CENTER
FOR
COURT
INNOVATION
A Project of the Fund for the City of New York

RESEARCH

Expanding Access to Drug Court

An Evaluation of Brooklyn's Centralized Drug Screening and Referral Initiative

By Sarah Picard-Fritsche

May 2010

ACKNOWLEDGEMENTS

This report presents an evaluation of the comprehensive screening and referral component of the Screening and Treatment Enhancement Project (STEP), launched by the Brooklyn Criminal Court in January 2003. The author would like to thank the staff and stakeholders of the Brooklyn Criminal Court, the Misdemeanor Brooklyn Treatment Court, and the STEP Felony Drug Court for making this research possible. For both their direct contributions and ongoing support of this research, the author owes particular gratitude to the Honorable Joseph E. Gubbay, Presiding Judge of the STEP Drug Court; Justin Barry, Counsel to Deputy Chief Administrative Judge; Tony Collandreo, Supervising Clerk in the Brooklyn Arraignment Part; and Mia Santiago, Project Director of the MBTC and STEP drug courts. We would also like to thank all of those that participated in interviews for the study, in particular, the Honorable Betty Williams, the Honorable William McGuire, the Honorable Richard Allman, Kings Borough Chief Clerk John Hayes, and Queens Borough Chief Clerk Brian Wynne.

From the Center for Court Innovation, the author would like to thank Michael Rempel and Melissa Labriola for their invaluable support during all phases of the research and editorial contributions to this report. Thanks to Greg Berman, Executive Director of the Center for Court Innovation and Valerie Raine, Director of Drug Court Programs, for their feedback on an earlier draft of the report.

We thank the New York State Division of Criminal Justice Services (DCJS) for providing electronic criminal record files. The authors are solely responsible for the final methodology and results obtained with the DCJS data.

This research was supported by the Bureau of Justice Assistance, Office of Justice Programs of the U.S. Department of Justice. Any opinions and interpretations and are those of the author or, where attributed, the stakeholders and research participants. They do not necessarily represent the official position or policies of the U.S. Department of Justice or the New York State Unified Court System. Please direct all correspondence to Sarah Picard-Fritsche, Senior Research Associate, Center for Court Innovation, 520 8th Avenue, 18th Floor, New York, New York 10016, e-mail: sfritsch@courts.state.ny.us.

TABLE OF CONTENTS

EXECUTIVE SUMMARY

Despite more than a decade of research demonstrating that drug courts and other court-mandated treatment programs are an effective and cost-efficient alternative to incarceration for drug-involved offenders, fewer than 10% of these offenders currently have access to such programs (Taxman, 2006; Bhati, Roman and Chalfin, 2008). The lack of formal screening and referral protocols in many drug courts has been identified as one of the primary barriers to increasing access to treatment for the thousands of offenders in need (National Drug Court Institute, 2008). While the extent of local court initiatives to increase access to court-mandated treatment has not been fully documented, it is believed that the majority of jurisdictions currently rely on the individual discretion of judges, defense attorneys and prosecutors to identify and refer defendants to drug courts. This evaluation examines one local effort to systematize and broaden access to court-mandated treatment, the Screening and Treatment Enhancement Project (STEP), implemented in Brooklyn, New York in 2003.

Brooklyn began offering court-mandated treatment in 1990 with the founding of the District Attorney's Drug Treatment Alternatives-to-Prison (DTAP) program and increased this capacity when the Brooklyn Treatment Court opened in 1996. In 2002, these two programs served almost 300 offenders. STEP was initiated as a pilot project of the Brooklyn Criminal Court in January 2003, with the purpose of greatly expanding access to court-mandated treatment. STEP project planners expanded the criteria for drug court eligibility to include several previously ineligible populations-- chronic misdemeanor offenders, defendants charged with an array of nonviolent property offenses, and young adults aged 16-19. Additionally, the new protocol maintained the court's existing pre-arraignment screening system, wherein all arrestees' case files are reviewed for legal eligibility prior to arraignment, and eligible arraignment case files are flagged for automatic adjournment to drug court for an in-depth clinical assessment. Finally, the project opened two new drug courts: the Misdemeanor Brooklyn Treatment Court and the STEP Drug Court, to ensure the court had the capacity to serve the newly eligible and referred defendants.

This evaluation examines the first four years of the STEP (2003-2006), with a focus on the impact of the enhanced system on the number and types of defendants found eligible, referred to and participating in court-mandated treatment through one of Brooklyn's three drug courts or DTAP. A mixed-method research design was employed which included four specific strategies:

- In-depth interviews with STEP project planners; arraignment court clerks; and judges, prosecutors and defense attorneys working in Brooklyn's arraignment and drug courts;
- A quasi-experimental analysis of drug court and DTAP eligibility, referral, participation, demographics and criminal justice profile data, comparing the two years immediately prior to STEP implementation with the first four years of the project;
- Structured courtroom observation in arraignment and drug courts; and
- Archival analysis of arraignment court calendars.

FINDINGS

Increased Access to Treatment

- *Eligibility*: The first year of STEP implementation saw a dramatic increase in the number of defendants found legally eligible for drug court or DTAP at the pre-arraignment stage, from just over 10,000 in 2002 to more than 20,000 in 2003. The number of eligible defendants increased incrementally each subsequent year, with more than 27,000 defendants found eligible in 2006.
- *Referral*: Referrals also dramatically increased, with the number of referred defendants almost tripling in STEP's first year and an increase of more than 250% per year throughout the post-STEP period. However, the number of defendants referred (averaging 4,230 per year from 2003-2006) represented only 17% of the total eligible pool, suggesting that STEP did not fully achieve the goal of "automatic adjournment" of all legally-eligible defendants to drug court or DTAP.
- *Participation*: The number of drug court or DTAP participants doubled in the year following STEP implementation, increasing by 420 participants across all four programs (from 289 in 2002 to 709 in 2003 and an annual average of 718 between 2003 and 2006). Despite the increased participant volume, 83% of those referred to drug court or DTAP after STEP *did not* become participants due to prosecutorial objection, lack of an eligible addiction, defendant refusal to participate or other reasons.

Path from Arrest to Participation

The process by which eligible defendants are identified and adjourned to drug court for clinical assessment involves multiple transition points (e.g., the transition from arrest to pre-arraignment screening, from screening to arraignment, from arraignment to referral, and from referral to drug court intake). At each point defendants may, for various reasons, be rerouted to a regular criminal court.

- *Pre-arraignment Screening*: We found that the overwhelming majority of eligible defendants are correctly identified during pre-arraignment screening, suggesting this component of the STEP protocol is successful.
- *Arraignment*: The primary consideration leading many defendants (83% of those legally eligible) to be routed away from drug court is judicial discretion at the point of arraignment. Judicial discretion may be influenced by the objection of defense attorneys to a drug court, assessment of risk by the judge, or DTAP referral and by informal prosecutorial policies that conflict with STEP eligibility criteria.
- *Drug Court Assessment*: About one-quarter (26%) of defendants who are routed to the drug court for further assessment are ultimately found ineligible due to the discretion of the drug court prosecutor or (in fewer cases) eligibility errors not detected during pre-arraignment screening. Of the remaining pool of defendants, 15% are found ineligible on clinical grounds (they are either not addicted or found to have a serious mental illness), 44% refuse to participate and 41% do not participate for other reasons. Refusals are especially common among misdemeanants (77% of those not ruled out on legal or prosecutorial grounds) perhaps because misdemeanants are unlikely to face significant jail time under conventional prosecution in Brooklyn.

Defendant Profile

The majority of defendants referred to drug court (or DTAP) post-STEP were African-American males charged with a felony drug possession or sales charge. However, the aggregate profile of referrals diversified post-STEP, and there were significant increases in the representation of certain subgroups, notably property and other non-drug offenders, misdemeanants, defendants over the age of 40, and first-time felony offenders. The trend to heterogeneity in age and charge type observed in the larger referral group was also observed in the participant group. In short, the post-STEP participant group included more non-drug offenders, misdemeanants, offenders over the age of 40 and offenders under the age 20 when compared with the pre-STEP group.

Rapid Adjournment and Placement in Drug Court

- *Arrest to Intake*: The median wait time from arrest to drug court intake following STEP implementation was 2.5 days; this time did not increase from the pre-STEP period despite the considerably higher volume of referrals.This suggests that STEP did not slow down case processing—a significant concern before the project started. However, only 45% of total drug court referrals reached intake within this time frame, suggesting that the project did not reach its goal of referral of *all* eligible defendants within two days.
- *Intake to Participation*: The median wait from intake to drug court participation (i.e., formal enrollment) increased incrementally over the full six-year period studied. By 2006, the median wait time from intake to participation was nine days, up from two days in 2001. This increase may be due in part to increasing participant caseloads over time.

CONCLUSION

This study demonstrates that the STEP project has been successful in terms of increasing the numbers of defendants found eligible, referred to and participating in court-mandated treatment. Moreover, several of our findings suggest that the universal pre-arraignment screening and "automatic adjournment" of legally eligible defendants has effectively systematized referral to drug court in Brooklyn's Criminal Court (i.e., defendants are referred according to protocols set out by STEP as opposed to on an informal, case-by-case basis). The demographic and criminal justice profile of both referred and participating defendants remained similar to that found in the two years prior to STEP implementation. But the proportion of non-drug offenders and misdemeanants represented in both groups increased substantially, in keeping with STEP's expanded eligibility criteria. The increase in drug court referrals and participants was proportionally low compared to the increased number of legally-eligible defendants.

CHAPTER 1. INTRODUCTION

As in many U.S. cities, rates of drug-related arrest and incarceration in New York City spiked beginning in the mid-1980s, reflecting both a response by local law enforcement to the city's burgeoning crack epidemic (Fullilove, 1998), and a general shift toward "get tough on crime" policies across the country (Mauer, 1999). In a period of only ten years, between 1979 and 1989, the percentage of New York City's arrests in which the most severe charge was a drug crime rose from 9% to 31% (Solomon, 2000). Since 1990, New York City has continued see more than 100,000 drug-related arrests annually (New York State Division of Criminal Justice Services, 2010), and as of 2009 there were more than 5,000 men and women citywide who are in state prisons for drug offenses (State of New York Department of Correctional Services, 2009).

This context of overwhelmed courtrooms and crowded jails and prisons also proved conducive to rapid innovation in the criminal justice system's response to drug-related crime, including adoption of the drug court model, distinguished by its combination of court-ordered drug treatment; ongoing judicial oversight of the treatment process; and a team-based approach to case processing (see National Association of Drug Court Professionals, NADCP, 1997). The first drug court was founded in Miami in 1989 as a direct response to the pressure of overloaded criminal dockets (McCoy, 2003). Within five years, there were over forty drug courts nationwide and federal legislation allowed for the funding of drug courts as part of the Violent Crime Act of 1994 (Government Accountability Office, GAO, 2005). Sustained funding through federal and state governments, as well as widespread political support, resulted in the establishment of more than 1,100 adult drug courts and nearly 800 family and juvenile drug courts by the end of 2007 (Huddleston et al., 2008). While the earliest drug courts were established in large urban areas, there are currently drug courts serving a range of urban, suburban and rural communities in all fifty states as well as Guam and Puerto Rico.

Evaluation research has found the drug court model to be successful, as measured both by decreased recidivism among participants when compared to matched comparison groups (e.g., see Shaffer, 2006; Wilson, Mitchell, and Mackenzie, 2006) and from the experience-based perspective of program stakeholders such as judges, attorneys, program administrators and participants (e.g., see Cissner and Farole, 2006; Farole et al., 2005; and Goldkamp, White and Robinson, 2002). This success has sparked interest among researchers and practitioners in efforts to "take drug courts to scale," either by integrating drug court components into larger criminal court systems or by substantially increasing the number of defendants served by specialized drug courts (e.g., see Bhati et al., 2008; Farole, 2009; Katz, 2009).

This report evaluates one such effort to expand the reach of drug courts, piloted by the Brooklyn Criminal Court in 2003. Known as the Screening and Treatment Enhancement Project ("STEP"), the project seeks to implement a formal, countywide protocol for screening and referring criminal cases for possible court-ordered treatment. The evaluation examines the impact of the protocol on the number and type of defendants found eligible for, referred to, and participating in court-ordered treatment, including Brooklyn's three drug courts and the District Attorney's Treatment Alternative Prison (DTAP) project.

CHAPTER 2. LITERATURE REVIEW

There is strong support in academic and program evaluation literature for focusing drug treatment resources on criminal justice populations. Drug abuse and dependence among adults under criminal justice supervision has remained at four times that of the general population for nearing a decade. The Arrestee Drug Abuse Monitoring (ADAM) project measured nationwide substance use at jail intake at 64% and substance dependence at 35% in 2000, and the National Survey on Drug Use and Health (NSDUH) found a similar rate of substance dependence (30%) for adults under parole or probation supervision in 2006 (Zhang, 2003; SAMHSA, 2007). Although a majority of jails and prison facilities have initiated some form of treatment for offenders, providing widespread access remains a challenge for practitioners and administrators in the justice system. According to a recent study, only 10% of offenders gain access to any form of treatment while under criminal justice supervision (Taxman, 2006). For many of these offenders, the "revolving door" of substance use, re-arrest, and re-incarceration remains a reality.

Efforts to provide offenders with drug treatment have generally taken four forms: (1) treatment provided in jail and prison facilities; (2) community-based treatment for parolees or probationers under supervised release; (3) prosecution-run diversion programs; and (4) drug courts. Drug courts offer a range of unique advantages when compared with community and prison-based treatment programs, including: (1) a legal incentive for entering and staying in treatment (incarceration in response to program failure and dismissed or reduced sentences upon graduation); (2) the capacity to monitor offenders under a variety of community-based treatment modalities; and (3) a team-based approach to problem-solving. The majority of drug court impact studies measure success based on rates of re-arrest or re-conviction among drug court participants when compared with rates among drug court eligible offenders that did not become participants. A 2006 meta-analysis identified 55 experimental and quasi-experimental studies of this general type conducted since 1990 (Wilson et al., 2006). Overall, the authors found lower rates of recidivism among drug court participants as opposed to non-participants--evident in 48 of the 55 sites studied. These findings are similar to those made by the Government Accountability Office in 2005 (GAO, 2005); the Center for Court Innovation in 2005 (Cissner and Rempel., 2005); and the National Center on Addiction and Substance Abuse in 2001 (Belenko et al., 2001). Positive results are weakened primarily by methodological flaws identified in many of the studies (see Roman and DeStefano, 2004) and by a lack of longitudinal research demonstrating the long-term effectiveness of drug courts well after program completion.

