



# Minority Report to the Governor's Task Force on Transforming Juvenile Justice in New York State

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The Governor's Task Force on Transforming Juvenile Justice had a formidable mandate to establish a framework for reform of New York's juvenile justice system. To that end, the Task Force has analyzed an enormous amount of information on every aspect of the post-adjudicatory process. The resulting report, "*Charting a New Course: A Blueprint for Transforming Juvenile Justice in New York State*" offers a broad range of recommendations for changing New York's approach to treatment of adjudicated youth.

There is no dispute with the need to address the Task Force's overarching concerns: reducing disproportionate representation of youth of color in institutional placement; and ensuring that NYS operates a unified and cohesive system of care for all youth in its custody, both those in private and state-run facilities. Implementation of a majority of the recommendations would result in a vastly improved system of care. However, the overall tone of the report and several of the specific recommendations diminish its success.

The eleventh hour addition of a recommendation to reduce reliance on institutionalization, close underused facilities and reinvest the savings into the community casts a pall of politicization over the entire report. For one year the Task Force examined the juvenile justice system, deliberated over specific recommendations through the subcommittee and full Task Force process, and spent months revising this report, yet this recommendation did not appear until the very last iteration of the report. The influence of the Office of Children and Family Services (OCFS) management in the final deliberations of the Task Force has discredited the independence of the Task Force in order to give the appearance of objective support of the Commissioner's underlying goal from day one of her term.

Furthermore, this recommendation makes little sense when considered with many of the Task Force's basic recommendations that would impact the size and use of the facilities. It is premature to call for reduced usage of residential care when we have neither the infrastructure of community based programs nor any evidence that such programs will work for the complex needs and dysfunctional family situations presented by many OCFS youth.

The Task Force recommendation to reinvest savings from facility closures into the community ignores its own suggestions for critical improvements in the residential system, which requires considerable funding increases. These recommendations include:

- "fund and provide services and programs, including education and mental health treatment, which prepare youth for release;"
- "design, implement, and invest in a coordinated continuum of facility-based services and programs that address the full range of youth needs;"

- “provide access to a high-quality education within facilities that prepares youth for success in the community;”
- “provide funding to ensure that all placement facilities are adequately staffed to serve youth needs;” and
- “recruit and retain a professional workforce.”

The Task Force recommends that placement be limited to youth who pose a risk to public safety, then simultaneously deprives those youth of the funding and services which would make their residential placement a success.

The Task Force report establishes the Department of Justice report as the initial and repeated frame of reference to the conclusions of the Task Force. As a result, a tone of widespread condemnation of existing practice permeates the report and the recommendations therein. This bias extends by implication to all staff working in OCFS, minimizing the tremendous resource inherent in OCFS’ professional workforce.

OCFS staff sometimes face insurmountable obstacles to their ability to perform their job and provide necessary services to youth. The Task Force report does not give a thorough portrayal of the pervasiveness of the dysfunction nor does it recognize that this dysfunction has deteriorated during the current administration.

### **Pervasive Violence**

The level of violence in facilities is perhaps most indicative of how the residential system has spun out of control. This is demonstrated not only by the level of injuries to youth related to staff use of restraints as reported by DOJ, but also the escalating youth on youth and youth on staff violence.

The recently released Department of Civil Service report on Workers Compensation Claims documents that OCFS has become the most dangerous agency in which to work in New York State. OCFS has a higher incident rate (19.6%) than either the Department of Correctional Services (15.2%) or the Office of Mental Health (16.8%). This is 33% increase in the overall incidence rate in work related incidences and injuries from the prior year. Over \$2.5 million in workers compensation claims were paid to OCFS employees (an increase of \$1 million) and the equivalent of 72 full time jobs were lost in time away from work.<sup>1</sup>

Data from OCFS on injuries in 2007 and the first three months of 2008 show a dramatic increase in the amount of youth on youth injuries in a number of facilities, including an estimated increase of over 300% in such offenses at Tryon Girls Residential Center (from 73 to an estimated 312 incidents). This situation deteriorated in 2008, with an estimated increase of 257% in staff injuries at Tryon Girls Residential Center (85 injuries in 2007 compared to an estimated 204 injuries in 2008).<sup>2</sup>

A review of “push pin” calls at the Louis Gossett, Jr. Residential Center<sup>3</sup> showed that in the first 5 months of 2008 there were 36 youth on youth incidents compared to four in the same time frame in 2007 and six in the entire year. There were also 7 incidents of youth inciting other youth in the first five months of 2008 while there were no such incidents in 2007. The review of push pin calls at Gossett show 49 calls for youth on staff incidents in the first five months of 2008 compared to only 10 such incidents in the first five months of 2007, and 28 youth on staff incidents in the entire year.

