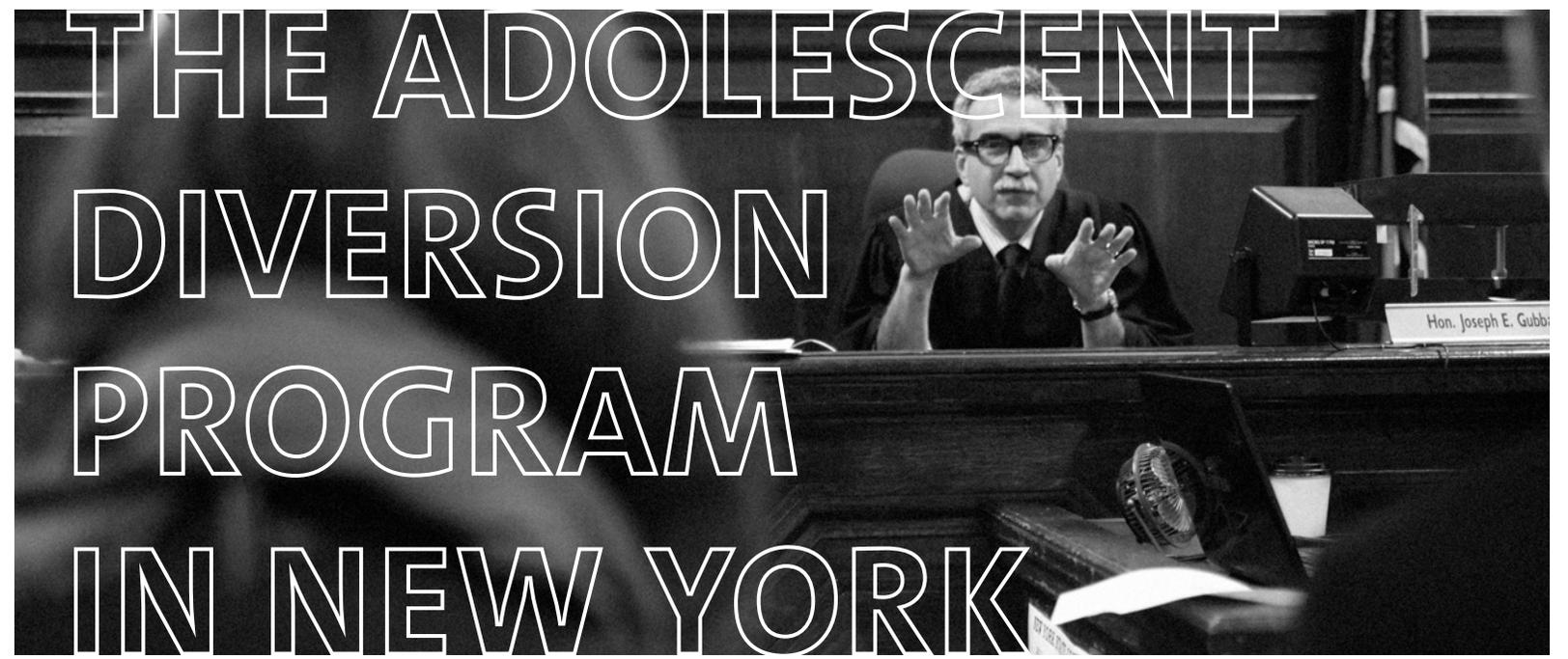


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THE ADOLESCENT DIVERSION PROGRAM IN NEW YORK

A Reform in Progress

author

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about this publication

By Judge Richard Ross (Ret.)
with an introduction by Alfred Siegel

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Richard Ross was a New York City Family Court judge from 1991 to 2001 and was supervising judge of Family Court in the Bronx and Manhattan from 1996 to 2001. He currently serves as a judicial hearing officer in Family Court and the New York City Criminal Court. He was the New York State Unified Court System's Director of Programs and Planning for nine years before his judicial appointment. In that position he had responsibility for the reporting and analysis of court caseload activity and management information on a statewide basis as well as for the design, installation, operation, and support of all computerized court information throughout the New York State courts. His office designed and conducted research projects across the broad spectrum of court operations. He is the author of *A Day in Part 15: Law and Order in Family Court*.

