
Manhattan Felony ATI Court

Reflections on a New Approach to Alternatives to Incarceration

By Danielle Reynolds

Center
for
Court
Innovation

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Incarceration

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Executive Summary

As cities and states across the country seek to reduce incarceration and enhance public safety, New York is pioneering an innovative response to serious crime. Launched in 2019, the Manhattan Felony Alternative to Incarceration (ATI) Program—an initiative of New York County Supreme Court, Criminal Term (the Court)—expands on the principles of specialized drug and mental health courts. Its work is not limited to specific needs or populations. Instead, it seeks to offer ATI for all types of felony cases, including violent offenses. As one of the first all-purpose felony alternative courts of its kind, it provides lessons and guidance for jurisdictions across the country.

Previous felony ATI programs in New York County (Manhattan) came with their own set of exacting eligibility requirements limiting their potential impact. Restricted eligibility meant that many individuals were ruled out of programs and in turn this created a need for additional alternatives for the District Attorney’s Office of New York County (DANY) to provide to eligible individuals. This led DANY and the Court to develop a dedicated felony ATI program in Manhattan.

The Manhattan Felony ATI Program features a specialized and dedicated staff to divert court-involved individuals away from incarceration, allowing them to remain in the community. While in community, individuals engage in programming to address factors contributing to their criminal legal system involvement. The program aims to prevent recidivism through a comprehensive, collaborative approach that integrates programming and services with court supervision and monitoring. Further, it strives to serve as a model for jurisdictions nationwide.

Current Study

This report describes the Manhattan Felony ATI Program, documenting program operations, including processes through which cases are screened and deemed eligible for ATI; admittance into the program; services and treatment; and court supervision, highlighting program strengths, challenges, and recommendations for future directions. In conjunction with the program policy manual and descriptive data from the Center’s case management system, this study draws on feedback garnered through interviews with program stakeholders and participants conducted in 2021. Researchers conducted remote semi-structured

interviews with stakeholders working in the program and with program participants who were currently engaged in or had completed the program. In January 2022 there was an administration change with the newly elected District Attorney for New York County and this report reflects stakeholder and participant opinions during the program under the previous administration through 2021. It does not account for any changes within the program model that took effect in 2022. These changes have responded to many of the challenges and recommendations highlighted in this report.

Strengths, Challenges and Recommendations

A Dedicated Court with Specialized Staff

The program employs a dedicated staff to serve individuals arraigned on felony offenses. Interviewees describe program partners as the program's greatest strength. Project partners were said to demonstrate a commitment to rehabilitating and reforming participants, collaborating to best serve and support participants, and prioritizing neutrality, respect, and fairness. Several stakeholders at the time of interviews, however, report that the program may have reached maximum capacity, fearing burnout among program partners and a reduction in program quality if caseloads continue to grow. Interviewees call for an additional judge, resource coordinators to encourage collaboration and engage stakeholders, and more social workers to support participants' needs.

Case Screening and Eligibility

The program does not impose eligibility or exclusionary criteria, meaning the program is available to individuals traditionally excluded from specialized problem-solving courts and diversionary programs due to charge severity. During the study period, the program diverted more than 230 participants. By 2022, the program received an average of 25 referrals per month. However, to improve and expedite access to felony ATI, stakeholders interviewed recommend establishing an automatic identification and screening process that would flag cases in criminal court prior to indictment, rather than waiting for them to reach supreme court. Several stakeholders stress that the proffer process, an interview between DANY and the individual and their attorney, to discuss life circumstances, current charges, past contact with the criminal legal system, and admit guilt in the current case, also contributes to a lengthy referral process. This process impedes program access, producing disparities among eligible court-involved individuals. Further, they recommend streamlining the referral process to reduce the referral period and lessen the burden on individuals facing felony charges and reserving proffers for more serious cases.

Program Entry and Process

The program tailors services and supports to address issues contributing to participants' criminal involvement, with the intent of subsequently reducing recidivism and promoting public safety. During the study period, the program connected participants to 700 services tailored to their needs and life circumstances with more than 180 different community-based service providers. However, stakeholders report that appropriate service referrals are challenging due to gaps in the treatment landscape, limited availability, and inconsistent program quality. Stakeholders interviewed suggest the Center's social workers strengthen relationships with community-based service providers the program currently utilizes, form relationships with new service providers, identify programming to address treatment gaps, and keep abreast of behavioral health trends to enhance service offerings for participants.

In addition, the program intensifies court supervision in response to noncompliance and loosens court monitoring when participants demonstrate compliance. However, some stakeholders report variation in program partners' response to noncompliance and less recognition of compliance, producing inconsistency and reducing motivation among participants. Further, the stakeholders differ in their perceptions of and responses to partial compliance. Some stakeholders call for more frequent and consistent positive reinforcement to motivate progress.

Program Completion

Participants who were referred to the felony ATI program during the study period spent an average of 108 days¹ (more than 3.5 months) in the referral phase before accepting an ATI plea. The subset of participants who were incarcerated during the referral phase move through the referral process faster (on average 72 days). Once individuals accept a plea, they spend an average of 16 months under program supervision, attending programming and court monitoring. To some stakeholders, mandate lengths are too long; they suggest program mandates be informed more by clinical needs and milestones rather than a prescribed length of court supervision.

¹ This includes 11 participants whose referral times were delayed for reasons outside the program's control, such as difficulty obtaining contact information and diminished access to in-person services in the early days of the pandemic. One case was excluded from this average because the participant declined ATI initially after their assessment but over a year later decided to be reconsidered for ATI. For this study, the referral process begins once DANY emails all parties to refer a case to the felony ATI program.

Participants who successfully completed the program during the study period would have collectively served a total between 58 and 258 years of detention. Instead, these individuals avoided any sentenced jail or prison time. More than half of graduates completed the program without a criminal charge on their record, reducing barriers to employment, housing, and other resources.

Chapter 1

Introduction

The “tough on crime” movement that drove harsher sentences and exponential growth of jail and prison populations has not produced benefits to justify its costs. Several studies find that custodial sentences contribute to, rather than reduce, re-offense (e.g., Agan, Doleac, and Harvey 2021; Jonson 2010; Mears and Cochran 2018; Petrich et al. 2020). This concern, coupled with the high monetary costs of incarceration borne by state and local governments, led to myriad alternative to incarceration (ATI) programs for offenders thought not to pose significant public safety risks. These programs offer a strategy to direct court-involved individuals away from incarceration, allowing them to remain in the community and engage in programming to address factors contributing to their criminal legal system involvement. They seek to prevent recidivism through a comprehensive, collaborative approach that integrates programming and services with court supervision and monitoring.

Felony ATI in New York County

The criminal legal system in Manhattan includes an extensive array of ATI options. Individuals experiencing behavioral health and/or substance use needs could appear in the Manhattan Mental Health Court (MMHC) or Manhattan Treatment Court (MTC), sentenced to behavioral health and/or drug treatment in lieu of incarceration. Court-involved individuals who did not satisfy the eligibility requirements for these specialized problem-solving courts historically had their cases resolved through the traditional court process, with alternative sentences meted out on a case-by-case basis.

The New York County District Attorney’s Office (DANY)² and the New York County Supreme Court, Criminal Term (the Court) observed three major limitations to this approach, propelling efforts to centralize and standardize a felony ATI program. First, Manhattan’s drug and mental health courts adhere to strict eligibility criteria, excluding a large population of individuals facing felony offenses. Second, the absence of a formal screening mechanism

² In January 2022 there was an administration change with the newly elected District Attorney for New York County. This report reflects the planning and implementation of the Manhattan Felony ATI Program as well as stakeholder and participants opinions during the program under the previous administration.

for ATI cases outside of these specialized problem-solving courts required individual defense attorneys to identify clients' needs, propose treatment recommendations, and make service referrals. Third, ATI sentences were administered at the discretion of individual judges, with inconsistent mandate lengths, requirements, and final dispositions.

In response, DANY made efforts to formalize and standardize a felony ATI program, forming a special prosecutorial unit to oversee and manage ATI cases. Specialized prosecutors managed the referral process and plea offers; DANY clinical coordinators conducted clinical assessments, made service recommendations, and monitored ATI mandates. However, this dual role as both clinician and prosecutor created at least the appearance of a conflict of interest. Further, it placed enormous authority in the hands of the prosecution. Recognizing these limitations, a team of DANY prosecutors met with Administrative Judge, New York County Supreme Court, Criminal Term, Ellen Biben in 2018 to discuss the inconsistencies of the ATI model and spearhead a new felony ATI program to address these limitations.

Later that year, the Court applied for and was awarded the U.S. Bureau of Justice Assistance grant to design a felony ATI program in Manhattan and to conduct a qualitative study describing program strengths and challenges during the first two years of program operation. Judge Biben created a working group of stakeholder agencies including three Manhattan defense agencies, DANY, and the Center for Court Innovation (the Center) to develop Manhattan's Felony ATI Program, consolidate ATI cases under a single judge and feature a specialized and dedicated staff to work with high-risk, high-need individuals.³ Program planning spanned from May 2018 through May 2019, and Manhattan's Felony ATI Program launched in June 2019.

Led by Judge Biben, the felony ATI program employs a resource coordinator within the Court and partners with DANY's ATI unit, the Center, and defense agencies. The resource coordinator is an essential component of the court model and performs several key functions, including coordinating all court appearances and case conferences, meeting with the Center's social work team weekly to review participant updates, representing the Court in case conferences, advancing appearances to respond to non-compliance, and assisting with developing and implementing new policies, among other tasks. DANY oversees the referral

³ The planning committee included representatives Judge Biben and her staff, the Center for Court Innovation, Neighborhood Defense Services of Harlem, Legal Aid Society, and New York County Defender Services.

and plea process, and the Center provides case management, including conducting clinical assessments, forming treatment recommendations, making referrals, coordinating care, liaising between the court and community-based service providers, and monitoring compliance.

The program aimed to improve the quality of services and increase the number of court-involved individuals receiving individualized community-based services, reduce incarceration, and enhance public safety by addressing root causes of criminal justice involvement and thereby reducing recidivism among participants. Further, it sought to serve as the default option for felony cases in Manhattan (when legally appropriate) and a model for jurisdictions nationwide. The program policy manual identifies seven primary program goals:

- 1. Increase Service Referrals:** Increase the number of individuals referred to community-based services;
- 2. Provide Tailored Services:** Provide individualized services that respond to criminogenic needs;
- 3. Provide Community-Based Supervision:** Perform high-quality supervision that allows for community-based programming while maintaining public safety;
- 4. Reduce Detention:** Reduce the use of incarceration for individuals facing felony charges;
- 5. Reduce Future Criminal Behavior:** Enhance public safety by addressing root causes of criminal justice involvement and thereby reducing future criminal behavior;
- 6. Provide Consistent Case Processing:** Consolidate ATI cases under a single judge with a specialized staff; and
- 7. Reduce Case Length:** Improve efficiency and reduce the case backlog through early resolution of felony cases.

