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Honorable Fernando Camacho

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## ADJUDICATING CASES INVOLVING ADOLESCENTS IN SUFFOLK COUNTY CRIMINAL COURTS

*Honorable Fernando Camacho\**

*Scientific evidence tells us that adolescent brains are not fully matured . . . the parts of their brains that govern reasoning, impulse control and judgment are still developing and, as a result, most adolescents lack the capacity to fully appreciate the consequences of their actions. Moreover, studies indicate that older adolescents, 16- and 17- year-olds whom we now prosecute and sentence in criminal courts, are not only more likely to re-offend and to re-offend sooner, but also go on to commit violent crimes and serious property crimes at a far higher rate than those young people who go through the family court system . . . there is a better way. With a tailored, age-appropriate approach, we can provide them with the services they need to break the cycle and get their lives back on track.*

—Jonathan Lippman, Chief Judge of the Court of Appeals of New York

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\* The Honorable Fernando Camacho obtained his undergraduate degree from Columbia College and attended Fordham University School of Law where he graduated in 1985. Directly after law school, he accepted a position with the Manhattan District Attorney's Office and spent several years assigned to the Trial Division and the Sex Crimes Unit. In 1989, Judge Camacho was promoted to the position of Senior Trial Counsel and assigned to the Manhattan District Attorney's Homicide Investigation Unit where he investigated and prosecuted violent drug gangs.

In 1997, he was appointed to the bench and spent four years in Kings County Criminal Court before being transferred to Queens County Criminal Court in 2002. In May 2009, Chief Judge Jonathan Lippman appointed Judge Camacho to the position of County Administrative Judge for Criminal Matters in Queens County. While serving as administrative judge, he also presided over the Queens County Supreme Court Youth Diversion Part, a specialized court dealing with adolescents charged with felony offenses. In January 2013, he was assigned to Suffolk County Supreme Court.

This article was an effort on Judge Camacho's behalf to explain how the Youth Part operates and to encourage local elected officials and community leaders to work with the court system to make this initiative successful. This version seen here was amended by the *Touro Law Review* to include supporting footnotes.

## I. INTRODUCTION

Most young persons who commit a crime prior to their sixteenth birthday are referred to Family Court where the focus is on rehabilitation, treatment and services.<sup>1</sup> Once an adolescent turns sixteen, this “safety net” disappears, and the young person is thrust into the adult criminal justice system where they appear in the same courtrooms as much older violent felony offenders.<sup>2</sup> Since there are very few resources available for these young offenders in our criminal courts, judges are often left with only one alternative—incarceration.

New York State is facing a juvenile justice crisis as reflected in the cries of the mother of a young defendant in my courtroom: “Please help me, I am going to lose my child to the system!” We have a moral responsibility to respond to this crisis by asking every young person who appears in our criminal courts: “*Why are you here, kid?*” and develop alternatives to incarceration which provide them with the tools to succeed, reduce recidivism and protect the community.

## II. HOW DOES THE SUFFOLK COUNTY FELONY YOUTH PART OPERATE?

Almost every 16, 17 and 18 year old charged with a felony in Suffolk County has their cases adjudicated in the Suffolk County Felony Youth Part (“SFYP”). The SFYP program involves three separate phases—the assessment, the plea and the compliance stage.<sup>3</sup>

### A. Phase 1 - The Assessment - “Why are you here, kid?”

At the outset, every young person undergoes a thorough psy-

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<sup>1</sup> See generally THE FUND FOR MODERN COURTS, A GUIDE TO THE NEW YORK STATE FAMILY COURT 47 (2005) available at <http://moderncourts.org/files/2013/10/familycourtguide.pdf>.

<sup>2</sup> See N.Y. CRIM. PROC. LAW § 720.10 (McKinney 2006); see also N.Y. CRIM. PROC. LAW § 1.20 (McKinney 2013); but see Teri Weaver, *Justice System Changes Would Treat 16-, 17-year-old Offenders as Children, Expand Family Courts*, SYRACUSE.COM (Jan. 19, 2015), [http://www.syracuse.com/news/index.ssf/2015/01/treat\\_16\\_17\\_as\\_children\\_not\\_adults\\_in\\_ny\\_criminal\\_justice\\_system\\_commission\\_reco.html](http://www.syracuse.com/news/index.ssf/2015/01/treat_16_17_as_children_not_adults_in_ny_criminal_justice_system_commission_reco.html).

