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Nancy L. Fishman

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NANCY L. FISHMAN

Reducing Juvenile Detention: Notes from an Experiment on Staten Island

ABOUT THE AUTHOR: Nancy L. Fishman is the Project Director for Youth Justice Programs at the Center for Court Innovation; J.D. Yale Law School; M.A. Human Development and Social Policy, Northwestern University. The author wishes to thank Alfred Siegel, Raye Barbieri, and Melissa Gelber of the Center for Court Innovation for their valuable contributions to this article, and also the staff at New York Foundling and others interviewed for this article. Special thanks, as well, to Amy Cross and Nina Maria Catalano for their research assistance.

I. INTRODUCTION

A young woman, Anna, fifteen years old, stands in the courtroom in front of a New York City Family Court judge.¹ She had been arrested two months earlier for resisting arrest and obstruction of governmental administration because she had run from truancy officers who stopped her on the street during school hours.² Although this arrest was part of a recent pattern of poor school attendance, declining grades, and increasingly confrontational behavior that had led to significant family conflict, Anna had no prior history of involvement in the juvenile justice or child welfare systems, and she lived at home with her parents and siblings. At her arraignment, the judge decided not to send her to a detention facility, but referred her instead to an alternative-to-detention program (ATD). Such programs are designed to help young people meet their obligations to the court and get back on track in school while addressing some of the underlying issues leading to misbehavior.

Unfortunately, despite a promising start in the ATD, Anna has not been doing well. She has built up a growing record of school absences, curfew violations, and program violations at the ATD and was once again stopped by truancy officers. Conflict in her home over this behavior escalated to the point where Anna's parents reached out to the Office of Corporation Counsel, and the case was advanced on the court calendar to address Anna's noncompliance.³ Anna and her parents are back in court today, awaiting the judge's decision.

What choices does the judge have in this situation? Anna's case is still pending, and there has yet to be a fact-finding hearing regarding the charges against her. She does not present a significant risk to public safety, but she is not complying with the court's directions or responding to the ATD's efforts to keep her out of further trouble. She has been living with her family, but they are overwhelmed at this point, unable or unwilling to manage her behavior, which is becoming increasingly challenging.

In New York, as in many states, the court's options for this kind of case have been severely limited. New York State law allows for the detention of juveniles during the pendency of delinquency proceedings if the court decides that they are likely to fail to appear for future court dates or to reoffend.⁴ There is no bail system in family court: young people are either detained or not, and if they are not detained, there must be a parent or guardian available to take them home, regardless of whether they are considered at risk for reoffending or failure to appear. It is generally acknowledged, however, that young people arrested for low-level offenses, who otherwise pose little risk, have been routinely remanded to detention facilities because their family

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1. "Anna" is a hypothetical example based on an actual case heard in Staten Island Family Court and referred to the READY Respite program.
 2. For youth under sixteen, these are delinquency charges, not crimes. N.Y. FAM. CT. ACT § 301.2 (McKinney 2011).
 3. In New York City, the Family Court Division of the New York City Law Department (also known as the Corporation Counsel's office) is the prosecutor in juvenile delinquency cases in family court.
 4. FAM. CT. ACT § 320.5.

circumstances were deemed too unstable to provide a secure environment. This happens particularly in cases of “crossover youth,” young people who are from families with past or current involvement in the child welfare system and who subsequently come in contact with the court through a delinquency proceeding.⁵ Not infrequently, families like Anna’s will actively urge the court for remand—or in some cases simply not show up to court—because they find themselves frustrated, unable to manage their child’s behavior, and are reluctant, or possibly fearful, to take the young person back home. Detention, however, rarely offers real relief. Detention puts the youth at greater risk for poor long-term outcomes, and neither the young person nor his or her family receive any guidance on how to change the family dynamic that may have led to or exacerbated the youth’s problems. After detention, the youth returns home to a situation that is unchanged, or perhaps even further deteriorated, with heightened prospects for continuing and deeper involvement in the justice system.

Detention has been one unsatisfactory option. Placement in foster care is another. Foster care placement requires an official transference of custody from the parent to the child welfare agency, the Administration for Children’s Services (ACS) in New York City, a process which requires time that may not be available when a young person like Anna is standing in front of the court on a delinquency arrest. Moreover, reliance on foster care can further complicate and burden family relationships, bringing a separate system with its own regulations and requirements into an already complicated family situation.⁶

In 2006, in response to the skyrocketing costs of detention, and the startlingly high recidivism rates among youth assigned to detention, New York City embarked on a system-wide reform effort to reduce reliance on detention and improve the quality of supervision offered to those young people released to the community. The two major components of this reform have been, first, the development and implementation of an empirically based risk-assessment instrument (RAI), designed to measure the risk of failure to appear and the risk of rearrest during the pendency of a delinquency case; and second, the creation of a range of alternative-to-detention

5. The “crossover” can happen in the other direction as well, such as when the family of a young person involved in a delinquency proceeding comes to the attention of the child welfare system either through the delinquency proceeding or through separate (if related) circumstances. The decision to engage the child welfare system, like the decision to send a young person to detention, will have a long-term impact on the family. *See, e.g.*, LORRIE LUTZ & MACON STEWART, CTR. FOR JUVENILE JUSTICE REFORM, CROSSOVER YOUTH PRACTICE MODEL 5–7 (2010); JANET K. WIIG WITH JOHN A. TUELL, CHILD WELFARE LEAGUE OF AM., GUIDEBOOK FOR JUVENILE JUSTICE & CHILD WELFARE SYSTEM COORDINATION AND INTEGRATION, at xiii–xv (2004).

6. In New York City, the child welfare and juvenile justice agencies were recently combined into one agency, facilitating more integrated and consistent services for families caught up in both systems, but the regulations and obligations controlling detention and foster care decisions remain separate. Press Release, N.Y.C. Admin. for Children’s Servs., Mayor Bloomberg Signs Legislation Merging the Department of Juvenile Justice into the Administration for Children’s Services (Dec. 7, 2010), http://www.nyc.gov/html/acs/html/pr_archives/pr10_12_07.shtml; *see also* Julie Bosman, *Seeking to Send Fewer Youths to Jail, City Shifts Strategy on Delinquency*, N.Y. TIMES, Jan. 21, 2010, at A31; Press Release, N.Y.C. Admin. for Children’s Servs., Laurence E. Busching to Lead Integration of DJJ into ACS (Feb. 4, 2010), http://www.nyc.gov/html/acs/html/about/news_djj_acs.shtml.

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options for young people not deemed to be high risk. The impact of these reforms has been measurable. The use of detention at arraignment dropped from thirty-two to twenty-eight percent between 2006 and 2009, with far fewer lower-risk youth, about nine percent as of 2008, going into detention at arraignment.⁷ The rearrest rate for youth at all risk levels also dropped.⁸

These reforms, however, did not address the challenge posed by young people like Anna, low-to-moderate-risk youth (as defined by the RAI) without family or others able or willing to house and support them in the community. For key players in New York Family Court—judges, attorneys for children, advocates, and probation officers—the gap in the system has been a persistent problem. Although no data about the specific size of this population is available (making it particularly difficult to address), stakeholders believe that it has contributed to the significant numbers of youth arrested for misdemeanors who have ended up in juvenile detention and placement facilities.

In 2009, the Center for Court Innovation, a nonprofit organization which runs two of New York City's ATD programs, joined forces with New York Foundling (NYF), a nonprofit social service agency for families in crisis whose programs include therapeutic alternatives to placement for the City, to launch a new pilot program designed to address this gap: READY Respite ("Respite") in Staten Island. Respite, which builds on the Center's Staten Island ATD, READY (Richmond Engagement Activities for Dedicated Youth), keeps youth out of detention and connected to community resources while providing an intensive level of supervision and support. Young people accepted into Respite are voluntarily relocated for up to twenty-one days to the home of a therapeutic foster family that is selected, trained, and supported by NYF and is not part of the state child welfare system. During the period of placement, a cooling-off period for everyone in the youth's biological family, the young person lives in a highly structured family setting in the community and attends school as well as the Center's READY ATD program after school. Both the young person and his or her biological family members receive intensive skill-building help as well as therapy, with the eventual goal of reunification. Families continue to receive support and after-care services following reunification.⁹

7. E-mail from Jennifer Jensen, Research Assoc., Vera Inst. of Justice, to Nancy Fishman, Project Dir., Youth Justice Programs, Ctr. for Court Innovation (June 20, 2011, 13:13 PM EST) (on file with the author); *see also* JENNIFER FRATELLO ET AL., VERA INST. OF JUSTICE, JUVENILE DETENTION REFORM IN NEW YORK CITY: MEASURING RISK THROUGH RESEARCH 12 (2011). The RAI asks a series of questions, addressing open warrants and prior failures to appear, school attendance, and prior arrests or adjudication, which are then scored to divide youth into three categories: low-, moderate-, and high-risk. The 2008 detention at arraignment rate for low-risk youth, nine percent, had decreased by sixty-two percent, from twenty-four percent in 2006. *Id.* The detention rate for high-risk youth increased during that same period, from forty-nine percent to seventy-two percent. *Id.* The majority of all cases (fifty-five percent) screened and petitioned during that two-year period were low risk. About a third (thirty-two percent) were moderate risk, and only thirteen percent were high risk. *Id.*

8. FRATELLO ET AL., *supra* note 7, at 12.

9. *Staten Island Youth Justice Center*, CTR. FOR COURT INNOVATION, <http://www.courtinnovation.org/project/staten-island-youth-justice-center> (last visited Feb. 2, 2012).

