



REFLECTIONS ON JUVENILE JUSTICE REFORM IN NEW YORK

Keynote address by

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At a conference sponsored by

The Diane Abbey Law Center for Children and Families

April 29, 2011

New York Law School
185 West Broadway
New York, NY 10013

I wish to thank the Diane Abbey Law Center for Children and Families at New York Law School for the invitation to speak at today's conference on Juvenile Justice Reform in New York. In particular, I extend my personal thanks to Diane Abbey for her vision in creating this Center which has, in its short life, under the leadership of Professor Carlin Meyer, already become a vibrant forum for discussion of issues facing children and families in New York City. Today's conference is a perfect example of how a high quality academic institution, grounded in the issues affecting New York City, and supported by civic leaders such as Diane Abbey, can advance new ideas and promote more thoughtful policies on pressing issues. We all wish you continuing success.

I also extend greetings to my many friends and colleagues in the room, many of whom worked with me on the Governor's Task Force on Transforming Juvenile Justice. This feels a bit like a high school reunion! We should be proud of the continuing impact of our Task Force report, which was the subject of the opening panel of today's conference. It is very gratifying to know that, in a modest way, our work has contributed to a larger movement, here in New York, one that is indeed "transforming juvenile justice."

This afternoon I would like to place the juvenile justice reform movement now underway in New York in a larger, national context, comment briefly on the work ahead, and then step outside the specific topic of this conference to suggest some overarching issues that should be of concern to anyone who pursues the goal of "youth justice."

When we released our Task Force report in December 2009, I and other members of the Task Force often noted the irony that New York State, which for so long had been a thought leader in juvenile justice circles, had instead become a poster child for a juvenile justice system that had lost its way. We found little to celebrate. Our recidivism rates were so high, well over 80%. Our costs were exorbitant, well over \$200,000 a year for each youth in placement. New York was not part of the robust national policy conversation on juvenile justice reform. We reached the nadir of our collective sense of shame when the Department of Justice, following an extensive investigation, documented truly shocking instances of physical abuse, poor or nonexistent services and unprofessional treatment of our young people held in facilities operated by our state's Office of Children and Family Services.

As New Yorkers, we like to think that we observe at least minimal standards of decency in our justice facilities, so it was wrenching to read of young people who had experienced "serious injuries...including concussions, broken or knocked-out teeth, and spiral fractures" (U.S. Department of Justice, Civil Rights Division, Letter from Acting Assistant Attorney General Loretta King; 2009, p. 5) at the hands of employees of our government for behaviors such as slamming the door, storming off, refusing to get dressed, refusing to stop laughing loudly, refusing to move, and glaring at the staff and "invading their space" (p. 7 & 8).

Yet our Task Force report also documented another New York story, one that does not make headlines in the same way, and one that now places our State on the cusp of becoming, once again, a national leader in juvenile justice. On two parallel tracks – one at the state level, one at the city level – our government leaders, working closely with advocates, service providers, researchers and policy analysts, many of whom are in this room, have been laying the foundation for a very different juvenile justice system in our state. At the state level, under the strong leadership of OCFS Commissioner Gladys Carrion, after years off the public radar, New York’s juvenile justice system was opened up to public scrutiny. In a stance that earned her friends and detractors alike, Commissioner Carrion openly stated that New York’s system of juvenile placement needs a total overhaul, that we need to abandon a philosophy of punishment and corrections in favor of a youth development approach, that we hold too many youth in our juvenile facilities, and that too many youth of color are being sent to facilities far from their homes where they were abused, not helped, and emerged worse, not better. Under Commissioner Carrion’s leadership, the state’s approach to juvenile justice has begun the long journey back to conformance with professional and constitutional standards. Our Task Force report documented many reform initiatives at OCFS, but the most striking trend is the sharp decline in the placement population.¹ Four years ago, when Commissioner Carrion took office, there were 1,158 youth held in placement facilities in New York State; today there are 650, a 44% decline (Carrion, 2011). This is simply breathtaking.