A report on a series of focus groups at Tryon Boys and Girls Residential Centers<sup>4</sup> that was facilitated by the University of Maryland illustrates many of the concerns of staff relating to how the facilities are currently being administered. The summary of the report indicates that “participants described their work environment, in both Tryon Boys and Tryon Girls, as chaotic and dangerous to staff and youth, alike. Widespread verbal and physical violence occurs, with virtually no consequences....In addition, staff state that they are afraid to attempt to control youth for fear that an allegation of abuse will be filed with potentially disastrous consequences to staff.”

Participants in the focus groups expressed “widespread belief that the overall environment is ‘out of control’”, that” staff are given very few tools or support with which to control youth behavior”, and “there a virtually no allowable consequences for youth.” They also commented on the significant mental health needs of youth currently in the facility, echoing the findings in the DOJ report.

The Task Force commends Commissioner Carrión for starting to implement a therapeutic environment by adopting a Sanctuary Model in the OCFS residential system. This model of “trauma-informed” care has been shown to be effective in addressing the needs of youth with serious emotional disturbances. It should be noted that an essential part of Sanctuary is contained in the statement that “a program cannot be safe for clients unless it is simultaneously safe for staff and administrators.”<sup>5</sup> Clearly the broader implications of this basic principle of reform have not been a priority.

OCFS has not demonstrated a clear commitment of OCFS to reducing violence. A committee of OCFS management, PEF, and CSEA representatives spent two years developing the draft policy and program and related elements as required by Labor Law Section 27(b). The final documents were sent for review and approval in early July 2009. Meanwhile, at least two OCFS worksites have received notices of violation from the NYS Department of Labor for not complying with the law and regulations. Training of staff is one of areas that must be accomplished. These violations have a compliance date of January 2010. If compliance is not accomplished by January 2010, the agency will be subjected to daily fines by the NYS Department of Labor.

The Task Force appropriately recommends improved staffing as a solution to many of the systems’ problems (Recommendations 9 and 10, Strategies 9-2, 9-3, 10-2, and 10-3). Implementation of the Task Force’s recommendations would also serve to greatly reduce levels of violence in the facilities, not only the staff on youth violence that was a central focus of both DOJ and the Task Force, but also the youth on youth and youth on staff violence that are pervasive in OCFS facilities.

### **Residential Placement and Alternatives to Placement**

The recommendations of the Task Force regarding limitations on residential placement and expansion of alternatives to placement have the potential to drastically change the institutional component of New York’s juvenile justice system:

- Recommendation 3: *Reserve institutional placement for youth who pose a significant risk to public safety, and ensure that no youth is placed in a facility because of social service needs, and*
- Recommendation 4: *Develop and expand community-based alternatives to institutional placement.*

It is imperative that a strictly risk based system not be implemented until a comprehensive network of alternative services is available in the community.

We need look no further than the mental health system to see the unacceptable results of deinstitutionalization without adequate community services development. New York is still coping with the results of massive deinstitutionalization of the mentally ill. The promised reinvestment never materialized, and many mentally ill became homeless, dumped in fetid Adult Homes, or ended up in prison as a result. Decades later, the Office of Mental Health responded with programs such as Assistive Outpatient Treatment and Assertive Community Treatment. At the same time New York is being held accountable by Federal court for discriminating against thousands of mentally ill in sprawling poorly run private adult homes,<sup>6</sup> OMH reports that 12% of the state's prison population was on the mental health caseload in 2007<sup>7</sup>, and the Federal Bureau of Justice Statistics found that 56% of state inmates had a mental illness.<sup>8</sup>

