

***QUITTING DRUGS, QUITTING CRIME:***

***Reducing Probationers' Recidivism  
Through Drug Treatment Programs***

City of New York  
Office of the Comptroller  
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## EXECUTIVE SUMMARY

Studies continue to show that there is a strong correlation between drug treatment and recidivism among probationers. Probationers who do not participate in drug treatment programs (DTP's) are more likely to commit new crimes. At the City Council Public Safety Committee MMR hearing in December 1998, New York City Police Commissioner Safir suggested 70-80 percent of those arrested have drug problems. Thus, there is an urgent need for probationers in need of drug treatment to be identified and receive the necessary treatment to enable them to overcome their problems. This can be accomplished only if the Department of Probation carefully monitors these programs and holds the probationers accountable if they fail to comply.

The New York City Comptroller's Office followed a sample of case records from the Department of Probation ("Probation"), to assess the impact of participation in drug treatment programs on recidivism. This report examines whether probationers identified by Probation as cocaine users are sent to drug treatment programs and whether the completion of these programs make a difference in the probationers' recidivism rates.

We visited Probation offices in each of the 5 boroughs between April 1997 and March 1998, and again in December 1998 and January 1999, and examined the records of 147 probationers. Our major findings are presented below:

- **Successful participation in a drug treatment program is the most important factor in reducing recidivism rates. Without drug treatment, probationers are nearly twice as likely to commit new crimes.**

Convicts on probation in New York City who tested positive for cocaine at the time of

their arrests and had a history of drug abuse were more likely to commit new crimes if they did not participate successfully in DTP's. In our sample, 26 probationers successfully completed a DTP. The recidivism rate for these 26 probationers was 39 percent. On the other hand, the recidivism rate for 121 non-participants was 74 percent.

- **Not enough probationers were remanded to drug treatment programs.**

While all 147 probationers in our sample were classified by Probation as “cocaine users,” our review of the records shows that only 68 percent of them (100 probationers) were remanded by the court or recommended by Probation to a DTP. It is unclear what criteria, if any, is used by the court or Probation in determining DTP's for probationers. Furthermore, we find the assignment rates of probationers to DTP's vary by borough. In our sample, all of the probationers in Staten Island, 90 percent in Queens, 80 percent in Brooklyn and only 64 percent in the Bronx and 52 percent in Manhattan were assigned either by the court or Probation to a drug treatment program.

- **Probationers are not taking drug treatment seriously.**

Even though 68 percent (100) of the probationers in our sample were either remanded by the court or recommended by Probation to a DTP, the completion rate is strikingly low. Only 26 out of these 100 successfully completed at least half of the assigned drug treatment program. We found no evidence that failure to attend or complete a court-mandated DTP, in and of itself, resulted in a sanction. Nor did failure to attend or complete a program recommended by Probation have any adverse consequences.

- **A large percentage of probationers in the sample were re-arrested for new charges.**

Ninety-nine (67.3 percent) of the probationers in our sample were re-arrested for new charges while on probation. Among these 99 recidivists, those who successfully completed drug treatment (10) were more likely to be re-arrested for misdemeanors instead of felonies, and less likely to be re-arrested for drug-related crimes. Only 4 (15 percent) out of 26 successful DTP participants were re-arrested and charged with felonies compared to 68 (56 percent) out of 121 for those who failed to attend the DTP's. The drug-related recidivism rates were 12 percent (3 out of 26) and 55 percent (67 out of 121) respectively for these two distinctive groups of probationers.

- **Numbers of previous convictions and employment history are also correlated to recidivism.**

Nearly half (48 percent) of the probationers in our sample had previous convictions. We find the recidivism rate increases linearly and significantly with the number of previous convictions the probationer had. Employment history is another strong predictor of recidivism. Almost three out of four (87 out of 120) unemployed probationers at the time of their arrests were re-arrested while less than half (12 out of 27) of employed probationers, either part-time or full time, were re-arrested. In our sample, for a typical unemployed probationer with or without previous convictions at the time of his arrest or re-arrest, successful DTP participation reduces the chance of recidivism by approximately **30** percent.

In summary, we find number of previous convictions, employment status and successful

completion of drug treatment programs are the three major factors in predicting recidivism. Among these three, drug treatment exerts the largest independent impact in reducing recidivism rates. Our results suggest that successful completion of DTP's is the key in preventing recidivism among drug addicted probationers. Unfortunately, there is little evidence to show that Probation plays an active role in communicating with drug treatment providers. Moreover, failure to attend DTP's seldom results in sanctions such as a recommendation to revoke probation. We believe Probation should put more effort into monitoring probationers once they are sent to DTP's.

### Recommendations

We have proposed a series of recommendations, designed to make Probation responsible for ensuring that probationers attend the necessary DTP's and receive sanctions for failure to comply. In order to accomplish these goals, Probation must ensure that all probationers sentenced by the court to DTP's attend regularly and complete the program. It must also demonstrate evidence of how probationers who are remanded to DTP's are monitored to ensure regular participation in DTP's. Improved record keeping by Probation is essential to achieve this goal. We further suggest Probation devise clear, improved guidelines for determining whether a probationer should be recommended for drug treatment as a condition of probation.

Failure by probationers to regularly participate in DTP's to which they have been remanded must have real consequences. When participation in a DTP is ordered by the court, and probationers fail to attend, probation should be revoked by the court.

Finally, data on the comparative success rates of different DTP's should be published by

Probation. The Mayor's Management Report should have data on the percentage of probationers assigned to DTP, the percentage that complete the required drug treatment, and the recidivism rate.

### Agency Comments

On June 18, 1999, we sent a draft of this report to Probation and the Mayor's Office of Operations. We received a written response from Probation on July 21, 1999. A copy of Probation's response is included as an appendix to this report.

We commend Probation for the proactive role the Department is taking in response to our report. Among other things, Probation agrees with our finding that there is a negative correlation between successful drug treatment and recidivism and that more can be done to reduce recidivism. Probation further asserts that numerous changes have been made to its drug treatment programs and testing policies during the course of our study. Moreover, they agree to take numerous additional actions over the next few months.

Probation states it has been its policy since 1998 to recommend drug testing and drug treatment for all probation bound or probation recommended cases with an underlying drug charge, recent history of use or admission by the defendant. According to Probation, it will implement training in Fall 1999 to assist officers in case managing the probation population. In order to better monitor probationers' attendance at the DTP's, Probation claims it will require its officers to either request monthly progress reports or contact providers by telephone to obtain the status information.

In response to our claim that there should be real consequences for failure to report to or

attend DTP's, Probation is making efforts to make probationers more accountable. It asserts that in Fall 1999 it will unveil a new misconduct policy requiring an internal administrative hearing with a supervisor to address this type of misconduct. Consequently, those who continue to fail to attend DTP's will be sent to Probation's Intensive Supervision Program by a formal internal Misconduct Review Board, previously a lengthy procedure requiring court review. Further, if a probationer tests positive for drugs and refuses to accept a referral for assessment and treatment, Probation's new policy will require the case be referred to court for imposition of a special condition of drug treatment, post-sentencing.

