CGR

Research to drive informed decisions.
Expertise to create effective solutions.

AN ASSESSMENT OF ALTERNATIVES TO INCARCERATION PROGRAMS IN ONTARIO COUNTY, NY

IMPACT AND FUTURE DIRECTIONS

Prepared for:
Ontario County Board of Supervisors and Alternatives to Incarceration Office

Donald E. Pryor
Project Director

One South Washington Street
Suite 400
Rochester, NY 14614-1125
Phone: (585) 325-6360
Fax: (585) 325-2612

7 South Broadway
Suite 300
White Plains, NY 10601
Phone: (914) 946-1599
Fax: (914) 682-8237

100 State Street
Suite 930
Albany, NY 12207
Phone: (518) 432-9428
Fax: (518) 432-9489

www.cgr.org

January, 2004

AN ASSESSMENT OF ALTERNATIVES TO INCARCERATION PROGRAMS IN ONTARIO COUNTY, NY

IMPACT AND FUTURE DIRECTIONS

January, 2004

SUMMARY

Alternatives to Incarceration (ATI) make a significant difference in preventing days that would otherwise be spent by inmates in the Ontario County jail. Without the ATI programs, the county would already be facing a likely need to expand the new jail, at significant cost to taxpayers.

In July 2003, CGR (Center for Governmental Research Inc.) was hired by Ontario County to conduct the first formal evaluation of the county's Alternatives to Incarceration programs and services. Alternatives to Incarceration began officially in Ontario County in 1990, and under the leadership of the ATI Advisory Board, ATI efforts have gradually expanded and evolved in the county in the intervening years; but up to this point, no formal assessment had been undertaken of the impact of the programs or of ways in which alternatives can be strengthened in the future. At the request of the county, the evaluation focused on the following four ATI programs—Community Service, Day Reporting, Felony Diversion, and Pretrial Release.

The evaluation relied on both quantitative and qualitative sources of data. CGR conducted extensive quantitative trend analyses of empirical data from the Ontario County jail and from each of the ATI programs. In some cases, additional quantitative data were available for comparison purposes from similar programs in other jurisdictions. We also analyzed qualitative information obtained from extensive interviews with key officials in the Ontario County criminal justice system, and from selected experts at the state and national levels.

Impact of Individual ATI Programs

In recent years, the proportions of pretrial defendants in the county jail who have been released on court orders (to the Pretrial Release program and through other non-monetary forms of release) have increased, while the proportions released on financial bail have declined. However, the average length of custody for all pretrial defendants has increased from 9.9 days per case in 1999 to 12.1 in 2003. The proportions of defendants who are eventually released, but after longer periods of detention, have increased.

There are wide variations in pretrial release practices across different types of courts and judges within the county.

- Although a number of refinements are recommended to strengthen the county's Pretrial Release program, even with its limitations, in its three years of existence it has already had a significant impact on the county's jail population: *The county jail would have an average of 19 additional inmates per day if the Pretrial Release program were not in existence. In addition, implementation within the next year or two of recommended practical, realistic changes in the Release program and in judicial release practices in the various courts of the county should prevent at least an additional 10.5 inmates per day.*

- *The county's Community Service program reduces the local jail population by an average of 1.3 inmates per day. Although it does not currently have a major impact in reducing the jail population, it is viewed as a valuable sentencing alternative* that gives judges choices, offers opportunities to hold offenders accountable for their actions, and provides services to numerous agencies within the county. The option is rarely used as an alternative to incarceration in most town/village justice courts. *There appears to be considerable opportunity to expand the use of community service as a true alternative to incarceration in appropriate cases in the future.*

- The county has recently eliminated its Day Reporting program, despite the fact that, *when fully functioning, the Day Reporting sentencing option prevented almost 16 jail inmates per day who would otherwise have been in the county jail. The county should find a way to reactivate this cost-effective program as soon as possible, and to ensure that it is more widely used* than it was during the last two years of its existence.

- *The Felony Diversion program has been used infrequently as a sentencing option in recent years, and has had little impact on the local jail population. As long as the State continues to fund its operation, the program should be*

continued, perhaps in combination with the Day Reporting program, and ways should be found to enhance its value as an alternative to incarceration. If State funds for Felony Diversion are discontinued in the future, the county should not absorb the costs of the program.

- *The county's two recently-established Drug Courts should be carefully evaluated within the next year or two* to assess their respective impacts on criminal recidivism and on the local jail population.

Net Cost Savings Impact of County ATI Programs

At the most basic level, simply having in place an array of ATI programs has enabled Ontario County to reduce the number of offender classifications in the county jail from 12 to four. The impact of this is substantial in terms of the numbers of modular PODs that would otherwise be needed in the jail. If Ontario County at any time in the future were to decide to eliminate, or possibly even substantially curtail, the ATI initiatives currently in place, it is quite likely that the State Commission of Correction would intervene and force the county to reinstate a more extensive classification system. Any such increase in the number of classifications would in all likelihood force the county to expand the number of PODs in the jail, at significant cost to county taxpayers.

The bottom line: Simply having ATI programs in place, and thereby limiting the number of inmate classifications needed in the jail, for about $230,000 per year in county funds (and a maximum of $362,000 under the worst-case scenario if all State aid for alternatives were to be eliminated in the future), the county has avoided, and continues to avoid, immediate jail expansion costs of at least one large and one small POD—at construction costs of $1.5 million or more and at estimated annual operating costs of between $450,000 and $600,000. In addition, within the next year or two, ATI programs will be preventing about 46.5 jail inmates per day, given the documented impact on jail days already saved by programs to date (36), plus conservative assumptions of additional impacts likely if our recommendations are followed (about 10.5).

This composite prevention by the ATI programs of jail days represents at least one additional POD that would be needed within the jail, if ATI programs were not in place, over and above the PODs saved by the simple *existence* of the ATI programs (because of the reduced classifications). *Thus the combined impact of*

the county's ATI initiatives is estimated to be at least one small and two large PODs avoided by the county—at annual avoided operating costs of between $750,000 and $900,000, and avoided construction costs of $2.5 million to $3 million. Even if there is some overlap in these cost estimates, and some savings are possible through construction efficiencies and staffing efficiencies between PODs, the savings made directly possible by the county's investment in ATI programming are clearly substantial.

Imperfect Current ATI Structure

ATI programs are currently separately administered—two under Probation and two under an independent ATI office. Although for the most part the various ATI programs collaborate and work well together, there is no single administrative structure that links the programs, there is a need for clearer lines of communication and accountability for all alternative programs, and there is a need and potential for greater efficiencies and sharing of resources between ATI programs in the future. *Consolidation of responsibility for all ATI programming and advocacy within Probation would save county taxpayers more than $50,000 each year.*

Recommendations

- ***The most basic core recommendation resulting from this study is that Ontario County should continue its commitment to funding the full array of ATI programs, including reinstatement of the Day Reporting program.*** Such a continuing commitment represents a clear investment which is saving taxpayers many times more than the costs of maintaining the services, and will continue to save even more in the future.
- ***The county should consolidate all ATI programs and responsibilities for all alternatives under one Alternatives Unit within the Probation Department.***
- ***The third core recommendation is to implement ongoing extensive evaluations by the county of ATI and Drug Court program impacts on jail days saved and recidivism.***
- Numerous other recommendations are made throughout the report to strengthen the use and value of pretrial and sentencing alternatives throughout the criminal justice courts of the county.

TABLE OF CONTENTS

ACKNOWLEDGMENTS

CGR gratefully acknowledges the Ontario County Alternatives to Incarceration Advisory Board, the County Board of Supervisors, and the ATI Coordinator for their leadership in undertaking this assessment of the impact of ATI programs in the county. They were willing to raise important questions about the past and future of these programs, and to "let the chips fall where they may" as a result of this independent evaluation.

We are particularly appreciative of the efforts of Ginny Gumaer-Muller, the county's ATI Coordinator. Her constant support, cooperation, guidance, insights, and helpful provision of information throughout the project were invaluable, yet she was very careful to never attempt to influence the objectivity, outcomes or conclusions of our work. The successful completion of this evaluation would not have been possible without her many contributions.

Special thanks also to key ATI staff for their assistance in providing us with helpful data and insights about their programs: Kevin Case, Steve Sherry, Rick Geno, and Carol Marthaller. Thanks to them and to Colleen Brown for their assistance in responding to our requests for data about the programs. And thanks to Sharon Donovan, Probation Supervisor, for her help in clarifying assumptions concerning sentencing options and the pre-sentence investigation process.

Special thanks also to Alice Haskins, Chief Corrections Officer of the county jail. She responded to numerous requests for information and interpretation of data about jail inmates, and about staffing and costs associated with the jail. Her cooperation throughout the project was invaluable.

