



NEW YORK CITY CRIMINAL JUSTICE AGENCY, INC.

Jerome E. McElroy
Executive Director

**THE CENTER FOR ALTERNATIVE
SENTENCES AND EMPLOYMENT
SERVICES' (CASES)
DAY CUSTODY AND TRANSITIONAL
CASE MANAGEMENT PROGRAMS**

Project Director

Freda F. Solomon, Ph.D.
Senior Research Fellow

FINAL REPORT
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THE CASES' DAY CUSTODY AND TRANSITIONAL CASE MANAGEMENT PROGRAMS

Project Director

Freda F. Solomon, Ph.D.
Senior Research Fellow

Project Programmer:

Geraldine Staehs-Goirn
Information Systems' Department Programmer/Analyst

Project Staff:

David Horton

Junior Research Analyst

Steve Mardenfeld

Senior Research Assistant

Raymond Caligiure

Graphics and Production Specialist

Annie Su

Administrative Associate

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Freda F. Solomon, Ph.D.
Senior Research Fellow & Project Director
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TABLE OF CONTENTS

INTRODUCTION.....	1
The Day Custody Program	1
The Transitional Case Management Program	4
 PART ONE: THE DAY CUSTODY PROGRAM	
Chapter I: THE DAY CUSTODY PROGRAM.....	7
Introduction	7
Program Eligibility	8
Data Sources, Data Collection and Information Sharing	11
Chapter II: THIRD-YEAR PROGRAM-SENTENCED CASES	13
Characteristics of Defendants in the DCP-Sentenced Cases	13
CJA Recommendation and Community Ties Characteristics.....	16
Arrest Crime Types and Severities for DCP-Sentenced Cases	18
Charge Composition at Criminal Court Arraignment	19
Measuring Program Success: Retention.....	21
Time from Sentencing to Program Intake	22
Setting Jail Lengths for Program Failure	25
Penalties for Program Failure	30
Administering the Brief Jail Mental Health Screen	35
Chapter III: RECIDIVISM AMONG PROGRAM-SENTENCED DEFENDANTS.....	37
Prevalence of Recidivism.....	40
COMPARING SUCCESSFUL PROGRAM DEFENDANTS WITH MATCHED PRE- PROGRAM COMPARISON GROUPS	42
Measuring Recidivism Between Successful and Matched Pre-Program Comparison Group Defendants.....	42
Prevalence of Re-arrest Between Matched Comparison Groups of Successful DCP- Sentenced Defendants and Matched Pre-Program Comparison Group Defendants	44
Time to First Re-arrest Between Successful DCP-Sentenced and Matched Comparison Group Defendants	45
Frequency of Re-arrests Between Successful DCP-sentenced and Matched Comparison Group Defendants	46
Chapter IV: THIRD YEAR DAY CUSTODY REJECTED CASES.....	49
Rejection Source and Reason	49
Characteristics of Defendants in DCP-Screened and Rejected Cases	51
CJA Recommendation and Community Ties Characteristics.....	54

Arrest Crime Types and Severities for Rejected Cases	55
Non-DCP Sentenced Case and Defendant Characteristics by Source of Rejection	56
Court Outcomes for Rejected Cases	61
Arraignment Charge Composition for Rejected Cases Convicted at Arraignment ..	63
Arraignment Decision Making for Non-DCP Sentenced Cases by Rejection Source.....	65
The Brief Jail Mental Health Screen Among Rejected Cases	69
Chapter V: SUMMARY AND CONCLUSIONS	73

PART TWO: THE TRANSITIONAL CASE MANAGEMENT PROGRAM

Chapter I: THE TRANSITIONAL CASE MANAGEMENT PROGRAM.....	79
Introduction	79
Data Sources, Data Collection and Information Sharing	84
Chapter II: DEMOGRAPHIC AND CRIMINAL HISTORY CHARACTERISTICS OF DEFENDANTS IN TCM CASES	86
Characteristics of Defendants in TCM Cases	87
Criminal Conviction Histories	89
Chapter III: PROGRAM CHARACTERISTICS OF CLIENTS IN TCM CASES.....	91
Government and Other Benefits of TCM Clients.....	91
Health Characteristics of TCM Clients	92
Identification of Cases of Defendants with Mental Health Needs and Entrance into TCM	96
Type and Length of Program Participation.....	98
Case Status	101
Chapter IV: TCM CASES IN COURT	102
Case Characteristics.....	102
Court Processing and Case Outcomes.....	104
Program Retention and Penalties for Failure in TCM-Mandated Cases	106
Prevalence and Frequency of Re-Arrests Among TCM Program Clients	108
Time to First Re-Arrest	111
Chapter V: SUMMARY AND CONCLUSIONS	113
APPENDIX: CJA'S TYPOLOGY OF OFFENSES	122

INTRODUCTION

This report focuses on two programs of the Center for Alternative Sentencing and Employment Services. The first is the Day Custody Program which has been in operation since September of 2005. The second is the Transitional Case Management program, which accepted its first program client in August 2007. This report joins the series previously prepared by the New York City Criminal Justice Agency about the Day Custody Program, and now adds a preliminary review of the start-up and early implementation periods of the Transitional Case Management program.

THE DAY CUSTODY PROGRAM

On September 22, 2005, the Center for Alternative Sentencing and Employment Services (CASES) began accepting defendants into its Day Custody Program (DCP). This program, created in partnership with the New York City Department of Correction (DOC), is designed as an alternative to traditional incarceration for defendants with at least three previous misdemeanor convictions arraigned in non-Spotlight-targeted misdemeanor cases in the downtown Manhattan Criminal Court.

The DCP sentence is a three-day, eight-hour daily, program consisting of community service, comprehensive needs assessment and post-release referrals, and some on-site intervention programs. All sentence activities are conducted during daytime weekday hours with the defendant in the custodial setting of a DOC facility adjacent to the downtown Manhattan Criminal Court. However, defendants are released from DOC custody at the end of each program day and must return on their own volition for each successive program day.

Defendants sentenced to the program, almost always upon a plea agreement at arraignment, have a ten-day window in which to successfully complete the three-day program requirement. At the time defendants receive the program sentence the court stipulates a jail sentence, expected to be ten days in

the program's original design, to be imposed as the penalty for failure to satisfactorily complete the program.

As part of the program's development and implementation, the New York City Criminal Justice Agency (CJA) was directed by the New York City Office of the Criminal Justice Coordinator (OCJC) to provide a series of research-related items. CJA is a not-for-profit organization, working under a contract with the City of New York, whose principal operational mission is to provide pretrial services to defendants prosecuted for crimes in New York City's adult criminal courts. As part of its pretrial services function the Agency maintains a computerized database consisting of information about defendants and the court processing and outcomes of their cases. This information is also used by CJA to perform research, and to provide criminal justice information and data on issues of interest to City agencies, non-profit organizations, and academic-based researchers as appropriate.

As part of its Day Custody Program research agenda, CJA previously prepared for the OCJC an analysis of misdemeanor cases prosecuted in the downtown Manhattan Criminal Court in a several month period prior to the program's implementation. The resulting report, *THE DAY CUSTODY PROGRAM: A BASELINE CASES ANALYSIS (November 2005)*, examined the prospective volume and characteristics of cases and defendants most likely to be eligible for DCP. A second report, *THE DAY CUSTODY PROGRAM: FY06 STATUS REPORT (June 2006)*, described research-related activities completed during the program's start-up period, including the collection of program data and the building of data sets for use by CJA to report on DCP activities. It also provided an analysis of cases and defendants, both those DCP-sentenced and those in cases screened but not sentenced to the program, during the program's early implementation.

Beginning with the first full program year of operation, CJA has provided a yearly report on program activities. The first-year study (June 2007, Final Report December 2007), described the characteristics of both DCP-sentenced and program-rejected cases and defendants, measuring successful completion

rates and penalties in cases of defendants who failed to complete the program and were returned to court for re-sentencing, and a preliminary examination of recidivism rates among program-sentenced defendants.¹ The second year's report built on this work to assess DCP activities, and to more thoroughly investigate issues related to recidivism, including a comparative analysis with similar cases and defendants from a pre-program period.² A summary of the findings of these reports was prepared as part of CJA's *Research Brief* series.³ The current report now covers the third full year of DCP activities, from October 1, 2007 through September 30, 2008.

The first chapter of the DCP portion of the report provides a program overview, a description of the Day Custody Program, and the data used in the analysis of program sentenced and rejected cases. The second is devoted to descriptions of DCP-sentenced cases and defendants in the program's third year of operation; successful completion rates; and assessing penalties in the cases in which defendants were returned on warrants for failure to successfully complete the DCP sentence requirements. The end of this section describes mental health screening of program-sentenced defendants, a new aspect of DCP introduced in tandem with the Transitional Case Management program.

The third chapter examines various aspects of recidivism, beginning with an overview of expected re-arrest rates based on an analysis of a pre-program control group. To create comparison groups for this recidivism analysis downtown Manhattan cases sharing similar defendant and charge characteristics, with arraignment convictions and jail sentences imposed greater than time served, were identified from calendar year 2004. The selected cases from the pre-program period create a baseline from which to analyze whether there were changes in recidivism patterns among program-sentenced cases.

¹ Freda F. Solomon, THE DAY CUSTODY PROGRAM: FIRST YEAR REPORT: Final Report, (New York City Criminal Justice Agency, December 2007), available on the Agency web site, www.nycja.org.

² Freda F. Solomon, THE DAY CUSTODY PROGRAM: SECOND YEAR REPORT: Final Report, (New York City Criminal Justice Agency, August 2008), available on the Agency web site.

³ Freda F. Solomon, THE CASES DAY CUSTODY PROGRAM: Creating an alternative to short jail sentences for recidivist misdemeanor defendants, CJA *Research Brief*, No. 20 (May 2009).

Another section of this chapter of the DCP report takes a more focused examination on three distinct aspects of recidivism—the prevalence of re-arrests and, if re-arrested, the time to and frequency of re-arrests. In this section defendants with successful program completion are analyzed in comparison with pre-program period comparison groups matched on defendant and case characteristics. Where appropriate, comparisons also are made to the findings of the matched comparison group analysis for the two previous program years' successful clients.

The fourth chapter of the Day Custody portion of the report focuses on cases screened and rejected over the course of the program's third full year of operation. The fifth chapter provides a summary review of the findings, along with some concluding commentary about the program's third year of operation.

THE TRANSITIONAL CASE MANAGEMENT PROGRAM

The other part of this report provides information about the start-up and early implementation periods of the Transitional Case Management (TCM) program. TCM is a CASES alternative-to-incarceration program providing seriously mentally ill clients with comprehensive community-based case management services. It is designed to provide the equivalent of correctional facility discharge planning services in a non-custodial setting for mentally ill defendants, clinically diagnosed under the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders' Multiaxial Diagnostic System with an Axis I condition, diverting them from the courthouse in cases expected to receive no more than short jail sentences in downtown Manhattan Criminal Court cases. It provides community-based continuity of care through case management for these defendants that would not be available were referrals to community services simply made upon jail release.

TCM initially was intended to serve Day Custody's defendants flagged as potentially mentally ill during DCP program screening, and subsequently found to have serious mental illnesses based on a far more in-depth clinical assessment. It was modeled on CASES' EXIT program, a three-year experimental jail

diversion program for mentally ill defendants in the downtown Manhattan Criminal Court that began in March 2003.

As with TCM, the EXIT program targeted a non-violent recidivist misdemeanor population with serious mental illness identified during the arraignment process in the downtown Manhattan Criminal Court. In addition, although not intended to accept defendants in Spotlight-targeted cases, some portion of EXIT's caseload was drawn from the Spotlight subset of recidivist defendants in misdemeanor cases. Other than a court required initial three-hour assessment session, the EXIT program relied on its staffs' ability to engage clients and to be responsive to client needs—including housing and other services in addition to mental health—to sustain voluntary participation. Client participation could last as long as six months, and sometimes even longer.

TCM originally was instituted to provide the same types of voluntary post-program case management services to DCP clients clinically assessed to be seriously mentally ill that had been offered as part of the EXIT program. TCM accepted its first client in August 2007, during the next-to-last-month of DCP's second program year, which ended with DCP-sentenced cases as of September 30, 2007. Because this was so late in the DCP second program year, and because only a handful of DCP defendants had been admitted to TCM by the year-end study period, no information about the TCM program was included in last year's DCP report. Our plan had been to incorporate the TCM adjunct to DCP into our study of the DCP third program year report.

However, after the program's start-up period TCM began to be used in some instances as an alternative to DCP. That is, in some instances the judges began mandating variable numbers of TCM counseling sessions instead of the Day Custody Program, as an alternative to a jail sentence. When this occurs, as with DCP, TCM-mandated program participants are released from court with the understanding that they must return on their own volition to each mandated program session, with an alternative jail sentence set by the judge for failure to complete the program mandate. However, unlike the DCP program the mandated sessions are not for entire days, nor do judges necessarily fix the

number of sessions at three. Further, TCM clients meet with the program's mental health staff at CASES' office facilities, not within the confines of a jail location.

Comparable to DCP, mandated program clients normally will be expected to complete the program sessions within a specified time after sentencing, and a compliance date set will be set at which time CASES staff report to the court whether or not the defendant has successfully completed the program's requirements. Once mandated sessions have been completed, TCM clients can continue program participation on a voluntary basis.

As a result, there are now two distinct pathways into the TCM program. For DCP-sentenced program clients, the willingness to engage in TCM services is purely voluntary. For TCM-mandated clients, some number of program sessions with CASES' mental health staff are required with continued engagement past this point subject to the client's voluntary participation. In addition, not all TCM-mandated clients necessarily meet the prior misdemeanor conviction requirements of the DCP program, nor do they necessarily come directly from Criminal Court arraignment courtrooms as part of a disposition plea agreement.

Fairly soon after its implementation TCM began to develop into an independent alternative-to-incarceration pathway out of the downtown Manhattan Criminal Court for misdemeanor-prosecuted defendants, in addition to being a voluntary program for seriously mentally ill DCP-sentenced defendants. In addition, and unlike DCP, it is not funded exclusively by City, but has additional grant money from the Bureau of Justice Assistance (BJA) and private foundation monies that underwrite some portion of its program services. Further, foundation funds have been obtained to underwrite a stakeholders committee working to identify ways to overcome policies and practices that impede diverting the seriously mentally ill recidivist misdemeanor population prosecuted in the downtown Manhattan Criminal Court from correctional facilities. As such it is discussed in a separate portion of this report. Further, because the TCM is still evolving, the end of the TCM discussion addresses research issues for future consideration.

CHAPTER I: THE DAY CUSTODY PROGRAM

Introduction

The Day Custody Program is designed as an alternative sentencing option in cases of recidivist misdemeanor defendants, held in custody after their arrest, and prosecuted in the downtown Manhattan Criminal Court for misdemeanor crimes. The DCP sentence is intended for use in cases of jail bound defendants convicted at arraignment in which both the case and defendant fit a series of eligibility criteria. The program sentence combines the elements of accountability such as would occur for defendants with a non-custodial community service sentence, early intervention programs, and discharge planning services that refer defendants to community-based private and government services based on a needs assessment at intake.

What makes the Day Custody Program unique is that all of these sentencing components are provided while the defendants are in custody in a Department of Correction facility adjacent to the downtown Manhattan courthouse only during daytime weekday program hours. Not using full-time incarceration avoids the need for DOC to transport defendants between the court and jail, conduct its normal lengthy screening processes at intake, and house defendants. In addition, it allows DCP activities to be provided without the normal interruptions that would occur in a traditional jail setting where inmate movement and other institutional requirements circumscribe the amount of time each day in which defendants can participate in activities.

Program activities are provided over the course of three days, which is about equivalent to, or only several days fewer than, the actual number of days defendants would serve post-arraignment for a ten-day jail sentence after accounting for pretrial detention time, and good-time credit which is equal to one day for each three sentence days. The program sentence is officially recorded as an intermittent jail sentence, with an alternative of a jail sentence of a stipulated length for failure to complete the DCP sentence. Defendants have a ten-day window in which to complete the three days' of program activities,

although defendants are encouraged to complete the program on three consecutive program days whenever possible. A court compliance date is scheduled fifteen days after the sentencing at which time CASES' staff report to the court whether or not the defendant successfully completed the program. Program failure results in the issuance of a bench warrant for the defendant in the case.

In order to identify prospective program participants, program staff review the court papers of misdemeanor cases in advance of arraignment. Program court staff then seek to pursue further those defendants who appear to meet the program's eligibility criteria. However, in some instances DCP court staff may be directed to screen for intake defendants in cases that may not meet the requisite criteria.

Program Eligibility

Under the program protocols, CASES court staff screen misdemeanor court papers of defendants awaiting arraignment at the downtown Manhattan Criminal Court. This first step is to determine if defendants are "paper eligible." Defendants are considered paper eligible if they have at least three prior misdemeanor convictions, are not awaiting arraignment in a Spotlight-program designated case, have no history of violent crimes, and do not have an active hold for a warrant. Although neither homelessness nor being on parole or probation is an absolute exclusion to participation, these factors can affect the initial or subsequent screening for program eligibility.

Defendants in each screened case must be able to begin the program immediately after sentencing. Defendants who are subject to being held at the end of the arraignment court appearance for out-of-county warrants or for violating parole conditions therefore cannot receive the DCP sentence in most instances. Consent by the Department of Parole is necessary before DCP can be offered to a defendant under its supervision, and an attempt to create a system for a quick response from parole officials has so far not been successful. In addition, getting a release from the Department of Parole is further

handicapped when a prospective program client is screened during evening and weekend arraignments.

In the latter part of the program's first year probation was no longer included as an exclusionary factor by DCP court staff, although there continue to be instances in which defense attorneys or defendants reject the program (or any arraignment plea) out of concern that a new conviction could jeopardize the probation. Homelessness was not originally envisioned as a bar to participation, but early experience indicated that at least some homeless defendants, especially street homeless without regular contact with a specific shelter facility, were poor risks for successful program completion. As a result, acceptance of otherwise eligible homeless defendants is considered on a case-by-case basis.

For defendants in cases the program wishes to pursue further, the first step is for DCP court staff to seek permission from the defense attorney to interview the defendant. Defense attorneys are most likely to allow the CASES' court staff to interview clients when they believe that the DCP sentence will be a better alternative than the anticipated or offered sentence by the prosecutor or judge. In addition, DCP court staff may be asked by defense attorneys to conduct the interview with defendants that would otherwise not be considered based on the program's eligibility criteria. Before conducting the defendant interview CASES staff normally check with the prosecuting attorney (ADA) to determine if there is an intent to seek jail time (greater than time served) for the defendant, as the program court staff will not conduct the interview for non-jail bound defendants.

Beginning with the introduction of the Transitional Case Management program (TCM) in July 2007, the interview process was modified to include the administration of the Brief Jail Mental Health Screen (BJMHS). This is a short survey which is used to flag defendants recommended for a more extensive clinical assessment to determine if there is a severe mental illness.

During the course of the interview DCP court staff may find that the defendant is not likely to be a successful DCP participant and may be rejected by DCP staff. Defendants also must consent to the program sentence. Conversely, after the full implementation of TCM, the interview may now be used to identify

individuals for whom mental health services through TCM might be an alternative to DCP. (This is discussed in greater detail in the TCM portion of this report.)

Among courtroom actors, judges influence the pool of the program-eligible population because they must be amenable to imposing alternative sentences. Further, judges have the power to seek a DCP sentence in a case otherwise deemed ineligible by the program protocols, or to reject a proposed DCP sentence even when other participants are willing.

Spotlight-targeted cases are a distinctive group, consisting of recidivist defendants who have been arrested for misdemeanor crimes during active offending cycles. Defendants in Spotlight-identified cases must have been arrested at least two previous times in the past twelve months, with one such arrest having a misdemeanor severity top arrest charge, and the defendant also must already have a minimum of two prior cases with convictions to misdemeanor crimes, one of which must have been within the previous twelve months. Defendants meeting these criteria are identified by the New York State Division of Criminal Justice Services (DCJS) upon review of the criminal record matching fingerprints sent by the New York City Police Department to DCJS at the time of a misdemeanor arrest. The rap sheets for defendants meeting the program criteria carry a printed banner with a “persistent misdemeanant” alert, which in turn is supposed to result in court papers for the case carrying a Spotlight stamp, although there are instances when the court papers are not appropriately marked. The goal of the Spotlight program is to encourage the courts to interrupt these offending cycles through jail sanctions for conviction, and for longer periods than would otherwise be used. As part of the conditions of funding the Day Custody Program, the City stipulated that defendants in Spotlight-targeted cases, even if otherwise DCP eligible, were not to be actively pursued.

For these and other reasons, defendants in DCP-sentenced cases are a selective group from among all defendants with a minimum of three prior misdemeanor convictions arraigned in the downtown Manhattan Criminal Court. The characteristics of DCP-sentenced defendants and cases, and those

screened but rejected from program participation, are examined in detail in the next chapters in this part of the report.

It also is important to recognize that eligibility for the program attaches to the case and defendant characteristics at the time court papers are reviewed for cases pending arraignment for a misdemeanor charge. As a result, DCP court staff may review different cases involving the same defendant over time, with program eligibility determined independently for each case. Because the same defendant may be screened multiple times but in different cases, the number of screened cases is greater than the number of screened defendants.

Data Sources, Data Collection and Information Sharing

After the program's implementation, CJA and CASES entered into a data-sharing agreement for the exchange of information about the cases and defendants sentenced to DCP, and about those screened but not sentenced to the program. As a result of that agreement CJA and CASES created a format for the regular transfer to CJA of identifiers of program-sentenced defendants and cases, and their program completion status, at the time of the scheduled court compliance review appearance. CJA staff review these cases to ensure that case and defendant identifiers match court records in the CJA database, and that the sentence information transmitted to CJA from the Office of Court Administration correctly records the DCP intermittent sentence. Problem cases are identified and sent back to CASES for correction. CASES also shares with CJA information about screened cases of defendants not sentenced to the program.

Information about defendants, and the arrest and court activity for all DCP screened cases, both those sentenced and those rejected, are extracted from the CJA database. Defendant demographic and community ties information are based on information collected by CJA as part of its pre-arraignment interview process with defendants held for Criminal Court arraignment. As part of this process CJA staff record the number of prior cases (if any) in which the most serious conviction charge was for a felony crime, cases with the most serious conviction charge of misdemeanor severity, and open cases pending in the adult

court system at the time of the interviewed arrest. In instances where CJA did not conduct an interview, or did not have access to the defendant's criminal history (i.e. "rap sheet"), for a DCP-sentenced case, the CJA database, supplemented by rap sheet information supplied by the New York State Division of Criminal Justice Services (DCJS), have been used to create summary conviction counts at the time of the DCP-sentenced case when possible. The same procedures are used to review instances in which it appears that the defendants did not have the requisite number of prior misdemeanor convictions to be program eligible.

Lastly, Operation Spotlight designated cases are identified from data files routinely provided to CJA by DCJS, which are used by CJA as part of a separate research agenda. These files also are used to confirm cases identified but rejected by DCP because of their Spotlight designation.

CHAPTER II: THIRD-YEAR PROGRAM-SENTENCED CASES

This section of the report describes DCP-sentenced cases from October 1, 2007 through September 30, 2008, the program's third year of operation. During this time a total of 564 cases arraigned in the downtown Manhattan Criminal Court received a sentence to the Day Custody Program.⁴ This is an increase over the 496 DCP-sentenced cases in the program's second year and is closer to the first year total of 548 sentenced cases.

There were a total of 548 unique defendant NYSID numbers found among the third year's sentenced cases. There were 13 defendants sentenced to the program in multiple cases, 11 sentenced to the program twice, one was sentenced to the program three times, and one was sentenced four times. Among the 548 program-sentenced defendants were 149 who also had other screened but rejected cases during the third program year.

The data that follow describe the characteristics of defendants in the DCP-sentenced cases, which in some respects may have been different at the time of each arrest for the 13 defendants with multiple DCP-sentenced cases.

Characteristics of Defendants in the DCP-Sentenced Cases

In the 564 second-year DCP-sentenced cases, most had defendants who were male and almost two-thirds were 40 years of age or older, with a mean (mathematical average) age of about 41 years of age. These overall demographic characteristics were very similar to those of the defendants sentenced in previous program years. However, in the third program year the percentage of cases with female defendants was somewhat greater, the average age about a year older, the percentage of non-Hispanic black defendants smaller, and the percentage of Manhattan addresses larger, than defendants in previous years' program-sentenced cases.