Additionally, a growing body of evidence shows that drug courts also reduce the overall social and economic costs of the drug-crime relationship (Bhati et al., 2008; Carey et al., 2005; GAO, 2005), for instance by reducing re-incarceration among program participants. As research focusing on drug court outcomes has approached a critical mass over the last decade, researchers have begun to make confident assertions. For example, in a 2003 article researcher Douglas Marlowe wrote "we know that drug courts outperform virtually all other strategies that have been attempted for drug involved offenders…" (Marlowe, 2003).

Despite these benefits, drug courts, like other criminal justice strategies for addressing addiction, have yet to come close to serving the entire potential universe of arrestees in need of drug treatment (ADAM, 2006; Bhati et al., 2008; Taxman, 2006). The issue of access is particularly

dire in urban areas, where of the rate of criminal offenders in need of treatment is significant. For example, a 1998 statewide study of probationers in Illinois found that in Cook County-Illinois' poorest and most urban district-- court-mandated treatment was provided for only 16% of probation-released drug offenders, less than half the average rate of other counties in Illinois (Olsen, 1998). Access to drug courts is dependant on two steps: legal and clinical eligibility. Legal eligibility typically comes first; the broader-based the legal eligibility criteria, the more defendants have access to clinical screening.

Inconsistency in legal screening and referral to drug court has recently been identified by as a barrier to efficiency and quality assurance in drug courts (Huddleston et al., 2006). However, there remains little extant literature on successful screening policies used by criminal courts to determine drug court eligibility. One exception is a 1998 report prepared for the National Office of Justice Programs, which identified 3 discrete phases that make up a comprehensive drug court referral process: legal screening, clinical screening and clinical assessment (Peters et al., 1998). The call for consistent and objective drug court screening has been reinforced by veteran drug treatment researchers at Texas Christian University in the 2008 National Drug Court Institute's Monograph Series *Evidence Based Practice* (Knight, Flynn and Simpson, 2008). Finally, in its 2005 report on Drug Courts, the Government Accountability Office encouraged research to turn from measuring the effectiveness of drug courts towards identifying mechanisms that make drug courts successful, including successful models for fair and broad screening and referral protocols (GAO, 2005).

In short, researchers are being encouraged to begin tracking and analyzing both how drug offenders are screened for and referred to treatment court as well as the characteristics of referred and participating populations. The current study, one of the first to focus on eligibility and screening, explores the challenges of Brooklyn's pilot screening protocol and examines how the system has affected the number and types of referrals and participants in Brooklyn's drug courts and DTAP. These findings may assist in the development of fair, valid and replicable procedures for determining eligibility in drug courts.

CHAPTER 3. EVOLUTION OF DRUG COURTS IN BROOKLYN

In Brooklyn, court-based efforts to link nonviolent drug offenders to treatment began in earnest in 1990 with the founding of *Drug Treatment Alternatives to Prison* (DTAP) program and grew substantially when the *Brooklyn Treatment Court* (BTC) opened its doors in 1996. Treatment alternatives were expanded again in 2003 with the initiation of STEP, which included two new dedicated drug court parts: *Misdemeanor Brooklyn Treatment Court* (MBTC) and a second felony level drug court (*"the STEP Court").* As the courts have evolved, efforts have focused both on expansion of access and revision of the court model to optimize positive outcomes.

Drug Treatment Alternatives to Prison

In 1990, Brooklyn District Attorney Charles Hynes initiated the Drug Treatment Alternatives to Prison program. While not a formal drug court, DTAP incorporated two key components of the drug court model:

1. *Justice System Oversight*: Under the DTAP model, the District Attorney's Office oversaw legal and clinical screening (in part by contracting with clinical social workers and case managers from an outside organization, Treatment Alternatives for Safer Communities, or TASC). Moreover, while DTAP participants received the same treatment as other clients of participating community-based treatment programs, they remained under the jurisdiction of the court system and were given alternative prison sentences if they did not complete mandated treatment (Swern, 2007).
2. *Legal Coercion*: DTAP was designed to employ the "carrot and stick" approach, in which participants forgo a trial and, since 1999, are required to plead guilty to charges before entering treatment, with the awareness that successful completion of the program will result in dropped or reduced charges and failure will result in a prison sentence determined prior to treatment entry (Belenko et al., 2003).

DTAP targeted a high-risk and high-need group: substance-abusing felony offenders with one or more prior felony convictions facing a mandatory prison sentence. Initially, DTAP offered participants deferred prosecution if they agreed to enter a residential treatment program of 18-24 months. During the pilot phase of DTAP, 138 of these offenders entered DTAP and early evaluations of the program showed promising results, with 58% of participants retained in the program after one year. These early results were particularly encouraging when compared with the less than 30% retention rate found by previous evaluations of civil commitment programs (National Institute on Drug Abuse, 1988). Based on its early success and emerging theories of legal coercion, the program was expanded and changed from a deferred prosecution model to a deferred sentencing model in 1999. The DTAP program was evaluated again in 2001 by Columbia University's Center on Addiction and Substance Abuse with similarly encouraging results: Five years following participation, participants in DTAP were 26% less likely to be rearrested when compared with a matched sample of felony offenders that served a prison sentence (Young and Belenko, 2002).

Brooklyn Treatment Court

The first official drug court in New York City and the second to open in New York State, the *Brooklyn Treatment Court* (BTC), was founded in 1996 as a demonstration project co-directed by the New York State Unified Court System and the Center for Court Innovation. The pilot involved implementing a comprehensive drug court model that closely mirrored national "best practices" that were in development at the time of the court's founding (Brooklyn Treatment Court Policy Manuel, 1998; NADCP, 1997):

1. *Dedicated Calendar/Docket*: A specialty docket for drug court cases to support the integration of criminal case processing and drug treatment for participants;
2. *Judicial Monitoring*: Regular court appearances designed to increase judicial interaction and enforce regular drug testing;
3. *Structured Treatment Mandates*: Targeted treatment "bands" and "phases," which determine the length and intensity of treatment and supervision based on the participant's level of need and the seriousness of the criminal charges;
4. *Diverse Treatment Options*: Partnerships with the New York City Department of Health and New York State Human Services Administrations as well as more than 80 local treatment providers offering a wide array of services (i.e., residential programs, outpatient treatment, detoxification, vocational and educational programming);
5. *Incentives and Graduated Sanctions*: A formal, written system of incentives for success in treatment (e.g., completion of phase 1 results in fewer compliance hearings) and sanctions (e.g., higher frequency of judicial compliance hearings or a short term jail sentence);
6. *Monitoring and Evaluation*: Piloting of a centralized information tracking system, which collected detailed health, criminal history, socioeconomic, drug use, and treatment progress information with the purposes of enhancing the court's ability to monitor participant progress and to gauge overall effectiveness.

The Brooklyn Treatment Court expanded court-mandated treatment eligibility for beyond what was previously offered by the DTAP program. Specifically, the court opened access to first-time felony offenders, including a number of participants arrested on felony charges but who ultimately pleaded to misdemeanor charges (Harrell, Roman and Sack, 2001). Expanded eligibility criteria increased the participation of female offenders, and the court responded with special emphasis on the needs of female participants (Brooklyn Treatment Court Policy Manual, 1998). Finally, BTC implemented an enhanced screening system whereby court clerks reviewed arrest files for eligible charges and criminal history and flagged case files for rapid adjournment (typically by the next business day) to the drug court.

During its first five years of operation, BTC enrolled more than 1,000 participants, just under two-thirds of whom were retained for ninety days of treatment and over half of whom completed "phase one" of their mandate (which totaled four months without a positive urine screen or a court sanction). Early evaluation research conducted at BTC examined patterns of retention among the courts' participants (Rempel and DeStefano, 2001 and documented that level of legal coercion predicted program retention (i.e., those facing more incarceration time for failing were more likely to be retained), as did engagement in treatment within 30 days of formal drug court enrollment. The high volume and relatively diverse population of the court allowed researchers

to analyze a variety of other factors that also contribute to retention (e.g., sex, drug of choice, age, criminal history). This knowledge was useful in revising and expanding the drug court model in Brooklyn, as reflected in the two new drug courts opened in 2003 (Harrell et al, 2001; Rempel et al., 2003).

STEP and Misdemeanor Brooklyn Treatment Court

In January 2003, the Brooklyn Criminal Court initiated the Screening and Treatment Enhancement Project (STEP) which involved the opening of two new drug courts, one specifically for chronic misdemeanor offenders (MBTC), and the other to increase existing drug court capacity ("the STEP court"). Under STEP, eligibility criteria were greatly expanded to include felony property offenders as well as "chronic misdemeanants," defendants with an extensive record of misdemeanor convictions (i.e, ten or more convictions). The new felony court was also expanded to include young adult felony offenders between the ages of 16 and 19. Finally, STEP transferred and centralized the judicial supervision of predicate felony offenders participating in DTAP to the STEP court judge, although these participants still followed the original DTAP model, as described earlier in this report.

While not explicitly discussed in STEP's planning or policy documents, expanded eligibility criteria resonated with concurrent trends in the drug court evaluation literature. The inclusion of property offenders, for example, reflected a growing consensus in the academic literature that the relationship between addiction and criminal careers is complex, involving multiple interactions between levels of drug use, drug dealing and property crime. Such research implies that surface criteria such as a current drug charge may be an insufficient indicator of addiction, and that widening the legal net for drug court eligibility might expand and equalize access for those in need (Anglin and Perrochet, 1998; Farrabee et al, 2001). The establishment of MBTC, on the other hand, reflected a separate strain in criminological research which suggests that an extensive "small time" criminal history (e.g., multiple drug possession and misdemeanor property convictions) points to a serious need for intervention (e.g., see Hawkins, Arthur and Catalano, 1995).

Finally, STEP implemented targeted programming for felony offenders under the age of 20 years who had previously been rejected from Brooklyn Treatment Court. Although younger offenders had lower success rates in drug court historically and in BTC in particular (Rempel and DeStefano, 2001), it was believed that specialized programming could prevent long-term addiction and related criminal activity.

STEP UNIVERSAL SCREENING PILOT

Aside from expanding capacity of the borough's drug courts, the STEP pilot also maintained and expanded the BTC pre-arraignment screening model, which involved the review of all arrest reports for drug court eligibility and, ideally, the automatic adjournment of eligible defendants for clinical assessment. Pre-arraignment evaluation of defendants under the STEP model involved a more in-depth examination of arrest reports and criminal histories as well as proper routing of eligible defendants to one of three drug courts or to Brooklyn's DTAP program. See *Appendix A* for a detailed chart of pre-arraignment screening protocols after STEP implementation.

The new screening and referral system hinges on the assumption that most nonviolent defendants arrested in Brooklyn deserve consideration for court-ordered treatment, a reasonable assumption given the large proportion of the borough's overall annual arrests that are made up of drug-related offenses, as discussed in the introduction. Under the new "universal" protocol, with the principal exception of violent offenders, few defendants are excluded based solely on charge, and arraignment court clerks are trained to properly identify and flag all eligible cases. These measures have effectively systematized drug court screening.

On a practical level, the goal of the enhanced screening protocol under STEP is to divert as many legally eligible defendants as possible to a specialized drug court (or DTAP) for clinical assessment. Aside from review of every case file, the screening protocol involves case review at multiple transition points. Arraignment judges and prosecutors are asked to use discretionary restraint and, ideally, eligible candidates are "automatically" adjourned to the appropriate drug court part on the next business day. Prosecutors are also asked not to make plea offers to drug court eligible misdemeanants, although other misdemeanor cases are frequently disposed at arraignment. While this protocol differs primarily in scope from that used for referral to BTC in earlier years, it is relatively rare when compared with most screening protocols in drug courts across the country, which rely heavily on individual discretion.

Shifting Goals and Policies, Brooklyn Drug Courts

The implementation of a universal screening pilot represents a shift in the priorities of Brooklyn's Criminal Court, with a new emphasis on enhancing access to court-ordered treatment. As described by the policy and planning manual published in 2003, the goals of STEP reflect a desire to move the drug court model moving from "specialty courts" to a system integrated into the normal process of criminal case screening:

As articulated by the project planners, the goals of STEP are:

(1) *Universal*: Every defendant arrested should be screened for drug court eligibility. Even-handed justice requires that all defendants be evaluated for eligibility;
(2) *Speed:* Reaching out to defendants during the "crisis" period; allowing clinical staff to use an objective tool, urine toxicology, to assess addiction severity; allowing the court to conserve resources by directing eligible candidates to drug court early in the criminal case filing process;
(3) *Accuracy and Efficiency:* Screening for court monitored substance abuse services that results in all eligible offenders being referred and all ineligible offenders being excluded from the more intense and costly clinical assessment process;
(4) *Integration:* The screening process should be fully integrated into the regular court case processing system; and
(5) *Centralization:* Cases eligible and interested in court-monitored substance abuse should be referred to the treatment court(s) that have the expertise, experience and clinical staff, leaving the regular court parts with more capacity to deal with their remaining caseload.

CHAPTER 4. METHODOLOGY

The current evaluation report presents an analysis of the first three years of STEP implementation (2003-2006). Analyses are based on:

Stakeholder interviews;
Archival analysis of arraignment court calendars;
Arraignment and drug court observations; and
Analyses of combined drug court and state criminal justice data.

ARRAIGNMENT AND DRUG COURT STAFF INTERVIEWS

Over the course of 2007, fifteen in-depth, semi-structured interviews were conducted with criminal court staff identified as having a stake in planning, implementation and/or outcomes of STEP. Initially, three arraignment court clerks were interviewed to understand the hands-on business of drug court screening and any challenges or benefits associated with implementing universal screening. Arraignment court and drug court judges were asked to share their perspectives on the effectiveness of universal screening, its impact on courtroom procedures and case processing, and whether they felt the project improved the court's capacity to offer treatment to drug-involved offenders. Key players, such as criminal court administrators and judges who worked in the Brooklyn Criminal Court prior to 2003, were asked to compare the current screening protocol with processes by which defendants were referred to drug court or community-based treatment prior to implementation. Finally, defense attorneys were asked to discuss defendants' reaction to mandatory adjournment to a drug court part, and whether enhanced screening affected the attorneys' ability to advocate for their clients. Prosecutors were asked if enhanced screening affected their ability to advocate on behalf of the state.