Terry Lee, the county's new Probation Director, was also very helpful in sharing insights and in responding to questions and suggestions during the latter part of the evaluation.

Finally, we appreciate the cooperation of the numerous people we interviewed as part of this project. Each person we interviewed was generous with his or her thoughtful comments, background information, insights and suggestions. We learned a great deal in each of these sessions, and our conclusions and recommendations were very much influenced by those interviews.

Within CGR, special thanks to Katie Hernberg for her data analysis assistance.

1. BACKGROUND AND INTRODUCTION

In July 2003, CGR (Center for Governmental Research Inc.) was hired by Ontario County to conduct the first formal evaluation of the county's Alternatives to Incarceration programs and services. Alternatives to Incarceration (ATI) began officially in Ontario County in 1990, and under the leadership of the ATI Advisory Board, ATI efforts have gradually expanded and evolved in the county in the intervening years; but up to this point, no formal assessment had been undertaken of the impact of the programs or of ways in which alternatives can be strengthened in the future.

The Context

Prior to 1990, Ontario was one of the few counties in the state with no formal Alternatives to Incarceration programs, other than traditional Probation services. Although a Community Service alternative program had existed in the county since 1987, it had been used primarily as an alternative to fines or other non-incarceration sentences, and was only occasionally used as an alternative to short jail sentences. It was rarely thought of as a true alternative to significant jail time. In 1991, that began to change, as the State Division of Probation and Correctional Alternatives, seeking to help alleviate overcrowding in the local jail, awarded Ontario County $32,200 to establish a new component of the Community Service program to specifically provide a true alternative to be used in lieu of 15 days or more of incarceration for misdemeanor and selected felony charges. This Community Service component became the first official ATI program in the county.

Since then, the county has added two ATI programs within the Probation Department: a Felony Diversion program, begun with state funding in 1995, followed by the establishment in 2000 of a Day Reporting Program and expanded electronic home monitoring. Subsequently, in early 2001, the county's fourth ATI program was added, as a new Pretrial Release program became operational.

In the meantime, in order to provide full-time oversight to existing ATI efforts, and to advocate, where appropriate, for the expansion of existing programs and for the creation of new alternatives as

needed, the ATI Board recommended, and the County Board of Supervisors approved, the creation of a new ATI Coordinator position, which was filled in the fall of 1999. The establishment of the new Coordinator position has helped to create a greater awareness of and appreciation for ATI programs in the county, and a higher level of coordination between ATI programs—and between those programs and the rest of the criminal justice system. At the same time, the creation of the position seemed to validate the concept of alternatives as an important and integral component of the criminal justice system.

Among the critical assumptions underlying the creation of ATI programs is that, individually and collectively, they help reduce jail overcrowding and help the county save money by providing safe, cost-effective options that reduce the amounts of time defendants would otherwise spend in jail, while at the same time providing services that are beneficial to the defendants and ultimately to society. However, prior to this evaluation, those assumptions have never been independently tested.

Purpose and Focus of the Study

This evaluation, conducted at the request of the ATI Coordinator and Advisory Board, and of the Ontario County Board of Supervisors, provides an objective, third-party assessment of the extent to which the ATI programs have been successful in helping the county reduce incarceration and jail overcrowding in the past, and are positioned to do so in the future; the extent to which they have saved the county money in the past, and are likely to do so in the future; and the extent to which the ATI programs work efficiently and cost-effectively together, with the potential for improved working relationships in the future.

At the request of the county, the evaluation focuses on the four ATI programs noted above—Community Service, Felony Diversion, Day Reporting and Pretrial Release. CGR was not asked to include an assessment of the county's two newest alternative programs—the Finger Lakes Drug Court, which began to serve all misdemeanor courts in the county in October 2001, and the Ontario County Felony Drug Court, which began in June 2002. Even though these recent initiatives were considered outside the scope of this evaluation—in part because not enough defendants have been in the Drug Court programs long enough

for definitive judgments to be made about their impact—we nonetheless included these new programs indirectly in our assessment, because they have become an important part of the context within which previously-existing alternatives operate, and therefore help shape decisions made about the use of other alternative programs. As such, we discuss Drug Courts and their effect on other alternatives, but draw no conclusions about their impact on defendants or incarceration rates.

Methodology

The evaluation relied on both quantitative and qualitative sources of data. We conducted extensive quantitative trend analyses of empirical data from the Ontario County jail and from each of the ATI programs. In some cases, additional quantitative data were available for comparison purposes from similar programs in other jurisdictions. We also analyzed qualitative data obtained from extensive interviews with key officials in the Ontario County criminal justice system, and from selected experts at the state and national levels. The major components of the research were as follows:

Assessment of Current ATI Programs

The analyses focused on how each of the ATI programs is and has been functioning, including an assessment of what would be likely to be happening in the criminal justice system if the programs individually and collectively did not exist. As part of this assessment, we did the following:

- **Quantitative Analyses of Incarceration Data.** We analyzed changes in incarceration profiles for the county jail for the past several years. In addition, we calculated the annual number of days spent in jail for all defendants involved in each of the ATI programs for each of the last three years, as well as calculating the most realistic estimates of "jail days avoided" as a result of involvement in ATI programs (i.e., days that would have been spent in jail had the programs not existed).[1]

[1] It should be noted that in CGR's original proposal to the county, we also proposed to assess the impact of the ATI programs in reducing subsequent recidivism rates. However, county officials concluded that the necessary data to conduct such analyses were not likely to be readily available, so this component of the proposed evaluation was dropped from consideration. However, possible future recidivism analyses are discussed later in the report, as part of possible future evaluation strategies for the county to consider.

- **Interviews with Key Criminal Justice Officials.** CGR conducted more than 20 interviews with key officials involved in and knowledgeable about the county's criminal justice system and the use of ATI programs and services. Those interviewed included: the ATI Coordinator; key staff of each of the four ATI programs included in the evaluation; the ATI Board Chair and member of the County Board of Supervisors; current and former Probation Directors; the District Attorney; a prominent Defense Attorney in the county; eight Judges and Magistrates, including representatives from County, City and Town courts; the Sheriff; and the Chief Corrections Officer of the jail. These interviews, supplemented by the jail and program-specific quantitative data, focused on the extent to which the alternative programs are used and under what circumstances; assumptions about jail time saved and what would happen in the absence of the ATI programs; potential for added use of alternative programs (existing or new) in the future; and any needed changes in the operations of the existing programs and/or in the relations between the programs and other officials and offices within the criminal justice system.

- **Review of National Data and Interviews with Selected State and National Experts.** We conducted interviews with and received information from experts at the state and national levels concerning the most effective alternative programs and core services, including any relevant research findings and their implications for Ontario County. Where available, we also compared the county's programs with national standards and best practices, and with available information on the extent to which other programs meet those standards.

Assessment of Program and System Inter-relationships

Based on the interviews with local officials, we assessed the extent and nature of the working relationships of the various alternative programs with each other, and the relationships between the ATI programs and other components within the county's criminal justice system. We explored internal changes that could help each program more effectively meet its objectives and improve outcomes for defendants and the overall criminal justice system; ways in which the programs could share resources and work more effectively together; and potential administrative oversight changes in the management and supervision of ATI programs that might be advantageous for the individual programs, for defendants and

the criminal justice system overall, and in terms of cost-effective use of county resources.

Outline of Future Evaluation Approaches

At the county's request, we assessed various approaches the county may wish to consider using to evaluate the ongoing impact of existing ATI programs, and/or to assess the impact of any new programs or changes in existing programs in the future. We considered changes that may be needed in assumptions currently made about the impact of alternatives, as well as considering types of data that were not available in this evaluation but which could be collected and monitored over time in the future. We also examined evaluation approaches that have been used in other locations. Based on these various observations and assessments, we proposed several research components and approaches that could be adopted by the county to undertake ongoing program evaluations in the future.

Development of Comprehensive Recommendations

Based on the findings of the analyses summarized above, we developed a series of recommendations that we believe will strengthen how ATI programs are delivered in the future in the county, and that will improve the overall impact of those programs, individually and collectively. The recommendations and their likely implications for the county are outlined throughout the report in appropriate sections, and are summarized in the report's concluding chapter.

2. Current Value of Alternatives: Prevailing Beliefs and Assumptions

Prior to a more extensive discussion of each of the county's current Alternatives to Incarceration programs, it is useful to first provide an overview of existing understandings and assumptions about alternatives in the county, the impact they are perceived to have on the population of the county jail, and the resulting cost savings perceived to be associated with the programs. Additional context is provided by examining historical trends over the past few years in the composition of the county jail population.

