

SUPERVISED TREATMENT IN THE
CRIMINAL COURT
A Process Evaluation of the Manhattan
Misdemeanor Drug Court

Rachel Porter

Vera Institute of Justice
May 2002

Acknowledgements

This report was prepared under contract with the Criminal Court of New York with funding from the Drug Courts Program Office of the United States Department of Justice. Points of view or opinions stated in this document are those of the author and do not represent the official positions or policies of these organizations or their representatives. Some data on subjects participating in this research were provided to Vera by the Manhattan Misdemeanor Treatment Court (MMTC). The MMTC is not responsible for the analytic methods used with these data, nor for the conclusions that appear in this report.

I gratefully acknowledge the invaluable contributions of my Vera colleagues: Jill Pope, in the Communications Department; Christopher Stone, Vera's Director; Doug Young, former project director; interns, Jeff Burl, Kati Connell, and Joshua Shimkin; and Vera's Research Director, Dr. Eileen Sullivan.

© 2002 Vera Institute of Justice, Inc. All rights reserved.

Additional copies can be obtained from the communications department of the Vera Institute of Justice, 233 Broadway, 12th floor, New York, New York, 10279, (212) 334-1300. An electronic version of this report is available on Vera's web site, www.vera.org.

Requests for additional information about the research described in this report should be directed to Rachel Porter, Research Associate, at the above address, or to rporter@vera.org.

Executive Summary

In July 2000 the Manhattan Misdemeanor Treatment Court joined the growing number of drug treatment courts that place and monitor criminal offenders in drug treatment. There are five treatment courts currently operating in New York City, but this is the only one that targets misdemeanor offenders alone. A month before the court opened, the Chief Judge of New York State announced an ambitious plan to expand drug treatment for all addicted offenders. The experience of the Manhattan Misdemeanor Treatment Court demonstrates both the potential these problem-solving courts hold and the challenges they present. If successful, treatment courts can reduce substance use and reoffending, but a poorly implemented court runs the risk of increasing costs without achieving its goals. The key questions in looking at this court were, How do judges, attorneys and treatment providers reach consensus? How can treatment be coordinated with the court process? And, How does a misdemeanor court differ from a treatment court for felony offenders?

To answer these questions the Vera Institute of Justice conducted an implementation evaluation of the court in its planning and start-up phases. Vera staff interviewed judges, attorneys, and other principal stakeholders in the court; reviewed court documents, files, and procedures; and analyzed data on participants. We also conducted anonymous interviews with 29 participants in the court to assess their perceptions of court components, such as rewards and sanctions. Finally, the research team spent over one hundred hours observing treatment and courtroom proceedings.

The Manhattan Misdemeanor Treatment Court has successfully implemented a collaborative approach to screen, assess, and monitor people in treatment. In its first ten months the court enrolled 264 misdemeanor drug offenders, all of whom pleaded guilty to possession of small amounts of a controlled substance. In the planning stage, the judges, attorneys and treatment providers involved in the court met regularly to discuss differences and forge agreements on issues such as eligibility and case disposition. These stakeholders remain committed to the compromises constructed in court planning, even as they maintain their differences. Notably, more than three quarters of the participants said that cocaine or heroin was their drug of choice, suggesting that severity of addiction is not correlated with severity of offending among these misdemeanor offenders. The length of treatment varied according to the criminal history of participants, and the court was most successful with defendants who had the least number of prior convictions, and received the shortest treatment. More than 80 percent of these participants graduated the two-day treatment intervention program where they were placed.

Three main themes emerged from the research findings on court operations and participants. First, the successful implementation of the Manhattan Misdemeanor Treatment Court benefited from collaboration and commitment among all the court stakeholders early in the planning process. The teamwork across agencies is a defining characteristic of the court and a crucial achievement. Second, the court did not reach its

target intake, even as the court team worked consistently to expand that number. The court will have to rely on the teamwork it has established to continue critical negotiations between the county prosecutor and the rest of the court team about expanding eligibility criteria. Third, because the treatment needs of the court's population are greater than anticipated, the treatment court is forced to confront the limits of coercion in providing needed treatment.

Table of Contents

Introduction	1
The Manhattan Misdemeanor Treatment Court	3
Planning the Court	3
Implementing the Court: A Team Approach	5
The Misdemeanor Court Process	8
The Court's Caseload	11
Monitoring Participation	14
Court Outcomes	25
Conclusion	26
Appendices	
Appendix A: Key Components of a Treatment Court	29
Appendix B: Manhattan Misdemeanor Treatment Court Flowchart	31
Appendix C: Manhattan Misdemeanor Treatment Court Infractions and Sanctions by Tier	34
Appendix D: Research Methodology	36

Introduction

In New York City, the first drug treatment court, in Brooklyn, was followed by similar courts for felony drug offenders in Queens, the Bronx, and Manhattan. In July 2000 the New York County Criminal Court opened the first New York City drug court devoted exclusively to misdemeanor cases, the Manhattan Misdemeanor Treatment Court (MMTC). The central goal of this court, begun in collaboration with the New York County District Attorney's Office, the New York County Defender Services, the Legal Aid Society, and two treatment providers, the Osborne Association and St. Luke's-Roosevelt Hospital, is to introduce nonviolent drug offenders to treatment.

Unlike drug treatment courts for felony offenders, the MMTC provides short-term interventions for first-time and low-level repeat offenders—people caught possessing small amounts of a controlled substance, for example. In exchange for a guilty plea, the court orders defendants to attend a drug treatment readiness program for two days or drug treatment for up to thirty sessions. The length of the sentence depends entirely on the defendant's arrest history. Like drug courts active around the country, the Manhattan Misdemeanor Treatment Court hopes that a combination of coercion and support from the court will encourage people to control their substance abuse and refrain from crime. And like other drug courts, this one uses a team-based approach to enrolling and supervising people.

Prior to opening the misdemeanor treatment court, the county used a treatment readiness program as a sentence for people convicted of low-level crimes, in addition to fines, probation, community service, or jail. However, the wait to enter treatment readiness was typically more than a month, and the sentence was monitored for completion only, and not through additional court supervision. According to the deputy chief of the trial division in the Manhattan prosecutor's office, people arrested for drug-related misdemeanors were more likely to enter drug treatment if they were approached immediately at arraignment when sentencing was imminent. Conversely, offenders were unlikely to go to treatment readiness programs that began weeks after arraignment. Treatment court planners hoped that if the court took hold, it would provide an immediate intervention in drug abuse for low-level offenders—potentially affecting hundreds of people each year by providing limited substance abuse treatment and related social services that targeted the problems at the root of their offending. Planners also hoped that by introducing defendants to the idea of treatment, the court would serve as an entry into more intensive treatment, and lead to long-term reductions in drug use and related criminal offending.

At the request of the New York State Office of Court Administration, the Vera Institute of Justice assessed the planning and start-up of the Manhattan Misdemeanor Treatment Court. This is the third Vera report to evaluate the implementation of a New

York City drug court.¹ We will summarize findings from the three studies in a final report to be published in 2002.

This study of the Manhattan Misdemeanor Treatment Court poses several questions: Does this court for misdemeanor offenders maintain the central characteristics of the national drug court model?² That model specifies a team approach to coordinating drug treatment with criminal case processing and using the coercive power of the court to maintain and support people in treatment; however, in the case of the misdemeanor court, “treatment” is primarily treatment readiness. In particular, is there active and meaningful collaboration among all the stakeholders—the judge, the court’s operations director, the prosecution, defense, and treatment providers? How does the court focus on rehabilitation within the time constraints of a misdemeanor sentence? Additionally, the report asks, does the court serve the defendants it intended to reach? How do cases enter the court? Does the court provide the services it planned to offer, and does it successfully monitor participants and respond appropriately to their setbacks and accomplishments? Finally, is the court achieving the enrollment, retention and graduation rates it originally proposed? This report explores each of these questions and, in the process, gives a detailed description of an alternative approach to the drug treatment court—the misdemeanor court.

This study covers the court’s planning and first nine months of operation. Vera researchers observed the court, oversight committee meetings, and treatment programs; interviewed each court stakeholder and the staff of the two treatment providers; and reviewed court and treatment program documents, including the proposal to create the court, the court operations manual, and treatment materials. In addition, we analyzed basic demographic, educational and vocational characteristics as well as court outcomes for 181 people who entered the treatment court between July 2000 and May 2001. These data were collected by the treatment court staff.³ The researchers also interviewed 29 people who appeared in the treatment court for status hearings during a four-week period

¹ The Institute also published a literature review focused on the impact of drug courts on custodial resources. See *Do Drug Courts Save Jail and Prison Beds?* by Reginald Fluellen and Jennifer Trone, Vera Institute of Justice, March 2000. In July 2000 Vera released *Implementing a Drug Court in Queens: A Process Evaluation*, and in July 2001, *Treatment Alternatives in the Criminal Court: A Process Evaluation of the Bronx County Drug Court*, both by Rachel Porter. Throughout its history Vera has conducted research and planning work in drug treatment and alternative sentencing that informs the current research. That work includes *Retaining Offenders in Mandatory Drug Treatment Programs: The Role of Perceived Legal Pressure* by Douglas Young, Vera Institute of Justice, March 1997; and *Bridging Drug Treatment and Criminal Justice* by Jennifer Trone and Douglas Young, Vera Institute of Justice, 1996.

² Appendix A provides the key components of the national drug court model, along with a comparison between the national model and the Manhattan Misdemeanor Treatment Court.

