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THE DAY CUSTODY PROGRAM: FIRST YEAR REPORT

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While there were many who assisted in a myriad of ways, I alone am responsible for the design of this research project and the contents of this report.

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INTRODUCTION

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 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, usually of ten days, that is 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 Office of the Criminal Justice Coordinator 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 City 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. This report, shared with our research partners at CASES and DOC, 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. The current report builds on this work to assess DCP activities throughout its first full year of operation.

This first-year program report is divided into several sections, beginning with a description of the Day Custody Program and the data used in the remainder of the report. This is followed by a chapter focused on cases with a DCP sentence, and a separate one focused on cases screened and rejected, over the course of the program's first full year of operation. Another section examines re-arrests among successful and unsuccessful program-sentenced defendants and cases. The final section contains a summary of the findings with some conclusions about the first year's program performance.

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 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 defendant is in custody only during daytime weekday hours in a Department of Correction facility adjacent to the downtown Manhattan courthouse, without using full-time incarceration. This 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 prisoner 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 the stipulation of a jail sentence, usually of ten days, for failure to complete the DCP sentence. Defendants have a ten-day window in which to complete the three days' of program activities. 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 be sentenced to the program immediately. 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, 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. While homelessness was not originally envisioned as a bar to participation, early experience indicated that many such defendants, at least the street homeless or those 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.

The second screening stage requires review and consent by all parties—defense attorney, defendant, judge, assistant district attorney (ADA), and DCP court staff. For defendants in cases the program wishes to pursue further, the first step is to seek permission from the defense attorney to interview the defendant, so that defense attorneys serve as gate keepers to defendants. They 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. The next step before conducting the defendant interview is to 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.

During the course of such an interview DCP court staff may find that the defendant is not likely to be a successful program participant. For example, because program activities are only during daytime weekday hours, defendants without any stable residential or other community ties, or who are found for other reasons to be poor program risks, may be rejected by DCP staff. Defendants also must consent to the program sentence.

Among courtroom actors, judges influence the pool of the program-eligible population because they must be amenable to using 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 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 sections of this 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.

CJA and CASES have worked together to share information about screened cases of defendants not sentenced to the DCP program. This has been more challenging for several reasons. As is common with new programs screening forms and other program protocols evolved over time. In addition, computerizing the information from the screening forms for non-DCP sentenced cases was affected by changing forms and the workload demands of program staffing during the early implementation period.

For the first several months of the program, (late September through December 2005), there was no routine computerization of the screening forms for non-DCP-sentenced cases by CASES. CJA was provided the screening forms for this period and computerized the case and defendant identifiers and rejection reasons to the extent they could be determined. The sole exception was that CASES did create, and provide to CJA, a computerized file of identifiers for program-screened cases during this time period that were not pursued because they were Spotlight-program targeted, a separate exclusion category.

Computerization by CASES' staff of the screening forms became effective for non-DCP sentenced cases screened as of January 2006. At the same time a final set of changes were being made to the screening form, in conjunction with other changes in screening practices. Computerized entry of screening forms by CASES began in February 2006. As of June 2006, CASES had completed the computerization of screening forms dating back to January 2006 and provided these data to CJA. Afterwards a system was created for the regular, periodic electronic transfer to CJA of information about screened but rejected cases.

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), is being 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.

FIRST YEAR DAY CUSTODY SENTENCED CASES

This section of the report describes DCP-sentenced cases from the start of the program through September 30, 2006, the program’s first year of operation. During this time a total of 548 cases arraigned in the downtown Manhattan Criminal Court received a sentence to the Day Custody Program. There were a total of 525 defendants in these cases with 23 defendants each receiving a DCP sentence in two separate cases. Among the 525 defendants were 107 who also had other screened but rejected cases. In addition, 61 of these 107 defendants were program-sentenced in Spotlight-targeted cases.

The data that follow describe the characteristics of defendants and cases at the time of the DCP-sentenced cases, which in some respects may have been different for the 23 defendants with two separate DCP-sentenced cases.

Characteristics of Defendants in the DCP-Sentenced Cases

In the 548 cases sentenced to the DCP program, most had defendants who were male and 35 years of age or older, with a mean (mathematical average) of about 39 years of age.

DEFENDANT DEMOGRAPHIC AND ZIP CODE CHARACTERISTICS					
SEX	N	%	ETHNICITY	N	%
Male	489	89.2	Black	332	62.8
Female	59	10.8	Hispanic	146	27.6
Total	548	100.0	White	44	8.3
			Other	7	1.3
			Total	529	100.0
			Unknown	19	
AGE GROUP	N	%	ZIP CODE	N	%
16-19	4	0.7	Manhattan	242	52.0
20-24	47	8.6	Bronx	105	22.6
25-29	50	9.1	Brooklyn	79	17.0
30-34	52	9.5	Queens	25	5.4
35-39	113	20.6	Staten Island	3	0.6
40-44	127	23.2	Other New York	5	1.1
45-49	82	15.0	New Jersey	6	1.3
50+	73	13.3	Total	465	100.0
Total	548	100.0	Other/Unknown	83	
Mean Age 39.19					

Almost all defendants were minority, with 62.8% identifying themselves as Black, and 27.6% Hispanic. Of those who were not homeless, and for which home address was known, over half had addresses with Manhattan zip codes.

Criminal conviction history, as shown in the next table, is characterized by the most severe conviction charge in all prior adult-court cases. Most commonly, first-year DCP-sentenced cases had defendants with prior criminal convictions for both felony and misdemeanor crimes.

PRIOR CRIMINAL CONVICTION HISTORY		
TYPE OF CRIMINAL RECORD	N	%
Misdemeanor Only	167	30.5
Felony Only	4	0.7
Both	377	68.8
Total	548	100.0

All DCP-sentenced defendants had some prior criminal conviction history, and almost all had a total of at least three such criminal convictions. However, there were twenty-seven cases in which it appeared that the defendants did not have the minimum program criteria of at least three prior cases with convictions to *misdemeanor* crimes, and a review of the criminal records in these cases showed that four defendants had only convictions to felony crimes.

COUNTS OF PRIOR MISDEMEANOR AND FELONY CONVICTIONS					
PRIOR MISDEMEANOR CONVICTIONS	N	%	PRIOR FELONY CONVICTIONS	N	%
Less than 3	27	4.9	None	167	30.5
3-5	115	21.0	1	124	22.6
6-9	116	21.2	2	110	20.1
10-14	95	17.3	3	86	15.7
15-19	63	11.5	4	39	7.1
20-24	44	8.0	5	17	3.1
25-29	28	5.1	6	3	0.5
30-34	16	2.9	7	2	0.4
35-39	13	2.4	8	0	0.0
40-44	13	2.4	10	0	0.0
45 or more	18	3.3	Total	548	100.0
Total	548	100.0			

Overall, in the DCP-sentenced cases 87% of the defendants had more than the minimum criteria of three prior convictions for misdemeanor crimes, with a mean of 14.5 prior misdemeanor convictions for those with at least one prior misdemeanor conviction (data not shown). Seventy percent of the defendants in the DCP-sentenced cases also had previously been convicted of felony crimes (381 out of 548), with an average of 2.3 felony convictions per defendant in cases with felony convictions.

CJA Recommendation and Community Ties Characteristics

As a group, defendants in the DCP-sentenced cases were 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, although such a defendant can receive 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	13	2.5
Moderate Risk	20	3.9
<i>Not Recommended:</i>		
High Risk	417	81.4

Bench Warrant	31	6.1
Other Exclusionary Categories	3	0.6
*No Recommendation	28	5.5
Total	512	100.0
Not Interviewed	36	
*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 serve 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 staff 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 responses to the question of whether they expected 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, almost two-thirds of the defendants in the DCP-sentenced cases reported that they were not engaged full time in work, school and/or program activities. In addition, over two-fifths (45.6%) expected someone to attend their arraignment court appearance, even though less than one-third (31.2%) reported living with others.

CJA COMMUNITY TIES INTERVIEW ITEMS		
INTERVIEW ITEM	N	%
Fulltime Employment/School:		
Yes	171	35.6
No	309	64.4
Total	480	100.0
Unresolved Conflict or N/A	68	
Lives With Others:		
Yes	151	31.2
No	333	68.8
Total	484	100.0
Unresolved Conflict or N/A	64	
Expects Someone at Arraignment:		
Yes	219	45.6
No	261	54.4
Total	480	100.0
Don't Know or N/A	68	

Arrest Crime Types and Severities for DCP-Sentenced 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 defendants in DCP-sentenced cases were arrested. 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. For example, the harm-to-persons category includes homicide (PL 125), violent sex offenses such as rape (PL 130), and assault (PL 120). In addition, although all categories contain charges with severities ranging from felony to misdemeanor, some categories such as “unknown/other” contain almost exclusively 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	3	0.5	B-Felony	12	2.2
Harm to Person & Property	2	0.4	C-Felony	4	0.7
Weapon	8	1.5	D-Felony	59	10.8
Property	178	32.5	E-Felony	18	3.3
Drugs	208	38.0	Subtotal Felony	93	17.0
Sex	2	0.4	A-Misdemeanor	395	72.1
Fraud	77	14.1	B-Misdemeanor	55	10.0
Misconduct	46	8.4	Subtotal Misdemeanor	450	82.1
Obstructing Justice	9	1.6	Other	5	0.9
Other	15	2.7	Total	548	100.0
Total	548	100.0			

Charge Composition at Criminal Court Arraignment

Because the DCP sentence only is available for cases pending arraignment for misdemeanor crimes, all but two of the cases with felony severity top arrest charges were prosecuted for less severe charges.¹ 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

¹ The remaining two cases were sentenced post-arraignment on amended charges of misdemeanor severity.

by severity at Criminal Court 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	193	38.8	3	6.4	0	0	196	35.8
Drugs	152	30.5	38	80.9	0	0	190	34.7
Fraud	60	12.0	0	0.0	0	0	60	10.9
Misconduct	65	13.1	4	8.5	0	0	69	12.6
All other	13	2.6	2	4.3	0	0	15	2.7
Unknown	15	3.0	0	0.0	3	100.0	18	3.3
Total	498	100.0	47	100.0	3	100.0	548	100.0
	(90.9%)		(8.6%)		(0.5%)		(100.0%)	
*The total includes the amended charge severity for the two felony affidavit cases (one property and one drug).								

At arraignment the most substantial change was that the percentage of cases in the property crime category, (over 87% a petit larceny charge), increased and became about a percentage point greater than drug category cases overall. At arrest the greatest percentage of cases was in the drug category, and this category's cases were 5.5 percentage points larger than the property crime category which was second largest. In addition, over 90% 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. Unlike regular jail sentences there is greater opportunity to provide assessment, services and discharge planning in a small-group setting. The ability to successfully provide this range of activities is dependent on program retention which requires defendants to complete the full three days of the schedule without being held in a custodial setting on a continuous basis. Depending of 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 at a later time. Therefore the key measure of program success is the program’s completion rate.

Of the 548 DCP-sentenced cases, a total of 445, or 81.2%, were reported to have successfully completed the program sentence. This includes four cases in which defendants successfully completed the program after being given a second chance. On the table that follows, success and failure rates are shown separately for the cases in which defendants appeared to meet the program’s eligibility criteria, and for two categories of cases in which it appears that the DCP sentence was imposed in instances in which defendants fell outside of the program’s parameters.

The ‘Insufficient Priors’ category contains 25 of the 27 cases of defendants without the minimum three prior misdemeanor convictions previously discussed. The ‘Spotlight’ category contains 204 cases that CJA identified as having been designated by DCJS as Spotlight program cases, including the other two cases of defendants without the minimum three prior misdemeanor convictions, although these two cases had two prior misdemeanor convictions, making them Spotlight eligible. 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. Among the 24 Spotlight no-show failures is one case in which the defendant was unsuccessful and then reinstated and given a second chance to complete the DCP sentence but failed to appear.

SUCCESSFUL AND UNSUCCESSFUL PROGRAM COMPLETION BY ELIGIBILITY CRITERIA								
PROGRAM OUTCOME	Eligible		Insufficient Priors		Spotlight		Total	
	N	%	N	%	N	%	N	%
Success	277	86.8	22	88.0	146	71.6	445	81.2
Failure	42	13.2	3	12.0	58	28.4	103	18.8
Total Cases*	319	(58.2)	25	(4.6)	204	(37.2)	548	100.0
Did Not Complete	24		3		34		61	
No Show	18		0		24		42	
*Percentages in parentheses are the percent of all sentenced cases, not within category percentages.								