On a parallel track, we have witnessed a similarly impressive policy shift at the local level. Early in his tenure as Probation Commissioner, Marty Horn came to the conclusion that the system for Alternatives to Detention was simply not working -- the funds were not well spent, youth were not being well-served, the community was not engaged properly -- so he shut it down. Simply did not renew the contracts. This was a shock to the system. What followed was an example of government at its best. Working with all stakeholders in the system – judges, service providers, advocates – the City, led by John Feinblatt and Michele Sviridoff of the Criminal Justice Coordinator’s office, went through a research process over several months to find the variables that are associated with success – return to court when needed; absence of re-arrests while on release. Based on this research, they developed a new risk assessment instrument which was piloted in 2007 in Queens, then went citywide the next year (Vera Institute of Justice, 2011).

The results of this reform are stunning. Low risk youth, who had been detained at arraignment at a level of 24%, are now being detained 9% of the time. Medium risk detention rates dropped

¹ The Office of Children and Family Services recently released a report entitled New York State Governor’s Task Force on Transforming Juvenile Justice Summary: Recommendations Implementation Progress Report, which documents the steps taken to carry out the twenty recommendations of the Task Force on Transforming Juvenile Justice.

from 39% to 34% (p. 12). As importantly, the detention levels for high risk kids went up. Judges finally have the information they need to make evidence-based decisions on detention. As a result the City has witnessed a 31 percent reduction in the use of detention, an increase in the appearance rate of young people in court, and a reduction in recidivism rates (while the case is pending) of 35% (Siegel, 2011). When the City closed the Bridges juvenile detention facility – also known as Spofford – earlier this year, after decades of promises to do so, the City celebrated not just a decline in its detention population, but the advent of a new, smarter, approach to making decisions about the lives of young people.

Today, as this audience knows full well, we have the remarkable reality that both our Governor and our Mayor are committed to the broad outlines of a lasting juvenile justice reform framework for New York – but we do not yet have a deal. Governor Cuomo has pledged that the State will reduce the number of juvenile placement facilities in New York. Indeed, his recently approved budget, envisions the closure of an additional 373 beds this fiscal year (Carrion, 2011). In the most stirring section of his State of the State address, he famously said, “I understand, I understand, the importance of keeping jobs. I understand the importance of keeping jobs especially in upstate New York. I also understand that that does not justify the burden on the taxpayer and the violation of civil rights of the young person who is in a program that they don’t need where they’re not being treated hundreds of miles from their home just to save state jobs. An incarceration program is not an employment program. If people need jobs, let’s get people jobs. Don’t put other people in prison to give some people jobs. Don’t put other people in juvenile justice facilities to give some people jobs. That’s not what this state is all about and that has to end this session” (Cuomo, 2011).

At the City level, Mayor Bloomberg, formally announced his decision to merge the Department of Juvenile Justice into the Administration for Children’s Services on November 17, 2010. This merger, in his view, would “strengthen our ability to improve long-term outcomes for youth involved with the juvenile justice system – many of whom have also been in the child welfare system.”(Bloomberg, 2010). Then, two months later, in his State of the City address on January 19, 2011, Mayor Bloomberg proposed that the City “opt out” of the state’s network of placement facilities, and keep New York City youth in New York City. Under the able leadership of John Feinblatt, Policy Advisor to the Mayor and Criminal Justice Coordinator, and Vinny Shiraldi, Commissioner of Probation and nationally-recognized juvenile justice expert, the City is now developing a plan for carrying out this “realignment” that will build upon the existing network of community-based providers and may include provisions of secure facilities here in the City.

As we sit here today, the final chapter of this remarkable story remains to be written. We do not yet know how these two visions – a smaller state system, and a separate city system – will

be reconciled. But there is no question that common ground can be found. I have great confidence in the individuals involved in making these decisions and firmly believe that New York will emerge with a juvenile justice system that is better for young people, better for their families, less expensive, and enhances public safety.