³ A total of 188 defendants entered the court during that time period. Electronic data were only available for a few variables due to limited staff resources. The court will eventually use the statewide management information system (MIS) developed by researchers at the Center for Court Innovation. The database captures criminal history information and information collected during intake and assessment and throughout treatment, as well as information about retention and graduation.

in April and May 2001.⁴ These brief interviews asked participants their opinions about the usefulness of different court components in their rehabilitation.⁵

The Manhattan Misdemeanor Treatment Court

Planning the Court

Planning for the court began in 1998, motivated by the city's interest in developing treatment for misdemeanor drug offenders who came through the criminal courts. In addition to the prosecutor's office, the planning group included the executive director of the New York County Defender Services, the New York Legal Aid Society, the operations director of the Manhattan Treatment Court (the felony treatment court in operation since 1998), the executive director of the Osborne Association, an established treatment provider in New York City, a criminal court judge, and the counsel to the Administrative Judge of the New York County Criminal Court, who oversaw the planning process.

With federal support for building a team, and assistance and encouragement from state court administrators, the planning committee met regularly for more than a year before launching the court. While each of the planning committee members had individual visions of what the court could achieve, the planning process reflected the cooperative spirit that characterizes the Manhattan Misdemeanor Treatment Court. The principal concession the district attorney's office made was to provide alternatives to offenders with extensive criminal histories. The district attorney and the defense bar each took a view of eligibility in keeping with their professional interests. The prosecutor's office wanted to restrict the treatment option to the least serious offenders, while the defense attorneys wanted eligibility to include people accused of more varied crimes. However, the stakeholders reached consensus with relatively few disagreements on all the central issues of court planning, including eligibility, plea, oversight, and sentence.

In developing the court's mission, the planners focused on the importance of creating an intervention that would be available to defendants immediately after they entered a guilty plea. Defendants accused of low-level drug possession repeatedly returned to court on similar charges, developing extensive misdemeanor records. As in treatment courts for more serious offenders, the planners sought to interrupt this cycle. However, unlike felony treatment courts, the misdemeanor court did not expect that its intervention alone would end its participants' addiction. While treatment courts are not the only way to coerce defendants to enter drug treatment—other possibilities include structured sentencing guidelines and committed judges—a treatment court for low-level offenders would offer them an immediate and supervised entry into treatment.

⁴ We were not permitted to interview anyone in detention.

⁵ For a full description of the evaluation methodology, see Appendix D.

Sentencing for misdemeanor offenders ranges from conditional discharge to one-year probationary periods and incarceration. Prior to the Manhattan Misdemeanor Treatment Court, misdemeanor drug offenders could be placed in a Treatment Readiness Program (TRP) operated by CASES, a criminal justice social service provider. TRP provides two days of education and counseling about drug abuse. Unlike the treatment court, TRP is not monitored by the court or coordinated by a group of court stakeholders other than to confirm program attendance. In part because the program is not court operated, TRP does not have an expedited case-processing component. After the judge sentences an offender to TRP, individual assessment and placement in the program takes approximately six weeks. The treatment court team focused on the importance of eliminating this waiting period between sentencing and program entry.

Planners agreed that the Misdemeanor Treatment Court would provide post-plea supervised treatment. Participants would be placed in one of three tiers: Tier I, the Treatment Intervention Program (TIP) that would serve as a two-day introduction to treatment; Tier II, twelve outpatient treatment sessions; and Tier III, thirty outpatient sessions. All three tiers would involve both group and individual sessions. Placement in treatment would be based on arrest history. In all three tiers of treatment, successful completion would be defined as attending the full number of treatment sessions mandated for the tier and testing negative for drug use; failure, not attending the full number of sessions within specified time periods for each tier.

Defendants would enter the court by pleading guilty to disorderly conduct and criminal possession of a controlled substance in the New York County Criminal Court's arraignments courtroom. Treatment would be monitored by a treatment court judge who would first encounter defendants in compliance adjournments when the participant would return to court and the operations director would inform the judge about participant progress. For Tier I participants, a court appearance like this would only occur at completion or failure. Tier II and Tier III participants would return to court weekly, according to the traditional drug court model of structured court oversight. Compliance adjournments would be held two days each week, and treatment providers would provide updates for each adjournment. The treatment court would initially be located in a courtroom devoted to misdemeanor drug and alcohol cases. The court would be operated in a collaborative effort by the treatment court team.

The planners decided that the goal of the treatment court would be to engage low-level substance abusing offenders in a continuum of treatment. In addition, the Misdemeanor Treatment Court's planners sought to reduce delays in case processing and to reduce the use of short-term incarceration, while maintaining public safety. Court planners also anticipated that these goals would contribute to reductions in substance abuse and repeat offending. The plan for the court, which was submitted to the federal Drug Courts Program Office, specified that the Manhattan Misdemeanor Treatment Court would:

- enroll at least 400 people charged with misdemeanor drug possession who were themselves substance abusers
- graduate 50 percent of participants
- contain in-program rearrest rates to no more than 10 percent of all participants
- enroll 30 percent of participants in voluntary treatment, and 40 percent of TIP participants in voluntary aftercare.

Implementing the Court: A Team Approach

From the beginning, the Misdemeanor Treatment Court demonstrated a team approach to maintaining the court's mission and structure. The entire team met monthly in the planning stages and smaller groups met more frequently to work on specific components of the court. After the court opened, the planning committee continued to meet as an oversight committee to monitor the court's implementation and operation. The team includes the Misdemeanor Treatment Court operations director, two case assessors, and a third case assessor who was hired after six months to work the night shift. The operations director and the case assessors are the principal liaisons between the court and defendants; they screen and assess defendants, place them in treatment programs, and report back to the court. These four positions are included in the treatment court budget. They are joined by a judge, the deputy chief of the trial division of the district attorney's office, and the arraignment supervisor for the Legal Aid Society. Additionally, assistant district attorneys and defense attorneys are generally present in court when their supervisors are not available. Unlike some courts, the Manhattan Misdemeanor Treatment Court does not have assigned court officers. However, the officers rarely vary beyond the small number assigned to the courtroom where the treatment court is held. The team is completed by staff from two treatment programs—the Osborne Association, which provides the treatment readiness program to the eighty percent of court participants who are sentenced to Tier I, the least restrictive sanction, and St. Luke's/Roosevelt Hospital, which provides short-term outpatient treatment to the remaining twenty percent of the participants.

These court stakeholders met regularly to review and monitor the first year of implementation, and they continue to do so. When concerns arise, such as the intensity of treatment or the number of eligible defendants, the group works together to understand the issue (often researching it by examining criminal court intake), and develop a response to the problem. From the earliest planning meetings to the monthly oversight meetings, this group has worked with a singular commitment to maintaining the treatment court.

The operations director was hired in May 2000, shortly before the court opened. The planning team developed the court's policy and procedure manual before hiring her. While the oversight committee continued their involvement in court policy, the operations director took over primary responsibility for court administration in accordance with the manual. She reports to the judge on client progress in court. She is

the primary liaison with treatment program staff, supervises court case assessors, and makes referrals for additional services as necessary. The operations director also speaks with the rest of the team and planning group as needed to keep them informed and address concerns.

The case assessors' primary responsibility is to interview defendants who are eligible for the treatment court according to their arrest charge and their conviction history and who have agreed to enter the court. If the prosecutor determines that a person is eligible, each defendant confers with his or her attorney and decides whether to plead guilty into the court at arraignment. (Defendants may also plead guilty but decide not to enter the treatment court). The interview is a detailed questionnaire about each defendant's background, experience and current circumstances. When the case assessors establish a need for treatment, they forward the assessment to the appropriate provider. This interview process does not involve any placement decisions, other than to confirm or refute the defendant's need for treatment. Instead, it is intended to provide sufficient background information to help the treatment providers deliver their services.

The case assessors meet with defendants immediately after they plead into the Manhattan Misdemeanor Treatment Court. They explain the court to new participants, give them an orientation packet, and answer any questions. Finally, they instruct defendants to go to the treatment programs that afternoon (for defendants who plead in the morning) or the next business day, and explain that the programs will monitor their attendance. The case assessors speak with the treatment programs daily to monitor participants' attendance.

The treatment court judge is a criminal court judge who continues to hear cases in the misdemeanor drug and alcohol courtroom. He is the third judge to work with the misdemeanor treatment court, and the second to preside over the functioning court. The first judge is also the judge in the felony treatment court, and was the original judge involved in planning the treatment court. Early in the planning process, she realized her caseload in the felony court was too substantial to allow her to act as judge in the misdemeanor treatment court. The second judge was a part of the treatment court team for the first six months of court operation; he resigned when he was appointed to the federal judiciary.

Since beginning in early 2001, the judge has operated the misdemeanor treatment court on a part-time basis within a courtroom devoted to substance abuse cases. The judge continues to hear non-treatment court cases in the same room, but that court schedule is suspended two days each week so that the Manhattan Misdemeanor Treatment Court can open and hear cases. The judge relies on reports from the treatment providers and the recommendations of the treatment providers and the court operations director in issuing sanctions and in supporting the participant. Unlike felony treatment courts that hold daily meetings to review the progress of participants, the judge in the misdemeanor court is constrained by the limited number of times he will see the defendant. While he says he had to get used to speaking directly to the defendants, the

judge says that he now talks with participants in the courtroom, asks about their experience in the treatment program and tells them what they must do next. Participant reports confirm conclusions from structured observation that the judge combines authority with concern for participants' well being. Due to the high number of non-treatment court cases he must attend to, he moves through progress reports quickly.

The Manhattan District Attorney's Office has maintained an active role in the court since its inception. A paralegal working for the deputy chief of the trial division is responsible for preliminary screening of all drug-related cases for eligibility based on criminal history. The paralegal conducts this on-paper screening prior to case arraignment. An assistant district attorney is available in the arraignment court to discuss the treatment court option with defense attorneys, and to answer defendants' questions about the treatment court's rules after the case is arraigned. Once defendants enter the treatment court, the deputy chief represents the district attorney's position during status hearings, when participants graduate the program, and when people who fail in the treatment court are sentenced. According to both the operations director and the district attorney's office, the prosecutor's presence in court is one of the strongest components of the court's intervention. He reminds participants about the consequences of breaking the rules, but also, and more extraordinarily, the deputy chief is overtly and personally committed to encouraging defendants to remain in treatment.