Program eligible cases, which represented 58.2% of all DCP-sentenced cases, had an 86.8% successful completion rate. The successful completion rate was even greater for the small number of cases in which defendants had fewer than the requisite three misdemeanor convictions. The successful completion rate was lowest for the Spotlight-targeted cases. However, it is not clear how much importance to attach to the success and failure rates for the two categories of ineligible cases because they represent such a small proportion of all such ineligible cases. For example, during this same time period there were 5,328 Spotlight cases arraigned in the downtown Manhattan Criminal Court, so that the 204 cases represent only a tiny percentage (3.8%) of such cases. Similarly there would have been many thousands of non-Spotlight cases of defendants with fewer than three prior misdemeanor convictions.

Penalties for Program Failure

There were a total of 103 cases unsuccessfully terminated from the program and for which a warrant was issued when the failure to successfully complete the program was reported to the court on the scheduled compliance date. As of June 12, 2007, defendants in 95, or 92.2%, of these cases had been brought back to court and received a new disposition on the DCP-sentenced case. As shown in the next table, defendants in 94 of these cases received a new sentence, and the remaining case was dismissed.

Of the other eight unsuccessfully terminated cases, six continued to show the outstanding warrant as of June 12th, and there was no record in the CJA database of these defendants having been returned to court either solely on the warrant or as a result of a new arrest. However, in one of these cases the defendant had been re-arrested and sentenced to time served prior to the issuance of the warrant on the DCP case. The other two cases are in the “other status” category: One had been returned to court but did not yet have a final disposition, and in the other case the judge decided to satisfy the requirements of the DCP sentence by entering a “Community Service Completed” disposition even though the program records showed that the defendant had not successfully complete the program.

STATUS OF UNSUCCESSFUL DCP-SENTENCED CASES AS OF JUNE 12, 2007		
Case Status	N	%
Re-sentenced	94	91.3
Dismissed	1	1.0
Outstanding Bench Warrant	6	5.8
*Other Status	2	1.9
Total	103	100.0
*Includes one case still ongoing, and one case in which the judge entered a community-service-completed disposition even though the program records this defendant as having not successfully completed the program requirements.		

The DCP program is designed to have a ten-day jail sentence as the penalty for defendants who fail to complete the three days of program activity, although in some cases the court imposed a different alternative jail sentence length. However, it appears that the actual re-sentencing practices varied among judges, and by whether the re-sentence in the DCP case occurred at the same time as a sentence in a re-arrest case was concurrently being imposed. This latter factor 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. The most extreme illustration of this is that in the dismissed DCP case the defendant was simultaneously receiving a 15-day jail sentence for a conviction in a re-arrest case.

In total, of the 94 cases that were re-sentenced, 88 received an imprisonment sentence (93.6%), and the remaining six cases were re-sentenced to a conditional discharge, including three cases which also received five days of community service in conjunction with the conditional discharge.

TYPE OF RE-SENTENCE IMPOSED IN UNSUCCESSFUL CASES		
Type of Re-sentence	N	%
Imprisonment	88	93.6
Conditional Discharge	6	6.4
Total	94	100.0

Of the 94 re-sentenced cases, 87 had at least one re-arrest which occurred before the re-sentence on the original DCP sentenced case. For the remaining seven cases the defendant was returned on the DCP case warrant without a new prosecuted arrest. Four of those seven cases (57.1%) without a re-arrest received a 10-day re-sentence, one case received a 3-day jail re-sentence, and the other two cases received a conditional discharge, both of which included a five-day community-service requirement.

The re-sentencing in the DCP case appeared to have occurred independently from the re-arrest case in 41 of the 87 cases which had a re-arrest before the re-sentence on the original DCP case. In 31 of these cases (75.6%) the defendants received jail sentences of 10 or more days on the re-sentence.

Of these 31 re-sentenced cases: 18 received a 10-day sentence, three 15 days, one 18 days, two 20 days, four were re-sentenced to 30 days, one received a 60 day re-sentence and two others received 90-day sentences. In five of the remaining ten cases with a re-sentence independent of the sentence on the re-arrest case, the defendant received a time-served sentence, one received a sentence of 4 days, two others a 5-day sentence, and in the remaining two cases the re-sentence was a conditional discharge, one of which also included a five day community service requirement.

The remaining 46 cases with a re-arrest before the re-sentence on the original DCP case were re-sentenced at the same time as the sentencing on the re-arrest case. In two of these cases the DCP re-sentence was a conditional discharge, but in one of these cases the concurrent case received a 60-day jail sentence, and in the other the concurrent case received a 45-day jail sentence.² In another eight 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 time served, one a 10-day sentence, two 15-day sentences, three 20-day sentences, and one received a 30-day sentence on the concurrent case. In the remaining 36 cases re-sentenced concurrently with a re-arrest case: 20 received 10-day re-sentences, two 15-day re-sentences, one each a re-sentence of 5, 7, and 20 days. Seven cases received 30 day re-sentences, one a 45-day re-sentence, two 60-day sentences, and there was one case in which a 180-day jail sentence appeared to have been imposed to satisfy both the DCP failure and the re-arrest.

As illustrated in the table below, almost half of the re-sentenced jail cases received a 10-day jail sentence, thirty percent more than 10 days, and the remaining cases received a new sentence of fewer than 10 days, including time-served sentences. Overall, almost eighty percent of all of the re-sentences with

² In this case the defendant was a No Show at DCP and was arrested the day after the DCP sentence. He was subsequently re-sentenced the day after the original sentence on the DCP case to 30 days at the same time he was sentenced on the re-arrest which resulted in the 45 day sentence.

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	13	14.8
3 days	1	1.1
4	1	1.1
5	3	3.4
7	1	1.1
Subtotal less than 10 days	19	21.6
10 days	42	47.7
15 days	5	5.7
18	1	1.1
20	3	3.4
30	11	12.5
45	1	1.1
60	3	3.4
90	2	2.3
180	1	1.1
Subtotal more than 10 days	27	30.7
Total	88	100.0

These data suggest that defendants were held accountable for program failure when returned to court, and in the majority of cases received a jail sentence of at least ten days. Five of the 88 cases that were re-sentenced to incarceration had no intervening re-arrest, and in none of these cases did the defendant receive a jail sentence of more than 10 days.

In 39 of the 88 cases re-sentenced to incarceration, the jail sentence imposed for the DCP failure appeared to have been independent of any new arrest, although defendants in these cases had a re-arrest which may have influenced the judge who was re-sentencing the defendant on the DCP case. In addition, of the 39 cases with incarcerative re-sentences and a re-arrest sentenced independently from the DCP case, 13 received a re-sentence of more than 10 days.

In the remaining 44 cases with a re-sentence of imprisonment, the re-sentence was imposed in conjunction with sentencing for the re-arrest that

returned the defendant to court for the DCP failure, and in over half of these cases the defendant received a jail sentence greater than 10 days. However, in a number of these instances the jail sentence either was imposed on the re-arrest, and/or was imposed as a sentence to cover both the DCP-failure and the new case.

FIRST YEAR DAY CUSTODY REJECTED CASES

This section examines cases that were screened but not sentenced to DCP. Unlike the previous section that examined DCP-sentenced cases through the program's first year, this analysis describes the attributes and outcomes for screened but not DCP-sentenced cases and defendants.

For the rejected cases from 2005 there were some issues which initially presented problems including changes in the screening form after the program's early implementation period and a lack of computerization of these forms for all but Spotlight-targeted cases. This led to the need for CJA to manually enter into a new database the information from the screening forms for non-DCP sentenced cases from September through December 2005, and subsequently to make decisions about rejection reasons when it was unclear from what the DCP screener indicated, or failed to indicate, on the screening sheet. Beginning in January 2006, CASES began computerizing the data from screening forms for rejected cases and from that time forward rejection reasons are as provided to CJA by CASES.

In total, information was available for 3,115 cases screened and rejected for placement in DCP over the course of the program's first year of operation. After verifying Spotlight-identified rejected cases, the screened pool of rejected cases consisted of 1,767 non-Spotlight cases and 1,348 Spotlight-targeted cases. There were a total of 2,665 defendants found among the 3,115 cases, 2,307 (86.6%) defendants had only one rejected case, while 289 were screened for two rejected cases, 54 had three screened cases, 12 defendants had four screened cases, and one defendant each was screened and rejected in five, seven, and eight separate cases respectively, in the first program year.

Rejection Source and Reason

The table that follows presents the combined rejection reasons from the manually entered data by CJA from 2005, and from the CASES' computerized screening data from January through September of 2006. The first section of the table 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, with cases for which the source or reason for the rejection was unknown shown separately.

SOURCE AND REASON FOR PROGRAM REJECTION			
CASES' DCP PROGRAM REJECTIONS:	N	%	Overall %
Operation Spotlight	1,063	53.3	34.1
Parole	242	12.1	7.8
Homeless/ Insufficient Community Ties	200	10.0	6.4
History of Violent Crimes	102	5.1	3.3
Other DCP Screener Rejection Reasons	172	8.6	5.5
Probation	42	2.1	1.3
Active Hold	106	5.3	3.4
Heavy Substance Abuser	28	1.4	0.9
Lives Outside NYC	29	1.5	0.9
Mental Illness (CPL 730)	12	0.6	0.4
Subtotal DCP Program Rejections	1,996	100.0	64.1
Defense Attorney	492	47.9	15.8
Judge	361	35.1	11.6
ADA	124	12.1	4.0
Defendant Refuses to Accept Program	51	5.0	1.6
Subtotal Other Rejection Sources	1,028	100.0	33.0
Unknown Rejection Reason ³	91	100.0	2.9
Total Screened But Rejected	3,115	100.0	100.0

For both the subcategory of rejections by the DCP screeners, and for all rejections as a whole, the presence of Spotlight program targeting on the court papers constituted the largest group of cases not pursued for program intake. 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.

³ This category includes cases that were misidentified as Operation Spotlight cases.

Among all rejections, the second largest category was the defense attorneys (15.8%), 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 client interviewed by DCP staff because they believe that the defendant will be receiving a very brief sentence such as time served or several jail days that will have been satisfied by the end of the court appearance, 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 their client to DCP for screening.

Judges were the third largest source of rejections (11.6%). Some judges are unwilling to consider any programs as an alternative sentence and therefore will not utilize DCP, while in other instances the judge may want a different and most likely lengthier period of incarceration. Four percent of rejections were from the ADAs. This represented a combined category of different ADA-designated rejection reasons on the original screening form. The majority (87.9% not shown) of the ADA rejections were because the screening form indicated that the ADA would be offering a non-jail sentence; the remaining were “other ADA rejections” and it appeared that in many of these cases the ADA offer was for a jail sentence substantially longer than 10 days.

Characteristics of Defendants in DCP-Screened and Rejected Cases

The demographics of the defendants in the 3,115 rejected cases were almost identical to those in the DCP-sentenced cases in regard to age and sex. Most were male (88.8% rejected versus 89.2% sentenced) and 35 years of age or older (74.4% versus 72.1%). The distributions among ethnicity categories between the defendants in the rejected and DCP-sentenced cases showed some variation, although the majority of defendants in the rejected (65.8%) and sentenced (62.8%) cases were Black. Looking at the proportion of defendants for which home address was known, Brooklyn zip codes represented a smaller percentage of rejected cases compared to sentenced cases (14.7% versus 17.0%). The distribution of cases with Manhattan (61.4% versus 52.0%) and the

Bronx (15.7% versus 22.6%) zip codes showed greater differences between defendants in the rejected and sentenced cases. However, the majority of defendants with known addresses in both groups' cases gave a home address in Manhattan.

CHARACTERISTICS OF DEFENDANTS IN DCP-REJECTED CASES					
SEX	N	%	ETHNICITY	N	%
Male	2,766	88.8	Black	1,906	65.8
Female	349	11.2	Hispanic	752	26.0
Total	3,115	100.0	White	211	7.3
			Other	26	0.9
			Total	2,895	100.0
			Unknown	220	--
AGE GROUP	N	%	ZIP CODE	N	%
16-19	37	1.2	Manhattan	1,397	61.4
20-24	189	6.1	Bronx	358	15.7
25-29	255	8.2	Brooklyn	335	14.7
30-34	315	10.1	Queens	91	4.0
35-39	574	18.4	Staten Island	22	1.0
40-44	742	23.8	Other New York	46	2.0
45-49	530	17.0	New Jersey	26	1.1
50+	473	15.2	Total	2,275	100.0
Total	3,115	100.0	Other/Unknown	840	--
Mean Age 40.17					

In terms of prior conviction histories, defendants in 71.3% of rejected cases had prior criminal convictions for misdemeanor and felony crimes, a slightly higher percentage than was found among sentenced cases (68.8%). CJA found that a very small proportion (1.5%) of rejected defendants had no prior criminal convictions at all, while all of the sentenced defendants had at least one prior criminal conviction to either a misdemeanor or a felony.