This article describes the development and potential of this new problem-solving response to a recurring and daunting challenge faced by courts in New York City and elsewhere. While the program has been in operation for only about two years, with a relatively small number of cases to date, the initial results are promising. Adapting an evidence-based practice, Multi-Dimensional Treatment Foster Care, to a short-term, respite care model for court-involved youth, Respite has the potential to be a useful tool for a juvenile justice system oriented toward keeping young people safely in the community and reducing the use of detention, incarceration, and long-term foster care placement.¹⁰

This article is divided into three parts. In Part II, we discuss the origins and development of the Respite program in the context of New York's effort to reduce the number of youth in preventive detention. In Part III, we describe Respite's first year of operations, including some detailed case studies of youths who have gone through the program. In Part IV, we identify some of the challenges of and lessons learned from putting this model into practice, review some considerations for replicating and expanding the program in New York City, and examine its broader implications for juvenile justice reform.

II. THE DEVELOPMENT OF READY RESPITE

A. Background: Preventive Detention in New York

Although the separate juvenile justice system was an innovation of the Progressive Era that began in the late nineteenth century,¹¹ New York City has had correctional facilities specifically designated for youth for almost two hundred years. The first institution for housing juvenile delinquents in the country, the New York House of Refuge, was established in New York in 1825.¹² While the law creating the institution did not specifically provide for preventive detention, its founders intended it not only for those convicted of criminal offenses, but also for those "under a certain age, who

10. "Evidence-based practices" are generally defined as practices whose effectiveness has been demonstrated by robust research.

11. See Anthony Platt, *The Triumph of Benevolence: The Origins of the Juvenile Justice System in the United States*, in READINGS IN JUVENILE JUSTICE ADMINISTRATION 20, 30 (Barry C. Feld ed., 1999) (Massachusetts and New York were the first states to pass laws providing for trials of minors separate from those of adults in 1874 and 1892, respectively, but the first model statute providing for a juvenile court was Illinois's Juvenile Court Act of 1899. By 1917, all but three states had passed juvenile court legislation, and by 1932, over six hundred independent juvenile courts existed throughout the United States.).

12. Alexander W. Pisciotta, *Treatment on Trial: The Rhetoric and Reality of the New York House of Refuge, 1857-1935*, 29 AM. J. LEGAL HIST. 151, 153 (1985). The goal of the institution was "to instill the values of the middle and upper middle classes into the inmates: order, discipline, punctuality, and submission to authority." *Id.* at 154. It "offer[ed] a planned program of labor, education, religion, indenture, and discipline which was intended to promote self-control and order in the lives of the children." *Id.* at 155. Under the law establishing the House of Refuge, the managers of the Society for the Reformation of Juvenile Delinquents in the City of New York were given the "power, in their discretion, to receive and take into the house of refuge to be established by them, all such children, who shall be taken up or committed as vagrants or convicted of criminal offenses." Law of March 29, 1824, ch. 126, § 4, 1824, N.Y. Laws 111.

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become subject to the notice of our Police, either as vagrants, or houseless, or charged with petty crimes.”¹³ After the House of Refuge was opened, the number of children who were admitted as “vagrants” grew. According to a news report at the time,

[t]he number of children rapidly increased, and it became evident to the Managers, that the increase came mainly from three sources, viz.: from the children of poor and often vicious emigrants; from the intemperance of parents, and the frequent want, misery and ignorance of their children; and from the existence of theatres, circuses, &c., whose amusements offered such temptations to children as to lead them often to petty acts of dishonesty to obtain the means of gratifying their taste for such performances.¹⁴

By the late nineteenth century, the practice of preventive detention was enshrined in the law and judges had broad discretion to detain youth pending the resolution of criminal charges, a practice that was ultimately incorporated into the new juvenile justice system: “Any magistrate having criminal jurisdiction may commit, temporarily, to an institution authorized by law to receive children on final commitment, and to have compensation therefor from the city or county authorities, any child under the age of sixteen years, who is held for trial on a criminal charge.”¹⁵

New York City’s current provisions regarding preventive detention are found in the Family Court Act of 1962.¹⁶ The provisions were developed in response to a growing concern that youths were being detained pending adjudication for long periods and without sufficient legal grounds.¹⁷ The law provides that young people between the ages of seven and fifteen who are arrested for delinquency may be detained during the pendency of their family court case if there is a “substantial probability” that the child will fail to appear in court or there is a “serious risk” that the young person will commit a new offense.¹⁸ Juvenile proceedings are considered

13. 2 GRACE ABBOTT, *THE CHILD AND THE STATE* 348 (1938).

14. *Our City Charities; The New-York House of Refuge for Juvenile Delinquents*, N.Y. TIMES, Jan. 23, 1860, <http://www.nytimes.com/1860/01/23/news/our-city-charities-the-new-york-house-of-refuge-for-juvenile-delinquents.html>.

15. Former N.Y. PENAL LAW § 291.6 (1882).

16. See N.Y. FAM. CT. ACT § 320.5 (McKinney 2011).

17. See Monrad G. Paulsen, *The New York Family Court Act*, 12 BUFF. L. REV. 420, 437 (1962) (“The Joint Legislative Committee on Court Reorganization was seriously concerned over abuses in detention practices which the Committee found to involve excessive and seemingly routine detentions. Most family and juvenile court laws [nationally, in 1962] do not provide in detail for the situations in which a youngster may be taken into custody.”). By the 1920s, a number of other detention facilities had opened in the city, including the Hanavah Lavenburg Home, the Youth House, and the Manida Juvenile Center. MALIKAH J. KELLY, CORR. ASS’N OF N.Y., *BROKEN PROMISES, BROKEN SYSTEM: 10 REASONS NEW YORK CITY SHOULD CLOSE THE SPOFFORD YOUTH JAIL 2* (2004). The Spofford facility opened in 1957 to relieve overcrowding at the Lavenburg Home. Sarina Roffe, Dep’t of Juvenile Justice Dir. of Pub. Affairs, *Juvenile Detention in New York—Then and Now*, N.Y. CORR. HISTORY SOC’Y, <http://www.correctionhistory.org/html/chronicl/djj/djj20yrs3.htm> (last visited Feb. 12, 2012) (on display at John Jay College of Criminal Justice).

18. FAM. CT. ACT § 320.5. In practice, youth are also detained at the time of arrest if an adult is unavailable to pick them up from the police station and it is too late to transfer them to family court to be interviewed by probation officers, or if no adult is present at the probation intake interview.

civil and therefore the constitutional right to bail does not attach: youths are either detained or released to a parent or guardian.¹⁹

In *Schall v. Martin*, the U.S. Supreme Court upheld the constitutionality of New York's juvenile preventive detention statute, and pretrial detention in juvenile matters in general, holding that the statute advanced legitimate state objectives, including both crime prevention and protecting the juvenile "from his own folly."²⁰ The U.S. Court of Appeals for the Second Circuit, the lower court, concluded that because many cases involving detained youths were subsequently dismissed, and in many others youths were simply returned to the community after adjudication, juvenile courts were using preventive detention as a way of imposing punishment prior to a finding of guilt. Reversing that decision, the Supreme Court found detention to be "consistent with the regulatory and *parens patriae* objectives relied upon by the State," and was not "used or intended as a punishment."²¹ The Court also upheld the section of the New York statute that allowed for detention based on the finding that there was "serious risk" that the juvenile would commit another offense during the pendency of the case and left it to the discretion of family court judges to determine whether such risk was present.²²

In New York City, the use of detention for juveniles awaiting disposition on delinquency matters expanded dramatically from the 1970s through the early 2000s. The Spofford Juvenile Center, which had opened in 1957 to relieve overcrowding in other facilities, became notorious for its mismanagement and its poor treatment of its charges; by 1979, it had already had twenty-seven different executive directors.²³ While the 1971 creation of nonsecure detention options for less serious offenders helped, it did not alleviate all of the problems at Spofford. In 1979, at the recommendation of a special commission, Mayor Koch created the Department of Juvenile Justice (DJJ) to supervise all detention in New York City, including the management of Spofford, the nonsecure detention options, and community

19. Joseph T. Bockrath, Annotation, *Right of Bail in Proceedings in Juvenile Courts*, 53 A.L.R.3d 848 (1973); see also *Kent v. United States*, 383 U.S. 541, 545 n.3 (1966). The Supreme Court in *In re Gault* extended basic constitutional due process protections to juveniles in adjudicatory hearings, including the right to counsel, notice of charges, a fair and impartial hearing, and the opportunity to confront witnesses, based on the reasoning that such hearings could lead to confinement in a state institution and that "commitment is a deprivation of liberty. It is incarceration against one's will, whether it is called 'criminal' or 'civil.'" 387 U.S. 1, 50 (1967). While subsequent Supreme Court cases extended these protections at the adjudicatory phase of juvenile proceedings, including the standard of proof "beyond a reasonable doubt," *In re Winship*, 397 U.S. 358 (1970), and the protections against double jeopardy, *Breed v. Jones*, 421 U.S. 519 (1975), the case law beginning with *Gault* has not extended criminal procedural protections to other aspects of the juvenile justice process and has continued to emphasize the significant differences between the juvenile and adult criminal systems. See, e.g., *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971) (denying juveniles the right to a jury trial).

