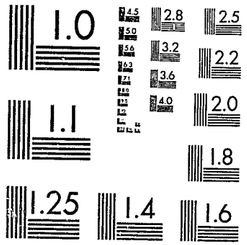

IN SEARCH OF JUVENILE JUSTICE

An Interim Report

on the

1978 New York Juvenile Offender Law

NS' COMMITTEE FOR CHILDREN OF NEW YORK INC.
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TASK FORCE ON

THE 1978 JUVENILE OFFENDER STATUTE

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PART I

DEFINING THE PROBLEM

In August of last summer, in the heat of a political campaign, the Legislature passed the Governor's Omnibus Crime Bill. No public hearing was held and no public participation was invited. This complicated new law was to be effective just several weeks from passage, on September 1st, before the elections.

Conspicuous among its provision were radical changes in State policy and procedure regarding juveniles charged with committing certain felony crimes. Until now, the State has dealt with all offenders under sixteen years as delinquents within the jurisdiction of the Family Court, no matter the gravity or degree of violence of the offense. New York, incidentally, is among those states with the lowest age ceiling (sixteenth birthday) for dealing with offending children as delinquents; those sixteen and over are dealt with as adults.

Under the new law, those children aged thirteen, fourteen and fifteen charged with murder, and those aged fourteen and fifteen charged with specified serious felonies would be subject to the Criminal Law and be prosecuted by indictment in the adult Criminal Courts.

In the course of the Criminal Court process, and under given conditions, the Juvenile Offender may be removed to the Family Court to be dealt with there as a delinquent. In all other states, the

process of removal or waiver is the reverse of the New York pattern: the Family or Juvenile Court is the court of original jurisdiction, with possible removal to the adult criminal court when it is deemed appropriate under the law. It is also considered by many in New York that the legal process in the adult criminal court provides greater safeguards to the defendant facing longer, more restrictive and more severe, fixed sentences.

Indeed, the times have changed. Thirty years ago, in 1948, Governor Dewey signed legislation terminating criminal responsibility of children under fifteen for the capital crime of murder. "The time is well overdue," the Governor noted in approving the bill, "to state in the law in no uncertain terms that a child under the age of fifteen has no criminal responsibility irrespective of the act involved..."

This was the law of New York until September 1978. Now the law is very different. It represents a view of children that is colored by alarm and anger, by a belief that there are children of such maturity, menace and incorrigibility that society must be protected from their unspeakable acts through long, punishing incarceration. The Legislature turned away from the Family Court and from what they evidently considered the inadequate rehabilitative resources available to the Family Court. Certainly many in New York thought stronger medicine was called for if the community is to be protected as it must be.

Given the atmosphere in which the new Juvenile Offender Law was adopted, the question then is how fair and decent; how reasonable and effective, is the handling of children under the new law, especially by institutions and officials in law enforcement accustomed to

dealing with adult offenders and little prepared for the new procedures and the young offenders.

Beyond the statements of those directly involved, beyond rasping rhetoric regarding "those juveniles," the public ought to know how the law is operating for the community and for the children. Though Citizens' Committee did not support the enactment of the new law, it too wanted a fair reading of how the law was working. Our views in these matters cannot be incorrigible but alterable in the light of experience.

THE ROLE OF CITIZENS' COMMITTEE FOR CHILDREN

Citizens' Committee is an independent, non-governmental group, which serves as watchful monitor of programs for children. Out of its investigations it proposes and then works for changes in law and practice to benefit children. The Committee conducts no direct services for children. It needs, therefore, to be protective of no interests other than those of the children themselves.

Early in October 1978, as promptly as possible after the law went into effect, Citizens' Committee established a Task Force to monitor the new Juvenile Offender Law. The Task Force is composed of volunteer citizens. Following briefing sessions, teams went into the field, visiting police headquarters, precincts, booking locations, holding pens, detention facilities, district attorneys in each of the four populous boroughs, Legal Aid staffs, courts, court services and institutions for sentenced offenders. Every step in the enforcement process was observed and significant participants in the process were interviewed. Those agencies of government responsible for gathering reports were also seen for what information they might provide.

The Task Force will continue its work throughout the first year of the new law.

THIS REPORT

This is a mid-passage report of what we have seen and what we have considered. In this early phase of the law's implementation, we have seen the start-up problems in a hastily arranged system of justice, but there is already enough experience to perceive major and continuing issues and problems in that system.

Evident by now are some technical problems in the language of the law. These are subjects for legal authorities to address. Ours is the report of a closely informed citizen observer.

The adult criminal court process is so protracted that even after seven months we find few cases moving to trial and final disposition. For this reason alone, a full review of the workings of the new law is not yet possible.

PART II

WHAT WE FOUND

THE SYSTEM GETS STARTED

From the start, the Juvenile Justice Institute of the New York State Division of Criminal Justice has had the responsibility for collecting and analyzing statistical data on the way the law is operating. Mr. Herbert Sturz, New York City's Deputy Mayor for Criminal Justice, has been attempting to coordinate the efforts of all agencies involved in the administration of the Juvenile Offenders Law.

Those involved are the Police, the Corrections Department, District Attorneys, the Legal Aid Society, the Family, Criminal and Supreme Courts, the administrative organizations for the Courts of the State, Special Services for Children within the City's Human Resources Administration, the school system, the Probation Department, and the State's Division for Youth.

Each agency prepared itself in its own way. The police issued special directives and instructions to its personnel. The Courts circulated summaries and interpretations of the legislation. Certain Criminal Court judges and Supreme Court judges were assigned to hear Juvenile Offender cases. District Attorneys made special provisions of varying sorts in Manhattan, Kings, the Bronx and Queens for handling the Juvenile Offenders. The Legal Aid Society assigned both a juvenile rights attorney and a criminal attorney to each case. When the law became effective on September 1, 1978, the Spofford detention facility for juveniles, located in the Bronx, was thought by the City administration not to be sufficiently secure to detain this new category of

offenders. New arrangements were made at the House of Detention for Women at Rikers Island where part of the building was set aside for detention of those children charged with Juvenile Offense. The segregated use of this adult facility was temporarily certified by the State Division for Youth.