CRIMINAL HISTORY OF DEFENDANTS IN REJECTED CASES		
PRIOR CRIMINAL CONVICTIONS	N	%
No Priors	46	1.5
Misdemeanor Only	822	26.4
Felony Only	27	0.9
Both	2,220	71.3
Total	3,115	100.0

For those defendants in both the rejected and sentenced cases who had more than the minimum criteria of three prior convictions for misdemeanor crimes, there was only a small difference between the two groups. Among the rejected cases, defendants in 83.8% of cases had more than the requisite three prior misdemeanor convictions, in comparison to 87.0% for defendants in the DCP-sentenced cases (data not shown).

NUMBERS OF PRIOR MISDEMEANOR AND PRIOR FELONY CONVICTIONS					
Prior Misdemeanors	N	%	Prior Felonies	N	%
Less than 3	248	8.0	None	869	27.9
3-5	697	22.4	1	718	23.0
6-9	625	20.1	2	607	19.5
10-14	458	14.7	3	455	14.6
15-19	327	10.5	4	257	8.3
20-24	203	6.5	5	123	3.9
25-29	134	4.3	6	44	1.4
30-34	113	3.6	7	31	1.0
35-39	75	2.4	8	8	0.3
40-44	50	1.6	9	2	0.1
45 or more	185	5.9	10	1	0.0
Total	3,115	100.0	Total	3,115	100.0

The mean number of misdemeanor convictions was slightly higher among rejected cases of defendants with prior misdemeanor convictions (15.3) in comparison to those in DCP-sentenced cases (14.5), and at least some of this difference was due to a few outliers with extremely high counts. (Data not shown.) The percentage of defendants in the rejected cases with prior felony convictions was slightly higher than the percentage of sentenced cases (72.1% and 69.5%). The mean number of felony convictions (2.5) was slightly higher for the rejected cases of defendants with prior felony convictions, compared to the sentenced cases of defendants with prior felony convictions (2.3), but the median (midpoint) was two for both groups. (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, (77.2% among rejected and 81.4% for sentenced cases).

CJA RELEASE RECOMMENDATION		
RECOMMENDATION CATEGORY	N	%
<i>Recommended:</i>		
Low Risk	60	2.1
Moderate Risk	102	3.5
<i>Not Recommended:</i>		
High Risk	2,233	77.2
Bench Warrant	213	7.4
Other Exclusionary Categories	39	1.3
<i>No Recommendation</i>	244	8.4
Total	2,891	100.0
Not Interviewed	224	--

A smaller percentage of defendants in rejected cases reported being engaged full time in work, school and/or program activities in comparison to defendants in DCP-sentenced cases (32.0% versus 35.6%). A much lower proportion of defendants in rejected cases reported living with someone (18.4%) when compared to defendants in DCP sentenced cases (31.2%). These differences most likely were due in part to homeless defendants being far more likely among rejected than sentenced cases. The same proportion of defendants in rejected cases and defendants in sentenced cases expected someone to attend their arraignment court appearance (46.0% and 45.6%).

CJA COMMUNITY TIES INTERVIEW ITEMS		
INTERVIEW ITEM	N	%
Fulltime Employment/School:		
Yes	849	32.0
No	1,805	68.0
Total	2,654	100.0
Unresolved Conflict or N/A	461	

Lives With Others:		
Yes	492	18.4
No	2,181	81.6
Total	2,673	100.0
Unresolved Conflict or N/A	442	
Expects Someone at Arraignment:		
Yes	1,219	46.0
No	1,429	54.0
Total	2,648	100.0
Don't Know or N/A	467	

Based on the individual interview items relating to being engaged full time in work, school and/or program activities, and whether or not the defendant lives alone, it appears that defendants in the sentenced cases had stronger community ties, compared to those in the rejected cases according to these measures.

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, with a higher percentage for the rejected cases (42.0% versus 38.0%). 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, (23.3% versus 32.5%). While the third largest crime type category for sentenced cases was fraud, almost all fare beating or forgery (14.1%), the third largest category for rejected cases was misconduct (12.8%) consisting mostly of criminal trespass charges.

A far smaller percentage of top arrest charges for rejected cases were of felony severity (12.6%) than was found among the DCP-sentenced cases (17.0%). 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 misdemeanors 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 (86.9% versus 82.1%). However, this was due almost entirely to the difference between felony and A-misdemeanor severity top arrest charges between the rejected and sentenced cases; there was only a single percentage point difference between the rejected and sentenced cases with B-misdemeanor severity charges (11.2% versus 10.0%).

MOST SEVERE ARREST CHARGE CHARACTERISTICS FOR REJECTED CASES					
TOP ARREST CHARGE CJA CRIME CATEGORY	N	%	TOP ARREST CHARGE SEVERITY	N	%
Harm to Persons	45	1.5	A-Felony	2	0.1
Harm to Person & Property	10	0.3	B-Felony	62	2.0
Weapon	40	1.3	C-Felony	16	0.5
Property	719	23.3	D-Felony	193	6.3
Drugs	1,297	42.0	E-Felony	117	3.8
Sex	11	0.4	Subtotal Felony	390	12.6
Fraud	381	12.3	A-Misdemeanor	2,305	74.6
Misconduct	395	12.8	B-Misdemeanor	345	11.2
Obstructing Justice	98	3.2	U-Misdemeanor	32	1.0
VTL	13	0.4	Subtotal Misdemeanor	2,682	86.9
Other	82	2.7	Other	16	0.5
Total	3,091	100.0	Total	3,088	100.0
Missing	24		Missing	27	

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. Although the defendant reject category is the smallest in numbers, it has the highest proportion of females across all reject categories. One possible reason for this may be women self-selecting themselves from consideration of the program because of concerns about childcare while in custody, and therefore hoping to receive a non-incarcerative sentence.

Among 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, such as having only misdemeanor severity top arrest charges. 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 for other reasons 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														
	Spotlight		Other DCP Reason		Defense Attorney		Judge		ADA		Defendant		Unknown	
Sex	N	%	N	%	N	%	N	%	N	%	N	%	N	%
Male	916	86.2	844	90.5	436	88.6	329	91.1	117	94.4	43	84.3	81	89.0
Female	147	13.8	89	9.5	56	11.4	32	8.9	7	5.6	8	15.7	10	11.0
Total	1,063	100.0	933	100.0	492	100.0	361	100.0	124	100.0	51	100.0	91	100.0
Age Group	N	%	N	%	N	%	N	%	N	%	N	%	N	%
16-19	10	0.9	11	1.2	8	1.6	5	1.4	0	0.0	0	0.0	3	3.3
20-24	66	6.2	50	5.4	29	5.9	29	8.0	9	7.3	3	5.9	3	3.3
25-29	84	7.9	71	7.6	50	10.2	27	7.5	12	9.7	3	5.9	8	8.8
30-34	105	9.9	99	10.6	52	10.6	36	10.0	12	9.7	5	9.8	6	6.6
35-39	218	20.5	176	18.9	76	15.4	56	15.5	20	16.1	11	21.6	17	18.7
40-44	267	25.1	236	25.3	97	19.7	77	21.3	28	22.6	13	25.5	24	26.4
45-49	157	14.8	172	18.4	90	18.3	73	20.2	19	15.3	7	13.7	12	13.2
50+	156	14.7	118	12.6	90	18.3	58	16.1	24	19.4	9	17.6	18	19.8
Total	1,063	100.0	933	100.0	492	100.0	361	100.0	124	100.0	51	100.0	91	100.0

The percentage of rejected cases with defendants having only prior misdemeanor criminal conviction records was greatest for Spotlight cases (31.9%), followed closely by defense attorney rejected cases (31.5%).

CRIMINAL HISTORY BY REJECTION SOURCE														
CRIMINAL CONVICTION HISTORY	Spotlight		Other DCP Reason		Defense Attorney		Judge		ADA		Defendant		Unknown	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
No Priors	0	0.0	23	2.5	12	2.4	2	0.6	3	2.4	1	2.0	5	5.5
Prior Misd. Only	339	31.9	170	18.2	155	31.5	89	24.7	36	29.0	14	27.5	19	20.9
Prior Felony Only	0	0.0	18	1.9	5	1.0	2	0.6	2	1.6	0	0.0	0	0.0
Both	724	68.1	722	77.4	320	65.0	268	74.2	83	66.9	36	70.6	67	73.6
Total	1,063	100.0	933	100.0	492	100.0	361	100.0	124	100.0	51	100.0	91	100.0

Across all rejection categories defendants overwhelmingly were rated by CJA as being of high risk for FTA if released in cases continued at arraignment. Defendant rejected cases had the largest percentage of defendants rated by CJA to be of high risk of FTA (89.4%), followed by Spotlight rejected cases (88.4%). Fewer than two-fifths of the cases in any rejection category had defendants who reported being 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, and of defendants who reported living with others.

CJA RECOMMENDATION AND INTERVIEW ITEMS BY REJECTION SOURCE														
CJA RECOMMENDATION	Spotlight		Other DCP Reason		Defense Attorney		Judge		ADA		Defendant		Unknown	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
Recommended:														
Low or Moderate Risk	21	2.4	53	6.8	38	8.8	29	9.0	10	9.5	3	6.4	8	9.8
Not Recommended:														
High Risk	770	88.4	638	81.3	364	84.1	270	83.3	84	80.0	42	89.4	65	79.3
Other Not Recommended	80	9.2	94	12.0	31	7.2	25	7.7	11	10.5	2	4.3	9	11.0
*Total	871	100.0	785	100.0	433	100.0	324	100.0	105	100.0	47	100.0	82	100.0

INTERVIEW ITEMS	Spotlight		Other DCP Reason		Defense Attorney		Judge		ADA		Defendant		Unknown	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
Fulltime Employment/School:														
Yes	237	27.1	257	32.7	158	36.1	118	36.2	39	37.9	17	36.2	23	29.1
No	638	72.9	529	67.3	280	63.9	208	63.8	64	62.1	30	63.8	56	70.9
Total	875	100.0	786	100.0	438	100.0	326	100.0	103	100.0	47	100.0	79	100.0
Unresolved Conflict or N/A	187		147		54		35		21		4		13	
Lives With Others:														
Yes	145	16.5	132	16.6	84	19.1	69	21.1	21	20.0	14	29.8	27	34.2
No	734	83.5	664	83.4	356	80.9	258	78.9	84	80.0	33	70.2	52	65.8
Total	879	100.0	796	100.0	440	100.0	327	100.0	105	100.0	47	100.0	79	100.0
Unresolved Conflict or N/A	184		137		52		34		19		4		12	
Expects Someone at Arraignment:														
Yes	360	41.4	342	43.6	225	51.6	182	56.0	62	58.5	27	57.4	21	26.3
No	510	58.6	442	56.4	211	48.4	143	44.0	44	41.5	20	42.6	59	73.8
Total	870	100.0	784	100.0	436	100.0	325	100.0	106	100.0	47	100.0	80	100.0
Don't Know or N/A	192		149		56		36		18		4		12	
*Excludes cases without a CJA recommendation.														

The drug category had the largest percentage of cases in every rejection category although the percentages vary, from 53.3% of the cases in the “unknown” reason category to 33.3% of the cases in the defendant reject category. The property crime category had the second largest percentage of cases in every rejection category, ranging from 29.4% among defendant reject cases to 10.7% in the ADA reject category. The percentage of cases in the fraud category was greatest in the ADA reject category while the percentage of cases in the misconduct category was greatest for the Spotlight rejection group of cases.

As previously discussed, no Spotlight-targeted case can have a felony severity top arrest charge so it is not surprising to find the greatest percentage of cases with A-misdemeanor in the Spotlight rejection category. The percentage

of cases with B-misdemeanor severity top arrest charges was far larger among the ADA-rejected cases (22.3%) than in any other rejection category.