20. 467 U.S. 253, 265 (1984) (citing *People ex rel. Wayburn v. Schupf*, 39 N.Y.2d 682, 688–89 (1976)).

21. *Id.* at 269, 271.

22. *Id.* at 278–79.

23. Roffe, *supra* note 17.

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programs.²⁴ As a result, more attention was placed on the types of services and care provided inside the detention facilities. DJJ was also tasked with creating new, smaller facilities. These new facilities, however, did not open until almost twenty years later, in 1998.²⁵

The population of youths in juvenile detention facilities spiked in 1989 and continued to grow.²⁶ Between 1993 and 2000, the number of youths remanded increased by sixty percent, and the average length of stay rose from twenty days to thirty-six days. In 1989, the average daily population was 191; by 1998, it was 318.²⁷ By 2006, that number had risen to 448, including both secure and nonsecure facilities.²⁸

There is a growing consensus, locally and nationally, that pretrial detention of young people has negative effects in both the short- and the long-term not only for the youths themselves but also for public safety. Nationally, research has shown that young people who are detained are more likely to be referred to court, to have their cases reach the formal disposition stage, and to receive a more punitive disposition.²⁹ In New York City specifically, researchers have found that, holding other factors constant, young people who were detained were nearly twelve times more likely to be recommended by probation officers for placement in a secure facility at disposition.³⁰

24. *Id.*

25. *Id.* The new facilities, Horizons and Crossroads, were each half the size of Spofford with a capacity of 125 beds, as compared to Spofford's 289 beds. Before these facilities were open, the city dealt with the overcrowding temporarily by leasing the Vernon C. Bain Center from the Department of Corrections, a barge with a 100-bed capacity. The city renovated Spofford and reopened it in 1999 as the Bridges Juvenile Facility. CORR. ASS'N OF N.Y., JUVENILE JUSTICE PROJECT, RETHINKING JUVENILE DETENTION IN NEW YORK CITY 2-3 (2002). The Bridges Juvenile Facility was closed permanently in early 2011 as a result of the reforms to the detention system implemented beginning in 2007. *See* discussion *infra* p. 1499.

26. Detention rates rose with rising crime rates in New York. This was the result, in great part, of the crack epidemic of the 1980s. *See, e.g.*, ELLIOTT CURRIE, CRIME AND PUNISHMENT IN AMERICA 32 (1998); Hope Corman & H. Naci Mocan, *A Time-Series Analysis of Crime and Drug Use in New York City* (Nat'l Bureau of Econ. Research, Working Paper No. 5463, 1996).

27. CORR. ASS'N OF N.Y., *supra* note 25, at i, 3.

28. CITY OF N.Y., MAYOR'S MANAGEMENT REPORT: FISCAL 2010, at 38 (2010), http://www.nyc.gov/html/ops/downloads/pdf/mmr/0910_mmr.pdf.

29. BARRY HOLMAN & JASON ZIEDENBERG, JUSTICE POLICY INST., THE DANGERS OF DETENTION: THE IMPACT OF INCARCERATING YOUTH IN DETENTION AND OTHER SECURE FACILITIES 5 (2006).

30. GOVERNOR DAVID PATERSON'S TASK FORCE ON TRANSFORMING JUVENILE JUSTICE, CHARTING A NEW COURSE: A BLUEPRINT FOR TRANSFORMING JUVENILE JUSTICE IN NEW YORK STATE 96 n.24 (2009) [hereinafter TASK FORCE] (citing Jeffrey Lin, Nat'l Inst. of Justice, *Exploring the Impact of Institutional Placement on the Recidivism of Delinquent Youth* 101-02 (2007) (unpublished report submitted to the National Institute of Justice)). Lin's study of 736 juveniles found that pretrial detention was one of the three strongest predictors of a placement recommendation. About sixty percent of the sample had been detained. Lin, *supra*, at 56, 65, 102. A study in Florida found a similar effect. HOLMAN & ZIEDENBERG, *supra* note 29, at 5 (citing Charles E. Frazier & John C. Cochran, *Detention of Juveniles: Its Effects on Subsequent Juvenile Court Processing Decisions*, 17 YOUTH & SOC'Y 286 (1986)); OFFICE OF THE STATE COURTS ADM'R, OFFICE OF COURT IMPROVEMENTS, FLORIDA'S JUVENILE DELINQUENCY COURT ASSESSMENT 24 (2003), http://www.flcourts.org/gen_public/family/bin/delinquencyassessment.pdf.

In the long term, youth who are detained are also much more likely to recidivate.³¹ In New York, a recent longitudinal study of youths released from state placement facilities (the equivalent of state prison in the juvenile system) found that eighty-nine percent of boys and eighty-one percent of girls were rearrested by age twenty-eight.³² Young people who have been detained or incarcerated also suffer negative long-term mental health, educational, and employment outcomes.³³ Among other factors leading to these negative effects, detaining youths exposes them to a negative peer culture while cutting them off from the positive support and stabilizing factors in their communities.³⁴

As noted above, there have been a number of attempts to reform the juvenile justice system in New York City over the years, but the most recent effort, beginning in 2006, began after the Department of Probation summarily closed New York City's only existing alternative-to-detention program, at a time when the detention population had reached its highest level in three years, at great cost to the city.³⁵ The program was closed in light of concerns that it was not reaching the right young people and that youth were being removed from their schools and placed in the program for far longer periods than were necessary.³⁶ Many of the players in the city's juvenile justice system, as well as those in the advocate community, were upset about the loss of any options other than detention. Taking advantage of the opportunity presented by the crisis, the New York City Mayor's Office of the Criminal Justice Coordinator (CJC) led an effort, in conjunction with other juvenile

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31. Holman and Ziedenberg cite, for example, studies in Wisconsin, Arkansas, and Texas. HOLMAN & ZIEDENBERG, *supra* note 29, at 4 & 18 nn.10–11, 6 & 18 n.16 (citing DON BEZRUKI ET AL., LEGISLATIVE AUDIT BUREAU, SECURE JUVENILE DETENTION: AN EVALUATION (1999)); Brent B. Benda & Connie L. Tollet, *A Study of Recidivism of Serious and Persistent Offenders Among Adolescents*, 27 J. CRIM. JUST. 111 (1999); Michael Fendrich & Melanie Archer, *Long-Term Rearrest Rates in a Sample of Adjudicated Delinquents: Evaluating the Impact of Alternative Programs*, 78 PRISON J. 360 (1998). A twenty-year study in Montreal found that youth placed in juvenile detention were found to be “nearly seven times more likely to be arrested for crimes as adults. . . . [And] those who ended up being sentenced to juvenile prison were 37 times more likely to be arrested again as adults, compared with similarly misbehaved kids who were either not caught or not put into the system.” Maia Szalavitz, *Why Juvenile Detention Makes Teens Worse*, TIME (Aug. 7, 2009), <http://www.time.com/time/health/article/0,8599,1914837,00.html>.
32. Rebecca A. Colman et al., *Long-Term Consequences of Delinquency: Child Maltreatment and Crime in Early Adulthood* 56–57, 86 (2009) (unpublished report submitted to the National Institute of Justice), available at <http://www.ncjrs.gov/pdffiles1/nij/grants/226577.pdf>. For an earlier study of New York, see also TASK FORCE, *supra* note 30, at 33 & 97 n.70 (citing BRUCE FREDERICK, OFFICE OF JUSTICE SYS. ANALYSIS, N.Y. STATE DIV. OF CRIMINAL JUSTICE SERVS., FACTORS CONTRIBUTING TO RECIDIVISM AMONG YOUTH PLACED WITH THE NEW YORK STATE DIVISION FOR YOUTH (1999)).
33. See HOLMAN & ZIEDENBERG, *supra* note 29, at 6–10; Bart Lubow & Joseph B. Tulman, *The Unnecessary Detention of Children in the District of Columbia*, 3 D.C. L. Rev., at ix, xv–xvi (1995).
34. HOLMAN & ZIEDENBERG, *supra* note 29, at 5 & 18 n.12 (citing Thomas J. Dishion et al., *When Interventions Harm: Peer Groups and Problem Behavior*, 54 AM. PSYCHOLOGIST 755 (1999)); see also Karen M. Abram et al., *Functional Impairment in Youth Three Years After Detention*, 44 J. ADOLESCENT HEALTH 528, 530 (2009).
35. FRATELLO ET AL., *supra* note 7, at 4.
36. *Id.*

