misdemeanor cases where the offender has been determined to have a low risk of reoffending.

##### ***RECOMMENDATION:***

Mandate diversion attempts for low-risk (per risk assessment) misdemeanor cases except where probation finds no substantial likelihood that youth will benefit from diversion in the time remaining for adjustment or if time for diversion has expired and the youth has not benefited from diversion services.

Requiring diversion attempts in these low-risk, low-offense severity cases would expand opportunity for assessment and targeted interventions without pushing low-risk youth deep into the justice system. Interventions for these cases should, as required by current regulations, be minimal.<sup>256</sup> At the same time, probation departments would retain flexibility to move cases to the presentment agency when intervention attempts fail.

##### ***RECOMMENDATION:***

Expand categories of cases eligible for adjustment to allow for adjustment in designated felony cases and Juvenile Offender cases removed to Family Court, with a requirement for court approval for all Juvenile Offender cases and if the youth is accused of causing physical injury in a designated felony case. Revise the criteria for determining suitability for adjustment to include risk level and the extent of physical injury to the victim.

The Commission finds that it is essential to allow probation departments to dispose of these arrests in the appropriate case without a felony conviction, and sometimes with no court process at all, when raising the age. Expansion of the opportunity for adjustment to these cases is a valuable mechanism to ensure that cases of 16- and 17-year-olds are not treated more severely with the expansion of juvenile jurisdiction. Because these cases have already been filed in the criminal court system, the Family Court would need to receive the case upon removal and review whether it is appropriate for an attempt at adjustment. If the court finds that adjustment of the case would be appropriate, the Family Court would then refer the case back to the probation department for adjustment.

Reframing the considerations for a youth's suitability for adjustment to reflect objective risk assessment and severity of harm to the victim would shift the use of diversion to an evidence-based framework. The validated risk assessment tools currently used by probation throughout New York include the many factors that are in the existing suitability considerations (such as age and history of offending). Use of these tools provides a framework, grounded in research on New York's population, which puts these factors together in an objective way to determine risk of reoffending. The one factor that is not used to determine risk, because it has not been shown by research to predict risk, is the severity of the offense. However, the extent of physical harm to a victim is a valid consideration when determining which cases should be diverted before court involvement. Therefore, the Commission recommends combining the objective risk information and the extent of physical harm to a victim as the considerations to guide whether a case is suitable for adjustment.

<sup>255</sup> New York State Division of Criminal Justice Services. "Computerized Criminal History (CCH) System and Felony Case Processing File," New York, October 15, 2014.

<sup>256</sup> Title 9, NY Codes, Rules, and Regulations § 356.7(a).

**RECOMMENDATION:**

Create the capacity and a process for victims to obtain orders of protection without a delinquency case being filed in court.

A new statutory process that allows the victim to obtain an order of protection without filing a petition in Family Court charging the underlying offense would allow probation departments to seek adjustment of such cases if the victim consents. Retention of the requirement for victim consent is key to ensuring that this recommendation is implemented in a manner that respects the needs of the crime victim.

**RECOMMENDATION:**

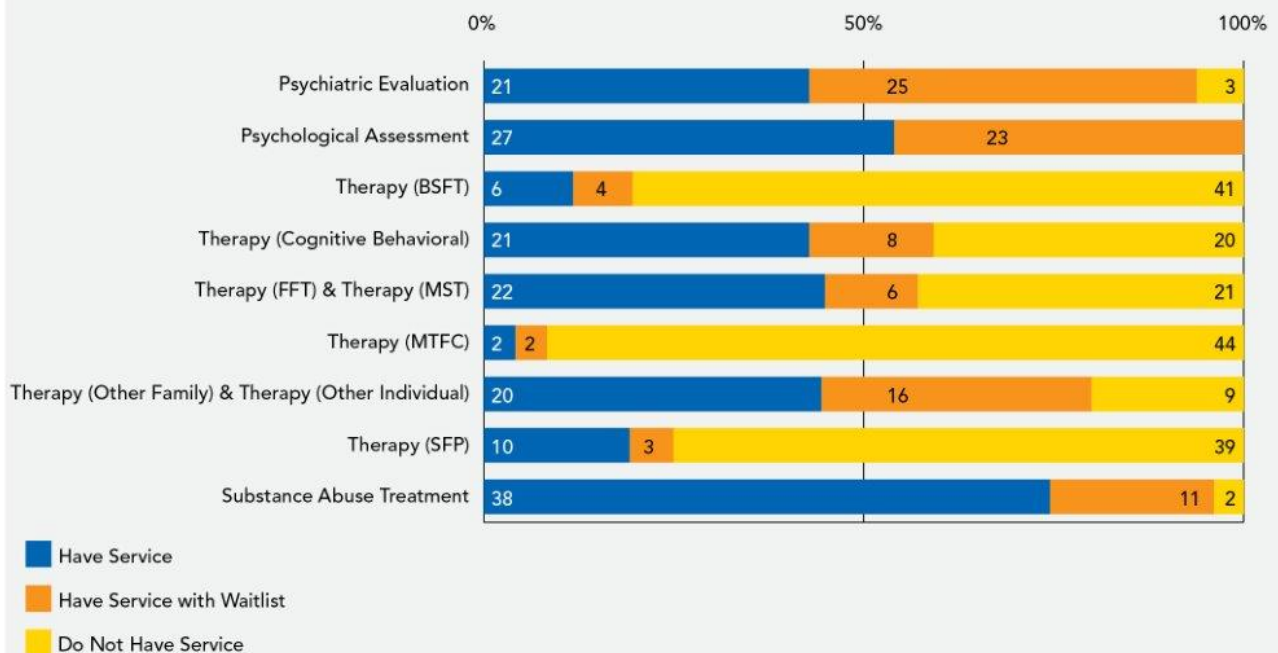
Allow two additional months for probation diversion (beyond 120 days) if a documented barrier to diversion exists or a change in service plan is needed.

Extension of the time for adjustment in order to access necessary services would increase opportunity for successful adjustment in cases with more intense service needs and in instances where localities have significant waiting lists for services (discussed further below). It would also better align New York State adjustment practice with standards in comparable states.

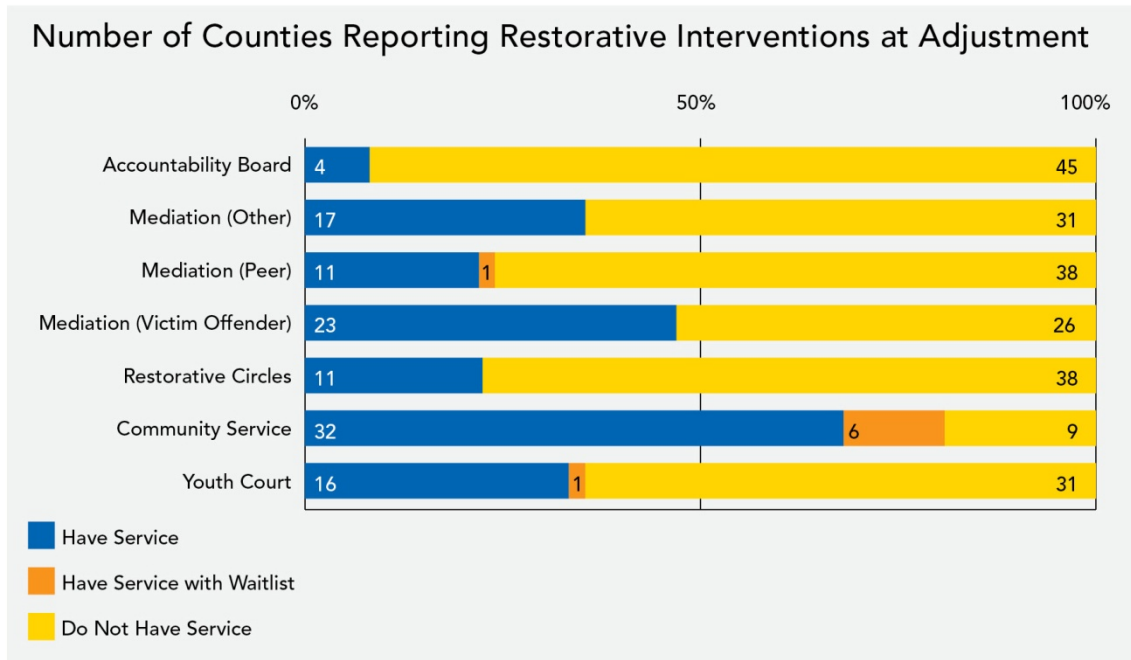
### DEVELOPING AN EFFECTIVE CONTINUUM FOR COMMUNITY-BASED DIVERSION SERVICES

These recommendations to reduce existing barriers to probation diversion will only reap positive benefits if localities across New York have access to a range of responses proven to be effective with youth. Adjustment cannot work if the right services are not locally available. Results from the survey of probation directors showed that, while most of the large counties have access to some evidence-based services at probation diversion, the majority of the smaller counties do not. In addition, while counties generally have access to psychiatric evaluation and psychological assessment, there are consistent waiting lists for those services throughout the state.

Number of Counties Reporting Therapeutic Interventions at Adjustment



Survey results also showed that the only restorative justice intervention that is widely available throughout New York State is community service. In addition, less than one-half of responding counties reported some form of victim-offender mediation or youth courts. Given that many of these interventions provide rapid means for direct accountability to the victim or the community at a relatively low cost, expansion of these kinds of interventions holds significant promise.



The Commission identified one of the most effective restorative interventions available in its review of Connecticut’s implementation of raising the age of juvenile jurisdiction: the Juvenile Review Board (JRB). In 2008, Connecticut established JRBs as a diversion mechanism for youth charged with first or second nonviolent misdemeanors who take responsibility for their actions. Drawing on restorative justice practices, these boards are made up of local professionals from across different sectors, including public schools, law enforcement, Youth Services Bureaus, Department of Probation, and community-based organization. There are nearly 100 JRBs across that state.

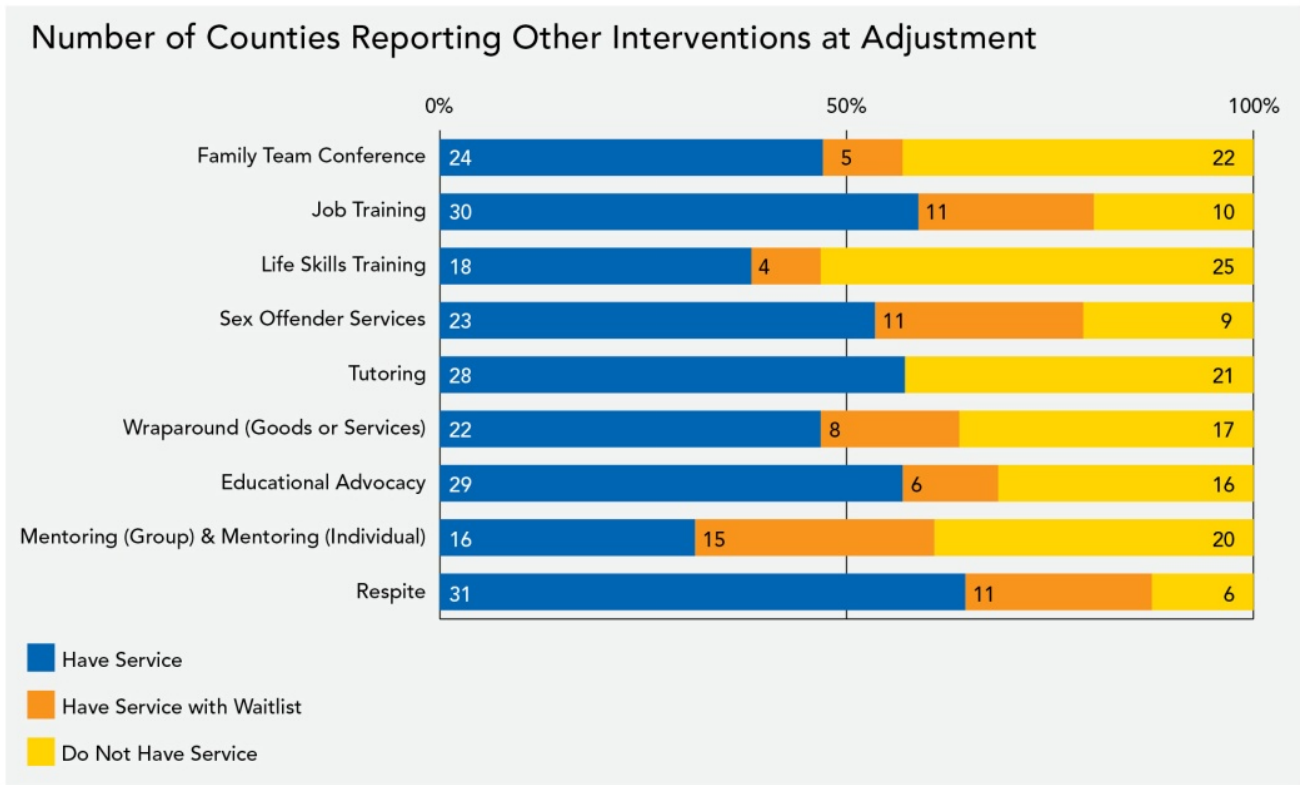
The JRB works with the youth and his or her caregivers to develop agreed-upon recommendations (e.g., community service, mental health, and substance abuse services).<sup>257</sup> Youth and their caregivers must agree to complete individualized services and activities deemed appropriate for that youth. Examples of services and activities include (a) payment to victim; (b) apology letters; (c) community service; (d) individual or family counseling; (e) tutoring; (f) employment; and (g) positive youth development activities. Youth who do not successfully complete the services and activities mandated by the board may be required to participate in additional services or may be referred to Family Court.

Two New York State counties, Albany and Ulster, and the City of Newburgh have been using the JRB model for pre-petition diversion. Generally, a panel composed of community members, including, if applicable, the person(s) harmed by the youth’s actions, determines the services and activities in which a youth is expected to engage. Often, youth are expected to sign a contract indicating their acceptance of the terms of the program, and failure to comply may result in an extension of services, additional requirements, or referral to juvenile court for case processing. Other communities in New York with

<sup>257</sup> State of Connecticut, “Judicial Branch Plan for Implementing ‘Raise the Age’ Legislation,” 11; Stephen Grant, Executive Director of Connecticut Judicial Branch Court Support Services Division, interview by author, at the Vera Institute of Justice, New York, May 7, 2014. As noted in his June 23, 2014, presentation to the Commission, Bill Carbone attributes much of Connecticut’s success at diverting youth at the front end of the system to the statewide use of juvenile review boards, particularly in the state’s urban centers.

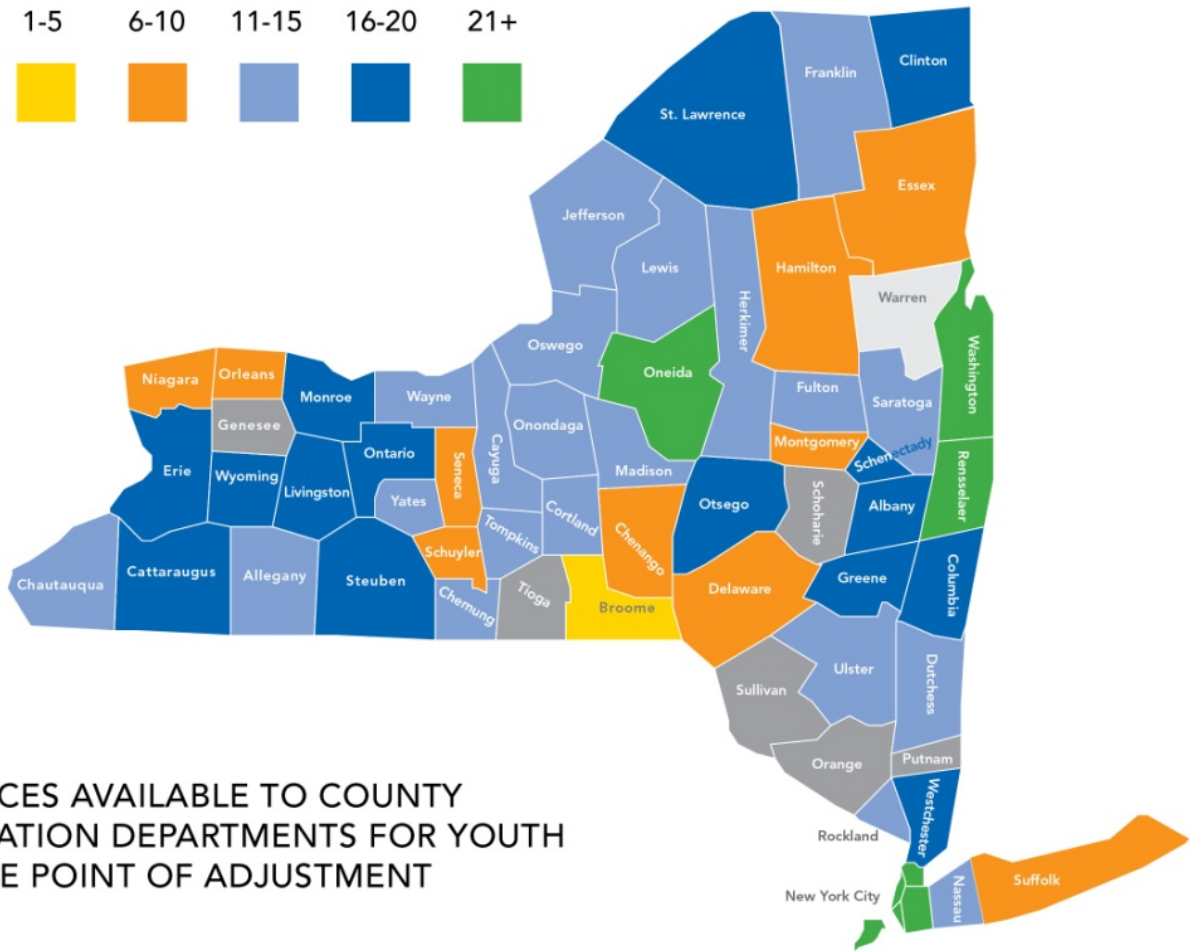
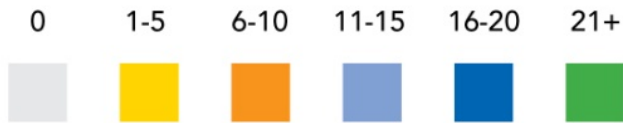
significant juvenile justice populations could also benefit by using the JRB to provide rapid accountability to the harmed victim and community while also supporting diversion of cases that do not pose significant public safety risk.

Survey results also showed that a range of other services such as job training, respite, sex offender services, educational advocacy, wraparound services, and mentoring are available across the state, but only with significant waiting lists. For example, nearly half of the counties with mentoring services also reported a waiting list for those services.



Tremendous regional variation was reported in the survey results. For example, two counties reported having five services or fewer available at probation diversion while the City of New York and four other upstate counties reported over 20 types of services. The map on the next page shows the enormous variation in diversion service capacity across New York State counties.<sup>258</sup>

<sup>258</sup> Counties coded as “NR” did not provide information about available services.



**SERVICES AVAILABLE TO COUNTY PROBATION DEPARTMENTS FOR YOUTH AT THE POINT OF ADJUSTMENT**

COUNTY	INTERVENTIONS
Albany	19
Allegany	12
Broome	4
Cattaraugus	17
Cayuga	15
Chautauqua	12
Chemung	13
Chenango	10
Clinton	19
Columbia	19
Cortland	12
Delaware	10
Dutchess	15
Erie	20
Essex	9
Franklin	14
Fulton	13
Genesee	NR
Greene	16

Hamilton	10
Herkimer	14
Jefferson	13
Lewis	12
Livingston	17
Madison	15
Monroe	19
Montgomery	9
Nassau	13
New York City	25
Niagara	7
Oneida	22
Onondaga	15
Ontario	19
Orange	NR
Orleans	8
Oswego	13
Otsego	17
Putnam	NR
Rensselaer	21

Rockland	12
Saratoga	11
Schenectady	17
Schoharie	NR
Schuyler	10
Seneca	10
Sullivan	NR
St. Lawrence	20
Steuben	9
Suffolk	11
Tioga	NR
Tompkins	15
Ulster	15
Warren	0
Washington	24
Wayne	11
Westchester	18
Wyoming	16
Yates	12



### **Facilitating family engagement in diversion process**

Access to an appropriate continuum of proven interventions is essential to the appropriate and effective use of adjustment. However, 12 out of 55 probation directors who responded to the survey took the time to write in an additional challenge to successful adjustment: gaining parental involvement or engagement. Family engagement is critical in order to obtain the parental consent that is necessary for diversion services and to ensure that youth substantially engage in the services that may be needed.

Juvenile justice jurisdictions across the country have taken lessons from other child-serving systems like mental health and child welfare, and have implemented peer family advocates, parent coaches, or family engagement specialists at various points in the justice system.<sup>259</sup> These family engagement specialists are community members who have personal experience with the juvenile justice system and who have received special training in supporting other families as their child moves through the justice system.

New York has established a New York State Family Peer Advocate Credential in recognition of the importance of family-to-family support. The credentialing process is a partnership with the New York State Office of Mental Health, and administered by Families Together in New York State. Family Peer Advocates have “lived-experience” as the parent (biological, foster, adoptive) or primary caregiver of a child/youth with a social, emotional, behavioral, mental health, or developmental disability who receive training to develop skills and strategies to empower and support other families. The intent of this credentialing process is to recognize the expertise of Family Peer Advocates, to ensure all advocates demonstrate core competencies, to expand reimbursement possibilities, and to provide opportunities for professional growth and collaboration. To date, over 200 Family Peer Advocate Credentials have been awarded.<sup>260</sup> Initial evaluation of the family and peer advocate programs shows that access to peer and family advocates in the mental health system is linked with greater satisfaction with mental health services.<sup>261</sup>

The Juvenile Justice Family Peer Advocate option is being developed in Pennsylvania. Although still in development stages in several jurisdictions, the role of this specialized service is to provide assistance and guidance from someone who is a peer, and who can help the family navigate the child serving systems (specifically the juvenile justice system). This practice builds on the Family Peer Advocacy model that emerged from the Children’s System of Care research and the Family Advocacy Movement that originated in the 1980s. Family Peer Advocates support families to acquire the knowledge and skills needed to effectively partner with the child serving systems on behalf of their children. There are 30 counties in Pennsylvania that currently support a Family Peer Advocacy project, and all provide cross-system support to families. Two counties (Chester and Philadelphia) have developed juvenile justice–specific family peer advocacy services.<sup>262</sup>

<sup>259</sup> Marleen Radigan, et al., “Youth and Caregiver Access to Peer Advocates and Satisfaction with Mental Health Services,” *Community Mental Health Journal* 50, no. 2 (2014), doi: 10.1007/s10597-014-9709-8, advance online publication <<http://www.omh.ny.gov/omhweb/resources/newsltr/2014/mar/research-to-practice.html> (2 November 2014); Edward Cohen and Linda Canan, “Closer to Home: Parent Mentors in Child Welfare,” *Child Welfare* 85, no. 5 (2006): 867–84; Terry Mizrahi, et al., “The Social Construction of Client Participation: The Evolution and Transformation of the Role of Service Recipients in Child Welfare and Mental Disabilities,” *Journal of Sociology and Social Welfare* 36, no. 2 (2009): 35–61; E. K. Anthony, et al., *Partnering with Parents: Promising Approaches to Improve Reunification Outcomes for Children in Foster Care*, New York: Hunter College, City University of New York, 2009; and Marina Lalayants, *Child Welfare Organizing Project Community Connections Program Evaluation Final Report June 2012* Silberman School of Social Work, National Resource Center for Permanency and Family Connections, Hunter College, City University of New York <[http://www.hunter.cuny.edu/socwork/nrcfcpp/info\\_services/download/CWOP%20CSC%20Evaluation%20-%20FINAL%20REPORT.pdf](http://www.hunter.cuny.edu/socwork/nrcfcpp/info_services/download/CWOP%20CSC%20Evaluation%20-%20FINAL%20REPORT.pdf)> (5 December 2014).

<sup>260</sup> Families Together in New York State, “New York State Family Peer Advocate Credential,” <<http://www.ftnys.org/family-peer-advocate/>> (5 December 2014).

<sup>261</sup> Marleen Radigan, et al. “Youth and Caregiver Access to Peer Advocates and Satisfaction with Mental Health Services,” *Community Mental Health Journal* 50, no. 2 (2014), doi: 10.1007/s10597-014-9709-8, advance online publication, <<http://www.omh.ny.gov/omhweb/resources/newsltr/2014/mar/research-to-practice.html>> (2 November 2014).

<sup>262</sup> Models for Change, Systems Reform in Juvenile Justice, “Family Involvement in Pennsylvania’s Juvenile Justice System,” Harrisburg, PA, 2009, <<http://www.pachiefprobationofficers.org/docs/Family%20Involvement%20Monograph.pdf>> (5 December 2014).

*RECOMMENDATION:*

**Establish a continuum of diversion services that range from minimal intervention for low-risk youth to evidence-based services for high-risk youth.**

The continuum should include low-cost, low-intensity responses such as restorative interventions (including juvenile accountability boards and youth courts), and more intensive services for a smaller number of youth and families who present with higher risk and more intense needs. A comprehensive range of interventions available across New York would provide access to services proven to reduce recidivism as well as rapid accountability measures that provide opportunity for youth to repair the harm they have caused without the need for more costly out-of-home placement. Services should embrace the strengths that youth and their families present through a frame of positive youth development. Creative solutions must be sought to create service capacity in more rural parts of New York to equalize access to services for youth in all parts of the state.

*RECOMMENDATION:*

**Establish family engagement specialists to facilitate adjustment.**

Support for family engagement specialists would strengthen system capacity to engage youth and their families in targeted services and serve to maximize the benefits of adjustment services.

Taken together, the recommendations to reduce barriers to adjustment, to establish a stronger continuum of diversion interventions, and to increase youth and family engagement in needed services would strengthen the juvenile system response to cases of 16- and 17-year-olds. Providing the appropriate interventions without the need for a court process in cases that do not pose a significant risk to public safety would reduce recidivism among 16- and 17-year-olds currently processed in the adult system and allow more resources to be targeted to those cases where the youth poses a greater risk to public safety.

## CHAPTER 5: COURT PROCESS

---

One of the most significant questions addressed by the Commission is how 16- and 17-year-olds should be handled in the court system once the age of juvenile jurisdiction is raised. If these cases were simply shifted to the current juvenile model, all cases would be handled in Family Court under its juvenile delinquency jurisdiction, except those cases required to be charged in adult criminal courts as Juvenile Offenders. While that default outcome could work well for many cases, it would not take into account the critical public safety concerns that require certain of the most serious violent offenses, committed in more significant volume by those who are 16 and 17 than those 15 and under, to be handled in criminal court, at least in the first instance. This chapter addresses this question in detail and recommends reforms to the current system designed to ensure that *every* youth is handled in the most appropriate manner to improve his or her prospects for future productivity as well as the safety of his or her community.

The Commission focused on the following issues to develop an appropriately nuanced approach to resolve these concerns:

- ▶ Determining which cases are appropriately initiated in Family Court or criminal court, and which transfer mechanism should be in place to ensure that cases are ultimately processed by the type of court best positioned to maximize public safety while also providing the most effective services to youth;
- ▶ Providing solutions that account for the significant regional variation in the current court structure, case processing volume, and physical plant limitations; and
- ▶ Maintaining structures that are currently beneficial to 16- and 17-year-olds in the criminal court system, such as the opportunity for bail and, in the case of town and village courts, a closer, potentially more familiar court experience.

The Sentencing Commission appointed by Chief Judge Jonathan Lippman focused first on these questions, and the Commission's analysis builds on that group's thoughtful work in many important ways. While their mandate was limited to consideration of how to process non-violent crimes committed by 16- and 17-year-olds, presentation of their deliberations to this Commission provided substantial insights regarding the many pressing court reform considerations such as court capacity, developmental differences between older and young adolescents, and the many different state, local and not-for-profit entities that touch the juvenile justice system.<sup>263</sup> Building on the Sentencing Commission's work, this Commission reviewed the current structure of criminal court and Family Court processing for youth, current Family Court capacity, the nature and extent of crimes of violence committed by 16- and 17-year-olds in New York State, and the national landscape of case processing for this group.

This chapter provides an overview of current court processing of 16- and 17-year-olds as well as current juvenile delinquency court processing. It then addresses concerns about regional variation and capacity of the Family Court to assume jurisdiction over some subset of 16- and 17-year-old cases. Finally, it provides background on the current Juvenile Offender system, describes the extent of serious and violent crime committed by 16- and 17-year-olds, details the many ways that all other states carve out some category of these offenses for criminal system processing, and provides a framework for maintaining criminal court jurisdiction for the most serious crimes of violence while also establishing new opportunities for specialized, youth-focused treatment of these cases.

<sup>263</sup> See the report of the Sentencing Commission's recommendations, February 10, 2012. That commission's executive director, Professor Martin Horn, presented the Sentencing Commission's findings and methodology in detail to this Commission on October 14, 2014. In addition, the co-chair of that commission, District Attorney Cyrus Vance, served as a member of this Commission and contributed greatly to the development of these recommendations.

## CURRENT 16- AND 17-YEAR-OLDS CRIMINAL JUSTICE SYSTEM PROCESSING

As described in Chapter One in this report, youth in New York alleged to have committed a criminal offense at age 16 or 17 are all prosecuted in criminal court by the county district attorney. Arraignment occurs before a judge in the local criminal court, usually within 24 hours of arrest.<sup>264</sup> At arraignment, youth are notified of formal charges against them, the right to counsel, and, if charged with a felony, the right to a hearing or grand jury indictment.<sup>265</sup> At arraignment and throughout the pendency of the case, judges may release youth on their own recognizance until the next court date, remand the youth to custody (local jail) without bail, or set bail.<sup>266</sup> Because these proceedings follow adult criminal procedure, the youth's parents are not formally involved in proceedings at arraignment, or at any other point in the court process. Following arraignment, the case may be dismissed, adjourned in contemplation of dismissal, proceed with a guilty plea, or proceed to trial.

The experience of 16- and 17-year-olds in the criminal courts is grounded in an adult justice model. As described in Chapter Six, the 16- and 17-year-olds who are confined during the pendency of their trial are held in adult jails.<sup>267</sup> Representation is provided by counsel representing the range of adult defendants in criminal court. An adult presentence investigation report is issued and adult sentences are applied unless the defendant is granted Youthful Offender status.<sup>268</sup>

As noted in Chapter Four, a large number of cases are disposed in criminal court early in the court process. In 2013, there were 33,064 dispositions of youth arrested for crimes committed when they were 16 or 17 in New York State. Of that total, 13,711 were found guilty of a crime in criminal court, while 19,353 were not prosecuted or were dismissed by the court.<sup>269</sup> Of those found guilty, 12,056 cases were disposed without a criminal conviction, with 7,146 cases receiving a noncriminal disposition of a violation and another 4,910 cases ending with a Youthful Offender adjudication.<sup>270</sup> This left only five percent of the cases, 1,655, resulting in a criminal record of conviction.

<sup>264</sup> NY Criminal Procedure Law § 170.10 (misdemeanor) and 180.10 (felony).

<sup>265</sup> The youth may be afforded a public defender or hire a private attorney.

<sup>266</sup> NY Criminal Procedure Law § 170.10 (misdemeanor), 170.55 (adjournment in contemplation of dismissal), and 180.70 (felony).

<sup>267</sup> New York State supports a range of Alternative to Incarceration Program (ATI) programs for people involved in the adult criminal justice system. Adolescents are eligible for this programming as an alternative to adult jail during the pendency of their trial although very few provide services targeted to the youngest population in the criminal justice system. There are about 200 ATI programs supported across the state, with fewer than 12 focusing specifically on interventions that are effective with 16- and 17-year-olds.

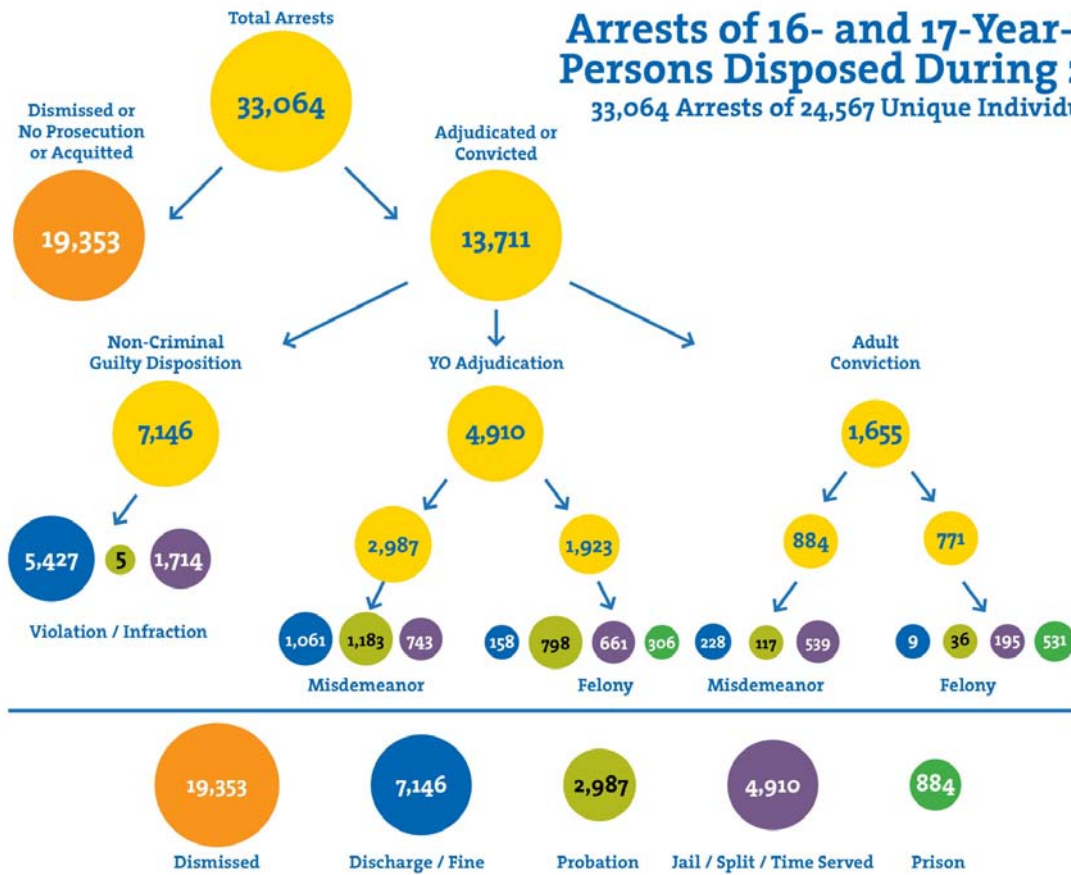
<sup>268</sup> NY Criminal Procedure Law § 390.20 and 390.30.

<sup>269</sup> Division of Criminal Justice Services, *Computerized Criminal History* (Albany: Division of Criminal Justice Services, 2014).

<sup>270</sup> A fuller description of Youthful Offender status is provided in Chapter Nine on collateral consequences.

# Arrests of 16- and 17-Year-Old Persons Disposed During 2013

33,064 Arrests of 24,567 Unique Individuals



Source: NYS Division of Criminal Justice Services, Prepared March 14, 2014

The Commission noted in its research that the current system effectively weeds out many, if not all, of the cases that should not proceed, whether via dismissal or otherwise, as shown in the preceding figure. But for those cases that do proceed through any significant proceedings, the relevant question is which court and which pretrial probationary services would be most likely to reduce recidivism and protect public safety. The Commission’s recommendations below attempt to answer that question with targeted, yet comprehensive reforms to the current process for handling 16- and 17-year-olds.

## CURRENT JUVENILE CASE PROCESSING

Children age 15 or under at the time they are alleged to have committed a criminal act is generally adjudicated in Family Court as juvenile delinquents.<sup>271</sup> A juvenile delinquent is a youth aged 7 to 15 “who, having committed an act that would constitute a crime if committed by an adult, (a) is not criminally responsible for such conduct by reason of infancy, or (b) is the defendant in an action ordered removed from a criminal court to the family court.”<sup>272</sup> A small number of youth are processed in Family Court for more serious offenses as “designated felony” cases.<sup>273</sup> In 2013, the Family Court handled about 7,800 initial delinquency petitions. Only 242 of those petitions were for designated felony offenses.<sup>274</sup>

Youth facing juvenile delinquency charges who are detained are held in juvenile detention centers during the pendency of their cases. Instead of the county district attorney, the “presentment agency” prosecutes cases in Family Court. In New York City, the office of Corporation Counsel within the Law Department is the presentment agency. In the rest of the state, county attorneys function as the presentment agency. Youth are represented by State-funded attorneys who are charged with helping to protect their interests and express their wishes to the court, and court rules require them to defend the child zealously in a delinquency proceeding.<sup>275</sup> Court rules also require an ongoing course of training and education for these attorneys for children.<sup>276</sup> Unique youth-focused factors such as school adjustment and previous social service intervention are included as part of the predispositional investigation and a sentencing structure that is generally shorter than the adult structure.<sup>277</sup>

Most of the Family Court trial process mirrors the Criminal Procedure Law that governs the adult trial process in criminal court. However, there are some key differences. The Family Court Act does not provide a right to a jury trial

<sup>271</sup> NY Family Court Act § 302.1.

<sup>272</sup> NY Family Court Act § 301.2(1).

<sup>273</sup> NY Family Court Act § 301.2(8). Designated felonies include (i) murder in the first and second degree; kidnapping in the first degree; or arson in the first degree committed by a person thirteen, fourteen or fifteen years of age; or such conduct committed as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law; (ii) assault in the first degree; manslaughter in the first degree; rape in the first degree; criminal sexual act in the first degree; aggravated sexual abuse in the first degree; kidnapping in the second degree, but only where the abduction involved the use or threat of use of deadly physical force; arson in the second degree or robbery in the first degree committed by a person thirteen, fourteen or fifteen years of age; or such conduct committed as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law; (iii) attempt to commit murder in the first or second degree or kidnapping in the first degree committed by a person thirteen, fourteen or fifteen years of age; or such conduct committed as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law; (iv) burglary in the first degree; subdivision one of burglary in the second degree; subdivision two of robbery in the second degree; or section 265.03 of the penal law, where such machine gun or such firearm is possessed on school grounds, as that phrase is defined in subdivision fourteen of section 220.00 of the penal law committed by a person fourteen or fifteen years of age; or such conduct committed as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law; (v) assault in the second degree or robbery in the second degree of the penal law committed by a person fourteen or fifteen years of age but only where there has been a prior finding by a court that such person has previously committed an act which, if committed by an adult, would be the crime of assault in the second degree, robbery in the second degree or any designated felony act specified in paragraph (i), (ii), or (iii) of this subdivision regardless of the age of such person at the time of the commission of the prior act; or (vi) other than a misdemeanor committed by a person at least seven but less than sixteen years of age, but only where there have been two prior findings by the court that such person has committed a prior felony.

<sup>274</sup> See New York State Division of Criminal Justice Services Office of Court Administration Family Court database (last accessed September 12, 2014).

<sup>275</sup> NY Family Court Act § 241; Administrative Rules of the Unified Court System & Uniform Rules of the Trial Courts § 7.2(c).

<sup>276</sup> Administrative Rules of the Unified Court System & Uniform Rules of the Trial Courts § 7.1(f).

<sup>277</sup> NY Family Court Act § 351.1(1). The maximum period of probation in section 353.2(6) of the NY Family Court Act is an initial term of two years followed by an optional third year. Under section 353.3(5) of the NY Family Court Act, placement other than restrictive placements are for up to an initial 12 months on a misdemeanor and an initial 18 months on a felony, with the option to extend placement at the end of the original term.

nor is there an opportunity to be released on bail. While speedy trial requirements exist in Family Court, their structure is substantially different from the speedy trial provisions in criminal court.<sup>278</sup>

Additionally, the process for sentencing (called disposition in Family Court) differs from that in criminal court. Once the allegations in the petition have been established, the court is required to order a probation investigation and may order a diagnostic report to inform the disposition.<sup>279</sup> Family Court's unique dispositional process includes the right to an evidentiary disposition hearing, where the court considers a variety of evidence, with relaxed standards regarding the admissibility of evidence, to support a disposition order based on a preponderance of evidence.<sup>280</sup> The disposition order must reflect the least restrictive disposition that balances the needs and best interest of the child and the need for protection of the community.<sup>281</sup>

These Family Court structures provide a range of youth-centered approaches that are not available in the criminal court. As described in Chapter Four, Family Court is not even accessed in the juvenile system until the opportunity for diversion interventions has been reviewed. Once in the court process, youth are represented by attorneys who are specially trained in the unique role of providing counsel to children, judges are enmeshed in the cases of children full time, probation assessments and reports focus on issues unique to youth (such as academic and family supports and challenges), and dispositional decision-making is rooted in the needs and best interest of youth as well as public safety. In addition, Family Courts have the capacity to order a range of services that are part of a larger portfolio of services to prevent out-of-home placement at the local level. None of these structures is currently incorporated into the criminal court context.

In addition, juvenile courts in New York State have adopted structured decision-making tools to help judges identify and match youth with the most effective interventions, in line with national best practice standards. In New York City, the Department of Probation uses the Youth Level of Service/Case Management Inventory Structured Decision Making matrix to inform judicial decisions. In all other counties, probation uses the Youth Assessment and Screening Instrument (YASI). Recent legislation championed by Governor Cuomo also requires use of a validated, predispositional risk assessment instrument to inform dispositional recommendations provided by probation in its predispositional investigation.<sup>282</sup> Currently under development by the OCFS, this new instrument will provide an objective tool to assist the Family Court in matching the dispositional outcome to the risk presented by the youth.

The options for post-disposition confinement are also substantially different in the Family Court system from the options of jail and prison in the criminal court system. Family Courts can order placement to a variety of settings dependent on the needs of the youth. Youth may be placed in the custody of the LDSS and be housed in a non-secure

<sup>278</sup> The NY Family Court Act contains several speedy trial provisions, including: entitlement to a speedy fact finding hearing following the filing of the petition or signing of the order of removal from criminal court (NY Family Court Act § 310.2); an initial appearance within 72 hours of the petition being filed or the next court day (whichever is sooner) for detained youth and, absent good cause shown, within 10 days after the petition is filed for youth who are not detained (NY Family Court Act § 320.5(1)); a probable cause hearing for detained youth within three days following the initial appearance or within four days following the filing of a petition, whichever occurs sooner (NY Family Court Act § 325.1); a fact finding hearing not more than 14 days after the conclusion of the initial appearance for youth detained and charged with an A, B, or C felony offense, not more than three days after the conclusion of the initial appearance if detained and charged with less than a C felony, and not more than 60 days after conclusion of the initial appearance if the youth is not detained (NY Family Court Act § 340.1); and a dispositional hearing not more than 10 days after the fact-finding order is issued if the youth is in detention and was found to have committed an offense other than a designated felony or not more than 50 days after the entry of the fact-finding order in all other cases (NY Family Court Act § 350.1). Criminal court requires trial within a certain time of commencement of a criminal action: within 60 days if accused of at least one misdemeanor punishable by imprisonment of no more than three months and no crimes punishable by imprisonment for more than three months; within 90 days if accused of a misdemeanor punishable by more than three months imprisonment and not accused of any felonies; and within six months if accused of any felony (NY Criminal Procedure Law § 30.30). An assessment of case processing time in Family Court versus case processing time in criminal court, conducted by the Division of Criminal Justice Services, found that case-processing time is faster in Family Court. Median days from offense date to disposition in Family Court was found to be 139 days in Family Court while the median days from arrest to disposition in criminal court was 214 days.

<sup>279</sup> NY Family Court Act § 351.1. The probation investigation and diagnostic report shall include the history of the juvenile including previous conduct, the family situation, any previous psychological and psychiatric reports, school adjustment, previous social assistance provided by voluntary or public agencies, and the response of the juvenile to that assistance. *Id.*

<sup>280</sup> NY Family Court Act § 345.1.

<sup>281</sup> NY Family Court Act § 352.2(2)(a).

<sup>282</sup> NY Family Court Act § 351.1(2-a) and (2-b).

facility operated by a private, not-for-profit agency. They may also be placed in the custody of the OCFS in a non-secure, limited-secure, or secure facility.<sup>283</sup> Since passage of the Close to Home Initiative in 2012, non-secure placement of all youth from New York City Family Court must be with the local department of social services, the New York City ACS. The second phase of Close to Home, once implemented, will also require custody with ACS for all New York City youth sent to limited-secure placement.

Length of placement depends on the type of offense. If the respondent is adjudicated for a felony, initial placement may be up to 18 months. For a misdemeanor, initial placement may not exceed 12 months.<sup>284</sup> Placements can be extended beyond this initial period after a hearing concerning the need for continuing the placement.<sup>285</sup>

For youth who are adjudicated delinquent for the most serious offenses processed in Family Court, designated felony offenses, the Family Court Act contains enhanced sentencing provisions to ensure public safety – restrictive placements. Orders of disposition on designated felony offenses must include specific findings of fact based on statutorily defined criteria to determine whether a restrictive placement is necessary.<sup>286</sup> In addition, a restrictive placement must be imposed if the youth inflicted serious physical injury on someone age 62 or older.<sup>287</sup> If ordered, restrictive placements for Class A felonies must be for an initial period of five years and must begin with 12 to 18 months in a secure facility.<sup>288</sup> Restrictive placements for offenses other than Class A felonies must be for an initial period of three years and start with six to 12 months in a secure facility.<sup>289</sup>

As shown below, there were 7,800 initial delinquency petitions filed in Family Court in 2013.<sup>290</sup> Approximately 29 percent of those cases resulted in a disposition to probation supervision, and 13 percent resulted in a disposition to an out-of-home placement setting. The remaining cases were disposed of without either probation or placement, including conditional discharge or adjournment in contemplation of dismissal.