Replying to our recommendation on evaluation of types of drug treatment programs, Probation states that new performance standards are being established for those drug treatment services under contract to Probation. There will be a new contract solicitation and evaluation process. Probation intends to retain a percentage of each contract value until satisfactory performance is confirmed.

Probation attributes its poor record keeping at the time of our site visits to the fact that it was in the midst of an unprecedented, massive, re-engineering effort, which required manual movement of file records. However, when we returned for a follow-up field study between December 1998 and January 1999, based on the records we reviewed, the problem of incomplete records remained unchanged. Probation claims that upon reviewing 30 of the Brooklyn cases, they found that 17 of 30 Probationers were referred to, or enrolled in a DTP at the time of sentence. Probation also found that of those 17, thirteen probationers (82 percent) "were not in compliance with DTP rules" and violations were filed for 12 of those 13 probationers. This finding is somewhat misleading, since our study found that in an overwhelming majority of the

cases, violations were filed after the probationer committed a new crime, and not necessarily as a result of failing to comply with DTP rules.

We are very encouraged by Probation's acknowledgement of the problems highlighted in this report and its willingness to take measures to deal with these problems. When we combine these changes with the performance standards Probation is establishing for its substance abuse contracts, we are optimistic that the lives of a greater number of these probationers will be enriched, consequently further reducing crime in the city.

## I. INTRODUCTION AND BACKGROUND

Drug offenders constitute the fastest growing segment of the criminal justice population. This applies to the adult probation population in New York State as well. Due to the enactment of mandatory sentencing laws in the 1970's, the crack epidemic of the 1980's, and the heightened focus of law enforcement agencies and courts on drug-related crimes, the number of probationers in New York State has soared from some 80,000 in 1983 to nearly 175,000 in 1996. Almost 80,000 of those probationers are in New York City.<sup>1</sup> As the general probation population has grown, so too has the proportion of drug offenders among them.

Reports released by the New York State Division of Criminal Justice Services (DCJS) and the New York City Department of Probation (Probation) confirm this trend. “Statewide, drug probationers constituted an increasing proportion of misdemeanants sentenced to probation. This is consistent with the statewide trend observed in the felony cohorts.”<sup>2</sup> It was also determined that, “the growth in felony drug probationers occurred primarily in New York City, whereas the growth in misdemeanor drug probationers occurred in the counties outside of New York City.”<sup>3</sup>

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1. Report of the Unified Court System’s Committee on Alternative Criminal Sanctions, December 1996, p.17.

2. New York State Division of Criminal Justice Services, *Research Note: Trends in Recidivism among Misdemeanant Sentenced to Probation*, March 1991, p. 1.

3. Ibid.

## Objectives of this Study

Our research objectives are to determine whether probationers identified by Probation as cocaine abusers:

- are sent to Drug Treatment Programs (DTP's);
- successfully complete their drug treatment whether mandated by the Court as a condition of probation or recommended by Probation;
- are sanctioned for failure to attend court ordered DTP's;
- are less likely to commit new crimes if they successfully completed DTP.

It should be noted that Probation does not have the power to remand probationers to drug treatment. It can merely make a recommendation to the judge, who makes the final determination regarding the imposition of drug treatment as a condition of probation. We found several instances where Probation recommended drug treatment but the courts did otherwise.

## Summary of 1989 Report

In March 1989, former City Comptroller Harrison J. Goldin released *Addicted to Crime: Probation in New York City*, a study which determined that, “Most drug abusers on probation have not been routinely remanded for drug treatment and ... when the courts require drug treatment as a condition of probation, Probation fails to ensure that the probationers involved enroll and stay in treatment. The result is an unacceptably high rate of recidivism.”

Of those probationers in the 1989 sample who were remanded to drug treatment, “only **3 percent** *successfully completed a drug treatment program.*” This finding was especially discouraging given the report’s ultimate conclusion that, “recidivism increases significantly when

probationers on drugs do not receive drug treatment while ... the converse is also true.” (p. i, ES)

Of the sample population, nearly 66 percent of the drug-abusing probationers who *did not receive treatment were rearrested* while, of those who *did receive some form of drug treatment*, approximately 40 percent were recidivists.

### **Other Studies**

Our findings are consistent with studies done over the past decade. According to the U.S. Department of Justice, Bureau of Justice Statistics, of 27,000 drug offenders sentenced to probation in 32 counties across 17 States in 1986, “49 percent were *rearrested for a felony offense within 3 years of sentencing.*”<sup>4</sup> It was also found that *drug abusers (55 percent) were more likely to be arrested than non-abusers (36 percent)*. The Justice Department report concluded that compliance with drug testing or drug treatment while on probation indicates a lower likelihood of re-arrest. Only 42 percent of the probationers who *satisfied the condition of drug treatment* were rearrested, while a much higher 67 percent of the probationers who *did not satisfy the condition of drug treatment* were rearrested. This data suggests that participation in and/or completion of a drug treatment program significantly lowers the recidivism rate of probationers, and in fact, these numbers are quite similar to our 1989 findings. Other studies published since 1994, including a more comprehensive follow-up study by the U.S. Department of Justice, confirm and reinforce those findings.

In another study that explored the relationship between drug treatment and recidivism, it

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4. U.S. Department of Justice, *Bureau of Justice Statistics, Drug and Crime Facts, 1994*, June 1995, p. 25.

was discovered that it is not enough merely to remand probationers to DTP's and assume they will attend.<sup>5</sup> There must be methods to ensure that drug offenders go to their mandated treatment sessions and complete them satisfactorily or receive sanctions for failure to attend. This raises policy issues regarding the intensity of case management by probation officers and others who are responsible for overseeing probationers' compliance with their sentences.

Similarly, an analysis of the impact of more aggressive case management found that, "Offenders completing TAP (a program in which substance-abusing offenders assessed as low risk are referred to community-based supervision with alcohol or drug abuse treatment) are significantly less likely to recidivate than offenders not completing the program.<sup>6</sup> This study's conclusions are important because they are based on an 18-month follow-up. During that time, those who participated in the program were significantly less likely to be arrested than offenders who did not complete the program by a wide margin, 43 percent to 73 percent.<sup>7</sup> So many studies have demonstrated the effectiveness of drug treatment and its ability to diminish recidivism that its adoption and effective implementation by the criminal justice system as a whole should be an imminent goal. The argument for the provision of drug treatment for most drug abusing criminal offenders as a condition of probation seems equally compelling.

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5. National Institute of Justice Research Preview, *A Corrections-Based Continuum of Effective Drug Abuse Treatment*, June 1996, p. 1.

6. Kit R. Van Stelle, Elizabeth Mauser, D. Paul Moberg, "Recidivism to the Criminal Justice System of Substance-Abusing Offenders Diverted Into Treatment," *Crime & Delinquency*, April 1994, p. 175.

7. *Ibid.*, p. 193.