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justice agencies and nonprofit organizations, most notably the Vera Institute of Justice, to develop system reforms that would yield better short- and long-term outcomes for youths in the system and for their communities and make more effective use of the city's resources.³⁷

The resulting reforms focused on two components: (1) the development and implementation of an empirically based risk assessment instrument, which would help courts to make detention decisions based on factors correlated with failure to appear and likelihood of rearrest in New York City; and (2) the development of alternatives to detention for moderate-risk youth that would provide community-based supervision and support to help those young people to succeed.³⁸ The alternatives to detention were established on a three-tier continuum. The first tier, the least restrictive, is community monitoring through regular curfew checks and school attendance monitoring. The second level couples community monitoring with afterschool programming, which participants are required to attend from 3:00 p.m. to 7:00 p.m. daily, in most cases. The third and theoretically the most restrictive tier involves intensive community monitoring by probation officers. The first two tiers are operated by private, nonprofit organizations, while the third is operated by the city.³⁹

The Center for Court Innovation (the "Center") developed and runs the city's tier one and tier two ATD programs for Queens (Queens Engagement Strategies for Teens, or QUEST, which opened in 2007) and Staten Island (READY, which opened in 2009). Functioning as the research and development arm of the New York State Unified Court System, the Center is a unique public-private partnership established in 1996 by the court system and the Fund for the City of New York to promote new thinking about how the justice system can respond more effectively to chronic problems like addiction, delinquency, child neglect, domestic violence, and truancy. The Center came to the ATD project with extensive experience developing demonstration projects testing innovative criminal and juvenile justice responses to these problems, including playing a pioneering role in the implementation of community court models and programs that serve as diversions from detention, placement, and incarceration for youths and adults.⁴⁰

The Center's ATDs, like the programs in the other boroughs, generally accept youth who are assessed as moderate risk under the RAI, or those assessed as low risk but who were initially detained; each ATD operates both tier one and tier two

37. *Id.* at 4–5.

38. *See id.* at 5–6.

39. *Id.* at 10–11.

40. Among the Center's major projects are Bronx Community Solutions, the Brooklyn Mental Health Court and Brooklyn Treatment Court, the Midtown Community Court, the Red Hook Community Justice Center, and the Harlem Community Justice Center. The Center also has extensive experience working with court-involved youth, operating a variety of youth-focused programming, including youth courts, vocational training for young people, specialized juvenile delinquency court subdivisions, and a wide range of social services, afterschool programming, and community service learning initiatives for youth. For more information about the Center's work, see CTR. FOR COURT INNOVATION, <http://www.courtinnovation.org> (last visited Feb. 2, 2012).

programs. In addition to ensuring that participating youth meet their curfews, attend school regularly, and appear at scheduled court dates, the ATD tier two programs partner with community groups to provide educational and recreational programming and links to social services and community-based substance abuse treatment as needed.⁴¹ The programs are oriented towards positive youth development, providing young participants with opportunities to develop new skills and competencies and build positive relationships to adults and pro-social peers in their communities.⁴²

In 2008, the Center also launched QUEST Futures, a program for young people with mental health concerns, identified through the QUEST ATD's screening and assessment process. QUEST Futures provides additional case management and links to community-based mental health services.⁴³

In the course of developing and operating the two ATD programs, Center staff became aware of a population of youth who were not being assigned to the ATD by judges or not succeeding once they were placed in the program. Initial analyses of potentially eligible cases referred (or not referred) to QUEST, and then to READY, by the courts confirmed what anecdotal conversations among Center staff, prosecutors, the defense bar, the judiciary, and others had highlighted: that there were a significant number of cases in which young people otherwise eligible for the ATD ended up in secure or nonsecure detention primarily because family members were not willing to have the youths at home or the family had a history of involvement in the child welfare system such that the court did not believe there were reliable adults available to support the youth in the community.⁴⁴

This issue was also coming to the fore at the state level. In December 2008, then New York Governor David Paterson launched the Task Force on Transforming Juvenile Justice, which was charged with developing a blueprint for reforming the deep end of New York's juvenile justice system, after a youth has been adjudicated delinquent in family court, with a particular focus on the placement of young people

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41. Every young person who comes to the ATD is assessed utilizing a validated instrument, the Diagnostic Predictive Scales (DPS), which allows rapid assessment of probable psychiatric diagnoses in children and adolescents.
 42. Positive youth development approaches are now widespread in work with teens generally, but have only recently been considered as strategies relevant to work with justice-involved youth. *See, e.g.*, JEFFREY A. BUTTS ET AL., COAL. FOR JUVENILE JUSTICE, POSITIVE YOUTH JUSTICE: FRAMING JUSTICE INTERVENTIONS USING THE CONCEPTS OF POSITIVE YOUTH DEVELOPMENT (2010). While the programs have yet to be formally evaluated, completion rates are high. Since opening in June 2007, QUEST has had 634 cases with an eighty percent compliance rate. Project READY has had 160 cases since opening in April 2009, with a seventy-one percent compliance rate. The statistics come from internal, unpublished program records; please contact the *Law Review* with any questions.
 43. QUEST Futures works with young people pre and postdisposition; predisposition youth may be mandated to the program, but they are also able to continue in or start with the program postdisposition on a voluntary basis.
 44. This included cases where youth were in foster care or in homes with other active involvement by ACS, or where the young person had run away or had a PINS (Persons in Need of Supervision) petition filed against them. PINS cases involve what are generally known as "status offenders," youth who have developed such a serious pattern of disobedience and disruptive behavior that their families or guardians seek the assistance of the courts. N.Y. FAM. CT. ACT §§ 711–84 (McKinney 2011).

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into the care and custody of the State Office of Children and Family Services (OCFS).⁴⁵ While the Task Force's efforts were directed at the postdisposition end of the juvenile justice system, its examination of the system necessarily included the role of pretrial detention in determining ultimate dispositions, and revealed the large numbers of young people who were finding their way into state placement facilities despite their having been found responsible of only misdemeanor-level offenses.⁴⁶ The final report of the Task Force concluded, based on its review of the data and interviews with court personnel and other stakeholders, that "too many young people are placed in institutions not because they are dangerous, but because they have social service and/or mental health needs that have not been met in their communities, often due to a lack of resources."⁴⁷ Reform at the state level had already begun by the time the Task Force released its report: through the use of alternative to placement programs in a number of key jurisdictions, including New York City, the number of admissions to OCFS custody in 2009 had decreased by almost one-third since 2000.⁴⁸ Still, the Task Force remained concerned that a high number of youth were being committed to placement facilities for low-level offenses when the young people posed little or no threat to public safety.

In September 2009, as part of the state's juvenile justice reform efforts and pursuant to the ongoing discussions at both the state and local level, the State Division of Criminal Justice Services released a Request for Proposals (RFP) for innovative programming designed to prevent youth from entering detention due solely to the absence of a viable home.⁴⁹ The state sought projects diverting youths who did not meet the statutory requirement of risk but who either would not be allowed by their families to come home or would return to homes that were deemed unsafe. READY Respite was developed as a pilot project in response to this RFP and was awarded a three-year grant in 2010.

45. TASK FORCE, *supra* note 30, at 8. At the same time that the Task Force was convening, the State was under investigation by the U.S. Department of Justice (DOJ) in response to allegations of excessive force and deprivation of services in four juvenile placement facilities. *Id.* In August 2009, the DOJ released its report, which documented numerous instances of excessive force and concluded that conditions in these state placement facilities constituted violation of residents' constitutional rights. A failure to address these problems could result in the state being sued by the DOJ. *Id.*; CIVIL RIGHTS DIV., U.S. DEP'T OF JUSTICE, INVESTIGATION OF THE LANSING RESIDENTIAL CENTER, LOUIS GOSSETT, JR. RESIDENTIAL CENTER, TRYON RESIDENTIAL CENTER, AND TRYON GIRLS CENTER (2009); see also Irene Jay Liu, *Feds: Ease up on Kids: Justice Department Says State's Juvenile Centers Rely Too Much on Force*, TIMES UNION (Albany), Aug. 25, 2009, <http://www.timesunion.com/local/article/Feds-Ease-up-on-kids-555263.php>; Martha T. Moore, *Youth Prison System Under Pressure*, USA TODAY, Feb. 3, 2010, at 3A; *New York Must Protect Its Troubled Youth*, U.S. FED. NEWS, Aug. 29, 2009.

46. The Task Force reviewed data showing that fifty-three percent of admissions to institutional facilities in 2007 were for misdemeanor or low-level adjudications. TASK FORCE, *supra* note 30, at 36.

47. *Id.* at 26.

48. *Id.* at 17.

49. N.Y. STATE DIV. OF CRIMINAL JUSTICE SERVS., OFFICE OF PROGRAM DEV. & FUNDING, SEPTEMBER 2009 JJDPa FORMULA GRANT PROGRAM, REQUEST FOR PROPOSALS 2 (2009), <http://criminaljustice.state.ny.us/ofpa/pdffdocs/2009jjformularfp.pdf>.