ARREST CHARGE CHARACTERISTICS BY REJECTION SOURCE														
TOP ARREST CHARGE TYPE	Spotlight		Other DCP Reason		Defense Attorney		Judge		ADA		Defendant		Unknown	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
Drugs	448	42.3	361	39.1	228	46.7	136	38.0	60	49.2	17	33.3	48	53.3
Property	296	27.9	205	22.2	74	15.2	101	28.2	13	10.7	15	29.4	15	16.7
Fraud	105	9.9	136	14.7	66	13.5	35	9.8	25	20.5	6	11.8	8	8.9
Misconduct	157	14.8	105	11.4	62	12.7	43	12.0	12	9.8	6	11.8	10	11.1
Other	54	5.1	116	12.6	58	11.9	43	12.0	12	9.8	7	13.7	9	10.0
Total*	1,060	100.0	923	100.0	488	100.0	358	100.0	122	100.0	51	100.0	90	100.0
TOP ARREST CHARGE SEVERITY	N	%	N	%	N	%	N	%	N	%	N	%	N	%
Felony	0	0.0	207	22.6	84	17.4	65	18.3	9	7.4	9	17.6	15	16.9
A Misdemeanor	945	89.2	622	68.0	321	66.6	235	66.0	82	67.8	35	68.6	66	74.2
B Misdemeanor	114	10.8	74	8.1	72	14.9	47	13.2	27	22.3	4	7.8	8	9.0
U Misdemeanor	0	0.0	12	1.3	5	1.0	9	2.5	3	2.5	3	5.9	0	0.0
Total**	1,059	100.0	915	100.0	482	100.0	356	100.0	121	100.0	51	100.0	89	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 January 26, 2007, for cases not disposed at Criminal Court arraignment. (Among the 82 cases shown as not disposed are one abated case, one case consolidated and one case covered by a prosecution in a different case.)

As can be seen, slightly less 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*	18	0.6	ACD*	4	0.4
Dismissed	4	0.1	Dismissed	269	24.7
Convicted	2,006	64.4	Convicted	674	62.0
Continued	1,087	34.9	Transferred to Supreme Court	13	1.2
Total	3,115	100.0	Warrant Ordered	45	4.1
*An ACD is an Adjournment in Contemplation of Dismissal.			Not Disposed	82	7.5
			Total	1,087	99.9

Among the cases with an arraignment conviction over three-fourths received a jail sentence as the most severe penalty imposed. 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 SEVERE SENTENCE IMPOSED AT AND POST ARRAIGNMENT					
AT ARRAIGNMENT	N	%	POST ARRAIGNMENT	N	%
Imprisonment	1,578	78.7	Imprisonment	587	88.7
Probation	2	0.1	Probation	5	0.8
CD	405	20.2	CD	61	9.2
Other Sentence	20	1.0	Other Sentence	9	1.4
Total*	2,005	100.0	Total**	662	100.1
*Total excludes one case convicted at arraignment but dismissed post-arraignment.					
**Total excludes 12 cases convicted post-arraignment and not yet sentenced, including one Dismiss-Do Not Seal and four cases with a warrant ordered as of the cutoff date.					

Almost two-thirds of the cases with a jail sentence imposed for an arraignment conviction were for time less than 10 days, including the time-served sentences, with the remainder receiving sentences of either 10 or greater than 10 days. (As will be discussed later, more than three of every five of the cases with jail time greater than ten days were Spotlight-targeted cases.) 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	645	40.9	Time Served	125	21.3
1-3 days	79	5.0	1-3 days	1	0.2
4-5	208	13.2	4-5	21	3.6
6-9	93	5.9	6-9	22	3.7
Subtotal less than 10 days	1,025	65.0	Subtotal less than 10 days	169	28.8
10 days	178	11.3	10 days	58	9.9
11-15 days	99	6.3	11-15 days	41	7.0
16-30	179	11.3	16-30	140	23.9
31-45	39	2.5	31-45	55	9.4
46-60	26	1.6	46-60	33	5.6
61-75	4	0.3	61-75	4	0.7
76-90	15	0.9	76-90	32	5.5
91-120	6	0.4	91-120	14	2.4
121-180	6	0.4	121-180	31	5.3
181-240	0	0.0	181-240	4	0.7
Over 240 days	1	0.1	Over 240 days	6	1.0
Subtotal greater than 10 days	375	23.8	Subtotal greater than 10 days	360	61.3
Total	1,578	100.0	Total	587	100.0

Arraignment Charge Composition for Rejected Cases Convicted at Arraignment

The table below 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 very few 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 (86.7%) than was found among sentenced cases (90.9%). There was a greater number and percentage 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, which had almost twice the number and percentage of cases as was in the second largest category, property crime. This is unlike the DCP-sentenced cases where the property crime category had a slightly larger percentage of cases than the drug category. In comparison to DCP-sentenced cases, rejected cases had a larger percentage in the CJA misconduct category (12.6% versus 17.3% respectively). In addition, while almost all such cases in both groups had criminal trespass charges, a much larger percentage of such cases were for the B-misdemeanor offense among rejected cases (not shown).

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	432	24.8	1	0.5	0	0	433	21.6
Drugs	655	37.6	154	74.8	1	1.7	810	40.4
Fraud	272	15.6	0	0.0	0	0.0	272	13.6
Misconduct	301	17.3	44	21.4	3	5.0	348	17.3
All other	40	2.3	7	3.4	6	10.0	53	2.6
Unknown	40	2.3	0	0.0	50	83.3	90	4.5
Total	1,740	100.0	206	100.0	60	100.0	2,006	100.0
	(86.7%)		(10.3%)		(3.0%)		(100.0%)	
*Includes seven cases with a U-misdemeanor charge severity.								

Overall, the charge composition of rejected cases convicted at arraignment are 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 as a group were more likely to receive comparatively longer jail sentences because of the larger percentage of charges of A-misdemeanor severity and the greater percentage of property-crime cases which have a higher likelihood of jail, and more of it.

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 court appearance by the source 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 rejected by DCP court staff (along with the unknown category of cases) had the comparatively smallest percentages of cases disposed at arraignment, with non-Spotlight cases rejected by the DCP court staff being much more likely to be continued than the cases in the Spotlight rejection group (44.1% versus 33.1% for Spotlight cases). Cases refused by the ADAs had the highest rates of arraignment dispositions (87.1%), followed by cases rejected by judges, defendants, and defense attorneys.

CASE OUTCOMES AT ARRAIGNMENT IN NON-DCP-SENTENCED CASES BY REJECTION SOURCE														
ARRAIGN- MENT DISPOSITION	Spotlight		Other DCP Reason		Defense Attorney		Judge		ADA		Defendant		Unknown	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
ACD or Dismissed	2	0.2	8	0.9	6	1.2	1	0.3	2	1.6	1	2.0	2	2.2
Convicted	709	66.7	514	55.1	335	68.1	256	70.9	106	85.5	35	68.6	51	56.0
Continued	352	33.1	411	44.1	151	30.7	104	28.8	16	12.9	15	29.4	38	41.8
Total	1,063	100.0	933	100.1	492	100.0	361	100.0	124	100.0	51	100.0	91	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 (86.7%, not shown) of the DCP-rejected cases that were convicted and sentenced at arraignment had an A-misdemeanor prosecuted charge, and in all but the defense attorney and ADA rejection categories the percentage was over eighty percent. These are cases for which the penalty can be as great as one year's jail time. And, although 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.

Among all rejection groups the largest percentage of cases was in the drug crime category, but this varied by rejection group, and the defendant rejections actually had the same percentage of cases in the drug and property crime categories. The unknown rejection reason category, followed by the defense attorney rejection group, had the largest percentage of cases in the drug-crime category. In comparison with drug charges in the other rejection groups, the ADA rejection group had a larger percentage of drug cases with marijuana crimes of B-misdemeanor severity (not shown). This largely explains the greater percentage of B-misdemeanor, and smaller percentage of A-misdemeanor,

cases for the ADA rejection group in comparison to these distributions among rejection sources. The percentage of cases that fell into the property crime category, almost all with petit larceny charges, was largest for the defendant rejection group.

ARRAIGNMENT CHARGE CHARACTERISTICS FOR CASES CONVICTED AND SENTENCED AT ARRAIGNMENT BY REJECTION SOURCE														
TOP ARRAIGNMENT CHARGE SEVERITY	Spotlight		Other DCP Reason		Defense Attorney		Judge		ADA		Defendant		Unknown	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
A Misdemeanor	652	92.0	451	87.7	261	77.9	219	85.5	80	75.5	31	91.2	45	88.2
B Misdemeanor	54	7.6	39	7.6	59	17.6	26	10.2	22	20.8	1	2.9	5	9.8
Other/Unknown	3	0.4	24	4.7	15	4.5	11	4.3	4	3.8	2	5.9	1	2.0
Total	709	100.0	514	100.0	335	100.0	256	100.0	106	100.1	34*	100.0	51	100.0
TOP ARRAIGN CHARGE TYPE	N	%	N	%	N	%	N	%	N	%	N	%	N	%
Drugs	279	39.4	188	36.6	160	47.8	98	38.3	48	45.3	11	32.4	26	51.0
Property	170	24.0	122	23.7	45	13.4	66	25.8	9	8.5	11	32.4	9	17.6
Fraud	92	13.0	83	16.1	45	13.4	22	8.6	23	21.7	2	5.9	5	9.8
Misconduct	141	19.9	79	15.4	56	16.7	45	17.6	14	13.2	5	14.7	8	15.7
Other	27	3.8	42	8.2	29	8.7	25	9.8	12	11.3	5	14.7	3	5.9
Total	709	100.0	514	100.0	335	100.0	256	100.0	106	100.0	34*	100.0	51	100.0

*The totals shown in the defendant-rejected category excludes one case convicted at arraignment but dismissed post-arraignment.

Over 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 defense attorneys had the lowest percentages of jail-time sentences imposed for conviction. Conversely, defendants in the judge-rejected cases, and those rejected by CASES' staff for Spotlight or other reasons, 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 most 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		Unknown	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
Imprisonment	584	82.4	423	82.3	225	67.2	213	83.2	77	72.6	20	58.8	36	70.6
Non-Imprisonment	125	17.6	91	17.7	110	32.8	43	16.8	29	27.4	14	41.2	15	29.4
Total	709	100.0	514	100.0	335	100.0	256	100.0	106	100.0	34*	100.0	51	100.0

*Excludes one defendant rejection case convicted at arraignment but dismissed post-arraignment

When a jail sentence was imposed at arraignment the length of the sentence varied among the rejection categories. In all categories over a majority of the cases received a jail sentence of less than ten days (including time-served sentences), ranging from 53.5% of the Spotlight cases to 93.5% among the sentences in the ADA rejection category. Cases in the defense attorney rejection group had the second largest percentage of cases with jail lengths less than ten days (85.3%).

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 10 days. The very small percentages of jail sentences of 10, or greater than 10 days, among the ADA and defense 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		Unknown	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
Time Served	149	25.5	174	41.1	131	58.2	102	47.9	67	87.0	6	30.0	16	44.4
1-3 days	33	5.7	15	3.5	16	7.1	9	4.2	2	2.6	2	10.0	2	5.6
4-5	78	13.4	60	14.2	36	16.0	20	9.4	2	2.6	3	15.0	9	25.0
6-9	52	8.9	23	5.4	9	4.0	5	2.4	1	1.3	1	5.0	2	5.6
Subtotal less than 10 days	312	53.5	272	64.3	192	85.3	136	63.9	72	93.5	12	60.0	29	80.6
10 days	82	14.0	61	14.4	16	7.1	16	7.5	0	0.0	2	10.0	1	2.8
11-15 days	47	8.0	30	7.1	6	2.7	11	5.2	1	1.3	3	15.0	1	2.8
16-30	92	15.8	36	8.5	7	3.1	35	16.4	3	3.9	2	10.0	4	11.1
31-45	23	3.9	9	2.1	0	0.0	6	2.8	1	1.3	0	0.0	0	0.0
46-60	15	2.6	4	0.9	1	0.4	5	2.3	0	0.0	0	0.0	1	2.8
61-75	2	0.3	2	0.5	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
76-90	5	0.9	5	1.2	2	0.9	2	0.9	0	0.0	1	5.0	0	0.0
91-120	3	0.5	1	0.2	1	0.4	1	0.5	0	0.0	0	0.0	0	0.0
121-180	3	0.5	2	0.5	0	0.0	1	0.5	0	0.0	0	0.0	0	0.0
Over 180 days	0	0.0	1	0.2	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Subtotal greater than 10 days	190	32.5	90	21.3	17	7.6	61	28.6	5	6.5	6	30.0	6	16.7
Total	584	100.0	423	100.0	225	100.0	213	100.0	77	100.0	20	100.0	36	100.0

RE-ARRESTS OF DEFENDANTS IN DCP-SENTENCED CASES

This section of the report is designed to examine a variety of issues related to re-arrests among DCP-sentenced defendants. Among them are the prevalence and frequency of recidivism, and the types of crimes and case outcomes in prosecuted re-arrests after the DCP-sentenced cases. The Day Custody Program makes no representation that it can more effectively reduce recidivism among defendants who otherwise would receive a traditional short jail sentence. And, because of a short time frame between the end of the first program year and the study period for this report, there was insufficient time to conduct a full-scale evaluation of the impact of the program in this regard. However, we did attempt to explore some facets of re-arrests in the program population because of the interest among policy makers for information about this issue.