<sup>283</sup> NY Family Court Act § 353.3.

<sup>284</sup> NY Family Court Act § 353.3(5).

<sup>285</sup> NY Family Court Act § 355.3.

<sup>286</sup> Considerations of the court must include: the needs and best interests of the respondent; the record and background of the respondent; the nature and circumstances of the offense, including injury to any victim; the need for community protection; and the age and physical condition of the victim. See NY Family Court Act § 353.5(2).

<sup>287</sup> NY Family Court Act § 353.5(3).

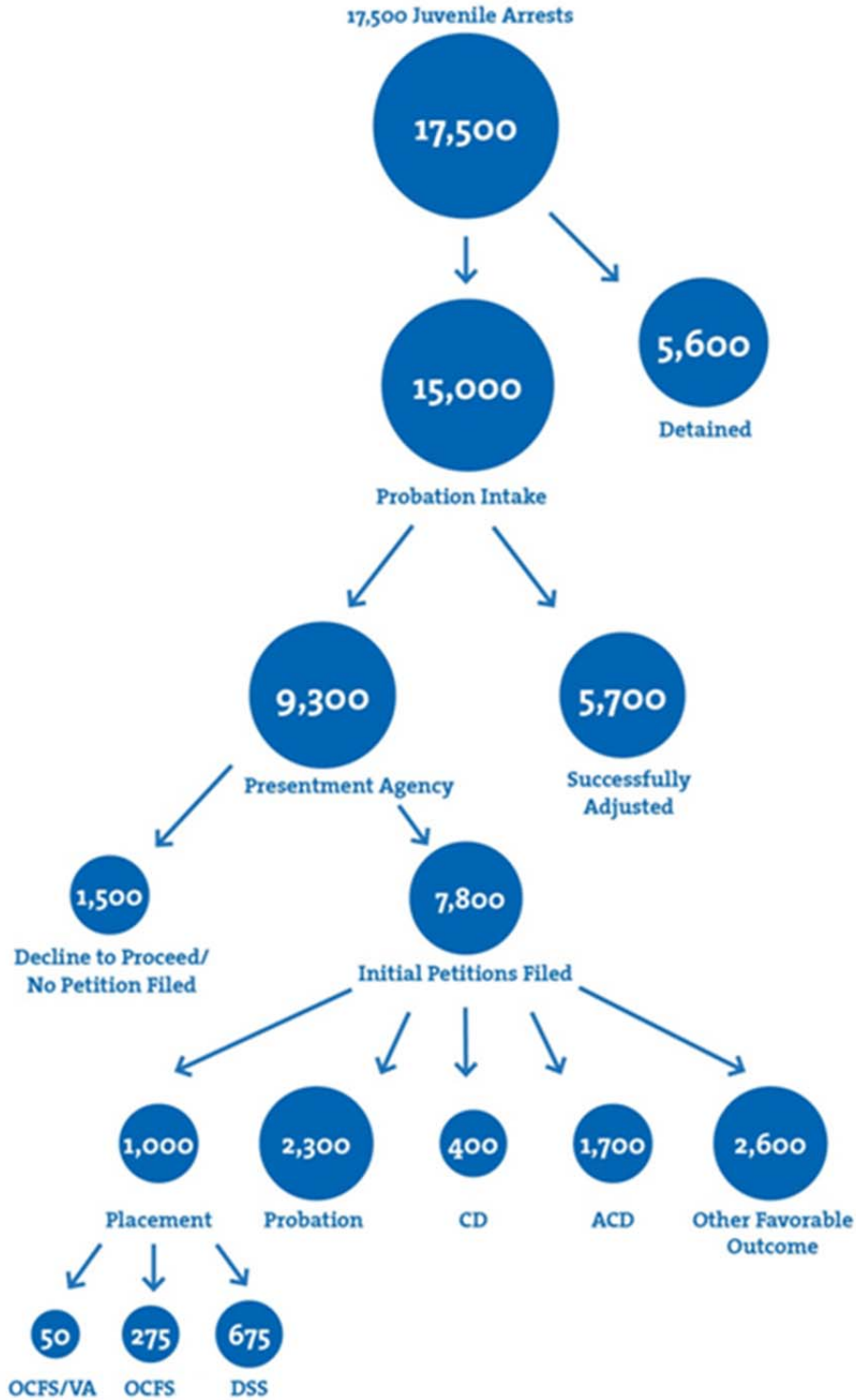
<sup>288</sup> NY Family Court Act § 353.5(4).

<sup>289</sup> NY Family Court Act § 353.5(5).

<sup>290</sup> Supplemental juvenile delinquency petitions, petitions to revisit issues in existing delinquency cases (such as violations of probation or extensions of placement), are not included in these numbers.



# New York State Juvenile Justice Processing - 2013

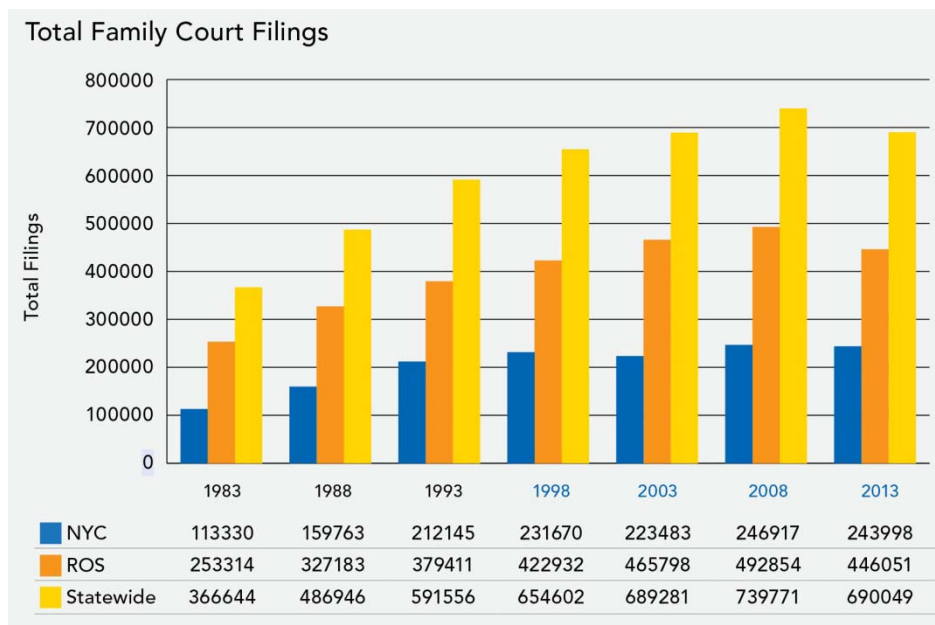


## FAMILY COURT CAPACITY AND REGIONAL VARIATION

Given the many existing provisions in Family Court that make its processing of youth more responsive to the developmental needs of teenagers and its capacity to access effective interventions targeted specifically for young people, many people who provided public testimony to the Commission and a majority of the stakeholders who participated in focus groups advised the Commission to recommend the Family Court structure for at least non-violent cases involving 16- and 17-year-olds.<sup>291</sup>

At the same time, many stakeholders who contributed to the Commission’s work and Chief Judge Lippman’s Sentencing Commission voiced concern about the overall impact of an increase in caseload volume for an already overburdened Family Court. Family Courts across New York State currently handle dockets comprised of a variety of cases that touch children and families, including custody and visitation, child support and paternity, child abuse and neglect, adoption, family violence, PINS (noncriminal status offenses such as truancy and running away), and juvenile delinquency. In 2013, 13,097 juvenile delinquency filings were handled by Family Courts, which represented only 3.5 percent of total 377,659 filings in that court statewide.<sup>292</sup>

The Commission found that the overall caseload in Family Court has nearly doubled over the last 30 years, although juvenile delinquency petitions have declined 35 percent statewide since 2009.<sup>293</sup>



As discussed more fully in Chapter Ten, if all misdemeanor and non-violent felony cases for 16- and 17-year-olds were shifted to Family Court and other Commission recommendations regarding diversion were implemented, Family Court would handle approximately an additional 6,840 cases annually. While this would almost double the delinquency docket, it represents only a two percent increase in total Family Court filings (excluding support filings).

It is also important to understand the tremendous regional variation in Family Courts across the state. Depending on the county, judges may preside over cases only in Family Court, or may also preside over a combination of cases in

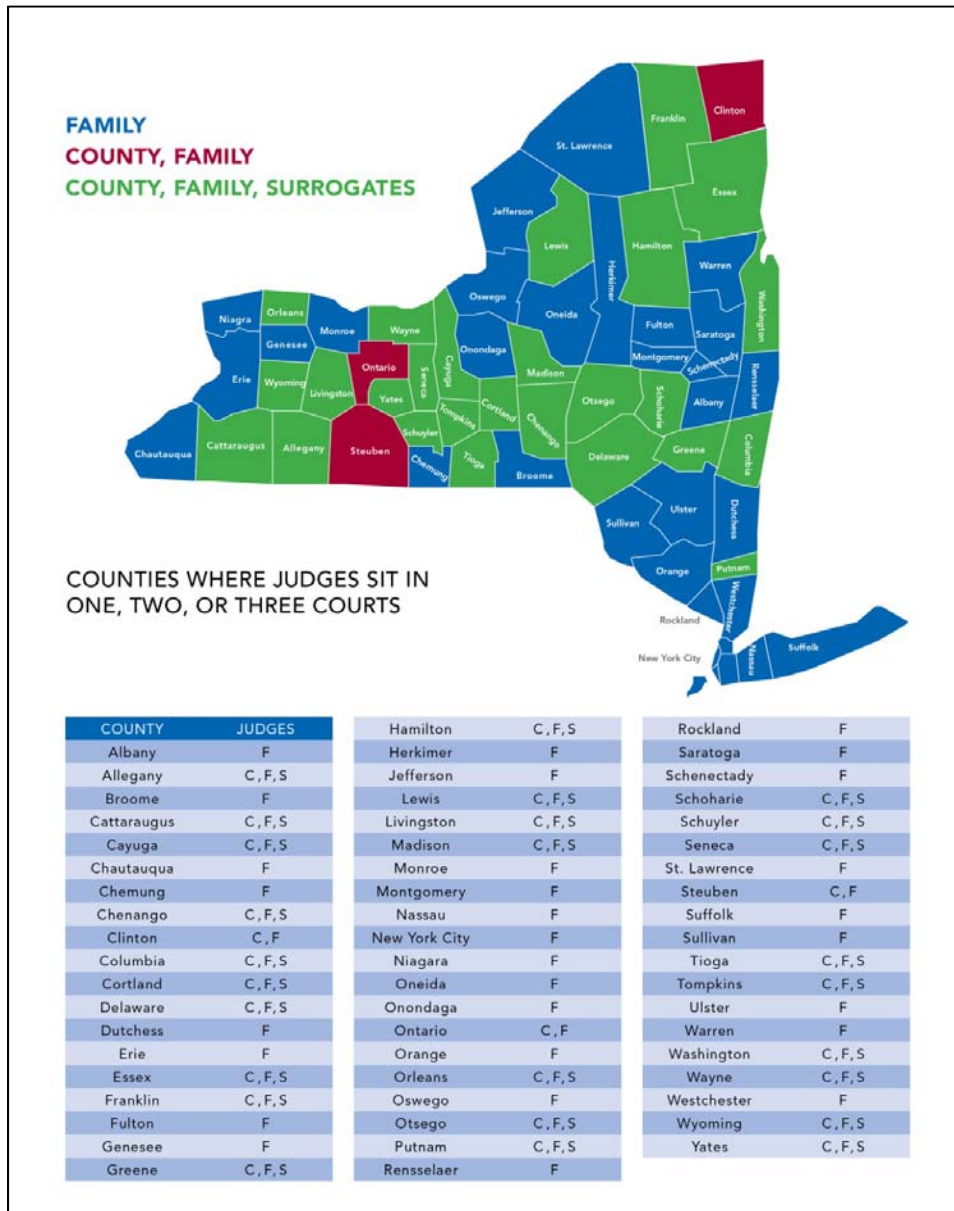
<sup>291</sup> Testimony provided to the Commission by Tamara Steckler, Legal Aid Society; Michael Marinan, Monroe County Secure Detention Administrator; Honorable Dandrea Ruhlmann, Monroe County Family Court.

<sup>292</sup> New York State Unified Court System, Filings by Case Type (2013). Prepared by the Office of Court Administration, June 18, 2014. Data represent initial and supplemental petitions. In New York City, it comprised 4.3 percent of Family Court case filings, and in the rest of the state it comprised 3.0 percent. This data excludes support filings.

<sup>293</sup> From unpublished data prepared for this Commission by the New York State Division of Criminal Justice Services.

Family Court, County Court, or Surrogate’s Court. Judges in 33 counties preside over Family Court alone, and judges in 29 counties preside over a combination of courts.<sup>294</sup> Some judges within Family Court specialize in juvenile delinquency cases, on a county-by-county basis, including judges in New York City.

The Family Court structure in New York City differs substantially from other counties in that the 47 New York City Family Court judges are appointed to the bench and serve over specialized dockets (delinquency and PINS; child welfare; child support and paternity; or custody, visitation, and family offenses). Outside New York City, Family Court judges are elected, and in 25 of the state’s most rural counties, Family Court judges are “triple haters,” also sitting as County Court and Surrogates Court judges. Family Court judges in four counties are “double haters,” sitting as both County Court and Family Court judges.



<sup>294</sup> Janet Fink to Jacquelyn Greene, e-mail, May 9, 2014.

## MISDEMEANORS AND NON-VIOLENT FELONIES

Given the existing structures in place in Family Court to process cases of adolescents in a developmentally informed way and the relatively minor impact that the influx of cases is likely to have on overall case volume in Family Court, the Commission recommends shifting all misdemeanor and non-violent felony cases against those who commit these offenses under age 18 to Family Court when raising the age of juvenile jurisdiction.<sup>295</sup> This would shift approximately 86 percent of all of the 16- and 17-year-old cases into the Family Court.<sup>296</sup>

The Commission gave significant consideration to the Sentencing Commission's recommendation to create a new hybrid court to handle all misdemeanor and non-violent felony offenses. While this Commission found great value in the capacity for the criminal court to maintain jurisdiction over cases originating in that court and removed to Family Court (as described later in this chapter), there are several reasons for directing lower-level cases against 16- and 17-year olds in Family Court instead of to a hybrid court. First, the creation of a new hybrid court would require creation of an entirely new tribunal offering a rehabilitative approach, with new links to services and programs. Yet the Commission's research found that Family Court is a well-established tribunal already structured to do just that. Establishing a hybrid court for those cases would thus pose unnecessary political and logistical challenges.

While not insignificant, the projected additional case volume expected to materialize under this Commission's proposals would be manageable for the Family Courts. Modeling completed in support of the Commission projects an additional 6,840 delinquency filings annually in Family Court once the new age of juvenile jurisdiction is fully implemented. With 20 new Family Court judgeships being established in January of 2015 and an additional five Family Court judgeships scheduled for January 2016, the Family Court would have adequate capacity to manage the influx of new 16- and 17-year-old misdemeanor and non-violent felony cases.<sup>297</sup> Family Court judges who provided input to this Commission all supported the use of Family Court for these cases, many of them noting that they hear cases of 16- and 17-year-olds now as PINS and child welfare cases and that handling any criminal activity of these same young people in a different court would hamper the court's capacity to work with them in a comprehensive way.

For all of these reasons, the Commission supports the use of the existing structures that are so well established in the Family Court to provide a developmentally appropriate rehabilitative approach for all but the most serious cases involving 16- and 17-year-olds.

The Commission further recommends that three changes be made to the existing Family Court structure in order to maintain appropriate levels of accountability and to maintain benefits that 16- and 17-year-olds have in the criminal system. First, some stakeholders voiced concern that the current jurisdiction of Family Court would not be sufficient because the Family Court does not currently have jurisdiction over any offenses that are classified as violations. Two specific violations, harassment and disorderly conduct, were raised by stakeholders as important in terms of accountability. These offenses are often connected to cases of domestic violence or disruptive behavior and are currently processed in the criminal courts for 16- and 17-year-olds. Some stakeholders felt it important to maintain some legal jurisdiction over these offenses in the context of raising the age. Therefore, the Commission recommends expanding Family Court jurisdiction to include the violations of harassment and disorderly conduct for 16- and 17-year-old youth. There would not be jurisdiction over any other violations in Family Court, making any other offenses less than misdemeanors not chargeable against 16- and 17-year-olds (just as they are currently not chargeable against youth who are 15 and under).

<sup>295</sup> The Commission's definition of violent felonies includes all crimes defined in the law as violent felony offenses as well as all homicide crimes, all Class A felonies, sexually motivated felonies, crimes of terrorism, felony vehicular assaults, and aggravated criminal contempt as well as conspiracy to commit any of those offenses and tampering with a witness related to any of those offenses, as described later in this chapter. The remaining felonies would be handled in Family Court for 16- and 17-year-olds.

<sup>296</sup> Division of Criminal Justice Services, *Computerized Criminal History* (Albany: Division of Criminal Justice Services, 2014).

<sup>297</sup> See Chapter 44 of the Laws of 2014.

Shifting the majority of 16- and 17-year-old cases to Family Court also presents a challenge in terms of access to bail. A bail option for 16- and 17-year-olds should be incorporated into Family Court procedures to ensure that these youth are not unnecessarily disadvantaged by the shift from criminal court.

Finally, some stakeholders raised concerns about centralizing case processing in the Family Court because, in most counties, that means that cases would need to be heard at the one Family Court location within the County. Currently, many low level cases of 16- and 17-year-olds are processed in local criminal courts right in the towns and villages where youth live. The shift to Family Court would usually mean that case processing would be available only at the one Family Court courthouse in the County. In order to provide flexibility to maintain more local case processing of these cases, the Commission recommends that Family Court judges should be allowed to ride circuit and hear cases in more localities within their jurisdiction. The Office of Court Administration (OCA) should oversee the implementation of this option, with the flexibility to use a variety of local settings to hear Family Court cases if OCA finds the use of those settings both feasible and preferable in any subset of delinquency cases.

**RECOMMENDATION:**

Expand Family Court jurisdiction to include youth ages 16 and 17 charged with non-violent felonies<sup>298</sup>, misdemeanors, or harassment or disorderly conduct violations. Provide access to bail for 16- and 17-year-olds in Family Court and allow Family Court judges to ride circuit to hear cases, at the discretion of the Office of Court Administration.

While the Commission finds that Family Court is the best fit for these lower-level offenses, the issue of how to process serious crimes of violence committed by 16- and 17-year-olds is a significant consideration. The Commission reviewed the current practice for handling the most serious offenses for youth currently under the age of juvenile jurisdiction as well as the national landscape to inform these important recommendations.

## CURRENT JUVENILE OFFENDER CASE PROCESSING

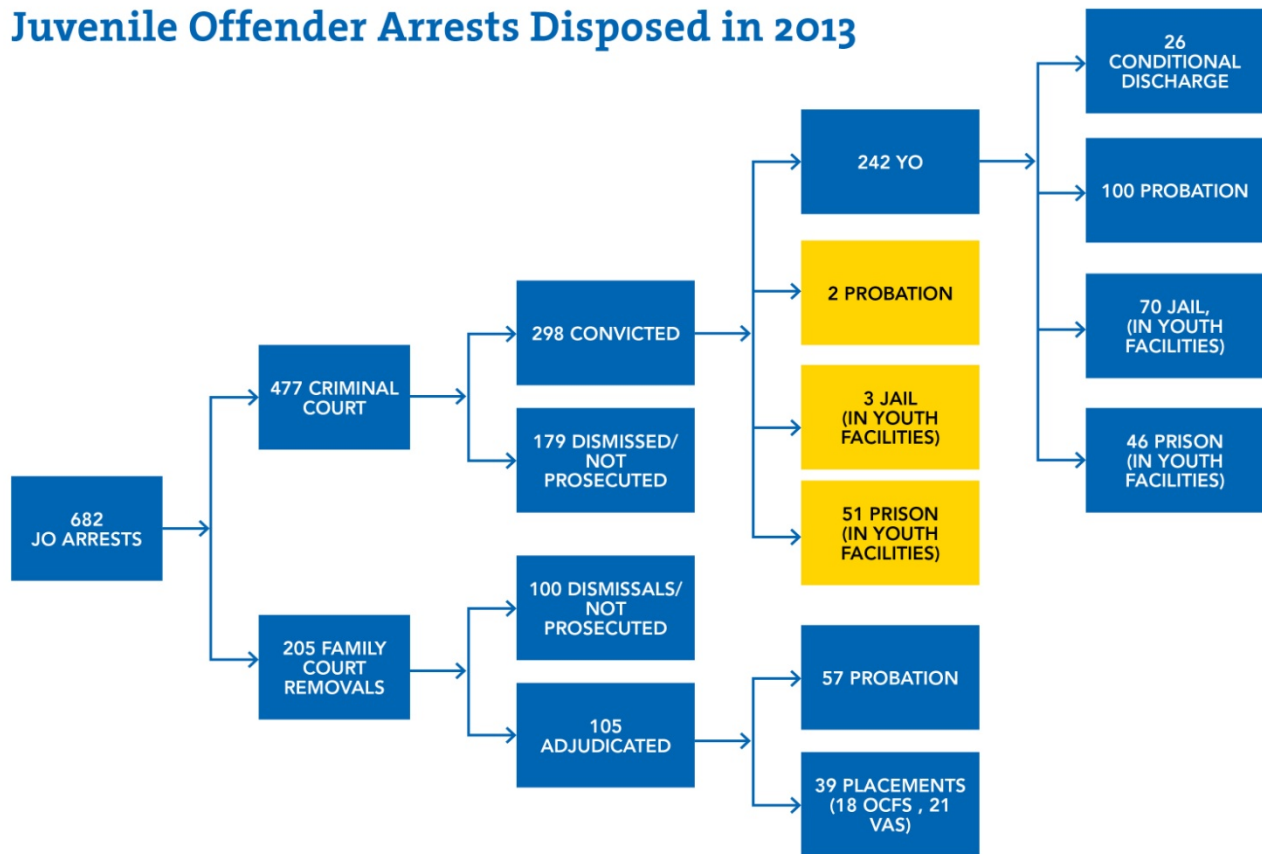
The cases of youth aged 13 through 15 who are alleged to have committed certain serious and violent offenses originate in adult criminal court as Juvenile Offenders.<sup>299</sup> While these cases originate in criminal court with the potential of an adult record of conviction, only eight percent of current Juvenile Offender arrests (56 of 682 arrests) result in an adult record of conviction. About one-quarter of Juvenile Offender arrests result in a period of confinement, served largely in juvenile facilities.<sup>300</sup> Juvenile Offender cases are currently processed as shown below, with the yellow boxes indicating cases that result in an adult criminal record.

<sup>298</sup> Non-violent felonies would exclude all homicide offenses; Class A felonies; Juvenile Offender crimes, Violent Felony Offenses, sexually motivated felonies, crimes of terrorism, felony vehicular assaults, aggravated criminal contempt; and conspiracy to commit or tampering with a witness related to any of the above offenses.

<sup>299</sup> Division of Criminal Justice Services, *Computerized Criminal History* (Albany: Division of Criminal Justice Services, 2014).

<sup>300</sup> *Ibid.*

## Juvenile Offender Arrests Disposed in 2013



The New York State Penal Law enumerates the relevant Juvenile Offender crimes as follows:

- ▶ For 13-year-olds: certain subdivisions within murder in the second degree or a sexually motivated felony.<sup>301</sup>
- ▶ For 14 and 15-year-olds, all crimes within: kidnapping in the first degree, arson in the first and second degrees, manslaughter in the first degree, burglary in the first degree, aggravated sexual abuse in the first degree, robbery in first degree, attempt to commit murder in the second degree, or sexually motivated felony. In addition, certain subdivisions of the following offenses: murder in the second degree, assault in the first degree, rape in the first degree, criminal sexual act in the first degree, burglary in the second degree, robbery in the second degree, or criminal possession of a weapon on school grounds.<sup>302</sup>

The criminal court has original jurisdiction over these offenses. However, removal of these cases to Family Court is possible at many different stages of the court process as shown below.

<sup>301</sup> NY Penal Law § 125.25(1-2).

<sup>302</sup> Juvenile offender offenses that include only a certain subdivision or subdivisions of the offense include: NY Penal Law § 125.25(1-3) (murder in the second degree), provided that crimes under subdivision 3 only apply when the person is criminally responsible for the underlying crime; NY Penal Law § 120.10(1-2) (assault in the first degree); NY Penal Law § 130.35(1-2) (rape in the first degree); NY Penal Law § 130.50(1-2) (criminal sexual act in the first degree); NY Penal Law § 140.25(1) (burglary in the second degree); NY Penal Law § 160.10(2) (robbery in the second degree); and NY Penal Law § 265.03 (criminal possession of a weapon), provided machine gun or firearm is possessed on school grounds.

In 2013, 682 disposed arrests of youth ages 13–15 originated in criminal court as Juvenile Offender cases. Of these, 205 (30 percent) were removed to Family Court and processed as juvenile delinquents.<sup>303</sup> In other words, even in the current system, almost one third of the most serious cases involving JO offenses are transferred to and handled by the Family Courts around the state. This is an important point considered by the Commission alongside concerns about the Family Court’s ability to handle these types of very serious offenses.

Juvenile Offender cases that remain in criminal court are subject to the standard criminal court process under the Criminal Procedure Law, including trial in criminal court with prosecution by the district attorney and defense provided by a public defender, holding in criminal court lockups, and trial in front of criminal court judges, with bail and jury trial options. At the same time, Juvenile Offenders are held in juvenile detention facilities instead of adult jails, pending trial. If convicted, Juvenile Offenders must be sentenced to a term of imprisonment in a secure juvenile facility operated by OCFS, or, if adjudicated as a Youthful Offender (discussed further below), may be sentenced either to confinement at OCFS, probation supervision, or a conditional or unconditional discharge.<sup>304</sup>

Indeterminate sentences of imprisonment served in OCFS secure facilities are prescribed in §70.05 of New York Penal Law and range anywhere from a one year minimum to a ten year maximum depending on the offense.<sup>305</sup>

Juvenile Offenders serving indeterminate sentences at OCFS or DOCCS appear before the New York State Board of Parole for authorized release. If released from confinement prior to expiration of their maximum sentence, Juvenile Offenders are supervised by DOCCS community supervision officers for a period of

Juvenile Offender Removal Opportunity in Criminal Process	District Attorney Involvement
Grand Jury <sup>a</sup>	None – the grand jury has to find that it is not a Juvenile Offender offense and therefore the grand jury cannot indict
Arraignment <sup>b</sup>	At the request of the District Attorney
Post-arraignment, pre-trial <sup>c</sup>	District Attorney consent required for charges of murder in the second degree, rape in the first degree, criminal sexual act in the first degree, or an armed felony
Plea <sup>d</sup>	Only with District Attorney recommendation
Verdict <sup>e</sup>	None – guilty verdict must be for a crime that is not a Juvenile Offender offense
Post-verdict <sup>f</sup>	On motion and with consent of the District Attorney

a N.Y. CRIM. PROC. LAW § 190.71.

b N.Y. CRIM. PROC. LAW § 180.75.

c N.Y. CRIM. PROC. LAW § 210.43. In determining whether removal is in the interests of justice, the court must consider: the seriousness, circumstances, and extent of harm caused by the offenses; the evidence of guilt regardless of trial admissibility; the history, character, and condition of the defendant; the purpose and effect of imposing upon the defendant an authorized sentence for the offense; the impact of removal to the community safety and welfare and upon the confidence of the public in the criminal justice system; the attitude of the complainant or victim with respect to the motion, where appropriate; and any other relevant fact indicating that a judgment of criminal court conviction would serve no useful purpose. Removal of actions involving an indictment charging a juvenile offender with murder in the second degree, rape in the first degree, criminal sexual act in the first degree, or an armed felony requires DA consent and a court finding of one or more of the following factors: (a) mitigating circumstances that bear on the manner in which the crime was committed; (b) where the defendant was not the sole participant in the crime, the defendant’s participant was relatively minor; or (c) possible deficiencies in the proof of the crime.

d N.Y. CRIM. PROC. LAW § 220.10.

e N.Y. CRIM. PROC. LAW § 310.85.

f N.Y. CRIM. PROC. LAW § 330.25

<sup>303</sup> See New York State Division of Criminal Justice Services, “Juvenile Offender Arrests Disposed During 2013. Unpublished data prepared for this Commission. July 9, 2014.

<sup>304</sup> NY Criminal Procedure Law § 60.10. NY Penal Law § 60.02

<sup>305</sup> NY Penal Law § 70.05 provides the following sentencing maximum and minimums for enumerated felony crimes: Class A second degree murder: a minimum of 5–9 years for Juvenile Offenders aged 13 and a minimum of 7.5–15 years for ages 14–15; and a maximum of life imprisonment; Class A first degree arson or kidnapping: a minimum of 4–6 years and a maximum of 12–15 years; Class B felony: maximum of 10 years, with a minimum of 1/3 the maximum; Class C felony: maximum of seven years with a minimum of one-third the maximum; Class D felony: maximum of four years with a minimum of one-third the maximum.

parole. Most Juvenile Offenders who serve sentences at OCFS are released from an OCFS facility back to their community, as shown in the following chart.<sup>306</sup>

OCFS JUVENILE OFFENDER DISCHARGES BY SETTING	2012		2013	
	#	%	#	%
DOCCS-Residential	31	20%	19	13%
Adult Parole/Probation	81	53%	87	57%
Community	40	26%	46	30%
Total	152	100%	152	100%

Youth serving lengthy terms of imprisonment may remain in an OCFS facility until age 21 and then must be transferred to DOCCS. But OCFS maintains statutory discretion to transfer youth to DOCCS before they turn 21. The original sentencing court can permit a transfer of a Juvenile Offender to DOCCS at age 16 or 17. Once youth turn 18, they can be administratively transferred to DOCCS.<sup>307</sup> As shown below, most Juvenile Offenders who transfer from OCFS to DOCCS are transferred either at age 18 or at age 21.

AGE AT JUVENILE OFFENDER DISCHARGE FROM OCFS TO DOCCS	2012		2013	
	#	%	#	%
17 years	2	7%	2	11%
18 years	13	42%	7	37%
19 years	2	7%	1	5%
20 years	3	10%	4	21%
21 years	11	35%	5	26%
Total	31	100%	19	100%

In interviews and focus groups conducted across the state about current Juvenile Offender practice, most stakeholders agreed that it is appropriate for some set of the most serious and violent crimes to be processed in criminal court, and that the current Juvenile Offender law should be expanded to include at least the same set of serious and violent crimes among 16- and 17-year-olds. However, stakeholders repeatedly pointed to one exception: the current processing of robbery in the second degree as a Juvenile Offender crime.

Specifically, stakeholders explained that under current law, youth who play a lesser role amidst a group of youth who commit a robbery may be processed in criminal court as Juvenile Offenders.<sup>308</sup> Of 620 total 14- and 15-year-old

<sup>306</sup> Frozen 2012–2013 New York State Office of Children and Family Services Discharge File: Youth in Care.

<sup>307</sup> NY Executive Law § 508(5).

<sup>308</sup> Specifically, pursuant to NY Penal Law § 10.00(18) and 160.10(2), a 14- or 15-year-old may be prosecuted in adult court for robbery in the second degree as a Juvenile Offender “when he forcibly steals property and when . . . in the course of the commission of the crime or of immediate flight therefrom, he or another participant in the crime [emphasis added]: (a) causes physical injury to any person who is not a participant in the crime; or (b) displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm. . . .”



Juvenile Offender arrests in 2013, 229 (37 percent) were for robbery in the second degree. Data is unavailable to confirm the proportion of these arrests that involved youth who were not the primary assailant in the crime.<sup>309</sup>

Concerns regarding the use of the adult parole structure in current Juvenile Offender practice were also raised by multiple stakeholders and were highlighted in the site visits to secure OCFS juvenile facilities that house Juvenile Offender youth. This issue will be discussed in detail in Chapter Eight as the concerns related to the capacity to implement the most effective model for re-entry planning and services for youth convicted as Juvenile Offenders.

The current system for Juvenile Offenders provides a framework for handling the most serious crimes of violence in criminal court while keeping youth out of adult jails and prisons. Feedback provided to the Commission from many system stakeholders emphasized the importance of maintaining initial jurisdiction for crimes of violence in the criminal court with district attorneys who are more specialized and better qualified to investigate and to try serious criminal cases.<sup>310</sup>

<sup>309</sup> New York State Division of Criminal Justice Services, “Juvenile Offender Arrest Charges 2013, by Age.” Unpublished data from the CCH, prepared by OJRP on 5/20/2014

<sup>310</sup> Public testimony of District Attorney Sandra Doorley to the Commission on September 8, 2014, interview with New York State Association of Chiefs of Police.

## SERIOUS CRIMES OF VIOLENCE COMMITTED BY 16- AND 17-YEAR-OLDS

There are approximately 4,600 violent felony arrests of 16- and 17-year-olds annually.<sup>311</sup> Robbery in the second degree, assault in the second degree, burglary in the second degree, criminal possession of a weapon in the second degree, and gang assault comprised 77 percent of those arrests.<sup>312</sup> Only about one-third of these arrests result in convictions for violent felony offenses, with more than half of the arrests not even proceeding to indictment.<sup>313</sup>

This analysis reveals the importance of maintaining the capacity to handle serious crimes of violence in criminal court while also needing to ensure sufficient off-ramps to avoid heightened criminalization of behavior that is currently resolved without a violent felony conviction.

Some Commission members raised the need to include certain crimes of violence that are not currently listed as violent felonies under the Penal Law in the category of cases that should originate in criminal court to approach the most serious crimes in a consistent manner. Crimes identified under this category include: homicides; Class A felonies; sexually motivated felonies; crimes of terrorism; felony vehicular assaults; aggravated criminal contempt; and tampering with a witness related to any crime that can originate in criminal court and conspiracy to commit any crime that can originate in criminal court. Data analysis provided by the DCJS showed that these crimes occur in extremely small numbers among 16- and 17-year-olds, as shown in the chart at right.

With the background of current New York State court practice and patterns of serious offending among 16- and 17-year-olds in hand, the Commission also researched how states with a higher age of juvenile jurisdiction process cases involving serious, violent crime in their court systems.



### Prevalence of crimes of violence that are not violent felonies and not Juvenile Offender crimes among 16- and 17- year-olds in 2013<sup>a</sup>

Homicide	36
Class A felonies	6
Conspiracy	36
Tampering with a witness	10
Sexually motivated felonies	0
Crimes of terrorism	0
Felony vehicular assaults	0
Aggravated criminal contempt	7

<sup>a</sup> DCJS, Computerized Criminal History system (as of 11/18/2014).

<sup>311</sup> Juvenile Offender arrests comprised 1,200 of the total violent felony arrests of 16- and 17-year olds in 2013, with other VFO arrests accounting for the remaining 3,400.

<sup>312</sup> New York State Division of Criminal Justice Services OJRP. Unpublished data prepared for this Commission.

<sup>313</sup> New York State Division of Criminal Justice Services. "Case Processing Flow for Sixteen- and Seventeen-Year-Olds Disposed in Criminal Court during 2013," unpublished data prepared by DCJS OJRP for this Commission.

## NATIONAL COURT PRACTICES FOR SERIOUS OFFENSES

Each of the 50 states and Washington, DC, has at least one mechanism for adult case processing of juveniles charged with serious crimes. There are three primary mechanisms that allow states to handle cases of young people under the age of criminal responsibility in adult criminal court: statutory exclusion, judicial waiver, and prosecutorial discretion. States also use three other policy categories that affect youth tried as adults: blended sentencing, “Once an Adult, Always an Adult,” and reverse waiver.<sup>314</sup>

*Statutory Exclusion* grants criminal court exclusive jurisdiction over certain classes of cases involving Juvenile Offenders that must initially be filed, and may remain, in criminal court (typically based on age and offense).<sup>315</sup> These states often have statutory provisions for reverse waiver (described below) to create a mechanism by which cases may be returned to juvenile jurisdiction on a case-by-case basis.

**Twenty-nine states** have provisions for statutory exclusion: Alabama, Alaska, Arizona, California, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Montana, Nevada, New Mexico, New York, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Utah, Vermont, Washington, and Wisconsin.<sup>316</sup> (See the following chart for the broad crime categories<sup>317</sup> and corresponding ages that trigger statutory exclusion in the 29 states).<sup>318</sup>

CRIMES EXCLUDED FROM JUVENILE JURISDICTION NATIONALLY								
MIN. AGE	ANY CRIMINAL OFFENSE	CERTAIN FELONIES	CAPITAL CRIMES	MURDER	CERTAIN PERSON OFFENSES	CERTAIN PROPERTY OFFENSES	CERTAIN DRUG OFFENSES	CERTAIN WEAPON OFFENSES
10				WI	WI			
13		MI	MI	GA, IL, NY, OK	GA, NY			
14			MD	CA, ID, MA, VT	CA, ID, VT	ID, NY, VT	ID	NY
15				AZ, LA, NM, OR	AZ, IL, LA, OR, PA			IL

September 2011, 2. <<https://www.ncjrs.gov/pdffiles1/ojjdp/232434.pdf>> (11 December 2014).

<sup>315</sup> Depending on state law, the case may then be transferred back down to juvenile court by the criminal court.

<sup>316</sup> See “Jurisdictional Boundaries,” *Juvenile Justice Geography, Policy, Practice & Statistics*. <<http://www.jjgps.org/jurisdictional-boundaries#transfer-laws?year=2012&policyGroup=1>> (11 December 2014). Developed by the National Center for Juvenile Justice (NCJJ), with funding from the John D. and Catherine T. MacArthur Foundation. *Current as of the 2012 legislative session*. (JJGPS).

<sup>317</sup> Note that the crime headings listed represent categories of crimes used by the National Center for Juvenile Justice (NCJJ) researchers to group states’ use of these mechanisms, given that states vary in the terminology they use to classify the same crimes (e.g., “any criminal offense” for provisions that exclude from juvenile jurisdiction any criminal offense; “certain felonies” when the excluded offense(s) are felonies; “capital” when the excluded offenses are punishable by death or life imprisonment; “murder” for homicide or attempted homicide; “certain person offenses” for selected excluded offenses against the person; “certain property” for selected excluded property offenses; “certain drug” for selected excluded drug offenses; and “certain weapon” for selected excluded offenses consisting of the unlawful possession, transfer, etc., of weapons.) See Patrick Griffin, Patricia Torbet, and Linda Szymanski, *Trying Juveniles as Adults in Criminal Court: An Analysis of State Transfer Provisions* (Washington, DC: US Department of Justice, Office of Juvenile Justice and Delinquency Prevention, 1998).

<sup>318</sup> See the National Center for Juvenile Justice (NCJJ): *Chart of Transfer Mechanisms and Upper and Lower Ages of Juvenile Jurisdiction* and corresponding data charts (Current as of the 2012 Legislative Session). Of note as well: “Murder is the offense most commonly singled out by statutory exclusion laws. In Massachusetts, Minnesota, and New Mexico, exclusion laws apply only to accused murderers. In all other states with exclusion statutes, murder is included along with other serious or violent felonies. Some states exclude less serious offenses, especially where older juveniles or those with serious delinquency histories are involved. Montana law excludes 17-year-olds accused of a wide range of offenses, including attempted burglary, attempted arson, and attempted drug possession. Mississippi excludes all felonies that 17-year-olds commit as well as armed felonies that juveniles 13 or older commit. Utah excludes all felonies committed by 16-year-olds who have already been securely confined once, and Arizona excludes all felonies committed by those as young as 15, provided they have previously been disposed as juveniles more than once for felony-level offenses.” OJJDP, pg. 6.

*Judicial Waiver*<sup>319</sup>—Cases typically originate in juvenile court, but jurisdiction is transferred from juvenile to criminal court on a case-by-case basis by the juvenile judge, based on what are often broadly articulated standards (e.g., nature of the crime, age, maturity level, delinquency history, and perceived rehabilitative prospects).<sup>320</sup>

There are three types of judicial waiver:

- ▶ **Discretionary:** Designates a class of cases in which a judge can consider waiver to criminal court, usually on the prosecutor's motion.
- ▶ **Presumptive:** Designates a class of cases in which a waiver to criminal court is presumed appropriate. The burden is placed on the juveniles and their attorneys to rebut the presumption and argue that the case should remain in juvenile court.
- ▶ **Mandatory:** Requires the juvenile court to transfer certain cases for criminal prosecution. The role of the juvenile court may be only to certify that the youth meets the statutory eligibility for mandatory waiver (e.g., within the age range where transfer for the charged offense category is mandatory).

**Reverse Waiver**—A total of 25 states have reverse waiver laws that allow juveniles subject to prosecution in criminal court to petition to have their cases transferred to juvenile court. Generally, in such cases, a hearing is required, and the criminal court is guided by the same kinds of broad standards and considerations as a juvenile court in a waiver proceeding. In most cases, the hearing is held prior to trial, and if the reverse waiver is granted, the case is adjudicated in juvenile court. But sometimes the offender's guilt must be established first and the reverse waiver is for disposition purposes only.

*"Once an Adult, Always an Adult"*—34 states have statutes that allow for "Once an Adult, Always an Adult" policies.<sup>321</sup> Most states' "Once an Adult . . ." laws require criminal prosecution of any youth who has previously been criminally prosecuted.<sup>322</sup>

**Blended Sentencing** – Juvenile blended sentencing laws are often viewed as a "last chance" for youth who would otherwise be transferred to adult court. The most common method courts use to administer a juvenile blended sentence is to try juveniles in juvenile court and provide a juvenile disposition, in combination with a suspended adult criminal sentence. If the youth reoffends or does not successfully complete the terms of the juvenile disposition, the court enforces the suspended criminal sanction. Fourteen states have statutory provisions that allow juvenile courts to apply a blended juvenile and criminal sentence in certain cases.<sup>323</sup> Eighteen states have provisions that allow for their criminal courts to impose a juvenile disposition, rather than an adult sentence, on juveniles who have been tried and convicted as adults.

States vary in their use of each of these mechanisms, often employing a combination for various ages and crimes (e.g., mandatory waiver for some offenses, discretionary for others) as shown on the following map.

<sup>319</sup> See Patrick Griffin, *Appendix: Legal Boundaries Between the Juvenile and Criminal Justice Systems in the United States* (National Center for Juvenile Justice, 2011), 4–5. <<http://www.ncjj.org/Publication/Legal-Boundaries-Between-the-Juvenile-and-Criminal-Justice-Systems-in-the-United-States.aspx>> (11 December 2014).

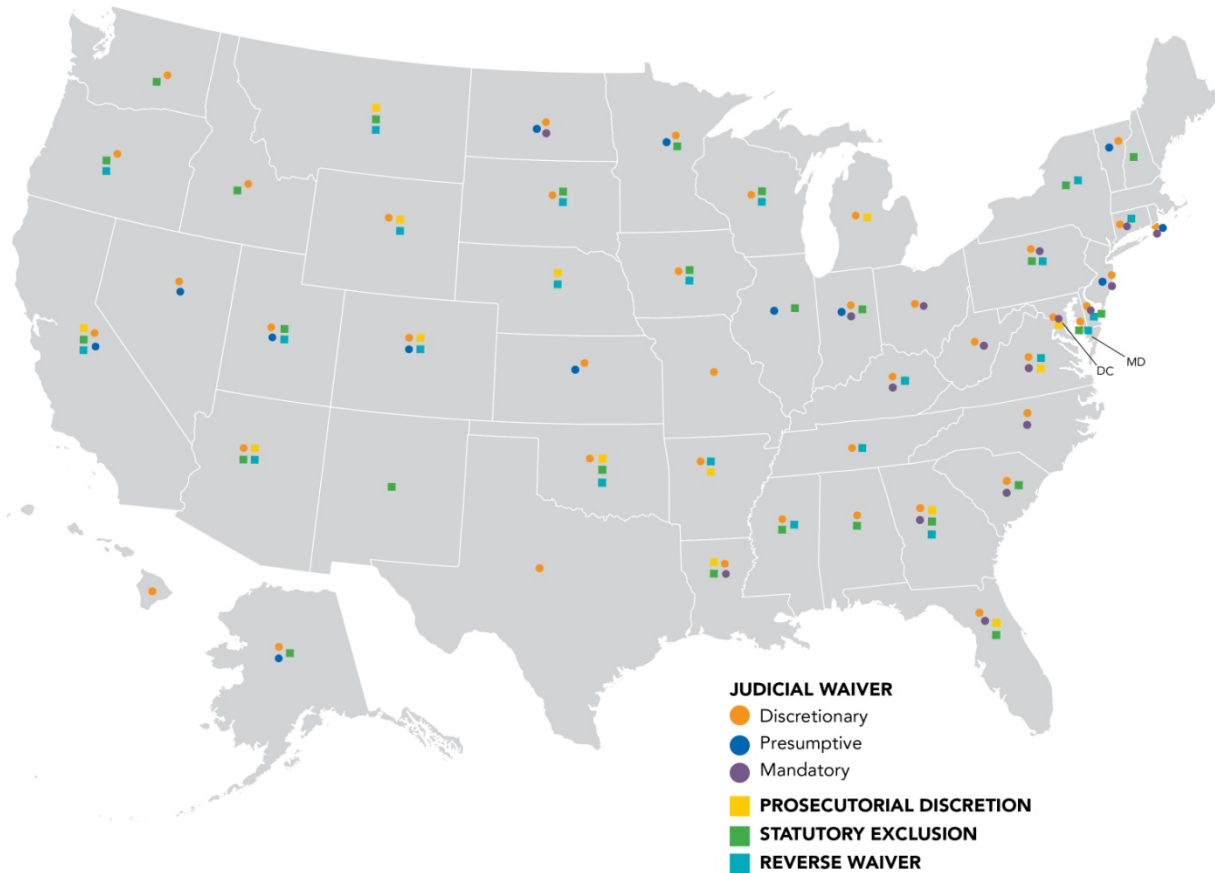
<sup>320</sup> Office of Juvenile Justice and Delinquency Prevention, *Juvenile Offenders and Victims*, 2.