## II. DRUGS, CRIME AND REARREST – SUMMARY OF FINDINGS

To assess the impact of the participation in DTP's on recidivism among offenders on probation in New York City, a sample of this population was selected. By following case records over a four year period, we were able to determine actual participation rates in DTP's and draw conclusions about the impact of participation in drug treatment on recidivism.<sup>8</sup>

- Convicts on probation in New York City who were classified by Probation as having a drug problem and who tested positive for cocaine at the time of their arrests were more likely to commit new crimes if they did not participate successfully in drug treatment programs (DTP's).
- Of those probationers who were re-arrested while on probation, 25 percent were re-arrested for violent felonies.
- Among recidivists, those who successfully completed drug treatment were more likely to commit misdemeanors instead of felonies.
- Only 68 percent of all cocaine users in our sample were remanded by the court and/or recommended by Probation to go into drug treatment.
- Only 18 percent of the probationers received meaningful drug treatment, by completing at least half of the program.
- Probationers were not sanctioned for failure to attend court-ordered DTP's.

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8. This group does not represent all mandated cases. In some cases, probationers may have been remanded to a DTP by some criteria other than testing positive for cocaine. That group of probationers is not the subject of our study.

### III. METHODS, DATA COLLECTION AND DESCRIPTIVE CHARACTERISTICS

#### Sample Selection

Our initial sample was comprised of 1,063 probationers, all of whom were arrested between January 1, 1994 and June 30, 1994, and were classified by Probation as having a drug problem.<sup>9</sup> In consultation with Probation, we controlled for age, gender, date of probation sentence and type of substance abuse, thereby substantially reducing the sample size. According to Frank Domurad, then-Deputy Commissioner of Probation, the most criminally active probationers are young males. Although all the probationers in our initial sample were, “classified as having a drug problem,” we further refined the sample population by limiting it to probationers who tested positive for cocaine at the time of their arrest.<sup>10</sup> Cocaine/crack was chosen because, according to Probation, cocaine/crack was the most commonly used substance at the time.<sup>11</sup> By using four criteria, age, gender, date of arrest, and cocaine abuse, we generated a final sample of 147 probationers. This sample consists of males *sentenced to probation between January 1, 1994 and June 30, 1994, who were classified by Probation as having drug problems, who tested*

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9. This is the classification used by Probation. It is unclear to us what the criteria are for assessing whether a probationer “has a drug problem.”

10. A person convicted of a drug-related offense may be remanded to drug treatment as a condition of probation by the courts or recommended for such treatment by Probation.

11. The results of a 1997 household survey conducted by the Substance Abuse and Mental Health Services Administration show that the number of heroin users has increased from 1992 to 1996. New York City is listed among the five cities with the highest rates of heroin-related emergency department episodes in 1995. As heroin is making a “comeback” in urban centers, future studies should include heroin users in their samples.

*positive for cocaine, and were between the ages of 19 and 29 years at the time of their arrest.*<sup>12</sup>

## **Problems in Data Collection**

Preliminary research for the report was conducted at Probation offices in all five boroughs. A team of analysts went through each of the case files and collected all available information. Each case file is supposed to contain the full legal history of the probationer, any and all court documents, arrest records, probation processing papers such as the pre-sentence investigation (PSI), and all appointment records with the probation officer, including the initial interview. Nevertheless, many of the case files contained incomplete information or records that were not current.<sup>13</sup> From these case files, all available data was used for our analysis.<sup>14</sup> When data were missing or incomplete, we attempted to procure information from other sources, in particular the DCJS.

Proof of attendance at DTP might consist merely of a letter from the treatment center notifying the probation officer of a probationer's enrollment. We rarely found any indication in the probation officer's case record of any Probation initiated inquiry into a probationer's DTP status or progress.

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12. There were initially 154 cases from the Probation. However, one case was a "dummy" file, which contained insufficient data for analysis, four cases turned out to be women, and four cases were duplicates (two files of the same probationer).

13. Preliminary field research took place between April of 1997 and March 1998. A subset of cases was revisited in January 1999. In many cases, probation officers' reports contained records whose last entry was from 1995 or before, directly contradicting court documents indicating more recent arrests.

14. Pursuant to the confidentiality protections in State Law, we were unable to use the pre-sentence investigation (PSI) in our analysis.

## **Delays in Obtaining Data**

The nature of our study was longitudinal. We tracked the probationers over a 4-year period. However, there were some impediments to obtaining the necessary data. We ultimately had to get the data from the state DCJS and we experienced significant delay in doing so. Additionally, as a result of personnel changes within Probation, we also experienced delays in getting clarifications on some of our questions.

## **Incomplete Data**

The problem of incomplete data has plagued Probation, as noted in two prior reports from the NYC Comptroller's Office (*Three Strikes and You're Out*; January, 1989, and *Addicted to Crime: Probation in New York City*; March, 1989).

Due to frequent inaccuracies and omissions, and after repeated attempts to receive the complete criminal histories of our cases from Probation, we obtained full arrest records for our sample population from the DCJS.<sup>15</sup> All information in the report is therefore based on data culled from the case files in each of Probation borough offices and the corresponding criminal histories provided by the DCJS.

## **Coding Variables**

In order to determine if a correlation exists between drug treatment and recidivism, and the seriousness of crimes committed by probationers, we examined the records of those

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15. Pursuant to the confidentiality agreement between Comptroller's Office and DCJS, this information was used for statistical analysis only. The identity of each probationer was not disclosed.

probationers who successfully completed DTP. We define “successful participation” as probationers having completed at least 50 percent of the hours required for completion of a sanctioned drug treatment program. Studies have shown that the length of time offenders actually participate in DTP's is positively correlated to a reduced recidivism rate. Nine to twelve months appears to be the optimal duration for the treatment.<sup>16</sup> Since in our sample the length of sanctioned drug treatment differs greatly among the probationers, we adopted 50 percent of hours of completion as our measure for drug treatment participation.

We classify re-arrests into three categories - misdemeanor, non-violent felony and violent felony,<sup>17</sup> in order to examine the effect of drug treatment on not only the recidivism rate but also on the seriousness of subsequent offenses committed while on probation. If the probationer was rearrested for more than one charge, he is then classified according to the most serious charge. We also note whether re-arrests involve drug-related crimes, such as criminal possession of a controlled substance and criminal sales of a controlled substance.