The Current Study

This study describes Manhattan's Felony ATI Program, examining perceived strengths and challenges, and recommendations for future directions. This report documents the primary processes through which cases are screened and deemed eligible for ATI (Chapter 2); the structure of the program (Chapter 3); external factors thought to have impacted the first two years of program operations (Chapter 4); and key lessons learned for the program and others seeking to implement similar approaches (Chapter 5).

Methodology

This study draws on interviews with program stakeholders and participants, Manhattan’s Felony ATI Program Policy and Procedures manual (finalized in December 2019), and administrative data to document program operations.

Table 1.1. Interviewees Recruited Across Program Partner Agencies

	N	17
Program Partner Agency		
Center for Court Innovation (The Center)		41%
District Attorney’s Office of New York (DANY)*		29%
Office of Court Administration		18%
Defense Agencies*		12%

*Attorneys with two or more cases in the program were invited to participate in the interviews.

Between April and September 2021, research staff conducted a total of 17 remote semi-structured interviews with stakeholders working in the felony ATI program. Potential interviewees were identified using a snowball design, with Center social workers providing the initial referrals. Interviewees were recruited via email, with multiple follow-up attempts; only one of the potential interviewees did not agree to participate. Table 1.1 presents the composition of interviewees by agency/stakeholder type.

Interviewees were asked about program practices, strengths, and challenges. Nearly 60% of interviews were recorded and later transcribed; research staff took notes during the remaining stakeholder interviews. Interviews were analyzed thematically using Dedoose software.

Between October 2021 and March 2022, research staff conducted a total of seven remote semi-structured interviews with participants currently engaged in (86%) or who had completed (14%) Manhattan’s Felony ATI Program. Center social workers provided initial referrals, and participants were interviewed via telephone. Interviewees were asked about their perceptions of, and experience in, the program. Research staff took notes during interviews and later analyzed notes based on the themes presented throughout this report. Research protocols for both stakeholder and participant interviews were approved by the Center’s institutional review board.

All participant interviewees self-identify as male, with an average age of 40. Three self-identify as white non-Hispanic with two self-identifying as white Hispanic and two self-

identifying as Black non-Hispanic. Interviewees were mandated for an average of 17 months, and more than 70% were facing nonviolent felony arraignment charges prior to entering the ATI Program.⁴ The Center developed a case management system to track activities in the felony ATI program, including clinical assessment results, compliance, and service referrals. Research staff drew on administrative data captured in this system during the study period (June 2019-March 2022).

⁴ The majority of program participants during the study period self-identified as male (79%) and non-Hispanic (55%). Roughly half of program participants reported nonviolent arraignment charges (52%) and were mandated to an average of 16 months of programming and court monitoring.

Chapter 2

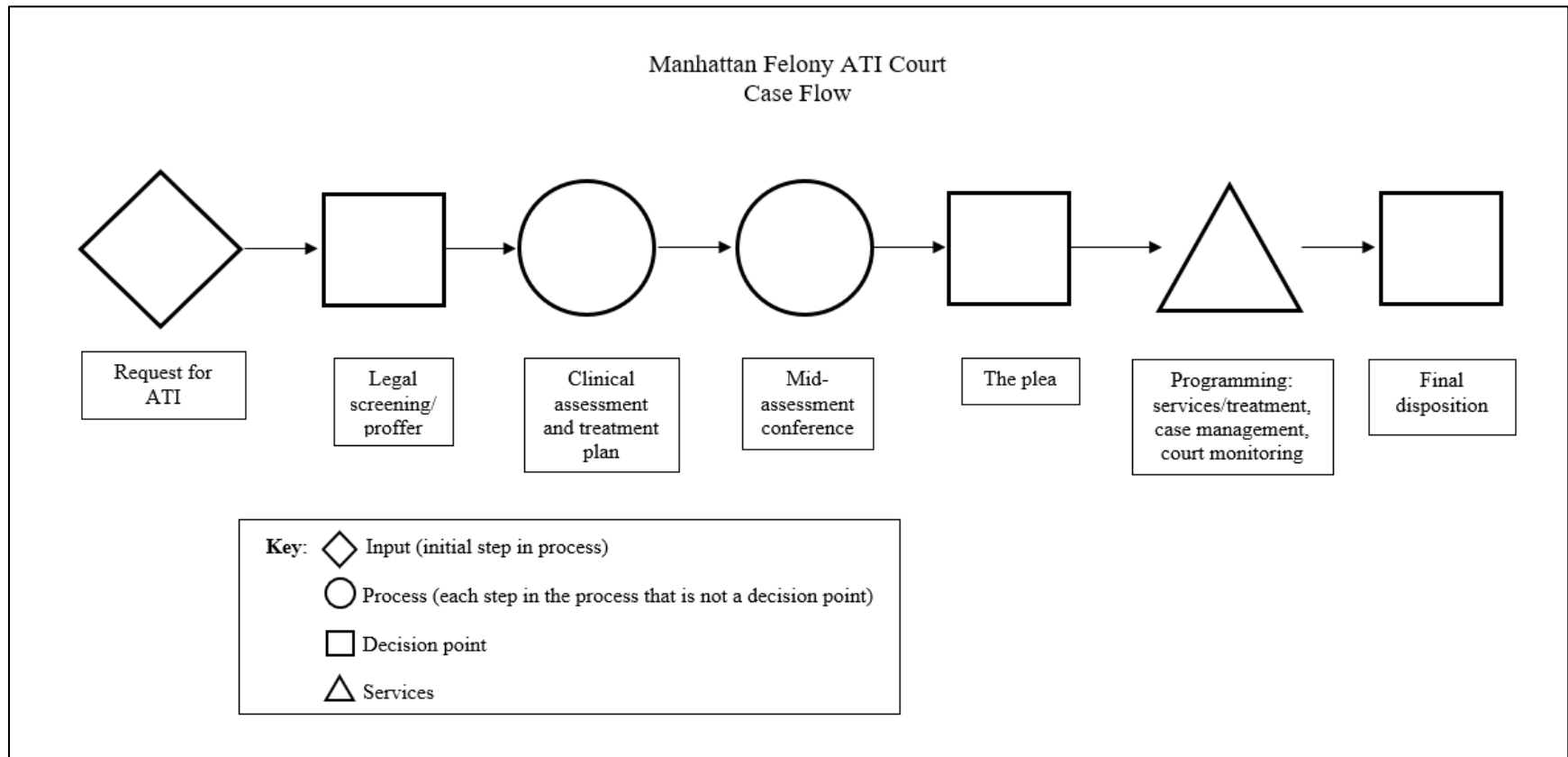
Case Screening & Eligibility

Manhattan’s Felony ATI Program operates as a centralized location for felony cases not eligible to specialized felony drug treatment or mental health courts. Figure 2.1 depicts the general case trajectory through the felony ATI program, although these processes may occur in a different order (or simultaneously) in some cases. This chapter describes the key activities that comprise Manhattan’s Felony ATI referral process. In describing each of these areas, stakeholder perceptions of challenges to implementation are noted.⁵

Manhattan’s Felony ATI Program begins with a request for ATI from a defense attorney, prosecutor, and/or judge. Following, DANY and the Center perform program assessments—the legal screening and clinical assessment—to evaluate the strength of a case, provide a holistic view of individuals’ service needs, life circumstances and how they contributed to the criminal charges, and determine whether the benefits of a community sentence outweigh the risk of recidivism or violence. Depending on the case, the legal screenings and clinical assessments are sometimes conducted sequentially or sometimes in parallel. During the program’s planning phase, program partners primarily aimed to serve individuals with substance use and/or behavioral health issues, as well as women and young adults facing felony charges. However, these criteria have shifted over time and the program serves a wider variety of participants including those without clinical needs. According to its policy and procedures manual, the program does not employ rigid eligibility criteria for admittance. Instead, eligibility is determined on a case-by-case basis. Stakeholders generally agree that the program operates without exclusionary criteria, however, in practice, eligibility is restricted to individuals facing incarceration or a lengthy probation sentence, cases determined by prosecutors to be legally appropriate for ATI, and cases for individuals with clinical needs who might benefit from community-based services and treatment and who do not qualify for other problem-solving courts.

⁵ Throughout this report “stakeholders” refers to interviewed individuals working in Manhattan’s Felony ATI Program and “program partners” refers to stakeholder organizations working with the program including DANY, defense providers, the Court, and the Center.

Figure 2.1. Manhattan Felony ATI Court Case Flow



Legal Screening

DANY's legal screening includes two components: the initial review followed by the "deep dive." The former includes a review of criminal history, previous judicial diversion experience, and medical or correctional health records. The "deep dive" includes an interview, known as the proffer, between DANY prosecutors and the court-involved individual and their attorney, to discuss life circumstances (e.g., family structure, childhood trauma, substance use, behavioral health diagnoses), current charges, and past contact with the criminal legal system.

Stakeholders differ in their perceptions of the legal screening. One group highlights the importance of the proffer to understand what led to individuals' involvement in the criminal legal system.

From our perspective, we absorb a lot of risk. If something doesn't work out and something bad happens, we are going to be held accountable by the public ... The rap sheet, the facts of the case, that's often the worst part of our defendants' life.... [The proffer is] great though because it humanizes people and helps breathe life into these documents. You are more than a rap sheet. Once I understand what led them to commit the crime, it makes me feel more comfortable going forward with an ATI.

This information is particularly important for violent felony charges that require additional administrative approval for ATI. These cases rely heavily on the proffer to "sell" ATI to DANY supervisors, and information compiled during the proffer provides context that may support a community sentence. Further, proffers may uncover whether individuals facing felony charges are willing to engage in programming.

Conversely, other stakeholders describe proffers' harmful consequences. First, individuals often attend more than one proffer, lengthening the referral process.⁶ Further, some individuals facing felony charges remain incarcerated during the referral process.

The process is just so arduous, it is taking the wind out of my sails. I can't imagine clients who are dangled a carrot and on the 3rd proffer [they don't

⁶ DANY recently amended the proffer process to include a single interview with line and ATI prosecutors. However, criminal history or the facts of the case may prompt prosecutors to schedule additional proffers before determining that ATI is legally appropriate.

get ATI]. And I've seen the heartbreak of clients thinking 'do they just not like me?' The DAs say, "[The charged individuals] have to sell it to me— why should [they] get ATI." ... They are asking people to jump through a hoop on fire.

These stakeholders also describe proffers as emotionally exhausting and upsetting for court-involved individuals who must describe their past trauma to prosecutors and demonstrate why they deserve an ATI plea offer.

It's almost punishment in the process ... the client is like, "I was molested as a child and started using crack at 12." And then you need to be deemed worthy by the DA and court.