Alfred Siegel has been deputy director of the Center for Court Innovation for 14 years, overseeing a variety of juvenile and criminal justice projects. Previously, he served as the first deputy commissioner for the New York City Department of Probation.

Cover photo: Judge Joseph Gubbay in Brooklyn Criminal Court (Gene Sorkin/Center for Court Innovation).

THE ADOLESCENT DIVERSION PROGRAM IN NEW YORK: A REFORM IN PROGRESS

Each year across New York State, between 40,000 and 50,000 16- and 17-year-olds are arrested for criminal behavior. Roughly 84 percent of these cases are misdemeanors; the most common offenses are possession of controlled substances, petty larceny, fare evasion, trespass, graffiti, and criminal mischief. In 48 other states, 16- and 17-year-olds arrested for these kinds of non-violent offenses are treated as juvenile delinquents. Not so in New York.

In New York, 16- and 17-year-olds are treated as adults, with their cases processed in the criminal, rather than the juvenile, justice system. As a result, adolescents face the prospect of criminal convictions that could affect their future ability to gain employment, complete their education, reside lawfully in public housing, and pursue a range of other important life goals. In addition to the threat of a conviction, these young people also face potential incarceration in adult jails and prisons, which can have dire, long-range consequences.

Recognizing that New York had fallen out of step with the rest of the country, in the fall of 2011, New York State Chief Judge Jonathan Lippman announced his support for rethinking business as usual with adolescent defendants. Judge Lippman's call for reform was embraced by a range of good-government groups and by *The New York Times* editorial board, which wrote that "treating adolescents as adults is both counterproductive and morally unjustified."

Judge Lippman's plan for change had two principal components. First, he tasked the New York State Permanent Sentencing Commission, co-chaired by Manhattan District Attorney Cy Vance Jr. and Administrative Judge for Criminal Matters for the Second District Barry Kamins, with developing a legislative proposal to be presented to the governor and the State Legislature. The proposed legislation calls for the creation of new courts within Criminal Court ("youth parts") that would focus exclusively on the special needs of adolescent defendants along with a new provision, similar to the Family Court adjustment process, that would allow for the diversion of cases pre-trial.

Recognizing that legislation will inevitably take some time to achieve, Judge Lippman also announced that he would create an “Adolescent Diversion Program” within the courts. The program consists of nine pilot programs throughout the state. Selected cases involving 16- and 17-year-olds are assigned to specially trained judges who have access to an expanded array of dispositions, including age-appropriate services.

The Adolescent Diversion Program has two principal purposes. First and foremost, the goal is to improve the judicial response to 16- and 17-year-olds, providing judges with the tools they need to address offenders’ behavior and help young people avoid criminal records and related collateral consequences. The second goal is strategic: if the pilots can demonstrate that a less punitive approach to adolescents does not increase recidivism, it will provide valuable support to the legislative reform effort. If ultimately enacted, this change would have far-reaching implications, profoundly altering not just the operation of the justice system but the lives of tens of thousands of New Yorkers.

This paper reviews the achievements and lessons learned so far from the nine pilot court sites, which were implemented in January 2012 under the direction of Judge Judy Harris Kluger, chief of policy and planning for New York State’s Unified Court System. The models being tested vary among the sites, depending on local resources and priorities.

Rather than reinventing the wheel, the Adolescent Diversion Program has, sought to build on the work that the Center for Court Innovation has already done to create linkages between the courts and service providers. For example, the community court initiatives in the Midtown neighborhood of Manhattan, the Red Hook neighborhood of Brooklyn, and the borough of the Bronx have already assembled networks of community-based, non-profit partners. In Queens and Staten Island, the initiative makes use of Queens Engagement Strategies for Teens (QUEST) and the Staten Island Youth Justice Center, two Center for Court Innovation projects that offer a range of youth and family engagement services—including specialized mental health programming—to young people charged with delinquency in Family Court.

