



Independent Democratic Conference

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IDC Discovers Spike in Overtime/ Worker's Comp Costs at Office of Children and Family Services

The Office of Children and Family Services has increased overtime costs and experienced a drastic spike in worker's compensation claims, according to a report released today by the Independent Democratic Conference.

These startling numbers come as the overall number of youths under OCFS supervision has actually decreased from 983 during this beginning of the 2009-2010 fiscal year, to roughly 700 currently.

"These are the symptoms of a broken system," Senator Jeffrey D. Klein, (D-Bronx/ Westchester), said. "There is no good reason why costs and workplace violence are rising, while the numbers of youths under OCFS supervision are falling. Governor Cuomo has made revamping our juvenile justice system a priority. Based on our findings, this reform cannot come soon enough."

The IDC report found:

- **Overtime Up; Number of OT Earners Down**

Overtime payments **increased** by \$690,000 from \$10.9 million in 2008 to \$11.6 million in 2009. This is despite the fact that the overall number of overtime earners **fell** from 2,644 to 2,190 during the same time period.

In both fiscal years, the top five individual overtime earners remained the same – with OT accounting for more than half of their overall salary.

Earnings in CY 2008 and 2009 for top OT earners

EMPLOYEE	Title	Average Salary	Two Year OT Earnings	Two Year Total Earnings	Percent of total earnings from OT
Employee 1	YOUTH DIV AIDE 4	\$52,582.00	\$169,557.82	\$288,655.54	59%
Employee 2	YOUTH DIV AIDE 4	\$51,951.00	\$165,128.83	\$282,595.66	58%
Employee 3	CHILD PROTCTV SVS S 2	\$61,771.00	\$147,807.25	\$278,241.90	53%
Employee 4	YOUTH DIV AIDE 4	\$51,469.50	\$147,574.86	\$262,797.74	56%
Employee 5	YOUTH DIV AIDE 4	\$52,148.00	\$129,501.22	\$246,460.44	53%
	Average	\$53,984.30	\$151,914.00	\$271,750.26	56%
	Totals	\$539,843.00	\$759,569.98	\$1,358,751.28	

Pensions are generally calculated based on an average of the last three years of service, including overtime earnings. If any of the five employees noted above are close to retirement, they could receive pensions based on a three year average of earnings well over \$110,000 as opposed to average earnings of under \$70,000.

"The payment of overtime to a small number of workers is concerning, and deserves further investigation. While overtime may be needed to ensure the health and safety of juveniles in the system and workers, this lopsided distribution suggests a serious problem," Senator David J. Valesky, (D-Oneida), said.

– Worker's Compensation Costs Increased 105 %

Worker's compensation incidents at OCFS increased 30 percent during the last three years, from just under 600 in Fiscal Year 2007-08 to nearly 800 in FY 2009-10.

Costs for worker's compensation at OCFS **jumped 105 percent** during this same time period – **from \$1.5 million to \$3.2 million.**

In FY 2009-10 alone, 20,750 workdays were lost, a **startling 87 percent jump** from the 2007-08 fiscal year.

These injuries not only increase worker's compensation costs, but also increase the demand for overtime.

"This vicious cycle doesn't serve the workers who are placed in harm's way, the juveniles placed under state's supervision, nor the taxpayers who paying for an inefficient and increasingly costly system." Senator Diane Savino, (D-Staten Island/ Brooklyn), said.

The Independent Democratic Conference recommends that:

– OCFS mend the broken relationship between staff and its leadership

Throughout the process of completing this report, it has been made clear that a disconnect exists between the leadership of OCFS and its staff. At the direction of the U.S. Department of Justice and the Paterson-era Task Force on Transforming Juvenile Justice, OCFS is changing from a corrections-based system to a model based on community based rehabilitation model. However, employees have complained that they have been left out of the decision-making process. The increase in violence and its related costs lead the IDC to recommend that the OCFS staff be brought more into this process.

– The Division of Budget be given final approval over all overtime expenditures

As the IDC has previously recommended, making overtime subject to the approval of the Division of the Budget would force agency heads to justify and reassess their reliance on overtime.

– OCFS introduces clear, new guidelines regarding discipline at its facilities

The spike in worker's compensation claims came after OCFS issued directives that made it much more difficult for staff to discipline youths in the system. This was a well-intentioned response to several tragic incidents at OCFS facilities. However, the OCFS administrators never implemented a replacement mechanism to tackle underlying issues driving disobedience. OCFS needs to put in place clear guidelines regarding what staff can do to protect youths and themselves when individuals begin to cause problems.

– Re-invest savings from potential facility closures back into rehabilitation model

Eliminating wasteful spending at OCFS is critical. However, there is no denying that appropriate funding is critical to ensure a safe and effective juvenile justice system.

The IDC recommends that money saved from the closure of underutilized facilities be efficiently reinvested to support the community-based rehabilitative model.

"A common sense approach is necessary to address the sweeping changes that must be made to our juvenile justice system," **Senator David Carlucci, (D-Rockland)**, said. "The safety of employees and residents is top priority. Guidelines regarding discipline should be clear to ensure a safer environment. Staff must have the resources needed to properly supervise residents, while ensuring that these young people are receiving any therapy or mental health treatment they need without incurring excessive overtime expenses. OCFS should re-invest money saved from closing defunct facilities for the acquisition of new staff with the skills and training to make a community based rehabilitative model work."



Independent Democratic Conference

Examining Spending at the Office of Children and Family Services

Report by
Gabriel Paniza

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I. Introduction

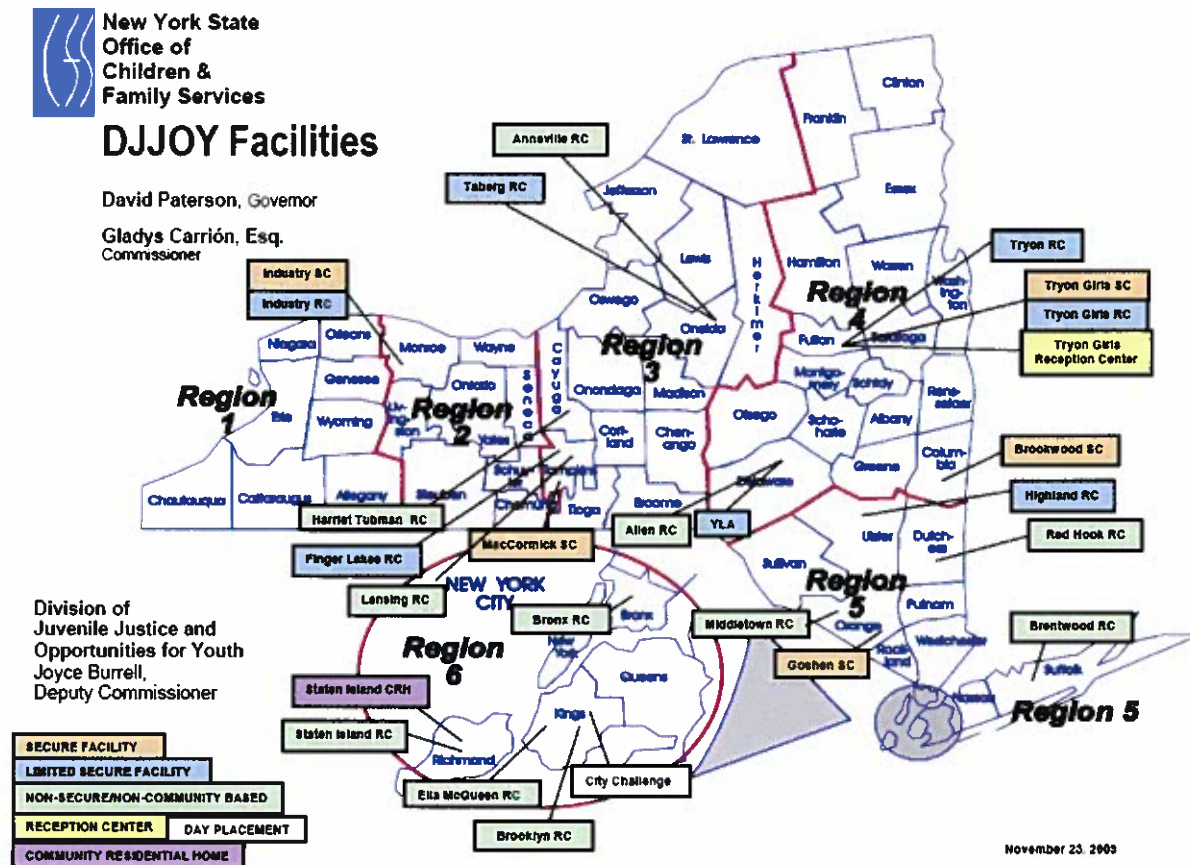
New York State remains mired in serious fiscal problems due to the combination of the steep decline in revenues, the result of the sharpest and longest economic downturn since the Great Depression, and huge public expenditures including the most expensive Medicaid system in the United States and one of the highest levels of per pupil spending. The State is trying to close a deficit this year of over \$9 billion and faces even larger deficits in the coming fiscal years. The purpose of this report by the Independent Democratic Conference (IDC) is to continue the work started by the State Senate Task Force on Government Efficiency by examining State operations and pointing out problems and making recommendations about possible solutions. The bi-partisan Senate Task Force raised questions about spending at several of the largest departments of the state government such as the Department of Correctional Services, the Department of Transportation, as well as the State University of New York, the largest public system of higher education in the country and pointed to excessive overtime spending, unnecessary administrative costs and lack oversight of contractors and contracts. In this first report from the Independent Democratic Caucus, we examine spending at the Office of Children and Family Services, which is responsible for administering a number of programs to enhance the safety and welfare of New York's children, such as child care, adoptions, and child abuse prevention, as well as running the State's juvenile justice system.

II. The Office of Children and Family Services (OCFS)

The Office of Children and Family Services (OCFS) was created in 1998 as part of a reorganization of the State's social services. The creation included merging children and family programs administered by the now-defunct Department of Social Services with the old Division of Youth and the Commission for the Blind and Visually Handicapped. Since 2007 it has been under the supervision of Commissioner Gladys Carrión. OCFS has a proposed all funds budget for Fiscal Year 2010-2011 (FY 2010-11) of \$3.9 billion and a workforce of 3,497 positions¹. That is down from 4,059 positions in FY 2007-08². The overall budget for OCFS has grown from \$3.5 billion in FY 2007-08 to \$3.9 billion for FY 2010-11. Most of this increase has come in the growth of Local Assistance, which sends money to local governments to fund their child welfare programs. This part of the OCFS budget has grown from \$2.96 billion in FY 2007-08 to \$3.36 billion in FY 2010-11. There has been a concerted effort by the administration at OCFS to divert as many individuals as possible from the several juvenile centers operated by OCFS into more community based programs. Over 251 positions are being cut through the closing of three juvenile facilities, closings that are part of this campaign to de-institutionalize juvenile corrections under Commissioner Carrión. This policy change has been quite controversial and has led to charges of increasing violence and dysfunction at juvenile justice facilities. As an attempt to address concerns about staffing ratios at these facilities, the Executive budget calls for the addition of 169 staff members to the remaining facilities. The total staff cut at OCFS for FY 2010-11 is 79 positions (a few additional positions being added due to federal funding for programs for the blind; other staffing positions are being reduced through attrition). Another significant portion of OCFS' mission is to run the State Central Register Child Abuse Hotline. OCFS employees do the initial case intake and then forward the investigation to local county child welfare agencies or local law enforcement. The State maintains a master database of those

found guilty of child abuse that is used by public and private employers to screen out abusers from jobs that focus on children, such as daycare centers.

OCFS Juvenile Justice facilities



III. Overall spending patterns at OCFS

Since FY 2007-08, spending at OCFS has been growing, as noted earlier, with growth in local assistance funds forming the bulk of the increase. That said, there has also been an increase in the State operations portion of the OCFS budget. The Comptroller's office tracks State operations spending, as well as some of the grants made by OCFS. Below is a chart of OCFS spending according to the Comptroller's Office between FY 2007-08 and FY 2009-10, the last complete fiscal year.