Finally, proffers require court-involved individuals to explain their past and present criminal behavior and admit guilt to the charges they are facing. Some defense attorneys believe that this may hinder their ability to take the case to trial should they decide not to move forward with ATI. Prosecutors cannot use charged individuals' statements in subsequent legal proceedings; however, the prosecution may discredit them should their testimony diverge from reports, potentially initiating further investigation to uncover additional admissible evidence. Therefore, the proffer may be a high-risk, low-reward gamble for some individuals facing felony charges.

You're going in with no promises on the table. The DA could be like, "oh maybe I'll consider an ATI." You go in, you do a proffer, you admit to everything because that's what you have to do, and then they say, "Never mind we decided not to do an ATI." It's a trap in many cases.

Consequently, several stakeholders worry defense attorneys choose not to refer clients who may struggle during the proffer, hoping to shield them from potential trauma if they do not foresee a successful outcome.

Oftentimes I'm trying to decide who's going to be successful in a proffer by which of my clients is charming enough to ... get the DA to like them. And that should have nothing, nothing to do with who gets an ATI, but it has everything to do with [it] ... Is this person going to be able to check the boxes for the DA's office to let them through in this process?

Participants' perceptions of the proffer varied. Some participants did not recall meeting with DANY, while others appreciated the opportunity to explain their circumstances and demonstrate that they are better than their alleged offense may indicate. However, one participant described the pressure imposed by the proffer to prove they should receive ATI, and disliked the length of time between proffers, suggesting that they occur closer together.

Criteria for an ATI Plea Offer

During the legal screening, prosecutors assess cases on their individual merits, examining the totality of circumstances to determine whether ATI may be appropriate for case resolution. Stakeholders highlight several factors prosecutors utilize to determine whether individuals should move forward in the process to the clinical assessment and receive an ATI sentence. The criteria include admitting guilt and accepting responsibility for criminal behavior, posing minimal risk of violence, presenting service needs that the program can address, and demonstrating a commitment to programming.

Admission of Guilt Individuals referred to the program are offered a plea deal and must plead guilty and accept responsibility for their criminal behavior to enter the program. This may involve a plea to their top charge or a lesser charge depending on the case. Denial of previous offenses may thwart an ATI plea offer.

When you're coming to my office asking for a benefit, be prepared to take responsibility ... There's a big difference between defendants who come in and say, "This was a terrible mistake, here's why it happened." ... Other defendants who come in and say, "What would you have done? I was backed into a corner" take no accountability ... no explanation or no sense of remorse of what happened. That's a red flag for me. Tells a lot of a person's insight.

Similarly, perceptions of dishonesty may hinder an ATI plea offer.

If somebody comes into the office and tells me bold face lies, that's huge. It's rare that there's going to be an instance where I forgive that and give programming.

However, some stakeholders believe proffers' adversarial nature challenges individuals' transparency and pressures them to choose a legal outcome that may not be in their best interest.

Minimal Risk of Violence Prosecutors examine past and present violent criminal activity as a proxy for risk of violence. Stakeholders express that the risk of violence may not prevent an ATI plea offer but may call for additional proffers to uncover previous criminal offending or violence.⁷ A few stakeholders express concern with prosecutors' assessment of violence risk, fearing prosecutors may overlook eligible individuals facing felony charges for ATI.

I also think that there are a lot of people with criminal records that are super, super long but maybe they were super long from when they were a kid. But now they're 50 and haven't been arrested in 10 years ... the district attorney's office is looking at the papers and saying that they're ineligible, when in fact probably they would do great.

Relevant Service Needs The program seeks to identify court-involved individuals who can benefit from services and treatment. Prosecutors describe factors that may identify a need, though nearly all examples or descriptions focused on flags for mental health or substance use needs, including being previously deemed unfit to stand trial, recent psychiatric hospitalizations, arraignment on drug-related offenses, and statements or behavior that demonstrate a more significant need during the offense.

If you want to see the body-worn camera, the defendant is rambling incoherently ... It seems like they're high, not knowing what's going on. So that's a way we can spot needs early ... we are looking at what statements were made to police officers ... "Oh I was really high. Oh, sorry officer, I was stealing that because I need to go get my fix."

Commitment to Programming Success in ATI hinges on participants' engagement with services. Therefore, court-involved individuals must demonstrate willingness to engage in the program — "they have to sell it to me why they should get ATI." Conversely, resistance to programming may indicate that ATI is inappropriate.

The need is there, but the insight and commitment [to] change and willingness to engage in programming is not there ... Definitely motivation is important. Recognition that "I have a problem." That's big.

⁷ The risk of violence is rarely the sole determinant for ATI. Nearly half of program participants (48%) were arraigned on violent felony offenses during the study period.

Stakeholders fear pushing court-involved individuals unwilling or incapable of programming will destine them for failure in the program. However, some stakeholders believe prosecutors appear more concerned about the willingness and capability of young men of color.

There's just more hand wringing over, "Can they do it? Are they capable?" ... They just don't trust [young men of color] as much ... Frankly, the DA is always concerned about who they're hanging out with, or what the people that they're hanging out with might be doing and making sure they're not associating with those people anymore. And sometimes they can be their best friends, family members ... half or more of the people in their life have spent some time in jail or prison. And so there is that systemic bias in the justice system that continues to play into this.

Generally, stakeholders voice concern about DANY's level of authority in determining whether ATI is appropriate for case resolution. They fear prosecutors' interpretation of these factors may lead them to overlook eligible court-involved individuals. They worry inconsistent application of these factors, and their subjective nature, reflect biases that mark certain court-involved individuals as "high-risk," excluding them from consideration for ATI.

Conversely, some stakeholders express that they are not concerned the program is missing large groups of eligible individuals facing felony charges. Rather, in 2021 the program expanded its capacity to serve court-involved young adults. Recognizing gaps in the service provider landscape, the program introduced its Emerging Adult Track to offer specialized programming for participants aged 18 to 25. This track targets treatment and resources to service this unique population often ineligible for youth services and developmentally unprepared for adult programming. During the study period, the Emerging Adult Track served 19 young adult participants.

Diversions programs are traditionally at risk of net-widening or extending social control mechanisms to individuals who would not have otherwise been subject to court supervision, increasing the number of individuals controlled by the criminal legal system. Stakeholders vary in their perceptions of net-widening in Manhattan's Felony ATI Program. A few stakeholders provide examples of net-widening, highlighting "lighter touch" cases accepted into the program that were likely not destined for incarceration.

I do have my questions in my mind sometimes about the way things are charged in the DA's office ... I sometimes wonder why [a given charge]

wasn't just a misdemeanor. They're over-charging just a little bit to get [individuals] into programming ... "Oh it's fine if we just charge a felony, we'll just give them ATI."

"Lighter touch" cases spend less time in the program and do not require a high level of care, appearing more successful. These stakeholders wonder if prosecutors recommend ATI upon identifying a social service need, even when incarceration may not have been a reasonable case outcome. The stakeholders also suggest prosecutors and defense attorneys prioritize cases destined for incarceration and negotiate plea offers responsive to case severity and comparable to dispositions in the absence of ATI.

Conversely, a few stakeholders do not perceive net-widening as a concern for Manhattan's Felony ATI Program, emphasizing that DANY's ATI unit are "hypersensitive" to net-widening. Similarly, DANY stakeholders interviewed claim that weaker evidentiary cases or more minor offenses receive non-incarceratory alternatives. They highlight the legal screening process to triage cases and remove those deemed inappropriate for ATI from consideration.

That's not the point of ATI. If your case stinks or it's a case where a misdemeanor should be offered, don't come to us looking for a felony to misdemeanor repleader⁸ just to resolve [a] case.

Other stakeholders believe ATI offers benefits that outweigh the risks of net-widening. "Lighter touch" cases receive shorter and less intensive mandates to accommodate case severity while providing participants with services and resources that address their social service needs. Further, ATI allows some participants to improve their case disposition upon program completion, graduating from the program without a felony conviction on their record.

Clinical Assessment

From the information gathered during the legal screening, DANY determines which court-involved individuals to refer to the Center for a clinical assessment. As of 2021, the Center's clinical team was comprised of one clinical director, six social workers, and one case

⁸ Repleader refers to a plea that offers court-involved individuals an opportunity to plea down to a lesser charge than they were initially arraigned.

manager providing case management, including conducting clinical assessments, forming treatment recommendations, making referrals, coordinating care, liaising between the court and community-based service providers, and closely monitoring compliance for the duration of the participant's court involvement in the felony ATI court. During the study period, the Center received 361 referrals for clinical assessment. Clinical assessments incorporate several components:

- Criminal Court Assessment Tool (C-CAT), a risk-needs-responsivity assessment tool to predict individuals' risk of reoffending and screen for social service needs that, if targeted, may reduce this risk;⁹
- Review of court documents, including the criminal complaint and indictment, criminal history, and parole or probation information. This information provides context to individuals' legal history and how it may have impacted psychological and social factors in their lives;
- Review of medical and mental health records (when applicable);
- Interviews with individuals' family members or friends; and
- Psychiatric evaluation (when applicable).

From the information gathered, clinicians identify services that best address these needs and best support participants during their mandate. Generally, clinical criteria do not exclude referred individuals from receiving ATI once deemed legally appropriate to resolve the case. However, court-involved individuals who require a higher level of care or monitoring than the program can support may be deemed clinically ineligible, although this seldom occurs.¹⁰

Stakeholders describe the strength of clinical assessments to identify and provide individualized treatment plans to address participants' needs and life circumstances.

We have quite a comprehensive assessment process where we get a very good sense of who is being referred to the court part ... what challenges they have in their life and what their needs are, what resources they may be a good fit for, and importantly, what they're interested in. What they're hoping to accomplish perhaps through the court mandate but also in their life more broadly ... [It] can be a pretty empowering experience...giving the participant

⁹ For more information on the C-CAT validation tool see Pichard-Fritshe et al. (2018).

¹⁰ During the study period, clinicians determined four referred individuals were clinically ineligible for ATI (<1% of assessed individuals).

the opportunity ... to sort of weigh in and to shape their outcome ... Through that process we're able to come up with service recommendations that are very responsive to individual people as people.

Participants offer input on services or resources. "It was a joint partnership to see what I needed help on and to see what she could help me with." They describe the clinical assessment as an opportunity to explain themselves and feel comfortable speaking with social workers who allow them to discuss topics they are typically uncomfortable sharing about. "For many years I had so much inside me, and I had no one to talk to ... [When meeting with my social worker], I felt like someone was there for me. It felt good opening up to her." Further, participants value social workers' feedback on services that may address needs that led to their criminal justice involvement.

A few stakeholders describe what they perceive as limitations to the C-CAT. The algorithm often conflicts with social workers' assessments. For example, social workers may identify a clinical need that does not flag in the C-CAT.

Substance use is a good example ... the C-CAT will go based on last use and frequency of use ... when they're incarcerated, they'll be like, "Oh, I haven't used in six months." But that's because that whole time they were in Rikers. So it won't flag, but we know, and they've shared, once they get out they're going to be exposed to the same triggers.

Similarly, stakeholders describe individuals flagging for employment needs who are in school or on disability.