## **Descriptive Characteristics**

All probationers were initially arrested within the five boroughs of the City of New York, regardless of their permanent residence, and were placed under the supervision of the New York City Department of Probation at a branch of the agency corresponding to the borough within

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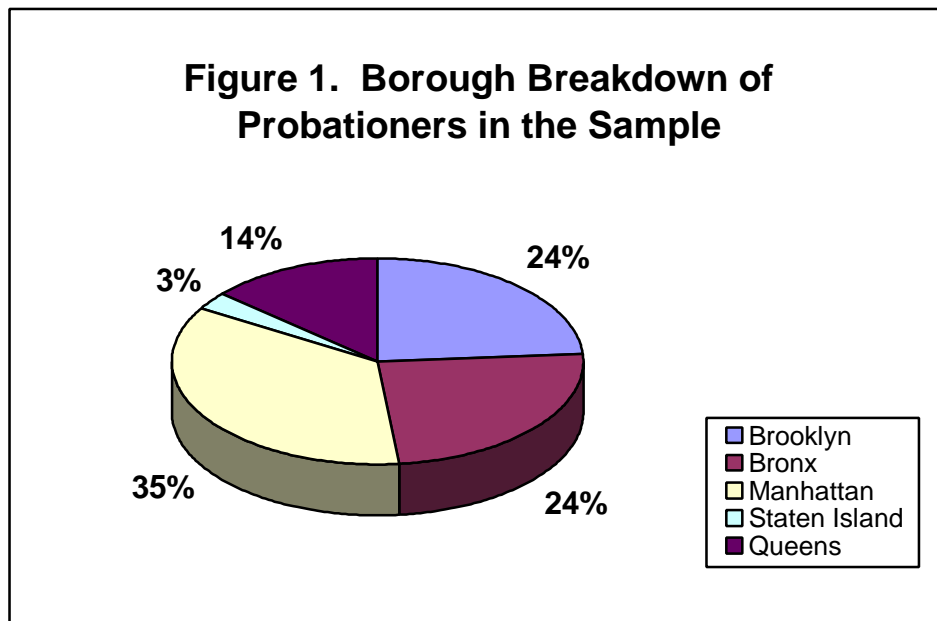
16. US Department of Justice, Office of Justice Programs, National Institute of Justice Research Report: *The Effectiveness of Treatment for Drug Abusers under Criminal Justice Supervision*. Printed at the 1995 conference on criminal justice research and evaluation.

17. Penal Law, Section 70.02, distinguishes between felonies and violent felonies.

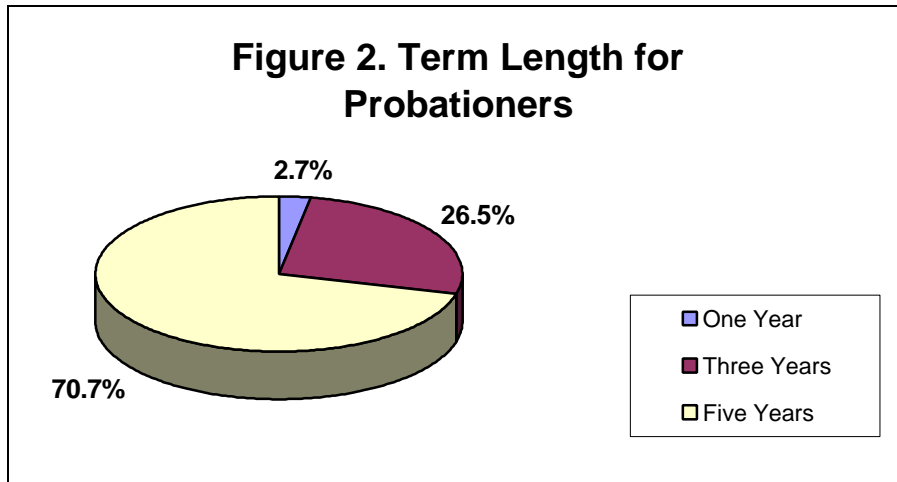
which they were arrested and sentenced.

Of the 147 probationers in our sample (See Figure 1):

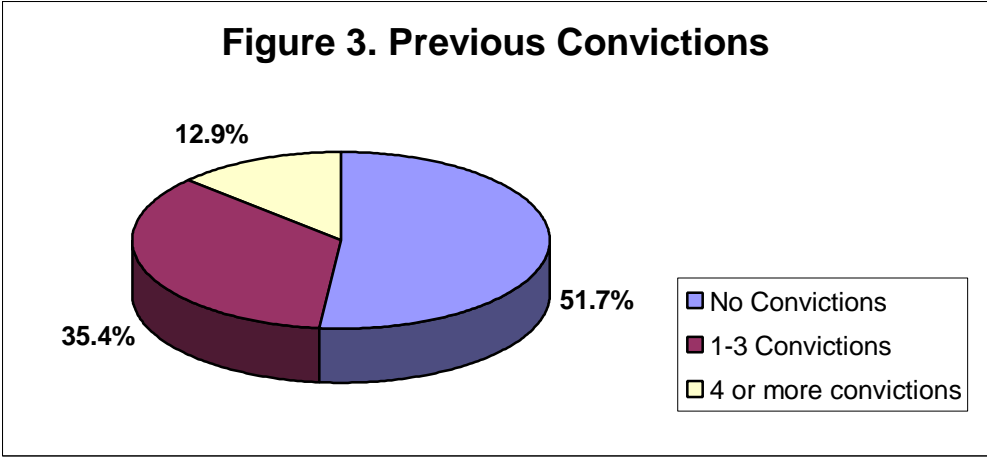
- **3 percent** (4 probationers) were supervised by the Staten Island branch of Probation.
- **14 percent** (20 probationers) were supervised by the Queens branch of Probation.
- **24 percent** (35 probationers) were supervised by the Brooklyn branch of Probation.
- **24 percent** (36 probationers) were supervised by the Bronx branch of Probation.
- **35 percent** (52 probationers) were supervised by the Manhattan branch of Probation.



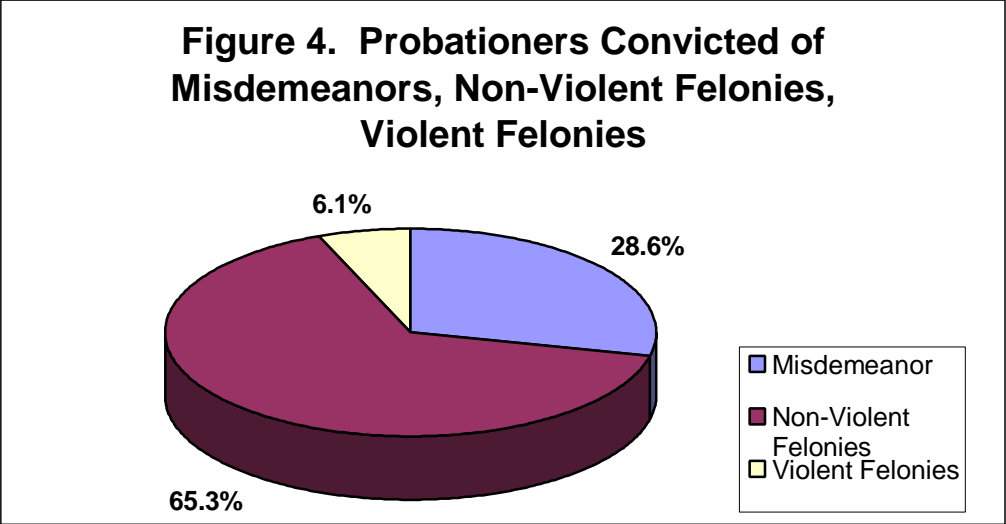
We monitored all 147 probationers' cases from the beginning of their sentences (commencing between January 1, 1994 and June 30, 1994) until January 1998, the last month for which we received this data. Figure 2 shows the length of probation terms. The overwhelming majority - 70.7 - percent were sentenced to 5 years of probation.



Of 147 probationers, just over half of them (76) had no previous convictions; 35.4 percent (52) of them had one to three previous convictions; and 12.9 percent (19) had four or more convictions (see figure 3).