B. Designing the READY Respite Model

Staten Island, Richmond County, was a compelling choice for a pilot family court program. First, the borough is the smallest in New York, with only two family court judges, making the development of a collaborative initiative with the court more manageable.⁵⁰ Because of the READY ATD, the Center had already built a strong working relationship with the judiciary and the other legal practitioners in the courthouse, including The Legal Aid Society's Juvenile Rights Division and the city's Law Department, which is the presentment agency. Because of its size, Staten Island was (and is) the only borough without a tier three ATD option.⁵¹ Overall, Staten Island has relatively limited resources for young people, not only in terms of diversion and support, but also in terms of educational, recreational, and civic engagement opportunities.

At the same time, although Staten Island is the smallest borough, it is larger than almost every other city or town in New York State—and is still growing. Between 2000 and 2008, the Department of City Planning estimated that Staten Island's population growth rate was 9.8%, the highest rate in New York City.⁵² Even though the Island has a reputation for being more suburban than other boroughs, the reality is that there are several neighborhoods hard-hit by poverty. In its densest district, over twenty-seven percent of area residents are under the age of eighteen, and over twenty-percent of all residents with children under eighteen live below the poverty level.⁵³ The arrest rate for Staten Island youths had risen markedly during the years preceding the development of READY. According to the CJC, in 2008, 724 youths under the age of sixteen were arrested in Staten Island, an increase of twenty-two percent over 2007.⁵⁴ These increased detention rates were on par with all of the other New York boroughs.⁵⁵

The Center decided to structure the program around a respite care model. The respite care model has generally been used to help family members or guardians who are responsible for taking care of someone with a serious illness or chronic disability

50. By comparison, Queens, where the Center's other ATD was located, has thirteen judges working in family court. For the judges' calendars in both Queens and Richmond County Family Court, see *WebFamily*, N.Y. STATE UNIFIED COURT Sys., http://iapps.courts.state.ny.us/fcasfamily/Calendar#search_result (last visited Feb. 3, 2012).

51. For an explanation of the three-tier system, see *supra* p. 1484.

52. CITY OF N.Y. DEP'T OF CITY PLANNING, COMMUNITY DISTRICT NEEDS FOR THE BOROUGH OF STATEN ISLAND: FISCAL YEAR 2012, at 6 (2011), http://www.nyc.gov/html/dcp/pdf/pub/sineeds_2012.pdf.

53. *Id.* at 12; CITY OF N.Y. DEP'T OF CITY PLANNING, SELECTED ECONOMIC CHARACTERISTICS 2007–2009, at 159 (2011), http://www.nyc.gov/html/dcp/pdf/census/puma_econ_07to09_acs.pdf.

54. This number includes both youth processed as juveniles in family court as well as juvenile offenders, who are youths under sixteen who are processed in criminal court due to the severity of their offense. By 2010, the number of arrests had climbed to 840. E-mail from Michele Sviridoff, Office of the Criminal Justice Coordinator, to Nancy L. Fishman, Project Dir. for Youth Justice Programs, Ctr. for Court Innovation (June 15, 2011, 16:26 EST) (on file with author).

55. E-mail from Jennifer Jensen, Research Assoc., Vera Inst. of Justice, to Nancy L. Fishman, Project Dir. for Youth Justice Programs, Ctr. for Court Innovation (June 20, 2011, 14:11 EST) (on file with author).

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or, in the child welfare context, to help parents at risk of losing custody of a child because of abuse or neglect.⁵⁶ The respite approach helps stabilize families in times of crisis or stress by providing temporary relief for primary caregivers.⁵⁷ Respite models have also been used, though on a more limited basis, in cases of status offenders. In those cases, the respite model provides status offenders with a cooling-off period of a few weeks to a month during which the child and family members live apart—as an alternative, in some cases, to placing the youth in nonsecure detention or foster care—and benefits both the child and the family. The cooling-off period is deliberately not an extended break, but rather a relatively short interlude devoted to readying the family, as a whole, to receive community-based services that will help them manage better going forward.⁵⁸ At the time that READY Respite was being developed, New York City did not have any respite models in the child welfare, status offender, or juvenile delinquency context.⁵⁹ Other jurisdictions, however, had begun testing the model for youth in delinquency proceedings, combining respite care with services and programming to help families reunite and help youth avoid detention or foster care placement.

Because the goal of the respite care model is to put the youth and their families in a better position after reunification than they were beforehand, planners looked for a research-based therapeutic intervention that could be most effectively integrated into the short-term relocation/separation model that was being considered. They eventually identified therapeutic foster care, which has over the past thirty years been increasingly used as a treatment option for youths who have a variety of attachment, emotional, and behavioral problems.⁶⁰ Therapeutic foster care is less intrusive and expensive and has been shown to produce greater behavioral improvements compared to congregate care or group home settings, allowing youth to remain in the community and live in family settings. In general, therapeutic foster care involves foster families who have been specially trained to work with children with significant and challenging needs, and provides more structure and support for children in the program.⁶¹

56. FIZA QURAISHI ET AL., VERA INST. OF JUSTICE, RESPITE CARE: A PROMISING RESPONSE TO STATUS OFFENDERS AT RISK OF COURT-ORDERED PLACEMENTS 2 (2002).

57. *Id.*

58. ERIC WEINGARTNER & ANDREA WEITZ, VERA INST. OF JUSTICE, RESPITE CARE: AN ALTERNATIVE TO FOSTER CARE FOR STATUS OFFENDERS IN NEW YORK CITY 10 (2002).

59. New York law contemplates the use of respite care for families and foster care families for up to twenty-one days, but the provision is not generally used. N.Y. COMP. CODES R. & REGS. tit. 18, § 435.5(b)–(c) (2012).

60. See Elizabeth M.Z. Farmer et al., *Enhancing “Usual Practice” Treatment Foster Care: Findings from a Randomized Trial on Improving Youths’ Outcomes*, 61 PSYCHIATRIC SERVICES 555, 555–56 (2010).

61. See Gail B. Nayowith, *A Window of Opportunity for Children Who Stay Too Long*, in CHILDREN’S LAW INSTITUTE 2000, at 355, 429 (PLI Litig. & Admin. Practice Series, Criminal Law & Urban Problems Course Handbook Series No. C-185, 2000); Admin. for Children & Families, U.S. Dep’t of Health & Human Servs., *Treatment Foster Care*, CHILD WELFARE INFO. GATEWAY, http://www.childwelfare.gov/outofhome/types/treat_foster.cfm (last visited Feb. 3, 2012).

The specific model chosen was the Oregon Social Learning Center's Multidimensional Treatment Foster Care Program (MTFC), an evidence-based approach which was initially developed as an alternative to institutional, residential, and group care placement for boys with histories of chronic and severe criminal behavior. It has since been adapted for and tested with children and adolescents who have severe emotional and behavioral disorders, girls arrested for delinquency and referred from juvenile justice systems, and youth in regular state-supported foster care.⁶² Research on MTFC in New York and throughout the United States has shown it to be effective at keeping adolescents who are identified for group care safely in neighborhood-based placements. The research has also documented that youths in MTFC homes have returned home quicker, experienced fewer placements, and spent fewer days in out-of-home care.⁶³

The Center approached New York Foundling to partner in adapting MTFC to a respite care model. NYF operates a diverse network of integrated programs, services, and initiatives for families with multiple social, economic, medical, and psychological needs, including a twenty-four-hour, seven-day-a-week parent helpline; trauma-specific treatment for abused and neglected children; services for teen parents; community-based family services; a charter school incubator for young children in the Bronx; afterschool activities for youths in low-income neighborhoods; early education and day care; and a panoply of programming for justice-involved and disconnected youth. NYF also oversees numerous private and congregate foster homes throughout New York City, recruiting and training parents and providing extensive support for youth and their biological and foster parents. In 2007, NYF was selected by ACS to pilot Blue Sky, an alternative to placement program that was part of the city's Juvenile Justice Initiative, combining three evidence-based interventions: Multisystemic Therapy, Functional Family Therapy, and MTFC

62. TFC Consultants, Inc., *History of MTFC*, MULTIDIMENSIONAL TREATMENT FOSTER CARE, <http://www.mtfc.com/history.html> (last visited Feb. 3, 2012).