CHILDREN CHARGED SO FAR AS JUVENILE OFFENDERS

The total arrests citywide for the first six months (September, 1978 through February 28, 1979) were 754. Females accounted for less than 10% of this number. Robbery 1 and Robbert 2 accounted for 594, or 79%, and Assault 1 added an additional 40, or 5%. Rape 1 and Attempted Murder were 3% each, 23 and 24 respectively. Sodomy and Arson 2 were each 2%, or 12 and 17, and Burglary 1 and 2 were each 1%, or 8 and 9. The typical Juvenile Offender is a fifteen year old black male who lives with at least one parent. The Criminal Justice Agency who interviewed over 300 children at arraignment found that "almost 5% reported non-correctional institutional residence at the time of arrest," such as foster group homes. Figures from the Department of Corrections admissions through December 1978 report that 75.8% admitted were black, 20.7% had Spanish surnames, 3.3% were white and .3% other. On January 8, 1979 there were 34 black boys and 12 with Spanish surnames actually residing in the Rikers Island facility who had either been remanded or not able to make cash bail. A large percentage of white Juvenile Offenders as compared to non-white were released on their own recognizance (ROR) and youngsters currently attending school were more likely to secure release as were females as opposed to males. Of those interviewed by the Criminal Justice Agency, 90.8% were not currently on probation or parole.

FIRST STAGES IN ENFORCEMENT: THE POLICE

Our visits with police personnel extended from early October through early December and included visits to both individual precincts and the central booking facilities in Brooklyn, Queens, and the Bronx, and the new Manhattan facility. In lengthy conversations with police personnel at all levels, we learned that there is no difference in either the number or kind of children being arrested. The police "continue to do the same job they did before the new law, charging with the same crimes as before." Police report that "juveniles are treated as juveniles." That is to say they are given special treatment in that they are expedited through the booking procedure in central booking, after an initial stop at the local precinct. Booking, which now includes photos, fingerprinting and "rap sheet" retrieval, is done in the central booking facilities in each borough. In addition, in keeping with the new law's requirements, children are questioned in areas separate from adults, kept in segregated cells and transported to segregated detention at Rikers Island in segregated vans or in individual police cars.

Our observation is that the police experience for the juvenile varies according to the borough. In part this is due to the physical set-up of the borough's central booking facility, and the time of day or night the arrest is made. Although the police say that they have no additional problems with children as opposed to adults, it is evident that they do, because of the need to keep them segregated. Children are not permitted to return home before arraignment in Court: there can be no release to parents if one of the designated felonies is

charged. Consequently, children must be transported to Rikers Island if court is not in session, or held in Central Booking or Corrections Department "pens" awaiting the return of the rap sheet information from Albany.

At one central booking facility we saw two young alleged offenders handcuffed to a pipe mounted on the wall while questioning was taking place. This took place in one corner of a large room where adults were being similarly questioned at the other end of the room. The reason they could not provide a separate room, we were told, was lack of space. In another facility, where Corrections personnel were responsible for the custody of the detained children while waiting for the return of the "rap sheet" from Albany before proceeding to Court, the children were held in the same cell block as adult prisoners. The problem of space was again cited, and our attention was drawn to the separation of the children from the adults by at least one cell. We were told that, because of lack of sufficient vehicles, segregated space in police vans was found by seating the juvenile in front or on one side or another of the vans going to Court or Rikers Island. It seems clear that "separate" meant not being able to touch or be touched.

At the police level the initial judgement is made by the arresting officer who charges according to his perception of the facts or events of the crime, and places the youth into the classification of offense these facts fit. There is an opportunity for a supervising officer or desk officer to confirm that the charge is a correct one, based on the reported facts; or it can be changed. At this point the charge can also be made more severe or less severe, possibly resulting in a non-designated

felony charge. This is one opportunity for the child to be taken out of the adult system. As our experience with this new law continued, reports have reached us that the police officers have become more conversant with those cases for which the district attorneys at the complaint room level have "declined prosecution," and have themselves lowered the charge. So far, the arrest figures do not reflect this.

THE DISTRICT ATTORNEY'S ROLE AND PERFORMANCE

We visited the District Attorneys' offices in Kings, New York, the Bronx and Queens, and the assistant District Attorney in charge of each borough's Juvenile Offenders was interviewed. When the police arrest report and the complaint are presented to the District Attorneys' screening unit in the complaint room, the assistant District Attorney has an opportunity, as noted above, to "decline prosecution," and in fact between September 1, 1978 and January 31, 1979, 131, or 17% were "d.p.'d." Those youngsters were taken out of the criminal justice system (pre-arraignment) and moved into the juvenile justice system. Each borough office has special procedures for pre-arraignment screening and for handling cases through the jury trial. Our observations were that the District Attorneys' offices vary from borough to borough according to the style and attitude of the particular office and the office's design for prosecution. The differences were dramatically illustrated by the following figures for the first three months:

a.) Declined prosecution pre-arraignment:

Kings	1%
New York	41%
Bronx	19%
Queens	2%

b.) Removal by judge or grand jury action:

Kings	39%
New York	7%
Bronx	24%
Queens	6%

In Queens the assistant District Attorney rarely declined prosecution or approved removal to the Family Court by the judge. On charges of murder or armed felony, no removal is possible over the District Attorney's objection. In Queens, no special Juvenile Offender unit has been set up, so that the assistant District Attorney in the Family Court does not see the child until he is removed from the Criminal Court. Here the District Attorney's office believes, according to an assistant District Attorney, that it has the "luxury of taking all cases into Criminal Court to see what will happen."