ARCHIVAL DATA

Archival data in the form of ten days of arraignment court calendars, randomly selected over the research period, were collected to test the accuracy of legal screening and adjournment to Brooklyn's three drug parts. In particular, the calendars provided data on where pre-arraignment clerks flagged the case files for adjournment based on their legal eligibility, as well as the actual adjournment status of each defendant as determined by the arraignment judge. These data are used to support qualitative findings concerning where identification and adjournment to drug court.

COMBINED DRUG COURT AND STATE CRIMINAL JUSTICE DATA

Since 1996, drug courts across New York State have used a statewide management information system known as the Universal Treatment Application (UTA), originally developed by the Center for Court Innovation, to track a wide range of information about drug court participants including charges, demographics, medical and criminal history, and progress toward graduation. For the purposes of this report, the UTA provided valuable information on time between arrest and drug court participation, warrants, charges, and reasons for program ineligibility or exit for the whole group of referrals. Brooklyn UTA data were later merged with a larger but less detailed set of data on all arrestees in Brooklyn provided by the New York State Division of Criminal Justice Services for the entire period under study (2001-2006). This allowed for the identification of significant differences between participating, referred and eligible defendants for both the pre- (2001-2002) and post- (2003-2006) STEP periods.

Arraignment and Drug Court Observation

Five visits to the arraignment court were conducted between January 2007 and May 2008. Structured observation data were collected for each case arraigned, including arrest charges, average time of appearance, adjournment part, and adjournment date. In addition, drug court observation was conducted twice for each of Brooklyn's two new drug court parts, the Screening and Treatment Enhancement Part and the Misdemeanor Brooklyn Treatment Court . Attention was paid to the overall flow and structure of the court, in particular attention to first-time drug court participants. For for first-time participants, we recorded the participant's charges, whether or not the participant accepted a plea to enroll in the drug court and, when discussed, why the participant made this choice. This data supplements quantitative data on overall rates of participation among those referred to drug court and reasons for non-participation.

Data Limitations

Prior to implementation of STEP, Brooklyn maintained one drug court part, the Brooklyn Treatment Court and the DTAP program. Mandated treatment through less formal means was also an important alternative for many judges, defense attorneys and prosecutors in Brooklyn's criminal courts (both the lower criminal court and the upper supreme court). Prior to the enhanced screening system, persons in need of treatment were also sometimes identified in the courtroom by attorneys or judges and referred to Treatment Alternatives for Safer Communities (TASC), a national case management agency. Quantitative data concerning the number of defendants that were mandated to treatment through this channel could not be obtained. Therefore, our analysis is limited to comparing the capacity and quality of referrals specifically to drug court and/or DTAP before and after STEP. It should be noted here that the unknown number of defendants mandated to treatment through informal channels could significantly alter the results presented in terms of the relative number of arrestees receiving mandated treatment before and after the implementation of STEP. However, qualitative data sheds important light on the informal referral system and how it compares with today's more organized, rules-based approach.

Evaluation Goals

The purpose of this study is to evaluate the impact of the enhanced screening pilot by comparing drug court referrals and participation data on defendants arrested during the first four years of the pilot (2003-2006) with the two years prior to implementation (2001-2002). Specifically, the report seeks to answer the following questions:

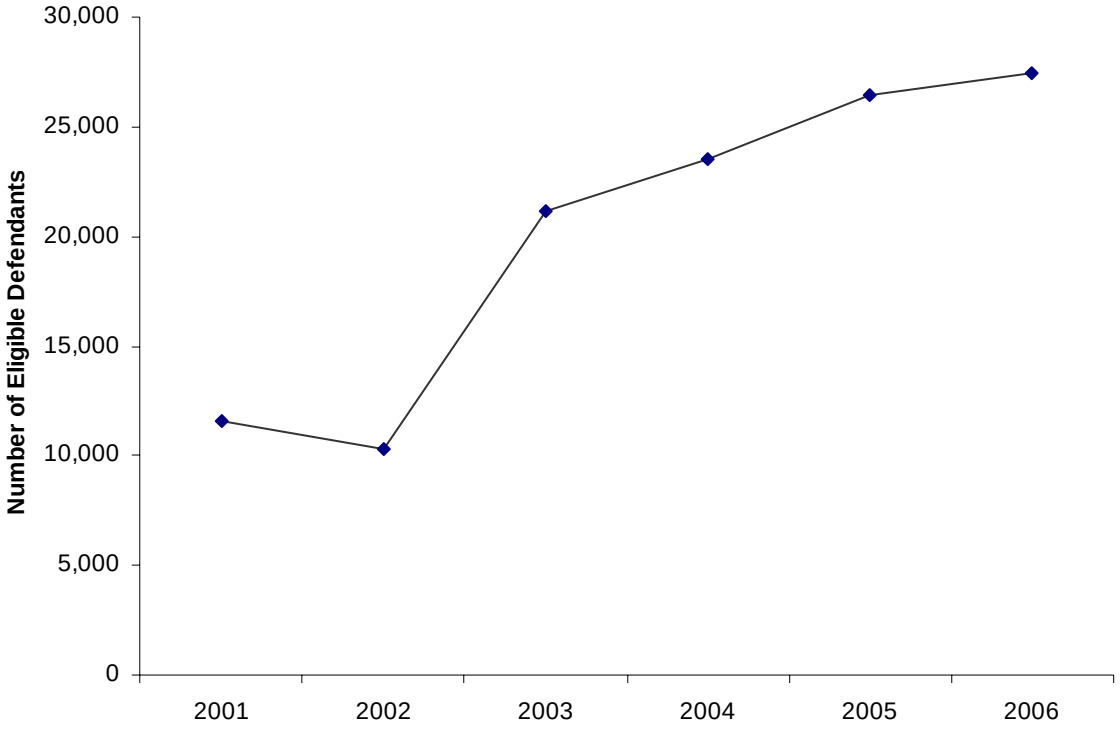
1. Has the system succeeded in accurately identifying and referring eligible defendants to drug court (or DTAP) under the expanded screening and eligibility protocol?
2. To what extent has the pilot increased access to court-ordered treatment for eligible defendants in Brooklyn?
3. Has the system affected the profile of defendants referred to or participating in drug courts (or DTAP)? How?
4. How has the pilot affected wait time from referral to placement for drug court (or DTAP) eligible defendants?

The findings that follow look at each of these questions separately.

CHAPTER 5. FINDINGS: ELIGIBILITY FOR COURT-MANDATED TREATMENT

Findings concerning eligibility show that the broadened criteria set up by the STEP screening protocol successfully expanded both the number and diversity of defendants eligible for drug court and DTAP. Figure 5.1. illustrates the dramatic increase in drug court eligibility triggered by the implementation of STEP. In its first year of operation, the number of eligible candidates more than doubled from the previous year, increasing from 10,314 candidates in 2002 to 21,166 candidates in 2003.

Figure 5.1.Overall Increase in Drug Court Elgibility
Brooklyn Criminal Court (2001--2006)



The STEP protocol expanded the type and severity of charges generally considered eligible for treament. Table 5.1, below, illustrates the increased diversity in eligibility by year. As shown, the percentage of eligible cases that were misdemeanors increased substantially in 2003 (from 34% in 2002 to 54% in 2003) while the distribution of charge type diversified, with the proportion of eligible cases arrested on a drug charge decreasing from 64% to 41% and those arrested on property charges or "other charges" increasing by 10% and 13%, respectively. Although there were modest fluctuations in the proportions of charge type and severity in the subsequent post-STEP years, the basic shift observed in 2003 remains steady across the period.

Table 5.1. Distribution of Drug Court Eligible Cases in Brooklyn Criminal Court by Year, Charge Severity, and Charge Type (2001-2006)

Year	2001	2002	2003	2004	2005	2006	All Years
Number of Eligible Cases	**11,556**	**10,314**	**21,166**	**23,558**	**26,435**	**27,438**	**120,622**
% of Total Eligible Population[1]	**10%**	**9%**	**18%**	**20%**	**22%**	**23%**	**100%**
% of Annual Eligible Population							
Charge Severity							
Felony	67%	66%	46%	46%	48%	50%	51%
Misdemeanor	33%	34%	54%	54%	53%	50%	49%
Charge Type							
Drug Charges	67%	64%	41%	43%	48%	50%	49%
Property Charges	25%	26%	36%	32%	30%	30%	31%
Other Charges	8%	10%	23%	26%	22%	21%	20%

[1]Total Eligible Popoulation refers to all legally eligible defendants arrested in Brooklyn between January 2001 and December 2006

CHAPTER 6. FINDINGS: REFERRAL TO DRUG COURT OR DTAP

While the post-STEP increase in the numbers and diversity of the drug court eligible population can be largely attributed to the expansion of legal criteria to include chronic misdemeanor and more nondrug offenders, without the referral mechanism put in place through the enhanced screening protocol, there would be no guarantee that eligible candidates would ultimately be adjourned to drug court or DTAP. As shown in figure 6.1, Brooklyn indeed saw a dramatic increase in court-mandated treatment referrals between 2002, the last year prior to STEP implementation, and 2003. Referrals continued to increase during subsequent years until leveling off at about 5,000 cases each in 2005 and 2006, well over four times the 1,072 referrals made in 2002.

Figure 6.1. Number of Eligible Defendants Referred To Court Mandated Treatment by Year (2001-2006)

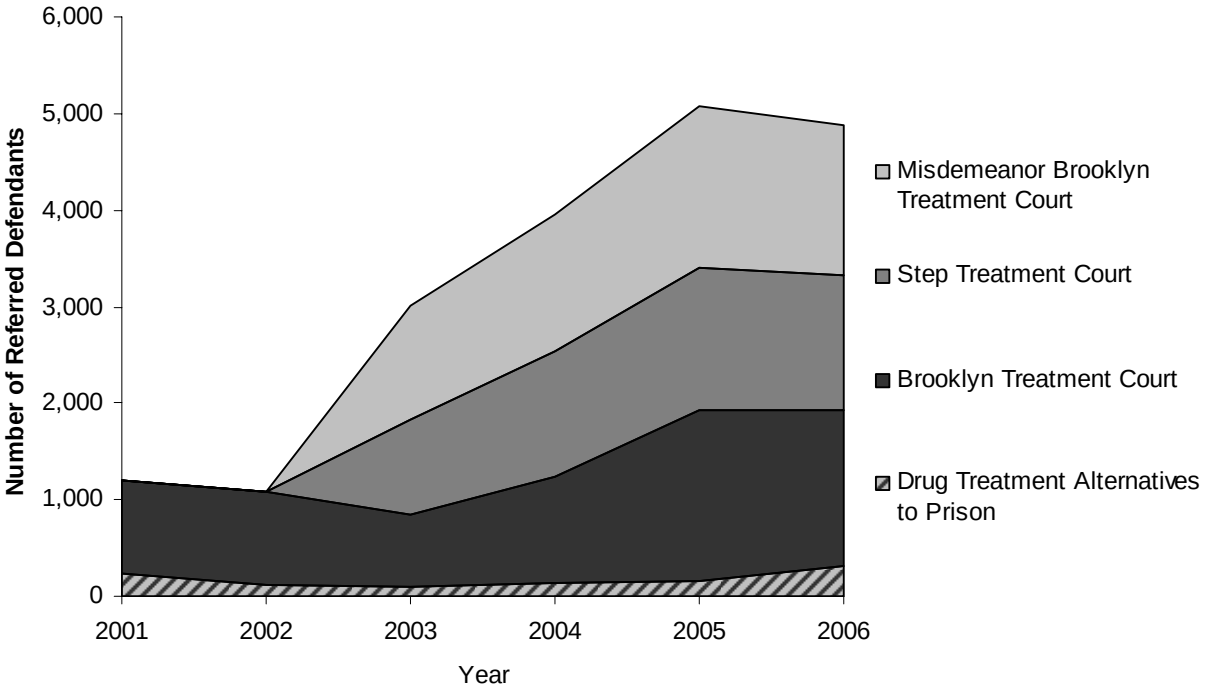
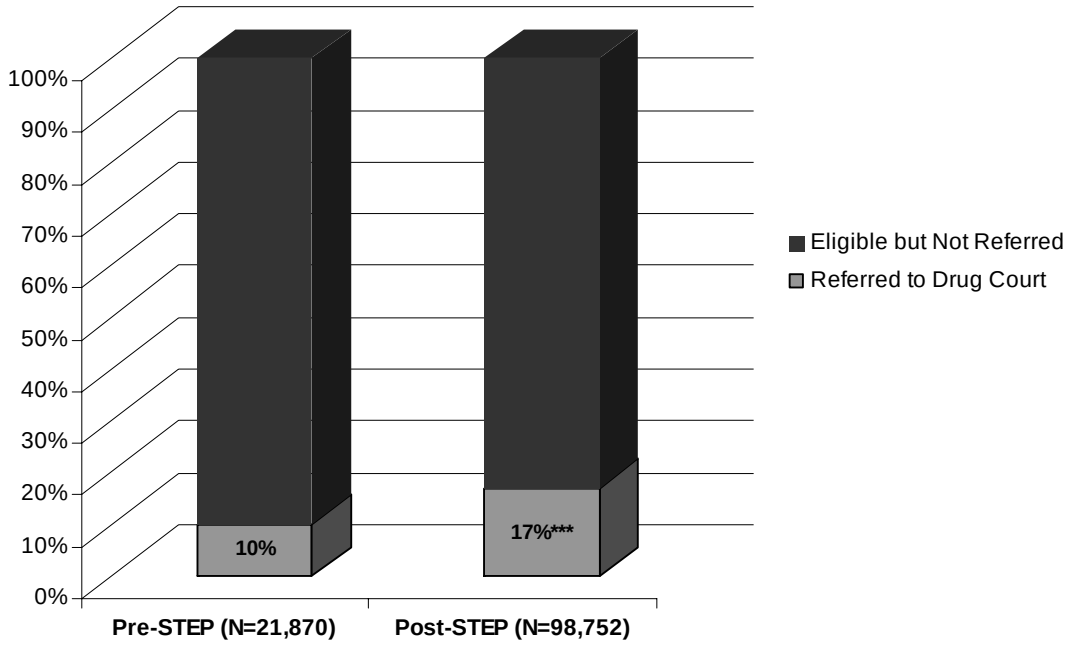


Figure 6.2.Percentage of Legally Eligible Defendants Referred to Drug Court Pre- vs. Post-STEP