One reason to be optimistic that these reforms will last is that New York is riding a national wave of juvenile justice reform. The changes in the juvenile justice policy arena around the country are truly breathtaking. We are joined today by Bart Lubow of the Annie E. Casey Foundation who has played a key role in this quiet revolution. We can trace these reforms back to 1993, when Ohio created a system giving juvenile courts financial incentives to keep youth in local programs, rather than sending them to the state. By 1995 state commitment had dropped by 43% and a 2005 follow-up study showed impressive results for recidivism rates: youth who had been included in the pilot model had average recidivism rates over a 2.5 to 3.5 year period of 20% compared to 53% for youth who were released from conventional Department of Youth Services placement (Latessa et.al. 1998; Lowencamp & Latessa, 2005). California has also witnessed a dramatic change in its juvenile prisons. Over the past five years, the number of youth in placement facilities in California has dropped from 10,000 to about 1,200. Detroit has implemented its own version of a “realignment” plan, with stunning results. In 1998, Detroit sent 730 youth to state facilities; in 2009, the city sent only 18 (Moore, 2011).

More recently, two governors with very different political views – Jerry Brown in California and Jan Brewer in Arizona – have offered proposals to eliminate their state juvenile corrections agencies entirely and shift responsibility to the county level. John Kitzhaber, the new governor of Oregon, has stated his intention to eliminate half of the state’s juvenile placement beds (Yoder, 2011). These forward-looking states are leading a national trend that is clearly reflected in numbers. The Office of Juvenile Justice and Delinquency Prevention has recorded a drop in national juvenile placements of 26% between the years 1997 and 2008 bringing the number of juvenile placements in 2008 down to a record low of 81,000 since 1993 (Sickmund, 2010).

On one level, we can argue these dramatic reductions in the juvenile detention population simply reflect fiscal realities – states need to cut their budgets. But I think there is a larger reality at work, one that holds great promise for the future of this reform movement. As a nation we are coming to realize – again – that young people do not belong in prison and there is a powerful rationale underlying this claim. We see the convergence of five realizations. First, we realize that the conditions of confinement are often horrific. According to a 2010 report from the Department of Justice, 13 percent of youth in state juvenile facilities are sexually abused, most often by the staff of the facility. According to a report by the Campaign for Youth Justice, juveniles who are sent to the adult prison system, even if they are not, in the end, convicted in adult court, are the most vulnerable population in terms of becoming a victim of

sexual assault and rape (Yoder, 2011; Campaign for Youth Justice - CFYJ, 2011, p. 16). In addition, “youth housed in adult jails are 36 times more likely to commit suicide than youth housed in juvenile detention facilities (CFYJ, p. 16).”

Contrasted with these findings, we are also benefitting from the emergence of a new model of juvenile facilities, pioneered by our colleagues in Missouri, which has garnered well-deserved national acclaim for providing a pathway out of our recent experiment with more punitive systems of detention and placement. Other states now look to Missouri for guidance, after justice officials there, under the leadership of Mark Steward, transformed the placement system for youth into one based entirely on smaller, locally accessible group living programs where youth can maintain ties to community and family while being held accountable for their offenses.

Second, we have now developed a robust body of empirical research showing that juveniles have lower recidivism rates when they are treated in community based facilities and, for those who must be held in secure facilities, their recidivism rates are lower if they are held there for shorter periods of time [Mulvey, 2011; CFYJ, p. 17]. These are important empirical findings from the social science community.

Third, we must not forget that the nature of juvenile crime – contrary to what popular media might communicate – is such that most crimes committed by youth are nonviolent rather than extreme violent acts. In fact, the percentage of youth arrested for violent crimes each year amounts to no more than 5% of all juvenile arrests (CFYJ, p. 13). The reality about juvenile crime is oftentimes distorted, depicting such crime as constantly increasing; yet, statistics show that juvenile crime has been consistently dropping since 1997 and is now at a historic low. It is important that we add our voices in recognizing such facts and emphasize this change in the national mood.