In Brooklyn the assistant District Attorney says that if the facts of the incident support the charge in a technical sense then only the court can remove, although they do recommend removal in many cases.

In New York the assistant District Attorney has declined prosecution of a large percentage--not forwarding a case considered inappropriate to the court--explaining both the high "declined prosecution" and low removal or dismissal rate by the court.

The Bronx apparently does some of both as the figures illustrate. Some of those children charged with violent felonies by the police and whom the District Attorneys have declined to prosecute include theft of property--candy, money--while threatening bodily harm. Often there is no previous juvenile record, and the facts indicate no apparent move to actually inflict injury, or perhaps there is no witness present or no

witness willing to pursue the complaint. Given similar circumstances in adult cases, these types of cases are diverted from the court process by accepting a plea to a lesser charge or declining to prosecute and dismissing. The complaint room assistant District Attorney is empowered to "raise, reduce or dismiss the charge on the spot."* We note some dramatic inconsistencies in handling at this stage.

In our interviews with court personnel, including court administrators and several judges of the various courts, it was suggested that the Family Court be the court of original jurisdiction, with a waiver or transfer to the Criminal Court, the method 48 other states and the District of Columbia employ for those designated violent felony cases that judgment determines warrants that action. The figures compiled since September suggest the reason. During the first six months of prosecution, 754 Juvenile Offender arrests have been made. 464, or 61%, have either been d.p.'d, removed, or dismissed. Some 279, or 38%, have remained in the Criminal Court system.

As noted in the January report by the Juvenile Justice Institute of the New York State Division of Criminal Justice Services, "probably the best indicator of dispositional outcomes over the course of the year would be the September court action statistics;**. . . Out of the 127 arrests, the District Attorney declined to prosecute 21 (16%) cases; 54 (43%) cases were removed to Family Court and 25 (20%) cases were dismissed. One (1%) is pending in Criminal Court. There have been 27 (21%) indictments. Included in these 27 indictments are two cases for which

* Vera Institute of Justice monograph, 1977, p.15.

** Because this group entered the system the earliest and has therefore proceeded furthest in the legal process, it offers the clearest picture of the possible final outcome of the cases of those arrested.

guilty pleas were entered. From these figures, it can be seen that of the 127 Juvenile Offenders arrested in September, only 28 (22%) remained in the Criminal Court system; 99 (78%) have been removed to Family Court, dismissed, or have never been prosecuted." We noted earlier that this seemed a process both wasteful and clumsy when so many were eventually moved out of the adult system.

DETENTION

Because no release is possible until after arraignment, 263 of the 516 children detained have spent time at the Rikers Island facility only to be released or bailed out after one day or less. An additional 137 were released after a stay of between two and five days, for a total of 400, or 78%. As we reported earlier, when this law went into effect, Spofford was by-passed as the detention facility for all juvenile offenders arrested. Part of the Women's House of Detention on Rikers Island was selected and prepared for their detention, under temporary certification by the State's Division for Youth. We visited Rikers Island on two occasions and by the time of our second visit on December 5, 1978, Spofford had been re-designated as detention for all juvenile females. The Rikers Island facility has been temporarily recertified by the Division for Youth, conditional on an exploration of screening procedures for male Juvenile Offenders, with Spofford to serve as an alternative secure detention facility. At the time of this writing, with plans for dismantling of the newly secure Spofford, it is unclear exactly how this plan will be accomplished or implemented.

As of December 5, 1978, 300 children had registered at Rikers, of whom 34 were females. On that date, the population was 42 boys, nine of

whom were in court during our visit. Of the 33 boys we saw, 16 had been at Rikers over 60 days, 10 over 30 days, and the remaining 7 for less than 10 days. Cash bail had been set for all but three of the boys present. A large percentage of those children who did remain in the Criminal Court system had been either bench paroled or had raised the cash bail set by the court. Among those out on bail were defendants accused of attempted murder, assault and robbery. Of the 178 children whose cases remained within the Criminal Court system at the end of November, 137 were not being detained.

We were not encouraged by the educational program we saw at the Rikers Island detention facility. The Board of Education, responsible for providing that part of the detention program, had been sadly remiss, to phrase it as charitably as possible. Planning for the detained youngsters (some now there almost seven months) and actual services were sadly deficient. While two teachers were assigned to teach over 30 boys, only one was in attendance on both of our visits. The promise of four teachers had been made, but their simultaneous attendance did not occur until January 19, 1979. Teachers refused, at one point, to teach classes of more than the prescribed ten or twelve pupils. The census has risen steadily, and on March 28, 1979, there were over sixty boys detained. More teachers are sorely needed.

The Rikers detention facility is now staffed by 39 corrections personnel and four social workers from Special Services for Children, as well as by a social worker from Legal Aid (who serves as liaison with the trail attorneys), a recreation teacher and four teachers. In addition, a psychologist is available every morning for referrals and health care is offered through a Montefiore Hospital clinic, a nurse and a pharmacist.

The day is spent in a mixture of classes, recreation, meals and lock-ins. The space is inadequate for the rapidly increasing numbers of active adolescents.

Citizens' Committee's visits to Rikers Island showed the monitoring group the many aspects of life in detention, but one common aspect overshadowed all our individual impressions. Rikers Island is a prison. The boys there have a prison experience. Their families, when they come to visit, have the same experience as the relatives of adult prisoners who visit this correctional island colony. As we noted above, many youngsters who have been detained at Rikers have since had their cases dismissed completely or removed to Family Court. As we record these impressions they are not intended to document instances of individual abuse or mistreatment by any corrections personnel, who were well meaning. Rather we suggest that these children, simply because they were charged with a particular crime, have been exposed to a system designed for adults.