<sup>321</sup> *Ibid.*, 2.

<sup>322</sup> Maryland, Michigan, Minnesota, and Texas have laws that apply only to felonies that occur post transfer. Iowa, California, and Oregon laws require that juveniles be at least 16 years old (*Ibid.*, 7).

<sup>323</sup> Office of Juvenile Justice and Delinquency Prevention, *Juvenile Offenders and Victims*, 7; see also "Juvenile Court Blended Sentencing Offense and Minimum Age Criteria, 2011," Statistical Briefing Book, Office of Juvenile Justice and Delinquency Prevention, <[http://www.ojjdp.gov/ojstatbb/structure\\_process/qa04113.asp?qaDate=2011](http://www.ojjdp.gov/ojstatbb/structure_process/qa04113.asp?qaDate=2011)> (11 December 2014).

## National Mechanisms Used to Transfer Juveniles to Adult Court



The Commission’s review of other states’ practices included analysis of how other states that recently raised the age of juvenile jurisdiction approached court processing of the most serious and violent crimes. As noted in Chapter Three, five states (Connecticut, Mississippi, Illinois, Massachusetts, and New Hampshire), recently implemented legislation to raise the age of juvenile jurisdiction.<sup>324</sup> Each of these states left in place existing carve-outs for serious violent offenses, using a range of transfer and waiver mechanisms.

Connecticut’s transfer law remained in place once its “raise the age” legislation went into effect in 2010. Connecticut law holds that if a youth is 14 or older, and commits certain capital or Class A or B felony offenses, the case is automatically handled in the adult system. In addition, cases of youth 14 and older charged with Class C or D or unspecified felonies can be transferred to adult court on motion of the prosecutor and order of the juvenile judge.<sup>325</sup>

Raise the age legislation in Illinois did not change Illinois transfer laws for serious violent offenders. First degree murder committed during another specified violent offense (sexual assault, aggravated sexual assault, aggravated kidnapping) for youths 13 and older and serious violent offenses for youth 15 and older automatically transfer up to adult court.<sup>326</sup>

<sup>324</sup> *State Trends: 2013–2014*. In addition to New York, three states (Texas, North Carolina, and Wisconsin) are engaging in efforts, with varying degrees of success, to raise the age of juvenile court jurisdiction.

<sup>325</sup> CT General Statutes § 46b-127(2)(b)(1).

<sup>326</sup> Serious violent offenses include first degree murder, aggravated sexual assault, various offenses committed with a firearm, etc.; 705 IL Compiled Statutes 405/5-130(3)(a).

As noted earlier, the Massachusetts adult court only has original jurisdiction over cases for juveniles when the youth is charged with first- or second-degree murder and is 14 or older.<sup>327</sup> New Hampshire, which will see its age of adult jurisdiction rise to 18 from 17 effective July 1, 2015, has (like Illinois) left its transfer law unaltered. New Hampshire has a mechanism for discretionary transfer to adult court when the youth is charged with an offense that would be a felony if committed by an adult; there is no automatic transfer mechanism, though there is a presumption in favor of transfer when the offense charged is one of a list of violent felonies and the youth has been adjudicated as responsible for felonies in four separate proceedings.<sup>328</sup>

## REFORMING THE CRIMINAL PROCESS FOR SERIOUS CRIMES OF VIOLENCE

The Commission finds that retaining processing of serious crimes of violence in criminal court, with the option for transfer to Family Court, would best protect public safety. Borrowing from the work of Chief Judge Lippman's Sentencing Commission and the strong recommendation from law enforcement stakeholders who informed the work of the Commission, all violent felony offenses as well as all homicide crimes, Class A felonies, sexually motivated felonies, crimes of terrorism, felony vehicular assaults, aggravated criminal contempt, and conspiracy to commit any of these offenses or tampering with a witness related to any of these offenses should be included in the group of crimes as to which cases against 16- and 17 year-olds originate in criminal court.<sup>329</sup>

While the Commission proposes originating these offenses in criminal court, stakeholder feedback and the research into practices in other states support using a particular transfer mechanism for the violent felony offenses that are not current Juvenile Offender crimes and for the current second degree robbery offense that is a Juvenile Offender crime. Just as every other state has a mix of transfer options connected to both age and offense, New York should acknowledge that only the most serious crimes for 16- and 17-year-olds should be processed in criminal court by imposing a new presumption for removal to Family Court for the violent felony offenses that are not existing Juvenile Offender crimes and for the Juvenile Offender crime of second degree robbery (which, as previously discussed, can sometimes cast a net beyond the primary assailant). To rebut that presumption, the prosecutor would have to demonstrate to the criminal court judge that criminal prosecution is *in the interests of justice*, considering the same factors that currently exist to decide to remove a case to Family Court, because the youth either *played a primary role* in commission of the crime *or aggravating circumstances, including but not limited to the youth's use or handling of a weapon*, are present.<sup>330</sup>

For those violent felony offense cases involving 16- and 17-year-olds accused of crimes that are not currently Juvenile Offender crimes considered for transfer by the criminal court judge, the Commission recommends that the transfer could be either of two types in each case, as determined by the judge. First, as under current law regarding transfers to juvenile court, the court could transfer a case physically to the Family Court to be handled there.

Second, the court could retain the case in criminal court but handle the case under the Family Court Act in all respects. In particular, the Commission draws from the concept proposed by the Sentencing Commission to clothe these judges in criminal court with concurrent Family Court jurisdiction and criminal court jurisdiction by statute. By allowing the criminal court judge to function as a Family Court judge in cases that he or she decides to process under the Family Court Act, while physically retaining the case in criminal court, the case can readily transition to a Family Court model, physical plant concerns in overcrowded Family Court buildings could be eased, and district attorneys should grow increasingly comfortable with having appropriate cases handled under the Family Court Act.

The Commission has also concluded that there must be a more youth-centered approach even to those cases of minors that remain and are processed in criminal court. Borrowing once again from the Sentencing Commission's

<sup>327</sup> MA General Laws chapter 119, § 74.

<sup>328</sup> NH Revised Statutes Annals § 169-B:24.

<sup>329</sup> The Sentencing Commission used the statutory definition of violent felony offenses to classify the crimes that were violent for their deliberations. See Report of Deliberations and Recommendations, February 10, 2012.

<sup>330</sup> NY Criminal Procedure Law § 210.43(2) delineates the current considerations in making a decision to remove a case to Family Court.

recommendations and responding to the testimony provided by Judge Michael Corriero based on his many years of experience handling Juvenile Offender cases in the criminal court, the Commission recommends that new “Youth Parts” should be established in criminal court with judges specially trained in adolescent development and effective interventions for adolescents to hear all cases of minors processed in criminal court.<sup>331</sup> Chief Judge Lippman’s proposal included Youth Division Parts that would be able to hear both lower level cases and Juvenile Offender cases under the umbrella of criminal court.<sup>332</sup>

Among other objectives, consolidation of these cases under one judge with specialized training would build expertise in effective resolution of adolescent cases. Even where the criminal court handles the case under the existing Criminal Procedure Law as it would an adult criminal case, rather than transferring it to the Family Court, the court would have the benefit of this special expertise and wherewithal regarding young offenders and the evidence-based interventions that reduce recidivism among such offenders.

Due to the severe nature of the current Juvenile Offender crimes as well as other Class A felonies, homicide offenses, sexually motivated felonies, crimes of terrorism, felony vehicular assaults, aggravated criminal contempt, and conspiracy and tampering with a witness related to these crimes, the Commission supports retaining the existing Juvenile Offender removal structure for all of these offenses. This structure maintains a capacity to remove cases to Family Court while supporting criminal court processing as the default in these most serious offenses.

Criminal court processing for minors should also be improved by adding juvenile probation assessment and the potential for service intervention pending trial and sentencing for any minors whose case is being processed in criminal court. Provision of juvenile probation assessment and interventions prior to trial could significantly enhance case outcomes for youth cases retained in criminal court.

The Commission has concluded that criminal court sentencing for the cases of 16- and 17-year-olds, other than for Class A felonies that are not Juvenile Offender crimes, should use the existing Juvenile Offender sentencing scheme as opposed to the current adult sentencing scheme. At the same time, the district attorney should have the capacity to show aggravating circumstances related to severe injury to a victim or extreme gravity of risk to public safety to access a standard adult sentence in cases where the offender is convicted of or pleads to a Class B violent felony offense. Analysis completed by DCJS revealed that 86 percent of sentences on Class B and C violent felony offenses committed at age 16 or 17 currently fall within the existing Juvenile Offender sentencing ranges.<sup>333</sup> A shift in sentencing options with a safety valve for the most egregious cases provides a more appropriate sentencing scheme while ensuring that public safety is protected in all cases.

It is also important to note that the Commission recommends retaining vehicle and traffic offenses as they are currently processed in the criminal courts for 16- and 17-year-olds. While these are largely not crimes of violence, the Family Court does not currently handle these kinds of cases and the Commission finds it best to retain these cases in the courts with vehicle and traffic law expertise.

Taken together, these shifts in adult court processing of the most serious cases would provide a more developmentally sound approach at every step in each case. They would: create a presumption for removal to Family Court in certain cases, implement juvenile pretrial assessment and interventions, create a Youth Part in criminal court with expertise in these cases and with concurrent criminal court and Family Court jurisdiction in one entity, shift from an adult to a juvenile sentencing regime (with adequate protection for public safety), and improve re-entry planning and services to reduce recidivism. Coupled with the recommendation to process all misdemeanor and non-violent felony cases in Family Court, these

<sup>331</sup> Judge Corriero provides compelling background on why a more youth-centered approach is necessary for the most serious young offenders in his book, *Judging Children as Children* (Philadelphia: Temple University Press, 2006).

<sup>332</sup> NY SB 4489 (2013).

<sup>333</sup> New York State Division of Criminal Justice Services, *Computerized Criminal History*. Unpublished data prepared by DCJS OJRP for this Commission.

recommendations provide a comprehensive framework to treat all minors in a developmentally appropriate and evidence

*RECOMMENDATION:*

Begin judicial processing in criminal court for current Juvenile Offender crimes as well as all violent felony offenses; all homicide offenses; class A felonies; sexually motivated felonies; crimes of terrorism; felony vehicular assaults; aggravated criminal contempt; and conspiracy to commit any of these offenses and tampering with a witness related to any of these offenses for 16- and 17-year-old offenders.

*RECOMMENDATION:*

Apply current standards for removal from criminal to Family Court of Juvenile Offender cases to those cases against 16- and 17-year-olds that would originate in criminal court, except for subdivision two of second degree robbery (a Juvenile Offender crime) and the Violent Felony Offenses that are not Juvenile Offender crimes. For these latter offenses, create a new rebuttable presumption for removal to Family Court. Such cases would be removed to Family Court unless the prosecutor demonstrates that criminal prosecution is in the interests of justice, considering the current criteria for removing a case to Family Court and whether the youth either played a primary role in commission of the crime or aggravating circumstances, including but not limited to the youth's use or handling of a weapon, are present.

*RECOMMENDATION:*

Create new Youth Parts, with specially trained judges, in criminal court for processing those cases against 16- and 17-year-olds and other Juvenile Offenders who remain in criminal court.

*RECOMMENDATION:*

Clothe judges in criminal court Youth Parts with concurrent criminal court and Family Court jurisdiction to allow Youth Parts to retain cases removed to Family Court under the new presumption for removal and to handle them under the Family Court Act where appropriate.

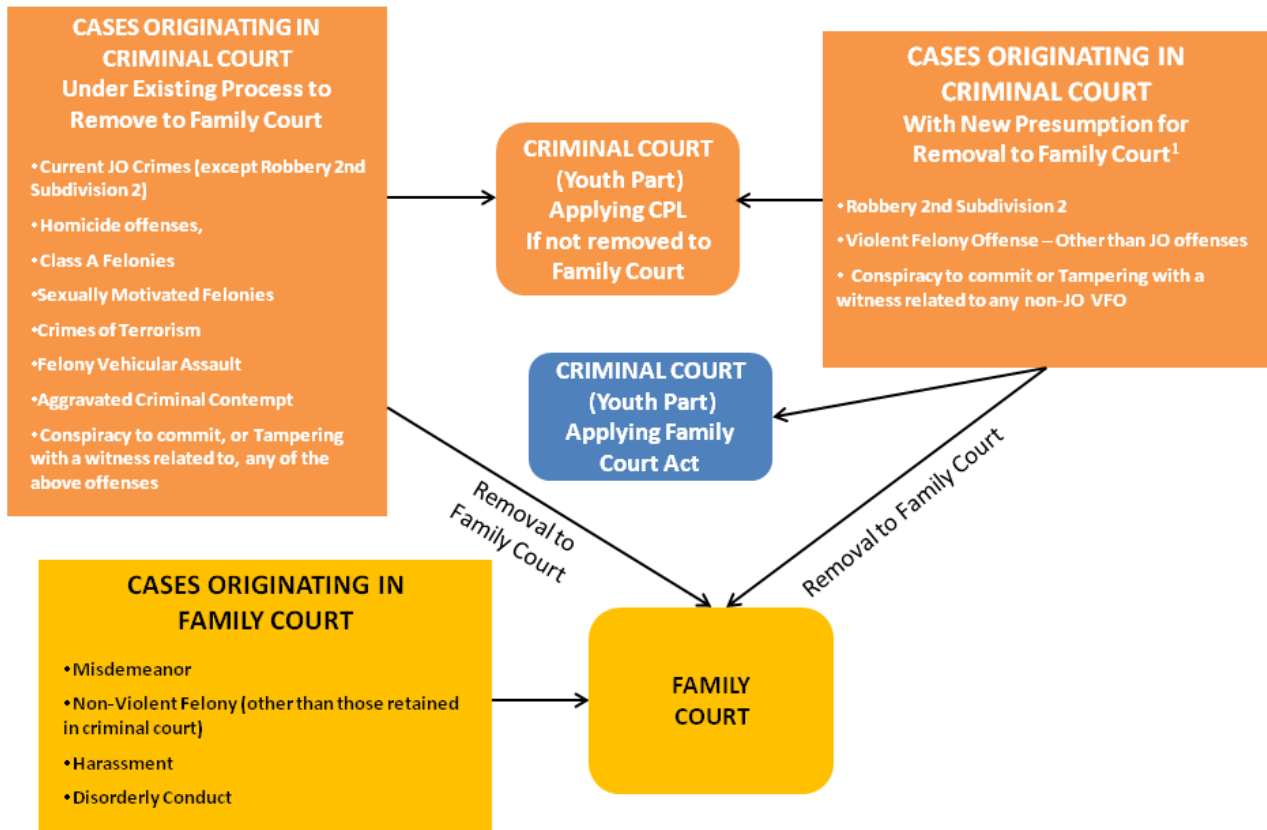
*RECOMMENDATION:*

Provide juvenile probation case planning and services for cases pending in criminal court.  
informed manner.

Implementation of these comprehensive recommendations would result in the anticipated Family and criminal court case flow shown below.



# Court Processing for 16- and 17-Year-Olds



This new judicial structure would place the vast majority of cases involving 16- and 17-year-olds firmly in the juvenile context while maintaining the role of the criminal court for the most serious crimes of violence. A new presumption for removal in some cases would protect against over-inclusion of crimes in which youth were caught up in a group activity but did not play a primary role in a crime. Authorizing the criminal court judge in the Youth Part to retain the case and apply the Family Court Act following removal would provide the flexibility necessary to protect public safety while providing effective justice responses for all youth under age 18.

## CHAPTER 6: REMOVING YOUTH FROM ADULT JAIL AND PRISON FACILITIES

The harms to youth detained or incarcerated in adult facilities across the country are well documented. As a result, one of the most critical system changes to accomplish in raising the age of juvenile jurisdiction in New York State will be to remove young people under age 18 from adult facilities, including both local jails and state prisons. This chapter: compares New York’s adult and juvenile confinement systems; addresses the fiscal and logistical challenges to shifting minors out of adult jails and prisons, and the anticipated need for new capacity; and provides recommendations to reduce unnecessary use of juvenile detention and placement.

### THE RISKS AND HARMS OF INCARCERATING YOUTH IN ADULT FACILITIES

Under current law, 16- and 17-year-olds can be held in the custody of either the local county jail or the New York State Department of Corrections and Community Supervision (DOCCS). Young people who are detained while their case is proceeding in court are held in local county jails, as are those who receive custodial sentences less than one year in length. Those who receive sentences greater than one year are committed to the custody of DOCCS and housed in state prison facilities. On any given day in New York State, there are approximately 700 16- and 17-year-olds held in local jails and about 100 more in State prisons.<sup>334</sup> On an annual basis, approximately 4,700 sentences involving adult jail or prison are handed down to youth who committed their crimes at ages 16 or 17.<sup>335</sup>

The impact of incarceration of 16- and 17-year-olds in adult facilities falls primarily on youth of color: black and Hispanic youth receive 82 percent of sentences to confinement statewide. In New York City, black and Hispanic youth account for more than 95 percent of prison sentences for 16- and 17-year-olds.<sup>336</sup>

#### *Research on youth outcomes in adult facilities*

Research has demonstrated that the use of adult prisons and jails as compared to juvenile facilities results in worse outcomes for juveniles and for community safety.<sup>337</sup> A comprehensive study of youths processed in New York as adults and nearly identical youths processed in New Jersey as juveniles found that the percentage of re-arrest for youth charged with robbery and processed in adult court was 25 percent higher than those charged with robbery and processed in juvenile court.<sup>338</sup> A follow-up study looking at the same comparison of youth further substantiated this outcome, finding a 26 percent higher likelihood of reincarceration for youths adjudicated and sanctioned in the criminal court, including those that spent time in adult facilities.<sup>339</sup> A similar study in Florida looking at comparable youths—half of whom were processed in juvenile court while the other half were transferred to adult court—found that youths incarcerated in adult prison and jail had higher percentages of recidivism than youth incarcerated in juvenile facilities. In addition, the types of recidivating offenses were likely to be more severe for youth incarcerated

<sup>334</sup> New York State Division of Criminal Justice Services, *Computerized Criminal History*. Unpublished data prepared by DCJS OJRP for this Commission.

<sup>335</sup> Unpublished data from SCOC Jail Management System 10/30/2014, NYC MOCJ 9/11/14, and New York State DOCCS 9/20/14.

<sup>336</sup> New York State Division of Criminal Justice Services, *Computerized Criminal History*. Unpublished data prepared by DCJS OJRP for this Commission.

<sup>337</sup> Much of the research that shows the negative consequences from juvenile placement in prisons and jails is also relevant to the research about outcomes of adjudicating youth in adult court instead of juvenile/Family Court.

<sup>338</sup> The study also compared the outcomes of youth charged with burglary in criminal and juvenile court and while a slight difference was found in the percentage rearrested (13 percent), the difference was not statistically significant. Jeffrey Fagan, “The Comparative Advantage of Juvenile Versus Criminal Court Sanctions on Recidivism among Adolescent Felony Offenders,” *Law & Policy* 18, nos. 1 and 2 (January–April 1996); it should be noted that while the study looked at different effects of court processing in addition to placement facilities, the cited results are only for the likelihood of reincarceration, and thus can be relevantly attributed to the facility’s effect on the youth.

<sup>339</sup> Jeffrey Fagan, Aaron Kupchik, and Akiva Liberman, “Be Careful What You Wish For: Legal Sanctions and Public Safety Among Adolescent Offenders in Juvenile and Criminal Court,” *Columbia Law School Public Law Research Paper Series* 03-61 (2007): 40–51; <<http://ssrn.com/abstract=491202>> (11 December 2014).

in adult facilities.<sup>340</sup> The study also concluded that those youth sent to adult jail had higher rates of recidivism than youth sent to juvenile residential commitment.<sup>341</sup> Other studies have found similar outcomes of higher recidivism rates for youth in adult facilities as compared to youth in juvenile facilities.<sup>342</sup>

Placing a juvenile in an adult facility not only undermines public safety, but also results in a higher likelihood of major injury to the youth. Studies from other states indicate that youth in jails and prisons face a greater risk of sexual abuse. Federally funded studies have found that youth under age 18 represented 21 percent of all sexual violence victims in jails in 2005 and 13 percent in 2006 despite only making up one percent of the entire jail population.<sup>343</sup> Congressional findings have concluded that juveniles are “5 times more likely to be sexually assaulted in adult rather than juvenile facilities—often within the first 48 hours of incarceration.”<sup>344</sup> These figures are likely low as incidents of sexual assault on youth in adult facilities are underreported.<sup>345</sup>

Other forms of physical violence are also greater for youth in adult facilities, as they are twice as likely to be beaten by staff and 50 percent more likely to be attacked with a weapon than youth in juvenile facilities.<sup>346</sup> The trauma experienced by youth in adult facilities leads to higher rates of suicide. Juveniles confined in adult facilities are five times more likely than the general population to commit suicide and eight times more likely than the youths in a juvenile facility.<sup>347</sup> Seventy-five percent of all deaths of youth under the age of 18 in adult jails are due to suicide.<sup>348</sup>

### ***New York stakeholders’ perspectives on youth in adult facilities***

Throughout the Commission’s focus groups, interviews, public testimonies, and site visits, an overwhelmingly common theme from stakeholders was a profound concern with juveniles being placed in adult prisons and jails. There was broad agreement among a range of stakeholders and from all geographic areas that minors do not belong in adult facilities.

<sup>340</sup> Lon Lanza-Kaduce, et al., “Juvenile Offenders and Adult Felony Recidivism: The Impact of Transfer,” *Journal of Crime and Justice* 28, no. 1 (2005): 59–77 <<http://www.campaignforyouthjustice.org/documents/FLjuveniletransferstudy.pdf>> (10 December 2014); also providing a qualitative analysis of stakeholders, youth, and families that found much more positive perceptions of juvenile facilities compared to adult facilities. See also Donna M. Bishop, et al., “The Transfer of Juveniles to Criminal Court: Does It Make a Difference?” *Crime & Delinquency* 42, no. 2 (April 1996): 171–91; and Lawrence Winner, et al., “The Transfer of Juveniles to Criminal Court: Reexamining Recidivism over the Long Term,” *Crime & Delinquency* 43, no. 4 (October 1997): 548–63.

<sup>341</sup> Adult prison was also explored; however, due to a small number of pairs (n=20), the results showed that those receiving adult prison actually recidivated less than youth receiving juvenile residential placement.

<sup>342</sup> For example, Richard E. Redding, “Juvenile Justice Fact Sheet: Recidivism Rates in Juvenile Versus Criminal Court,” Institute of Law, Psychiatry & Public Policy, University of Virginia, 2007; Marcy Rasmussen Podkopacz and Barry C. Feld, “The End of the Line: An Empirical Study of Judicial Waiver,” *Journal of Criminal Law and Criminology* 86, no. 2 (Winter 1996): 490–91 (finding a 38 percent higher recidivism rate for youths in adult facilities compared to youths in juvenile facilities); and J. White et al., *The Comparative Dispositions Study: Handling Dangerous Juveniles*, executive summary (Washington, DC: US Department of Justice, Office of Juvenile Justice and Delinquency Prevention, 1985). See generally Jennifer M. O’Connor and Lucinda Kinau Treat, “Getting Smart about Getting Tough: Juvenile Justice and the Possibility of Progressive Reform,” *American Criminal Law Review* 33, no. 4 (Summer 1996): 1299 and 1315; Richard E. Redding, “Juvenile Transfer Laws: An Effective Deterrent to Delinquency?” *Juvenile Justice Bulletin*, June 2010, 6; and Jennifer L. Woolard, et al., “Juveniles within Adult Correctional Settings: Legal Pathways and Developmental Considerations,” *International Journal of Forensic Mental Health* 4, no. 1 (2005): 1–18. See also Patrick A. Langan and David J. Levin, “Recidivism of Prisoners Released in 1994,” press release, US Department of Justice, Bureau of Justice Statistics, 2002 (finding that youths in adult facilities had significantly higher recidivism rates than adults in the same facilities).

<sup>343</sup> Allen J. Beck, Paige M. Harrison, and Devon B. Adams, “Bureau of Justice Statistics Special Report: Prison Rape Elimination Act of 2003: Sexual Violence Reported by Correctional Authorities, 2006,” US Department of Justice, August 2007; and Howard N. Snyder and Melissa Sickmund, *Juvenile Offenders and Victims: 2006 National Report* (Washington, DC: US Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, 2006). See the Prison Rape Elimination Act of 2003 § 2, 42 US Code § 15601 (2006) (finding that juveniles made up 7.7 percent of all victims of sexual violence in jails and prisons, even though they made up less than 1 percent of the total detained and incarcerated population, and that youth are “more than other groups of incarcerated persons . . . at the highest risk for sexual abuse”).

<sup>344</sup> Prison Rape Elimination Act of 2003 § 2, 42 US Code § 15601(4) (2006).

<sup>345</sup> Alice Ristorph, “Sexual Punishments,” *Columbia Journal of Gender and Law* 15 (2006): 139 and 149; and the Prison Rape Elimination Act of 2003 § 2, 42 US Code § 15601(6) (2006).

<sup>346</sup> Richard A. Mendel, *Less Hype, More Help: Reducing Juvenile Crime, What Works—and What Doesn’t* (Washington, DC: American Youth Policy Forum, 2000), 3; and “Building Blocks for Youth,” <<http://www.buildingblocksforyouth.org/issues/adultjails/factsheet.html>> (10 December 2014).

<sup>347</sup> James Austin, Kelly Dedel Johnson, and Maria Gregoriou, *Juveniles in Adult Prisons and Jails: A National Assessment* (Washington, DC: US Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, 2000), 7–8. <<http://www.ncjrs.gov/pdffiles1/bja/182503.pdf>>. See also Campaign for Youth Justice, *Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America* (Washington, DC: Campaign for Youth Justice, 2007); and Campaign for Youth Justice, “Key Facts: Youth in the Justice System,” April 2012, 4 (“youth housed in adult jails are 36 times more likely to commit suicide than are youth housed in juvenile detention facilities (endnote omitted)”).

<sup>348</sup> Margaret E. Noonan, “Deaths in Custody: Local Jail Deaths, 2000–2007 Statistical Tables,” US Department of Justice, Bureau of Justice Statistics, Washington, DC, 2010.

Officials highlighted many specific problems with placing youths in jails, including, among others: limited opportunities for education; the absence of programming opportunities (e.g., 21 inactive hours per day in jails); high inmate-to-staff ratios in many situations; lack of training for staff to work with 16- and 17-year-olds; and insufficient mental health and therapeutic services despite the high prevalence of youth with diagnosed mental illness. Many stakeholders felt strongly that removing minors from adult jails was the primary issue this Commission should address. One high-level official stated, “Young people in adult jails are a heartbreak. Youth don’t belong in adult jails regardless of offense. The most important part of raise the age reform is the separation of youth from adults in institutions.”

Correction Model	Rehabilitation Model
Locked facility with external controls	Open facility with only those controls necessary to ensure public safety
Limited services	Continuum of services
Relationship between staff and youth is limited or often nonexistent	Staff are counselors
Family and community are often seen as the problem	Family and community are considered partners and part of the solution
Program has many rules and regulations	Program staff help youth internalized their own
Program staff force youth to comply and follow rules and regulations	Program staff help youth internalized their own boundaries
Rules and boundaries are reinforced by staff	Rules and boundaries are reinforced by youth and peers
Result is behavior compliance	Result is cognitive change and development
A youth’s behavior improves because of correctional structure, restrictions and limitations.	A youth’s behavior improves because of internalized boundaries and cognitive change.

Youth and caregivers in the Commission’s focus groups expressed the same conclusion that youth do not belong in adult jails. Caregivers were adamant in their belief that detaining minors alongside adults jeopardized the safety and well-being of their children. Many caregivers shared stories about violence and harm their children and grandchildren had experienced in adult jails, including physical and sexual abuse. Another very common experience reported was the lack of adequate mental health care for youth who need it. In contrast, those youth and caregivers of youth who had experienced both adult and juvenile facilities repeatedly told the Commission that the juvenile detention facilities were not nearly as violent or frightening.

There was also broad stakeholder agreement that adult prisons are inappropriate for 16- and 17-year-

olds, and that youth should reside in youth-oriented facilities that protect them from adults and address their developmental needs. Parents and caregivers described a collective experience that youth feel the need to fight to survive in adult prisons. One mother described the difficult transfer of her 17-year-old son from a residential program for youth with mental illness where he was achieving significant success to an adult prison where he decompensated. Parents emphasized the importance of developmentally appropriate care. One parent stated, “Children don’t respond to instruction the same way as adults. . . . There needs to be a youth-oriented program, with youth-oriented counselors.” A number of other caregivers agreed that adult incarceration left their loved ones “different people” and “unrecognizable” from the youths who entered the facilities.

This research makes clear that the different experiences and outcomes of prisons and jails compared to juvenile facilities is a product of the fundamentally different models underlying these types of facilities.<sup>349</sup> The correctional

<sup>349</sup> Richard A. Mendel, “No Place for Kids: The Case for Reducing Juvenile Incarceration,” Annie E. Casey Foundation, 2011; Antoinette Davis, Angela Irvine, and Jason Ziedenburg, *Stakeholders’ Views on the Movement to Reduce Youth Incarceration* (Washington, DC: National Council on Crime &

model of the adult system emphasizes incapacitation, security, and removal from communities as the main objectives. Correctional facilities' use of rehabilitative and educational programming is limited because the central purpose is security, with a focus on controlling inmates' movements and creating physical environments that restrict escape. The staff's primary role in these facilities is to ensure security. Force, restraints, isolation, and physical confinement are common tools used to maintain order.

Juvenile facilities, on the other hand, are framed on a rehabilitative model and are properly designed to focus on treatment, training, and successful re-entry into communities. Rather than punitive or deterrence goals, these facilities are intended to identify and address the underlying sources of anti-social behavior.<sup>350</sup>

## CURRENT NEW YORK STATE PRACTICE—PRETRIAL CONFINEMENT

Sixteen- and 17-year-olds are currently held in local jails if they are detained while their court case is proceeding.<sup>351</sup> Youth who commit offenses when they are age 15 and under and are held during their court processing (both in Family Court and, for Juvenile Offenders, in criminal court) are held in juvenile detention centers. On any given day in New York State, there are about 700 16- and 17-year-olds held in local jails. The Commission's investigation revealed substantial differences in conditions between adult jail and juvenile detention.

### **Housing**

Jails can house youth either in individual cells or in an area with up to 60 people in one large room.<sup>352</sup> New York State law requires local jails to house all detainees and inmates ages 16 and 17 separately from those 18 and older.<sup>353</sup> Minors can be in contact with older inmates in common areas of the jail, including places like the cafeteria and health services. Although federal PREA standards require enhanced staffing if this kind of comingling occurs, local jails are not subject to any penalty for failure to be PREA compliant.

Juvenile detention facilities must provide individual sleeping rooms for each child and those rooms are required to be 10 square feet larger than an individual jail cell (70 square feet versus 60 square feet).<sup>354</sup>

### **Solitary confinement**

The use of solitary confinement (or room isolation in the juvenile setting) is an area of major difference between jails and juvenile detention settings. Jails are permitted to use solitary confinement (administrative segregation) immediately if the youth threatens the safety, security, and good order of the facility. Youth can continue to be confined in administrative segregation until the completion of the disciplinary process and as a sanction for violation of jail rules.<sup>355</sup>

By contrast, room confinement in juvenile detention facilities is allowed only in secure detention settings and only if the youth is a serious and evident danger to himself or others.<sup>356</sup> In addition, regular mental health and physical health

---

Delinquency, 2014); and New York State Juvenile Reentry Task Force, *New York State Juvenile Reentry Strategic Plan* (Albany, NY: New York State Division of Criminal Justice Services, 2013).

<sup>350</sup> A Isami Arifuku, Antoinette Davis, and Dana Linda, *Special Report: Assessing the Enhanced Ranch Program of the Santa Clara County Probation Department* (Oakland, CA: National Council on Crime and Delinquency, 2010), 5.  
<[http://nccdglobal.org/sites/default/files/publication\\_pdf/specialreport-santaclaraprobation.pdf](http://nccdglobal.org/sites/default/files/publication_pdf/specialreport-santaclaraprobation.pdf)> (11 December 2014).

<sup>351</sup> In addition, 16- and 17-year-olds are held in adult jails if they receive a custodial sentence of less than one year in length.

<sup>352</sup> Requirements for individual cells can be found in Title 9, NY Codes, Rules, and Regulations § 740.4, and requirements for multiple-occupancy settings can be found in Title 9, NY Codes, Rules, and Regulations § 740.5.

<sup>353</sup> NY Correction Law § 500-b.

<sup>354</sup> Title 9, NY Codes, Rules, and Regulations § 180.9(18).

<sup>355</sup> Title 9, NY Codes, Rules, and Regulations § 7006.7 provides authority for administrative segregation during the disciplinary process, and Title 9, NY Codes, Rules, and Regulations § 7006.9 provides authority for its use as a disciplinary sanction.

<sup>356</sup> Title 9, NY Codes, Rules, and Regulations § 180.9(c)(11).

monitoring are required for any youth in room confinement and staff must maintain constant visual or auditory supervision of the youth in the juvenile detention setting.<sup>357</sup>

### **Staffing**

Staffing levels are also dramatically different in jails and detention settings. Local jails are required to provide staff as necessary to provide for the “care, custody, and control” of inmates.<sup>358</sup> The New York State Commission of Correction, the body tasked with regulating correctional facilities, sets actual staffing requirements for local jails based on the range of services the facility is required to provide (and the labor hours required to provide them), the physical layout of the facility, the maximum prisoner capacity, and any other relevant factors.<sup>359</sup> There is no set ratio of staff to inmates specified in the regulations; instead, the obligation to meet minimum standards of service provision carries through all calculations.

The statewide regulations governing staffing of juvenile detention facilities require one child care worker for every eight children per shift and one social worker for every 15 children.<sup>360</sup> The regulations further specify minimum standards of qualification for certain categories of staff who work in facilities: administrative staff; case management staff; recreation supervisors; medical staff; education staff; and dietary staff.<sup>361</sup>

### **Education**

Both jails and detention settings are required to meet the mandates of the education law. How that mandate is met can vary substantially between settings. Education must be offered to any person under age 21 who is in a jail for 10 or more days and who does not have a high school diploma. Educational services are the responsibility of the school district where the facility is located and must be offered for at least three hours for each day in which school is regularly in session in that district.<sup>362</sup> Educational programming varies significantly across jails, with economies of scale allowing for more robust educational opportunities in larger facilities.

Juvenile detention facilities have a similar minimum requirement of three hours of education per day.<sup>363</sup> However, responsibility for providing educational services in the juvenile detention setting is borne by the facility itself, not by the local school district or the home school district of the youth. Secure detention providers operate educational programs on-site, with youth often attending full-day programs of educational instruction.

### **Recreation/Programming**

Opportunities for recreation also vary substantially between the adult jail and the juvenile detention setting. Jails are required to provide one hour of outdoor exercise a day over seven days, or 1.5 hours a day for five days per week. This recreation opportunity can be revoked if it is found that it would cause a threat to the safety, security, or good order of the facility, or the safety, security, or health of the youth or others.<sup>364</sup>

Juvenile detention facilities are required to have both outdoor and indoor recreation spaces with opportunity for a range of recreational activities.<sup>365</sup> While regulations do not require a minimum amount of recreation that must be provided, they do require a balanced program of indoor recreation and for lounge facilities to accommodate its full capacity of children at any given time. The resources must permit a range of activities from vigorous, organized games through quiet informal play. A balanced program of outdoor recreation that can accommodate all the children

<sup>357</sup> Title 9, NY Codes, Rules, and Regulations § 180.9(c)(11)(i), (vi), and (vii).

<sup>358</sup> Title 9, NY Codes, Rules, and Regulations § 7041.1.

<sup>359</sup> Title 9, NY Codes, Rules, and Regulations § 7041.2. The Commission of Correction is established in Article 3 of the NY Correction Law.

<sup>360</sup> Title 9, NY Codes, Rules, and Regulations § 180.9(c)(15).

<sup>361</sup> *Ibid.*

<sup>362</sup> NY Education Law § 3202: public schools are free to resident pupils; nonresident pupils must pay tuition.

<sup>363</sup> Title 9, NY Codes, Rules, and Regulations § 180.9(a)(2).

<sup>364</sup> Title 9, NY Codes, Rules, and Regulations § 7028.6.

<sup>365</sup> Title 9, NY Codes, Rules, and Regulations § 180.9(c)(8) and (20).

at once is also required. Outdoor recreation has to include a range of activities from vigorous organized games through informal play.<sup>366</sup>

### **Health Care**

Access to mental health services varies dramatically between the adult jail setting and the juvenile detention setting. While many jails provide some level of mental health care, there are no minimum legal standards for the provision of mental health services in jails.

Juvenile detention facilities have significant requirements to provide mental health services. Psychiatric services have to be provided on an on-call basis for the examination and treatment of minor and/or acute mental disorders which can be appropriately handled in a detention facility. The psychiatrist is also required to take a leadership role in referring any youth to a mental health facility if that level of intervention is necessary.<sup>367</sup> In addition, juvenile detention centers are required to provide casework services with supervision of those services provided by a licensed master social worker.<sup>368</sup>

In terms of physical health care, individuals admitted to jail are to receive a medical exam no later than 14 days after admission (immediately if incapacitated due to drugs or alcohol), and facilities are required to have medical staff.<sup>369</sup> Medical assessments in juvenile detention are conducted within 72 hours of admission (sooner if emergency needs arise) and are required to provide access to medical, nursing, dental, obstetrical, gynecological, mental health and public and preventive health services. The health care in juvenile detention is required to be of good quality, efficient, accessible, and continuous.<sup>370</sup>

## **CURRENT NEW YORK STATE PRACTICE—SENTENCES TO CONFINEMENT**

Currently, 16- and 17-year-olds serve any determinate or indeterminate sentences of imprisonment of one year or more in state prison and any definite sentences of imprisonment that are one year or less in local jails (under the conditions described above). Youth who commit an offense under the age of 16 are confined after sentencing in either state operated juvenile facilities or with not-for-profit providers called voluntary agencies. The Commission's review of these custodial settings also found substantial variation in terms of conditions of confinement and access to rehabilitative interventions.

### **Housing**

Currently, minors incarcerated in DOCCS facilities are mixed together with older inmates in housing. Depending on the security level and structure of the particular prison, minors can be housed in individual cells, in double cells, or in large dormitories of as many as 60 people of all ages. An array of suitability and compatibility factors are considered when determining who to place in a double cell with a minor (in facilities where double cells are used), including age. There is currently no policy excluding housing a minor with an older person and sometimes this is done in order to provide a mentor for the youth. The dormitory-style prisons include a large room with beds in cubicle areas for as many as 60 people, mixing minors and adults. One common bathroom area with shared showers is used by minors and adults alike without any separation. DOCCS places many minors together at a select number of facilities in order to facilitate programming for this younger population.

In order to comply with PREA, DOCCS is constructing separate units for minors in existing facilities. These units will be self-contained and provide for nearly complete separation between minors and those 18 and older. Some needs, such as

<sup>366</sup> Title 9, NY Codes, Rules, and Regulations § 180.9 (20).

<sup>367</sup> Title 9, NY Codes, Rules, and Regulations § 180.9(6)(ii).

<sup>368</sup> Title 9, NY Codes, Rules, and Regulations § 180.8(d).

<sup>369</sup> NY Correction Law § 505.

<sup>370</sup> Title 9, NY Codes, Rules, and Regulations § 180.9(b).

health care, may still require contact between minors and adults once the separate housing units are complete, but security supervision will be present in such situations.

State-operated juvenile facilities for youth provide individual rooms. Each housing unit consists of several rooms attached or with access to a common area that is used for recreation, group meetings, and programming. Voluntary agencies can provide sleeping accommodations for more than one child per room as long as there are 60 square feet per child in the space and a minimum of two feet between the beds. Individual rooms can be and often are also provided.<sup>371</sup>

### **Solitary Confinement**

The use of solitary confinement, or room isolation, is a major difference between prisons and juvenile placement settings. While segregation may be used as a sanction for rule violations in prison, its use is substantially limited in youth facilities.

Youth committed to DOCCS facilities are subject to policies regarding disciplinary sanctions, including adult solitary confinement, and can be segregated in special housing units (SHU). In general, as currently structured, a stay in SHU involves complete isolation in a cell, sometimes with one other inmate, without the opportunity to exit the cell for programming or outside activity. A small outdoor space behind the cell is provided for one hour out of the cell each day and all basic needs including eating and showering are met inside the cell in some facilities. In other facilities, the inmate must exit the cell and be escorted to the exercise area or to the shower area. Stays in the SHU are subject to disciplinary proceedings and lengths of stay can vary from days to weeks or months.

In response to litigation, in February of this year DOCCS agreed to voluntary implementation of changes in the disciplinary system and SHU conditions regarding vulnerable populations, including inmates under 18.<sup>372</sup> DOCCS agreed to provide separate housing for 16- and 17-year-old inmates at Greene Correctional Facility, Woodbourne Correctional Facility, and Cossackie Correctional Facility, including separation units to be used as alternatives for placement in SHU. DOCCS further agreed that even under the most restrictive forms of disciplinary housing, young inmates will be entitled to out-of-cell programming and outdoor exercise at least five days a week, limiting time in their cells to 19 hours per day.<sup>373</sup>

Youth placed in state operated juvenile facilities are subject to policies regarding room confinement. OCFS policy limits the use of room confinement to situations where youth are a serious and imminent danger to themselves or others and where other less restrictive attempts to manage a youth have failed. Room confinement is an interim measure intended to control acutely dangerous behavior. Youth in room confinement are closely monitored using continuous visual observation and the use of room confinement may not exceed 24 hours without the prior approval of the deputy commissioner. The use of isolation or seclusion is not authorized for OCFS under existing law.

Voluntary agencies are prohibited from using solitary confinement and room isolation cannot be used as a form of discipline.<sup>374</sup> Room isolation can be used if it is included as part of the agency's approved restraint policy. Use of isolation has to be reviewed on an hourly basis, rooms must be unlocked unless special approval for the use of locked rooms has been obtained, constant visual supervision is required and staff is generally required to be present in the room with the youth. In addition, room isolation is prohibited for youth who are seriously depressed, have a developmental disability, or have a seizure disorder.<sup>375</sup>

<sup>371</sup> Title 18, NY Codes, Rules, and Regulations § 442.6.

<sup>372</sup> Peoples et al. vs. Fischer et al., Stipulation for a Stay with Conditions, Case 2:11-cv-02694-SAS (filed February 19, 2014).

<sup>373</sup> Ibid., at 3.

<sup>374</sup> Title 18, NY Codes, Rules, and Regulations § 441.9(b) and (d).

<sup>375</sup> Title 18, NY Codes, Rules, and Regulations § 442.2.



## Staffing

Staffing ratios vary dramatically between the prison system and the juvenile placement system. While DOCCS facilities can have upwards of 60 men in an open unit with one correctional officer, OCFS facilities operate with average unit size of 8-12 youth. They provide enhanced levels of staffing, as shown, in order to achieve their mission to provide comprehensive rehabilitative programming.

Voluntary agencies are also required to have significantly more staff than the prison system. Units with nine or fewer children are required to have one staff person and units with 10 to 19 children are required to have two staff people.<sup>376</sup> In addition, consistent with the rehabilitative model of juvenile settings, voluntary agencies must have one social worker for every 20 children.<sup>377</sup>

OCFS Staffing Ratios	
Unit Type	Staff: Youth Ratio
Discrete (mental health, sex offense behavior treatment)	1:4
Mixed	1:5
Generic	1:6

## Education

Education is provided in both the prison and juvenile placement settings in compliance with state education law. DOCCS offers education services for any person under 21 without a high school diploma (as required by state law).<sup>378</sup> In addition, DOCCS screens all people under 21 years old at intake for special education needs. If youth present with special education needs at intake or if they have a history of a need for special education they are housed in one of 14 DOCCS special education facilities. Special education services range from special classes and resource room supports to cell study and outreach services for youth who are in housing segregation. DOCCS convenes the Committee on Special Education (CSE) which develops and oversees implementation of individual education programs (IEPs) for students with disabilities as required by special education law.<sup>379</sup> Youth in DOCCS who qualify are given the opportunity to take the TASC™ statewide assessment and earn a high school equivalency diploma.

A number of prisons also have on-site college programs available to inmates. These programs are currently offered through public/private partnerships at no cost to the inmates or taxpayers.<sup>380</sup> Additionally, any inmate with a verified high school diploma or high school equivalency diploma may participate in post-secondary correspondence programs from accredited institutions of higher education. These courses are facilitated and approved by the education supervisor at the facility and the cost is the responsibility of the inmate or family member.

Appropriate to an adolescent and young adult population, educational services are foundational to OCFS programming. A full school day of education is provided in every OCFS facility throughout the school year. Youth are provided instruction in the core areas of mathematics, English language arts, science, and social studies to permit the awarding of at least 0.5 units of credit in each content area toward a high school diploma. An amendment to regulations that allows OCFS to have capacity to issue credits for coursework was approved by the Board of Regents on September 16, 2014 and took effect October 1, 2014. DOCCS does not have a similar capacity to issue course credits.