To begin to address this issue we sought to determine whether successful DCP-program defendants had lower rates of new arrests, and longer times to a new arrest, than unsuccessful program defendants. In addition, we sought to assess the characteristics of new arrests, and whether there would be increased penalties imposed upon defendants whose criminal records showed a sentence to the Day Custody program.

For the purpose of this report recidivism is defined as new prosecuted (docketed) arrests within five months of the scheduled compliance date for defendants in DCP-sentenced cases. The five month interval for each defendant in a DCP-sentenced case was used because this was the longest period for which it was possible to track court activity following the latest DCP-sentenced cases in order to create a recidivism data set for this project 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 in the original case. When this occurred the compliance date of the reinstatement was used in the analysis.

In many instances recidivism is discussed and illustrated not only between successful and unsuccessful defendants, but also by defendants' program-eligibility status in the DCP-sentenced case. Among the successful and unsuccessful program clients were defendants who met the program's eligibility requirements when sentenced to the Day Custody Program. That is, the defendants had a minimum of three prior misdemeanor convictions, were prosecuted in a non-Spotlight targeted misdemeanor case, and the District Attorney's plea offer at arraignment was for jail time greater than time served. There were a very small number of DCP-sentenced defendants in non-Spotlight targeted cases with fewer than the required three prior misdemeanor convictions.

Another group contains normally ineligible defendants sentenced to the program in Spotlight-targeted cases, either at the initiative of court participants other than CASES' court staff, or who appeared eligible to CASES' court staff because the court papers were not properly marked with the Spotlight identifier. For this and a variety of other reasons defendants in the DCP-sentenced Spotlight cases are a particularly problematic group. For example, while in general defendants in Spotlight-targeted cases are more likely to receive jail sentences and longer sentence lengths than recidivist misdemeanor defendants in comparable but not Spotlight-targeted cases, other research suggests that at least some of the DCP-sentenced Spotlight cases might not have been jail sentenced.

Most of the analysis about recidivism is presented solely in descriptive terms using percentage comparisons. In only a few instances were tests of statistical significance used to measure differences in recidivism between successful and unsuccessful defendants. When tests of significance were used the .05 level of statistical significance was uniformly applied as the criterion. This means that we can be at least 95 percent confident that differences found did not occur by chance. Given that an overwhelming majority of DCP-sentenced

defendants successfully complete the program, there are only a comparatively small number of unsuccessful defendants, which pose challenges to any methods of comparison. When divided further into program-status groups, or other categorical breakdown, numbers can become so small that even percentage comparisons are not meaningful.

Finally, re-arrests are analyzed in two different ways. In the first program year there were a total of 525 defendants sentenced to the Day Custody Program in a total of 548 cases. This includes twenty-three defendants each with two separate DCP-sentenced cases in the year's time. Most of the analysis of recidivism focuses only on re-arrests within the five months of *the first or only* DCP-sentenced case for each of the 525 defendants. Later there is some additional discussion of re-arrests within five months of *all* DCP-sentenced cases.

RE-ARRESTS OF DEFENDANTS WITHIN FIVE MONTHS OF THE FIRST (OR ONLY) DCP-SENTENCED CASE

Prevalence of Recidivism

The first table shows the prevalence of at least one docketed re-arrest for the 525 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 525 defendants were distributed among the program-eligibility categories. The next column shows the number of defendants in each category and then the total number of defendants with one or more docketed re-arrests following the compliance date of the first DCP-sentenced case, and the final column shows the percent re-arrested. For example, among all 525 defendants, a total of 312 were re-arrested within five months of the compliance date of the first (or only) DCP-sentenced case, for a 59.4% overall re-arrest rate. Among the 310 defendants who met the program's eligibility criteria in the original DCP-sentenced case, the re-arrest rate was 54.2% in comparison with a 71.1% re-arrest rate for DCP-sentenced defendants from the Spotlight cases.

RECIDIVISM AMONG DCP-SENTENCED DEFENDANTS			
PROGRAM-ELIGIBILITY STATUS	Number of Defendants	Number Re-Arrested	Percent Re-arrested
Eligible	310	168	54.2
Insufficient Priors	25	9	36.0
Spotlight	190	135	71.1
Total	525	312	59.4

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 who successfully completed the program in comparison with unsuccessful defendants. This was true in every program-status category although the percentages differed.

The overall difference in re-arrest rates between the defendants who successfully completed the program sentence in their first case (56.2%) and unsuccessful defendants (73.5%) was statistically significant at the .002 level, well below the .05 criterion.

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	270	141	52.2	40	27	67.5
Insufficient Priors	22	7	31.8	3	2	66.7
Spotlight	135	92	68.1	55	43	78.2
Total	427	240	56.2	98	72	73.5

However, it cannot be determined from these data whether, or to what extent, the lower re-arrest rates among successful program participants might be a result of the Day Custody Program. As discussed later, the defendant and

charge characteristics within the unsuccessful program group are not sufficiently similar to those in the successful program completion group to be used for comparative purposes. In addition, without a pre-program or other group with sufficiently similar characteristics to defendants and cases in the successful completion group it is not possible to determine what the successful group's re-arrest rate would likely have been absent any program intervention.

Time to First Prosecuted Re-arrest

The next table shows the mean (mathematical average) and median (midpoint) number of days to the first prosecuted re-arrest on or after the court compliance date for both the successful and unsuccessful DCP-sentenced defendants who were re-arrested within five months of the compliance date of the first DCP-sentenced case. This table shows that there was a longer average time to the first prosecuted re-arrest for successful program defendants. Although the times to the first prosecuted re-arrest for the seven recidivist successful defendants and the two recidivist defendants with insufficient priors are included in the total, the data for them are not shown because there are too few cases for meaningful comparisons.

For the 240 recidivist successful program clients the average time to their first re-arrest was 54.79 days, with a median of 43.5 days. In comparison, for the 72 recidivist defendants among the unsuccessful program clients the average time to re-arrest was 36.09 days with a median of 24.5 days. This difference in the average time to re-arrest between successful and unsuccessful defendants was statistically significant below the .05 level. Once again, however, this difference does not necessarily reflect a program impact.

TIME TO FIRST RE-ARREST FOR SUCCESSFUL AND UNSUCCESSFUL DCP-SENTENCED DEFENDANTS				
PROGRAM-ELIGIBILITY STATUS	Recidivist Successful Completers		Recidivist Unsuccessful Completers	
	Mean Number of Days	Median Number of Days	Mean Number of Days	Median Number of Days
Eligible	58.26	48.0	40.48	29.0
Spotlight	48.20	35.0	32.32	22.0
*Total	54.79	43.5	36.09	24.5

* The total includes the mean and median times for the 7 successful and 2 unsuccessful recidivist defendants with insufficient priors but separate data for this program-eligibility category are not shown.

For recidivist defendants in the successful program completion group the shortest time to re-arrest occurred for five defendants who had a first re-arrest on the compliance date and the longest was for one defendant first re-arrested 148 days from the compliance date. For recidivist defendants in the unsuccessful program group there was one defendant arrested on the compliance date and the longest time was for one defendant re-arrested after 140 days. (Data not shown)

Type and Severity of Prosecuted Charge on the First Re-arrest

There were differences in both the types and severity distributions of charges at Criminal Court arraignment on the first prosecuted re-arrest between successful and unsuccessful defendants. Crime types are categorized using the CJA-created typology previously discussed in an earlier section, and as provided in the APPENDIX to this report.

The types of prosecuted (arraignment) charges on the first re-arrest case among recidivist successful DCP clients were dispersed among a variety of crime categories, and had different distributions depending on the program-eligibility status of the defendants in the DCP-sentenced cases. (The Criminal Court arraignment charge in the first re-arrest case for each of the seven recidivist successful defendants with insufficient priors fell into a different crime category so the percentage allocation, 14.3%, is the same for each.)

Overall, the drug (28.3%) and property (20.8%) crime categories have the largest percentages of Criminal Court arraignment charges among the first re-arrest cases for recidivist successful defendants. These are followed in descending percentage order by charges in the fraud, misconduct and other/unknown crime categories.

For recidivist successful program defendants in the eligible group, drug crimes made up the largest percentage Criminal Court arraignment charges for first re-arrest cases (29.8%). For the defendants in this group charges in the fraud category, a majority of which were fare-evasion and secondarily possession of a forged instrument crimes, had the second largest percentage of arraignment charges on the first re-arrest (17.7%), closely followed by charges in the property crime category, mostly the petit larceny charge. The next largest percentage of charges was found in the misconduct category, most of which involved criminal trespass.

For recidivist successful defendants from the Spotlight group, the property crime category had the largest percentage of arraignment charges on the first re-arrest cases (29.3%), closely followed by charges in the drug crime category (27.2%). There were the same percentages of arraignment charges in the misconduct and other/unknown categories, tied for the third largest percentages of cases, followed by first re-arrest cases with arraignment charges in the fraud category.

Among the recidivist successful program defendants in both the eligible and Spotlight groups there were a small and similar percentage of first re-arrest cases with arraignment charges that fell into the harm-to-persons and persons-and-property crime categories, with the VTL category having the smallest number and percentage of prosecuted charges for first-re-arrests.

CRIME TYPE OF CRIMINAL COURT ARRAIGNMENT CHARGE ON THE FIRST RE-ARREST CASE								
CJA CRIME CATEGORY OF ARRAIGNMENT CHARGE ON 1 ST RE-ARREST	Recidivist Successful Defendants							
	Eligible		Insufficient Priors		Spotlight		Total	
	N	%	N	%	N	%	N	%
Harm to Persons	9	6.4	1	14.3	6	6.5	16	6.7
Persons & Property	3	2.1	0	0.0	2	2.2	5	2.1
Weapon	3	2.1	1	14.3	0	0.0	4	1.7
Property	22	15.6	1	14.3	27	29.3	50	20.8
Drug	42	29.8	1	14.3	25	27.2	68	28.3
Sex Crime	3	2.1	0	0.0	0	0.0	3	1.3
Fraud	25	17.7	1	14.3	8	8.7	34	14.2
Misconduct	21	14.9	0	0.0	11	12.0	32	13.3
Obstruct Justice	3	2.1	0	0.0	2	2.2	5	2.1
VTL	1	0.7	1	14.3	0	0.0	2	0.8
Unknown Other	9	6.4	1	14.3	11	12.0	21	8.8
Total	141	99.9	7	100.1	92	100.1	240	100.1

There were some differences in the distribution among crime-type categories of the charges at Criminal Court arraignment in first re-arrest cases for recidivist unsuccessful DCP-sentenced defendants. Overall these defendants had first re-arrest cases with Criminal Court arraignment charges far more heavily concentrated in the property (38.9%) and drug (31.9%) crime categories, with about eleven percent of the remainder prosecuted for charges in the misconduct category. As with the cases of recidivist successful defendants, the petit larceny charge constituted a majority of the cases in the property crime category, and criminal trespass charges dominated the misconduct category. (The two defendants in the insufficient priors group each had a different type of arraignment charge for an even 50-50 percent split between the property and misconduct categories.)

For the unsuccessful program-eligible defendants, drug crime had a larger percentage of arraignment charges (44.4%) than charges in the property crime

category (37.0%), with the second largest percentage of arraignment charges. This is unlike successful recidivist defendants for which the fraud category had the second largest percentage of arraignment charges for the first re-arrest case.