THE COURT PROCESS

We mentioned earlier that there are various legal points that will be dealt with by the courts through judicial decisions. These we intend to leave for discussion and comment by legal groups. However, several areas are appropriate for comment by our lay group, and these would include the child's right to confidentiality, removal inquiries, and the "youthful offender" privilege. "Youthful Offender" treatment is available, at the discretion of the Supreme Court judge, for those offenders, aged 16 to 19, but, under the new law, it is not available to the 13, 14 or 15 year old "Juvenile Offender." In the case of the Youthful Offender treatment, the possibility of a shorter sentence after conviction,

coupled with the opportunity to "seal" the record, has been specifically denied to the Juvenile Offender. Perhaps the opportunity for "removal" to Family Court permitted by the legislation seemed to offer the same opportunity, but even our short experience with this new law demonstrates that cases removed by the Criminal Court judge "in the interest of justice" to the Family Court are subject to indictments by Supreme Court grand juries. The child is then returned to the adult arena and no Youthful Offender treatment is available. This is one of the problems noted by all personnel we interviewed, whatever their view of the law in its other aspects.

When a child is arrested and charged with a crime, he may or may not be the subject of public scrutiny. If he is charged with a crime returnable in the Family Court he is protected by a rule of confidentiality afforded because he is under sixteen. If he is charged with a crime that brings him into the Criminal Court system, he and his activities are a subject of public record and the possibility of public exposure and censure. As we learned from the statistics, a large percentage of those who enter the adult system are removed to the Family Court, or dismissed, but by then their cases are on public record. Illustrative of the pitfalls of sending an arrested youngster directly to the Criminal Court is the case that involved the son of a hospital administrator. He was arrested, charged, sent to Rikers Island with full media coverage. He was subjected to detention and exposure to the criminal justice system, in spite of no previous history of violence or trouble with the law. His case was eventually dismissed by the judge on the facts, but the experience was a searing, destructive and frightening one, and should have been avoided.

We have monitored removal hearings and inquiries, probable cause hearings, pre-trial motions involving identification criteria, Miranda warnings, and suppression of confessions, as well as an on-going jury trial. It is apparent that the only aspects in these Criminal Court proceedings that are unique for the Juvenile Offender are the "removal" inquiry and the length of sentence (shorter than that for an adult charged with the same crime). One of the options available to the judge in both the Criminal and Supreme Courts, and to the Grand Jury, is the opportunity to remove in the "interests of justice." The law mentions this as a "removal inquiry", as a means to send the young offender out of the adult system--even if the facts warrant the charge--to receive services deemed more appropriate. This "removal inquiry" is a special mechanism written into the law so that the "wrong candidates" for adult sentencing could be ferreted out. Unfortunately, there is very little specificity as to the form this inquiry should take, and it is used in some cases, not used in other cases, and ignored in yet other instances by District Attorneys who present their material directly to the grand jury for indictment, even after removal by the Criminal Court judge. Surely this is not a consistent use of the law, nor a use in keeping with the intent of the legislators. The law was designed to give the offending children a longer sentence than is now possible through the Family Court. The only proper subject of the law--as the law was conceived--is that juvenile accused of a serious and violent crime, who has, by a pattern of criminal behavior, demonstrated that the Family Court dispositional alternatives have not been adequate in the past, and the presumption is that these dispositional alternatives will not be in the future.

PROBATION DEPARTMENT SERVICES

When the director of the New York City Department of Probation was interviewed, he told us that he intended to use his Family Court probation officers to do all the pre-sentence reports on the convicted Juvenile Offenders. This was not the case with the first Juvenile Offender, but subsequent reports have been. The form is different but the content will be the same as for all juveniles.

The other change that affects probation procedures occurs when a child is "removed" to the Family Court. Because he has already been in court, he is transferred to a court part in the juvenile system, thus by-passing Probation intake and the interview, and the possibility of adjustment, if it is not a designated felony complaint at this time. The Criminal Court complaint is rewritten as a petition and no interviews with witnesses, family members or the child is done at this time, unless specifically requested by the judge sitting on this matter after the child has appeared in court. No diversion or offer of alternative probation services can be provided without a prior court appearance. Likewise, the child whose case is dismissed by the Criminal Court has no opportunity of any services for himself or his family.

FACILITIES FOR SENTENCED JUVENILE OFFENDERS: NEW YORK STATE DIVISION FOR YOUTH

After a child is convicted as a Juvenile Offender, the State Division for Youth has the responsibility for the restrictive placement or sentence. DFY has this responsibility until the child becomes sixteen, but can be extended to twenty-one, at which time he must move to an adult facility for the remainder of his sentence. It is conceivable that a Juvenile Offender may spend as many as nine years in Goshen, the

secure placement. More secure facilities are planned and a supplemental budget seeks 150 additional secure beds.

The Division for Youth has had the responsibility of providing care for those youths sent from the Family Court in the past, many of whom have committed serious offenses. They report that the training they believe to be important for these boys has been hampered by the following:

1.) limitations on the size of shops and labs

2.) inadequate staffing patterns and the need for upgrading staff skills

3.) non-existent or inadequate case planning necessary for dealing with the variable term placements of the youth in the facilities.

In discussion with DFY program planners, lack of money is cited as the main reason for the inadequacies of the program. Personnel in the secure center at Goshen stated that they are further hampered because their population includes many boys they believe could be better served in mental health facilities and whose presence dilutes the effectiveness of existing efforts to provide meaningful care. On March 29, 1979, the New York Times reported further cuts from within the Division for Youth. Among the victims are a number of secure facilities for violent youths and secure units within the Office of Mental Health for mentally ill, violent juveniles.

A federally funded "counter-cyclical" job-readiness, work experience program with funds for 35 participants has been in operation since September, 1978, at Goshen, and the staff has high hopes for its effectiveness.