63. See, e.g., Patricia Chamberlain et al., *Multidimensional Treatment Foster Care for Girls in the Juvenile Justice System: 2-year Follow-up of a Randomized Clinical Trial*, 75 J. CONSULTING & CLINICAL PSYCHOL. 187 (2007); Leslie D. Leve & Patricia Chamberlain, *A Randomized Evaluation of Multidimensional Treatment Foster Care: Effects on School Attendance and Homework Completion in Juvenile Justice Girls*, 17 RES. ON SOC. WORK PRAC. 657 (2007). MTFC is one of only twelve programs classified as "model programs" by the Blueprints for Violence Prevention initiative, developed by the Center for the Study and Prevention of Violence at the University of Colorado-Boulder. The Blueprints initiative has established research-based standards for evaluating the effectiveness of violence and drug prevention programs and has designated a small number as sufficiently evidence-based to qualify as model programs (the other classification is "promising"). Center for the Study and Prevention of Violence, *Blueprints for Violence Prevention*, U. COLO. BOULDER, <http://www.colorado.edu/cspv/blueprints/> (last visited Feb. 3, 2012). Blueprints for Violence Prevention is actively supported by the Office of Juvenile Justice and Delinquency Prevention, which also includes MTFC as a model program. SHARON MIHALIC ET AL., CTR. FOR THE STUDY AND PREVENTION OF VIOLENCE, UNIV. COLO.-BOULDER, BLUEPRINTS FOR VIOLENCE PREVENTION, at i (2004) (published by the Office of Juvenile Justice & Delinquency Protection), www.ncjrs.gov/pdffiles1/ojjdp/204274.pdf; see also OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, <http://www.ojjdp.gov/> (last visited Feb. 3, 2012).

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services. Blue Sky was targeted at youth who would otherwise be placed into OCFS facilities and was designed to last four to twelve months.⁶⁴

Although the MTFC model was originally designed for longer-term interventions, project planners at the Center and NYF felt it could be adapted to work with a short-term respite model. Similar to the purpose of respite, the goals of MTFC are to help young people live successfully in families (as opposed to acclimating to institutional or congregate care settings) and to prepare their families to provide effective parenting to help sustain improvements made during the relocation period. The short-term approach was considered critical by NYF to the respite component of the program, which was not intended to be an alternative custodial arrangement. The focus was to be on skill-building and support for the family as a unit, with the therapeutic work continuing after the youth returned home.⁶⁵ NYF would recruit respite families from a pool of fully trained foster families within its foster care network. Potential respite parents would receive additional training in the MTFC principles and the new model, which is referred to as TFC Respite.⁶⁶

The new program included several key components designed to help youths achieve sustainable permanency in the community and better long-term outcomes. First, young people referred to and accepted into the program are matched with an available TFC Respite-trained family for a period of up to twenty-one days. The Respite family makes sure that the young person is supervised at all times, ensuring that he or she goes to school and then to the READY ATD Program, and closely monitors peer associations in conjunction with the ATD program.

While in the home, the Respite family implements a daily behavior management regimen by reinforcing positive and normative behaviors and setting clear limits through the use of points and levels that specify daily expected activities and behaviors. Respite parents are called every day by the supporting clinical team and are surveyed about thirty-seven critical behaviors that are known to disrupt placement in the home—such as bedtime compliance, morning routine and timeliness, housework and homework, and room neatness. The clinical team uses the information to address problems through individual counseling sessions, to monitor progress, and to craft individualized service plans using the resources of the READY ATD. Participants gain or lose points based on their behavior. If a youth acquires a certain number of points, she or he is rewarded with incentives such as TV viewing, computer or video game time at home, extra phone calls to family and friends, or other

64. *Juvenile Justice Initiative*, N.Y.C. ADMIN. FOR CHILDREN'S SERVS., http://www.nyc.gov/html/acs/html/support_families/juvenile_justice.shtml (last visited Feb. 13, 2012).

65. The short-term model also fits with New York's approach to respite care in the child welfare context, which was familiar to NYF through its other foster care programs. *See generally* N.Y. COMP. CODES R. & REGS. tit. 18, § 435.5(b)–(c) (2011).

66. Potential Respite parents are certified foster parents who have already received thirty hours of Model Approach to Partnership and Parenting (MAPP) training to be in compliance with New York State licensing requirements. NYF provides twenty hours of additional training in the modified MTFC model to become Respite parents. *See* Center for Court Innovation, Project READY Respite: A Therapeutic Foster Care Model 8–9 (Feb. 21, 2012) (unpublished Respite operations manual) (on file with author).

individualized incentives as determined by program staff and the Respite parents. Youth who lose points or do not achieve a threshold of expected points for acceptable behavior lose privileges such as those listed above.

Respite program staff also conduct a comprehensive assessment for all youths in the program, which includes a mental health screening and a full psychosocial assessment. This assessment is then integrated into the individualized service plan. In addition, Respite participants receive all the services offered through the ATD portion of READY, including academic support and homework help, group workshops, in-house art programming, cultural events, recreational outings, and guest speakers. READY uses the same point and level system for all youth in the ATD, extending the reach of the intervention. Respite youth participate in twice weekly individualized skill-building sessions with clinical staff, focusing on anger awareness and anger management, conflict resolution, enhanced communication, stress management and wellness, and self-advocacy without confrontation.

At the same time, the Respite family therapist works with the youth's biological family to help them prepare for the young person's return home, helping them build better management and coping skills. Biological parents are trained in the use of the same point and level system in place in the Respite home and are coached to develop and test conflict resolution techniques, communication enhancement strategies, and the effective use of rewards and sanctions at home. The Respite team also immediately begins to prepare the family for reunification through monitored telephone calls between the youth and biological parent, as well as through facilitated family visits which begin almost immediately after Respite entrance.

After twenty-one days, the youth returns home and continues in the READY ATD tier two program, and the family continues to receive and participate in comprehensive supportive services by the Respite clinical team until a fully viable aftercare plan is in place. The team assists the family in managing the youth's initial return, overcoming obstacles and misunderstandings, and creating acceptable house rules and behavior terms, as well as implementing rewards and sanctions on which all can agree. After sixty days, the youth is stepped down into the tier one program, with program completion after 120 days.⁶⁷

III. THE RESPITE PROGRAM IN ACTION

A. Program Operations

READY Respite began accepting cases during the summer of 2010 and, as of December 31, 2011, twenty-five youths had gone through the program, all but three of whom, or eighty-eight percent, successfully completed the twenty-one-day Respite home placement. While some youth subsequently encountered problems, with seventy-one percent successfully completing the aftercare component of Respite, all

67. The court case may still continue at that point, or there may be a disposition. The maximum length of participation in the ATD is 120 days. Center for Court Innovation & N.Y. Foundling, Project READY Respite 4-7 (Jan. 13, 2011) (PowerPoint presentation) (on file with author).

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but two received community dispositions as opposed to placement in a facility.⁶⁸ Although the program is targeted to youths in the predisposition phase, young people can become eligible at any stage in the court process, including after disposition if they received a probation disposition and are at risk of remand due to a violation of probation (VOP). A youth is eligible for Respite when (1) his or her primary residence and school are in Staten Island;⁶⁹ (2) he or she has an open delinquency case or a VOP; and (3) the parent or guardian is refusing to take the youth home, or the youth is in or at risk of being remanded to detention and the court has concerns about the parent's or guardian's ability to ensure a court appearance or prevent rearrest, or the youth is in READY ATD, but there are concerns about compliance or home volatility and, as a result, violations and remand are likely.

Program staff developed a basic Respite Assessment Tool, which can be used at any stage of the court process to identify youths who may be appropriate.⁷⁰ If the young person is in detention, Respite staff are notified of the potential case and will appear in court on the same day if possible, bringing with them a potential Respite family match. Respite's social worker and program supervisor interview the youth and also meet with the biological family. If everyone in the family voluntarily agrees to participate, signed consents are executed.⁷¹ In court, the judge will order the youth paroled during the pendency of the case pursuant to the conditions of Respite and ATD participation. Immediately after the court appearance, the biological family, the Respite family, the youth, and the Respite staff go to the Respite offices for orientation and to complete a more detailed intake. The young person leaves with the Respite family and begins ATD participation the next business day. A similar process occurs for youths identified at the point of possible remand due to program noncompliance.⁷² READY ATD staff report on the youth's progress in the program at each court appearance.

Respite functions with a staff of three, in addition to the Respite parents and the staff at READY, and under the joint supervision of the NYF program director and

68. E-mail from Melissa Gelber, Project Dir., Staten Island Youth Justice Ctr., to Nancy L. Fishman, Project Dir., Youth Justice Programs, Ctr. for Court Innovation (Jan. 24, 2012, 2:59 PM EST) (on file with author).

69. This limits the eligible population, because high school students in New York City rarely go to high school near to where they live. Primary residence on Staten Island is a requirement of Respite because the Respite parents are required to take the young person both to school and to the READY ATD after school.

70. Center for Court Innovation, Respite Assessment Tool (Jan. 10, 2011) (on file with author). The tool is one page and provides a checklist of eligibility factors.

71. A fundamental difference between respite and MTFC is that admission to the Respite program is entirely voluntary and based on the consent of the biological parents or guardians, who retain custody of the child at all times. Biological parents have to agree to participate in the full array of services available while their child is in respite care.

