

REIMAGINING THE ROLE OF DEFENSE COUNSEL FOR
ADOLESCENTS IN THE ADULT CRIMINAL COURT
SYSTEM: BRINGING THE COMMUNITY AND
POLICYMAKERS INTO THE PROCESS TO ACHIEVE THE
GOALS OF *GIDEON*

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INTRODUCTION

Children under the age of eighteen are minors, a legal status that is recognized in every area of the law in New York State except criminal law. New York State prosecutes sixteen- to eighteen-year-olds and some thirteen- to fifteen-year-olds as adults in the adult criminal court system. Their status as legal minors must be considered in assessing the appropriate punishment in each criminal case in which there could be a criminal conviction. Our justice system is grounded in the principle of penal proportionality. The degree of punishment should be related to the individual's state of mind, state of development, and maturity at the time of the crime. Every sentence imposed upon a teenager, however, must also consider the impact it will have upon his or her development and ability to function in society as an adult. With the exception of those sentenced to the longest periods of incarceration, all convicted youth will re-enter their communities at some point, many while in their teens or twenties. The court system, defined broadly as the courts and systems that serve the courts, bears responsibility for returning youth who can function in their communities. Thus, treatment and rehabilitation must always be considered before imposing a sentence of incarceration in a case involving a teenage defendant.

The Legal Aid Society of New York was one of the first public defender offices in the country to provide specialized representation for teenagers prosecuted in the adult court system. The Adolescent Intervention and Diversion Project (AIDP) of the Criminal Practice represents teenagers ages thirteen to eighteen charged in the adult court system with misdemeanors and felonies. Specially trained lawyers work closely with specially trained social workers to provide legal representation and education, foster care, and mental health and policy

advocacy. For the past fifteen years, the Author has been director of the project, which has served close to five thousand clients.

This enhanced representation allows defense counsel to expand the conversation in court beyond the crimes charged to include the clients' histories and profiles. Based on the information developed during our early assessment process, we present educational and service plans to the court in an effort to provide rehabilitation for the clients and keep as many youth as possible in their communities or in settings where necessary services are available in lieu of incarceration. Given that New York State is one of two remaining states in the United States to set the age of majority for criminal prosecution purposes at sixteen, it is particularly critical to divert as many teenagers as possible from the consequences of prosecution in the adult criminal courts. In New York, the only sentence options, which include supervision, for adolescents in adult courts are probation and incarceration. There exists no statutory path to foster care or mental health treatment at the sentencing stage in the adult criminal court system, as currently exists in the Family Court Act.

The AIDP implements early assessment of clients in order to identify appropriate programming. We have developed relationships with community-based and government agencies to facilitate community-based and residential placements, as well as to advance policy issues critical to our clients and their families. The courts, as a result of our extensive protocol, have come to rely on our ability to plan for our clients, which has resulted in better case outcomes in terms of fewer teenagers facing incarceration and reduced recidivism.

I. HISTORICAL PERSPECTIVE ON THE PROSECUTION OF TEENAGERS IN NEW YORK

New York State first designated sixteen- and seventeen-year-olds as adults for purposes of criminal prosecution in the late 1700s.¹ During the first twenty-five years of the twentieth century, however, great reform swept the country. Embracing social work and child psychology findings, states recognized that children were different from adults, and juvenile courts were established to address the needs of children and teenagers.² Despite the fact that almost every state set the age of adult

¹ See ASHLEY CANNON, CITIZENS CRIME COMM'N OF N.Y.C., GUIDE TO JUVENILE JUSTICE IN NEW YORK CITY 4-5 (Richard Aborn & John Bennett eds., 2010), available at <http://www.nycrimecommission.org/pdfs/GuideToJuvenileJusticeInNYC.pdf>.

² See AM. BAR ASS'N, DIALOGUE ON YOUTH AND JUSTICE 4-8 (2007), available at <http://www.americanbar.org/content/dam/aba/migrated/publiced/features/DYJfull.authcheckdam.pdf>.

criminal prosecution at eighteen, New York maintained that sixteen- and seventeen-year-olds were adults for purposes of criminal prosecution.³ A 1931 report of the New York State Crime Commission criticized maintaining the jurisdictional cutoff at sixteen, but the legislature took no action. Again, this issue was discussed in detail at the 1961 Constitutional Convention, which established the New York State Family Court.⁴ The Convention deferred a decision to raise the age from sixteen, but no further action was ever taken.⁵ As a result, for over one hundred years, New York State has set its jurisdictional age at sixteen. There is no evidence whatsoever that this policy has led to lower rates of crime or recidivism by adolescents.

Bringing even younger children into adult criminal courts, in 1978, New York enacted the Juvenile Offender Act of 1978, which created the category of Juvenile Offender—youth aged thirteen to fifteen who are charged with committing serious felonies.⁶ The Act lowered the age of criminal responsibility and moved prosecution of these cases to adult criminal court. These youth are incarcerated in juvenile facilities at all stages of the criminal proceeding⁷ and face shorter periods of incarceration than adults, but significantly longer periods than children under age sixteen charged as juvenile delinquents, who are prosecuted in family court and who do not receive criminal records.⁸

Juvenile Offenders face mandatory state sentences of incarceration unless the court makes a finding of a Youthful Offender adjudication, which replaces the criminal conviction.⁹ Any youth who is convicted as a Juvenile Offender based on a crime committed during the ages of thirteen to fifteen, or who is convicted of a crime committed between the ages of sixteen and eighteen, may be eligible for consideration as a Youthful Offender under New York law.¹⁰ In the interest of justice, the court may adjudicate a youth as a Youthful Offender in substitution for

³ See CANNON, *supra* note 1, at i, 19.

⁴ See Merrill Sobie, *Pity the Child: The Age of Delinquency in New York*, 30 PACE L. REV. 1061, 1071–73 (2010).

⁵ See *id.*

⁶ 1978 N.Y. Laws ch. 481, § 27 (codified as amended at N.Y. PENAL LAW § 10 (McKinney 2013)).

⁷ See N.Y. EXEC. LAW § 508 (McKinney 2013) (Juvenile Offenders can be transferred to adult correctional facilities at age sixteen with the permission of the sentencing court upon a showing that the youth is no longer benefitting from services provided in a juvenile facility. At age eighteen, youth can be transferred by administrative decision of the agency running the facility. All Juvenile Offenders are transferred to adult correctional facilities at age twenty-one if they are still in custody.).

⁸ See N.Y. FAM. CT. ACT § 353.3 (McKinney 2013); PENAL § 70.05.

⁹ See PENAL § 60.10.