The monitoring visit to Goshen was made on January 23, 1979, and on that visit we had an opportunity to see and understand first hand some of the problems that senior administrative personnel had described to us. We were able to talk freely with both staff and residents, and see them at work, study, lunch and gym. Recent arrivals among the residents were several boys sentenced under this Juvenile Offender legislation. We talked with one boy, convicted of manslaughter, who may remain at Goshen at least 3 1/3 years, if he is judged by DFY staff able to take advantage of their programs. We saw another young man being escorted out of the building by a state trooper. He had assaulted a teacher, who then pressed charges. He was at Goshen despite suggestions that a mental health facility would be a more appropriate setting for him. This supported staff's opinion that many of the residents could not take full advantage of the DFY programs because they were really in need of mental health care. Much staff energy is expended in dealing with misappropriately placed boys, and the presence of these children dilutes the effectiveness of existing efforts to provide positive programs.

The need for, and importance of, positive, innovative programs cannot be overstated. These should be designed especially for the child who is in need of "habilitation" and held for longer periods of incarceration. The maturation process has many stages, and the young person of thirteen, fourteen and fifteen still has both many tasks to learn and opportunity for significant change. Many will leave the community they live in as children, and re-enter as adults. It is our responsibility to attempt to give them the tools for a useful and

productive life. Otherwise, we must recognize our responsibility for returning them once again to the criminal justice system.

It is clear that a change in existing programs at the DFY facilities will be necessary in view of the length of restrictive stay that will now be the rule rather than the exception. The existing programs, designed with incentives which were projected for a stay of up to twelve or eighteen months, are not intended for the youngster who will remain two or three years and upwards--some with only a future transfer to an adult facility to look forward to.

PART III

HOW IT LOOKS SO FAR

In attempting to judge the law and its implementation until now, we have sought to apply standards of assessment we believe would be commonly accepted.

IS THERE GREATER PROTECTION FOR THE COMMUNITY UNDER THIS LAW THAN UNDER THE FAMILY COURT ACT?

This was the purpose justifying the new law in the first place, so this question demands a direct reply.

We have seen that of the 754 arrested, 464, or 61%, have not even remained in the Criminal Court system. Of those who have remained, all but some forty or so have either been granted bail and met it, or been released on their own recognizance by the Court.

Two things should be noted at this point. 1.) A very large percentage of those charged by the Police with a violent felony act have been adjudged appropriate candidates for removal to the Family Court. 2.) A majority of those held by the adult system have been judged able to remain in the community while court proceedings continue, and some have been rearrested during this period.

The availability of bail reduces the numbers to be held in detention. The Family Court, influenced as it has been by a preventive detention orientation, tends to hold greater numbers of offenders in detention. This is especially true in "designated felonies," serious

crimes still dealt with by the Family Court, where the percentages of those held in detention are higher than those similarly held by the Criminal Court under the Juvenile Offender law. Many, of course, have deplored what is deemed to be excessive use of detention by the Family Court and would applaud the more liberal standards for release employed by the Criminal Court. Still, the irony remains that this "get tough" law is less restrictive than the one it replaced, and possibly less effective in the end.*

The transfer of jurisdiction from one court to another does not appear to be the answer to the perplexing problem of what standards and what procedures to employ in detaining or releasing persons before a court. There must be measures that are fair to those persons and at the same time protective of the community.

IS THERE EVIDENCE THAT THE NEW LAW PROVIDES A GREATER DETERRENT TO CRIME?

The figures of arrests for designated felonies increased overall by 17 when we compare the September and January arrest figures, and within those numbers, the figure for Attempted Murder rose, as did

* In New York City during the first twelve months of the Juvenile Justice Reform Act, the conviction rate for designated felony cases was 68%. During the latter part of this period, after the district attorneys began handling these cases, the rate rose to 82%. In contrast, the adult felony conviction rate in New York City is only 42%.

Of the juveniles originally arrested and charged with a designated felony act the first year, 39% have been placed with the Division for Youth for 18 months or more. In contrast, incarceration for a year or more occured in 4% of the felony cases in the adult system. Furthermore, 203 youths originally charged with a designated felony act last year have been placed with the Division for Youth.

(From 1978 Report by the Committee on Child Care.)

Sodomy and Robbery 2, Rape, Burglary 2 and Kidnapping. Burglary 1 remained the same, and Robbery 1, Arson 2 and Murder 2 dropped. It is early to look for such a trend, but one doubts that the impulsiveness demonstrated by these juvenile acts will be contained by fear of the consequences. To date there have been only two convictions by a jury, although seven others have pleaded guilty to reduced charges in order to avoid a trial and three pleaded guilty to reduced charges and were removed to Family Court.

IS THE LAW BEING IMPLEMENTED CONSISTENTLY, EVEN-HANDEDLY, WITH EQUAL JUSTICE TO ALL UNDER THIS ENACTMENT?

Reference at this point must be made to several items listed earlier. Through visiting, watching, and talking to those responsible for carrying out the mandate of the law, we became aware of the fact that a Juvenile Offender's experience differs greatly from borough to borough. We were struck by the different interpretations of the prosecutorial role under the law. From September 1 through January 31 the District Attorneys' offices declined prosecution of 131 juveniles, or 17% of those arrested city-wide. Kings declined 31, or 11% of their arrested youth; New York declined 58, or 35% of their youth; the Bronx declined 30, or 19%; and Queens declined to prosecute 12, or 9% of youth in their jurisdiction. The "luxury" of a lighter court calendar permits the inclusion of almost all arrests, as noted earlier. If the District Attorney declines prosecution, the juvenile exits from the adult system at this point.