Perceptions of Key Criminal Justice Officials

Interviews were conducted with all the key officials involved with alternatives and the overall criminal justice system in Ontario County who were listed in the methodology section. Among others, these interviews included the three County and Surrogate Court judges, judges from Canandaigua and Geneva City Courts, and three town court justices. In addition, we reviewed comments from nine other town justices who responded to an ATI survey. The comments from all these interviews and survey responses concerning the ATI programs and services are summarized below:

ATI programs receive strong support from key stakeholders.

- Nearly everyone—representing a wide range of perspectives ranging from self-described "relatively liberal" to "strongly conservative" philosophically—expressed general support for the concept of, and need for, alternatives in the county. Although there were varying degrees of familiarity and working relationships with the individual programs, there was a general consensus that the county has a good variety of alternative programs in place. Most described the core mission of ATI programs with some variation of the following: "To keep out of jail defendants that don't need to be there." Several added comments along the line of "thereby helping to save the county money."
- There was general support for the notion of a mixture of pretrial and sentencing alternatives, along with the new jail, which was typically viewed as being needed for many defendants, but "less often than if the alternative programs were not in place." The key, as several persons said, is to "use each appropriately, given the circumstances of each case."

Alternatives are viewed as having value beyond only reducing incarceration.

- Alternatives were described as having value beyond just helping to reduce the current jail population. These comments tended to focus on the value of alternatives in helping to prevent, or reduce the probability and frequency of, future criminal behavior. Various comments were made about the rehabilitative value of alternatives, their ability to help individual defendants become more responsible, helping to instill good work habits and attitudes, helping defendants retain jobs, helping to address core problems at the root of criminal behavior, obtaining treatment and support for various substance abuse and other types of problems, and in some cases helping keep families together and productive, by "avoiding the need for a prolonged period of incarceration." Two comments were made which specifically focused on the value of *alternatives* as "providing important options within the judicial system, even if they aren't necessarily always alternatives only to *incarceration* per se."
- On the other hand, a small proportion of judges who considered themselves strong ATI supporters cautioned that ATI programs should be careful not to "go too far down the social work road and lose sight of our core mission to keep people out of jail who don't need to be there."
- Several emphasized the importance, even though it wasn't technically included as part of the evaluation, of providing sufficient support for a strong Probation department "as the true, original alternative to incarceration."
- The range of alternatives—from pretrial release to community services to day reporting to felony diversion, and including drug courts—was touted by several individuals as offering a sufficient variety of options to enable judicial officials to shape pretrial and sentencing decisions to the particular circumstances associated with each individual defendant and criminal case.
- Several comments acknowledged that Ontario County had been relatively late, compared to other counties in the state, in developing an array of alternative programs, and some added their perception that the county had acted primarily in response to pressure from the State to address jail overcrowding issues. But these comments typically were followed by expressions of support for the current mix of alternatives and jail cells, and a belief that, "with a combination of push from the State and our own

initiatives, we seem to have gotten the right services in place to reflect the prevailing needs, wishes and predominant conservative philosophy and values of the residents of this county."

- One town justice expressed a very different perspective, saying that alternatives "add little if any benefit to our process" and that those who are "managing alternative programs should place their energies in another direction such as helping with the overwhelming workload that the Probation office has."

- A more frequent response, especially among town justices, was that even though they support the alternatives in place, they use them relatively infrequently. (Justices reported most frequently using Pretrial Release and Community Service.) Typical comments were that the cases that come before the justices, especially in the smaller towns, rarely are serious enough to warrant jail sentences, so that for them to use ATI programs more frequently would represent inappropriate imposition of services and conditions only intended to be used in lieu of jail sentences. Several of these justices estimated that, as a result, even if they are supportive of ATI, it is probably only appropriate for them to consider using alternatives in at most 5 to 10% of their cases. Data from the Pretrial Release program provided some support for that perspective: Of the town court cases released through Pretrial in the past three years which have reached a final disposition, 10% involved a jail sentence or a sentence involving time already served in jail, compared to 20% of comparable cases opened in Canandaigua or Geneva City Courts, and much higher proportions of County Court cases. Nonetheless, even though jail may not be a frequent sentencing option among town justices, town and village courts account for a majority of the pretrial detainees in the jail, as discussed in more detail in the chapter on pretrial release.

Most town/village court justices report using alternatives, but rarely as alternatives to incarceration.

In general, CGR's independent assessment provides support for the preceding comments, and suggests that there are good reasons to be supportive of what exists—while also acknowledging that there are opportunities to strengthen and build on the current network of alternatives. Subsequent chapters provide more extensive examinations of the individual ATI programs.

Jail Inmate Historical Trends

In order to provide perspective for the ATI program discussions that follow, and in particular for the analyses of jail days avoided

by the programs, trends over the past six years in the county's jail population are presented below.

Table 1: Ontario County Jail Average Daily Population, 1998-2003, by Selected Categories of Jail Inmates

Inmates	*1998*	*1999*	*2000*	*2001*	*2002*	*2003*
Total	167	176	162	152	169	162
Unsentenced	83	81	79	78	87	87
Sentenced	82	96	83	73	82	76
State-Ready	15	30	9	3	7	5
Boarded Out	16	14	7.5	13	4	<1

Sources: NYS Commission of Correction Daily Population Count Reporting System; Ontario County Jail.
Note: All data are from the Daily Population Count reports except Boarded Out numbers from 1999-2003, which were derived by CGR from County Jail data. Unsentenced + Sentenced may vary slightly from Total population figures due to rounding errors or, in 1998, additional federal prisoners included in the Total.

The overall average daily population (ADP) in the jail has fluctuated somewhat from year to year since 1998, with increases some years and declines in others. However, when the overall population is broken down into selected components, some patterns and trends begin to emerge.

Average daily unsentenced jail population has increased since PTR began.

Despite the startup of the Pretrial Release program early in 2001, the average daily unsentenced population in the jail seems to have increased somewhat since then. The unsentenced ADP has been several days higher in each of the last two years than in any of the previous four. Not shown in the table is the fact that in only two of 16 quarters of the years from 1998 through 2001 did the unsentenced ADP reach as high as 90 defendants, whereas averages well in excess of 90 (98, 98, 94) have been experienced in the jail in three of the past six quarters. The unsentenced ADPs have been especially high in the second halves of each of the past two years. A more extensive discussion in the next chapter examines why these numbers have gone up during these years despite the efforts of the Pretrial Release program.

By way of contrast, the sentenced population has gradually been trending downward during the past three years, compared with the previous three years. During the 12 quarters from 1998 through 2000, the sentenced ADP was 80 or more in ten, including four quarters in which it was 90 or higher. However, beginning with 2001, the ADP reached 80 or more in only four of 12 quarters, including only once as high as 90.

The primary factor contributing to the overall decline in the sentenced ADP is the dramatic reduction in the number of State-ready prisoners, from an average of 30 per day in 1999, to an average of about five per day over the past three years. Jail officials note that the norm recently has been for inmates sentenced to a State prison to be leaving the local jail for their prison setting within three days of being sentenced, compared to weeks and even months in previous years.

There have been dramatic reductions in numbers of State-ready prisoners and of inmates boarded out to other county jails.

Accompanying the decline in State-ready prisoners has been a less dramatic, somewhat up-and-down, but nonetheless overall significant decline in the average number of inmates boarded out to other counties. *From a high of 16 inmates a day being boarded out in 1998, the daily average dropped to four a day in 2002, and to an average of less than one inmate a day in 2003.* Inmates were boarded out for a total of 5,186 days in 1999, compared to 229 days in 2003. At $80 a day, that represents a difference in costs to the county of $414,880 expended in 1999, compared to $18,320 in 2003. Since that decline occurred during the years that alternative programs were expanding within the county, it would be easy at first glance to attribute some or all of that reduction in county costs to the impact of ATI programs. But as the data in the table indicate, such a conclusion would not be warranted.

The data suggest instead that *the decline and almost elimination of boarded-out inmates is attributable mainly, if not exclusively, to the reduction in State-ready prisoners.* Indeed, if the State-ready ADP is subtracted from the sentenced ADP in Table 1, the remaining sentenced average daily population in the jail has actually increased in recent years. Thus, *after factoring out the State-ready inmates, neither the sentenced nor the unsentenced jail population seems to have declined in recent years as alternative programs have expanded in the county.* In fact, the numbers of unsentenced and non-State-ready sentenced inmates in the county

jail on an average day have both increased during the years when advocates of alternatives might have expected a decline.