Court stakeholders and our observation confirm that staff of the Legal Aid Society and the New York County Defender Services continue their involvement in court oversight, by their general availability when a sanction is imposed in the substance abuse courtroom and at oversight meetings. However, as with other treatment courts, neither agency has assigned an attorney to work exclusively on treatment court cases. While several treatment court stakeholders, including the defense, view the lack of a dedicated defense attorney as a problem, the relatively low number of cases makes a dedicated attorney impractical. All stakeholders agree that ideally a defense attorney would be present whenever a participant returns to court, whether for compliance review, sanction, or sentencing.

The Misdemeanor Treatment Court uses two local treatment programs to provide its three tiers of treatment intensity. The overwhelming majority of participants are in Tier 1, a two-day treatment readiness program provided by the Osborne Association. About twenty percent of the participants are in two or three-month outpatient treatment provided by St. Luke's-Roosevelt Hospital. Participants who need more intensive treatment than that provided by the sentence are referred to intensive outpatient or residential programs through the resources of the felony treatment court, however additional treatment is not monitored by the court. The treatment providers work with the court to monitor participants' compliance in treatment. Treatment programs report on attendance and participation to the case assessors and operations director, rather than directly in court. The providers discuss participants' behavior with the court's operations director, and rely on the court to punish infractions and reinforce positive efforts.

One disadvantage cited by all of the stakeholders we interviewed was the lack of a separate courtroom. Originally, planners intended a courtroom that would be devoted to the misdemeanor treatment court and separate office space for screening, drug tests, and counseling. The plans for a separate courtroom have been postponed indefinitely, primarily because the lower than expected intake of the court makes a separate courtroom impractical. While the delay in obtaining space has been disappointing to staff, they also say that it has not inhibited the overall treatment court project.

The county, city, and state administrative judges have all expressed support for the court both in public statements and in interviews. System-wide support for treatment courts is critical if the courts are to continue after federal funding ends. Since its inception, this court's costs have been limited largely to the salaries of the operations director and the case assessors, and to paying for drug testing. All other staff and administrative costs are covered by other court budgets. Treatment costs are covered within the individual treatment programs' budgets, which include a combination of local, state, federal and private sources. According to court administrators, the New York State Unified Court System has allocated funds to continue paying treatment court salaries, and to maintain the court and the coordination this particular team structure requires.

The Misdemeanor Treatment Court Process

Initially, all defendants entering the court were charged with misdemeanor possession of an illegal substance.⁶ In accordance with federal guidelines, the Manhattan Misdemeanor Treatment Court restricts eligibility to people accused of nonviolent offenses. During the planning process the district attorney's office also required that participants could not have been convicted of any felony-level offense in the previous ten years, nor any violent misdemeanor conviction in the previous three years. The District Attorney's office also limited the number of prior arrests to twenty, and specified that defendants could not have any felony or violent misdemeanor charges pending against them. The district attorney's office felt that these restrictions were warranted because it made a significant concession in allowing defendants with multiple misdemeanor convictions into an alternative program such as the court.

As in other treatment courts, charge-related eligibility criteria do not capture all defendants in need of drug abuse treatment. Someone caught possessing drugs might need treatment, but so might someone caught for petty theft. But the targeting criteria do make it easy to identify potential participants who would otherwise be difficult to identify during criminal court arraignments. Here, as in most treatment courts, criminal history serves as a proxy for addiction because the information available to court staff is primarily related to the criminal offense, and does not include the background information necessary to recognize addiction.

⁶ New York State Penal Law 220.03.

Defendants who fall within eligibility criteria are flagged by the district attorney's office prior to arraignment. While the district attorney assesses a case, the defense attorney also begins to handle it. The defense attorney or treatment court staff may approach the DA with a request that a defendant enter the treatment court. While Legal Aid Society attorneys, and increasingly other defense attorneys, are familiar with and accept the treatment court, they may also pursue other plea options and alternatives, including case dismissal or a lesser plea, if such pleas seem possible and appropriate. If the defense attorney or the defendant believes the treatment court is too burdensome or that the defendant is unlikely to succeed in treatment and would receive a higher sanction as a result, the defense may refuse to consider a treatment court plea. However, regardless of whether the defendant enters the treatment court, once a case has been screened eligible for MMTC, the case will be adjourned to the courtroom where MMTC cases are processed, because the treatment court uses the courtroom devoted to drug and alcohol adjournments.

The period before the defendant pleads into the treatment court resembles standard criminal court processing. While both parties have agreed to general eligibility criteria for the treatment court, they may still disagree on individual cases prior to a defendant's plea agreeing to enter the treatment court. Further analysis of all arraigned cases is needed to examine how often the defense opts out of the treatment court partnership. The prosecutor's office appears to place all treatment court-eligible cases in the court. However, more detailed research is needed to determine whether the eligibility requirements remove a significant portion of misdemeanor drug cases from the target pool.

*The MMTC Plea.*⁷ After the district attorney approves a case as eligible, and the defense accepts a treatment court plea, the defendant meets with a case assessor, who conducts a clinical assessment to establish a genuine need for treatment. (Initially case assessors were only available for arraignments during weekdays, but beginning in early 2001, an additional case assessor was hired to work in night court until 9 p.m. on weeknights.) As with other alternative sentences involving drug treatment, planners were concerned that some defendants would feign a need for treatment in order to avoid a criminal conviction and possibly confinement. The interview is a complete psychosocial assessment designed to establish need for treatment. Participants who do not indicate drug addiction are referred back to the court either for sentencing or to renegotiate their plea without the Misdemeanor Treatment Court intervention. The prosecutor's office points out, however, that few participants not in need of treatment are likely to enter the court because it is a more demanding sentence than defendants would receive via traditional case processing.

The assessment interview asks people about their background, including their social and family networks, physical and mental health, drug use, criminal history, educational

⁷ Appendix B provides three flow charts that explain the way the court processes cases.

and vocational experience, and history of physical and mental abuse. The interview also includes a ten-item motivational assessment, and asks participants whether they have particular service needs with which they would like help from the court. The detailed information documented in the assessment is unlikely to be used for most participants in Tier I because they are with the court for only two days. However, the interview could be a valuable reference document for Tier II and Tier III participants. This assessment is also used occasionally by case assessors and the operations director to establish participants' immediate needs for services such as housing, for example. However, without a staff person devoted to addressing participants' needs for services other than drug treatment, the court staff lacks the resources to make full use of the assessment tool.

Court planners expected that the screening and placement process would take place within the same day or by the next business day if a defendant were arraigned in the afternoon. The court's operations director and observation confirm that cases move from arrest to placement in treatment quickly.

Defendants with two or fewer prior arrests enter Tier I, those with three to seven prior arrests enter Tier II, and defendants with eight to twenty arrests enter Tier III. Placement is not affected if none of the arrests led to conviction, nor by the level of the arrest (felony or misdemeanor). According to the Legal Aid Society arraignment supervisor, most defendants would receive community service, and might receive a relatively short jail sentence, if they had many convictions already and were convicted absent the Misdemeanor Treatment Court. He points out that the likelihood of incarceration for most of the cases is so slight that some defendants may regard treatment in the court as more onerous than standard case processing without treatment. In this regard, the court targets defendants who are interested in drug treatment.

Defendants who enter Tier I plead to a count of disorderly conduct, which is a violation, not a crime, in New York. They receive a conditional discharge, and no additional penalty is imposed if the participant completes the two-day program. Participants who enter Tiers II or III plead to both disorderly conduct and criminal possession of a controlled substance. They are told that the more serious charge, possession, will be removed if they successfully complete treatment. Participants in Tiers II and III receive a conditional discharge when they complete treatment.

Participants who fail in Tier I (by not showing up for one or both days of the program) are sentenced to up to 15 days in jail. People who fail in Tier II receive no more than 30 days in jail, or, if the participant has previously served more than 30 days for a prior offence, no more than six months. Tier III participants who fail receive up to 60 days in jail, or up to six months if they previously served 60 days. The prosecutor recommends what he considers an appropriate sentence upon failure, but the judge decides the final sentence. The operations director and prosecutor say that few people who failed in the treatment court were sentenced to more than the 30- or 60-day maximums, but exact data could not be collected for this report.

The Court's Caseload

The court planners projected that the court would admit 400 defendants within its first year. The court succeeded in enrolling 249 people in its first ten months. The target number, which was based on the estimated number of misdemeanor prosecutions annually, might have been optimistic in two respects. First, the total number of misdemeanor cases dropped slightly during the court's first year of operation. Second, the 400-person target may not have included a realistic assessment of the nature of cases handled by the district attorney's office. Eligibility restrictions may have eliminated a larger portion of cases than planners anticipated.

The treatment court team has monitored court intake carefully, and has met regularly to consider options to increase the number of participants. Beginning in March 2001, the court began screening misdemeanor charges of possession of an illegal substance in night court. Between 6 p.m. and 9 p.m. a case assessor was available to advise attorneys about the treatment court plea. Prior to this, night court cases were not accepted into the treatment court. The court discontinued night court screening in early 2002 because too few cases were brought into the court to justify the effort. While the court team hoped that introducing this limited night court availability would increase caseload, they also discussed expanding eligibility based on charge. The defense attorney and other team members expressed interest in expanding eligibility to include offences beyond drug possession; however, the prosecutor's office had resisted these efforts because of public safety concerns. The team eventually agreed to include criminal trespass offences in MMTC eligibility criteria.⁸ The prosecutor would not consider reducing the number of years without a felony conviction from ten to five, nor any of the other eligibility restrictions relating to criminal history.

Participant Characteristics. Table 1 shows select background characteristics of the court's participants in its first year. These data confirm that participants face substantial economic and social challenges. The data in the table also suggest that severity of offending is not tied to severity of addiction in this population, contradicting an assumption held in many court-linked treatment initiatives.

