January 2012

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Rose L. Amandola

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FORGETTING SOMEONE? NEW YORK’S PERMANENCY LEGISLATION OF 2005 FAILS TO ADDRESS THE NEEDS OF JUVENILE DELINQUENTS IN FOSTER CARE

ROSE L. AMANDOLA

INTRODUCTION

P.D. first became acquainted with the judicial system when she was seven months old, after her hospital visit for second-degree burns heightened the suspicions of authorities. That was just the beginning of her unfortunate journey through the judicial system. At five years old, the court adjudicated P.D. as dependent and placed her in the care of an aunt. At twelve years old, P.D. became a foster child. After years of languishing in the system, it seemed that the court’s goal of long-term foster care may have finally been the break that P.D. needed to start shaping her life in a positive manner. Foster care would, at the very least, provide her with living arrangements on a continuing basis.

Yet only six months later, the court abandoned its goal, abandoning P.D. as well. P.D.’s adjudication as delinquent on a charge of misdemeanor battery meant the end of her placement in foster care. Not only did the court set aside its previous goals for P.D., but it also placed her in a shelter with a history of abuse and neglect accusations.

The inability of New York Family Courts to adequately address the needs of foster youth who have committed delinquent

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1 J.D. Candidate, June 2009, St. John’s University School of Law; B.S., 2002 Binghamton University.
3 Id.
4 Id.
5 Id.
acts is an all-too-common problem that plagues the judicial system throughout the country. In New York, in particular, the statistics are astounding. "Over 50% of youth entering the detention system have experienced the child welfare system." These children number in the thousands. The large population of children who move from foster care to the juvenile justice system, coupled with the already daunting number of children who languish in the foster care system has created a scenario where delinquent youth have essentially fallen to the wayside of judicial priority. Courts often solve the problem of numerous delinquents and scarce resources by placing these children in institutional organizations and juvenile halls, regardless of whether such placement is particularly appropriate. The result is that delinquents once in foster care are uprooted and deprived of the opportunity to find more permanent living situations.

New York’s Permanency Legislation of 2005 (the “Permanency Bill”) seeks to address the needs of children in foster care generally and to achieve the goal of finding stable, long-term living arrangements. The law, however, also represents yet another instance of the overburdened family court’s failure to successfully rise to the challenge that delinquents in foster care pose. Section 10-A of the Permanency Bill makes some tremendous strides. Most notably, the law imposes continuing jurisdiction of the Family Court over children in foster care, so that a single judge may come to fully understand a particular child’s situation. In addition, the Permanency Bill requires courts to adhere to strict standards. It necessitates detailed reports outlining major aspects of the child’s life before permanency hearings take place in addition to

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9 See infra note 63 and accompanying text.
11 The article “is meant to provide children placed out of their homes timely and effective judicial review that promotes permanency, safety and well-being in their lives.” Id.
12 Id.
permanency hearings every six months for any child placed out of the home.\textsuperscript{13} To say, however, that all children placed outside the home benefit from the new law's coverage is an exaggeration. The law excludes juvenile delinquents and persons in need of supervision ("PINS") from its protection.\textsuperscript{14}

This Note argues that New York's Permanency Bill, while representing an improvement in the law, cannot fully and adequately effectuate its goal of permanency for foster children while continuing to omit juvenile delinquents from coverage. Part I of this Note details the applicable laws. It includes a comparison between New York’s Permanency Legislation of 2005 and the permanency hearings of the past, revealing that the legislature makes some important changes that have the potential to significantly decrease the number of children aging out of the child welfare system. Part II of this Note argues that, despite the many improvements that the Permanency Bill represents, it does not go far enough in achieving its goal of permanency for foster children. The statistics alone are enough to suggest that delinquents—as such a large subgroup of children in foster care—require inclusion in the new law.\textsuperscript{15} Moreover, there is an alarming connection between children who commit acts of delinquency and those who were previously abused and/or neglected.\textsuperscript{16} As such, the problems that once led a child to foster care are often the underlying cause of their delinquency. Finally, Part III seeks to suggest solutions that would rectify the weaknesses of the Permanency Bill. As the most obvious first step, the legislature should amend the new law to include juvenile delinquents and PINS. In order to optimize the effectiveness of the law, however, New York should consider a more extensive solution. The Family Courts has become an antiquated and ineffective entity. Therefore, the Family Courts should merge with other lower courts within the state, thus maximizing available resources.

\textsuperscript{13} See id. § 1089.
\textsuperscript{14} See id. § 1087.
\textsuperscript{15} See generally Armstrong, supra note 6.
\textsuperscript{16} See Scrivner, supra note 7.
I. THE STATUTORY BASES AND PROCEDURES WITHIN THE CHILD WELFARE AND JUVENILE JUSTICE SYSTEMS

A. Permanency Legislation

New York's Permanency Legislation lies at the heart of some radical changes within the state's family courts. The law aims to alleviate the long-standing problem of foster children who languish in the system.\(^\text{17}\) In 1997, Congress officially recognized this crisis through the Adoption and Safe Families Act ("ASFA").\(^\text{18}\) By that time, approximately 500,000 children were in foster care throughout the nation.\(^\text{19}\) Even more troubling, these children were spending an average of three years within the system.\(^\text{20}\) These conditions led to the unfortunate situation that many children "aged out" of foster care. In other words, foster children remained in the system for such long periods of time, particularly when they entered the system as adolescents or teenagers, that they simply became too old to remain any longer. In New York, for example, at the age of eighteen, an individual in foster care may voluntarily remove herself from the system.\(^\text{21}\) By the age of twenty-one, these individuals are automatically removed from the system.\(^\text{22}\) Therefore, the "ASFA relegislated permanency planning—timely, well thought out decision-making and good casework practice."\(^\text{23}\)

One of the ASFA's major accomplishments was its implementation of regular permanency hearings. Permanency hearings are hearings "held . . . for the purpose of reviewing the foster care status of the child and the appropriateness of the permanency plan."\(^\text{24}\) In general terms, social services and appropriate organizations cooperate with the parties and the courts in order to develop a plan best suited for the child and his

\(^{17}\) N.Y. FAM. CT. ACT § 1086.
\(^{20}\) Id.
\(^{21}\) N.Y. SOC. SERV. LAW § 398-a(1) (McKinney 2008).
\(^{22}\) Id.
\(^{23}\) Gendell, supra note 19, at 26.
\(^{24}\) N.Y. FAM. CT. ACT § 1012(k) (McKinney 2008).
During the permanency hearings, the court hears the facts of the child’s case and determines both short-term and long-term goals for the child. The court sets these objectives with the ultimate purpose of stability in living arrangements for the child in mind. Therefore, such eventual determinations by the court may include reunification with a parent or freedom for adoption.