Spending Type	FY 2007-08	FY 2008-09	FY 2009-10
Capital Expenses	\$22,650,559.39	\$27,987,379.69	\$27,454,660.57
Contractual Services	\$152,495,618.68	\$177,116,794.12	\$144,767,809.09
Non-Personnel Services	\$53,744,382.69	\$36,526,424.83	\$34,426,641.71
Grants	\$278,191,666.89	\$248,196,930.81	\$326,388,805.18
Personnel Expenses	\$226,256,553.39	\$240,608,903.32	\$241,583,731.90
Totals	\$733,338,781.04	\$730,436,432.77	\$774,621,648.45

Non-personnel services account for leases, supplies, employee travel, telephone expenses, and other such costs. Personnel expenses account for salaries, wages, and benefits. The following chart shows that there have been some significant shifts in spending in several of the categories and some steady trends in others.

Spending Category	07-08 to 08-09 % change	08-09 to 09-10 % change	07-08 to 09-10 % change
Capital Expenses	23.6%	-1.9%	21.2%
Contractual Services	16.1%	-18.3%	-5.1%
Non-Personnel Services	-32.0%	-5.7%	-35.9%
Grants	-10.8%	31.5%	17.3%
Personnel Expenses	6.3%	0.4%	6.8%
Total	-0.4%	6.0%	5.6%

Between FY 2007-08 and FY 2008-09 there was a large increase in capital spending, over 20%, which declined only very slightly in the following fiscal year. This resulted in an overall increase of over 20% in the time period covered. Contractual services spending grew significantly between FY 2007-08 and FY 2008-09 and then fell significantly during the next fiscal year, leading to an overall decline during the period of 5%. The chart shows that Non-personnel services spending has dropped massively during this period, being cut by over one third in just the last few fiscal years. The Governor's office through the Executive Budget has targeted this area for cuts most aggressively, and OCFS has clearly accepted the challenge. That said, the Governor's Executive Budget calls for even more cuts. Unless there had been massive waste and graft in the OCFS Non-Personnel Services budget prior to FY 2008-09, there doesn't seem to be that much room left to cut in that area. Such massive cuts must eventually lead to some degradation in the agency's ability to function most effectively. Spending on grants to non-state agencies saw close to an 11% fall between FY 2007-08 and FY 2008-09, but then saw a 30% plus increase. This significant shift has led to an overall increase of 17%.

The only category of spending that saw no decrease during these three fiscal years was personnel expenses, which grew modestly between FY 2007-08 and FY 2008-09 and grew minimally the next fiscal year, for an overall increase in the period of almost 7%. This increase occurred at the same time that OCFS has cut its overall full time positions by more than 500.

Spending Category	Percent of FY 07-08 Spending	Percent of FY 08-09 Spending	Percent of FY 09-10 Spending
Capital Expenses	3.1%	3.8%	3.5%
Contractual Services	20.8%	24.2%	18.7%
Non-Personnel Services	11.8%	5.0%	4.4%
Grants	37.9%	34.0%	42.1%
Personnel Expenses	30.9%	32.9%	31.2%

This last chart highlights why further cuts to Non-personnel services might not yield additional significant savings. While in FY 2007-08 this line formed over 10% of the overall spending, by FY 2009-10 it had fallen to under 5% of all spending. OCFS will likely have to look to other categories to cut spending. According to the Executive budget, the agency hopes to find more of these savings from contractual services". At some point, the agency will also have to examine capital and personnel expenses if it is to cut spending in a more beneficial manner.

IV. Overtime Spending at OCFS

The State is spending hundreds of millions of dollars in overtime each year with very little control exercised by the agencies themselves. The IDC recognizes the fact that there are times when overtime is a cost effective method of making sure that all necessary shifts are filled, particularly true at agencies that oversee 24 hour facilities, like OCFS. However, excessive overtime spending can point to inefficiencies in the management of work hours and significant disparities in overtime spending at various facilities can indicate a lack of workforce hour oversight.

While OCFS runs a number of 24 hour facilities, the number of workforce earning overtime is much smaller than that at some of the agencies previously examined by the Senate Task Force. In Calendar Year 2009 (CY 2009), 2,190 employees were recorded by the Office of the Comptroller as earning overtime (this includes less than a dozen employees recorded as having “earned” negative overtime, employees who had to reimburse the state for incorrect overtime pay). These employees earned a total of \$11.6 million in overtime. OCFS comes in 9th in terms of overtime spending by State agencies.

As noted in the IDC’s report summarizing the findings of the Task Force, one of the recurring issues that came up in those reports was a very uneven distribution of overtime earnings by the overtime-eligible employees. A small number of employees earn the bulk of overtime. For example, as shown below, less than 2% of the workforce earns over 15% of the overtime.

OT Earning employees 2009	Amount Earned	OT Earned	% of OT Earned	% Of OT Earning employees
5	Over \$70,000	\$394,372.72	3.39%	0.23%
13	Over \$50,000	\$843,653.37	7.24%	0.60%
22	Over \$40,000	\$1,259,641.47	10.82%	1.01%
40	Over \$30,000	\$1,887,922.19	16.21%	1.84%
101	Over \$20,000	\$3,359,029.19	28.84%	4.64%
325	Over \$10,000	\$6,454,564.67	55.43%	14.92%
703	Over \$5,000	\$9,161,396.46	78.67%	32.26%
2179	More than \$0	\$11,645,537.64	100%	100%

In examining where overtime was being spent in CY 2009, it is clear that those classes of employees who serve at the 24 hour juvenile centers run by OCFS account for most of the overtime spending. This is similar to trends found by the Senate Task Force in its previous reports on OPWDD and DOCS. Youth Division Aides, whose job it is to perform various youth care tasks in limited secure and non-secure facilities, accounted for the bulk of the overtime earnings. Youth Division aides levels two through four accounted for 59% of the overtime earning employees and earned 72% of the overtime paid.

Top 10 Overtime Earners in CY 2009¹

Title	Annual OT Earnings	Salary	Total Earnings	Percent of Salary in OT	Percent of total earnings from OT
YOUTH DIV AIDE 4	\$90,383.92	\$53,482.00	\$150,739.58	169%	60%
YOUTH DIV AIDE 4	\$81,734.80	\$52,842.00	\$140,837.16	155%	58%
YOUTH DIV AIDE 4	\$76,635.43	\$52,781.00	\$135,467.34	145%	57%
YOUTH DIV AIDE 4	\$73,999.06	\$53,042.00	\$133,042.23	140%	56%
CHILD PROTCTV SVS S 2	\$71,619.51	\$62,685.00	\$135,630.14	114%	53%
YOUTH DIV AIDE 4	\$64,187.65	\$51,738.00	\$122,030.96	124%	53%
CHILD PROTCTV SVS S 2	\$58,699.36	\$62,685.00	\$121,729.21	94%	48%
YOUTH DIV AIDE 4	\$56,673.21	\$51,714.00	\$113,119.89	110%	50%
YOUTH DIV AIDE 4	\$56,207.49	\$50,531.00	\$111,178.31	111%	51%
CHILD PROTCTV SVS S 1	\$55,972.01	\$50,531.00	\$107,998.37	111%	52%

As can be seen above, seven of the top ten overtime earners were Youth Division aides level four, the most senior level for Youth Division aides. The other type of employee represented in the top ten list are child protective service specialists, who handle incoming reports of child abuse.

Most of the agencies examined before by the Task Force had cut their overtime expenditures between CY 2008 and CY 2009, so while they still had very high overtime spending, it was declining. This drop was particularly visible at the Department of Transportation, as shown in our previous Senate Task Force report^{iv}. Unlike at these other agencies, overtime spending at OCFS actually increased between CY 2008 and CY 2009, even as the overall workforce at OCFS and the number of overtime earners declined. Total overtime in CY 2008 was \$10.9 million, and that went up to the aforementioned \$11.6 million, a \$690,000 increase. At the same time, the number of overtime earners fell from 2,644 employees to 2,190 employees. Combined, these increased the average overtime earned per overtime-earning employee from \$4,142.52 in CY 2008 to \$5,316.35 in CY 2009, an increase \$1,173.82, which amounts to an increase of 28% from the CY 2008 levels. The increase in average overtime earnings actually made the distribution of overtime earnings at OCFS more equitable in CY 2009 than CY 2008. That said, the shift was only minor and the general pattern in which a small number of employees earn a disproportionate amount of the overtime held true in CY 2008.

OT Earning employees 2008					% Of OT Earning employees
	Amount Earned	OT Earned	% of OT Earned		
4	Over \$70,000	\$309,695.10	2.83%		0.15%
10	Over \$50,000	\$624,529.50	5.70%		0.38%
19	Over \$40,000	\$1,020,437.56	9.31%		0.72%
31	Over \$30,000	\$1,450,199.20	13.24%		1.18%
83	Over \$20,000	\$2,693,370.19	24.58%		3.16%
307	Over \$10,000	\$5,771,272.74	52.67%		11.70%
654	Over \$5,000	\$8,225,170.81	75.07%		24.93%
2623	More than \$0	\$10,957,097.45	100%		100%

¹ Data from the Office of the Comptroller.

Not only did the average overtime earned go up, but the amounts paid to the top overtime earners also rose. We can see that by comparing the top ten overtime earners in CY 2009 shown in the previous graph with the top ten overtime earners in CY 2008:

Top 10 Overtime Earners in CY 2008²

Title	Annual OT Earnings	Salary	Total Earnings	Percent of Salary in OT	Percent of total earnings from OT
YOUTH DIV AIDE 4	\$83,394.03	\$51,060.00	\$141,758.50	163%	59%
YOUTH DIV AIDE 4	\$79,173.90	\$51,682.00	\$137,915.96	153%	57%
CHILD PROTCTV SVS S 2	\$76,187.74	\$60,857.00	\$142,611.76	125%	53%
YOUTH DIV AIDE 4	\$70,939.43	\$50,158.00	\$127,330.40	141%	56%
YOUTH DIV AIDE 4	\$55,502.16	\$51,254.00	\$113,418.21	108%	49%
CHILD PROTCTV SVS S 2	\$53,941.68	\$60,857.00	\$120,926.26	89%	45%
YOUTH DIV AIDE 4	\$52,398.17	\$53,082.00	\$111,426.48	99%	47%
YOUTH DIV AIDE 4	\$51,503.41	\$51,207.00	\$108,907.43	101%	47%
YOUTH DIV AIDE 4	\$51,122.55	\$50,110.00	\$107,701.25	102%	47%
CHILD PROTCTV SVS S 2	\$50,366.43	\$59,362.00	\$114,074.17	85%	44%

If we compare the two lists, we see that the top earners in CY 2009 made more than in 2008, though salaries had also gone up, making the percentage of total earnings from overtime less pronounced. Overtime for Youth Division aides was a significant reason for the increase. While the overall overtime spending at OCFS increased by \$ 689,968.60 between CY 2008 and CY 2009, as was stated earlier, spending on overtime for Youth Division aides increased by \$964,921.15, or 13%. In short, the increase in the overtime for Youth Division aides accounts for the entirety of the increase in OCFS overtime spending, increasing the total share of overtime earned by Youth Division aides at OCFS. In CY 2009 these employees accounted for 59% of overtime earners and 72% of overtime earnings. In CY 2008 these aides accounted for 56% of the overtime earners and 67% of the total overtime earned.

Year	Youth Division Aides earning OT	Amount Earned	% of all OT earning employees	% of all OT earned at OCFS
2008	1483	\$7,375,265.60	56%	67%
2009	1132	\$8,340,186.75	59%	72%
Change	-351	\$964,921.15	3%	5%

A startling fact from our examination of overtime spending at OCFS was that many of the same individuals who earned significant amounts of overtime in CY 2008 did so as well in CY 2009. Nineteen OCFS employees earned over \$40,000 just in overtime in CY 2008. Twenty-two employees did so in CY 2009. Sixteen individuals were on both lists of high overtime earning employees, meaning that in just two years they earned over \$80,000 in overtime.