Fourth, this emerging national consensus that young people are better off if they are kept out of juvenile facilities – and that juvenile facilities can be operated in humane ways -- is reinforced by the strong scientific findings about the development of the brain. This research, in turn, has provided support for a new Supreme Court jurisprudence on the appropriateness of punishment for young people. In the 2005 *Roper v. Simmons* decision, for example, the Court held that juveniles under the age of 18 must no longer receive a sentence of death for any crime committed arguing, that: “When a juvenile commits a heinous crime, the State can exact forfeiture of some of the most basic liberties, but the State cannot extinguish his life and his potential to attain a mature understanding of his own humanity.” (*Roper v. Simmons*, 2005). Then, just last year, in *Graham v. Florida*, the Court had to decide another case with fundamental and national implications regarding the adjudication of juveniles to life without parole. Here, it was argued that: “The inadequacy of penological theory to justify life without

parole sentences for juvenile nonhomicide offenders, the limited culpability of such offenders, and the severity of these sentences all lead the Court to conclude that the sentencing practice at issue is cruel and unusual” (Graham v. Florida, 2010).

These decisions reflect research studies on brain development and adolescent developmental stages demonstrating that young people up to a certain age (typically 19) cannot be considered culpable to the same extent as adults because their brains are not fully developed in essential areas that define blameworthiness, such as: future time orientation/temporal perspective, identity, social maturity of judgment, self-reliance and responsibility, resistance to peer pressure, and other psychosocial characteristics. (Cauffman & Steinberg, 2000; Zimring, 2000).

These are truly historic shifts – in the operations of our juvenile justice system, the underlying scientific foundations, and the jurisprudence of our Supreme Court. Finally, we are also witnessing a new legislative posture in several states around the country. In a development that has received less public attention, a number of state legislatures have begun to roll back many of the more draconian reforms passed in the 1970s and 1980s. Over the past five years, four states (CO, ME, VA, PA) have passed laws limiting the ability of states to house youth in adult jails and prisons. Three states (CT, IL, MS) have expanded the jurisdiction of their juvenile courts so that older youth, who would automatically have been tried as adults, may now be tried in juvenile courts. Ten states (AZ, CO, CT, DE, IL, IN, NV, UT, VA, WA) have reformed their transfer laws, making it more likely that youth will be tried in juvenile courts. Finally, four states (CO, GA, TX, WA) have reformed their mandatory minimum laws to reflect developmental differences between young people and adults (CFYJ).

So we live in exciting times. The cause of juvenile justice reform is now moving forward with remarkable momentum. Not in every state; perhaps not even in most states; but you get a sense the tide is shifting. Here in New York, we still have lots of work ahead of us to close the deal on our reform agenda. We hope that the Governor and Mayor – and the legislature -- will soon reach an agreement that will establish a new framework for the operations of our state’s system of juvenile placement facilities. Within that framework, we have to continue our pressure to make sure the conditions of confinement more humane, aligned with youth development principles, and geared to successful reentry and reintegration of the youth involved. We urgently need our legislature to get on board the reform agenda. Our Task Force made a number of recommendations for statutory reform – most importantly, to limit the discretion to send a youth to a placement facility to public safety factors, abandoning the idea that this deprivation of liberty could ever be in the best interests of the child. On a related matter, a number of organizations and individuals, including Task Force Committee Chair, Michael Corriero, are mounting a strong campaign to raise the age of criminal responsibility, to bring New York into line with the rest of the country. The advocates in this room – perhaps with

the assistance of the Diane Abbey Center -- should rally around a simple legislative reform agenda that will ensure that we not only seize this moment, but have set New York on an irreversible path toward a more effective and humane juvenile justice system.

Before closing, I would like to challenge this audience to adopt a wider framework as you work on the cause of youth justice. It is very easy for us to become intellectually complacent – for us to talk only to each other – to preach to the chorus of justice reformers – and to overlook two important realities: the reality of crime on the streets, and the reality of justice as experienced by young people. We often become “system-centric” and focus only, or mostly, on the workings of the juvenile justice system itself - - the courts, the detention and placement facilities, and the community services that work in tandem with the system. But the system is not the only reality we need to consider.