The figures on these children removed or dismissed by the courts are the following: Kings, 55%; New York, 30%; Bronx, 48%; and Queens,

30%. The court in effect removed those it believed to be inappropriately in its jurisdiction. The above figures speak for themselves and generally follow the trend set in the first several months under the new law.

Under this standard we note that several items mentioned above are relevant. These deal with unequal treatment of several categories of youngsters. The most glaring of these is the denial of the Youthful Offender treatment now available to youths aged sixteen to nineteen, but not to those aged thirteen, fourteen and fifteen convicted in the same court, possibly as co-defendants.

The second area concerns unequal treatment of the male and female Juvenile Offender--regardless of their crime. The Department of Corrections has the responsibility for detention, pre-trial custody of all male Juvenile Offenders at Rikers Island--whether they are to be held overnight or for six months or longer--pending a court verdict. Female Juvenile Offenders are detained at Spofford by child care workers under the auspices of Special Services for Children (Human Resources Administration).

Another group we note are those held because they are unable to post cash bail sufficient to bring release from detention. It seems incongruous and patently unfair, and speaks less to the violence of the accused than to his family's financial ability to supply the necessary funds.

Another aspect invites comment in this context. If two youngsters commit a crime, are charged with a designated felony, and the District Attorney in one borough declines prosecution, while another does not, the differences become apparent. One child goes to the Family Court where the proceedings are closed and the matter confidential, while the other

child goes the adult route, and is fully exposed to the glare of publicity. As we learned from the statistics, 61% are removed from the adult court system, but by then it is too late, and the arrest is a matter of public record no matter what the outcome; the harm is done.

The Legal Aid Society has been providing defense attorneys for three-forths of the juveniles who come into Criminal Court. They have assigned a Juvenile Rights attorney and a Criminal Court attorney as well to each case. Because the law is so new, each case provides an opportunity for testing different aspects and application of the law. Legal Aid attorneys have provided good, caring and resourceful representation for their young clients. In addition, they have provided a Legal Aid Society social worker who is stationed on Rikers Island and who acts as liaison between the children, their families, as well as the attorneys.

IS THE COURT PROCESS SWIFT?

Justice delayed is justice denied. Through the end of February, only twelve cases had reached disposition, though 29 of those arrested in September are indicted, and some are still in detention. After indictment, seven pleaded guilty, two were found guilty after a trial, and three were removed. Only four have been sentenced in Supreme Court. The proceedings in the criminal justice system can be very long in an attempt to provide full due process to the defendant who faces the possibility of a long sentence.

IS EVERY OPPORTUNITY TAKEN TO MAKE OF THE ENTIRE PROCESS OF THE LAW A CONSTRUCTIVE EXPERIENCE, A PRELUDE TO GROWTH?

We must be aware that if rehabilitation, along with incarceration after conviction, is a goal we wish to reach, care must be taken so that

the process itself does not compound the difficulties of rehabilitation. If a youngster remains in limbo while his case proceeds through the court, he will defend himself by erecting a wall to fend off the fear that attends the uncertainty of his situation. The very much longer period between arrest and sentence in the adult system exacerbates this situation. The first jury trial of a Juvenile Offender arrested September 18, 1978, was finally completed January 6, 1979, and sentencing took place in February.

If this long time is spent in a detention setting, is every opportunity made to make this a helpful experience? Are the court proceedings explained, and do they have some meaning to the Juvenile Offender? The educational component at Rikers Island hardly gave assurance of this kind of experience. We did involve ourselves early in developments at Rikers, and we have seen a gradual improvement of social services and counselling available there. The impermanent nature of that facility has added to the difficulties experienced by staff in providing a more positive experience than they have thus far. However, as the census increases, as it already has (66 on March 28, 1979), it will become more important to coordinate the services which are currently offered in piecemeal fashion at this time. The legislature has not approved Division for Youth budgetary items, but they hope to use a supplementary budget to fund 150 new beds within the Division. New 50 bed secure facilities are planned. Goshen, for secure detention, and Brookwood, for "lighter weight," will be utilized for Juvenile Offenders until the additional facilities are available. On the basis of the numbers so far, estimates for secure beds needed run between 100 and 150. Planning for new facilities and programs within those settings is not being done with the idea of providing an "exclusively Juvenile Offender facility," but for increasing facilities

for all juveniles from both the Family Court and Criminal Court who require secure detention. With the increase in the probable length of stay and an older population, thought is being given to more appropriate programs. When we read of cuts imposed on the existing budget, we must be pessimistic about the possibility of translating thought into action.

IS THE IMPLEMENTATION AS TIGHT AND ECONOMICAL AS POSSIBLE WITHIN THE PROPER STANDARDS OF JUSTICE?

The last standard we have applied in assessing the new law and its functioning and effect is that of the <u>cost</u> to the taxpayer. The preparation, staffing and maintenance of the Rikers Island facility, which duplicates the secure detention services now available at Spofford, stands out as an expensive addition. The following items, for which no dollar costs have yet been determined, were suggested by the Division for Criminal Justice Services representative as probable "expensive items" in the Juvenile Offender process:

1.) Additional fingerprinting and computer retrieval,
2.) Additional police time,
3.) Additional compalint room time and time by District Attorneys spent with victims and witnesses,
4.) Removal inquiry--varying time spent,
5.) Possible longer jury selection time,
6.) Probation sentencing placement reports--more extensive, and
7.) Large numbers of interlocutory appeals and appeals of final judgment.

We are certainly not urging that less care, and therefore, less time be taken, but question that the procedures set up to reach a small number should involve the large number.

PART IV

CONCLUSIONS AND RECOMMENDATIONS

FIRST SIX MONTHS: A REPORT CARD

Although many of those engaged in the implementation of the Juvenile Offender Law have earned high marks for effort, the experience with this law has been unsatisfactory on every count.