⁸ New York State penal code 140.15 and 140.10

Table 1: Manhattan Misdemeanor Treatment Court Participant Characteristics
July 2000 – May 2001⁹

Participant Characteristic	MMTC Participants (n=188)
<i>Age: Mean</i>	38
Male	60%
<i>Ethnicity</i>	
African-American	44%
Latino	28%
Caucasian	26%
Other	2%
High school diploma or GED	74% (171)
Unemployed at court entry	62% (173)
Married	11% (171)
Receive government assistance	23% (173)
Have children	53% (172)
Ever homeless	33% (174)
History of drug treatment	41% (174)
History of incarceration in family	3% (128)
History of drug use in family	12% (128)
Report chronic physical health problems	39% (175)
Report chronic mental health problems	15% (175)
<i>Drug of Choice</i>	
Cocaine	53%
Heroin	29%
Marijuana	15%
Other	2%

The defendants are primarily African-American and Latino, however a quarter of the participants are Caucasian, a much higher proportion than we found in the felony treatment courts. Forty percent of the sample are women, again, a higher proportion than is typically seen in alternative programs for felony offenders. Participants' average age is 38, making them substantially older than their counterparts in other alternative sentencing

⁹ All data are taken from court data systems created by the project director using intake assessment data. Complete data were not available for all of the 188 participants who entered the court during the first nine months. Where data were only partially available, the total number of respondents is provided in parentheses. This data system will be replaced by the New York State data application for all drug treatment courts.

programs.¹⁰ These differences may reflect the misdemeanor charge level, although further analysis is needed to confirm such a relationship.

Only eleven percent of the court's first-year participants report being married, which is typically viewed as an indicator of stability. Half of the available sample of treatment court participants have at least one child, indicating that the court affects families, not just individual defendants. While nearly three quarters of the sample completed high school or attained a graduate equivalency degree, sixty percent were unemployed when they entered the court. About a third report having been homeless at some point, forty percent say they have chronic physical problems and fifteen percent chronic mental health problems. Taken together, these findings present a complex set of defendant characteristics which include lifetime disadvantage, but a relatively strong educational background.

Fifty-three percent of the first-year participants say cocaine is their drug of choice; twenty nine percent say they use heroin primarily, and only fifteen percent describe marijuana as their primary drug. The data confirm that the Manhattan Misdemeanor Treatment Court accepts defendants who have histories of drug use. The data also show the treatment court team's commitment to accept participants in need of intensive treatment.

The findings on drug use are interesting because they suggest a sizable population of chronic petty drug offenders, for whom serious drug addiction is not correlated with serious criminal offending. A smaller percentage of participants in this misdemeanor treatment court reported marijuana use than in either the Queens County or the Bronx County felony treatment courts. And, notably, larger percentages of the misdemeanor court participants reported using cocaine and heroin than did participants in either the Bronx or Queens felony treatment courts. Yet, unlike the felony courts, the Manhattan Misdemeanor Treatment Court does not require the length of time or intensity of treatment that is widely believed to be necessary to treat addiction.¹¹ The court planners and the treatment team are aware of these limitations and did not expect the court to fully treat participants. However, members of the court team expressed surprise at the severity of addiction among participants, and have struggled to develop responses to participant treatment needs without the benefit of an extended court oversight.

¹⁰ For comparative examples see: Porter, R., Lee, S. & Lutz, M. (2001) *Balancing Punishment and Treatment: Alternatives to Incarceration in New York City*, Vera Institute of Justice; Young, D. (1997) *Retaining Offenders in Mandatory Drug Treatment Programs: The Role of Perceived Legal Pressure*, Vera Institute of Justice.

¹¹ Inciardi, J. A., Martin, S.S., Butzin, C.A., Hooper, R.M., & Harrison, L.D. (1997) An effective model of prison-based treatment for drug-involved offenders. *Journal of Drug Issues*. 27 (2).

Monitoring Participation

The Manhattan Misdemeanor Treatment Court supervises even its most long-term participants for less than six months, and it supervises the majority of its participants for only two days. Within these limited time frames, the court provides limited treatment. Unlike felony courts that provide intensive outpatient or residential treatment and aim to end drug abuse in participants, the misdemeanor court recognizes the limits of what treatment can achieve in two days, twelve sessions, or thirty sessions. The court attempts to introduce participants to treatment, with the hope that they will voluntarily continue after their sentences are completed.

Treatment. Before they enter treatment, participants sign a consent form stating that they understand and will abide by court rules, and that the court and treatment providers may share information about them. Attendance—both in the court and in the treatment program—is required, as is drug testing, and participants are required to be law-abiding. Any physical violence in the court or treatment program is prohibited. Participants are told that breaking the rules will result in sanction. However, the judge and treatment team consistently demonstrate that they will continue to work with individuals who relapse, commit infractions, or do not progress, and that services are not withheld due to failure to comply with program rules while the person remains in the program. Participants are also told that treatment may be suspended if the judge determines that a person has continually failed to abide by court rules.

Typically, the court treats defendants who violate court rules more leniently if they tell the court about the violation, rather than the court finding out from another source. This practice is designed to encourage personal responsibility. Participants in Tier I have one month to complete treatment. The longer time period allows ample time for making up a session in case a participant does not return right away for the second day. A case assessor from the treatment court contacts participants who do not return for the second day, to encourage their compliance. Participants in Tier II have 45 days to complete treatment, and in Tier III participants have 90 days to complete treatment.

Table 2: Manhattan Misdemeanor Treatment Court Treatment Placements
May 2001

Type of Program	Participants	Number of Days of Treatment	Days Permitted to Complete
Treatment Intervention Program	198	2	30
Tier II: Brief Treatment	30	12	45
Tier III: Brief Treatment	21	30	90

It is not uncommon for an offender to test positive for drug use, either at intake or during the course of treatment. The court expects relapse; however, the court and treatment staff respond to positive drug tests with both sanctions and increased supervision. Generally, random testing is considered more effective, but random testing is also more difficult for a program to manage, and a part-time program is even less able to manage a random schedule. The court may refer the participant to more intensive treatment, especially on the treatment provider's recommendation. Either the court or the treatment program may refer a participant to a detoxification program if necessary.

Tier I. Defendants with two or fewer prior arrests enter the Treatment Intervention Program (TIP) operated by the Osborne Association, an established treatment provider based in New York. The program is located a block from the court, and participants are expected to walk to the program immediately after assessment, or the following day if the assessment takes place in the afternoon. A case assessor contacts TIP after each assessment so that the treatment provider will expect court participants. If a participant fails to show up in treatment, a TIP staff person informs the treatment court.

Participants attend the program for two daytime sessions, each composed of acupuncture and groups, and each lasting approximately three hours. The Osborne Association was one of the first providers in New York to incorporate acupuncture into drug treatment. While the literature on the effectiveness of the approach is mixed, the agency believes that acupuncture relaxes participants, and that many people who are addicted to drugs need to calm down in order to address their addiction.¹²

The first day staff introduce participants to the TIP program, inform them about acupuncture, and obtain consent to conduct acupuncture and share information with the court. Staff then treat participants with acupuncture. If participants do not want acupuncture, staff ask them to just sit quietly, and try to relax while the rest of the group receives acupuncture treatment. The second part of the day is devoted to groups. The first group is drug education, and is primarily didactic. The second group is more interactive and introduces participants to relapse prevention skills using a video and discussion. On the second day, participants again receive acupuncture. Then a TIP counselor provides information to groups on health concerns such as HIV, other sexually transmitted diseases, and tuberculosis. The final group session is an interactive discussion about further treatment options.

Treatment staff point out that a two-day session can only introduce the possibility of treatment, but that participants who are interested can voluntarily continue in treatment offered through other Osborne programs or different agencies that collaborate with the court. The court has developed incentives to encourage participants who complete the

¹² E.g. Bullock, M.L., Kiresuk, T.J., Pheley, A.M., Culliton, P.D., & Lenz, S.K. (1999) Auricular acupuncture in the treatment of cocaine abuse: a study of efficacy and dosing. *Journal of Substance Abuse Treatment*. 16 (1); Avants, S.K., Margolin, A., Holford, T.R., & Kosten, T.R. (2000) A randomized control trial of auricular acupuncture for cocaine dependence. *Archives of Internal Medicine*. 160 (15).

program to continue in treatment in the next treatment level. The court agrees to vacate the original sentence and grant an adjournment in contemplation of dismissal (ACD) if Tier I graduates enter and complete Tier II. And if the participant remains law-abiding for six months after completing Tier II, the arrest and conviction are removed from their record.

When participants complete the TIP program, they are asked if they would like to continue drug treatment, but few choose to. All of the members of the treatment court team wanted to make treatment available and appealing to the greatest number of participants, and they have been disappointed that more TIP graduates have not entered Tier II. Participants can also attend vocational and educational classes provided by the Osborne Association or other agencies. But treatment staff estimate that few participants use these services. In both instances, mere access to more social services does not appear to convince treatment court participants to make room in their lives to enroll in new programs.

TIP is for Manhattan Misdemeanor Treatment Court participants only, so groups tend to be small, typically no more than five people. The program is staffed by two counselors, one of whom is licensed to provide acupuncture. The Osborne Association provides administrative and clinical support from its central office. Staff attend training several times annually, and are supervised monthly by the agency's clinical director.

Tiers II & III. Participants with more than two prior arrests enter the Brief Treatment outpatient program at St. Luke's-Roosevelt Hospital in northern Manhattan. In addition to MMTC participants, the program provides services to probationers, parolees, people convicted of DWI offenses, and people placed in treatment by a family court judge. All participants receive the same group services, but Misdemeanor Treatment Court defendants also receive an individual counseling session each week. This individual component was added to the schedule during the court planning process, in response to concerns that group treatment alone would be insufficient. Within the group services, participants are not separated by referring agency.