New York’s legislation of 2005 builds upon the general principles of the ASFA. Though the ASFA implemented permanency hearings every twelve months upon initial placement and every twelve months thereafter, it soon became obvious that foster children required regularity of a more stringent type. One year in the life of a child away from his or her home is a considerable amount of time and a great deal can happen in the interim. Moreover, the vague descriptions of what was to happen during these permanency hearings and how, exactly, the courts should decipher a practical plan became unworkable. Therefore, article 10-A of the New York Family Court Act specifies the detailed happenings during the hearings and the regularity with which they are to take place.

One of the most important features of article 10-A is its implementation of timelines. In order to prevent children from aging out of the foster care system, the law sets very specific and strict deadlines for the judicial procedures of foster children. Although the dates vary somewhat depending on the manner in which the child first entered care, the court must set a date for the first permanency hearing no later than sixty days plus six months from removal—essentially a total of eight months—from the time the child first entered care. This date is a “date certain,” meaning that, in the absence of a strongly compelling reason, the hearing must take place on the set calendar date. This prevents parties from rescheduling to try and find a date convenient for everyone. Given that the court predetermines the date eight months in advance, legal guardians, parents, custody

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25 See id. § 1011.
26 See id. § 1089(c)(1).
27 See id. § 1086.
28 See id. § 1089(c)(1)(i)–(ii).
30 See generally N.Y. FAM. CT. ACT § 1089.
31 Id. § 1089(a)(2).
32 Id.
facilities, and any other parties will not be afforded much leniency for requested delays.\textsuperscript{33} In addition, permanency hearings must occur every six months thereafter for the remaining period that the child continues in custodial care.\textsuperscript{34}

Article 10-A also designates a series of specific items that the court must address during the permanency hearings. Of particular importance is the law’s provision requiring a sworn report by the social services district submitted to the court and the parties involved fourteen days before the permanency hearing.\textsuperscript{35} Prior to this implementation, the law dictated only that a report be made, meaning that often the social services district did not submit the report until trial, or even afterwards.\textsuperscript{36} This was a major hindrance to the progress of the child, as the court did not have any notice of the conditions of the youngster or his living alternatives. The current permanency hearing report details the health and well-being of the child and her status since the last hearing.\textsuperscript{37} In contrast to the existing legislation, prior law did not mandate inclusion of the child’s health status, his educational development, parental visitation, or even efforts made by parents or relatives to achieve reunification.\textsuperscript{38}

The most important aspect of the new legislation is that courts retain continued jurisdiction over the child’s case.\textsuperscript{39} The statute declares “the case shall remain on the court’s calendar and the court shall maintain jurisdiction over the case until the child is discharged from placement and all orders regarding supervision, protection or services have expired.”\textsuperscript{40} Therefore, the court orders after a permanency hearing do not end jurisdiction and the child benefits from continued appearances. Each time the child is due for another permanency hearing, she will be before the same judge who has already heard her story and is familiar with the case.

\textsuperscript{33} See id. Previous laws allowed adjournments for various reasons, including the absence of key parties. See also N.Y. SOC. SERV. LAW § 392 (repealed 2005).

\textsuperscript{34} N.Y. FAM. CT. ACT § 1089(a)(3).

\textsuperscript{35} Id. § 1087(e).

\textsuperscript{36} N.Y. SOC. SERV. LAW § 392(5-a) (repealed 2005).

\textsuperscript{37} N.Y. FAM. CT. ACT § 1087(e).


\textsuperscript{39} N.Y. FAM. CT. ACT § 1088.

\textsuperscript{40} Id.
B. Juvenile Delinquency Laws

Article 10-A fails to protect delinquent children adequately. This Part explains the typical path likely to be faced by a New York foster child accused of an act that would be a crime if committed by an adult, thus revealing some of the inherent loopholes within the law. Although New York statutes governing delinquency adjudication are somewhat confusing and dispersed, the experiences of “crossover” children—children who move from foster care into the juvenile justice system—are generally similar.

The initial stages of adjudication are fairly straightforward and are often time-sensitive. First, a presentment agency files a petition. The petition, although not subject to a strict time limitation, must be filed within a reasonable period of time. Following the petition, the court will conduct an initial hearing. When the child, or “respondent,” is detained, the initial appearance must take place “no later than” seventy-two hours after the filing of the petition or “the next day the court is in session, whichever is sooner.” During the initial hearing, the court will decide a number of issues, including whether the child should be detained and the date of a probable cause hearing to determine such detention.

There are two initial observations worthy of attention at this point. To begin, it is fairly likely that the foster child will remain
in detention following her arrest. The reasons for this are twofold. First, New York has founded its delinquency laws around the assumption of parental guardianship.\textsuperscript{50} In the absence of a parent, the child must wait until the court appoints a law guardian. Though a zealous advocate for the interests of the child, a law guardian can neither adequately fill the role of parent nor appropriately and immediately provide living arrangements in the same manner as a parent. Second, in stating its reasons which support a detention order, the court must declare "whether the continuation of the respondent in the respondent's home would be contrary to the best interests of the respondent based upon, and limited to, the facts and circumstances available to the court at the time of the initial appearance."\textsuperscript{51} The judge may easily answer such a question where foster children are at issue. Simply put, they are foster children for sound reasons, and the same reasons that justify foster care initially will also justify detention in a delinquency setting. Home, for whatever reason, is no longer a suitable living arrangement for the child and, therefore, the court can also legitimately justify detention. Likewise, the additional requirements that the laws impose upon the courts are not difficult to dispose of in cases of crossover children. For example, the court must also determine "whether reasonable efforts were made to make it possible for the respondent to safely return home."\textsuperscript{52} One can assume, however, that the question will be answered in the affirmative so long as the courts have adhered to the impositions of the permanency legislation. In other words, where courts must conduct regular and detailed permanency hearings for foster children with the goal of permanency, it is safe to assume that "reasonable efforts were made"\textsuperscript{53} and that the courts have satisfied the statute.