The following report offers a snapshot of the Adolescent Diversion Program from the perspective of former judge Richard Ross, who previously served as a supervising judge of New York City Family Court. As a work in progress, the Adolescent Diversion Program is expected to change over time. Judge Ross offers his impressions of how the new pilots depart from standard practice, profiling the work of two projects—Brooklyn and Nassau County—and highlighting the key elements of the Adolescent Diversion Program model. The Center for Court Innovation plans to continue to document the program’s evolution and will eventually conduct an evaluation looking at case outcomes, final sentences, and re-arrests among program participants and comparing them to a matched sample of 16- and 17-year-old defendants whose arrests preceded program implementation.

Alfred Siegel
Deputy Director, Center for Court Innovation
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HOW IT WORKS

The Adolescent Diversion Program is a collaborative effort involving judges, prosecution and defense counsel, the defendant's family, court-staffed community resource coordinators, rehabilitation service professionals, and county and municipal probation, social service, and educational officials. All commit to fashioning and supporting case dispositions that draw upon an assessment of an adolescent defendant's life situation and rehabilitative needs so that hopefully the child no longer commits crime and community protection is enhanced.

Importantly, the program emphasizes the presence and involvement of the defendant's parents or guardians at all stages of the case process. According to Judge Joseph Gubbay, who presides over the Adolescent Diversion Program in Brooklyn Criminal Court: "You cannot over-emphasize the need for family involvement."

A defendant's participation in the Adolescent Diversion Program is voluntary; the adolescent can opt for the standard case process. By agreeing to participate, and by cooperating with assessments and rehabilitative services, the adolescent obtains a sentence that includes no jail time. Dispositions of case dismissal and the sealing of case records are commonplace, an outcome which protects the teenage defendant from future collateral consequences of a conviction.

Many, if not most, case resolutions involve pleas to violations instead of misdemeanors, or involve the granting of "adjournments in contemplation of dismissal," pending the completion of social services. These case outcomes allow an adolescent to answer in the negative the question of whether an arrest resulted in conviction of a crime. By agreeing to participate in the Adolescent Diversion Program, judges, prosecutors, and defense counsel at the pilot sites have accepted the idea that—for the sake of both the adolescent and the community—the criminal cases of adolescents merit special handling. The program depends upon this shared vision to encourage young people to participate; the idea is to fashion case outcomes that address the unique needs of adolescents without exposing them to harsher sanctions than they otherwise would have received in court.

Several striking features of the Adolescent Diversion Program were plainly in view during my visits to Brooklyn Criminal Court and Nassau County 2nd District Court.

COMMUNICATION

At the Nassau and Brooklyn pilot sites, the judge's role includes highly focused, direct, in-court communication with the parents and guardians of the adolescent defendants. The Adolescent Diversion Program judges at these sites—Sharon Gianelli in Nassau 2nd District Court, Joseph Gubbay in downtown Brooklyn Criminal Court, and Alexander Calabrese in the Red Hook (Brooklyn) Community Justice Center—demonstrated an empathetic, energetic judicial style. Particularly noteworthy was their ability to convey to the adolescent defendants in a firm yet kind manner a clear notion of what the court expected from them. The judges also made clear the potential negative consequences of failure to make best efforts to use the Adolescent Diversion Program services effectively. As Judge Calabrese described it to one adolescent: "My objective is to build court-defendant trust on a two-way street."

The judges addressed the entire group of defendants and family from the bench at the opening of the calendar, explaining to them the purpose of the Adolescent Diversion Program and the vital importance of the family's role in the court proceedings and in the rehabilitation of their kin. Upon the call of their child's case, family members approached with the adolescent; the judge thanked them for the interest they were demonstrating by their attendance and engaged them regarding issues and details arising from the case and the Adolescent Diversion Program process.

This type of judicial involvement impressed many families. As one parent put it, "I could see how busy the judge was, so for him to take the time to talk to me made a big impression on me. Even though my son didn't show it, I think it got his attention, too."

The court's insistence on the involvement of families—not to mention the judges' obvious interest in their welfare—helps to lessen the anxiety in the courtroom. A defense attorney explained: "My clients often tell me their court appearance wasn't what they expected, that they had the sense the judge and staff really cared about what happened to them not like they were just another number on the court calendar."

