Case Closed

New York City's probation department is diverting thousands more teens away from juvenile court.

BY ALEC HAMILTON

EACH YEAR, MORE than 10,000 teens aged 15 and younger are arrested by police. They begin their journey into the criminal justice system with a visit to an intake officer at the Department of Probation. Increasingly, the trip stops there. In a remarkable turnaround, the probation department has become an off-ramp for thousands of teens each year, diverting them away from court, and into short-term community programs.

The number of teens aged 15 and under whose cases have been "adjusted" and closed by the probation department increased 47 percent between 2009 and last year, and has more than doubled since 2006. In 2011, 4,564 teens under age 16 arrested in New York City—38 percent of the total—had their cases closed through adjustment, up from 3,107 two years earlier. Today, the city funds nearly 30 community-based adjustment programs, serving just over 800 young people as of June.

The terms of an adjustment can include restitution for victims and the completion of one of these special programs, which involve community service or other projects. Adjustment periods typically last 60 days, though they can be extended to four months with a judge's approval. If a young person meets the terms, he or she walks away from the case with no need to go deeper into the justice system.

And that's exactly the point: Especially for low-level offenders, explains Deputy Commissioner of Probation Ana Bermudez, involvement with the justice system often does more harm than good. "There is significant research that youth outcomes actually deteriorate with court processing, particularly when you're looking at low-risk youth," she says. "You interfere with those supports that were making them low-risk in the first place."

Studies indicate that young people who are arrested and taken to court—even a juvenile or family court—are somewhat more likely to increase, rather than decrease, problem behavior, compared to those who aren't put through the system. One meta-analysis of 29 random-assignment studies, covering more than three decades of research, found that court system involvement not only failed to deter future criminal activity, but often increased its likelihood.

So far, the probation department says its adjustment programs are getting positive results. Ninety percent of diverted youth make it through their assigned program, say officials. Of those, 86 percent are not rearrested within the following six months, during which their cases are tracked.

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In a room on the 11th floor of the Family Court building in Brooklyn, former graffiti artist Ralph "Tatu" Perez is struggling to connect with the students in his Paint Straight program. There are just four of them—all teenage boys who've recently been arrested for graffiti or vandalism.

Short and spry, Perez leans back in his chair. "Y'all know what karma is?" he asks.

All but the two youngest kids nod their heads. A 13- and 14-year-old, recently arrived from Yemen, they are struggling to understand the language.

"You see these scars?" Perez asks, pointing to his own face. "I did a lot of bad things. Ever notice my nose? See how part of it is missing? I was attacked by two pit bulls."

The kids lean forward, peering at his nose. Perez nods. "They chewed my face up. I went into a coma because I lost so much blood. Here I was, living life, thinking I was okay, then out of nowhere come these dogs." He rolls his chair closer to the thirteen-year-old, who is wide-eyed. "You see?"

"You still have the dog?" asks the boy, only partially understanding.

"No man." Perez laughs. "It wasn't my dogs." Then he goes back to his point. "You do bad things, it's going to come back to you and haunt you."

Perez's Paint Straight program is one of several new programs funded by the probation department to work with kids who get in trouble with the law. According to Perez, in the two years he's been running his classes, only one participant out of 60 was subsequently rearrested.

The program runs in six-week sessions during which arrestees meet in small groups with Perez, who talks with them about vandalism laws, addictive and compulsive behavior, and respecting their communities. He also gives them some art history, starting, he says, with how the human urge to draw on walls has existed "for as long as man stood up straight." The goal is to teach respect for laws and community while still encouraging kids to express themselves artistically.

At the start of the first class, Perez checks in with the kids. He asks a 15-year-old about his involvement in gangs, but the youth shakes his head and says he is no longer involved.

Perez is pleased. "You left the gang? Why?"

The boy shrugs. "Because my girl."

Perez nods. "That's good. My mother says always listen to the women."

The 13-year-old clicks his pen on and off, smiling brightly when Perez scowls at him.