⁴ There were actually 566 DCP-sentenced cases in the third program year, but two cases are excluded from the analysis because the defendants could not participate in the program subsequent to sentencing. In one instance, the defendant was sent to Westchester on a warrant where she was given a long term prison sentence, precluding participation in DCP. In the other instance, the defendant was removed from DCP and transferred to TCM because his mental health issues made it impossible for him to participate in DCP.

DEFENDANT DEMOGRAPHIC AND ZIP CODE CHARACTERISTICS					
SEX	N	%	ETHNICITY	N	%
Male	475	84.2	Black	322	61.5
Female	89	15.8	Hispanic	150	28.6
Total	564	100.0	White	48	9.2
			Other	4	0.8
			Total	524	100.0
			Unknown	40	
AGE GROUP	N	%	ZIP CODE	N	%
16-19	7	1.2	Manhattan	306	63.9
20-24	38	6.7	Bronx	85	17.7
25-29	44	7.8	Brooklyn	62	12.9
30-34	44	7.8	Queens	15	3.1
35-39	62	11.0	Staten Island	5	1.0
40-44	120	21.3	Other New York	4	0.8
45-49	142	25.2	New Jersey	2	0.4
50+	107	19.0	Total	479	100.0
Total	564	100.0	Other/Unknown	85	
Mean Age 41.33					

The majority of defendants in year three cases were non-Hispanic black (61.5%), and the second most represented ethnic group was Hispanic (28.6%). Only 9.2 percent was non-Hispanic white. This pattern matches previous years. (It should be noted that more cases were missing ethnicity-related data than in previous years.)

Of the cases in which defendants did not report being homeless, and for which home address was known, over three-fifths had addresses with Manhattan zip codes. The percent of defendants in DCP-sentenced cases with Manhattan zip codes of residence has increased in each successive year, from 52 percent in the first program year and 56.7 percent in the second program year, to 63.9 percent in the third program year. The number of cases in which defendants had Brooklyn addresses was five percentage points lower than in the two previous years. All other trends related to defendant addresses in third-year cases were very similar to those reported in the previous program years.

Criminal conviction history, as shown in the next table, is characterized by the most severe conviction charge in prior adult-court cases. The pattern in this year's report is almost identical to last year's. Most cases (67.4%) sentenced to

DCP in its third year had defendants with prior criminal convictions for both felony and misdemeanor crimes. Only 32.6% cases had defendants with only prior misdemeanor convictions.

PRIOR CRIMINAL CONVICTION HISTORY		
TYPE OF CRIMINAL RECORD	N	%
Misdemeanor Only	184	32.6
Felony Only	0	0
Both	380	67.4
Total	564	100.0
Missing	0	

In the third program year, every DCP-sentenced defendant had a prior criminal conviction history that included at least three misdemeanor convictions.⁵ Third year DCP-sentenced cases had a mean of 16.0 prior misdemeanor convictions, approximately one greater than in previous years but this was affected in previous years by the few cases in which defendants had fewer than three prior misdemeanor convictions.

COUNTS OF PRIOR MISDEMEANOR AND FELONY CONVICTIONS					
PRIOR MISDEMEANOR CONVICTIONS	N	%	PRIOR FELONY CONVICTIONS	N	%
3-5	109	19.3	None	184	32.6
6-9	122	21.6	1	130	23.0
10-14	114	20.2	2	101	17.9
15-19	74	13.1	3	70	12.4
20-24	41	7.3	4	51	9.0
25-29	33	5.9	5	17	3.0
30-34	18	3.2	6	5	0.9
35-39	8	1.4	7	4	0.7
40-44	10	1.8	8	1	0.2
45 or more	35	6.2	10	1	0.2
Total	564	100.0	Total	564	100.0

Over two-thirds of the defendants in the DCP-sentenced cases also previously had been convicted of felony crimes (380 out of 564), with an average

⁵ In all program years defendants had at least some criminal conviction history. However, in the first program year there were 27 cases, and in the second program year 7 cases, in which defendants did not have the requisite three prior cases with *misdemeanor-severity* conviction charges.

of 2.4 felony convictions per defendant in cases with felony convictions. These data are almost identical with those in previous program years.

CJA Recommendation and Community Ties Characteristics

Across all three program years, defendants in the DCP-sentenced cases have been consistently rated by CJA to be poor risks for recognizance release if their cases were not disposed at arraignment. CJA's recommendation classification is based on a point scale that assesses the risk of failure to appear (FTA), and includes factors such as warrant history. In the point scale system used by CJA since June 30, 2003, prior FTA for cases without an active bench warrant is included in the risk assessment, and it is the single most heavily weighted factor against recognizance release in the point scale's indicators of risk of FTA. A recidivist defendant who has previously failed to appear can never score well enough to be given CJA's unqualified low-risk recommendation or a moderate-risk recommendation. Defendants with an outstanding active bench warrant are classified in a separate not recommended category.

Because criminal record is an essential element of the recommendation system, no recommendation is made in cases of defendants for which a rap sheet is not available. These cases, along with cases with incomplete interviews, appear in the "no recommendation" category in the table that follows.

CJA RELEASE RECOMMENDATION		
RECOMMENDATION CATEGORY	N	%
<i>Recommended:</i>		
Low Risk	6	1.2
Moderate Risk	16	3.1
<i>Not Recommended:</i>		
High Risk	430	84.1
Bench Warrant	30	5.9
Other Exclusionary Categories	5	1.0
<i>*No Recommendation</i>	24	4.7
Total	511	100.0
Not Interviewed	53	n/a
*The No Recommendation category includes cases in which no rap sheet was available, and circumstances in which the interview process could not be completed, often because the defendant declined or was unable to complete the interview.		

In the course of its pre-arraignment interview CJA staff also collect information that serves as indicators of the strength of defendants' ties to the community, including whether or not at the time of an interviewed arrest defendants are engaged on a *full-time basis* in work, school or other program activities, alone or in combination. Another item is whether or not defendants live alone or with others. CJA interviewers seek to verify the responses to these questions by telephone contact with third parties supplied by the defendant. For these items the table that follows shows all yes or no responses, with the verified and not verified responses combined. The final item, defendant response to the question of whether they expect someone at arraignment cannot be verified, and therefore is based solely on whether the defendant answers this question with a yes or no.

Percentage calculations are based only on yes and no answers (including verified responses as applicable) to each item. The numbers of cases for which there was an unresolved conflict between defendant and third-party verifier responses, for which no response to the item was available, or a "don't know" response was given in regard to expecting someone at arraignment, are shown below the total.

As seen in the table on the next page, three-quarters of the defendants in the DCP-sentenced cases reported that they were not engaged full time in work, school and/or program activities. This is almost identical to the percentage found among defendants in second program-year cases and very similar to those in the first program year as well. About 15 percent expected someone to attend their arraignment court appearance, although almost half (48.2%) reported living with others. These percentages are almost identical to those found among the cases of second program-year defendants. However, in the first program year almost two-fifths of defendants expected someone to attend their arraignment, while less than a third reported living with others.

CJA COMMUNITY TIES INTERVIEW ITEMS		
INTERVIEW ITEM	N	%
Fulltime Employment/School:		
Yes/Yes Verified	121	25.4
No/No Verified	356	74.6
Total	477	100.0
Unresolved Conflict or N/A	87	
Lives With Others:		
Yes/Yes Verified	234	48.2
No/No Verified	251	51.8
Total	485	100.0
Unresolved Conflict or N/A	79	
Expects Someone at Arraignment:		
Yes	75	15.2
No	417	84.8
Total	492	100.0
Don't Know or N/A	72	

Arrest Crime Types and Severities for DCP-Sentenced Cases

As in the first and second program years, in the third program year's cases drugs, property crimes (mostly petit larceny charges), and fraud category crimes (mostly theft-of-services and forgery-related charges) were the most frequent types of offenses for which program-sentenced defendants were arrested. However, in the third program year the percentage of cases with arrest charges in the drug category was greater, and in the fraud category smaller, than in previous program years.

Because the program criteria only requires that the most serious prosecution charge at arraignment be of misdemeanor severity, some cases had felony-severity crimes as the top arrest charge. However, overwhelmingly the top arrest charge was of misdemeanor severity. The table that follows displays arrest crime types using a CJA-created typology.

A number of the categories contain charges defined in only one or a limited number of articles in the New York State Penal Law (PL), such as the weapon (PL 265) and drug (PL 220 and PL 221) categories. Other categories draw charges from an assortment of Penal Law articles. In addition, although all categories may contain charges with severities ranging from felony to misdemeanor, some categories such as "unknown/other" almost exclusively

contain offenses of misdemeanor or lesser severity, while other categories such as harm-to-persons or persons-and-property contain a number of the most serious felony-severity crimes. A more detailed description of the charges in these crime categories, shown in the left-side column, can be found in the APPENDIX to this report.

MOST SEVERE ARREST CHARGE CHARACTERISTICS					
TOP ARREST CHARGE CJA CRIME CATEGORY	N	%	TOP ARREST CHARGE SEVERITY	N	%
Harm to Persons	0	0.0	A-Felony	1	0.2
			B-Felony	16	2.8
Harm to Person & Property	1	0.2	C-Felony	9	1.6
Weapon	10	1.8	D-Felony	33	5.9
Property	190	33.7	E-Felony	31	5.5
Drugs	232	41.1	Subtotal Felony	90	16.0
Sex	7	1.2	A-Misdemeanor	414	73.4
Fraud	39	6.9	B-Misdemeanor	57	10.1
Misconduct	48	8.5	U-Misdemeanor	1	0.2
Obstructing Justice	22	3.9	Subtotal Misdemeanor	472	83.7
Other	15	2.7	Other	2	0.4
Total	564	100.0	Total	564	100.0

Charge Composition at Criminal Court Arraignment

Because the DCP sentence only is available in misdemeanor cases, all of the cases with felony severity top arrest charges were prosecuted for less severe charges.⁶ Sometimes this resulted in cases being prosecuted for secondary arrest charges which were not necessarily in the same crime category as the top arrest charge. In other instances the arraignment charge was for a less severe offense within the same crime category. The table below shows the configuration of the prosecuted crime types by severity at Criminal Court

⁶ There were two cases with felony severity top arrest and arraignment charges, both of which were sentenced on an amended charge of misdemeanor severity, one at- and one post-arraignment.

arraignment for the DCP-sentenced cases. For the purposes of this display, only charges in the property, drug, fraud, and misconduct categories are shown separately, with all other crime types combined.

TOP PROSECUTED CRIME TYPE BY CHARGE SEVERITY AT CRIMINAL COURT ARRAIGNMENT FOR DCP-SENTENCED CASES								
CRIME TYPE	ARRAIGNMENT CHARGE SEVERITY							
	A-Misdemeanor		B-Misdemeanor		Lesser Severity or Unknown		Total*	
	N	%	N	%	N	%	N	%
Property	192	37.1	0	0.0	0	0.0	192	34.0
Drugs	191	36.9	28	73.7	0	0.0	219	38.8
Fraud	30	5.8	0	0.0	0	0.0	31	5.5
Misconduct	70	13.5	5	13.2	1	16.7	76	13.5
All other	19	3.7	5	13.2	0	0	24	4.3
Unknown	16	3.1	0	0.0	5	83.3	22	3.9
Total	518	100.0	38	100.0	6	100.0	564	100.0
	(91.8%)		(6.7%)		(1.1%)		(100.0%)	
*The total includes the amended charge severity for the two felony-prosecuted cases.								

At arraignment there were some modest shifts in the volume of cases among the categories. The most substantial difference between the distribution of top arrest and arraignment charges was the five percentage point increase in the volume of cases in the misconduct category, some of which was due to the reduction in the percentage of cases in the drug category. However, and unlike the two previous years, the shift in the charge composition between top arrest and arraignment charges did not include the property crime category having the greatest volume of arraigned cases.

As in the previous program years, over 90 percent of all the DCP-sentenced cases were arraigned on a charge of A-misdemeanor severity, the most severe misdemeanor classification. Because almost all arraignment convictions were to the same charge severity, and almost always the same charge, this table also describes with very few exceptions the charge and severity composition of the cases for which the DCP sentence was imposed.

Measuring Program Success: Retention

DCP offers an alternative to a traditional jail sentence. The program includes an accountability component through work activity at the program site, comparable to “community service,” a range of on-site services such as motivational videos and a drug-treatment readiness program, and referrals to additional services as part of a discharge plan. The ability to successfully provide this range of activities is dependent on program retention which requires defendants to complete the three days of the schedule without being held in a custodial setting on a continuous basis. Depending on the day of the week and time of day of the DCP-imposed sentence, defendants either are brought directly to the program to complete the first day, or are released from court and directed to report to the program on the next weekday. Therefore, the key measure of program success is the program’s completion rate.

Of the 564 DCP-sentenced cases, a total of 454 (80.5%) were reported to have successfully completed the program sentence. This success rate is very similar to the rates in the first and second program years—81.2 and 79.4 percent respectively. In the third program year, this includes two cases in which defendants successfully completed the program after being reinstated and given a second chance. In the table that follows, success and failure rates are shown overall and separately for the cases in which defendants appeared to meet the program’s eligibility criteria and for those in Spotlight-targeted cases.

The Spotlight category contains 208 cases that CJA identified as having been designated by DCJS as Spotlight program cases. Some of these cases may have appeared program eligible because court papers were not properly identified with the Spotlight program stamp, while in other instances the program sentence most likely was solicited or imposed even though CASES court staff correctly identified the cases as within the Spotlight exclusion. The reasons for program failure—either because the defendant failed to successfully complete all three program days, or did not appear at all—are shown at the bottom of the table.

SUCCESSFUL AND UNSUCCESSFUL PROGRAM COMPLETION BY ELIGIBILITY CRITERIA						
PROGRAM OUTCOME	Eligible		Spotlight		Total	
	N	%	N	%	N	%
Success	302	84.8	152	73.1	454	80.5
Failure	54	15.2	56	26.9	110	19.5
Total Cases*	356	(63.1)	208	(36.9)	564	100.0
Did Not Complete	24		30		54	
No Show	30		26		56	
*Percentages in parentheses are the percent of all sentenced cases, not within category percentages.						

Program eligible cases, which represented 63.1 percent of all DCP-sentenced cases, had an 84.8 percent successful completion rate. The successful completion rate was lower for the Spotlight-targeted cases (73.1%). These are the same patterns found in the first and second program years, with only small differences in the successful completion rates within the two categories.

As was noted in previous years' reports, it is not clear how much importance to attach to the lower success rate in Spotlight cases because they are such a small and not necessarily representative proportion of all such cases. During the twelve months of the third program year there were in total 8,128 Spotlight cases arraigned in the downtown Manhattan Criminal Court, so that the 208 DCP-sentenced Spotlight cases represent only a tiny percentage (2.6%) of such cases.

Time from Sentencing to Program Intake

Reporting on the number of days that it took from the time defendants were sentenced to the time that they appeared at the program for intake began in the second year report in order to permit an examination of the extent to which immediately beginning the program might influence the likelihood of successful completion. There are several considerations that may affect the length of time to intake including the hour of the day of sentencing, the day of the week of sentencing, holidays, and other factors that would prevent a person from

appearing for DCP intake on the same day as sentencing even if they would choose to begin the program immediately.

The table below depicts the days to intake by eligibility category for successful completion cases in the third program year. Overall, more than a quarter (26.1%) of successful completion cases involved participants who appeared for intake on the same day as sentencing. The largest proportion overall was for cases where there was one day from sentencing to intake (41.8%). This is very similar to the pattern found among successful cases in the second program year in which the greatest percentage of cases with successful completion began the program on the day after sentencing, with the second largest percentage on the day of sentencing.

DAYS TO INTAKE BY ELIGIBILITY CRITERIA FOR SUCCESSFUL CASES*						
Days to intake	Eligible		Spotlight		Total	
	N	%	N	%	N	%
0 days (sentence date)	78	25.9	40	26.5	118	26.1
1 day	126	41.9	63	41.7	189	41.8
2 days	34	11.3	13	8.6	47	10.4
3 days	38	12.6	20	13.2	57	12.8
4 days	14	4.7	9	6.0	23	5.1
5 or more days	11	3.7	6	4.0	17	3.8
Total	301	100.0	151	100.0	452	100.0
*Excludes the two reinstated cases that completed DCP successfully.						

However, in comparison with the second program year, the percentage of third-year cases in which successful defendants began the program on the sentencing day was slightly smaller overall and in both the eligible and Spotlight category cases. In addition, and unlike the previous year, the percentage of successful program defendants in the Spotlight category beginning the program on the following day was not greater than their counterparts in the eligible cases category.

Unsuccessful cases involve defendants who failed either because they did not complete the three days of the program or because they never showed up at all to DCP. As was seen on a previous table, 56 of the 110 unsuccessful cases (or slightly over half), had defendants who never showed up and therefore had no length of time to intake. The table below shows the distribution of days to

intake for the eligible and the Spotlight cases for the remaining 53 unsuccessful cases.

DAYS TO INTAKE BY ELIGIBILITY CRITERIA FOR UNSUCCESSFUL CASES THAT DID NOT COMPLETE THE PROGRAM*						
Days to intake	Eligible		Spotlight		Total	
	N	%	N	%	N	%
0 days (sentence date)	10	43.5	11	37.9	21	40.4
1 day	3	13.0	13	44.8	16	30.8
2 days	3	13.0	0	0.0	3	5.8
3 days	4	17.4	3	10.3	7	13.5
4 days	1	4.3	0	0.0	1	1.9
5 or more days	2	8.7	2	6.9	4	7.7
Total*	23	100.0	29	100.0	52	100.0
*Excludes one reinstated unsuccessful case.						

Compared to the successful cases, an overall higher proportion of the unsuccessful completion cases appeared for intake on the day of sentencing (40.4% versus 26.1%). Among the defendants who failed to complete the program there was very little difference between cases in the eligible and Spotlight categories in regard to beginning the program on the sentence date (43.5% versus 37.9%). Over another one-quarter (30.8%) of all unsuccessful cases involved defendants with one day between sentencing and DCP intake, but there was a substantial difference between the eligible and Spotlight categories (13.0% versus 44.8%). This is unlike the pattern among cases of unsuccessful defendants in the previous year in which almost the exact same proportion of unsuccessful eligible and Spotlight cases had defendants who appeared for intake on the day of sentencing, or one day later.

When defendants in successful and unsuccessful cases are compared, these data suggest that for those who at least start the program, success does not appear to depend on whether or not program intake commences immediately after sentencing. However, it is not possible to determine whether there would have been greater success among the defendants in the 'no show' cases had they at least experienced an introduction to the program on the day of sentencing.

The table that follows takes a somewhat different perspective by combining all the cases of defendants who began the program on the day of sentencing with those that did not (including the no shows). As displayed on the table below, of the 139 cases in which defendants began the program on the sentencing date, 84.9 percent successfully completed the program. In comparison, of the 422 cases in which defendants were scheduled to begin the program at a later date there was a lower successful completion rate (78.9).

SUCCESSFUL AND UNSUCCESSFUL CASES BY WHETHER PROGRAM COMMENCED ON DAY OF SENTENCING						
Days to intake	Successful*		Unsuccessful**		Total	
	N	%	N	%	N	%
0 days (sentence date)	118	84.9	21	15.1	139	100.0
1 or more days, or no show	334	78.9	88	21.1	422	100.0
Total	452	89.7	109	10.3	561	100.0
*Excludes the two reinstated case with successful completion.						
**Excludes one unsuccessful reinstatement.						

Setting Jail Lengths for Program Failure

In the course of program planning the expected jail sentence length to be imposed for program failure was 10 days, and the 10-day jail alternative length is pre-printed on the courtroom program commitment form. However, judges are not bound by this and can choose to set any statutory permissible alternative up to the maximum 365 days for conviction to a crime of A-misdemeanor severity. In examining information about sentencing practices after the first program year, CJA identified some implementation issues in regard to the recording of the program sentence and the alternative jail sentence length by various court personnel.

First, not all courtroom personnel understood that the Day Custody Program required marking on the court calendar (docket) page the sentence as intermittent imprisonment; that the jail length to be recorded was an alternative to the three program days and not a sentence of three days; and, that attention needed to be paid to whether judges were imposing something other than the expected 10 jail alternative days. Second, court personnel entering the courtroom data into the Office of Court Administration's (OCA) computerized

database (CRIMS) did not always correctly input the program's sentencing information from the calendar entries.

There are a variety of consequences when the Day Custody Program sentence is not correctly recorded by the court system. The OCA computerized data is the information reported to the New York State Division of Criminal Justice Services (DCJS), which maintains the statewide criminal history (rap sheet) information system. In addition, it also is the source of the information that is electronically transferred and incorporated into CJA's main computer database. Further, the incorrect computerized court information could affect the sanction imposed if defendants are returned on a warrant issued in program-failure cases.

To assist CJA to better monitor these issues, beginning in the second program year CJA requested that CASES' courtroom staff record the judicially-imposed alternative jail sentence length. This also was designed as a mechanism for assisting CASES in determining the extent to which the court's personnel were more frequently recording the DCP program sentence correctly. We further requested that CASES courtroom staff attempt to record the District Attorney's sentence length offer in the case to examine the extent to which DA offers might be influencing judicial decisions to impose jail sentence lengths other than 10 days.

In the second program year we found that OCA reported 10-day jail alternatives in approximately 90 percent of the program-sentenced cases. In comparison, CASES reported that a 10-day jail alternative occurred in only 63 percent of the cases with the remainder having alternative sentences greater than 10 days. We also found that the longer than 10-day sentences reported by CASES' more often were associated with cases in which the DA was seeking a longer jail sentence.

As a result of our second year findings CASES program staff again brought the issue of improper recording of DCP sentences to the attention of court personnel. For the third year's DCP-sentenced cases we compared the consistency between the information in the OCA/CRIMS computerized database

with the sentence lengths reported by CASES' courtroom staff. Our research found even greater discrepancies than in the previous year, as shown on the table below, when comparing the sentence length recorded by CASES courtroom personnel with the alternative sentences reported in the court's computerized database. Once again, according to the court's data over 90 percent of all DCP-sentenced cases had a 10-day jail alternative (524 out of the total of 564 program-sentenced cases). However, and in comparison, according to the CASES' reported data less than half (253 cases) of all DCP-sentenced cases received a 10-day jail alternative, with all but one of the remaining receiving a longer jail alternative.

CASES AND COURT REPORTING OF DCP JAIL ALTERNATIVE LENGTHS							
CASES' Reported Jail Alternative Sentence	Court (OCA-CRIMS) Reported Jail Alternative Sentence						
	Less than 10 days	10 days	15-30 days	45-60 days	90-180 days	365 days	Total
Less than 10 days	0	1	0	0	0	0	1
10 days	3	253	1	0	0	0	257
15-30 days	3	151	24	0	0	0	178
40-60 days	0	75	0	6	0	0	81
90-180 days	0	28	0	0	1	0	29
270 days	0	3	0	0	0	0	3
365 days	0	13	0	0	0	2	15
Total	6	524	25	6	1	2	564

In exploring possible explanations for the use of longer than 10-day jail alternatives we examined the extent to which the use of greater than 10-day jail alternatives was associated with Spotlight-targeted cases in comparison with program-eligible cases. As the table that follows indicates, it does not appear that Spotlight cases systematically received a harsher alternative jail sentence than non-Spotlight cases.⁷ The percentage of Spotlight cases with greater than a 10-day jail alternative sentence (57.2%) is only slightly larger in comparison with the eligible cases category (54.3%).

⁷ After the end of the study period, the City agreed to relax somewhat the prohibition on Spotlight cases providing that the program advocate for a 30-day jail alternative in these cases.

CASES' RECORDED ALTERNATIVE JAIL SENTENCE LENGTH BY ELIGIBILITY CRITERIA FOR PROGRAM-SENTENCED CASES								
CASES Alternative Jail Sentence	All Sentenced Cases		Eligible		Spotlight		Insufficient Priors	
	N	%	N	N	N	%	N	%
10 days	258	45.7	169	47.5	89	42.8	0	0.0
More than 10 days	306	54.3	187	52.5	119	57.2	0	0.0
Total	564	100.0	356	100.0	208	100.0	0	0.0

We also did not find that longer jail alternatives were associated with DA jail offers for arraignment conviction guilty pleas (data not shown).