<sup>3</sup> See generally RACHEL PORTER, ET AL., CTR. FOR COURT INNOVATION, WHAT MAKES A COURT PROBLEM-SOLVING vi (2010), available at [http://www.courtinnovation.org/sites/default/files/What\\_Makes\\_A\\_Court\\_P\\_S.pdf](http://www.courtinnovation.org/sites/default/files/What_Makes_A_Court_P_S.pdf).

cho-social assessment.<sup>4</sup> A probation officer conducts an investigation and generates a report based upon interviews with the adolescent, family members, friends, teachers and anyone else who may have relevant information. If there are mental health issues, a psychiatric evaluation is also conducted.

**B. Phase 2 - Taking the Plea - “If You Want to Avoid Going to Jail Kid, Let Me Tell You What is Expected From You.”**

Once the assessment is completed, there is a plea.<sup>5</sup> This will typically involve a plea to a felony at the outset, and a postponement of the sentence for twelve to eighteen months during which the defendant is closely monitored by the Court and the Department of Probation to insure full compliance.

During the twelve to eighteen months after the plea, the youth is expected to comply with numerous conditions. A non-exhaustive list of possible conditions includes: residential placement; community-based substance abuse or mental health programs; anger management programs; family counseling; jobs and job training programs; educational programs; curfews; G.P.S. bracelets; youth recreational programs; community service; restitution; and any other condition reasonably related to rehabilitation. After the plea is taken, the case is adjourned for compliance updates.<sup>6</sup>

**C. Phase 3 - The Compliance Stage - “How Are You Doing, Kid?”**

During the Compliance Stage, participants are expected to continue to appear in court every four weeks during the entire period of the deferred sentence.<sup>7</sup> Once they complete the program, they are adjudicated a Youthful Offender and sentenced to an additional four years of Probation. If they are not compliant, there is a specific jail alternative, which typically involves state prison.

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<sup>4</sup> See generally *id.* at 13.

<sup>5</sup> See generally *id.* at 10.

<sup>6</sup> See generally *id.* at 61.

<sup>7</sup> See generally *id.*

### III. HOW CAN THE COURT SYSTEM COLLABORATE WITH OUR PARTNERS IN SUFFOLK COUNTY TO MAXIMIZE THE CHANCES OF SUCCESS FOR EVERY YOUNG PERSON IN SFYP?

When discussing the juvenile justice crisis in Suffolk County, I often evoke the image of a twelve-year-old kid dribbling a basketball in a playground as an elderly grandmother tries to convince the youngster to go to school, while on the other side of the playground, a group of Bloods tells him: “Don’t listen to her kid, come with us.” We, as a caring and compassionate community who love our children, need to develop a coordinated plan to help them avoid the perils of the streets and the horrors of state prison.

I have identified five main areas of concern with respect to the participants in the SFYP program: a) housing and family dynamics; b) substance abuse; c) mental health; d) education; and e) gang involvement.

a) *Housing and Family Dynamics*: Some of the kids in the SFYP program are homeless and many are “throwaways.” They have no permanent roof over their heads and sleep on friends’ couches and in county parks. Others, although they may have a roof over their heads, come from dysfunctional homes where discord, violence, and chaos abound.

b) *Substance abuse*: Many of the participants in the program have experienced extensive trauma during their short lifetime. They turn to drugs or alcohol at an early age to numb their pain and ease their anguish. As a result, many of the young people who come into SFYP suffer from a serious addiction.

c) *Mental health*: There are some young people who enter SFYP with a serious mental illness. Others, although not mentally ill, suffer from “oppositional defiance disorder.” In other words, they are angry—they hate the world because they think the world hates them. They distrust adults because they feel that all persons in authority, sometimes even their own biological parents, have abandoned them.

d) *Education*: Sadly, many of the young people who come into SFYP are not being educated. Some of them do not have anyone who cares enough to force them to go to school, and as a result, they accumulate absences. Those with anger issues act up, engage in fights, and are disrespectful and defiant to the school staff. After repeated suspensions, they are sent to alternative educational programs

where the same pattern is repeated.

e) *Gangs*: For many youngsters, the major obstacle to the successful completion of the SFYP program is the gang presence in their neighborhoods. Many who want to comply with the court's mandates are unable to do so because of intimidation and threats by gang members.