For recidivist unsuccessful Spotlight defendants, property crime charges (39.5%) had a larger percentage of arraignment charges in the first re-arrest case than the drug category (25.6%). While this is the same order as was found among recidivist successful defendants in the Spotlight group, among the unsuccessful defendants the percentage of first re-arrests in the property crime category is larger, and the percentage in the drug category smaller.

CRIME TYPE OF CRIMINAL COURT ARRAIGNMENT CHARGE ON THE FIRST RE-ARREST CASE								
CJA CRIME CATEGORY OF ARRAIGNMENT CHARGE ON 1 ST RE-ARREST	Recidivist Unsuccessful Defendants							
	Eligible		Insufficient Priors		Spotlight		Total	
	N	%	N	%	N	%	N	%
Harm to Persons	1	3.7	0	0.0	2	4.7	3	4.2
Persons & Property	-	-	-	-	-	-	-	-
Weapon	0	0.0	0	0.0	1	2.3	1	1.4
Property	10	37.0	1	50.0	17	39.5	28	38.9
Drug	12	44.4	0	0.0	11	25.6	23	31.9
Sex Crime	-	-	-	-	1	2.3	1	1.4
Fraud	2	7.4	0	0.0	2	4.7	4	5.6
Misconduct	2	7.4	1	50.0	5	11.6	8	11.1
Obstruct Justice	0	0.0	0	0.0	3	7.0	3	4.2
VTL	-	-	-	-	-	-	-	-
Unknown Other	0	0.0	0	0.0	1	2.3	1	1.4
Total	27	99.9	2	100.0	43	100.0	72	100.1

Differences also were found in the distributions among the severities of the charges at Criminal Court arraignment for first re-arrest cases for recidivist successful and unsuccessful DCP defendants. As shown in the table below, fairly comparable percentages of first re-arrest cases had a felony-severity arraignment charge between the successful (15.8%) and unsuccessful (15.3%) recidivist defendants, but there was a larger concentration of first re-arrest cases

in the A-misdemeanor category for the unsuccessful (76.4%) than for the successful (69.6%) defendants.

SEVERITY OF CRIMINAL COURT ARRAIGNMENT CHARGE ON FIRST RE-ARREST CASE								
SEVERITY OF ARRAIGNMENT CHARGE	Recidivist Successful Defendants							
	Eligible		Insufficient Priors		Spotlight		Total	
	N	%	N	%	N	%	N	%
Felony	24	17.0	2	28.6	12	13.1	38	15.8
A- Misdemeanor	97	68.8	4	57.1	66	71.7	167	69.6
B- Misdemeanor	10	7.1	0	0.0	6	6.5	16	6.7
Unclassified Misdemeanor	1	0.7	1	14.3	0	0.0	2	0.8
Lesser/Unknown	9	6.4	0	0.0	8	8.7	17	7.1
Total	141	100.0	7	100.0	92	100.0	240	100.0

SEVERITY OF CRIMINAL COURT ARRAIGNMENT CHARGE ON FIRST RE-ARREST CASE								
SEVERITY OF ARRAIGNMENT CHARGE	Recidivist Unsuccessful Defendants							
	Eligible		Insufficient Priors		Spotlight		Total	
	N	%	N	%	N	%	N	%
Felony	7	25.9	1	50.0	3	7.0	11	15.3
A- Misdemeanor	19	70.4	1	50.0	35	81.4	55	76.4
B- Misdemeanor	1	3.7	0	0.0	3	7.0	4	5.6
Unclassified Misdemeanor	-	-	-	-	-	-	-	-
Lesser/Unknown	0	0.0	0	0.0	2	4.7	2	2.8
Total	27	100.0	2	100.0	43	100.1	72	100.1

Spotlight Targeting on First Prosecuted Re-arrests

The percentage of first re-arrests that were Spotlight-targeted was greater among recidivist unsuccessful program defendants. To some extent these differences reflect the fact that a greater percentage of defendants originally sentenced in a Spotlight-targeted case were unsuccessful in completing the DCP sentence. However, as shown on the table below, there was a higher percentage of Spotlight-targeted first re-arrests among unsuccessful completers for all DCP-sentence status categories than among the same categories for recidivist but successful program completers, although the percentages differed.

Overall, among successful program completers almost half of the first re-arrests were Spotlight targeted (49.6%) in comparison to almost two-thirds (65.3%) of the first re-arrests for recidivist unsuccessful program clients. This means that the first re-arrest had a misdemeanor as the most severe arrest charge, and the defendant met both the number and timing of prior arrests and convictions required by the Spotlight targeting protocols to be designated as an active repeat offender.

For defendants whose original DCP sentence came from the Spotlight category, there was about a six percentage point difference between the recidivist successful and unsuccessful completers with a Spotlight-targeted first re-arrest (72.8% versus 79.1%). There was a slightly greater difference (7.5 percentage points) between DCP-sentenced eligible successful and unsuccessful defendants having a Spotlight targeted re-arrest (36.9% versus 44.4%).

SPOTLIGHT PROGRAM TARGETING OF FIRST RE-ARREST CASES FOR SUCCESSFUL AND UNSUCCESSFUL DEFENDANTS BY PROGRAM STATUS IN DCP-SENTENCED CASE								
WAS 1 ST RE-ARREST SPOTLIGHT TARGETED?	Program Status for Recidivist Defendants in DCP-Sentenced Case							
	Eligible		Insufficient Priors		Spotlight		Total	
Successful	N	%	N	%	N	%	N	%
No	89	63.1	7	100.0	25	27.2	121	50.4
Yes	52	36.9	0	0.0	67	72.8	119	49.6
Total	141	(58.8)	7	(2.9)	92	(38.3)	240	100.0
Unsuccessful	N	%	N	%	N	%	N	%
No	15	55.6	1	50.0	9	20.9	25	34.7
Yes	12	44.4	1	50.0	34	79.1	47	65.3
Total	27	(37.5)	2	(2.8)	43	(59.7)	72	100.0

Criminal Court Decision Making in First Prosecuted Re-arrest Cases

All Criminal Court dispositions, or the outcome at the latest appearance, are as reported to CJA by OCA as of March 29, 2007. First re-arrests occurred in Manhattan for over three-fourths of the successful recidivist defendants, and in over four-fifths of the first re-arrest cases for unsuccessful defendants. (Data not

shown) When the first re-arrest case was prosecuted in the Bronx, a Criminal Court equivalent outcome was created for non-felony cases in order to present comparable data for all prosecuted re-arrests.

After the consolidation of the Bronx court system for all post-arraignment court appearances on or after November 4, 2005, virtually all cases not disposed at Criminal Court arraignment are transferred to the Criminal Division of the Bronx County Supreme Court. When the Criminal Court arraignment charge for Bronx re-arrests was of non-felony severity case processing was followed into the Supreme Court where the case outcome (or last status) was considered as the equivalent of a Criminal Court outcome in the other counties; felony cases were considered to have a Criminal Court equivalent outcome of a Supreme Court transfer.

As the table below shows, convictions were the dominant outcomes for all re-arrest cases, which is consistent with expected outcomes in non-felony cases in a recidivist misdemeanor population. While a larger percentage of the re-arrest cases of successful defendants ended with a dismissal, this most likely reflects differences in the types of charges between recidivist successful and unsuccessful program defendants.

CRIMINAL COURT (or equivalent) OUTCOME ON THE FIRST RE-ARREST CASE AS OF March 29, 2007								
CRIMINAL COURT OUTCOME ON 1 ST RE-ARREST	Program Status for Recidivist Defendants in DCP-Sentenced Case							
	Eligible		Insufficient Priors		Spotlight		Total	
Successful	N	%	N	%	N	%	N	%
Conviction	109	77.3	4	57.1	68	73.9	181	75.4
Dismissal	9	6.4	1	14.3	10	10.9	20	8.3
ACD	1	0.7	0	0.0	0	0.0	1	0.4
Pending	5	3.6	0	0.0	4	4.3	9	3.8
Warrant	2	1.4	0	0.0	3	3.3	5	2.1
Transfer to Supreme Court	15	10.6	2	28.6	7	7.6	24	10.0
Total	141	100.0	7	100.0	92	100.0	240	100.0

Unsuccessful	N	%	N	%	N	%	N	%
Conviction	23	85.2	2	100.0	39	90.7	64	88.9
Dismissal	0	0.0	0	0.0	2	4.7	2	2.8
ACD	-	-	-	-	-	-	-	-
Pending	-	-	-	-	-	-	-	-
Warrant	0	0.0	0	0.0	1	2.3	1	1.4
Supreme Court	4	14.8	0	0.0	1	2.3	5	6.9
Total	27	100.0	2	100.0	43	10.0	72	100.0

Sentencing for Conviction in the First Re-arrest Case: Jail, Length of Jail

The next illustration shows the use of jail as the most severe sentence imposed upon recidivist DCP-sentenced defendants upon conviction in the first re-arrest cases. Among successful program defendants approximately three-fourths received a sentence of jail, in comparison to all but one defendant among the unsuccessful recidivist defendants. Among the successful recidivist defendants who did not receive a jail sentence, seven in the eligible group and one in the Spotlight group each received a new sentence to the Day Custody Program upon an arraignment conviction in the first re-arrest case (data not shown). In comparison with successful recidivist defendants, there was a greater likelihood of the imposition of a jail sentence for unsuccessful defendants in all program-status groups.

THE USE OF JAIL AS THE MOST SEVERE SENTENCE FOR CONVICTION IN THE FIRST RE-ARREST CASE								
JAIL FOR CONVICTION ON 1 ST RE-ARREST	Program Status for Recidivist Defendants in DCP-Sentenced Case							
	Eligible		Insufficient Priors		Spotlight		Total	
Successful	N	%	N	%	N	%	N	%
No	27	25.2	1	25.0	18	26.5	46	25.7
Yes	80	74.8	3	75.0	50	73.5	133	74.3
Total Sentenced	107	100.0	4	100.0	68	100.0	179	100.0
Unsuccessful	N	%	N	%	N	%	N	%
No	1	4.3	0	0.0	0	0.0	1	1.6
Yes	22	95.7	2	100.0	39	100.0	63	98.4
Total Sentenced	23	100.0	2	100.0	39	100.0	64	100.0

When a jail sentence was imposed, successful defendants were more likely to receive a time-served sentence (27.8%) than unsuccessful defendants with a jail sentence for conviction in the first re-arrest case (9.5%). In addition, when the sentence imposed was for time other than time-served, the length of the jail sentence was comparatively shorter in the first re-arrest case for the recidivist successful program defendants.

LENGTH OF JAIL SENTENCES (in days) IMPOSED FOR CONVICTION IN THE FIRST RE-ARREST CASE								
LENGTH OF JAIL SENTENCE FOR 1 ST RE-ARREST CONVICTION	Program Status for Recidivist Defendants in DCP-Sentenced Case							
	Eligible		Insufficient Priors		Spotlight		Total	
Successful	N	%	N	%	N	%	N	%
3-9 days	25	31.3	1	33.3	5	10.0	31	23.3
10	6	7.5	1	33.3	9	18.0	16	12.0
15	9	11.2	1	33.3	4	8.0	14	10.5
20-30	10	12.6	0	0.0	7	14.0	17	12.8
35-60	7	8.7	0	0.0	3	6.0	10	7.5
90-365	2	2.5	0	0.0	6	12.0	8	6.0
Subtotal Non-Time-Served	59	73.8	3	99.9	34	68.0	96	72.2
Time Served	21	26.2	0	0.0	16	32.0	37	27.8
Total	80	100.0	3	99.9	50	100.0	133	100.0
Unsuccessful	N	%	N	%	N	%	N	%
3-9 days	1	4.6	0	0.0	4	10.3	5	7.9
10	6	27.3	0	0.0	3	7.7	9	14.3
15	4	18.2	1	50.0	7	17.9	12	19.1
20-30	5	22.7	1	50.0	9	23.1	15	23.8
35-60	2	9.1	0	0.0	7	17.9	9	14.3
90-365	3	13.6	0	0.0	4	10.3	7	11.1
Subtotal Non-Time-Served	21	95.5	2	100.0	34	87.2	57	90.5
Time Served	1	4.5	0	0.0	5	12.8	6	9.5
Total	22	100.0	2	100.0	39	100.0	63	100.0

To a large extent these differences in the use and length of jail reflect the greater proportion of Spotlight-targeted re-arrest cases among unsuccessful program clients. In addition, some of the differences in sentence lengths also can be accounted for by the differences in the types of charges in the first re-

arrest case between successful and unsuccessful program clients. For example, a much larger percentage of first re-arrests involving a fraud charge, most with a fare-evasion charge, were found among successful recidivist defendants. This type of A-misdemeanor charge usually results in lesser penalties in comparison with conviction to other A-misdemeanor severity crimes such as petit larceny, found in the property-crime category. Overall, these data do not suggest that greater penalties than would be expected were imposed upon re-arrest for either successful or unsuccessful defendants who previously received a DCP sentence.