On the surface, these data would seem to suggest that ATI programs have had little or no impact on the jail population. But such a conclusion is not justified, as will be seen later in the report. It is true that alternatives have not enabled the county to *reduce* its jail population from pre-ATI days. But that does not mean that they have not had a positive impact. *The numbers of jail inmates would have been much higher without the existence of ATI programs.* Many demographic, societal and criminal justice system factors influence the jail population as much as, or more than, any effect of alternative programs.

ATI programs have not reduced the jail population, but have limited its growth to below what it would otherwise have been.

Thus a key question for this evaluation to address is how much of an effect the alternative programs have had in avoiding/preventing jail days that would otherwise have occurred without their existence. That is, *to what extent have the ATI programs helped avoid jail days that otherwise would have contributed to higher levels of jail overcrowding, to potentially greater numbers of boarded-out inmates, and to the possibility that additional jail cells would have been needed without their existence? Those are among the key questions which the remainder of the report addresses.*

Assumptions about Jail Days Avoided

Data calculated by each of the existing ATI programs, reported in each year's annual ATI and Probation reports, emphasize significant numbers of jail days saved or avoided each year as a result of program efforts, with resulting annual dollar savings to the county. For 2002, the most recent year for which annual data have been reported by the programs, the following figures were presented:

Program Estimates of Jail Day and Cost Savings

Pretrial Release: 8,175 days avoided, for a savings of $654,000;

Community Service: 2,189 days, with savings of $175,120;

Day Reporting: 1,176 days, with savings of $94,080;

Totals:[2] 11,540 days avoided, with savings of $923,200.

[2] No jail avoidance data were reported in 2001 or 2002 for the Felony Diversion program.

In addition, Probation reported 3,580 jail days avoided and $286,400 saved as a result of use of Electronic Home Monitoring devices, though some of those savings may overlap with the Day Reporting savings, since the two are typically used in tandem. Also, the 2002 ATI Annual Report indicated that Misdemeanor and Felony Drug Courts avoided thousands of additional days of incarceration, with possible resulting savings of $1.8 million or more. But these amounts are speculative and dependent upon defendants' successful completion of their respective programs, and since relatively few defendants have as yet completed Drug Court, CGR believes it is premature to be suggesting such potential savings.

Previous claims of jail days avoided and dollars saved need to be independently reviewed.

More to the point, all of the claims of jail days avoided and county dollars saved need to be subjected to independent scrutiny and revisions. Each of the claims of jail days saved by each program was independently reviewed by CGR in light of careful assumptions developed based on information gathered throughout this study, and the findings about each program are presented in subsequent chapters of the report.

Calculation of Cost-Saving Estimates

But first, an overall caution is needed about dollars saved by the county as a result of ATI program efforts. In the past, ATI programs have calculated a savings for the county of $80 for each jail day avoided. This figure is roughly equivalent to the daily amount of money the county pays, on average, to other counties who house Ontario County prisoners on days when the county jail is overcrowded and needs as a result to "board out" inmates to other county jails. It is reasonable to use such a figure during times when significant numbers of inmates are being boarded out, because it can be argued that any jail days avoided represent real savings to the county in terms of expenditures avoided. However, as noted above, the number of persons boarded out has declined significantly in the past two years, to the point that it is now rare that a jail day avoided actually prevents a transfer to another jail at a cost to the county of $80.

Thus using $80 a day to calculate cost savings associated with ATI programs may be too high under current realities, with a new jail in place and few needs to board prisoners out. Jail financial experts suggest that the real costs avoided as a result of each jail day saved

are actually closer to the range of $3 or $4—the marginal costs per inmate associated with food and clothing used by that inmate. All other costs associated with the jail—personnel, maintenance, health care contracts, etc.—are fixed, and remain the same whether or not one or 10 additional inmates—or one or 10 fewer inmates—are in the jail on a given day.

Therefore, under present conditions, *it does not make sense to assume that the county saves $80 every time a jail day is avoided by the use of an ATI program*. The actual daily savings in reality are much closer to the $3 or $4 figure than to the $80 estimate. But a larger question is in play, with much more substantial amounts of county resources at stake: Even with the new jail, will more space be needed in the not-too-distant future? The jail has been constructed on a modular basis, with separate PODs housing certain numbers of inmates with selected characteristics, e.g., separate PODS devoted to males vs. females, minors, persons with special needs, disciplinary problems, etc. Typically PODs contain either 24 or 48 cells, and the latter have the capacity to house up to 60 inmates, if approved by the State. If the number of inmates with certain characteristics begins consistently to exceed the capacity of the current POD structure to house those inmates, then a new POD may need to be constructed, with a corresponding need for additional staff.

Thus the real cost savings potential of ATI programs is in their cumulative ability to help maintain the jail population at a low enough level that there is no need to expand the number of PODs and the corrections officers needed to staff them. Some of those we interviewed believe that the use of alternatives has already been instrumental in limiting the number of beds in the new jail to 276, rather than perhaps 300 which might otherwise have been built. But will those additional beds, and perhaps others, be needed in the near future?

The true measure of ATI cost savings is whether they prevent expansion of PODs and related staffing.

Given county demographic trends and current inmate patterns, jail officials estimate that the county may need to add another POD to the jail within the next two years. Jail officials indicate that the 24-bed POD for special needs inmates is already typically at or near capacity, and that a POD for male inmates that contains 48 beds, with the ability to double cell up to a capacity of 60, may also need to be supplemented at some point. Thus the ability to assess realistically the impact ATI programs have had to date on the jail

population—and, more importantly, the ability of such programs to continue to maintain or even increase their capability to reduce jail days in the future—has significant cost implications for the county, both short-term and on an ongoing basis[3].

Jail officials estimate that the operating costs of staffing a new POD—including the salaries and benefits of five or six officers needed to cover the unit 24 hours a day, differential shift pay, costs of uniforms, training, etc.—would be about $300,000 per year.[4] In addition, the one-time construction costs of building a new POD are estimated to be slightly in excess of one million dollars. Without offsetting revenues, these costs would in all likelihood be borne entirely by county taxpayers.[5]

A new POD would cost about $300,000 a year to operate, and more than $1 million to build.

Thus *the true measure of the impact of ATI programs may most accurately be assessed not so much on the basis of a $4 or $80-a-day cost saving, but rather on whether they make it possible to avoid sufficient jail days to significantly delay, or eliminate entirely, the need to expand the existing jail facility.* We will continue to reference this discussion and its implications for the future in the context of the findings and conclusions presented throughout the remaining chapters of the report.

---

[3] It is reasonable to question why, with an average daily population typically about 100 below the new jail capacity of 276 beds, there is any possible need to consider new PODs in the near future. However, 36 of the 276 beds can only be used for State-approved "double-celling" on a temporary basis; inmate populations on given days often far exceed the *average* figures; and many beds are not interchangeable and can only be used for special populations, e.g., women, special needs inmates, minors, admissions, etc. Thus *available* capacity for use with a given inmate with particular characteristics may be significantly less than the jail's rated *maximum* capacity would suggest.

[4] Jail officials indicate that staffing and operating costs would be about the same whether a new POD contained 24 or 48 cells.

[5] County jail officials indicate that there is a possibility that the costs of any new POD might be partially subsidized by the Federal government, in exchange for access to a certain number of beds to house Federal inmates in the future. Jail officials estimate that as much as 25% of new construction costs for one POD could be borne by Federal dollars, and that as many as 10 Federal inmates a day might be housed under such circumstances at about $95 a day. Such a Federal commitment could help offset county costs, but there are no guarantees. There would be potential competition, as several counties are housing Federal prisoners now, and some have built extra beds in hopes of boarding in Federal prisoners, only to find that the demand has not met expectations. Thus the ability to generate substantial offsetting revenues, while possible, is highly speculative at this time.

3. PRETRIAL RELEASE PROGRAM AND PRACTICES

This chapter analyzes the impact of the Pretrial Release program (PTR), which began in Ontario County in 2001. A small pretrial release program had previously operated under the Probation Department, but it had not been in existence for a number of years. By 1999, when the county appointed its first Alternatives to Incarceration Coordinator, Ontario had become one of a small handful of counties in New York without a formal pretrial release program. One of the first priorities of the new Coordinator was to design a new release program under ATI auspices. The new program began to interview defendants detained in jail on a pretrial basis beginning in late February 2001.

Program Description

The Pretrial Release program was designed to identify appropriate defendants who have community ties and other characteristics that make it highly likely that they will appear for all court appearances if released on their own recognizance or under various types of supervision and/or notification of their court appearances. The program is based on the premise that release on non-financial conditions is as effective as money bail, if not more so, in ensuring court appearance. The program helps "level the playing field" for those defendants for whom access to money bail would be difficult if not impossible. PTR is designed to ensure the integrity of the judicial process by minimizing failures to appear in court and to reduce costs incurred in providing pretrial detention.