St. Luke's treatment runs in a continuous 12-week cycle. Each 12-week cycle is made up of three treatment units, and each treatment unit is made up of four group sessions. The first unit focuses on educating participants about addiction and abuse. The second unit requires participants to examine their own behavior and problems. The third unit deals with participants' interaction with their families and communities, and introduces relapse-prevention skills. Participants in Tier III (and others outside of the treatment court) who are required to attend more than 12 sessions attend additional group counseling that focuses on individual behavior and interaction in the community—that is, more of the second and third units. Treatment court participants are encouraged to continue in treatment after they complete the requirements, but few have chosen to do so. This may be because the court does not retain authority to monitor participants in extended treatment, so participants feel less pressure.

While the court sends the St. Luke's program the detailed case assessment completed after the defendant's plea, the treatment program conducts its own additional intake interview, both to obtain more detailed information and to develop a relationship between treatment staff and participants. A licensed caseworker assesses participants at intake using the Addiction Severity Index, a standardized instrument. Caseworkers use the assessment throughout the treatment period to structure individual counseling according to participants' needs. After their assessment, participants are expected to come to the program two or three times each week for group sessions; they must also attend one individual counseling session each week. Groups alternate between lectures and interactive groups, each of which last ninety minutes. Individual counseling sessions typically last 45 minutes. Group size fluctuates, but program administrators report that groups average between ten and fifteen people. Spanish-speaking groups and counselors are available. Each group session involves interactive exercises, and participants are given additional exercises and articles to read for homework. Participants are tested for drug use at least once every week.

In addition to mandatory participation in drug treatment, program participants can use support services on a voluntary basis. Educational and vocational classes are available on site, and additional classes and job training are provided through referrals. In accordance with New York State licensing regulations, St. Luke's assesses all participants' reading and mathematical ability. The program provides on-site nutritional and psychological assessment and assistance as necessary. St. Luke's-Roosevelt also offers other types of drug treatment that MMTC participants and their families may use, including in-patient detoxification, ongoing outpatient treatment, adolescent drug treatment, and halfway house facilities. Finally, medical services are available through the hospital. Payment for all treatment and medical services is typically through Medicaid; if participants are not enrolled in Medicaid, the treatment program will help them apply for assistance.

The program supervisor estimates that treatment court participants are generally more disadvantaged than the rest of the St. Luke's treatment population. When asked how the treatment court clients compare with clients from other referral sources, treatment staff said that treatment court participants are more likely to have physical and mental health problems, longer, more severe histories of addiction and fewer marketable skills. Treatment court participants are more marginalized socially, and more disadvantaged financially than other treatment clients, according to staff. Additionally, treatment staff report that treatment court participants, like all of St. Luke's clients, typically come in to the program with serious family and relationship problems.

The St. Luke's program is staffed by three caseworkers and a supervisor. The program is in a separate building than the hospital, but uses hospital administrative and other staff. All program staff receive training throughout the year. They meet monthly to discuss cases, and each caseworker meets privately with the supervisor every week.

Court Appearances. Participants in Tier I are asked to return to court after completing treatment, but are not sanctioned if they fail to do so. Data on the percent of people who complete Tier I and attend the final court session are incomplete, but would be useful in determining whether participants in the court's lowest level of intervention value the potential of interaction with the treatment court judge, prosecutor and other actors. Participants in Tiers II and III are required to appear in court every week to report to the judge on their progress in treatment. The St. Luke's treatment program provides participant update forms specifying attendance, participation information, and drug test results for every court appearance

According to court documents, interviews, and observation, the treatment court operations director informs the judge about participant progress as each case is called. The operations director and a representative from the district attorney are always present. These briefings are designed to inform the judge about treatment progress and, for defendants in Tiers II and III, provide opportunities for interaction between the judge, the prosecutor, and the participant.

Defendants wait on benches reserved for the treatment court in the drug and alcohol courtroom until their cases are called, and then stand next to the treatment court's operations director at the defense table, some ten feet from the judge's bench. Defense attorneys are rarely present at case adjournments when there is no risk that their clients would face a court imposed sanction. However defense counsel is present at arraignments when defendants agree to enter the treatment court, and for case adjournments when a sanction is to be imposed. The operations director speaks directly to the judge, rarely addressing the defendant, other than to congratulate participants for completing treatment. Then the judge speaks to the defendant, commenting on the progress report, and offering praise or sanction.

The prosecutor welcomed active participation in the treatment court from the court's inception. Generally, the operations director informs the prosecutor about the day's cases, so that he is prepared to speak to each participant. The operations director and other treatment court team members have emphasized the importance of the personal commitment of the district attorney's trial bureau chief. Court observation confirmed that he was the most outgoing member of the treatment court team in courtroom interaction with participants. He congratulates participants who complete treatment or test negative for drug use, emphasizing the importance of individual success to the district attorney's office. If a person struggles in treatment, he offers cautious encouragement such as: "This is a problem you have to deal with on a daily basis." If a person tests positive or fails to attend treatment, the prosecutor tempers his comments and recommended sanction with an effort to support the defendant. He speaks directly to participants, makes eye contact with them, and speaks clearly and loudly so that the entire court can hear his comments. While he generally keeps his comments brief, he includes individual information on a regular basis. For example, in addressing a defendant whose mother had recently died, he congratulated the person for refraining from drug use despite his grief.

The treatment court's operations director and case assessors have extensive contact with participants, from their initial assessments of all participants to updates and drug tests for participants in Tiers II and III. The court offices provide space for the treatment court staff to hold impromptu meetings. Particularly on the two mornings each week that the court holds compliance adjournments, the offices are bustling with activity and conversation between staff and participants waiting to take a drug test and go to court. Staff say they want to help participants complete their treatment sentence, and court and office observation confirm that the operations director and her staff are generally encouraging and supportive with participants. Even when staff are addressing an infraction or a positive drug test, they remind the participant that the court wants to help the person complete treatment and stop using drugs.

Tables 3 and 4 detail the results of courtroom observation during four months in the first year of the court. Each observation was a different compliance adjournment case, not all of which included all possible components. Of the 81 cases observed, a quarter were in Tier I, approximately a third were in Tier II and the remainder were in Tier III. Participants were present for two-thirds of the adjournments, while the remainder of the time cases were called without participants, either to be sentenced to a conditional discharge for participants who completed Tier I, or to issue a warrant or set a new adjournment date for other participants. The sample was equally divided between men and women. Race was not recorded in 27 cases, but of the remaining 54 cases, 57 percent were African American, 11 percent were Latino and 32 percent were white.

Table 3 describes the content and nature of the report the operations director made to the judge on participants' progress during case adjournments. Drug tests were administered and reported on in half the cases (49 of 81), and approximately a third of the drug tests conducted showed drug use.

The operations director reported on both compliance with court and treatment rules, and on participant attitude and behavior. Reports included information on at least one of the content areas in the table unless the participant was not present and the case was adjourned or a warrant was ordered. The majority of reports expressed satisfaction; however, a third of the reports noted concern and twenty percent called for a sanction. Half of the reports resulted in an adjournment, twenty percent were graduation reports and twenty percent resulted in warrants.

Table 3: Observations of MMTC
January - April 2001

Contents of Court Operations Director's Report to Judge	Percent Observed (n=81)
Drug test	82 (49)
Positive drug test	34 (44)
Information included in report:	
Attendance	59 (81)
Infractions	36 (81)
Behavior	5 (81)
Attitude	12 (81)
Progress	44 (81)
Personal/non-clinical issues	16 (81)
Problems	7 (81)
Other	31 (81)
Report expresses:	
Satisfaction	64 (81)
Praise	28 (81)
Concern	35 (81)
Sanction	21 (81)
Interaction between operations director and Participant	15 (53)
Report outcome:	
Adjournment: Update	53 (81)
Stay warrant	4 (81)
Warrant	20 (81)
Graduation	21 (81)
Sanction	3 (81)

Table 4: Observation of MMTC
Comparison of Prosecutor and Judge
January - April 2001

Behavior Towards Participant	Percent observed Prosecutor (n)	Percent observed Judge¹³ (n)
Speaks directly to participant	100 (51)	98 (53)
Makes eye contact with participant	100 (52)	93 (53)
Engages the participant in conversation	40 (52)	93 (54)
Expresses satisfaction with participant's progress	84 (55)	56 (81)
Expresses praise/congratulations	47 (55)	26 (81)
Expresses concern that the participant was headed towards failure	27 (55)	21 (81)
Reminds the participant of sanctions for failure	11 (53)	13 (62)
Encourages the participant to volunteer into the next Tier	69 (13)	24 (17)

Table 4 compares the courtroom behavior of the judge and the prosecutor. While both the judge and the prosecutor interacted with participants, the observation data confirms that the trial bureau chief plays a central role in the courtroom. The two officials differed little in expressing their concern about participants who were doing poorly, but the prosecutor was more likely to overtly encourage participants who complied with court rules, and who graduated from the court. These differences confirm statements made by the judge and the bureau chief in interviews about their respective levels of comfort with the alternate structure of the treatment court.

Sanctions and Rewards. Because of its shortened time frame, the Manhattan Misdemeanor Treatment Court makes limited use of sanctions and rewards. Participants in Tier I receive little in either regard: if they do not attend treatment the court issues a warrant and if they return they will be sanctioned or, if they have repeatedly failed to comply with the mandate to attend treatment, they fail in the court and are sentenced. Tier I participants who complete treatment receive a certificate in court if they return to receive it. In Tier II and Tier III the court uses a system of sanctions for specific infractions, broken down by level of severity. Repeat infractions are punished more harshly than first infractions.

¹³ Two judges served during the time period in which these observations were conducted, however about 80 percent of these observations were conducted when the current judge was presiding.

The court manual establishes sanctions for infractions at three levels of severity and gives the judge discretion over what sanctions to impose. For example, the judge may decide that sitting in the courtroom is less effective than writing an essay, or that a defendant who works should be jailed over a weekend, rather than during the week. The judge said that initially he was reluctant to use short-term jail stays as a sanction because of the inherent severity of any incarceration. But he became more willing to use jail as he became more comfortable speaking directly to defendants, and could explain to them why he was using jail as a sanction. The prosecutor reported his preference for more frequent use of jail as a sanction. Discussion between the two, and with the rest of the court team, has led to a compromise that the team as a whole accepts.