All OCFS facilities also generate their own CSEs to develop IEPs for students with disabilities. OCFS provides mandated supports and services for all youth with educational disabilities.

<sup>376</sup> Title 18, NY Codes, Rules, and Regulations § 442.18(d).

<sup>377</sup> Ibid.

<sup>378</sup> Academic Education Program Policies, State of New York Department of Corrections and Community Supervision Directive 4804, August 8, 2013, <<http://www.doccs.ny.gov/Directives/4804.pdf>> (10 December 2014).

<sup>379</sup> Special Education Services, State of New York Department of Corrections and Community Supervision Directive 4805, October 20, 2014, <<http://www.doccs.ny.gov/Directives/4805.pdf>> (10 December 2014).

<sup>380</sup> DOCCS college programs are offered at: Sing-Sing, Bedford Hills, Taconic, Fishkill, Green Haven, Otisville, Eastern, Woodbourne, Sullivan, Wallkill (starting January 2015), Coxsackie, Greene, Upstate (cadre), Cape Vincent, Auburn, Cayuga, Five Points, Albion, Wyoming, and Attica.

Educational outcomes reported by OCFS for youth in its care are promising:

- ▶ Youth participating in OCFS education programs for a minimum of six months achieve an average increase in their reading and math skill levels by at least one-half grade level.
- ▶ From January 1, 2012 to December 31, 2013, 80.3 percent of youth enrolled in Alternative High School Education Programs (AHSEP)—General Equivalency Diploma (GED) took and passed the GED examination.
- ▶ Approximately 67 percent of youth improved their math score by at least one-half grade level and 68 percent improved their reading score by at least one-half grade level in overall performance (based on data submitted to New York State Education Department for Consolidated State Performance Report for the last reporting period, July 1, 2011–June 30, 2012.)

OCFS also offers college courses at Brookwood Secure Center and Columbia Secure Center for Girls through on-site instructors and at MacCormick Secure Center via on-line learning. On-site college instruction has been offered at Goshen Secure Center and is in the process of being expanded.

Voluntary agencies likewise ensure the provision of comprehensive educational services to youth. They are required to ensure that all children in care receive education appropriate to their needs and in accordance with the requirements of the education law, to maintain an active and direct liaison with any school in which a child in its care is enrolled, and to make sure that the youth receive appropriate educational and vocational guidance.<sup>381</sup> In practice, many voluntary agencies operate their own schools as approved private schools for youth with special education needs or associated with a public school providing education services to students who reside in child care institutions.<sup>382</sup> These schools operate under education law and regulations by the State Department of Education, provide full days of instruction for the required school year, and ensure access to credits for coursework as well as high school diplomas.<sup>383</sup>

### **Recreation/Programming**

Recreation and other programming are available in both the adult prison system and juvenile placement facilities, although they often take a different shape due to the age of the populations. Prisons are required to provide a variety of optional recreational and leisure time activities for groups and individuals. Each facility must have professional recreation staff and provide athletic and non-athletic recreation.<sup>384</sup> These activities are designed to assist the offender in making better use of leisure time and cover a wide range of programs such as fine arts, yoga, poetry readings, wellness classes, inmate organizations, and structured team sports with outside teams.

DOCCS facilities also provide a continuum of programming other than recreation and education. While not every program is available at every facility, programming generally includes: alcohol and substance abuse treatment, a sex offender counseling treatment program, a trauma recovery program, cognitive interventions, aggression replacement training, a family reunion visiting program, a special needs program (for people with an IQ below 70), faith based/spiritual programs, training in vocational trades, and programming to support transition to the community post release.<sup>385</sup>

<sup>381</sup> Title 18, NY Codes, Rules, and Regulations § 441.13.

<sup>382</sup> Private and public schools for youth with special education needs in the state consist of 853 schools providing education services to students who reside in child care institutions that are known as special act school districts. More information on both kinds of schools can be found in “Approved Private, Special Act, State-Operated, and State-Supported Schools in New York State,” New York State Department of Education, <<http://www.p12.nysed.gov/specialed/privateschools/home.html>> (10 December 2014).

<sup>383</sup> Title 8, NY Codes, Rules, and Regulations § 200.7.

<sup>384</sup> Special Subjects, State of New York Department of Corrections and Community Supervision Directive 4807, February 20, 2014.

<sup>385</sup> Linda Hollmen (director of education, State of New York Department of Corrections and Community Supervision) to Jeff McKoy (deputy commissioner for Program Services, State of New York Department of Corrections and Community Supervision), memo, August 18, 2014. Vocational trade training includes: barbering, vocational building, maintenance, cabinetmaking, carpentry, commercial arts, computer operator,

DOCCS has also invested in the creation of “under 21 facilities” to provide extended hours of structured programming for the younger population. For example, Greene Correctional Facility provides four modules for programming each day, with programs running well into the evening to keep the younger population actively engaged in structured settings.

OCFS programming also includes significant recreation and vocational training opportunities. However, this programming is structured through a therapeutic lens with the goal of addressing student needs in three different ways:

- ▶ as part of the student’s treatment (therapeutic);
- ▶ as a way to develop pro-social leisure attitudes, values and skills (leisure education); or
- ▶ as a means for enhancing physical and mental well-being (conventional).

These three areas overlap and in many instances the same activity can be used to achieve significantly different outcomes. OCFS recognizes that to prevent delinquency, appropriate management of a youth’s time and behavior is paramount. In addition, to provide for ongoing positive youth development, constructive leisure time activities are an essential component to the creation of a therapeutic environment. OCFS provides physical education coursework as part of its school programs and recreation programming in the evenings and weekends as well. In addition to dedicated gym space, OCFS has several swimming pools for use by residents, and has climbing walls and climbing towers in its facilities. OCFS administers the Presidential Physical Fitness test to its students to assess their level of fitness and then works with the students to improve their level of fitness.

Youth learn age-appropriate recreation skills, behaviors, and attitudes through comprehensive physical education and recreation programs. Physical education classes concentrate on teaching youth the motor skills needed to participate in various recreational activities. These classes follow guidelines set forth by the New York State Education Department. Youth recreation specialists in each facility function in a dual capacity: teaching physical education and managing the recreation program. These specialists work as part of a team responsible for promoting the youth’s social, mental, emotional, and physical development.

OCFS also provides vocational programming that varies across facilities. Current offerings include a culinary arts program at two facilities, digital printing and graphic design at three facilities, energy efficiency and weatherization at two facilities, and horticulture and aquaculture at nine facilities. OCFS is currently transforming existing vocational offerings into training programs that are self-sustaining, cost-saving, and income generating.

Voluntary agencies are required to have adequate recreation facilities and to provide leisure activities and planned recreation that includes cultural and sports activities.<sup>386</sup> Provision of work experiences that are individualized and related to the youth’s needs, and appropriate to the youth’s age, physical strength, and readiness to do the task is also required in the voluntary agency setting.<sup>387</sup> Finally, voluntary agency requirements reflect the special needs of youth by mandating daily activities for youth that include free time and opportunities for privacy and time for rest as well as scheduled activities.<sup>388</sup>

---

computer repair, cosmetology, custodial maintenance, drafting, electrical trades, floor covering, culinary arts, general business, horticulture, horse handling, heating ventilation and air conditioning, introduction to technology, machine shop, masonry, painting, plumbing, printing, radio/tv repair, small engine repair, upholstery, and welding.

<sup>386</sup> Title 18, NY Codes, Rules, and Regulations § 442.10 and 442.20.

<sup>387</sup> Title 18, NY Codes, Rules, and Regulations § 441.10.

<sup>388</sup> Title 18, NY Codes, Rules, and Regulations § 442.19(c).

## Health Care

### MENTAL HEALTH

Mental health services are provided in both the prison and juvenile placement settings. However, juvenile facilities tend to be structured to establish an overall therapeutic environment while mental health services are provided in the DOCCS system for people with serious mental illness within a correctional framework.

Mental health care is provided in prisons through collaboration between DOCCS and the New York State Office of Mental Health (OMH). Mental health history and evaluation is a required part of inmate health screening and must be performed within 24 hours of the inmate's reception at the facility.<sup>389</sup> In practice, every inmate is screened by OMH upon admission to DOCCS.<sup>390</sup> Several DOCCS facilities are classified to serve people with various levels of mental health service needs and there are just over 1,500 specialized mental health beds throughout the DOCCS system.<sup>391</sup> Data provided by DOCCS to the Commission shows that the 16- and 17-year-old population at DOCCS is generally not utilizing these specialized services, with only about six youth incarcerated in the highest level mental health facilities each of the last three years.<sup>392</sup>

DOCCS is also in the midst of significant reform related to the use of SHUs (or solitary confinement) for people with mental health disorders. Policy first shifted from allowing no time for out-of-cell therapy during confinement in the SHU to two hours of out-of-cell therapy per day for those inmates who are diagnosed with a serious mental illness. In addition, as a result of a new SHU Exclusion law, all inmates with serious mental illness who are confined in the SHU beyond 30 days will now have four hours out-of-cell therapeutic programming five days per week. Suicide prevention screening has also been put into place along with OMH assessment and reassessment of inmates with mental illness confined in the SHU. DOCCS has also expanded staff training related to mental illness.<sup>393</sup>

The therapeutic approach of juvenile facilities is a critical component that sets the juvenile setting apart from the adult correctional setting. OCFS has been actively improving its model of care in recent years, implementing the New York Model, a therapeutic model that focuses on both safety and treatment. This model incorporates a therapeutic approach throughout each facility through use of a trauma-responsive milieu, crisis prevention management, and a multi-disciplinary support team model for treatment planning and service integration.

The New York Model supports the OCFS philosophy and mission, employing evidence-based programs in residential programs and in the community. The New York Model is values-driven, treatment based, trauma-responsive, and future oriented and uses a person-centered approach to enhance commitment and motivation for change in youth and families. Youth in care and their families identify and develop their own treatment goals and objectives, and are supported by a multi-disciplinary team of facility- and community-based staff and service providers.

The New York Model incorporates both the Sanctuary Model (to provide a therapeutic and trauma-sensitive milieu) and evidence-based treatment models such as Dialectical Behavior Therapy and Trauma-focused Cognitive Behavior Therapy (to foster emotional self-regulation and enhance the likelihood of success in the community). The Missouri Youth Services Institute (MYSI) is also in an ongoing collaboration with OCFS to bring aspects of the MYSI approach to team building and positive youth development into the New York Model.

Prior to the development of the New York Model, OCFS created and staffed a state-wide infrastructure for the provision of mental health services at all of the residential and community programs for youth in the state. These

<sup>389</sup> Title 9, NY Codes, Rules, and Regulations § 7651.3(h); Title 9, NY Codes, Rules, and Regulations § 7651.9(a)(1).

<sup>390</sup> Anthony J. Annucci (acting commissioner, New York State Department of Corrections and Community Supervision), testimony, before the New York State Assembly Standing Committee on Correction and the New York State Assembly Standing Committee on Mental Health, November 13, 2014.

<sup>391</sup> *Ibid.*

<sup>392</sup> New York State Department of Corrections and Community Supervision, "Special Programming/Services by Admission Year for Sixteen- and Seventeen-Year-Old Admissions between 2011 and 2013." Unpublished data prepared for this Commission.

<sup>393</sup> Annucci, testimony.

interventions begin at the OCFS central intake and assessment location (currently at the Ella McQueen Residential Center) to provide each youth coming into the system a comprehensive intake assessment. This intake process takes 14 days to complete and includes both orientation of each youth to the rules and expectations of the OCFS residential system as well as specific assessments. The assessments include: health, dental health, academic level and IQ, psychiatric and mental health, substance use/abuse, and other specialty assessments as needed (e.g., neurological, sexually offensive behavior, etc.). Information generated from this intake assessment informs placement decisions and the assignments of youth to programs which are best suited to meet their needs.

Currently, every OCFS residential program has an in-house staff of licensed mental health providers that include psychologists and social workers. In addition, each residential program has access to OCFS staff (or contracted) psychiatry services, and has a facility-based clinical administrator to oversee all mental health programming. Each youth is assigned a mental health clinician who works with a multi-disciplinary team (including the youth's facility case manager, community case manager, teacher, medical staff, psychiatrist (as indicated), recreation staff, direct care staff, and parent/guardian) in the program to support the youth in achieving self-identified goals.

To support the facility-based service teams, OCFS also developed a regional supervision and support network that includes regional social work supervisors and chiefs of treatment services. Individuals in these positions support the facility-based teams with training, quality assurance reviews, and clinical supervision. Discreet specialty service units that are located at various facilities (for the treatment of substance abuse issues, sexually offending behaviors, and acute mental health issues) also have identified social work supervisors who function as program coordinators.

During their residential stay, youth are provided with individual, group, and family-focused mental health services in accordance with their individual and family needs. Services include verbal psychotherapy, dialectical behavior therapy, medication management, and family services. Youth participate in the development of individual support plans that identify their goals and the supports and interventions that staff will provide to help accomplish them. Family engagement in youth treatment is paramount and families are invited to participate in the planning and execution of children's mental health care.

OCFS collaborates with other state agencies to provide both mental health and other specialty services to youth. The New York State Office of Alcoholism and Substance Abuse Services provides technical assistance and certification to OCFS's discreet substance abuse treatment units located in various residential programs around the state. This collaboration and technical assistance assures that OCFS programs meet quality and effectiveness standards for the provision of substance abuse treatment services. OCFS also works with the New York State Office for People with Developmental Disabilities to identify and youth who require appropriate and potentially lifelong supports and services to assist them in meeting their goals.

For youth who will require additional intensive mental health services following discharge, OCFS has partnered with OMH to create a Residential Treatment Facility for Juvenile Justice. Operated by the August Aichhorn Center, this program is an OMH-licensed, 24 bed, co-ed residential treatment facility in Brooklyn, NY, that delivers critical mental health services (comparable to a psychiatric inpatient setting) to youth in need.<sup>394</sup> Services include individual and group therapy, medication management, crisis intervention, family therapy, and other mental health treatment services based on the individual needs of youth and families. Based on the success of this program in providing needed services to youth and families, current plans include a potential expansion of eight additional beds.

OCFS also has access to a creative and comprehensive program to use Medicaid funding to support the successful maintenance of youth with substantial needs without accessing more costly residential settings. Services are available for youth in OCFS care who have been diagnosed with a serious emotional disturbance and/or developmental

<sup>394</sup> More detail on this program, called August Aichhorn, is provided in Chapter Seven.

disability through this home and community-based waiver program. These waivers allow Medicaid funding to be used to provide supports and services that may be used to avert higher cost interventions such as residential mental health treatment or hospitalization.

Voluntary agencies operate on an overall foster care model and are therefore also very different from the corrections system in their therapeutic approach. Agencies are required to have therapeutic services for the youth in their care and to maintain regular casework contacts with the parents or relatives of the youth as well as regular casework contacts with the child.<sup>395</sup> Social work services are required, with a master's degree level social work providing supervision.<sup>396</sup> Psychiatric and psychological services are also required to meet the needs of the youth.<sup>397</sup>

## **PHYSICAL HEALTH**

DOCCS is required to provide inmates with overall medical services, as well as skilled professional health care services deemed necessary by the facility medical personnel.<sup>398</sup> Minors do not have the legal capacity to consent to their own routine medication, dental, and mental health treatment under current New York State law. Special provision exists in the correction law that grants minors committed to DOCCS this capacity to consent to routine medical care through the commitment order to DOCCS.<sup>399</sup>

The mission of the DOCCS Division of Health Services is to assure that all inmates have access to medically necessary health care in order to protect the health and safety of the inmates, staff, and visitors. Healthcare presence is available in all 54 correctional facilities; each facility has a different spectrum of care. Five regional medical units provide sub-acute care. Acute hospitalization takes place in secure units of medical centers (such as Albany Medical Center). The DOCCS Division of Health Services encompasses Coordinated Specialty Care, Dental, Infection Control, Nursing, Operations, Pharmacy, and Utilization Review Services.

Over the course of an average year, DOCCS Health Services provides:

- ▶ More than 1 million primary care visits provided by New York State and contracted employees
- ▶ 1.8 million medication call-outs
- ▶ 18,000 inpatient hospital days
- ▶ 6000 emergency room visits
- ▶ More than 130,000 outpatient specialist encounters

OCFS likewise provides health and nutritional services to all youth in care through the Bureau of Health Services. Initial physical and dental exams are given at intake and follow-up health and dental health services are provided as needed. Youth in care are often in need of significant health services including dental fillings, immunizations, and preventative services such as dental sealants.

OCFS provides and oversees medical and nursing services, dental services, HIV prevention and treatment services, nutritional oversight via menus and food services, and communicable disease programs such as tuberculosis screening, youth immunization programs, and staff hepatitis B immunization programs.

<sup>395</sup> Title 18, NY Codes, Rules, and Regulations § 441.21.

<sup>396</sup> Title 18, NY Codes, Rules, and Regulations § 442.18(d)(1) and (b)(6).

<sup>397</sup> Title 18, NY Codes, Rules, and Regulations § 441.15.

<sup>398</sup> Title 9, NY Codes, Rules, and Regulations § 7651.15(b) and (e).

<sup>399</sup> NY Correction Law § 140.

The standardization of health care practice, control and prevention of communicable diseases, quality assurance, and supporting access to appropriate outside specialty health services when needed are ongoing areas of focus for OCFS health care staff.

The Nutritional Services Program under the OCFS Bureau of Health supports facilities to meet the dietary and nutritional needs of youth in care. The director of this program is a registered dietician with the American Dietetic Association and is certified with the State of New York.

Voluntary agencies are required to provide comprehensive medical services for all youth in their care.<sup>400</sup> Comprehensive medical exams are required within the first 30 days of placement and regularly thereafter. Exam standards reflect general pediatric standards and have to include a comprehensive health and developmental history; a physical exam; vision, hearing, and dental screening; appropriate laboratory testing; and screening for child abuse and maltreatment.<sup>401</sup> Finally, support to transition youth to a medical provider in the community is required at discharge from care.<sup>402</sup>

## FISCAL AND LOGISTICAL CHALLENGES OF MOVING YOUTH TO JUVENILE FACILITIES

Significant cost and capacity challenges must be overcome to shift minors out of adult correctional settings into juvenile custodial settings. The Commission analyzed both in developing their recommendations.

### **Cost**

As documented in the previous section, different standards apply to juvenile facilities (e.g., staffing ratios, available services). As a result, the cost of juvenile detention and placement is significantly higher than the cost of adult jail and prison. At current cost levels within New York State, adult jails are estimated to have costs at between \$70 and \$80 per day, whereas juvenile detention facilities are estimated to cost \$400–\$600 per day, depending on the level of security. Similarly, prisons are estimated to cost approximately \$55 per day, whereas OCFS placement facilities are estimated to cost between \$500–\$600 per day.

### **Capacity—Juvenile Detention**

There are currently eight secure juvenile detention centers across the state, with a total capacity of 390 beds. As of June 30, 2014, there were 207 youth in secure detention statewide. The current non-secure detention capacity statewide is 338 beds, with 180 young people occupying those beds as of June 30, 2014.

Notably, there is significantly more use of jail among the 16- and 17-year-old population than there is current use of juvenile detention for the under-16 population. As shown in the following chart, the median daily population of 16- and 17-year-olds in county jails outside of New York City ranges from zero in many counties (although they may have an admission from time-to-time) to 65 in Erie County, with the bulk of that population in jail pending trial (the unsentenced population).<sup>403</sup> In addition, New York City has an average daily population of about 240 16- and 17-year olds in local jail, with 92 percent of that population pending trial.<sup>404</sup>

<sup>400</sup> Title 18, NY Codes, Rules, and Regulations § 441.22(a).

<sup>401</sup> Title 18, NY Codes, Rules, and Regulations § 441.2(c) and 441.2(f).

<sup>402</sup> Title 18, NY Codes, Rules, and Regulations § 441.2(o).

<sup>403</sup> New York State Division of Criminal Justice Services, “Non-NYC Daily Jail Populations for Sixteen- and Seventeen-Year-Olds by Facility,” daily counts for the time period June 1, 2014, to October 24, 2014, Daily Jail Population database.

<sup>404</sup> Elizabeth Glazer to Jacquelyn Greene, e-mail, November 19, 2014.

Non-NYC Daily Jail Populations for 16-and 17-Year-Olds by County			
County	Unsentenced Minors Daily Median	Sentenced Minors Daily Median	Total Minors Daily Median
ALLEGANY	0	0	0
CATTARAUGUS	1	1	2
CHAUTAUQUA	6	1	7
ERIE*	48	16.5	64.5
GENESEE	2	0	2
LIVINGSTON	0	1	1
NIAGARA	8	1	9
ORLEANS	2	0	2
WYOMING	1	0	1
ELMIRA	6	2	8
MONROE	0	0	0
MONROE	32	4	36
ONTARIO	3	2	5
SCHUYLER	0	0	0
SENECA	1	1	2
STEBEN	5	2	7
WAYNE	2	2	4
YATES	1	0	1
BROOME	9	1	10
CAYUGA	2	2	4
CHENANGO	0	0	0
CORTLAND	1	0	1
HERKIMER	1	0	1
JEFFERSON	2	0	2
LEWIS	1	0	1
MADISON	0	1	1
ONEIDA	14	4	18
ONONDAGA*	30	7	37
OSWEGO	7	2	9
ST LAWRENCE	4	0	4

Non-NYC Daily Jail Populations for 16-and 17-Year-Olds by County			
County	Unsentenced Minors Daily Median	Sentenced Minors Daily Median	Total Minors Daily Median
TIOGA	0	0	0
TOMPKINS	0	0	0
ALBANY	12	1	13
CLINTON	0	0	0
COLUMBIA	5	0	5
DELAWARE	2	2	4
ESSEX	1	0	1
FRANKLIN	2	0	2
FULTON	6	1	7
GREENE	0	0	0
HAMILTON	0	0	0
MONTGOMERY	1	0	1
OTSEGO	1	1	2
RENSSELAER	15	3	18
SARATOGA	4	0	4
SCHENECTADY	6	3	9
SCHOHARIE	0	0	0
WARREN	4	0	4
WASHINGTON	3	1	4
DUTCHESS	2	0	2
NASSAU	37	5	42
ORANGE	16	1	17
PUTNAM	0	0	0
ROCKLAND	3	1	4
SUFFOLK*	18	2	20
SULLIVAN	3	0	3
ULSTER	6	2	8
WESTCHESTER*	35.5	4	39.5
TOTAL	371.5	77.5	449

\*Several jails in county

Daily counts for time period 6/1/2014 - 10/24/2014



An analysis of the counties without secure juvenile detention facilities that had the highest number of jail admissions for 16- and 17-year-olds is shown in the chart below.<sup>405</sup>

There is good reason to believe that use of juvenile detention would not mirror current jail use after the age of juvenile jurisdiction has been raised. First, neither Illinois nor Connecticut experienced significant increases in the use of juvenile detention following their reforms. In fact, the average daily population in Connecticut’s pretrial detention centers fell from 132 in 2006 to 94 in 2011, the year after 16-year-olds entered the juvenile system, allowing the state to close one of its three state-operated detention centers.<sup>406</sup> Illinois likewise saw an 18 percent decline in its juvenile detention system following expansion of juvenile jurisdiction to 17-year-old youth who committed misdemeanors.<sup>407</sup>

Access to Secure Juvenile Detention in Counties with Significant Jail Admissions and No Secure Juvenile Detention Facility				
County	16/17 year old Jail admits per month	Nearest Secure Detention	Miles	Minutes
Niagara	20	Erie	21	33
Chautaugua	11	Erie	67	80
Schenectady*	10	Albany	9	20
Chemung	10	Erie	156	162
Rensselaer*	8	Albany	9	22
Dutchess	8	Westchester*	73	80
Ulster	6	Albany	55	54
Rockland	6	Westchester	19	25
Oswego	6	Onondaga	42	49
Cattaraugus	5	Monroe	37	43

\* Schenectady and Rensselaer currently use the Albany youth detention center. Dutchess is approximately the same distance to Albany as it is to Westchester.

In addition, several existing factors make the incentives to detain offenders in juvenile detention facilities weaker than those for local jails. First, while every county has at least one jail, there are only 32 non-secure detention centers statewide (17 are outside of New York City) and only eight secure detention centers statewide (six are outside of New York City).<sup>408</sup> Geography renders juvenile detention more challenging than jails for local officials and courts.

Second, probation departments must screen each offender with the detention risk assessment instruments approved by OCFS before choosing juvenile detention.<sup>409</sup> This reduces the numbers detained in juvenile facilities and supports detention decisions based on objective risk, reducing opportunity for race-based bias to control the detention decision. Third, counties have access to programs that help successfully maintain youth at home during court processing through programs supported by the STSJP program established under Governor Cuomo (described in Chapter One).

As discussed in detail in Chapter Ten, fiscal modeling conducted in support of the Commission suggests that there would be a need for 558 new secure detention beds, with this new need largely focused in New York City, Long Island, and large upstate cities like Buffalo and Rochester. Still, it is difficult to know whether practice will instead shift as it did in Illinois and Connecticut, actually reducing the use of detention.

<sup>406</sup> Justice Policy Institute, *Juvenile Justice Reform in Connecticut*.

<sup>407</sup> Illinois Juvenile Justice Commission, *Raising the Age of Juvenile Court Jurisdiction: The Future of 17-Year-Olds in Illinois’s Justice System* (Springfield, IL: Illinois Juvenile Justice Commission, 2013), <<http://ijjc.illinois.gov/sites/ijjc.illinois.gov/files/assets/IJJC%20-%20Raising%20the%20Age%20Report.pdf>> (10 December 2014).

<sup>408</sup> OCFS, “Non-Secure Detention Capacity and Census on July 2, 2014, and Secure Detention Facility Capacity and Daily Census on June 30, 2014.” Unpublished data prepared for the Commission.

<sup>409</sup> NY Executive Law § 530.

### **Capacity–Juvenile Placement (post-disposition confinement)**

Shifting sentenced youth out of local jails and out of DOCCS would also require increased capacity in the juvenile placement systems. Long-term out-of-home placement presents fewer geographical challenges, because the placement system generally operates as a statewide system, without a presumption of placement capacity in every county. Nevertheless, it is essential to consider the overall capacity needs, particularly the special needs of certain populations and emerging best practices to place youth close to their homes.

As described in the beginning of this report, youth processed in Family Courts outside of New York City who are given a custodial disposition can be placed in a voluntary agency, under the custody of the LDSS or OCFS, or in an OCFS-operated residential facility. New York City youth sent to non-secure placement must be placed in a voluntary agency setting in the custody of New York City’s Administration for Children’s Services and those placed in a limited-secure setting are expected to fall under the same requirement in the coming months. Youth processed as Juvenile Offenders in criminal court can be placed only in an OCFS-operated secure center.

Currently, the majority of youth sent to out-of-home placement are placed in voluntary agency settings. In 2013, nearly two-thirds of youth admitted to residential care were initially served in programs operated by not-for-profit, voluntary agencies under the custody of LDSS. Voluntary agencies are located throughout the state and would need additional specialized capacity to work with the new population of 16- and 17-year-old delinquent youth.

Modeling conducted in support of the Commission’s work estimates that an additional 749 voluntary placement beds would be needed to meet the needs of the 16- and 17-year-old population. However, this statewide need would be substantially mitigated by forecast reductions in the use of placement due to the Commission’s recommendation to prohibit the use of PINS placement (to follow) as well as the anticipated reduction in the number of 12–15 year-olds in the juvenile justice system. Because the PINS placement population is almost entirely outside of New York City, the Commission’s proposed reforms would relieve more capacity in the counties outside of New York City. New York City would likely need about 370 new voluntary agency beds in their Close to Home program.

In addition, OCFS would have capacity needs for the remaining one-third of placement dispositions that are sent to their care and custody. There are currently 584 OCFS-operated beds; 185 of those beds are currently available. The modeling completed for the Commission estimates that OCFS would need an additional 38 limited-secure beds and 192 secure beds to remove all youth under age 18 from adult facilities. The need for limited-secure beds would be outside of New York City, as any additional New York City limited-secure beds would be provided in the voluntary agency setting under Close to Home. The majority of the new secure bed needs would be in New York City, with about 70 new secure beds needed in other counties—principally from the Mid-Hudson, Finger Lakes, and Long Island regions.

Experiences from Illinois and Connecticut also provide reason to believe that this projected impact, based on current adult and juvenile court disposition practices, may not materialize to the extent predicted. In Connecticut, total commitments to its juvenile placement settings began to decline prior to raising the age of juvenile jurisdiction and continued to decline even after 16-year-olds were added.<sup>410</sup> A small increase in delinquency commitments to juvenile placement materialized in 2013, with both 16- and 17-year-olds fully integrated into the juvenile system. However, total commitments were still less than in 2010.<sup>411</sup>

Illinois experienced a similar trend. While juvenile placements for 17-year-old misdemeanants increased when they were added to the juvenile system, overall placements to that system continued to decline. Placements were down 22.4 percent from the time the age was raised in 2010 and the beginning of 2013.<sup>412</sup> While there is no comprehensive research explaining these reductions, stakeholders interviewed in support of the Commission’s work pointed to the fiscal incentive structure supporting community-based services in exchange for reductions in use of out-of-home placement, known as

<sup>410</sup> Connecticut reduced total commitments to its training school and other residential facilities from 680 in 2000 to 216 in 2011, even with the addition of sixteen-year-olds to the juvenile system. See Justice Policy Institute, *Juvenile Justice Reform in Connecticut*.

<sup>411</sup> See “How Did the System Change?” Raise the Age CT <<http://www.raisetheagect.org/results-change.html>> (10 December 2014).

<sup>412</sup> Illinois Juvenile Justice Commission, *Raising the Age of Juvenile Court Jurisdiction*.

Redeploy Illinois and described in Chapter Three of this report, as key to reductions in placement at the same time the age was raised.

**RECOMMENDATION:**

**Prohibit confinement of any minor in an adult jail or prison and, to the extent funding and operational considerations allow, permit youth to remain in youth settings until age 21.**

Given the documented negative effects and dangers of incarcerating young people in adult facilities, the clear recommendation is to remove all young people under 18 from adult jails and prisons. For those youth who require confinement both pending trial and as a sentence, juvenile facilities are better equipped to provide developmentally appropriate services than adult correctional settings. Youth who commit offenses under the age of 18 should be allowed to remain in youth facilities until the age of 21 to the extent permitted by resources.

This shift will require development of new detention and placement capacity in local detention centers, voluntary agencies, and OCFS operated facilities. The planning phase should include a collaborative planning process between the state and local detention providers to develop necessary detention capacity.<sup>413</sup> In addition, the planning phase should include a collaborative process between the state and voluntary agencies to develop model placement capacity in the voluntary agency setting for 16- and 17-year-old youth who will now be adjudicated delinquent. As discussed more fully in Chapter Seven, new models of OCFS placement should also be developed to mirror the successful Missouri model of care and to provide targeted services to youth with specialized needs such as intensive mental health and substance abuse services.

## STRATEGIES TO REDUCE UNNECESSARY CONFINEMENT

While the experiences of Illinois and Connecticut suggest that the demand for new juvenile detention and placement capacity may not materialize to the extent expected, study of those states revealed that their reforms were accompanied by a substantial investment in efforts to reduce existing juvenile detention and placement practices that do not increase public safety. The Commission found that resources currently used for unnecessary use of juvenile detention and placement could be redirected to support the appropriate use of these settings for 16- and 17-year-olds who present a true risk to public safety.

Juvenile detention and placement settings are currently used for the following populations, despite the fact that they do not pose substantial risk to public safety:

- ▶ Low-risk youth who commit a misdemeanor offense;
- ▶ Youth who violate probation without committing a new crime or threatening public safety;
- ▶ Youth who are detained over the weekend waiting for a court appearance and are then immediately released by the judge; and
- ▶ Status offenders (youth who have engaged in truancy, running away, or are beyond the control of their parents—but have not committed any crime).

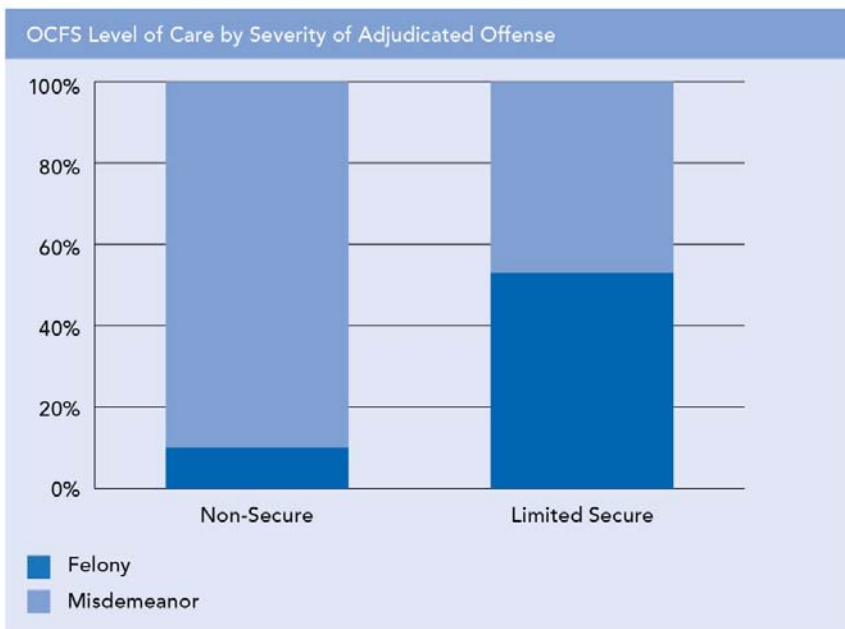
### ***Low-risk youth who commit misdemeanor offenses***

Data analyzed by the Commission revealed that custodial interventions are often used for youth who commit low-level, non-violent offenses in New York. For example:

<sup>413</sup> Public testimony to the Commission of Michael Marinaro, Monroe County Secure Detention Administrator; Kelly Reed, Commissioner, Monroe County Department of Human Services.

- ▶ About 2,200 minors receive sentences to jail or time served following a misdemeanor arrest, and 80 percent of those involved non-violent arrest charges.<sup>414</sup>
- ▶ Last year more than 250 juvenile delinquent youth were sent to out of home placement as a result of a delinquency finding for a case that was initially petitioned as and adjudicated for a non-violent misdemeanor.<sup>415</sup>
- ▶ In New York City, 59 percent of detention admissions are for youth charged with misdemeanor offenses.<sup>416</sup>

The chart below shows OCFS data on the number of youth in non-secure and limited-secure, state-operated facilities by the level of their placement charge. Over half (53%) of youth in OCFS non-secure and limited-secure care were placed as a result of a misdemeanor-level finding.



Commission analysis also revealed that several other states have placed restrictions on the use of out-of-home placement for misdemeanors. Specifically, Texas, Ohio, Georgia, Mississippi, Kentucky, and Florida have each enacted legislation that bans custodial options for specific categories of youth, particularly misdemeanants. The chart below summarizes the specific measures these states have taken to eliminate the use of custody for populations adjudicated for low-level offenses.

While it is important to reserve detention and placement for youth who have committed serious offenses that

present significant risk to public safety, it is also critical to support current plea bargaining practices. Over half (55 percent) of all petitions filed as felonies in Family Court are resolved with a misdemeanor finding.<sup>417</sup> There is a risk that fewer cases would be reduced from felony to misdemeanor charges if detention and placement would then not be available. Therefore, the Commission is recommending restrictions on detention and placement only for cases that originate with misdemeanor charges.

<sup>414</sup> Division of Criminal Justice Services, *Computerized Criminal History* (Albany: Division of Criminal Justice Services, 2014).

<sup>415</sup> Unpublished Family Court data prepared for this Commission by the New York State Office of Court Administration, October 31, 2014.

<sup>416</sup> New York City data provided by the NYC Juvenile Justice Database (JJDB), a city-owned database managed by the Vera Institute of Justice. The JJDB tracks juvenile delinquent youth going back to 2008 from arrest through disposition, including detention and important case processing outcomes.

<sup>417</sup> New York State Office of Court Administration, Family Court Data, prepared by DCJS OJRP on December 16, 2014. Unpublished data prepared for this Commission.

### Technical Violations of Probation

The use of out-of-home placement for violations of the terms and conditions of probation that do not involve commission of a new offense, also known as technical violations, was also identified by the Commission as an area ripe for reform.<sup>418</sup> Technical violations are not new offenses, yet youth who violate orders of probation can be sent to placement. Nationally, OJJDP reports that 16 percent of youth in juvenile placement had a technical violation of supervision recorded as their most serious offense leading to placement.<sup>419</sup> Data on the number of New York State youth who are placed solely because of a technical violation of probation is inconsistently kept. However, in a survey administered to probation departments across New York State for this Commission, those that responded estimated that in 2013, 270 youth in the juvenile justice system were sent to placement solely as a result of technical violations of probation.<sup>420</sup>

State	Restrictions on Placement of Juvenile Misdemeanants
Texas	Misdemeanants under 17 at time of offense may not be placed in secure facilities <sup>a</sup>
Ohio	Misdemeanants under 18 at time of offense cannot be committed to secure facilities operated by the Ohio Department of Youth Services, <sup>b</sup> and any post-adjudication placement in a juvenile facility is limited to 90 days. <sup>c</sup>
Georgia	Misdemeanants under 17 at time of offense cannot be committed to a juvenile placement facility unless at least 3 prior juvenile delinquency adjudications, one of which would have been a felony if committed by an adult. <sup>d</sup>
Mississippi	First-time non-violent delinquent youth and status offenders may not be placed in a juvenile facility. Further, only a child who has been adjudicated delinquent for a felony or who has been adjudicated delinquent three (3) or more times for a misdemeanor offense may be committed to the state training school. <sup>e</sup>
Kentucky	Misdemeanants and Class D felony offenders under 18 at time of offense cannot be committed to a juvenile placement facility unless the youth has been adjudicated for a deadly weapon offense, sex offense, has three or more prior delinquency adjudications, or four or more prior adjudications for supervision violations <sup>f</sup>
Florida	Florida courts may no longer commit youth without felony adjudications to residential facilities, except youth with three or more prior misdemeanor adjudications and youth adjudicated of offenses highly correlated with risk to re-offend. <sup>g</sup>

a. See Texas Senate Bill Section 65.

b. Ohio Revised Code § 2152.16 authorizes the court to place youth in DYS secure facilities for certain felony offenders. In a Vera interview with Ohio stakeholders, they said that misdemeanants cannot be placed in secure facilities.

c. Ohio Revised Code § 2152.19(A)(3).

d. Ga. Code Ann. § 15-11-601 (2014).

e. Mississippi Senate Bill 2984/Ch 371, signed into law March 17, 2010; effective July 1, 2010.

f. The Pew Charitable Trusts Kentucky's 2014 Juvenile Justice Reform (Philadelphia: Pew Charitable Trusts, 2014)

<<http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2014/07/kentuckys-2014-juvenile-justice-reform>> (11 December 2014).

g. S.B. 2114, 114<sup>th</sup> Leg., Reg. Sess. (Fla. 2011).

<sup>418</sup> A technical violation of probation occurs when a youth fails to adhere to the conditions of the probation order, which may include missing curfew or failing to comply with a mandated program.

<sup>419</sup> "Easy Access to the Census of Juveniles in Residential Placement: 1997–2011," US Department of Justice, Office of Juvenile Justice and Delinquency Prevention. <<http://www.ojjdp.gov/ojstatbb/ezacjrp/>> (10 December 2014).

<sup>420</sup> The response rate to this question was inconsistent, so this likely represents an undercount.

In New York State, local probation directors establish written policies and procedures with respect to noncompliance with probation conditions.<sup>421</sup> These policies require consideration of the probationer’s history of compliance with probation terms and conditions; the nature of the noncompliant behaviors; any dangerousness to self or others; and other case-specific circumstances.<sup>422</sup> Many graduated sanctions (such as intensifying the level of supervision, reprimands by department administrative officials, changes in service providers, and greater restrictions on movement) can be imposed administratively by the probation department, without formal court action. The goal is to determine which sanctions might be suitable to achieve compliance and accountability while avoiding the need for formal court intervention.

Decision-making in response to technical violations mirrors that at other system points like diversion and placement; best practice dictates that a youth’s risk and need profile should guide the appropriate level and type of intervention. Structured decision-making, informed by validated risk assessment tools, is a critical element.<sup>423</sup> Additionally, graduated sanctions require access to a range of interventions that can be applied to match the severity and the nature of the behavior. Examples of options that may be included in a continuum include more intensive probation reporting schedules, electronic monitoring, or day treatment. The goal is to use custodial options only in those cases where the youth presents a significant risk to public safety. These justice interventions also need to be accompanied by appropriate services that are designed to reduce risk; however, as noted above, probation departments across New York State vary in the availability of a range of services to address youth needs and behavior.

Other states have taken notice of the resources expended on these youth who are confined without a new offense. The final report of the 2013 Hawaii Juvenile Justice Working Group noted that “over the past three fiscal years, more than four in ten” admissions to the Hawaii Youth Correctional Facility were for technical violations of probation.<sup>424</sup> Subsequent legislation was passed to provide probation officers with a fuller range of community-based graduated sanctions for use in response to violations.<sup>425</sup> Kentucky also recently passed legislation that requires the use of graduated sanctions to address probation noncompliance, and further prohibits the commitment or recommitment of youth to the state juvenile justice agency for a violation of probation.<sup>426</sup> Kansas has adopted a graduated sanctions model where probation officers are given discretion to incentivize good behavior and hold youth accountable for negative behavior without resorting to incarceration. The options given to probation officers include a nonresidential weekend reporting alternative to detention program.<sup>427</sup> Florida allows for brief stays in custody in special secure facilities called “consequence units” designed for youth detained because of technical violations.<sup>428</sup> These facilities can be used both pre-adjudication and as the disposition of the violation (up to five days for a first violation, up to 15 days for a second). Florida also allows for alternative consequence programs to avoid the use of custody.<sup>429</sup>

### ***Weekend Detention Stays Pending Arraignment***

Adult system processing is currently structured to arraign adults over the weekend in order for the court to make decisions about releasing individuals pending trial. However, this kind of court access is not available in the juvenile detention setting outside of New York City. Instead, youth arrested and detained as juveniles must wait until Monday to see a Family Court judge if they are arrested after the Family Court closes on Friday afternoon. These days are spent in a detention setting despite the fact that the youth may be released once they have the opportunity to see a

<sup>421</sup> Title 9, NY Codes, Rules, and Regulations § 352.4(a).

<sup>422</sup> Title 9, NY Codes, Rules, and Regulations § 352.4(a)(1).

<sup>423</sup> Robert E. DeComo and Rick Wiebush, eds., *Graduated Sanctions for Juvenile Offenders, Vol. II: A Program Model and Planning Guide: Dispositional Court Hearing to Case Closure* (Washington, DC: National Council of Juvenile and Family Court Judges, Juvenile Sanctions Center, 2005).

<sup>424</sup> “Hawaii Juvenile Justice Working Group Final Report” December 13, 2013

<sup>425</sup> Hawaii HB 2490. Graduated sanctions systems include a continuum of intervention of services and programs that allow the juvenile justice system to match these to specific characteristics of the juvenile and/or the behavior.

<sup>426</sup> Kentucky SB 200, signed into law April 25, 2014. *See also* “Kentucky’s 2014 Juvenile Justice Reform,” The Pew Charitable Trusts, 2014, *available at* <http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2014/07/kentuckys-2014-juvenile-justice-reform>.

<sup>427</sup> Youth may be detained for up to 30 days.

<sup>428</sup> FLA. STAT. § 985.439(2) (2014).

<sup>429</sup> *Ibid.*

judge. Shifting 16- and 17-year-olds to a delinquency model without implementing weekend arraignment for Family Court cases would therefore leave these youth more subject to incarceration than they currently are.

A significant proportion of youth remain in juvenile detention for three days or fewer statewide—41 percent of juvenile delinquent youth detained in New York City and 23 percent of juvenile delinquent youth detained outside of New York City.<sup>430</sup> Some of this detention use outside of New York City is attributable to the lack of weekend arraignment.

Weekend and holiday arraignment has been available for juveniles in New York City since 2008. Juveniles arrested on weekends are processed by judges who have the authority over criminal and Family Court proceedings. Cases from all five boroughs are processed in Manhattan the day following the arrest. In keeping with “sight and sound” separation requirements, juvenile case processing occurs in a separate courtroom from adult arraignment and juveniles are held separately in detention space adjacent to the courtroom. Probation conducts the standard juvenile intake process, including the risk assessment instrument (RAI), and may either open the case for adjustment or refer the case to the Law Department. The Law Department may: (1) reschedule and release to parent(s) or legal guardian(s), (2) refer back to probation for adjustment, (3) request a pre-petition filing by ACS or (4) file a petition. If a petition is filed, the court must obtain a waiver of venue signed by the youth’s parent or legal guardian, the youth and the youth’s attorney. At the time of waiver, the case gets docketed by the court and the child is seen by the presiding judge where a decision is made to release to parent or guardian, refer to an alternative to detention program, or detain. This process allows for multiple exit points—at probation intake, law department intake, and by the judge—if the child is deemed low-risk to public safety.

To date, approximately 75 percent of cases heard at weekend arraignment have been released to the community. These are youth who would have been detained, at least briefly, in the absence of this policy.<sup>431</sup> Implementation of similar structures statewide would reduce the unnecessary use of juvenile detention and ensure that 16- and 17-year-olds are not disadvantaged by a shift to the juvenile system.