Nine of the probationers (6.1 percent) were convicted of violent felonies, such as first and second degree robbery; 65.3 percent (96) were convicted of non-violent felonies, such as grand larceny; and 28.6 percent (42) were convicted of misdemeanors, such as criminal use of drug paraphernalia (See Figure 4). In sum, 71.4 percent of these probationers were convicted for felonies and were sentenced to probation for their crimes.



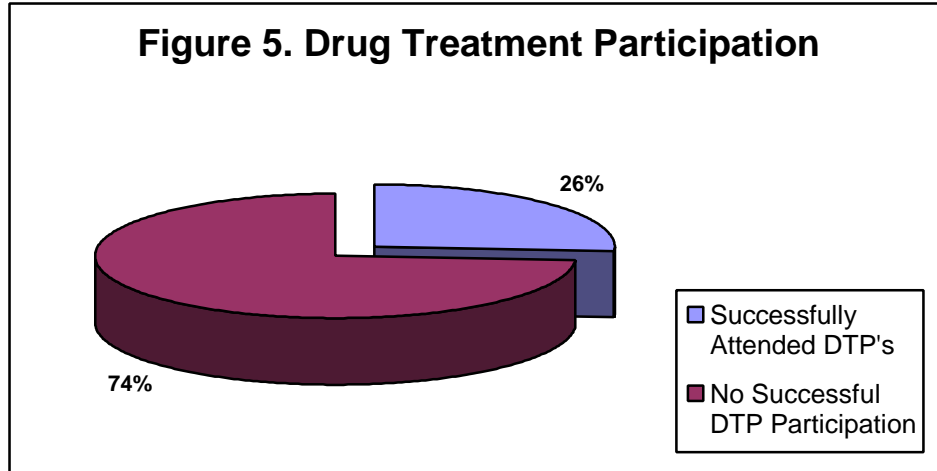
## IV. FINDINGS

- 1. While all 147 probationers in our sample were classified as “cocaine users” and 99 were convicted of drug related crimes resulting in a sentence of probation, drug treatment program participation was not always imposed by the court or recommended by Probation. Only 68 percent (100 probationers) were court mandated and/or recommended to DTP’s. Of this group, only 26 percent (26 probationers) successfully completed the DTP.***

All 147 probationers in our sample were classified by Probation as “having a drug problem” and tested positive for cocaine at the time of their initial arrest. Furthermore, 67.3 percent (99) were convicted of drug-related crimes. However only 68 percent (100) were either remanded by the court (35 probationers) or recommended by Probation (65 probationers) to a DTP. Of these 100 probationers, only 26, or 26 percent successfully completed drug treatment<sup>18</sup> (See Figure 5). Another useful way to look at these numbers is to understand that of the entire cohort of 147 probationers having a drug problem, only 17.7 percent received meaningful drug treatment.

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18. According to Probation records, several probationers were already enrolled in some form of drug treatment at the time of their arrest. In all of these cases, they were instructed to continue their therapy with the threat of sanction upon failure to complete the program. These are included in the 100 probationers.



Since all of the probationers in our sample tested cocaine/crack positive at the time of their arrests, the fact that more of them were not remanded to drug treatment programs raises questions. It leads one to question whether there were any specific criteria used by either Probation to recommend or the court to remand probationers to DTP's. We performed several statistical analyses to examine if certain factors are related to the imposition of DTP's as a condition of probation. We found that there is no statistically significant relationship between being remanded by the court or recommended by Probation to a DTP (the dependent variable) and/or whether the probationer was a) currently convicted of drug-related crimes; b) had a record of previous convictions; c) the number of previous convictions; and d) the seriousness (ranked in ascending order as misdemeanor, felony, violent felony) of the current and any previous record of convictions (the independent variables). The two variables that were statistically significant predictors of being sentenced to a DTP were whether any previous convictions were drug-related (See Table 1) and the borough in which the probationer was arrested and sentenced (See Table 2). In general, 23.8 percent (35 out of 147) of the probationers were remanded by court to a

DTP as a condition of their probation. However, among those who had previous drug-related convictions, 39.4 percent of them were remanded by court, significantly higher than 19.3 percent, the percentage for those who had no previous drug-related convictions.

**Table 1. Remanding to DTP by Previous Drug-Related Convictions**

Drug Treatment Imposed by Court	Previous Drug-Related Convictions (YES)	Previous Drug-Related Convictions (NO)
Yes	39.4 % (13)	19.3 % (22)
No	60.6 % (20)	80.7 % (92)
Total	100 % (33)	100 % (114)

Queens and Staten Island had the highest rate for sentencing probationers to DTP's. All 4 probationers in Staten Island and 18 out of 20 (90 percent) probationers in Queens were remanded either by the court or recommended by Probation to DTP's, whereas only half of the probationers in Manhattan were remanded to DTP's. We do not know whether this was due to the availability of services or some other factors.

**Table 2. Assignment to DTP by Borough**

Assigned to DTP's	Manhattan	Bronx	Brooklyn	Queens	Staten Island
Court Imposed	25.0% (13)	11.1% (4)	17.1% (6)	40.0%(8)	100% (4)
Probation Recommended	26.9% (14)	52.8% (19)	62.9% (22)	50.0% (10)	
Neither	48.1 % (25)	36.1% (13)	20.0% (7)	10.0% (2)	
Total	100% (52)	100% (36)	100% (35)	100% (20)	100% (4)

**2. *Convicts on probation in New York City who were classified by Probation as having a drug problem and who tested positive for cocaine at the time of their arrests were more likely to commit new crimes if they did not participate successfully in drug treatment programs (DTP's).***

Of 147 probationers who were classified by Probation as having a drug problem and who tested positive for cocaine at the time of their arrests, 65 (44 percent) were remanded by the court and 35 (24 percent) were recommended by Probation to DTP's. Twenty-six of the probationers who participated in a DTP completed at least half of the program.<sup>19</sup> Of these 26 participants, only 10 (38.5 percent) went on to commit new crimes. In striking contrast, of the 121 probationers who either did not participate in a DTP or did not sufficiently attend the program, 89 (73.6 percent) went on to commit new crimes. For those who were neither remanded by the court nor recommended by Probation, the recidivism rate was 68.1 percent. For those who failed to successfully complete the assigned DTP, the recidivism rate was 77 percent. Further, we found no evidence that failure to attend or complete a court-mandated DTP, in and of itself, resulted in a sanction. On a number of occasions, we found evidence of probation being revoked upon re-arrest for new criminal activity.

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19. Throughout our report, we use the phrase “successfully attended” to mean that the probationer completed or attended at least half of the required treatment.