Employees who earned over \$40,000 in overtime in CY 2008

² Information from the Office of the Comptroller

Calendar Year	Title	Annual OT Earnings
CY 2008	YOUTH DIV AIDE 4	\$83,394.03
CY 2008	YOUTH DIV AIDE 4	\$79,173.90
CY 2008	CHILD PROTCTV SVS S 2	\$76,187.74
CY 2008	YOUTH DIV AIDE 4	\$70,939.43
CY 2008	YOUTH DIV AIDE 4	\$55,502.16
CY 2008	CHILD PROTCTV SVS S 2	\$53,941.68
CY 2008	YOUTH DIV AIDE 4	\$52,398.17
CY 2008	YOUTH DIV AIDE 4	\$51,503.41
CY 2008	YOUTH DIV AIDE 4	\$51,122.55
CY 2008	CHILD PROTCTV SVS S 2	\$50,366.43
CY 2008	CHILD PROTCTV SVS S 2	\$47,823.74
CY 2008	CHILD PROTCTV SVS S 1	\$46,647.26
CY 2008	YOUTH DIV AIDE 4	\$45,055.48
CY 2008	YOUTH DIV AIDE 3	\$45,051.97
CY 2008	CHILD PROTCTV SVS S 2	\$44,105.96
CY 2008	YOUTH DIV AIDE 4	\$43,276.42
CY 2008	YOUTH DIV AIDE 4	\$41,839.93
CY 2008	CHILD PROTCTV SVS S 1	\$41,504.76
CY 2008	CHILD PROTCTV SVS S 1	\$40,602.54

Employees who earned over \$40,000 in overtime in CY 2009

Calendar Year	Title	Annual OT Earnings
CY 2009	YOUTH DIV AIDE 4	\$90,383.92
CY 2009	YOUTH DIV AIDE 4	\$81,734.80
CY 2009	YOUTH DIV AIDE 4	\$76,635.43
CY 2009	YOUTH DIV AIDE 4	\$73,999.06
CY 2009	CHILD PROTCTV SVS S 2	\$71,619.51
CY 2009	YOUTH DIV AIDE 4	\$64,187.65
CY 2009	CHILD PROTCTV SVS S 2	\$58,699.36
CY 2009	YOUTH DIV AIDE 4	\$56,673.21
CY 2009	YOUTH DIV AIDE 4	\$56,207.49
CY 2009	CHILD PROTCTV SVS S 1	\$55,972.01
CY 2009	YOUTH DIV AIDE 4	\$55,242.70
CY 2009	CHILD PROTCTV SVS S 1	\$51,600.08
CY 2009	YOUTH DIV AIDE 4	\$50,698.15
CY 2009	CHILD PROTCTV SVS S 2	\$49,408.13
CY 2009	YOUTH DIV AIDE 4	\$48,702.76
CY 2009	YOUTH DIV AIDE 3	\$48,150.90
CY 2009	CHILD PROTCTV SVS S 1	\$46,986.81
CY 2009	YOUTH DIV AIDE 4	\$46,635.39
CY 2009	YOUTH DIV AIDE 4	\$46,092.86
CY 2009	YOUTH DIV AIDE 4	\$44,903.50
CY 2009	CHILD PROTCTV SVS S 2	\$43,885.46
CY 2009	CHILD PROTCTV SVS S 2	\$41,222.29

The employees shaded in yellow are those sixteen that appear on both lists. The chart below shows how much these sixteen earned in overtime each year and the change between 2008 and 2009:

	OT Earned
2008	\$879,776.22
2009	\$969,500.89
Change	\$89,724.67
Percent change	10%

At the very top of the list, the exclusivity becomes even greater. The top five overtime earners in CY 2008 were also the top five overtime earners in CY 2009, though their specific order on the list changed. This finding is quite troublesome. There are valid circumstances, such as emergency situations or contingencies brought about by specific events, in which employees might be needed to work a lot of extra hours and thus earning high amounts of overtime. However, serious questions arise when the very same set of employees are earning overtime in excess of their own salaries for two calendar years in a row. It is possible that the offices at which these five employees work are severely understaffed or staffing there is being badly utilized, or perhaps certain select employees are being allowed to greatly enhance their earnings through overtime. Both possibilities are cause for concern.

Earnings in CY 2008 and 2009 for top OT earners³

EMPLOYEE	Title	Average Salary ⁴	Two Year OT Earnings	Two Year Total Earnings	Percent of total earnings from OT
Employee 1	YOUTH DIV AIDE 4	\$52,582.00	\$169,557.82	\$288,655.54	59%
Employee 2	YOUTH DIV AIDE 4	\$51,951.00	\$165,128.83	\$282,595.66	58%
Employee 3	CHILD PROTCTV SVS S 2	\$61,771.00	\$147,807.25	\$278,241.90	53%
Employee 4	YOUTH DIV AIDE 4	\$51,469.50	\$147,574.86	\$262,797.74	56%
Employee 5	YOUTH DIV AIDE 4	\$52,148.00	\$129,501.22	\$246,460.44	53%
	Average	\$53,984.30	\$151,914.00	\$271,750.26	56%
	Totals	\$539,843.00	\$759,569.98	\$1,358,751.28	

OCFS needs to examine why such a small number of employees are earning such large amounts of overtime repeatedly. It is important to note that most collective bargaining agreements between the State and its various bargaining units calculate pension costs based on an average of the last three years of service, including overtime earnings. If any of the five employees noted above are close to retirement, they could see pensions based on a three year average of earnings well over \$110,000 as opposed to average earnings of under \$70,000. That is, if one were to assume that they would earn not only their salaries but some minor overtime and additional other minor benefits. That would saddle the state with higher pension liabilities than necessary for possible decades. That would turn a few years of excessive overtime into many years of artificially-inflated pension payments.

V. Security Concerns at OCFS

Since becoming the commissioner of OCFS in 2007, Commissioner Carrión has sought to de-institutionalize the juvenile justice system in New York State. The juvenile justice system in

³ Data from Comptroller's Office.

⁴ Average of salary over period. Due to step increases, salaries for these employees increased between 2008 and 2009.

New York State has been a source of controversy for years now. In 2006 Human Rights Watch came out with a report denouncing the girl's detention system because "far too often, girls experience abusive physical restraints and other forms of abuse and neglect, and are denied mental health, educational, and other rehabilitative services they need."^v That same year a youth serving his sentence at the Tryon Boys Residential Center, Darryl Thompson, was involved in an altercation in one of the bathrooms that caused him to be restrained on the floor, an act that led to his death. The United States Justice Department began a civil rights investigation of OCFS-run facilities in late 2007. In August of 2009 it issued a scathing report^{vi} on conditions at these centers. In September 2008 Governor Paterson created a Task Force on Transforming Juvenile Justice to examine the future of the juvenile justice system in New York State. In December 2009 the Task Force issued its report^{vii} which called for a variety of changes to the system, including a call for de-institutionalization.

At this point, based on the various findings of the Justice Department and the Governor's Task Force, there is no question that a serious and sustained transformation of our current juvenile justice system is necessary. OCFS recently entered into a settlement agreement with the Justice Department in order to forestall a possible Federal takeover of the system due to its civil rights concerns. OCFS agreed to spend at least \$18.2 million in order to implement this settlement, which included the hiring of additional mental health professionals, as well as counselors and direct care staff, and to provide additional training to the existing staff on the new procedures being implemented—this includes a ban on certain types of restraints and restraining methods. These changes were made to try to correct the deficiencies in the system found by the Governor's Task Force and the Justice Department's investigation. The question the State faces is what is a reasonable time table to reform our system and its implementation.

The main drive of the de-institutionalization drive by OCFS has been in the closing of limited secure and non-secure non-community based centers. These facilities, such as the Tryon Boys Residential Center, hold juveniles convicted primarily of misdemeanors or lower offenses; the alternatives are secure centers, such as Tryon Secure Girls or the Brookwood Secure Center, which hold juveniles convicted of felony offenses. OCFS has stated that it aims to move as many youths as possible from these secure centers into community based programs, which, according to OCFS, have a three year recidivism rate of approximately 30% versus the over-80% recidivism rate suffered by the current system^{viii}. Since 2007 OCFS has either closed or is closing facilities in Clinton, Cayuga, Delaware, Fulton, Cattaraugus, and Bronx Counties, as well as merging programs of various centers. Many of the remaining centers are operating at under 50% capacity.^{ix} Part of this underutilization of facilities stems from a shift by many family court judges who are sending fewer youths into OCFS run facilities and more into a variety of community-based programs that have sprung around the State, mainly in New York City.

OCFS is actively trying to ensure that more and more youths are placed in community-based programs, and it usually touts the "Missouri Model" as the inspiration for this new policy. This model began to take shape in the 1970's and was a drive to move the State's system from a corrections-based philosophy into a rehabilitation-based system of small community groups in which the staff and the children are supposed to build a strong bond^x which in turn helps the staff confront the various problems that have driven these children into the system in the first place. As was noted before, this system has been found to have a higher success rate, when measured in recidivism rates, than a purely correctional system of juvenile justice.

At the same time that OCFS has been moving towards a more community-based treatment system, violence towards OCFS staff has increased. The most troubling incident was the June 2008 murder of Renee Greco, an employee at a not-for-profit residential center in Lockport under contract by OCFS, by two youths placed there by OCFS. This incident was followed by an incident in 2009 in Rochester where police officer Anthony DiPonzio was shot in the head by a youth who had gone AWOL from a private placement facility in Rochester where he had been placed by OCFS. A comprehensive report on staff injuries at OCFS was released earlier this year by the office of Assemblyman Rory Lancman.^{xi} The report highlighted statistics from the Department of Civil Service^{xii} showing that OCFS had by the second highest rate of reported incidents of workplace injury in FY 2007-08 and the highest rate of incident any State agency in FY 2008-09.

Worker's Compensation Claims, FY 2007/08 and FY 2008/09⁵

Agency	Employees 2007/08	Employees 2008/09	Incidents 2007/08	Incidents 2008/09	Incident Rate 2007/08	Incident rate 2008/09	Rate Change
OCFS	4,088	3,988	599	780	14.7%	19.6%	33%
OMRDD	22,893	23,121	3,790	3,632	16.6%	15.7%	-5%
DOCS	32,565	31,827	4,283	4,824	13.2%	15.2%	15%
OMH	17,207	17,361	2,384	2,914	13.9%	15.7%	13%
SUNY	16,540	16,734	1,987	1,845	12.0%	11.0%	-8%

The five agencies above had the highest rates of worker's compensation incidents in FY 2007/08 (in FY 2008-09 the Parks Department replaced SUNY as the fifth with an incident rate of 11.3%). As can be seen above, the rate increase of incidents at OCFS was more than twice as high as that at DOCS and OMH.

Worker's Compensation Claims at OCFS, FY 2007-08 to FY 2009-10⁶

Fiscal year	Employees	Incidents	Incident Rate
2007-08	4,088	599	14.7%
2008-09	3,988	780	19.6%
2009-10	3,656	778	21.3%

If we incorporate the latest available data, for FY 2009-10^{xiii}, we see that the situation has continued to deteriorate. The incident rate has gone past 20%. Although the actual number of incidents declined by two between FY 2008-09 and FY 2009-10, the number of employees dropped by over 300 in the same period. The overall number of incidents has risen by 30%.

According to the workers compensation report^{xiv}, in FY 2007-08 OCFS paid out \$873,111 in compensation costs and \$701,732 in medical costs for the various reported incidents for a total of \$1,574,843. In FY 2008-09, OCFS paid out \$1,451,054 just in compensations, and an additional

⁵ NYS Department of Civil Service, *Annual Report of New York State Government Employees' Workers' Compensation Claims Fiscal Year 2008/2009*, table 2

⁶ NYS Department of Civil Service, *Annual Report of New York State Government Employees' Workers' Compensation Claims Fiscal Year 2009/2010*, table 2A

\$1,084,080 in medical expenses, for a total of \$2,535,134. That is an increase of 61% in total costs between FY 2007-08 and FY 2008-09, due to a 54% increase in medical expenses and 66% in compensation costs.

According to the latest data available, the costs to OCFS from workers compensation claims grew even more in the last full fiscal year, FY 2009-10. Compensation costs in FY 2009-10 were \$2,062,280.19 and medical costs were \$1,173,055.59, for a total cost of \$3,235,335.78. That represents a 28% increase from the \$2.5 million of FY 2008-09, the results of an 8% growth in medical costs and a whopping 42% increase in compensation costs. Between FY 2007-08 and FY 2009-10, total costs grew by 105%, with the medical costs of workers compensation growing by 67% and the compensation costs growing by an astonishing 136% even as the OCFS workforce shrank by hundreds of employees.

It was highlighted in the previous section that Youth Division Aides earn the bulk of overtime at OCFS. One of the main reasons for overtime at any facility comes when staff is absent for whatever cause, including illness and injury. If we look at a breakdown of incidents by job titles, we see that Youth Division Aides have a high number of workers compensation complaints.