¹⁰ See N.Y. CRIM. PROC. LAW § 720.10(1)–(2) (McKinney 2013).

a criminal conviction, allowing for a reduced sentence and relieving the burden of a criminal conviction.¹¹

II. RECENT SCIENTIFIC AND JUDICIAL DEVELOPMENTS RECOGNIZE THE DIFFERENT CULPABILITY OF ADOLESCENT OFFENDERS

Notably, almost all of the social science, neuroscience, and psychiatric findings supporting the conclusion that teenagers should be evaluated for criminal culpability differently than adults have been published in the last fifteen years.¹² Beginning in the year 2000, brain researchers and psychologists began to publish scientific studies demonstrating that the brain continues to develop during the adolescent years and is not fully formed until the early twenties, with some studies placing the age of complete development at age twenty-five.¹³ New technologies, such as magnetic resonance imaging (MRI), allow scientists to study brain images.¹⁴ This neuroscience research demonstrates that the last areas of the brain to develop are the frontal lobes and specifically the pre-frontal cortex, which governs decision-making, judgment, and impulse control.¹⁵ As this area of the brain develops, young adults become more reflective and deliberate decision makers.¹⁶

Scientific research on adolescent brain development has been recognized by the United States Supreme Court since 2005 as a mitigating factor in sentencing, when, in *Roper v. Simmons*,¹⁷ the Court determined that minors under the age of eighteen bear a constitutionally different status for sentencing purposes.¹⁸ In that case,

¹¹ See *id.* § 720.20(1). An adolescent is eligible only one time for Youthful Offender adjudication on a felony, see *id.* § 720.20(2), as long as there are no events barring such an adjudication as set forth by statute, see *id.* § 720.10.

¹² See Sara B. Johnson et al., *Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent Health Policy*, 45 J. ADOLESCENT HEALTH 216, 216 (2009).

¹³ See, e.g., Debra Bradley Ruder, *A Work in Progress: The Teen Brain*, HARV. MAG., Sept.–Oct. 2008, at 8, available at <http://harvardmag.com/pdf/2008/09-pdfs/0908-8.pdf>.

¹⁴ See NAT'L INST. OF MENTAL HEALTH, *TEENAGE BRAIN: A WORK IN PROGRESS* (2001), available at <http://public.health.oregon.gov/HealthyPeopleFamilies/Youth/AdolescentGrowthDevelopment/Documents/teenbrain.pdf>.

¹⁵ See *id.*; Elizabeth S. Scott & Laurence Steinberg, *Blaming Youth*, 81 TEX. L. REV. 799, 816 (2003) (citing Patricia Spear, *The Adolescent Brain and Age-Related Behavioral Manifestations*, 24 NEUROSCIENCE & BEHAV. REVS. 417, 421, 423 (2000)).

¹⁶ See *id.*

¹⁷ 543 U.S. 551 (2005).

¹⁸ See *id.* at 569, 578–79 (relying on such research in holding that “[t]he Eighth and Fourteenth Amendments forbid imposition of the death penalty on offenders who were under the age of 18 when their crimes were committed”); see also *Eddings v. Oklahoma*, 455 U.S. 104, 115 n.11 (1982) (“[A]dolescents, particularly in the early and middle teen years, are more vulnerable, more impulsive, and less self-disciplined than adults.” (alteration in original))

the Court credited social science research, citing it to support its holding that “[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions.”¹⁹ Special dispensation has been granted for minors in *Roper* (disallowing the death penalty for offenders under the age of eighteen),²⁰ *Graham v. Florida*²¹ (prohibiting life without parole on non-homicide offenses for youth under the age of eighteen),²² and *J.D.B. v. North Carolina*²³ (holding that a child’s age is a relevant factor to consider in determining whether a child is “in custody” for the purposes of *Miranda* warnings).²⁴

More recently, in *Miller v. Alabama*,²⁵ the Supreme Court again held that “sentencing rule[s] permissible for adults may not be so for children.”²⁶ The decision relied upon research showing that children are less capable of evaluating the possible outcomes of different courses of actions.²⁷ Adolescents “are more vulnerable . . . to negative influences and outside pressures, including from their family and peers; they have limited contro[l] over their own environment and lack the ability to extricate themselves from horrific, crime-producing settings.”²⁸ In essence, “[b]ecause juveniles have diminished culpability and greater prospects for reform . . . they are less deserving of the most severe punishments.”²⁹

The Court has recognized that adolescents are less blameworthy for the offenses they commit because they are less capable of evaluating the possible outcomes of different courses of actions and they are more vulnerable to external pressures.³⁰ For example, the Court has found that:

(quoting FRANKLIN E. ZIMRING, CONFRONTING YOUTH CRIME: REPORT OF THE TWENTIETH CENTURY FUND TASK FORCE ON SENTENCING POLICY TOWARD YOUNG OFFENDERS 7 (1978)) (internal quotation marks omitted).

¹⁹ *Roper*, 543 U.S. at 569 (alteration in original) (quoting *Johnson v. Texas*, 509 U.S. 350, 367 (1993)) (internal quotation marks omitted).

²⁰ *See id.* at 578–79.

²¹ 560 U.S. 48 (2010).

²² *See id.* at 82.

²³ 131 S. Ct. 2394 (2011).

²⁴ *See id.* at 2406.

²⁵ 132 S. Ct. 2455 (2012).

²⁶ *Id.* at 2470.

²⁷ *See id.* at 2463–65.

²⁸ *Id.* at 2463 (alterations in original) (quoting *Roper v. Simmons*, 543 U.S. 551, 569 (2005)) (internal quotation marks omitted).

²⁹ *Id.* at 2464 (quoting *Graham v. Florida*, 560 U.S. 48, 68 (2010)) (internal quotation marks omitted).

³⁰ *See, e.g.*, *Roper v. Simmons*, 543 U.S. 551, 569 (2005); *Eddings v. Oklahoma*, 455 U.S. 104, 115 n.11 (1982).

[A]dolescents, particularly in the early and middle teen years, are more vulnerable, more impulsive, and less self-disciplined than adults. Crimes committed by youths may be just as harmful to victims as those committed by older persons, but they deserve less punishment because adolescents may have less capacity to control their conduct and to think in long-range terms than adults.³¹

The Court has further noted that deterrence is not an effective goal of punishment for juveniles because “the same characteristics that render juveniles less culpable than adults”—their immaturity, recklessness, and impetuosity—make them less likely to consider potential punishment.³² In *Roper*, the Court acknowledged that “almost every State prohibits those under 18 years of age from voting, serving on juries, or marrying without parental consent.”³³ In fact, New York sets the age of majority for most civil purposes at eighteen.³⁴ These civil laws were designed to account for the correlation between youth and lack of adult capacity for responsible decision-making. In this context, New York’s decision to continue treating youth under age eighteen as adults for criminal prosecution is incongruous.

“[C]ulpability concerns the degree to which a defendant can be held accountable for his . . . actions. . . . [I]mmature judgment is considered as a possible mitigating circumstance, which would render the defendant less blameworthy for transgressions committed.”³⁵

³¹ *Eddings*, 455 U.S. at 115 n.11 (alteration in original) (quoting ZIMRING, *supra* note 18) (internal quotation marks omitted); *see also Roper*, 543 U.S. at 569.

³² *Graham v. Florida*, 560 U.S. 48, 72 (2005) (quoting *Roper*, 543 U.S. at 571) (internal quotation marks omitted).

³³ *Roper*, 543 U.S. at 569.

