Balancing Punishment and Treatment: Alternatives to Incarceration in New York City

Editor’s Note: In 1997, the New York City Council’s Public Safety Committee called for increased funding of the City’s alternatives to incarceration. The Committee also called for more objective information on program participants, services, and outcomes. In response, the New York City Council and the City’s Office of the Criminal Justice Coordinator commissioned the Vera Institute of Justice to conduct an evaluation of these programs and investigate their effect on the participants as well as public safety. To answer the questions posed by the New York City Council, researchers at Vera interviewed 687 felony offenders entering nine of the ten alternative programs, and then interviewed more than half of them again at the end of their third month. Over a three-year period, the researchers compared the recidivism rate for more than 300 of these offenders with the rate for a sample of similar offenders not sentenced to alternative programs. The researchers also interviewed judges, prosecutors, defense lawyers, and program staff, visited the programs, and obtained attendance and other data from participant case files. The final report was nearly 100 pages long, and it is excerpted in the following pages.

I. Introduction

The criminal justice system in New York City includes a unique network of alternatives to incarceration: a coordinated set of programs to which judges may send criminal offenders instead of sentencing them to jail. The programs are designed and operated independently, but all require offenders to attend counseling, classes, and treatment for a period of six months to a year in order to avoid a threatened jail or prison sentence. All but one are nonresidential.

New York City currently is spending approximately $12.5 million on alternatives to incarceration, or ATI programs, responsible for the punishment and treatment of approximately 3,000 people on an annual basis.

About half of those people are arrested for misdemeanor offenses and half for felonies.

This report assesses the operation of the ATI system when dealing with defendants accused of felonies. While previous studies have examined individual programs, this is the first study to examine the felony ATI system as a whole.

The ATI system in New York City differs from other programs nationwide in at least three ways. First, its programs are more carefully targeted than most “alternative” sentences in the United States, screening offenders to maximize the chance that the programs admit only those genuinely bound for jail or prison. Defendants whose charges carry potential jail time, but who are likely to receive only a probation sentence, are screened out. Second, the ATI system emphasizes treatment and onsite supervision as opposed to around-the-clock surveillance. Each program serving felony defendants is under contract to treat a general population of offenders or one of three special populations—substance abusers, women, or youth. Third, the system is operated entirely through contracts between non-profit organizations and the mayor’s Criminal Justice Coordinator and the New York City Council.

Judges in New York, as in most states, are not required by legislation or sentencing guidelines to send offenders to ATI programs. [As such,] budget and justice officials have few mechanisms to shift large numbers of offenders away from jail sentences, even if the alternative sentences save money and reduce crime. These officials may try to promote alternative sentences, but the use...
of alternative programs is left to the initiative of individual judges, prosecutors, or defense lawyers.

New York City has expanded the network of actors in the courtroom to encourage the use of alternative sentences. City officials have created an ATI system that includes ... court representatives whose job is to persuade ... judges, assistant DAs, and public defenders to use these programs routinely in appropriate cases. As a result, the ATI system plays a dual role in the criminal justice process, trying to shape plea bargains and sentencing decisions in court as well as administering the sentences themselves.

A. This Study
This report describes the results of a four-year evaluation of New York City’s ATI system for felony defendants. Not only is ours the first study to examine the entire ATI system, ... the study also follow[ed] a substantial number of offenders for two years after they finish the program. We compare reconviction rates of a large sample of those enrolled in ATIs with matched offenders who were sentenced to probation, jail, or prison.

Specifically, this report addresses three central questions:

• Who enters New York City’s ATI system? We examine how judges make decisions to sentence offenders to the ATIs.

• Are the ATI programs implemented with integrity? ... We examine what range and intensity of services they provide, and how well the services match the participants’ needs.

• Does the ATI system compromise public safety? We examine the re-conviction rates among program participants, not only during their time in the programs but for many months afterwards, to see if those placed in ATIs are convicted more often than a matched comparison group.

B. ATI Programs
New York City supports ten felony ATI programs that specialize in one of four subpopulation groups [—general population, substance abusers, women, and youth.]

Our research covered nine of these [programs]. ... The figures we present for our study sample as a whole are not representative of the ATI system because we over-sampled within certain of these groups to obtain sufficient numbers of women and youth. In addition, two programs ... are substance abuse treatment programs for women and are included in both the women’s program group and the substance abuse program groups.