In addition to likely detention, one should also note the leniency of supposed time restrictions in juvenile proceedings. Though upon initial appearance the court will declare the date of a probable cause hearing, this is not a "date certain" as is the case in permanency hearings. A "date certain" requires much more than the usual commitment of a date set by the court and,

\begin{itemize}
\item \textsuperscript{50} See Scrivner, \textit{supra} note 7, at 139.
\item \textsuperscript{51} N.Y. FAM. CT. ACT § 320.5(5)(a).
\item \textsuperscript{52} Id. § 320.5(5)(b).
\item \textsuperscript{53} Id.
\end{itemize}
in general, the court will consider it to be legally binding.\textsuperscript{54} Juvenile delinquents do not benefit from that level of certainty. Such proceedings, therefore, are subject to change despite general constitutional rights to a speedy trial.

The trial will continue with probable cause\textsuperscript{55} and fact-finding hearings.\textsuperscript{56} Courts generally conduct fact-finding hearings in a relatively efficient and time-conscious manner. This, though, reflects the inherent weaknesses of the system. In addition to the inappropriate infiltrations of adult criminal justice principles,\textsuperscript{57} juvenile delinquency courts are hearing only part of the child's complete story. Oftentimes there is little doubt as to whether the respondent committed the act in question and whether the prosecutor can meet the burden of proof.\textsuperscript{58} The real questions are why the child behaved as she did and what can be done to correct it. Rehabilitation becomes a secondary goal in delinquency proceedings, however.\textsuperscript{59} Without thorough analysis of the child's situation, it is easy to comply with speedy trial mandates.

Where the prosecution has proven its case, the court will hold a dispositional hearing and draw conclusions about particular routes of placement. During the hearing, the court will determine whether "the respondent requires supervision, treatment, or confinement."\textsuperscript{60} Commonly, for reasons discussed in Part II.A,\textsuperscript{61} lack of available alternatives requires that the judge place the crossover child either with the commissioner of social services or the Division of Youth in accordance with section 353.3 of the Family Court Act.\textsuperscript{62} Of these placements, most generally occur through the Division of Youth,\textsuperscript{63} where the child's options include a secure facility, limited-secure facility, or a non-secure facility.\textsuperscript{64} The types of facilities vary according to their

\begin{itemize}
\item \textsuperscript{54} See BLACK'S LAW DICTIONARY 423 (8th ed. 2004).
\item \textsuperscript{55} N.Y. FAM. CT. ACT § 325.1.
\item \textsuperscript{56} Id. § 340.1.
\item \textsuperscript{57} See infra note 126 and accompanying text.
\item \textsuperscript{58} The burden of proof in this context is "proof beyond a reasonable doubt." See N.Y. FAM. CT. ACT § 342.2(2); In re Winship, 397 U.S. 358, 365–68 (1970).
\item \textsuperscript{59} See infra note 128 and accompanying text.
\item \textsuperscript{60} N.Y. FAM. CT. ACT § 352.1(1).
\item \textsuperscript{61} See infra note 82 and accompanying text.
\item \textsuperscript{62} N.Y. FAM. CT. ACT § 353.3(1).
\item \textsuperscript{63} Merrill Sobie, Practice Commentaries, N.Y. FAM. CT. ACT § 353.3 (McKinney 2008).
\item \textsuperscript{64} N.Y. FAM. CT. ACT § 353.3(3).
\end{itemize}
restrictive nature. For example, a "secure detention facility" means a facility characterized by physically restricting construction, hardware and procedures" whereas a "non-secure detention facility" means a facility characterized by the absence of physically restricting construction, hardware, and procedures. Secure facilities, as suggested by the nomenclature, are most like adult prisons, despite the general aversion to such reference. They "provide the highest level of security with enhanced staffing, perimeter fencing, exterior lighting and increased security precautions." Similarly, limited secure facilities also include "a perimeter fence, exterior lighting, enhanced staffing and increased security precautions." In contrast, non-secure facilities include mostly group homes, and provide the most "family-like" environment.

Placement in any of the three types of facilities contains the significant possibility of extended stays. Any time that the court has placed the respondent pursuant to section 353.3, the facility, the Division of Youth, or the commissioner can petition the court to extend such placement. Therefore, initial placement may be for a period of up to eighteen months. After this period has elapsed, the court may extend placement in yearly increments until the child's eighteenth birthday.

Where a child is in a secure or limited-secure facility, extensions mean that the child will not benefit from judicial oversight into her progress beyond the extension hearings. The children in foster homes and other non-secure facilities receive

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65 Id. § 301.2(4)-(5).
67 Id.
69 N.Y. FAM. CT. ACT § 355.3(1).
70 Id. § 355.3(6).
72 See N.Y. FAM. CT. ACT § 355.5.
permanency hearings, but only those under the general guidelines of the original permanency legislation established by the ASFA. This means that children will receive permanency hearings on an annual basis only. Moreover, obligations concerning the procedures and goals during those permanency hearings are vague. The court shall decide on a “permanency plan for the child that includes whether . . . the child will be returned to the parent, placed for adoption . . . , or referred for legal guardianship, or . . . placed in another planned permanent living arrangement.” What, exactly, this language means and how the court should accomplish such lofty objectives is unclear and the very basis of the new permanency legislation. Thus, these children are left to suffer due to the confusion of the courts.

Despite the many problems of the delinquency system, children are not without rights. In fact, courts often apply the same constitutional rights to juveniles as they do to adults. For example, federal laws dictate certain uniform principles throughout the states. The Juvenile Justice Delinquency Prevention Act of 1974 and its amendments are key pieces of legislation in the United States. “The Act largely transferred, from the federal government to the states, the obligation to provide preventative and rehabilitative services for at-risk and delinquent youth. The Act also required states to comply with certain standards, such as separating incarcerated juveniles and adults.” There are many cases, as well, that have extended constitutional rights to young Americans. New York courts have even recognized that placement of a child adjudicated delinquent constitutes a deprivation of liberty and state laws

74 See N.Y. FAM. CT. ACT § 355.5(2).
76 Davis, supra note 41, at 385 (footnote omitted).
77 See, e.g., In re Winship, 397 U.S. 358, 367–68 (1970) (establishing guilt beyond a reasonable doubt); In re Anthony R., 119 Misc. 2d 557, 559, 462 N.Y.S.2d 1007, 1009 (Family Ct. Queens County 1983) (holding that parens patriae may not be used to deprive juvenile delinquents of their constitutional rights); Davis, supra note 41 (discussing landmark cases in this area).
abound to extend protections beyond federal laws. Unfortunately, implementation of these rights is necessary and indicative of the divergent initiatives taken by New York family courts as of late.\textsuperscript{79} As Part II divulges, the problems within the Family Courts and, particularly, the juvenile justice system, are numerous and significant.