Several stakeholders feel the C-CAT reinforces biases common in the criminal legal system. For example, its algorithm flags youth and individuals with a lengthy criminal history at higher risk of reoffending, even when the latter's most recent offense occurred years before.

I think unfortunately because we live in the U.S. and there's biases in who's arrested, who's policed, who's convicted ... people who are low-income will plead out to things that could potentially not have been a conviction because they just can't afford bail and they want to get out of jail ... I think that gets reproduced in the C-CAT, naturally, because obviously some people are going to have higher reconviction levels.

As such, social workers rely on the C-CAT as one source of information to guide service referrals. According to clinical stakeholders, the C-CAT is rarely utilized as the sole indicator for risk of reoffending or violence. Instead, social workers engage in interviews with referred individuals, review criminal and medical history, and speak with collateral contacts to assess risk and needs, and determine treatment type, intensity, and modality.

Recommendation & Mid-Assessment Conference

Following the clinical assessment, social workers develop the treatment recommendation, including programming type, intensity, and modality, to meet individuals' needs. Research highlights that inconsistency between risk level and programming leads to higher levels of recidivism among court-involved individuals (see Andrews, Bonta, and Hoge 1990; Bona, Wallace-Capretta, and Rooney 2000). For example, excessive programming for low-risk individuals can cause them to drop out of treatment or increase reoffending. In contrast, insufficient programming for high-risk individuals may not offer enough treatment for behavioral change. Consequently, social workers consider individuals' risk, needs, and life circumstances when forming treatment recommendations.

You really have to ask yourself, "Is this going to be beneficial?"... You really have to be very intentional [with] what you put in [the treatment recommendation] because that's what that person's gonna be held to for a period of potentially one year or two years.

Treatment plans remain flexible to maintain a balance between individual needs and services. Services may be sequential so as not to overwhelm participants while supporting their progress in the program. Social workers prioritize service referrals that address the most imminent needs, or those directly related to the criminal offense, followed by secondary needs. Similarly, they may initially recommend a lower threshold of services and advance treatment later, if necessary.

I'm not gonna take someone who's working full-time and be like you have to be involved in three services every day after work, I'm gonna do the services one at a time ... There are some things though where if something is truly co-occurring ... you have to deal with both of those things at once.

Social workers may recommend voluntary services to address secondary needs. Social workers must calculate the frequency and modality of mandated treatment and determine if

the participant is clinically able to engage in additional services and if these services should be included in the treatment plans. Participants have many demands on them, as such, social workers are constantly determining how many mandated services might set someone up for failure.

Without the judge, program partners—including DANY, defense, the Center social worker and the resource coordinator—meet for the mid-assessment conference at a mutually convenient time to review the case and the treatment recommendation, with the goal of finalizing mandated programming requirements. In these conferences, the resource coordinator represents the Court's perspective and flags issues that may need to be decided by the Judge. The mid-assessment conference allows parties to come together outside of the courtroom, communicate about the facts of the case and needs of the participant, and collaboratively identify the best way to move forward. Generally, they agree on the level of care and content of services included in the treatment plan with a few exceptions. Assuming the participant agrees, the goal is to have a general treatment plan ready prior to the upcoming court date, which then in turn allows for more efficiency inside the courtroom. Additional information may be shared during the mid-assessment conference, calling for revisions to the treatment plan. For example, DANY provides domestic violence reports and information gleaned during the proffer that may impact programming requirements. Program partners may also voice concerns as to the appropriate level of treatment.

This debate of “too much” versus “not enough” programming comes up most often in discussions of toxicology monitoring and residential versus outpatient treatment. Some program partners suggest toxicology monitoring to measure progress, where others believe intense monitoring may be clinically inappropriate and lead to over-programming. These partners believe allowing participants to retain their daily schedules while integrating programming and services is more likely to lead to program success. If there are signs that participants need more intensive treatment later, these partners maintain that they can enhance the level of care as needed. Others believe that participants should begin at the highest level of care and step down with progress and stability.

Program partners resolve differences in opinion on a case-by-case basis. However, according to several stakeholders, partners can appear to defer to prosecutors' recommendations, fearing withdrawal of an ATI plea offer.

You have to throw your hands up and just agree to it because this is the only way that they're gonna let this person not be incarcerated ... if we don't agree to that, they won't get [the ATI] at all.

The final treatment plan however, remains flexible based on the participants needs, evolving throughout the mandate.

Chapter 3

Program Entry & Process

This chapter describes program entry and the key activities that comprise Manhattan's Felony ATI Program, including the plea, services and treatment, court supervision and monitoring and program completion. In describing each of these areas, stakeholder perceptions of challenges to implementation are noted.

The Plea

Following the mid-assessment conference, legal parties engage in plea negotiations. During the study period, of the 314 participants who completed a clinical assessment, 234 participants (75%) accepted a plea and entered Manhattan's Felony ATI Program. Thirty-five participants were not offered or did not accept an ATI plea, and forty-five participants remain open in the referral phase of the program.

Attrition between the referral and programming phases occurred for several reasons:

1. Prosecutors chose not to offer ATI (n=10);
2. Individuals facing felony charges chose not to accept ATI offer (n=7);
3. Defense attorneys declined ATI on behalf of clients (n=7);
4. Cases transferred to another court program (n=4);
5. Clinical assessments deemed referred individuals clinically ineligible (n=4); and
6. Referred individuals experienced death or serious illness (n=2).

Stakeholders spoke about why DANY may not offer ATI and why court-involved individuals, or their attorneys might decline an ATI offer.¹¹ One stakeholder describes court-involved individuals as rational decision-makers, weighing the costs and benefits of ATI and choosing which benefits them most. For example, it may take months to more than a year before DANY is willing to consider and offer an ATI program. Consequently, individuals tire and assess other legal options to resolve their case and limit their involvement with the criminal legal system. Some incarcerated individuals decide to serve the remainder of their

¹¹ Refer to legal screening criteria above for why DANY may choose not to offer ATI.

sentence rather than accept an ATI offer. During the study period, 28% of referred individuals were incarcerated pre-plea. Incarceration may influence decisions to accept an ATI offer.

The process is incredibly daunting ... Clients are asking, “What’s the minimum time to get out because this is tiring?” ... People do whatever it takes to get out of jail faster. They can’t have something hanging over their head that is so intense.

Some individuals prefer not to undergo the several months or years of court supervision required by the program. Conversely, court-involved individuals may be drawn to the benefits of ATI, including programming and treatment to address their needs and the possibility to plead to a lesser charge or case dismissal upon program completion.

I try to talk to potential participants about the sort of win-win-win of, “If there are services that you need or programming that you’d like or resources that you’d like to be connected to, you could do that and at the same time, satisfy the mandate with the court.”

Participants describe community-based programming as a motivator for ATI, preferring to remain in the community to serve their sentence and the opportunity to reduce their charge or improve their case disposition.

Similarly, defense attorneys assess individuals’ life circumstances, needs, and willingness to engage in programming to assess preparedness for ATI’s lengthy and intense programming. They may determine ATI is not best for their client or case, or that their clients may struggle to satisfy mandate requirements, engaging in plea negotiations with prosecutors for a non-incarceratory or lesser jail sentence or suggesting a trial. On the other hand, one interviewed participant preferred to take their case to trial but was advised against this by his attorney.

In most cases, DANY offers individuals an opportunity to plea to a lesser charge to enter the program, however some individuals may plea to their arraignment charge.¹² In limited circumstances the judge could choose to offer ATI over DANY’s objection.¹³ This occurs

¹² DANY offered 89% of individuals who entered the program during the study period a plea to a reduced charge.

¹³ During the study period, the judge offered ATI to 12 individuals over the objection of the prosecutor’s office (5% of all post-plea cases).

infrequently, and the judge prefers that cases follow the traditional ATI path, driven by recommendations from the Center and DANY after a thorough and thoughtful assessment process.

The plea includes mandated ATI programming and a proposed disposition contingent on program outcome. Along with completing their mandated programming, participants are also required to obtain a lawful means of support (e.g. employment, benefits, family support) and make progress towards obtaining stable housing. In each case participants are provided with a written plea agreement that they review with their defense attorney before proceeding. The judge also explicitly reviews the terms of the plea agreement with the participant, including the requirements of the mandate, during the plea allocution.

Participants reported that their understanding of their mandate length and requirements varied. A few participants were aware of mandate conditions when they accepted the ATI plea offer, while most we spoke with learned of these conditions later in the program, often from their assigned social worker.

Program participants during the study period were mandated to an average of 16 months of programming and court monitoring. According to stakeholders interviewed, DANY weighs several factors in determining mandate length, including criminal history, case severity, previous treatment failure, and recommended services. Further, they consider participants' engagement in programming before accepting an ATI plea, reducing mandate length to accommodate prior service engagement. During the study period, 30 participants began programming pre-plea, later mandated to an average of 15-months in the program. Finally, some stakeholders use guidelines established in other problem-solving courts to determine mandate lengths, rather than tailoring them to individual or case characteristics to maintain consistency across ATI programs.

Several stakeholders feel mandates are too long, leading to over-programming, prolonged supervision, and additional opportunities for noncompliance. Further, some stakeholders report mandate requirements are intense and not determined by participants' arraignment charge or clinical needs. These stakeholders fear programming beyond clinical milestones may cause adverse outcomes for participants. They recommend that mandates be informed more by clinical needs and milestones rather than a prescribed length of court supervision.

They basically say in the plea agreement, "You have 12 months to complete your therapy, get a job and find housing or work towards housing," and if the person does

that in six months they don't [graduate] them at six months ... if you check all the boxes and do all the things they ask you to do, who cares how long it takes?

Pleas for ATI participants include two potential case dispositions.

- **Successful Program Completion** During the study period, 81% of participants were promised a conditional discharge (42%) or dismissal (39%) upon successful completion and an additional 18% were promised time served.
- **Failure to Complete** Participants can be unsuccessful in the program because they fail to complete their program mandate, have a new arrest, or abscond from the program. Those who fail to complete are typically promised the minimum sentence for the charge on which they plead. Those who fail the program due to re-arrest or absconding are typically promised up to the maximum sentence for the plea charge. During the study period, participants were promised incarceratory alternatives for program failure ranging from a minimum of 31 months to a maximum of 97 months.

The judge ultimately determines when participants should exit the program, with feedback and communication from program partners. Program partners rarely recommend removing participants from the program for failure to meet program requirements. One participant was removed from the program during the study period for lack of engagement and sentenced to time served rather than the agreed upon 28 months. Similarly, stakeholders explain that it is rare for the judge to impose the maximum sentence in response to program failure; rather, the judge generally considers participants' time in the program. During the study period, 14 participants failed the program due to a re-arrest and three for absconding. Nine of these participants were sentenced to jail or prison, originally promised an average of 81 months incarceration, however, were given minimum sentences with an average of 33 months incarceration. Six participants' cases remain open, and a final sentence is to be determined.