Table 5: Treatment Court Sanctions and Rewards

Behavior	Possible Court Action
Infraction	Sanctions
<i>Tier I</i>	
Fail to enter or complete treatment	Violation of conditional discharge, issue warrant: jail alternative up to 15 days
<i>Tier II and Tier III</i>	
Arrest for a new offense	Termination from the court or jail remand
Positive final drug test	Termination or jail remand; 4 days community service
Absent three times	
3 positive drug tests	Increase drug testing (3/week) Lose compliance time: additional treatment Short jail remand Sit in courtroom
Absent twice	
1-2 positive drug tests	Report to court; Verbal warning; Increase drug testing (2/week); Essay; Sit in courtroom
Absent once	
Accomplishments	Rewards
Complete treatment	Certificate; Praise from judge; Notebook (Tier II); Coin (Tier III)
Compliant for 30 days/60 days	30-Day certificate; 60-Day certificate; Praise from judge

The court's operations director, the judge and observations confirm that the judge uses traditional sanctions, such as increased supervision and jail, as well as the newer,

symbolic sanctions associated with drug courts such as essays and sitting in the courtroom to observe proceedings. The court has also embraced several of the drug court rewards developed to reinforce participant's good behavior. These rewards, such as judicial praise, certificates of achievement, and small gifts, are symbolic gestures from the court to support participant effort. In keeping with the treatment court model, the court stakeholders believe that swift and clear responses to infractions are critical to affect participant behavior. Both positive and negative incentives may affect participants' behavior and buy-in to the court model, but detailed data are needed to understand how consistently they are applied and whether they have an effect. Notably, these sanctions are used in the minority of the Manhattan Misdemeanor Treatment Court's cases, since most participants enter Tier I and do not have compliance adjournments.

The court addresses participants' behavior at each of their appearances, so the court response to minor infractions or achievements may consist only of the judge's words and tone to the defendant, and his acknowledgement of the treatment program's response to the behavior. Table 5 provides a summary of the treatment court's prescribed responses to participant behavior. Each level of sanction may also include lesser punishments, and all achievements are recognized by the judge. The treatment court team reviews the status of all defendants who break court rules.

The judge retains discretion in responding to participant behavior, but relies on communication with the operations director and the recommendation of the prosecutor as well. Infractions are categorized according to decreasing severity level: A, B or C. Running away from the court and being involuntarily returned is an A-level infraction, and is typically punished with time in jail, which may range from 1 to 4 days. Lesser infractions include positive drug tests, missed appointments, and violations of court rules. Sanctions that are less severe than detention include: sitting in court to observe the rest of the cases; writing an essay on why the infraction was committed; returning to an earlier standing in treatment or a higher level of treatment supervision; and submitting to more frequent drug testing. The complete list of the court's sanctions and infractions appears in a table in Appendix C.

Perception of the Court. Table 6 shows participants' perceptions of the treatment court and treatment elements. These data were drawn from anonymous participant interviews conducted during a four-month period in the first half of 2001. Twenty-seven¹⁴ participants were interviewed, of whom 45 percent were women, 55 percent African American and 30 percent white. The average age of respondents was 36. They were roughly equally divided between the three program tiers, and had spent an average of 17 days in the program, ranging from two to ninety days. Responses do not indicate the number of sanctions and rewards participants experienced. Instead, the data show the

¹⁴ These data are a random sample but not one that is representative of the total population because of the small sample size.

overall perceived effectiveness of positive and negative interaction with the court. Participants rated court features using a scale of zero to five, with five indicating the most useful elements. Participants only answered questions that applied to situations they experienced.

Participants appeared in the court for one of three reasons: they appeared for regularly scheduled adjournments to inform the court about their progress in treatment (Tiers II and III only); they were not attending treatment or were otherwise breaking treatment court rules and were brought in either on a warrant or voluntarily; they completed treatment, and came in to receive their completion certificate.

Overall the small sample praised the court. The findings suggest that participants value the court intervention as a whole more than particular components of that

Table 6: Participant Perception of Treatment Court Components
February - June 2001

Court Component	Average Utility Rating: 0-5 (number responding¹⁵)
Treatment Court appearances	4.6 (26)
Attend two days of treatment readiness	4.5 (16)
Threat of sentence upon failure	4.4 (27)
Drug testing	4.2 (26)
Direct interaction with the judge	4.2 (26)
Help with other problems	4.1 (23)
Individual counseling	4.0 (25)
Group sessions about treatment readiness	3.8 (23)
Praise from judge	3.8 (26)
See other defendants praised by judge	3.5 (27)
Develop a treatment plan	3.5 (27)
Listen to lectures about addiction	3.5 (24)
Sanction by the judge	3.4 (23)
Witness other defendants sanctioned	3.3 (27)
Offered opportunity for more treatment	3.2 (19)
See others volunteer into more treatment	3.0 (20)
See others before the judge	2.9 (26)

intervention. Respondents said they valued the careful oversight of the court, rating frequent compliance monitoring (Treatment Court appearances) higher than other components. Threat of failure holds a similar importance, even though participants in the

¹⁵ Twenty-seven participants were interviewed, however not all respondents had experienced each situation.

Misdemeanor Treatment Court are unlikely to receive a long jail sentence as a consequence.

Respondents were relatively less enthusiastic about observing the court or volunteering to enter more treatment. Taken together, these indicators suggest that participants value the drug court intervention – at least to the extent that participants follow the rules in order to complete the court sentence. Such “buy-in” to following rules is a critical step in the long-term goal to reduce offending.

Court Outcomes

Table 7 shows the outcomes of the 249 cases admitted into the Manhattan Misdemeanor Treatment Court in its first ten months. The court admitted three quarters of the cases it hoped to enroll, but surpassed its goal to graduate 50 percent of its participants. A total of 41 cases have failed in the court. In cases where a bench warrant was ordered, the participant failed to appear for treatment and court, but the case is not yet terminated. In the remaining cases, the defendant was sentenced to the jail alternative. Generally, the court will not fail a person who voluntarily returns within a month of the bench warrant order, but those who are rearrested on the warrant will probably fail.

Participants achieved the greatest success in the Tier I TIP program. Eighty-five percent of Tier I participants graduated the court, compared with 40 percent of Tier II participants and only 19 percent of Tier III participants.

Table 7: Manhattan Misdemeanor Treatment Court Outcomes
July 2000- May 2001 *

Outcome Measure	Tier I	Tier II	Tier III	Total
Enter Treatment Court	198	30	21	249 (100)
Active cases	8 (4)	5 (17)	10 (48)	23 (9)
Graduate	169 (85)	12 (40)	4 (19)	185 (74)
Fail or bench warrant	21 (11)	13 (43)	7 (33)	41 (17)

* Number of cases and (percent within Tier). This table does not include voluntary participants in Tier II

The court, and TIP (the court’s Tier I) in particular, has achieved a level of success that is notable in any alternative program, but even more so given the constraints of serving a seriously addicted population in a limited time period. TIP, the treatment readiness intervention that accounts for most of the court’s participants, achieved its completion rate without many of the traditional components of a treatment court such as a dedicated courtroom, and regular use of sanctions and rewards. However, the treatment court’s success is primarily with the lowest level of intervention—the court has a far higher success rate in Tier I than the other tiers. While a large portion of participants in Tiers II and III are still in treatment, the lower graduation and higher failure rates suggest

that the Manhattan Misdemeanor Treatment Court intervention is most effective as an introduction to treatment. Efforts to provide longer interventions may be less compelling to participants either because they decide that avoiding punishment is not worth the relative time cost of attending treatment, or because their addiction is so severe that they cannot maintain a treatment schedule.

Conclusion

The Manhattan Misdemeanor Treatment Court defines its central mission as an effort to break the cycle of drug use and crime. The challenge to the court in fulfilling this mission is that it is bound by the misdemeanor defendants the court targets. Because these defendants committed low-level crimes, the court could not require extensive periods of supervision and treatment. The court hoped that criminal offending and drug addiction were parallel in the lives of its participants, so that the limited intervention of treatment readiness or short-term outpatient care would make a significant difference overall.

The treatment court proved to be a strong success in its ability to retain participants in its lowest level of treatment. While completion results are based on a small sample, and are not sufficient to provide a conclusive understanding, they suggest that the treatment intervention is more successful as a brief introduction to treatment, rather than an entry into comprehensive treatment. The court successfully implemented a team-based approach to court administration and treatment monitoring. The court team has consistently worked together since the early planning stage to develop, assess, and rework each component of the treatment court. Members of the team are clear in their commitment to the court and to cooperating with each other.

The Manhattan Misdemeanor Treatment Court faced several challenges in implementing the drug court model for a low-level offender population. These challenges provide important lessons for drug court practitioners.

- The court struggled to increase caseload, looking both towards increased screening hours and additional offenses. At the same time, the prosecutor's office insisted that defendants whose offenses it viewed as threats to the public (such as shoplifting) not be accepted into the court. Similarly, that office would not ease restrictions related to participants' criminal history. This tension limits the potential caseload of the treatment court to a small portion of the larger universe of misdemeanor cases. To expand its influence, the treatment court could include other populations likely to have high rates of substance abuse, including shoplifters, other misdemeanor offenders, and drug possession offenders who would be eligible for the court except for previous convictions. By expanding eligibility the Misdemeanor Treatment Court would adhere to its mission by maximizing the number of defendants it serves.