72. For youth identified while participating in the ATD as being at risk of remand because their home situation has become unmanageable, Respite staff will notify all court players via e-mail that Respite is being considered. The Respite clinical team meets and determines whether Respite is appropriate, and then the staff meets with the youth and the family to obtain all necessary consents.

the READY project director. All staff, plus the Respite parents, attend biweekly, mandatory meetings to maintain the high level of coordination and consistency among program participants. In order to retain an available pool of Respite families for youths as they come into the program, the Respite families are paid a per diem amount while they care for a child and are also paid a lower per diem in between assignments. There are currently five Respite families in the program, with the goal of having a maximum of two youths in Respite homes at any one time. While the program initially started without these extra families, it was determined early on that their inclusion was important, for three reasons. First, Respite staff wanted to be able to match the youth with an appropriate family, and having more than one option, if there is already one family with an assignment, was critical to that end. Second, it also became clear that Respite families needed some opportunities for respite themselves, given the intensity of the program and the high demands placed on them while youths are in their homes. Third, project staff wanted to be careful to include additional homes to which a youth could be moved should the original Respite home assignment not work out or need to end for any reason.⁷³

B. Case Studies

While the number of participants is still too low to draw a statistical picture of the program, the specific case studies below provide a good illustration of the types of challenges youths in the program present.⁷⁴

1. Tiffany

Tiffany was sixteen years old when she was referred to READY Respite in October 2010. She had been in and out of secure and nonsecure detention since February 2010. Her original arrest, for assault, occurred in June 2008. In April 2009, she received a disposition of probation and had since accumulated a litany of violations. In February 2010, she was remanded to secure detention following a period of two weeks when her whereabouts were unknown. When she was referred to Respite in October 2010, Tiffany was in the dispositional phase once again on a VOP and was being held in detention. In the interim, her mother had approached the Center for Court Innovation's Staten Island Youth Justice Center, which houses and oversees Respite and the READY ATD, to see if it could help in any way. There, she learned about the Respite program and asked if the family could participate. Based on the referral from the READY program director, the court decided to give Tiffany an opportunity, despite her poor record of compliance, in the hopes that a new approach might change her behavior: if she could complete the Respite program and attend READY ATD, then the court would consider the City's Juvenile Justice Initiative (JJI) as an alternative to placement

73. These would include family emergencies or illnesses in the Respite home as well as circumstances in which the relationship between the youth and the Respite family deteriorated.

74. The names and certain identifying details of the participants have been changed to protect their identities.

at final disposition.⁷⁵ Participation in JJI would allow her to remain in the community and would probably be her last chance to do so.

Once the Respite team began working with Tiffany, they learned that she had a history of aggression and fighting with her peers. While she had never been formally diagnosed with a mental health disorder, she displayed and self-reported symptoms of depression and attention deficit hyperactivity disorder and had received mental health services while in detention. Tiffany admitted having a long-standing history of using alcohol and marijuana, but she claimed to have been drug-free since entering detention in February 2010. This information, which was gleaned during the assessment process, became vital in crafting an individualized service plan for Tiffany. While substance abuse treatment did not appear necessary at the time she entered the program, Tiffany indicated a willingness to participate in individual therapy to address some traumatic events in her past.

Despite her challenges and her history, Tiffany did well in Respite. She followed all the rules, participated enthusiastically in the afterschool program, and got along well with the Respite family. She had been reenrolled in high school after being released from detention and now began attending school regularly. There were, however, a few instances during her Respite stay when her whereabouts were unknown for short periods of time. On one of her home visits, for example, she did not return from an outing with a family friend on time, and on two occasions she was not at the designated pickup zone after school. All of these situations were used as teaching opportunities during her individual skill-building and family therapy sessions. Subsequently, her behavior and judgment showed marked improvement. During family therapy sessions, Tiffany's family received help in developing a behavior plan using the point and level system that worked well in the Respite home. The plan would help Tiffany's mother temper her emotional responses to Tiffany's actions and implement rewards for positive behaviors and immediate consequences for misbehavior. The family therapist role-played typical challenging situations with Tiffany's mother so that the therapist could observe her responses and offer feedback.

While in the Respite program, Tiffany and her mother were screened and deemed appropriate for the JJI program. After twenty-one days in Respite, Tiffany was reunited with her mother and the family returned to court two days later. In light of her positive Respite report, she received a disposition of twelve months of probation with the requirement that she participate in JJI programming. She has not been back in court since her disposition.

2. *Samuel*

Samuel, fifteen years old, was paroled to READY Respite in June 2010 following arraignment on the charges of obstruction of governmental administration and resisting arrest. He had been arrested the day before, when he went to school to

75. JJI is an initiative of ACS that provides home-based services for youth who would otherwise go into state OCFS placement facilities. The program typically lasts four to twelve months and uses evidence-based therapeutic interventions. *Juvenile Justice Initiative, supra* note 64.

retrieve his report card. He arrived late and the school safety officer would not let him in. There was a physical confrontation, and Samuel allegedly hit the officer as he was attempting to restrain the young man.

Samuel's attorney identified him as eligible for Respite at the pre-petition stage, when Samuel's mother stated she was unable to control him at home. She said that she was afraid of him because he had recently shoved her against a wall during a fight. She indicated that he stayed out of the house most of the time and did not listen to her, and she suspected he was using marijuana. Samuel presented in court as defiant and indignant, but he agreed to go into the Respite program. He denied intentionally shoving his mother, but also complained of ongoing conflict in the family.

Despite his initial uncertainty about living in the Respite home, Samuel's behavior throughout the twenty-one days was without incident, with no negative behaviors reported in the home other than some irritability after a frustrating phone call with his mother. He participated actively in the READY ATD afterschool program, as well. There were some instances in which he demonstrated poor decision making skills and disruptive behavior. These issues became the focus of Samuel's individual skill-building sessions. Respite's clinical staff focused on his communication skills as well as on developing his awareness of how his actions, behaviors, and even tone of voice affected how people perceived him and treated him.

During his first two weeks in the Respite home, however, Samuel consistently expressed a deep resentment toward his mother for "putting [him] here." This sentiment was part of an overall defiant attitude and belief that he had done nothing to deserve the arrest or the program's strict boundaries. His individual skill-building sessions with staff honed in on his coping skills at home as well as his expectations and responsibilities. The primary focus of family therapy with Samuel and his mother was developing a behavior plan to be implemented for Samuel when he returned home. The plan delineated responsibilities and privileges identified by Samuel himself and also helped Samuel's mother set realistic expectations for him and incorporate meaningful incentives for good behavior.

When Samuel returned home, his mother reported that his behavior had vastly improved. Without the rigid structure of the Respite home, however, he began to have compliance issues. Although he continued to attend summer school every day, within two weeks he had four violations for failing to attend the ATD program and missing curfew. READY staff submitted an affidavit of noncompliance to have Samuel's case advanced in court. In court, he avoided remand in part because of the positive report on his home behavior from his mother. Respite staff continued to work with Samuel and his mother to implement the behavior plan and address Samuel's time management issues. His behavior improved over the next several weeks, and he incurred only one violation for arriving late in the afternoon to the ATD program. Based on this turnaround, he received a disposition of a six-month supervised adjournment in contemplation of dismissal. The Respite clinical team remained involved with Samuel and his mother, ultimately providing them a referral for long-term family therapy.

IV. ASSESSING THE FIRST YEAR AND LOOKING FORWARD

A. Early Lessons Learned

READY Respite is a pilot program and represents New York City's first effort to use brief respite care, in combination with evidence-based programming, as an alternative to detention in cases where neither detention nor foster care is warranted, but a family needs additional support to help a youth succeed in the community. All participants in the program, including program staff, New York Foundling, the Center for Court Innovation, and all of the court stakeholders remain in regular communication about what is and is not working. Program staff have made changes and adjustments throughout the first year, informed by the data collected on progress and initial outcomes for participants. Although the program has yet to be rigorously evaluated, and the number of participants to date is too small to draw definitive conclusions, there have been lessons learned that are worth examining, even at this early stage.

The first of these is that all players—the judiciary, prosecution, defense bar, and advocates—are committed to making the program work because it responds to a vexing and historic chasm in the system and gives every indication of effectively addressing that gap in a way that meets the concerns of stakeholders and families. Demand for the program has increased as it has demonstrated that, at the most basic level, it appears to work: young people are successfully completing the program and avoiding detention without posing risks to public safety. Referrals to the program have come from both prosecutors and the defense bar, as well as from the presiding judge, and, as in the case of Tiffany, from parents as well. There have been cases referred at a time when no beds were available, and the parties have been able to collaborate in the interim, stabilizing the youth with tier two ATD participation or even nonsecure detention until a bed becomes available.

If the program responds to the need of court system players for more alternatives to detention, it also responds to a very specific and very pressing need for parents. There has been little or no support for families, particularly low-income families in under resourced communities, whose children are facing detention during a delinquency proceeding. It is not surprising that a parent faced with the challenge of dealing with a young person with a history of troubling behavior—the arrest and court involvement representing just the latest example of persistent problems—might simply throw up her hands, with the result that the youth ends up in far more serious trouble and facing more negative long-term consequences. This is more likely when there are other, younger children in the home. Although the family may not need or want the child to be taken away, typically there has not been any other option available. What the Respite experience demonstrates is that with attention, clinical assistance, and ongoing support, these families can be stabilized and can be taught skills that will allow them to manage better what is often normative, if challenging, teenage behavior, obviating the need for more disruptive, expensive, and potentially harmful interventions. The combination of the cooling-off period with therapeutic and educational services provides a practical, accessible solution. The goal is not to

resolve all of the family's problems, but rather to give them tools that they can use to address and reduce conflict more effectively.