Job Titles with highest rate of incidents reported⁷

Title	Employees 2007/08	Employees 2008/09	Incidents 2007/08	Incidents 2008/09	Incident Rate 2007/08	Incident Rate 2008/09	Rate Change
Security Hospital Treatment Assistant	537	531	378	406	70.4%	76.5%	8.7%
Youth Division Aide 4	262	296	77	149	29.4%	50.3%	71.1%
Security Hospital Senior Treatment Assistant	81	85	30	35	37.0%	41.0%	10.8%
Mental Health Therapy Aide Trainee	432	317	104	128	24.1%	40.4%	67.6%
Youth Division Aide 3	853	781	263	301	30.8%	38.5%	25.0%
Developmental Disability Secure Care Treatment Aide 1	804	853	294	304	36.6%	35.6%	-2.7%
Secure Care Treatment Aide 1	412	429	120	139	29.1%	32.4%	11.3%
Mental Health Therapy Aide	2,466	2,548	637	796	25.8%	31.2%	20.9%
Youth Division Aide 2	204	171	28	50	13.7%	29.2%	113.1%
Bridge Repair Mechanic	150	154	40	40	26.7%	26.0%	-2.6%

⁷ NYS Department of Civil Service, *Annual Report of New York State Government Employees' Workers' Compensation Claims Fiscal Year 2008/2009*, table 5

As the above chart shows, Youth Division Aides of all levels had an incident report rate of over 25% in FY 2008-09. In fact, the two most stark increases in incidents reported were the rates for Youth Division Aides 4 and 2. An incredible 50% of all Youth Division Aides 4 reported a worker's compensation incident in FY 2008-09. Just as worrying, the incident rate for Youth Division Aides 2 more than doubled during these two fiscal years, catapulting the title past several others into this top ten list. As can be seen from the list of titles, Youth Developmental Aides face similar levels of injuries as individuals in job titles dedicated to treating individuals with mental health problems or developmental disabilities.

Youth Division Aides Workers Compensation incidents FY 2007-08 through FY 2009-10⁸

Title	Employees 2007/08	Employees 2008/09	Employees 2009/10	Incidents 2007/08	Incidents 2008/09	Incidents 2009/10	Incident Rate 2007/08	Incident Rate 2008/09	Incident Rate 2009/10
Youth Division Aide 4	262	296	283	77	149	200	29.4%	50.3%	70.7%
Youth Division Aide 3	853	781	686	263	301	272	30.8%	38.5%	39.7%
Youth Division Aide 2	204	171	128	28	50	28	13.7%	29.2%	21.9%

If we incorporate the data for FY 2009-10, we see that the incident rate for Youth Division Aides 4 has continued to rise dramatically, with the actual number of reported incidents growing by 160% and the rate of incidents growing by 140%. The rate of incidents for youth division aides 3 increased very slightly since while the number of actual incidents fell, so did the number of employee with that title. The rate of incidents for youth division aides 2 declined from a high in FY 2008-09 but remained significantly higher than the rate in FY 2007-08.

According to the figures above, in FY 2007-08 incidents reported by Youth Division Aides accounted for 61% of all the incidents claimed at OCFS (368 incidents out of 599 reported) while in FY 2008-09 64% of all incidents reported at OCFS had been made by Youth Division Aides (500 of 780). The proportion of incidents remained the same in FY 2009-10, 64% of all incidents involving Youth Division Aides (500 of 778). In fact, while the overall rate of reported incidents at OCFS grew by 33% over the three fiscal years, the rate of reported incidents by Youth Division Aides rose by 36% in the same period. In the previous section we noted that Youth Division Aides are the main recipients of overtime at OCFS, and that their share of all overtime, as well as the amount actually collected, had increased between CY 2008 and CY 2009, even as the number of Youth Division Aides collecting had declined.

According to this workers compensation claims report, in FY 2007-08 OCFS had a total of 11,088 lost work days due to incidents, while in FY 2008-09 the number of lost days shot up to 15,930, an increase of 44%, far higher than the incident report rate increase. In FY 2009-10 the

⁸ NYS Department of Civil Service, *Annual Report of New York State Government Employees' Workers' Compensation Claims Fiscal Year 2009/2010*, table 5.

total number of lost work days climbed even higher, to 20,750, an increase of 30% over the FY 2008-09 numbers and a total of 87% higher than the original FY 2007-08 numbers.

Lost work day incidents at OCFS from FY 07-08 to FY 09-10⁹

Fiscal Year	Incidents	Lost Time Incidents	Lost Time case rate	Lost work days	Rate of Lost days per incident	Youth division Aide incidents	% of Youth division Aide incidents	% Lost days for youth division aides
2007-08	599	198	33.1%	11,08	56	368	61%	6,812
2008-09	780	257	32.9%	15,93	62	500	64%	10,212
2009-10	778	287	36.9%	20,75	72	500	64%	13,335

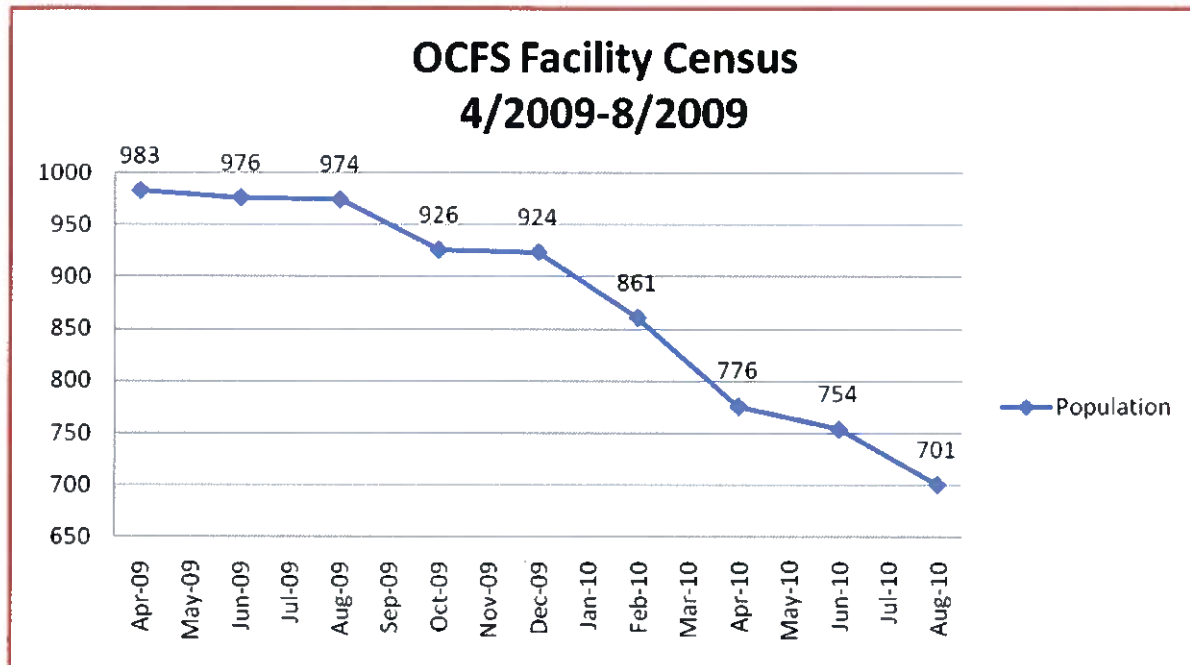
As the chart above shows, not all incidents led to a loss of work days, a situation that would contribute to overtime as employees had to be found to fill in the shifts of those employees that had to miss days. The number of incidents that did result in lost time have climbed during this three year period, growing by 45% over the period, a much higher increase than the 30% growth in total incidents. The percentage of incidents that led to a loss of work days rose overall throughout this period. If we divide the number of days lost by the number of incidents that led to a loss of work days, the number of days lost per incident has grown from fifty-six days to seventy-two days. Unfortunately, we don't have a breakdown of lost time incidents per job title, the best we can do to figure out how many days were lost by Youth Division Aides and assume that the same percentage of overall incidents claimed by youth division aides applies to lost time incidents and lost work days. That would mean that 61% of the lost work days in FY 2007-08 went to Youth Division Aides and 64% of lost days went to youth Division Aides in FY 2008-09 and FY 2009-10. For the last two fiscal years we would see a loss of work days of 10,212 and then 13,335. This is a vast increase in the number of lost work days just as the actual number of Youth Division aides drops at OCFS. It is not hard to imagine that this increase in lost work days due to injuries would account for some of the 13% in overtime earnings for Youth division Aides between CY 2008 and CY 2009.

As noted in the Minority Report to the Governor's Task Force,^{xv} violence against youths in the facilities have also increased. This report highlights an increase during 2007 and 2008 of seventy-three incidents to 312 incidents of youth-on-youth injuries at the Tryon Girls Residential Center, an increase of 327%. This increase in violence against both staff and youths at these facilities points to a failure to adequately manage the transition between a corrective model and a more therapeutic model. The Lancman report begins by quoting Sandra L. Bloom^{xvi}, who founded the Sanctuary model, a model of treatment praised by OCFS that attempts to help rehabilitate individuals by helping them deal with traumas that have led to their condition. Ms. Bloom is quoted as saying "a program cannot be safe for clients unless it is simultaneously safe for staff and administrators." As the numbers above show, OCFS is failing to ensure the safety of either its staff or its students.

⁹ NYS Department of Civil Service, *Annual Report of New York State Government Employees' Workers' Compensation Claims Fiscal Year 2009/2010*, table 2B.

If we take into account that the number of youths in OCFS facilities has been declining for years, this increase in violence becomes even more startling, since it shows that a larger percent of those working for or being held and treated by OCFS are now experiencing violence.

Census counts at OCFS facilities from April 2009 to August 2010¹⁰



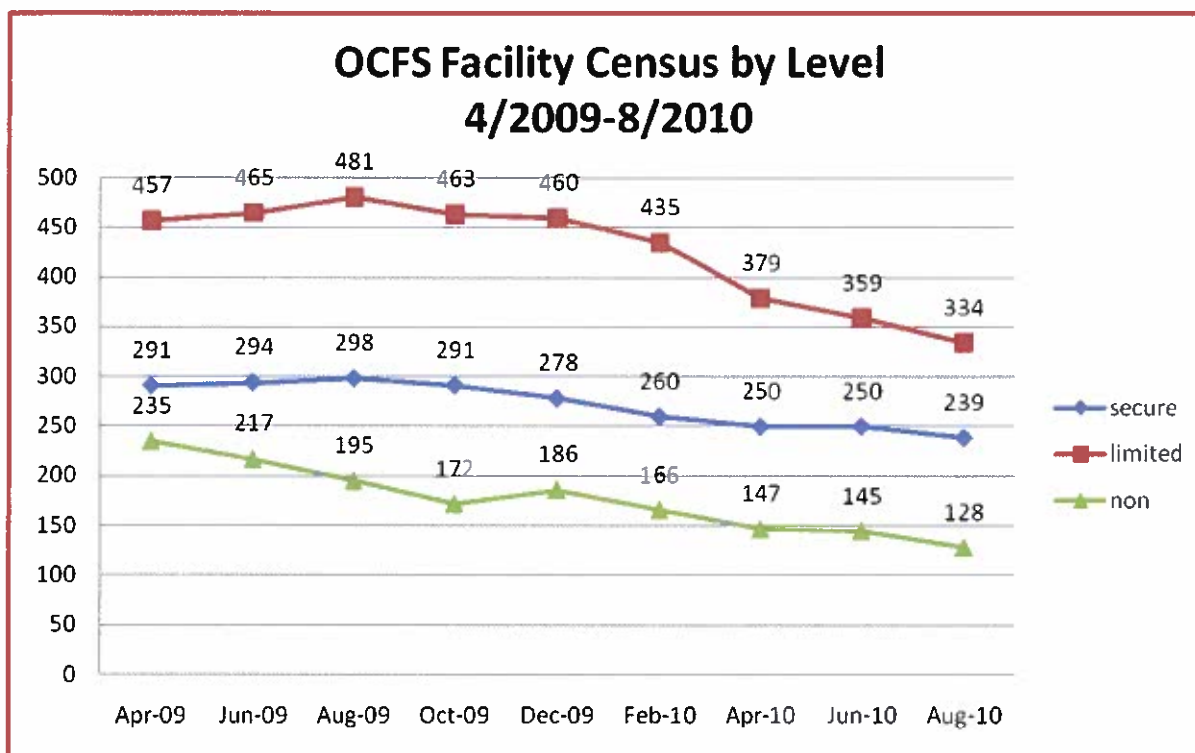
The total number of youths being kept in these facilities through the FY 2009-10 fiscal year declined from 983 to 776. At last count, the number of youths in these facilities numbers 701. We can see that Commissioner Carrión is succeeding at lowering the number of youths being kept at these facilities. This is all happening at the same time that the number of injuries to staff have risen dramatically and the number of lost workdays has risen sharply, as documented above. The State is seeing the cost per youth at these facilities escalate, which is unacceptable.