We did find some relationship between alternative jail sentence lengths and the type of prosecuted charge at Criminal Court arraignment. Approximately two-thirds of all cases with a longer than 10-day jail sentences were prosecuted for a property-category charge although this crime category's cases (almost all with a petit larceny charge) constituted only somewhat over a third of DCP-sentenced cases.

Most DCP cases are sentenced in weekday court sessions—both day and evening—which normally are presided over by judges regularly assigned to the downtown Manhattan Criminal Court. On weekends, when only arraignment courts are in session, judges drawn from other courts each preside several times in a calendar year. In the third program year, 466 (79.1%) of all program sentences were imposed on a weekday, with the remaining 118 (20.9%) being program-sentenced at a weekend arraignment. Of the 306 program cases with a longer than 10-day alternative sentence 254 (83%) received the sentence on a weekday (data not shown). The CJA database does not contain the identity of judges. As a result it is not possible to determine the extent to which the longer alternative jail lengths are concentrated among particular judges, or represent a more widespread pattern.

Of greater import is whether or not longer jail alternative sentences may be having an impact on successful completion rates. As previously discussed, the overall successful completion rate of approximately 80 percent, and the relative successful completion rates for defendants in program-eligible and Spotlight

These data suggest a substantial change in the sentencing practices for DCP-sentenced cases in the third program year. According to CASES' provided information, a majority of third-year DCP-sentenced cases received an alternative sentence greater than the 10 days expected in the program's design. In the second program year the percentage with more than 10-day sentences was less than two-fifths of the program-sentenced cases. Unfortunately, there is no clear explanation for this phenomenon that emerges from the analysis of the data. In addition, because neither the CJA database nor the data we receive from CASES contains the identity of the sentencing judge, we cannot determine the extent to which the pattern of longer than 10-day jail alternatives is concentrated among a small number of judges or reflect a more broad consensus among the judiciary about the appropriate penalty for program failure based on defendant and/or case characteristics.

Penalties for Program Failure

There were a total of 110 cases in which defendants were unsuccessfully terminated from the program, and for most of these cases a warrant was issued when the failure to successfully complete the program was reported to the court on the scheduled compliance date. As of May 15, 2009, defendants in 94 (85.4%) of these cases had been brought back to court and received a new disposition on the DCP-sentenced case. This is a somewhat smaller percentage than in the first program year (91.3%) and almost identical to the second program year (85.3%), but the cut-off period in the previous program years' studies was slightly longer. As such the data are not entirely comparable.

As shown in the next table, of the 16 unsuccessfully terminated cases without a court return for the program failure, eight continued to show the outstanding warrant as of May 15th, and there was no record in the CJA database of these defendants having been returned to court on the DCP case, either solely on the warrant, or as a result of a new arrest. The other eight cases, shown in the "other status" category, are ones where the judge decided to satisfy the requirements of the DCP sentence by entering a "Community Service Completed" or "Execution of Sentence" disposition even though the program

records showed that the defendants had not successfully completed the program.

STATUS OF UNSUCCESSFUL DCP-SENTENCED CASES AS OF MAY 15, 2009		
Case Status	N	%
Re-sentenced	94	85.4
Dismissed	0	0.0
Outstanding Bench Warrant	8	7.3
Other Status	8	7.3
Total	110	100.0

The DCP program was designed with an expectation of a ten-day jail sentence as the penalty for defendants who failed to complete the three days of program activity. However, as previously discussed, CASES frequently reported a different alternative jail-sentence length which complicates assessing the extent to which the penalty imposed for re-arrest matches the original plea agreement. In addition, judges are independent decision makers and the judge at re-sentencing would not necessarily have been the same judge who imposed the original jail alternative condition. Because the CJA database does not contain the identity of judges it is not possible to determine the extent to which different judges imposed the re-sentence. Further, at re-sentencing judges would need to have the original court papers or program commitment form to know the original jail alternative set in the case because the court's computerized information, which also informs the rap sheet, most likely would be in error.

In total, of the 94 cases that were re-sentenced, 91 received an imprisonment sentence (96.8%). The remaining three cases were re-sentenced to a conditional discharge, two of which also included a condition of community service.

TYPE OF RE-SENTENCE IMPOSED IN UNSUCCESSFUL CASES		
Type of Re-sentence	N	%
Imprisonment	91	96.8
Conditional Discharge	3	3.2
Total	94	100.0

Another issue in examining the penalty imposed for program failure is that in a number of cases the re-sentence in the DCP case occurred after a new arrest, sometimes independently of sentencing in the new case and sometimes concurrently. This further complicates determining the consequences of program failure on defendants because the penalty imposed at re-sentencing in the DCP case may not fully reflect other actions being taken at the same time against the defendant. To distinguish among the circumstances of re-sentencing we have divided the cases into three categories: those in which the re-sentencing occurred without an intervening new arrest; those in which a new arrest occurred but the re-sentence in the DCP case occurred independent of the disposition in the new case; and those in which the DCP-re-sentence and the disposition in the new case occurred concurrently. Of the 94 re-sentenced cases 23 had defendants returned on the DCP warrant without a new prosecuted arrest. There were 71 cases in which at least one re-arrest occurred before (or on the day of) the re-sentence on the original DCP case, 29 which were re-sentenced independent of the disposition on the new arrest and 42 with a concurrent outcome.

Of the remaining 23 cases in which the defendant was returned on the DCP case warrant without a new prosecuted arrest, eight cases (34.8%) received a 10-day re-sentence, as shown in the first column of the table that follows. Among the other 15 cases, one received a 3-day jail re-sentence, one a 7-day, two a 15-day, two a 20-day, two a 30-day, three a 60-day, and one a 180-day re-sentence; of the three remaining cases, one was satisfied with time served and two cases received a conditional discharge sentence which included a community-service requirement.

The re-sentencing in the DCP case appeared to have occurred independently from the re-arrest case in 29 cases. In 19 of these cases (65.5%) the defendants received jail sentences of ten or more days on the re-sentence. Of these 19 re-sentenced cases, as shown in the middle column: 12 received a 10-day sentence, one 15 days, two 20 days, four 30 days, and one was re-sentenced to 45 days. In the nine remaining cases with a re-sentence

independent of the sentence on the re-arrest case, 8 defendants received a time-served sentence, and one was re-sentenced to a conditional discharge.

Finally, there were 42 cases in which the re-sentence on the DCP case occurred concurrently with the disposition on the re-arrest case. In eight of these cases the DCP re-sentence was for time served, but each received a jail sentence on the concurrent case. One of the eight concurrent cases received a 7-day sentence, two had 20-day sentences, one a 25-day sentence, two a 30-day sentence, one a 60-day sentence, and one a 90-day sentence on the concurrent case. In the remaining 34 cases re-sentenced concurrently with a re-arrest case: one received a 5-day sentence, 14 received 10-day re-sentences, three received a 15-day re-sentence, 6 received a 20-day re-sentence, six received a 30-day re-sentence, two received a 60-day re-sentence, one a 90-day re-sentence, and one a 180-day re-sentence. It should be noted that in three of these cases the re-arrest case was dismissed when the DCP-sentenced case was re-sentenced.

JAIL SENTENCES IMPOSED AT RE-SENTENCING ON DCP CASE BY CIRCUMSTANCE OF CASE AT RE-SENTENCING				
Jail Length (in days)	No New Arrest	Independent of New Arrest	*Concurrent with New Arrest	Total
Time Served	1	8	8	17
3 days	1	0	0	1
5	0	0	1	1
7	1	0	0	1
Subtotal Less Than 10 Days	3	8	9	20
10 Days	8	12	14	34
15	2	1	3	6
20	2	2	6	10
25	0	0	0	0
30	2	4	6	12
45	0	1	0	1
60	3	0	2	5
90	0	0	1	1
180	1	0	1	2
Subtotal More Than 10 Days	10	8	19	37
Total Jail	21	28	42	91
Conditional Discharge	2	1	0	3
Total	23	29	42	94
* Does not always reflect the sentence imposed concurrently on the re-arrest case.				

Overall, as illustrated in the table below, over a fifth (22%) of the re-sentenced cases received a new sentence of fewer than 10 days, including time-served sentences, more than a third (37.4%) of the re-sentenced jail cases received a 10-day jail sentence, and over two-fifths (40.6%) more than 10 days. This percentage of re-sentenced cases with jail sentences greater than 10 days is substantially larger than in the previous program year, when only 22.6 percent received a re-sentence greater than 10 days. However, the percentage of cases with a jail alternative set at greater than 10 days also was larger than in the previous year. In total, nearly eighty percent of all of the re-sentences with imprisonment received a jail sentence of ten or more days, when the 10-day and more than 10-day categories are combined.

LENGTH OF JAIL TIME (in days) FOR RE-SENTENCES OF IMPRISONMENT		
Length of Jail Sentence	N	%
Time Served	17	18.7
3 Days	1	1.1
5	1	1.1
7	1	1.1
Subtotal Less Than 10 Days	20	22.0
10 Days	34	37.4
15 days	6	6.6
20	10	11.0
30	12	13.1
45	1	1.1
60	5	5.5
90	1	1.1
180	2	2.2
Subtotal More Than 10 Days	37	40.6
Total	91	100.0

As best as can be determined, among jail re-sentenced cases the re-sentence imposed matched the jail alternative originally set as the penalty for failure in 37 of the 91 cases (40.7%), but this does not take into account all of the confounding factors such as different judges or re-arrests (data not shown). What can be inferred from the data is that when returned to court for program failure, almost all defendants were held accountable by the imposition of a jail

sentence, and the overwhelming majority of those jail sentences were for at least 10 days, and in over two-fifths of the cases more than 10 days.

Administering the Brief Jail Mental Health Screen

With the introduction of the Transitional Case Management (TCM) program as a voluntary extension of DCP for seriously mentally ill defendants, CASES court staff began to administer the Brief Jail Mental Health Screen (BJMHS) as part of its interview process with prospective DCP clients prior to the start of the third DCP program year. The BJMHS was developed through the National GAINS Center under the umbrella of the U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA). It is a simple screening device designed to be used by non-mental health professions as a tool to identify individuals in the criminal justice system that should be referred for a clinical assessment of serious mental illness.⁸ As such, BJMHS is merely an initial screening tool with an expected likelihood of false positives—flagging persons who subsequently will be found not to be seriously mentally ill, and false negatives—not flagging the mentally ill, a particular problem among women offenders.

Of the 564 program-sentenced cases, there were a total of 174 cases (30.9%) in which defendants were flagged as in need of further assessment by the BJMHS, and a handful of cases in which defendants were identified through other means for further screening.

From the data provided by CASES it does appear that there was a somewhat greater likelihood that defendants in Spotlight-targeted cases were flagged by the BJMHS as shown in the table below. However, because defendants in Spotlight cases have a lower successful completion rate, in some number of these cases there would have been no opportunity for a clinical assessment to have taken place.

⁸ BJMHS originally was created as a tool for corrections personnel, and validated in correctional settings.

BJMHS SCREENING OF DEFENDANTS IN ALL DCP-SENTENCED CASES						
Flagged as needing clinical assessment	Non-Spotlight		Spotlight		Total	
	N	%	N	%	N	%
Flagged Yes on BJMHS	100	28.1	74	35.6	174	30.9
Flagged No on BJMHS	251	70.5	131	63.0	382	67.7
Flagged by Other Means	5	1.4	3	1.4	8	1.4
Total	356	100.0	208	100.0	564	100.0

The table below shows the results of the BJMHS screening only for the cases of the third-year's *successful* program clients. In this illustration the differences between defendants in the non-Spotlight and Spotlight cases narrows somewhat.

BJMHS SCREENING OF DEFENDANTS IN SUCCESSFUL DCP-SENTENCED CASES						
Flagged as needing clinical assessment	Non-Spotlight		Spotlight		Total	
	N	%	N	%	N	%
Flagged Yes on BJMHS	89	29.5	52	34.2	141	31.1
Flagged No on BJMHS	210	69.5	99	65.1	309	68.1
Flagged by Other Means	3	1.0	1	0.7	4	.9
Total	302	100.0	152	100.0	454	100.1

A clinical assessment of defendants was conducted in approximately 90 percent of the BJMHS-flagged successful program cases. In many of these cases no mental illness sufficient to warrant consideration for the TCM program was found, although there were some personality disorders among the cases of defendants diagnosed as not seriously mentally ill. In numerous instances the clinical assessment found substance abuse to be a far more prevalent and evident condition. Among the small percentage of cases in which defendants were found to be seriously mentally ill, only a subset of less than two dozen went on to admission into the TCM program, discussed in greater detail in the latter part of this report.

CHAPTER III: RECIDIVISM AMONG PROGRAM-SENTENCED DEFENDANTS

This portion of the report addresses various aspects of recidivism. It is divided into several sections, moving from a more general overview of re-arrests among third-year program-sentenced defendants to a more focused analysis of recidivism among successful program clients. Throughout, recidivism is examined based on *defendant* behavior. When the same defendant's NYSID number appeared more than once in any study period the earliest case was examined. This maximized the ability to track re-arrests forward within the study period. In addition, in most instances recidivism is discussed and illustrated not only for all defendants, but also by defendants' program-eligibility status in the DCP-sentenced case, either program eligible or Spotlight.

Where data were available and applicable, comparisons are provided with defendants in program-sentenced cases in the two previous program years, and with a pre-program comparison group of defendants in cases with comparable characteristics to program-sentenced cases from calendar year 2004.

For the purpose of CJA studies of the Day Custody Program, recidivism for defendants in DCP-sentenced cases has been defined as new prosecuted (docketed) arrests within five months of the scheduled compliance date. The five month interval for each defendant in DCP-sentenced cases is used because it is the longest possible period to track new arrests in order to create the recidivism data sets within the time frame for completing each year's DCP study report.

Every DCP-sentenced case is scheduled for a compliance hearing approximately fifteen days after sentencing, at which time CASES' program staff report to the court whether or not the defendant has successfully completed the program. If defendants were arrested during the interval between the DCP-sentencing and compliance dates these arrests were not included in our definition of recidivism, but new arrests that occurred on the compliance date were included. In a few instances DCP-sentenced defendants were given a second chance to complete the program. When this occurred the compliance date of the reinstatement was used in the analysis.

To create the pre-program data set, cases prosecuted on misdemeanor charges in the downtown Manhattan Criminal Court in calendar year 2004 were extracted from the CJA database. For the purposes of creating a pool of cases from this pre-program period with characteristics most similar to those likely to be targeted by, or receive, a DCP sentence, we began by further selecting from the Downtown Manhattan cases in calendar year 2004 cases in which defendants were held for Criminal Court arraignment, were prosecuted on an A- or B-misdemeanor severity charge or a charge outside the Penal or Vehicle and Traffic Laws of unknown severity, were disposed by a guilty plea at Criminal Court arraignment, and had a jail sentence imposed of at least three days. The selection criteria excluded all non-jail sentenced cases. In addition, the minimum jail sentence length of at least three days was used to eliminate not only actual time-served sentences but also any sentence that would automatically be the equivalent of time served when imposed for a conviction at Criminal Court arraignment.

We further examined case characteristics and excluded all in which defendants had no prior adult court criminal convictions, dividing those remained into groups based on criminal histories. The first consisted of non-Spotlight cases in which defendants interviewed by CJA had a minimum of three prior convictions. This is the eligible program status category, and a majority of DCP-sentenced cases met these criteria in each program year. The second group was Spotlight cases, included for comparison purposes because, although CASES does not actively recruit defendants from this population, about a third of all DCP-sentenced cases have come either by solicitation to CASES from other courtroom participants, or because court papers have not been properly marked as Spotlight-designated cases. There was a third group of non-Spotlight cases in which defendants had prior convictions, but not necessarily three of misdemeanor severity. This category was included because there were small numbers of defendants outside the program's parameters that did receive DCP sentences in the first two program years. However, because all defendants in third-year program-sentenced cases had at least three prior misdemeanor

convictions this category is not applicable to an analysis of third program-year defendants.

For defendants in the pre-program period cases recidivism was defined as a new prosecuted arrest within five months of jail release. For each of the pre-program cases in calendar year 2004 meeting the selection criteria we computed an estimated jail release date. We took the length of the jail sentence imposed at Criminal Court arraignment, uniformly converted into days, subtracted one day's time to account for arrest-to-arraignment detention, and then multiplied the remaining time by .6666 to account for one day's good-time credit for each three days of the remaining jail sentence, rounded to the nearest full number of days. We added the resulting computed time to the arraignment date to determine the start date from which to search for new prosecuted arrests five months forward for each case.

Based on the pre-program data, the program's target population was expected to have a high rate of recidivism, somewhat smaller among defendants in the eligible category of cases and somewhat greater among defendants in Spotlight-designated cases. As shown on the table that follows, over half of the defendants in the pre-program cases in the eligible category, and in the Spotlight category over two-thirds of the defendants, were re-arrested within five months of jail release. Although the overall charge composition and defendant characteristics are not identical to those in each program year, these data set a baseline from which to examine general re-arrest patterns among defendants in program-sentenced cases.

RE-ARRESTS AMONG DEFENDANTS IN THE PRE-PROGRAM CASES			
PROGRAM-EQUIVALENT ELIGIBILITY STATUS	Number of Defendants	Number of Re-Arrested Defendants	Percent Re-arrested
Eligible	2,002	1,070	53.2
Spotlight	1,596	1,106	69.3

Prevalence of Recidivism Among All Year-Three Program-Sentenced Defendants

The next table shows the prevalence of at least one docketed re-arrest for the 548 third program year's sentenced defendants within five months of the scheduled compliance date of the first (or only) DCP-sentenced case. The "number of defendants" column shows how the 548 third-year defendants were distributed between the two program status categories. The next column shows the number of defendants in each category, followed by a column showing the number of defendants with one or more docketed re-arrests following the compliance date of the first DCP-sentenced case. The final column shows the percent re-arrested (which is the number of re-arrested defendants divided by the number of defendants). For example, among all 548 third-year program-sentenced defendants, a total of 311 were re-arrested within five months of the compliance date of the first (or only) DCP-sentenced case, for a 56.8 percent overall re-arrest rate. Among the 348 defendants who met the program's eligibility criteria the re-arrest rate was 47.4 percent in comparison with a 73.0 percent re-arrest rate for the DCP-sentenced defendants from the Spotlight category.

RECIDIVISM AMONG THIRD-YEAR DCP-SENTENCED DEFENDANTS			
PROGRAM-ELIGIBILITY STATUS	Number of Defendants	Number Re-Arrested	Percent Re-arrested
Eligible	348	165	47.4
Spotlight	200	146	73.0
Total	548	311	56.8

In the eligible category the re-arrest rate for defendants in third-year program-sentenced cases was smaller than in the baseline pre-program period shown previously (53.2%). In addition, the re-arrest rate in the third year's eligible category was almost identical with that of the defendants in the second program year (47.7%), and was smaller than in the first program year (54.2%) (data not shown). For defendants in the Spotlight category, the re-arrest rate (73.0%) was greater than in the pre-program period (69.3%). It also was greater

than was found in the second program year (61.4%), and slightly greater than in the first program year (71.1%).

The overall re-arrest rate (56.8%) in the third program year is not comparable with prior years or to the pre-program period because the total re-arrest rates for each included a small number of cases of defendants with insufficient prior misdemeanor convictions to meet the program's criteria.

The next table compares the prevalence of recidivism within five months of the first DCP-sentenced case separately for successful and for unsuccessful defendants—those who either failed to attend or who began but did not successfully complete their DCP-program sentence—overall and by their program eligibility status at the time they were given their first DCP-sentence. It shows that there was a lower re-arrest rate among the defendants in the eligible and Spotlight categories who successfully completed the program in comparison with unsuccessful defendants, although the percentages differed. *However, the far smaller re-arrest rates of successful program participants cannot necessarily be attributed to the Day Custody Program, but may be due to other differences in defendant and case characteristics.*

RECIDIVISM AMONG SUCCESSFUL AND UNSUCCESSFUL DCP-SENTENCED DEFENDANTS						
PROGRAM STATUS AT SENTENCING	SUCCESSFUL			UNSUCCESSFUL		
	Number of Defendants	Number Re-arrested	Percent Re-arrested	Number of Defendants	Number Re-arrested	Percent Re-arrested
Eligible	294	129	43.9	54	36	66.7
Spotlight	144	100	69.4	56	46	82.1
Total	438	229	52.3	110	82	74.5

Among both the successful eligible and Spotlight defendants the re-arrest rates in the third program year were lower than in previous years. For successful defendants in the eligible category the re-arrest rate was 45.1 percent in the second program year and 52.2 percent in the first program year, in comparison with 43.9 percent in the current study period. The re-arrest rate among successful third year Spotlight defendants was 57.6 percent in the second, and 73.5 percent in the first, program year (data not shown).

Among unsuccessful defendants in the eligible category the third year's re-arrest rate (66.7%) was larger than in the second program year (61.7%) and more similar with the first program year (67.5%). Among unsuccessful defendants in the Spotlight category, the third-year's re-arrest rate (82.1%) was greater than in either of the previous two program years (70.6% and 78.2% respectively).

Comparing Successful Program Defendants with Matched Pre-Program Comparison Groups

The previous section examined the prevalence of re-arrests of all DCP-sentenced defendants in comparison with defendants prosecuted in the downtown Manhattan Criminal Court with similar characteristics to the DCP-sentenced population during a pre-program period, and with DCP-sentenced defendants in the two prior program years. In this section the analysis is restricted to successful program clients, examines additional aspects of recidivism, and uses more closely matched pre-program groups of defendants for comparative purposes.

Measuring Recidivism Between Successful and Matched Pre-Program Comparison Group Defendants

The analysis examines the prevalence of re-arrests, and for successful program clients with re-arrests the time to, and frequency of, re-arrests in comparison with matched groups of defendants and cases from the pre-program period within program eligibility categories. The goal is to gauge whether, on these three measures of recidivism, there were differences between successful program defendants (the treatment group) in comparison with pre-program defendants and cases sharing comparable characteristics but without the program's intervention (the control group).

As was done in the previous section of this report, we use the same calendar year 2004 cases to create pre-program comparison groups. However, we refined our analysis to create matched comparison groups, within program eligibility status categories, using selected case, defendant and criminal history characteristics. This was done in part because the general case and defendant

characteristics in calendar year 2004 that met our selection criteria were not identical to the characteristics of successful DCP-sentenced cases and defendants in the third program year's cases.

Using these matched comparison groups permits us to test whether there were any differences in the various facets of recidivism examined between successful DCP defendants with matched groups of pre-program defendants and cases with comparable characteristics. In addition, to further eliminate bias we matched only on the first case, by earliest arrest date, for pre-program and successful DCP-sentenced defendants. We were able to match the successful program defendants with the calendar year 2004 case and defendant characteristics in all but nine cases, three in the eligible category and six in the Spotlight category.

For all of the analyses that follow, re-arrest for defendants in the pre-program matched comparison groups again was measured within five months of the jail release date, and for successful DCP defendants within five months of the court compliance date for the first program-sentenced case. The goal was to measure re-arrest after successful program completion so that for DCP defendants this therefore excluded any new arrest that might have occurred between the time of sentencing and the compliance date, which could have been before, during or immediately after, successful program completion, but prior to the compliance date. Although it would have been preferable to use the actual program completion date this was not an item that was monitored by CJA and therefore was not part of the data requested from CASES. However, because there is such a small window from sentencing to the compliance date, and the interval between program completion and the compliance date would be extremely short, this would at most have only a very slight effect for a very few cases.

In addition to descriptive comparisons in text and tables, different types of tests of statistical significance were performed when differences were found, as appropriate to the nature of the measurement. For determining if differences in re-arrest rates were statistically significant we used a Chi Square test. In this

The re-arrest rates for successful program-sentenced defendants were lower in each category than the re-arrest rates found among matched comparison groups of both first and second year defendants. In addition, in the previous program year we found that in matched comparison groups only the lower re-arrest rate among defendants in the eligible, but not the Spotlight, category was statistically significant, and there were no statistically significant differences between matched defendants in these two program categories in the first program year (data not shown).

Time to First Re-Arrest Between Successful DCP-Sentenced and Matched Comparison Group Defendants

In addition to measuring the prevalence of re-arrests between successful recidivist program-sentenced defendants and their matched comparison group counterparts within eligibility categories, the time to the first re-arrest within the five-month study interval also was measured. Time was computed in days from the compliance date, or from the projected jail release date for defendants in the matched comparison groups, and then the mean and medians of these times was compared. The T-Test was then used to determine if the differences in the mean time to the first re-arrests were statistically significant within categories.