³⁴ *See* N.Y. C.P.L.R. 105(j) (McKinney 2013) (defining “infant” as an individual under the age of eighteen); N.Y. DOM. REL. LAW § 2 (McKinney 2013) (“A ‘minor’ or ‘infant’, as used in this chapter, is a person under the age of eighteen years.”); N.Y. GEN. OBLIG. LAW § 1-202 (McKinney 2013) (same). New York State restricts the rights of eighteen-year-olds in the following areas: alcohol possession and sale, *see* N.Y. ALCO. BEV. CONT. § 65c(1)–(2) (McKinney 2013) (establishing minimum age at twenty-one); contractual rights, *see* C.P.L.R. 105(j) (defining infancy); *see also* N.Y. U.C.C. LAW § 9-403(b)(4)(A) (McKinney 2013) (establishing defense based on infancy); marriage, *see* DOM. REL. § 7; voting, *see* N.Y. ELEC. LAW § 5-102 (McKinney 2013); wills, *see* N.Y. EST. POWERS & TRUSTS LAW § 3-1.1 (McKinney 2013); pawnbrokers, *see* N.Y. GEN. BUS. LAW § 47-a (McKinney 2013) (prohibiting pawnbrokers from dealing with minors under age eighteen); gambling and lottery, *see* N.Y. GEN. MUN. LAW § 486 (McKinney 2013) (restricting minors under age eighteen from participating in licensed bingo games); *see also* N.Y. TAX LAW § 1610 (McKinney 2013) (prohibiting sale of lottery tickets to minors under age eighteen); jury duty, *see* N.Y. JUD. LAW § 510 (McKinney 2013); pornography, *see* N.Y. PENAL LAW § 235.21 (McKinney 2013); tattoos, *see* PENAL LAW § 260.21(2); firearms sales, *see* PENAL LAW § 265.16 (crime to sell firearms to minors under age nineteen); cigarette possession and purchase, *see* N.Y. PUB. HEALTH LAW § 1399-cc(2) (McKinney 2013); driving, *see* N.Y. VEH. & TRAF. LAW § 502(2) (McKinney 2013).

³⁵ Elizabeth Cauffman, Jennifer Woolard & N. Dickon Reppucci, *Justice for Juveniles: New Perspectives on Adolescents’ Competence and Culpability*, 18 QUINNIPIAC L. REV. 403, 415 (1999).

Developmental psychologists who have examined the issue of youth and delinquency propose “that adolescents, as a class, may warrant characterization as less mature than adults, not because of cognitive immaturity . . . but because of deficiencies in maturity of judgment.”³⁶

III. MOST ADOLESCENT OFFENDERS DO NOT CONTINUE THEIR BEHAVIORS INTO ADULTHOOD

A criminal defense client’s youth factors into both his or her degree of culpability and his or her capacity for reform. Important findings have shown that most adolescent offenders do not continue their behaviors into adulthood.³⁷ These findings of low recidivism rates are consistent with the studies of brain maturation as teens enter adulthood. In 2011, the United States Department of Justice’s Office of Juvenile Justice and Delinquency Prevention published a report which analyzed the most comprehensive data set currently available about serious adolescent offenders and their lives in late adolescence and early adulthood. The most significant finding of the study is that “[m]ost youth who commit felonies greatly reduce their offending over time, regardless of the intervention. Approximately 91.5% of youth in the study [aged fourteen to eighteen] reported decreased or limited illegal activity during the first 3 years following their court involvement.”³⁸ Additionally, the study found that “[l]onger stays in juvenile facilities did not reduce reoffending; institutional placement even raised offending levels in those with the lowest level of offending.”³⁹

IV. COLLATERAL CONSEQUENCES OF CRIMINAL CONVICTIONS

One of the most significant effects of prosecuting youth under eighteen years of age in adult courts is the exposure to the collateral consequences of criminal convictions. Aside from the significant direct effects of adult sentences and detention or imprisonment with adults, the collateral consequences of a criminal conviction can permanently remove an adolescent from the path to becoming a contributing member of society. A criminal conviction interferes with or bars an

³⁶ *Id.* at 412.

³⁷ See EDWARD P. MULVEY, U.S. DEP’T OF JUSTICE, OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, HIGHLIGHTS FROM PATHWAYS TO DESISTANCE: A LONGITUDINAL STUDY OF SERIOUS ADOLESCENT OFFENDERS 3 (2011), available at <https://ncjrs.gov/pdffiles1/ojjdp/230971.pdf>.

³⁸ *Id.* at 1.

³⁹ *Id.* at 3.

individual from access to many of the systems necessary to becoming a successful adult. Criminal convictions may create barriers to employment, college admission, and financial aid; lead to eviction and homelessness; and have significant immigration consequences.⁴⁰ In New York State, in 2010, 1226 youth aged sixteen and seventeen were convicted as adults of non-violent felonies and misdemeanors and not granted Youthful Offender status.⁴¹ Every one of those young people is saddled with a criminal record that will follow him or her for life.

Given the well-documented issue of disproportionate minority contact in the criminal justice system, it is important for us, collectively, to decrease the obstacles to success for minority youth. Creating lifelong barriers for behavior that has been shown, for the most part, to be time-limited is an unjustifiably harsh and irreversible consequence.

V. CHANGING THE TRADITIONAL PUBLIC DEFENDER MODEL OF REPRESENTING TEENAGERS

In 1996, the Criminal Practice of the Legal Aid Society of New York City created a pilot project in its New York County office dedicated to representing the youngest clients, aged thirteen to fifteen, prosecuted for the commission of violent felonies in the adult criminal court system. The unit was named the Juvenile Offender Team (J.O. Team) to reflect the jurisdictional designation of the target population. As described below, the pilot project has since expanded to be citywide and encompasses representation of teenagers ages thirteen to eighteen charged with misdemeanors and felonies. Lawyers work closely with social workers and provide legal representation and education, foster care, and mental health and policy advocacy. For the past fifteen years, the Author has been director of the project, which has served close to five thousand clients. Adolescent clients present unique challenges to the criminal justice system since their involvement with their families and other government systems must be considered to arrive at a meaningful outcome of the criminal case for the youth and the community. The needs of these youth exist along a continuum, but the

⁴⁰ See LEGAL ACTION CTR., SETTING THE RECORD STRAIGHT: WHAT DEFENSE ATTORNEYS NEED TO KNOW ABOUT THE CIVIL CONSEQUENCES OF CLIENT CRIMINAL RECORDS 8–13 (2001), available at http://lac.org/doc_library/lac/publications/setting_the_record_straight.pdf; see also COLLATERAL CONSEQUENCES CRIM. CHARGES (Nov. 25, 2013), <http://www2.law.columbia.edu/fourcs> (providing overview and detailed information on collateral consequences of criminal convictions in New York State).

⁴¹ Andrew White, *The High Cost of Convicting Teens as Adults*, CHILD WELFARE WATCH: CENTER FOR N.Y.C. AFF. AT NEW SCH. (Dec. 17, 2012), <http://blogs.newschool.edu/child-welfare-nyc/2012/12/the-high-cost-of-convicting-teens-as-adults>.

majority present multiple, significant issues which must be addressed to minimize incarceration and recidivism.