PTR in Ontario County is staffed by one full-time person who reports to the jail each morning, Monday through Friday, and interviews pretrial defendants, recently committed to the jail, who meet initial screening requirements for a release interview. Defendants screened out as ineligible for interviews are those in the following categories: fugitives from justice, defendants with parole or other detainers, Family Court cases, defendants deemed by correctional staff as security risks and/or suicidal, and defendants for whom a psychiatric evaluation has been ordered.

For the remaining pretrial detainees, the Pretrial officer conducts interviews based on a standardized set of questions designed to assess the person's stability in the community and likelihood of

returning for all court appearances. The officer subsequently verifies the information, scores it objectively, and presents the information to the appropriate judges and town/village court justices, either in formal court sessions or via phone calls or faxed information. The program makes no decisions on its own to release defendants, nor does it make formal recommendations to the court officials. Rather, the program presents verified objective information, indicating whether the defendant meets release eligibility requirements, i.e., meets at least the minimum acceptable release eligibility score, with the ultimate decision made by the judicial officials.

Core principles underlying the program emphasize that the use of a standardized assessment of defendants' likelihood of court appearance, backed by PTR's supervision of cases assigned to it, enables judges to release defendants who are good appearance risks in as timely a fashion as possible, while reducing reliance on money bail and reducing unnecessary incarceration. Ideally defendants should be released with the least restrictive conditions deemed necessary to ensure court appearance.

More will be said about the program, how its operates, and how it compares to national pretrial release standards, later in the chapter. But prior to analyzing the program and presenting information about its operation and impact, data are presented below on the recent history of the county jail's pretrial inmate population as a whole, regardless of whether they were interviewed by, or released to, the Pretrial Release program.

Historical Perspective: Pretrial Jail Inmates

Table 2 on the next page shows the average daily population of unsentenced inmates in the county jail for the past six years, along with the number of individual pretrial inmates housed in the jail each year, regardless of how long they were detained.

As shown in the table and as noted in the previous chapter, the pretrial population in the county jail has not declined since the Pretrial Release program began in 2001. Indeed, both numbers in 2002 and 2003 were higher than in previous years before PTR was in operation. *Thus the program has not resulted in a reduction in the pretrial jail population, either in total numbers or the numbers present on a daily basis.*

Table 2: Average Daily Population (ADP) for Unsentenced Inmates, and Number of Pretrial Inmates, 1998 – 2003

	1998	*1999*	*2000*	*2001*	*2002*	*2003*
ADP	83	81	79	78	87	87
Pretrial Inmates	NA	1,146	1,130	1,172	1,313	1,182*

Sources: NYS Commission of Correction Daily Population Count Reporting System; Ontario County Jail.

* Note: Number of pretrial inmates in 2003 was 1,140 through December 15. The total of 1,182 is an estimate for the total year, based on an estimate of the number of inmates for the last half of December, which was derived from similar data for the previous years. Pretrial inmate data were not available for 1998.

Changes in Release Patterns

However, during this same period of time, there have been some encouraging signs: As shown in Table 3 on the next page, *the proportions of pretrial defendants released on court or judges orders (PTR and other non-monetary court-ordered release prior to a sentencing decision) have steadily increased since 1999*—from 24% to almost a third of all defendants in 2003—*while the proportions released on financial bail have declined*—from almost two-thirds in 1999 to 57% during the past year. (In addition, anecdotal information obtained in the interviews for this project suggest that the existence of PTR may have also led to increases in the numbers of pretrial releases through appearance tickets and own recognizance release without even a short-term jail intake being needed.)

Proportions of jail inmates released pretrial on non-monetary release have increased since 1999.

Over the past five years, about 90% of all pretrial cases have consistently been released from jail at some point prior to disposition of the case, although the proportions of financial to non-financial release have shifted during that time. The remaining 10% of the cases have typically been detained throughout the pretrial period, until sentencing to jail or other alternatives (including time served), transfer to State prison, release to parole or to another county for disposition of another case. Those proportions have changed very little during the past five years.

Table 3: Proportion of Ontario County Pretrial Defendants Released Under Various Conditions, 1999 – 2003

Type of Release	1999	2000	2001	2002	2003	Total
Served Sentence	4.3%	2.9%	2.9%	4.5%	4.8%	3.9%
Judge/Court Order	24.4	25.1	25.2	30.0	32.3	27.4
Posted Bail	66.1	65.3	63.1	59.1	57.0	62.2
Released to State Prison	1.6	1.2	3.3	2.6	1.6	2.1
Released to Other Cnty.	2.9	4.5	4.4	2.7	3.2	3.5
Released to Parole	0.3	0.2	0.3	0 .3	0.1	0.2
Other	0.3	0.7	0.8	0.8	1.0	0.7
Total #	1,146	1,130	1,172	1,313	1,140	5,818

Source: Ontario County Jail.
Note: Served Sentence refers to defendants who remain incarcerated throughout the pretrial period until they are sentenced. Release to Other County refers to release to a county for which another charge is pending, after Ontario County charges are disposed of.

Changes in Length of Pretrial Detention

Despite the fact that there have been encouraging increases in pretrial release on non-financial conditions in recent years, *the average length of custody for all pretrial defendants has increased from 9.9 days per case in 1999 to 10.5 in 2002 and 12.1 in 2003.* Even those released through court order during the pretrial period have consistently remained in jail for an average of between 13 and 14 days prior to their release during each of the past five years. Those ultimately released on bail or bond have typically been detained for an average of four days prior to obtaining their release. Thus, despite the fact that there have been encouraging reductions in the proportions of cases retained on bail and increases in the proportions released without financial conditions, the amount of

More pretrial defendants are being detained longer before being released.

time spent in jail prior to those forms of release has not declined over time.

Moreover, *the proportions of all cases released within two days have actually declined since PTR began*—from 58% in 1999 to 48% in 2003, as shown in the following table:

Table 4: Proportions of Defendants Released After Various Periods of Pretrial Custody, 1999 – 2003

Days in Custody	1999	2000	2001	2002	2003	Total
2 or less	57.9%	58.4%	56.7%	53.8%	48.2%	54.9%
3-5	16.4	16.5	16.9	17.4	16.8	16.8
6-10	9.5	11.1	10.0	9.8	12.5	10.6
11-25	6.9	5.8	7.8	9.0	10.2	8.0
26-50	4.6	3.5	3.0	4.6	6.4	4.4
51-100	2.0	3.2	4.4	4.4	3.5	3.7
> 100	1.8	1.5	1.3	1.0	2.4	1.6

Source: Ontario County Jail.

Gradually over the past five years, the proportions of defendants who are eventually released, but after longer periods of detention, have increased. For example, the proportions of those detained for 6 to 10 days increased from 9.5% in 1999 to 12.5% in 2003; those detained for 11 to 25 days increased from 6% or 7% in 1999 and 2000 to 10% in 2003; and the proportions detained for 26 to 50 days have gone from 3% or 4% in earlier years to more than 6% in 2003. When those proportions are applied against a base of more than 1,100 pretrial defendants each year, and more than 1,300 in 2002, those relatively small increases in proportions add up to significant numbers of individuals and additional jail days, as shown in more detail in Table 6 later in the chapter.

Changes in Bail Amounts

Related to the increases in the ADP and length of stay for pretrial detainees is the fact that during the past five years, the numbers

Higher proportions of pretrial inmates are being detained on high bail or with no bail set.

for whom no bail has been set, and those for whom higher bail amounts have been set, have increased. It is not clear whether these changes in bail patterns are because judges are now setting higher financial conditions (or setting no bail at all) for certain serious crimes, or whether there have been higher proportions of more serious crimes in recent years. The interviews shed no clear light on this issue, though available data do not indicate any major shifts in types of crimes over time. Whatever the reasons, the reality is that, in recent years, *proportions of cases for which bail amounts in excess of $2,500 (and of more than $5,000) have more than doubled, as have the proportions of cases in which no bail was set, at least initially.*

Table 5: Proportions of Defendants For Whom Various Amounts of Bail Were Set, 1999 – 2003

Bail Amount	1999	2000	2001	2002	2003	Total
None*	5.5%	5.2%	5.0%	2.9%	2.4%	4.2%
0*	2.6	3.1	4.7	6.1	9.8	5.3
$1-250	23.6	21.5	17.2	20.4	14.7	19.5
$251-500	28.1	31.4	32.6	27.0	24.3	28.6
$501-1,000	19.4	18.4	17.7	18.2	20.6	18.8
$1,001-2,500	12.9	11.3	11.7	12.0	11.8	12.0
$2,501-5,000	4.6	5.3	7.5	8.1	8.2	6.8
> $5,000	3.3	3.7	3.6	5.3	8.1	4.8
Avg. Bail Set	$1,683	$1,834	$1,979	$2,037	$2,670	$2,044

Source: Ontario County Jail. * Note: 0 indicates no bail was set. For "None," it was not always clear whether no bail was set, or whether the data were simply not available.