As shown in the table that follows, within each program status category defendants in successful program cases had longer average (mean) times to the first re-arrest than did their counterparts in the pre-program period, and the differences in each category were statistically significant. For example for re-arrested successful program defendants in the eligible category the mean time to a first re-arrest was 59.0 days in comparison to 47.7 days for defendants in the matched pre-program eligible category.

TIME (In Days) TO FIRST RE-ARREST FOR THIRD-YEAR DCP-SUCCESSFUL DEFENDANTS AND MATCHED COMPARISON GROUP DEFENDANTS						
PROGRAM-ELIGIBILITY STATUS	Defendants in Third-Year Successful Program Cases			Defendants in Pre-Program Matched Comparison Cases		
	N of Re-arrested Defendants	Mean Time	Median Time	N of Re-arrested Defendants	Mean Time	Median Time
*Eligible	128	59.0	58.0	232	47.7	37.0
**Spotlight	96	56.2	43.0	120	37.2	25.0
*Statistically significant (p=.015)						
**Statistically significant (p=.001)						

In the previous program year a longer mean time to re-arrest for successful program defendants in the matched eligible category was statistically significant, but not a longer mean time to re-arrest among matched Spotlight defendants. In the first program year, although there were longer mean times to a first re-arrest for successful program-sentenced defendants in comparison with their respective pre-program counterparts, the differences were not statistically significant for defendants in either the eligible or Spotlight categories.

Frequency of Re-arrests Between Successful DCP-Sentenced and Matched Comparison Group Defendants

The next table shows the results of comparing the average number of re-arrests, within the five-month interval studied, among re-arrested defendants in the successful and matched pre-program comparison groups within the eligible and Spotlight categories in each of the two program years. For both categories the difference in the mean numbers of arrests between successful but re-arrested program clients was statistically significant.

FREQUENCY OF RE-ARRESTS FOR THIRD-YEAR DCP-SUCCESSFUL DEFENDANTS AND MATCHED COMPARISON GROUP DEFENDANTS						
PROGRAM-ELIGIBILITY STATUS	Defendants in First-Year Successful Program Cases			Defendants in Pre-Program Matched Cases		
	N of Re-arrested Defendants	Mean Number of Re-arrests	Median Number of Re-arrests	N of Re-arrested Defendants	Mean Number of Re-arrests	Median Number of Re-arrests
*Eligible	128	1.51	1.0	232	2.00	2.0
**Spotlight	96	1.90	2.0	120	2.38	2.0
*Statistically significant (p=.000)						
**Statistically significant (p=.003)						

In the two previous program years the mean number of re-arrests for successful program clients was smaller than for the matched pre-program defendants in both the eligible and Spotlight categories. However, the differences were smaller than found in the third program year and none were statistically significant.

This section of the report has attempted to examine whether successful program completion had an effect on recidivism within five months of the program compliance date. Recidivism was measured in terms of the prevalence, time to, and frequency of new prosecuted arrests, using matched comparison defendants from the pre-program calendar year 2004 period. The lower rates of recidivism among successful program clients within a five-month post-program interval, in comparison with matched pre-program defendants within five months of jail release, in both the eligible and Spotlight categories, were found to be statistically significant. In addition, if re-arrested, the longer times to re-arrest, and fewer average numbers of re-arrest among successful program clients, in comparison to matched pre-program defendants, also were found to be statistically significant.

In comparing third year successful program clients with their matched counterparts there were more statistically significant findings than were found in matched comparison group analyses of defendants in the two prior program years. However, there is nothing in these data that can help inform what aspects of the program may be affecting the lower rate, longer average times, and

numbers of re-arrests. For example, it may be that the change in case composition, with its greater proportion of defendants prosecuted for drug crime, results in defendants better suited for the program's intervention. In addition, because we only examined new prosecuted re-arrests within a five month interval, there is no way of anticipating whether there would be any longer term impact on recidivism among successful program clients.

CHAPTER IV: THIRD YEAR DAY CUSTODY REJECTED CASES

Unlike the previous sections that examined program-sentenced cases, this chapter examines cases that were screened but not program sentenced. In the third program year 4,260 cases were screened and rejected for placement in DCP, more than a thousand cases greater than in each of the two previous program years. Among these are five cases rejected for DCP at the Criminal Court arraignment appearance but which received a program sentence at a subsequent post-arraignment court appearance in the case.⁹

After verifying Spotlight-identified cases, the screened pool of rejected cases included a total of 2,019 Spotlight-targeted cases of which 1,448 were rejected because of this exclusionary category and 571 were rejected for other reasons. The other 2,241 were rejected non-Spotlight cases. There were a total of 3,510 unique defendant NYSID numbers found among the 4,260 rejected cases, 2,941 (83.8%) defendants had only one rejected case, 444 were screened for two rejected cases, 82 had three screened cases, 34 defendants had four screened cases, six defendants had five screened cases, two defendants had six screened cases, and one defendant was screened and rejected in seven separate cases over the course of the third program year.

Rejection Source and Reason

The table that follows presents the rejection reasons from the computerized screening data received monthly from CASES. The first stage of the screening process is undertaken by CASES DCP court representatives who identify the prospective pool of eligible cases and defendants. In a case that appears paper eligible, the court staff will seek the consent of the defense attorney to interview defendants. If such consent is given, the court representative usually will consult with the Assistant District Attorney (ADA) in regard to the sentence that will be requested on a plea offer. Defendants will not be pursued further if the ADA indicates that s/he is not requesting post-arraignment jail time. The DCP court

⁹ In two cases the DCP sentence occurred as the re-sentence in cases in which defendants failed to comply with the community service component of a conditional discharge. In the other three cases the DCP sentence was imposed at a post-arraignment court appearance.

representative will offer judges the alternative of a DCP sentence in cases with defendants that successfully pass the screening stages.

In the table that follows the first section shows the various reasons for rejection by DCP program staff. In some instances the program rejection would have been based on paper eligibility screening and other times only after interviewing the defendant. The DCP-program rejections are followed by rejections attributed to other courtroom participants. Most rejections attributed to ADAs occur because the prosecuting attorney is not requesting any jail time.

SOURCE AND REASON FOR PROGRAM REJECTION			
CASES' DCP PROGRAM REJECTIONS:	N	%	Overall %
Operation Spotlight	1,448	60.1	34.0
Parole	118	4.9	2.8
Homeless/ Insufficient Community Ties	98	4.2	2.3
History of Violent Crimes	137	5.7	3.2
Other DCP Screener Rejection Reasons	422	17.5	9.9
Probation	18	0.7	0.4
Active Hold	120	5.0	2.8
Heavy Substance Abuser	24	1.0	0.6
Lives Outside NYC	19	0.8	0.4
Mental Illness (CPL 730)	3	0.1	0.1
DCP Program Rejections	2,407	100.0	55.4
Defense Attorney	877	47.3	20.6
Judge	594	32.1	13.9
Assistant District Attorney (ADA)	347	18.7	8.1
Defendant Refuses to Accept Program	35	1.9	0.8
Other Rejection Sources	1,853	100.0	44.6
Total Screened But Rejected	4,260	100.0	100.0

For both the category of rejections by the DCP screeners, and for all rejections as a whole, Spotlight cases constituted the largest group of cases not pursued for program intake in the third program year: 60.1 percent of DCP program rejections, and 34.0 percent of all rejections overall. This pattern was found in the previous two years as well. Because Spotlight identification takes precedence over all other rejection reasons it is not possible to determine how

many of the defendants in these cases would otherwise have been eligible for further consideration.

Among all rejections, the second largest category was the defense attorneys (20.6%), who act as the gatekeepers for their defendants and whose permission is almost always required before DCP screeners may interview their clients. Most often defense attorneys will refuse to have their clients interviewed by DCP staff because they believe defendants will receive a jail sentence of time served or only several days, or a non-custodial sentence such as community service. On the other hand, there are situations where a defense attorney who has a client facing a short jail sentence may refer the client to DCP for screening. Judges were the third greatest source of program rejections, with 13.9 percent of all rejected cases.

The percent of cases rejected by CASES' court representatives because the defendant was homeless or had insufficient community ties (2.3%) was significantly smaller than in the second program year in which this had been the cause of 8.0 percent of rejections. However, the overall percentage of cases rejected for unspecified "Other DCP Screener Rejection Reasons" increased from 3.6 to 9.9 percent in the third year.

Characteristics of Defendants in DCP-Screened and Rejected Cases

The demographic age and sex characteristics of the defendants in the 4,261 rejected cases were similar to those in the DCP-sentenced cases. Most were male (87.6% rejected versus 84.2% sentenced) and over three-fifths were 40 years of age or older (63.2% versus 65.1%). The ethnic identification of majorities of defendants in both the rejected (64.5%) and sentenced (61.5%) cases were categorized as non-Hispanic Black. In addition, and as in the first two program years, most (59.9%) DCP-rejected defendants with known addresses had Manhattan zip codes.

CHARACTERISTICS OF DEFENDANTS IN DCP-REJECTED CASES					
SEX	N	%	ETHNICITY	N	%
Male	3,732	87.6	Black	2,579	64.5
Female	528	12.4	Hispanic	1,063	26.6
Total	4,260	100.0	White	309	7.7
			Other	48	1.2
			Total	3,999	100.0
			Unknown	261	--
AGE GROUP	N	%	ZIP CODE	N	%
16-19	17	0.4	Manhattan	1,859	59.9
20-24	233	5.5	Bronx	588	18.9
25-29	359	8.4	Brooklyn	401	12.9
30-34	364	8.5	Queens	139	4.5
35-39	592	13.9	Staten Island	21	0.7
40-44	867	20.3	Other New York	47	1.5
45-49	933	21.9	New Jersey	49	1.6
50+	895	21.0	Total	3,104	100.0
Total	4,260	100.0	Other/Unknown	1,156	--
Mean Age 41.74					

In a figure identical to the one produced in the second program year, defendants in 71.6 percent of rejected cases had prior criminal convictions for misdemeanor and felony crimes, a higher percentage than was found among sentenced cases (67.4%). Among rejected cases only fractional percentages had either no prior convictions (0.2%) or prior convictions only to crimes of felony severity (0.1%): In all program-sentenced cases defendants met the minimum three prior misdemeanor conviction criteria.

CRIMINAL HISTORY OF DEFENDANTS IN REJECTED CASES		
PRIOR CRIMINAL CONVICTIONS	N	%
No Priors	10	0.2
Misdemeanor Only	1,194	28.0
Felony Only	3	0.1
Both	3,051	71.6
Total	4,260	100.0

Between the cases of the rejected and program-sentenced defendants, there was very little difference in the percentages with more than the required minimum of three misdemeanor convictions. For defendants in the rejected cases with at least three prior misdemeanor convictions, 90.1 percent had more than the minimum of three. This was only slightly smaller than the 92.1 percent of cases of DCP-sentenced cases in which defendants had more than three prior misdemeanor convictions.

NUMBERS OF PRIOR MISDEMEANOR AND PRIOR FELONY CONVICTIONS					
Prior Misdemeanors	N	%	Prior Felonies	N	%
Less than 3	69	1.6	None	1,204	28.3
3-5	909	21.3	1	944	22.2
6-9	857	20.1	2	770	18.1
10-14	714	16.8	3	590	13.9
15-19	500	11.7	4	378	8.9
20-24	307	7.2	5	234	5.5
25-29	209	4.9	6	87	2.0
30-34	172	4.0	7	23	0.5
35-39	145	3.4	8	16	0.4
40-44	90	2.1	9	5	0.1
45 or more	286	6.7	10 or more	7	0.1
Total	4,258	100.0	Total	4,258	100.0
Missing	2		Missing	2	

The percentage of cases with prior felony convictions was slightly higher in rejected cases than in sentenced cases (71.7% and 67.4%). The mean number of felony convictions (2.6) was slightly higher for the rejected cases of defendants with prior felony convictions as well, compared to the sentenced cases of defendants with prior felony convictions (2.4). Among defendants in rejected cases the mean number of misdemeanor convictions (16.9) was only slightly greater than among those in DCP-sentenced cases (16.0). (Data not shown)

CJA Recommendation and Community Ties Characteristics

Only small proportions of defendants in both the rejected and sentenced cases were rated as being of low or moderate risk of FTA if released in a case continued at Criminal Court arraignment, and over three-quarters of defendants in both groups of cases were rated as being of high risk, (78.0% among rejected and 84.1% for sentenced cases).

CJA RELEASE RECOMMENDATION		
RECOMMENDATION CATEGORY	N	%
<i>Recommended:</i>		
Low Risk	52	1.3
Moderate Risk	87	2.2
<i>Not Recommended:</i>		
High Risk	3,104	78.0
Bench Warrant	317	8.0
Other Exclusionary Categories	25	0.6
<i>No Recommendation</i>	393	9.9
Total	3,978	100.0
Not Interviewed	282	--

Only a slightly smaller percentage of defendants in rejected cases reported being engaged full time in work, school and/or program activities in comparison to defendants in the DCP-sentenced cases (23.8% versus 25.4%). A much lower proportion of defendants in rejected cases reported living with someone (23.8%) when compared to defendants in DCP sentenced cases (48.2%). In addition, a somewhat smaller proportion of defendants in rejected cases expected someone to attend their arraignment court appearance compared to defendants in sentenced cases (13.0% versus 15.2%).

CJA COMMUNITY TIES INTERVIEW ITEMS		
INTERVIEW ITEM	N	%
Fulltime Employment/School:		
Yes/Yes Verified	854	23.8
No/No Verified	2,730	76.2
Total	3,584	100.0
Unresolved Conflict or N/A	676	

Lives With Others:		
Yes/Yes Verified	854	23.8
No/No Verified	2,730	76.2
Total	3,584	100.0
Unresolved Conflict or N/A	676	
Expects Someone at Arraignment:		
Yes	474	13.0
No	3,160	87.0
Total	3,634	100.0
Don't Know or N/A	626	

As in the second program year, responses to interview items relating to being engaged full time in work, school and/or program activities, and whether or not the defendant lives alone indicate that defendants in the sentenced cases had stronger community ties than those in the rejected cases.

Arrest Crime Types and Severities for Rejected Cases

Drug charges represented the largest CJA crime category of top arrest charges for cases in both the rejected and sentenced groups and produced an equal percentage (41.1%) of cases in both groups. The second largest category for both groups was property crime, mostly petit larceny charges, with the defendants in rejected cases having a much smaller proportion of top arrest charges in this crime category, (24.3% versus 33.7%). The third largest crime type category for both rejected and sentenced cases was fraud, almost all fare evasion (theft-of-service charge) or forgery, with a higher percentage for rejected cases (13.5% versus 6.9%).

A smaller percentage of top arrest charges for rejected cases were of felony severity (11.5%) than was found among the DCP-sentenced cases (16.0%). To at least some extent this was influenced by the large presence of Spotlight cases in the rejected group, because Spotlight targeting only occurs when the top arrest charge is of misdemeanor severity. This reduces the proportion of cases in the rejected group, prosecuted for misdemeanor crimes, which might originally have had felony top arrest charges. Conversely, the overall percentage of rejected cases with misdemeanor severity charges was greater than for sentenced cases (87.8% versus 83.7%).

MOST SEVERE ARREST CHARGE CHARACTERISTICS FOR REJECTED CASES					
TOP ARREST CHARGE CJA CRIME CATEGORY	N	%	TOP ARREST CHARGE SEVERITY	N	%
Harm to Persons	19	0.4	A-Felony	0	0.0
Harm to Person & Property	8	0.2	B-Felony	110	2.6
Weapon	49	1.2	C-Felony	21	0.5
Property	1,035	24.3	D-Felony	196	4.6
Drugs	1,751	41.1	E-Felony	162	3.8
Sex	9	0.2	Subtotal Felony	489	11.5
Fraud	575	13.5	A-Misdemeanor	3,170	74.4
Misconduct	519	12.2	B-Misdemeanor	524	12.3
Obstructing Justice	124	2.9	U-Misdemeanor	48	1.1
VTL	8	0.2	Subtotal Misdemeanor	3,742	87.8
Other	163	3.8	Other	29	0.7
Total	4,260	100.0	Total	4,260	100.0
Missing	0		Missing	0	

Non-DCP Sentenced Case and Defendant Characteristics by Source of Rejection

On the pages that follow the case and defendant characteristics are shown for the non-DCP-sentenced cases by the source of the rejection. In some instances percentage comparisons are not meaningful because of the small number of cases in the rejection category as a whole, or in individual cells for an item.

Among the cases rejected by DCP court staff, Spotlight cases are shown separately from the other cases rejected by program staff. Defendants in Spotlight-targeted cases do appear to have some distinguishing characteristics, some of which are due to the nature of that program's requirements. However, as noted previously, because Spotlight trumps all other rejection reasons, the extent to which some defendants in these cases would otherwise have been

rejected by DCP court staff or by other court participants, or would have been defendants in cases of interest to the program, cannot be determined.

CHARACTERISTICS OF DEFENDANTS IN REJECTED CASES BY SOURCE OF PROGRAM REJECTION												
Defendant Character-istics	Spotlight		Other DCP Reason		Defense Attorney		Judge		ADA		Defendant	
Sex	N	%	N	%	N	%	N	%	N	%	N	%
Male	1,261	87.1	868	89.8	728	83.0	540	90.9	314	90.5	28	80.0
Female	187	12.9	98	10.2	149	17.0	54	9.1	33	9.5	7	20.0
Total	1,448	100.0	959	100.0	877	100.0	594	100.0	347	100.0	35	100.0
Age Group	N	%	N	%	N	%	N	%	N	%	N	%
16-19	10	0.7	3	0.3	2	0.2	1	0.2	1	0.3	0	0.0
20-24	79	5.5	40	4.2	61	7.0	39	6.6	13	3.7	1	2.9
25-29	124	8.6	86	9.0	71	8.1	51	8.6	24	6.9	3	8.6
30-34	122	8.4	72	7.5	71	8.1	58	9.8	38	11.0	3	8.6
35-39	212	14.6	147	15.3	107	12.2	75	12.6	47	13.5	4	11.4
40-44	294	20.3	207	21.6	183	20.9	120	20.2	57	16.4	6	17.1
45-49	339	23.4	205	21.4	185	21.1	129	21.7	70	20.2	5	14.3
50+	268	18.5	199	20.8	197	22.5	121	20.4	97	28.0	13	37.1
Total	1,448	100.0	959	100.0	877	100.0	594	100.0	347	100.0	35	100.0

The percentage of rejected cases of defendants having only prior misdemeanor criminal conviction records was greatest for ADA rejections (32.3%), followed closely by Defense Attorney rejection cases (30.9%). This is consistent with the likelihood that ADAs were not requesting, or defense attorneys were not expecting, jail sentences in these cases.

CRIMINAL HISTORY BY REJECTION SOURCE													
CRIMINAL CONVICTION HISTORY	Spotlight		Other DCP Reason		Defense Attorney		Judge		ADA		Defendant		
	N	%	N	%	N	%	N	%	N	%	N	%	
	No Priors	0	0.0	6	0.6	1	0.1	2	0.3	1	0.3	0	0.0
	Prior Misd. Only	420	29.0	215	22.4	271	30.9	168	28.3	112	32.3	8	22.9
	Prior Felony Only	0	0.0	2	0.2	0	0.0	1	0.2	0	0.0	0	0.0
	Both	1,028	71.0	735	76.6	604	68.9	423	71.2	234	67.4	27	77.1
	Missing	0	0.0	1	0.1	1	0.1	0	0.0	0	0.0	0	0.0
	Total	1,448	100.0	959	100.0	877	100.0	594	100.0	347	100.0	35	100.0

Across all third-year rejection categories defendants overwhelmingly were rated by CJA as being of high risk for FTA if released in cases continued at arraignment. The defendant-rejected category had the largest percentage of cases in which defendants were rated by CJA to be of high risk of FTA (90.3%) although this category also had the smallest number of cases. The ADA rejection category had the second largest percentage of high risk cases (89.5%). These were followed by cases that were rejected due to judicial discretion, defense attorneys, other DCP reasons, and Spotlight-designated cases (88.2%, 87.3%, 86.1% and 84.9% respectively).

With only one exception, less than 30 percent of the cases in each rejection category had defendants who reported being engaged in full-time activities. The cases that were rejected due to judicial discretion had the largest proportion (31.0%) of defendants engaged in full-time activities. Spotlight rejected cases had the smallest percentage of defendants who reported being engaged on a full-time basis in work, school or program activities (18.6%). The defendant-rejected category had the smallest proportion of defendants who reported living with others (31.3%).

As shown below, the drug category had the largest percentage of cases in every rejection category although the percentages varied, from 39.8 percent of the cases in the Spotlight rejection category, to 47.1 percent of the cases that were rejected due to judicial discretion. The property crime category had the second largest percentage of cases in all of the rejection categories except ADA rejections, ranging from 8.4 percent among ADA rejected cases to 30.7 percent in the Spotlight category. The percentage of cases in the fraud category ranged from 11.3 percent of both the Spotlight and defense attorney rejections to 21.9 percent of ADA rejections.

The greatest percentage of cases with A-misdemeanor severity arrest charges was found in the Spotlight rejection category. The percentage of cases with B-misdemeanor severity top arrest charges was largest among the defense ADA-rejected cases (19.8%) compared with the other rejection categories. However, because of the arrest-charge criteria for Spotlight targeting virtually all cases in this rejection category should have misdemeanor-severity arrest charges. This is not true of the other rejection categories, which creates some difficulty in comparing the distribution of arrest-charge severity classification across rejection categories.

ARREST CHARGE CHARACTERISTICS BY REJECTION SOURCE												
TOP ARREST CHARGE TYPE	Spotlight		Other DCP Reason		Defense Attorney		Judge		ADA		Defendant	
	N	%	N	%	N	%	N	%	N	%	N	%
Drugs	577	39.8	385	40.1	354	40.4	280	47.1	140	40.3	15	42.9
Property	445	30.7	239	24.9	192	21.9	120	20.2	29	8.4	8	22.9
Fraud	162	11.3	114	11.9	99	11.3	91	15.3	76	21.9	7	20.0
Misconduct	186	12.8	110	11.5	106	11.3	60	10.1	61	17.6	3	8.6
Other	73	5.3	111	11.6	106	12.1	43	7.2	41	11.8	2	5.7
Total*	1,448	100.0	959	100.0	877	100.0	594	100.0	347	100.0	35	100.0

TOP ARREST CHARGE SEVERITY	N	%	N	%	N	%	N	%	N	%	N	%
Felony	12	0.8	168	17.7	174	20.2	94	15.9	35	10.2	6	17.1
A- Misdemeanor	1,265	87.8	668	70.5	570	66.1	409	69.1	232	67.6	23	65.7
B- Misdemeanor	162	11.2	98	10.3	106	12.3	84	14.2	68	19.8	6	17.1
U- Misdemeanor	2	0.1	13	1.4	12	1.4	5	0.8	8	2.3	0	0.0
Total**	1,441	100.0	947	100.0	862	100.0	592	100.0	343	100.0	35	100.0
*Total excludes cases with unidentified top arrest charges.												
**Total excludes cases with charges of lesser or unknown severity.												

Court Outcomes for Rejected Cases

The next table shows the arraignment outcome for all rejected cases in the left-side column. The right-side column shows the disposition, or last known status as of March 1, 2009, for cases not disposed at Criminal Court arraignment. (Among the 62 cases shown as not disposed are one abated case and three cases covered by a prosecution in a different case.) As can be seen, more than two-thirds of all cases screened but not DCP-sentenced were disposed at arraignment, virtually all with a conviction.

COURT OUTCOMES FOR REJECTED CASES AT AND POST ARRAIGNMENT					
ARRAIGNMENT OUTCOME	N	%	POST ARRAIGNMENT	N	%
ACD*	15	0.4	ACD*	18	1.5
Dismissed	5	0.1	Dismissed	291	24.1
Convicted	3,031	71.2	Convicted	794	65.7
Continued	1,208	28.4	Transferred to Supreme Court	14	1.2
Total	4,260	100.1	Warrant Ordered	29	2.4
*An ACD is an Adjournment in Contemplation of Dismissal.			Not Disposed	62	5.1
			Total	1,208	100.0

Among the cases with an arraignment conviction most (88.0%) received a jail sentence as the most severe penalty imposed. This was an increase from the first and second program years when 78.7 and 84.2 percent of cases convicted at arraignment had a jail sentence as the most severe penalty. Jail sentences also dominated the sentencing patterns for cases convicted at a post-

arraignment court appearance. Almost all other sentences were a conditional discharge (CD) most of which included community service. These patterns were consistent across all three program years.

