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Jury members of the Red Hook Youth Court weigh in on sanction options during deliberations.

Youth Court as an Option For Criminal Court Diversion

By Nancy Fishman

Youth courts in New York State, like the over 1,000 youth courts around the country, accept referrals for diversion from a range of sources. Police officers send young people, usually first-time offenders, to youth courts instead of arresting them and sending them on to probation. Probation officers use youth courts as a reason to adjust a case, to give a teenager an opportunity to answer for a bad judgment call before a petition can be filed in family court and a more damaging record established. Schools use youth courts as an alternative for school disciplinary matters, holding students accountable for problematic behavior without suspension or other exclusionary disciplinary actions.

Virtually unique to New York, however, are referrals to youth court from criminal court. In a survey of New York State youth courts conducted by the Center for Court Innovation in 2009, only eight of the 58 courts that responded indicated that they accepted cases of 16- to 18-year-olds referred by criminal court judges. (New York is one of only two states left in the country where youth between 16 and 18 are automatically under the jurisdiction of the adult criminal court. North Carolina is the other.) The fact that these referrals are unusual suggests

that the youth court option remains relatively unknown among criminal court judges and practitioners.

The experience of jurisdictions that have made use of youth courts for criminal court cases demonstrates that these courts represent an untapped resource for responding effectively to low-level offenses by older teens. Youth courts, whose volunteer members generally range in age from 13 to 18, require young people cited for a variety of misbehaviors to answer to a court of their peers. In New York, these courts are dispositional only: they do not determine guilt or innocence and young people opting to participate must first accept responsibility for their actions. Youth court members, serving as judge, jury and advocates, use a hearing to understand what happened and determine an appropriate sanction, based generally on the nature of the offense, the respondent's understanding of its effect on others, and the respondent's needs, talents and aspirations. Sanctions can include community service, jury duty for the youth court, workshops, and letters of apology. Respondents are held accountable but are afforded the chance – by peers whom they respect – to move beyond the kind of bad decisions that are not uncommon in teenagers. After completing their sanc-

tions, respondents are often recruited to become youth court members themselves.

Criminal courts, particularly in high-volume jurisdictions, have limited ability to respond effectively to low-level offenses by first-time offenders. Youth courts in these cases may actually expect more of respondents, but those who comply do not end up with a criminal record, which can limit their future educational and employment opportunities, among other things. And youth court sanctions are restorative, focused on engaging youth in their communities. The court system benefits as well, in that these less-serious cases are handled outside the regular docket.

There is no section in New York law that specifically provides for diversion to youth court, but judges have made use of their discretion to adjourn cases in contemplation of dismissal (an ACD), either before or after youth court participation. While defendants must accept responsibility for the actions underlying the charges as part of participating in youth court, the referring criminal courts have agreed that statements made in youth court cannot be used should the case end up before the criminal court. If a young person does not complete the youth court sanction or is arrested during the six-month ACD period, the case will be sent back to the referring court for regular processing. According to the youth court staff and participating judges, this is a rare occurrence.

Below I describe how criminal courts have worked with youth courts in several jurisdictions, including how the youth courts in each case began to accept criminal court referrals, how the process works, and what is known about outcomes. One of the great strengths of the youth court model is its flexibility: programs can be shaped to fit the context of a particular jurisdiction. These three programs demonstrate how this variation works in practice.

Staten Island Youth Court

The Staten Island Youth Court was opened in 2009 by the Center for Court Innovation, as part of the Staten Island Justice Center, which also includes an alternative to detention, a program known as Project READY (Richmond Engagement Activities for Determined Youth). The youth court component was suggested by former New York State Chief Judge Judith Kaye, who was struck by the fact that New York did not have a youth court that addressed older youths at risk of a criminal record. The Staten Island District Attorney's office joined as a program partner, but had no history of offering ACDs as an opportunity for diversion for young defendants. They were concerned that business leaders wouldn't be amenable to youth court as an appropriate response to shoplifting, one of the most common charges bringing youth into the criminal court. The Center met with business owners and security personnel at the local mall and discovered that they

were not at all averse to youth court, having already seen youth under 16 having shoplifting cases adjusted and being required to perform community service. With the addition of leadership and support from Staten Island's criminal court judges, the program was under way.