### ***Status Offenders (Persons In Need of Supervision—PINS)***

In keeping with the principle of reserving detention and placement for those youth that present a high risk to public safety, the Commission reviewed New York State use of those options for status offenders. In New York State, a status offender, or PINS, is a youth under 18 who does not attend school as required, is incorrigible, is ungovernable, is habitually disobedient and beyond the lawful control of a parent or other person legally responsible, violates the provisions of the penal law regarding marijuana or prostitution, or appears to be a sexually exploited child.<sup>432</sup>

Local service attempts to divert PINS from court are required by law before a petitioner can access the Family Court. There is no time limit on diversion. Each county is allowed to determine whether its probation department or department of social services will be the lead agency on PINS cases.<sup>433</sup> The lead agency conducts an intake and assessment and must make attempts to divert the case through the use of services prior to filing a petition.

Youth being adjudicated for PINS issues can be placed in institutional settings outside of the community despite the fact that they have not committed any criminal offense. While they may only be confined in non-secure detention and non-secure placement facilities, any removal from their homes presents: fertile opportunity for educational disruption; health and mental health care disruption; intense exposure to a range of youth, some of whom are likely to be higher risk; and interventions that do not involve support for a stronger family response to the behavior problem.<sup>434</sup>

<sup>430</sup> Unpublished data prepared for this Commission by the Office of Children and Family Services.

<sup>431</sup> Unpublished data prepared for this Commission by the New York City Mayor’s Office of Criminal Justice.

<sup>432</sup> NY Family Court Act § 712(a).

<sup>433</sup> Preventive service funding covers diversion when DSS is the lead, probation-led diversion is no longer similarly eligible.

<sup>434</sup> NY Family Court Act § 720 prohibits secure detention in PINS cases and N.Y. FAM. CT. ACT § 756 provides that placement can only be in the custody of the local department of social services (which, in turn, means that only voluntary agency settings can be used for their housing).

2013 PINS Admissions to Placement	NYC	ROS	Total
Total	N=50	N=577	N=627
Sex			
Male	48%	50%	50%
Female	52%	50%	50%
Age at Admission			
<12 years	2%	5%	4%
13	6%	11%	10%
14	14%	21%	21%
15	16%	27%	27%
16 +	62%	36%	38%
Race/Ethnicity			
Black	10%	28%	27%
Hispanic	10%	9%	9%
White	0%	52%	48%
Multiple	2%	5%	5%
*Other	0%	1%	0%
Unknown	78%	5%	10%

The use of detention and placement for cases involving youth charged as PINS is found predominately outside of New York City. Eighty-nine percent of the PINS placements ordered by Family Court in 2013 were in counties outside of New York City.<sup>435</sup> There were 627 admissions to local department of social services custody in 2013, with girls comprising half of that population and the majority of those youth under the age of 16.<sup>436</sup>

The median length of stay for PINS placements is significant—nearly 18 months.<sup>437</sup> The table below tracks youth admitted to residential care in 2012 on a PINS related petition and follows them until May 1, 2014, to determine length of custodial stay. Custodial stay is defined as the length of time, in months, from the youth’s first admission into a residential bed until their discharge from services. Youth may or may not have had an active PINS placement for the duration of their custodial stay.

Length of Stay for 2012 PINS Admissions	Rest of State		New York City		New York State	
	#	%	#	%	#	%
Total	508	100%	50	100%	558	100%
Discharged as of 6/1/14						
<3 Months	58	11%	0	0%	58	10%
3+ to 6 Months	49	10%	1	2%	50	9%
6+ to 1 Year	105	21%	6	12%	111	20%
1+ to 2 Years	56	11%	5	10%	61	11%
>2 Years	3	1%	1	2%	4	1%
Still in Care on 6/1/14	237	47%	37	74%	274	49%
Length of stay as of 6/1/14						
Median in months	17.4		20.7		17.6	

ed for this

Commission.

<sup>436</sup> New York State OCFS, Bureau of Research, Evaluation, and Performance Analytics, Prepared July 2, 2014.

<sup>437</sup> Ibid.



The use of detention for PINS youth is also primarily a phenomenon outside New York City. In 2013, 83 percent of PINS detention admissions were from outside New York City, as shown below.<sup>438</sup> The average length of stay for detention on a PINS case is two weeks.<sup>439</sup>

Use of non-secure detention and out-of-home placement for PINS youth is a costly practice. Analysis completed by OCFS in support of the Commission’s work showed that New York State spends over \$100 million annually to hold PINS youth in detention and placement. This expensive practice is also contrary to best practice standards for these youth who have not committed any offense.

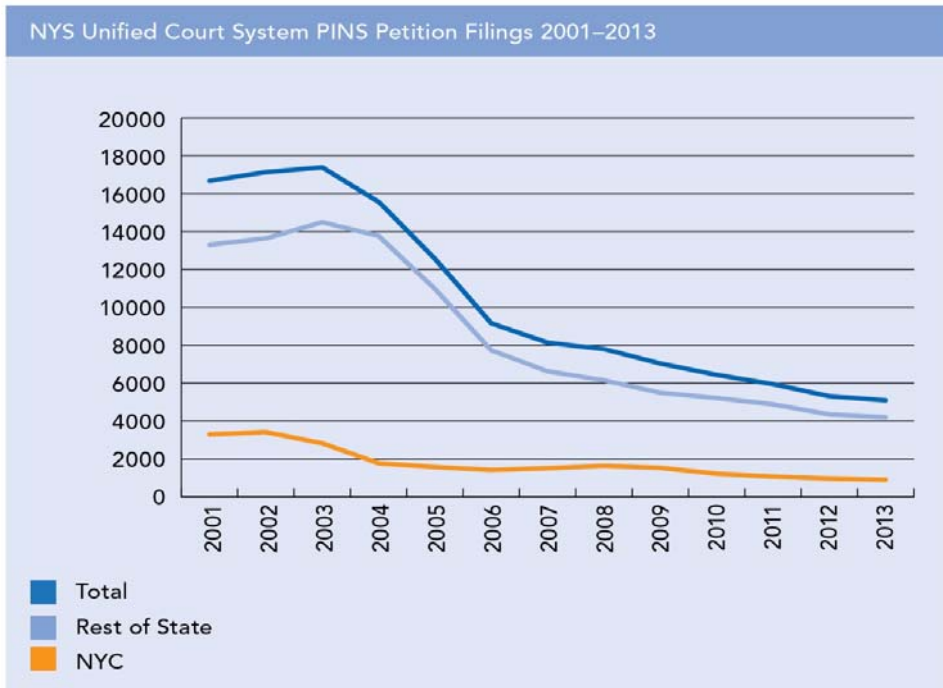
2013 PINS Detention Admissions	Total Admissions	# of Unique Youth Admitted
New York State	1,808	1,280
New York City	234	215
Rest of the State	1,574	1,065

Nationally, there has been an increased focus on reducing the use of custody for youth charged with status offenses. Federal law has banned secure detention and placement of status offenders outside the violation of a valid court order.<sup>440</sup> However, New York and other states have gone beyond this standard and have banned secure confinement completely. New York has taken significant steps towards reducing the use of non-secure detention and placement, by mandating diversion efforts and investing in evidence-based practices as community-based options. The volume of PINS petitions making it to Family Court has declined substantially since a requirement for pre-court diversion efforts for PINS cases was enacted in 2005.

<sup>438</sup> Ibid.

<sup>439</sup> Ibid.

<sup>440</sup> Federal regulations define a valid court order as a court order given by a juvenile court judge to a juvenile who has been brought before the court and made subject to a court order. The use of the word “valid” permits the incarceration of juveniles for violation of a valid court order only if they received their full due process rights as guaranteed by the Constitution. See “What Is the Valid Court Order Exception to Secure Detention for Status Offenders?” *NCJJ Snapshot* 16, no. 5 (May 2011).  
 <[http://www.ncjj.org/pdf/Snapshots/2011/vol16\\_no5\\_What%20is%20the%20Valid%20Court%20Order%20Exception%20to%20Secure%20Detention%20for%20Status%20Offenders.pdf](http://www.ncjj.org/pdf/Snapshots/2011/vol16_no5_What%20is%20the%20Valid%20Court%20Order%20Exception%20to%20Secure%20Detention%20for%20Status%20Offenders.pdf)> (11 December 2014).



The Vera Institute of Justice’s Status Offense Reform Center has compiled a set of guidelines that describe the best practice elements of jurisdictional responses for status-offending youth:<sup>441</sup>

4. *Diversion from court.* Keeping kids and families out of court requires mechanisms that actively steer families away from the juvenile justice system and toward community-based services.
5. *An immediate response.* Families trying to cope with behaviors that are considered status offenses may need assistance right away from trained professionals who can work with them, often in their home, to de-escalate the situation. In some cases, families also benefit from a period where the young person spends a few nights outside of the home in a respite center.<sup>442</sup>
6. *A triage process.* Through careful screening and assessment, effective systems identify needs and tailor services accordingly.
7. *Services that are accessible and effective.* Easy access is key. If services are far away, alienating, costly, or otherwise difficult to use, families may opt out before they can meaningfully address their needs. Equally important, local services must engage the entire family, not just the youth, and be proven to work based on objective evidence.
8. *Internal assessment.* Regardless of how well new practices are designed and implemented, there are bound to be some that run more smoothly than others, at least at first. Monitoring outcomes and adjusting practices as needed is essential to make them effective and also to sustain support for new practices.

<sup>441</sup> Annie Salsich and Jennifer Trone, *From Courts to Communities: The Right Response to Truancy, Running Away, and Other Status Offenses* (New York: Vera Institute of Justice, Status Offender Reform Center, 2013), <<http://www.vera.org/sites/default/files/resources/downloads/from-courts-to-communities-response-to-status-offenses-v2.pdf>>.

<sup>442</sup> Fiza Quraishi, Heidi J. Segal, and Jennifer Trone, *Respite Care: A Promising Response to Status Offenders at Risk of Court-Ordered Placements* (New York: Vera Institute of Justice, 2002), <[http://www.vera.org/sites/default/files/resources/downloads/IIB\\_Respite\\_care.pdf](http://www.vera.org/sites/default/files/resources/downloads/IIB_Respite_care.pdf)> (10 December 2014).

In addition, the Coalition for Juvenile Justice recently released Standards of Care for Non-Delinquent Youth (PINS youth, in New York) that reflect evidence-based practice for addressing the issues of status offenders and their families. The standards encourage a strong community-based infrastructure of non-judicial programs to provide intervention to PINS youth and their families and warns against more punitive approaches that can result from court involvement and locked confinement in these cases.<sup>443</sup>

Connecticut has developed a promising model that reflects these best practices to respond to the needs of families of status offending youth who were previously primarily served through the courts. In October, 2007, Family Support Centers (FSCs) opened in the four jurisdictions with the highest numbers of status offense complaints. In lieu of court referrals, status offending youth who are in crisis or deemed high-risk after being screened by a probation officer are referred to FSCs—community-based nonprofit service providers that offer immediate support.<sup>444</sup>

The FSC multiservice model requires caseworkers to contact families within three hours of receiving a referral. They conduct an initial screening to determine the appropriate next step for families, including a comprehensive assessment and planning of services that can be offered within the center. FSC officials collaborate with other service providers in the

community to provide youth with a successful plan of action. They work to strengthen families, provide treatment services, reconnect youth with family and schools (in cases of truancy), and increase the skills of youth and family in managing status offense behavior. Services provided to youths and families diverted to FSC include counseling, mediation, mental health, and respite care. Only if a family experiences repeated crises after FSC intervention can a formal petition be filed with the courts.

During the first six months after the 2007 implementation of FSCs, the number of status offense court referrals fell by 41 percent, and more than one year later no youth charged with a status offense had been securely detained. From 2007 to 2009, 81 percent of youths who successfully completed an FSC program had no further involvement in the juvenile justice system.<sup>445</sup>

**Family Support Centers were developed as an alternative response to the high number of youth referred to family court for status offenses in Connecticut.**

**Probation supervisors screen youth whose families are seeking to make a Families with Service Needs (status offender) complaint in court. Those who are assessed to have high needs are referred to the FSCs immediately. The Family Support Center staff make their first attempt at contacting the family within 3 hours of the referral, and outreach attempts continue until all efforts are exhausted. The Family Support Center offers comprehensive screening and assessment, and develops a collaborative service plan to address the needs of the youth and family, using an array of voluntary services, including:**

- Crisis Intervention
- Family Mediation
- Case Management/Coordination with Other Systems
- Educational Consultation/Advocacy
- Aftercare Services
- Referrals to home-based programs
- Flex Funds for Pro-social Activities

afety-opportunity-and-success-project/national-and local policymakers and advocates should: 1) Eliminate juvenile systems are accurately responding to behaviors as either episodes of t resolved through non-judicial interventions and supports; 2) ams and systems to ensure direct youth and family access to a and resourced to respond to behaviors that might otherwise be ent is necessary, ensure court mechanisms are in place that allow

the appropriate court division to effectively serve the needs of the youth and family without inappropriate use or risk of more punitive outcomes for the child and family; and 4) Prohibit the use of locked confinement for youth petitioned to court for a status offense.

<sup>444</sup> Youth who are found to be at low risk are not allowed to receive service from FSCs and are referred to local youth services or programs in the community. See “Connecticut Families with Service Needs (FWSN),” US Department of Justice, Office of Juvenile Justice and Delinquency Prevention. <<http://www.kidscounsel.org/OJJDP%20CT%20FWSN.pdf>> (11 December 2014).

<sup>445</sup> See Dr. Stephanie Bontrager Ryon, Dr. Kristin Parsons Winokur, and Lindsey Devers, *Process and Outcome Evaluation of the 2007–2009 Connecticut Families with Service Needs Initiative: Final Report* (Justice Research Center, 2010). <<http://www.cga.ct.gov/kid/FWSN/Docs/2010/JRC%20Final%20FWSN%20Process%20and%20Outcome%20Evaluation%20Report.pdf>> (11 December 2014).

The Commission finds that a portion of the resources currently used to detain and place status offending youth should be reinvested to establish FSCs in New York in order to end the costly and ineffective practice of removing youth who have committed no crime from their communities.

Redirecting the use of detention and placement away from low-risk youth who commit misdemeanor offenses, technical probation violators who present no imminent risk to public safety, youth waiting for court to open to see a judge, and status offending youth who have not committed any crime, to 16- and 17-year-old youth who present a significant risk to public safety can allow for the removal of minors from jails and prisons without the exponential expansion of the juvenile detention and placement systems.

**RECOMMENDATION:**

**Reduce unnecessary use of detention and placement through:**

**(A) PROHIBITION OF DETENTION AND PLACEMENT FOR YOUTH ADJUDICATED FOR FIRST-TIME OR SECOND-TIME MISDEMEANORS THAT DO NOT INVOLVE HARM TO ANOTHER PERSON, AND WHO ARE LOW-RISK, EXCEPT WHERE THE COURT FINDS A SPECIFIC IMMINENT THREAT TO PUBLIC SAFETY.**

Given the rich body of research showing the public safety danger that comes from the use of confinement for youth who are not high risk, the data indicating that out-of-home settings are sometimes being used for this population, and building on the reforms in other states, the Commission finds restrictions on the use of juvenile placements for low-risk youth who have not committed significant crimes are warranted. The Commission considered several factors in developing the criteria for these restrictions including concerns about youth committing repeated low-level offenses who are not responding to community-based interventions; the need to allow for continued use of the plea bargaining process so that the number of youth adjudicated for felony offenses does not rise as a result of the policy; and the need to reserve out-of-home placement for high risk youth. These considerations led the Commission to conclude that prohibitions on placement are appropriate for youth who screen low risk on a validated risk assessment tool; who have been adjudicated for only one or two misdemeanor offenses; who have not caused physical harm to another person; and where there is no imminent risk to public safety. These caveats would support appropriate restrictions on the use of out-of-home placement while still protecting public safety and supporting plea bargaining without the concern that reduction to a misdemeanor offense would remove placement as a dispositional option.

**(B) PROHIBITION OF PLACEMENT FOR TECHNICAL PROBATION VIOLATIONS ALONE, EXCEPT WHERE 1) THE COURT FINDS A SPECIFIC IMMINENT THREAT TO PUBLIC SAFETY OR 2) THE YOUTH IS ON PROBATION FOR A VIOLENT FELONY OFFENSE AND THE USE OF GRADUATED SANCTIONS HAVE BEEN EXHAUSTED WITHOUT SUCCESSFUL COMPLIANCE.**

The Commission also focused on the use of out-of-home-placement for technical probation violations that are not the result of new crimes. Research supports prohibiting the use of placement for youth who are low risk simply because they have broken a rule, such as missing a curfew or being truant from school. While New York State data on this practice is not comprehensive, the survey completed for the Commission revealed that these placements are certainly occurring in parts of the state. At the same time, stakeholders raised concerns about eliminating placement as a tool for youth on probation who are not compliant with their terms and conditions and pose a threat to public safety or who were adjudicated for a violent felony offense and have not been responsive to the various graduated sanctions implemented by probation to obtain compliance. The Commission therefore recommends a prohibition on the use of placement for youth who have just violated the terms and conditions of probation, but not committed a new crime, unless there is a specific imminent threat to public safety or the youth is on probation for a violent felony offense and the graduated sanctions in place at probation have been exhausted.

**(C) IMPLEMENTATION OF WEEKEND ARRAIGNMENT FOR FAMILY COURT CASES STATEWIDE WHERE ADULT ARRAIGNMENT ALREADY OCCURS.**

Weekend arraignments are available now to adults who have been arrested, providing them the opportunity to be released by a judge if they are arrested over the weekend. Sixteen- and 17-year-olds have this resource available now, as they are processed in the adult system. However, it is not available for youth arrested and detained as juveniles. Those youth must wait in detention until Family Court is open again on Monday morning. Shifting 16- and 17-year-olds to the juvenile system without providing for weekend arraignments would therefore subject them to increased use of detention over what they experience in the adult system. Implementation of weekend arraignment would also reduce the unnecessary use of detention over the weekend for all juveniles if they are going to be released once they appear before a judge. The Commission therefore recommends that the practice of weekend arraignment of juveniles should be expanded statewide.

**RECOMMENDATION:**

**Establish family Support Centers in high-PINS referral localities to provide more robust community-based PINS services, and then eliminate detention and placement of PINS.**

New York already stands as a leader in status offense reform—one of only 16 states which prohibit secure detention of status offenders, incorporating research-informed elements into many aspects of current practice. However, non-secure detention and out-of-home placement of PINS youth consumes significant public resources annually and does not reflect standards of best practice in these noncriminal cases. Based on its review of the evidence, the Commission finds that providing community-based services rather than even non-secure residential placement in most cases would reduce costs and improve outcomes for these children.

Connecticut has provided a promising model which was an integral part of the state's elimination of custody as an option for status offenders. This model can be used to deliver primary prevention, serving as a referral hub for families to access rapid assessment, crisis response, and referrals to needed services without a petition. The Commission recommends that in keeping with best practices, a full range of services be made available, including respite care. Resources currently used for out of home detention and placement should be reinvested to support this robust model of effective community-based intervention. It is essential that this range of supports, housed in FSCs, are developed prior to closing the door to the detention and placement of youth in the PINS system in order to avoid shifting of these cases to the delinquency or child welfare systems in order to access needed services.

## CHAPTER 7: EFFECTIVE DISPOSITION SERVICES AND FACILITIES

---

Providing access to effective interventions for 16- and 17-year-olds whose cases result in either an adjudication of delinquency or a criminal finding is critical to raising the age of juvenile jurisdiction. In reviewing changes that should be made to provide the most effective interventions to 16- and 17-year-olds following sentencing, the Commission considered the following:

- ▶ The sentencing structure for cases that would remain in the criminal court;
- ▶ Access to evidence-based interventions to support youth during terms of probation supervision;
- ▶ Models of residential care needed to meet the needs of the 16- and 17-year-old population effectively; and
- ▶ The continuing programming needs of the small subset of this population that may age into DOCCS custody as a result of a lengthy sentence.

This chapter addresses the need to shift to a determinate sentencing structure for minors who are sentenced in the criminal courts, explores juvenile community-based supervision and custodial-setting enhancements that would provide the most effective interventions for 16- and 17-year-olds, and recommends a continuum of effective interventions for those youth who may age into the DOCCS system.

### SENTENCING FOR YOUTH WHO REMAIN IN CRIMINAL COURT

The sentencing structure in criminal court provides for two kinds of sentences—determinate and indeterminate. Under the determinate structure, a definite term of years of incarceration is imposed at sentencing, with a mandatory period of “post-release supervision” (parole) to follow. The release date is certain from the time of sentencing, with the opportunity to be released after serving six-sevenths of the term for good behavior.<sup>446</sup> Current sentences for 16- and 17-year-olds in the criminal court who are convicted of violent felony offenses follow the same determinate sentencing structure used for all adult violent felony offenders.

Under the indeterminate structure, youth are sentenced to a minimum and maximum period of years and have the opportunity to be released by the Board of Parole once the minimum sentence is completed. The Board considers a series of factors when making release decisions, including the youth’s record while incarcerated, the seriousness of the offense, and prior criminal record.<sup>447</sup> If the Board does not allow release, youth can spend the maximum term of years imposed at sentencing incarcerated, with the capacity to reduce the maximum term of imprisonment by one-third for good behavior.<sup>448</sup> Timing of release under this structure is therefore uncertain and at the discretion of the Board of Parole. While institutional behavior is one factor considered in the exercise of that discretion, good behavior while incarcerated cannot guarantee release by the Board. Under the current structure, youth sentenced as Juvenile Offenders and those who receive Youthful Offender status for a felony offense serve indeterminate sentences. Under the structure proposed by the Commission for court processing, a small universe of young offenders under 18 would be sentenced in the criminal court. *See* Chapter Five. Specifically, violent felony cases against 16- and 17-year-olds would continue to originate and, in certain instances, remain in criminal court.<sup>449</sup> In addition, cases against 16- and

<sup>446</sup> NY Correction Law § 803(1)(c).

<sup>447</sup> NY Executive Law § 259-1(2)(c)(A).

<sup>448</sup> NY Correction Law § 803(1)(b).

<sup>449</sup> For purposes of this discussion, violent felonies include statutorily defined violent felony offenses as well as Class A felonies, homicide offenses, sexually motivated felonies, crimes of terrorism, felony vehicular assaults, aggravated criminal contempt, and conspiracy to commit and tampering with a witness related to any of these or any statutorily defined violent felony offense.

17-year-olds involving those crimes covered by the Juvenile Offender statute would also originate and, in certain instances, remain in criminal court. Accordingly, the Commission was required to determine how those 16- and 17-year-old defendants who face sentencing in criminal court should be handled.

The Commission focused on two aspects of needed reform. First, in keeping with the need to reduce recidivism by increasing the rehabilitative opportunities for this group, the Commission concluded that, with the exception of Class A offenses (that are not currently Juvenile Offender crimes), 16- and 17-year-olds being sentenced for violent felony offenses, crimes covered by the Juvenile Offender statute, and other crimes that would originate in criminal court should be sentenced under the statutory Juvenile Offender sentences, rather than under existing sentences used for adult defendants. This approach would avoid the obvious illogic of allowing violent felony offenses, which are generally less serious than the Juvenile Offender crimes, to lead to sentences that are more severe than sentences for Juvenile Offender crimes. This reform would also reflect the fact that sentences in the upper range of adult sentencing are rarely appropriate for a teenager who retains a real capacity for rehabilitation. This reality has been acknowledged by the U.S. Supreme Court in its recent rulings banning the death penalty and life without parole for offenders under age 18, as described in Chapter Two.

At the same time, however, several district attorneys and others consulted in support of the Commission's work pointed to those very rare but egregious cases where a 16- or 17-year-old presented a major, ongoing threat to public safety. To account for those cases, the Commission concluded that it makes sense to retain the current sentencing structure solely for Class A felonies and to provide an option for longer sentences if a 16- or 17-year-old commits a Class B violent felony. Therefore, the Juvenile Offender and youthful offender sentencing structures should apply to all sentences in criminal court for crimes committed at ages 16 and 17, except for Class A felonies that are not Juvenile Offender crimes. In addition, the option of imposing the existing longer determinate adult sentence should be provided where the prosecution can make a showing of aggravating circumstances, including severity of injury and gravity of risk to public safety, for Class B violent felony offenses.

**RECOMMENDATION:**

Use statutory Juvenile Offender and Youthful Offender sentences for offenses committed at ages 16 and 17 that are sentenced in criminal court, except for Class A felony offenses that are not juvenile offender crimes. For Class B violent felony offenses, the court should have statutory discretion to impose a longer adult sentence if the prosecution shows aggravating circumstances, including severity of injury or gravity of risk to public safety.

This sentencing structure would reflect the developmental reality of 16- and 17-year-olds while also providing protection against the premature release of the few extremely violent 16- and 17-year-old offenders.

The second aspect of sentencing of young offenders in criminal court that the Commission found in need of reform is the indeterminate structure of such sentences. Stakeholder interviews and focus groups, as well as extensive discussions with experts in this area, identified serious concerns about the impact of the current Juvenile Offender and Youthful Offender indeterminate sentences on youth. In particular, stakeholders highlighted the uncertainty that results from indeterminate sentencing and the challenges that such uncertainty creates for effective programming and re-entry planning during placement. Because youth can be released by the Board of Parole at different points over a period of years, or not at all, there is no capacity to know when release will occur, to create an institutional case plan structured to complete programming in a timely manner, or to develop a strong plan for re-entry supports.

Others emphasized how difficult it is to help youth serving indeterminate sentences to set personal goals and motivate them to focus on their education and training when the timing of their release is so uncertain. Under the determinate



sentencing structure, good behavior is guaranteed to reap the benefit of an early release and therefore provides strong motivation for completing programming and following rules while confined. However, under the indeterminate structure, youth may do everything required of them while confined and still not be released by the Board of Parole. This inability to tie good behavior to certainty of an early release can serve as a disincentive for good behavior and, at times, leave youth feeling that there is no reward for following the rules and completing programs.

Finally, the separation in the current structure between the custodial agency (OCFS) and the release decision-making entity (Board of Parole) was raised by some stakeholders as a significant barrier to strong re-entry planning. Juvenile Offender youth housed in OCFS facilities have limited contact with the release-planning staff from DOCCS. In order to strengthen the release-planning process for these youth, OCFS has recently devoted staff resources to designing release plans for youth and partnering with DOCCS to identify and implement community-based supports for Juvenile Offender youth pending release to the community. These individualized plans are developed with input from the family and are presented to the Board of Parole to aid in the Board's decision whether to grant release to a youth. However, these are adaptations to a process that remains controlled by the Board of Parole and DOCCS. OCFS does not have authority over release decisions for these youth, eliminating its capacity as the residential provider to guarantee an early release based on good behavior and compromising capacity to prepare youth for release in a planned manner.

Shifting to a determinate structure would facilitate certainty in release planning and create motivation for youth to behave while in custody, as they would know with certainty when they can be released if they follow the rules. The Sentencing Commission recently completed several years of analysis on how best to shift from an indeterminate to a determinate sentencing structure, and their recommendations should be considered when developing a determinate range in Juvenile Offender and Youthful Offender sentencing. This Commission supports determinate sentencing for all offenses that do not currently have the potential for life in prison, consistent with the Sentencing Commission.

**RECOMMENDATION:**

**Use determinate sentencing for youth sentenced under Juvenile Offender or Youthful Offender statutes, including 16- and 17-year-olds.**

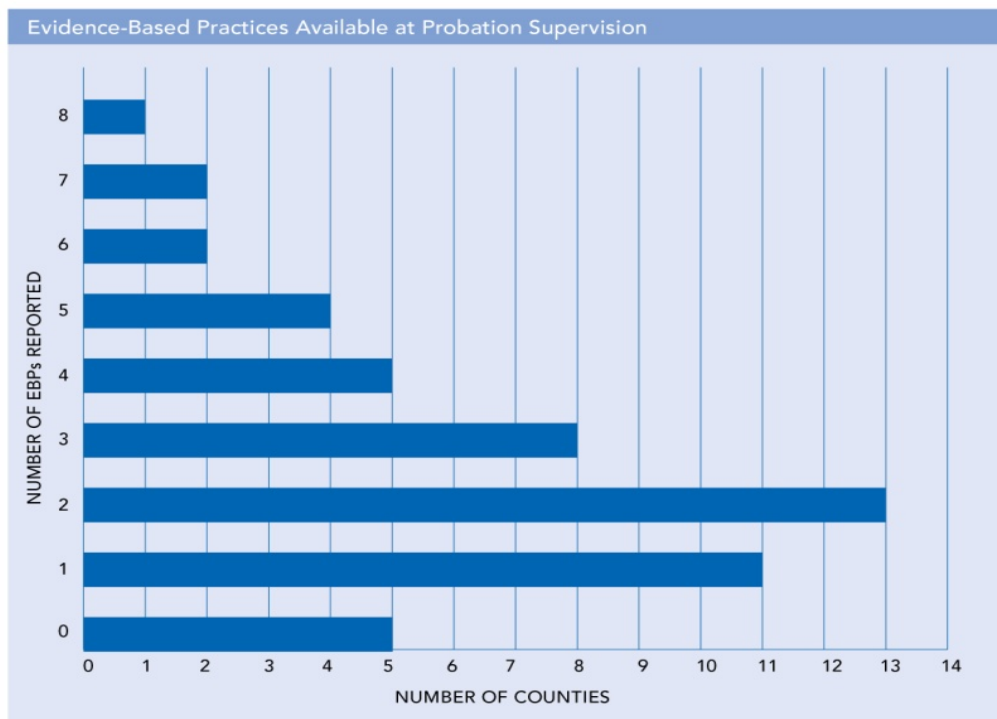
Establishing more certainty around the timing of release is one important step toward improving the structure of re-entry practice for youth with criminal convictions and incentivizing good behavior during confinement. The determinate structure would provide a guaranteed reward for good behavior and the capacity to plan for a known release date well in advance. The shift to a determinate structure should be done carefully, to guard against increasing time under custody from custodial time served under the current structure. The Commission is not recommending any increase in Juvenile Offender or Youthful Offender penalties as a result of this shift.

## **ENHANCEMENTS TO COMMUNITY-BASED SUPERVISION BY PROBATION**

Community-based supervision provided to 16- and 17-year-olds, whether adjudicated in Family Court or sentenced in the adult court, should provide supervision with evidence-based interventions individually tailored to reduce the risks and address the needs presented by the youth. Use of a validated risk assessment tool provides a critical foundation to develop this kind of effective plan for intervention. As previously described, probation departments throughout New York currently use validated risk and needs assessments to assess youth in the juvenile justice system (Youth Level of Service/Case Management Inventory (YLS/CMI) in New York City and the Youth Assessment Screening Instrument (YASI) in the rest of the state). While the New York State Office of Probation and Correctional Alternatives guides counties to use these instruments on 16- and 17-year-olds who are currently in the adult system, many counties do not currently engage in that practice. Shifting the vast majority of 16- and 17-year-old cases to the juvenile system and

implementing a juvenile probation assessment model for those youth who remain in the adult court system would ensure that these validated risk assessment instruments would be used for all youth under 18.

Successful completion of probation supervision often hinges on the interventions available to address the risks and needs identified by the risk assessment instruments. As discussed in Chapter Two, youth receive optimal benefits from programs designed to reduce the risk of reoffense when the intensity and type of program is matched to their risk level and their specific needs.



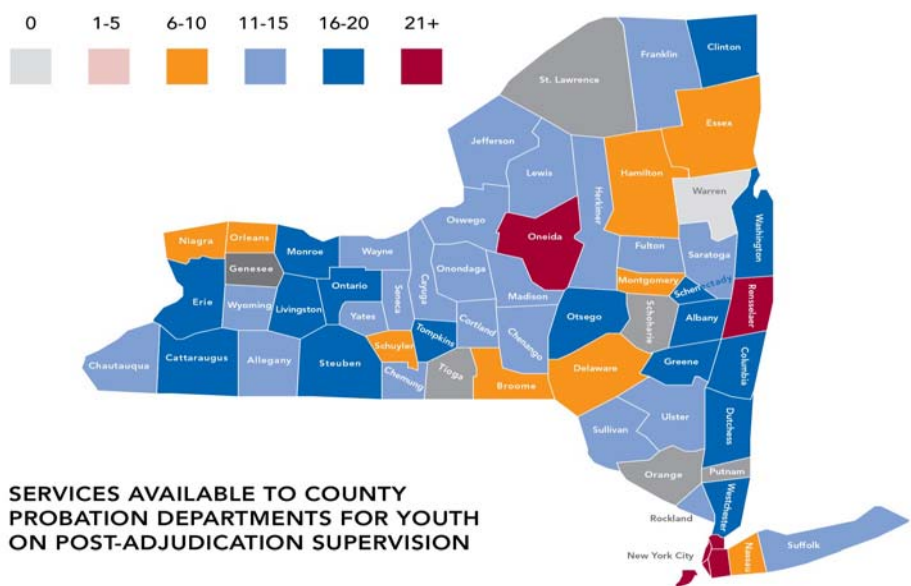
Juvenile probation supervision is currently structured to do exactly this, and many counties have a range of services available to effectively address the individualized needs of young people. However, 16- and 17-year-olds processed in criminal court are currently not eligible for these programs.<sup>450</sup> While some counties have a robust continuum of evidence-based interventions for youth on probation, the survey of probation departments conducted for the Commission showed that the service capacity varies greatly across county lines, both in terms of range of services and current capacity to expand services to a new population of youth. For example, while all counties that responded to the survey reported access to psychological evaluation, nearly half of them also reported a waiting list to access that service.

In addition, while probation departments in larger counties tended to report access to evidence-based therapeutic interventions, over half of the 52 localities that provided information on their services at probation supervision reported fewer than three evidence-based services, and six counties reported no evidence-based services for use

<sup>450</sup> The New York State Office of Probation and Correctional Alternatives funds and oversees a variety of community-based correctional alternative programs, many of which can accommodate youth on adult probation; however, most counties do not have specific programs targeted at the needs of youth under 18. Many of these probation-supervision programs are supported using Title IV-E funds, which, under federal law, are not available to support programs for youth in criminal court. Title IV-E funding supports foster-care services and interventions put in place to avoid the need for foster-care placement (see “Title IV-E Foster Care,” The Children’s Bureau website, : May 17, 2012 <<http://www.acf.hhs.gov/programs/cb/resource/title-ive-foster-care>> (17 December 2014)). Youth processed for delinquency in the Family Court are at risk of a foster-care placement, as any voluntary agency setting and any OCFS-operated facility that has 25 beds or fewer qualifies as a foster-care placement. However, youth processed in the criminal court with the threat of incarceration in an adult facility do not face the same risk of foster-care placement. Therefore, this federal funding that can be used to support services for youth adjudicated delinquent cannot be made available to 16- and 17-year-olds processed as adults. Additionally, recent guidance from OCFS restricting the use of preventive-services funding by probation departments has put this use of funds in jeopardy, and many counties are reducing the use of preventive funding (reimbursed at 62 percent) in the juvenile probation context. State reimbursement for probation services is approximately 11 percent.

during probation supervision.<sup>451</sup> Even among counties that reported having some evidence-based services, delayed access in the form of waiting lists was routinely reported.

<sup>451</sup> Reported evidence-based practices include: Multi-Systemic Therapy (MST), Functional Family Therapy (FFT), Multi-Dimensional Treatment Foster Care (MTFC), Brief Strategic Family Therapy (BSFT), Strengthening Families Program (SFP), Cognitive Behavioral Therapy (CBT), Mentoring (Group), and Mentoring (Individual).



COUNTY	INTERVENTIONS
Albany	17
Allengany	12
Broome	8
Cattaraugus	16
Cayuga	15
Chautauqua	12
Chemung	15
Chenango	11
Clinton	19
Columbia	20
Cortland	12
Delaware	10
Dutchess	16
Erie	20
Essex	9
Franklin	15
Fulton	13
Genesee	NR
Greene	16
Hamilton	10
Herkimer	13
Jefferson	15
Lewis	12
Livingston	17
Madison	14
Monroe	19
Montgomery	9
Nassau	10
New York City	27
Niagara	7
Oneida	22
Onondaga	13
Ontario	19
Orange	NR
Orleans	7
Oswego	15
Otsego	17
Putnam	NR
Rensselaer	21
Rockland	12
Saratoga	11
Schenectady	17
Schoharie	NR
Schuyler	9
Seneca	11
St. Lawrence	NR
Steuben	20
Suffolk	11
Sullivan	14
Tioga	NR
Tompkins	18
Ulster	14
Warren	0
Washington	24
Wayne	14
Westchester	17
Wyoming	15
Yates	13

The tremendous variation in post-dispositional community-based service capacity across counties is shown on the following map. While Rensselaer County, Oneida County and the City of New York each reported over 20 different kinds of services connected to probation supervision case disposition, seven counties each reported fewer than ten.<sup>452</sup>

The challenges of accessing adequate and timely services for youth on probation supervision in some counties were reflected in the feedback the Commission received from many stakeholders who were concerned that adding 16- and 17-year-olds to those receiving these services would further strain existing resources. In addition to concerns about overall capacity, some stakeholders also raised concerns that the existing array of services may not be appropriate for the range of needs presented by an older adolescent population, and that new resources would be needed to ensure these service needs were

adequately met. To inform recommendations about resources for youth placed on probation, and to address these stakeholder concerns, the Commission’s review identified existing promising practices that should be expanded.

The Juvenile Risk Intervention Services Coordination (JRISC) program is one such initiative. A State initiative that links enhanced probation supervision with evidence-based programs, JRISC is designed to reduce recidivism among high-risk youth and, in turn, reduce the need for detention, placement, and incarceration.<sup>453</sup>

Seven counties currently participate in the JRISC initiative: Dutchess, Monroe, Niagara, Onondaga, Orange, Oswego, and Schenectady. Each county has selected an evidence-based intervention and received intensive training for both probation officers and clinicians, as required by the model developers. The approach co-locates the clinical services in the probation office, allowing for an intensive team approach to high-risk probation cases.

<sup>452</sup> Counties coded as “NR” did not provide information on available services.  
<sup>453</sup> New York State Department of Criminal Justice Services, “Juvenile Risk Intervention Services Coordination Summary 2008-2010,” <<http://dpc.state.ny.us/pdfs/jrisc2008-2010annualsummaryattachment.pdf>> (15 December 2014).

The program began in 2010 and, in its first four years, has served just under 1,000 youth across the seven participating counties at a total cost of about \$3.5 million.<sup>454</sup> Outcomes of the program are promising, with a 71 percent rate of program completion in 2013 and, within those cases, a 74 percent rate of risk reduction. JRISC has been shown to effectively maintain high-risk youth in the community, and these services should be expanded beyond the seven participating counties.

New York City also has a strong continuum of community-based alternatives available to avoid placement where possible and appropriate that was bolstered through implementation of Close to Home.<sup>455</sup> Prior to 2012, there were two primary Alternative to Placement (ATP) programs in operation. Esperanza, started in 2003, and ACS' Juvenile Justice Initiative (JJI), started in 2007; both include family-focused therapeutic interventions in the youths' homes and communities. JJI includes evidence-based models such as MST<sup>456</sup>, FFT<sup>457</sup>, and MTFC.<sup>458</sup> Esperanza serves Juvenile Offenders referred by judges in criminal court.

Evidence-Based Interventions Spotlight: Functional Family Therapy		
Program Description:	Target Population:	Demonstrated Outcomes: <sup>a</sup>
<ul style="list-style-type: none"> <li>• Family-based intervention</li> <li>• Includes assessment of problem and conflict areas, therapy on family responses, and education on family living skills</li> <li>• 8 to 12 one-hour sessions for mild cases, up 30 sessions in more difficult cases, spread over 3 months</li> </ul>	<ul style="list-style-type: none"> <li>• Ages 11-17</li> <li>• At risk for delinquency, violence, substance use, or other behavior problems such as Conduct Disorder or Oppositional Defiant Disorder</li> <li>• Serious criminal offenses</li> <li>• Can be used in variety of multiethnic, multicultural contexts</li> </ul>	<ul style="list-style-type: none"> <li>• 20% - 60% reduction in recidivism</li> <li>• Significant reduction in sibling reoffending</li> <li>• Reduction in marijuana use</li> </ul>

<sup>454</sup> 2013 JRISC Program Data Summary, prepared by the Office of Probation and Correctional Alternatives

<sup>455</sup> Vera Institute of Justice, "Innovations in NYC Health and Human Services Policy: The Close to Home Initiative and Related Reforms in Juvenile Justice," <<http://www.vera.org/sites/default/files/transition-brief-placement-juvenile-justice-reform.pdf>> (15 December 2014).

<sup>456</sup> Scott W. Henggeler, Gary B. Melton, and Linda A. Smith, "Family Preservation Using Multisystemic Therapy: An Effective Alternative to Incarcerating Serious Juvenile Offenders," *Journal of Consulting and Clinical Psychology* 60, no. 6 (1992): 953-61; Charles M. Borduin, Barton J. Mann, Lynn T. Cone, Scott W. Henggeler, Bethany R. Fucci, David M. Blaske, and Robert A. Williams, "Multisystemic Treatment of Serious Juvenile Offenders: Long-Term Prevention of Criminality and Violence," *Journal of Consulting and Clinical Psychology* 63, no. 4 (1995): 569-78; and Jane Timmons-Mitchell, et al., "An Independent Effectiveness Trial of Multisystemic Therapy with Juvenile Justice Youth," *Journal of Clinical Child and Adolescent Psychology* 35, no. 2 (2006): 227-36.

<sup>457</sup> Donald A. Gordon, et al., "Home-Based Behavioral-Systems Family Therapy With Disadvantaged Juvenile Delinquents," *American Journal of Family Therapy* 16, no. 3 (1988): 243-55; and Thomas L. Sexton, and Charles W. Turner, "The Effectiveness of Functional Family Therapy for Youth With Behavioral Problems in a Community Practice Setting," *Journal of Family Psychology* 24, no. 3 (2010): 339-48.

<sup>458</sup> In MST and FFT, trained counselors visit families' homes to help parents respond to the behavior of their adolescents by providing intensive therapy and crisis intervention. Goals generally include: improving problem solving, increasing emotional connections, and strengthening parents' abilities to provide structure, guidance, and limits for their children. In Multi-Dimensional Treatment Foster Care, specially trained foster families care for youth in their homes with the support of a specially trained family therapist. Simultaneously, the youth's family of origin receives therapy and training to help them prepare for reunification with their child.

## Evidence-Based Interventions Spotlight: Multisystemic Therapy

Program Description:	Target Population:	Demonstrated Outcomes: <sup>a</sup>
<ul style="list-style-type: none"> <li>• Home-based therapy several times a week, therapists work with entire family, available 24/7</li> <li>• Therapists concentrate on parental/family engagement; the family takes the lead in setting treatment goals and therapist helps them to accomplish goals</li> <li>• Average treatment is 4 months</li> </ul>	<ul style="list-style-type: none"> <li>• Ages 12-17</li> <li>• Violent and chronic offenders</li> <li>• Serious criminal offenses</li> </ul>	<ul style="list-style-type: none"> <li>• 25% – 70% reduction in long-term re-arrest rates</li> <li>• 47% – 64% reduction in out of home care days</li> <li>• Improved family functioning</li> <li>• Increased School Attendance</li> <li>• Decreased psychiatric and substance abuse symptoms</li> <li>• Reduced offending by siblings</li> </ul>

To expand on these options and address other types of youth needs, the New York City Department of Probation added three additional programs to the ATP array following implementation of Close to Home:

- ▶ **Advocate, Intervene, Mentor (AIM):** Based on principles found in research to be effective in working with high-risk young people, AIM matches an advocate/mentor from within the young person’s own community who engages him or her for at least seven hours over the course of a week. A family team conferencing model is applied to case planning, and the probation officer serves as a member of this team.
- ▶ **Every Child Has an Opportunity to Excel and Succeed (ECHOES):** ECHOES is an intensive level of probation with meetings four times per week, including Saturdays. Participants work with specialized probation officers and a nonprofit, community-based organization to develop skills they need to successfully transition to adulthood.
- ▶ **Pathways to Excellence, Achievement, and Knowledge (PEAK):** PEAK is a day or evening school-based program targeting youth who have been disconnected from school or disruptive while in school.

Availability of these kinds of evidence-informed services is critical to the success of any justice system for youth. As detailed in Chapter Two, evidence-based services for youth have been shown to reduce recidivism and produce better outcomes for youth in terms of education and substance abuse; some even result in a positive preventive impact for other youth in the family. It is important that services acknowledge and build on the many assets youth possess and provide opportunity and support for building on those assets to support a crime-free path forward. Expanding access to these kinds of effective programs for 16- and 17-year-old youth is necessary to achieve the best possible outcomes in youth justice.

### RECOMMENDATION:

Develop a continuum of effective community-based services at the local level to be used by probation, including expansion of JRISC, to maintain more high-risk youth in the community and reduce recidivism.

## ENHANCEMENTS TO OUT-OF-HOME CUSTODIAL SETTINGS

### *An Overview of Juvenile Placement Settings*

While a small percentage of adjudicated youth end up in out-of-home custodial settings, these youth often present with the most intense needs and present the most significant risk to public safety. As the Commission recommends using juvenile placement settings for all minors, whether they are processed in juvenile or adult court, it is critical to develop the right kind of capacity to serve 16- and 17-year-olds in youth facilities. These settings include the following:

- ▶ Voluntary agencies;
- ▶ OCFS-operated non-secure and limited-secure facilities; and
- ▶ OCFS-operated secure custody (primarily for youth processed in criminal court).