MOST SEVERE SENTENCE IMPOSED AT AND POST ARRAIGNMENT					
AT ARRAIGNMENT	N	%	POST ARRAIGNMENT	N	%
Imprisonment	2,668	88.0	Imprisonment	735	93.4
Probation	0	0.0	Probation	1	0.1
CD	349	11.5	CD	46	5.9
Other Sentence	14	0.5	Other Sentence	5	0.6
Total	3,031	100.0	Total*	787	100.0
*Total excludes 7 cases convicted post-arraignment and not yet sentenced, including one case that was dismissed and six cases still active as of the cutoff date.					

Over 70 percent of the cases with a jail sentence imposed for an arraignment conviction were for time less than ten days, including the time-served sentences, with the remainder receiving sentences of either ten (11.5%) or greater than ten days (17.8%). (As will be discussed later, approximately 70 percent of the cases with jail time greater than ten days were Spotlight-targeted.) In addition, jail time of three or fewer days, and even for some in the 4-5 day category depending on the day of the week, would be tantamount to a time-served jail sentence after crediting defendants for one day toward early release for every three jail days (including credit for pre-conviction detention time), and early scheduled weekend releases. Although a far greater proportion of the jail sentences imposed for a post-arraignment conviction were longer than those imposed at arraignment, this does not take into account how much pre-trial detention time would have been credited in these cases toward post-conviction incarceration time.

JAIL TIME (in days) FOR CASES WITH A MOST SEVERE SENTENCE OF IMPRISONMENT					
AT ARRAIGNMENT	N	%	POST ARRAIGNMENT	N	%
Time Served	1,186	44.5	Time Served	193	26.3
1-3 days	161	6.0	1-3 days	8	1.1
4-5	347	13.0	4-5	30	4.1
6-9	188	7.0	6-9	50	6.8
Subtotal less than 10 days	1,881	70.4	Subtotal less than 10 days	281	38.3
10 days	308	11.5	10 days	113	15.4
11-15 days	129	4.8	11-15 days	51	6.9
16-30	236	8.8	16-30	150	20.4
31-45	50	1.9	31-45	46	6.3
46-60	34	1.3	46-60	40	5.4
61-75	4	0.1	61-75	2	0.3
76-90	16	0.6	76-90	25	3.4
91-120	5	0.2	91-120	5	0.7
121-180	4	0.1	121-180	14	1.9
181-240	0	0.0	181-240	1	1.1
Over 240 days	0	0.0	Over 240 days	7	1.0
Subtotal greater than 10 days	478	17.8	Subtotal greater than 10 days	341	47.4
Total	2,668	100.0	Total	735	100.0

Arraignment Charge Composition for Rejected Cases Convicted at Arraignment

The table that follows shows the configuration of the prosecuted crime types by their severities at Criminal Court arraignment for convicted cases. For the purposes of this display, only charges in the property, drug, fraud, and misconduct categories are shown separately, with all other crime types combined. With some exceptions, convictions in these cases were to charges of the same severity, and usually the same charge type, as the prosecuted charge. Because virtually all DCP sentences were imposed for conviction at Criminal Court arraignment, this permits us to compare charge characteristics for the most comparable group of rejected cases, those convicted and sentenced at arraignment.

Among rejected cases there was a smaller percentage of cases arraigned on A-misdemeanor severity charges (86.5%) than was found among sentenced cases (91.8%). There were a greater number of rejected cases with unspecified

charges and most of these would have been charges outside of the Penal or Vehicle and Traffic Laws which usually are of misdemeanor-equivalent severity.

The largest percentage of rejected cases was found in the drug category (39.1%). This figure is up from the second program year, in which 35.5 percent of rejected cases were prosecuted for drug charges, and more similar to the 40.4 percent of rejected drug cases in the first year of DCP. As in both previous years of the program, the second largest percentage of rejected cases was in the property crime category (22.5%). This pattern matches the one found among DCP-sentenced cases.

TOP PROSECUTED CRIME TYPE BY CHARGE SEVERITY AT CRIMINAL COURT ARRAIGNMENT FOR DCP-REJECTED CASES CONVICTED AT CRIMINAL COURT ARRAIGNMENT								
CRIME TYPE	ARRAIGNMENT CHARGE SEVERITY							
	A Misdemeanor		B Misdemeanor		Lesser Severity or Unknown*		Total	
	N	%	N	%	N	%	N	%
Property	680	25.9	3	0.9	0	0	683	22.5
Drugs	935	35.7	247	77.4	2	2.2	1,184	39.1
Fraud	451	17.2	3	0.9	0	0.0	454	15.0
Misconduct	397	15.1	61	19.1	3	3.3	461	15.2
All other	76	2.9	5	1.6	0	0.0	81	2.7
Unknown	82	3.1	0	0.0	86	94.5	168	5.5
Total	2,621	100.0	319	100.0	91	100.0	3,031	100.0
	(86.5%)		(10.5%)		(3.0%)		(100.0%)	
*Includes five cases with a violation charge severity.								

In comparison to DCP-sentenced cases, rejected cases had a larger percentage in the CJA property category (34.0% versus 22.5% respectively) and in the fraud category (5.5% versus 15.0% respectively). In addition, while almost all cases in the misconduct category had criminal trespass charges, among rejected cases a larger percentage of such cases were for the B-misdemeanor severity of this offense.

With the exception of Spotlight-category cases, the charge composition of rejected cases convicted at arraignment is consistent with the no or very short jail sentences regularly imposed on recidivist misdemeanor defendants in these types of cases in the downtown Manhattan Criminal Court. Further, the differences in charge composition between the rejected cases and the DCP-sentenced cases strongly suggest that the DCP-sentenced cases, at least in the eligible category of program-sentenced cases, were more likely to receive comparatively longer jail sentences than were non-Spotlight rejected cases.

Arraignment Decision Making for Non-DCP Sentenced Cases by Rejection Source

Because the Day Custody Program is designed to provide an alternative sentence for cases with convictions at arraignment in the downtown Manhattan Criminal Court, this section exclusively focuses on court outcomes and case characteristics for DCP-rejected cases at this first (arraignment) court appearance. The distribution among types of outcomes is displayed for the different sources of program rejection.

Over half of the cases in each rejection category examined were disposed at arraignment, almost always by conviction, although the percentages varied with the rejection source. Overall, cases in the 'Other DCP Reason' rejection category had the comparatively smallest percentages of cases disposed at arraignment. Unlike in the second program year, non-Spotlight cases rejected by defendants were no more likely to be continued than the cases in the Spotlight rejection group (25.7% versus 25.0% for Spotlight cases). Cases refused by the ADAs had the highest rates of arraignment dispositions (93.1%), followed by the Spotlight rejections and cases rejected by the defendant.

CASE OUTCOMES AT ARRAIGNMENT IN NON-DCP-SENTENCED CASES BY REJECTION SOURCE												
ARRAIGN- MENT DISPOSITION	Spotlight		Other DCP Reason		Defense Attorney		Judge		ADA		Defendant	
	N	%	N	%	N	%	N	%	N	%	N	%
ACD or Dismissed	3	0.2	4	0.4	5	0.6	2	0.3	6	1.7	0	0.0
Convicted	1,083	74.8	577	60.2	600	68.4	423	71.2	323	93.1	26	74.3
Continued	362	25.0	378	39.4	272	31.0	169	28.5	18	5.2	9	25.7
Total	1,448	100.0	959	100.0	877	100.0	594	100.0	347	100.0	35	100.0

There were only a few items of note that distinguished the prosecuted charge characteristics across rejection sources for cases convicted and sentenced at arraignment, displayed in the next table. In some instances, percentage differences may not be as meaningful as they might appear because of the small number of cases in some of the groups.

Most (84.7%) of the DCP-rejected cases that were convicted and sentenced at arraignment had an A-misdemeanor prosecuted charge, and in all rejection categories the percentage was over eighty percent (data not shown). These are cases for which the penalty can be as great as one year's jail time. And, although also not shown in the table that follows, the conviction charge severity was almost always the same as the prosecuted charge severity. The smallest proportion of A-misdemeanor severity charges was in the ADA rejection category (77.7%), followed by the defense attorney category (81.3%).

In each of the rejection groups the largest percentage of cases was in the drug crime category, but this varied by group. As shown on the next tables, the judge rejection category (43.7%), followed by the defense attorney group (40.8%), had the largest percentages of rejected cases in the drug crime category.

ARRAIGNMENT CHARGE CHARACTERISTICS FOR CASES CONVICTED AND SENTENCED AT ARRAIGNMENT BY REJECTION SOURCE												
TOP ARRAIGN- MENT CHARGE SEVERITY	Spotlight		Other DCP Reason		Defense Attorney		Judge		ADA		Defendant	
	N	%	N	%	N	%	N	%	N	%	N	%
A Misdemeanor	993	91.7	511	88.7	488	81.3	353	83.5	251	77.7	25	96.2
B Misdemeanor	80	7.4	45	7.8	81	13.5	56	13.2	56	17.3	1	3.8
Other/ Unknown	10	0.9	20	3.5	31	5.2	14	3.3	16	5.0	0	0.0
Total	1,083	100.0	576	100.0	600	100.0	423	100.0	323	100.0	26	100.0
TOP ARRAIGN CHARGE TYPE	N	%	N	%	N	%	N	%	N	%	N	%
Drugs	393	36.3	229	39.8	245	40.8	185	43.7	122	37.8	10	38.5
Property	307	28.3	135	23.4	126	21.0	80	18.9	29	9.0	6	23.1
Fraud	144	13.3	81	14.1	84	14.0	68	16.1	71	22.0	6	23.1
Misconduct	173	16.0	73	12.7	90	15.0	57	13.5	64	19.8	4	15.4
Other	66	6.1	58	10.1	55	9.2	33	7.8	37	11.4	0	0.0
Total	1,083	100.0	576	100.0	600	100.0	423	100.0	323	100.0	26	100.0

A majority of rejected cases received a jail sentence for conviction at arraignment, although the percentages varied by the source or reason for the rejection. Cases rejected by defendants or by ADAs had the lowest percentages of jail-time sentences imposed for conviction. Conversely, defendants rejected for Spotlight reasons, judge-rejected cases, and defense attorney-rejected cases had the largest percentage of jail sentences. To some extent these differences are related to the differences in the arraignment crime type and severity among rejection groups. For example, misdemeanor cases with B-marijuana charges, which were more frequent among the ADA rejection group, are also the type of case least likely to receive jail time and the shortest sentences when jail is imposed.

SENTENCING AT ARRAIGNMENT IN NON-DCP SENTENCED CASES BY REJECTION SOURCE												
MOST SEVERE SENTENCE TYPE	Spotlight		Other DCP Reason		Defense Attorney		Judge		ADA		Defendant	
	N	%	N	%	N	%	N	%	N	%	N	%
Imprisonment	998	92.2	487	84.5	520	86.7	372	87.9	270	83.6	21	80.8
Non-Imprisonment	85	7.8	89	15.5	80	13.3	51	12.1	53	16.4	5	19.2
Total	1,083	100.0	576	100.0	600	100.0	423	100.0	323	100.0	26	100.0

When a jail sentence was imposed at arraignment the length of the sentence varied among the rejection categories. In all categories most of the cases received a jail sentence of less than ten days (including time-served sentences), ranging from 98.6 percent of the rejected cases attributed to ADAs, to 58.3 percent among the Operation Spotlight rejection category.

Not only did a greater percentage of cases in the Spotlight category receive jail sentences, but they also had the largest percentage of sentences imposed at arraignment that were greater than ten days (26.2%). The very small percentages of jail sentences of ten and greater than ten days, among the ADA and defense attorney rejection groups are consistent with the gate-keeping function these court participants provide in determining whether DCP court staff pursue an interview with defendants who appear paper eligible for the program sentence.

JAIL TIME (in days) FOR CASES WITH A MOST SEVERE SENTENCE OF IMPRISONMENT IMPOSED FOR AN ARRAIGNMENT CONVICTION												
SENTENCE LENGTH IN DAYS	Spotlight		Other DCP Reason		Defense Attorney		Judge		ADA		Defendant	
	N	%	N	%	N	%	N	%	N	%	N	%
Time Served	281	28.2	232	47.6	205	39.4	202	54.3	258	95.6	8	38.1
1-3 days	57	5.7	20	4.1	55	10.6	21	5.6	5	1.9	3	14.3
4-5	148	14.8	59	12.1	100	19.2	33	8.9	3	1.1	4	19.0
6-9	96	9.6	23	4.7	46	8.8	21	5.6	0	0.0	2	9.5
Subtotal less than 10 days	582	58.3	334	68.5	406	78.0	277	74.4	266	98.6	17	80.9

10 days	154	15.4	71	14.6	47	9.0	30	8.1	4	1.5	2	9.5
11-15 days	72	7.2	16	3.3	24	4.6	17	4.6	0	0.0	0	0.0
16-30	128	12.8	41	8.4	29	5.6	37	9.9	0	0.0	1	4.8
31-45	32	3.2	7	1.4	6	1.2	5	1.3	0	0.0	0	0.0
46-60	18	1.8	10	2.1	4	0.8	2	0.5	0	0.0	0	0.0
61-75	2	0.2	2	0.4	0	0.0	0	0.0	0	0.0	0	0.0
76-90	8	0.8	2	0.4	3	0.6	2	0.5	0	0.0	1	4.8
91-120	2	0.2	2	0.4	1	0.2	0	0.0	0	0.0	0	0.0
121-180	0	0.0	2	0.4	0	0.0	2	0.5	0	0.0	0	0.0
Over 180 days	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Subtotal greater than 10 days	262	26.2	82	16.8	67	13.0	65	17.3	0	0.0	2	9.5
Total	998	100.0	487	100.0	520	100.0	372	100.0	270	100.0	21	100.0

The Brief Jail Mental Health Screen Among Rejected Cases

Most cases are rejected based on review of paper documents (e.g. Spotlight stamp on court papers) without CASES court staff conducting an interview with defendants. As a result, the Brief Jail Mental Health Screen (BJMHS) is not generally administered to the rejected population of defendants.

Among all 4,260 rejected cases, 109 were flagged by the BJMHS for further assessment if the defendants had received a DCP sentence. This is a tiny subset of all rejected cases, and ones in which defendants evidently were interviewed by DCP court reps prior to being rejected. From the data for the BJMHS item for rejected cases it is not possible to distinguish in which cases defendants may have been administered the BJMHS but screened negative, from those rejected without any interview being conducted. We therefore can make no determination about the proportion of the rejected population that would have been flagged by the BJMHS for further assessment.

The table below shows the source and reason for program rejection for the 109 cases flagged by the BJMHS for further assessment had the defendant received a DCP sentence. As with the overall rejected population of cases, the

majority of BJMHS flagged cases were rejected by CASES program staff, although the percentage shown (59.6%) is somewhat greater than the overall rejections attributed to program staff shown earlier (55.4%) in this section of the report. However, unlike the general rejected population, the Spotlight designation was not the largest source of these rejections. This would be expected because most Spotlight cases are rejected based on paper screening and would not normally be pursued by an interview. But, this also highlights the likelihood that the 109 BJMHS flagged cases were not a representative subset of rejected cases.

Among this small subset of rejected cases, the overall percentage of rejected cases attributed to judges (21.1%) is much larger than among the general rejected population (13.9%). The percentage of rejections by defendants themselves among the BJMHS flagged cases also is larger (9.2%) than was found in the general rejection population (0.8%).

SOURCE AND REASON FOR PROGRAM REJECTION AMONG BJMHS FLAGGED CASES			
CASES' DCP PROGRAM REJECTIONS:	N	%	Overall %
Operation Spotlight	23	35.4	21.1
Parole	2	3.1	1.8
Homeless/ Insufficient Community Ties	2	3.1	1.8
History of Violent Crimes	2	3.1	1.8
Other DCP Screener Rejection Reasons	26	40.0	23.8
Probation	1	1.5	.9
Heavy Substance Abuser	9	13.8	8.3
DCP Program Rejections	65	100.0	59.6
Defense Attorney	7	15.9	6.4
Judge	23	52.3	21.1
Assistant District Attorney (ADA) Non-jail offer	4	9.1	3.7
Defendant Refuses to Accept Program	10	22.7	9.2
Other Rejection Sources	44	100.0	40.4
Total BJMHS Flagged But Rejected	109	100.0	100.0

The charge characteristics of the flagged cases were very similar with those of the rejected population as a whole, with the largest proportion of the cases prosecuted for drug crimes (36.7%) followed by property crimes, mostly petit larceny (29.4%). (Data not shown)

With such small number of cases in almost all of the rejection categories it is not realistic to compare outcomes at arraignment within categories to the full population. However, in all categories of the BJMHS cases, as with the general population of rejected cases, the overwhelming majority were disposed at the Criminal Court arraignment, and by a conviction.

CASE OUTCOMES AT ARRAIGNMENT FOR REJECTED BJMHS FLAGGED CASES BY REJECTION SOURCE														
ARRAIGN- MENT DISPOSITION	Spotlight		Other DCP Reason		Defense Attorney		Judge		ADA		Defendant		Total	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
Convicted	15	65.2	26	61.9	5	71.4	16	69.6	3	75.0	9	90.0	74	67.9
Continued	8	34.8	16	38.1	2	28.6	7	30.4	1	25.0	1	10.0	35	32.1
Total	23	100.0	42	100.0	7	100.0	23	100.0	4	100.0	10	100.0	109	100.0

As with the general population of rejected cases, the vast majority of BJMHS flagged cases with arraignment convictions had a sentence of imprisonment imposed in each rejection category (87.8%, data not shown). The table below shows the jail sentence length imposed, in days, for the BJMHS flagged cases with arraignment convictions and a jail sentence. Again, because of the small numbers within categories it is very difficult to make meaningful comparisons with the jail sentence lengths imposed for the general population of rejected cases. However, where in the general population rejected cases a majority in each category had a sentence imposed of less than 10 days (including time-served sentences), that was not uniformly the case for the BJMHS flagged cases.

JAIL TIME (in days) FOR BJMHS FLAGGED CASES WITH A MOST SEVERE SENTENCE OF IMPRISONMENT IMPOSED FOR AN ARRAIGNMENT CONVICTION BY REJECTION SOURCE														
SENTENCE LENGTH IN DAYS	Spotlight		Other DCP Reason		Defense Attorney		Judge		ADA		Defendant		Total	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
*Less than 10 day	11	73.3	9	45.0	4	100.0	8	53.3	2	100.0	6	66.7	40	61.5
10 Days	1	6.7	4	20.0	0	0.0	1	6.7	0	0.0	2	22.2	8	12.3
More than 10 days	3	20.0	7	35.0	0	0.0	6	40.0	0	0.0	1	11.1	17	26.2
Total	15	100.0	20	100.0	4	100.0	15	100.0	2	100.0	9	100.0	65	100.0
*Includes time-served sentences.														

In addition, a much larger percentage of the BJMHS flagged cases in the Spotlight category received jail sentences of less than 10 days in comparison with the general rejected population in this category. Conversely, a substantially larger percentage of the BJMHS flagged cases rejected by judges received sentences of 10 or more days (a combined total of 46.7%), in comparison with the general rejected population in this category (a combined 25.4%).

CHAPTER V: SUMMARY AND CONCLUSIONS

Between October 1, 2007 and September 30, 2008, the third program year, there was a total of 564 DCP-sentenced cases, the largest number to date. There were a total of 548 defendants, with thirteen defendants receiving a DCP-sentence in more than one case in this twelve-month period.

The characteristics of defendants in DCP-sentenced cases have been very similar over the three program years studied to date. The overwhelming majority of defendants have been male, although the percentage of female defendants was greater in third program year sentenced cases than in past program years.

Over two-thirds of all defendants in DCP-sentenced cases were forty years of age or older, although the mean (mathematical average) age of 41 in the third program year was about a year older than in previous years. Over half of the defendants in each year's program-sentenced cases have been non-Hispanic black.

In each program year defendants in over sixty percent of sentenced cases met the program's criteria and about a third of sentenced cases were Spotlight targeted. In each program year's cases approximately two-thirds of defendants had prior criminal convictions to crimes of felony severity, and in overwhelming majorities of cases in each program year the average number of prior misdemeanor convictions far exceeded the required three minimum. In a small number of cases in the first program year defendants did not meet the minimum prior misdemeanor conviction criteria and an even smaller number in the second program year. In the third program year there were no cases of defendants that fell outside of the program's criminal history criteria.

There were some differences in case characteristics in the third year's program-sentenced cases. In each program year the greatest number of cases had a drug crime as the top arrest charge. However, in the third program year drug cases also comprised the largest category of top arraignment charges. This is unlike the two previous program years in which the largest number of cases were arraigned in Criminal Court with a property crime charge (almost all of which were for the petit larceny charge). As in the previous program years only a

small percentage of all cases were prosecuted for crimes of B, as opposed to A, misdemeanor severity.

Among third-year program-sentenced cases there was an approximately 80 percent successful program completion rate, with a higher successful completion rate among defendants in program-eligible cases and a lower rate among defendants in Spotlight-designated cases. The successful completion rates, and differences between defendants in eligible versus Spotlight cases, have remained almost constant across the three program years to date.

Decisions about the jail length penalty for program failure have increasingly become divergent from the program's design, and there does not appear to be a clear explanation for this phenomenon. The program envisioned a ten-day jail alternative for failure to complete the three program days, and this ten-day jail alternative is pre-printed on the program commitment form. The imposition of a ten-day sentence for conviction would be an incentive because the jail-time served would be somewhat longer than the three program days after factoring in good-time credit and credit for pre-arraignment detention time. In addition 10-day sentences were a common sentence length for the target population of eligible cases in the downtown Manhattan Criminal Court.

The analysis of data provided by CASES found that in the third program year approximately 60 percent of all DCP-sentenced cases had a jail alternative sentence length set at greater than 10 days. In comparison, in the second program year only about 40 percent of all cases had a jail alternative set greater than 10 days. (We have no comparable data for the first program year).

Neither the Spotlight designation, nor the ADA jail offers for conviction pleas, nor the type of prosecuted charge, could clearly be identified as the motivating factor for the longer alternative jail sentences although they may have contributed to judicial decisions. Because there is no identification of judges in the CJA information system, or in the data provided by CASES, it is not possible to determine how widespread this practice is among the judiciary or if the volume of longer alternative jail sentences is the result of the a few judges' preferences.

At some point CASES staff might want to examine this issue and engage judges to find out what is influencing this diversion from the program's design.

In addition, in comparing successful completion rates between cases in which the jail alternative was ten versus longer than ten days we found an almost identical successful completion rate among cases in which defendants met the program's eligibility criteria, and only a very small difference in the percentage of successful completions among defendants in the Spotlight cases.

According to the data entered into the court's computer system, which is electronically transferred to both the CJA and the DCJS information systems, in each program year over 90 percent of all DCP-cases had a 10-day jail alternative imposed. This administrative problem is continuing to occur even though CASES personnel have brought the issue to the attention of court staff and there reportedly have been efforts on the part of the chief clerk to rectify the situation.

With the introduction of the Transitional Case Management (TCM) program to provide comprehensive services to seriously mentally ill defendants among the DCP target population, CASES court staff has been administering the Brief Jail Mental Health Screen (BJMHS) to prospective program defendants. This short questionnaire was created as a mechanism for non-mental-health professionals to identify individuals for clinical assessment.

Of the 564 DCP sentenced cases, less than a third was flagged as in need of further assessment, and of these many were subsequently not found to meet the clinical definition of seriously mentally ill. Among those found to be seriously mentally ill, fewer than two dozen went on participate in the services offered by TCM. However, the clinical assessment did find a fairly pervasive presence of substance abuse. As a result, DCP added a separate substance abuse screening instrument to its interview protocol. However, data from this screening process were not available to CJA at the time of this study.

These findings highlight several issues confronting programs seeking to divert the seriously mentally ill early in court processing. The conditions of confinement between arrest and arraignment can create behavioral manifestations that can confound the ability to identify severe mental illness, and

in the press of time to bring defendants into the courtroom for arraignment do not provide adequate time for an in-depth and more precise clinical assessment. In addition, the policy exclusion of many cases of recidivist misdemeanor defendants means that only a small proportion of the target population even receives the BJMHS.