II. HOW NEW YORK'S PERMANENCY LEGISLATION FAILS TO ACCOMPLISH ITS OBJECTIVE AT THE COST OF JUVENILE DELINQUENTS

New York’s Permanency Bill—article 10-A—does not address the needs of juvenile delinquents and therefore cannot effectuate its goal of preventing children from languishing in the child welfare system. The new statute explicitly excludes juvenile delinquents from its coverage.\textsuperscript{80} This exclusion, in turn, illustrates a significant defect in the law and a major problem in the New York Family Court system generally. Juvenile delinquents represent a considerable population of children in the foster care system. Moreover, the circumstances that justify placement in foster care may also lead to future delinquency problems.

A. The Plight of Juvenile Delinquents

Elimination of juvenile delinquents from coverage under article 10-A creates a multitude of problems, presenting compelling reasons for legislative rectification. Though the harms are numerous, three main categories sufficiently encompass the result of exclusion. First, crossover children face a significant possibility of placement in excessively prohibitive facilities relative to the delinquent acts committed. Second, the inadequate permanency legislation applied to juvenile delinquents (as opposed to article 10-A applied to foster children) leads to the possibility of lack of specificity within the permanency hearings and long delays between hearings. Third, and perhaps most importantly, crossover children do not benefit from continuity, thus subjecting them to multiple hearings with different parties and judges.

\textsuperscript{79} See infra note 126 and accompanying text.

\textsuperscript{80} See N.Y. FAM. CT. ACT § 1086 (McKinney 2008).
1. Placement Within Secure Facilities

Courts are more likely to place foster children facing charges of juvenile delinquency in secure facilities, affording them a "punishment" disproportionate to the alleged act committed. This is, in part, due to the fact that New York's juvenile delinquency system assumes parental involvement in the adjudication process.\(^8\) For the same reasons that a judge will likely possess an inclination toward initial detention, there are equally justifiable reasons for secure custody of a crossover child. Essentially, the unique situation of a crossover child puts her at a disadvantage under the current juvenile delinquency and permanency laws.

The law, in fact, begins with return of the child to his home as a foundational inquiry.\(^8\)\(^2\) In the general case of an alleged juvenile delinquent in a relatively functioning home, the court's analysis is brief. If the child can safely return home, then the logical course of action is to allow this, ensuring that state resources will not be consumed and that the child continues his usual mode of education. Placement in foster care, however, means that home is already not an option. Thus, the crossover child starts from an adverse position, given that the preferred choice of placement is not available.

In addition, the limitations upon placement of crossover children are even more extensive than just the simple exclusion of residence with her family. During the dispositional hearings of a crossover child, the court applies a standard of the "least restrictive available alternative... which is consistent with the needs and best interests of the respondent [child] and the need for protection of the community,"\(^3\) in order to determine whether confinement is appropriate. While home may not be an available option, it initially appears that the law still aims to protect the child. Generally, this type of statutory language would be enough to protect the usual juvenile delinquent; yet, the inadequacies of the juvenile delinquency laws with respect to foster children create a situation wherein the crossover child is left to suffer. Often times, less restrictive alternatives are not available as a child's behavior serves to isolate her from the

\(^8\) See supra note 50 and accompanying text.
\(^8\)\(^2\) See N.Y. FAM. CT. ACT § 320.5.
\(^3\) Id. § 352.2(2)(a). Different standards govern where the child is charged with a designated felony. See id. § 353.3(5).
already small number of possible foster homes and facilities. Accusations of delinquency can take away what little hope a child has left. Those foster homes or adoptive parents willing to give the child a chance may become discouraged by seemingly criminal proceedings pending against the child. Facilities and persons untrained and not in a position to accommodate a disobedient child are not likely to welcome a young person with a pending delinquency case. Even those facilities that are equipped may already be filled to maximum capacity. In essence, an overcrowded child welfare system coupled with a deviant adolescent logically leads to the conclusion that placement of a child, even for the most conscientious of judges, will be difficult and somewhat restrictive. Where there is nowhere else to turn, the court may place children in secure or limited-secure facilities in the hopes that they might be able to provide the children with the services needed.

At this point, at least brief reference should be made to the fact that the weaknesses of the juvenile delinquency and permanency legislation may actually lead the court to violate the constitutional rights of crossover children. As previously stated, federal and state law afford juvenile delinquents many of the same constitutional protections as adults. Placing children in secure facilities for reasons of practicality and lack of resources, however, seems prima facie disproportionate punishment in violation of the Eighth Amendment. New York courts have consistently held that Eighth Amendment protections do, in fact, apply to juvenile offenders. Ultimately, whether placement of crossover children within secure facilities violates the Constitution depends upon a kind of balancing test where the court “compare[s] ‘the gravity of the offense,’ understood to

84 Scrivner, supra note 7, at 139 (“If a child is in a foster placement and the foster parents intend to adopt the child, a delinquency adjudication may deter them from proceeding with the adoption.”).

85 In fact, police may encourage delinquency proceedings in order to bring the child to at least minimal resources. See Jeanne Asherman-Jusino, The Right of Children in the Juvenile Justice System To Inclusion in the Federally Mandated Child Welfare Services System, 3 D.C. L. REV. 311, 312 (1995).

86 See supra notes 76–77 and accompanying text.

87 This is particularly true as the courts and legislature continue a trend toward increasing punishment. See infra note 128 and accompanying text.

include not only the injury caused, but also the defendant’s culpability, with the ‘harshness of the penalty.’” 89 Although there is no clear answer, the age, maturity, and underlying causes for the delinquent act factor strongly on the side of unconstitutionality. Not only does a child’s physical and mental condition suggest a relatively lower level of culpability than that of an adult, 90 crossover children may be particularly less culpable as their unique circumstances and obvious familial dysfunction have already resulted in foster care placement. Moreover, Family Court judges seem to increasingly base their decisions upon lack of options rather than on the harm caused by the child or his fault. Secure facilities, though obviously not the equivalent of adult penitentiaries, do restrict the freedom of children contained within their walls. 91 Such determinations, though practical, do not appear constitutional.