Participant Profile

As reported in Table 3.1, most of the 233 individuals who entered the felony ATI program during the study period are men aged 25 to 59 who self-identify as Black and/or Hispanic. Half of participants reside in Manhattan, while slightly more than 10% live outside of New York City. More than one-third of participants reported being homeless at the time of assessment. Participants' arraignment charges varied, with burglary (28%) and robbery (22%) most common. Finally, most program participants flag for several needs, with roughly half flagging for co-occurring mental health and substance use needs.

Table 3.1. Felony ATI Participants, June 2019–March 2022

Number of Participants		233
Demographics		
Gender¹		
Male		79%
Female		18%
Other		2%
Age (mean)		
		38 years
18 to 24 years		14%
25 to 40 years		47%
41 to 59 years		32%
60+ years		7%
Race²		
Black		42%
White		30%
Multiracial		12%
Asian		3%
No race specified		12%
Ethnicity		
Non-Hispanic		58%
Hispanic/Latinx		41%
Borough of Residence³		
Brooklyn		11%
Bronx		13%
Manhattan		51%
Queens		7%
Staten Island		<1%
Outside of New York City		12%
Top Arraignment Charge⁴		
Burglary		28%
Robbery		22%
Assault		11 %
Grand Larceny		9%
Drug		7%
Criminal Possession of Weapon		6%
Sex Offense		3%
Other		13%
Needs Flags⁵		
Mental Health		80%
Trauma		82%
Employment		70%
Substance Use		63%
Housing		38%
Education		33%

¹ Male and female gender represent cisgender individuals; other represents the 2% identifying as female (transgender). Gender information was unavailable for 1% of participants.

² Race information was unavailable for 1% of participants.

³ Borough of residence for participants reporting as homeless represents where they spend most nights. Borough information was unavailable for 5% of participants.

⁴ Arraignment charge information was unavailable for 1% of participants.

⁵ Individuals may flag for more than one need, therefore, totals add up to more than 100%.

Services & Treatment

Once they enter the program, participants are connected to a range of community-based services that they engage in for the length of their mandate. During the study period, the program referred participants to more than 180 community-based service providers for an average of three services per participant.¹⁴

Stakeholders highlight several challenges with making service referrals. First, service referrals hinge on available programming. Stakeholders describe a checkered service landscape laden with programming gaps that create challenges for pairing participants with appropriate services. For example, limited services exist for provision of safe and stable housing or residential mental health treatment, and few services are geared specifically towards young adults or LGBTQ and gender non-conforming participants.

A difficult area to navigate is in the young adult realm, negative peer influences. Some people commit crimes because they're in the wrong crowd. Those individuals have a stronger hold on [the] defendant than anyone else.... I wish there was a place that could be a therapeutic community, have great resources onsite, do educational things. Give them the time they need away from the environment that bred them, create relationships so when they go back to the community, they can lean on them.

Second, available programming may suffer from lack of resources, staff, or funding. Stakeholders describe several examples of poor-quality or poorly defined programming. For example, one stakeholder describes a community-based service provider who promised “trauma-informed therapy”; however, its therapists were not certified in this specialty. Similarly, programs promising co-occurring treatment to address mental health and substance use needs may focus more heavily on one area, lacking quality services to address the other.

Finally, many programs do not accept Medicare or Medicaid, requiring private insurance or out-of-pocket expenses, fostering treatment disparities among participants. Stakeholders report that privately-funded programs do not have the above limitations and generally offer higher quality programming to participants. Conversely, Medicaid-funded providers serve participants with limited staff and resources and experience high turnover, resulting in

¹⁴ Some community-based service providers address single needs and others may address multiple.

difficulty providing consistent, individualized treatment. Further, a few stakeholders describe these programs as “jail-like,” producing a triggering environment for participants. Consequently, participants attending such programs appear to face more challenges during their mandate.

The programs that Medicaid pays for are harder to engage in and complete because there’s just very little assistance and care. I mean it’s there but it’s not the same if it’s a private therapist who has ten clients and is really focused on your well-being.

Further, access is particularly challenging for incarcerated participants. They are less likely to be able to afford private services and may spend months incarcerated waiting for treatment availability. Though Medicaid-funded providers offer wider availability and employ a rapid referral process that allows participants to leave jail more quickly, this may lead to heightened treatment disparities in programming between these participants and others.

The Center social workers engage in micro- and macro-level strategies to address some of these challenges, including modifying programming; ceasing treatment; making new service referrals better suited to participants’ evolving needs; reflecting on available programming to better understand the benefits, challenges, and limitations; and uncovering new services and resources—particularly those designed to support specific populations (e.g., transgender individuals, young adults). Further, they constantly build new relationships or strengthen existing relationships with community-based service providers and community partners to improve programming options.

Supervision

Supervision consists of two components: case management and court monitoring.

Case Management

The Center social workers perform weekly case management to assist and support participants during their mandate. They juggle many responsibilities during these sessions, including checking in with participants, answering questions, assisting with resource referrals, and addressing issues or crises (e.g., problems with treatment, lost housing, relapse). One stakeholder describes case management as, “having so, so, so many balls in the air at one time and always having balls dropping.”

Case management offers social workers an opportunity to strengthen relationships with participants, stay abreast of their progress, and identify and address issues in the service plan. They tailor sessions to attend to individual needs and preferences, uncovering how they can best support or advocate for participants. Further, they offer participants a safe space to discuss their struggles or successes. Participants describe their social workers as available to discuss identified challenges or needs, remaining open-minded to problem-solve and address concerns. While participants are required to attend weekly case management sessions, many participants indicated that they voluntarily reach out to social workers several times each week.

Case management may also include proactive intervention to mitigate noncompliance. Social workers discuss program expectations with participants, including consequences for noncompliance. Further, they tailor services to participants' schedules and commitments and send reminders for upcoming appointments to encourage compliance.

Court Monitoring

Supervision in the felony ATI program includes monitoring participant progress and responding to noncompliance. The Center social workers play a large role in court monitoring, liaising between community-based service providers, court partners and the mandated participant. Collaborating with the former, they frequently reassess participants' needs and progress, discuss service engagement, and troubleshoot issues. Similarly, participants describe collaboration with social workers to adjust their services. Subsequently, social workers make changes in the treatment plan to implement a higher or lower level of care when necessary.

People try with one community-based service provider and if it doesn't work out ... having [the Center] involved as a safety net to sort of spot these issues as they are developing ... rethink services and get participants reengaged ... and to ... explain that to legal parties so that this is seen as part of a process rather than a moment to pull the plug ... is really important.

I would say one thing the parties are pretty good at listening to is when the provider deems that [participants are] clinically eligible to complete their services. They will not force them to stay in services when they feel like all their clinical goals have been met ... what's nice about this program is like the flexibility to increase and decrease the intensity of services.

Stakeholders explain that treatment intensity may be modified without the involvement of the court, particularly if participants achieve clinical milestones and advance to less intense treatment or require enhanced treatment to address their needs. However, in some cases (e.g., a participant's desire to leave residential treatment early), the Center social workers must seek approval from program partners to amend mandated treatment requirements.

The Center social workers liaise with court parties by reporting compliance with mandate requirements every six to eight weeks and appearing before the judge to discuss participant progress. Prior to court appearances, program partners, including the judge, meet to conference upcoming cases, briefing parties on participant progress and engaging in collaborative problem-solving to address noncompliance. This allows partners to relay a consistent message to participants during court appearances and informs the judge on participants' progress since the previous court appearance, including changes in their life. For instance, during the conference the following is messaged, "the most important thing here is to acknowledge that this participant got a job after getting fired two months ago, this is a huge accomplishment. The most important thing here is that this participant lost his father, and he has been struggling." Some stakeholders describe the judge as "receptive" to various points of view, which can help to balance out the prosecution's authority.

Participants and stakeholders highlight the judge's interest in participants' experience in the program. During court appearances the judge asks them, "How are you doing? Do you feel properly supported? Is there anything else we can do for you?" This provides participants with a voice and an opportunity to play an active role in their experience. The judge describes her role as that of a parent, balancing encouragement but providing structure and enforcing compliance.

Stakeholders interviewed differ in their perceptions of court monitoring in the program. Some believe the program appropriately assigns supervision level to participants' needs, criminal charge, and life circumstances. In contrast, others describe court monitoring as intense and intrusive, claiming that supervision is excessive given arraignment charges.

Compliance During the planning phase, program partners developed a system of graduated responses to program noncompliance to ensure fairness and consistency while providing opportunities for individualized approaches consistent with the type and frequency of noncompliance. Program partners often informally discuss instances of noncompliance and determine a response that they present to the judge at the following court date. In cases of severe noncompliance, a court appearance is scheduled to address the behavior. Although the

judge ultimately determines the court response to noncompliance, in practice she often defers to the team's recommendation. However, some stakeholders prefer that the judge be more involved in court responses to noncompliance.

During the program's planning phase, program partners established a list of example achievements and associated court responses to both reward compliance and incentivize future engagement with the program (see Table 3.2). Stakeholders' descriptions of compliance in the felony ATI program generally mirror these, however participants and stakeholders highlight praise and recognition from the judge and social workers as important to motivate and incentivize participant success. Program partners recognize prolonged compliance by reducing mandate lengths. During the study period, 37 participants (16%) received at least one mandate reduction in response to compliance, and more than a quarter of these participants received two or more mandate reductions. Mandate reductions extend an average of five weeks, most commonly for negative toxicology tests or excellent engagement in programming (94% of mandate reductions).

It happens with someone who's just so knocking it out of the park, who's just so consistently getting a "man of the year" from every program, and the district attorney's office will be like, "Okay we can knock off a month."

Mandate reductions provide positive reinforcement to participants and encourage future program progress. However, compliance is recognized on a case-by-case basis, with little perceived consistency among participants. Instead, recognition appears to turn on advocacy from participants' defense attorneys or Center social workers.

It does take ... [the Center's] prompting and advocating for that positive reinforcement. I haven't yet experienced it where the [court parties] have said 'let's take some time off the person's mandate because they've been doing so well.'

Similarly, the program appears to respond to compliance less frequently than noncompliance, suggesting to participants that recognizing good behavior is not as important as sanctioning infractions. Stakeholders wonder if more standardized court responses would improve consistency, reduce inequality, and offer more transparency about program expectations.