CASE SCREENING

Defendants are screened before their cases are called. The screening process helps ensure that judges give informed consideration to each case.

In Nassau County, the District Attorney's Office reviews all arrests of 16- and 17-year-olds to determine whether to recommend the adolescent for participation in the Adolescent Diversion Program. The principal criteria include the adolescent's criminal history and the nature of the new case. Most recommended cases involve a misdemeanor or violation, although felonies are eligible as well.

The court will not arraign an adolescent's case without the presence of a parent or other caregiver. Immediately following arraignment, the adolescent and parent or guardian meet with the Nassau County Probation Department, which administers a Youth Assessment and Screening Instrument (the "YASI"). Parental or guardian consent is required for the YASI to be completed. The YASI gathers information on the adolescent's legal history, family, school attendance and other educational issues, community and peer relationships, drug and alcohol use, mental and physical health, and tendencies towards violence. (The Nassau County District Attorney's Office has agreed that any statement made by a defendant to the Nassau County Probation Department during the YASI interview will not be used in any criminal proceeding brought against the defendant.)

A benefit of the parent's presence at arraignment and the YASI appointment is that family members are made aware of the first scheduled court appearance date and the importance of their participation in the process.

The YASI yields a rating of the adolescent as low-, medium-, or high-risk for recidivism. For adolescents rated medium-risk or high-risk, the case file and YASI information are reviewed prior to the first scheduled court date by a court resource coordinator. (Adolescent Diversion Program resource coordinators are court staff whose job is to develop working relationships with an array of local service providers and to recommend and monitor

defendant compliance with services.) The cases of adolescents rated low-risk are dismissed in the interests of justice at the first Adolescent Diversion Program court appearance.

The Nassau Adolescent Diversion Program case calendar is called on Wednesday afternoons. Each Tuesday, every case on the week's calendar is reviewed in an off-the-record conference involving the judge, the resource coordinator, the prosecutor, and defense counsel. The conference for each case may result in modification of service plan recommendations for the next day's appearance.

In Brooklyn, the Adolescent Diversion Program operates at two locations: the downtown Brooklyn Criminal Court and the Red Hook Community Justice Center. Red Hook cases are drawn from arrests within one of the three Brooklyn police precincts served by the Justice Center; arrests from all other Brooklyn police precincts are arraigned downtown.

At arraignment, the judge, prosecution, and defense consider an adolescent's prior record, current charges, and other information that may be available. No formal assessment similar to the Nassau YASI is administered. Although felony top charges are not automatically excluded from eligibility, most Brooklyn Adolescent Diversion Program cases involve top charges of misdemeanors or violation.

In its review to determine the appropriate plea offers and program recommendations, the District Attorney's Office considers whether the adolescent has been the subject of multiple arrests, whether the new case involves an assault with injury, weapons possession, drug possession or drug sales, and whether the adolescent is subject to probation supervision pursuant to a Family Court juvenile delinquency finding.

Brooklyn plea offers may envision an immediate "adjournment in contemplation of dismissal"—commonly referred to as an ACD—on the first appearance before the judge, for example, with the ACD made contingent upon compliance with agreed-upon services. In other cases, the case may remain open pending completion of service requirements, at which point case dismissal and the sealing of case records will occur. A typical sentence in Brooklyn involves the performance of one or more days of social service and/or community service. The types of social services and community services are unlike those ordinarily performed in the standard criminal case process. Instead, the services are educational and therapeutic.

Cases recommended for more intensive, longer-term adolescent participation involve—with parental consent—a full clinical assessment to address the adolescent's needs.

No plea is entered at the first Adolescent Diversion Program court appearance; instead, the case is adjourned and an offer and potential plea await the assessment results.

SERVICES

The objective of case planning is to match adolescents with appropriate rehabilitative resources. In Nassau, the two resource coordinators review the cases of all adolescents who are rated medium-risk or high-risk on the YASI and develop resource recommendations for consideration of the judge. The resource coordinators are guided by the YASI as well as by other information developed during their case review about drug or alcohol use; parent-child relationship issues including neglect or abuse history; truancy or other educational issues; gang affilia-

tion; mental or physical health issues; problems with peers or other negative community involvement. The judge and counsel review these recommendations in conference on the day before the calendar call.