The Staten Island Youth Court now accepts both criminal court referrals and probation adjustment and violations cases. The number of criminal court cases has gradually increased as all of the justice system partners have become more confident in the program. These referrals now make up almost half the docket. The types of cases are generally the same regardless of their referral source, primarily petit larceny, graffiti and possession of marijuana. Cases appropriate for the youth court are identified in advance by the District Attorney's office, and then the option is discussed by the prosecutor with the youth and his or her defense counsel, using materials provided by the youth court. If the defendant wants to participate in the court, and the judge is willing, the court grants an ACD, with participation in the youth court included as an explicit condition. The defendant is not required to make a formal admission of responsibil-

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ity in the criminal court but must do so in the context of participating in the youth court hearing.

Staten Island uses a youth judge model, with youth court members rotating through the roles of judge, bailiff, juror, youth advocate and community advocate. The youth advocate meets with the respondent on the day of the hearing and is responsible for presenting the case to the jury. The community advocate serves as the prosecutor, but focuses his or her statements on the impact that the offense has had or could have on the community, rather than on the particular failings of the respondent. The jury members are responsible for questioning the youth. The court does not question other witnesses. After closing statements, the jury deliberates and reaches a consensus on an appropriate sanction. Sanctions include

community service, essays, letters of apology, and workshops. Youth court staff will also connect the young person and/or the family to community services as needed. Respondents who complete their sanctions and stay out of trouble for the time remaining on their six-month ACD will have their charges dismissed.

The court is on track to complete 160 cases in 2010. According to Melissa Gelber, Director of the Staten Island Youth Justice Center, 90% of youth court respondents complete their sanctions successfully, and the rate for criminal court referrals is even higher. Among former respondents, the older teens are most likely to apply to become members of the youth court after they have completed their sanctions.

The Rochester Teen Court is the only youth court in New York to **focus solely on young people aged 16 to 18** referred by the criminal court. Established in 1997, the idea was the brainchild of Rochester's then-Mayor, William Johnson, following a Youth Summit addressing issues facing young people in the city.

Rochester Teen Court

The Rochester Teen Court is the only youth court in New York to focus solely on young people, aged 16 to 18, referred by the criminal court. Established in 1997, the idea was the brainchild of Rochester's then-mayor, William Johnson, following a Youth Summit addressing issues facing young people in the city. With leadership from the top, the initial planning team included judges, probation officers, law enforcement, the Jury Commissioner, court personnel and representatives from the school district and other city agencies, and the program has continued to have considerable support from the criminal justice system and the City of Rochester. Initially structured as an initiative within the City of Rochester, the program shifted around for several years, funded fitfully by the city, before landing at the Center for Youth, an independent not-for-profit. Being at the Center for Youth has enhanced the social service component of the program as well as its stability, making private fundraising possible to help sustain and expand the program.

The Rochester program hears cases referred by the Rochester City Court and town courts from a number of suburban communities surrounding the city. Judges refer first-time offenders between the ages of 16 and 18 who have been charged with non-violent misdemeanors

and violations. Primarily, these are cases involving petit larceny, criminal trespass, low-level drug possession, and criminal mischief. A teen court staff member conducts a preliminary intake interview immediately after arraignment to assess the appropriateness of the case for teen court disposition and provide information to the youth and his or her parent or guardian. Staff members make a recommendation to the judge, at which point the defendant and his or her parent or guardian, defense counsel and the prosecutor sign an agreement, in which the defendant accepts responsibility for the actions that led to the referral. The defendant receives an ACD, with charges dismissed upon successful completion of the teen court process within six months.

In Rochester, an adult judge presides over the hearings, and teen court members assume all other courtroom roles, including prosecutor and defense attorney, bailiff, deputy and juror. The adult judge model, which predominates in youth courts nationally but is less common in New York State, was chosen because the planning committee believed that defendants would take the proceed-

ings more seriously, according to Judge Frank Geraci, who was part of the committee and now serves as one of the youth court judges. Since the Center for Youth took over the teen court and increased its capacity, the caseload has doubled and now some cases, typically the less complicated ones, are instead referred to a trained attorney facilitator, who works with all of the parties – defendant, parent or guardian, teen advocates – to reach a suitable disposition.