Table 3.2. Partners responses to program compliance with graduated incentives

Sample Compliance	Sample Incentives
<ul style="list-style-type: none"> • Negative drug tests • Regular attendance: Mandated service providers • Regular attendance: Court appearances • Regular attendance: Social worker appointments 	<ul style="list-style-type: none"> • Certificates of achievement • Recognition/praise: Clinical staff • Recognition/praise: Judge • Decreased frequency of court appearances • Decreased intensity of programming • Decreased length of programming

Table 3.3 lists examples of noncompliant behaviors and associated court responses that serve to both sanction these behaviors and re-establish participant compliance. Stakeholders’ descriptions of noncompliant behaviors in the program mirror those listed, however court sanctions commonly include increased frequency of services to respond to treatment-related noncompliance, increased frequency of court appearances to check-in with the judge, and in cases of prolonged or consistent noncompliance, mandate extensions. During the study period, 39 participants (17%) received at least one mandate extension for noncompliance, and 11 of these participants received two or more mandate extensions. Mandate extensions lengthened mandates by an average of 14 weeks, most commonly for positive toxicology tests and/or lack of engagement with services (69% of mandate extensions).¹⁵ According to stakeholders interviewed, the program often grants participants several opportunities to correct behavior before program failure, rarely removing participants from the program for noncompliance.

We don’t expect them to behave perfectly all the time. I don’t think it would work if the first time they did something wrong we threw them in jail ... We really work with the participant to keep trying.

It’s very rare that they’ll fail anyone for a clinical issue. They’ll extend the hell out of someone forever, which we hate, but ... the benefit of that is that the other option for them is to be like, “You didn’t do it ... it so you failed.” ... They will allow someone to stay if that is what they’re choosing.

Program partners value transparency when participants violate conditions of their mandate and are more likely to allow them to proceed with programming when informed of missteps in advance of court appearances.

¹⁵ Two mandate extensions were for an “indefinite” period and are excluded from this average.

Court responses vary on a case-by-case basis, consistent with the type, severity, and frequency of noncompliance. This is particularly true in circumstances of partial compliance. All stakeholders recognize progress is nonlinear and expect participants to stumble before they succeed in the program. While some stakeholders prefer that program partners employ flexibility in court responses to noncompliance that allow for missteps, they feel that the court takes a more black and white view and expects speedier linear progress.

Relapsing is considered noncompliance, but it's such an everyday part of recovery ... We'll have someone who their drug choice is heroin, they haven't used heroin in months, but they're still testing positive for weed. Clinically, that's incredible progress.

Several stakeholders fear individualized court responses to noncompliance cause inconsistencies among participants and lead to participant frustration, hindering success. Similarly, they fear transparency about participants' challenges may cause court parties to respond with legal sanctions rather than taking a problem-solving approach to addressing issues. Although program parties are more lenient when informed of noncompliance in advance, court parties maintain a more abstinence-based approach.

Sometimes I feel like I have to paint a rosier picture or hold back on some information when I'm communicating with DANY about a participant if they are struggling because I'm worried about there being a punitive result.

Table 3.3. Partners responses to noncompliance with graduated sanctions

Sample Noncompliance	Sample Sanctions
<ul style="list-style-type: none"> • Positive drug tests • Missed appointments: Mandated service providers • Missed appointments: Court appearances • Missed appointments: Social workers • Re-arrest • Absconding from program 	<ul style="list-style-type: none"> • Personal essay • Verbal warning • Additional check-ins with social worker • Advanced court appearance in front of the judge • Community service • Clinical re-assessment • Increased frequency of court appearances • Increased frequency of services • Increased length of programming

To improve transparency of program expectations and standardize and communicate consequences for noncompliance, the program implemented benchmarks to document and track (non)compliance. At a court appearance following noncompliance, program partners

establish a benchmark that participants must meet by the following court appearance (e.g., make 85% of appointments) or their mandate will lengthen. This is intended to improve procedural justice by ensuring the participant is informed and preserves some of their agency.

I think it's also really important to set really clear goals, so someone isn't just made to feel bad, they're made to feel okay this is what I have to do in this timeframe to address this. So that it feels very tangible and can create a "this is how I can get back on track."

Although benchmarks improve consistency and transparency, program partners remain divided on how to define and respond to partial compliance.

Compliance Motivators Stakeholders and participants describe several factors that they believe challenge or motivate program compliance. For example, participants' personal disposition, drive, and ability to meet mandate requirements may facilitate or challenge engagement in the program. Stakeholders express that some participants want to engage in treatment to leave jail, however mandate requirements are too burdensome, or they do not understand the consequences for failure to engage in programming.

We've had people abscond from residential because maybe they thought they were ready when they were in Rikers. It sounds really tempting but it's really intense, and it's maybe not what people were expecting.

Similarly, participants echoed that internal motivation drives program compliance. As one interviewee said, "I knew that there were things that needed to change, that I had to make a better decision for myself. I could end up somewhere else if I didn't choose to correct my choices and decisions."

Stakeholders and participants describe environmental factors that motivate or challenge compliance. For example, employment, childcare, and other commitments may make it difficult for participants to attend appointments. Further, although positive family support facilitates motivation, negative family relationships may produce a triggering, unsafe or unstable environment that hinders participants' engagement. Finally, stakeholders and participants highlight instability (e.g., housing, mental health) and unexpected events (e.g., a breakup, death) as critical challenges to program success. One stakeholder explains,

It's the hierarchy of needs. Right? If someone doesn't know where they're getting dinner or if someone doesn't know where they're sleeping, why are they gonna care about going to a 4pm appointment that's not gonna help them address any of those needs?

Most stakeholders do not see court sanctions as a motivator for participant compliance. Instead, they perceive that participants either do not fully comprehend the ramifications of mandate extensions or are unmotivated by these consequences. Rather, they believe extending mandate lengths precludes participants from seeing the light at the end of the tunnel. However, a few stakeholders emphasize that consequences for noncompliance and recognition for compliance varied case-by-case, with some participants responding well and others less motivated by incentives and sanctions. A few participants describe program partners' recognition of their hard work in the program, reinforcing that they are on the "right track." When participants appear unmotivated by court incentives or sanctions, program partners collaborate to determine which factors may encourage their compliance.

Program Completion

Manhattan's Felony ATI Program requires participants to satisfy requirements for the length of their mandate. Further, participants must demonstrate that they are working towards securing stable housing and a lawful means of financial support, if applicable, and must test negative for marijuana and other substances within 90 days of program completion. Ultimately the judge declares successful program completion or failure; in practice however, the judge often defers to DANY to make this decision based on the plea agreement.

According to stakeholders, completion requirements are broadly interpreted, allowing transitional housing, residing with family members, or a shelter to satisfy the housing requirement, and government benefits to satisfy the financial condition for completion.

I think it would be ethically irresponsible if the court and the ATI Program said to someone, "Okay the ATI Program's over. Good luck finding a place to live and hope you can scrape two cents together, but we're done with you" and sort of wipe our hands clean of them because their mandate date came up, but they have no place to live and no income.

The individualized readiness assessment built into the program tailors completion requirements to the participant and their life circumstances. However, some stakeholders fear

this may result in inconsistent treatment among participants. Further, application of these conditions appears to differ in practice.

I have a case where DANY decided because [the participant] has a work history, benefits aren't sufficient [and] he needs a job to complete. That seems a little bit unfair to me. They want him to be a productive member of society and reach his full potential, but if the goal is legal means of support, then the standard has to be applied equally.

Consequently, many stakeholders prefer that the program relax completion requirements, suggesting they hinder participants' transition to an independent, law-abiding life post-program. For example, participants' open felony case may challenge them from obtaining employment or affordable housing. Further, many available housing options are unsafe or located in crime-ridden or low-income areas that lack economic opportunities. A few stakeholders claim the program's toxicology requirement does not derive from a clinical recommendation or evidence-based practice but is adopted from Manhattan Treatment Court. Finally, they stress that mandate lengths establish an expectation that participants can turn their lives around during the program, which is often unrealistic.

Upon program completion, participants receive a final case disposition and sentence. During the study period, 46 participants completed the program (65% of case closures), most of whom graduated without a felony conviction on their record (87%). More than a third had their cases dismissed (37%). Program graduates during the study period would have collectively served a total between 58 and 258 years of detention. Instead, these individuals avoided any sentenced jail or prison time.¹⁶ Recently, DANY began to reward consistent program compliance with better case dispositions upon program completion than were originally agreed to as part of the plea, with an eye to further reduce barriers to housing, employment, and other benefits negatively impacted by a felony conviction.

If we are on board, it is rare that a person keeps a felony at the end. We know that having any criminal conviction, especially a felony, has a lot of consequences ... If they go through the program and we think they are rehabilitated, we have to own that and give the dismissal. If we want to have a record of the case, the trial assistant wants [a] misdemeanor. But even when

¹⁶ This range captures the sum minimum and maximum jail alternative for all participants completing the program during the study period, based on their plea to a lesser charge than their arraignment charge.

that is the case there have been times that they have given them a better disposition because the person showed us that they did it.

Of participants accepting a plea into the program during the study period, 21% graduated with a disposition than was better than initially promised.

Conversely, those who fail to complete the program receive one of the two jail alternative sentences promised in the plea. During the study period, 18 participants failed to complete the program. Non-completing participants spent an average of 345 days in the program and half were sentenced to incarceration while six participants' cases remain ongoing. One participant was removed from the program and received a time served sentence. Similarly, forty participants were re-arrested¹⁷ during the study period, however only 13 of these re-arrested participants were removed from the program. Two re-arrested participants went on to successfully complete and the remaining re-arrested participants remain active.

Completion Motivators

Stakeholders describe characteristics common among successful program completers. These factors mirror contributors to participant compliance. For example, interviewees report that internally motivated participants capable of satisfying mandate requirements and those who experience stability in their lives are more likely to succeed.

My sense is the longer your record, [if] you have been in and out of state custody, it's a hard road. It's hard to turn it around. There is a lot of trauma there. There is a lot of bad habits. There are a lot of negative social influences. If someone comes to ATI with no criminal record and someone comes to ATI with six felony convictions ... I would say the guy with no criminal record [will do better]. I think it's a harder road for some who are deeply justice involved.

Further, stakeholders highlight that a strong relationship and rapport with program staff and appropriate service placement contribute to program success. They describe consistent communication with program partners as essential to identify and address problems and offer participants support.

¹⁷ Researchers did not have access to rearrest data including charges or dates of incidents that led to rearrests.

Someone who completed, it was actually such a rough past. He was on the brink of needing to go to residential [treatment] which would have been a disaster because he worked as a super so he would have lost his job and his housing. It was a very rocky road. He was [toxicology] positive, negative, positive, negative, but he never lost communication with us and so we were always able to know what was happening and how to intervene. I feel like it's so much harder when the person isn't in contact because then we can't help them with the issue that's going on.

Conversely, lack of support from program partners, such as defense attorneys, due to absence from court conferences or appearances can challenge participants' success in the program.

Some defense attorneys we have incredible communication with. As soon as we tell them there's an issue, they get in touch with the person and help the person get back in touch with us. Or they're really involved in advocating for better outcomes for their people. And then in the inverse we have some defense attorneys who ... don't answer us, they don't answer their participants, they're not involved, they miss conferences, they miss court. So that's really challenging because we really need them to be advocating for the participant.

Finally, mandate challenges and completion requirements may cause participants to grow frustrated. Some choose to leave the program, resolving their case through other avenues.