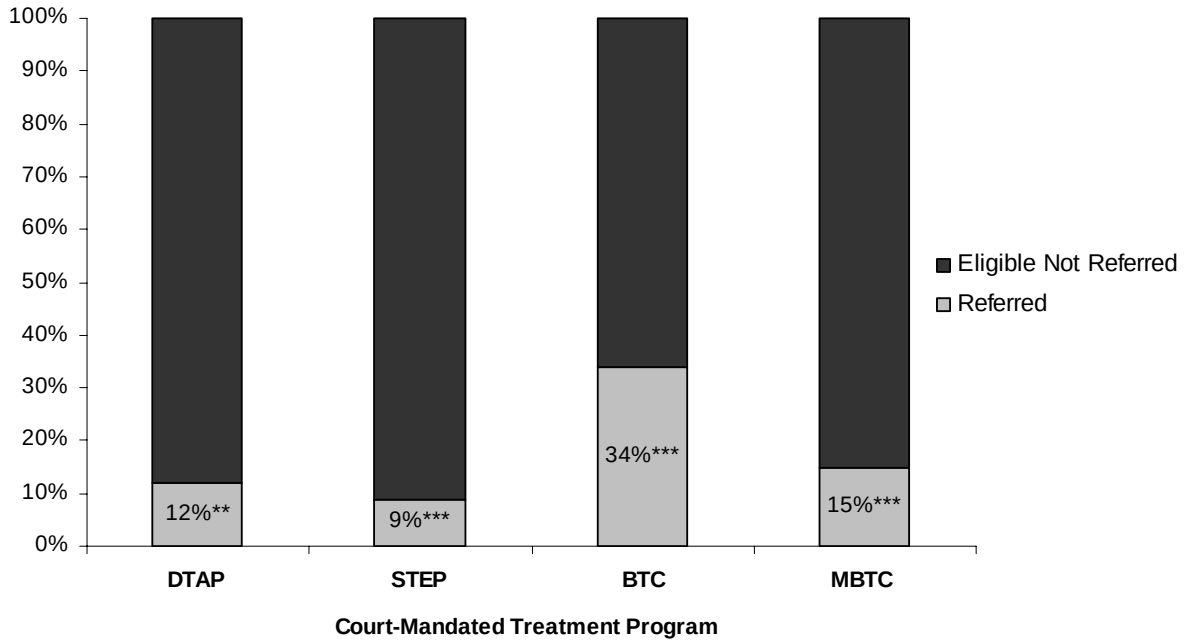
+p<.10 *p<.05 **p<.01 ***p<.001

Figure 6.2 compares drug court referrals during the pre-and post-STEP periods, displayed as a percentage of the total number of eligible candidates. The figure shows that the proportion of legally eligible candidates referred to drug court increased by 70% during the post-STEP period ($p<.001$). The number of legally eligible candidates not referred to drug court, however, is sizeable during both time periods. Indeed, despite a significant increase in referrals following STEP implementation, the majority of legally eligible candidates do not ever receive a full clinical assessment, let alone drug treatment. Specifically, of nearly 100,000 eligible candidates over the four-year post-STEP period, only 16,981 (17%) were ultimately adjourned to be assessed for DTAP or drug courts.

The remainder of this chapter focuses on analyzing the referral process and investigating at which points in the process eligible candidates are most likely to be routed away from drug court. Figure 6.3 presents a breakdown of referral rates among eligible defendants according to the specific court-mandated treatment program for which they were legally eligible (DTAP, STEP Court, Brooklyn Treatment Court or Misdemeanor Brooklyn Treatment Court). The figure represents the post-STEP period only, as our interest here is in identifying whether eligibility for a particular program affected the likelihood of referral after the implementation of the comprehensive screening protocol. As shown, there were significant differences in referral rates across the four programs during the Post-STEP period. Specifically, those defendants eligible for BTC, referred at a rate of 34% over the four-year period, were more than twice as likely to be referred as defendants eligible for DTAP (12%) or MBTC (15%), and more than three times as likely to be referred as those eligible for STEP court (9%). One possible explanation for this

disparity is that arraignment court staff, who were already familiar with protocols for referral to Brooklyn Treatment Court at the time of STEP implementation, were more likely to identify and refer these candidates. The differences may also be related to disparities in referral rates among defendants depending on their charge severity and charge type, an issue discussed in detail later in this chapter.

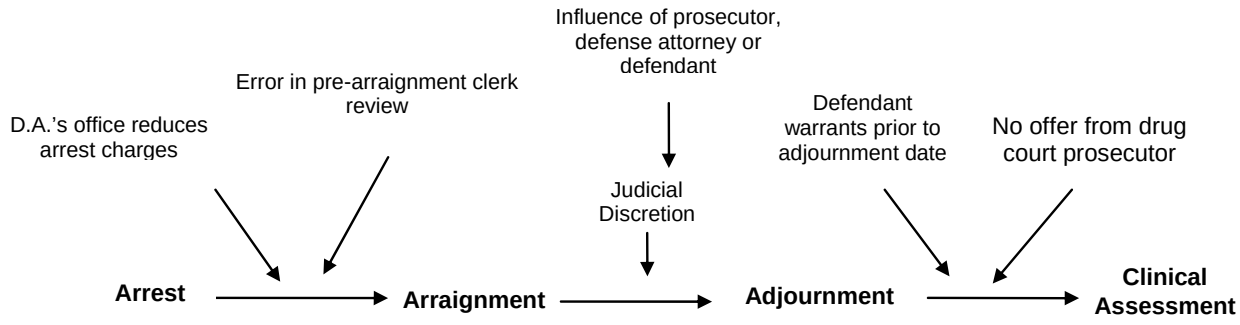
Figure 6.3. Percentage of Eligible Defendants Referred to Drug Court by Program, Post-STEP Only (2003-2006)



+p<.10 *p<.05 **p<.01 ***p<.001
Note: Significance levels based on one-way ANOVA.

A map of the path taken by arrestees from arraignment to adjournment provides a template to analyze points at which arrestees are likely to be diverted from a path to clinical assessment for drug court (Figure 6.4).

Figure 6.4. Diagram of Potential Gaps in the Drug Court Referral Process



As the diagram illustrates, defendants make several transitions from the time of arrest to adjournment, regardless of their drug court eligibility status. Multiple transition points combined with data limitations make it difficult to determine the exact point at which specific numbers of legally eligible defendants are rerouted from the path to clinical assessment. However, archival analysis of arraignment calendars supplemented by interview data provide some reliable clues.. The following sections analyze the potential for re-routing at each transition point in the referral process.

BETWEEN ARREST AND ARRAIGNMENT

Reduced Charges

There is some potential that arrestees with eligible charges at the point of arrest will no longer be eligible at the point of pre-arraignment review due to charge adjustment by the prosecutor's office. If charges are adjusted (e.g., a felony is reduced to a misdemeanor) prior to transferring a case file to the arraignment court, the file will be flagged for drug court referral based on the adjusted ("arraignment") charges. The possibility that charge adjustment is affecting drug court eligibility pre-arraignment was addressed in several interviews with mixed results. In two separate conversations with pre-arraignment clerks, one reported that arraignment and arrest charges are most often the same, while the other reported that the charges are most often different. An interview with a current prosecutor with the STEP court confirmed that charges are subject to change pre-arraignment and that property offenders eligible at arrest may be more likely to have their charges adjusted than drug offenders. This point was reiterated by a defense attorney with experience in arraignment and drug court settings:

> *As defense attorneys, we did sometimes see cases where the prosecutor's office had reduced or otherwise changed the arrest charges. This happened commonly with property offenses, say a burglary charge that is reduced to a misdemeanor trespassing charge. It would be less common in drug cases because there is less police discretion since, for example, five grams of cocaine results in the same specific possession charge all the time.*
>
> *--Former Legal Aid attorney, Brooklyn Criminal Court*

Because the data used for this analysis contained arrest but not arraignment charges, the exact number of candidates whose charges were adjusted between arrest and arraignment could not be ascertained. However, since the interview data suggest that charge adjustments prior to arraignment might be affecting not only the number of legally eligible candidates, but also the type of arrestees found eligible, the issue seemed worthy of further investigation. To obtain a rough estimate of how many defendants might be affected, we conducted a review of almost 150 criminal case files. The review was conducted after the cases were arraigned but prior to adjournment. The cases reviewed represented all the arraignments seen during a single 9-5 shift on a randomly selected weekday. For each case, current arrest charges were compared with arraignment charges to identify any adjustment made prior to arraignment. Of the 134 cases reviewed, only 11 cases (7%) were identified in which arrest and arraignment charges did not match exactly. Of these, none of the charge adjustments affected the eligibility status of the defendant. This analysis would seem to suggest that reduced or adjusted charges are not a substantial source of re-routing from drug court.

Errors in Pre-Arraignment Screening

There may also be one or more errors during the initial (pre-arraignment) screening process, which requires that clerks review an arrestee's criminal history as well as current charges for eligibility. Aside from following the protocol for eligible charges, clerks must also disqualify defendants with any ineligible criminal history factors, most commonly any violent conviction or less than the minimum number of convictions in misdemeanor cases.[1] Despite the relative complexity of the review process, data suggests that this component of the screening protocol runs efficiently with minimal errors.

Identification of all drug court eligible cases that were not "flagged" for adjournment is outside the scope of available data. However, an analysis of those candidates who *are* being adjourned to drug court gives us some idea of the overall accuracy of pre-arraignment screening. It is possible to distinguish those cases that were referred to drug court but unable to participate due to errors in pre-arraignment screening. Of the 16,981 candidates referred to drug court after STEP implementation, 12% had their cases closed due to factors that should have been picked up during pre-arraignment screening (e.g., violent prior convictions or open felony cases). While this is an compared with the average rate during the two years prior to STEP (6%), the difference is not statistically significant. Moreover, pre-arraignment staff who perform case review after the implementation of enhanced screening were able to maintain a low rate of pre-arraignment screening errors despite considerably higher volume.

Some pre-arraignment clerks reported having doubts about the feasibility of the expanded screening system at the point of STEP implementation, but by the time interviews for this study were conducted, most felt confident that the system was running accurately and efficiently. Clerks also reported that the intensified review process is not a significant burden on court staff. The following dialogue occurred during an interview with two of Brooklyn's supervising arraignment clerks:

> ***Q.*** *What was your reaction when you first learned of plans for the enhanced [drug court] screening protocol?*
>
> ***A.*** *My initial reaction was that it was going to be a lot more work. As it turns out, screening takes about at most five minutes…This [enhanced drug court screening] may add about one or two more minutes.*

During the same conversation, both interviewees emphasized that the pre-arraignment flag was understood as a "suggestion" to the arraignment judge, who ultimately makes the final adjournment decision. Although none of the people interviewed for this report disputed that arraignment judges should retain discretion over adjournment decisions, there were a range of opinions on the extent to which "automatic adjournment" gets positive results for defendants. One prosecutor who has worked in Brooklyn's drug courts for five years and is responsible for reviewing eligible cases following adjournment, made a strong case for minimal judicial discretion:

[1] The minimum number of previous convictions for MBTC eligibility has changed twice since the implementation of STEP. First the number was increased from seven to eleven and then later decreased from eleven to ten. (personal communication with pre-arraignment clerk, fall 2007)

I am in favor of automatic adjournment because I would rather see the case and reject it than not see the case. For example, just the other day I saw the case of a man who committed a felony property offense—his first crime in decades. Basically he went into someone's yard and stole some property. On the face it looked like a straightforward case where the charges would probably be reduced. But when the man was referred to drug court, he admitted that he had been clean for 21 years and then had a relapse.
-- Prosecutor, Brooklyn District Attorney's Office

On the other hand, some interviewees felt that automatic adjournment unnecessarily reduces the sensitivity of the referral process:

My understanding is that we are not supposed to use discretion in these cases….my feeling is it's a waste to send someone if they don't want treatment and are not committed…I'm not naïve, I know how hard it is to succeed in treatment even if you are committed to it—but if you never wanted it to begin with you have no chance at all.
--Brooklyn Criminal Court Judge

…the more bureaucratic the court becomes, the less they are able to deal with the subtlety of cases, all cases are different.
-- Defense Attorney, Brooklyn Legal Aid Society

Judicial discretion is clearly a controversial issue for drug court stakeholders. The following paragraphs look at the extent to which judicial discretion is affecting the referral of eligible candidates to drug court and what other courtroom dynamics might be influencing the use of discretion.

BETWEEN ARRAIGNMENT AND ADJOURNMENT

Archival analysis of arraignment court calendars, provided data on whether individual cases were flagged for drug court as well as where the case was ultimately adjourned. In Brooklyn the court schedules between six and eight arraignment calendars per day, with each calendar containing 80-100 cases. Ten calendars were selected for the analysis based on three primary criteria: (1) the calendars were spread out over multiple dates throughout the data collection period (spring 2007-spring 2008); (2) the sample included two weekend calendars; and (3) the same judge did not appear more than once in the sample.

Results suggest that in many cases, defendants are marked on the calendar by clerks as eligible but are not adjourned to the indicated drug court part by arraignment judges. Across all the dates evaluated, of 54 candidates flagged, 21 (39%) were referred to drug court. This overall percentage reflects a wide range of referral rates depending on the specific calendar examined. For instance, on one date in June 2007, two of seven (28%) eligible candidates were referred, while on a similar weekday of the same month, eight out of ten (80%) eligible candidates were referred. This analysis suggests that chances for referral to a drug court part depend both on legally eligible status and the presiding judge on the day of arraignment. It also dovetails with findings from interviews, as presented earlier in this chapter, during which arraignment judges expressed conflicting opinions concerning the use of discretion in drug court eligible cases.