The population targeted by DCP is characterized by high recidivism rates. In the third program year, based on any new prosecuted arrest for each of the 548 DCP-sentenced defendants five months from the compliance date of the first or only program-sentenced case, the overall re-arrest rate was 56.8 percent. It was lower (47.4%) for defendants in the eligible category and substantially higher (73.0%) among defendants in the Spotlight category. In comparison with the baseline pre-program period's defendants, this was a lower than expected re-arrest rate for defendants in the eligible category and slightly higher than expected for Spotlight defendants, which were 53.2 and 69.3 percent respectively among comparable defendants in calendar year 2004.

To better refine the analysis of recidivism, and to examine potential beneficial effects of successful program completion in regard to recidivism, comparison groups were created for successful program defendants. The characteristics of successful defendants and their cases in the eligible and Spotlight categories were matched based on demographic and charge characteristics with counterparts in the pre-program data set. As appropriate, measures of statistical significance were used to determine if, within a 95 percent confidence level, differences found between the matched comparison groups did not occur by chance.

Among third-year successful program clients in the eligible and Spotlight categories, this analysis found a statistically significant lower rate of re-arrests within five months of the compliance date for program-sentenced defendants in comparison within five months of jail release for the matched pre-program sets of defendants. If re-arrested, the longer mean time to a new arrest, and a smaller mean number re-arrests, within the five month interval for both categories of program-sentenced clients, were statistically significant.

These findings differed from a matched comparison group analysis for first-year successful program clients in which none of the differences were found to be statistically significant. The third-year's findings also differed in some respects from the matched comparison analysis of second-year successful program clients. Among matched defendants in the eligible category, there were statistically significant differences in the lower re-arrest rate, and longer mean time to a first re-arrest, for program-sentenced clients, but no statistically significant difference in the mean numbers of re-arrests. Among none of these measures were there any statistically significant differences for second-year successful program clients and their matched counterparts in the Spotlight category.

In the third program year the number of program screened and rejected cases was more than a thousand greater than in each of the two previous program years. As was found in the two previous program years, Spotlight designated cases continued to be the largest category of rejected cases.

The demographic characteristics of defendants in rejected cases in the third program year, as in the previous two years, were similar to those in program-sentenced cases in regard to age, sex and racial composition. The mean (mathematical average) number of prior misdemeanor convictions among defendants in third-year rejected cases was only slightly greater than among program-sentenced cases. As in program-sentenced cases, a large majority of defendants were not recommended by CJA for recognizance release because of a high risk of FTA.

There were some differences in the charge composition of rejected cases, with a somewhat larger percentage of rejected cases prosecuted for crimes of B-misdemeanor severity, and for crimes outside of the Penal or Vehicle and Traffic Laws. Overwhelming majorities of rejected cases convicted at Criminal Court arraignment had a jail sentence imposed but, with the exception of Spotlight cases, at least two-thirds received jail sentences of less than ten days. ADA and defense attorney rejected cases had among the largest percentage of such cases. This is in keeping with the gate-keeping function these decision makers

play in determining which cases are not likely to receive jail sentences at least equivalent to the minimum expected 10-day jail alternative for program failure.

For the most part, differences in court processing and outcomes between rejected and program-sentenced cases have been very similar across the three program years to date.

CHAPTER I: THE TRANSITIONAL CASE MANAGEMENT PROGRAM

This portion of the report describes the start-up and early implementation period of the Transitional Case Management (TCM) program. TCM is a separate CASES program targeting recidivist misdemeanor defendants in misdemeanor-prosecuted cases assessed to be seriously mentally ill. The primary criterion for entrance into TCM is a mental health disorder that is currently impairing the defendant's ability to function. More specifically, TCM uses the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders' multi-axial diagnostic system to define "mental health disorder" as an Axis I clinical condition. Axis I diagnoses include all clinical psychiatric diagnoses other than personality disorders and mental retardation (e.g. psychotic disorders, mood disorders, anxiety disorders, eating disorders, sleep disorders, sexual and gender identity disorders).

The goals of TCM are to provide the access, coordination and management of community-based services needed by the seriously mentally ill caught up in the criminal justice system. This is accomplished by diverting program-appropriate clients from the courthouse, and using a non-custodial setting in which to facilitate the stability of this offender population in the community in lieu of using discharge planning from the City's correctional facilities. The TCM portion of this report covers cases and defendants admitted as program clients from August 1, 2007 to September 30, 2008.¹⁰

Introduction

In the aftermath of deinstitutionalization of the seriously mentally ill, and the inadequacy of sufficient community-based placements for this population, jails and prisons have come to be seen as institutions of last resort for the displaced mentally ill. The problem of the seriously mentally ill offender, often homeless

¹⁰ TCM began operation in August of 2007 and, as such, there are two TCM clients with admission dates that precede the earliest possible DCP sentence date (October 1, 2007) for the third program year. Because there were too few TCM participants to warrant discussion as part of the previous year's DCP report, these two clients are being analyzed with the rest of the TCM clients who were admitted to TCM during the October 1, 2007 to September 30, 2008 period that coincides with DCP sentencing in the third program year.

and with co-occurring substance-abuse related mental health disorders, in the City's jail facilities has been exacerbated since the adoption of quality-of-life policing which targets public order misdemeanor and lesser severity offenses such as criminal trespass or possession of small quantities of drugs or other forms of substance abuse in public space.

One manifestation of the problems facing New York City's jails in responding to large numbers of mentally ill offenders was the court case of *Brad H. et al. v. City of New York et al.* 712 N.Y.S. 2d336 (2000), commonly referred to simply as "Brad H.". This case challenged the lack of discharge planning for the seriously mentally ill leaving New York City's Department of Correction (DOC). According to the amicus brief submitted in 1999 in support of the plaintiffs in the Brad H. case "...approximately 25% of the 130,000 inmates admitted annually to City Jails are in need of mental health treatment...and approximately 15,000 of these patients suffer from serious and persistent mental disorders...".¹¹

In the years since the Brad H. decision, DOC has undertaken new initiatives to comply with the mandate to assess inmates for mental illness and, as appropriate, provide discharge planning upon release. However, low-level offenders frequently pass through the jail system too quickly for assessment and discharge planning to take place. In addition, the conditions of confinement may exacerbate the level of impairment for offenders' psychiatric disabilities.¹² To address these concerns an alternative would be to divert the mentally ill non-violent low-level offender directly from the Criminal Court into community-based services. In 2003, CASES in cooperation with the New York City Office of the Criminal Justice Coordinator developed the EXIT program for this purpose with

¹¹ Amici Brief submitted in *Brad H. et al. v. City of New York et al.*, available on the web site of The Judge David L. Bazelon Center for Mental Health Law, <http://www.bazelon.org/issues/criminalization/bradh.html>

¹² Heather Barr, *Transinstitutionalization in the Courts: Brad H. v. City of New York, and the Fight for Discharge Planning for People with Psychiatric Disabilities Leaving Rikers Island*, Crime & Delinquency, (California: Sage Publications, 2003) Vol. 49, No. 1, January 2003, pp. 97-123.

funding from the U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA).

EXIT was a three-year demonstration project targeting seriously mentally ill repeat misdemeanor defendants prosecuted in the downtown Manhattan Criminal Court. The program was designed to divert defendants in these cases, most of whom were likely to be convicted at Criminal Court arraignment with brief jail sentences, into community-based mental health and supportive services.¹³ The downtown Manhattan Criminal Court was selected because of its large volume of misdemeanor cases, large percentage of cases disposed at the initial arraignment appearance, and the comparatively brief jail sentences imposed in the cases involving recidivist defendants. All of these are factors that work against the ability of DOC to effectively intervene with the seriously mentally ill population of recidivist misdemeanor defendants revolving through the City's criminal justice system.

Under the EXIT program protocols, if court personnel made a referral to the program's courtroom representative, and with the consent of defense attorneys, an initial assessment was conducted prior to the courtroom arraignment. If the defendant was found to be a candidate for the program, and upon the consent of the judge, s/he would plead guilty to a misdemeanor charge and would be released to the program. The sole mandate was for the defendant to attend a three-hour initial treatment assessment session after which participation in program services was voluntary. Although the program was not to actively advocate for cases targeted by the Operation Spotlight program, an initiative designed to increase jail sentence lengths imposed on this population of recidivist misdemeanants actively cycling through the City's Criminal Courts, a substantial percentage of defendants in Spotlight-targeted cases were ultimately referred to the program. Because of limited funding, the program could only accept a very small number of potential clients. But what the program did demonstrate was that almost all defendants would appear for their intake

¹³ Gerald Foley, Shana McMahan and Elisa Ruppel, *Report for Substance Abuse and Mental Health Services Administration: The Exit Program Annual Program Evaluation Report* (12/29/06), report obtained from the principal author.

assessment and a substantial majority continued to avail themselves of program services thereafter.

To some extent CASES' experience with the EXIT program helped inform both the Day Custody and Transitional Case Management Programs. Like the EXIT program, both programs were designed to target the population of defendants with multiple prior misdemeanor convictions prosecuted for misdemeanor crimes at the downtown Manhattan Criminal Court location. Neither programs actively pursues Spotlight program cases, although these cases are well-represented in both due to referrals from other courtroom participants and judicial discretion. And in both, program clients are not held fulltime in a custodial setting but instead are released into the community between program sessions.

After the implementation of the Day Custody Program (DCP) and the end of the EXIT program, CASES approached the City with a proposal to expand DCP with a component for program-sentenced defendants assessed with serious mental illness modeled on the EXIT program. Additional funding assistance was obtained from the Bureau of Justice Assistance (BJA) as part of a grant to the City's Department of Correction (DOC) and Department of Health and Mental Hygiene (DOHMH), as well as from several private foundations. The participation of these City departments is based on the goal of diverting seriously mentally ill offenders from in-custody discharge planning, and using an alternative-to-incarceration program to provide assistance to these defendants as they leave the criminal justice system.

This Transitional Case Management program would provide community-based mental health and supportive services comparable to those of the EXIT program for DCP-sentenced defendants clinically diagnosed with serious mental illness during their DCP participation. Because the clinical assessment would be conducted during the Day Custody program sessions there would be no need for a separate mandated intake assessment session as had been a condition of the EXIT program so that TCM participation would be entirely voluntary.

Finding TCM-eligible cases within the prospective DCP defendant population has proven difficult. There is a very limited time period between arrest and arraignment in which defendants can be interviewed. To facilitate identification of potential DCP defendants with mental illness, CASES adopted the Brief Jail Mental Health Screen (BJMHS) described in earlier sections of the DCP portion of this report as the screening mechanism for flagging prospective DCP defendants in need of further clinical mental health assessment if program-sentenced. The advantage of the BJMHS is that it can be administered very quickly by non-clinical staff. The disadvantage is the large percentage of false positive results, and of false negative results among female offenders.

Among DCP clients flagged by the BJMHS many are being found not to meet the diagnostic criteria for serious mental illness. This underscores a problem previously experienced by the EXIT program which was the difficulty in identifying suitable program clients under the time constraints between arrest and arraignment. The problem is further exacerbated by the fact that by the time defendants are available for a pre-arraignment interview they often have been in detention for many hours under stressful circumstances. This increases the likelihood of a false positive result on the BJMHS, especially so if defendants are manifesting behaviors actually resulting from substance abuse withdrawal.

However, once the TCM program was implemented both defense attorneys and judges began to refer defendants directly to TCM. This undoubtedly was due in part to the reputation of both CASES and the previous EXIT program, and at least in some part to the absence of alternatives-to-incarceration for the mentally ill low-level offender population. This has meant that while some TCM clients are voluntary post-DCP participants, others are now receiving a direct TCM-mandated sentence, most commonly as part of a conditional discharge imposed for a conviction.

This has changed both the character of the program and CJA's research design. Because TCM was envisioned as a voluntary extension of DCP, CJA expected to be able to integrate its study of the TCM program into the already established DCP report series. However, as it became clear that program clients were coming not only from DCP but also with a direct TCM mandate, it became more appropriate and necessary to discuss TCM program cases and clients as a separate cohort.

Data Sources, Data Collection and Information Sharing

After the program's implementation CJA and CASES entered into a data-sharing agreement for the exchange of information about the cases and defendants mandated to TCM, in addition to just those screened from the DCP-sentenced cohort. As a result of that agreement CJA and CASES have been developing a format for the transfer to CJA of program information, benchmarks for program participation, the identifiers of program-sentenced defendants and cases, and program completion status at the time of the scheduled court compliance review appearance. CJA staff review court and defendant identifiers to ensure that they correctly link to records in the CJA database. Problem cases are identified and sent back to CASES for correction.

Information about defendants and the arrest and court activity for their TCM cases are extracted from the CJA database. Defendant demographic and community ties information are based on information collected by CJA as part of its pre-arraignment interview process with defendants held for Criminal Court arraignment. As part of this process CJA staff record the number of prior cases (if any) in which the most serious conviction charge was for a felony crime, cases with the most serious conviction charge of misdemeanor severity, and open cases pending in the adult court system at the time of the interviewed arrest. In instances where CJA did not conduct an interview, or did not have access to the defendant's criminal history (i.e. "rap sheet"), for a TCM program client, the CJA database, supplemented by rap sheet information supplied by the New York State Division of Criminal Justice Services (DCJS), have been used to create summary conviction counts at the time of the DCP-sentenced case when

possible. The same procedures are used to review instances in which it appears that the defendants did not have the requisite number of prior misdemeanor convictions to be program eligible. Operation Spotlight designated cases are identified from data files routinely provided to CJA by DCJS, which are used by CJA as part of a separate research agenda.

All program information contained in this report is based on the information provided to CJA by CASES.

Chapter II: DEMOGRAPHIC AND CRIMINAL HISTORY CHARACTERISTICS OF DEFENDANTS IN TCM CASES

From the beginning of the TCM program, through September 30, 2008, the end of the current study period, there were a total of 43 program cases, with a total of 41 individual clients. Among these 43 cases were 20 cases in which DCP-sentenced defendants chose to participate in TCM after completing their DCP-mandated sentence. Among these voluntary post-DCP program clients is one individual who had his first voluntary case participation terminated and his treatment interrupted when he received a nine-month jail sentence for an arrest that occurred after admission to TCM. After completing this sentence and being re-arrested, he self-referred to TCM at which point the program created a new record based on his second admission. However, we do not include the second case that led to his resuming TCM participation in our discussion of defendant and case characteristics because there was no TCM-related court action in this case.

In the other 23 cases that came directly into the TCM program there are 21 defendants. (This includes one case of a DCP-sentenced defendant who was unable to participate in DCP due to the severity of the mental illness and for which the program mandate was transferred to TCM.) There were two individuals with two TCM cases each in the period under study. One individual maintained continuity of care across his two cases (i.e. only has one program admission date) but was re-arrested while voluntarily participating in TCM after completing his first TCM mandate, and was re-mandated in a second case without having his treatment interrupted by incarceration. In the second instance the defendant had the TCM program mandate imposed concurrently as the disposition in two separate court cases.

In all but one of the 23 TCM-direct cases the defendant came to the program under court mandate. The one exception was a defendant who was referred and voluntarily brought himself to the program after his case was dismissed on CPL 730 grounds.

Accordingly, the sample sizes discussed in the TCM program report vary slightly depending on whether or not case-based variables (e.g. demographic and/or criminal justice variables) or individual-based variables (e.g. clinical and diagnostic variables) are being analyzed, and by whether the analysis is based on voluntary or mandated TCM program participation. Overall, the number of TCM program cases and clients is small, even smaller when divided between voluntary post-DCP clients and cases versus TCM-direct clients and cases, and sometimes tiny when further broken down into subdivisions based on specific characteristics between these two categories of cases. As a result, caution needs to be used when drawing inferences from percentage differences shown in tables throughout the discussion of the TCM program. In addition, not all percentages on the tables may sum to exactly 100.0 percent due to rounding.

Characteristics of Defendants in TCM Cases

The data in this section describe the characteristics of the individuals at the time of each case that led to TCM participation. In the illustrations that follow descriptions are provided by whether or not in each case the client came to TCM as a voluntary admission subsequent to completion of a DCP sentence, or directly into the TCM program, usually under court mandate.

Most TCM cases had male clients (86.0%), although the percentage of cases with female clients was substantially larger among the TCM-direct cases (21.7%). The percentage of DCP cases attributed to the lone case with a female client, 5.0%, underscores the cautionary note about percentage comparisons. The mean age (mathematical average) of clients drawn from DCP-sentenced cases, 42.5, was somewhat older than that of clients with direct entry into the TCM program, 39.7 years of age. The comparatively younger age of defendants in the TCM-direct cases may also affect differences in criminal histories, as discussed later in this section. In both groups of cases a majority of program clients were non-Hispanic Black with a substantial percentage of Hispanic ethnicity.

There were a total of 38 cases in which some type of residence address was reported but the zip code of the address could be determined in only 31 of

the cases, with a greater number (5) missing among the TCM-direct cases in comparison with the DCP cases (2). For the cases with a residential a zip code that could be determined, almost three-fourths of the DCP and one-half of the TCM-direct cases' clients provided addresses with a Manhattan zip code. More of the cases of the TCM-direct clients had a Queens zip code (4) in comparison with the DCP-sentenced participants (1), while the same number in both categories had a residence associated with a Bronx zip code (2 cases each).

DEMOGRAPHIC AND ZIP CODE CHARACTERISTICS OF DEFENDANTS IN TCM CASES BY SOURCE OF PROGRAM ADMISSION						
Characteristic	DCP		TCM-Direct		Total	
SEX	N	%	N	%	N	%
Male	19	95.0	18	78.3	37	86.0
Female	1	5.0	5	21.7	6	14.0
Total	20	100.0	23	100.0	43	100.0
AGE GROUP	N	%	N	%	N	%
20-24	0	0.0	2	8.7	2	4.7
25-29	2	10.0	3	13.0	5	11.6
30-34	1	5.0	3	13.0	4	9.3
35-39	5	25.0	5	21.7	10	23.3
40-44	2	10.0	6	26.1	8	18.6
45-49	6	30.0	4	17.4	10	23.3
50+	4	20.0	0	0.0	4	9.3
Total	20	100.0	23	100.0	43	100.0
Mean Age	42.6		37.1		39.7	
ETHNICITY	N	%	N	%	N	%
Black	9	50.0	11	52.4	20	51.3
Hispanic	6	33.3	5	23.8	11	28.2
White	3	16.7	3	14.3	6	15.4
Other	0	0.0	2	9.5	2	5.1
Total	18	100.0	21	100.0	39	100.0
Unknown	2	-	2	-	4	-
ZIP CODE	N	%	N	%	N	%
Manhattan	11	73.3	8	50.0	19	61.3
Bronx	2	13.3	2	12.5	4	12.9
Brooklyn	1	6.7	1	6.3	2	6.5
Queens	1	6.7	4	25.0	5	16.1
Staten Island	0	0.0	1	6.3	1	3.2
Subtotal Known Zip Code	15	100.0	16	100.0	31	100.0
Other/Unknown	2		5		7	
Total	17		21		38	

Criminal Conviction Histories

Criminal conviction history is based on information collected by CJA and is characterized by the most severe conviction charge in prior adult-court cases. Overall, a majority of TCM cases (54.8%) had defendants with prior convictions to crimes of both misdemeanor and felony severities, but the percentage was greater (65.0%) among the DCP cases than among the TCM-direct cases (45.5%). Some of this difference is due to the fact that in all DCP cases defendants had at least some prior criminal convictions while no prior cases with criminal convictions were found in the CJA database for defendants in three TCM-direct cases (and in one case no prior criminal conviction history could be determined).

PRIOR CRIMINAL CONVICTION HISTORY OF DEFENDANTS IN TCM CASES						
TYPE OF CRIMINAL RECORD	DCP		TCM-Direct		Total	
	N	%	N	%	N	%
No Prior Convictions	0	0.0	3	13.6	3	7.1
Misdemeanor Convictions Only	7	35.0	9	40.9	16	38.1
Both Misdemeanor and Felony Convictions	13	65.0	10	43.5	23	54.8
Total	20	100.0	22	100.0	42	100.0
Missing	0		1		1	

As shown on the top portion of the next table, among the cases of defendants with prior misdemeanor convictions, those in the DCP category appeared to have comparatively greater numbers of such convictions. However, part of this difference is due to the fact that in all DCP-sentenced cases defendants met the program's criteria of a minimum of at least three prior misdemeanor convictions while in a few TCM-direct cases this criterion was not met.

NUMBER OF PRIOR MISDEMEANOR AND FELONY CONVICTIONS AMONG DEFENDANTS IN TCM CASES						
Number of Prior Misdemeanor Convictions	DCP		TCM-Direct		Total	
	N	%	N	%	N	%
1 or 2	0	0.0	3	15.8	3	7.7
3-9	3	15.0	6	31.6	9	23.1
10-20	7	35.0	3	15.8	10	25.6
21-40	5	25.0	4	21.1	9	23.1
41 or more	5	25.0	3	15.8	8	20.5
Total	20	100.0	19	100.0	39	100.0
Number of Prior Felony Convictions	N	%	N	%	N	%
	N	%	N	%	N	%
1	2	15.4	2	20.0	4	17.4
2	7	53.8	4	40.0	11	47.8
3	2	15.4	2	20.0	4	17.4
4 or more	2	15.4	2	20.0	4	17.4
Total	13	100.0	10	100.0	23	100.0

In cases in which defendants had prior felony convictions in both categories a majority of all defendants had no more than two prior felony convictions when the 1 and 2 prior felony conviction categories are combined. However, a somewhat greater percentage of defendants in the DCP category had no more than two such prior felony convictions in (69.2%) in comparison with the TCM-direct category (60.0%) when the total for 1 and for 2 prior felony convictions are combined.

CHAPTER III: PROGRAM CHARACTERISTICS OF CLIENTS IN TCM CASES

This chapter of the TCM portion of the report describes various aspects of the characteristics and program participation elements of TCM clients.

Throughout, the data discussed were provided to CJA by CASES under a data-sharing agreement entered into by the agencies.

Government and Other Benefits of TCM Clients

At the time of admission, 37 (90.2%) of the 41 TCM clients had some form of benefits. However, three of these clients had only food stamps, so only 34 TCM clients (82.9%) had health benefits. TCM staff was able to work with the health care providers of 12 TCM clients (29.3%) while they were participating in the program.

The breakdown of benefits type is detailed in the table below. Because many clients had multiple types of benefits in combination with each other the sum of benefits is far greater than the number of program clients. For example, of the 41 program clients, 31 (75.6%) had Medicaid benefits and 25 (61.0%) program clients had access to food stamps. It is worth noting that five of the six clients who reportedly had no benefits at all came directly to TCM.

GOVERNMENT AND OTHER BENEFITS HELD BY TCM PROGAM CLIENTS						
TYPE OF HEALTH BENEFITS	DCP		TCM Direct		Total	
	N	%	N	%	N	%
Medicaid	15	75.0	16	76.2	31	75.6
Medicare	1	5.0	1	4.8	2	4.9
SSI	7	35.0	8	38.1	15	36.6
SSD	2	10.0	1	4.8	3	7.3
Public Assistance/Welfare	2	10.0	3	14.3	5	12.2
Food Stamps	14	70.0	11	52.4	25	61.0
Section 8 Housing	0	0.0	1	4.8	1	2.4
Pension	0	0.0	1	4.8	1	2.4
None	1	5.0	5	23.8	6	14.6
No Medical Benefits (i.e. Food Stamps Only)	3	15.0	0	0.0	3	7.3

According to the information collected by CASES staff, most TCM clients (N = 35, 85.4%) were unemployed. One client (2.4%) was employed legally and five clients (12.2%) were employed “off the books”. In addition, four TCM clients (9.8%) self-reported previous military service, two with honorable discharges.

Eighteen individuals, or 43.9 percent of all program clients, were recorded by CASES as homeless based on the residential information provided by the TCM clients. Of these 18 clients, 10 reported living on the street, four were living in a shelter, one was living in a hostel, and three were “doubled up”.

The incidence and prevalence of the employment, military service-related, and homelessness variables were very similarly distributed between the DCP-diverted and TCM-direct groups and the number of clients was so small that these data are only presented in text without any tabular illustration.