Questions of constitutionality aside, whether the court places the child within a secure, limited-secure, or non-secure facility, the crossover child suffers from the absence of connectivity between juvenile delinquency law and permanency legislation. Children placed in secure facilities do not benefit from any kind of permanency hearings whatsoever. 92 The crossover child, thus, goes from the world of foster care and article 10-A proceedings, to a juvenile delinquency system seemingly indifferent to her permanency and future. No permanency hearings in effect means that neither judges, nor law guardians and placement facilities will be under an obligation to analyze a child’s progress, the resources she receives, and what will happen to her after detention. The result is the very evil that article 10-A seeks to prevent: Children will languish in the system, without guidance, without a place to live, and without the skills to live independently. It is no surprise that recidivism abounds as the child enters adulthood with crime as the only means of financial and social support. 93

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90 See id. at 971.
91 See TESTIMONY, supra note 66, at 5–6.
92 Merrill Sobie, Practice Commentaries, N.Y. FAM. CT. ACT § 355.5 (McKinney 2008).
2. Vague Hearings and Lengthy Delays

Even those children that are lucky enough to find placement in another foster home or non-secure facility will face the very problems that the permanency legislation was meant to solve. Among these are vague permanency hearings and extensive delays. While article 10-A dictates that permanency hearings for foster children take place on a “date certain,” laws governing juvenile delinquents do not require such strict dates. Dates certain ensure that delays and rescheduling conflicts are rare or non-existent. In contrast, juvenile delinquents may remain in a facility for months as the parties and judges struggle to find an appropriate date. Although there are general speedy trial requirements for juvenile delinquents, it can be quite a daunting, and justifiably time-consuming, process to simply find a date upon which all interested parties can attend the proceedings.

New York legislation in this area simply does not contemplate timeliness and permanency in a manner sufficient to accommodate juvenile delinquents, and specifically, crossover children. Detained delinquents must have an initial appearance within seventy-two hours after the petition is filed or on the next court day, whichever is sooner. Once the petition has been filed, however, adjournments can and may occur. Adjournments beyond the sixty day limitation merely require that the moving party show good cause. This is understandably not difficult to do when Family Courts and law guardians are already quite burdened. When one considers the potential for delay, it seems as though almost anything could frustrate the case. Far from achieving permanency, juvenile delinquents struggle simply to be heard.

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94 Compare N.Y. FAM. CT. ACT § 1089(a) (McKinney 2008) (requiring a court to set a “date certain”), with id. § 340.1(4)(b) (allowing adjournments on as little as “good cause”).
96 See In re Louis P., 304 A.D.2d 501, 501, 757 N.Y.S.2d 740, 740 (1st Dep’t 2003) (holding that the presentment agency did not violate the Sixth Amendment despite the fact that delays had continued for seven and a half months); In re Kelvin R., 298 A.D.2d 183, 183, 748 N.Y.S.2d 46, 46 (1st Dep’t 2002) (finding that the respondent’s rights were not violated despite a seven month delay).
3. Lack of Continuity

Perhaps the most critical problem faced by these children is lack of continuity. Proponents of the legislation of 2005 hail "the principle that the Court retains continuous jurisdiction (and involvement) from the day a child has been placed until the date permanency is achieved through family reunification, adoption, independent living, or a suitable permanency alternative" as "[a] major achievement of article 10-A."\textsuperscript{100} When a court adjudicates children as delinquent, not only are they left without regular permanency hearings, but they also do not receive the resounded benefits of continuity. Juvenile delinquents are placed at a particular disadvantage\textsuperscript{101} because each time a judge adjudicates his case or holds a permanency hearing (where applicable), the judge is never able to actually come to know the entirety of circumstances surrounding the child's behavior and arrest.\textsuperscript{102} Vague permanency hearings coupled with overburden dockets allows the judge only to hear the very narrow events involving the child's alleged delinquency. The problem worsens as the child languishes in the system and a different judge presides over each hearing. An individual judge never comes to know the child's full story or how acts of delinquency may simply have been manifestations of the failures of the child welfare system.

Particularly troubling is the fact that courts can extend placement.\textsuperscript{103} Judges may be compelled to extend placement where the minimum facts present a situation of a misbehaved child with nowhere to go.\textsuperscript{104} Thus, a judge may place a child for an initial period of up to eighteen months, but extend that placement in yearly increments up to the age of eighteen.\textsuperscript{105} In essence, the child still "ages out" of the system, yet through a

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\textsuperscript{100} Merril Sobie, Practice Commentaries, N.Y. FAM. CT. ACT § 1086 (McKinney 2008).
\textsuperscript{101} Scrivner, supra note 7, at 135.
\textsuperscript{102} See In re Rudolph M., 174 Misc. 2d 273, 276–77, 664 N.Y.S.2d 399, 401 (Family Ct. Kings County 1997) (holding that the same judge need not preside over a placement and an extension of placement hearing).
\textsuperscript{103} See N.Y. FAM. CT. ACT § 353.3(7); see also supra note 69 and accompanying text.
\textsuperscript{104} See N.Y. FAM. CT. ACT § 355.3(4) (requiring the court to consider the child's possible living arrangements).
\textsuperscript{105} Id. § 353.3(5), § 355.3(6).
means other than the foster care system.\textsuperscript{106} Although the legislators can claim that the permanency statute achieves its goal of promoting permanency for children in of the foster care system, the practical result is simply that more children age out of the juvenile justice system. The successes of the law, despite its well-intentioned objectives, are attributable merely to the narrow way in which it defines “system.” Where “system” means only those children who are in foster care, then the law obtains its goal; yet when we consider the child welfare system as a whole, including juvenile delinquents, many children are still left to languish.

B. Why Juvenile Delinquents Merit Inclusion in Article 10-A

The unique situation that crossover children present suggest compelling reasons for their inclusion in the permanency legislation of article 10-A beyond the problems mentioned above. First, taken collectively, crossover children represent a large subgroup of foster children. In fact, foster children are more likely to become juvenile delinquents than the general population within the same age group.\textsuperscript{107} Second, crossover children are individuals, each of whom has a unique and heartbreaking story. Although emotions may not present practical reasons for changes under the law, it is important to recognize that each of these children has the opportunity to either contribute to our society or to impose burdens upon it. Moreover, crossover children, given their circumstances, stand to gain the most from article 10-A protection.

1. Juvenile Delinquents as Former Foster Children

The goal of the permanency legislation is “to establish uniform procedures for permanency hearings for all children who are placed in foster care . . . . It is meant to provide children placed out of their homes timely and effective judicial review that promotes permanency, safety and well-being in their lives.”\textsuperscript{108} This objective, however, is merely an aspiration and its futility

\textsuperscript{106} See Rudolph M., 174 Misc. 2d at 275–76, 174 N.Y.S.2d at 401 (holding that a proceeding brought pursuant to the New York Family Court Act section 355.3 is not brought by the Presentment Agency).