In six months of operation the Juvenile Offender law has caused 754 children, thirteen, fourteen and fifteen years of age, charged with serious felonies, to be subjected to the adult criminal justice process. They have been arrested, booked and fingerprinted. Of the original 754, only 623 were arraigned in open court on prosecutor's charges, 270 were removed to the Family Court and 63 dismissed, and only 177 then went on to grand jury proceedings, and 146 have been indicted. Of the handful of twelve who completed the adult criminal justice process, exactly two of these children were tried on indictment and finally convicted. The other seven pleaded guilty to reduced charges and so avoided trial, and three were removed to the Family Court after indictment on a reduced charge. Only four of the twelve have been sentenced in Supreme Court.

For the children and their families, the proceedings must have been incomprehensible and the delays interminable.

The Juvenile Offender Law has failed in its avowed intent: to provide the community with greater protection from violent juvenile crime. During the lengthy criminal justice process, many children charged with grave felonies have been back on the streets, free on bail or bench parole, and a mere two were convicted after trial. This cannot be

as the architects of the law intended. And yet, with the exception of the removal hearings which are special to children, this is the usual course of the adult criminal justice process.

This law has failed as a deterrent to crime,

failed to provide a fair, even-handed administration of law in which there is uniformity of policies and practices wherever in the City the proceedings are conducted,

failed to be a swift, certain, economical system of justice.

Whatever the incidental failures due to the newness of the law, the fundamental error lies in trying to seek a solution to juvenile justice in a cumbersome, burdened, inappropriate adult criminal justice system.

RECOMMENDATIONS

All of us believe that society must protect its members from personal harm, regardless of the age or conditions of the offenders. Its laws must be enforced through a fair, clear, firm system of justice, but justice must be appropriate to a gravity of the offending acts and to the nature of the young offenders.

It surely was not accidental that the political leaders and the legislative body of the State did not choose to strengthen the legal process created especially for children. The conclusion must be drawn that the Family Court did not enjoy the public confidence that would have prompted politicians to look to that Court for public reassurance and political remedies.

And yet, when all is said and done, that is where the remedies must be found, for this is the Court not only experienced in working with children, but also able to provide children with full, fair legal process in which counsel defends to the best of his ability. Rules of evidence, standards of proof, availability of appeal are equally applied in Family Court as in other courts.

After careful study of the legal process and procedures under the Juvenile Offender Law of 1978, and following deliberation on the findings, Citizens' Committee for Children respectfully but firmly recommends that

- the Juvenile Offender Law be repealed
- exclusive jurisdiction of juvenile offenders up to the sixteenth birthday be restored to the Family Court.

With the return of exclusive jurisdiction of Juvenile Offenders, we would advise that the Legislature consider investing the Family Court with greater dispositional powers and tightening its procedural safeguards. It is suggested that such steps be taken only after full study, consultation and public hearing, in order that the Legislature be reasonably assured that the proposed strengthened dispositional powers are consonant with the public interest and with the rights and interests of the minors before the Court; and similarly that the proposed additional procedural safeguards are in keeping with the purposes and nature of the Family Court.

Citizens' Committee for Children also suggests that a board of citizens be appointed to oversee the work of the Family Court, with the obligation to report to the public regularly, and with full powers to obtain such information as will permit a thoroughgoing review of the Court's performance.

Once again we urge that the bench be appointed with special care and be of sufficient size to conduct properly the business of the Family Court. And again we urge that appropriate and adequate provision be made available to the Family Court for investigation of fact, diagnostic assessment, and for enriching services and programs to children and their families during supervision in the community and for those in detention and placement facilities, in order that the Court have promptly all the information it needs at its hearings and that the Court proceedings and dispositions be protective of the community and be as beneficial as possible for the children before the Court. The State's Division for Youth should be called upon for full and regular reports to the Legislature on its custody, supervision and rehabilitation of children assigned to it by the Court.

Citizens' Committee for Children's view that children charged with serious, violent crime should be wholly within the jurisdiction of the Family Court is supported by reports of this Court's handling of "designated felons." The conviction rate is far higher, the dismissal rate far lower, the process far faster for "designated felons" in the Family Court than those rates are for Juvenile Offenders in the adult criminal courts. In administering the Juvenile Justice Reform Act of 1976, the Family Court is proving itself to be decisive and effective. This is now clearly evident from recent reports.

In justice to the victims, to the offenders, to all of us in the New York community, we at Citizens' Committee would entrust to the Family Court, under constant citizen review, the fortunes of all children under sixteen in conflict with the law. We believe that everyone's interests plainly would be better served.

SOURCE: Juvenile Justice Institute
New York State Division for Youth
March 28, 1979

JUVENILE OFFENDERS
SEPTEMBER 1, 1978 - FEBRUARY 28, 1979
ARRESTS BY CRIME AND COUNTY

	KINGS	NEW YORK	BRONX	QUEENS	RICHMOND	CITYWIDE
ROB. 1°	115 (41)	72 (44)	73 (47)	66 (48)	7 (44)	333 (44)
ROB. 2°	115 (41)	55 (34)	45 (29)	40 (29)	6 (38)	261 (35)
ASS. 1°	12 (4)	10 (6)	10 (6)	8 (6)		40 (5)
BURG.1°	2 (1)	1 (1)	1 (1)	3 (2)	1 (6)	8 (1)
BURG.2°	3 (1)	5 (3)	1 (1)			9 (1)
ARSON 2°	7 (2)	1 (1)	5 (3)	4 (3)		17 (2)
RAPE 1°	6 (2)	5 (3)	7 (5)	5 (4)		23 (3)
SODOMY1°	3 (1)	2 (1)	3 (2)	3 (2)	1 (6)	12 (2)
KIDNAP2°	1 (0)	1 (1)				2 (0)
ATT. MURD. 2°	11 (4)	6 (4)	4 (3)	2 (1)	1 (6)	24 (3)
MURD. 2°	3 (1)	2 (1)	5 (3)	1 (1)		11 (1)
OTHER*			1 (1)	2 (1)		3 (0)
UNKNOWN	3 (1)	4 (2)		4 (3)		11 (1)
	28(100) (37)	164(100) (22)	155(100) (21)	138(100) (18)	16(100) (2)	754(100) (100)

*Crimes for which juveniles are not criminally responsible.
Note: Numbers in parentheses are percentages. Those in the right hand side of the cells add vertically; those in the lower portion of the cells add horizontally.