Our experience has demonstrated that approximately 20% of our youngest clients have been or presently are in foster care and half regularly use drugs and/or alcohol and/or have a family member who is chemically addicted or dependent. A significant percentage of our youth has been the victim of or has lived in the presence of domestic violence. Approximately two-thirds have known or undetected special education needs. Many do not attend school regularly because their school programs fail to meet their educational needs. Twenty-five percent have significant mental health needs, requiring medication and consistent counseling services.

The pilot J.O. Team's approach concentrated juvenile representation with a select number of staff familiar with the systems in which young clients are involved, including foster care, schools, and mental health services, and who have strong connections to adolescent-specific service providers. This specialized knowledge facilitated speedy diversion of the youngest clients from incarceration as well as placements with service providers that address needs such as substance abuse, emotional or learning disabilities, or mental health problems. Over the life of this pilot project, we found that such speedy interventions dramatically reduced the recidivism rates of juveniles.

The unit was and continues to be composed of experienced attorneys, a forensic social worker, an investigator, and, for a number of years in its early history, a therapeutic social worker. We conduct crime scene investigations as early in the process as possible, make home visits, and, where necessary, perform complete collateral interviews. The team compiles clients' social, educational, and mental health histories early in the prosecution. This information enhances case advocacy and aids in the identification of appropriate alternative-to-incarceration programs, reducing the time spent in custody for most clients. The team has developed relationships with experts as well as significant internal expertise in adolescent development, psychiatric diagnoses prevalent among youth, the impact of child abuse and neglect, and the foster care system. The team also provides representation in educational matters, including school suspension hearings and special education advocacy, and arranges for our clients to be placed in foster care settings where necessary.

The team works collaboratively with lawyers and social workers in the Legal Aid Society's Juvenile Rights Practice (JRP), which practices in family court, to coordinate outcomes when the two offices represent the same clients. Many of our clients are either currently or have previously been represented by JRP lawyers and social workers in child protective or delinquency cases. This continuum of representation across the court

systems provides the Legal Aid Society with the unusual ability to access information about a child's history and coordinate system planning. This relationship enables us to obtain social, educational, and mental health information soon after being assigned to the case, the availability of which greatly aids us in creating sentencing plans. Additionally, collaboration with our family court staff facilitates the placement of our clients in foster care settings where necessary—an outcome that is unavailable in criminal court or New York State Supreme Court.

Specialized representation allows us to engage in early, intensive case investigation and assessment. We view early intervention as a critical feature of our approach, since multiple court appearances impair clients' school attendance as well as their parents' ability to attend work. Our prompt investigations and assessments lead to meaningful discussions of the merits of each case with the assigned prosecutor at an early stage of the prosecution. This approach has significant benefits for both our clients and the efficient operation of the criminal justice system.

VI. PILOT OUTCOMES

One study of cases handled by the team in Manhattan showed that, over an eight-year period, approximately 25% of the cases were dismissed prior to indictment as a result of our early investigation and advocacy with the prosecution.⁴² Provision of early, enhanced services to our young clients and their families has decreased the more expensive and, often, destructive option of incarceration. Fully 88% of the youth served by Legal Aid's New York County pilot team were diverted from prison sentences. By contrast, only 60% of all youth whose cases were handled in that county's Youth Part were diverted from prison.⁴³

An internal, longitudinal study of Legal Aid Juvenile Offender cases handled by the J.O. Team in the New York County Youth Part showed that the clients had a recidivism rate of only 30%, in sharp contrast to the 80% recidivism rate of all youth lodged with the State Office of Children and Family Services for crimes that are usually much less serious than the violent felonies committed by our clients. Moreover, even among the 30% of former J.O. Team clients who committed new offenses, the criminal activity was generally less serious. Only 10% were convicted of new felony offenses, while 62% of the new

⁴² See CHARLES BRECHER ET AL., A STUDY OF THE LEGAL AID SOCIETY'S JUVENILE OFFENDER TEAM 20–21 (2004).

⁴³ Michael A. Corriero & Mollie Faber, *The Youth Part and Juvenile Justice*, N.Y. L.J., Feb. 4, 1997, at 44.

convictions were for violations (non-criminal offenses) and 29% were for misdemeanor offenses.⁴⁴

In 1998, the federal Office of Juvenile Justice and Delinquency Prevention highlighted the Legal Aid Society's J.O. Team as an innovative program providing high quality defense to adolescents prosecuted in the adult court system.⁴⁵

VII. SPECIALIZED REPRESENTATION HUMANIZES TEENAGERS IN THE ADULT COURTS—IT IS ABOUT THE WHOLE PERSON, NOT JUST ABOUT THE CRIME

Being a teenager is hard enough even for those lucky enough to live with a loving family in a safe neighborhood and be enrolled in an academically strong, nurturing school. Sadly, for many teens in the criminal court system, one or many of the elements of a healthy childhood are missing. The traditional analysis of an individual prosecuted for the commission of a crime looked to whether the crime was committed by the individual charged and the harm caused by the crime. This evaluation assumes that a person charged with a crime has control over most aspects of his or her life and has made one or a series of bad decisions resulting in a court appearance. This rubric, however, rarely applies to teenagers who lack control over where they reside, with whom they live, and where they attend school, and who cannot access services without the aid and/or permission of an adult.

Setting aside the most egregious offenses, where significant harm is caused and incarceration is the likely case outcome, there is a wide range of system responses to the majority of the crimes charged against teenagers. In fact, despite a list of approximately twenty serious felonies that can be charged against teenagers aged thirteen to fifteen in the adult court system in New York City,⁴⁶ the vast majority of youth in that age group—consistently in the range of 80% to 85%—are charged with robberies.⁴⁷ These offenses are almost always committed in groups and

⁴⁴ These statistics are based on a longitudinal recidivism study of Juvenile Offenders represented by the Legal Aid Society from 1999 through 2001. The findings were not published and are on file with the author.

⁴⁵ See PATRICIA PURITZ & WENDY WAN LONG SHANG, U.S. DEP'T OF JUSTICE, OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, INNOVATIVE APPROACHES TO JUVENILE INDIGENT DEFENSE (1998), available at <https://www.ncjrs.gov/pdffiles/171151.pdf>.

⁴⁶ See N.Y. CRIM. PROC. LAW § 1.20(42) (McKinney 2013); N.Y. PENAL LAW § 10.00(18) (McKinney 2013).

⁴⁷ See MARIAN GEWIRTZ, N.Y.C. CRIMINAL JUSTICE AGENCY, INC., ANNUAL REPORT ON THE ADULT COURT CASE PROCESSING OF JUVENILE OFFENDERS IN NEW YORK CITY: JANUARY THROUGH DECEMBER 2011, at 9–10 (2012), available at <http://www.cjareports.org/reports/jo2011color.pdf>; MARIAN GEWIRTZ, N.Y.C. CRIMINAL JUSTICE AGENCY, INC., ANNUAL REPORT

there is often a wide range of culpability within the group. As such, it is critical to tell the story of each child charged.