Health Characteristics of TCM Clients

Every one of the 41 TCM clients met the Diagnostic and Statistical Manual of Mental Health Disorders-IV-TR criteria for at least one Axis I diagnosis (e.g. schizophrenia or bipolar disorder), as required by the program protocols. Nine clients (22.0%) had two or more Axis I diagnoses and 32 clients (78.0%) had a dual diagnosis that included at least one Axis I diagnosis and one substance-related mental health disorder.

Only 12 of the 41 TCM clients (29.3%) had not previously been inpatients in a psychiatric hospital. Of the 29 (70.7%) that had been hospitalized, 13 (31.7%) were known to have been hospitalized on multiple occasions. Fourteen TCM clients (34.1%) had not been receiving any sort of mental health treatment prior to their admission to TCM, seven clients (17.1%) had received treatment while incarcerated prior to admission to TCM, and the remaining TCM clients had utilized various treatments ranging from sporadically receiving medications from an emergency room to private psychiatric care. (Data not shown)

The incidence and prevalence of Axis I disorders among the TCM population is displayed in the next table. As can be seen, the general TCM population is predominantly characterized by psychotic disorders and mood disorders. Because some TCM clients had multiple non-substance-related

mental health disorders, the total number of diagnoses on this table is greater than the number of clients.

MENTAL HEALTH DIAGNOSES AMONG TCM CLIENTS						
Diagnoses	DCP		TCM Direct		Total	
	N	%	N	%	N	%
Psychotic Disorders	7	35.0	8	38.1	15	36.6
Schizophrenia	5	25.0	2	9.0	7	17.1
Schizoaffective Disorder	1	5.0	2	9.5	3	7.3
Delusional Disorder	0	0.0	1	4.8	1	2.4
Psychotic Disorder NOS	1	5.0	3	14.3	4	9.8
Mood Disorders	13	65.0	13	61.9	26	63.4
Bipolar Disorder	9	45.0	5	23.8	14	34.1
Depressive Disorder	4	20.0	8	38.1	12	29.3
Anxiety Disorders	1	5.0	3	14.3	4	9.8
Post Traumatic Stress Disorder	1	5.0	3	14.3	4	9.8
Impulse Control Disorders	0	0.0	1	4.8	1	2.4
Kleptomania	0	0.0	1	4.8	1	2.4
None	0	0.0	0	0.0	0	0.0

Although the sample size is small and no definitive conclusions can be drawn from these data, the manner in which psychiatric diagnoses break down across client groups (i.e. from DCP or TCM-direct) does provide an opportunity for some speculation regarding differences in the client groups. For instance, although both groups had approximately the same number of clients with psychotic disorders, the clients with psychotic disorders in the DCP group had largely been diagnosed with schizophrenia whereas the clients with psychotic disorders who entered TCM directly tended to be diagnosed with a psychotic disorder “not otherwise specified” (NOS), a diagnosis that indicates that, for some reason (perhaps the DCP diversions were referred with a more complete psychiatric history), these clients had never received psychiatric care for a long enough period of continuous time for a clinician to ascertain adequate clinical information to make a specific diagnosis.

Similarly, although both groups had the same number of clients with mood disorders, the clients with mood disorders in the DCP diverted group had largely been diagnosed with bipolar disorder whereas the clients with mood disorders who were mandated directly to TCM tended to be diagnosed with a depressive disorder. It is possible that more of the clients mandated directly to TCM were bipolar as well, but had not been in continuous psychiatric care long enough (or did not come into the program with a sufficient mental health history) for clinicians to have been able to observe the clients oscillating between the depressed to the manic episodes of bipolar disorder. Lastly, it is also worth noting that 75% of the clients who had diagnoses of post traumatic stress disorder had been mandated directly to TCM.

Substance-related mental health disorders were also very prevalent among TCM clients. Only nine TCM clients (22.0%) did not meet Diagnostic and Statistical Manual of Mental Health Disorders-IV-TR criteria for at least one substance-related mental health disorder. Sixteen clients (39.0%) had multiple substance-related diagnoses. (Data not shown)

The incidence and prevalence of substance-related mental health disorders among the TCM population are displayed in the next table. As can be seen, diagnoses of a wide range of substance abuses and dependencies were highly prevalent but opioid dependence and crack cocaine dependence were especially common (17.1% each). Substance dependence disorders (especially opioid, alcohol and cannabis dependence) were more prevalent among clients who were mandated directly to TCM and, conversely, substance abuse disorders were more common among cases that were diverted from DCP.

SUBSTANCE-RELATED MENTAL HEALTH DIAGNOSES AMONG TCM CLIENTS						
Diagnoses	DCP		TCM Direct		Total	
	N	%	N	%	N	%
Substance Dependence	8	40.0	11	52.4	19	46.3
Alcohol Dependence	0	0.0	2	9.5	2	4.9
Cannabis Dependence	0	0.0	1	4.8	1	2.4
Cocaine Dependence	1	5.0	0	0.0	1	2.4
Crack Cocaine Dependence	4	20.0	3	14.3	7	17.1
Opioid Dependence	3	15.0	4	19.0	7	17.1
Phencyclidine Dependence	0	0.0	0	0.0	0	0.0
Polysubstance Dependence	0	0.0	1	4.8	1	2.4
Substance Abuse	12	60.0	2	9.5	14	34.1
Alcohol Abuse	2	10.0	1	4.8	3	7.3
Cannabis Abuse	3	15.0	1	4.8	4	9.8
Cocaine Abuse	4	20.0	0.0	0	4	9.8
Crack Cocaine Abuse	1	5.0	0	0.0	1	2.4
Opioid Abuse	1	5.0	0	0.0	1	2.4
Phencyclidine Abuse	1	5.0	0	0.0	1	2.4
Polysubstance Abuse	0	0.0	0	0.0	0	0.0
History of Substance Abuse or Dependence with no Current Substance Abuse or Dependence	1	5.0	2	9.5	3	7.3
History of Substance Abuse or Dependence with Current Substance Abuse or Dependence	1	5.0	3	14.3	4	9.8
Diagnosis not finalized	7	35.0	1	4.8	8	19.5
None	3	15.0	6	28.6	9	22.0

Self-reported medical histories also were collected for all TCM clients. Twenty-five clients (61.0%) were being treated for at least one medical condition while participating in TCM. The incidence and prevalence of medical health conditions among the TCM population is displayed in the table below. Because the numbers are so small, no comparison between the DCP and TCM-direct clients are shown.

MEDICAL CONDITIONS AMONG TCM CLIENTS		
Medical Condition	N	%
Arthritis	3	7.3
Asthma	6	14.6
Cardiac Arrhythmia	2	4.9
Diabetes	3	7.3
Edema	1	2.4
Epilepsy	1	2.4
Heart Disease	1	2.4
Heart Murmur	1	2.4
Hepatitis C	2	4.9
High Blood Pressure	6	14.6
HIV	1	2.4
Lupus	2	4.9
Seizure Disorder	3	7.3
Other / Unknown	11	26.9
None	16	39.0

Identification of Cases of Defendants with Mental Health Needs and Entrance into TCM

The next table illustrates the source of referral and method of admission into the TCM program. Defendants in 26 of the 43 TCM cases (58.1%) were initially flagged by the Brief Jail Mental Health Screen (BJMHS) as part of the Day Custody pre-arraignment screening process. Eighteen of these cases received a DCP sentence at arraignment, although in one of these cases the defendant's mandate was moved to TCM and we account for this case under the TCM-direct category. An additional case was referred to TCM after completion of a DCP sentence based on the administration of the BJMHS during the DCP evaluation. In the other seven cases defendants did not receive a DCP sentence but subsequently entered TCM directly at a post-arraignment appearance.

Legal Aid Society referrals to TCM program staff accounted for 12 of the 43 TCM cases (27.9%). All of these twelve cases went directly into the TCM program. Two of these 12 cases received a TCM sentence at Criminal Court arraignment and the others at a post-arraignment appearance.

There were other sources of referrals as well. There were two cases (4.7%) sentenced to TCM after being referred for program evaluation by the judge in the case. In one instance the client voluntarily entered after completing a DCP sentence based on a referral by The Neighborhood Defender Services of Harlem. There was one defendant who entered TCM as a self-referral, on a repeat admission after his original participation was interrupted by a jail sentence. In another instance an existing program client received a second program mandate in a re-arrest case after TCM staff was notified by his mother that he again was in the criminal court system.

SOURCE OF REFERRAL TO TCM FOR CLINICAL ASSESSMENT BY TYPE OR PROGRAM ADMISSION						
Source of Referral to TCM for Clinical Assessment	DCP		TCM-Direct		Total	
	N	%	N	%	N	%
Administration of BJMHS pre-arraignment	17	85.0	8	34.8	25	58.1
DCP in-program administration of BJMHS	1	5.0	0	0.0	1	2.3
Subtotal BJMHS	18	90.0	8	34.8	26	60.4
Legal Aid	0	0.0	12	52.2	12	27.9
Judge	0	0.0	2	8.7	2	4.7
Neighborhood Defender Service	1	5.0	0	0.0	1	2.3
Self or Family Referral	1	5.0	1	4.3	2	4.7
Total	20	100.0	23	100.0	43	100.0

The part of the criminal justice system from which TCM clients are admitted is largely a function of where they are identified, but the correlation is not perfect. Most cases diagnosed through DCP had arraignment convictions with DCP program mandates, while most of the TCM direct entry cases were the result of a post-arraignment commitment: There were only two TCM-direct entry cases mandated from a Criminal Court arraignment. But there also are differences in how the symptoms of mental illness lead to a referral to TCM.

Overall a majority of TCM cases had defendants flagged by the BJMHS as part of pre-arraignment DCP screening. In addition, almost every post-DCP entrant into TCM was clinically assessed and offered TCM participation having been flagged by the BJMHS. However, there were other cases of defendants

flagged by the BJMHS screen that did not receive a DCP sentence, but were subsequently found to be seriously mentally ill and appropriate for being diverted into TCM. The defense bar, and most specifically the Legal Aid Society, was the second largest source of TCM referrals, all of which resulted in a post-arraignment program admission.

In total, as shown, clients in 20 of the 43 TCM cases (46.5%) that participated in TCM also had participated in DCP. In these cases clients were voluntary TCM participants having already satisfied a court-mandated program through the completion of DCP. Of the 23 cases that came directly to TCM, all but one case (a CPL 730 case with charges that were dismissed) had some number of judicially mandated program sessions or length of participation imposed, with a jail sentence to be imposed for failure to complete the required participation in the TCM program. However, clients could voluntarily avail themselves of TCM services after the mandated period.

Type and Length of Program Participation

The delivery of discharge planning services in TCM is unlike DCP. TCM clients participate in face-to-face meetings with the program's staff and a mandated session lasts at least fifteen minutes, although sessions may last far longer. The services provided in these sessions are tailored to the needs of individual clients although there are many common needs to be served in the TCM client population, such as acquiring housing, medical benefits and medication. When TCM participation is court-ordered, the mandate is based on sessions to be completed almost always within a limited time period designated with a compliance date.

DCP in comparison is a fixed length program of three days of activities with attendance for these days to be completed within the 15-day window from sentencing to the compliance date. Many of the DCP program activities are conducted in groups rather than on an individual basis. When mandated, CASES staff attempt to bring both TCM and DCP defendants into the program as quickly as possible, and encourage defendants to return for additional sessions as soon as possible. However, the goal of TCM is to use this initial period to

actively engage clients so that they will continue to return for additional services on a voluntary basis even if their entrance to the program was court-mandated. In comparison, DCP has a fixed three-day period in which to deliver all service and referral components with no expectation of a continuing one-on-one delivery of services between the program participant and staff.

In TCM-mandated cases the most limited measure of program success is whether or not defendants complete the number of court-imposed program sessions within the time period set. But for the TCM program, the expectations are much more expansive, and the court mandate is not applicable to the cases of DCP participants who voluntarily enter TCM.

Among the TCM cases that were admitted directly to TCM and did not participate in DCP (N = 23), there was some variability in the number of sessions that they were required to complete in order to avoid an alternative jail sentence. There were seven cases (30.4%) in which defendants were mandated to three case management sessions (one of which also included some sort of fee) and seven cases (30.4%) for which the mandate would be complete at the discretion of the sentencing judge. Four of the cases (17.4%) were mandated to five sessions, one case (4.3%) was mandated to eight sessions, and two cases (8.7%) were mandated to ten sessions. A single case (4.3%) with a mandate of "Other" was required to attend TCM for four months, but the number of sessions was not specified. One case (4.3%) that had been referred directly to TCM, in which the case was dismissed after a CPL 730 proceeding, did not receive a mandate and thus had no mandated sessions. (Data not shown)

The breakdown of voluntary participation among the 23 cases that were referred directly to TCM is as follows: the CPL 730 case with the dismissed court case attended 5 sessions, all of which were voluntary as he was not mandated. Of the 22 mandated cases that were referred directly to TCM, five were unsuccessful in completing their mandates and, thus, attended no voluntary sessions. Of the 17 cases that were mandated and successful, 9 chose not to participate in TCM after their compliance dates and therefore attended no voluntary sessions. Eight of the 17 mandated and successful cases continued to

work with TCM after their mandates were complete (i.e. after their compliance dates), but the number of voluntary sessions this group attended cannot be calculated because four of the eight were mandated to an unknown number of sessions (i.e. mandate was up to judge's discretion) that cannot be subtracted from the total number of sessions they attended. However, it is known that 9 cases (39.1%) that were referred directly to TCM participated voluntarily at some point in their treatment. (Note that this 39.1% is not comparable to the 100% of post-DCP clients, all of which participated voluntarily in all of their sessions, because it is not known how many DCP cases were offered TCM services but refused them.)

As a group, the cases that were admitted directly to TCM attended more face-to-face case management sessions than their non-mandated counterparts from DCP. In total, TCM staff provided 452 face-to-face case management sessions of at least 15 minutes each during the current reporting period. The group of cases that were referred directly to TCM accounted for 273 (60.4%) of these sessions whereas the TCM cases that arrived at TCM via DCP accounted for 179 sessions (39.6%).

This finding is noteworthy in that it indicates two possibilities. First, it may be that defendants in the cases mandated to TCM are more likely to engage with the services provided by TCM despite the fact that their participation is, at least initially, compulsory. But alternatively, this finding could be indicative of the fact that clients in the TCM-direct cases have more serious mental health issues and/or did not previously have as much psychiatric care as DCP referred clients, and therefore benefit from greater service utilization than their non-mandated counterparts. This possibility seems especially likely in consideration of the fact that over 60% of TCM direct cases were referred by Legal Aid Society staff and Criminal Court judges (i.e. legal professionals with no mental health training) who are likely to recognize only overt signs of psychopathology and are not currently using screening instruments to identify potential TCM clients.

The cases that were directly referred to TCM had a mean (mathematical average) length of stay of 82.22 days (shortest length of stay was 7 days and the

longest was 209) and participated in a mean of 11.9 face-to-face case management sessions (fewest number of sessions was 1 and greatest was 37). The DCP cases that arrived at TCM via DCP participation had a mean length of stay of 110.9 days (shortest length of stay was 12 days and the longest was 308) and participated in a mean of 9.0 face to face case management sessions (fewest number of sessions was 0 and greatest was 58). In comparison then, TCM-direct clients accumulated more sessions in less time than the post-DCP participants. (Data not shown).

Case Status

Of the 22 cases that were referred directly to TCM and had a mandate to TCM, 17 (77.3%) successfully completed their mandates. All 20 (100.0%) of the cases that were post-DCP admissions (and not given TCM mandates) successfully completed DCP.

The next table shows the status of TCM clients during the study period, as of the end April 2009, including whether the case was still active, or had been discharged or terminated, as of that cut-off date. The status is broken down by participation groups.

CASE STATUS AS OF THE END OF THE CURRENT STUDY PERIOD						
Case Status	DCP		TCM-Direct		Total	
	N	%	N	%	N	%
Case Still Active	2	10.0	4	17.4	6	14.0
Dropped Out	6	30.0	0	0.0	6	14.0
Missing	1	5.0	1	4.3	2	4.7
Dropped Out & Missing	1	5.0	3	13.0	4	9.3
Relocated	3	15.0	0	0.0	3	7.0
Incarcerated	1	5.0	1	4.3	2	4.7
Sentenced	0	0.0	1	4.3	1	2.3
Involuntary Psychiatric Commitment	0	0.0	1	4.3	1	2.3
Psychiatric Hospitalization (for a time greater than 3 months)	0	0.0	1	4.3	1	2.3
Refused Services After Enrolling	1	5.0	0	0.0	1	2.3
ATI Graduation	0	0.0	2	8.7	2	4.7
Other	5	25.0	9	39.1	14	32.6
Total	20	100.0	23	100.0	43	100.0

Chapter IV: TCM CASES IN COURT

This chapter of the TCM report focuses on the characteristics of the prosecuted cases that brought defendants into the TCM program. It also examines penalties imposed by the court for program failure for TCM-direct cases. In the last section different facets of recidivism are examined for program participants.

Case Characteristics

Neither the DCP nor TCM programs actively advocate for program participation of defendants in Operation Spotlight cases.¹⁴ However, as previously discussed in regard to DCP, CASES can accept Spotlight cases if defendants are referred by other courtroom participants, or directed to do so by judges. In addition, there are instances in which court papers are not correctly marked with the Operation Spotlight stamp so that the defendant would appear program eligible. As can be seen in the table below, the overall percentage of clients drawn from Spotlight cases (48.8%) was substantial, and larger than the approximately one-third of all DCP-sentenced cases drawn from Spotlight-targeted cases.

OPERATION SPOTLIGHT DESIGNATION AMONG TCM CASES						
Was the case Operation Spotlight Designated?	DCP		TCM-Direct		Total	
	N	%	N	%	N	%
No	10	50.0	12	52.2	22	51.2
Yes	10	50.0	11	47.8	21	48.8
Total	20	100.0	23	100.0	43	100.0

There also were some differences in the type and severity of the top prosecuted charges at Criminal Court arraignment between the two categories of cases. The top of the next table compares the types of prosecuted crimes at Criminal Court arraignment between the DCP and TCM-direct case. It uses a CJA-created typology of crime categories, a more extensive description of which is found in the APPENDIX to this report.

¹⁴ After the end of the study period the City somewhat relaxed its restriction on inclusion in TCM mandated cases of defendants in Operation Spotlight cases provided the number of required program sessions and the alternative jail length, were longer than for non-Spotlight cases.

Among the TCM-direct cases over half were arraigned on a property category charge. Most of these cases were prosecuted for the crime of petit larceny but others within this category had charges such as possession of stolen property or criminal mischief (data not shown). The drug category, and harm-to-persons category (in which program cases had charges of assault or menacing), each had four cases, the second largest number among all TCM-direct cases.

In comparison, slightly less than half of the DCP cases had a defendant arraigned on a property category charge (45.0%), all of which were for the petit larceny charge. As was found with the TCM-direct cases the property crime category had the largest number of DCP cases. Drug crimes made up the second largest category of cases for defendants in the DCP cases, and the percentage (25.0%) in this crime category was greater than was found among the TCM-direct cases (17.4%). And, unlike the TCM-direct cases, there were no DCP cases prosecuted with a charge in the harm-to-persons category, but there were several cases in the misconduct category, involving criminal trespass charges.

TYPE AND SEVERITY OF TOP PROSECUTED CHARGE AT CRIMINAL COURT ARRAIGNMENT IN TCM CASES						
Type of Charge	DCP		TCM-Direct		Total	
	N	%	N	%	N	%
Harm to Persons	0	0.0	4	17.4	4	9.3
Weapon	0	0.0	1	4.3	1	2.3
Property	9	45.0	11	47.8	20	46.5
Drug	5	25.0	4	17.4	9	20.9
Fraud	1	5.0	0	0.0	1	2.3
Misconduct	3	15.0	1	4.3	4	9.3
Obstruction of Justice	1	5.0	1	4.3	2	4.7
Other/Unknown	1	5.0	1	4.3	2	4.7
Total	20	100.0	23	100.0	43	100.0
Severity of Top Arraignment Charge	N	%	N	%	N	%
Felony	0	0.0	3	13.0	3	7.0
A misdemeanor	19	95.0	19	82.6	38	88.4
B misdemeanor	1	5.0	0	0.0	1	2.3
Other/Unknown	0	0.0	1	4.3	1	2.3
Total	20	100.0	23	100.0	43	100.0

As shown on the bottom portion of the table, although the overwhelming majority of all TCM cases were prosecuted for crimes of A-misdemeanor severity (88.4%), there were some differences in the severity of the top charge at Criminal Court arraignment between the DCP and TCM-direct cases. For the DCP cases, almost every case was prosecuted for an A-misdemeanor crime (95.0%) and none had a felony-severity charge entering the court system. In comparison, most TCM-direct cases also were prosecuted for A-misdemeanor crimes (88.4%) but the remainder were distributed among cases arraigned with a felony crime, or a crime of lesser or unknown severity, most of the latter of which are for charges outside the Penal or Vehicle and Traffic Laws. Because TCM-direct cases receive their program sentence at a post-arraignment court appearance, there likely are greater possibilities for felony-prosecuted cases that will subsequently be reduced to non-felony charges to be considered for TCM if defendants are found to meet the mental health criteria.

Court Processing and Case Outcomes

In the course of following case processing and court outcomes in the TCM-direct category we found that our ability to track court activity and decision-making at specific milestones in these cases was problematic. The TCM program is unlike DCP which is characterized by a high degree of uniformity, in which defendants in targeted cases are screened prior to Criminal Court arraignment in anticipation of a guilty plea agreement at that initial court appearance. Upon conviction, the Day Custody Program carries an intermittent jail sentence. In comparison there are wide variations in both the type of case outcomes and the court appearance at which the decision to mandate defendants' participation to the TCM program are made.

Many of the programming difficulties we encountered in researching TCM-direct cases result from the way case processing and court outcome information cases is recorded in the court's computer system which is electronically transmitted to CJA, and/or in the way CJA interprets that information when it is transferred into its computerized database. Another source of our difficulty in tracking TCM mandated cases is that we had not anticipated some of the

differences found between case processing of DCP and TCM cases when we applied our DCP programming to the TCM cases.

Unlike DCP cases that receive the program sentence in conjunction with a conviction, not all TCM cases, even when court mandated, receive the program as a sentence. For example, in several instances we discovered that the TCM-mandate was imposed after a conviction but while the case was adjourned pending sentence, with the case dismissed upon successful completion of the mandated program period. In addition, TCM clients may self-refer and enter the program independent of any specific court case.

Second, in the Day Custody Program all sentenced cases should be reported with an intermittent jail sentence imposed. This readily identifies a DCP program case, and in the CJA database such cases remain active until either the DCP sentence is satisfied, or the defendant is returned and re-sentenced based on the warrant issued for program failure. Because the TCM program activities do not take place in a jail facility, even if TCM is mandated in conjunction with a sentence, there is no sentence code comparable to an intermittent jail sentence. Most often when the TCM-mandated sentence is associated with a sentenced conviction, the sentence is a conditional discharge with the program identification merely written into a comment field in the OCA computer system which is not part of the electronic data transfer. As a result, there is no way that CJA can independently identify any particular downtown Manhattan case with a conditional discharge sentence as being part of the TCM program. This also means that no alternative jail sentence length appears associated with the case in the electronic record transmitted from the court's computer system to CJA. Further, the conviction and conditional discharge sentence are interpreted as a determinative disposition for CJA purposes and the case is removed from CJA's active database. The case record is therefore not available for any automated updating even if the case is restored to the Court's calendar due to unsatisfactory program completion.

Third, almost all DCP sentences are the result of a negotiated plea at Criminal Court arraignment. Of the 20 TCM cases with voluntary post-DCP participation, all but three originally entered DCP from a conviction and sentence entered at Criminal Court arraignment. In comparison, we found only three TCM-direct cases which entered the program following Criminal Court arraignment, and one of these was originally a DCP-sentenced case in which the defendant was transferred to TCM. Locating the court appearance in which the TCM program was mandated is therefore problematic.

A fourth issue, and one that appears distinctive to some of the TCM clients, is that in some instances the defendant's court processing was interrupted by a statutory mental health assessment under Criminal Procedure Law Article 730 (CPL 730). At least two of the TCM-direct cases had defendants with a CPL 730 outcome at Criminal Court arraignment, and at least several others had CPL 730 outcomes at subsequent appearances. Because this was not anticipated, our programming did not include capturing a separate case processing milestone of whether any court appearance had a CPL 730 outcome prior to program admission in TCM-direct cases. In at least several instances, TCM clients were diverted into the program although the ultimate case disposition was a dismissal. And, a dismissal is another determinative outcome that moves a case out of CJA's active data file so that no further updating occurs.