I believe strongly that advocates for justice reform are more effective if they also advocate for public safety – if they are conversant with the realities of crime and violence and can engage in the public debates on how to reduce the level of crime in our society. I say this for two reasons -- one for strategic value, one for intellectual consistency. First, because the public is justifiably concerned about the high levels of crime in general, and youth crime in particular, those who advocate for better treatment of youth who violate the law need to have an answer to the public’s understandable question: how will your proposals address the crime problem in our city? We typically present a narrow answer, which is that these reforms will reduce recidivism. I recognize that this is an important answer; reducing recidivism through evidence-based programs should always be our goal. But we must be truthful with ourselves: because the new crimes committed by young people exiting the juvenile justice system account for only a small percentage of all crimes committed by young people, reducing their failure rates will have minimal impact on our city’s crime rates. I have special admiration for those justice reformers who also have well-developed positions on the effectiveness of crime reduction strategies. They gain public trust because they address the public’s concerns.

A second reason to link our justice reform agenda with a public safety agenda is that the young people we care about are typically growing up in neighborhoods and families marked by high levels of violence. A youth development perspective on the world should encompass both a concern about institutional treatment in juvenile prisons and a concern about the impact of child abuse, exposure to domestic violence, bullying, victimization and teenage dating violence. Intellectual consistency – and a sincere commitment to the future of the young people we care about -- requires us to deplore these inhuman conditions of life as much as we deplore inhuman conditions of confinement.

Finally, I would urge this audience to focus on the realities of justice as experienced by young people. Few youth -- and hopefully fewer in the future – will spend time inside a secure or non-

secure placement facility. If our hopes are realized, they will number no more than a few hundred a year. But hundreds and thousands of youth will experience our justice system each year. They will be stopped by the police, sometimes frisked, and occasionally arrested. They will receive summonses for various infractions, be required to go to court, often plead guilty and pay fines. They will be arrested for minor offenses such as public possession of marijuana. They will be subjected to police interventions for allegations of unruly and sometimes criminal behavior in schools. These interactions frequently occur outside public view, with little oversight or accountability, out of view of the judicial system.

Over recent years, the experience of young people with our justice system has changed dramatically. Between 2003 and 2009, according to police statistics, the number of police stops in New York City has more than tripled (Center on Race Crime and Justice, 2010). Youth advocates should be concerned about these trends. The Center for Court Innovation has just completed a survey of Brownsville residents that sheds light on this phenomenon. According to the Center's forthcoming report, 28% of the individuals surveyed reported they had been stopped and frisked by the police in the past year. On average, they had been stopped and frisked five times that year. And for young people between the ages of 16 and 24, the rate was even higher. Forty-four percent had been stopped and frisked in the past year, an average of 5.5 times (Hynynen, 2011).

In short, the interaction between our justice system and our young people has changed in profound ways, with unknown costs and benefits. Those of us who are proponents of the theories of procedural justice, developed by NYU Professor Tom Tyler and Yale Law School Deputy Dean Tracey Meares, are concerned that these experiences might undermine the level of trust in the rule of law and the legitimacy of the justice system itself. We are concerned that young people, particularly young people of color, who are experiencing these increases, are growing up with a feeling of alienation from the agencies of government entrusted with the power to enforce the law and administer justice. These young people will likely never be residents in a juvenile facility, but all of them are citizens of our city and our future depends on their active engagement in civic life.

A number of people in this room are working on these issues of crime prevention, youth-police interactions, and alternatives to the juvenile justice system. I applaud their work, and encourage all of us to continue to work to bring about deep and lasting reforms – not only in the operations of the juvenile justice system, but also in the lives of young people who will benefit if they grow up in safe communities, in healthy relationships, and with positive experiences of justice.

Thank you.

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