VIII. EXPANSION OF THE MODEL CITYWIDE

Based on the success of our pilot project, in 2005, Legal Aid secured government funding to expand the project to Brooklyn and, in 2007, to the Bronx and Queens. The unit expanded its representation to include select youth aged sixteen to eighteen, since, in New York State, such youth are eligible to have their convictions replaced by Youthful Offender adjudications,⁴⁸ thereby erasing a criminal conviction for crimes committed up to their nineteenth birthdays. Additionally, thirteen- to eighteen-year-olds share many of the developmental and social issues which are critical to court and policy advocacy. In order to reflect the broader age constituency, the project name was changed to the Adolescent Intervention and Diversion Team (AID). Since there are too many cases of sixteen- to eighteen-year-olds to accept into the unit,⁴⁹ our intake decision is based on whether the youth has issues that will make it difficult for the court or counsel to create an appropriate sentencing plan in the absence of specialized counsel.⁵⁰ These issues include: mental health, serious substance abuse, special education, and foster care involvement. The unit is comprised of one lawyer and one social worker in each county, two investigators/paralegals, and a supervising attorney. In addition to individual client representation, the lawyers and the supervising attorney serve as expert resources for the more than five hundred Legal Aid Society lawyers citywide representing young clients. The unit also often provides advice for lawyers outside the Legal Aid Society who represent teenagers.

ON THE ADULT COURT CASE PROCESSING OF JUVENILE OFFENDERS IN NEW YORK CITY: JANUARY THROUGH DECEMBER 2010, at 9–10 (2011), *available at* <http://www.cjareports.org/reports/jo2010color.pdf>. For a list of additional annual reports containing similar statistics, see JUVENILE ARREST REPORTS (Dec. 30, 2013), <http://www.cjareports.org/index8.htm>.

⁴⁸ See CRIM. PROC. § 720.10(1)–(2).

⁴⁹ New York State Division of Criminal Justice Services data indicates that there were 46,000 arrests of sixteen- to seventeen-year-olds in New York State in 2010. The majority of those arrests occur in New York City. See SCHUYLER CTR. FOR ANALYSIS & ADVOCACY, RAISING THE JUVENILE JUSTICE JURISDICTIONAL AGE: TREATING KIDS AS KIDS IN NEW YORK STATE'S JUSTICE SYSTEM (2012), *available at* http://www.scaany.org/documents/scaabrief_raiseheage_march2012_000.pdf.

⁵⁰ *Id.*

IX. CITYWIDE OUTCOMES

The AID project has distinguished itself as a model of criminal representation for young people in the adult criminal courts. In 2010, the city's Criminal Justice Coordinator's office conducted a study that showed that the AID model of service delivery drastically improves outcomes.⁵¹ The study showed that the AID project had a 53% conviction rate for Juvenile Offender cases, in contrast with an 83% conviction rate of Juvenile Offender clients represented by lawyers outside of Legal Aid. Fully 31% of Legal Aid cases were dismissed or resulted in acquittal, while other lawyers achieved that result in only 13% of the cases they handled. Much of this latter statistic is likely due to the early investigation and advocacy work in which our lawyers and social workers regularly engage. Lastly, only 40% of those clients represented by the AID unit who were convicted and sentenced went to prison as compared to 51% of Juvenile Offenders represented by other lawyers.

X. PROGRAM MODEL

The AID model relies on a multi-pronged approach consisting of individual, interdisciplinary case representation, city and state policy and legislative advocacy, and advocacy with administrative agencies. Legal Aid's role as the primary defender in New York City provides us with a unique ability to track trends and categories of need among particular client populations. A key to our success in case outcomes for young clients lies in the fact that courtroom advocacy is only one piece of our representational model.

It should be noted at the outset that we pursue traditional litigation routes for the cases that call for them. However, even for cases we intend to actively litigate, we may concurrently pursue a mitigation or service plan route. The latter approach serves multiple functions: It creates a plan that can be presented to the court to support a bail application, it allows the client to demonstrate that he or she is amenable to treatment or services, it can stabilize family dynamics, and it creates a service plan that can be utilized in future plea negotiations.

In cases where teenagers are facing serious charges and mandatory state prison time, this approach always helps our clients stabilize their lives and demonstrate that they are amenable to reform. Our experience indicates that recidivism is reduced and community safety is best

⁵¹ Case outcomes for the year 2008 were evaluated.

protected when appropriate services are identified and accessed for the vast majority of court-involved teenagers and young adults, so that they become less likely to be entangled again in the court system. To achieve effective mitigation or service plans for teenagers, we do most of that work outside the courtroom.

AID staff make home and school visits and review school, special education, and mental health records. We interview family members, neighbors, caretakers, school personnel, and counselors. Where necessary, we provide critical context to stories of hardship, such as teens running away from home to avoid abusive caretakers, substance abuse as a result of undiagnosed and untreated mental health problems, and truancy as a result of inadequate school placement or programming.

Once these life issues are identified, counsel develops a plan along with our client, and proposes the plan to the court. These histories and plans are often presented in extensive pre-pleading or pre-sentence reports. Some clients need little more than a curfew or a referral to an afterschool program. Others need intensive outpatient or residential treatment programs or foster care services. Some require therapeutic school settings, intensive academic remedial services, or special education services. In particular, judges often require service plans for young clients charged with serious offenses or who appear to have significant and unaddressed social or emotional issues in order to avoid incarceration or as a way to allow the youth to “earn” Youthful Offender treatment. Demonstrating that a young person can adhere to the court’s directives during the course of a case helps assess a client’s ability to stay crime free. Prolonged periods of compliance lead to better case outcomes and reduced recidivism.

Effective planning for clients requires cultivating relationships and cooperative agreements with community providers and government agencies. When we specialized our representation for adolescents, we met with many service providers, government agencies, and politicians to introduce the model and establish working relationships. This process is ongoing and is often tied to both individual client representation and broader policy issues.

Because our clients often have issues that require systems coordination, we sometimes serve as the point for service referral and management. Modifications of service plans are also made where necessary. In some cases, additional needs are identified requiring new or different programs to be put in place. For other clients, we may find that the initial program does not meet their needs or that another program might be more appropriate. In those cases, we will locate and arrange to place the client in a program that better meets his or her needs. This quick re-referral process minimizes or eliminates the use of

incarceration after a program failure. Additionally, some clients and families develop problems during the life of the case, and the process of monitoring and service provision allows for modifications to better meet developing needs.

XI. EDUCATIONAL ADVOCACY IS CRUCIAL FOR EVERY CLIENT UNDER TWENTY-ONE

Before outreach can start on an individual case, the AID team evaluates a young person's school history. The information in school records often contains critical information about a client's family and mental health history in addition to special education and academic histories. Given the prominence of the phenomenon of the school-to-prison pipeline in our criminal justice system, the importance of a young person's school history cannot be underestimated. Even where the criminal case is not related to school, school history plays an important role in how the young person enters the court system. School serves as a young person's social community and a history of push-out or undiagnosed or unmet special education issues can lead to alienation and dysfunction.