The Adolescent Diversion Program resource coordinator carries out site visits to potential resource providers and has developed working relationships with many of them. Every one of Nassau's 57 school districts has designated a contact person from whom the Adolescent Diversion Program can obtain school records. The court has also established relationships with agencies and organizations providing services for: anger management; in-patient and out-patient drug and alcohol dependency; domestic violence; individual, group and family therapy; in-patient psychiatric care; parenting education; family bereavement, crisis, and trauma; HIV services; and educational services, among others. A resource manual currently in use in the Nassau Adolescent Diversion Program contains hundreds of providers.

In both Nassau and Brooklyn, once a case is before the Adolescent Diversion Program judge, the District Attorney's office will make case resolution offers based on its own review of the case and on consideration of the resource coordinator recommendations. The offers and responses are well-coordinated in advanced of court, however; once a case is called in the courtroom, disputes are the exception. A variety of outcomes may occur. Examples include:

- A 16-year-old, charged with criminal mischief, in court with her mother, who told the court she was unable to pay for her daughter's anger management program. The judge waived the program fee, promised case dismissal (with sealing of case records) upon successful program compliance, and adjourned to a compliance review court date.
- A 17-year-old, charged with disorderly conduct, was referred to Youth Court¹ with a disposition of adjournment in contemplation of dismissal, a \$200 fine, and an order of protection for the complaining witness.
- A 17-year-old, charged with criminal mischief, was referred for counseling with a judicial promise of dismissal in the interests of justice (with sealing of case records) upon successful compliance.
- A 17-year-old, charged with Class E felony grand larceny and in court with his father, was referred for counseling with a judicial promise of a violation conviction upon compliance with counseling and with an order of protection on behalf of the victim (property was taken from a person).
- A 16-year-old, charged with misdemeanor marijuana possession and in court with his mother, was referred to family therapy with the case adjourned with a judicial promise of dismissal (with sealing of case records) upon compliance with the family therapy.
- A 17-year-old, charged with misdemeanor marijuana possession and in court with her mother. The defendant, who had relapsed, told the judge she would not continue drug treatment because "it wasn't helpful" and that she believed she could stop using drugs on her own. Speaking softly but directly, the judge

1. In Youth Court, youth are judged by their peers, who attempt to use positive peer pressure to bring about a defendant's rehabilitation and restitution to the community.

responded, “We’re deeply concerned that you’re going to turn up dead,” and set an early court date for a recommendation for further evaluation and treatment.

MONITORING

During the 30 to 60 days between the first and second Adolescent Diversion Program court appearance, the Nassau Adolescent Diversion Program resource coordinator monitors adolescent compliance with court orders, touching base with the assigned programs and, as applicable, with probation officers, a family’s child protective services workers, school officials, and others. Where compliance is a problem, the adolescent and parent or guardian may be asked to attend an off-the-record conference with the judge, prosecution, defense counsel, and resource coordinators to discuss the issues affecting compliance. The conferences are held outside the courtroom setting. Conferences may also occur with a resource coordinator only.

On the second Nassau Adolescent Diversion Program court appearance, an adolescent’s compliance with the assigned program or service will almost always result in a final disposition according to the promise made previously. If an adolescent is non-compliant, one or more additional Adolescent Diversion Program court dates will be set with adjustments made to compliance requirements as appropriate.

In Brooklyn, whether an Adolescent Diversion Program case originates downtown or at the Red Hook Community Justice Center, much of the service plan development and monitoring takes place at the Red Hook Community Justice Center, a unique multi-jurisdictional community court that provides adults and juveniles with a broad variety of rehabilitative and other services.

In a downtown case, a brief intake session is conducted immediately following an adolescent’s guilty plea in order to gather basic demographic and contact information. The adolescent is given a date and directions for appearing at the Red Hook Justice Center for a clinical screening that will determine the nature of the social services to be performed. In addition to the screening, the adolescent on that day attends an “Adolescent Resource Group” session that discusses the Adolescent Diversion Program and compliance issues as well the various services and opportunities available.