The fact that there have been increasing proportions of cases with high bail set, and where no bail was set at all, may mean that there have been fewer cases in which judges were willing to consider information from PTR suggesting that a defendant would be a good risk for non-financial release. On the other hand, these increasing numbers of defendants with higher bail amounts also suggest that *there is a growing need, and greater opportunities, for PTR to have an impact in finding alternative release strategies that make it possible for at least some of these defendants with higher bails to be released and supervised with conditions that would reduce days spent in jail, while also building in sufficient supervision to help ensure that court appearances will be met.*

Opportunities for Earlier Releases

Despite the increases in numbers of defendants with higher bail amounts, the further reality, as indicated in Table 5, is that except for 2003, *between 65% and 70% of all pretrial cases have had bail amounts set at $1,000 or less, with about half set at $500 or less.* The vast majority of the cases involve misdemeanor charges with relatively small bail amounts, suggesting that more of the cases could be safely released sooner. Indeed, the data suggest significant opportunities for earlier release. Most of those with low bail are released within two days: over the past five years, 79% of those with bail of $250 or less have been released within two days, as have 67% of those with bail amounts between $251 and $500 and 55% of those with bail between $501 and $1000.

Most pretrial inmates have bail amounts set at $1,000 or less.

Nonetheless, the reality is that these numbers still leave many defendants even at the lower bail levels who are not released early. For example, an average of 48 defendants in each of the past five years had bail set at $250 or less, but remained in jail longer than two days. All were eventually released, but typically only after three to five days, and an average of 15 of these each year were detained for between six and 25 days before being released. An additional 111 defendants a year with bails set between $251 and $500 took three days or longer to be released, more than half of whom were detained for between six and 25 days before their release. An average of 101 defendants a year with bail between $501 and $1,000 were detained at least three days, including about 30 a year who were only released after between 11 and 50 days in jail.

Another way to look at the potential for additional/earlier releases is to examine the numbers of defendants who were released after various periods of detention within the past three years. Many had relatively low amounts of bail set, yet still remained in jail for substantial periods of time before eventually being released prior to final disposition of their case.

Table 6: Numbers of Defendants in Pretrial Custody for Varying Periods of Time Prior to Release, with Proportions with Low Bail Amounts, 2001-2003

Days in Custody	2001	2002	2003	% Cases w/Bail $1,000 or Less (& $500 or less)
3-5	198	229	192	62% (42%)
6-10	117	129	143	55% (33%)
11-25	92	118	116	47% (27%)
26-50	35	60	73	34% (13%)
51-100	51	58	40	8% (3%)
> 100	15	13	27	12% (6%)

Source: Ontario County Jail

A number of inmates who are ultimately released pretrial may be able to be released sooner.

It should be acknowledged that some of these cases held in jail on relatively low bail amounts had holds on them from Ontario County courts or jurisdictions from other counties, and other circumstances not apparent in the statistics may have made early release of many of these cases difficult. But those circumstances notwithstanding, *the reality is that all of the cases represented in the table above were ultimately released at some point during the pretrial phase of their case. Given that reality, should it not have been possible for most of those defendants to have been released sooner?* Should it not be possible for the Pretrial Release program to develop approaches to help judges find ways to release higher proportions of defendants earlier in the future, with no disruption to the judicial system, no negative impact on public safety, and a positive impact on reducing the

daily jail population, thereby reducing the likelihood of needing to spend county dollars to expand the current jail facility?

Simply using these actual historical numbers from Table 6—that is, not assuming any new people being released from jail, but simply taking people who were already released anyway—and making some reasonable assumptions about other release scenarios that might have occurred, some indications of impact on the jail population can begin to be estimated. Assume that just a fraction of the days those defendants spent in custody prior to being released pretrial could have been avoided. For example:

- Assume an average of 200 defendants a year who were detained 3-5 days could each have been released two days earlier, for a net savings or avoidance of 400 days a year;
- Assume 125 defendants detained 6-10 days each could have been released five days earlier, for a net savings of 625 jail days a year;
- Assume 115 defendants detained from 11 to 25 days could have been released an average of 12 days sooner, for a net avoidance of 1,380 days a year;
- Assume that 50 of the defendants detained from 26 to 50 days could have been released an average of 20 days sooner, for a net avoidance of 1,000 days;
- Assume that as few as 10 defendants detained for more than 50 days could have been released an average of 40 days earlier, for a net savings of 400 days a year.

Had pretrial mechanisms and judicial processes been functioning in any of the past three years in such a way that such savings could have been possible, a reduction of 3,805 jail days per year would have been possible—the equivalent of 10.4 fewer people in the jail each day. Being able to reduce the jail population by more than 10 people a day would represent a substantial contribution toward being able to significantly delay or eliminate the need to expand the current jail facility, with significant resulting savings to county taxpayers in avoided annual operating costs and one-time capital construction expenditures.

With different pretrial processes in place, an estimated 10 fewer people could be in jail per day through earlier release of those eventually released anyway.

The potential for implementing approaches to create such reductions in pretrial detention days will be addressed in more detail in the discussion of the current Pretrial Release program below. But prior to analyzing the PTR program in more detail, it is instructive to first examine differences in pretrial practices, and resulting pretrial custody, across different levels of courts within the county.

Differential Pretrial Outcomes by Court

Pretrial release practices, and the outcomes that result, have differed substantially in recent years across different court levels within the county. An overall summary of the ways in which defendants were released over the past five years, by type of court, is presented in Table 7:

Table 7: Proportion of Defendants Released by Various Pretrial Release Types, by Originating Court From 1999-2003

Courts	Posted Bail	Court Order	In Custody til Disposition
County (N=232)	34.5%	47.1%	18.3%
Canandaigua City (N=924)	62.1%	31.8%	6.1%
Geneva City (N=948)	41.2%	44.8%	13.9%
Towns* (N=3142)	74.0%	21.3%	4.8%

Source: Ontario County Jail.
Note: N's refer to total number of defendants in custody from each court over the five-year period from 1999-2003. * One village court is also included in these data, along with the 16 town courts in the county. Courts in these and subsequent tables refer to the court where a case originated. Cases involving initial felony charges may begin in a City or town/village court and wind up being resolved in County Court. Felony cases would only remain in or be returned to lower courts if the initial charge were reduced to a misdemeanor offense.

For those defendants who were in custody at some point during the pretrial process, *those whose cases originated in the town courts were most likely to obtain release by posting bail, with only about one-fifth of the town court cases being released through Pretrial Release or other forms of non-*

financial release. Less than 5% of all town court cases remained in custody throughout the pretrial period, even though 38% of the initial charges in the cases were for felony offenses, as many as or more than in the two City Courts. Not surprisingly, with its handling of exclusively felony cases, County Court cases were more likely to remain in custody until disposition of the cases (many had no bail set, as discussed below).

There have been significant differences in release outcomes across different courts.

Perhaps the most surprising data in the table are those comparing the two City Courts. Even though a higher proportion of Canandaigua City cases involved initial felony charges (38%, compared to 29% in Geneva), *cases originated in Geneva City Court were less likely to be released pretrial and were more than twice as likely to remain in custody until final case disposition than was the case in Canandaigua* (14% vs. 6%). On the other hand, *Geneva City Court has historically been more likely to release defendants on non-financial forms of release compared with Canandaigua City Court*, which has been more likely to impose bail as the primary condition of release (62% vs. 41% in Geneva).

Differences in Levels of Bail

However, the Geneva City Court, though making relatively infrequent use of bail as a condition of release, compared to Canandaigua City Court and the town courts, has been much more likely to impose relatively high bail when it is used. As shown in Table 8, *the average bail amount set in Geneva City Court has been almost twice as high as the average bail in town courts, and more than $800 higher than the average Canandaigua City Court bail amount.* Although three-quarters of all bail amounts set in Canandaigua City Court and the town courts were for $1,000 or less (and more than 55% were for $500 or less), just under half of all bails set in Geneva City Court were for $1,000 or less, including about 27.5% for $500 or less.

Conversely, *about one of every four pretrial custody cases originating in Geneva City Court involved bail amounts of more than $2,500* (including 12% over $5,000), compared with about 10% of town court and Canandaigua City Court cases with bail of more than $2,500 (and less than 5% over $5,000).