It's hard to gauge how the class is being received by its participants. The two youngest boys—the Yemeni immigrants—are clearly having trouble following what's going on. Perez says the boys weren't familiar enough with U.S. customs to know that what they were doing was a crime. The younger of the two smiles winningly at everyone. The older one sits beside him, politely alert, but clearly left out of the conversation.

Another boy, the oldest in the group, is visibly frustrated to be there. He leans back in his chair, sullen, and sighs angrily when Perez questions him.

"This is stupid," he says during a break. "How are you gonna tell us that graffiti is bad and then turn around and tell us how to do graffiti?"

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Administrators at the Department of Probation set the goal of increasing adjustment rates several years ago as one more step in their work to keep kids at home rather than sending them to juvenile lockups. So far, the changes have been achieved not through a legal overhaul of the department, but rather through a series of small yet significant tweaks to procedural policy. Officials are giving probation staff more training on intake procedures, and teaching them to tailor their recommendations to the risk level that the youth presents.

After a young person's arrest, a probation officer reviews the charges and talks to the people involved to try to get a sense of the severity of the situation, the youth's home and school life, and any other relevant factors. Probation officers use a tool known as an RAI, or Risk Assessment Instrument, to evaluate the risk of allowing the youth to leave rather than placing them in detention.

Bermudez says that some kids deemed low-risk by the RAI are still sent to detention for what she characterizes as "system barriers"—situations where there's no other safe and supervised place for a young person to go—but the goal is to keep as many low-risk youth as possible out of institutions. In 2011, the department adjusted 68 percent of youth deemed low-risk on the RAI.

In order for an intake officer to refer a young person for adjustment, probation officials must get the consent of the victim of the offense. Bermudez says the department has sought to increase the willingness of common complainants, beginning with major department stores like Macy's and H&M, which now consent to adjustment for young people who've been arrested for stealing merchandise as long as they complete the department's online anti-shoplifting program. Between January and July of 2011, shoplifting offenses accounted for a full 16 percent of all youth arrests, officials say.

Other changes have been achieved simply by retraining intake officers, says Bermudez. In the past, if a young person already on probation was arrested on a new charge, officers automatically denied adjustment. Now however, if there is no public safety threat, staff are instructed to consider whether the underlying issues causing the young person's behavior are already being addressed through their probation. If appropriate, probation can continue or enhance those services, rather than send the youth to court.

Unofficial policy also used to dictate that if a complainant couldn't be reached by 3 p.m. on the day of an arrest, a young person could not be adjusted. Now, officers are instructed to wait at least 24 hours before making their decision.

Delores Hunter, a supervising probation officer in the Bronx Family Court Intake Services Unit, says that while initially there were some reservations among intake staff, most of her colleagues now believe the changes are for the better. "It is refreshing to be able to stand up and say that we, the Department of Probation, are trying to offer children an opportunity to stay out of the system, and really mean it," says Hunter. She maintains that parents, too, seem happier with the new methods.

"We often meet parents who are either frustrated with their child for being arrested, or frustrated with a system that they feel arrested their child for no reason. But when they hear that we empathize with them and are able, when appropriate, to offer them adjustment services that will allow their child to get the help they need with minimal disruption, the parents leave more grateful than angry."

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At Paint Straight, the class is almost over. Soon Perez will tell the kids he's taking them for pizza down the block, as he does at the end of every class. They'll gather up backpacks and jackets and Perez will remind them to be on time next Tuesday. "If you don't come next week, everyone takes a turn throwing their schoolbooks at you," he jokes.

Perez has talked to the kids for over an hour about graffiti, crime and community, and asked them about their families, their relationships, and their plans. An hour or so into the class, another young person joined the group–a former Paint Straight student, now returned as a mentor to others in the program.

But for now, Perez is still working to imprint the lessons he learned from his own life. Long ago, in the 1980s and early 90s, his DROID graffiti tag was notorious, peppered across the city. He says he long since decided that tagging and vandalism are not the way to make it as an artist, or in life.

"When you do good, it comes back to you," he says to the teens, building on the karma theme.

He looks intently at each of the kids, one by one. "That's what I believe. Maybe it's God, maybe Allah, maybe the universe. When you do good, good things come back to you."

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