Although the school-to-prison pipeline narrative is often examined in the context of juvenile court cases, it is no less important when teenagers are charged in adult court settings. Approximately 64% of school-based arrests in New York City in the 2011–12 school year involved students aged sixteen and over, all of whom by law were prosecuted in adult criminal courts.⁵² The most prominent problems we see among our client population are unaddressed and unidentified disabilities, contributing to school failure and placing a child at risk of incarceration; a lack of residential placement options to address the special education service needs of youth diagnosed with intensive emotional and learning disabilities; significant barriers to re-enrollment upon release from incarceration; and a lack of appropriate educational placements for older teens with few course credits.⁵³

We have developed a strong educational advocacy practice in AID. We represent our young clients in school suspension hearings, and we

⁵² See N.Y.C. SCH.-JUSTICE P'SHIP TASK FORCE, KEEPING KIDS IN SCHOOL AND OUT OF COURT 8 chart 6 (2013), available at <http://www.nycourts.gov/ip/justiceforchildren/PDF/NYC-School-JusticeTaskForceReportAndRecommendations.pdf>.

⁵³ In New York City, there are approximately 138,000 students between the ages of sixteen and twenty-one who are "overage and under-credited." OFFICE OF MULTIPLE PATHWAYS TO GRADUATION, N.Y.C. DEP'T OF EDUC., MULTIPLE PATHWAYS RESEARCH AND DEVELOPMENT: SUMMARY FINDINGS AND STRATEGIC SOLUTIONS FOR OVERAGE, UNDER-CREDITED YOUTH 9 (2006), available at <http://schools.nyc.gov/NR/rdonlyres/B5EC6D1C-F88A-4610-8F0F-A14D63420115/0/FindingsofOMPG.pdf>.

advocate for special education services and appropriate school and program placements. Our unit assesses whether the youth is on an appropriate educational track, examining both the availability of academic and vocational services; monitors the youth's performance in school; and, upon discharge from incarceration, facilitates appropriate placements in the city's school system or in vocational training. All of the lawyers in our trial offices are trained in school suspension advocacy, and we have developed resource materials that are posted on our intranet. Over the years, we have developed relationships with individuals throughout the Department of Education (DOE) who can aid in finding appropriate programming and placement for our clients.

Statistics kept by the New York City agency that administers juvenile detention facilities reveal that at least 46% of the students in the juvenile justice facilities receive special education services, compared to 11% of all students in New York City public schools.⁵⁴ The average age of admission to Secure Facilities (where all youth charged as Juvenile Offenders are mandated to be detained, and where some charged with Juvenile Delinquency are also detained) is fifteen. At that age, which normally corresponds with ninth or tenth grade, 90% of detained youth read below the seventh grade level, 83% had math skills below the seventh grade level, and 25% read below the fourth grade level.⁵⁵ Of the youth (aged sixteen to twenty-one) admitted to the city's jail system for adults, approximately 83% have previously been classified as requiring special education services.⁵⁶ Thus, at any given time in New York City, there are at least one thousand incarcerated youth below the age of twenty-one identified as in need of special education services.⁵⁷

As a result of various errors and omissions by the school system, our teenage clients often fall so far behind that they simply stop attending school. Incarceration has been shown to serve as a remarkably unsuccessful treatment for truancy. Schools all too often fail to provide effective interventions for at-risk youth. Instead, some schools criminalize truancy and behavioral problems and push youth into the criminal justice system, rather than providing ameliorative services that would prevent students' entry into the court system. Meaningful attempts to divert youth from a criminal involvement should strive to

⁵⁴ See TIMOTHY LISANTE & CHRISTINE PAHIGIAN, NYC STUDENTS: PROMISING PRACTICES IN EDUCATIONAL RE-ENTRY 3 tbl. 5 (2013), available at <http://www.nycourts.gov/ip/justiceforchildren/PDF/Capital%20Region%20Summit/PPTs/9%20P4%20-%20Lisante.pdf>.

⁵⁵ This data, which used to be published on the website of the Department of Juvenile Justice, which is now the Division of Youth and Family Justice, is no longer made publicly available.

⁵⁶ See OFFICE OF MULTIPLE PATHWAYS, *supra* note 53.

⁵⁷ See *id.*; see also *Handberry v. Thompson*, 92 F. Supp. 2d 244 (S.D.N.Y. 2000) (Department of Correction statistic cited in plaintiffs' complaint).

increase academic engagement and build academic competence. More frequent use of suspension and expulsion without resort to remedial measures has been proven to increase the risk of school dropout.⁵⁸

We found that these problems were compounded by the lack of effective transitional school services for young people returning to the community after being incarcerated, even for short periods of time. Commonly, credits were not transferred, course work and records were not transmitted, and, too often, schools simply refused to readmit returning students. Those students who spent periods of time unable to attend school as a result languished without the structure that schools provide and that is often required by the courts and the probation department. As a result, these youth were at high risk of re-arrest, incarceration, and recidivism. In 2005, the AID project and Legal Aid's Juvenile Rights staff in Brooklyn jointly created a re-entry transition team with state funding. A lawyer and social worker worked with Juvenile Delinquency and Juvenile Offender clients in Brooklyn to facilitate re-enrollment after release from incarceration, collaborated with city agencies to ensure appropriate services were provided, and engaged in individual case advocacy to obtain appropriate special education and academic services and placements. Our staff also provided counseling and support to the youth and their family members, helping the youth transition to community school settings.

In order to address the issue of educational transition more globally, the Legal Aid Society partnered with Advocates for Children, an educational advocacy organization in New York City and pro bono co-counsel Dewey Ballantine LLP, to file a class action lawsuit in the District Court for the Eastern District of New York on behalf of youth charged as Juvenile Delinquents and Juvenile Offenders who were denied timely enrollment and appropriate education upon return to New York City schools from detention centers and long term incarceration.⁵⁹ After six years of litigation and negotiations, with the education department instituting substantial changes along the way, plaintiffs secured a certified class and entered into a court-ordered

⁵⁸ KATIE MOSEHAUER ET AL., WASHINGTON APPLESEED & TEAM CHILD, RECLAIMING STUDENTS: THE EDUCATIONAL AND ECONOMIC COSTS OF EXCLUSIONARY DISCIPLINE IN WASHINGTON STATE (2012), available at http://www.teamchild.org/docs/uploads/Reclaiming_Students_-_a_report_by_WA_Appleseed__TeamChild.pdf.

⁵⁹ See Second Amended Class Action Complaint, J.G. *ex rel.* F.B. v. Mills, No. 04-CV-5415, 2011 WL 239821 (E.D.N.Y. Jan. 24, 2011), 2005 WL 6004341. The action alleged that Juvenile Delinquents and Juvenile Offenders returning from detention or court-ordered placement were often turned away from school altogether or not placed in appropriate schools, grade level, classes, and services, in violation of their constitution due process rights, the Individuals with Disabilities Education Act, the Americans with Disabilities Act, the Rehabilitation Act, the New York State Constitution, and New York education law. *See id.*

consent decree with New York City in 2011,⁶⁰ following their court-ordered settlement with the State, which guarantees oversight, monitoring, and technical assistance, in 2008. The New York City DOE agreed to a detailed set of obligations to make sure that all students returning from court ordered settings would be promptly enrolled in school upon their return to New York City community schools.⁶¹ Compensatory relief was provided for school-aged students who had not been returned to school in a timely manner during the course of the lawsuit.⁶² Monitoring of New York City's compliance is ongoing.