Similarly, Task Force Strategy 4-1: *Expand the use of evidence-based alternatives to placement* should be implemented cautiously. A program being "evidence based" in one jurisdiction does not insure its viability in another. A case in point is OCFS' own implementation of the Multi Systemic Therapy (MST) program, which when evaluated showed not only no improvement in reducing recidivism, but also that boys in the program were more likely to be rearrested for violent felonies than those in the control group. The evaluation was determined to have failed because of "the severity and intractability of the problems facing OCFS youth and their families."<sup>9</sup>

The Task Force report narrative on this strategy refers to a cost-benefit study conducted by Vera Institute, showing that considerable savings could be derived by diverting 15% of youth currently placed in juvenile facilities. The fact that the results of this study were not considered by Vera Institute when they conducted this analysis seriously undermines its credibility. There is reason to believe that other evidence-based programs that have not been evaluated with the OCFS population may also be poorly suited to the most difficult to serve youth typical of OCFS's facility population. It is entirely possible that they would not achieve projected savings and may even result in additional costs and victimizations.

For those youth who do get placed, the Task Force recommends that they be placed close to home (Recommendation 6) and specifies further that a standard distance within which all youth are placed be established (Strategy 6-1). While this is certainly a well intended recommendation, the cost of development would preclude this from becoming a reality given the overwhelming numbers of youth from the metropolitan area. It should also be noted that although the recommendation reflects a frequently stated goal of the current OCFS administration, OCFS closed Ella McQueen, one of the only metropolitan NY facilities, in order to relocate the reception function from Pyramid Reception Center. With the removal of this 25 bed small facility close to youths' families and homes, only 105 beds remain in the metropolitan NY area (Bronx, Brooklyn, Brentwood, and Staten Island Residential Centers, and the Staten Island Group Home).

The Task Force further recommends that the amount of time youth spend in institutional facilities be limited (Recommendation 12). This would in part be accomplished by establishing a legislative presumption that juvenile delinquents in placement shall stay for no longer than six months. A presumptive release date takes away incentives for youth to actively participate in services. If they know they will be released regardless of their level of participation or achievement of goals they are unlikely to make the necessary changes in behavior that will prepare them for success in the

community. Furthermore, prescriptive sentences are typical of a correctional model rather than a therapeutic model. A fixed time frame does not accommodate therapeutic needs.

### **Staffing and Program Issues**

As stated previously, several of the Task Force's recommendations and strategies deal directly with staffing issues that are at the core of many of the OCFS institutional system's deficiencies. These recommendations are both staffing specific (i.e. Recommendation 10, *Support and invest in staff, and the relevant strategies*) and ancillary to program issues (i.e., Recommendation 9, *Fund and provide services and programs, including education and mental health treatment, which prepare youth for release*). The deterioration of staffing ratios in OCFS has contributed to the overall dysfunction of the residential system. Enhancement of direct care, clinical and programmatic staffing ratios will have a beneficial impact on the quality and success of residential placement.

The specific strategies for improving the quality and retention of staff are problematic. Strategy 10-3, *Recruit and retain a professional workforce* proposes changing the Youth Development Aide (YDA) minimum qualifications to include increased educational and/or experience requirements. This would likely warrant a reallocation or upgrade. YDAs employed by the State are currently allocated to much lower salary grades [SG-9 YDA 2 (166), SG-12 YDA 3 (911), and SG-14 YDA 4 (391)] than those positions serving similar populations in other State agencies that require a college degree and counseling or casework experience, which are usually allocated to Salary Grade 18 and above.

As the report indicates, staff-to-youth ratios are far from optimal. Ideally, the State should hire more professional/clinical staff and create smaller units so that the existing YDAs could be trained to work along with the professional/clinical staff to implement the treatment plan and provide consistent staff for the specific youth they are assigned. The costs associated with an increased professional clinical staff would be less demanding than the upgrading over 1,400 YDAs.

Strategy 10-4, *Make salaries for hard-to-recruit positions competitive with other agencies*

The Task Force recommends using increased hiring rates and special salary plans for hard-to-recruit positions. There are additional mechanisms in the Civil Service Law, such as geographic differentials (Civil Service Law §130.6), that do not require special pay scales but would afford OCFS the ability to offer salaries that are competitive with other State agencies.