### *Voluntary Agencies*

Youth adjudicated as delinquent and placed in the custody of the commissioner of the LDSS reside in a variety of residential programs run by not-for-profit providers, also known as “voluntary agencies.”<sup>459</sup> These residences are typically embedded within local communities or located on an agency campus, and can range in size from those that house fewer than six to more than 25 residents.<sup>460</sup> As described more fully in Chapter Six, all voluntary-agency programs must offer youth an array of individualized and family-focused services that include but are not limited to medical, psychiatry, and behavioral health services; recreation; education; family visits; and life-skills training.<sup>461</sup>

These residential settings receive the majority of the youth placed out of their homes by the Family Courts. In 2013, 62 percent of youth adjudicated delinquent and admitted to residential care were placed in the custody of the LDSS and initially served across a total of 34 programs operated by voluntary agencies.<sup>462</sup> Many of these programs also serve youth placed out of their homes for other reasons, such as PINS status, abuse and neglect, or educational needs that cannot be met by the local school district.

It is important to note that the financing structure likely plays a role in the extensive statewide use of voluntary-agency placements. Voluntary-agency placements are supported through the foster-care block grant allocation provided by the State to each county. Placements to OCFS-operated facilities are not supported with this block grant funding. Instead, OCFS placements are paid half by the State and half by the county sending the youth to placement. Therefore, the local fiscal impact of out-of-home placement can be mitigated through the use of voluntary-agency placement to the extent that the county has funding available in its foster care block grant.

New York City is unique in both its financing for placement and the structure of its programs under the Close to Home initiative. Currently, Administration for Children’s Services (ACS) custody and the voluntary-agency setting must be used for all youth sent by the Family Court to non-secure placement under the Close to Home initiative, and a special funding stream that functions like a block grant provides fiscal support. These programs are specifically designed only for a juvenile justice population. The facilities, housing six to 12 youth at a time, provide an array of services to both general and specialized populations, and some additional youth are placed in MTFC programs. All of the Close to Home general population programs have adopted either an evidence-based or an evidence-informed

<sup>459</sup> Voluntary agencies are not-for-profit providers approved and regulated by OCFS to provide residential care for youth in accordance with section 371(10) and article 7 of the social services law.

<sup>460</sup> Agency-operated boarding homes may house up to six youth, group homes house 7–12 youth, group residences house 13–24 youth, and institutions house 25 or more youth. Regardless of program type or size, voluntary agencies may not use mechanical restraints to confine youth. Handcuffs and footcuffs are allowed only during transport in a vehicle, and only for youth who constitute a clear danger to public safety or to themselves. See NY Compilation of Codes, Rules, and Regulations title 18 § 441.17 (f).

<sup>461</sup> See NY Compilation of Codes, Rules, and Regulations title 18 § 441 and § 442.

<sup>462</sup> Unpublished data prepared for this Commission by the New York State Office of Children and Family Services.

approach to residential treatment, using models specifically selected for working with juvenile delinquent youth.<sup>463</sup> In addition, specialized programs were developed to serve youth with highly specialized needs that require additional support and attention, including serious emotional disturbance, developmental and intellectual disabilities, fire-setting behaviors, problematic sexual behavior, a history of sexual exploitation, and substance abuse and co-occurring disorders. This non-secure placement structure was the first phase of Close to Home implementation. A second phase to provide limited-secure care in the voluntary-agency setting is expected to be implemented in 2015.<sup>464</sup>

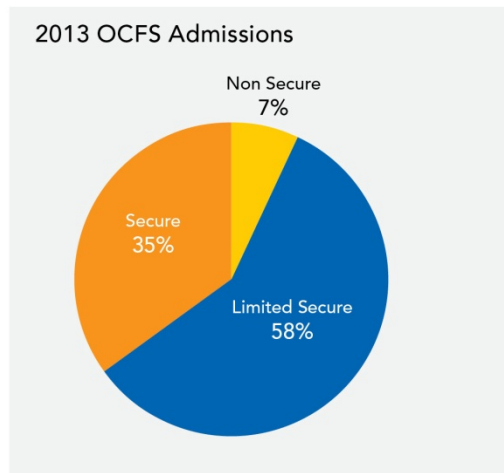
### State-Operated Facilities

Youth who are adjudicated as delinquent in Family Court outside of New York City can also be placed in OCFS custody and can then be admitted to either an OCFS voluntary-agency program (the same voluntary-agency structure described above, but contracted with OCFS) or to a state facility directly operated by OCFS.<sup>465</sup> Currently, New York City youth can only be housed in OCFS facilities for limited-secure and secure placements. As discussed above, New York City youth will only be allowed to be placed with OCFS for secure custody once Close to Home is fully implemented.

In 2013, admissions to OCFS state-operated facilities were distributed across the levels of security shown. Youth placed as a result of Family Court juvenile delinquency petitions are generally housed in non-secure or limited-secure settings, while youth tried in criminal court as

Juvenile Offenders are housed in secure centers.

As of June 2014, OCFS operated a residential



### Total OCFS beds by Facility Type and Gender

FACILITY TYPE	TOTAL BEDS	MALE	FEMALE
Ella McQueen Reception Center	29	20	9
Non Secure Facilities (2)	44	22	22
Limited Secure Facilities (5)	320	298	22
Secure Facilities (4)	241	225	16

care system that included 12 locations with a total budgeted capacity of 682 beds (609 male and 73 female).<sup>466</sup>

<sup>463</sup> Some of the Close to Home agencies have chosen to implement the Missouri approach, a group-oriented system of change, with support from the Missouri Youth Service Institute. Other agencies are using evidence-informed or promising approaches such as Boys Town or the LaSallian Model.

<sup>464</sup> "Limited-secure" custody is the most secure placement option available for youth placed by the Family Court on delinquency petitions. The approved plan for non-secure placement is "New York City Administration for Children's Services Close to Home: Plan for Non-Secure Placement For Submission to New York State Office of Children and Family Services," NYC ACS, June 8, 2012 <[http://www.nyc.gov/html/acs/downloads/pdf/cth\\_NSP\\_Plan\\_final.pdf](http://www.nyc.gov/html/acs/downloads/pdf/cth_NSP_Plan_final.pdf)> (17 December 2014).

<sup>465</sup> Ten percent of all youth admitted to residential care were served in OCFS voluntary agencies. New York State Office of Children and Family Services. Unpublished data prepared for this Commission.

<sup>466</sup> New York State Office of Children and Family Services. Unpublished data prepared for this Commission.



The median length of stay (from admission to first community release) for juvenile delinquent youth is 6.6 months in an OCFS state-operated facility, 7.7 months in an OCFS contracted voluntary agency, and 17 months for Juvenile Offenders in OCFS secure centers. As described in Chapter Six, most services are provided on-site across facility levels, including education, employment training, recreation, counseling, medical and mental health services, and ministerial services. Some facilities also have specialized units for youth needing intensive treatment in specific areas such as substance abuse, mental health, and sex offender treatment.

State-operated facilities for youth have undergone massive reform since 2007 when the U.S. Department of Justice (DOJ) initiated an investigation into four OCFS facilities.<sup>467</sup> In 2009, DOJ issued a findings letter that concluded that certain conditions constituted violations of youth’s constitutional rights to protection from harm stemming from the use of force by staff, and inadequate mental health care and treatment.<sup>468</sup> Also in 2009, the Legal Aid Society filed suit against OCFS alleging the persistent and unlawful use of force by staff against children and failure to provide minimally appropriate mental health services.<sup>469</sup> At the same time, Governor David Paterson convened a Task Force on Transforming Juvenile Justice. That task force released its findings in 2009 with a clear recommendation to rethink the way New York operated institutional placement.<sup>470</sup>

As a result, on July 14, 2010, the United States and the State of New York entered into a negotiated settlement agreement before the U.S. District Court for the Northern District of New York.<sup>471</sup> That settlement covered three current OCFS facilities—Columbia Girls Secure Center, Finger Lakes Residential Center, and Taberg Residential Center for Girls. A settlement was similarly reached in 2013 in the Legal Aid lawsuit and covered Industry Residential Center, Youth Leadership Academy, Highland Residential Center, and Ella McQueen Reception Center for Boys and Girls.<sup>472</sup> The settlements required OCFS to hire additional mental health staff, required certain protocols to better assess and respond to youth’s mental health needs, and required new protocols for training and oversight of staff regarding the use of restraints and force.

OCFS created and began to implement a new model of care in its facilities as a result of these settlements, called the New York Model. OCFS-operated facilities now incorporate elements of the Missouri approach (to foster team building and a positive youth development culture) and the Sanctuary Model (to provide a therapeutic and trauma-sensitive milieu). The New York Model also includes evidence-based treatment models such as Dialectical Behavior Therapy and Trauma-Focused Cognitive Behavior Therapy (to foster emotional stability and enhance the likelihood of success in facilities and in the community).

These reforms to the structure of state-operated juvenile placement have substantially moved New York toward full compliance with the federal settlement. One facility, Columbia Girls Secure Center, was dismissed from the settlement agreement in September 2014.<sup>473</sup> In addition, most recent Department of Justice monitoring visit reports filed with the court for the other two covered OCFS facilities found Finger Lakes Residential Center to be in full compliance with all of the settlement provisions and Taberg Residential Center to be in full compliance with 44 of the

<sup>467</sup> Tryon Residential Center, Tryon Girls Center, Lansing Residential Center, and Finger Lakes Residential Center

<sup>468</sup> See U.S. Department of Justice, Civil Rights Division, “Investigation of the Lansing Residential Center, Louis Gossett, Jr. Residential Center, Tryon Residential Center, and Tryon Girls Center,” 14 August 2009 findings letter, <[http://www.justice.gov/crt/about/spl/documents/NY\\_juvenile\\_facilities\\_findlet\\_08-14-2009.pdf](http://www.justice.gov/crt/about/spl/documents/NY_juvenile_facilities_findlet_08-14-2009.pdf)> (15 December 2014). (Hereafter, referred to as “Investigation of the Lansing Residential Center.”)

<sup>469</sup> *G.B. v. Carrion* 09 Civ. 10582

<sup>470</sup> See Vera Institute of Justice, “Charting a New Course: A Blueprint for Transforming Juvenile Justice in New York State,” <<http://www.vera.org/sites/default/files/resources/downloads/Charting-a-new-course-Executive-summary-recommendations.pdf>> (15 December 2014).

<sup>471</sup> U.S. Department of Justice, “United States v. New York,” 14 July 2010 letter, <<http://www.justice.gov/sites/default/files/opa/legacy/2010/07/14/agreement-07142010.pdf>> (15 December 2014).

<sup>472</sup> The Legal Aid Society, *G.B. vs. Class Action Lawsuit* <[http://www.legal-aid.org/media/124462/complaint\\_in\\_ocfs\\_lawsuit.pdf](http://www.legal-aid.org/media/124462/complaint_in_ocfs_lawsuit.pdf)> (15 December 2014).

<sup>473</sup> See *United States of America v. The State of New York and the New York State Office of Children and Family Services*, Civil No. 1:10-CV-0858(FJS/DRH), Document 24 Filed September 8, 2014.

provisions and in partial compliance with the other 14 provisions. Facilities must be in full compliance for 12 consecutive months to be released from the settlement agreement.

These overarching improvements have increased youth access to specialized and evidence-based services, improved integrated case planning and re-entry planning, extended safety precautions like video cameras to all facilities, and invested in a more highly trained workforce.<sup>474</sup> Many OCFS facilities are now fully trained in the New York Model, with training expected to continue into 2015 in order to achieve full implementation in all OCFS-operated facilities.<sup>475</sup> While these substantial improvements in the juvenile placement system are taking hold in OCFS-operated facilities, it is critical that juvenile placement capacity for the new 16- and 17-year-old population is developed in a manner that expands this shift to a therapeutic model and meets the many specialized needs of the new population.

### Supporting Youth with Specialized Needs

Any out-of-home placement setting, whether state-operated or run by a voluntary agency, must have the capacity to meet the varied needs of 16- and 17-year-old youth. A review of the needs of the current population of youth sent to OCFS facilities provides a framework for the expected needs of the older population. Youth entering OCFS facilities in 2013 brought significant need for substance abuse, mental health, and special education services.<sup>476</sup>

### Meeting Significant Mental Health Needs: August Aichhorn

The Commission found that the current model of care provided by the August Aichhorn Center for Adolescent Residential Care is a promising model that should be expanded to meet new need for 16- and 17-year-old youth with serious mental health disorders who are sent to juvenile placement.

The August Aichhorn Center was established to “serve, to study and to teach about the special problems of providing long-term care and treatment to teenagers who were [deemed] ‘unplaceable’ in any existing facilities except State hospitals or correctional institutions.”<sup>477</sup> Through a partnership between the New York State Office of Mental Health (OMH) and OCFS, August Aichhorn operates a Residential Treatment Facility (RTF) in Brooklyn. Admission to the RTF is managed

Needs of Youth Admitted to OCFS Facilities in 2013<sup>a</sup>

		TOTAL	
		PERCENT	NUMBER
NEEDS AT INTAKE	Total Facility Admissions	100.0%	396
	Substance Abuse	86.1%	341
	Mental Health	57.3%	227
	Special Education	52.5%	208
	Sex Offender	7.1%	28
	Limited English Proficiency	3.3%	13

a. 396 JO and JD youth entering OCFS facilities (73% total admissions) were screened for special needs as part of intake process. JDs entering Voluntary Agencies or Interstate Compact youth in community settings are excluded. Youth can have multiple service needs, so it is not meaningful to sum across categories

<sup>474</sup> “Investigation of the Lansing Residential Center”; U.S. Department of Justice, New York State Settlement on Juvenile Justice Findings, “Highlights of Substantive Obligations,” <<http://www.ocfs.state.ny.us/main/Final%20Fact%20Sheet%20-%20settlement%20highlights%207%2014%202010.pdf>> (15 December 2014); and unpublished data provided to the Commission by Acting OCFS Commissioner Sheila Poole and Acting Deputy Commissioner Ines Nieves in a presentation on July 23, 2014.

<sup>475</sup> Information provided to the Commission by Acting OCFS Commissioner Sheila Poole and Acting Deputy Commissioner Ines Nieves in a presentation on July 23, 2014. The current New York model facilities are Columbia Girls Secure Center, MacCormick Secure Center, Industry Residential Center, Youth Leadership Academy, Red Hook Residential Center, and the Ella McQueen Reception Center for Boys and Girls. Highland Residential Center is in the training phase.

<sup>476</sup> Unpublished data prepared for this Commission prepared by New York State Office of Children and Family Services.

<sup>477</sup> The August Aichhorn Center for Adolescent Residential Care, Inc., “An Introduction: Who We Are and What’s In This Site,” <<http://www.aichhorn.org>> (10 June 2014).

by the OMH Pre-Admission Certification Committee (PACC) through a special application process because RTF is the highest level of mental health care available in the state system, reserved for only youth with serious mental health disorders.

The program provides a kind of care and supervision that is significantly different from traditional correctional settings. The model does not use room seclusion or mechanical restraints, provides full-day education in a classroom setting, engages youth in positive activities in a community room or outdoors when school is not in session, houses youth in rooms that resemble a dormitory setting, offers the constant support of therapists, and operates on the philosophy that the program cannot achieve success by excluding, transferring, or discharging the most troublesome on the grounds of their special needs.<sup>478</sup>

Youth currently served at the August Aichhorn Center present with significant mental health and behavioral issues. A review of the first 61 youth who entered the RTF operated by August Aichhorn showed 193 previous episodes of out-of-home care for those 61 youth.<sup>479</sup> At the same time, the model of care is reaping positive outcomes both for youth and for public safety. A study of youth who completed the program found a recidivism rate of 39 percent compared to a recidivism rate of 60 percent among the control group.<sup>480</sup> The program has accomplished this with no transfers to psychiatric centers or other hospitals, no runaways from the building, no sexual assaults or deaths, and only one serious self-inflicted injury in 23 years.<sup>481</sup>

New York State should expand the capacity to serve placed youth with serious mental health disorders through this program model. Its efficacy in terms of public safety as well as youth safety and success provides exactly the outcomes that should result from raising the age of juvenile jurisdiction.

### **Meeting Needs of LGBT Youth**

In recent years, OCFS and New York City ACS have taken significant steps to address the needs of LGBT youth in their custody, including honoring youths' wishes regarding unit placement—allowing, but not requiring, placement consistent with their self-identified gender—staff training, language, and incident reporting.<sup>482</sup> These policies have received widespread attention as significant efforts in juvenile justice practice. In interviews conducted during the course of the Commission's work, experts noted that having strong anti-discrimination policies in place, with robust training for staff, and an accessible yet independent incident-reporting system were important steps in addressing the needs of LGBT young people in juvenile justice settings. Taking care to involve members of the broader LGBT community in aspects of planning and implementation was another best practice noted.

Like all youth, LGBT youth need access to appropriate programs and services prior to placement; a continuum of appropriate programs and services should be available from initial system contact through re-entry. If justice systems do not simultaneously assure that community-based alternatives and diversion programs are affirming environments, LGBT youth may be set up to fail, leading to placement. Stakeholders suggested that contractual obligations can be defined to track programs' adherence to best practices and their areas of needed improvement. The Commission

<sup>478</sup> The August Aichhorn Center for Adolescent Residential Care, Inc., Residential Treatment Facilities, PowerPoint presentation for Commission site visit October 2, 2014. (Hereafter, referred to as "Residential Treatment Facilities PowerPoint.")

<sup>479</sup> Those 193 episodes included 106 hospital stays, 22 juvenile justice admissions, and 65 admissions to smaller treatment agencies. See The August Aichhorn Center for Adolescent Residential Care, Inc., Residential Treatment Facilities, PowerPoint presentation for Commission site visit October 2, 2014.

<sup>480</sup> Bernard Horowitz, Michael A. Pawel, and Patrice O'Connor, "Frontline Reports: The August Aichhorn Center for Adolescent Residential Care," *Psychiatric Services*, 52, no. 10 (October 2001): 1391.

<sup>481</sup> See "Residential Treatment Facilities PowerPoint."

<sup>482</sup> New York State Office of Children and Family Services, "Lesbian, Gay, Bisexual, Transgender and Questioning Youth Policy & Procedures Manual (PPM 3442.00)", 17 March 2008, <<https://www.nycourts.gov/ip/judicialinstitute/transgender/220U.pdf>> (15 December 2014); and City of New York Administration for Children's Services, "Promoting a Safe and Respectful Environment for Lesbian, Gay, Bisexual, Transgender and Questioning (LGBTQ) Youth and Their Families Involved in the Child Welfare, Detention and Juvenile Justice System (Policy # 2012/01)," <[http://www.nyc.gov/html/acs/downloads/pdf/lgbtq/LGBTQ\\_Policy.pdf](http://www.nyc.gov/html/acs/downloads/pdf/lgbtq/LGBTQ_Policy.pdf)> (15 December 2014).

supports careful consideration of the needs of LGBT youth in development of community-based and institutional programming to meet the needs of 16- and 17-year-olds.

### **Meeting the Specialized Needs of Girls**

The Commission also took note of the unique needs presented by girls involved with the justice system. Nationally, a growing percentage of the adjudicated youth population is female.<sup>483</sup> Research shows that incarcerated girls are often younger than male counterparts. In 2007, 25 percent of all females arrested were under 18 years of age compared to 18 percent of males, and 42% of those were girls under 15 years of age, compared to only 31 percent of boys.<sup>484</sup> Their offense patterns tend to be different as well. When considering the offender-victim relationships in their sample, one study found that 28 percent of girls arrested for assault had assaulted a family member compared to only 16 percent of boys.<sup>485</sup> Indeed, high rates of physical, sexual, and emotional abuse and greater rates of physical neglect characterize girls' descriptions of their histories.<sup>486</sup> Given these descriptions, it is perhaps not surprising that very high rates of mental health issues have been documented among detained girls. In a pivotal study of the Cook County juvenile detention system, researchers found that three-quarters of the girls met criteria for a mental health condition, compared with two-thirds of boys.<sup>487</sup> Rates of trauma exposure and resultant traumatic stress conditions are particularly high among girls.<sup>488</sup>

Many have hypothesized that because the juvenile justice system was developed to respond to delinquency in boys, with girls representing only a small percentage historically, that the structure and programming in many systems simply overlooks the unique needs of girls.<sup>489</sup> This has been changing in recent years, and gender-responsive care in juvenile facilities at the local and state level has been increasingly common in the U.S.<sup>490</sup> Gender-responsive care must be comprehensive, care for mental health needs, address family and relationship difficulties, maintain an environment of physical and personal safety, and rethink a reliance on group treatment.<sup>491</sup> Any new residential and community-based services for 16- and 17-year-olds must respond to the specialized needs of girls.

### **Replicating National Best Practice in Residential Care**

Development of juvenile residential capacity to meet the new demand that would result from raising the age provides New York a unique opportunity to create new residential programs from the ground up. The Commission's review of the most promising models for residential placement of older adolescents brought focus to the model implemented in Missouri. In 2001, the American Youth Policy Center identified the Missouri approach as a "guiding light" for reform in juvenile justice.<sup>492</sup> Over the past two decades, Missouri's Division of Youth Services (DYS) has developed a model of care deeply rooted in rehabilitation.

- <sup>483</sup> American Bar Association & National Bar Association, *Justice by Gender: The Lack of Appropriate Prevention, Diversion, and Treatment Alternatives for Girls in the Justice System* (2001), available at [http://www.americanbar.org/content/dam/aba/publishing/criminal\\_justice\\_section\\_newsletter/crimjust\\_juvjus\\_justicebygenderweb.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publishing/criminal_justice_section_newsletter/crimjust_juvjus_justicebygenderweb.authcheckdam.pdf).
- <sup>484</sup> National Council on Crime and Delinquency. (2009). *Getting the facts straight about girls in the Juvenile Justice System*. NCCD Center for Girls and Young Women.
- <sup>485</sup> Feld, B. (2009). Violent girls or relabeled status offenders?: An alternative interpretation of the data. *Journal of Crime and Delinquency*, 55(2): 241-265.
- <sup>486</sup> Understanding the Female Offender," by Elizabeth Cauffman, and "Adolescent Offenders with Mental Disorders," by Thomas Grisso in *The Future of Children, Juvenile Justice*, Volume 18, Number 2, Fall 2008.,
- <sup>487</sup> Teplin, L.A., Abram, K.M., McClelland, G.M., Dulcan, M.K., & Mericle, A.A. (2002). Psychiatric disorders in youth in juvenile detention. *Archives of General Psychiatry*, 59, 1133-1143.
- <sup>488</sup> Hennessey, M., Ford, J.D., Mahoney, K., Ko, S.J., Siegfried, C.B. (2004). Trauma among girls in the juvenile justice system. Los Angeles: National Child Traumatic Stress Network.; Loper, A.B. (2000). Female juvenile delinquency: Risk factors and promising interventions. *Juvenile Justice Fact Sheet*. Charlottesville, VA: Institute of Law, Psychiatry, & Public Policy, University of Virginia.
- <sup>489</sup> Female juvenile delinquency: Risk factors and promising interventions. *Juvenile Justice Fact Sheet*. Charlottesville, VA: Institute of Law, Psychiatry, & Public Policy, University of Virginia.
- <sup>490</sup> Female juvenile delinquency: Risk factors and promising interventions. *Juvenile Justice Fact Sheet*. Charlottesville, VA: Institute of Law, Psychiatry, & Public Policy, University of Virginia.
- <sup>491</sup> [http://whatworks.uwex.edu/attachment/whatworks\\_07.pdf](http://whatworks.uwex.edu/attachment/whatworks_07.pdf)
- <sup>492</sup> Annie E. Casey Foundation, *The Missouri Model: Reinventing the Practice of Rehabilitating Youthful Offenders*, 2010, <<http://www.aecf.org/m/resourcedoc/aecf-MissouriModelFullreport-2010.pdf>> (15 December 2014). (Hereafter, referred to as *The Missouri Model*.)

As described in a 2010 report by the Annie E. Casey Foundation, the Missouri model is epitomized by six core characteristics:<sup>493</sup>

1. Smaller facilities located near the youths' homes and families.

In contrast to the large training schools that preceded the current Missouri approach, the largest of the residential programs houses only 50 youth.<sup>494</sup> The residential programs are scattered throughout the state, and each draws its young people from the region in which the program is located. There is one larger campus that contains six small programs, but importantly, each of these programs operates entirely independently to maintain the small-program approach. The smaller settings allow all program staff, from the kitchen staff to the director, to develop strong, individualized relationships with the youth in their care.

The programs are specifically designed to have a non-institutional feel, with little security hardware visible (although the most secure facilities do have perimeter fencing). Youth are permitted to wear their own clothes, instead of correctional uniforms, and can have personal items in the rooms they share with the other members of their teams. Some programs have pets living in the facility to contribute to the home-like atmosphere.

2. Closely supervised, small groups and a rigorous group treatment process offering extensive and ongoing individual attention.

In every Missouri DYS residential facility, at every level of security, each young person spends virtually every minute of his or her day with a treatment team of 10–12 youth. The youth sleep in the same dorm room, eat together, study together, exercise together, do chores together, and attend daily therapy sessions together—always under the supervision of DYS youth specialists. The report further describes:

These small groups serve as the crucible in which the DYS treatment process attains focus and intensity. The constancy of the group does not allow young people to hide or withdraw. Rather, the youth remain under the watchful eyes of not only staff, but also their peers, and they are held accountable by the group for any disruptive, disrespectful, or destructive behavior. Rather than facing isolation or punishment when they act out, youth are called upon to explain their thoughts and feelings, explore how the current misbehavior relates to the law breaking that resulted in their incarceration, and reflect on how their behavior impacts others.<sup>495</sup>

3. Emphasis on (and admirable success in) keeping youth safe not only from physical aggression but also from ridicule and emotional abuse through constant staff supervision and supportive peer relationships.

Establishing a culture of safety and trust is paramount to facilitating positive change and youth development, and Missouri facilities achieve this by avoiding coercive correctional practices like isolation, preempting behavioral issues through constant adult staff supervision, and engaging the group in holding each other accountable for their individual progress as well as the progress of the team. Implementing these new practices required a new vision for the workforce, including changes in the hiring qualifications for staff. Instead of previously established recruitment practices for correctional guards, staff in Missouri facilities are currently recruited from local colleges, and understand their role to be part of the treatment team.

4. Youth develop academic, pre-vocational, and communications skills that improve their ability to succeed following release.

<sup>493</sup> Ibid.

<sup>494</sup> Ibid.

<sup>495</sup> The Missouri Model, p.20.

This group model applies to the youths' education as well and, despite concerns raised by critics about the lack of specialized tracks for youth with different academic levels or special needs, has shown positive results. More than 70 percent of DYS youth progress at a rate equal to or greater than their peers attending regular public schools. And, more than 300 DYS youth earned high school diplomas or obtained GEDs while in DYS custody in 2008.<sup>496</sup>

5. Parents and family members are involved both as partners in the treatment process and as allies in planning for success in the aftercare transition.

Families are engaged from the beginning of placement as active participants in the change process. Although individual therapy is only used in a discrete portion of cases to meet specialized needs, family therapy is more common, particularly toward the end of placement as youth are preparing to reunite with their families at home. Families are true partners in planning for release, in terms of the structures and supports that help youth make the easiest transitions to the community.

6. Considerable support and supervision for youth transitioning home from a residential facility—conducting intensive aftercare planning prior to release, monitoring and mentoring youth closely in the first crucial weeks following release, and working hard to enroll them in school, place them in jobs, and/or sign them up for extracurricular activities in their home communities.

The youth's service coordinator, who begins work with him or her at the outset of placement, partners with the youth and the family in making plans for the transition home well before the release date arrives. Prior to release, the youth may complete short-term furloughs to test out the transition to the community and identify any challenges or pitfalls. This same staff member works with the youth to support him or her beyond the point of release, creating an essential continuity of care.

Missouri has seen substantial decreases in the recidivism rates of youth placed into the custody of DYS; Over two-thirds (67.1 percent) of youth discharged from the Missouri facilities remain law-abiding.<sup>497</sup> In addition, an overwhelming majority of youth exiting custody were productively engaged in school and/or employment at discharge.<sup>498</sup>

As described in Chapter Six, modeling completed in support of the Commission estimates the need for about 230 new OCFS-operated beds across the state. New secure beds are likely to be needed for New York City youth as well as youth in many other parts of the state, especially on Long Island and in the Mid-Hudson and Finger Lakes regions. New OCFS-operated limited-secure beds would also be needed in areas outside of New York City. Building on the promising model of residential care for older adolescents in Missouri, the Commission recommends developing several small residential facilities throughout the state that incorporate each of the six core characteristics of that model described above.

<sup>496</sup> Ibid.

<sup>497</sup> The law-abiding rate measures the percentage of youth discharged from the Division of Youth Services (DYS) custody avoiding future system involvement including recommitment to DYS, adult probation or adult incarceration. Youth are followed for three years after discharge from the DYS while services cease, one of the most rigorous standards in the nation. Missouri Department of Social Services 2012 Annual Report.

<sup>498</sup> Ibid.

**RECOMMENDATION:**

**Develop residential facilities using best practices models to support the needs of older adolescents, including:**

- (A) For newly required placement capacity, establish a network of new, small facilities with staffing and programming consistent with the Missouri approach;
- (B) Expansion of the August Aichhorn RTF model for justice-involved youth with serious mental health disorders; and
- (C) Programs that meet the specialized needs of LGBT youth.

## **EFFECTIVE INTERVENTIONS FOR YOUTH WHO AGE INTO DOCCS FACILITIES**

While the Commission recommends use of juvenile facilities for all minors and supports retention of youth in those facilities until the age of 21 to the extent resources allow, some youth would inevitably still shift into the adult prison system as a result of their age at sentencing and their sentence length. In addition, there is currently a substantial population of 18- to 21-year-olds at DOCCS (1,982 inmates as of August 1, 2014), the vast majority of whom committed their offenses when they were over 17.<sup>499</sup> This population would continue to be incarcerated in DOCCS facilities even after the age of juvenile jurisdiction is raised.

As described earlier in this report, recent advances in brain science show that the adolescent brain continues to develop in areas of cognitive processing and decision making well into the mid-20s. Stakeholders raised concerns regarding the system response to the 18- to 24-year-old population in light of the fact that they continue to experience the impulsivity and immature thinking of adolescence. This population is also at a life stage where they are separating from the supportive institutions of schools and family, and thus can greatly benefit from alternative support groups as they transition to adulthood. New York State can seize leadership in the realm of youth justice by focusing on developmentally appropriate services for this population which would remain in or transition to the adult corrections system.

Research has shown this population to be particularly amenable to intervention. As part of the New York State's *Results First* cost-benefit analysis initiative, DCJS modeled the impact of various criminal justice program interventions to determine impact on recidivism, victimization, and cost. Several evidence-based programming modalities appeared to be both successful and cost effective when applied to New York's young felony jail and probation cohorts.

<sup>499</sup> Unpublished data prepared for this Commission prepared by New York State Department of Corrections and Community Supervision.

## Rehabilitative and Cost Effective Programming Modalities

INCARCERATIVE SETTING:	COMMUNITY SUPERVISION SETTING:
Cognitive Behavioral Therapy	Cognitive Behavioral Therapy
Basic Employment Training/Job Readiness Assistance	Basic Employment Training/Job Readiness Assistance
General Education	Electronic Monitoring
Vocational Education	Supervision with Risk, Need and Responsivity Principles

The specific levels of impact on recidivism and victimization are detailed in the chart below. The results show that high-risk offenders and offenders under the age of 25 show larger decreases in recidivism upon receipt of many types of effective programming, and consistently show larger reductions in victimization.

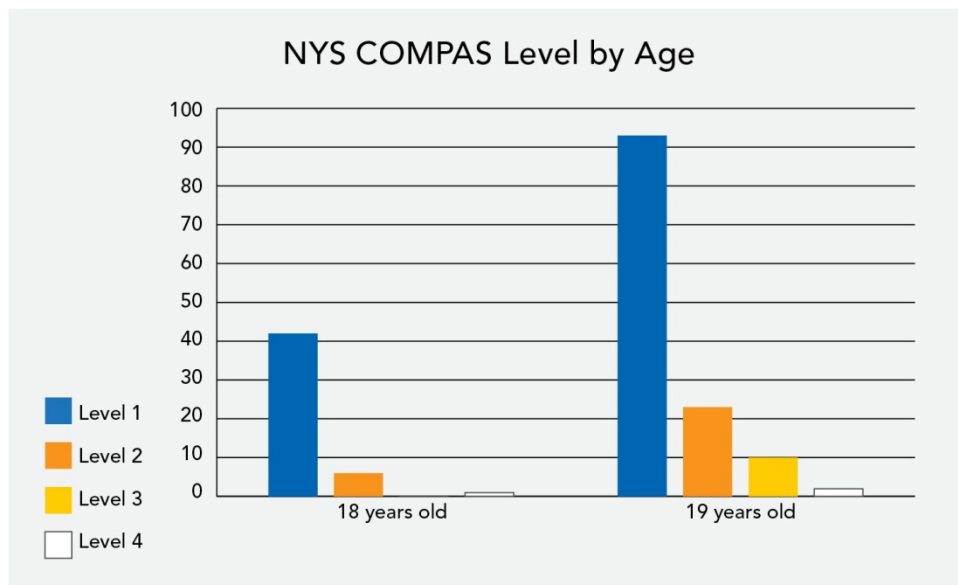
Projected Change in Recidivism for Felony Populations by Programming Modality<sup>500</sup>

<sup>500</sup> Schabbes, M. (2014). *Cost Benefit for Public Safety Executives*. New York State Division of Criminal Justice Services. Criminal Justice Cost Benefit Update. Unpublished.



Population Receiving Programming		Five Year Cumulative Recidivism Rate		Reduction in Victimizations
		Baseline Recidivism	Recidivism w/ Programming	(Per 100 Program Participants)
State Inmate (Prison) Programming Modalities				
Cognitive Behavioral Therapy	Prison—Any Risk	47%	41%	8.1
	Prison High Risk	69%	62%	11.4
Employment: Basic Training/ Job Readiness	Prison—Any Risk	47%	43%	4.9
	Prison High Risk	69%	65%	6.6
General Education in Prison	Prison—Any Risk	47%	36%	15.0
	Prison High Risk	69%	56%	21.9
Vocational Education in Prison	Prison—Any Risk	47%	36%	14.1
	Prison High Risk	69%	57%	20.7
Local Inmate (Jail) Programming Modalities				
Cognitive Behavioral Therapy	Jail—Any Age	51%	45%	9.9
	Jail Under Age 25	60%	54%	13.2
Employment: Basic Training/Job Readiness	Jail—Any Age	51%	47%	5.8
	Jail Under Age 25	60%	57%	7.9
Local Probationer Programming Modalities				
Cognitive Behavioral Therapy	Probation—Any Age	28%	24%	5.7
	Probation Under Age 25	39%	33%	9.4
Electronic Monitoring	Probation—Any Age	28%	19%	10.9
	Probation Under Age 25	39%	28%	19.6
Employment: Basic Training/Job Readiness	Probation—Any Age	28%	25%	3.4
	Probation Under Age 25	39%	35%	5.7
Supervision w/ Risk Need & Responsivity Principles	Probation—Any Age	28%	20%	10.1
	Probation Under Age 25	39%	29%	17.6

While this population has been shown to be particularly amenable to many evidence-based interventions, it is also a population that presents significant risk to public safety if risk factors are not reduced. As shown below, 18- and 19-year-olds within DOCCS are overwhelmingly high risk (with level 1 being the highest risk), as assessed by the COMPAS risk instrument used in the DOCCS system.<sup>501</sup>



This older adolescent population is currently folded into the overall population for programming within DOCCS. All inmates are screened for areas of need upon admission to DOCCS, but there are often long waits to access programs and services within DOCCS facilities.

published data prepared for this

While programming such as CBT and vocational education have been shown to significantly reduce victimizations among the high-risk population, the population of young, high-risk people in DOCCS does not receive priority for enrollment in these effective programs. The Commission recommends that people under age 25 in DOCCS receive priority for programs proven to have increased positive impacts on the high-risk population, based on their high risk and special amenability to intervention that comes with their ongoing development. This includes general education programming as well as vocational education programming, both of which reap greater benefits among the high-risk population.

Finally, because a small subset of youth are likely to transition from a juvenile setting to a prison setting, it is important to draw attention to programmatic continuity that supports this transition. Because DOCCS is currently building discrete units to come into compliance with PREA’s separation requirements for 16- and 17-year-olds, unique discrete housing capacity will be available within selected DOCCS facilities after minors are removed as a result of raising the age. These discrete units could provide opportunity for specialized programming and structure for older adolescents at DOCCS as well as opportunity to provide targeted transition services for older adolescents moving from juvenile to adult confinement.

---

**RECOMMENDATION:**

**Reduce recidivism among the 18 – 24 population in the criminal justice system by::**

- (A) Using data-driven, risk-based methodology to prioritize DOCCS inmates aged 18-24 for effective programs;
- (B) Using technology to expand educational opportunities for 18-21 year-olds in DOCCS custody; and
- (C) Considering use of discrete housing units for youth transitioning from juvenile facilities to DOCCS and for older adolescents at DOCCS

## CHAPTER 8: RE-ENTRY

---

Implementation of the reforms already discussed to raise the age will fail to reach their full potential for crime reduction and youth success if re-entry planning and services are not central to the effort. The Commission focused on reforms to re-entry planning and implementation that would best foster successful returns to the community for 16- and 17-year-olds. This chapter recommends actions to move New York State practice closer to the best practice model.

### RE-ENTRY BEST PRACTICE

One of the foremost experts in re-entry practices, Dr. David Altschuler has developed a *reintegration continuum* to guide re-entry practice that is based upon the principal research performed to date.<sup>502</sup> There are four evidence-based building blocks in this model that create a service planning and provision framework, including:

1. Providing continuity of care in the kinds of services, social environment, and attachment of the youth;<sup>503</sup>
2. Use of cognitive-behavioral, skills-focused interventions, particularly those that focus on managing anger and handling conflict well, assuming responsibility for one's actions and reactions, building empathy, solving problems and setting goals, and acquiring life skills geared to a community setting;<sup>504</sup>
3. Focusing on the role system professionals play through attention to staffing, training, and quality assurance; and<sup>505</sup>
4. Implementation of overarching case management that includes assessment and classification, individual case planning, a mix of surveillance with services, incentives and consequences (graduated responses), and connection to services and other supports.<sup>506</sup>

Services should be rooted in an individualized assessment of the youth and family, including assets, needs, and criminogenic risk level.<sup>507</sup> The information gained from these assessments should inform an individualized service plan designed to meet the needs of the youth and the family during placement and to connect youth to community-based services before release wherever possible. Barriers to smooth educational transitions, difficult adjustments to returning to a family, struggles connecting to new service providers, and challenges applying new skills learned during placement can be reduced through this kind of comprehensive case planning and supervision that begins immediately upon placement and continues into the community at re-entry.<sup>508</sup>

### MOVING NEW YORK TO BEST PRACTICE IN ADOLESCENT RE-ENTRY

Review of New York's current adolescent re-entry practice revealed several areas for improvement in order to better implement these best practices. Those areas include use of assessment tools to identify risk and develop plans to reduce that risk, continuity in planning and implementation of services from residential placement through return

<sup>502</sup> David M. Altschuler, PhD, *Juvenile Demonstration (Planning and Implementation) and Technology Career Training Grantees: Collaborating for Results: Second Chances and Safer Communities*, May 22, 2012, <[http://csgjusticecenter.org/documents/0000/1485/Learning\\_from\\_Each\\_Other\\_-\\_Juvenile\\_Demonstration.pdf](http://csgjusticecenter.org/documents/0000/1485/Learning_from_Each_Other_-_Juvenile_Demonstration.pdf)> (15 December 2014). (Hereafter, referred to as *Juvenile Demonstration*.)

<sup>503</sup> *Ibid.*, 15.

<sup>504</sup> *Ibid.*, 16.

<sup>505</sup> New York State Division of Criminal Justice Services, *New York State Juvenile Re-entry Strategic Plan: A Report from the New York State Juvenile Re-entry Task Force*, <<http://www.nysjjag.org/documents/statewide-plan-juvenile-re-entry.pdf>> (15 December 2014). (Hereafter, referred to as *New York State Juvenile Re-entry*.)

<sup>506</sup> *Juvenile Demonstration*, 17.

<sup>507</sup> Craig S. Schwalbe, "Risk Assessment for Juvenile Justice: A Meta-Analysis," *Law & Human Behavior* 31, no. 5 (2007): 449-462; and David Steinhart, *Juvenile Detention Risk Assessment: A Practice Guide to Juvenile Detention Reform*, <<http://www.aecf.org/upload/PublicationFiles/JJ3622H5038.pdf>> (15 December 2014).

<sup>508</sup> *New York State Juvenile Re-entry*, 28.

home, coordination of re-entry supports and attachment to consistent pro social supports in the community, and access to appropriate housing resources upon discharge from placement.

### ***Implementing a Risk, Need, Responsivity Framework to Support Successful Re-entry***

Provision of re-entry planning and aftercare services in the juvenile placement system varies widely depending on the type of placement. Assessment and case-planning tools are not consistent across placement settings and do not usually include assessment of and planning to reduce the risk of committing more crime. As discussed in Chapter Two, best practice in reducing recidivism includes assessing youth for the specific factors that are causing their risk of committing crime and then providing interventions to reduce that risk (known as the risk, need, responsivity—or RNR—framework).

The voluntary agency residential setting is considered a foster-care setting under state and federal law.<sup>509</sup> There are no separate state or federal statutes that uniquely govern the re-entry of youth who have been in the juvenile justice system. Therefore, the statutory and regulatory framework that governs juvenile re-entry from voluntary agency settings for youth placed in the custody of the local department of social services is the foster-care framework. That framework provides specific direction on family engagement, discharge and transition planning, and health insurance, all through a child welfare framework. Voluntary-agency staff is required to use a child welfare model of risk assessment and service planning.<sup>510</sup> In many cases, this model is appropriate because many youth are involved with both the child welfare and juvenile justice systems.

However, research has shown that specific practices and interventions designed to address criminogenic risk and needs have been highly effective in reducing recidivism.<sup>511</sup> Using solely a child welfare model with youth who are involved with the juvenile justice system prevents them from benefitting from services specifically matched to help them avoid committing future crimes.<sup>512</sup>

While the re-entry model at OCFS is different from the voluntary-agency framework, it also does not include assessment and case planning specifically targeted to identified criminogenic risks. OCFS provides re-entry supervision to juvenile delinquent youth with time left on their placement at discharge through one of 12 Community Multi-Service Offices (CMSOs) across the state.<sup>513</sup> CMSO workers assume primary case management responsibility for youth in the community on aftercare status; however, their work with youth and their families begins long before community release, with an expectation that monthly contact occur between the worker, the youth, and the youth's family during the youth's residential stay.<sup>514</sup>

In addition to services provided directly by their CMSO worker, youth may also be connected to community-based treatment services during their aftercare stay, including MST and FFT. CMSO workers are also actively involved in reenrolling youth in school, assisting with vocational services, substance abuse treatment referrals, social and recreational program identification, transportation assistance for families, and a wide range of family support services. Recent statistics show that youth spend an average of six months on aftercare status, and that CMSO workers engage youth and their families an average of 24 times during that period.<sup>515</sup>

In recent years, OCFS CMSOs have expanded their purview to include provision of aftercare services to youth placed into voluntary agency programs under the custody of OCFS. CMSO workers are required to monitor the progress of OCFS youth in voluntary-agency programs throughout their residential stay. CMSO workers are also involved in the

<sup>509</sup> See §371(10) of the New York State Social Services Law and 42 U.S.C. 672 (c)(2).

<sup>510</sup> New York State Juvenile Re-entry, 15.

<sup>511</sup> David M. Altschuler, PhD, "Rehabilitating and Reintegrating Youth Offenders: Are Residential and Community Aftercare Colliding Worlds and What Can Be Done About It?" *Justice Policy Journal* 2, no. 1 (2008): 10.

<sup>512</sup> New York State Juvenile Re-entry, 14.

<sup>513</sup> There are five CMSOs located in New York City and seven in the rest of the state.

<sup>514</sup> Unpublished data provided to the Commission by the Office of Children and Family Services (OCFS), July 2014.

<sup>515</sup> Unpublished data provided to the Commission by the Office of Children and Family Services (OCFS), July 2014.

design of release plans for youth, and in securing specific support services and making program referrals that will take effect upon return to the community.

The Commission found that use of criminogenic risk assessment to inform service provision while in placement that continues once youth return home would bring New York State closer to best practices in adolescent re-entry and build upon the valuable improvements OCFS has made to its re-entry services. Whether housed at a voluntary agency or at an OCFS facility, an RNR framework should be used with youth, to assess them for the specific factors that are contributing to their risk of committing future crimes and to provide interventions while in placement and once they return home to reduce that risk.

**RECOMMENDATION:**

Establish and implement new OCFS regulations requiring evidence-based risk-needs-responsivity (RNR) framework for case planning and management in private- and State-operated placement.

Service planning for youth requires a comprehensive assessment of risks and needs, and an effective match between this risk and needs profile and services tailored to meet those needs. Juvenile justice staff should be fully trained in the elements of the RNR framework and how to apply them. The State should embed this best practice in its own juvenile justice facilities and, via regulation, in the voluntary agency setting.

***Achieving Continuity of Case Planning and Service Implementation***

Altschuler’s evidence-based building block of continuity is especially difficult to achieve when a system bifurcates the custodial entity from the entity responsible for successful re-entry. The current system for Juvenile Offender re-entry does exactly this. Youth reside at OCFS secure facilities, but the timing of their release is decided by the Board of Parole (as described in Chapter Seven) and DOCCS is responsible for community-based supervision. This division of responsibility for the residential plan and the community-based plan across agencies makes successful re-entry planning much more difficult.

Stakeholders from both the adult corrections field and the juvenile placement field expressed concern about the effectiveness of the system as currently structured. Youth and system professionals expressed frustration with a community-based supervision entity that has very little contact with youth prior to release and plays no role in structuring interventions provided in the residential setting. Given the significant barrier that this bifurcated system creates for continuity of care across the placement and community-based setting, the Commission recommends reform to ensure that planning for and supervision of community-based interventions are provided by the agency responsible for residential care (i.e., OCFS).