SOURCE: Juvenile Justice Institute
New York State Division
for Youth
March 28, 1979

JUVENILE OFFENDERS
SEPTEMBER 1, 1978 - FEBRUARY 28, 1979
COURT ACTION BY COUNTY

	KINGS	N.Y. CO.	BRONX	QUEENS	RICHMOND	CITYWIDE
DECLINED TO PROSECUTE	31 (11) (24)	58 (35) (44)	30 (19) (23)	12 (9) (9)		131 (17) (100)
REMOVED TO FAM. CT.	128 (45) (47)	35 (21) (13)	65 (42) (24)	34 (24) (13)	8 (50) (3)	270 (36) (100)
DISMISSED	29 (10) (46)	15 (9) (24)	9 (6) (14)	9 (6) (14)	1 (6) (2)	63 (8) (100)
SUBTOTAL	188 (66) (41)	108 (65) (23)	104 (67) (22)	55 (40) (12)	9 (56) (2)	464 (61) (100)
PEND. IN CRIM. CT.	26 (9) (25)	33 (20) (32)	14 (9) (14)	27 (19) (26)	2 (13) (2)	102 (13) (100)
PEND. IN GRAND JURY	9 (3) (28)	4 (2) (13)	7 (4) (22)	7 (5) (22)	5 (31) (16)	32 (4) (100)
INDICTED	54 (19) (37)	19 (12) (13)	31 (20) (21)	41 (29) (28)		145 (19) (100)
SUBTOTAL	89 (31) (32)	56 (34) (20)	52 (33) (19)	75 (54) (27)	7 (44) (3)	279 (38) (100)
UNKNOWN (UNCONFIRMED ARREST REPORTS)	7 (2) (41)	1 (1) (6)		9 (6) (53)		17 (2) (100)
TOTAL	284*(100) (37)	165*(100) (22)	156*(100) (21)	139*(100) (18)	16*(100) (2)	760*(100) (100)

*Seven youths appear in these figures twice; one youth arrested does not appear, See previous "Court Action" tables for footnotes.

Note: Numbers in parentheses are precentages. Those in the right hand side of the cell add vertically; those in the lower portion of the cells add horizontally.

SOURCE: Juvenile Justice Institute
New York State Division
for Youth
March 28, 1979

JUVENILE OFFENDERS
SEPTEMBER 1, 1978 - FEBRUARY 28, 1979
DISPOSITIONS OF INDICTED CASES

	KINGS	N.Y.Co.	BRONX	QUEENS	RICHMOND	CITYWIDE
GUILTY BY TRIAL		1	1			2
GUILTY BY ADMISSION	3	3	1			7
CONVICTION SUBTOTAL	3	4	2			9
REMOVED FOR PLEA		2	1			3
DISMISSED						
PENDING IN SUPREME CT.	51	13	28	41		133
TOTAL INDICTMENTS	54	19	31	41		145

SOURCE: Juvenile Justice Institute
New York State Division for Youth
March 28, 1979

JUVENILE OFFENDERS
SEPTEMBER 1978
COURT ACTION BY COUNTY

	KINGS	N.Y. CO.	BRONX	QUEENS	RICHMOND	CITYWIDE
Declined to Prosecute	3 (5) (14)	10 (40) (48)	5 (26) (24)	3 (16) (14)		21 (16) (100)
Removed to Fam. Ct.	35 (55) (63)	7 (28) (13)	7 (37) (13)	4 (21) (7)	3 (100) (5)	56 (43) (100)
Dismissed	11 (17) (46)	4 (16) (17)	3 (16) (13)	6 (32) (25)		24 (18) (100)
Subtotal	49 (77) (49)	21 (84) (21)	15 (79) (15)	13 (68) (13)	3 (100) (3)	101 (78) (100)
Pend. in Crim. Ct.						
Pend. in Grand Jury						
Indicted	15 (23) (52)	4 (16) (14)	4 (21) (14)	6 (32) (21)		29 (22) (100)
Subtotal	15 (23) (52)	4 (16) (14)	4 (21) (14)	6 (32) (21)		29 (22) (100)
Unknown (Unconfirmed Arrest Reports)						
Total	64 * (100)* (49)	25 (100) (19)	19 (100) (15)	19 (100) (15)	3 (100) (2)	130 * (100) (100)

* Two youths are reported twice in these figures. One was indicted after removal; another was removed after indictment

SOURCE: Juvenile Justice Institute
New York State Division for Youth
March 28, 1979

JUVENILE OFFENDERS
SEPTEMBER 1, 1978 - FEBRUARY 28, 1979
DISPOSITIONS OF INDICTED CASES - DETAILED

KINGS

1	Plea to Assault 1'	Sentence 1-3 Years
1	Plea to Manslaughter 1'	Sentence 3 1/3-10 Years
1	Plea to Robbery 2'	Sentence 1-3 Years

NEW YORK COUNTY

3	Pleas to Robbery 1'	
1	Guilty by trial of Rape 1', Sodomy 1' Burglary 1' Robbery 1'	
2	Removed after Pleas	

BRONX

1	Plea to Robbery 2'	Sentence 1-3 Years
1	Guilty by trial of Robbery 1' - 4 Counts	
1	Removed after Plea to Robbery 2' (1)	

END