II. ATI Entry and Participants
Only a small fraction of the felony offenders in New York City courts receive ATI sentences, but the ones who do typically are charged with serious felonies and have been detained or held on bail when they first appeared in court.

In the absence of legislation [or] guidelines ... [governing] who should be sent to these programs ... the ATI court representatives have become part of the negotiation process among judges, prosecutors, and defense attorneys.

Defendants enter ATI programs not just at the time of their sentencing, but more often as part of a deal in which the judge agrees to defer sentencing. In some cases defendants enter the programs as a condition of pretrial release before pleading guilty. ... Almost half of the ATI participants are pleading guilty to B-felony charges, meaning that ATI participants face ... mandatory prison sentences if they fail in their programs.

The picture across all four program groups is one of great disadvantage and multiple needs. A majority of the offenders in all groups report prior involvement with drugs. Almost all are financially disadvantaged and most do not have a high school degree or consistent employment. The rates of family, health, and social problems are high across all groups.

III. Program Integrity: Retention and Completion Rates
The ATIs retain participants at rates that meet their original contractual obligations and compare favorably with rates achieved in other programs across the country. All of the program tracks retain more than 60 percent of participants for at least 180 days except for the substance abuse programs, which retain just over half the participants for this minimum period. Nearly 60 percent of the participants in our sample successfully completed the programs, and if transfers are included, nearly two-thirds of participants completed successfully. Few aspects of participants’ lives that we were able to examine—including most aspects of their criminal history—are associated with successful completion. The ... severity of the charge that brought the participant into the ATI is not associated with completion. ... The participants who are most vulnerable to failure in the programs are those with histories of suicidal thoughts, incarceration, and recent use of cocaine or heroin. This suggests that the programs might improve completion rates by focusing particular attention on participants with these background characteristics.

Consistent with their lower retention rates, the substance abuse programs also achieve the lowest completion rates, even controlling for the participant variables we are able to examine. Nonetheless, participants retained in the substance abuse programs for at least 90 days are just as likely to complete as participants in the other programs. This suggests that the first three months represent a critical risk for participant failure.

IV. ATIs and Public Safety
This research provides evidence that sentencing felony offenders to ATI programs rather than to incarceration does not compromise public safety. The ATI participants are no more likely to be arrested and convicted than the comparison sample over the study period. The ATI participants are
arrested and convicted on about the same level of charges as the comparison sample—mostly misdemeanors and noncriminal offenses—and they are significantly more likely than the comparison sample to be discharged back to the community rather than incarcerated.

... Our research does not provide sufficient evidence that the ATI system is achieving the overall rehabilitative goal of reducing participant reconviction. It does suggest, however, that the ATIs affect the behavior of those participants who remain in the programs. This research indicates that there are steps the programs could take to improve their overall recidivism rates and increase their rehabilitative capacity. . . . ATIs would improve their overall rehabilitative capacity by increasing their completion rates. [T]his would mean developing strategies to improve retention through 90 days and to provide particular attention to those whose background characteristics make them vulnerable to failure. The issue of noncompleters is more difficult; the programs are required to report to the courts on participants’ progress and on any terminations. . . . While ATI staff seek to give participants every chance to succeed, it is possible that greater efforts to track noncompliance and absconding . . . would bring the sanctions that could prevent . . . a new arrest. This may be especially applicable to the substance abuse programs whose participants are more likely to be arrested and convicted within the six months after they enter the program. Dealing with the issue of the noncompleters would require the city, the courts, and the ATIs to develop more consistent criteria for failure in the programs and for the imposition of sanctions for that failure.

The analysis of the program groups suggests additional ways that the ATIs could strengthen their capacity to fulfill rehabilitative goals. Some characteristics of the women’s programs may be associated with their low recidivism rates; they are, for example, smaller and have lower staff to participant ratios. . . . [P]articipants in the program groups have different periods of greatest vulnerability for reoffending. . . . The vulnerable periods are just after they enter the programs for women, between the third and sixth months for the general population group, and in the year after they leave the programs for the youth. For the youth especially some provision of aftercare services might reduce recidivism.

