

Treatment Courts Making a Difference for Youths

By Lori A. Hoffman Recently, it seems like criminal defendants are getting younger and younger. According to the FBI's latest "Crime in the United States Report," one in 10 of all arrests in New York State involved people under 18 years old. Further, New York State Division of Criminal Justice Services statistics show that 2,260 juveniles were arrested in the five-county Western New York region in 2011, with 65 percent of them being in Erie County. It is important for courts, attorneys, clients and families to be aware of the programs available to youths with criminal charges. These programs can mean the difference between a conviction or a dismissal, incarceration or a suspended sentence, and a life of crime versus a life of opportunity. These days, the task of mitigating criminal charges against youthful offenders is harder and harder. In 2011, out of the 305 youth offenders in Erie County who were sentenced after being arrested for a felony as the top charge, 61 percent were adjudicated for a felony and 39 percent were adjudicated for a misdemeanor. A year earlier, 53 percent were adjudicated for a felony and 46 percent were adjudicated for a misdemeanor, according to Division of Criminal Justice Services data. In short, Erie County youthful offenders were less successful at avoiding felony-based sentences in 2011, as compared to the previous year. The same is true for 2009 and 2008. Article 720 of the New York State Criminal Procedure defines who qualifies for youthful offender status. Youths eligible for this status are at least 16 years old, are not yet 19 years old and have not previously been convicted of a felony offense. All youths ages 16 to 18 are eligible for youthful offender status, unless they are charged with a class A-I or A-II felony, armed robbery, rape or criminal sexual act in the first degree or aggravated sexual abuse. An eligible youth may still be granted youthful offender status in such cases when a sentencing judge finds mitigating factors in the crimes. Upon the conviction of an eligible youth, the court must order a pre-sentence investigation and make a determination regarding youthful offender status. Pursuant to Criminal Procedure Law § 720.20, if an eligible youth in a local court has not previously been adjudicated a youthful offender, the court must replace the conviction with a youthful offender adjudication. If the eligible youth has previously been adjudicated a youthful offender, he or she is not entitled to such status again. But the court may, in its discretion, grant a second youthful offender adjudication. If an eligible youth is convicted of two or more offenses, he or she must be granted or denied youthful offender status for all convictions. The court cannot grant youthful offender status on one charge and deny it on others. If the court determines the eligible youth to be a youthful offender, the court must vacate the criminal conviction and replace it with a youthful offender adjudication; the court must sentence accordingly and order the record sealed.

Development of youth courts

Following the tradition of creating specialized treatment courts, many jurisdictions have established a "youth court" for youth offenders' cases. This is not a type of peer court; it is an actual criminal court that handles nothing but youth offenders charged with a crime. It is similar to drug court and mental health court and seeks to combine treatment options for at-risk teens and the criminal justice system. This type of hybrid court can be extremely beneficial to a client and can help result in a more favorable long-term outcome. Youth court

can be advantageous when the youth has mental health or emotional issues, behavior disorders, or drug or alcohol addictions that are untreated and causing the behavior that led to the crime. It can also be beneficial when the youth has been suspended or expelled from school, or if there is family instability or other issues causing the delinquent behavior. When the underlying issues that may have precipitated the youth's alleged criminal behavior are identified and addressed, felony charges may be reduced to misdemeanors, resolved with a youthful offender adjudication, adjournment in contemplation of dismissal (ACD) or even outright dismissal. Again, if the youth is making a reappearance in criminal court, there may not be the option of youthful offender status or an ACD to resolve the case. If the youth has previously been adjudicated a youthful offender status, the youth court may allow for a non-criminal disposition, or at least prevent incarceration through a misdemeanor conviction. Central to a positive outcome in youth court is the attorney's familiarity with the client and his or her family. It is important to thoroughly interview youths and their families and tactfully raise possible problem behaviors or habits, without offending them or damaging the attorney/client relationship. Another critical aspect of using youth court is proactively seeking for the youth any available public services. For example, if the youth has been in a fight, expelled from school and is now charged with assault, he or she can be enrolled in an alternative educational program or GED class before appearing in court. Sometimes, the best defense is a good offense. Demonstrating that the youth recognizes the behavioral issues that must be addressed — and taking steps to do so before facing a court order — can go a long way in the eyes of the judge and district attorney. With thoughtful consideration and clearly defined objectives, youth court can be an invaluable tool that not only prevents your client from a criminal conviction but may prevent them from becoming a repeat offender.