I think the people reach a point where they just feel like they need to get on with their life and in some cases just taking the felony or whatever would almost be easier than having to jump through all these hoops.

Chapter 4

Program Context

No program operates in isolation. Stakeholders describe several external factors thought to have significantly impacted program operations, including inter-agency communication and collaboration, COVID-19, and the legalization of marijuana in New York.

Communication & Collaboration

Stakeholders describe inter-agency communication as the key to program success. Generally, they describe positive relationships and communications between program partners and felt that the rapport and trust between partners facilitates transparency, collaboration, and program growth. Program partners collaborate on individual cases, addressing challenges and making recommendations to support participants. The Court's resource coordinators are central to this collaboration, ensuring a steady and efficient flow of information between the parties by coordinating off-calendar communication, scheduling court appearances (including advancing cases as necessary) and case conferences, and representing the Court in conversations with the Center and the legal parties. Further, representatives from all partnering agencies attend regularly scheduled meetings for program partners to discuss broader programmatic issues, such as procedural justice and compliance tracking.

According to stakeholders interviewed, inter-agency communication was initially minimal, with information shared sparingly, leading to frustration and distrust among program partners. For example, legal partners felt they were not receiving adequate clinical and treatment information to make informed decisions about the plea offer. Similarly, clinical partners felt uninformed about legal decisions, particularly mandate lengths and case dispositions. As the program evolved, relationships between program partners strengthened and communications improved.

However, stakeholders highlight a few remaining challenges. First, they describe an imbalance between program partners.¹⁸

This is the prosecutor's show ... They dominate the court appearances. They create the plea agreements ... having one party be super checked-in and reading every single appointment that you made or missed, and then having the party that's supposed to be defending you be less engaged, is very difficult and imbalanced.

Unlike their counterparts, defense partners do not employ designated ATI staff. Instead, the program experiences a revolving door of defense counsel that interviewees saw as a challenge to consistency, trust, and transparency among program partners.

The constant stream of new people, it doesn't allow you to build that same depth of relationship ... I can build relationships with 5 people from DANY, but how am I going to build a relationship with ... 100 defense attorneys? It undermines the ability to collaborate when people haven't done this together before.

Our repeat players learned the rules of the game and are not just thinking about one case at a time but are thinking about dozens of cases ... because defense attorneys are assigned cases individually ... there's an asymmetry in that the other parties have more context for what's happening and how it's comparable to other cases that are proceeding at the same time.

Inconsistent defense engagement may challenge representation for participants and hinder collaboration among program partners. When defense agencies are not present during partner meetings, discussions omit a crucial perspective. In circumstances where defense attorneys play a minor role in participants' program engagement, the Center social workers unintentionally assume an advocacy role, representing participant interests during court conferences and appearances. According to several stakeholders, this complicates the Center's intended role as an independent third party, instead placing social workers in the difficult position of serving as both participant advocates and neutral clinical experts.

¹⁸ This imbalance is even greater when a participant's defense attorney is not familiar with the ATI part such as when they retain a private attorney or have an attorney who is not employed by one of the three Manhattan public defense agencies.

Several stakeholders describe a lack of deference to clinical opinion in the program. At times, Center social workers must contend with program partners who share different opinions and have varying levels of clinical expertise. The role of DANY's clinical coordinator can also complicate conversations about participant treatment and progress. Before Manhattan's Felony ATI Program, the clinical coordinator performed clinical assessments and made treatment recommendations for ATI participants without a specified program. According to some stakeholders, the clinical coordinator role in Manhattan's Felony ATI Program remains poorly defined. Instead, some reported it duplicates the Center's clinical role.

Stakeholders also reveal inconsistent communication from community-based service providers about participants' engagement and treatment compliance. Some of these providers communicate regularly with program partners, while others are less familiar with or more resistant to sharing information. Further, communication may vary by the assigned staff member. At worst, poor communication between community-based service providers and program partners may hinder participant progress during their mandate.

Sometimes they won't tell us any issues going on and then they'll send us a court report that the person missed five of six weeks. If you would have told us this at week two, we could have fixed the problem. And now this person is going to have a horrible court report.

Although stakeholders describe challenges to inter-agency communication, generally, communication has improved, and stakeholders consistently highlight the strength of collaboration as a key to the program's and participants' success.

COVID-19

In March 2020, the nation experienced shutdowns to combat the spread of COVID-19. Since then, the pandemic has caused both short- and long- term effects on the program, its partners, and participants. Vulnerable populations were most affected by and had more limited defenses against COVID-19. Many participants lost their jobs, had difficulty feeding their families, experienced deteriorating physical and behavioral health, and had limited medication access.

People who have substance use problems, their triggers are tenfold [be]cause of the isolation, the depression, all of this. People who are in domestic

violence situations were stuck at home with their abuser. People who have mental health problems, their symptoms could have got exacerbated.

COVID-19 challenged participants' access to services. Many participants could not travel to appointments, several programs closed, and programs that remained open suffered from low staffing and lack of resources. Further, some participants struggled with virtual programming, particularly young adults, older participants, and those without access to technology. Similarly, the transition to remote clinical assessments and court appearances challenged program partners' ability to build rapport with and support participants.

However, Manhattan's Felony ATI Program demonstrated resilience during this period. The ATI court remained open as an emergency part and continued to hear cases. The program also continued to receive referrals, including prioritizing potential participants being held in custody pretrial, and offered opportunities for participants to engage in remote programming. During the initial months of the pandemic, referrals dipped slightly from an average of ten per month between January and March 2020 to an average of four per month between April and June 2020.¹⁹ Further, the program supported participants by providing cell phones to facilitate check-ins with social workers and engage in virtual programming, increasing service attendances and compliance with mandate requirements. In fact, many participants succeeded during this period, enjoying the benefits offered by virtual services and court appearances.

I think there is a real lesson learned there going forward that ... for some participants, virtual engagement is just going to work much better in their life. There are conflicting demands on their time and by doing some or all services over [the] phone or over Zoom, we can ... improve compliance, improve engagement, hopefully also improve the quality of treatment and success of the mandate.

Virtual court appearances and written progress reports can facilitate lighter court monitoring. According to stakeholders interviewed, virtual communications enhanced inter-agency collaboration and freed participants' schedule for programming or other commitments.

¹⁹ Stakeholders interviewed suggest a case backlog in the district attorney's office reduced the number of referrals as prosecutors resolved many cases through dismissal.

These are people we are encouraging to work, so to have them take a day off of work to come to court, it's really given us an avenue to kind of revisit whether that's necessary and in which instances it should be crucial. Kind of meeting people where they are a little bit more. Especially because we want them to feel engaged and seen.

Further, interviewees report that virtual court appearances encourage procedural justice and restructure the power imbalance common in court. Stakeholders and participants describe the intimacy offered by virtual court monitoring—parties are represented in similar sized boxes and participants are guaranteed unobstructed time with the judge. However, a few stakeholders believe there are occasions where in-person court appearances are preferable. They describe participants who appeared to take advantage of the informality afforded by virtual court appearances.

People say things and do things that they should not be doing in court [be]cause I don't think they realize it's a serious thing. They'll be lying in bed shirtless, or they'll be out at the park and the judge gets very annoyed and then puts them on for an in-person appearance because she feels as that they aren't taking it seriously. We had two participants curse at the judge [be]cause they just feel like they're on FaceTime. They're just not realizing it's a courtroom.

Similarly, some stakeholders feel that face-to-face meetings with the judge benefit participants struggling with program compliance. However, a few stakeholders wonder if reserving in-person court appearances for noncompliance negatively impacts participants who utilize recognition from the judge for motivation.

I felt like cases where the defendants were doing well were getting overlooked and not getting enough facetime with DANY and the court ... We were not putting cases on the calendar to tell the defendant we were proud of them. Those defendants were sort of getting lost in the weeds.

Currently, some aspects of pandemic-related innovation have remained. For example, many participants continue to engage in remote programming where appropriate, legal parties engage in virtual case conferences, and participants who live out of state/ engaged in residential treatment are permitted to attend virtual court appearances. The Center continues to give phones to participants who need them to engage in services. However, many changes have not continued, for example, almost all court appearances are now back in-person.

Legalization of Marijuana

In 2021, New York State passed the Marijuana Regulation and Taxation Act (MRTA), legalizing the purchase and possession of marijuana by adults 21 years of age or older.²⁰ Currently, for participants in substance abuse treatment and those who are mandated to toxicology testing, the program prohibits marijuana use (and the use of other controlled substances), requiring 90-days of sobriety before program completion and responding to use with intensified treatment, toxicology testing, and/or extended mandate length.

Program partners struggle to determine the role marijuana use should play in the program. Some stakeholders question how the court can punish participants for engaging in legalized behavior and fear sanctions for marijuana use hinder progress in the program and produce disparities among participants.

It's definitely been an uphill battle in terms of trying to acknowledge that "Yes, we have participants that could certainly benefit from cutting back on their marijuana use. We have participants that can't reach their goals because of their marijuana use. We also have participants where their marijuana use is honestly not harmful and perhaps beneficial to them. Or we have participants where maybe they are using marijuana, but they used to be using heroin so from a harm reduction lens that's great progress."

The client was doing everything that he needed except that he kept getting positive marijuana tests ... I mean it wasn't high levels, he wasn't smoking every day. It was just occasional as a stress reliever ... and it had nothing to do with his offense. And yet they kept extending his time and were kind of getting to the point of threatening to put him in jail if he didn't come back with negative toxicologies for marijuana. And it just got to a point where it just seemed ridiculous.

With the complex nature of marijuana legalization, stakeholders are unsure when or how this will impact program operations. Interviewees call for more straightforward guidelines and further discussions of the program implications of legalized marijuana.

²⁰ See <https://cannabis.ny.gov/adult-use> for more information.

Discussion & Conclusion

Stakeholder and participants described strengths and challenges of the Manhattan Felony ATI Program that may prove instructive for the program itself, as well as for other jurisdictions seeking to implement similar approaches. This chapter first summarizes some of these key discussion points and then identifies study limitations and next steps for future research. The program strengths and challenges are thematically oriented around the seven program goals identified in Chapter 1.

Program Strengths & Challenges

Increasing Service Referrals

The program serves participants with varying charges and needs. It does not impose eligibility or exclusionary criteria, unlocking opportunities for court-involved individuals traditionally deemed ineligible by specialized problem-solving courts or overlooked by diversionary programs due to charge severity.

[To] take ATI from something that ... only goes to specialized populations and change it to something that is open to everyone and ... to be seen more as sort of a default approach for resolving felony cases as opposed to sort of a fringe approach.

Since its inception, the program diverted more than 230 participants and reported a rise in referrals from an average of seven monthly referrals in the last quarter of 2020 to an average of 25 referrals per month in the first quarter of 2022. Further, the program introduced the Emerging Adult Track in 2021 to offer specialized programming for participants aged 18 to 25. Similarly, program partners recently began discussions of a gun track to serve participants arraigned on weapons charges.