Effect of Objection by Defense Attorney or Defendant

Arraignment court observations led to the finding that it is not uncommon for defense attorneys (or defendants themselves) to object that their clients are not interested in drug treatment. The effect of these objections varies from judge to judge. In one scenario, the arraignment judge announced that the defendant was eligible for BTC, to which the defense objected "your honor, my client is not ready for treatment," and the judge responded by re-routing the defendant to a regular criminal court part. However, in a similar situation in which a chronic misdemeanor offender was flagged for MBTC, the following exchange occurred between the defense attorney and the arraignment judge:

> *Judge: the defendant should be adjourned to MBTC…*
> *Defense: Your Honor, this is my client's first arrest in 12 years, she's been clean for over a decade…*
> *Judge: Well obviously she relapsed! Adjourned to MBTC for Monday…*

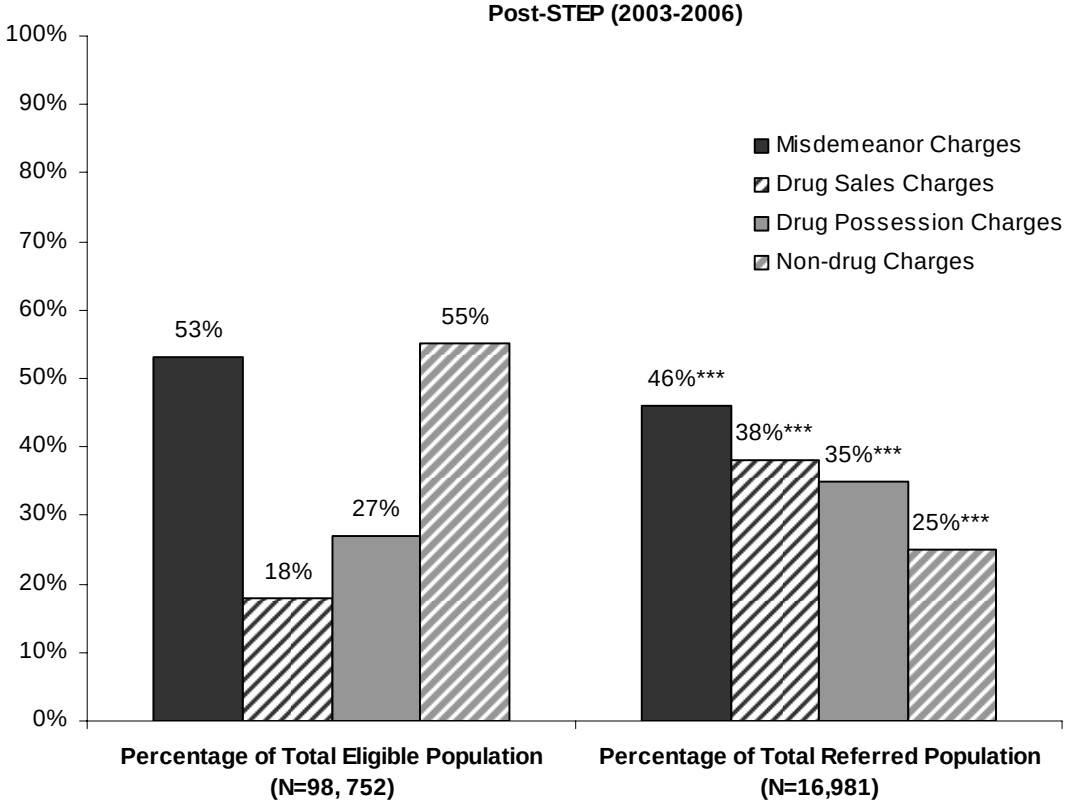
Effect of Informal Prosecutorial Policy

Additionally, there appears to be one or more potential discrepancies between charges deemed eligible by the STEP protocol and those considered eligible by the prosecutor's office. In these cases, the defendant's file would be marked for eligibility but objection to adjournment to the drug court would be made by the prosecutor (or, in some cases, the presiding judge). For instance, forgery charges are considered eligible under the STEP protocol. However, because the prosecutor's office considers forgery a crime potentially related to identity theft, which can carry a mandatory minimum sentence of two years, it is an internal policy not to offer drug court on forgery crimes.[2] Overall, only 2.3% of legally eligible forgery cases were adjourned to drug court since the initiation of the STEP project. Other common reasons that an arraignment prosecutor may block adjournment to drug court include the discovery of concurrent pending charges or outstanding arrest warrants. This is in conflict with STEP policy, which recommends that such discretionary decisions be made not by the arraignment court prosecutor, but by the drug court prosecutor after referral.

It also appears that defendants arrested on non-drug offenses are generally more likely than drug offenders to be routed away from drug court during arraignment. The most common eligible non-drug offenses are property offenses (burglary, nonviolent robbery, grand larceny), followed by forgery, criminal mischief and weapons possession. Taken together, non-drug offenses constitute more than half of all eligible cases after 2003 (55%). However only 28% of those referred for clinical assessment are defendants charged with nondrug offenses. In contrast, defendants charged with drug sales make up only 19% of the drug court eligible population but 38% of the population referred to drug court after STEP. Similarly, defendants with a drug possession charge make up a disproportionate segment of the group referred to drug court when compared with their numbers in the larger eligible group (35% of referred vs. 27% eligible defendants). Finally, eligible misdemeanor defendants make up a moderately smaller proportion of the referred population when compared with their representation in the eligible pool (47% vs. 53%) As figure 6.5. below shows, this discrepancy based on charge is statistically significant in all four of these charge groups ($p<.001$).

[2] Personal communication, prosecutor assigned to Brooklyn arraignment court, January, 2007;

Figure 6.5. Composition of Eligible vs. Referred Populations According to Charge Type, Post-STEP (2003-2006)



p<.10 *p<.05 **p<.01 ***p<.001

In light of earlier findings, it is reasonable to assume that the decision not to refer defendants charged with property or other nondrug offenses is being made at the discretion of the arraignment judge. Qualitative data supports this hypothesis. For example, an interview with an arraignment court judge also pointed to the use of discretion in property offense cases:

> *It really depends on the person. There are people who are legally eligible under the "wider net"… but who have no drug history and it's clear from the arrest report that it's just not drug-related. They are sometimes not good candidates [for referral]…*

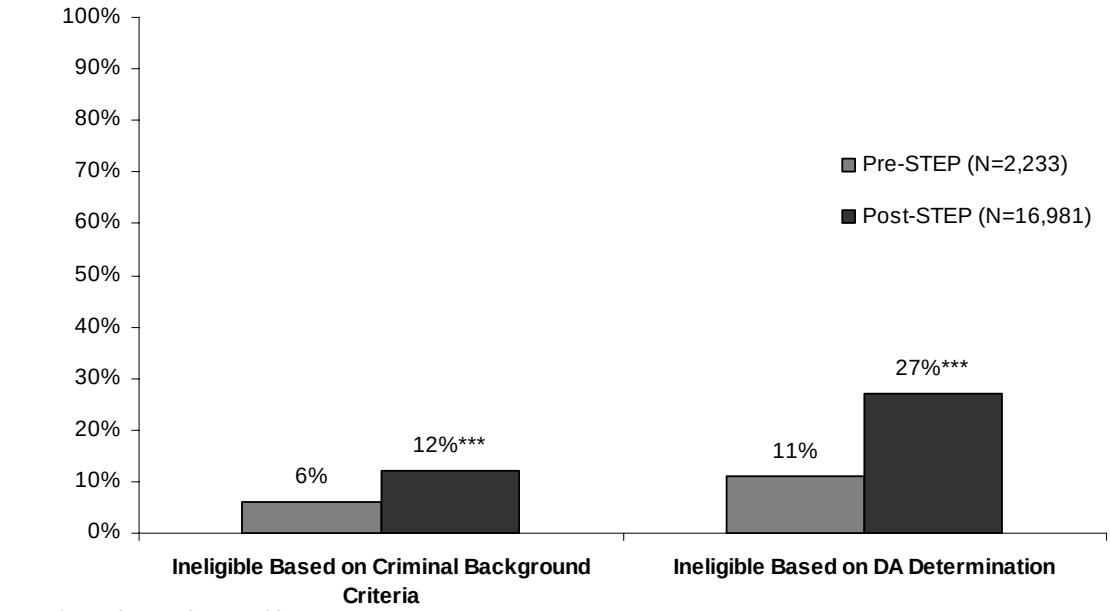
It is unclear whether objection on the part of the defendant or defense attorney is more likely to arise in non drug-related cases and how this may be affecting the adjournment decisions of judges. However, interview and observation data suggest that concerns regarding defendant "motivation" for treatment are being made both by defense attorneys and judges in arraignment court, and that such judgments are moderating the overall success of the automatic adjournment process. During an interview, one arraignment court judge suggested that in the case of certain property offenses, arraignment clerks were not aware that certain classes of robbery (robbery in the 3rd degree) and burglary charges (burglary in the 3rd degree) are eligible for drug court, since most other subclasses of these charges are classified as violent crimes and therefore ineligible. This may account for some property offenders that are not making it to the clinical assessment stage; however, the extent of this potential effect could not be measured by available data.

BETWEEN ADJOURNMENT AND CLINICAL ASSESSMENT

The final transition point for drug court eligible defendants occurs between adjournment and clinical assessment. Once a case is adjourned to drug court or DTAP, there are still several reasons why they might not ultimately receive a full clinical assessment. First, as discussed earlier in this chapter, some cases may be adjourned despite the defendant having one or more criminal background characteristics that are considered ineligible (e.g., a prior violent conviction). In these cases, the defendant was overlooked during pre-arraignment screening but subsequently found ineligible by the drug court-dedicated assistant district attorney (ADA) prior to clinical assessment. Second, the ADA may "veto" the case for legal reasons that are not necessarily part of STEP policy.

As shown in figure 6.6. below, criminal background criteria accounts for 12% of cases re-routed after adjournment to drug court after STEP, whereas ADA veto accounts for 27% of cases referred to drug court but found ineligible before assessment. Review by the ADA is a built-in component of the drug court referral system, both before and after clinical assessment. However, as the figure suggests, both cases ineligible on criminal background criteria and district attorney vetoes have increased following STEP ($p<.001$), suggesting that the wider pool of referral allows in more cases that the prosecutor's office does not consider appropriate for drug court.

Figure 6.6. Referred Defendants found Legally Ineligible Between Adjournment and Clinical Assessment



+p<.10 **p<.05 **p<.01 ***p<.001

Finally, defendants released on bail between arraignment and adjournment to drug court may warrant or "no show" for their first drug court appearance. Data indicates that warranting prior to adjournment is not a significant reason that eligible defendants do not reach clinical assessment in either the pre- or post-STEP periods (less than one percent of all referrals in both cases).

CHAPTER 7. FINDINGS: DRUG COURT AND DTAP PARTICIPATION

As expected, there was a substantial increase in the overall number of drug court participants following STEP implementation. Table 7.1 displays the yearly participant volume by program. As shown, the annual participant volume for drug court and DTAP participants more than doubled during STEP's first year (increasing from 289 in 2002 to 709 in 2003). In the subsequent four years, annual volume hovered around 700 participants combined across all four programs. Although the absolute number of participants increased during the post-STEP period, this volume represented a significantly smaller percentage of the total number of referred defendants when compared with two years prior to STEP. Specifically, 34% of referred defendants became participants during 2001 and 2002, compared with a yield of 17% over the four-year post-STEP period ($p<.001$).

Table 7.1. Annual Participant Volume, Brooklyn Drug Courts and DTAP, 2001-2006

Total Number of Participants=3625	**2001**	**2002**	**2003**	**2004**	**2005**	**2006**
DTAP Program	232	121	86	101	92	97
Brooklyn Treatment Court (BTC)	231	168	188	257	315	369
Step Treatment Court (Step)	--	--	110	98	107	86
Misdemeanor Brooklyn Treatment Court (MBTC)	--	--	325	245	221	176
All Programs	463	289	709	701	735	728

Table 7.2 looks at the reasons that defendants who were referred and not rejected by the dedicated ADA for legal reasons nonetheless did not ultimately become participants. As the table shows, the most commonly cited reasons for non-participation appear to have shifted noticeably since STEP implementation. First, there has been a significant decrease in the percentage of defendants not participating based on clinical assessment results indicating that they are not drug dependent ($p<.001$). This finding is somewhat counterintuitive, as the broader legal eligibility criteria and increased referral rates under the STEP protocol should result in more non-drug dependent candidates being referred. None of the data gathered here provides a discernable reason for this shift. In contrast, the percentage of defendants found clinically eligible but refusing participation increased substantially following STEP implementation. This finding makes intuitive sense based on the assumption that an increased number of legally eligible defendants were "automatically adjourned" during the post-STEP period with the purpose of providing these defendants with a full assessment before allowing them to refuse the option of court-ordered treatment. Finally, a small percentage of referred defendants were unable to participate due to a history of serious mental illness both pre-and post-STEP. There was a statistically significant though moderate increase in this category following STEP implementation.

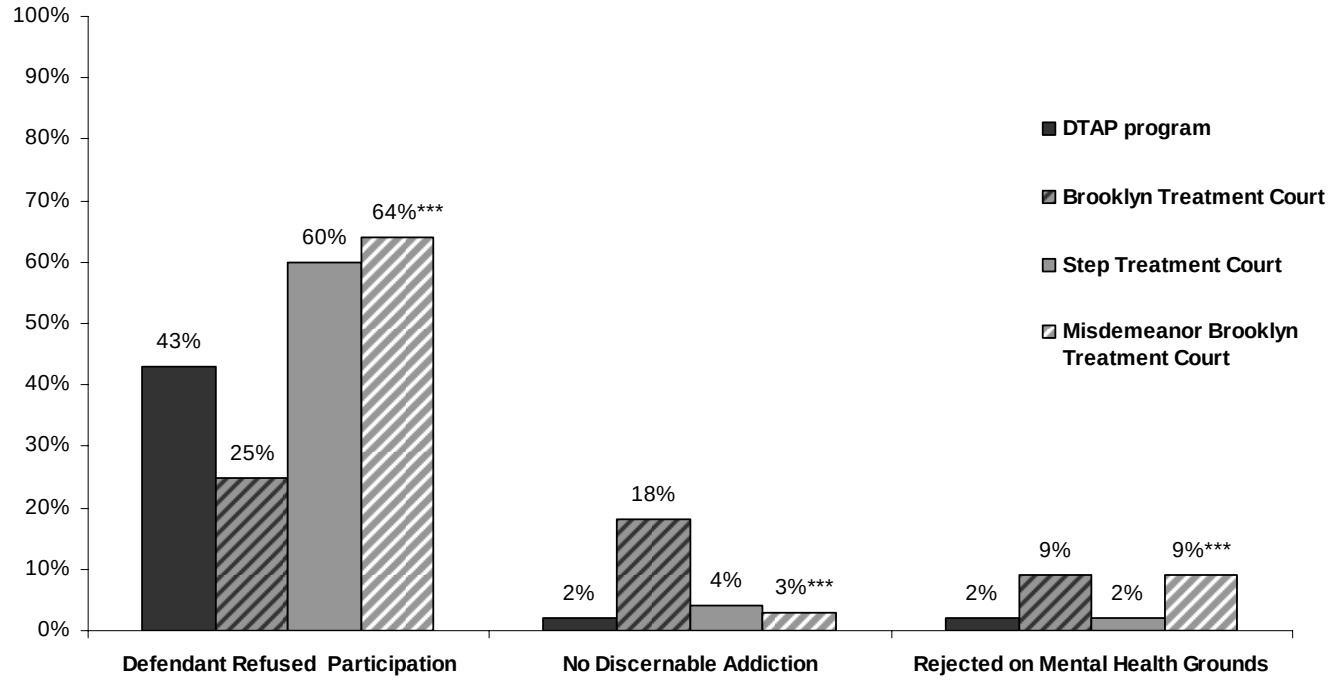
Table 7.2. Reasons for Non-participation among defendants referred to drug court or DTAP and found eligible by the dedicated ADA, pre-STEP vs. post-STEP

	Pre-STEP (2001-2002)	Post-STEP (2003-2006)
Number of Defendants	*1,131*	*8,039*
No Discernable Addiction	44%	8%***
Defendant Refused Participation	9%	44%***
Rejected on Mental Health Grounds	4%	7%***
Other Reason	43%	41%**

+p<.10 *p<.05 **p<.01 ***p<.001

Figure 7.1 further examines the post-STEP shift in reasons for non-participation. The figure compares the prevalence of the major reasons (defendant refusal; no discernable addiction; mental health reasons) in each of the three drug courts and DTAP. As shown, defendant refusal is the most common reason for nonparticipation across all four programs. Beyond that, however, there are some significant differences. For example, defendants referred to MBTC and STEP court were significantly more likely to refuse participation ($p<.001$) than those referred to the Brooklyn Treatment Court or DTAP ($p<.001$). One possible explanation for the higher rate of refusal among MBTC referrals is that non-felony defendants are facing less serious legal consequences and thus do not have as much incentive to agree to drug court participation. This may also be true of first-time felony property offenders in the STEP court. As discussed in Chapter 6, prosecutors may be more willing to reduce charges on property offenses as compared with drug offenses. Beyond that, reasons for the high rate of refusal in the STEP court and MBTC are unclear.