\textsuperscript{108} N.Y. FAM. CT. ACT § 1086.
becomes obvious when one considers the large number of children excluded from its protection.\(^{109}\) It is a fallacy to say that the statute achieves, or even aims to achieve, permanency for "children placed out of their homes"\(^ {110}\) when the reality is that juvenile delinquents comprise a large number of children once in the foster care system. Some experts estimate that as many as half of the children adjudicated delinquent come from the child welfare system.\(^ {111}\) Still others find the numbers hard to ignore\(^ {112}\) and even conservative assessments calculate the number of crossover children to be in the thousands.\(^ {113}\)

These large numbers partially result from the fact that foster children are more likely to become juvenile delinquents than other children.\(^ {114}\) Countless studies reiterate the resounding theme that there are "striking and significant overlaps in the risk factors in both the child welfare and juvenile justice systems."\(^ {115}\) The very nature of circumstances which surround placement in the foster care system dictate that the problem of juvenile delinquency is, at the very least, a real possibility. From a practical standpoint, despite the multitude of factors that could lead any child along a path of delinquency,\(^ {116}\) it stands to reason that underlying issues of familial abuse and neglect would have profound effects upon a youngster that may cause one to act out in ways that society generally considers unacceptable. The result is that juvenile delinquents suffer from the inability of legislation to effectively deal with such issues.

\(^{109}\) Persons in need of supervision (PINS) and article 6 custody placements are also excluded from the legislation's coverage. \(Id. \) § 1087(a).

\(^{110}\) \(Id. \) § 1086.

\(^{111}\) \(See\) Armstrong, supra note 6.

\(^{112}\) \(See\) Scrivner, supra note 7 ("Countless children are involved in both the child welfare/abuse and neglect system and the juvenile justice/delinquency system."); \(see\) also Miriam Aroni Krinsky, \textit{A Case for Freedom of the Child Welfare System}, 45 Fam. Ct. Rev. 541, 542 (2007).

\(^{113}\) Scrivner, supra note 7.

\(^{114}\) \(See\) Koch, supra note 107.

\(^{115}\) \(See\) Brown, supra note 42, at 22; \(see\) also In re Kingsley, 183 Misc. 727, 731, 49 N.Y.S.2d 947, 951 (N.Y.C. Dom. Rel. Ct. N.Y. County 1944) (recognizing that most children become juvenile delinquents due to neglect or some kind of family dysfunction); Armstrong, supra note 6; Scrivner, supra note 7.

2. Their Individual Stories

The abstract numbers and statistics of the many crossover children do not present the full picture of the ways in which exclusion from article 10-A affects juvenile delinquents. Their individual stories implicate expansive public policy reasons for their inclusion. Take, for example, Sabrina S. In 1997, a New York Family Court adjudicated Sabrina a delinquent and placed her in Lansing Residential Center in Tompkins County. During this placement, Sabrina "exhibit[ed] both verbal and passive aggressive behavior." Her continued acts of disobedience and destructive behavior led supervisors within the facility to become increasingly frustrated with the young woman. Sabrina was lucky that the residential center did not request her expulsion and, in fact, the court granted a one year extension of her placement. The court’s decision was a single page analysis, with only passing references to hopes for the child’s future progress and possible underlying reasons for her misbehavior. Sabrina’s stepfather and brother remained in the comforts of their home, despite allegations of possible sexual abuse of the young girl, while she was left in the system for twelve months without consistent judicial oversight.

Thus, the plight of juvenile delinquents described in Part II.A, and the unique ways in which these problems may manifest themselves in their individual lives present a clear failure of the disconnect between the foster care and juvenile justice systems. The background concerning a child’s initial placement in foster care and his progress, or lack thereof, within the system, can have profound effects upon the child’s future rehabilitative and living needs. Without detailed permanency hearings following delinquency adjudication, a judge may never come to know underlying problems of sexual or physical abuse which resulted in foster care placement in the first place. Knowledge of such facts can help a judge presiding over delinquency proceedings to decide where the child should live in the future and how to best get that particular child the resources she needs. The absence of such considerations means that the child may never find the

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118 Id. at 915, 681 N.Y.S.2d at 670.
119 Id.
120 Id. at 915, 681 N.Y.S.2d at 671.
121 Id.
necessary resources, and therefore, may continue to commit delinquent—or even criminal—acts as she becomes an adult.

III. THE INABILITY OF THE COURT SYSTEM TO ADJUDICATE JUVENILE DELINQUENTS PROPERLY UNDER THE CURRENT FORMULATION OF THE PERMANENCY LAWS

The weaknesses of article 10-A and the delinquency laws generally are not the only source of quandary in the lives of crossover children. The foster care system and the juvenile justice system have taken widely divergent paths throughout their histories significantly contributing to the punishment-oriented delinquency regime (as opposed to a focus upon rehabilitation) that has justified exclusion of juvenile delinquents from permanency hearings. Differing objectives have, in turn, led to a general lack of cooperation and coordination between the two systems. Ultimately, one of the biggest problems has been a lack of resources available to both courts.

The most notable reason why the legislature viewed juvenile delinquents differently from foster children, and therefore, excluded them from article 10-A, is the divergent paths that the two systems have taken throughout the course of their histories. Although the goals of the foster care system and the juvenile delinquency system derive from the same general premise—protecting children—each has carved out its own, specialized jurisdiction.

The juvenile justice system originated with the goals of rehabilitation and treatment as its main objectives. For years, New York courts have emphasized their focus upon child protection rather than punishment. Recently, however, this goal has changed and become increasingly punishment oriented. This is evidenced by the very roots of the juvenile justice system.

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122 Merril Sobie, Practice Commentaries, N.Y. FAM. CT. ACT § 301.1 (McKinney 2008).

Early legislators actually carved juvenile delinquency laws from the adult criminal justice system. Moreover,

[the development of the court . . . was born out of the needs of the times. It was looked upon as a solution to the increasing numbers of . . . delinquent youths. If the conditions that helped to produce so many delinquent youths . . . had not occurred, the juvenile court might never have been necessary.

In other words, the entire system originated with the idea that these children were somehow different from the rest of society. They were troubled and wayward, problems in need of rectification rather than children in need of help.