Part of what has made Respite itself function well is very clear role definition for all of the staff and participants, combined with regular and clear communication among those involved. In this way, the youth at the center of the program receives the identical message from all corners and faces consistent expectations from the Respite family, the social worker, the family therapist, the READY staff, and the biological family. At the same time, Respite staff have used a "whatever it takes" approach to help a youth succeed, keeping an eye on what matters but being otherwise more flexible. In one instance, for example, the program supervisor was alerted that a young man in the program had not come home when he was supposed to and the Respite family didn't know where he was. She went out and found him on the basketball court and brought him in. Even though he did lose some behavior points for not being where he was supposed to be, he was given the opportunity to earn more time to play basketball as his behavior improved. This proved to be an effective motivator for this young man.⁷⁶

Still, challenges for the program remain. Not all families that could benefit from the program opt in. Families with a history of involvement in the child welfare system in particular have been reluctant to participate, even when the more limited parameters of the respite care approach are explained. Although young people are generally not interested in going to detention, many are still wary of going into the Respite family home.

The other major challenge for the program is making sure that gains made while the youth is in the Respite home are sustained going forward. Although the time in the Respite home is brief, and participants remain in contact with their biological families during the respite period (the program incorporates short, daytime home visits), the transition from the highly structured Respite family setting, with its twenty-four-hour monitoring, back to the home has proven to be a daunting adjustment for many kids, as Samuel's case indicates. This is made all the more difficult when the underlying court case continues long past the Respite placement period, as expectations and requirements remain elevated and there is simply more risk that the situation will deteriorate. Respite staff have been looking at other options, including incorporating an overnight visit home during the twenty-one-day period, to help assess potential stumbling blocks after reunification. Staff are also looking at ways to expand the aftercare component of the program, even to the point of readmitting a youth into Respite care if warranted.

B. Replication and Expansion in New York City

Because Respite offers the promise of assistance to young people like Tiffany and Samuel, helping them to avoid detention, there has been considerable interest in expanding and/or replicating the program elsewhere in New York City, even at this

76. Telephone Interview with Sylvia Rowlands, Program Dir., N.Y. Foundling (Mar. 14, 2011).

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early stage in its development. Those familiar with the program have identified a number of considerations for taking Respite to other boroughs.

First, there is no doubt that the program's location on Staten Island has facilitated its relatively smooth start-up and integration into the family court. That county has a smaller community of key actors in the system and the population and geographic area are circumscribed. To those working in the other New York City boroughs, Staten Island is virtually a separate city and there is always some doubt that something that seems to work there will work, for example, in the Bronx or Queens. Any effort to replicate the model in other boroughs would need to start small and build confidence in and understanding of the model among the judiciary, and prosecution and defense bars. Some changes would have to be made to integrate the program successfully into a courthouse with more than one judge. It would make sense to work closely with the ATD programs in each of the other boroughs to build on their models and existing relationships with services and resources in those communities.

At the same time, there is a broad need for and interest in alternatives to detention for youth who may be precluded from assignment to the existing ATD programs for reasons largely beyond their control. As a result, Respite programs in larger jurisdictions will need to be clear about eligibility requirements and screen cases appropriately. Court system players in other jurisdictions in New York City have cautioned that there will be pressure to accept families that either do not need the program (even if they need something) or need more than the program can offer. The fear of net widening—providing youth who are not actually at proximate risk for detention with an intervention that is more intensive than is warranted by their circumstances or behavior—is not unfounded and will need to be addressed in adapting the model for a larger jurisdiction. This reinforces the importance of effective communication among all participating partners to the program and setting clear eligibility guidelines.

Respite's model of having a certain number of backup families consistently available may be challenging to replicate at a larger scale. The training of Respite parents is a rigorous process and the expectations are substantial. Matching the right family to the right youth is an important part of the model's success to date, but is also delicate and labor-intensive work. The program has not been operating long enough at this point to determine the right ratio of families to active beds necessary to maintain sufficient matching capacity. In order to sustain a broader pool of families, it may be necessary to pool TFC Respite-trained families as resources for different types of referring programs, including Persons In Need of Supervision⁷⁷ and child welfare cases.

In addition, the program has benefitted from its location as part of the Staten Island Youth Justice Center, which includes the READY ATD and its resources and community connections, as well as the Staten Island Youth Court, a peer justice program which includes in its caseload some cases of minor ATD program violations,

77. For an explanation about PINS, see *supra* note 44.

to help keep these youth on the path to success.⁷⁸ The ability to leverage the additional resources of a larger program makes the Respite model potentially more effective. Again, linking any new program in other boroughs to the existing ATD there could address this concern.

V. CONCLUSION

New York City, like many other jurisdictions, is engaged in the hard process of reforming a juvenile justice system that was considered costly, ineffective at ensuring public safety, and profoundly harmful to many of the young people it touched. One of the major lessons we have learned through experience and years of research is that taking young people—whether pre or postdisposition—out of their communities and placing them in restrictive institutional settings is inappropriate in all but the limited number of cases where public safety concerns are truly manifest. Through the use of an empirically based risk assessment instrument as well as the development of a range of alternatives to detention and placement that support youth and their families in their home communities, New York City—which has been the source of the majority of the youths in the state’s juvenile justice system—has made significant strides in reducing institutional placements. In early 2011, these efforts resulted in the closing of the Bridges Juvenile Facility, the once notorious Spofford detention center, an event hailed as a major victory for the City.⁷⁹

As reformers look for more strategies to respond effectively to delinquency without sending young people to jail, the experience to date of Staten Island’s READY Respite indicates the value of tailoring programs to particular populations of youth who are at high risk of remand, but for whom detention is an inappropriate option. Respite provides a practical, problem-solving response when young people who do not pose a significant flight or public safety risk lack family ready or willing to keep them at home while their court cases are resolved. Like other problem-solving models, Respite looks to address the underlying reasons behind troubling behavior as a way to ensure improved and more lasting outcomes. Instead of pulling

78. Youth courts are tribunals of young people who have been trained to hear actual cases of offenses committed by other youth, serving as judge, jury, and advocate and imposing sanctions that reflect restorative justice principles. These sanctions, which often include community service, reflective essays, and letters of apology, provide an opportunity for youth court respondents to redress the harm they have committed against the community and learn how to make better decisions going forward. Youth courts can also link respondents and their families to community resources that promote positive youth development. Youth courts do not determine guilt or innocence, and young people must accept responsibility for their actions in order to participate. The Center for Court Innovation operates five youth courts in New York City, which serve as diversion programs for youth at risk of deeper penetration into the justice system. The Staten Island Youth Court hears cases referred by the police, the department of probation, and, for young people between the ages of sixteen and eighteen, from the criminal court. *See, e.g.*, Jeffrey A. Butts & Jennifer Ortiz, *Teen Courts—Do They Work and Why?* N.Y. ST. B.A.J. 18 (Jan. 2011); Nancy Fishman, *Youth Court as an Option for Criminal Court Diversion*, N.Y. ST. B.A.J. 38 (Jan. 2011); Tim Stelloh, *Ensuring Petty Crimes Don’t Lead to Big Ones*, N.Y. TIMES, Sept. 22, 2010, at A22.

79. Daniel Beekman, *Bronx’s Notorious Spofford, aka Bridges Juvenile Center, Finally Shut Down*, N.Y. DAILY NEWS, Mar. 31, 2011, http://articles.nydailynews.com/2011-03-31/local/29381941_1_troubled-youth-social-services-center-bronx-activists.

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young people out of their communities and creating more, possibly irreparable, disruption in their lives, Respite’s therapeutic approach provides them and their families the opportunity to build skills that will help them navigate day-to-day problems. This can potentially reduce the likelihood that the young person will end up in trouble in the future. The inclusion of a short period of respite care can prevent a moment of crisis from escalating into a tragedy.

READY Respite provides a compelling example of how a new program can effectively build on and adapt existing research-informed interventions to address an underserved need. Criminal and juvenile justice policymakers have rightly begun to require that new programs rely on “evidence-based practices,” interventions that have been shown to be effective according to robust research standards. There are not yet, unfortunately, a sufficient number and breadth of validated interventions available to respond to every population, in every context; in fact, the number of proven interventions for juvenile justice populations, while growing, is extremely limited.⁸⁰ How, then, are jurisdictions like New York City, with complex problems and a need to implement well-designed juvenile justice system reforms now, to respond? The READY Respite experience offers a guide to successful innovation in this environment. By combining the respite and MTFC models that were shown to be effective with similar populations, the new model is grounded in evidence-based principles and is positioned to generate new evidence on “what works.” The next step is obviously to formally evaluate the model; but the approach can, until then, draw upon practical expertise in research-informed strategies, and move the field forward.

80. Only twelve programs are generally accepted to reach the highest level of research-based effectiveness, through the rankings of the Center for the Study and Prevention of Violence, and each addresses only a particular problem or population. *See* discussion of BLUEPRINTS FOR VIOLENCE PREVENTION, *supra* note 63.