- The court has seen that limiting criminal history does not limit substance abuse. Most participants in the court reported using primarily heroin or cocaine, indicating that the target population has serious treatment needs. In keeping with the treatment court model, the Manhattan Misdemeanor Treatment Court is designed to address substance abuse, but it is unlikely that the court can successfully change established patterns of drug use with such a limited intervention. The court team recognized this problem when the severity of participants' drug use became apparent and has discussed the possibility of creating additional incentives to encourage participants to continue to engage in treatment voluntarily. Court efforts to encourage more treatment reflect the frustration shared by treatment and court staff that participants need more services than the court is intended to provide.
- Voluntary treatment has been underused, with most court participants appreciative of TIP but unwilling to commit to further treatment. Tier II and III entry and retention rates for voluntary participants suggest the difficulty of maintaining misdemeanor clients in longer-term treatment when the court does not have oversight. The limited treatment time available in working with misdemeanor cases may compel the court to adopt a narrower mission. Instead of successfully intervening in a cycle of petty offending and serious drug use, the misdemeanor court may more appropriately serve as an intermediary step in helping criminal offenders examine the consequences of their drug use.
- In spite of a possibly narrower role of the drug court, the Manhattan Misdemeanor Treatment Court demonstrates that the drug court model of partnership between court and treatment is feasible. Significantly, the model was implemented in spite of the absence of several components that have come to typify drug courts such as a dedicated courtroom, applause, and an elaborate system of sanctions and rewards. The New York City Criminal Court administration, the Legal Aid Society, the New York County Defender Services, the District Attorney's office, and the two treatment agencies worked together to create the court, develop its operations manual, and oversee its implementation. This cooperation provides the framework for significant revision of the interest and role of the prosecutor's office, flexibility and responsiveness of treatment providers, and engagement of the defense bar in defendant rehabilitation.
- The Manhattan Misdemeanor Treatment Court also challenges outcome measures for drug courts. The court implementation asserts the importance of introducing treatment as a valuable shift in the way the court handles low-level drug offenses—the so-called victimless crimes that cycle through the criminal justice system repeatedly. Outcome research is needed to assess the effect the

court has on retention, re-offending and drug use. But the court demonstrated that key actors in criminal case processing are able to review their positions towards defendants and work together to offer participants respect and support as they address their addiction. This achievement can stand alone without more ambitious and perhaps unreasonable goals such as permanent abstinence, drug-free births, and zero-level reoffending.

Appendix A: Key Components of a Treatment Court

In 1997 the Drug Courts Program Office within the Office of Justice Programs released *Defining Drug Courts: Key Components* based on the experience of treatment courts nationally. In the foreword, the authors state that these elements are not mandatory, but are areas that are important in establishing a successful treatment court. The table below lists the ten components specified in that document in the first column. The second column compares the Manhattan Misdemeanor Treatment Court to the national recommendation, and the third column shows additional work necessary to develop the court in keeping with the national recommendations.

Key Components of a Treatment Court:
Comparison Between National Recommendations and
the Manhattan Misdemeanor Treatment Court

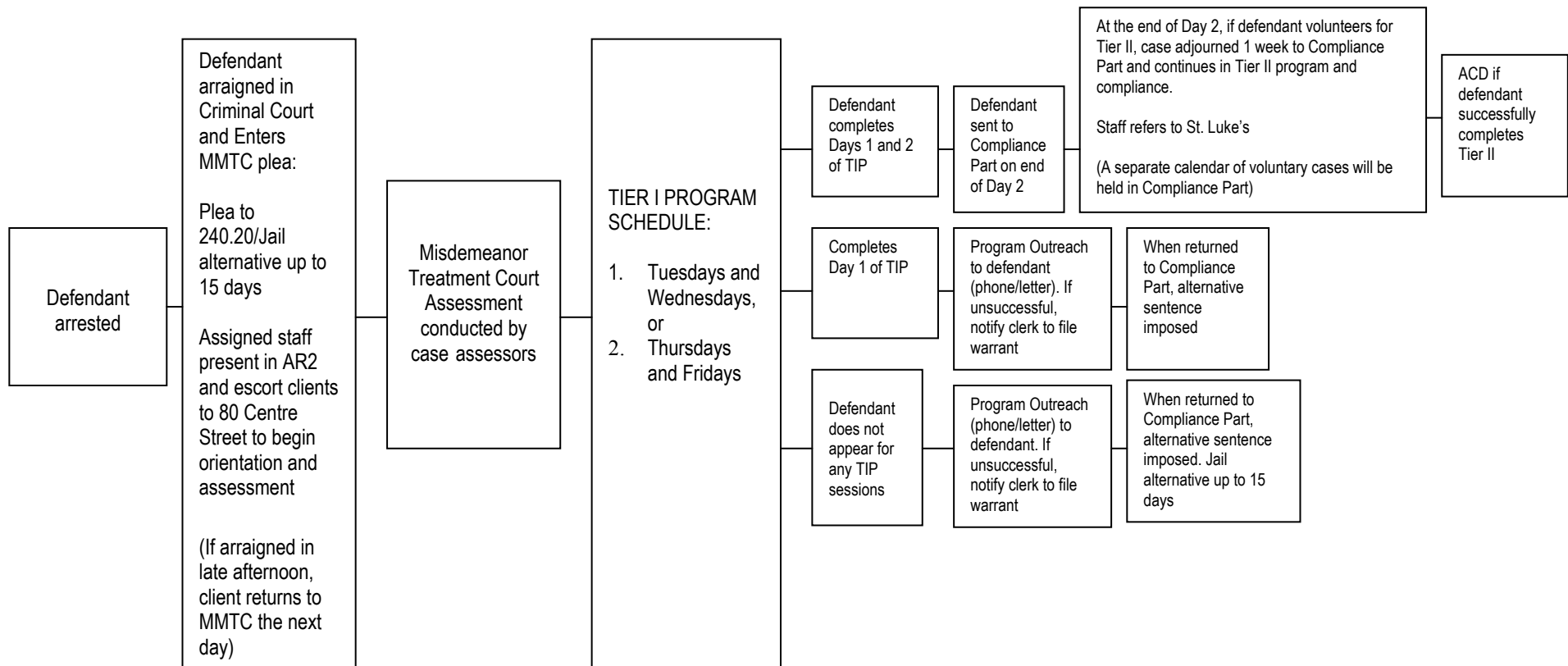
Office of Justice Programs Key Component	MMTC Indicator	Areas to Develop
1. Integrate drug treatment with judicial case processing.	All cases enter court as misdemeanor cases and are mandated into drug treatment.	
2. Nonadversarial approach to protect public safety and due process.	Once a case is in the court the defense and prosecution cooperate. Prior to entry, roles are more traditional.	Assess number of cases screened that do not enter the court and why. Assess reoffending and likely sentence absent MMTC.
3. Early identification and placement in treatment of participants.	Assessment same day as plea. Placement intended to begin next day, with immediate follow-up for no-shows.	Analyze dates of arraignment and treatment entry to definitively measure time for case processing.
4. Access to a continuum of treatment and related services.	Court uses two treatment options. More intensive treatment is available on a voluntary basis only.	Consider and clarify level of coercion and treatment opportunities to include in court mission.
5. Frequent drug testing of participants to monitor abstinence.	Majority of participants tested once. Tiers II and III participants tested weekly in program and again at each adjournment.	

Office of Justice Programs Key Component	Bronx Treatment Court Indicator	Areas to Develop
6. Coordinated response to participant behavior to monitor compliance.	Court has a sanction and incentives protocol for participants in Tiers II and III. Court team agreed on and discusses protocol.	Record and analyze court response to participant behavior to assess systematic and consistent use of sanctions and incentives.
7. Ongoing interaction between judge and participant.	Judge and prosecutor speak briefly and directly to participant at court appearances. Arraignment judges are not part of treatment court.	Separate courtroom would enhance interaction between treatment court actors and participants. Train and incorporate arraignment judges with treatment court model.
8. Monitoring and evaluation of court to assess program success and achievement.	Vera Institute of Justice conducted implementation evaluation. New York State management information system will be installed.	Develop court capacity to manipulate MIS in order to generate information about court operations on a regular basis.
9. Ongoing training and education of stakeholders to benefit planning and operations.	Planning team attended two training sessions. Some court team members have attended national and regional trainings. No ongoing staff training, but staff are permitted to attend outside training and education sessions.	Develop policy specifying type and quantity of training for staff. Set goals for staff training.
10. Partnership between court and other government and community agencies.	Established relationship with New York Unified Court System and limited partnership with New York City Department of Health.	Develop specific goals of outreach. Expand outreach by senior court stakeholders, primarily the judge and operations director.