**RECOMMENDATION:**

Require that youth sentenced in the criminal courts and released from an OCFS facility receive post-release supervision from OCFS, instead of DOCCS, to facilitate better re-entry planning and implementation.

Placing one state agency in charge of the case from the day the youth enter the facility to the day they complete their period of supervision in the community supports the continuity necessary for successful re-entry planning and implementation. Juvenile Offender youth who are transferred to DOCCS to complete their term of custody would continue to be supervised in the community by DOCCS, as the agency responsible for their residential care would also be responsible for community-based planning and supervision under this approach.

### ***Coordination of Re-entry Supports and Attachment to Pro Social Supports***

As described above, best practice in adolescent re-entry calls for supports and positive attachments that begin during placement and continue once youth return to the community. Feedback provided to the Commission from a range of stakeholders emphasized the need for coordination of re-entry supports and services beginning during placement and continuing after youth return home. In addition, many people discussed the need for supportive adults to become a regular part of a youth's life to support successful re-entry.

There is a promising model for adolescent re-entry coordination in Monroe County that should be expanded to support strong re-entry practice. In 2010, Monroe County launched a Re-entry Task Force and a collaborative program with the Boys and Girls Club. The initiative established a satellite unit of the Boys and Girls Club at the Industry Residential Center, a limited-secure juvenile residential center operated by OCFS. The goal was to offer youth awaiting release to Rochester the opportunity to meet and develop relationships with adults who will support and supervise their transition to the community.<sup>516</sup>

The prerelease planning process is coordinated with the youth and their families, and informed by an RNR framework to help staff match services to the youth's risks and needs. Linkages to services facilitated by the task force provide continuity of care and support post-release are established *before* the youth leaves the facility. The task force has a wide range of Rochester-based re-entry services—substance abuse, mental health, housing, literacy, employment skills, education, etc.—as formal members or partners to ensure youth returning to Monroe County get the services they need. Task force members come together with the family before youth are released to set up a supportive plan for re-entry, and youth continue to be supported by the task force after returning home.

In the first 19 months of the initiative, the task force served over 90 youth and families, and youth who participated in the program had a recidivism rate of 20 percent, compared to a norm of 63 percent.<sup>517</sup> Based on these promising results, this model is currently being replicated in Oneida and Niagara counties.

This kind of coordination between the youth and family, the residential provider, and resources in the youth's home community can foster continuity of services and set up a young person for a greater likelihood of success as he or she returns home. In addition, bringing community-based service into the residential setting supports the development of positive relationships between the youth and community-based resources that can endure after he or she returns home. Staff from the Monroe County project reported that youth often wanted to attend the Boys and Girls Club after they returned home because they had established positive relationships with the staff while they were still in placement. All youth under the jurisdiction of the juvenile justice system would benefit from replication of this structure statewide.

#### **RECOMMENDATION:**

**Replicate the Monroe County juvenile re-entry task force in counties with highest juvenile case volume.**

The Monroe Task Force provides an effective model for comprehensive and continuous case planning in line with best practice, which has proven results in New York. Replications of this model require a full- or part-time coordinator for the task force at the county level, as well as capacity to provide flexible “wraparound” supports to assist in meeting youth and family needs (e.g., enrollment fees for recreational activities) and achieving the goals of the service plan.

<sup>516</sup> “Officials Announce Juvenile Re-entry Initiative in Rochester: Federal stimulus funds committed to innovative initiative at Boys and Girls Club,” press release, *New York State Division of Criminal Justice Services*, April 1, 2010 <[http://www.criminaljustice.ny.gov/pio/press\\_releases/2010-04-01b\\_pressrelease.html](http://www.criminaljustice.ny.gov/pio/press_releases/2010-04-01b_pressrelease.html)> (17 December 2014).

<sup>517</sup> Keefe, Mark, email message to Jacquelyn Greene, August 27, 2014.

**RECOMMENDATION:**

**Require reasonable efforts to establish at least one connection between placed youth and a supportive adult in the home community before leaving placement.**

Providing youth a different set of connections in their home communities than those they left can sometimes be the key to a successful return. Whether it is a relationship with a faith-based community, a neighborhood recreation center, a community garden, a center for the arts, or another positive local resource, supports from peers or adults with positive attitudes who engage in law-abiding activities can provide youth critical support once they are no longer in a program. Placement settings should be working during placement to foster these relationships for youth in order to strengthen their attachment to positive supports at home and increase likelihood that youth will connect with them after they return to the community.

***Access to Appropriate Housing Resources at Discharge from Placement***

Many stakeholders who provided feedback to the Commission emphasized the unique need that older adolescents have for supportive housing when they return to the community. As 16- and 17-year-olds become 18- and 19-year-olds while in placement, their capacity to return to their family of origin may change. In addition, return to the home they left may not be the best plan to support successful re-entry as families may be experiencing housing instability or youth may need to return to a neighborhood with more positive supports than those they had in the neighborhood they left. Further, some youth do not have a family to whom they can return.

Supportive housing is an important resource to provide a community-based residential option for older adolescents who need a housing resource at re-entry. This housing model combines permanent, affordable housing with services and helps people who are homeless or at risk of becoming homeless achieve housing stability and independence in the community. There is a strong supportive-housing model in New York City, called New York New York III (NYYNYIII) which will support 9,000 new units of supportive housing in New York City over 10 years.<sup>518</sup> These units, along with another 3,000 units currently in development will fulfill the city's commitment to create 12,000 units of supportive housing in New York City. Some of these supportive-housing units are specifically targeted to young people transitioning from the voluntary-agency setting to adult independence. However, the capacity for supportive housing to fill these housing gaps at re-entry is extremely limited outside of New York City.<sup>519</sup>

**RECOMMENDATION:**

**Expand availability of supportive housing for older youth at release.**

Additional supportive housing is an important element for older youth leaving custodial placement who do not have family resources to whom they can return.

Implementation of these recommendations would move the juvenile re-entry structure toward a more evidence-based model in order to maximize successful re-entry of 16- and 17-year-olds returning to the community after the age is raised. It is critical for any reforms to address re-entry in order to maximize benefits to public safety and improve youth outcomes.

<sup>518</sup> New York State Juvenile Re-entry, 19.

<sup>519</sup> Ibid.

## CHAPTER 9: ADDRESSING COLLATERAL CONSEQUENCES OF A CRIMINAL RECORD

---

Every society must strike a balance between, on the one hand, affording young people a “second chance” to rebound from transgressions to become productive adults and, on the other hand, ensuring that offenders can be prosecuted and sentenced effectively for their crimes against a community. At present, New York is essentially failing on both counts.

Unlike many states, except for the Youthful Offender statute discussed below, New York has no meaningful way for someone who committed a nonviolent felony or misdemeanor at a young age to have that conviction expunged or sealed even after a lifetime free of any other crimes. The negative collateral consequences that result from a criminal record are serious. From opportunities for education and employment to barriers in housing and public benefits, people with criminal histories can face a myriad of challenges that compromise their capacity to maintain stability in the community. That is a problem not only for the individual in question, but also for the community itself that suffers mightily when a former offender cannot get an education, serve in the armed forces, or find gainful employment. The Commission found this to be one of the areas in most pressing need of change.

At the same time, the current laws deprive law enforcement officials and judges of the information they need to charge and sentence properly the few repeat violent offenders that can plague a community. In particular, if a minor commits a violent felony offense and receives a Youthful Offender adjudication, that information cannot be used in sentencing if that person commits subsequent violent felony offenses. That gap undermines their capacity to protect public safety by recognizing the significant threat posed by such a rare, persistent, violent offender.

This chapter reviews the collateral consequences that youth face from a criminal record; explains how the Youthful Offender statute mitigates many of those consequences, and recommends reforms to that law to strengthen it; compares New York with other states with respect to the laws that govern sealing criminal convictions, and recommends reforms to align New York’s sealing policies for young people, both prospectively and retroactively, with other states’ policies; and recommends reforms to strengthen the system for maintenance of juvenile records as the volume of delinquency cases expands once the age of juvenile jurisdiction is raised.

### THE ENDURING IMPACT OF A CRIMINAL CONVICTION—COLLATERAL CONSEQUENCES

Collateral consequences can strike at the very things most vital to a person’s successful re-entry into society. The American Bar Association has created a database of collateral consequences, and has found over 44,000 criminal convictions that result in discrete, lawfully mandated collateral consequences, with over 2,111 specific to New York.<sup>520</sup> There are several key categories of collateral consequences that have particularly notable detrimental effects upon successful rehabilitation, including housing, employment, education, public benefits, and family rights. These collateral consequences necessarily must be considered to understand the true effects of an adult criminal conviction.

A criminal conviction often means a person may be ineligible for public housing. Depending on the level of conviction, ineligibility may span from two years to a lifetime.<sup>521</sup> Moreover, private housing providers may freely reject an applicant because of a criminal history.

Criminal convictions preclude employment in certain law enforcement and federal government agencies and in various other fields, including many health care jobs.<sup>522</sup> In New York State, current laws prevent a person from

<sup>520</sup> ABA National Inventory of Collateral Consequences of Conviction, “New York,” <<http://www.abacollateralconsequences.org/search/?jurisdiction=35>> (16 December 2014). (Hereafter, referred to as NICCC “New York.”)

<sup>521</sup> E.g., 24 Code of Federal Regulations 5.855, 966.4, 982.553; 9 New York Codes, Rules and Regulations § 1627-7.2.

<sup>522</sup> E.g., NY Compilation of Codes, Rules, and Regulations title 10 § 402.7 (ineligibility for employment in various health care services based upon a felony conviction); see NICCC “New York.”



obtaining a wide range of professional licenses, such as a barber’s license, if they cannot prove good moral character as a result of a criminal record that is directly related to the license sought.<sup>523</sup>

The even more severe burden arises from the biases faced by applicants who have criminal records. Employers are free to request information on past criminal records and often do so. The U.S. Equal Employment Opportunity Commission (EEOC) reports that 92 percent of employers subject all or some of their job candidates to criminal background checks.<sup>524</sup> There are some federal protections for job applicants with a criminal record. Federal Title VII protections require employment decisions based upon criminal convictions to consider the nature and gravity of the criminal offense, how much time has passed since the offense, and the nature of the job.<sup>525</sup> New York provides some additional protections, including prohibiting employers from asking about or considering arrests or charges that did not result in conviction; asking about or considering records that have been sealed or Youthful Offender adjudications; and denying employment unless there is a “direct relationship” between the conviction and the job.<sup>526</sup> However, these protections still allow room for employers to deny employment explicitly because of a criminal conviction and cannot fully address implicit denials of employers.

Even if a person with a criminal record obtains a job, earnings for persons with criminal records are substantially lower than those for other employees.<sup>527</sup> Effects of biased hiring opportunities are especially apparent for persons of color with criminal records, with one study showing a 50 percent reduction in employment opportunities for white Americans and a 64 percent reduction in employment opportunities for black Americans.<sup>528</sup> The lack of employment opportunities exacerbates the problems facing persons released from incarceration, as ex-offenders who are unemployed are three to five times more likely to reoffend than those with jobs.<sup>529</sup>

A criminal conviction can result in reduced opportunities for obtaining an education by limiting admissions to educational institutions. Sixty-six percent of colleges that responded to a nationwide survey collect criminal justice information from applicants, and 62 percent use criminal justice information in the admissions process.<sup>530</sup> Furthermore, certain types of public and private loans, scholarships, and grants are not available to persons with criminal convictions, especially in the case of sex or drug offenses.<sup>531</sup>

There are also certain public benefits that are unavailable or limited if a person has certain criminal convictions. For example, a person with a felony conviction in New York is ineligible for unemployment benefits, worker’s

<sup>523</sup> NY Correction Law §752[1].

<sup>524</sup> Society for Human Resource Management, “Background Checking: Conducting Criminal Background Checks,” slide 3 (22 January 2010), <[http://www.slideshare.net/shrm/background-check-criminal?from=share\\_email](http://www.slideshare.net/shrm/background-check-criminal?from=share_email)> (16 December 2014).

<sup>525</sup> U.S. Equal Employment Opportunity Commission, “EEOC Enforcement Guidance (Number 915.002),” (25 April 2012), <[http://www.eeoc.gov/laws/guidance/upload/arrest\\_conviction.pdf](http://www.eeoc.gov/laws/guidance/upload/arrest_conviction.pdf)> (16 December 2014).

<sup>526</sup> NY Executive Law § 296; NY Correction Law § 752 (setting forth nine factors that employers must consider to determine whether there is a “direct relationship” between the job and the conviction).

<sup>527</sup> Harry J. Holzer, Steven Raphael, and Michael A. Stoll, “Employment Barriers Facing Ex-Offenders,” <[http://www.urban.org/uploadedpdf/410855\\_holzer.pdf](http://www.urban.org/uploadedpdf/410855_holzer.pdf)> (16 December 2014).

<sup>528</sup> See Devah Pager, “The Mark of a Criminal Record,” *American Journal of Sociology* 108, no. 5 (5 March 2003): 937–75.

<sup>529</sup> Marc Levin, “Working with Conviction: Criminal Offenses as Barriers to Entering Licensed Occupations in Texas,” *Texas Public Policy Foundation* (November 2007): 1–14 <<http://www.texaspolicy.com/center/effective-justice/reports/working-conviction>> (17 December 2014). It should also be noted that though the bias in hiring persons with criminal convictions most poignantly affects the persons with criminal convictions, businesses and the economy as a whole also suffer. The U.S. economy is calculated to lose between \$57 and \$65 billion in output every year due to the reduction in hiring persons with a criminal conviction. John Schmitt and Kris Warner, “Ex-offenders and the Labor Market,” *Center for Economic and Policy Research* (November 2010): 1–24 <<http://www.cepr.net/documents/publications/ex-offenders-2010-11.pdf>> (17 December 2014).

<sup>530</sup> Marsha Weissman, et al., “The Use of Criminal History Records in College Admissions Reconsidered,” Center for Community Alternatives <<http://www.communityalternatives.org/pdf/Reconsidered-criminal-hist-recs-in-college-admissions.pdf>> (17 December 2014).

<sup>531</sup> For example, private loans and scholarships sometimes inquire about or are unavailable to people with past criminal records, and some public loans/grants/scholarships are similarly limited, such as Free Application for Federal Student Aid loans and scholarships, which are not available to those with past drug offenses. See “Students with criminal convictions have limited eligibility for federal student aid,” *Federal Student Aid* website <<https://studentaid.ed.gov/eligibility/criminal-convictions>> (17 December 2014).

compensation, and veteran's annuities.<sup>532</sup> Convictions for certain drug and sex offenses and fraud-related crimes also render the offender ineligible for certain public benefits.<sup>533</sup>

Finally, certain family rights are undermined by a criminal conviction. A host of adoption restrictions and restrictions on eligibility to be a foster parent or live with a foster parent are triggered by a criminal conviction.<sup>534</sup> Restrictions on visitation rights and on certain living arrangements with children are imposed by law for certain offenses.<sup>535</sup>

While many of these restrictions may be justified in particular circumstances, their cumulative impact makes the already difficult task of re-entry and employment that much more difficult. The impact ripples through the community as well, as former offenders struggle to avoid reoffending and too often fail.

## STRENGTHENING YOUTHFUL OFFENDER PROTECTIONS

The lifelong impact of these collateral consequences is a pressing problem for 16- and 17-year-old offenders in New York because, unless they are granted Youthful Offender status, their criminal records are regular adult records of conviction.<sup>536</sup> If youth are not granted youthful offender status at sentencing, a misdemeanor or felony conviction will appear as a criminal conviction on their record for the rest of their lives. Except for certain narcotics offenses, there is no record relief from any misdemeanor or felony conviction for offenses committed by an adult in New York, including 16- and 17-year-olds.<sup>537</sup>

The Youthful Offender statute provides the opportunity for any youth under the age of 19 to have a criminal conviction substituted with a noncriminal adjudication at sentencing.<sup>538</sup> Youth are eligible for Youthful Offender status if they have no previous designated felony adjudication for delinquency, no previous conviction for a felony offense, and no previous criminal conviction for a felony.<sup>539</sup> The court must grant Youthful Offender status to youth under 19 convicted of a misdemeanor in the local criminal court and who have no previous convictions or Youthful Offender adjudications.<sup>540</sup> For the remaining convictions, granting Youthful Offender status is discretionary. The court may grant Youthful Offender status upon finding that the interest of justice would be served by relieving the youth from the onus of a criminal record and by not imposing a sentence longer than the maximum Youthful Offender sentence of four years.<sup>541</sup>

Youthful Offender status provides for a reduced sentencing scheme. While youth can receive Youthful Offender status for a range of felony offenses, they are sentenced according to the indeterminate sentencing range for Class E felony offenses, which sets a minimum of one year or one and one-third years and a maximum of three to four years for imprisonment. In addition, Youthful Offenders may be eligible for probation, conditional discharge, unconditional discharge, or definite (local jail) sentences of one year or less.<sup>542</sup>

The Youthful Offender status is currently used extensively in cases of 16- and 17-year-olds. For example, of the cases against 16- and 17-year-olds disposed in 2013, 6,565 resulted in an initial criminal conviction. Seventy-five percent

<sup>532</sup> NY Labor Law § 593; NY Workers' Compensation Law § 10; and NY Executive Law § 364.

<sup>533</sup> See ABA Collateral Consequences Project, "New York—Government Benefits," <<http://www.abacollateralconsequences.org/search/?jurisdiction=35>> (16 December 2014)(highlighting 44 statutory violations that result in termination of certain government benefits).

<sup>534</sup> E.g., 8 C.F.R. 204.3, 204.309; NY Compilation of Codes, Rules, and Regulations title 18 § 421.27; and NY Social Services Law § 378.

<sup>535</sup> See ABA Collateral Consequences Project, "New York—Family/Domestic Rights," <<http://www.abacollateralconsequences.org/search/?jurisdiction=35>> (16 December 2014)(highlighting 56 statutory violations that result in restrictions on familial or domestic rights).

<sup>536</sup> Youthful Offender status is not permitted for Class A felonies and can only be granted in armed felony, first-degree rape, criminal sexual act in the first degree, and aggravated sexual abuse cases upon special findings of mitigating circumstances. NY Criminal Procedure Law § 720.10.

<sup>537</sup> New York State law allows for sealing of certain controlled substance and marijuana offenses in certain circumstances following successful completion of a judicial diversion program. NY Criminal Procedure Law § 160.58.

<sup>538</sup> NY Criminal Procedure Law § 720.

<sup>539</sup> NY Criminal Procedure Law § 720.10(2).

<sup>540</sup> NY Criminal Procedure Law § 720.20(1)(b).

<sup>541</sup> NY Criminal Procedure Law § 720.20(1)(a).

<sup>542</sup> NY Penal Law § 60.02.

(or 4,910) of those cases were then converted from a criminal conviction to a Youthful Offender adjudication. The majority of the Youthful Offender adjudications were granted in misdemeanor cases, but a significant number were also granted in felony cases, as shown below.<sup>543</sup>

**2013 Youthful Offender Adjudications for offenses committed at 16 and 17**

Misdemeanor	Felony
2,987	1,923

Youthful Offender status provides youth four key benefits: relief from record of a criminal conviction, reduced sentences, privacy from public release of the youth's name pending the Youthful Offender determination on misdemeanor offenses only, and confidentiality of the Youthful Offender record.<sup>544</sup> Youthful Offender records maintained by police, courts, and the Division of Criminal Justice Services (the state agency responsible for maintenance of New York State criminal history information) cannot be released except to the local designated education official (for the purpose of executing the youth's educational plan and for successful re-entry) and to any institution responsible for the youth's care or supervision (such as the DOCCS and local probation). Youthful Offender records are provided to law enforcement upon fingerprinting for any subsequent arrest, and they can also be known to district attorneys during prosecution for any subsequent offense.

Testimony provided to the Commission revealed that youth may face significant barriers even if they are granted Youthful Offender status. The most significant issue raised was the weakness that comes with a confidential record at sentencing if the name of the youth is released to the public pending trial. Staff from Youth Represent and a young person who received Youthful Offender status for a crime committed at age 17 provided testimony to the Commission, describing how the advent of Internet search engines has resulted in a functional record of criminal involvement for youth whose names are in the press regardless of the subsequent confidentiality of the official record.<sup>545</sup> While the current statute provides for sealed accusatory instruments in apparently Youthful Offender-eligible misdemeanor cases (in which the youth has never received a previous Youthful Offender designation), there is no analogous protection for felony-level offenses.<sup>546</sup> Therefore, a youth who is ultimately granted confidential Youthful Offender status at sentencing may still be readily connected to the offense through an Internet search.

A second weakness identified in the current Youthful Offender structure is the statutory prohibition on Youthful Offenders to receive a conditional discharge for drug offenses.<sup>547</sup> While adult offenders can be eligible for a conditional discharge for some drug offenses, youth granted Youthful Offender status are not provided that same, lesser sentencing opportunity.

The Commission found that the opportunity for Youthful Offender status does not match the research on adolescent brain development discussed in Chapter Two or other legal standards for adulthood in New York. The brain development detailed earlier found that the brain does not reach full maturity until well into the mid-20s.<sup>548</sup> In addition, youth in New York State cannot legally drink alcohol until age 21, and the obligation for parents to support their children extends to age 21.<sup>549</sup> While there is no one clear line that establishes adulthood, it is clear that those

<sup>543</sup> New York State Computerized Criminal History Database, prepared by DCJS OJRP (as of 3/14/14).

<sup>544</sup> NY Criminal Procedure Law § 720.35; NY Penal Law § 60.02; NY Criminal Procedure Law § 720.15; and NY Criminal Procedure Law § 720.35.

<sup>545</sup> Laurie Parise, Exec. Dir., Youth Represent, Aminta Williams, and Charles Nunez, Remarks to New York State Governor's Commission on Youth, Public Safety, and Justice (Jul. 29, 2014).

<sup>546</sup> NY Criminal Procedure Law §720.15.

<sup>547</sup> NY Penal Law § 60.02(2).

<sup>548</sup> Richard J. Bonnie, Robert L. Johnson, Betty M. Chemers, and Julie A. Schuck, eds., *Reforming Juvenile Justice: A Developmental Approach*. (Washington, DC: The National Academies Press, 2013).

<sup>549</sup> NY Alcoholic Beverage Control Law § 65-C; and NY Family Court Act § 413.

under 21 are not fully adults according to the law and the relevant science. Yet, there is currently no Youthful Offender opportunity for those who are 19 or 20 years old. Recent analysis by DCJS found that approximately 7,000 cases involving 19- and 20-year-olds could be eligible for Youthful Offender consideration annually.<sup>550</sup>

Finally, law enforcement officials who provided input to the Commission noted that the Youthful Offender law can prevent appropriate intervention after commission of repeated violent crimes. New York State Law allows for enhanced sentencing for repeat violent felony offenders.<sup>551</sup> But because these sentences require a previous conviction for a violent felony offense, a Youthful Offender adjudication for a violent felony offense will not count as a predicate at sentencing on a subsequent violent felony. Analysis of the 10-year reconviction rates for 3,088 youth who received Youthful Offender status for a violent felony offense in 2002 and 2003 showed that 19 percent of those youth were convicted for a new violent felony offense within 10 years.<sup>552</sup> For that small but dangerous group of offenders, the current law prevents law enforcement agencies and courts from protecting public safety by using the knowledge of prior violent felony offenses to inform charging and sentencing decisions.

**RECOMMENDATION:**

Create a new presumption to grant Youthful Offender status in criminal cases against offenders who are under 21 if the youth has no previous felony finding. Allow the presumption to be rebutted by the district attorney in the interest of justice. While Youthful Offender eligibility should be extended to 19- and 20-year-olds, current adult sentencing should be retained for 19- and 20-year-old Youthful Offenders

This proposal would extend the opportunity for Youthful Offender status through adolescence and establish a presumption that all first-time offenders should be granted Youthful Offender status except when it is not in the interest of justice.

**RECOMMENDATION:**

Require all accusatory instruments in Youthful Offender-eligible cases, except sex offenses, to be filed as sealed instruments prior to trial.

This would expand the current practice of sealing Youthful Offender-eligible misdemeanor accusatory instruments to Youthful Offender-eligible felony offenses (other than sex offenses) in order to mitigate the impact of criminal processing information that can be easily found on the Internet even after a youth receives the confidentiality that comes with Youthful Offender status. While the proposal would require insulation of these accusatory instruments from public access, the current statutory structure that allows for, but does not require, private arraignments on consent of the defendant and at the discretion of the judge would be maintained.<sup>553</sup>

**RECOMMENDATION:**

Allow youth who receive Youthful Offender status on a drug offense to be eligible for conditional discharge, as those adults who are convicted of these offenses are currently so eligible.

Allowing for a conditional discharge for certain drug offenses would conform the discharge options applicable to youth deemed Youthful Offenders to those applicable to youth who receive a regular criminal conviction.

<sup>550</sup> DCJS Computerized Criminal History, as of 10/21/2014

<sup>551</sup> NY Penal Law § 70.04, 70.08.

<sup>552</sup> New York State Division of Criminal Justice Services data, Presentation to New York State Governor's Commission on Youth, Public Safety, and Justice (30 September 2014). (Hereafter, referred to as Presentation to Governor's Commission.)

<sup>553</sup> NY Criminal Procedure Law § 720.15(2).

**RECOMMENDATION:**

**Allow violent felony Youthful Offender adjudication for anyone 16 or over to be used as a predicate in sentencing for subsequent violent felony charging and sentencing only.**

This proposal would ensure that New York's communities can be better protected from the very small number of youth who repeatedly engage in crimes of significant violence

## PROVIDING RECORD RELIEF FOR ONE-TIME ADOLESCENT MISTAKES—SEALING CRIMINAL RECORDS

Youth under 21, convicted in criminal court, who do not get the benefit of Youthful Offender status at sentencing, have no capacity to get relief from their criminal record for the rest of their lives (except for the narrow drug diversion provision previously discussed), even if they never commit another offense. Youth convicted as Juvenile Offenders and who do not get the benefit of Youthful Offender status similarly have no opportunity to move beyond their record, even if they remain crime free for their entire adult life.

The benefits to both the individual and the community of an opportunity to seal a conviction are grounded in solid research. Research has shown that first-time offenders, who go three to four years without recidivating, have a lower likelihood of committing a crime in the future than the general population.<sup>554</sup> Sealing records is a targeted way to limit the collateral consequences of a criminal conviction without undermining public safety.

The Commission's review of other states' practices regarding sealing criminal records found that 19 other states do not allow any adult misdemeanor convictions to be sealed, and 23 states do not allow any adult felony convictions to be sealed.<sup>555</sup> Policies vary substantially across states that do allow criminal records to be sealed, principally in how long individuals must wait before they are eligible for a seal and which offenses are eligible.

The waiting period for sealing a misdemeanor tends to be shorter than the period for a felony seal in most states. Three states allow for a misdemeanor offense to be sealed in one year or less.<sup>556</sup> Another two states allow for a misdemeanor conviction to be sealed at the conclusion of the sentence for that offense.<sup>557</sup> Other states set the waiting period for a misdemeanor seal substantially longer, with North Carolina requiring a 15-year wait, and Vermont, South Dakota, and Oklahoma requiring a 10-year wait before a misdemeanor conviction can be sealed.<sup>558</sup>

<sup>554</sup> Alfred Blumstein and Kiminori Nakamura, "'Redemption' in an Era of Widespread Criminal Background Checks," National Institute of Justice (2010), <<http://www.nij.gov/journals/263/Pages/redemption.aspx>>(16 December 2014) (results for New York first-time offenders).

<sup>555</sup> Margaret Colgate Love, National Association of Criminal Defense Lawyers, *Restoration of Rights Resource Project, Chart # 4: Judicial Expungement, Sealing, and Set-aside*,

<[http://www.nacd.org/uploadedFiles/files/resource\\_center/2012\\_restoration\\_project/Judicial\\_Expungement\\_Sealing\\_and\\_Set-Aside.pdf](http://www.nacd.org/uploadedFiles/files/resource_center/2012_restoration_project/Judicial_Expungement_Sealing_and_Set-Aside.pdf)> (16 December 2014).

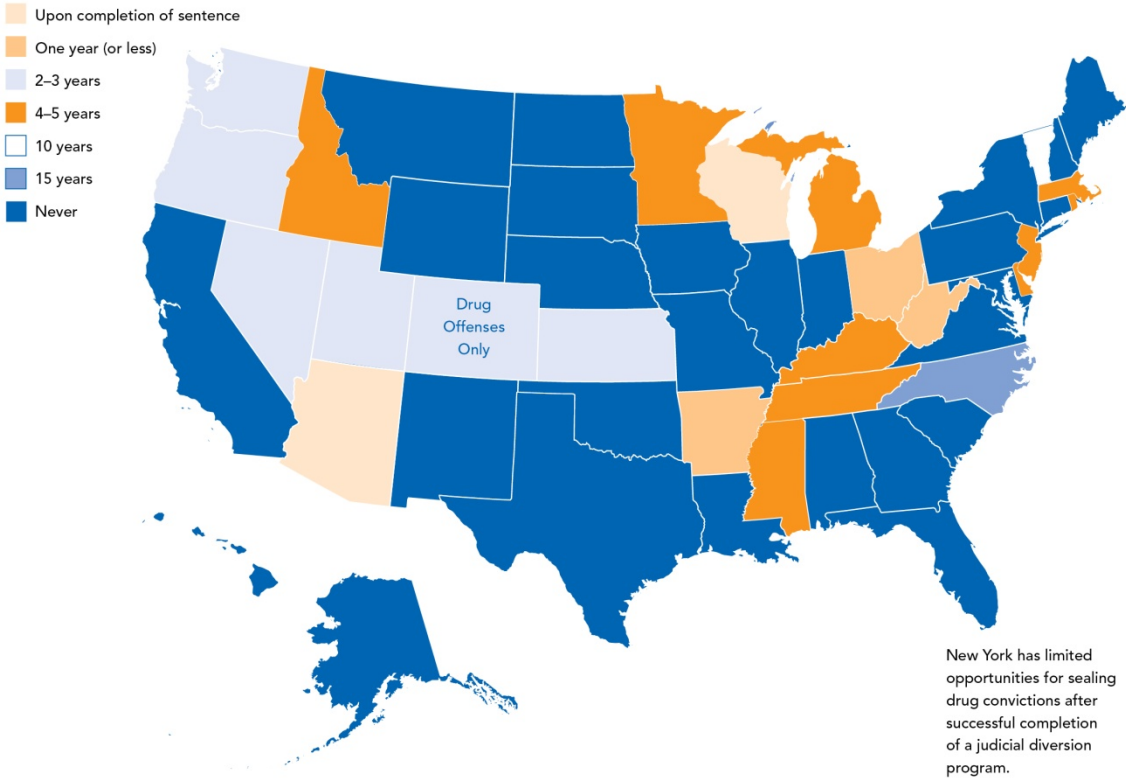
<sup>556</sup> Ohio (Ohio Revised Code Annotated § 2953.31 et seq.), West Virginia (West Virginia Code § 5-1-16a [youthful first offenses, ages 18–26]), and Arkansas (Arkansas Code Annotated § 16-90-1405).

<sup>557</sup> Arizona (Arizona Revised Statutes Annotated § 13-907), and Wisconsin (Wisconsin Statutes § 973.015 [for offenses committed before age 25]).

<sup>558</sup> N.C. GEN. STAT. § 15A-145.5; VT. STAT. ANN. tit. 13, §§ 7601 et seq.; S.D. CODIFIED LAWS § 23-6-8.1; and OKLA. STAT. ANN. tit. 22 § 18(9),

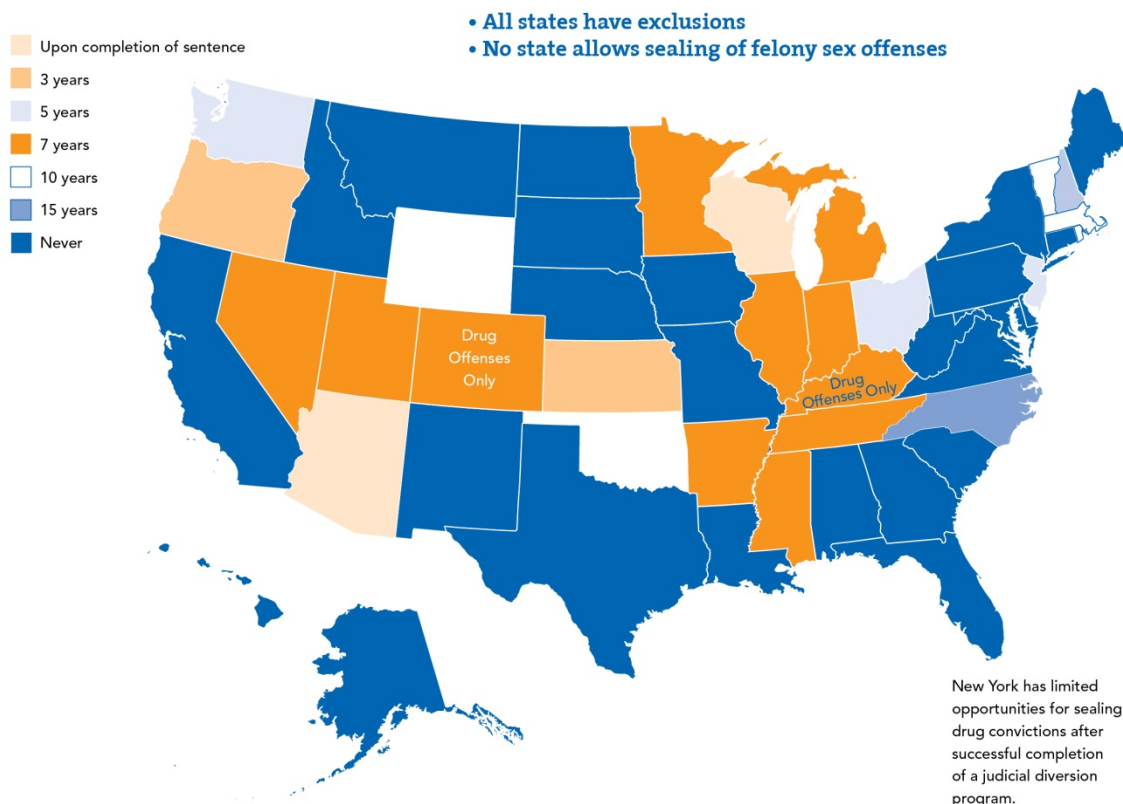
As shown on the map below, the majority of states that allow a misdemeanor conviction to be sealed require a waiting period between two and five years.

### Minimum Years until a Misdemeanor May Be Sealed



With respect to felony offenses eligible for sealing, North Carolina maintains the same 15-year waiting period as with misdemeanor offenses.<sup>559</sup> Wyoming, Oklahoma, Vermont, Massachusetts, and Rhode Island all require a 10-year wait before sealing an eligible felony.<sup>560</sup> The shortest wait for sealing of an eligible felony offense is three years in Oregon, Kansas, and Ohio.<sup>561</sup> Two states also allow for sealing of an eligible felony at the conclusion of the sentence.<sup>562</sup> The map below shows felony sealing standards across the country.

## Minimum Years until a Felony May Be Sealed



It is important to note that only six states allow any violent felony offenses to be sealed at any time, and even those states have certain exclusions.<sup>563</sup> For instance, no state allows felony sex offenses to be sealed. In addition, two of the states that allow a subset of violent felony offenses to be sealed require that the offender meet a standard beyond simply being conviction-free for a period of years before the conviction can be sealed.<sup>564</sup>

New York State’s policies, when compared to those of other states, appear quite restrictive in not allowing any criminal conviction to be sealed at any time. People who are convicted of one nonviolent crime when under the age of 21 and who do not go on to commit another offense arguably need not and should not be burdened by the many

<sup>559</sup> North Carolina General Statutes § 15A-145.5.

<sup>560</sup> Wyoming Statutes Annotated § 7-13-1502; 22 Oklahoma Statutes Annotated § 18(9); Vermont Statutes Annotated title 13, §§ 7601 et seq.; Massachusetts General Laws chapter 276 § 100A; and Rhode Island General Laws §§ 12-1.3-1 et seq.

<sup>561</sup> Oregon Revised Statutes § 137.225; Kansas Statutes Annotated § 21-6614; and Ohio Revised Code Annotated § 2953.31 et seq.

<sup>562</sup> Wisconsin (Wisconsin Statutes § 973.015 [for offenses committed before age 25]) and Arizona (Arizona Revised Statutes Annotated § 13-907).

<sup>563</sup> Massachusetts (Massachusetts General Laws chapter 276 § 100A.), Michigan (Michigan Compensation Laws § 780.621), Nevada (Nevada Revised Statutes § 179.245), Indiana (Indiana Code § 35-38-9-2 et seq.), Kansas (Kansas Statutes Annotated § 21-6614), and Oregon (Oregon Revised Statutes § 137.225)

<sup>564</sup> Oregon requires the petition to be granted unless it is against the public interest (Oregon Revised Statutes § 137.225(13)), and Indiana requires prosecutorial consent before the conviction can be sealed (Indiana Code § 35-38-9-5).

collateral consequences of that single conviction for the remainder of their lives. In addition, youth under the age of 18 who commit a violent offense and are then able to turn away from a life of crime should have an opportunity for a lifetime without the stigma and barriers that come with a criminal record.

This can be accomplished through a conditional seal on the record of conviction for civil purposes. This type of seal renders records confidential for civil purposes such as an employer's criminal record checks (except for jobs with the police and as a peace officer). At the same time, the police and the district attorney may still access these sealed records for law enforcement purposes only. If the person is convicted of a subsequent crime, moreover, the conditional seal is removed permanently even for civil purposes. Therefore, a conditional civil seal reduces most of the collateral consequences of a criminal conviction while also maintaining the criminal history in case of continued criminal activity.

In addition, a reasonable waiting period provides confidence that subsequent offending is unlikely. Taking other states' practices into account, the Commission concluded that New York should require a two-year waiting period for a seal on a misdemeanor conviction and a five-year waiting period for a seal on a nonviolent felony offense (other than Class A felonies, homicides, and felony sex offenses). Persons who were convicted as Juvenile Offenders but who did not receive Youthful Offender status upon conviction should also have access to a conditional civil seal if they are able to remain conviction-free for a period of 10 years.

It is important that the process to obtain a seal following the required waiting period is accessible and should not depend upon the capacity to retain an attorney or conduct complex legal proceedings in court *pro se*. Therefore, sealing should be largely automatic once a person meets the necessary eligibility criteria. A system should be created within the existing criminal history database administered by DCJS to apply a conditional civil seal *automatically* for any person convicted of a nonviolent felony (excluding Class A felonies and felony sex offenses) or a misdemeanor committed under age 21.

In order to address concerns that an automatic sealing process may not be appropriate in every case, however, the district attorney should be given the opportunity at sentencing to request that a specific individual reappear before the court after the requisite waiting period for the court to make a determination that application of the seal would be in the interests of justice. Creation of this type of automatic sealing process, with the opportunity for a higher threshold in a subset of more egregious cases, would place New York State at the forefront of accessibility for criminal record relief for young offenders.

Because of the severity of Juvenile Offender crimes that do not receive Youthful Offender status and therefore create a criminal record, the Commission concluded that requests for the seal of a Juvenile Offender conviction should be made through the sentencing court. Analysis completed by the Division of Criminal Justice Services found that a very small number of youth receive a criminal conviction as Juvenile Offenders (2,992 between 1979 and 2013), and of those youth, only 20 percent do not reoffend.<sup>565</sup> Therefore, adding capacity to seal Juvenile Offender records through a judicial process would not generate a significant new caseload in the criminal courts.

The Commission also considered carefully the wisdom of applying this new sealing policy retroactively to those who would otherwise be eligible but who committed their offenses prior to the proposed date for raising the age of criminal responsibility (i.e., January 1, 2017 or 2018). The Commission received input from many people who currently possess criminal records from their adolescence. According to DCJS, there are currently 102,901 individuals in New York State with a record of one criminal conviction for a nonviolent felony (excluding Class A felonies, which are not classified as violent felony offenses) or a misdemeanor between the ages of 16 and 20 and who have no subsequent conviction and no arrests that are pending.<sup>566</sup> That figure substantially overstates the number

<sup>565</sup> New York State Computerized Criminal History Database, prepared by DCJS OJRP (as of 9/23/14).

<sup>566</sup> Raise the Age Sealing Analysis, November 7, 2014, prepared by DCJS OJRP.



of individuals who would otherwise be eligible for the proposed record relief because, among other reasons, it includes many offenders whose convictions were too recent to have satisfied the waiting period requirement. It also does not account for the number of people who may no longer reside in New York State, who may have aged out of the workforce, or who may simply not feel a need to have their conviction sealed given their current circumstances.

The Commission concluded that there is no sound reason not to apply the proposed sealing policy to those whose convictions occurred prior to the passage into law of the reforms proposed in this report. Indeed, the same compelling reasons for making the proposed seal available to future offenders apply equally to those whose offenses have occurred already. Accordingly, the Commission believes that this policy should be applied retroactively, as discussed below.

Retroactive application of the opportunity to seal one criminal conviction during adolescence should also be an administrative process handled by DCJS that does not require people to obtain counsel or to petition the court. However, it is important to establish an orderly system to notify the applicable district attorney when a request for a retroactive seal is received and to provide the district attorney the opportunity to require particular requests to be made through the court in particularly problematic cases. (It is important to note, of course, that with the exception of the very few former Juvenile Offenders who would have to wait 10 years to obtain a seal, none of the eligible offenses involve violent crimes.) Implementation of a process to provide this kind of criminal record relief should not await implementation of the other reforms proposed by the Commission and should be put in place as soon as is administratively practicable.

Together, these reforms and the automated process envisioned to implement them would make New York the nation's leader in giving a meaningful second chance to those young people who deserve it while protecting, at the same time, the safety of our communities.

The Commission also wished to indicate its support for the ongoing efforts of the New York State Council on Community Re-entry and Reintegration, which is currently engaged in substantial analysis to determine which statutory employment-related barriers can be safely eliminated to help young offenders succeed upon re-entry.

**RECOMMENDATION:**

**Create process to seal one conviction (excluding violent felonies, Class A felonies, homicides, and sex offenses) for crimes committed under age 21.**

The sealing process would be available on the first misdemeanor conviction for youth who remain conviction-free for two years after sentencing to a community-based sentence or release from incarceration, or at the conclusion of the probation term, whichever is longer. The nonviolent felony sealing process would be available if the youth remains conviction-free for five years after sentencing to a community-based sentence or release from incarceration. Significantly, the process for obtaining these seals would be a simple administrative application to the DCJS (online or via mail), eliminating the need for people to obtain counsel or engage in a judicial process. If, however, the judge decides at sentencing that it is in the interests of justice to require the youth to return to court to request the seal, the sentencing judge could mandate use of a judicial process with district attorney notice to request the seal.

**RECOMMENDATION:**

**Create the capacity to seal one Juvenile Offender conviction (excluding Class A felonies, homicides, and sex offenses) upon application to the court, if the person remains conviction-free for 10 years after release from confinement.**

Record relief should also be available to youth who receive a criminal conviction for a Juvenile Offender crime. However, given the severity of those offenses, a ten-year waiting period should be required. In addition, because of the severity of Juvenile Offender crimes, the Commission concluded that requests for the seal of a Juvenile Offender conviction should be made through the sentencing court.

---

**RECOMMENDATION:**

Allow any person whose conviction occurred prior to the effective date of the law passed to implement these reforms, and who would be otherwise eligible for a seal as described above, to apply to the Division of Criminal Justice Services to obtain that seal, with notice of that application to the district attorney and opportunity for the district attorney to require the seal request to be considered by the court in particularly egregious cases.

This retroactive application of sealing provisions would reduce the collateral consequences of one adolescent conviction to thousands of New Yorkers while protecting public safety.

## ACCURATE MAINTENANCE OF JUVENILE RECORDS

The Commission also examined current practices related to juvenile delinquency records. The Family Court Act provides many record-related protections for youth processed as juvenile delinquents in New York. Many youth arrested for delinquency have no official record to begin with, as fingerprinting of youth arrested on misdemeanor offenses is not allowed. In addition, youth ages 11 and 12 are only required to be fingerprinted for A and B felony offenses, and youth ages 13, 14, and 15 are required to be fingerprinted for any felony arrest.<sup>567</sup> Notice of a delinquency arrest to DCJS is only provided if a fingerprint is taken. Therefore, the non-fingerprintable delinquency arrests never result in any centralized arrest record. Even if youth arrested on a delinquency offense are fingerprinted, the Family Court Act provides several mechanisms for the destruction of that fingerprint record. The record of arrest must be destroyed if the case is successfully adjusted by probation prior to court involvement, if the presentment agency declines to prosecute the case, or if there is any outcome of the case in Family Court other than a felony finding.<sup>568</sup> If the case does result in a felony adjudication for delinquency, the arrest record is maintained by DCJS and is required to be destroyed if the youth remains conviction-free when reaching the age of 21, or three years following release from placement, whichever occurs sooner.<sup>569</sup>

Accuracy of juvenile delinquency records is therefore dependent on many different entities that can dispose of a youth's case providing case processing outcomes to DCJS. Local probation departments, presentment agencies, the courts, OCFS, and local departments of social services all play a role in providing the information necessary for destruction of juvenile records in various circumstances. Local probation departments must notify DCJS when felony delinquency cases are successfully adjusted, and presentment agencies must notify DCJS when they decline to prosecute a felony delinquency case. Court records must be provided to indicate which cases result in an actual felony finding. Finally, OCFS and local departments of social services must inform DCJS when youth who were adjudicated for a felony offense are released from placement. There are currently no automated systems in place to allow for the aforementioned notifications. Manual checks of court delinquency records and processing of paper notifications from probation departments and presentment agencies are currently used to maintain accurate delinquency records. While these processes have been sufficient to maintain the current volume of delinquency records, the Commission's proposed expansion of delinquency case volume will demand an automated delinquency record maintenance process to ensure that records of felony delinquency arrests are destroyed as currently required by the Family Court Act. The Commission therefore recommends that the processes for notification of delinquency case outcomes to DCJS, necessary for accurate record destruction, become automated.