As part of a broad coalition of advocacy and legal groups, we also participated in the effort to have the City Council pass the Student Safety Act.⁶³ In early 2011, Mayor Bloomberg signed the Act—which provides for public reporting of data on suspensions and arrests in city schools—into law.⁶⁴ The transparency brought about by this law has led to an ongoing examination of discipline and police practices in our schools. Since the data has become publicly available, the numbers of suspensions and arrests in schools have decreased significantly.

As a result of our educational advocacy, we have established ourselves as experts in the field of education and court-involved youth in New York City. Our individual case work informs our policy discussions. We are regularly consulted by the New York City DOE and the City Council on policy issues related to service provision, programming, school discipline, and special education. The city's one school district is comprised of 1700 schools, making outreach and collaboration a sometimes complicated but rewarding process. Recently, for example, AID collaborated with the DOE to train school administrators and social service teams in how to more extensively assess young people's risks and serve as service referral resources to their students and their students' families before court involvement.

XII. FOCUS ON FAMILIES, MENTAL HEALTH, AND SUBSTANCE ABUSE

For clients with known histories in the foster care or mental health systems, AID reviews their records as early as possible in the case. Sadly,

⁶⁰ See *J.G. ex rel. F.B. v. Mills*, No. 04-CV-5415, 2010 WL 5621274, at *13 (E.D.N.Y. Dec. 28, 2010) (report and recommendation of magistrate judge), *adopted by* No. 04-CV-5415, 2011 WL 239821 (E.D.N.Y. Jan. 24, 2011).

⁶¹ See *id.* at *2, *13.

⁶² See *id.* at *2.

⁶³ City Council, Local Law No. 6, (N.Y.C. 2011) (codified as amended at N.Y.C., N.Y. ADMIN. CODE §§ 8-1101–1103 (2011)).

⁶⁴ See *id.*; see also *The Student Safety Act*, N.Y. CIV. LIBERTIES UNION, <http://www.nyclu.org/schooltoprison/ssa> (last visited Jan. 7, 2014); Noah Rosenberg, *City Will Require Police to Report on School Arrests*, N.Y. TIMES, Dec. 21, 2010, at A30.

this process of cross system evaluation does not occur for many individuals until entry into the court system. Very often, the systems do not communicate to coordinate service delivery. Referrals to mental health, vocational, educational, or substance abuse treatment—or some combination of these—can provide the socially positive redirection that can lead to a positive case outcome. The lack of consistent intervention with young offenders soon after their initial contact with the police or another authority has long been recognized as the most significant gap in the justice system's response to youth crime.⁶⁵

Over the years, we have seen many manifestations of mental health and substance abuse issues. Some clients have long histories of mental illness with inconsistent treatment. It is not unusual for a teenage client to self-medicate with illegal drugs in the absence of consistent treatment. Our practice of collecting records from years of treatment allows an evaluating mental health professional, who we look to as an expert, to make recommendations for future treatment to the court on behalf of our clients. Some clients with mental health issues have family members with similar problems. Our team, either alone or with other mental health professionals, will attempt to engage the parents in considering a recommended treatment plan for their child.

As we have developed an advocacy approach for education issues, we have also developed relationships with city agencies, therapeutic providers, and alternative-to-incarceration programs in order to create service plans for clients. We have advocated for substance abuse referrals, mental health placements and service referrals, foster care placements, and other community-based programming as an alternative to detention and incarceration. Our experiences in individual cases also inform our system reform work. We often appear in court and in policy and legislative meetings and hearings as partners in securing funding and services. These relationships are critical to our ability to advocate for our clients.

For a number of years, we had a therapeutic social worker (TSW) on staff. We created this position because we found that our teenage clients were stabilizing after participation in community-based programs, but their families were still in crisis. Additionally, some clients did not have caretakers who were going to serve as long-term supports, and our young clients needed independent living skills to learn how to function on their own. The TSW worked with each family member to address his or her own needs as a first step in being able to care for others. She worked on issues, such as time management and communication skills, and made referrals to educational and job

⁶⁵ Jeffrey A. Butts & Daniel P. Mears, *Reviving Juvenile Justice in a Get-Tough Era*, 33 *YOUTH & SOC'Y* 169, 191 (2001).

training services. The TSW also used role-play to teach family members to understand each other's feelings and respond appropriately to each other in a controlled environment, providing an experience they could draw upon to mediate future conflicts. Once many community-based agencies built this function into their own staffing, we discontinued this service internally.

XIII. INDIVIDUAL CASE SUCCESSES BASED ON THE AID COMPREHENSIVE REPRESENTATION MODEL

The following represent just some of the AID client success stories that we could not have achieved without specialized representation and relationships with our community and government agency partners.

DR was a sixteen-year-old client charged with armed robbery on a bus. The AID social worker reviewed hundreds of pages of foster care and educational records in order to present an accurate picture of our client to the court and prosecutor. Our client is the youngest of seven siblings, almost all of whom were born while their mother was incarcerated. The children were moved from caretaker to caretaker, most of whom really did not care for the children. When he was actually in the care of this mother, a neglect case was filed against her for hitting him. He was also neglected by his mother's girlfriend and, at some point, his oldest sisters filed for custody of him. He was then removed from his sisters' home because it was discovered that his sisters were using his and his siblings' benefit money to buy drugs, which they sold, and were providing no care for the younger children. Our client began stealing to survive. After reading the client's history, the judge agreed to allow him to return to the community in a foster care placement in an alternative-to-incarceration program. Although he initially struggled, DR completed the program, was adjudicated a Youthful Offender, and was sentenced to probation.

RM was a sixteen-year-old boy charged with falsely reporting an incident in the third degree, a misdemeanor. He was being bullied at school, and despite the fact that the school was aware of the problem, nothing was done. He tried to transfer to a different school, but was told he could not do so unless he filed a police report. New York City school policy requires a police complaint to initiate a safety transfer. Desperate, he went to the local precinct and filed a complaint against one of the boys who was bullying him, alleging that the boy robbed him. The police investigated the complaint and, upon learning that it was false, arrested our client. We referred the client to a community-based alternative-to-detention program with an educational component. His caseworker brought RM to the enrollment office of the DOE and succeeded in having him transferred to a new school. His attendance

improved markedly and he completed participation in the program. The court granted him an adjournment in contemplation of dismissal.