Frequency of Re-arrests

In addition to the prevalence of re-arrests, a separate issue is the frequency (numbers) of re-arrests within five months of the compliance date of the first DCP-sentenced case for recidivist defendants by whether or not they had been successful DCP program completers. This table shows the frequency of re-arrests for the successful and unsuccessful defendants. Overall, there were only small differences in the frequency of new prosecuted arrests between the recidivist successful and unsuccessful DCP-program sentenced defendants.

The 240 recidivist successful program defendants had a combined total of 418 new prosecuted arrests within five months of their original program compliance date, with a mean of 1.74 arrests and a median of one arrest. In comparison, the 72 recidivist unsuccessful DCP-sentenced defendants had a combined total of 145 re-arrests, with both a mean and median of two arrests. The difference in the mean number of re-arrests between successful and unsuccessful defendants was not statistically significant.

Among recidivist defendants in the program-eligible group there was virtually no difference in the frequency of re-arrests between the successful and unsuccessful program completers. The mean number of re-arrests for the 141 recidivist successful program defendants was 1.66 in comparison with 1.67 for the 27 unsuccessful defendants in the program-eligible group, and both groups had a median of 1.0.

The seven recidivist successful defendants in the insufficient priors groups had a combined total of ten re-arrests, while the two recidivist unsuccessful

defendants with insufficient priors in the DCP-sentenced case had a total of three re-arrests, and these numbers are simply too small for meaningful comparison.

The frequency of re-arrests among the recidivist Spotlight defendants was lower for the 92 defendants who successfully completed the DCP program, with a mean of 1.89 re-arrests and a median of 1.0, in comparison with a median of 2.26 re-arrests and a median of 2.0 for the 43 unsuccessful recidivist defendants originally sentenced to DCP in a Spotlight case.

FREQUENCY OF RE-ARRESTS BETWEEN SUCCESSFUL AND UNSUCCESSFUL DEFENDANTS BY THEIR PROGRAM-ELGIBILITY STATUS IN THE DCP-SENTENCED CASE						
PROGRAM STATUS OF 1 ST DCP-SENTENCED CASE	SUCCESSFUL			UNSUCCESSFUL		
	Total Number of Re-arrests	Mean Number of Re-arrests	Median Number of Re-arrests	Total Number of Re-arrests	Mean Number of Re-arrests	Median Number of Re-arrests
Eligible	234	1.66	1.0	45	1.67	1.0
Insufficient Priors	10	1.43	1.0	3	1.50	1.5
Spotlight	174	1.89	1.0	97	2.26	2.0
Total	418	1.74	1.0	145	2.01	2.0

RE-ARREST OF DEFENDANTS IN ALL FIRST-YEAR DCP-SENTENCED CASES

In addition to examining the prosecuted re-arrests after the first (or only) DCP-sentenced case for each of the 525 program-sentenced clients, we also examined re-arrests within five months of the compliance data for all of the 548 DCP-sentenced cases during the first program year. The total number of cases includes 46 belonging to 23 defendants each with two DCP-sentenced cases within the first program year. Because there was very little difference in the findings about recidivism after accounting for the additional twenty-three cases, only selected aspects of this analysis are presented.

The frequency of re-arrests is not shown because of the overlap between the first re-arrests and the second DCP-sentenced cases. As discussed previously, there were eight recidivist successful defendants (7 in the eligible group and 1 in the Spotlight group) who received a DCP sentence as the sanction for conviction on the first re-arrest after the original program sentence.

No unsuccessful DCP clients received a second program sentence as a sanction for conviction in the first re-arrest case within five months of the original program sentence.

Among all 548 cases, 445 had defendants who successfully completed the program and 103 cases had defendants reported to the court as unsuccessful. Once again, both successful and unsuccessful cases were made up of defendants who fit the program's eligibility requirements, a small group of non-Spotlight cases of defendants who had fewer than the required three prior misdemeanor convictions, and defendants in Spotlight-targeted cases. However, none of the defendants in the non-Spotlight cases with fewer than the required three prior misdemeanor convictions had more than a single DCP-sentenced case within the program's first year.

Prevalence of Recidivism

The first table shows the prevalence of at least one docketed re-arrest within five months of the scheduled compliance date for defendants in all DCP-sentenced cases, shown by the program-eligibility status of the defendants when the program sentence was imposed. The second column shows how the DCP-sentenced cases were distributed among the program-eligibility categories. The next column shows the number of cases of defendants in each category with one or more docketed re-arrests, and the final column the percent re-arrested.

Among all the 548 DCP-sentenced cases, a total of 332 had defendants who were re-arrested within five months of the compliance date, for a 60.1% overall re-arrest rate. Among the 319 DCP-sentenced cases in which defendants met the program's eligibility criteria, the re-arrest rate was 54.9% in comparison with a 72.5% re-arrest rate for DCP-sentenced cases of defendants in the Spotlight group. In almost all instances these percentages are only fractionally different than was found when only the first re-arrest for each defendant was examined, and the number and percentage of defendants in the insufficient priors group is identical.

RECIDIVISM AMONG DEFENDANTS IN ALL FIRST-YEAR DCP-SENTENCED CASES			
PROGRAM-ELIGIBILITY STATUS	Number of Cases	Number of Cases with Re-arrested Defendants	Percent Re-arrested
Eligible	319	175	54.9
Insufficient Priors	25	9	36.0
Spotlight	204	148	72.5
Total	548	332	60.1

The next table compares the prevalence of recidivism in the cases of successful and unsuccessful defendants in DCP-sentenced cases, overall and by the eligibility status of the defendants in the DCP program cases. It shows that there was a lower re-arrest rate (57.3%) among cases with successful program completers in comparison with the cases of unsuccessful defendants (74.8%). This was true in every program-status category although the percentages differed. These are comparable to the findings about the first re-arrest cases for each defendant. And, once again, the difference in re-arrest rates between defendants in the successful and unsuccessful cases also was statistically significant well below the .05 level. However, as previously discussed, these differences between successful and unsuccessful program participants cannot necessarily be attributed to the Day Custody Program but may be due to other differences in defendant and case characteristics.

RECIDIVISM OF DEFENDANTS IN SUCCESSFUL AND UNSUCCESSFUL DCP-SENTENCED CASES						
PROGRAM STATUS AT SENTENCING	SUCCESSFUL			UNSUCCESSFUL		
	Number of DCP-sentenced Cases	Number with Re-arrested Defendants	Percent Re-arrested	Number of DCP-sentenced Cases	Number with Re-arrested Defendants	Percent Re-arrested
Eligible	277	146	52.7	42	29	69.0
Insufficient Priors	22	7	31.8	3	2	66.7
Spotlight	146	102	69.9	58	46	79.3
Total	445	255	57.3	103	77	74.8

Time to a Prosecuted Re-arrest within Five Months of the Compliance Date for Each DCP-sentenced Case

The next table shows the mean and median number of days to a new prosecuted arrest within five months on or after the court compliance date for each DCP-sentenced case. The data are shown for defendants in the successful and unsuccessful DCP-sentenced cases. This table shows that there was a longer average time to the first prosecuted re-arrest among the cases of successful program defendants.

For the 255 cases of recidivist successful program clients the average time to a re-arrest within five months of the compliance date was 54.28 days, with a median of 42.0 days. In comparison, for the 77 cases with recidivist unsuccessful program clients the average time to a re-arrest was 36.19 days with a median of 25.0 days. The difference in the average time to a new arrest between the successful and unsuccessful categories was statistically significant well below the .05 level.

TIME TO FIRST RE-ARREST BY DEFENDANTS IN SUCCESSFUL AND UNSUCCESSFUL DCP-SENTENCED CASES				
PROGRAM-ELIGIBILITY STATUS	Successful		Unsuccessful	
	Mean Number of Days	Median	Mean Number of Days	Median
Eligible	57.75	47.5	41.03	29.0
Spotlight	48.14	36.0	32.19	23.0
*Total	54.28	42.0	36.19	25.0
* Total includes cases of defendants with insufficient priors but separate data for the few defendants in this program-eligibility group are not shown.				

Among the cases of recidivist defendants in the successful group the shortest time to re-arrest was for six defendants with a re-arrest on the compliance date and the longest was one defendant re-arrested 149 days after the compliance date. For the cases of recidivist defendants in the unsuccessful group there was one defendant arrested on the compliance date and the longest time was for one defendant re-arrested after 140 days. (Data not shown)

Spotlight Targeting on First New Arrests

The percentage of first prosecuted re-arrests on or after the DCP compliance date that were Spotlight-targeted was greater among the cases of recidivist unsuccessful program completers. Among cases of recidivist successful program completers slightly over half of the first new arrests after the DCP-sentenced compliance dates were Spotlight targeted in comparison to almost two-thirds of the first new arrests for recidivist defendants in the unsuccessful category of cases. As shown on the table below there was a higher percentage of Spotlight-targeted re-arrests among unsuccessful completers for all DCP sentence status categories than among the same categories in cases of recidivist but successful program completers, although the percentages differed.

For defendants with DCP-sentenced Spotlight-targeted cases the difference between the recidivist successful and unsuccessful completers with a Spotlight-targeted first re-arrest was very small (73.5% versus 76.1%). Among the cases of recidivist unsuccessful completers in the program-eligible category there was a larger percentage of unsuccessful defendants with a Spotlight-targeted first re-arrest (48.3%) in comparison to cases of recidivist successful completers (37.7%).

SPOTLIGHT TARGETING OF FIRST PROSECUTED RE-ARREST BY PROGRAM STATUS FOR THE DCP-SENTENCED CASES OF SUCCESSFUL AND UNSUCCESSFUL DEFENDANTS								
WAS 1 st NEW ARREST SPOTLIGHT TARGETED?	Program Status for Recidivist Defendants in DCP-Sentenced Cases							
	Eligible		Insufficient Priors		Spotlight		Total	
Successful	N	%	N	%	N	%	N	%
No	91	62.3	7	100.0	27	26.5	125	49.0
Yes	55	37.7	0	0.0	75	73.5	130	51.0
Total	146	(57.3)	7	(2.7)	102	(40.0)	255	100.0
Unsuccessful	N	%	N	%	N	%	N	%
No	15	51.7	1	50.0	11	23.9	27	35.1
Yes	14	48.3	1	50.0	35	76.1	50	64.9
Total	29	(37.7)	2	(2.6)	46	(59.7)	77	100.0

SUMMARY AND CONCLUSIONS

The Day Custody Program (DCP) is a demonstration project of the Center for Alternative Sentences and Employment Services (CASES) offered in conjunction with the New York City Department of Correction (DOC). It is available as an alternative sentence for recidivist misdemeanants in cases arraigned on misdemeanor charges at the Downtown Manhattan Criminal Court location who otherwise would be expected to receive a jail sentence for an arraignment conviction. For defendants in program-sentenced cases, DCP offers the court a sanction combining accountability, needs assessment and early intervention programs, and discharge planning services, over the course of three days in a DOC facility adjacent to the courthouse. However, unlike traditional jail sentences, defendants are not held in a correctional facility for the entirety of the sentence and, instead, are responsible for returning to the program location each day.

At sentencing an intermittent jail sentence is imposed with the understanding that failure to satisfactorily complete the program's requirements will result in the imposition of a jail sentence, usually of ten days' duration. Defendants have ten weekdays in which to fulfill the three program days' activities, and a court compliance date is scheduled shortly thereafter. Depending on the day of the week and the time of day at which the sentence is imposed some defendants begin their sentence immediately upon imposition; in other instances defendants must report to the program location on a subsequent day to begin their program sentence.