<sup>567</sup> NY Family Court Act § 306.1.

<sup>568</sup> NY Family Court Act § 354.1.

<sup>569</sup> NY Family Court Act § 354.1(7).

*RECOMMENDATION:*

**Automate information exchanges between entities necessary to ensure that juvenile records are destroyed as required by statute**

This automation between the many systems with responsibility for accurate juvenile record maintenance and destruction would provide reliable records of juvenile felony offenses for offenders who continue to offend, and would provide accurate record destruction in the majority of juvenile cases that do not result in a felony finding with a continued pattern of offending.

Elimination of the collateral consequences of a lifelong criminal record, or even a confidential Youthful Offender record, in appropriate cases is one of the most significant reasons to implement these reforms. Young people who stop offending should have the educational and employment access needed to support law-abiding lives. Implementation of these reforms would place New York State in the lead, making a real second chance available to young people while ensuring that communities remain safe.

## CHAPTER 10: PROJECTED CASE PROCESSING

---

### BACKGROUND

As detailed throughout this report, raising the age of juvenile jurisdiction in New York State would result in a myriad of system-processing impacts. By its very nature, this change would increase the number of youth flowing through the juvenile delinquency system while a smaller subset of youth would continue to be processed in the criminal court. However, because of the breadth of the Commission’s recommendations and the complex connections between segments of the juvenile justice system, the overall impact is not as straightforward as adding the 16- and 17-year-old youth to the current juvenile justice case flow. The overall impact would include an increase in cases in some areas of the justice system, but the number of cases would decrease in other areas. Therefore, it is necessary to use a robust model to forecast case flow. To develop this model, the Commission created a working group comprised of staff from several state agencies, with support from the Vera Institute of Justice, to estimate the case processing changes that would result from the Commission’s recommendations.

### ARREST FORECAST

The Commission’s first step was to develop a forecast of arrests for youth ages 16 and 17—the “raise the age” population—as well as youth ages seven through 15, the current juvenile population. The number of expected arrests when reforms are implemented would be influenced by two factors: (1) changes in law enforcement practices caused by raising the age (the RTA effect) and (2) changes in crime rates and law enforcement practices independent of the reforms, i.e., even if the age were not raised, based on current trends the number of future arrests is projected to change (the non-RTA effect). The forecast of future arrests used in the model includes both the non-RTA effect, based on recent data in New York, and the RTA effect, based on data from Connecticut and Illinois.

### NON-RTA EFFECT

Current forecasting research finds that simple “trend line” projections—meaning, future changes will be similar to recent changes—yield effective projections, even compared to more sophisticated prediction methods.<sup>570</sup> The number of future arrests independent of RTA (i.e., the non-RTA effect) is estimated using such a trend line approach and forecasts that there will be 25,086 arrests of 16- and 17-year-olds by 2017 if the age of juvenile jurisdiction remains unchanged.<sup>571</sup> This figure applies the four-year arrest trend—the average annual change in arrests between 2010 and 2013—to the number of arrests in 2013 (34,263). Between 2010 and 2013, arrests of 16- and 17-year-olds declined five percent per year in New York City and 10 percent in the rest of the state.<sup>572</sup> The model forecasts that these downward trends would continue until 2017, and would then hold constant at 25,086 (before the additional RTA effect, described below).<sup>573</sup> The steady decline of arrests of 16- and 17-year-olds in New York is consistent with trends in other states, including Connecticut and Illinois, which recently raised the age of juvenile jurisdiction, and several other states determined to be comparable to New York in either size and structure or proximity, or particularly notable in some way regarding juvenile justice practice: California, Florida, Massachusetts, New Jersey, Pennsylvania, and Texas. Across all of these states, there has been a decline in the number of arrests in the past decade.

<sup>570</sup> According to a National Academy of Sciences report on understanding crime trends, sophisticated forecasts—such as linear time-series models with detailed demographic and economic characteristics—do no better than the simple assumption that the future will continue like the past. See John V. Pepper, “Forecasting Crime Trends: A City-Based Approach,” *Understanding Crime Trends Workshop Report*, Committee on Understanding Crime Trends, Arthur S. Goldberger and Richard Rosenfeld, eds., National Academy of Sciences, (Washington, DC: National Academies Press, 2008), 207.

<sup>571</sup> The Commission used the same approach to estimate the number of arrests of juveniles aged seven to 15, which is necessary to calculate the impact of the Commission’s recommendations to remove youth aged seven to 11 from juvenile jurisdiction and also model various aspects of the reforms that are applicable to younger youth (such as the availability of additional diversion programs). Between 2010 and 2013, arrests of youth aged seven to 15 declined nine percent per year in New York City and eight percent per year in the rest of the state. Similar to the forecast of 16- and 17-year-old arrests, the team applied these rates to the number of arrests in 2013 (18,628), to calculate that there will be 11,605 arrests in 2017, which are assumed to then remain constant.

<sup>572</sup> New York State Computerized Criminal History Database, prepared by DCJS OJRP (as of 7/30/14).

<sup>573</sup> Mid-year data for 2014 indicates that the downward trend in arrests is continuing and there will be 30,000 arrests in 2014.

Change in Arrest Rates for 16- and 17-year-olds in Selected States (2003–2012)	
STATE	CHANGE IN ARRESTS
California <sup>a</sup>	-32%
Connecticut <sup>b</sup>	-52%
Florida <sup>c</sup>	-37%
Illinois <sup>d</sup>	-40%
New Jersey <sup>e</sup>	-45%
Pennsylvania <sup>f</sup>	-28%
Texas <sup>g</sup>	-33%

- a. California Department of Justice, Office of the Attorney General, Arrest Data, Crime in California Reports (2002-2012), Accessed at: <http://oag.ca.gov/cjsc/pubs>
- b. Connecticut Department of Public Safety, UCR Arrest Data, Crime in Connecticut Reports (2003-2012), Accessed at: <http://www.dpsdata.ct.gov/dps/ucr/ucr.aspx> In the 2010 Crime in Connecticut Report, Hamden reporting agency only reported January to July. Juvenile arrests in 2010 were estimated by using an average of arrests from 2009 and 2011 and then conducted a sensitivity analysis to determine whether there were any noticeable effects on arrest trends with the inclusion of the estimated Hamden data. There were no significant effects on arrest trends.
- c. Florida Department of Juvenile Justice, Delinquency profile dashboard, juvenile age groups: <http://www.djj.state.fl.us/research/delinquency-data/delinquency-profile/delinquency-profile-dashboard> Additional data collected from the Department of Law Enforcement, UCR Arrest Data, Crime in Florida Reports (2003-2013) accessed at: [http://www.fdle.state.fl.us/Content/FSAC/Menu/Data---Statistics-\(1\)/UCR-Arrest-Data.aspx](http://www.fdle.state.fl.us/Content/FSAC/Menu/Data---Statistics-(1)/UCR-Arrest-Data.aspx).
- d. Illinois Criminal Justice Information Authority, Illinois Statistical Analysis Center, Criminal History Record Information (CHRI) System Arrest Data (2002-2012). Accessed at: <http://www.icjia.state.il.us/public/sac/index.cfm?metasection=forms&metapage=raw>
- e. New Jersey Department of Law & Public Safety, Office of the Attorney General, New Jersey State Police, Uniform Crime Reports (2002-2012), Accessed at: <http://www.njsp.org/info/stats.html>
- f. Uniform Crime Reporting System, Arrest Data (2004-2013), Accessed at: <http://ucr.psp.state.pa.us/ucr/reporting/query/summary/querysumarrestui.asp>
- g. Texas Department of Public Safety, Crime in Texas Reports (1999-2011), Accessed at: [http://www.txdps.state.tx.us/administration/crime\\_records/pages/crimestatistics.htm](http://www.txdps.state.tx.us/administration/crime_records/pages/crimestatistics.htm)

The model projects that the nationwide downward trend in arrests would continue in New York for two reasons. First, there has been a recent and dramatic decline in the number of youth involved in the juvenile justice system. Statewide, juvenile arrests for youth seven to 15 have declined 51 percent between 2002 and 2013.<sup>574</sup> Because of the relationship between juvenile delinquency and further justice involvement, as delinquency abates, young adult crime should abate as well.<sup>575</sup> Second, in recent years there have been increasing commitments to age-appropriate, evidence-based, or research-informed programming for youth that focuses on the needs and risks that are strongly

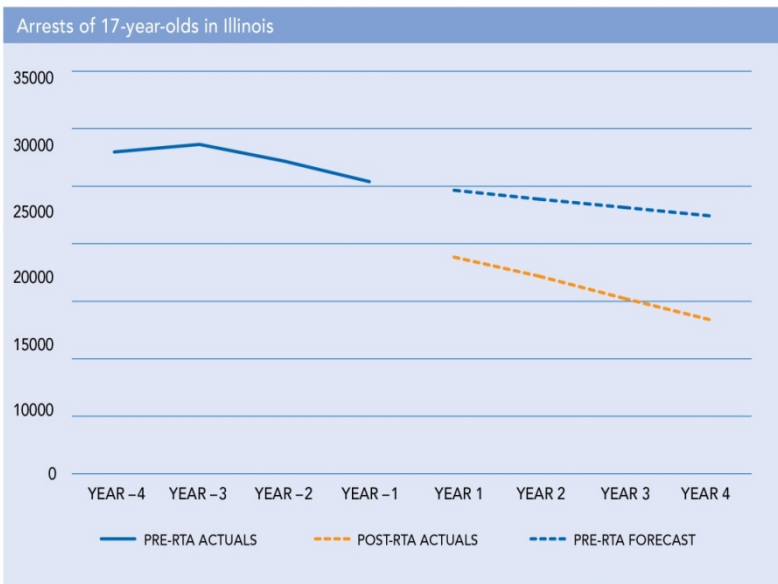
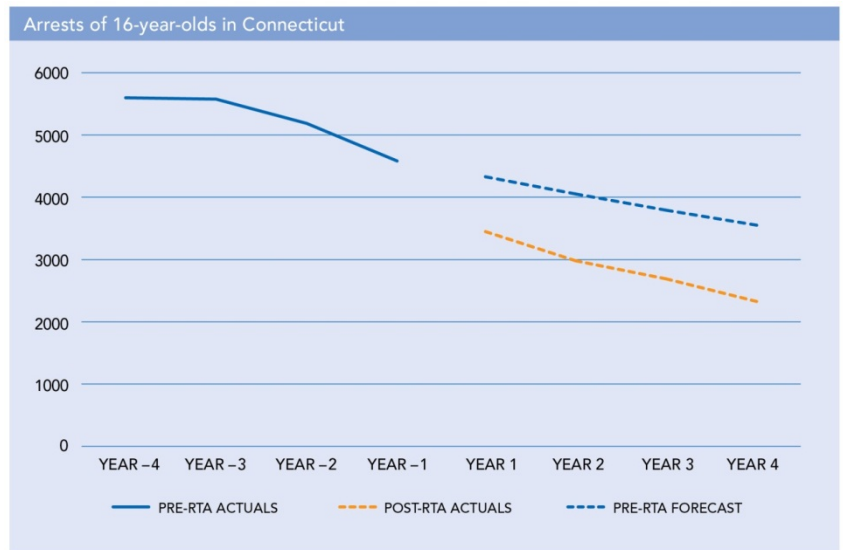
<sup>574</sup> DCJS, UCR, and IBR; NYPD crime data, prepared by Division of Criminal Justice Services, Office of Justice Research and Performance.

<sup>575</sup> John H. Laub, and Robert J. Sampson, *Shared Beginnings, Divergent Lives: Delinquent Boys to Age 70*, (Cambridge, MA: Harvard University Press, 2009); Terrie E. Moffitt, "Adolescence-Limited and Life-Course-Persistent Antisocial Behavior: A Developmental Taxonomy," *Psychological Review* 100, no. 4 (1993): 674; and Alex R. Piquero, David P. Farrington, and Alfred Blumstein, "The Criminal Career Paradigm," *Crime and Justice* (2003): 359–506.

related to delinquency. These interventions have been found to lead to reductions in future involvement in both the juvenile and adult systems.<sup>576</sup>

### RTA EFFECT

In addition to the historical downward trend in arrests that we project to continue until 2017, the model assumes that there would be an additional decline in the number of arrests of 16- and 17-year-olds after the age of juvenile jurisdiction is raised. This is based on declines in juvenile arrests in Connecticut and Illinois after those states raised the age of juvenile jurisdiction.<sup>577</sup> As shown in the figure to the right, prior to the 2010 reforms in Connecticut, arrests declined an average of six percent per year (the dotted blue line depicts arrests if that trend had persisted at a rate of six percent). However, after the reform was implemented, arrests of 16-year-olds were actually 28 percent lower than the projected trend (dotted orange line).



The data in Illinois reveals a similar pattern, as shown in the figure to the left. Prior to the reforms, arrests declined an average of three percent per year (the dotted blue line depicts the number of arrests, had that trend continued). After the reforms were implemented, arrests of 16-year-olds were 32 percent lower than the pre-RTA trend (dotted orange line).

<sup>576</sup> See Chapter Two for a full description of this research.

<sup>577</sup> In Illinois, we can only examine the RTA effect for 17-year-olds because arrest data in that state does not disaggregate 16-year-olds from younger juveniles. In Connecticut, we examine the RTA effect for 16-year-olds because the juvenile age increased to 17 in 2010, but did not increase to 18 until 2012.

In these states, like in New York, there had been a declining number of 16- and 17-year-old arrests prior to the reforms, which then accelerated once the juvenile age was raised. There is no consensus as to why these arrests dropped, but there are a few theories. Increased availability of preventive and diversionary services (some of which were available as station-house diversion options in Connecticut) may have an influence on the rate of formal arrests or on the rate of delinquency if effective preventive services are more accessible. But while the specific cause of the RTA effect in Connecticut and Illinois is hard to explain, data on juvenile arrest patterns indicates that there is, in fact, an effect. Accordingly, the Commission assumed that raising the age of juvenile jurisdiction in New York would affect arrest trends above and beyond the historical trend line. As described above, this effect was 28 percent in Connecticut and 32 percent in Illinois. For the purposes of the New York model, a conservative estimate of 15 percent was assumed and this RTA effect was applied only to misdemeanor and nonviolent felony arrests because law enforcement practices would likely not change with respect to the more serious crimes of violence. The model thus forecasts the RTA effect would reduce the number of arrests by 3,239, resulting in a total of 21,847 arrests of 16- and 17-year-olds in 2018, which is then projected to hold constant.

### **CASE PROCESSING FORECAST**

The model predicts case-processing outcomes for each of the projected 21,847 arrests in 2018.<sup>578</sup> Because there is variation in how cases are processed by the juvenile justice system, the model disaggregates cases by age, geography (New York City and the rest of state), and type of crime (Juvenile Offender cases, violent felonies, nonviolent felonies, and misdemeanors). Case-processing outcomes are then modeled based on current practice for each of these eight subgroups of cases. Data were obtained from several New York State and New York City agencies to support this analysis.<sup>579</sup> DCJS provided criminal system data for New York City as well as for the other counties.<sup>580</sup>

The model assumes that Family Court would have original jurisdiction for the current array of delinquency cases involving youth ages 12 to 15 and the majority of cases involving 16- and 17-year-old youth.<sup>581</sup> Current Juvenile Offender crimes would originate in criminal court and follow current case processing, with the exception of the expanded presumption of removal to Family Court for robbery in the second degree. Violent felony offenses for 16- and 17-year-olds, other than the current list of Juvenile Offender crimes, would originate in criminal court with a presumption to remove them to Family Court processing, either to the Family Court itself or within the Youth Part in Superior Court, as detailed in Chapter Five. The projected removal patterns are based on patterns of current dispositions for violent felonies. Sixteen- and 17-year-olds arrested and disposed for violent felonies are modeled as processed in criminal court. Those charged with a violent felony at arrest, but disposed as a nonviolent felony or misdemeanor, are modeled as removed to Family Court. Based on those assumptions, 20,595 of the 21,847 arrests would be processed through the juvenile delinquency processing model and 1,252 would be processed through the criminal court.

### **CRIMINAL CASE PROCESSING**

Although the Family Court would handle the vast majority of offenses, there would still be a subset of serious crimes that would originate in criminal court. To model criminal court case processing for these crimes, the team used data

<sup>578</sup> Although 16-year-olds will be in juvenile jurisdiction in 2017, this section reports outcomes and costs in 2018, when the reform is fully implemented.

<sup>579</sup> Data for counties outside New York City were provided by DCJS and OCFS. New York City-specific data were obtained by Vera through the JJDB, the New York City Law Department, and New York City Department of Probation. The JJDB is a city-owned and managed database that tracks juvenile delinquency from arrest through disposition. The JJDB links information from several city agencies, and each case record includes information about probation intake, detention, court processing, sentencing, and recidivism outcomes.

<sup>580</sup> Data for 15-year-olds were used to predict case processing outcomes for 16- and 17-year-olds (it is assumed that 16- and 17-year-old youth would be processed in a manner comparable to that of the oldest end of current juvenile jurisdiction). This approach is supported by an analysis of national data, conducted by Dr. Jeffrey Butts in support of the Commission's work, which found that 16- and 17-year-old case processing is similar to that of 15-year-olds, except for "deep end" system outcomes. The one exception is placement rates, which were adjusted upward to account for the greater likelihood of the use of juvenile placement for 17-year-olds, when compared to 15-year-olds.

<sup>581</sup> This reflects the Commission's recommendation to raise the lower age of juvenile jurisdiction to 12, except for homicide, where the age would be raised to 10.

on current criminal justice case processing for 16- and 17-year-olds for similar crimes.<sup>582</sup> Based on the existing trends, the model projects that 1,149 criminal cases (92 percent) would result in a conviction. Of these convictions, 339 would be sentenced to probation, 141 would receive a split sentence of a brief stay in custody followed by a term of probation, and 567 would be placed in the custody of OCFS in a secure facility on an annual basis.<sup>583</sup>

## JUVENILE PROCESSING

The majority of 16- and 17-year-old arrests—misdemeanors, nonviolent felonies, and Juvenile Offender and violent felony offender cases removed from the criminal court—would be processed in the juvenile justice system under the proposed reforms (20,595 cases). However, not all juvenile cases reach Family Court—fewer than half of juvenile arrests result in a Family Court petition. The remaining cases do not have a petition filed because they are either adjusted by the probation department or the county presentment agency declines to prosecute the case. The projected impacts on case processing prior to Family Court involvement as a result of the proposed reforms are as follows:

- ▶ **Probation intake (21,847 cases).** Every case, including those in the criminal court, would be reviewed by the probation department through the juvenile risk and intervention framework.
- ▶ **Probation adjustment (11,385 cases).** The model estimates that the probation department would attempt to adjust 55 percent of arrests processed in the juvenile system. This proportion is based on the current rate of attempted adjustments for 15-year-olds, plus an enhancement of 10 percentage points. The assumed increase accounts for the anticipated impact of Commission recommendations designed to enhance available diversion programming and address current barriers to adjustment.
- ▶ **Probation-based diversion services (8,880 cases).** The vast majority (78 percent) of cases probation attempts to adjust would be referred to a diversion intervention. This community-based programming would range from low-intensity interventions like peer courts and juvenile review boards to high-intensity therapeutic programs using evidence-based models like MST or FFT.

The model assumes that 15 percent of attempted adjustments (1,698 cases) would not succeed at meeting the adjustment requirements and ultimately would result in a referral to the presentment agency based on current adjustment success rates. Presentment agencies currently decline to prosecute a proportion of cases referred from probation for a variety of reasons. The model estimates 4,069 cases would be declined for prosecution by presentment agencies, based on current data from the New York City Law Department and analysis of juvenile case processing completed by DCJS. After accounting for these various “off-ramps,” the model estimates that 6,840 cases would result in a Family Court petition. The model projects that 3,826 of these petitions would result in a disposition other than probation or placement based on current case-processing outcomes for 15-year-olds.<sup>584</sup> The projected impact on post-disposition probation supervision and placement that would result from the proposed reforms is as follows:

- ▶ **Probation supervision (1,887 cases).** Twenty-eight percent of petitions would result in probation supervision.
- ▶ **Placements (1,127 cases).** Sixteen percent of petitions would result in placement to a residential facility operated by OCFS or a voluntary agency. This figure was calculated by adjusting the likelihood of placement for 15-year-olds upward by nine percent to account for the greater likelihood of placement for older juveniles.

Finally, the model projects that, consistent with the Commission’s recommendation, all youth leaving placement, from either an OCFS facility or voluntary agency, would receive a period of post-release aftercare supervision and

<sup>582</sup> As described in earlier chapters, youth under 18 who are sentenced to long periods of custody begin their sentence in a secure juvenile facility and are transferred to a state prison after a certain age to serve the remainder of their sentence.

<sup>583</sup> The remaining cases would receive a conditional discharge.

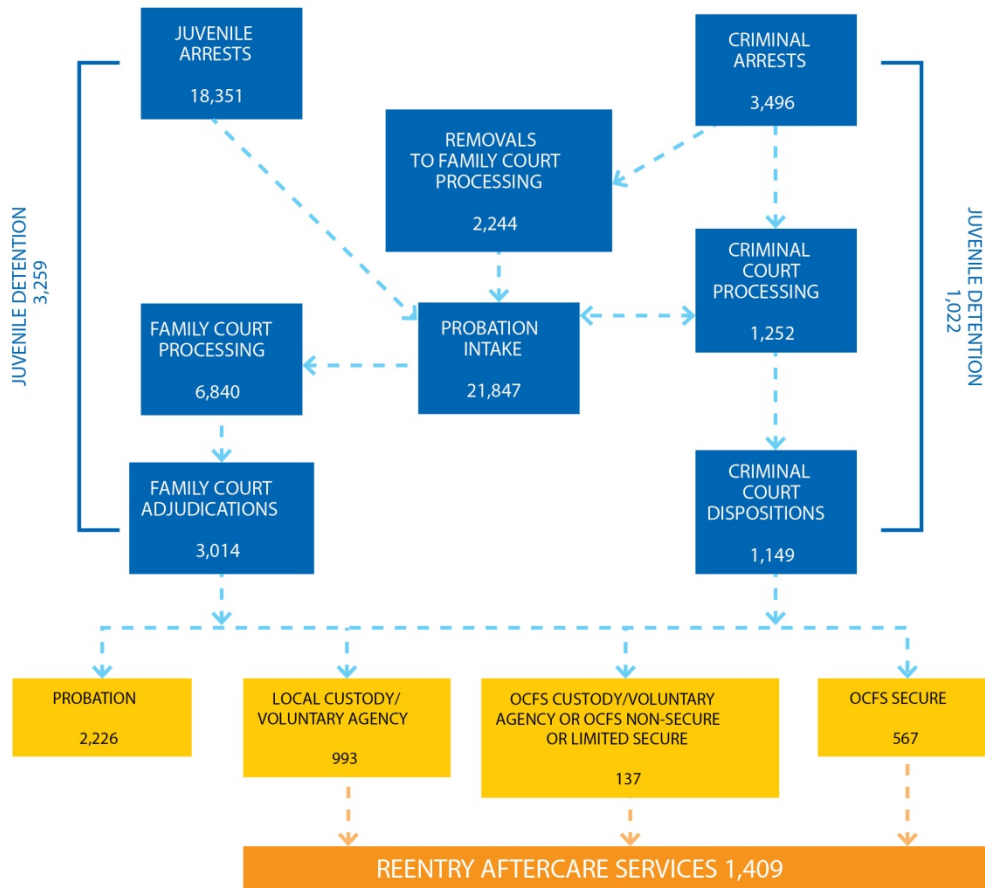
<sup>584</sup> Other outcomes can include dismissal, adjournment in contemplation of dismissal, conditional discharge, and conversion to a PINS petition.



services. This includes youth sentenced in criminal court released from OCFS secure placements to complete their sentence under community supervision, but excludes youth who leave OCFS secure placements and transfer to DOCCS to serve the remainder of a custodial sentence.

The overall projected case processing impacts of the Commissions proposed reforms are pictured below.

## Estimated Distribution of 16/17 Year Old Cases Under Proposal



## CONCLUSION

---

It is critically important for New York State to implement these reforms. Supported unanimously by this Commission, these recommendations would move New York State from last in the nation on justice for 16- and 17-year-olds to the lead. While processing most offenses committed by 16- and 17-year-olds in Family Court would bring New York in line with national practice, the complete package of proposed reforms would do much more. It would: reduce crime victimization; provide meaningful opportunity for a life without the stigma of a criminal record for adolescents who turn away from crime; eliminate the disproportionate incarceration of 16- and 17-year-olds of color in adult jails and prisons; reserve the juvenile placement system for only those few young people who present significant risk to public safety; and create therapeutic out-of-home placement settings for older adolescents. Given this range of benefits, the State should provide the financial investment to make these recommendations a reality. New York State should implement these reforms, becoming the nation's leader on adolescent justice.

The recommendations contained in this report are as follows:

- 1. Raise the age of juvenile jurisdiction to 18, consistent with other states.**
- 2. Raise the lower age of juvenile jurisdiction to twelve, except for homicide offenses, which should be raised to ten.**
- 3. The Governor should appoint one or more individuals with expertise in juvenile justice and a commitment to these reforms to help coordinate their implementation.**
- 4. Expand to 16- and 17-year-olds the current juvenile practice regarding parental notification of arrest and the use of Office of Court Administration-approved rooms for questioning by police.**
- 5. Expand the use of videotaping of custodial interrogations of 16- and 17-year olds for felony offenses.**
- 6. Mandate diversion *attempts* for low-risk (per risk assessment) misdemeanor cases except where probation finds no substantial likelihood that youth will benefit from diversion in the time remaining for adjustment or if time for diversion has expired and the youth has not benefited from diversion services.**
- 7. Expand categories of cases eligible for adjustment to allow for adjustment in designated felony cases and Juvenile Offender cases removed to Family Court, with a requirement for court approval for all Juvenile Offender cases and if the youth is accused of causing physical injury in a designated felony case. Revise the criteria for determining suitability for adjustment to include risk level and the extent of physical injury to the victim.**
- 8. Create the capacity and a process for victims to obtain orders of protection without the delinquency case being filed in court.**
- 9. Allow two additional months for probation diversion (beyond 120 days) if a documented barrier to diversion exists or a change in service plan is needed.**
- 10. Establish a continuum of diversion services that range from minimal intervention for low-risk youth to evidence-based services for high-risk youth.**
- 11. Establish family engagement specialists to facilitate adjustment.**

12. **Expand Family Court jurisdiction to include youth ages 16 and 17 charged with non-violent felonies,<sup>585</sup> misdemeanors, and harassment or disorderly conduct violations. Provide access to bail for 16- and 17-year-olds in Family Court and allow Family Court judges to ride circuit to hear cases, at the discretion of the Office of Court Administration.**
13. **Begin judicial processing in criminal court for current Juvenile Offender crimes as well as all violent felony offenses; all homicide offenses; Class A felonies; sexually motivated felonies; crimes of terrorism; felony vehicular assaults; aggravated criminal contempt; and conspiracy to commit any of these offenses and tampering with a witness related to any of these offenses for 16- and 17-year-old offenders.**
14. **Apply current standards for removal from criminal to Family Court of Juvenile Offender cases to those cases against 16- and 17-year-olds that would originate in criminal court, except for subdivision two of second degree robbery (a Juvenile Offender crime) and the Violent Felony Offenses that are not Juvenile Offender crimes. For these latter offenses, create a new rebuttable presumption for removal to Family Court. Such cases would be removed to Family Court unless the prosecutor demonstrates that criminal prosecution is in the interests of justice, considering the current criteria for removing a case to Family Court and whether the youth either played a primary role in commission of the crime or aggravating circumstances, including but not limited to the youth's use or handling of a weapon, are present.**
15. **Create new Youth Parts, with specially trained judges, in criminal court for processing those cases against 16- and 17-year-olds and other Juvenile Offenders who remain in criminal court.**
16. **Clothe judges in criminal court Youth Parts with concurrent criminal court and Family Court jurisdiction to allow Youth Parts to retain cases removed to Family Court under the new presumption for removal and to handle them under the Family Court Act where appropriate.**
17. **Provide juvenile probation case planning and services for cases pending in criminal court.**
18. **Prohibit confinement of any minor in an adult jail or prison and, to the extent funding and operational considerations allow, permit youth to remain in youth settings until age 21.**
19. **Reduce current unnecessary use of detention and placement through:**
  - a. **Prohibition of detention and placement for youth adjudicated for first-time or second-time misdemeanors that do not involve harm to another person, and who are low-risk, except where the court finds a specific imminent threat to public safety;**
  - b. **Prohibition of placement for technical probation violations alone, except where 1) the court finds a specific imminent threat to public safety or 2) the youth is on probation for a violent felony offense and the use of graduated sanctions has been exhausted without successful compliance; and**
  - c. **Implementation of weekend arraignment for Family Court cases statewide where adult arraignment already occurs.**
20. **Establish Family Support Centers in high-PINS referral localities to provide more robust community-based PINS services and then eliminate detention and placement of PINS.**
21. **Use statutory Juvenile Offender and Youthful Offender sentences for offenses committed at ages 16 and 17 that are sentenced in criminal court, except for Class A felony offenses that are not Juvenile Offender crimes. For Class B violent felony offenses, the court should have statutory discretion to impose a longer adult sentence if the prosecution shows aggravating circumstances, including severity of injury or gravity of risk to public safety.**

<sup>585</sup> Nonviolent felonies would exclude all homicide offenses; Class A offenses; Juvenile Offender crimes, Violent Felony Offenses, sexually motivated felonies, crimes of terrorism, felony vehicular assaults, aggravated criminal contempt, and conspiracy to commit or tampering with a witness related to any of the above offenses.

22. Use determinate sentencing for youth sentenced under Juvenile Offender or Youthful Offender statutes, including 16- and 17-year-olds.
23. Develop a continuum of effective community-based services at the local level to be used by probation, including expansion of JRISC, to maintain more high-risk youth in the community and reduce recidivism.
24. Develop residential facilities using best practices models to support the needs of older adolescents, including:
  - a. For newly required placement capacity, establish a network of new, small facilities with staffing and programming consistent with the Missouri approach;
  - b. Expansion of the August Aichhorn RTF model for youth with mental health disorders; and
  - c. Programs that meet the specialized needs of LGBT youth.
25. Reduce recidivism among the 18 – 24 population in the criminal justice system by:
  - a. Using data-driven, risk-based methodology to prioritize DOCCS inmates aged 18-24 for effective programs;
  - b. Using technology to expand educational opportunities for 18-21-year-olds in DOCCS custody; and
  - c. Considering use of discrete housing units for youth transitioning from juvenile facilities to DOCCS and for older adolescents at DOCCS
26. Establish and implement new OCFS regulations requiring evidence-based risk-needs-responsivity (RNR) framework for case planning and management in private and state-operated placement.
27. Require that youth sentenced in the criminal courts and released from an OCFS facility receive post-release supervision from OCFS, instead of DOCCS, to facilitate better re-entry planning and implementation.
28. Replicate the Monroe juvenile re-entry task force in counties with highest juvenile case volume.
29. Require reasonable efforts to establish at least one connection between placed youth and a supportive adult in the home community before leaving placement.
30. Expand availability of supportive housing for older youth at release.
31. Create a new presumption to grant Youthful Offender status in criminal cases against offenders who are under 21 if the youth has no previous felony finding. Allow the presumption to be rebutted by the district attorney in the interest of justice. While Youthful Offender eligibility should be extended to 19- and 20-year-olds, current adult sentencing should be retained for 19- and 20-year-old Youthful Offenders.
32. Require all accusatory instruments in Youthful Offender eligible cases, except sex offenses, to be filed as sealed instruments prior to trial.
33. Allow youth who receive Youthful Offender status on a drug offense to be eligible for conditional discharge as those adults who are convicted of these offenses are so eligible.
34. Allow violent felony Youthful Offender adjudication for anyone 16 or over to be used as a predicate in sentencing for subsequent violent felony charging and sentencing only.
35. Create the capacity to seal one conviction (excluding violent felonies, Class A felonies, homicides, and sex offenses) for crimes committed under age 21.

- 36. Create the capacity to seal one Juvenile Offender conviction (excluding Class A felonies, homicides and sex offenses) upon application to the court, if the person remains conviction-free for 10 years after release from confinement.**
- 37. Allow any person whose conviction occurred prior to the effective date of the law passed to implement these reforms, and who would be otherwise eligible for a seal as described above, to apply to the Division of Criminal Justice Services to obtain that seal, with notice of that application to the district attorney and opportunity for the district attorney to require the seal request to be considered by the court in particularly egregious cases.**
- 38. Automate information exchanges between entities necessary to ensure that juvenile records are destroyed as required by statute**

## APPENDIX A

---

## **LIST OF INDIVIDUALS WHO PROVIDED TESTIMONY TO THE COMMISSION**

---

### ***Commission Meeting July 29, 2014***

Jeannette Bocanegra, Family and Community Organizer, Community Connections for Youth  
Jeffrey Butts, Director, Research and Evaluation Center, John Jay College of Criminal Justice  
Zachary Carter, Corporation Counsel, New York City Law Department  
Honorable Michael Corriero, Director, New York Center for Juvenile Justice  
John Fowle, Acting Director, Nassau County Probation Department  
Jeremy Kohomban, President, The Children's Village  
Charles Nunez, impacted youth, affiliated with Youth Represent  
Aminta Williams, impacted youth, affiliated with Youth Represent  
Laurie Parise, Executive Director and Founder, Youth Represent  
Rocco Pozzi, Commissioner, Westchester County Probation Department  
Tami Steckler, Attorney-in-Charge, Juvenile Rights Division, Legal Aid Society

### ***Commission Meeting September 8, 2014***

Michael Alston, impacted youth, with Center for Youth staff  
Paige Pierce, Director, Families Together in New York State  
Sandra Doorley, District Attorney, Monroe County  
Mike Marinan, Monroe County Secure Detention Administrator  
Chief Gerald Pickering, Webster Police Department  
Ed Mulvey, Director, Law and Psychiatry Program, University of Pittsburgh Medical School  
Kelly Reed, Commissioner, Monroe County Department of Social Services  
Honorable Dandrea Ruhlmann, Monroe County Family Court  
Hasan Stephens, Executive Director, Good Life Foundation  
Marie Verzulli, Victim/Survivor Liaison, New Yorkers for Alternatives to the Death Penalty  
Marsha Weissman, Executive Director, Center for Community Alternatives

# LIST OF NEW YORK STATE STAKEHOLDER FOCUS GROUPS & INDIVIDUAL INTERVIEWS

---

## FOCUS GROUPS

### **Category 1: New York State Regional Youth Justice Teams**

#### **I. Capital Region and Mohawk – Completed in Albany**

- Albany County Probation (2)
- Albany County Dept. for Children, Youth & Families (2)
- Colonie Police Dept.
- Kids Oneida
- Mental Health Association, New York State
- Oneida County Probation
- Rensselaer County Probation
- Schenectady County Family Court Judge
- St. Catherine’s Center
- Warren County Probation
- Youth L.I.F.E. Support Network Inc., Albany

#### **II. North Country – Completed in Watertown**

- Children’s Home of Jefferson County (4)
- County Attorney/American Bar Association
- Credo Residential and Rehabilitation Services for Youth
- Jefferson County Dept. of Social Services (2)
- Jefferson County Probation (2)
- Jefferson County Sheriff’s Office (2)
- Jefferson County Youth Court
- Jefferson-Lewis Bureau of Cooperative Educational Services (BOCES)
- Lewis County Probation (2)

#### **III. Central New York and Finger Lakes – Completed in Rochester**

- ACT Rochester
- Center for Community Alternatives (Onondaga) (2)
- Genesee County Attorney’s Office
- Good Life Youth Foundation
- Hillside Children’s Center
- Livingston County Probation
- Villa of Hope
- Ontario County Youth Court
- Wayne County Schools
- Monroe County Children’s Center
- Monroe County Family Ct. Judge
- Monroe County Probation
- Monroe and Wayne Counties Chaplain
- New York State Office of Children and Family Services
- Onondaga County Dept. of Juvenile Justice
- Oswego County Probation (2)



**IV. Western New York – Completed in Buffalo**

- Allegheny County Probation
- Baker Victory Services
- Cattaraugus County Probation (2)
- Chautauqua County Probation
- Erie Assistant County Attorney
- Erie County
- Erie County Probation (2)
- Erie County Sheriff's Office
- Erie County Dept. of Mental Health
- Family Court Erie County
- Legal Aid Erie County
- Niagara County Probation (3)
- Niagara Sheriff's Office

**V. Mid-Hudson – Completed in White Plains**

- Children's Rights Society
- Children's Village
- Dutchess Probation
- Orange Probation
- Putnam Probation
- Rockland Dept. of Social Services
- Rockland BOCES
- Ulster County Attorney
- Ulster Mental Health
- Westchester Probation (5)
- Westchester County Attorney
- Westchester Children's Association
- Woodfield Cottage

**VI. Long Island – Completed in Babylon**

- 1st Precinct
- Attorneys for Children
- Community Response Bureau
- Hope for Youth
- Long Island Adolescent
- Nassau County Probation
- Mercy First
- Nassau County Attorney
- Office of Mental Health
- Suffolk County Attorney
- Suffolk County Probation (3)
- Town of Babylon (2)

**VII. New York City – Completed in Manhattan**

- Bronx County Family Court
- Children's Defense Fund

- Citizen’s Committee for Children
- Correctional Association of New York
- Episcopal Social Services
- Esperanza
- Good Shepherd Services
- Kings County District Attorney (2)
- New York City Department of Education
- New York City Department of Probation (2)
- New York City Family Court Mental Health Services
- New York City Law Department

**Category 2: Youth and Families**

- Formerly and currently justice-involved youth (JD/JO/adult systems)
- Family members of currently or formerly justice-involved youth

**I. Youth Group at the Center for Youth in Rochester**

**II. New York City youth focus group**

**III. Upstate family focus group**

**IV. New York City family focus group**

**Category 3: Other stakeholder-specific focus groups**

- Local DSS commissioners
- COFCCA and voluntary agencies
  - Andrus
  - Berkshire Farm
  - Boystown, NY
  - Cardinal McCloskey Community Services
  - Children’s Aid Society (2)
  - Children’s Village
  - Council of Family and Child Caring Agencies (COFCCA)
  - Family Treatment Rehabilitation (FTR) Preventive Programs, Brooklyn Community Services
  - Graham Windham
  - Jewish Child Care Association
  - Leake and Watts (2)
  - Lincoln Hall (3)
  - MercyFirst
  - St. Christopher’s, Inc. (2)
  - St. Christopher-Otilie (SCO) Family of Services (2)

**INTERVIEWS OF INDIVIDUALS REPRESENTING THE FOLLOWING ORGANIZATIONS:**

- New York State Department of Corrections and Community Supervision
- New York State Division of Criminal Justice Services
- New York State Office of Probation and Correctional Alternatives
- New York State Office of Children and Family Services

- Erie County Department of Social Services
- Judge, Nassau County
- New York City Administration for Children’s Services (ACS)
- New York City Corporation Counsel
- New York City Criminal Court
- New York City Department of Correction (DOC)
- New York City Department of Education (DOE)
- New York City Department of Probation (DOP)
- New York City Family Court
- New York City Family Court Judges Association
- New York City Legal Aid Society
- New York City Mayor’s Office of Criminal Justice (MOCJ)
- New York City Police Department
- New York State Association of Chiefs of Police
- New York State Association of Counties (NYSAC)
- New York State Commission on Correction
- New York State Juvenile Justice Advisory Group (JJAG)
- State Association of Family Court Judges
- Supreme Court Kings County, Criminal Term
- Westchester County Probation
- Center for Community Alternatives
- Community Connections for Youth
- Center for Court Innovation
- Center on NuLeadership for Urban Solutions
- Citizens Committee for Children
- CUNY
- Families Together in New York State
- Fortune Society
- New York Center for Juvenile Justice
- New York State Permanent Judicial Commission on Justice for Children
- Pace Law School
- Schuyler Center for Analysis and Advocacy
- The Children’s Village
- Youth Represent



## CLASS A AND VIOLENT FELONY OFFENSES

CLASS A FELONIES	PL statute
Conspiracy 1: Defendant Over 18 Years Of Age	105.17
Criminal Possession Controlled Substance-2nd Degree	220.18
Criminal Possession Controlled Substance -1st Degree	220.21
Criminal Sale Of A Controlled Substance – 2nd Degree	220.41
Criminal Sale Controlled Substance – 1st Degree	220.43
Operating As A Major Drug Trafficker	220.77
Aggravated Enterprise Corruption	460.22
Murder 2nd: With Intent	125.25
Murder-1st Degree	125.27
Predatory Sexual Assault	130.95
Predatory Sex Assault Against A Child: Specified Offense Against Child<13	130.96
Kidnapping -1st Degree	135.25
Arson-1st Cause Injury/For Profit	150.20
Criminal Possession Of A Chemical/Biological Weapon-1st Degree	490.45
Criminal Use Of Chemical/Biological Weapon-2nd Degree	490.50
Criminal Use Of Chemical/Biological Weapon-1st Degree	490.55

CLASS B VIOLENT FELONIES	PL statute
Gang Assault-1st Degree: Cause Serious Physical Injury	120.07
Assault -1st Degree	120.10
Aggravated Assault Upon A Police Officer Or A Peace Officer	120.11
Manslaughter -1st Degree	125.20
Aggravated Manslaughter -1st Degree	125.22
Rape -1st Degree	130.35
Criminal Sexual Act-1st Degree	130.50
Aggravated Sexual Abuse -1st Degree	130.70
Course Of Sexual Conduct Against Child- 1st Degree	130.75
Kidnapping – 2nd Degree	135.20
Burglary-1st Degree	140.30
Arson - 2nd Degree	150.15
Robbery-1st Degree	160.15
Intimidating a Victim Or Witness	215.17
Incest-1st: Commit Specified Offense Against Related Person	255.27
Criminal Possession Of A Weapon-1st Degree	265.04
Criminal Use Of A Firearm- 1st Degree	265.09
Criminal Sale Of A Firearm-1st Degree	265.13
Hindering Prosecution Terrorism 1st Degree	490.35
Criminal Possession Of A Chemical/Biological Weapon-2nd Degree	490.40
Criminal Use Of Chemical /Biological Weapon-3rd Degree:Grave Risk Of Death/Injury	490.47

<b>CLASS C VIOLENT FELONIES</b>	<b>PL statute</b>
Gang Assault-2nd Degree: Cause Serious Physical Injury	120.06
Assault On A Peace Officer, Police Officer, Fireman Or Emergency Medical Services Professional	120.08
Assault On A Judge-Cause Serious Physical Injury And Prevent Official Duties	120.09
Strangulation -1st Degree -Obstruct Breath-Cause Serious Physical Injury	121.13
Aggravated Criminally Negligent Homicide	125.11
Aggravated Manslaughter -2nd Degree	125.21
Aggravated Sexual Abuse -2nd Degree	130.67
Burglary-2nd Degree	140.25
Robbery-2nd Degree	160.10
Criminal Possession Of A Weapon- 2nd Degree	265.03
Criminal Use OF A Firearm -2nd Degree	265.08
Criminal Sale Of A Firearm-2nd Degree	265.12
Criminal Sale Of A Firearm With The Aid Of A Minor	265.14
Aggravated Criminal Possession OF A Weapon	265.19
Solicit/Provide Support For An Act Of Terrorism -1st Degree	490.15
Hindering Prosecution Of Terrorism -2nd Degree	490.30
Criminal Possession Of A Chemical/Biological Weapon-3rd Degree	490.37

<b>CLASS D VIOLENT FELONIES</b>	<b>PL statute</b>
Reckless Assault Of A Child	120.02
Assault -2nd Degree	120.05
Menacing A Police Officer Or Peace Officer	120.18
Stalking -1st Degree	120.60
Strangulation -2nd Degree	121.12
Rape -2nd Degree	130.30
Criminal Sexual Act-2nd Degree	130.45
Sexual Abuse -1st Degree	130.65
Aggravated Sexual Abuse -3rd Degree	130.66
Course Of Sex Conduct Against Child -2nd Degree	130.80
Facilitating A Sex Offense With A Controlled Substance	130.90
Intimidating A Victim Or Witness 2nd Degree	215.16
Falsely Reporting Incident -1st Degree	240.60
Placing A False Bomb Or Hazardous Substance -1st Degree	240.62
Place A False Bomb Or Hazardous Substance In A Mall/Arena/Stadium	240.63
Criminal Sale Of Firearm -3rd-Degree	265.11
Aggravated Unpermitted Use Of Indoor Pyrotechnics-1st Degree	405.18
Solicit/Provide Support For Act Of Terrorism -2nd Degree	490.10
Making A Terroristic Threat	490.20

---

<b>CLASS E VIOLENT FELONIES</b>	<b>PL statute</b>
Persistent Sexual Abuse- 2 Or More Prior Convict In 10 Years	130.53
Aggravated Sexual Abuse- 4th Degree	130.65-A
Falsely Reporting An Incident-2nd Degree	240.55
Placing A False Bomb Or Hazardous Substance-2nd Degree	240.61