GM was a seventeen-year-old girl with no school disciplinary history. Six weeks from high school graduation, she was suspended for an incident that began when she tried to re-enter her school after forgetting her wallet in her locker. The school has a rule that students cannot re-enter after they leave, but the student asked for permission since she lives forty-five minutes from the school and could not walk home. The student was told by the school safety agent (SSA) to speak with the parent coordinator to get permission to go to her locker but, as the student was walking up the stairs to the desk where the parent coordinator sat, the same SSA grabbed the student's arm. The student pulled her arm away, and the SSA placed her arms around the student in a restraint; shortly thereafter, numerous SSAs responded to the scene and restrained and handcuffed the student. At one point, testimony of the dean and a video showed the SSAs holding the student precariously over the staircase railing. The suspension hearing officer found that, despite the SSA's claim that the student had hit her, based on the oral and video evidence, the student never used physical force during the encounter. The suspension and criminal case were dismissed, but not before the student had spent ten hours incarcerated before she was arraigned in criminal court on the arrest and had been excluded from her school for eight days.

RF, a fifteen-year-old girl charged with robbery, did well while psychiatrically hospitalized for severe depression, but her mother was not supportive of the counseling and medication regime that was a critical part of her discharge plan. RF began to use illegal drugs in an effort to self-medicate her psychiatric symptoms. When RF was transferred to a long-term therapeutic environment, her mother signed her out against medical advice. Our social worker assigned to this case dedicated a great deal of time working with the mother to accept her daughter's needs and understand the need to fully support a treatment plan for RF. As a result of this intervention, RF was released to a community-based supervision and counseling program with intensive community-based mental health services put in place. Based on her ability to stay out of trouble and her clinical progress, the court granted her a conditional discharge and Youthful Offender treatment.

CR was a fourteen-year-old boy charged with two gunpoint robberies. After reviewing his school records, we learned that he was classified as having an intellectual disability, but had never received the educational services he needed. Additionally, his mother died when he was nine years old, and his grandparents, who had cared for him, became too old and sick to continue to care for him. At the time of the crime, he was living with his father, who was also limited in his

functional ability, working twelve hours a day, and had started a new family with another woman. A combination of record review, home visits, and neighbor and school interviews brought to light that our client had been essentially raising himself for the two years preceding his arrest. Through advocacy with the New York City DOE, we were able to secure a seat for him in a residential school that was able to address his significant learning disabilities while teaching him the life skills he needed to function as an adult. His conviction was replaced with a Youthful Offender adjudication. He is now twenty years old and remains at the school, where he attends classes and has a job in the community.

ER was a fifteen-year-old boy charged with robbery in the first degree. In the years prior to his arrest, he witnessed his uncle repeatedly rape his sister and was threatened by the uncle to remain silent about what he had seen. The client turned to drugs to deal with his feelings about what he had witnessed. We placed our client in a substance abuse program and provided supportive services to his mother so she could retain her housing. He was adjudicated a Youthful Offender.

MM was a fifteen-year-old boy charged with a sex offense. Extensive review of child protective agency records from multiple states unearthed a pattern showing that his family moved from state to state to evade government agency involvement. In fact, the father of some of the children in the home was suspected of sexually abusing the children over a period of years. After a period of detention, our team worked with the Administration for Children's Services, which administers the foster care and detention system, so that MM could be placed in a foster care setting. He now attends school and is receiving therapeutic services to address his history as a victim and an offender.

KC was a seventeen-year-old client charged, along with other teenagers, with robbing a restaurant deliveryman. KC lived with his mother. His father had been murdered. When we first met him, he was so depressed, he would sit in court and cry. He could not function in school or at home. He lacked a feeling of self-worth and saw no future for himself. We referred him to a job training and placement program for court-involved youth. KC graduated from the program after successfully completing the training and job placement. Due to his success in the program and his renewed interest in school, he was allowed to re-plead to a misdemeanor, had his conviction replaced by Youthful Offender adjudication, and did not face any incarceration.

HF was charged with a gang assault that involved a stabbing. We litigated the school suspension hearing and provided the minutes of the hearing to the judge. The minutes demonstrated that a confrontation occurred the day before the stabbing during which the complainant and his friends were taunting our client and challenging him to fight the

next day. Those taunts and challenges, coupled with the profound fear HF walked around with as a result of his brother having been seriously stabbed a few months before, caused our client to react disproportionately. Based on the facts elicited at the school suspension hearing, the judge granted Youthful Offender treatment, replacing the criminal conviction.

Y was a fourteen-year-old client charged with robbery in the first degree. He was HIV positive. He lived with his mother who had full-blown AIDS and was very ill. We were able to arrange for a lawyer from Gay Men's Health Crisis to come to the family's home and write a will for the mother. Arrangements were also made for God's Love We Deliver, a nonprofit that cooks and delivers meals to the seriously ill, to provide food to the home. These services greatly reduced the stressors in the home and have allowed our client to successfully adhere to the conditions imposed upon him by the court. The client was adjudicated a Youthful Offender.

BW first became our client when he was fourteen years old and was charged with robbery. He was placed on probation and later was diagnosed with schizophrenia. After a re-arrest for taking a bottle of water from a bodega, his probation was violated. The probation officer was unable to find any program to meet his needs. When he was nineteen, we assisted with reconnecting him to treatment and were then able to arrange for a long-term hospitalization at the New York State Psychiatric Institute. He was later transferred to a state hospital and his probation was terminated.

DB was a fifteen-year-old charged with a sex offense. He was sexually abused as a young child and engaged in what he believed was a consensual sexual act with a younger girl. Our social worker had him re-evaluated by the Committee on Special Education after a review of his school records demonstrated a prolonged period of failure to provide adequate special education services to meet his needs. Our social worker and lawyer worked with DOE to find a residential school placement where DB could receive counseling addressing his sexual behavior and where his academic and emotional needs could be met. The court adjudicated DB a Youthful Offender. At age eighteen, he remains in the residential school receiving educational and therapeutic services.

CONCLUSION

Ideally, teenagers charged with committing crimes would be prosecuted in a court system specifically fashioned to recognize their developmental abilities, psychosocial maturity, trauma histories, and educational, mental health, and family challenges. Until society achieves that goal, enhanced and specialized representation of teenagers can

bring those issues to the court's attention for consideration. Early assessment by a multi-disciplinary team plays a critical role for the presentation of service and sentencing plans. Matching appropriate services to court-involved teenagers serves multiple goals in addition to rehabilitation of the youth: guiding youth to accept responsibility for the harm caused by their actions; providing support systems to keep teenagers in school and help them reach the goals of graduation and college or work readiness; stabilizing families, many with unaddressed trauma histories; and ultimately reducing recidivism and making communities safer.

These goals require public and private partnerships with the court systems. Government agencies must recognize that court-involved youth are part of their mandate, so that services are provided to stabilize our most vulnerable young people. Justice for court-involved youth can only be achieved when they are viewed as the sum of their experiences and appropriate services and programming can be provided so that they can successfully participate in their communities. Adolescents need to be given an opportunity to demonstrate that they have learned from their past wrongdoing and must be allowed to enter adulthood, where that showing can be made without a criminal record. The defense bar plays a critical and ongoing role in urging that all the systems that touch youth and their families achieve this objective.