V. Implications and Conclusions
[This research has shown that the ATI system represents a valuable sentencing option in the city. The programs balance punishment and treatment for felony offenders without compromising public safety, and they have the potential to reduce reoffending.] The findings . . . suggest that the programs in this analysis successfully meet several of their goals. . . . The ATIs target and admit serious, primarily B-level, felony offenders who are significantly challenged by economic, social, and health problems. The programs supervise these participants, report to the courts on their progress and problems, and deliver a broad range of services to address their problems.

... The ATI programs also generally meet the original completion targets of 55 percent set by New York City in 1997. They graduate an average of about 60 percent of participants in the study, a rate that is higher than rates reported in national studies of outpatient treatment. . . . This research shows that the ATI programs do not compromise public safety. Participants were no more likely to be convicted of new offenses over the three years than the comparison group of offenders who spent much more of that time incarcerated. The recidivism analysis shows that 86 percent of the ATI sample remained free in the community without reconviction six months after entry into the program, and 66 percent remained free of a reconviction after nearly three years. This compares with a six-month rate of 90 percent for the matched comparison sample that did not enter ATIs after case processing and 68 percent of the comparison group after nearly three years. These differences are not statistically significant and are eliminated when time incarcerated is subtracted from the analysis. . . . [T]he findings in this report suggest that the programs provide [a] rehabilitative effect on criminal behavior only for those participants who complete the program. Program completers have low recidivism rates, indicating that the ATIs have the potential to effect long-term behavior change. . . . [P]eople who complete the ATIs are more than twice as likely to remain free of conviction in the community as people who do not complete. . . . [T]his finding suggests that the primary challenge to the programs is in retaining participants so that they receive the full benefit of program intervention.

To assist the programs in this regard, the research identifies several participant characteristics that indicate vulnerability to failure in the programs and the periods when participants are most likely to be rearrested. If the ATIs directed specific services to these groups, they could increase completion of the programs and reduce recidivism. In other ways also, the city, the courts, and the ATIs could take steps to strengthen the programs. These include developing standard management information systems, using information about program operations and outcomes to inform sentencing decisions, developing more consistent criteria for program completion, and responding in a timely way to the offenders who fail in the programs.

The sentencing option that the ATIs provide to judges and prosecutors is limited to only a portion of the current target population. ATI administrators say that screeners for the ATIs have a hard time finding cases that are likely to receive a sentence of at least six months incarceration and that prosecutors are willing to “give up” to the ATI, which they perceive as more lenient. The result is that the programs compete for the limited number of cases
that prosecutors are willing to release. This prosecutorial discretion limits ATI capacity at the source of the referrals—the court. The ATIs and the city could take steps to inform the courts and prosecutors about the operations and outcomes of the programs so that sentencing decisions would reflect the knowledge that has been gained about participants who have succeeded in the ATI system. In this way, the ATIs might be able to admit a greater proportion of the eligible offender population.

Historically, the success of the ATIs has been defined by the percentage of all intakes who graduate, while the people who fail are considered a loss. An alternate view is that the clinical expertise of program staff is used to assess appropriate placement, which may include more or less intensive treatment as well as jail or prison. In order to maximize the potential of ATIs to help the courts assess defendant placement, the programs and the courts could standardize requirements for completion and criteria for program failure. The courts and prosecutors must have confidence that noncompliant participants are returned to court swiftly and consistently if they are to use the programs more frequently.

A related issue concerns responses to those who are failing in the programs but have not yet been terminated. One option that has been suggested is the use of graduated sanctions, which have gained prominence through drug courts. Graduated sanctions provide varying degrees of punishment depending on the severity of the infraction and the compliance history of the individual. While research on the effectiveness of these graduated sanctions is still inconclusive, they are an option to be considered for the ATIs as they would allow judges to punish infractions without removing the participant from the program.

A last implication concerns ATI eligibility criteria and whether it should be expanded so that the programs could serve offenders charged with both more serious and less serious crimes. Offenders facing shorter and longer terms of incarceration would need to face comparable periods of required treatment and more or less severe sanctions for failure. This research has shown that the ATI system represents a valuable sentencing option in the city. The programs balance punishment and treatment for felony offenders without compromising public safety, and they have the potential to reduce reoffending.

Note

Excerpted from Rachel Porter, Sophia Lee, & Mary Lutz, Balancing Punishment and Treatment: Alternatives to Incarceration in New York City (Vera Institute of Justice, 2002).