As was noted earlier, OCFS has been moving to close those facilities known as limited secure and non-secure centers. If we break down the facility census numbers by the type of facility, we can see a very significant decline in the number of children held at these limited and non secure facilities while the number of juveniles held at the secure centers, reserved for juveniles found guilty of serious criminal acts has fallen by much less.

Census count by facility security level at OCFS, April 2009-August 2010¹¹

¹⁰ Information forwarded by PEF from bi-monthly OCFS census reports

¹¹ Information forwarded by PEF from bi-monthly OCFS census reports



The number of juveniles at limited secure centers has fallen by 27% and the number of juveniles at non-secure facilities has fallen by 46%, while the number of those held at the secure facilities has only fallen by 18%.

The most important question is to ask why this is happening—why, at a time the number of juveniles being held by the system is declining, is the number of injuries climbing precipitously. Employees at OCFS facilities have testified^{xviii} that they see the cause of this immense increase in violence and injuries as the results of policies implemented directly by OCFS under Commissioner Carrión. As we discussed before, the Justice Department had been investigating our juvenile justice system based on a number of incidents that had led to children being severely injured or killed while being restrained. According to testimony by employees, the new leadership at OCFS sought to end what the new leadership saw as unnecessary violence being used against children in the system in the wrong manner.

In this testimony, provided to a State Senate Task Force on Juvenile Justice reform on June 16,^{xviii} members of the Public Employees Federation (PEF) and the Civil Service Employees Association (CSEA) stated that OCFS leadership failed to properly transition the system from the corrections-based model that was instituted in the mid 1990's to the Sanctuary model it seeks to implement. The administration changed the circumstances under which the staff could use force at any level to discipline or control juveniles. They also re-established the Office of the Ombudsman, which exists to give juveniles in the system a voice and a place to report abusive behavior. These actions were meant to create limitations on the force that staff could use against students, and juveniles in the system came to the realization that they could challenge the staff more and behave more disruptively while facing fewer consequences.

While OCFS was working to implement policies that would make it much harder for staff to use force to discipline juveniles, in order to limit the possibility of incidents like the death of Darryl Thompson, it failed to increase the therapeutic staff at facilities. It should never be forgotten that children that end up at these juvenile facilities have been sent there by judges. That is, they have already shown problematic behavior, including violent behavior. The correctional model to deal with these problems that was tried for some time clearly failed, as the report by the Justice Department shows. At the same time, switching to a system that emphasizes community settings can only be implemented if the State makes the resources available to provide assistance to these juveniles that will help them overcome the problems that caused them to act in ways that brought them into the juvenile justice system. The recent deal between the State and the Federal government shows that the State has been remiss for too long in providing the juveniles at these facilities with the support staff, such as psychiatrist, therapists, and mental health professionals, that they need to overcome many of the causes of their problems.

In their June 16 testimony,^{xix} representatives from PEF used the Youth Leadership Academy (YLA) and the Allen Residential Center, a non-secure center, both in Delaware County, as examples of the administration's failure. YLA was a juvenile boot camp, where juveniles and staff wore uniforms and had a very organized schedule. In 2003 the decision was made to merge YLA with the Allen Residential Center. The staffs of the two centers were retrained in order to correctly execute the merger, and the discipline and structure of the YLA was to serve as the template for the new operations. According to data provided, the number of times that restraints had to be used on juveniles at Allen decreased from 146 in 2003 prior to the merger to just 26 in 2004, a reduction of 82%. This was attributed to the new system that residents and staff were trained to respect and follow. It is critical to note that each time that staff must restrain a youth, there is a chance for injuries to both staff and the youths. The more violent the interactions between staff and residents become (including the greater the number of restraints), the greater the number of injuries to staff and residents as well.

Once the new administration at OCFS took over, the situation at YLA/Allen changed. The quasi-militaristic boot camp method used at YLA was frowned upon because it did not conform to the therapeutic model the administration is trying to implement. The policies aimed at reducing the instances in which staff could use restraints mentioned before was implemented and the controlled environment of the boot camp system was undermined. These changes disrupted the fabric of the facilities and broke down the order that existed. This breakdown in order led to more violence, and the number of restraints being used by staff rose, even though the staff was limited in the instances when it could use force. OCFS achieved the opposite of their aim—instead of lowering the amount of restraints use, they exacerbated the instances in which restraints had to be used.

Use of Restraints at YLA and Allen Residential Center¹²

Facility	2007	2008	2009	Change
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¹² Info provided by PEF

YLA	75	205	253	237%
Allen	38	110	166	337%

Starting in 2007 Commissioner Carrión took steps to dismantle the correctional model of juvenile justice, without putting in the resources needed to implement the therapeutic model of juvenile justice. The violence that has resulted is the consequence of that incomplete and badly managed transition. A study by the Annie E. Cassie Foundation, cited in the Lancman report, details how the first few years of transition in Missouri from a correctional system to a therapeutic system were problematic, as negative behaviors by youths increased. Policy makers in New York should have heeded the lessons from other states regarding the possible problems of transitioning between these two very different models.

It is also important to note that a therapeutic system of juvenile justice will not work for all of the children currently being held by OCFS. In 2008 a detailed report of the efficacy of Multisystemic Therapy (MST) programs at two sites in the State was released.^{xx} MST, an intensive program in which therapists handle a small case load and make themselves available 24/7 to help youths, not only with individual problems but also attempt to assist their families as well, did not show any significant improvement in recidivism rates.^{xxi} This proved to be the case even though OCFS had correctly implemented the various processes that MST calls for, after some initial problems in integrating the family based methodology of MST with the youth-based methodology of existing OCFS programs. The study concluded that OCFS had made a mistake in seeking to use MST as a “post-release” program geared at youths that had already been through the juvenile justice system; the underlying problems faced by the children were just simply too great^{xxii}.

There also appears to be some inconsistency at OCFS as to the models that it plans to use. Beginning in 2007, OCFS began to institute training based on Ms. Bloom’s sanctuary model at the Annsville Residential Center in Oneida County. The implementation of the Sanctuary model at that facility was so successful that not only was the center certified on the sanctuary model, a distinction few treatment centers in the country share, but in 2008 the Juvenile Justice Trainers Association recognized OCFS for the work at Annsville. Two years later, OCFS is planning to close the Annsville Residential Center^{xxiii}, even as it seeks to move more youths into treatment models like the sanctuary model.

There have also been some clear failures in leadership at OCFS in terms of implementing some programs meant to improve the conditions of children at OCFS. The case of the “social” to be held at the Goshen Secure Center in late 2009 is the most shocking and well known example.

VI. Goshen Incident

On December 12, 2009 a “winter social dance” was held at the Goshen Secure Center for four youths being held there. The secure centers hold a different population than the limited and non-secure centers that Commissioner Carrión has been seeking to actively close. Youths sent to secure centers have committed violent crimes, including murder, and have been either convicted by the criminal justice system or placed into these secure centers by the family court system due to special circumstances. When the events at Goshen Secure Center first became public

knowledge following press reports,^{xxiv} the Task Force sent a letter to OCFS dated May 24, 2010¹³ with a series of questions. OCFS replied in a letter dated June 9, 2010¹⁴. The July 2010 report^{xxv} by the New York State Commission of Correction showed that OCFS's answers to the Task Force's questions were incomplete and failed to acknowledge the mistakes made by OCFS in hosting this event. The OCFS response sought to paint the picture of a well planned events, which is totally contradicted by the scathing Commission report, which concluded that:

In sum, the lack of executive guidance and direction, adequate planning, a thorough and reliable resident eligibility assessment or vetting of guests and poor managerial performance by OCFS officials, coupled with inattention to duty and lack of good judgment at the local level, ultimately resulted in four individuals, all serving lengthy sentences for violent offenses, participating in a sanctioned agency social event with outside, virtually unknown guest participants under lax security/supervision. The December 12, 2009 incident at Goshen underscores the Commission's continuing concerns about the security and safety of the five secure facilities operated by the OCFS. Those concerns are a reflection of the extraordinary number of Unusual Incident Reports that are generated from OCFS secure facilities.^{xxvi}

OCFS's June letter indicated that the socials were instituted as a result of recommendations by OCFS juvenile justice managers for creating incentives to reward positive behavior, a particularly important need at secure centers given the longer terms of stay at these facilities than at centers with lower security levels. What that reply failed to mention is that OCFS was actively seeking ways to create positive incentives as a way to lower greater gang related attacks at secure centers, as was found by the Commission report^{xxvii}.

The Task Force asked how the guests were chosen to attend the social. OCFS responded that the participating youths were chosen because they were classified as being at the Honors or Transition stages of program at the Secure Center. The Commission report found that this stage system is a purely internal scale that fails to consider gang affiliation, past criminal history, or any history for a propensity to violence.^{xxviii} The report also showed that several of the youths who participated had in fact committed infractions while at Goshen that should have disqualified them for participation based on this limited "stages" scale, including infractions for disobeying orders, violent conduct and destroying state property.^{xxix}

The Task Force also asked about the amount of vetting done regarding the guests, a question that was the result of reports that one of the female guests at the event was a prostitute and that another was a minor. OCFS responded that the participants themselves had chosen the guests, which the Commission report verified,^{xxx} and that the guests were required to be older than eighteen years of age or to have a guardian's permission if they weren't. The Commission report found that Goshen's own visitation policies were not followed with respect to the minor who attended as the guardian's written consent was not notarized, as is required^{xxxi}. The report also documents a general failure to do any vetting of the guests. One of the guests who came to the event had already visited one of the youths who was participating in the past, and had in those previous occasions claimed to have been the youth's "sister" and then "step-sister," while on paperwork for the event she was identified as a "girlfriend."^{xxxii} This guest and the youth were shown on video security footage of the event to be having intimate contact of a sexual nature on

¹³ Index Pgs. 1-2

¹⁴ Index Pgs. 3-6

several occasions, contact that staff failed to break up or prevent.^{xxxiii} The report found that the youth sent this guest a \$100 check from his commissary account prior to the social which was posted on December 21, nine days after the social^{xxxiv}. As the Commission report concludes, correctly, this shows a total failure on the part of OCFS staff to accurately vet these guests.

According to the OCFS response letter, a total of 12.5 hours of staff overtime were used to cover this event and State vehicles were used to transport the female guests to and from the social a total of 344.88 miles. According to OCFS, this translates to a mileage cost of only \$31.56, which comes out to a mileage costs of only 9¢ to a mile. This mileage cost seems to be particularly low, given that 2010 IRS guidelines put the cost per mile for businesses at 50¢ for medical, moving trips at 16.5¢, and charitable organizations at 14¢^{xxxv}. Given the general failure of OCFS to create rules and guidelines for local administrators to follow regarding this event, and the subsequent failures at the local level to execute this event, even this supposedly low cost was clearly too high.

VII. Recommendations and conclusions

The Office of Children and Family Services is an agency going through a significant transition. As the Department of Justice's report and the findings of the Governor's Task Force show, the juvenile justice system in New York, which is operated by OCFS, is in need of reform. The corrections-based system that was created in the 1990's and early 2000's failed to help those children sent into it, leading to civil rights violations that could have led to a Federal takeover. The question now is whether the leadership at OCFS has handled that transition correctly. The increase in violence at OCFS facilities, as documented by higher injury rates for the staff and higher incident reports of youth-on-youth violence show that at least at the juvenile justice facilities the transition is going anything but smoothly.

As the figures show, the cost to the state of this increased violence is not minimal—the amount the state paid for compensation and medical costs due to incidents of workplace injury rose by an astonishing 105% between FY 2007-08 and FY 2009-10, an additional cost to the state of over \$1.6 million. A strong link can also be made between this increase in violence and the increase in overtime pay at OCFS. When more and more workers are injured, someone else must take their place, which means additional overtime hours for the replacement.

When looking at overtime, not only is spending going up, something that differed from other agencies we had examined before, but we found signs that a very small group of employees were monopolizing high overtime earnings. The fact that the very same five individuals were the top overtime earners in 2008 and in 2009 needs to be closely examined by OCFS. That sixteen individuals collected over \$40,000 just in overtime for two calendar years in a row, and that this group also saw their overall overtime earnings go up by 10% over those two years, also needs to be examined.

Various press reports, such as notable articles in the *Village Voice* and *New York Magazine*, show a culture at the top of OCFS,^{xxxvi} starting with Commissioner Carrión, that seeks to implement a radical change. To read these reports is to see an agency at war with itself: the central offices and the staff on the ground do not work together. While the past failures of the

system require us to transform the system, getting this transformation right is critical for the future. Failure to implement this necessary transition correctly might not only mean even higher costs in the future, but would surely do great harm to the thousands of children whom the juvenile justice system will treat or hold in the coming years. Below are some common sense recommendations from the IDC for the current administration as it continues to work to transform the juvenile justice system in New York.