Figure 7.1. Reasons for Non-participation among Referred and Legally Eligible Defendants by Program (Post-STEP only)



+p<.10 *p<.05 **p<.01 ***p<.001

Significance levels based on one-way analyisis of variance which shows statistically significant differences between the four programs in terms of the major reasons that legally-eligible, referred defendants do not ultimately become participants.

As we discovered earlier in our analysis of referral rates among eligible defendants (see figure 6.3), post-STEP trends in the Brooklyn Treatment Court are noticeably different than in the other three programs we examined. As figure 7.1 shows, defendants referred to BTC are substantially more likely to be found not addicted than in the other drug courts or DTAP ($p<.001$). Conversely, defendants referred to BTC are also less likely to refuse participation ($p<.001$). Reasons for this difference are unclear, as all three drug courts should be using the same measure of addiction, which is integrated into the Universal Treatment Application. It may relate to informal policies of Brooklyn Treatment Court or to characteristics of BTC eligible defendants, both of which are beyond the scope of this analysis. Finally, defendants referred to BTC and MBTC both were moderately but significantly more likely to be rejected for mental health reasons than defendants referred to the other two programs ($p<.001$).

CHAPTER 8. FINDINGS: PROFILE OF REFERRED DEFENDANTS

A thorough analysis of the new screening system requires that we investigate not only whether the screening system is working as planned, but also how it is affecting the types of defendants referred to and ultimately participating in drug court (or DTAP). Table 8.1 below provides an aggregate profile of defendants referred to drug court (or DTAP) before and after STEP. To be clear, this table includes *all* referrals, whether or not they were later rejected for participation by the dedicated assistant district attorney, found not to be drug-addicted, refused to participate, were rejected for other reasons, or ultimately enrolled.

Table 8.1. Profile of Defendants Referred to Drug Court or DTAP, Pre- vs. Post-STEP

	Pre-STEP	Post-STEP
N	*2,233*	*16,981*
Sex		
Male	76%	78%
Female	19%	15%***
Both	5%	8%
Race		
Black	55%	62%***
White	9%	13%***
Latino	36%	24%***
Age		
Under 20 Years Old	10%	11%*
20-30 Years Old	40%	28%***
30-40 Years Old	26%	25%**
Over 40 Years Old	24%	36%+
Arrest Charges		
Drug Sales	72%	37%***
Felony Drug Possession	22%	15%***
Misdemeanor Drug Possession	1%	19%***
Property	3%	19%***
Other	2%	7%***
Charge Severity		
Felony	95%	68%***
Misdemeanor	5%	32%***
First-time Felony	46%	29%***

+p<.10 *p<.05 **p<.01 ***p<.001

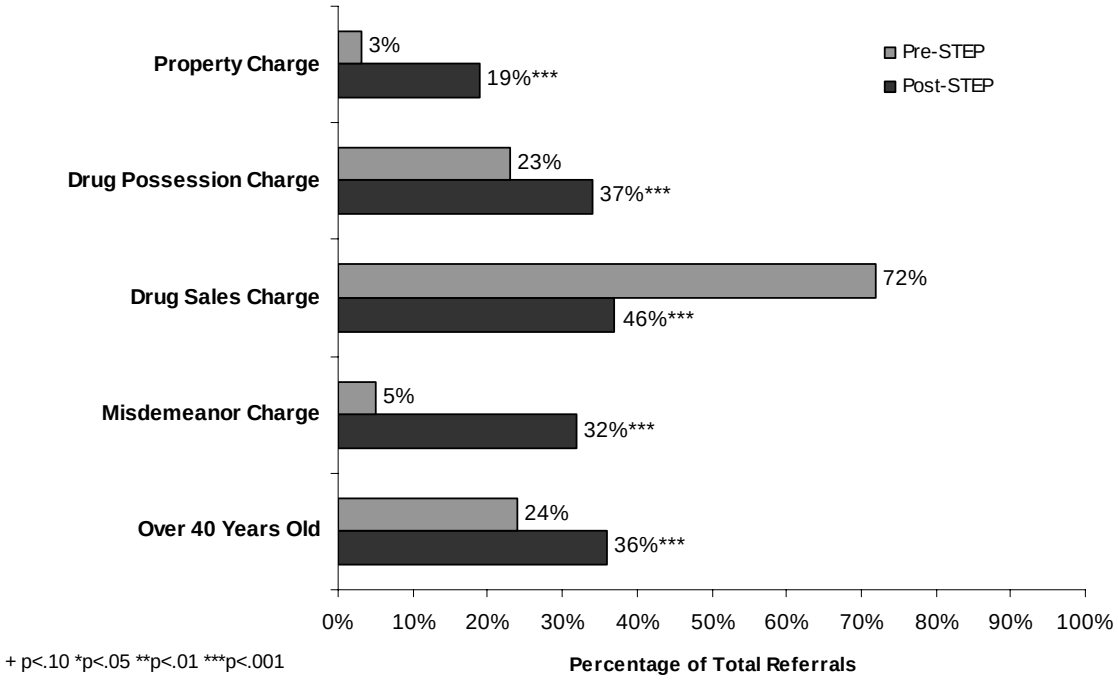
Demographic and Criminal History Data from DCJS. Unless otherwise noted, "pre-STEP" data includes all categorically relevant cases filed between January 2001 and December 2002, "Post-STEP" refers to all categorically relevant cases referred between January 2003 and December 2006

As the table shows, following the implementation of STEP, the baseline profile of defendants referred to Brooklyn drug courts and DTAP remained relatively stable in some ways but changed dramatically in others. In both the pre-and post-STEP periods, referred defendants were most often African-American males with a current felony offense and one or more prior offenses. However, while the majority of post-STEP referrals continued to be those charged with felony

drug sales and drug possession charges, after 2003, the percentage of all referrals arrested on property charges and misdemeanor charges increased noticeably due to the expanded eligibility criteria.

Additionally, referral to drug court increased substantially for certain subgroups, including defendants over the age of 40, those charged with drug possession and property offenses, and misdemeanants. Increased referral for all four of these subgroups is statistically significant. At the same time there was also a significant decrease in the proportion of referred defendants charged with drug sales (Figure 8.1).

Figure 8.1. Subgroup Representation among Candidates Referred to Drug Court



+ p<.10 *p<.05 **p<.01 ***p<.001

These findings point to the success of the new program not only in terms of increasing the raw number of defendants adjourned to drug court, but also the diversity of referrals. This diversity is particularly evident with respect to age and charge type.

Table 8.2. Odds Ratios from Logistic Regression Predicting Referral among Defendants Eligible for Drug Court or DTAP Pre-STEP vs. Post-STEP

	Pre-STEP (N=21,870)	Post-STEP (N=98,752)
Chi-Square	2196.409	7532.509
Naglekerke R^2	0.206	0.126
Odds Ratios:		
Female	1.701***	1.483***
Black/African American	0.931	0.883***
Latino	1.212*	1.125***
Under 20 Years Old	1.07	1.602***
Over 40 Years Old	1.103	1.083***
Charged with Drug Sales	25.786***	6.196***
Charged with Drug Possession	8.985***	3.311***
One or more Prior Convictions	0.337***	0.903***

+p<.10 *p<.05 **p<.01 ***p<.001

Following the preliminary analysis, a multivariate analysis of referral trends pre-and post-STEP was conducted. As shown in Table 8.2, by far the strongest predictor of referral in both periods was being charged with a drug sales offense. Being charged with a drug possession offense was also a strong predictor in both periods, although noticeably more predictive during the pre-STEP period. Indeed, the strength of both drug sales and drug possession charges as predictors of referral decreased substantially after STEP implementation, again presumably due to the expanded eligibility criteria under STEP, which led to the routine adjournment of nondrug offenders to drug court or DTAP. Female sex and Latino ethnicity were also predictive during both time periods. Interestingly, defendants with one or more prior convictions were less likely to be referred during both periods, although this relationship was relatively weak during the post-STEP period. Finally, being under the age of 20 years was found to be predictive of referral post-STEP, but was *negatively* associated with referral pre-STEP. This change is unsurprising since STEP Drug Court expanded eligibility to 16-19 year old defendants and offers programming tailored to the needs of young defendants (e.g., educational and employment programs in addition to drug treatment).

CHAPTER 9. FINDINGS: PROFILE OF DRUG COURT AND DTAP PARTICIPANTS

In both the pre- and post-STEP periods the typical drug court participant is closely reflects the profile of the typical referral. Table 9.1, below, provides a demographic comparison of pre- and post-STEP drug court (or DTAP) participants. As the table illustrates, the overall post-STEP trend towards heterogeneity in charge type and age group is evident in the participant group just as in the referral group.

Table 9.1. Profile of Drug Court Participants, Pre-vs. Post-STEP

	Pre-STEP	Post-STEP
N	*752*	*2,873*
Sex		
Male	72%	77%*
Female	23%	15%***
Both	5%	7%
Race		
Black	45%	62%
White	11%	13%
Latino	45%	23%
Age		
Under 20 Years Old	7%	19%***
20-30 Years Old	29%	27%+
30-40 Years Old	35%	22%***
Over 40 Years Old	29%	32%*
Arrest Charges		
Drug Sales	72%	43%***
Felony Drug Possession	17%	16%
Misdemeanor Drug Possession	1%	19%***
Property	6%	14%***
Other	4%	5%+
Charge Severity		
Felony	91%	70%***
Misdemeanor	8%	30%***
First-time Felony	30%	38%***

+p<.10 *p<.05 **p<.01 ***p<.001

Demographic and Criminal History Data from DCJS. Unless Otherwise noted, "pre-STEP" data includes all categorically relevant cases filed between January 2001 and December 2002, "Post-STEP" refers to all categorically relevant cases referred between January 2003 and December 2006

In order to examine potential differences between post-STEP referrals that ultimately became drug court or DTAP participants and those that did not, Table 9.2 compares the two groups across the same demographic and criminal history characteristics examined in Table 9.1.

Table 9.2. Profile of Post-STEP Drug Court Referrals by Participation Status

	Post-STEP Referrals, Nonparticipants	Post-STEP Referrals, Participants
N	*14,108*	*2,873*
Sex		
Male	78%	77%
Female	15%	15%
Both	7%	8%
Race		
Black	62%	61%
White	13%	13%
Latino	23%	23%
Age		
Under 20 Years Old	10%	19%***
20-30 Years Old	26%	27%
30-40 Years Old	27%	22%**
Over 40 Years Old	37%	32%***
Arrest Charges		
Drug Sales	36%	43%***
Felony Drug Possession	15%	16%+
Misdemeanor Drug Possession	19%	19%
Property	20%	14%***
Other Charge	8%	5%***
Charge Severity		
Felony	70%	71%
Misdemeanor	30%	29%
First-time Felony	27%	38%***

+p<.10 *p<.05 **p<.01 ***p<.001

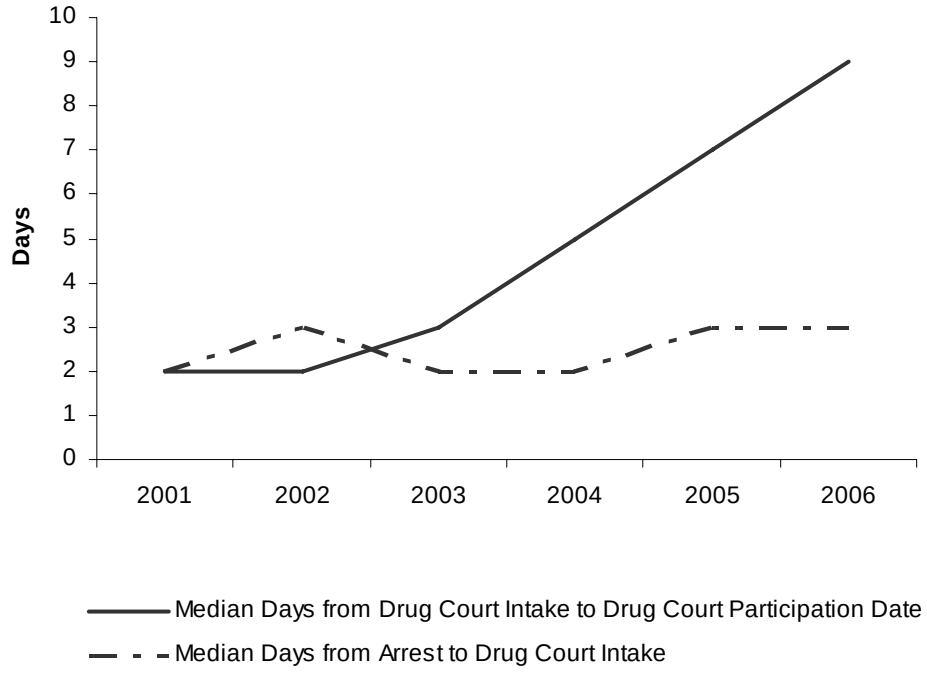
Demographic and Criminal History Data from DCJS. Unless Otherwise noted, "pre-STEP" data includes all categorically relevant cases filed between January 2001 and December 2002, "Post-STEP" refers to all categorically relevant cases referred between January 2003 and December 2006

As in the analysis of referred defendants presented in Chapter Eight, Table 9.2 includes *all* drug court referrals, including those that were found ineligible by the dedicated assistant district attorney, those who were found to be not addicted or ineligible for other clinical reasons, and those who refused participation. With this in mind, the comparison suggests that among defendants referred post-STEP, there were several subgroups that were especially likely to become participants. Most noticeably, defendants under the age of 20, first-time felony defendants, and those charged with drug sales were especially likely to become participants. Conversely, older defendants (i.e., over the age of 30) and those charged with nondrug offenses were especially unlikely to become participants.