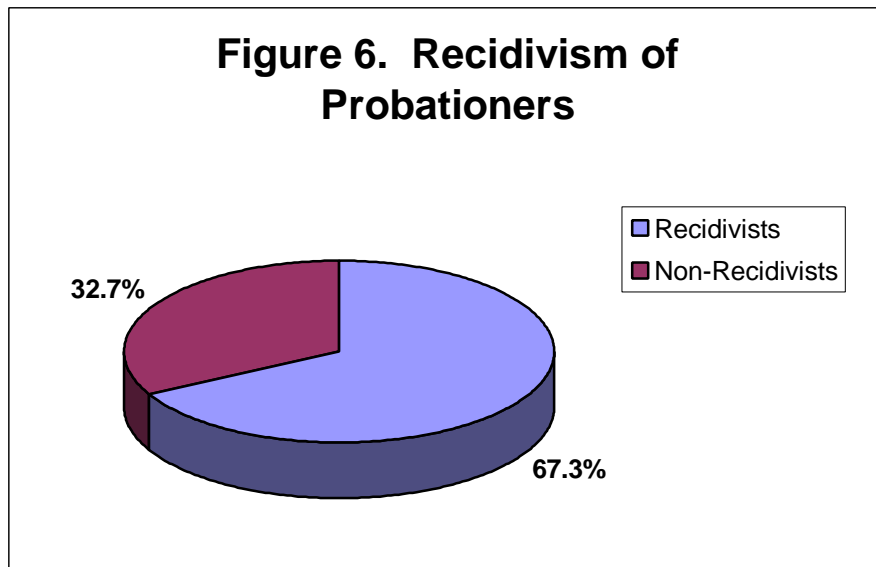
**3. Probationers who successfully participated in drug treatment programs were less likely to commit new offenses. However, being assigned to DTP's without effective follow-up to ensure DTP participation has no effect on recidivism.**

We find no difference in recidivism rates between probationers who were remanded or recommended to DTP's and those who were not. The recidivism rate for all the probationers in the sample was 67 percent. It is the successful attendance in DTP's that exerts a potent impact on recidivism rates. Table 3 shows that probationers who successfully attended drug treatment had a substantially lower recidivism rate than those who did not. Of the 147 probationers in our sample 99 were rearrested. Of the 121 probationers who did not attend or were not assigned to DTP's, 89 were rearrested. In contrast, only 10 probationers who successfully participated in DTP's were rearrested, a recidivism rate of 38.5 percent. A chi-square test confirms this negative correlation between drug treatment and recidivism.

**Table 3. Successful Drug Treatment and Recidivism**

	No/Incomplete Drug Treatment	Successful Drug Treatment
Non-Recidivism	26.4 % (32)	61.5 % (16)
Recidivism	73.6 % (89)	38.5 % (10)
Total	100 % (121)	100 % (26)

4. *Ninety-nine (67.3 percent) of the probationers in our sample were rearrested on new charges.*

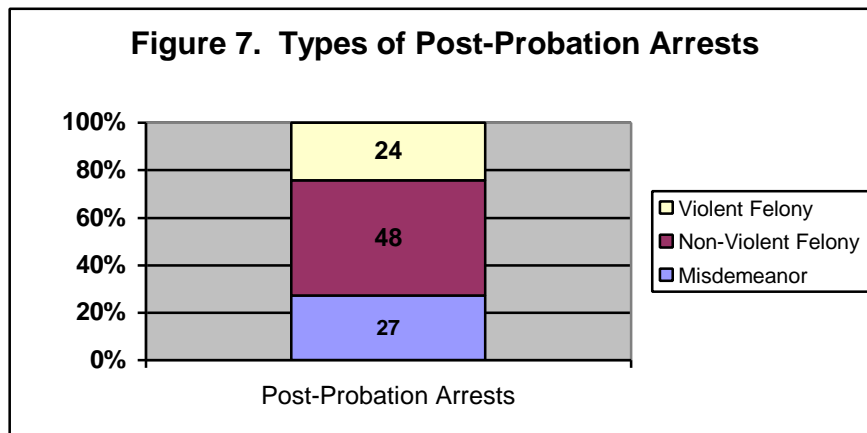


Of 147 probationers, 99 (67.3 percent) were rearrested at least once from the time of their conviction to January 1998, a 3 1/2 to 4 year period (see Figure 6). Only 48 (32.7 percent) were not rearrested during this period. This finding on recidivism rates is consistent with the findings in the general literature on substance-abusing offenders

**5. *Of the 99 recidivists in our sample, 24 were rearrested for the commission of violent felonies and 48 were rearrested for the commission of non-violent felonies.***

Ninety-nine out of 147 probationers were rearrested during probation. Of these 99 recidivists, 27.3 percent (27) were rearrested for misdemeanors, 48.5 percent (48) for non-violent felonies, and 24.2 percent (24) for violent felonies (See Figure 7). Due to the time lag between arrest and conviction, our data did not allow us to track the ultimate disposition of these new arrests.

We did however analyze whether the types of convictions that resulted in members of our sample being placed on probation initially can be correlated first to recidivism, and second, to the types of offenses committed while on probation (measured as misdemeanor, non-violent felony, and violent felony). In other words, if a probationer had committed a violent felony back in 1994, was he more likely than a misdemeanant to commit a new felony while on probation? Our analysis found no correlation.



**6. Among recidivists in our sample, those who successfully completed drug treatment were more likely to commit misdemeanors instead of felonies.**

To further examine the effect of drug treatment on recidivism, we divided recidivists into sub-groups according to the three types of crimes -- misdemeanors, non-violent felonies, and violent felonies. Probationers who successfully attended DTP's were both less likely to commit new crimes and less likely to commit serious new crimes. Only 4 (15 percent) out of 26 successful DTP participants were rearrested and charged with felonies compared to 68 (over 50 percent) out of 121 for those who did not attend drug treatment (see Table 4). As stated in the previous page under Finding 5, we found no correlation between types of convicted crimes and types of offenses committed while on probation. Apparently, successful completion of drug treatment exerts an independent impact on the seriousness of new crimes, if they occur at all.

**Table 4. Drug Treatment and Types of Re-arrests**

	No/Incomplete Drug Treatment	Successful Drug Treatment
Non-recidivism	32 (26.4%)	16 (61.5%)
Misdemeanor	21 (17.4%)	6 (23.1%)
Non-Violent Felony	46 (38.0%)	2 (7.7%)
Violent Felony	22 (18.2%)	2 (7.7%)
Total	121 (100.0%)	26 (100.0%)

**7. Among recidivists in our sample, those who successfully attended drug treatment were less likely to have drug-related re-arrests.**

We also found that drug treatment and drug-related recidivism are inversely correlated. Among recidivists, those who successfully attended drug treatment were less likely to commit new drug-related offenses.<sup>20</sup> Of the 99 probationers in our sample who were rearrested, three out of four probationers (67 out of 89) who did not attend DTP's or failed to complete it successfully if they did go, were rearrested for at least one new drug-related offense. In contrast, the percentage of drug-related recidivism for those who successfully participated in the drug treatment program was only 30 percent (3 out of 10) (See Figure 8). However, although current drug-related convictions are positively correlated to drug-related recidivism (see Table 5), drug convictions are not statistically associated with recidivism in general. In other words, a cocaine dealer is not more likely than a car thief to commit new crimes while on probation, even when they both use drugs personally. However, when a drug dealer does commit a new crime on probation, that crime is more than likely to be drug-related.