Social services pursuant to an Adolescent Diversion Program case are unlike those required by dispositions under the standard case process. Adolescent Diversion Program social service options include a one-day adolescent drug/alcohol education workshop provided by the Counseling Service of the Eastern District of New York; a one-day youth anger management group session; a one-day “Motivating Youth” workshop that explores how to deal with stress and conflict; a one-day individual case management session with a clinician to explore and plan in greater depth an adolescent’s service provision needs; or a two-day participation in a Youth Court. The same procedures and services apply to short-term intervention cases originating at Red Hook.

Longer-term intervention cases require a full clinical assessment by a staff clinician at the Red Hook Justice Center, regardless of where the case originated. The assessment requires the consent of parent or guardian. An adolescent’s mental health, substance use, and education are assessed along with the adolescent’s family and lifestyle issues. In developing a rehabilitative service plan, emphasis is placed not just on negative behavioral and pathological issues but also on the adolescent’s strengths.

The clinical recommendation for rehabilitative service is presented to the judge at the first Adolescent Diversion Program court appearance. If the adolescent or parent/guardian do not accept the clinical recommendations, the case exits the Adolescent Diversion Program and a date is set for appearance in a standard court part. If there is consent to the service plan, the adolescent enters a guilty plea and the first of what may be one or more compliance court dates is set. All compliance court dates, including those of downtown Adolescent Diversion Program cases, are at Red Hook.

The recommended services for longer-term cases may include:

- Individual counseling: weekly individual therapy with a mental health professional licensed by the New York State Office of Mental Health.
- Psychiatric assessment: outpatient mental health psychiatric assessment and diagnosis.
- Outpatient drug treatment: two to seven days per week of group sessions together with weekly individual sessions.
- Conflict coaching: two 1-hour sessions with a trained mediator at the New York Peace Institute for developing skills to handle disputes non-violently and productively.
- Consultation with school liaisons: a one-time meeting between the adolescent, the family, and the adolescent's school liaison to address educational issues.
- Case management sessions: from two to 10 bi-weekly meetings with a Red Hook clinician to discuss the adolescent's ongoing service provision needs.

CONCLUSION

Over the first six months of implementation, January 2012 to June 30, 2012, the Adolescent Diversion Program served 1,505 adolescents at the nine pilot court sites, including 630 at the Nassau and Brooklyn sites. Nassau and Brooklyn report that 80 percent of adolescents have been compliant with required services.

In order to move forward to raise the age of criminal responsibility, it will be necessary to focus on the resources available to adolescents. Who will perform assessments? Who will provide services? How will compliance be monitored? What, if any, are the costs associated with these things? These are issues that state legislators will have to ponder as they weigh legislation to raise the age of responsibility.

In his September 2011 speech to the Citizens Crime Commission that announced the Adolescent Diversion Program, Judge Lippman asked: "Do we really want teenagers to be processed in an adult criminal justice system focused on punishment and incarceration . . . where rehabilitative options are limited . . . where they may be jailed . . . where they may be victimized . . . and where they may be burdened with a criminal record that bars them from future employment and educational opportunities?" The early results of the Adolescent Diversion Program provide hope that New York State's criminal justice process can be reformed and that courts are capable of providing appropriate consideration to the special problems inherent in the social and psychological development of vulnerable young people.

Center for Court Innovation

The winner of the Peter F. Drucker Award for Non-profit Innovation, the Center for Court Innovation is a unique public-private partnership that promotes new thinking about how the justice system can solve difficult problems like addiction, quality-of-life crime, domestic violence, and child neglect. The Center functions as the New York State court system's independent research and development arm, creating demonstration projects that test new approaches to problems that have resisted conventional solutions. The Center's problem-solving courts include the nation's first community court (Midtown Community Court), as well as drug courts, domestic violence courts, youth courts, mental health courts, reentry courts and others.

Nationally, the Center disseminates the lessons learned from its experiments in New York, helping court reformers across the country launch their own problem-solving innovations. The Center contributes to the national conversation about justice through original research, books, monographs, and roundtable conversations that bring together leading academics and practitioners. The Center also provides hands-on technical assistance, advising innovators across the country and around the world about program and technology design.

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