CHAPTER 10. FINDINGS: RAPID ASSESSMENT AND PLACEMENT

Rapid engagement of drug-involved defendants in treatment was articulated as a goal of STEP by project planners. Previous drug court research suggests that defendants who become engaged in treatment quickly after their arrest have greater chances of success in drug court than those whose referral is delayed (Rempel and DeStefano, 2001; Rempel et al., 2003). The establishment of automatic adjournment for drug court eligible defendants was intended to ensure that eligible defendants receive a clinical assessment within 48 hours of arrest. Figure 10.1 presents the median wait time by year for the full period studied (2001-2006). This analysis found that during the first four years following STEP implementation, about half (45%) of eligible defendants reached the drug court for intake within two days of arrest and 90% reached the drug court within five days of arrest. The figure distinguishes wait time between arrest and drug court intake (dotted line) and subsequent wait time between drug court intake and formal drug court enrollment (solid line). Overall, post-STEP, the median number of days to intake was 2.5 days, which is identical to the pre-STEP period (shown in figure 10.1 with the relative lack of fluctuation in the dotted line). Although the Brooklyn Criminal Court therefore succeeded in adjourning many eligible defendants to the drug court within 48 hours, the court was unable to achieve its goal for more than half of those referred. However, the additional case volume added post-STEP did not exacerbate the problem of wait times for drug court eligible defendants, since the trendline did not change following STEP.

Figure 10.1. Median Wait Time from Arrest to Drug Court or DTAP Engagement, Participants Only (N=3,625)



Another time period that may affect participant success falls between drug court intake and formal enrollment in drug court or DTAP. In contrast to our findings concerning wait time from arrest to intake, the analysis showed a substantial shift in wait time from intake to drug court participation post-STEP (see the continuous line in Figure 10.1). Overall the median wait time from intake to enrollment in drug court increased by seven days over the six-year period studied (from a median of 2 days in 2001 to a median of 9 days in 2006). Reasons for the sharper increase in wait time from intake to enrollment date are not immediately apparent from the data, although it could be due to increasing caseloads over time as a result of more defendants enrolling than exiting early after the inception of STEP.

Finally, it should be emphasized that this comparison includes only drug court and DTAP participants (i.e., those who were referred to BTC, MBTC, STEP or DTAP). An unknown number of drug dependant defendants may have been referred individually by judges in general criminal court parts after arraignment, as discussed previously. Although we were unable to obtain quantitative data on the wait time to mandated treatment participation for informally referred defendants, qualitative data suggests that the wait time for enrollment through this referral channel would be longer (both pre-and post-STEP, as most defendants referred this way were not referred to treatment until after they were adjourned to a regular criminal court part following arraignment). However, as discussed previously, it is also quite likely that the number of defendants receiving court-mandated treatment outside of the formal drug court and DTAP system declined during the post-STEP period.

CHAPTER 11. CONCLUSION

STEP was designed to systematically identify and refer appropriate defendants to court-mandated treatment. This study demonstrates that STEP has been successful in terms of increasing the number of drug court referrals and participants. After STEP was implemented, the Brooklyn criminal court offered treatment to more nonviolent drug-involved defendants as a whole. Table 11.1 shows annual changes in the number of defendants found eligible and referred to drug court pre- and post-STEP. As the table shows, the number of defendants found eligible increased 105% between 2002 and 2003 alone. Additionally, the number of drug court referrals increased by 177% during STEP's first year.

Table 11.1. Annual Change in Drug Court and DTAP Eligibility and Referral, Brooklyn Criminal Court (2001-2006)

Year	Number Eligible	Percent Change from Previous Year	Number Referred	Percent Change from previous Year
2001	11,566	--	1,205	--
2002	10,314	(-11%)	1,087	(-9%)
STEP Implementation				
2003	21,140	**(+105%)**	3,017	**(+177%)**
2004	23,558	(+11%)	3,960	(+31%)
2005	26,435	(+12%)	5,068	(+28%)
2006	27,438	(+4%)	4,877	(-4%)

A substantial increase in the number of drug court participants following STEP implementation (see Table 11.2) also reflects positively on STEP's efforts to establish two new dedicated drug courts (MBTC and STEP). As discussed in Chapter 7, the number of defendants participating in drug court or DTAP program more than doubled in 2003 and has remained steady since STEP implementation. On the other hand, the increase in participation has been small (just over 400 defendants from 2002 to 2003) compared to the increases seen in eligibility (almost 10,000 defendants from 2002 to 2003) and referral (almost 2,000 defendants from 2002 to 2003).

Table 11.2. Annual Change in Drug Court and DTAP Participation, Brooklyn Criminal Court, 2001-2006

Year	Number of Participants	Percent Change from Previous Year
2001	463	--
2002	289	(-38%)
STEP Implementation		
2003	709	**(+163%)**
2004	701	(-1%)
2005	735	(+5%)
2006	728	(-1%)

Our findings suggest that screening for drug court eligibility has been successfully integrated into regular case processing at the pre-arraignment stage. First, despite the increased caseload and more in-depth case review required of pre-arraignment clerks under the STEP protocol, court observation and interview data indicate that the screening process is operating efficiently without creating a significant time or resource burden on court clerical staff. One administrator in the Brooklyn Criminal Court during STEP implementation indicated that the protocol was implemented without hiring any additional court clerks to prepare the case files for arraignment. Second, analysis of those defendants that were referred to drug court during the STEP pilot period showed that referral of legally ineligible defendants due to screening errors remained low even after the screening caseloads increased dramatically.

However, while the enhanced screening component of the STEP project has been successful in expanding access to court-ordered treatment, the automatic adjournment component of the referral process has not been a full success as conceptualized by STEP planners. The majority of defendants flagged as eligible for drug court (or DTAP) are not ultimately adjourned to drug court (or DTAP). Aside from a small number of conflicts between prosecutorial policy and formal STEP eligibility criteria, the primary obstacle to automatic adjournment has been the use of judicial discretion in arraignment court, which often leads eligible defendants not to be adjourned to a drug court part. Anecdotal evidence suggests that this discretion may be influenced by the objection of the defense attorney or the defendant in the case, depending on the judge. The use of discretion remained a controversial issue among criminal court stakeholders throughout this study, as evidenced by conflicting opinions expressed by judges and defense attorneys during interviews. In contrast, automatic adjournment of candidates has strong support from drug court staff. One drug court judge has made repeated efforts to curb judicial discretion during arraignments through periodic memos to judges working in arraignments *(see Appendix C & D).*

Details of the appended memos suggest that the supporters of automatic adjournment are aware that certain eligible defendants face greater obstacles to referral (e.g., property offenders, misdemeanants). These obstacles are supported in the quantitative data, which show that although the overall percentage of eligible defendants has tended to increase each year since STEP implementation, eligible property and eligible misdemeanor defendants are less likely to be adjourned to drug court than eligible drug felony defendants. Additionally, defendants eligible for the Brooklyn Treatment Court are being referred at higher rates than those eligible for DTAP, the STEP drug court, or the Misdemeanor Brooklyn Treatment Court.

Overall, the analysis suggests that the court system still has obstacles to overcome in terms of promoting access to drug court for eligible defendants. Judges, attorneys, and staff both in drug court and arraignment court are generally supportive of providing treatment access to as wide an array of defendants as possible. This support is particularly apparent among court staff when asked to compare the efficiency and quality of drug court screening before and after STEP:

> *The informal process was terrible. AP parts are too busy for attorneys and judges to do effective advocacy for people in need of treatment. Going back to that…that's about the worst idea I can think of.*
>
> *-Criminal Court Judge , Brooklyn, 2002-present*

I definitely think comprehensive screening is the way to go…if you only screen for those that you think would be most successful in drug court, you may save money, but you are being cynical and writing off people who need help the most.

-Court Administrator, Brooklyn Criminal Court, 2000-2005

While support for universal screening was broad, some stakeholders expressed concern about automatic adjournment to drug court parts. In particular, defense attorneys were concerned that automatic adjournment means paper-eligible defendants are not afforded the same rights as other defendants in arraignment court.

Arraignment prosecutors are not supposed to make offers on drug court eligible defendants [misdemeanors only]. I think this is unfair, every individual should get an offer at the same time, regardless of their charges.

- Legal Aid Attorney

Both the challenges and successes identified in this investigation are useful starting points for new research. First, the increased diversity of both referred and participating defendants presents a critical opportunity to test recent hypotheses concerning the responsivity of court-ordered treatment programs to the risk level and service needs of different categories of defendants. For example:

- To what extent is the new cohort of younger felony offenders with less serious drug use histories succeeding in drug court programs?
- Are chronic misdemeanor participants receiving proper mandates given their less serious charges (and typically shorter treatment mandates) but more extensive drug use histories?

Examining these types of questions may be particularly important in light of recent research that has found that improper treatment matching may produce negative outcomes for some types of participants (e.g., see Marlowe, 2003). As STEP reaches five years in operation, the extensive data collected on its drug court participants (via a statewide information management system) will also allow for examination of the long-term impact of drug court on different subgroups of offenders, a crucial gap in drug court research to date.

Second, the shift in reasons for non-participation among defendants referred to drug court after STEP merits further examination. Although some increase in the number of referred defendants refusing participation in drug court is to be expected, the observed refusal rate of 52% post-STEP suggests that more pre-arraignment filters could be useful in controlling the caseload for drug courts. Research examining the characteristics of defendants refusing treatment after adjournment could help to identify points at which to focus pre-referral filtering of drug court candidates. Similarly, an exploration of reasons for the decrease in drug court referrals being found clinically ineligible for drug court, possibly via an in-depth comparison of referred defendants found clinically eligible versus ineligible in one court during the same time period, might be informative.

Finally, in light of the large number of potential candidates that are not currently being referred for DTAP or drug court, an analysis of the program capacity needed to accommodate a substantial increase in participants is a crucial precursor to changes in drug court referral practices. In short, the expanded eligibility and referral model under STEP has the potential to

increase the number of defendants referred to drug court to more than 20,000 candidates annually (in contrast with the actual increase of approximately 4,000 referrals annually observed over the period studied here). Moreover, the screening and referral model appears fairly easy to replicate, and previous cost-benefit analyses suggest that drug court participation is generally cheaper and more beneficial in terms of public safety than imprisonment (e.g., see Bhati, Roman and Chalfin, 2008). Therefore, a local cost-benefit study of the potential increase in financial and human resources needed by Brooklyn's drug court to handle three to four times the current caseload could be informative for court planning and policy purposes.

REFERENCES

Anglin, M. D., & Perrochet, B. (1998). *Drug use and crime: A historical review of research conducted by the UCLA Drug Abuse Research Center*. Substance Use and Misuse, 33(9), 1871-1914.

Belenko, S. (1998). Research on Drug Courts: A Critical Review. *National Drug Court Institute Review, 1* (1), 1-42.

Belenko, S. (2001). *Research on Drug Courts: A Critical Review*. New York, NY: National Center on Addiction and Substance Abuse.

Belenko, S., Sung H-E, O'Connor, L. (2003). *Crossing the Bridge: An evaluation of the Drug Treatment Alternatives to Prison Program.* New York: The National Center on Addiciton and Substance Abuse Treatment.

Bhati, A., & Roman, J. (2008). *To Treat or Not to Treat: Evidence on the Prospects of Expanding Treatment to Drug Involved Offenders*. Washington, DC: The Urban Institute.

Bonta, J., & Andrews, D. A. (2007). *Risk-need-responsivity model for offender assessment and rehabilitation*: Public Safety Canada; Carlton University.

Cappa, C. (2006). The Social, Political and Theoretical Context of Drug Courts. *Monash University Law Review, 32*(145-172).

Cissner, A., & Rempel, M. (2005). *The State of Drug Court Research: Moving Beyond 'Do They Work?'* Center for Court Innovation: New York, NY.

Cooper, C. S. (2003). Drug Courts: Current Issues and Future Perspectives. *Substance Use and Misuse, 38* (11-13), 1671-1711.

Edwards, D. (2007). *Drug Court Initiative: 2006 Annual Report*. Brooklyn: Office of the Administrative Judge, Criminal Court of the City of New York.

Farabee, D., Joshi, V., & Anglin, M.D. (2001). *Addiction careers and criminal specialization. Crime & Delinquency*, 47(2), 196-220.

Farole, D. (2009). Problem Solving and the American Bench: A National Survey of Trial Court Judges. *The Justice System Journal*, 30(1), *50-67.*

Fox, A. and Berman, G. (2002). Going to Scale: A Conversation about the future of Drug Courts. Available at: http://www.courtinnovation.org/_uploads/documents/goingtoscale1.pdf

Fullilove, M., Fullilove, R. and Xaveria, B. (1998). Arms against Illness: Crack Cocaine and Drug Policy in the United States. *Health and Human Rights*, 2 (4), 42-58.

Goldkamp, J., White, M., and Robinson, J. Do Drug Courts Really Work? Getting Inside the Drug Court Black Box. *The Journal of Drug Issues*, 31(1), 27-72.

Gottfredson, S. D., & Moriarity, L. J. (2006). Statistical Risk Assessment: Old Problems and New Applications. *Crime and Delinquency, 52*(1).

Government Accountability Office (2005). Adult Drug Courts: Evidence Indicates Recidivism Reductions and Mixed Results for Other Outcomes. Available at: http://www.gao.gov/new.items/d05219.pdf

Harrell, A., Roman, J., & Sack, E. (2001). *Drug Court Services for Female Offenders: 1996-1999: Evaluation of the Brooklyn Treatment Court*. Washington, DC: Urban Institute.