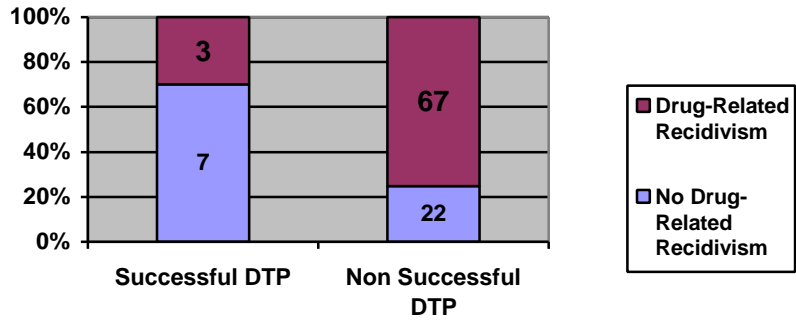
**Table 5. Drug-Related New Crimes by Drug-Related Convictions**

	Drug-Related Convictions (Yes)	Drug-Related Convictions (No)
Drug-Related New Crimes (Yes)	79.4 % (50)	55.6 % (20)
Drug-Related New Crimes (No)	20.6 % (13)	44.4 % (16)
Total	100% (63)	100% (36)

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20. Examples of drug related crimes are Criminal Possession of a Controlled Substance and Criminal Sale of a Controlled Substance.

**Figure 8. Comparison of Drug-Related Recidivism between Successful DTP and Non-Successful DTP**



**8. Previous Convictions Exert A Positive Impact On Recidivism**

Nearly half of the probationers in our sample had previous convictions. Not surprisingly, our data suggested that probationers who had previous convictions are more likely than others to commit new crimes (See Table 6). The recidivism rate increases linearly and significantly with the number of the probationer’s previous convictions. For those who had no previous convictions, 56.6 percent of them committed new crimes while on probation, compared to almost 90 percent of those who had more than 4 previous convictions. As stated earlier, judges do not seem to be considering the number of prior convictions when determining which probationers must attend DTP’s as a condition of probation.

**Table 6. Recidivism by Previous Convictions**

	No Previous Convictions	1 – 3 Convictions	4 And More Convictions
No Recidivism	43.4% (33)	25.0 % (13)	10.5 % (2)
Recidivism	56.6 % (43)	75.0 % (39)	89.5 % (17)
Total	100 % (76)	100 % (52)	100 % (19)

**9. Employment Status is Negatively Correlated with Re-arrest.**

It is often asserted that employment is inversely related to recidivism. This hypothesis is supported by our data. Table 7 shows that probationers who were employed either part-time or full-time at the time of their arrests were less likely to commit new crimes. Almost three out of four (87 out of 120) unemployed probationers were rearrested while less than half (12 out of 27) of employed probationers were rearrested.

**Table 7. Employment Status and Recidivism**

	Unemployed	Employed
Non-Recidivism	27.5 % (33)	55.6 % (15)
Recidivism	72.5 % (87)	44.4 % (12)
Total	120 (100% )	27 (100% )

**10. *Controlling for previous conviction and employment status at the time of the arrest or re-arrest, the impact of successful participation in DTP's remains statistically significant. Successful DTP reduces the chance of recidivism by approximately 30 percent for an unemployed probationer.***

Our findings show drug treatment participation together with number of previous convictions and employment status have a statistically significant impact on recidivism. In order to examine the independent effect of drug treatment on recidivism, we conducted a logistic regression analysis, controlling for the probationer's previous convictions (categorized as having no previous convictions vs. having at least one previous conviction) and employment status (unemployed vs. full time or part-time employed) at the time of his arrest. We find that the impact of drug treatment on recidivism remains statistically significant even when previous convictions and employment status are being held constant (see Table 8).

Results also show that previous conviction status, as expected, is a significant predictor for recidivism as well, though the magnitude is smaller ( $\beta$  coefficient is 1.0281) than participation in the DTP's ( $\beta$  coefficient is 1.3431). The impact of employment is no longer significant when the effects of previous convictions and participation in DTP's are controlled. In our sample, 51.7 percent (76 out of 147) of the probationers had no previous convictions. The expected probability of recidivism is .53 for a probationer with no previous convictions, who was both unemployed and did not successfully participate in DTP's. The probability reduces to .23 if the same probationer was unemployed but successfully attended the DTP's, and it further declines to .11 if he was both employed and successfully participated in the DTP's.<sup>21</sup> In other words,

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21. The formulas used to calculate the probabilities:  $P = e^L / 1 + e^L$ , where  $L = a + \beta_1 X_1 + \beta_2 X_2$

probationers with no previous convictions who successfully attended DTP's and who were employed at the time of the arrest were predicted to have as low as an 11 percent chance of being recidivists. Using the same method, we arrived at a probability of .76 for a probationer with at least one previous conviction, who did not attend a DTP and was unemployed. The probability of being a recidivist dropped to about .45 if the same person went to DTP's successfully. In general, if the estimated probability of the event is less than .5, we predict that the event will not occur. Successful participation in a drug treatment program reduces the chance of recidivism by approximately 30 percent for an unemployed probationer regardless of his previous conviction status – making the recidivism unlikely to happen (the probability was reduced to below .5).

**Table 8. Logistic Coefficients for Regression of Recidivism on Drug Treatment, Number of Previous Convictions and Employment Status**

Independent Variables	b	(S.E.)	Exp (B)
Drug Treatment	-1.34**	.48	.26
Previous Convictions	1.03*	.39	2.79
Employment	-.87	.47	.42
Constant	.13	.27	

\*p<.05 \*\*p<.01 (two-tailed tests)

***11. Probationers were not sanctioned for failure to attend court-ordered DTP's.***

At the time of our review, we found no evidence that failure to attend a court ordered DTP in and of itself resulted in revocation of probation. In the cases where probation was revoked, it was for the commission of a new crime. In January 1999, we re-visited each of the five boroughs and reviewed the files of 19 of the 35 probationers in our sample, who were remanded to DTP's by the courts. There was still no indication that the probationers were being sanctioned for failure to attend DTP. In fact, we found that none of the probationers who failed to attend a DTP had their probation revoked as a consequence.

## V. CONCLUSION

Our first major research finding is that successful completion of DTP's exerts an independent and considerable impact on reducing recidivism rate. The recidivism rate for those who successfully completed DTP's was 38.5 percent, almost half the rate (73.6 percent) for those who did not go or failed to complete programs. In our sample, for a typical unemployed probationer with or without previous convictions at the time of his arrest or re-arrest, successful DTP participation reduces the chance of recidivism by approximately **30** percent. Our finding demonstrates that sending probationers with drug problems to DTP's and ensuring their completion of the assigned program is an effective way to prevent recidivism.

Our second major research finding is that 68 percent (100) of the probationers in the sample population were *remanded to drug treatment by the court or recommended by Probation as a condition of probation*, but only 26 percent (26) either *completed or regularly attended drug treatment*. These numbers are unacceptable, especially given the demonstrated success of drug treatment in lowering recidivism rates of probationers having a drug problem. Probation, in cooperation with drug treatment programs, must establish procedures to ensure that all probationers remanded to drug treatment actually attend and complete their programs. Although probation status cannot be revoked for failure to attend court-ordered DTP's based on Probation's recommendation alone, Probation should make more of an effort to require these probationers to attend.