Re-establish a working relation between the leadership at OCFS and the staff.

The fact that this recommendation needs to be made speaks to the depth of the problems at OCFS during the previous administration. The IDC agrees that the current correctional system of juvenile justice has failed in New York and change is necessary, which is why it is critical that the leadership at OCFS mend the relationship with its staff. An organization at war with itself is not one capable of implementing the changes that need to happen, and this animosity has only served to deepen the dysfunction at the agency. The increase in violence is a grim reminder that policy failures have tangible consequences. No group has more experience with our juvenile justice system than those who staff it. Their input and participation is critical for a successful transformation of the system.

Give the Division of Budget control over the approval of overtime spending in OCFS in order to control excessive overtime.

One of the recommendations to the SAGE Commission made by the IDC on January 10th, 2011 was that the Division of Budget (DOB) be given control over all overtime spending at State agencies, akin to the kind of oversight that the Office of Management and Budget (OMB) practices in New York City. This kind of oversight of overspending is particularly necessary here in the case of OCFS, which as was noted before was an agency that saw its overtime spending increase between 2008 and 2009, while most agencies saw reductions in their overtime spending even if they were still spending too much. The administration should give DOB control over the pre-and post approval of overtime spending as a means of forcing the agency to justify its spending and find ways to cut down on overtime, which might also force it to tackle the causes of growing overtime, particularly increasing violence.

Establish new clear guidelines regarding disciplinary actions by staff.

The significant increase in violence and injuries in the OCFS system is attributed to a breakdown in discipline in these OCFS facilities, as the administration sought to dismantle the strict correctional model without having had in place the necessary staff and resources to implement a more rehabilitative model. The old order broke down without a replacement system being in place. It is critical that OCFS come to grips with this situation. As long as the State of New York continues to try children as adults for certain crimes, OCFS will have to run facilities to house juvenile criminals found guilty of violent crimes. OCFS needs to come up with clear guidelines of when youth divisions officers are granted the discretion to use force to enforce the rules at these facilities and should also create guidelines as to what their force options are. It is important that those being held at these facilities also know what the possible consequences of disobedience and disruptions are. Clear rules will help re-establish a new temporary order that will then allow the agency to implement new rules and guidelines to transform the system.

Re-invest savings from closing of low and medium security facilities back into system in order to correctly implement a community based rehabilitative model.

As New York moves to shift from a juvenile justice system based on a correctional model to one based on a community-centered rehabilitation model, the State must recognize that such transitions are not cost free. The fact that the State was forced by the Justice Department to hire additional mental health and social workers for OCFS shows that the previous administration had failed to acquire the kind of staff needed to transform the system correctly. In this time of fiscal difficulty bringing State costs down is necessary, but as Gov. Cuomo noted in his State of the State speech, the fiscal crisis is not the only challenge facing the State. The Governor also spoke passionately about the need to reform the juvenile justice system, and the IDC agrees. As the State closes underutilized medium and low security facilities, it needs to make available all the funds necessary to create an alternative system that in the long term should prove itself to be more effective at a lower cost. Those funds freed by the closing of unnecessary facilities should be re-invested into the transformation of the OCFS system. The State can't afford to shortchange the transition at this critical time.

By taking these steps, OCFS should be able not only to help curb the unacceptable increase in violence at its facilities, but also create a foundation from which a new and better system will arise. The IDC is making these recommendations because it wants to ensure that the transition at OCFS is carried out correctly and in a way that both protects those held by OCFS and working for OCFS from violence and saves the State money. New York State must make the best possible use of its resources at hand, particularly the current staff at OCFS while making the necessary investments to ensure that a new community based sanctuary model of juvenile justice is implemented the right way. The IDC believes that with these recommendations in hand and through the work it will carry out in the future the State will be able to implement Governor Cuomo's vision of a better, more just system of juvenile justice here in New York.

INDEX



NEW YORK STATE SENATE

TASK FORCE ON GOVERNMENT EFFICIENCY

"Protecting the People's Money"

May 24, 2010,

Commissioner Gladys Carrión
Office of Children and Family Services
52 Washington Street,
Rensselaer, NY 12144-2735

Dear Commissioner Carrión

Sen. Craig Johnson and I are writing to you regarding the disturbing report that appeared in the *New York Post* regarding the possible attendance of a suspected prostitute and underage girls at a "social" being held at the Goshen Secure Center in Orange County on December 12, 2009. It is unconceivable that scarce taxpayers dollars could have been used to facilitate prostitution and child endangerment at a supposedly secure State facility.

As you know, I am the chair of the New York State Task Force on Government Efficiency, which exists to ensure that State government is using our State money wisely, and Sen. Johnson is the Chair of the Senate Standing Committee on Investigations and Government Operations. This damaging expose brings up several key questions about the behavior and actions of employees at the Office of Children and Family Services (OCFS), questions which we believe demand public answers:

How are guests to these "socials" chosen? Are guests at these "socials" vetted before they are allowed into State facilities?

Who pays for the transportation of these individuals to and from OCFS facilities?

How is the security of these guests maintained? How are these "socials" supervised? Does the State incur additional staffing costs for increased security?

Is the State fiscally liable if a guest is injured?

These are very serious allegations, and they require swift and effective investigation. The Task Force expects prompt and complete answers to these questions. Although the Task Force is not a standing committee of the Senate, its work is directly related to the work and jurisdiction of the Senate Committee on Investigations and Government Operations. Indeed, the Task Force and the Investigations Committee (along with other committees) are working closely together to investigate and advance legislation to make government more efficient and provide taxpayers with the same or improved public services at lower cost.



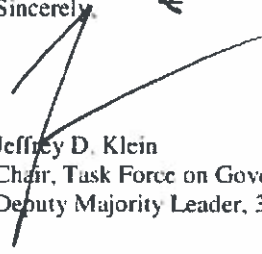
NEW YORK STATE SENATE

TASK FORCE ON GOVERNMENT EFFICIENCY

"Protecting the People's Money"

Accordingly, we appreciate your cooperation providing answers to the questions without delay. We note that Section 62-a of the Legislative Law entitles Senator Johnson, as Chair of the Government Operations Committee, to issue a subpoena requiring the production of this information, if necessary.

Sincerely,


Jeffrey D. Klein
Chair, Task Force on Government Efficiency
Deputy Majority Leader, 34th SD


Craig M. Johnson
Chair, Senate Standing Committee on
Investigations and Government Operations



**New York State
Office of
Children & Family
Services**

www.ocfs.state.ny.us

David A. Paterson
Governor

Gladys Carrión, Esq.
Commissioner

Capital View Office Park
52 Washington Street
Rensselaer, NY 12144

June 9, 2010

Honorable Jeffrey D. Klein
Member – New York State Senate
Chair, Taskforce on Government Efficiency
Deputy Majority Leader
State Capitol, Room 427
Albany, New York 12247

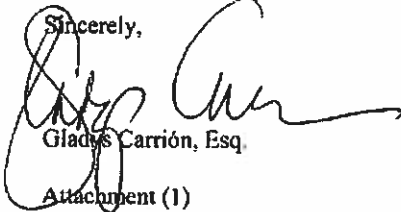
Honorable Craig M. Johnson
Member – New York State Senate
Chair, Standing Committee on Investigations and Government Operations
Legislative Office Building
Room 814
Albany, New York 12247

Dear Senators Klein and Johnson:

Per my letter to you at the end of May regarding the incident at the Office of Children and Family Services' Goshen Residential Center in late 2009, I want to stress again that we take any allegations of misconduct extremely seriously and that the safety of the staff and youth within our Juvenile Justice facilities, as well as visitors to our programs, are of paramount concern.

I very much appreciate your collective concerns with regards to this incident and am pleased to provide you with responses to your questions identified in your letter dated May 25, 2010. A copy of the responses is attached for your reference.

Sincerely,



Gladys Carrión, Esq.

Attachment (1)



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Office of Children and Family Services

What are the policies written and unwritten that govern the administration of these youth "socials"?

There are written policies (available upon request) that govern supervision of youth in Office of Children and Family Services (OCFS) facilities. The written policies are:

- Supervision of Youth General PPM 3247.03
- Resident Rules PPM 4443.00
- Visits to Youth at Juvenile Justice and Opportunities for Youth (DJJOY) Facilities PPM 3455.00 (version: 09/26/1986 and revised 02/02/2010)
- Goshen Secure Residential Center Post Orders and Shift Assignments

What was the rationale for implementing these events?

It was recommended by several OCFS juvenile justice facility managers that we could improve programs at the facilities by creating incentives that rewarded youth for positive behavior. In the secure facilities, where youth have long lengths of stay, it was particularly important to poll youth and staff to determine what types of incentives would motivate youth to engage in programs. After completing the poll, managers and facility directors adopted a few of the recommended strategies. The proposals, which included socials, were approved on a pilot basis. Based upon the allegations that arose immediately following the "social" event at Goshen in December, OCFS terminated the pilot and has no plans to approve any further "socials" in the future.

When was this program first implemented?

OCFS has approved three "socials"; the first occurred at the Brookwood Secure Center in Columbia County in July, 2009.

How are guests to these "socials" chosen?

For a youth in the Goshen Secure Residential Center to be eligible to participate in the "social," the youth was required to be on one of the two top stages of program: Transition or Honors. In addition, the invited guest was required to be 18 years of age or older or, if under the age of 18, a parent or guardian was required to give written consent for the guest to attend the event.



Office of Children and Family Services

Are guests at these "socials" vetted before they are allowed into State facilities?

Guests at the "socials" were identified by the residents and were required to meet the above criteria to participate in the social. Upon arrival, each guest was required to present photo identification, undergo a routine visitor search and, if necessary, have written parental consent. The guests at the Goshen social in December complied with these requirements.

Who pays for the transportation of these individuals to and from OCFS facilities?

Since the facilities operated by OCFS are primarily located in upstate New York, which tend to be hundreds of miles away from the homes of the children and youth placed, OCFS attempts to assist families and other visitors on a limited, case-by-case basis, by providing transportation assistance for events and activities. This is in support of treatment and maintaining family and community relationships, which are essential to ensure the youth's successful reintegration after release from custody.

And, how much has this transportation cost the state?

Combining the round trip travel from Goshen to New York City and Albany the total miles and cost were 344.88 miles, which is equivalent to \$31.56 at the current mileage rate.

How is the security of these guests maintained?

In planning the event, the number of staff supervising the event was determined, as well as which areas would require staff coverage or assistance. Facility managers were directed to hold the "social" in an area that has camera coverage. The following staff assignments were determined for this event during planning in administrative meetings at the facility:

- Staff assigned to transportation included both male and female staff;
- Staff were assigned to the Visit Room and for movement to and from the rest room, which are routine visiting room procedures;
- A Youth Counselor 1 was assigned to the Visit Area;
- A Youth Counselor 2 was the administrator on duty;



Office of Children and Family Services

- The Assistant Facility Director was on duty; and
- Central Support Unit Staff, with video camera viewing capability, were on duty.

How are these "socials" supervised?

Socials were supervised by the staff assigned to that activity. Assignments were made based on the schedule for the day and the particular event. Staff was assigned particular locations or posts. Supervision of youth is the primary assignment of staff in any OCFS juvenile justice facility.