Table 8: Proportions of Defendants with Various Bail Amounts Set in Pretrial Custody Cases, by Type of Originating Court from 1999 – 2003

Bail Amount	County Court	Canandaigua City Court	Geneva City Ct.	Town Courts	Total
None *	18.1%	1.1%	2.7%	1.3%	4.2%
$ 0 *	34.1	4.2	2.5	2.4	5.3
$1- $250	6.0	28.1	10.2	22.3	19.5
$251- $500	13.8	31.1	17.3	33.9	28.6
$501- $1,000	8.6	15.9	21.4	20.7	18.8
$1,001- $2,500	11.6	9.8	21.4	10.0	12.0
$2,501- $5,000	3.9	4.8	12.8	6.3	6.8
> $5,000	3.9	5.0	11.6	3.0	4.8
Average Bail Set	$2,011	$2,337	$3,199	$1,676	$2,044

Source: Ontario County Jail.
* Note: 0 indicates that no bail was set. For "None," it was not always clear from the data whether no bail was set, or whether the data were simply not available.

Differences in Lengths of Pretrial Detention

Given bail amounts set within Geneva City Court, and that bail is often not set within County Court, it is not surprising that defendants whose cases originated in those courts have had the highest average lengths of pretrial custody, as indicated in Table 9. *Over the past five years, the average pretrial custody stay for cases originated in Geneva City Court has been about twice the average stay for cases originated in Canandaigua CC, even though higher proportions of Canandaigua's cases involved initial felony charges.* Moreover, more than 60% of all pretrial detainees originating in Canandaigua CC and the town courts were

released within two days (about 45% within one), compared with less than a third of the detainees originating in Geneva CC (14% within one day). Fourteen percent of Geneva's pretrial detainees remained in custody for 26 days or more—more than twice the proportions in Canandaigua City Court or the town courts.

Table 9: Proportions of Defendants Released After Various Periods of Pretrial Custody, by Originating Court, 1999–2003

Days in Custody	County Court	Canandaigua City Court	Geneva City Ct.	Town Courts	Total
0-2	50.0%	61.8%	32.5%	63.1%	54.9%
3-5	15.9	14.9	29.3	13.5	16.8
6-10	9 .5	11.9	13.6	9.5	10.6
11-25	11.6	7.0	10.8	7.3	8.0
26-50	5.6	2.2	7.3	3.8	4.4
51-100	4.3	1.3	4.4	1.8	3.7
> 100	3.0	0.9	2.1	1.0	1.6
Average Custody	15.1 days	6.9 days	13.5 days	7.8 days	7.8 days

Source: Ontario County Jail.
* Note: 0 indicates that no bail was set. For "None," it was not always clear from the data whether no bail was set, or whether the data were simply not available.

Improved release outcomes should be possible with changes in pretrial release practices in all courts.

It should be noted that even though Canandaigua City Court and the town courts had the lowest average pretrial custody stays per defendant, they also were most likely to use financial forms of release as the predominant means of releasing pretrial defendants, and it has taken an average of seven or eight days, respectively, for average defendants in those courts to obtain release. *Thus there remains room for improvement in release outcomes in all of the courts.*

Experience with the Pretrial Release Program

In order to assess how pretrial release outcomes can potentially be improved throughout all levels of the judicial system within Ontario County, we will now assess the county's Pretrial Release

program, the difference it has made in its first three years of existence, and its potential for increasing its impact in the future.

Perceived Value of PTR Program

Nearly everyone whom we interviewed during this project had praise for PTR and the role it plays in the pretrial decision-making process. They expressed trust in Kevin Case, the Pretrial Release Officer, and praised the helpfulness and objectivity of the information provided by the program through the risk assessment/point scale "tool" that helps "take much of the guesswork out of the judge's release decision." Several judges added related comments about the additional "comfort level" they feel as a result of the information supplied by the program.

Others spoke not just of the value of the information provided to the courts, but also of the supervision of cases released to the program. The combination of the objective information plus the ability to supervise defendants while they await the disposition of their cases is viewed as invaluable in "getting people out of jail who shouldn't be there, while also protecting the judges who make the release decision." Two judges added that *using PTR rather than setting bail is a big improvement in many cases over financial release, "because bail offers no supervision or services or reminders to the defendant of upcoming court appearances."*

PTR is highly regarded, is viewed as providing support for judges, and has room for improvement.

Some of PTR's strong supporters acknowledged that there are ways the program can improve. Some suggested that the program and judges should be able to expand the pool of defendants who could be safely released in the future, while others said the program should begin to reduce the emphasis on restrictive conditions. Others spoke of streamlining program practices to become more efficient. Specific ideas for improving the program are discussed in more detail later in this chapter.

Finally, several town court justices, while generally supportive of PTR, indicated that there are relatively few cases in many of their courts where the need for PTR arises. Several justices in the smallest courts in particular noted that they frequently use ROR or appearance tickets, and often know the defendants and their families, so that they often feel no need for PTR's services. Nonetheless, it should be noted that, even though this observation may well be true in a number of the smaller courts, the reality is that almost 55% of the pretrial custody cases in the county jail

over the past five years have originated in the town courts. In that context, most of the town justices who indicated that they had relatively little need for the program on a routine basis, noted that they were happy to have the program's services available when they did need it, and indicated that they had generally been pleased with the program when they had used it.

The Interview and Release Process

Table 10 provides an overview of program activity during the past three years of its existence.

Table 10: Pretrial Release Screening Process; Eligibility and Release Decisions Made by Program and Judges, 2001 – 2003

Steps and Decisions in the Release Process	2001	2002	2003
Pretrial Inmates in Jail	1,172	1.313	1,182
Screened by PTR	674	683	561
Screened Out	145	151	88
Defendant Refused Int.	39	31	20
PTR Interviewed	482	508	453
Eligible (5+ points)	97	135	104
Released to PTR	59	86	61
Not Eligible (< 5 points)	302	290	254
Released to PTR	11	24	19
Released Pre-Verification	83	83	95
Total Interviewed and Released to PTR	70	110	80
Direct Referrals to PTR	6	42	76
Total PTR Supervision	76	152	156

Source: Ontario County Jail; ATI Annual Reports; CGR analysis of Pretrial Release data.
Note: 2003 pretrial inmates figure is an estimate derived by CGR, as described in Table 2.

Several points should be made about the data in this table:

- The number of defendants screened by PTR declined in 2003, to fewer than half of the total number of pretrial defendants in the jail during that year. The proportion of all pretrial inmates screened by PTR has declined from 57.5% in 2001 to 47.5% in 2003. It is not clear whether this is a reflection of changes in the program, or if more defendants are simply being released before the program is available to interview them. PTR interviews defendants in the jail each morning Monday through Friday, but defendants could be booked into the jail later in the day and be released via bail or other forms of release the same day without being seen by PTR; similarly, some defendants who checked into the jail between Friday morning after the release interviews and Sunday evening could also have been released without a PTR interview, since no interviews are conducted over the weekend.
- The number of defendants not interviewed because of automatic screening/knockout factors described in Chapter 2 declined in 2003. It is not clear whether there were fewer defendants with those characteristics in the jail in 2003, or if other circumstances accounted for this decline. Program officials indicate that there were no changes in the program's screening factors that would have accounted for the change in numbers.
- *The program actually interviewed fewer pretrial defendants in 2003 than in either of its first two years in operation.* The number of those who met the program's minimum point scale score qualifying for release eligibility—and, of those, the number actually released to PTR—also declined in 2003 to levels just above the totals in the program's first year.

Numbers of interviews and those meeting release eligibility requirements are down, and direct referrals by judges way up in past 3 years.

- Although the number of defendants interviewed by PTR and released to the program declined significantly from 2002 to 2003, this decline was more than offset by the *dramatic increase in each of the last two years in the number of direct referrals by judges to PTR for supervision, even though those defendants were not interviewed by the program.* Those direct referrals have increased from 6 in 2001 (7.9% of all supervised cases that year) to 76 in 2003 (48.7% of the program's cases opened that year). These increases may reflect well on the program, in the sense that the judges express confidence in PTR's effectiveness in supervising defendants and ensuring their court appearances, even if the program has not verified defendant

eligibility/probability of compliance. Or, a less positive interpretation of these data is that some judges may now be referring to the program for supervision defendants who in the past would have been released without supervisory conditions. The program should explore in more detail the reasons behind this rapid expansion of referrals.

- The number of persons interviewed but released prior to verification also increased in 2003 from 83 to 95, again suggesting that the program may have helped create more of a predisposition on the part of some judges and town justices to release some defendants on their own recognizance without waiting for the formal review process. On the other hand, some of these early releases may simply have made bail without waiting for the remainder of the verification process. This is another area the program may wish to investigate further, in order to better understand both the impact of its practices, as well as the impact of other factors on how the program operates.