Stakeholders made several suggestions to increase referrals to the program, including identifying and screening cases arraigned in criminal court, rather than waiting for them to reach supreme court, or establishing criteria that refers cases to ATI for screening.²¹

²¹ This mirrors Manhattan Treatment Court where statutory guidelines trigger program referrals.

Identifying cases in criminal court was initially suggested in the planning process and implementation of this idea remains a goal of the program.

However, several stakeholders emphasize that the program has reached maximum capacity, fearing burnout among program partners, and impacting program quality. From August 2020 through March 2022, the number of open cases (pre-and post-plea) in the program increased from 92 to 260. In the fall of 2020, the felony ATI program received an average of eight referrals monthly. This number increased to an average of 12 referrals monthly in 2021 and 25 referrals monthly in the first quarter of 2022. One stakeholder describes the increasing caseload as “relentless” and a “never-ending volume of work”. Stakeholders highlight increasing demand for the program coupled with a few causes of an increase in caseload: a) the program’s lengthy referral process and b) mandate lengths. They fear burnout among program partners, impacting the quality of program operations and delivery to participants. Stakeholders worry the program cannot manage this increased caseload. To address the caseload capacity concern, stakeholders call for an additional judge, resource coordinators to enhance program familiarity among court parties working in other courtrooms, and more social workers to support participants’ needs. In 2022, the court borrowed staff from other court parts to enhance and expand court operations. The court also added a second calendar day which now allows the court part to meet two days a week. Similarly, in 2022 the Center added additional social workers and case managers and developed a new position of senior social worker to enhance the court’s capacity and to address those limitations.

Providing Tailored Services

The program provides an array of individualized services and supports to address issues contributing to participants’ criminal legal involvement, with the intent of subsequently reducing recidivism and promoting public safety. During the study period, the program connected participants to more than 180 community-based service providers and 700 services tailored to their needs and life circumstances. Participants highlight programming aspects that helped them to navigate challenging situations and improve their lives. For example, one participant describes how services help him grieve and overcome the anger caused by the loss of his son that drove his decisions leading to criminal involvement. He explains that program services offer him an opportunity to confront this pain, “Before, I would think about my son and be in a rut ... I know how to react to certain things now, know how to not react to certain things. Manage my aggression.”

However, stakeholders describe gaps in the treatment landscape, limited availability, and inconsistent programming quality that make service referrals challenging. Further, they

recognize treatment disparities in privately versus publicly funded programming that may impact participants' success in the program.

Stakeholders offer several recommendations to improve service delivery to participants. They suggest Center social workers strengthen relationships with current community-based service providers, form relationships with new community-based service providers, identify programming to address treatment gaps, and familiarize themselves with behavioral health trends to enhance service offerings for participants. Additionally, stakeholders identified gaps in the treatment landscape independent of the Centers and the Court's operations such as residential mental health services. Further, stakeholders recommend additional program tracks that offer specialized services for subpopulations in contact with the criminal legal system. Finally, one stakeholder suggests that the Center provide onsite services to participants, serving as the direct service provider, and potentially enhancing participants' comfort with treatment, and facilitating program access and improving compliance.

Providing Community-Based Supervision

Manhattan's Felony ATI Program provides flexible supervision, consistent with participants' needs, and progress in the program. For example, supervision intensifies in response to noncompliance and loosens when participants demonstrate compliance. However, stakeholders report variation in program partners' response to noncompliance, producing inconsistency among participants.

Some stakeholders expect participants to "turn their lives around" during the program, defining progress by absolute compliance with mandate conditions and requiring that participants meet certain milestones prior to completion. They recommend greater accountability and more punitive sanctions to encourage compliance. Conversely, other stakeholders believe change is gradual and may not be observed before program completion, acknowledging partial compliance as progress.

It's not that we "fixed" someone, it's that we helped them address something and set them up so when they're done with the court their going to continue working on things and being able to access services and resources.

Further, they call for more frequent and consistent positive reinforcement to motivate progress. To improve transparency of program expectations and standardize court responses to (non)compliance, the program implemented a benchmark system to track participant progress. However, the impact of this process on supervision of program participants has yet to be evaluated.

Reducing Detention

Participants who successfully completed the program during the study period would have collectively served a total between 58 and 258 years of detention. Instead, these individuals avoided any sentenced jail or prison time. Further, 87% of graduates completed the program and received a non-felony disposition; in fact, more than half graduated without a criminal charge on their record, reducing barriers to employment, housing and other resources that can contribute to involvement with the criminal legal system.

Increasing Law-Abiding Behavior

Participants describe the program's positive impact on their lives, redirecting them from "street life" and criminal activity and facilitating a law-abiding lifestyle.

To be where I'm at in a year and half. To be employed. To be in a safe environment. To not be depressed. But to be happy ... to have a stable mind ... I'm on my way to being where I always wanted to go ... Sometimes I think it's too good to be true ... My life's a whole 180 [degrees different].

I was really ready to throw the towel in and do another 10 to 15 years in prison and look at me now. I'm not going back ... I'm teaching people on taking the right path in life and standing up for what's right. What I want to give them or teach them are the trades or skills that the program taught me ... I'm touching others' lives and I'm making a difference in my life ... One thing I know is that I'll never use drugs again. I'll never go to prison again ... I'm taking advantage of this.

Further, participants attribute reconnecting with family and building a career to their experience in the program.

Providing Consistent Case Processing

The program operates as a centralized location for ATI staffed by a dedicated judge and specialized team of prosecutors, social workers, and court personnel. Further, the program seeks to improve efficiency, fairness, and quality of ATI programming for participants. Stakeholders and participants describe program partners as the program's greatest strength. Although approaching the work from varying perspectives, they share a commitment to rehabilitate and reform.

The quality of the people that [are] working on the project on a day-to-day basis are super invested and really bring a level of care and thoughtfulness ...

taking the time to learn about the person and treat them as a unique individual with their own set of circumstances and to be flexible throughout their mandate as a result of that.

Regular meetings between program partners and informal case conferences provide opportunities for diverse perspectives that reduce the power imbalance traditionally observed in the criminal legal system. Further, these meetings are intended to empower program partners to be invested in program success.

Stakeholders emphasize that “the right people” must be working in the program, demonstrating a commitment to its goals, fairness, neutrality, and respect towards the team and participants. Similarly, they emphasize the importance of transparent communication and collaboration that best supports participants and facilitates consistency in program delivery.

Participants describe Center social workers’ support as critical to their success. Center social workers connect participants to services and resources, offer a safe space to discuss their experiences, and represent their interests during court appearances and conferences. As one participant noted, “To have an individual person focus on you, to call you and to see how you’re feeling, it means a lot sometimes.” Similarly, a clinical stakeholder describes this role:

We are there as sort of an ally for the participants throughout their mandate ... They know there is someone they can go to ... They have someone who is keeping an eye out *for* them, not *on* them.

To provide a better counterweight to what some stakeholders highlight as DANY’s enormous authority over program operations compared to defense agencies’ minor role in the program, several stakeholders call for an ATI unit or at least a dedicated representative at the three defense partner agencies to enhance familiarity with and engagement in program operations. Some stakeholders prefer to increase the involvement of the judge in more day-to-day decisions rather than deferring to the team’s suggestions to lessen this imbalance of authority.

Reducing Case Length

Once referred to ATI, program participants spend an average of 108 days²² (ranging from 10 to 455 days) in the program's referral phase before accepting an ATI plea. The subset of participants who were incarcerated during the referral phase move through the referral process faster (on average 72 days). Several stakeholders stress that proffers contribute to referral process length and impede program access, producing disparities among eligible court-involved individuals. For example, these stakeholders believe that white individuals facing felony charges experience a shorter referral process and are more likely to receive an ATI offer. In contrast, they perceive that individuals of color attend several proffers with DANY and must do more to prove their ability and willingness to engage in the program. To note, researchers had access to participant data during the study period and it showed no difference in average referral times based on race. However, data on referrals that did not enter the program was not analyzed for this report and data on the specific steps that DANY required for each referral to complete during the proffer process was not available.

Once participants take a plea into the program, they spend an average of 16 months of programming and court monitoring. Several stakeholders suggest mandate lengths are too long, leading to over-programming and prolonged supervision. Some stakeholders recommend that mandates be informed more by more clinical needs and milestones rather than a prescribed length of court supervision.

Stakeholders offer several recommendations to reduce the referral period and improve access to the program. They suggest streamlining the referral process to increase its efficiency and reduce pre-plea incarceration. Additionally, several stakeholders recommend looking at changes to the proffer process to reduce the referral period and lessen the burden on individuals facing felony charges or reserving proffers for severe cases.

Study Limitations

There are several noteworthy limitations to this study. First, researchers interviewed participants and stakeholders engaged in the program; thus, assessments of program

²² This includes 11 participants whose referral times were delayed for reasons outside the program's control, such as difficulty obtaining contact information and diminished access to in-person services in the early days of the pandemic. One case was excluded from this average because the participant declined ATI initially after their assessment but over a year later decided to be reconsidered for ATI. For this study, the referral process begins once DANY emails all parties to refer a case to the felony ATI program.

operations are subjective. Further, the stakeholder sample did not include community-based service providers, omitting an important perspective. Similarly, the participant sample includes only seven participants recruited by Center social workers. This recruitment strategy made it difficult to engage participants in the study and may have influenced participant responses—for instance, identifying participants who were generally more favorable about the program—potentially limiting the generalizability of findings. Future participant interviews should employ a researcher-led recruitment strategy. In addition, this report describes a felony ATI program located in the largest city in the United States. Findings from this report should not be generalized to other jurisdictions, though they may prove informative for other jurisdictions planning their own felony ATI program. This report drew from administrative data contained in the Center’s case management system, but researchers did not have the resources to match to court or arrest data which could have created a more complete picture or helped to verify information provided by interviewees.

Directions for Future Research

As the program enters its fourth year, it continues to expand and enhance operations, reflecting on the past to inform future directions. However, program success is unknown in several areas. Future research should utilize the findings from this descriptive study to examine clinical and criminal legal impacts. This study does not evaluate the impact of Manhattan’s Felony ATI Program on recidivism rates post-program, given that only 42 participants completed the program during the study period. However, the Center developed a case management and data tracking system to develop metrics and lay the foundation to examine program impacts after a longer period. Future recidivism studies should examine re-arrests over a period adequate to provide insight into the long-term impact of the program. Although re-arrest rates are important, a comprehensive outcome evaluation should aim to measure change in intermediate outcomes. For example, an analysis of impacts on educational, housing, employment, post-program service engagement, substance use, and strengthening social supports would provide a broader measure of program success. Additionally, research should explore the impact of program components (e.g., referral period length, mandate length, pre-plea programming, compliance) on access to and retention in the program, as well as participant outcomes. These inquiries should shed light on any disparities in access among eligible court-involved individuals and felony ATI’s ability to enhance public safety while reducing the use of incarceration.

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