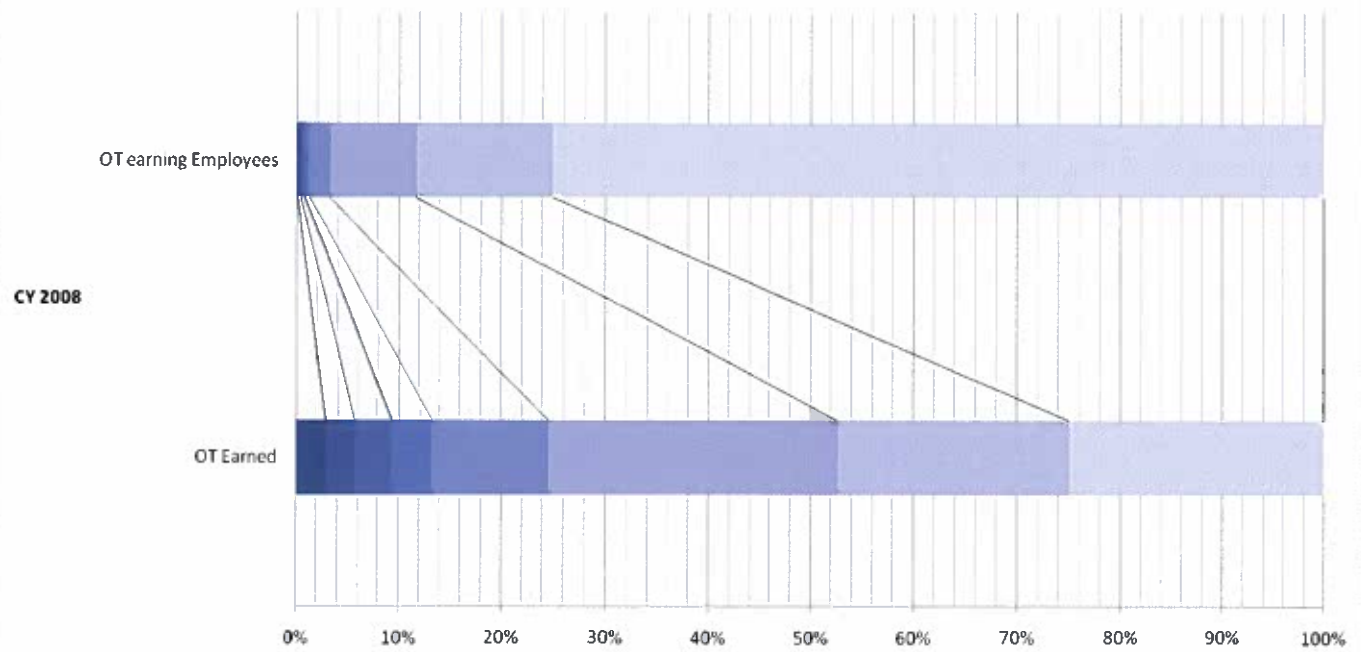
Does the State incur additional staffing costs for increased security, and, if so, how much?

Yes. There were 12.5 hours of overtime paid for on the day of the social. All staff on duty was scheduled to work on the date of the "social" and would have been on duty whether or not the "social" occurred.

Is the State fiscally liable if a guest is injured?

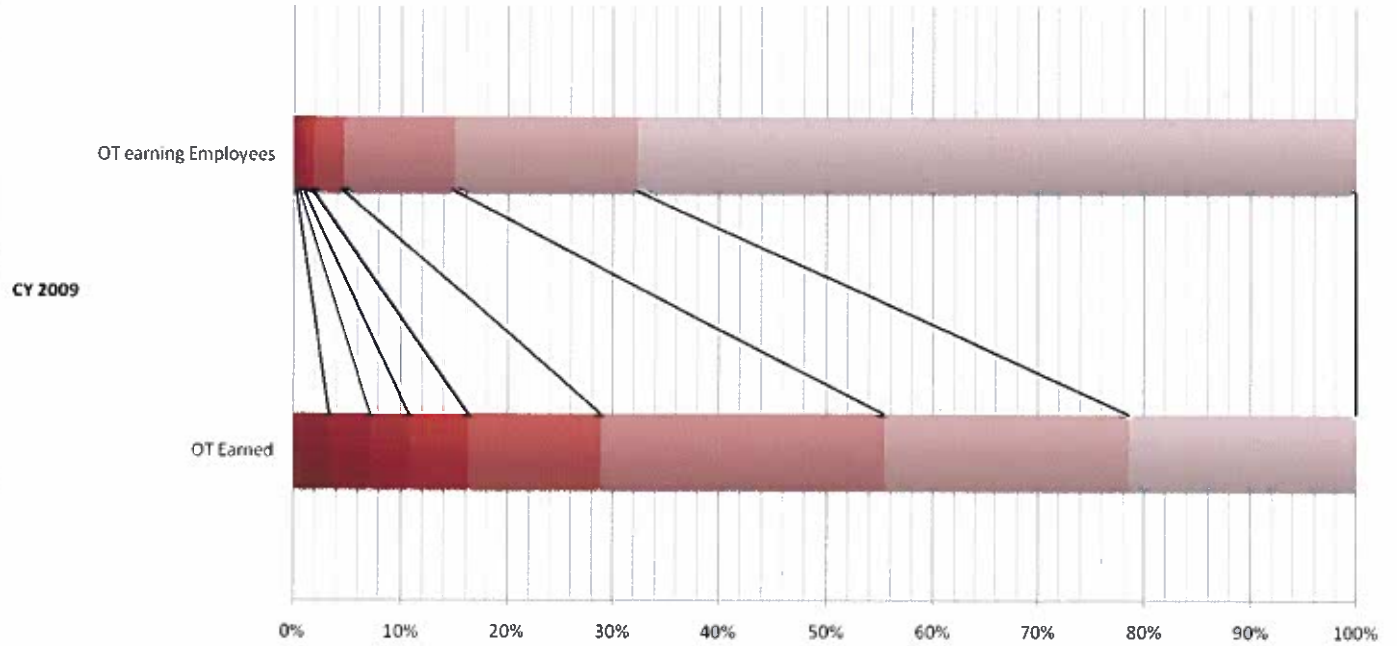
The State may or may not be financially responsible if any individual is injured on State grounds. The question of the State's liability would be determined based on the facts and circumstances surrounding the incident.

Overtime Distribution in CY 2008



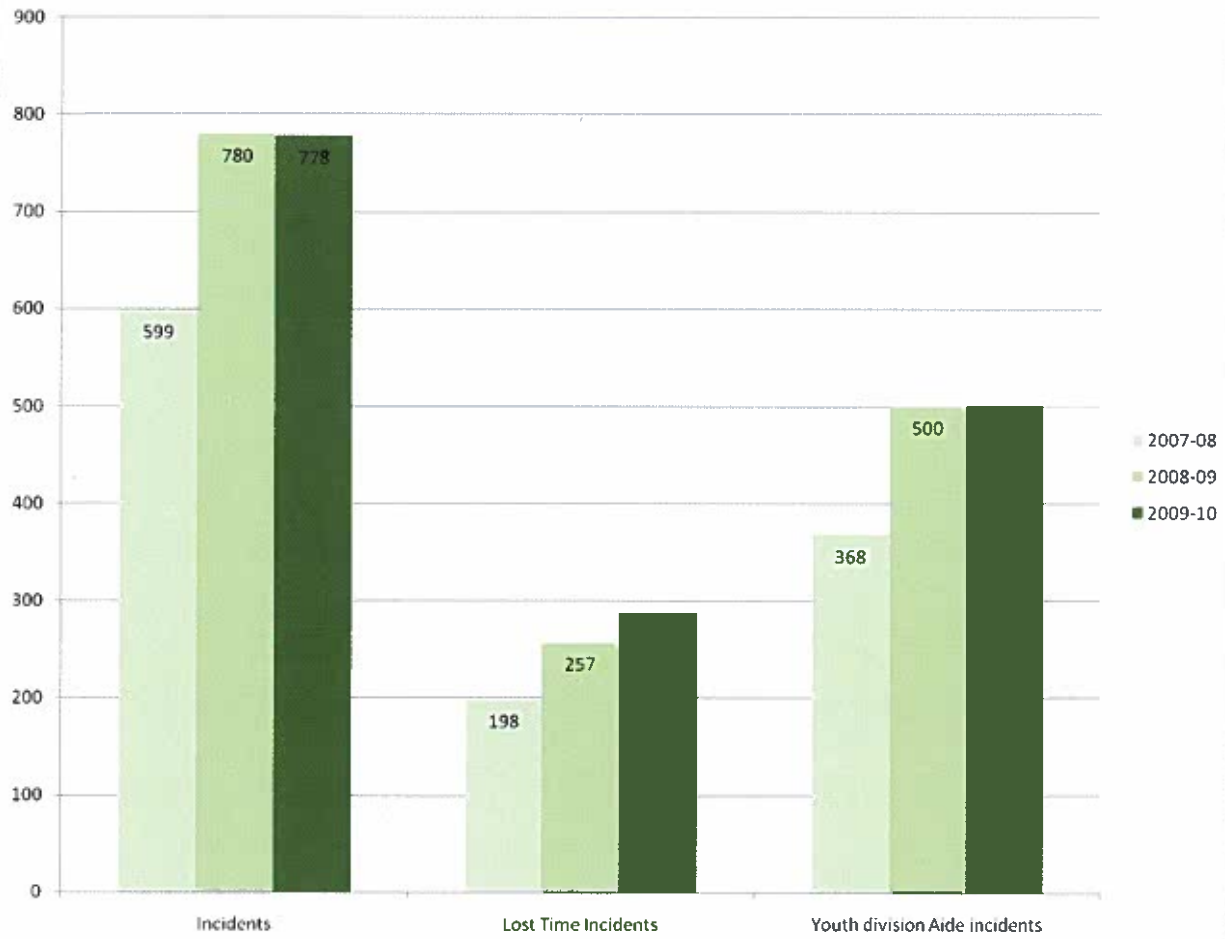
	OT Earned	OT earning Employees
Over \$70,0000	\$309,695.10	4
\$50,000 to \$69,999.99	\$314,834.40	6
\$40,000 to \$49,999.99	\$395,908.06	9
\$30,000 to \$39,999.99	\$429,761.64	12
\$20,000 to \$29,999.99	\$1,243,170.99	52
\$10,000 and \$19,999.99	\$3,077,902.55	224

Overtime Distribution in CY 2009



	OT Earned	OT earning Employees
Over \$70,0000	\$394,372.72	5
\$50,000 to \$69,999.99	\$449,280.65	8
\$40,000 to \$49,999.99	\$415,988.10	9
\$30,000 to \$39,999.99	\$628,280.72	18
\$20,000 to \$29,999.99	\$1,471,107.00	61
\$10,000 and \$19,999.99	\$3,095,535.48	224
\$5,000 and \$9,999.99	\$2,706,831.79	378
Between \$0.01 and \$4,999.99	\$2,484,141.18	1476