### **System Accountability and Transparency**

The Task Force report commendably focuses on improving data collection and analysis, including applying uniformity in data collection regarding the private sector operations. It should be noted that in the 2008-09 state budget, the Legislature provided funding for a study of juvenile recidivism and the effectiveness of residential and community based juvenile justice services in State operated and not for profit agencies. OCFS was required to submit an initial report on the research design by January 2009, an interim report by January 2010, and a final report by January 2011. Citing fiscal restraints, OCFS is now planning to merely review existing data sources and design a study for possible future implementation. This study would not focus on the comparable effectiveness of public and privately operated programs, but rather focus on comparing residential and "selected" community based alternatives. Given that an increasing proportion of adjudicated youth are being sent to privately operated programs, it is critical that the State begin to have a uniform data base on

all sectors of the system, regardless of the operating aegis. This data collection process should be a routine function of the Division of Criminal Justice Services, instead of a contractual research study of limited scope with cherry picked subjects.

## Conclusion

The many thoughtful and potentially positive recommendations of the Task Force are overshadowed by the last minute addition of the recommendation to close facilities and reinvest savings in the community. The addition of this recommendation undermines the credibility of the Task Force report by presenting a rubber stamped predetermined conclusion, one which Commissioner Carrión has been advocating since day one of her term.

The residential system must be improved through full staffing, particularly in the areas of mental health and education. Systems of youth evaluation should be modified to include educational progress. Ensure the seamless coordination of educational, health, mental health and substance abuse treatment services from intake through aftercare. Measures can be taken to improve the safety of facilities for both children and staff, including: reviewing all rules and disciplinary procedures for enforcing youth rules and discipline to eliminate, to the extent possible, actions that escalate youth agitation, while maintaining structure, expectations, and reasonable consequences for rule violations; revamping crisis prevention and management training to focus on recognizing early warning signs of agitation and learning de-escalation techniques and skills; eliminate the use of prone restraints; and develop systems to assess the risk, causes and solutions, when youth engage in threatening, violent behavior towards other youth or staff.

Implementation of the original recommendations of the Task Force will require a significant commitment of funds. State decision makers need to be cautious about being politically expedient by choosing the simplest and least expensive of the recommendations (e.g. limiting the amount of time youth spend in institutional facilities) without addressing equally important but more costly recommendations (e.g., provide services and programs, including education and mental health treatment, which prepare youth for release). This would further weaken the system and provide no real improvement in care for troubled youth.

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<sup>1</sup> NYS Department of Civil Service, *Annual Report of New York State Government Employees' Workers' Compensation Claims, Fiscal Year 2008-2009*

<sup>2</sup> Data reported in Leader Herald, Nov. 16, 2008, pursuant to a FOIL request to OCFS. 2008 data for the first 3 months of 2008 was extrapolated for full year estimate

<sup>3</sup> Data compiled by PEF members

<sup>4</sup> OCFS Focus Groups, January 23-24, 2008 Focus groups facilitated by and report written by: Kate McPhaul, Jane Lipscomb, Matt London – University of Maryland School of Nursing

<sup>5</sup> Bloom, Sandra L, Organizational Stress as a Barrier to Trauma-Sensitive Change and System Transformation [www.sanctuaryweb.com](http://www.sanctuaryweb.com)

<sup>6</sup> Disability Advocates, Inc., v. David Paterson

<sup>7</sup> Letter, Glen Leibman, Mental Health Association NYS to Denise O'Donnel,, Chair NYS Commission on Sentencing Reform

<sup>8</sup> Bureau of Justice Statistics, *Mental Health Problems of Prison and Jail Inmates*, September 2006, NCJ 213600

<sup>9</sup> Susan Mitchell-Herzfeld, Therese A. Shady, Janet Mayo, Do Han Kim, Kelly Marsh, Vajeera Dorabawila, Faye Rees; *Effects of Multisystemic Therapy (MST) on Recidivism Among Juvenile Delinquents in New York State*; June 2008, Office of Children and Family Services