DCP is a selective program with a series of eligibility criteria for the cases and defendants it will accept. Among these criteria are that defendants must already have at least three prior misdemeanor convictions and be in custody awaiting Criminal Court arraignment for a misdemeanor crime in a non-Spotlight targeted case. Under the conditions of funding CASES' is supposed to exclude defendants in Spotlight-targeted cases, a separate City initiative designed to increase the use and length of jail sentences imposed citywide on recidivist defendants actively cycling through the Criminal Courts who are arrested and

arraigned on misdemeanor charges. However, DCP may accept defendants in Spotlight-targeted cases if solicited to do so by other court personnel. Further, DCP and other court personnel may be unaware of Spotlight targeting if the court papers are not appropriately marked. In addition, defendants must be able to immediately begin the program sentence if convicted at arraignment, so that defendants with outstanding bench warrants or who are on parole cannot receive a program sentence unless these impediments can be resolved before the conclusion of the arraignment proceedings.

Court papers are reviewed by CASES' staff for charge, prior conviction record eligibility and other criteria. Defendants found to be "paper eligible" are then interviewed by CASES' staff upon the consent of the defense attorney and after consultation with the prosecuting attorney to determine if there will be a plea offer of jail time greater than time served. In some instances of cases of otherwise ineligible defendants an interview may be conducted at the request of other court personnel. Once interviewed prior to arraignment by CASES staff, defendants may be rejected by the program for a variety of reasons including issues beyond the program's capacity to address, or by the refusal or the judge or even by the defendant him/herself to consent to the Day Custody sentence.

The Day Custody Program began accepting clients in late September 2005, and through the end of September 2006 (approximately a year's time) CASES' court staff had screened the court papers in a total of 3,663 cases of which 548 cases, or approximately 15%, had received a program sentence. CJA identified the NYSID numbers of 3,083 individuals among these 3,663 cases. In the first program year there were 525 defendants in the 548 DCP-sentenced cases, with 23 defendants receiving the program sentence in two separate cases.

CASES' selection criteria were met in almost 60% of the program-sentenced cases, and in only a small percentage of the cases were there defendants with insufficient numbers of prior misdemeanor convictions. Over a third of the DCP cases were Spotlight-targeted cases, but they represented only a very small percentage of all Spotlight-targeted cases arraigned in the downtown Manhattan Criminal Court in the same time period.

Defendants in the DCP-sentenced cases were mostly male and minority, with an average age of close to forty. An overwhelming majority had far more than the minimum three prior misdemeanor convictions, with an average of about 14 prior convictions for misdemeanor crimes. Approximately 70% of the defendants in the DCP-sentenced cases also had previously been convicted of at least one felony crime. Overwhelmingly CJA rated defendants in the DCP-sentenced cases as poor risks for recognizance release had the cases been continued at arraignment and, among interviewed cases, less than two-fifths reported being engaged full-time in work or other activities at the time of the arrest.

Well over a third of the DCP-sentenced cases had defendants arrested for drug crimes and almost another third for property crimes—mostly petit larceny, with most of the remaining cases involving fraud crimes, or public disorder offenses such as criminal trespass. However, at Criminal Court arraignment the property crime category had the largest percentage of cases, slightly greater than the percentage of cases in the drug category. This change in charge composition is important because almost all convictions in DCP-sentenced cases were to the arraignment charge, and conviction for petit larceny tends to have a greater likelihood of jail time and comparatively more of it than almost all other misdemeanor charges. In addition, almost 91% of all DCP-sentenced cases were arraigned (and convicted) for crimes of A-misdemeanor severity.

This first-year program study found that over 80% percent of defendants in the 548 first-year cases sentenced to DCP completed the program requirements. A successful completion rate of almost 87% was found among defendants in cases that fit the program's specific eligibility requirements and a lower percentage for defendants in Spotlight-targeted cases sentenced to the program.

Among the 103 cases in which defendants failed to satisfactorily complete the program sentence, over 90% had been returned to court for re-sentencing as of June 12, 2007, the study cut-off date for tracking the cases. In almost all of the 94 re-sentenced cases this research found that defendants returned to court and re-sentenced after program failure were held accountable by appropriate

sentences to jail time. Most of the defendants in the re-sentenced cases were returned to court as a result of new arrests; in only seven cases were defendants returned and re-sentenced in the DCP cases without a new prosecuted arrest.

Among the 87 cases re-sentenced subsequent to being returned to court after a new arrest, 41 were re-sentenced in the DCP cases separately from the outcome and sanction on the new arrest, and the remaining 46 had the re-sentence in the DCP case imposed at the same time the new prosecuted arrest also was being disposed. As a result, it is not possible to precisely account for the penalty assessed for the program failure as in many instances the fact of a new arrest, or the actual imposition of the sentence in the re-arrest case, invariably influenced the DCP cases' re-sentence. In addition, in a few instances the alternative jail time set with the DCP sentence was for more than ten days so that not all re-sentences for program failure necessarily would have been for exactly ten days. What we did find, however, was that in all but six of the re-sentenced cases the defendant received a jail sentence. In addition, almost half of the jail sentences were for ten days, and another thirty percent received a sentence greater than ten days, with the largest number of these 30-day jail sentences.

In addition to the DCP-sentenced cases, there were 3,115 cases involving 2,665 defendants that were screened but not program sentenced. CASES' court staff was the source of the rejection for 64% of the cases, with defense attorneys and judges being the next largest sources for rejections. Among those rejected by CASES' staff, over half were excluded because of Spotlight-program targeting (as were over a third of the rejected cases overall). Among the remaining cases rejected by DCP staff, parole and homelessness/insufficient community ties were the next two most frequent reasons given for rejection.

The characteristics of defendants in rejected cases closely resembled those in program-sentenced cases: overwhelmingly male, minority, and 35-years-of-age or older; and, most had far more than the requisite three prior misdemeanor convictions and only about 30% did not also have prior cases with conviction to a crime of felony severity. Further, like their program-sentenced counterparts,

defendants in the rejected cases overwhelmingly were rated by CJA as being of high risk of failing to appear if released on recognizance were the case to be continued at the Criminal Court arraignment. These characteristics were fairly consistent regardless of the source or reason for rejection, although percentages among categories varied.

However, there were some differences in the top arrest charges and their severities between the sentenced and rejected cases. Drug crime had the largest percentage of arrest charges for both groups' cases, but there was a higher percentage found at arrest among the rejected cases. Similarly, while the property crime category had the second largest percentage of top arrest charges for both sentenced and rejected cases, the percentage was smaller among the rejected cases. In addition, a smaller percentage of rejected cases had top arrest charges of felony severity, although to some extent this reflects the large proportion of Spotlight cases among the rejects all of which only can have misdemeanor-severity top arrest charges.

Somewhat under two-thirds of all rejected cases were disposed at Criminal Court arraignment, almost all with a conviction, and over three-fourths had some form of a jail sentence imposed for the arraignment conviction. However, almost two-thirds of these cases received a jail sentence of less than ten days (including time-served sentences).

Examining the characteristics of court charges and severities of rejected cases with arraignment convictions revealed some differences in comparison to the program-sentenced cases. The largest percentages of all rejected cases convicted and sentenced at arraignment were prosecuted for drug charges with the second largest percentage found in the property crime category. Among DCP-sentenced cases this order was reversed, with a slightly larger percentage of arraignment charges falling into the property crime category than in the drug category. In addition, a somewhat greater percentage of rejected cases convicted at arraignment were prosecuted for crimes of B-misdemeanor severity, but this charge severity category had a relatively small percentage of cases for both the rejected and sentenced groups.

These overall differences in charge and severity composition between rejected cases convicted at arraignment and program-sentenced cases strongly suggest that sentenced cases of program-eligible defendants would more likely have had jail sentences imposed, and of longer duration, than the rejected cases with arraignment convictions (excluding Spotlight-targeted cases). However, because there were so many similarities in the defendant characteristics and case composition between program sentenced and rejected cases, these data are unable to provide guidance to CASES for refinements in the targeting criteria at court screening to better identify cases more likely to have jail bound defendants.

This study did find some differences among the rejected cases depending on the source or reason for program rejection. For example, Spotlight program cases received comparatively longer jail sentences at arraignment in comparison to cases rejected from other sources or for other reasons. Conversely, cases rejected by defense attorneys (or defendants themselves) had the lowest percentages of jail-time sentences imposed for an arraignment conviction, indicating that defense attorneys in particular were effective gatekeepers.

The selection of the downtown Manhattan Criminal Court as the site for this demonstration project offered the advantage of being able to provide program space in a correctional facility conveniently located adjacent to the courthouse. In addition, among the City's Criminal Courts, this is the courthouse processing the largest volume of misdemeanor cases with arraignment convictions, comparatively lenient sentences, and few available alternative sanctions to short jail time.

As originally envisioned, by offering a more meaningful sentence in non-Spotlight targeted cases of recidivist misdemeanor defendants, DCP expected to draw its clients not only from the population jail bound for ten or more days, but also from the pool of cases in which defendants would otherwise have received either time served or very short sentences. However, without the leverage of jail time equal to or greater than the ten-day sentence for program failure, it has proven extremely difficult to draw defendants into the program from the majority

of cases that receive lesser sentences. To expand the eligible pool would appear to require that either the Manhattan District Attorney's Office, judges, or both, more widely embrace the Day Custody Program, and use their discretion to change sentencing practices to make DCP a more attractive alternative. In addition, the exclusion of Spotlight-targeted cases further greatly reduces the pool of jail bound defendants. Although Spotlight-targeted cases made up somewhat over a third of the DCP-sentenced cases examined in this report, these cases represented only a tiny percentage of all Spotlight cases passing through the court during the same time period.

At present, although currently able to draw relatively small numbers of cases into its program, CASES appears to have developed an alternative sentencing program incorporating both accountability and discharge planning in an experimental setting that can be successfully completed by the overwhelming majority of defendants who receive the DCP sentence.

An early assessment of recidivism explored in this study showed that successful program clients had lower rates and longer times to the first re-arrest, within five months of the compliance date of the DCP-sentenced cases, than unsuccessful program clients, and these differences were statistically significant. However, these differences do not tell us whether the program is having an impact on recidivism among defendants in the successful program completion group. Differences in defendant and case characteristics between the successful and unsuccessful program completion groups could explain the difference in the prevalence and time to re-arrests. The examination of recidivism also showed that if defendants were re-arrested, there was virtually no difference in the frequency with which re-arrests occurred between successful and unsuccessful program completers within five months of the compliance date.

Whether DCP can have an impact on recidivism for successful program clients remains to be seen. Finding a comparison group to measure a program impact on recidivism is challenging and not something that could be done within the time frame of this study. In the first program year DCP had a very high successful completion rate which left a comparative small number of defendants

in the unsuccessful program completion group, and there were differences in the characteristics of defendants and cases between the successful and unsuccessful completion groups. As a result, comparing re-arrests between successful and unsuccessful program clients is of limited value in measuring the impact of DCP on recidivism. The program rejection group also did not yield sufficient numbers of similar cases from which to create a comparison group. For example, once Spotlight cases are excluded there remain relatively small numbers of likely jail bound defendants in the rejected cases' pool.

To examine the impact of DCP on the prevalence of recidivism therefore requires constructing a comparison group from a different pool of cases, and remains an item to be explored in future research. One possibility would be to create a pre-program comparison group of cases with similar defendant and case characteristics, and jail-bound court outcomes at arraignment, from the downtown Manhattan court dating back to early 2004. This would provide a sufficient lag time to examine rates of re-arrests before the start of the Day Custody Program. Another possibility is to look to other boroughs, such as Brooklyn, or Brooklyn and Queens combined. However, constructing a comparison group from other boroughs is complicated because of differences in case and defendant composition, and court processing and sentencing practices. For example, the downtown Brooklyn Criminal Court currently arraigns about the same number of misdemeanor cases as the downtown Manhattan Criminal Court, but it has a much lower percentage of cases disposed by an arraignment conviction than its Manhattan counterpart.

Another facet to an examination of recidivism is to investigate factors that might explain when or why the program may reduce the prevalence of recidivism. Future research may explore data collected from program-sentenced defendants to see if they can provide insights into the types of client needs, or services provided, that may affect recidivism. Provision was made for the sharing of this information with CJA although no transfer of these data was attempted up to this point.

The Day Custody Program was, in part, an outgrowth of the work of the short-stay committee of the Discharge Planning Collaboration, a project organized by the New York City Departments of Correction and Homeless Services. Information collected about DCP-sentenced defendants, representing a population of jail bound recidivist misdemeanor offenders, could further provide material to assist program providers as well as government agencies in serving both the discharge planning and community-service needs of offenders during their re-entry and re-integration upon release from jail.

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.