Hawkins, D., Arthur, M. & Catalono, R. (1995). Preventing Substance Abuse. *Crime and Justice, 19,* 343.

Hodulik, J. (2001). The Drug Court Model as a response to "Broken Windows": Criminal Justice for the Homeless and Mentally Ill. *The Journal of Criminal Law and Criminology, 9*(4), 1073-1100.

Huddleston, W. C., Marlowe, D., & Freeman-Wilson, K. and Russell, A. (2005). *Painting the Current Picture: A National Report Card on Drug Courts and Other Problem Solving Courts*: Washington, D.C.: National Drug Court Institute.

Huddleston, W. C., Marlowe, D., & Casebolt, R. (2008). *Painting the Current Picture: A National Report Card on Drug Courts and Other Problem Solving Courts*: Washington, D.C.: National Drug Court Institute.

Hynes, C. (2007). *DTAP: Drug Treatment Alternative to Prison: 16th Annual Report*. Brooklyn, NY: District Attorney, Kings County.

Johnson, T. (October 4th, 2004). Drug offenders want day in this court. *Seattle Post-Intelligencer*. Available at: http://www.seattlepi.com/local/193622_drugcourt04.html.

Katz, S. (2009). *Expanding the Community Court Model: Testing Community Court Principals in the Bronx Community Centralized Courthouse*. Center for Court Innovation: New York.

King, R. (2008). *Disparity by Geography: The War on Drugs in America's Cities*. Washington, DC: The Sentencing Project.

Knight, K., Garner, B. R., Simpson, D. D., Morey, J. T., & Flynn, P. M. (2006). An Assessment for Criminal Thinking. *Crime and Delinquency, 52*(1), 159-167.

Latessa, E. (2002). Beyond Correctional Quackery--Professionalism and the Possibility of Effective Treatment. *Federal Probation, 66*(2), 43-47.

Longshore, D., Turner, S., Wenzel, S., Morral, A., Harrell, A., McBride, D., et al. (2001). Drug Courts: A Conceptual Framework. *Journal of Drug Issues, 31*(1), 7-26.

Lowenkamp, C., & Latessa, E. (2005). Increasing the effectiveness of correctional programming through the risk principle: Identifying offenders for residential treatment. *Correctional Programming and Risk, 2*(4), 263-290.

Marlowe, D. B., DeMatteo, D. S., & Festinger, D. S. (2003). A sober assessment of drug courts. *Federal Sentencing Reporter, 16* (2), 153-157.

Marlowe, D.M., Festigner, D.S., Lee, P.A., Dugosh, K.L., Benasutti, K.M.(2006). Matching Judicial Supervision to Clients' Risk Status in Drug Court. *Crime and Delinquency, 52*(1), 52-76.

Mauer, M. (2000). Why are Tough on Crime Policies so Popular? *Stanford Law and Policy Review* 9 (11).

Meyer, H. W. (2007). *Constitutional and Other Legal Issues In Drug Court*. Washington, D.C.: National Drug Court Institute.

Miller, J. M., & Shutt, J. E. (2001). Considering the Need for Empirically Grounded Drug Court Screening Mechanisms. *Journal of Drug Issues, 31*(1), 91-106.

Miller, N. S., & Flaherty, J. A. (2000). Effectiveness of coerced addiction treatment (alternative consequences): A Review of the Clinical Research. *Journal of Substance Abuse Treatment, 18*, 9-16.

The National Center on Substance Abuse and Addicition (CASA).(2003). *Crossing the Bridge: An evaluation of the drug treatment Alternative-to-Prison (DTAP).* New York, NY: National Center on Addiction and Substance Abuse.

National Association of Drug Court Professionals (1997). *Defining Drug Courts: The Ten Key Components*. Available at: http://www.ojp.usdoj.gov/BJA/grant/DrugCourts/DefiningDC.pdf.

National Drug Court Institute. (2008). Quality Improvement for Drug Courts: Evidence-based Practices. *Monograph Series 9.* Available at: http://www.wvpds.org/Drug%20Court/Quality%20Improvement%20Section%206.pdf#page=11.

National Institute on Drug Abuse (NIDA), 1988, *Compulsory Treatment of Drug Abuse: Research and Clinical Practice*. Rockville, MD: NIDA.

New York City Criminal Court Office of Drug Court Initiatives. (1998). Brooklyn Treatment Court Policy Manual: New York, NY.

New York State Commission on Drugs and Courts. (2000).A Report to Chief Judge Judith S. Kaye: Confronting the Cycle of Addiction and Recidivism. Available at:

http://www.nycourts.gov/reports/addictionrecidivism.shtml

New York State Division of Criminal Justice Statistics. (2010). *Adult Arrests: New York City (2000-2009). Available at: http://criminaljustice.state.ny.us/crimnet/ojsa/arrests/nyc.htm.*

Olsen, D.E. (1998). Results of the 1997 Illinois Adult Probation Study. Available at: http://www.icjia.state.il.us/public/pdf/ResearchReports/Results%20of%20the%201997%20Illinois%20Adult%20Probation%20Outcome%20Study.pdf.

Peters, R. (2000). Effectiveness of Screening Instruments in detecting Substance use Disorders. *Journal of Substance Abuse Treatment, 18*, 349-358.

Peters, R. H., & Peyton, E. H. (1998). *Guideline for Drug Courts on Screening and Assessment*. Washington, D.C.: Justice Programs Office, American University.

Rempel, M., Dana, F.-K., Cissner, A., Cohen, R., Labriola, M., Farole, D., et al. (2003). *The New York State Drug Court Evaluation*. New York, NY: Center for Court Innovation.

Rempel, M. and Destefano, C. (2002). Predictors of Engagement in Court Mandated Treatment: Findings from the Brooklyn Treatment Court, 1996-2000. *Journal of Offender Rehabilitation,33(4),* 87-124..

Saum, C., Sarpitti, F., & Robbins, C. (2001). Violent Offenders in Drug Court. *Jounal of Drug Issues, 31*(1), 107-128.

Shaffer, D.K. (2006). *Reconsidering drug court effectiveness: A meta-analytic review*. Las Vegas, Nevada: University of Nevada, Department of Criminal Justice.

State of New York Department of Correctional Services. (2009).Under Custody Report: Profile of Inmate Population under Custody on January 1, 2009: http://www.docs.state.ny.us/Research/Reports/2009/UnderCustody_Report_2009.pdf.

Solomon, F. (2002). Summary and Analysis: Trends in Case and Defendant Characteristics, and Criminal Court Processing and Outcomes, in Non-felony arrests Prosecuted in New York City's Criminal Courts. New York City Criminal Justice Agency, New York. Available at: http://www.cjareports.org/reports/fnrep02.pdf.

Swern, A. (2007). *DTAP: Drug Treatment Alternative to Prison Sixteenth Annual Report*. Brooklyn, New York: Brooklyn District Attorney's Office.

Taxman, F. (2007). Screening Assessment and Referral Practices in Adult Correctional Settings: A National Perspective. *Criminal Justice and Behavior, 34*.

Young, Douglas & Steven Belenko, *Program Retention and Perceived Coercion in Three Models of Mandatory Drug Treatment*, 32 J. Drug Issues 297, 321 (2002).

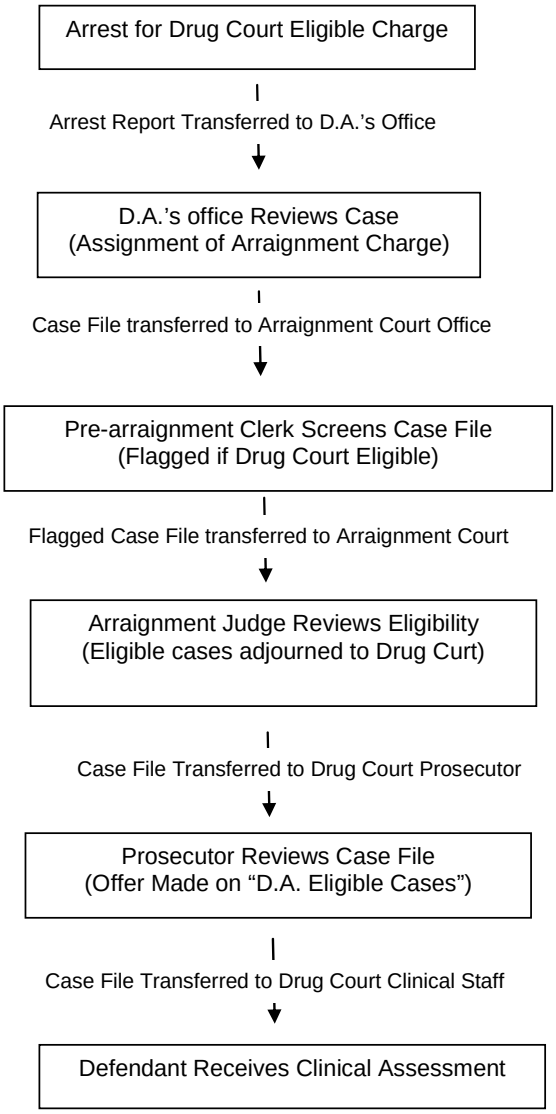
Young, D., Fluellen, R., & Belenko, S. (2004). Criminal Recidivism in three Models of Mandatory Drug Treatment. *Journal of Substance Use Treatment, 27*(4), 313-323.

Appendix A: Screening Criteria for Brooklyn Treatment Courts (post-STEP)

SCREENING CRITERIA FOR BROOKLYN TREATMENT PARTS

APD at 360 Adams Street	STEP at 120 Schermerhorn Street	MBTC at 120 Schermerhorn Street
First Felony Offenders • First Felony *Drug Offenders** 19 years of age and older	First Felony Offenders • First Felony *Drug Offenders** or under 19 years of age • First Felony *Marijuana Offenders***	Case must meet the following criteria: 6. Nonviolent class A misdemeanor 7. Defendant: a. has 10 or more felony and/or misdemeanor convictions AND/OR b. is on probation or parole
Predicate Felony Offenders • Female Predicate *Drug Offenders** from the Blue, Grey & Orange Zones	Predicate Felony Offenders • Male Predicate Felony *Drug Offenders** • Female Predicate *Drug Offenders** from the Red and Green Zones	8. Defendant must have: a. no violent felony convictions AND b. no arson or sex crime convictions
	Non-Drug Offenses • Any offender charged with following designated non-drug felonies: ▲ PL§145 Criminal Mischief ▲ PL§155 Grand Larceny ▲ PL§165 Theft Offenses ▲ PL§170 Forgery ▲ PL§140.20 Burglary	

Appendix B. Diagram of STEP Enhanced Screening Process[1]



[1]STEP goal is completion of screening process within 48 hours of arrest

.

Appendix C
Memo from Drug Court Judge Regarding Automatic Adjournment

MEMO

TO: ALL CRIMINAL COURT JUDGES

FROM: JOSEPH GUBBAY

RE: SCREENING FOR STEP AND MBTC IN ARRAIGNMENTS

Date: September 25, 2007

I thought the following might be helpful in responding to some of the concerns which may arise in the arraignment parts regarding STEP and MBTC eligible cases. (I must credit J. Sheryl Parker for the original draft of this memo which I have updated with minor revisions.)

- If there is a defendant who technically falls within the criteria for STEP/MBTC, but who denies having a drug problem, and there is no outward reason to suspect that this defendant does have a drug problem, should this case be sent to STEP/MBTC? **Answer: Yes, send the case to STEP/MBTC where the case can be evaluated, and it can be determined whether the defendant actually does have a drug problem. Encourage the defendant to sign the consent to be assessed to expedite the assessment process.**

- If there is a defendant who appears to have a drug problem and who qualifies for STEP/MBTC, but who firmly states that he/she does not want a program and would prefer to do the time, should this case still be sent to STEP/MBTC over counsel's objection that it is a waste of time? **Answer: Yes, send the case to STEP/MBTC for evaluation. STEP/MBTC case managers are trained to explain the long term benefits of treatment, including health services, education, and vocational training.**

- If there is a defendant who is charged with criminal mischief or other non-drug related crimes, why is this case going to STEP/MBTC? **Answer: STEP/MBTC screens for certain non-violent, non-drug related crimes. Even if you suspect that the case might be reduced, or the defendant says he/she doesn't want drug treatment, the case must be sent to STEP/MBTC.**

- If an adolescent is arrested and the defendant claims he/she is not addicted, should this case be sent to STEP/MBTC? **Answer: Yes, we have found that although many 16 - 19 year olds are not addicted to narcotic drugs, they do abuse marijuana and there are a number of excellent programs which address marijuana abuse as well as education, employment, and family issues.**

Again, please encourage the defendant to sign the consent to be assessed to expedite the assessment process.

Appendix D: Second Memo to Arraignment Judges

Dear Judges:

The following is a brief summary explaining the Drug Court screening process that occurs in arraignment parts. Eligible drug-related cases are referred for **the next business day** to any of the following three treatment courts: Felonies - STEP (Screening Treatment and Enhancement Part) or APD; Misdemeanors - MBTC (Misdemeanor Brooklyn Treatment Court).

While judges retain the discretion to adjourn a case to any part they determine is appropriate, it is court policy to exercise that discretion sparingly concerning treatment eligible cases. If the file jacket is stamped treatment court eligible, the case **should be adjourned to the stamped part, regardless of the representations of counsel or the defendant's expressed desire**. The reason for this is that many addicted defendants come to the realization between arraignment and the next court date, that they want and/or need treatment.

Please advise the assistant district attorney appearing before you **not to make any offers on MBTC eligible cases**. Such cases as a general rule should not be disposed of at arraignment. The reason being, given the eight month mandate for treatment in MBTC, it is extremely unlikely that a drug dependent defendant will commit to such a period of treatment knowing that his case can be resolved with a minimal period of jail time. The Assistant District Attorney assigned to MBTC, the primary defense attorney, and court agree on a fair jail alternative before entering into a plea in MBTC.

If a defendant expresses any interest in treatment at arraignment, **please have them sign the consent form to be assessed,** this will greatly expedite the assessment process for lawyers, defendants and court staff. This applies for all of the treatment courts.

Finally, if a defendant appears before you who has **a case pending** in one of the treatment courts, do not dispose of the case. Rather, adjourn it for the **next business day** to the treatment court where the open case is pending. Typically, the defendant has already plead guilty in the treatment court and is being closely monitored by the treatment court judge. Any new arrest is a likely violation of the treatment mandate and a prompt judicial intervention is imperative.

If you have any further questions, please feel free to call me or Judge Betty Williams.

Joseph E. Gubbay