Appendix B: Manhattan Misdemeanor Treatment Court Flowcharts

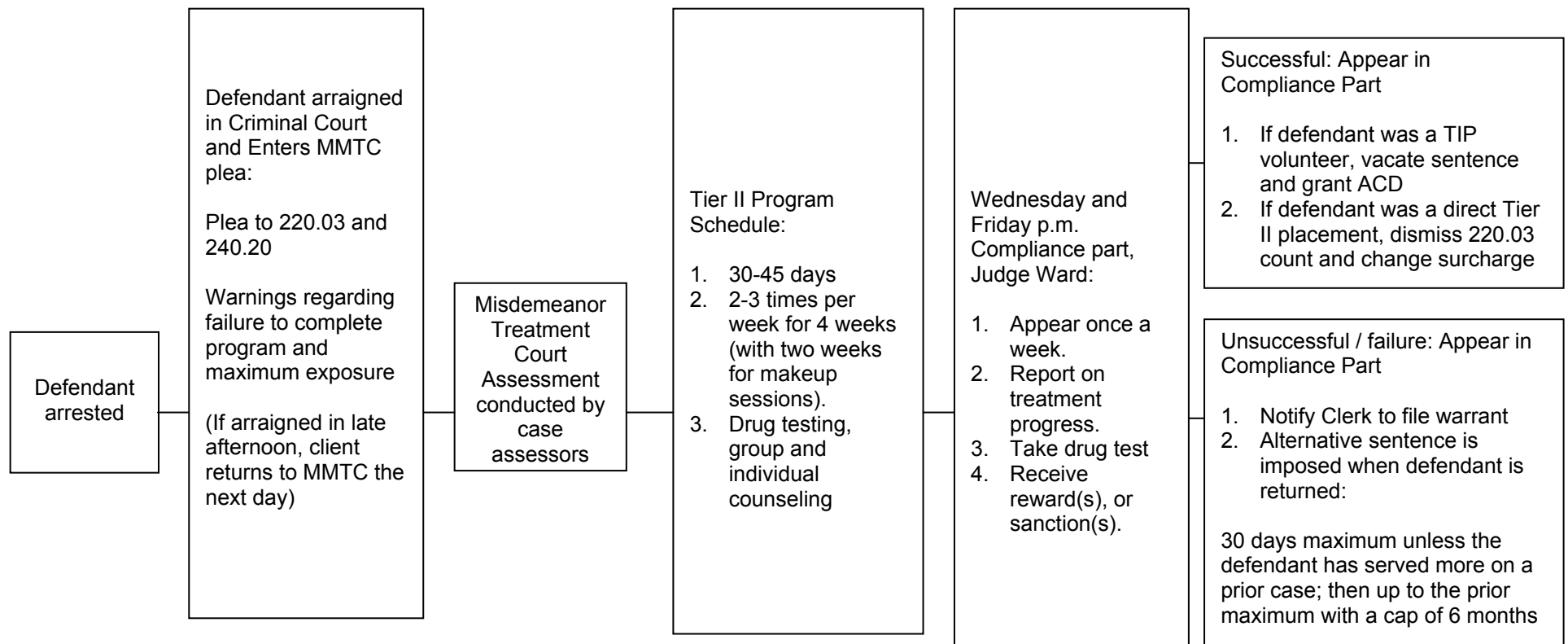
Manhattan Misdemeanor Treatment Court Tier I (TIP)

(Defendants with 0-2 prior arrests)



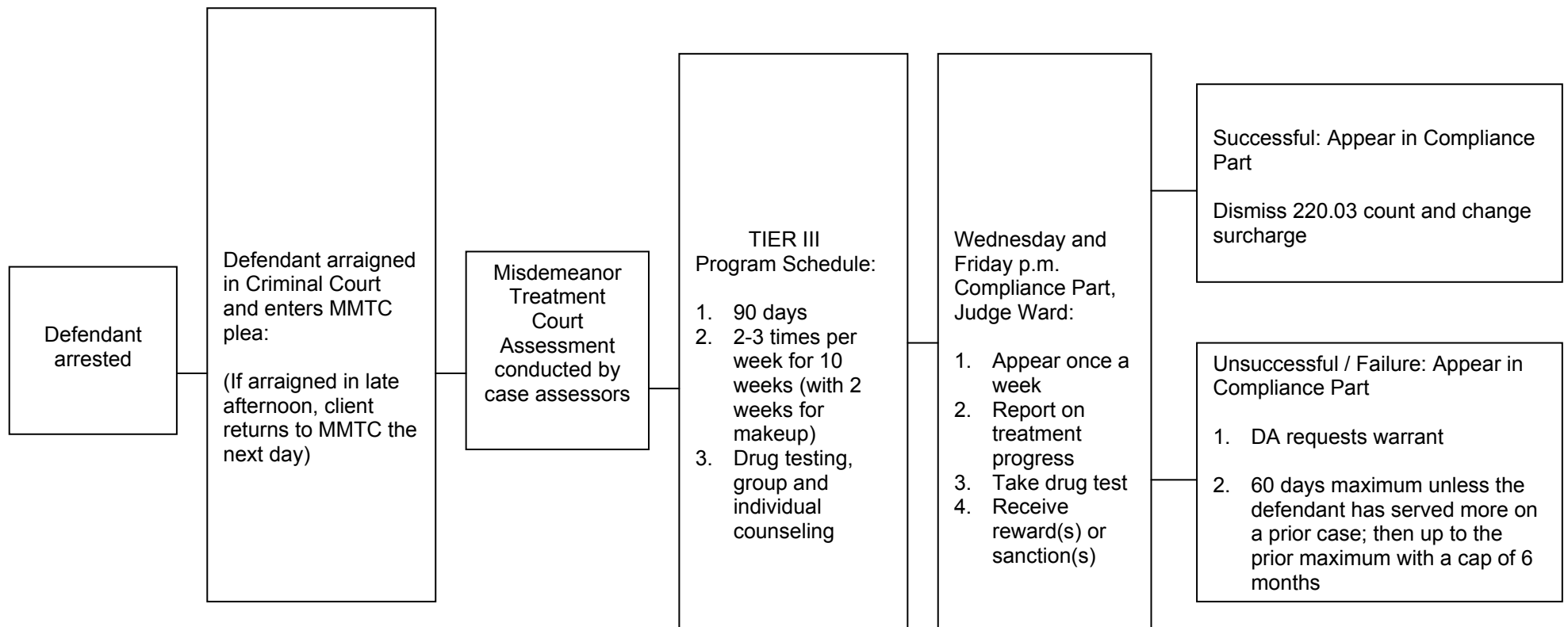
Manhattan Misdemeanor Treatment Court Tier II

(Defendants with 3-7 prior arrests)



Manhattan Misdemeanor Treatment Court Tier III

(Defendants with 8-20 prior arrests)



Appendix C: Manhattan Misdemeanor Treatment Court Infractions and Sanctions by Tier

Tier I

Infraction	Court Imposed Sanctions
<ul style="list-style-type: none"> Does not commence TIP Does not complete TIP 	<ul style="list-style-type: none"> Violation of C.D. filed

Tier II

Infraction	Court Imposed Sanction
<i>Level C* (First 30 days)</i>	
<ul style="list-style-type: none"> 1-2 positive drug tests(s) Missed program day Missed case management visit Missed court appearance 	<ul style="list-style-type: none"> Report to court Verbal warning Increase in drug testing to 2 times each week at MMTC Essay writing Sitting in courtroom
<i>Level B (Within 45 days)</i>	
<ul style="list-style-type: none"> 3 positive drug tests Missed 2 program days Missed 2 court appearances 	<ul style="list-style-type: none"> Increase drug testing to 3 times each week at MMTC Loss of compliance time Sitting in courtroom Short remands
<i>Level A (Within 45 days)</i>	
<ul style="list-style-type: none"> Positive on last drug test Re-arrest on new charge Missed more than 2 program days Missed more than 2 court appearances Missed more than 2 case assessment visits 	<ul style="list-style-type: none"> 4 days of community service Plea stands Jail alternative at judge's discretion
<i>Note: All above refer to infractions without medical documentation</i>	

* Level refers to infraction severity. A is the most severe.

Note: Absences and other infractions that result from medical necessities require documentation.

Tier III

Infractions	Court Imposed Sanctions
<i>Level C* (First 30 days)</i>	
<ul style="list-style-type: none"> • Same as Tier II 	<ul style="list-style-type: none"> • Same As Tier II
<i>Level B (Within 60 days)</i>	
<ul style="list-style-type: none"> • 3 Positive drug tests • Missed 2 days at program • Missed 2 court appearances 	<ul style="list-style-type: none"> • Loss of compliance time • Increase drug testing to 2 times each week at MMTC with additional case management visit • Review progress with treatment provider for Increased services/referral/short remands
<i>Level A (Within 90 days)</i>	
<ul style="list-style-type: none"> • Last 2 drug tests positive • Re-arrest on new charge • Missed more than 2 days at program • Missed more than 2 court appearances 	<ul style="list-style-type: none"> • Plea stands • Jail alternative at judge's discretion

* Level refers to infraction severity. A is the most severe.

Appendix D: Research Methodology

The research for this report was approved by Vera's Institutional Review Board and was planned and conducted between July 1999 and July 2001. This appendix includes and explains the interview instruments and observation guidelines used.

Researchers conducted structured observations of the treatment court examining four domains: treatment report, court actors, court environment, and support services. Research staff spent the equivalent of 25 full days in court over a ten-month period, taking field notes that were transcribed and analyzed, and conducting 81 structured observations that were also analyzed.

We developed an open-ended questionnaire to interview the eight stakeholders: the court's project director, the judge, the deputy chief of the trial division in the district attorney's office, the arraignment supervisor for the New York County Legal Aid Society, the clinical supervisor and the coordinator of the St. Luke's-Roosevelt program, the Manhattan Felony Treatment Court's project director, and the counsel to the Administrative Judge of the New York County Criminal Court. Additionally, research staff met and held regular telephone conversations with most of these actors and attended borough-wide meetings and local and national conferences with members of the treatment court team.

The research staff used data collected by the Manhattan Misdemeanor Treatment Court. Information about defendant eligibility, participant characteristics, criminal charge, treatment programs used, and case outcomes were all collected and recorded by the court staff between July 2000 and May 2001. The treatment court is part of the New York State treatment court management information system, which includes an extensive database on case and participant characteristics. However, that system was not available for this evaluation. As a result, the data presented in this report are taken from the interim records system developed by the court's operations director. Some of these data are reported in Table 1.

While we were restricted in our ability to collect data, the researchers were interested in assessing participants' perceptions of treatment court components. Based on instruments developed by researchers at the Institute of Behavioral Research at Texas Christian University, Vera researchers developed a utility rating instrument. We asked participants to assess how much each component assisted them in complying with court and treatment requirements. A trained intern conducted 27 anonymous interviews with treatment court participants who appeared in the court for a case adjournment between January and May 2001. Defendants were not required by the court to consent to the interviews and received no compensation for participation. Two participants declined to be interviewed.

Finally, research staff observed the TIP and St. Luke's-Roosevelt brief treatment programs, and conducted staff interviews with supervisors and case management staff. These interviews were based on instruments developed by members of the research team in earlier analyses of drug treatment sentencing alternatives. The researchers also benefited from conversations with the treatment providers during the course of the evaluation.