Teen attorneys receive case assignments at least one week before scheduled hearings, which occur twice per month. They are expected to contact their clients and prepare their cases in advance, and are responsible for making opening and closing statements and questioning witnesses. Teen court respondents always testify and their parents or guardians sometimes testify as well. The youths serving as defense and prosecution attorneys may also call law enforcement officers and victims to testify.

The jury, composed of youth volunteers and sanctioned defendants, deliberates immediately following the hearing and must reach a unanimous decision regarding sanctions, which must include at least jury service and an assessment conducted by social work staff at the Center for Youth. Other sanctions include performing community service, enrolling in educational programming,

drug screening, writing essays and letters of apology, and attending one of two behavioral workshops. The sanctions chosen by the jury have to be approved by the judge.

The Rochester Teen Court has heard, on average, 105 cases per year, but that number has grown considerably and the program now aims to serve 300 cases in the coming year. While it has not been formally evaluated, program staff report that sanction completion rates exceed 80%.

Town of Colonie Youth Court

The Town of Colonie Youth Court was established in 1993. The youth court began hearing cases of youth up to and including age 18 from the very beginning, and the planning team engaged the town's three justices on an advisory board where they helped develop the criteria for cases that would be referred by the town court to the youth court. Initially an independent not-for-profit, it was taken over by the Town of Colonie in 2004. Located in the same building as the police department, the program is now funded by the town through the police department's budget. Referrals from the town court now make up about 60% of all of the youth court's cases. The remainder are referred by the Albany County Department of Probation and the Colonie Police Department.

Cases coming through the town court are pre-screened by youth court staff who identify those that fit the criteria based on the defendant's age and the type of offense. At the time of the first appearance in town court, staff conduct an intake with the youth and his or her parent or guardian, and then make a recommendation to the judge as to whether the case is suitable for youth court. The town court can refer first time non-violent misdemeanors or violations. The most common charges are petit larceny and marijuana possession. The parent or guardian of the youth must be present and sign a release form, and the defendant must acknowledge responsibility for the conduct underlying the charge. Violet Colydas, the program's director, estimates that 98% of those offered the youth court option accept it. Those who do not generally cite transportation issues or conflicting school activities.

The Town of Colonie uses a youth judge model, with youth court members serving in all courtroom roles and a jury drawn from a larger pool of volunteers and respondents. The program averages over 100 members annually, who are assigned to six-person teams. The teams receive case assignments on four-week rotations. At least one week before the hearing, the teams are provided with information about the case, including a detailed description of the incident, and other basic information regarding the respondent. The youth advocates serving as defense



Youth Judge Jamie Manhertz presides over the Greenpoint Youth Court.

counsel are expected to prepare their client in advance of the hearing, and victim advocates are expected to communicate with any victims.

As in Rochester, the respondent and his or her parent or guardian usually testify at hearings, and victims are encouraged to testify. Youth serving as the defense and prosecution question the witnesses, make opening and closing statements and recommend sanctions to the jury and the presiding youth judge. The jury deliberates immediately after the hearing and must reach a unanimous verdict regarding sanctions. Sanctions typically include community service, jury service, and writing essays and letters of apology. All respondents attend a two-hour educational class, addressing issues like shoplifting prevention and resisting peer pressure. Youth court hearings are closed to the public.

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tion completion rate for all youth court cases is 99%. According to Judge Peter Crummey, who has been a town judge since 1999, the recidivism rate during the six-month ACD period (which in Colonie begins after the youth court process is complete) is "next to nil."

These examples suggest that youth courts are a viable option for criminal courts to address offenses committed by older teens. A well-run youth court provides age-appropriate, thoughtful sanctions as well as links to services, while helping young people avoid a criminal record that can be a lifetime scar. Judges in courts that refer to youth courts have been pleased to have this additional tool to respond to young offenders appearing before them. Finally, these programs also help lighten the burden on criminal courts, with no apparent reduction in public safety. ■