Program Retention and Penalties for Failure in TCM-Mandated Cases

For the purposes of determining the jail alternative set in these cases, we relied entirely on CASES data. The table below shows that there was a wide variety of alternative jail sentence lengths, ranging from two cases with 10-day jail alternatives, to two cases in which the jail alternative was set at one year, and one case in which the judge indicated a discretionary penalty of up to one year in the event the defendant was unsuccessful in attending the mandated number of program sessions. In one TCM-direct case the defendant entered the program without a court mandate and this case is excluded from the illustration. As also shown in this table, of the 22 TCM-mandated cases, there was one case for which the length of the jail alternative was not provided.

PENALTIES FOR FAILURE FOR SUCCESSFUL AND UNSUCCESSFUL CASES OF TCM-MANDATED CLIENTS						
Jail Alternative for Program Failure	Successful		Unsuccessful		TOTAL	
	N	%	N	%	N	%
10 Days	2	11.8	0	0.0	2	9.1
15 Days	1	5.9	0	0.0	1	4.5
20 Days	1	5.9	0	0.0	1	4.5
30 Days	3	17.6	1	20.0	4	18.2
45 Days	0	0.0	1	20.0	1	4.5
*60 Days	1	5.9	1	20.0	2	9.1
*90 Days	2	11.8	2	40.0	4	18.2
180 Days (6 months)	2	11.8	0	0.0	2	9.1
270 Days (9 months)	1	5.9	0	0.0	1	4.5
**Up to 1 year	3	17.6	0	0.0	3	13.6
Not Specified	1	5.9	0	0.0	1	4.5
Total	17	100.0	5	100.0	22	100.0
*One successful client was mandated to TCM concurrently in two separate cases. In one case the penalty for program failure was set at 60 days and at 90 days in the other case. **Two of these cases had a one-year jail alternative while in another case the judge set a jail alternative of <i>up to</i> one year.						

In all five of the unsuccessful cases defendants failed to complete the required number of mandated program sessions which included one with five sessions, one with eight sessions, two with ten sessions, and one case with an open mandate of four months. In three of the five unsuccessful cases the client only attended the first session, and in one case the client attended two (out of a mandated five). However, there was one client who attended nine of a mandated ten sessions. In all of these five cases the defendants had final case outcome dispositions associated with the court appearance in which the program was mandated. As a result, the cases were removed from CJA's active database so that we cannot determine if any of the defendants in these cases were returned to court and re-sentenced in the TCM-mandated case without information from court source documents.

Prevalence and Frequency of Re-Arrests Among TCM Program Clients

Among the 43 TCM cases were 41 program clients, 20 of which were voluntary post-DCP participants, and 21 with direct entry into the TCM program, all but one of which began the TCM program under court mandate. To ensure comparability with the methodology for studying re-arrests for DCP program participants, and because every DCP participant in the TCM program had only a single program case, new prosecuted arrests were searched for TCM-direct clients forward of their first or only program case. Among other considerations this maximized our ability to search for re-arrests within a five-month interval of various benchmark decision points. However, it does mean that a second mandated TCM case for a defendant would be counted as a re-arrest if it occurred within five months of the compliance date of the first case.

One question about the prevalence of re-arrests is whether or not TCM clients had any new prosecuted arrest on or after the compliance date on the first or only mandated cases, and especially for defendants who successfully completed the court's required number of mandated sessions with TCM staff. For the purposes of the illustration that follows we included in the TCM successful completion column the re-arrest information for the one TCM-direct client who came to the program after a CPL 730 finding led to a court dismissal and for whom participation was purely voluntary. For this defendant we researched re-arrests on or after the program admission date rather than a court compliance date. All the clients in the DCP column had already successfully satisfied their court program mandate so that there was no court compliance date in their cases. For the DCP participants all TCM participation was entirely voluntary. For these program clients we researched re-arrests on or after their TCM program admission date.

ANY PROSECUTED ARREST OF DCP PARTICIPANTS WITHIN 5 MONTHS OF ADMISSION AND ANY PROSECUTED ARRESTS OF TCM CLIENTS WITHIN FIVE MONTHS OF COURT-MANDATED COMPLIANCE DATE								
Any Re-arrest?	DCP		*TCM Successful		TCM Not Successful		Total TCM	
	N	%	N	%	N	%	N	%
No	9	45.0	6	37.5	1	20.0	7	33.3
Yes	11	55.1	10	62.5	4	80.0	14	66.7
Total	20	100.0	16	100.0	5	100.0	21	100.0
<i>*The TCM successful column includes one program client without a court mandate. Re-arrest for this individual was based on or after the TCM program admission date.</i>								

As can be seen from the above illustration, more DCP clients had no re-arrests within five months of their admission to the TCM program (9 individuals) in comparison with the total number of TCM-direct clients not re-arrested within five months of their compliance date (7 individuals). This also led to a difference between the percentages of DCP participants with no re-arrests within five months of the TCM program admission date (45.0%) in comparison with the percentage of all TCM-direct clients without any re-arrest within five months of the program-mandated compliance date (33.3%). In addition, the percentage of *successful* TCM-direct clients with no re-arrest within five months of their court compliance date also was somewhat smaller (37.5%) than for the DCP participants, all of which had successfully completed their court mandated program.

The next table examines the frequency of new arrests for re-arrested TCM clients, by their participation status, for the defendants in each category with a new prosecuted arrested within the five-month interval studies. In every category at least half of the re-arrested clients had only a single re-arrest in the five-month interval examined.

RE-ARRESTS OF DCP PARTICIPANTS WITHIN 5 MONTHS OF ADMISSION AND RE-ARRESTS OF TCM CLIENTS WITHIN FIVE MONTHS OF COURT-MANDATED COMPLIANCE DATE								
Number of Re-arrests	DCP		*TCM Successful		TCM Not Successful		Total TCM	
	N	%	N	%	N	%	N	%
1	9	60.0	5	50.0	3	75.0	8	57.1
2	3	20.0	2	20.0	1	25.0	3	21.4
3	1	6.7	1	10.0	0	0.0	1	7.1
5	2	13.3	2	20.0	0	0.0	2	14.3
Total	15	100.0	11	100.0	4	100.0	14	100.0
*The TCM successful column includes one program client without a court mandate. Re-arrest for this individual was based on or after the TCM program admission date.								

What these data on the prevalence of re-arrests suggest is that there was a high rate of recidivism among TCM clients on or after their program-mandated compliance date, whether for TCM-direct clients after completing the program's mandated number of sessions, or for the DCP clients after admission to TCM and who already completed the DCP mandate and voluntarily were availing themselves of TCM program services. The re-arrest rates starting from TCM admission among the DCP clients (55.1%) was very similar with the post-compliance re-arrest rate for the general population of DCP-sentenced defendants (56.8%). The re-arrest rate among all TCM-direct program clients in the five-month post-compliance period examined (66.7%), and among the successful TCM-direct clients (62.5%) was greater than for both voluntary DCP clients or the general DCP successful population, but was smaller than the post-compliance date re-arrest rates among DCP-sentenced defendants in Spotlight-targeted cases (73.0%). These are imperfect comparisons at best. Unfortunately, there is no available comparison group of seriously mentally ill defendants from which we can determine if TCM program participation had any affect on the prevalence or frequency of re-arrest in comparison with similarly situated defendants either without program intervention or who received in-custody discharge planning.

Time to First Re-Arrest

Another facet of recidivism is the time to the first re-arrest for defendants. For re-arrested DCP clients we calculated the time from the TCM program admission date to the date of the first re-arrest. For re-arrested TCM-direct clients we calculated the time to the first re-arrest from the program compliance date. (The one voluntary TCM-direct client was not re-arrested so no separate calculation needed to be made for this case as was done in the previous analysis.)

The rows on the table below show both the mean and median (midpoint) number of days to the first re-arrest, and the fewest and greatest number of days to re-arrest for each category.

TIME TO FIRST RE-ARRESTS FOR RE-ARRESTED TCM CLIENTS				
Time (in days)	DCP	*TCM Successful	TCM Not Successful	Total TCM
Mean	74.4	65.7	64.0	65.2
Median	88.0	55.0	59.0	55.0
Fewest number of days	8	0	11	0
Greatest number of days	149	130	127	130
Total Re-Arrested	11	10	4	14

The mean (average) number of days to a new arrest among re-arrested DCP participants was about ten days longer than the average for the TCM-direct clients 74.4 days in comparison with 65.2 days. In addition, the median days were considerably longer for the eleven re-arrested in the DCP group (88.0 days) in comparison with the median for both all TCM clients and successful DCP clients (55.0 days). However, it is very difficult to put any meaningful interpretation on these findings. The range of time to a first re-arrest, for all categories of TCM clients, was very broad—from re-arrests on the date of program admission or court compliance—up to a maximum of 149 days for re-arrested DCP participants to a maximum of 130 days for a successful TCM-direct client. And, the number of cases is very small, from fourteen re-arrested TCM-direct defendants of which only four were unsuccessful participants, to eleven re-arrested DCP clients. Because there is no comparable data available for the

DCP population as a whole, how the TCM clients compare with the general DCP population cannot be determined.

CHAPTER V: SUMMARY AND CONCLUSIONS

This part of the report has focused on CASES' Transitional Case Management (TCM) program. The TCM program is specifically for recidivist misdemeanor offenders clinically assessed to be seriously mentally ill. The goals of the program are to divert program-appropriate offenders from short custodial jail sentences imposed in downtown Manhattan Criminal Court cases into a non-custodial setting in which services and referrals addressing a wide array of needs can be provided. In addition, it moves discharge planning for re-entry and re-integration into the community out of the jails and into a community-based program which should be better able to serve as a resource for these defendants.

TCM was modeled on CASES' EXIT program, a three-year demonstration project at the downtown Manhattan Criminal Court location. Like TCM, this earlier program sought to divert seriously mentally ill recidivist misdemeanor defendants into community-based mental health and supportive services. In the EXIT program, most cases were diverted to the program after a conviction with a conditional discharge sentence which required defendants to participate in a mandated three-hour program assessment session after which clients could choose to avail themselves of services and referrals for up to six months (and in some instances longer).

TCM originally was envisioned as an extension of CASES Day Custody Program, offering services to those among the DCP population found to be seriously mentally ill. Upon completion of the DCP sentence mandate, defendants meeting TCM's criteria would be offered voluntary admission into the program. To facilitate the early identification of prospective DCP defendants in need of further clinical mental health assessment, CASES introduced the Brief Jail Mental Health Screen (BJMHS) as part of its DCP pre-arraignment procedures. The BJMHS is a tool for flagging symptoms of mental illness in a very short survey instrument designed to be administered by non-mental health professionals. For those flagged by the BJMHS a clinical assessment would be conducted as part of the DCP program activities.

Very shortly after the start-up of TCM it became clear that the numbers of clients from DCP would be very limited, and that others in the system, especially members of the Legal Aid Society and the judiciary, were looking for a way to divert mentally ill offenders into a separate program. As a result, early in the TCM program's implementation it began to get requests for clinical assessments of defendants outside the parameters of DCP, and also began to receive defendants sentenced directly into the program under a court mandate. This early experience also has helped inform the work of the foundation-funded TCM stakeholders committee by focusing attention on the need to find ways to more effectively intercept the seriously mentally ill for diversion out of the downtown Manhattan Criminal Court.

In the period between August 2007 and September 2008, TCM accepted 43 cases involving 41 individual clients. Among these were 20 cases in which a DCP-sentenced defendant voluntary came to TCM after completing the DCP sentence. The other 23 cases involved 21 defendants, all of which entered TCM directly and in all but one of these cases under court-mandated conditions of compulsory participation of judicially imposed length, with a jail alternative stipulated by the judge for failure to complete the required mandate. However, like their DCP-referred counterparts, voluntary participation was available to TCM defendants after the end of the court mandate.

The overwhelming majority of all TCM program clients were male, but five of the six female TCM clients entered TCM directly. The average age of program clients was approximately 40, slightly older for DCP participants and slightly younger for TCM-direct participants. DCP participants appeared to have had more extensive criminal conviction histories with a larger percentage having prior convictions to crimes of both misdemeanor and felony severities, and more prior misdemeanor convictions, in comparison with defendants in the TCM-direct group.

TCM program staff collects considerable information about clients. For example, these program data show that in over three quarters of TCM cases clients had Medicaid, and about a third also collected SSI. In over half of the

TCM cases program clients received food stamps, although the numbers were larger for participants who entered through DCP. Among the benefit categories there were very few differences between clients in the two groups of cases. However, it is worth noting that among six cases in which clients reported receiving no benefits, five were in the group of cases that entered TCM directly. According to the way CASES reports residential status 18 individuals, representing over two-fifths of the cases, were recorded as homeless with ten of these street homeless and four others connected to shelter facilities. This underscores an important characteristic of the mentally ill in the criminal justice system which is the absence of stable housing and is a need that the program tries to address.

The mental health clinical assessment performed by CASES' TCM staff found that all TCM participants met the requirements on at least one Axis I diagnosis under the Diagnostic and Statistical Manual of Mental Health Disorder-IV-TR, and over three-fourths had a dual diagnosis of at least one Axis I diagnosis and one substance-related mental health disorder. In general psychotic and mood disorders were prominent among the TCM population. Only nine TCM clients did not additionally meet the clinical criteria of at least one substance-related disorder. Substance dependence disorders were more commonly found among the TCM-direct clients, whereas substance abuse disorders were more common among clients referred through DCP.

The BJMHS was the most common means of identifying TCM clients in need of clinical assessment, and all but two of the DCP program clients were originally identified by this means. However, not all TCM clients flagged during DCP screening came into TCM through the DCP program. Approximately a third of all TCM clients flagged by the BJMHS were diverted directly into TCM at a post-arraignment court appearance. The Legal Aid Society was the second largest referral source for the TCM program's clients during this study period, and all these cases entered directly into TCM. How to enhance the ability of the Legal Aid Society to serve as a program referral source had become another issue on the stakeholder committee's agenda.

TCM is unlike DCP with its fixed and finite sentence of three program days to be completed within a fifteen day period. In comparison, in TCM-mandated cases there is judicial discretion in setting the extent of participation, almost always based on a number of compulsory sessions which *the program defines as face-to-face contact of a minimum of fifteen minutes*. In addition, in the court-mandated cases the compliance dates were not assigned on the basis of a uniform interval after sentencing.

In all but one TCM-direct case defendants entered the program under a mandated sentence with the number of compulsory sessions varying from three up to ten, with one defendant given a four-month participation mandate with an unspecified number of sessions. Among the 22 mandated cases, defendants failed to satisfactorily complete the requirements in five cases, although in all of these cases the defendant attended at least one session, and one defendant attended nine out of ten. Most importantly, TCM is designed to engage clients so that they will continue to participate on a voluntary basis even if their initial contacts are compulsory. In the seventeen cases with a completed mandate, nine continued after the end of the compulsory period, and in all of the DCP-referred cases all session participation was entirely voluntary. When and why clients leave the program was very difficult to determine definitively from the program data, and in six of the cases (14.0%) clients were still participating as of the cut-off date used to provide program data for this study.

Because of all of these factors it is not possible to measure program success as a simple dichotomy of whether or not program clients completed a uniform program sentence as was done in the study of DCP-sentenced defendants. What can be examined is the number of sessions attended, and how these were divided between the DCP-referred and TCM-direct clients.

Overall, TCM staff provided a total of 452 face-to-face case management sessions of a minimum of fifteen minutes each based on the program data made available for the current study. The 23 cases with direct entry to TCM accounted for 273 of these sessions with the other 179 sessions attributed to the cases of the 20 clients who entered TCM post-DCP. In addition, TCM-direct cases

accumulated their sessions in less time than did the clients in the DCP cases. These differences cannot be accounted for simply by the several greater number of TCM-direct cases in comparison with the DCP referrals.

While these findings are interesting, there is no single explanation for these differences. It may be that defendants in TCM-direct cases were more likely to engage even though their initial participation is compulsory. But an equally plausible explanation is that TCM-direct clients had more serious mental health issues and greater need for other services than their DCP counterparts. One possible indication of this may be our finding that in at least several of the TCM-direct cases court processing was interrupted by a CPL 730 determination, and in one of the cases the defendant entered TCM after the case was dismissed based on a finding of incompetence.

In examining case characteristics we found that approximately half of all TCM cases had a Spotlight program designation, and there was little difference between the DCP and TCM-direct groups. For both groups of cases the largest number was arraigned on a charge in CJA's property crime category, but the percentage was greater among the TCM-direct cases. A greater number and percentage of the DCP cases were arraigned on a drug charge. In addition, several TCM-direct cases were arraigned on a charge in the harm-to-persons category (with a charge of assault or menacing) while no DCP cases fell into this crime category. The overwhelming majority of both group's cases were arraigned on a charge of A-misdemeanor severity, but in the TCM-direct group there were several cases initially prosecuted for a felony crime in comparison with none in the DCP group.

An important difference between the two groups of cases is the point of entry into the respective programs. In all but three of the DCP cases, the program sentence occurred in conjunction with an arraignment conviction. In comparison, assignment to the TCM program at Criminal Court arraignment occurred in only three of the TCM-direct cases. The length of jail alternatives imposed for failure to complete the TCM mandate was highly variable, ranging from 10 days up to one year. Among the unsuccessful TCM-mandated cases,

the alternative jail sentence ranged from 30 to 90 days. From a research perspective, following case processing in TCM-direct cases is complicated because, and unlike DCP with its conviction and intermittent jail sentence, there is no uniform identification of a TCM case disposition in the computerized court data which is electronically transferred into the CJA database. This also made it impossible to track in the CJA database whether or not TCM-direct cases in which defendants failed to complete the mandated session were returned to court for re-sentencing.

Both the Day Custody and TCM programs target the same population of downtown Manhattan Criminal Court cases of repeat misdemeanor defendants, a group characterized by high rates of recidivism. As was done in the DCP research we looked for re-arrests during a five-month interval. However, because there were not uniform pathways into the program between the two groups, our starting point for TCM cases with a court mandate looked forward beginning with the court compliance date, and for any case with voluntary TCM admission, which included all the DCP cases and the one voluntary TCM-direct client, we started on the TCM program admission date. In instances in which a TCM client was mandated in more than a single case, the first case for the client was used.

Among all TCM clients only one-third had no new prosecuted arrest within the five month interval, smaller in comparison with the DCP clients (45.0%). Conversely, the DCP group, all voluntary participants, had a lower re-arrest rate (55.1%) in comparison with the TCM group overall (66.7%) and also in comparison with just the *successful TCM program clients* (62.5%). The re-arrest rate for the DCP group was very similar to that previously found among the general population of all DCP-successful defendants (56.8%) during the DCP third program year. The re-arrest rate for the TCM-direct client group, although greater than the general DCP population was smaller than the subset of that group in Spotlight-targeted cases (73.0%). However, the number of cases in each TCM program group is very small so that it is very difficult to draw inferences from these data. In addition, there is no available comparison group

of mentally ill defendants with discharge planning from DOC facilities to draw any conclusions about whether there would have been differences between defendants diverted from the courthouse versus those exiting the City's jails.

If re-arrested, a majority in both groups had only a single new prosecuted arrest in the five-month interval. Among re-arrested TCM clients, the mean number of days to the first re-arrest was longer for the DCP group (74.4 days) than for the TCM-direct group (65.5 days) with only a small difference between successful and unsuccessful clients in this latter group. There is no comparable data for the general population of DCP cases so that no comparisons can be made.

The research provided about the CASES TCM program contained in this report needs to be understood as purely descriptive, based on small numbers, and providing a snapshot of a program at its earliest stages of implementation. At the outset, our research into TCM was handicapped by the small number of program cases during the period under study, and the division between these cases into those that had post-DCP client participation and those that received a court mandate directly into DCP. In addition, even early in the start-up period it was becoming evident that TCM was evolving into an independent program and not merely an adjunct to DCP for the subset of Day Custody's clientele clinically assessed to meet AXIS I diagnoses of seriously mentally ill. This has changed the character of the program by expanding not just the method by which defendants gain admission to the program, but also the court appearances and sources of referrals that bring defendants directly into TCM. As a result, it was not possible to universally apply the same research design to the TCM program cases as was used in the DCP studies.

Since the end of this study period changes have been occurring to the TCM program protocols. For example, the City agreed to somewhat ease the Spotlight restriction on the conditions that the program advocate for more mandatory sessions and a longer jail alternative than in non-Spotlight cases. This has led to a comparatively large increase in program cases, and may also lead to some changes in case and clientele characteristics. In addition, the

stakeholders group has been working on ways to intercept the seriously mentally ill defendants as they enter the downtown Manhattan Criminal Court, and develop new program practices that can divert even greater numbers of program-qualified defendants.

Once the program form becomes more fully developed and gains larger numbers of participants, additional research may be desirable, and one with methodologies best suited for understanding and evaluating the program. To accomplish this would require much additional work and several distinct types of data collection.

Among these items would be a coordinated effort between CASES and researchers to work together to find items of interest to such a study and to develop ways to code these data into categories that lend themselves to computerized analysis. This would not be an easy task as the program staff currently collects considerable information needed for developing client-specific plans and clinical notes, so that this would require additional data collection beyond just coding changes. In addition, such a research study would be enhanced by acquiring a better understanding of how judges and lawyers in particular, as non-mental health professionals, identify defendants they believe are in need of clinical assessment for serious mental illness. Another issue is to better gauge judicial understanding of the program and their decision making in setting the number of mandated program sessions.

Measuring a program impact requires creating at least one and most likely more than one comparison group. First is a comparison group developed from cases of seriously mentally ill defendants that leave DOC facilities with an in-custody created discharge plan. DOC is required under the Brad H. decision to provide discharge planning for these defendants. However, DOC only can do so if defendants have sentences that keep them in DOC custody long enough for such an assessment to be completed. The comparatively brief sentences imposed on the TCM targeted population at the downtown Manhattan Criminal Court location raise questions in this author's mind about how many prospective defendants in such a comparison group fall outside these parameters.

Another group is the BJMHS-flagged defendants, some who are found ineligible, but among which are defendants offered but do not join TCM. Although data about these cases was provided to CJA for the current study there was insufficient time to examine these data for inclusion in the report. It may be that there would be enough such cases in the future from which to build a separate comparison group. However, one would need to be able to determine how many of the cases have defendants without existing services versus those that do not participate in TCM because they already have other community-based support services.

APPENDIX

CJA'S CRIME-TYPE CATEGORIES.

The categories and principal charges found in CJA's typology of offenses are as follows:

- The *harm-to-persons* category consists of some of the most serious felony crimes such as murder, manslaughter and rape, as well as various types of assault including those of misdemeanor severity.
- The *harm-to-persons-and-property* category consists almost exclusively of violent felony offenses such as robbery.
- The *weapon* category includes all charges relating to use, possession and sale of weapons found in Article 265 of the New York State Penal Law.
- The *property* crime category includes petit larceny at the misdemeanor level, and grand larceny at the felony level, and also includes related offenses such as possession of stolen property or burglar's tools. This category also includes criminal mischief charges that can be of either felony or misdemeanor severity.
- The *drug* category includes all non-marijuana charges found in Article 220, and all marijuana charges found in Article 221, of the New York State Penal Law.
- The *sex-crime* category contains primarily prostitution-related offenses such as promoting prostitution, soliciting for the purposes of prostitution, prostitution, or patronizing a prostitute.
- The *fraud* category principally contains the theft-of-services misdemeanor charge, the vast majority of which involve fare beating, and other types of theft-by-deception activities such as forgery, credit card and welfare fraud, or trademark infringement.
- The *misconduct* category contains a variety of public-order offenses such as criminal trespass, harassment, disorderly conduct, and loitering, and other charges such as illegal gambling or obstructing governmental administration.
- The *obstruction-of-justice* category includes charges such as resisting arrest and criminal contempt charges including violating protection orders.
- *VTL* refers to offenses contained in the Vehicle and Traffic Laws, the vast majority of which are considered to be of unclassified misdemeanor severity.
- The *other/unknown* crime category contains mostly charges from sources outside the Penal Law or VTL, such as the City's Administrative Code or the State Tax Code (e.g. untaxed cigarettes), and small numbers of charges not recognized in the CJA database.