As the juvenile courts continued throughout history to their modern states, the dual nature of protection and punishment became increasingly at odds. "Not only is the court expected to carry out its original purpose as a welfare agency for the rehabilitation of wayward youths, it is also expected to protect society from the foul deeds of the juvenile delinquent." This has been reflected in the upsurge of constitutional protections now afforded delinquents. As the system has become more punishment oriented, courts have been forced to provide these youngsters with the same rights as adult criminals and more and more courts have come to recognize that delinquency proceedings are, at least, "quasi-criminal in nature." In 1976, punishment objectives officially became a part of New York juvenile delinquency law.

Courts now must balance rehabilitation desires with "the need for protection of the community." As courts struggle to keep our communities safe, protection of the children themselves becomes a difficult aim to

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125 Id. at 229–30.
126 Id. at 230–31.
130 N.Y. FAM. CT. ACT § 301.1 (McKinney 2008).
achieve. Therefore, while the foster care system continues to retain paternalistic principles over children, the juvenile justice system does not.

These divergent foundations result in discrepancies in permanency laws and a lack of cooperation of the child welfare system as a whole. Increased specification has resulted in inefficient distinctions among the family court system generally and among the New York lower courts. For example, New York categorizes its cases into subjects such as divorce, custody, foster care, and delinquency, each with its own specialized courts and judges. Familial issues, however, are predominantly interconnected.

The current system fosters inefficiency in two main ways: First, courts do not have the flexibility to share work in order to transfer cases from burdened dockets to more available ones, and second, one judge is often jurisdictionally incapable of hearing claims stemming from the same factual scenario.¹³¹

Illogical distinctions within the Family Court system mean that cases stemming from the same underlying facts bounce from court to court. The result is sometimes overinclusive, creating overlaps between cases and courts. On the other hand, important cases and facts may fall to the wayside as the overburdened system struggles to address the multitude of proceedings that a single family could potentially present. As Chief Judge Judith S. Kaye noted, however, this “blizzard of overlapping courts . . . imposes significant harm and costs on our state and its people . . ., including . . . families in crisis.”¹³²

As the case changes jurisdictions, the judge presiding over the case changes as well. Oftentimes, parties working on cases involving the same child and/or family may not realize that there are concurrent proceedings within another court and before another judge.¹³³ Even judges may not understand the entirety of a child’s case.¹³⁴ A judge’s attempts to educate himself on the complete matters will likely mean numerous, and sometimes traumatic, court appearances as the child must continually

¹³² Id. at 7.
¹³³ See Scriver, supra note 7, at 140.
¹³⁴ See THE REPORT, supra note 131, at 36–37.
recount her story.\textsuperscript{135} Moreover, the trend toward juvenile punishment further exacerbates the existing problem as more and more cases previously within the Family Court jurisdiction move toward the adult court system.\textsuperscript{136} Once again, the case moves to another jurisdiction within another court with a judge who knows very little about the surrounding circumstances.

The connection between such inefficient overlaps and a general lack of cooperation among the systems makes the scarcity of resources obvious. Multiple cases with the same underlying facts, appearing again and again as children enter child welfare, significantly strains court time, increases the workload of law guardians, and burdens dockets. Further compounding the problem of a lack of resources is the fact that article VI of the New York Constitution places a limit upon the number of lower court judges, based upon population.\textsuperscript{137} In turn, this provision forced the Chief Administrative Judge to reallocate resources, albeit in a somewhat artificial and sometimes injurious manner. In order to fill deficits, the Judge transferred judges from their benches, to other courts.\textsuperscript{138} In effect, the numbers of Family Court judges dwindled further as they were asked to fill even larger deficits in other parts of the New York lower court system. With few judges, and even less time, the Family Courts place the burden upon the crossover child to suffer the consequences.

IV. SOLUTIONS

New York's permanency legislation of 2005 presents a profound and complex predicament. Despite the comprehensive problem posed by crossover children, there are equally extensive solutions that can substantially improve this unique dilemma. The most obvious solution includes expansion of the permanency legislation to include all children placed outside of the home, including juvenile delinquents. This would, at the very least, allow foster children who commit delinquent acts the benefits of continued permanency hearings. Expansion, however, provides but a temporary solution to an enduring issue. In order to fully

\textsuperscript{135} See Gloria Danziger, Delinquency Jurisdiction in a Unified Family Court: Balancing Intervention, Prevention, and Adjudication, 37 FAM. L.Q. 381, 388 (2003).

\textsuperscript{136} See id.; see also supra note 128 and accompanying text.

\textsuperscript{137} THE REPORT, supra note 131, at 23.

\textsuperscript{138} Id.
resolve the exclusion of juvenile delinquents from the permanency legislation and to optimize the effectiveness of the statute, New York's courts require restructuring. Unification of the lower courts would enable the dissolution of inefficient jurisdictional distinctions and the pooling of resources.

The most immediate manner in which to rectify the failures of New York's permanency legislation is to amend the statute in order to include juvenile delinquents (and PINS) within its coverage. This simple adjustment would ensure that juvenile delinquents placed out of their homes have access to the same resources that they would otherwise have. They, like other foster children, would receive regular permanency hearings with continued jurisdiction. The courts would no longer be able to ignore crossover children; rather, they would have the ability to devote the time and consideration necessary to adjudicate such a case. An amendment to the permanency legislation would equip Family Court judges with the knowledge, through prior hearings, to make informed and appropriate decisions concerning delinquency adjudication and placement.

Inclusion of juvenile delinquents within the law, however, does not fully solve the problem. In fact, it merely contributes to an already burdened system, revealing the inadequacies of New York court system generally. The fact that adding juvenile delinquents to the new legislation could potentially burden the courts to the point of malfunction exposes the fragility our current court structure. The family courts, and in fact the entire judiciary organization, have become antiquated and unmanageable. The ever-changing face of the American family and the increased overlap of family court cases139 dictate change in the form of a court merger, or at least an integrated Family Court.

Merging New York's trial courts, including Family Court, into a single Supreme Court would effectuate a number of positive changes within the New York court system and ensure that the judiciary apply article 10-A—and in fact many other state laws, particularly those pertaining to crossover children—in an optimal manner. Through consolidation of lower state courts into one, or a minimal number, of courts, the divergent

goals of the foster care system and the juvenile justice system could again reunite. The judiciary would be better able to pool resources, there would be greater efficiency and thus fewer delays in proceedings, and crossover children could finally benefit from continuity.