For those probationers who fail to meet the requirement of court-ordered drug treatment, Probation and the courts must take swift and certain action. Probation must establish better communication with drug treatment programs regarding probationers' attendance and

progress. Probationers found to be non-compliant with court-ordered programs should be immediately reported to the court, which can then make a prompt probation revocation decision. Our findings justify the need for new responses.

Our third major finding bears directly on public safety. Our research found that 24.2 percent of our probationers sampled were *rearrested for violent felonies*.<sup>22</sup> It is worth repeating: nearly 75 percent of probationers in New York City are felons, many of whom have previously been convicted of violent offenses. Our sample suggests that many of them continue to engage in violent crime. Why? And why has the use of probation grown so precipitously as a sentence for violent felons? The common practice of plea bargaining is only a partial explanation for the exponential growth of felons on probation in NYC. Given that 24 percent of the sample were rearrested for violent felonies, can current criminal justice system practices be justified? Clearly, further study of this issue is needed.

Recently, new options emerged to deal with the increasing numbers of drug offenders entering the criminal justice system. These Alternatives-to-Incarceration (ATIs), although, small in scope, allow non-violent drug offenders and other non-violent offenders to receive the treatment, training and supervision they desperately need with the intensive supervision that probation alone all too often fails to provide. This subject will be discussed in a subsequent report.

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22. Data does not factor in that a number of these probationers will plea-bargain and will ultimately be convicted of a less serious crime.

## VI. RECOMMENDATIONS

1. Probation must ensure that all probationers sentenced by the court to DTP's attend regularly and complete the program.
2. Probation must demonstrate evidence of how probationers who are remanded to DTP's are monitored to ensure regular participation in DTP's. Improved record keeping by Probation is essential.
3. Failure by probationers to regularly participate in DTP's to which they have been remanded must have real consequences. When participation in a DTP is ordered by the court, and probationers fail to attend, Probation should more vigorously issue a Violation of Probation so the court can make a revocation decision.
4. Probation should devise clear, improved guidelines for determining whether a probationer should be recommended for drug treatment as a condition of probation.
5. Probation should be more vigilant in recommending drug treatment where appropriate, which should result in the court's accepting more of their recommendations.
6. Data on the comparative success rates of different DTP's should be published by Probation. The Mayor's Management Report should have data on the percentage of probationers assigned to DTP, the percentage that complete the required drug treatment, and the recidivism rate.

In light of the findings and recommendations of this report, we are encouraged by recent efforts taken by Probation to address drug use among the probation population. The FY 98 Mayor's Management Report provides a narrative account of very recent progress made by the Probation Department in its "Citywide Anti-Drug Initiative" and its efforts "to re-engineer its system for supervising adult probation...focusing resources on high risk, violence prone probationers."<sup>23</sup> For example, the MMR describes expansion of Probation substance abuse treatment resources "adding 75 outpatient treatment slots citywide and doubling the number of

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23. The City of New York, *Mayor's Management Report*, FY 98, Volume I - Agency Narratives, p. 45

beds devoted to short-term residential treatment."<sup>24</sup> The FY99 MMR notes the testing of ion scanners that will enable probation officers to conduct non-invasive drug testing during field visits, by detecting microscopic traces of illegal drugs on a probationer's clothing or furniture.

We urge the developing Probation Adult Supervision Restructuring (ASR) program to adopt recommendations made in this report for offenders in each supervision track who are known to be substance abusers. In particular, attention should be paid to our third recommendation, which was based on data available in Probation files. We found that probationers' failure to regularly participate in DTP's did not lead to corrective actions or sanctions. If the issuance of violations for failure to attend DTP's was made, the evidence for such actions was generally not available in Probation files we reviewed.

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24. Ibid. p.42

## **VII. AGENCY COMMENTS**

On June 18, 1999, we sent a draft of this report to Probation and the Mayor's Office of Operations. We received a written response from Probation on July 21, 1999. A copy of Probation's response is included as an appendix to this report.

We commend Probation for the proactive role it is taking in response to our report. Among other things, Probation agrees with our finding that there is a negative correlation between successful drug treatment and recidivism and that more can be done to reduce recidivism. Probation further asserts that numerous changes have been made to its drug treatment programs and testing policies during the course of our study. Moreover, they agree to take numerous additional actions over the next few months.

Probation states it has been its policy since 1998 to recommend drug testing and drug treatment for all probation bound or probation recommended cases with an underlying drug charge, recent history of use or admission by the defendant. According to Probation, it will implement training in Fall 1999 to assist officers in case managing the probation population. In order to better monitor probationers' attendance at the DTP's, Probation asserts it will require its officers to either request monthly progress reports or contact providers by telephone to obtain the status information.

In response to our claim that there should be real consequences for failure to report to or attend DTP's, Probation is making efforts to make probationers more accountable. It asserts that in Fall 1999 it will unveil a new misconduct policy requiring an internal administrative hearing with a supervisor to address this type of misconduct. Consequently, those who continue to fail to attend DTP's will be sent to Probation's Intensive Supervision Program by a formal internal

Misconduct Review Board, previously a lengthy procedure requiring court decisions. Further, if a probationer tests positive for drugs and refuses to accept a referral for assessment and treatment, Probation's new policy will require the case be referred to court for imposition of a special condition of drug treatment, post-sentencing.

Replying to our recommendation on evaluation of types of drug treatment programs, Probation states that new performance standards are being established for those drug treatment services under contract to Probation. There will be a new contract solicitation and evaluation process. Probation intends to retain a percentage of each contract value until satisfactory performance is confirmed.

Probation has also initiated a number of other projects in an effort to improve probationer outcomes. The projects include a diversion project for juveniles, a federally funded demonstration project involving partnership with clinical services, and collaboration with a vocational training and placement organization working in conjunction with a treatment provider. A partner with a national research group in a study of mandated treatment, Probation has carried out basic training in drug and alcohol abuse and treatment for all staff.

Probation attributes its poor record keeping at the time of our site visits to the fact that it was in the midst of an unprecedented massive re-engineering effort, which required manual movement of file records. However, when we returned for a follow-up field study between December 1998 and January 1999, based on the records we reviewed, the problem of incomplete records remained unchanged. Probation claims that upon reviewing 30 of the Brooklyn cases, they found that 17 of 30 probationers were referred to, or enrolled in a DTP at the time of sentence. Probation also found that of those 17, thirteen probationers (82 percent) "were not in

compliance with DTP rules” and violations were filed for 12 of those 13 probationers. This finding is somewhat misleading, since our study found that in an overwhelming majority of the cases, violations were filed after the probationer committed a new crime, and not necessarily as a result of failing to comply with DTP rules.

We are very encouraged by Probation’s acknowledgement of the problems highlighted in this report and its willingness to take measures to deal with these problems. When we combine these changes with the performance standards Probation is establishing for its substance abuse contracts, we are optimistic that the lives of a greater number of these probationers will be enriched, consequently further reducing crime in the city.

## APPENDIX