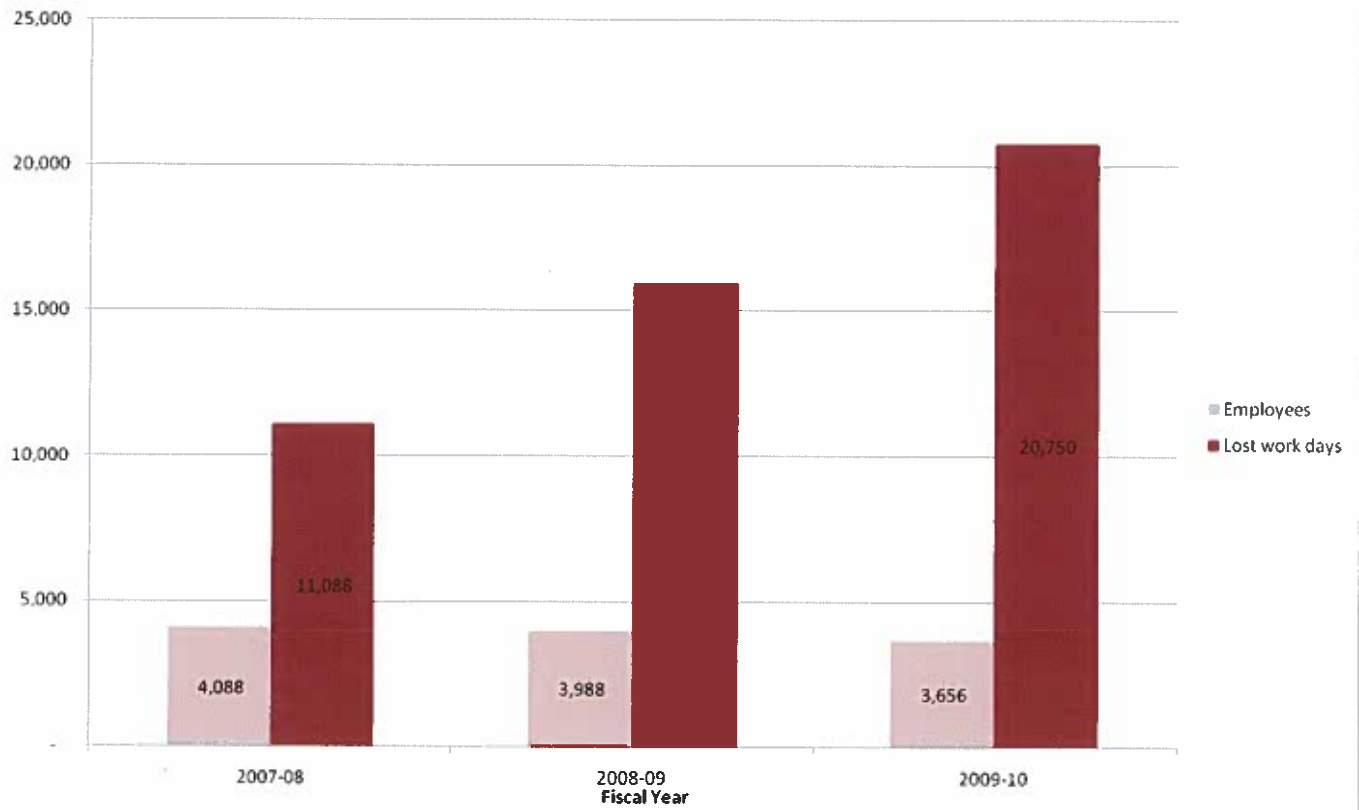
Workers Compensation Claims



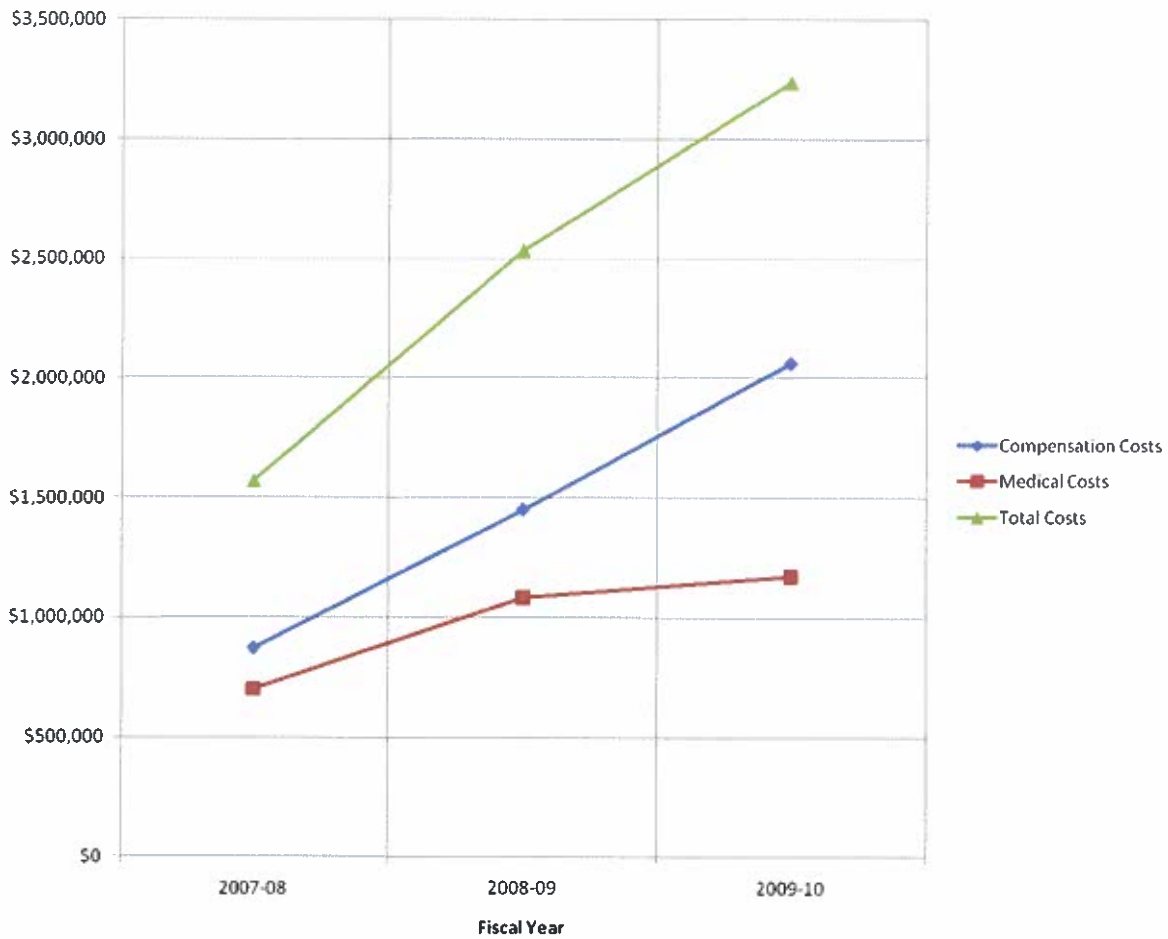
Lost work days due to injuries and the OCFS workforce

25,000

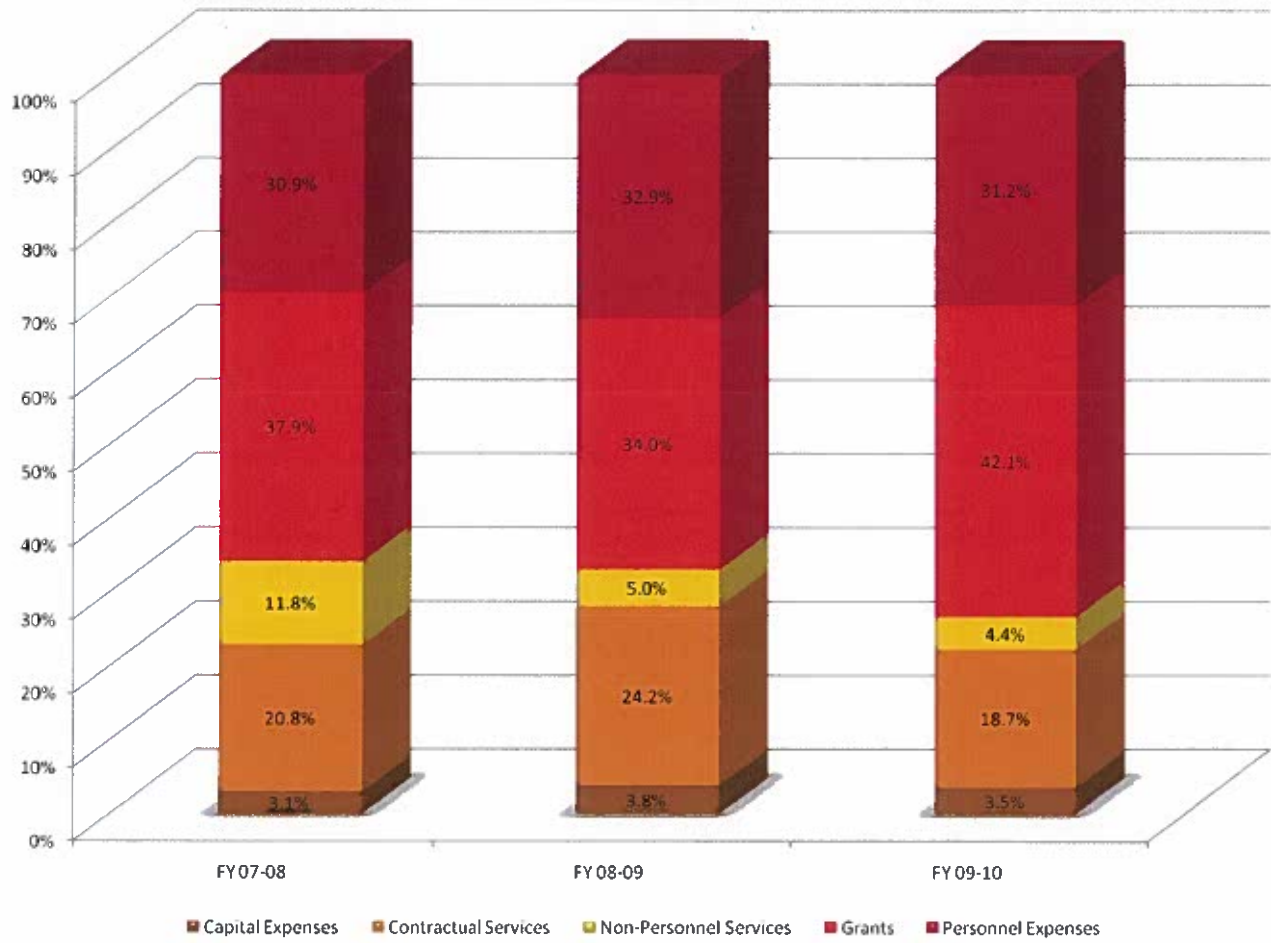
Lost work days due to injuries and the OCFS workforce



Workers Compensation Costs at OCFS



OCFS Spending Breakdown



¹ Division of the Budget, *2010-2011 Executive Budget Agency Presentations*, pgs. 35-44, available at: <http://publications.budget.state.ny.us/eBudget1011/AgencyPresentations/pdf/AgencyPresentations.pdf> (Last visited 9/21/10)

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³ *2010-2011 Executive Budget Agency Presentations*

⁴ NY State Senate Task Force on Government Efficiency, *An Investigation into the New York State Department of Transportation*, pg. 4, available at: <http://www.nysenate.gov/files/pdfs/Task%20Force%20NY%20DOT%20Report.pdf> (Last visited 9/21/10)

⁵ Human Rights Watch, *Custody and Control: Conditions of Confinement in New York's Juvenile Prison for Girls*, Sept. 24, 2006, available at: <http://www.hrw.org/en/node/11152/section/1> (Last visited 9/21/10)

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⁷ Task Force on Transforming Juvenile Justice, *Charting a New Course, A Blueprint for Transforming Juvenile Justice in New York State*, December 2009. Available at: <http://www.vera.org/download?file=2944/Charting-a-new-course-A-blueprint-for-transforming-juvenile-justice-in-New-York-State.pdf> (Last visited 9/21/10)

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¹⁰ Human Rights Watch, *Custody and Control: Conditions of Confinement in New York's Juvenile Prison for Girls*, pgs. 50-51

¹¹ Office of Assemblyman Rory Lancman, *Employee Safety in the NYS Juvenile Justice System*, available at: http://assembly.state.ny.us/member_files/025/20100517/index.pdf (Last visited 9/21/10)

¹² NYS Department of Civil Service, *Annual Report of New York State Government Employees' Workers' Compensation Claims Fiscal Year 2008/2009*, available at: http://www.cs.state.ny.us/pio/publications/chapter171_report.pdf (Last Visited 9/21/20)

¹³ NYS Department of Civil Service, *Annual Report of New York State Government Employees' Workers' Compensation Claims Fiscal Year 2009/2010*, available at: http://www.cs.state.ny.us/pio/publications/Workers_Compensation_Annual_Report_09-30-2010.pdf (Last Visited 11/9/10)

¹⁴ Ibid, pg. 26.

¹⁵ Kenneth Brynien, *Minority Report to the Governor's Task Force on Transforming Juvenile Justice in New York State*, available at: [http://www.thecommunicator.org/ocfsletters09/Task%20Force%20Minority%20Report%20final%20\(2\).pdf](http://www.thecommunicator.org/ocfsletters09/Task%20Force%20Minority%20Report%20final%20(2).pdf) (Last visited 9/21/10)

¹⁶ *Employee Safety in the NYS Juvenile Justice System*, pg. 2

¹⁷ Testimony of Anita Kendall, Nurse level 2 from the Youth leadership Academy, June 16, 2010, at the "Public Forum on Policy Failure: Examining the Juvenile Justice System in New York State" held by the Special legislative Task force for Reform of the New York State Juvenile Justice System.

¹⁸ Ibid

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²⁰ Susan Mitchell-Herzfeld, Therese A. Shady, Janet Mayo, Do Han Kim, Kelly Marsh, Vajeera Dorabawila, Faye Rees; *Effects of Multisystemic Therapy (MTS) on Recidivism Among Juvenile Delinquents in New York State*, June 2008, Office of Children and Family Services. Available at: <http://www.ocfs.state.ny.us/main/reports/FINAL%20MST%20report%206-24-08.pdf> (Last visited 9/21/10)

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²⁴ Fred Dicker, "Hooker an teen at juvie jail 'orgy'", *New York Post*, May 24, 2010, Available at: http://www.nypost.com/p/news/local/hooker_teen_at_juvie_jail_orgy_CvzAbXyvZ71APphEPilbM (Last visited 9/21/10)

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²⁶ Ibid, pg 6.

²⁷ Ibid, pg 13

²⁸ Ibid, pg. 18

²⁹ Ibid, pg. 19

³⁰ Ibid, pg 20

³¹ Ibid, pg 22

³² Ibid, pg20

³³ Ibid, pg. 6

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