Chief Judge Kaye, along with a multitude of other experts and professionals, advocates a plan that “calls for consolidation of the State's major trial courts into a simple two-tier structure: a Supreme Court and a District Court.” Under such a scheme, there would be no formal distinction among lower state courts. In other words, the “newly expanded Supreme Court would have general jurisdiction to hear any kind of case, including all family cases and cases that include claims against the state.” The benefits are almost immediately apparent. Consolidation would provide for fluidity and flexibility in the system, allowing the court to hear cases such as those involving domestic violence or crossover children in a more comprehensive manner. In the absence of jurisdictionally distinct courts, judges would not be under an obligation to stay, reserve, or remove cases based solely upon the multiplicity of issues.

In its simplest form, merger would mean that crossover children would not suffer from numerous cases, before different judges, in different courts. If judges were afforded greater jurisdictional leeway and the ability to hear cases with some sense of fluidity, this would at least open the possibility for continuity of proceedings for crossover children. Without jurisdictional barriers, a single judge would have the potential to hear a child’s case, not only from start to finish of foster care proceedings, but also as the child’s case moves into the juvenile justice arena. Thus, article 10-A and the protections of regular permanency hearings would apply to the crossover child. Obligatory cessation of frequent, detailed permanency hearings would no longer be the norm, as the mere topic of proceedings changed.

In addition to continuity, general integration would help to reunite the divergent goals of the foster care and juvenile justice

141 THE REPORT, supra note 131, at 68.
142 See id. at 10.
systems. Historically, the systems began with the same goal of protection for children at their foundations, and fragmentation within the family court structure has “evolved through historical accident.” The result has been a New York court system that “is the most archaic and bizarrely convoluted court structure in the nation.” Defragmentation would aid the courts in reevaluating the current trend toward juvenile punishment and potentially reverse it, eventually bringing juvenile justice into conformity with its original premise. In fact, “the Pre-Gault [juvenile] court was a kind of unified family court.” Assimilation of the foster care and juvenile justice regimes would quell the somewhat adversarial and competitive juxtaposition presently in existence. Family Court judges would instead have the freedom to work under a system of unified goals and rules.

Similarity, or likely a fusion, in goals would allow not only the foster care courts and juvenile justice courts to work in a more efficient manner, but would also mean efficiency for the system as a whole. For example, a number of states throughout the country have already realized the benefits that court merger makes possible. New Jersey and California, in particular, have responded to the very same problems currently facing the New York courts through judicial merger. Prior to change, experts criticized New Jersey courts for their “overlapping jurisdictions, the... inordinate delays in the administration of justice, and... the attendant inefficiency in operations.” Similarly, reforms in California focused upon “matters of efficiency and ‘management’ in holding trials and, more generally, in processing disputes.”

143 See supra notes 122–124 and accompanying text.
145 The State of the Judiciary, supra note 140, at 3.
146 Danziger, supra note 135, at 382 (internal quotation marks omitted).
147 New Jersey’s family court integration has actually had the effect of rule unification in order to promote its consistent application for children and families. See The Report, supra note 131, at 29.
148 See id. at 28 (citing Thomas A. Henderson, The Significance of Judicial Structure: The Effect of Unification on Trial Court Operations 3 (1984)).
149 Joseph Harrison, New Jersey’s New Court System, 2 Rutgers L. Rev. 60, 73 (1948).
Court merger in both states led to the desired aims of proficiency. In 1947, New Jersey consolidated its system from seventeen different courts,\textsuperscript{151} each with unique jurisdictional boundaries, to seven courts.\textsuperscript{152} Significantly, trial judges within New Jersey were able to hear all cases in all trial courts.\textsuperscript{153} As a result, the state almost immediately realized a fifty percent improvement in the efficiency of proceedings.\textsuperscript{154} Several years later, noting the continued success of New Jersey, California voters followed suit, voting in 1950 to amend the state constitution to allow for a simplified two-tier structure.\textsuperscript{155} After several years and changing legislative votes, the California system now consists of one trial level court of general jurisdiction, along with an appellate court and a high court.\textsuperscript{156} A recent study revealed such benefits as “improved service to the public . . . ; a reduction in backlog and improved case disposition time . . . ; judges hearing a wider range of cases . . . ; and standardization of local rules.”\textsuperscript{157}

The success of other states and the problems revealed by New York’s current state of affairs suggest that New York should abolish the illogical distinctions within its Family Court. Proceedings, where appropriately under the jurisdiction of Family Court, should not undergo further categorization into matters such as divorce, custody, foster care, and delinquency. The life of a crossover child may include multiple court appearances. The same instances of child abuse or neglect may underlie permanency hearings and foster care placement, criminal charges against the parents, and acts of delinquency. In each of these instances, the child suffers as the case bounces between jurisdictions and judges.

\textsuperscript{151} New York currently has eleven different trial courts alone. \textit{The Report}, \textit{supra} note 131, at 16.

\textsuperscript{152} \textit{The Report}, \textit{supra} note 131, at 28–29 (citing \textsc{Carla Vivian Bello & Arthur T. Vanderbilt II}, \textit{New Jersey’s Judicial Revolution: A Political Miracle}, 19–20 (1997)).

\textsuperscript{153} See \textit{id.} at 29.


\textsuperscript{155} See \textit{The Report}, \textit{supra} note 131, at 30 (citing Los Angeles Superior Court, \textit{About the Court: Historical Perspective}, \textit{http://www.lasuperiorcourt.org/aboutcourt/history.htm} (last visited Nov. 9, 2008)).

\textsuperscript{156} See \textit{id.} at 31.

\textsuperscript{157} \textit{id.} at 32 (citing \textsc{Mary Anne Lahey et al.}, \textit{Analysis of Trial Court Unification in California, Final Report} 1 (2000)).
CONCLUSION

New York’s permanency legislation of 2005 has done a great deal to help foster children and prevent them from languishing in the system for extensive periods of time. Detailed permanency hearings and continued jurisdiction certainly appear steps in the right direction. These are, however, only steps, and juvenile delinquents require particular inclusion. In the absence of their incorporation in the new law, juvenile delinquents, who comprise a significant number of children previously or simultaneously in the foster care system, will not benefit from the advantages of the new legislation. Foster children who commit acts of juvenile delinquency will continue to pine in placements outside of their homes without the coverage of article 10-A.

To best facilitate the inclusion of juvenile delinquents and overall judicial efficiency, New York should merge its lower courts. This would eliminate jurisdictional barriers, allowing flexibility for cases involving multiple issues and greater resources for the courts overall. Most of all, crossover children would be able tell their complete stories, potentially before one judge, and work with the courts to develop a permanency plan that would facilitate stability.