To maximize the chances of success for SFYP participants, the court system, public officials and county agencies need to join with local community leaders to create a *network of support and oversight for our youth*. The network needs to be divided into two separate tracks—the “*Residential Track*” and the “*Community-Based Track*.”

#### A. “Residential Track”

Homeless youngsters, and those from dysfunctional homes where community-based services are simply not a possibility, need appropriate residential placements.

Those who do not have a serious addiction or mental health issue need safe, clean, well-supervised residential facilities where they can be educated, receive counseling services and secure part-time employment with local businesses. In this way, they can save money, learn to become self-sufficient and begin to formulate an exit strategy for their return to the community.<sup>8</sup>

Those who suffer from serious mental illness are presently being warehoused in our local correctional facilities. This is unconscionable. We need to create a streamlined procedure to navigate the very complicated mental hygiene bureaucracy and formulate a quick, efficient and expeditious process for submitting SPA or SPOA (Single Point of Access) applications on behalf of mentally ill youngsters in order to secure placement in appropriate mental health facilities.<sup>9</sup>

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<sup>8</sup> Timothy Hill Children's Ranch is a great example of this type of facility. *History of the Ranch*, TIMOTHY HILL CHILDREN'S RANCH, <http://www.timothyhillranch.org/THCR/Home.html> (last visited Apr. 7, 2015).

<sup>9</sup> Vincent F. DeMarco, Sheriff of Suffolk County, New York, is in the process of creating this type of fast-track procedure for young inmates housed in his facilities. See *Sheriff DeMarco Creates Youth and Justice Committee*, SUFFOLK COUNTY SHERIFF'S OFFICE (July 24, 2014), <http://www.suffolkcountyny.gov/sheriff/PressReleases/tabid/909/ctl/details/itemid/2591/mid/1989/sheriff-demarco-creates-youth-and-justice-committee.aspx>.

## B. “Community-Based Track”

For those participants who have a stable home environment, where community-based services are possible, we need to create “*Safe Spaces*”—locations free of gangs, drugs and violence—where kids are free to attend school, overcome their drug addictions, receive services for their mental health needs and avoid the negative influences that led them to become involved with the criminal courts in the first place.

I urge you to consider the creation of “*Safe Space*” facilities at several locations throughout Suffolk County. I would focus on the areas where many of the SFYP participants come from: North Amityville, Wyandanch, Brentwood, Central Islip, Bellport, Huntington Station and Riverhead.

The “*Safe Space Program*” would operate as follows: The young person is mandated by the Court to attend his or her local facility Monday through Friday from 8:00 a.m. until the evening.<sup>10</sup> During the morning and early afternoon hours the youngster attends school at the facility.<sup>11</sup> After the school day ends, substance abuse, mental health and family counselors are brought in to offer services. Throughout the afternoon, the facilities sponsor recreational activities, programs promoting social skills and accountability, jobs programs and field trips. Neighborhood leaders such as clergy and local business people, as well as other potential mentors/role models, are invited to the facility to speak to the kids and provide support.<sup>12</sup> In order to keep gangs out of these “*Safe Spaces*,” promote safety and insure compliance, a Probation Officer and a COPE (community oriented police enforcement) officer are assigned to each facility. Finally, there is a case manager in each of these locations to insure that everyone receives appropriate services. Naturally, an existing space large enough to accommodate all of these programs has to be identified within each of the “*Safe Space*” communities.

While attending the local “Youth Center” in Central Islip recently, a counselor remarked that what these kids truly need is a secure place free of chaos, gangs and violence, where positive influ-

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<sup>10</sup> Having the facilities located in their neighborhood avoids transportation costs which can be substantial.

<sup>11</sup> Education is provided by the school district, or perhaps by an accredited alternative education program.

<sup>12</sup> What these kids need is “hands on their backs” to keep them on the right path and “eyes” to watch out for potential dangers.

ences abound. This “*Safe Spaces*” model would provide a haven where kids can be themselves and feel protected from the random violence and abuse that many of them have grown up with. It will also give them a built-in response when neighborhood gang members challenge them—“Sorry, if I don’t go to my program the Judge will put me in jail.” If we all join together we can make our neighborhoods safer and save many of our children from being “lost to the system.”