Eligibility and Release Rates

Selected data from Table 10 are organized in a different way in Table 11, in order to help suggest questions for both the program and judges to raise concerning use of the program in the future.

Table 11: Proportion of Defendants Eligible for Release, and Proportions of Those Actually Released to PTR, 2001 – 2003

Decisions in Pretrial Process	2001	2002	2003	Total
Total Interviews Verified	399	425	358	1,182
# (and % Eligible)	97 (24.3%)	135 (31.8%)	104 (29.1%)	336 (28.4%)
# Released (as % of Eligible)	59 (60.8%)	86 (63.7%)	61 (58.7%)	206 (61.3%)

Source: ATI Annual Reports; CGR analysis of Pretrial Release data.

Only about ¼ of those interviewed are determined by PTR to be eligible for release—lower proportions than in adjoining counties.

It should be of concern to the PTR program that in its first three years, it has only certified 23% of all those interviewed, and 28% of all verified interviews as eligible for release. By contrast, 44% of all those interviewed in 2003 by the pretrial release program in neighboring Wayne County were determined to be eligible for release. In that county of about 7,000 fewer residents than Ontario's population, the pretrial program interviewed more than 230 more defendants in 2003 than did the Ontario County program, automatically screened out fewer people, and found

three times as many defendants eligible for release (302 of 688 interviewed, compared with 104 of 453 in Ontario).

Furthermore, the pretrial release program in Monroe County recommended release for about 60% of the pretrial defendants it interviewed in 2003, and it has fewer factors on which it screens out defendants prior to interviewing. Moreover, it is dealing with significant numbers of more transient defendants within the city of Rochester, and yet it still recommends more than twice the proportion of pretrial defendants as the Ontario County program certifies as eligible (the Monroe County program makes formal recommendations, rather than simply stating who is eligible*). Based on Ontario's numbers and these comparisons with neighboring counties, we recommend that the Ontario PTR program undertake an evaluation of its point scale and scoring process to determine whether changes should be made which might enable the program to qualify higher proportions of defendants for release, consistent with public safety and high levels of court appearance* (see the evaluation chapter later in the report).

Proportions of eligible defendants actually released are lower than in nearby counties.

It is also significant that during the first three years of the PTR program, just over 60% of all defendants certified as eligible for release have actually been released to the program. Again, comparisons with Wayne and Monroe County pretrial data suggest that higher rates are attainable. In the past two years, the comparable proportion of judicial releases in Monroe County has ranged between 68% and 78% of all cases recommended by the county's pretrial release program. In Wayne, 73.5% of all defendants determined to be eligible were actually released to the pretrial program.

As indicated in Table 12 on the next page, the total of new cases referred by judicial officials to Ontario's PTR and supervised by the program changed very little between 2002 and 2003, but the composition of those cases has changed dramatically in each year since the program began. For example, in its first year, more than three-quarters of all cases supervised by PTR had previously been determined to be eligible for release before they were released to the program for supervision and court date notification throughout the pretrial period. Just two years later, that proportion had been cut in half, to 39% of all new cases entering the program in 2003. During that same period, the numbers of

non-verified direct referrals to the program had increased from a handful in 2001 to almost half of all new cases in 2003. During the three years, the proportion of "not eligible" cases which judges or town justices had referred to the program, despite the fact that the program had determined that they did not meet release eligibility requirements, has remained relatively constant at just under 15%.

Table 12: Proportions of New Pretrial Cases Supervised by PTR, by Source of Referral to the Program, 2001 - 2003

Referral Source/Release Type	2001	2002	2003	Total
Eligible/Released to PTR	59 (77.6%)	86 (56.6%)	61 (39.1%)	206 (53.6%)
Not Eligible/Released to PTR	11 (14.5%)	24 (15.8%)	19 (12.2%)	54 (14.1%)
Direct Referrals to PTR	6 (7.9%)	42 (27.6%)	76 (48.7%)	124 (32.3%)
Total Cases Supervised by PTR	76	152	156	384

Source: ATI Annual Reports; CGR analysis of Pretrial Release data.

The county's Release Officer continues to have a caseload that averages about 30 defendants at any given time, but the makeup of that group is different than in the past. Whereas in the first year, virtually all the defendants in the program had been interviewed by PTR, and community and criminal justice data about them had been collected and verified, by 2003 almost half the caseload had not been interviewed, and little was known about their characteristics or likelihood of successfully completing the release experience. Thus the Release Officer may need to be conscious of different types of behavior, or may need to be cognizant of providing different types of supervision in dealing with defendants about whom relatively little is known by the program. As it looks to the future, *PTR should separately monitor the court appearance rates of each of the different types of releases, while at the same time making sure that the expansion of direct referrals doesn't limit the program's focus on interviewing and expanding non-financial release opportunities for those defendants not directly referred by judges.*

Different Release Patterns by Courts

County, City and town/village courts have exhibited clear differences in overall pretrial release patterns, as indicated earlier in

this chapter. Consistent with those overall release patterns, there have been clear specific differences as well across the different courts in ways in which they have tended to use the PTR program. For example, Table 13 shows how the overall different release patterns just discussed concerning Table 12 vary considerably by different types of courts.

Table 13: Proportions of Pretrial Cases Supervised by PTR, by Source of Referral, by Originating Courts, 2001 - 2003

Referral Source/Release Type	County Court	Canand. City Crt.	Geneva City Crt.	Town Courts	Total
Eligible/Released to PTR	48.6%	58.8%	43.6%	72.3%	53.6%
Not Eligible/Released to PTR	8.6%	25.5%	10.6%	19.3%	14.1%
Direct Referrals to PTR	42.9%	15.7%	45.7%	8.4%	32.3%
Total Cases Supervised by PTR*	35	50	95	120	300

Source: ATI Annual Reports; CGR analysis of Pretrial Release data. * Note that Table 12 was based on 384 cases, including all of 2003. For this table, the N = 300, as court breakdowns were only available for data through the first half of 2003.

Town courts were most likely as a whole to release to PTR those determined by the program to be eligible for release, with few direct referrals without verification of eligibility. Canandaigua City Court made somewhat higher proportions of direct referrals, but was most likely of all the courts to release defendants the program had determined to be not eligible. On the other hand, Geneva City Court and the County Court judges rarely released defendants to the program who had been determined to be ineligible, but both referred well over 40% of their cases to the program without having had prior verification information from PTR. Anecdotally, Geneva Court judges also were most likely to order higher levels of conditions on those released to the program.

Different courts use PTR very differently.

In addition, the proportions of all eligible defendants who are actually released have varied considerably by type of court (not shown in the table). For example, in County Court, 85% of defendants certified as release eligible by PTR over the past three years were actually released by the Court to the program, as were

75% of such cases in Canandaigua City Court and 64% of those in the various town courts. *By contrast, fewer than half (48%) of all eligible cases which came before judges in Geneva City Court were actually released to the program.* Instead, as shown above, they were more likely to make direct referrals to the program. Across all courts within the county, three judicial officials have been particularly prone to ignoring PTR statements of defendant eligibility, choosing half or more of the time not to release eligible defendants to the program.

The consequences of defendants not being released to PTR even though eligible are significant. In 35% of those cases, they were instead released on bail—sometimes immediately before a release decision could be made by a judge, but frequently only after significant amounts of time spent in custody And in another 35% to 40% of the cases, they were not released at all, being detained until the time of sentencing on their charge. *The average length of pretrial custody for release-eligible defendants who were not released to PTR was 49 days, compared with about seven days for those who were released to PTR.*

Defendants eligible for release but not released to PTR spend 7 times longer (almost 50 days) in pretrial custody.

Moreover, those defendants not considered by the program to be eligible for release (more than 70% of those interviewed and verified in the first three years of the program) face even direr release consequences: Almost 55% of those defendants remained in custody throughout the entire pretrial period, until their cases were resolved, and another 24% were released only after a period of time spent in jail prior to making bail. *The average length of pretrial custody for "not eligible" defendants not released to PTR was 61 days.*

PTR and judges should continually rethink pretrial release practices.

Thus it is critical that the program, and judicial officials throughout the county, constantly engage in a process of rethinking release strategies and their consequences.

Profile of Defendants Released to PTR

Those released to PTR over its three years of operation have typically had similar characteristics from year to year. The defendants released to the program can be described as follows:

- 75% male.
- About 40% 21 or younger, with about 20% between 22 and 30, and 40% 31 and older, including about 18% over 40.

- 75% Caucasian, about 20% African-American, and about 5% Hispanics.
- *The program has successfully released defendants with serious charges and prior records*: For example, 43% of those released were originally charged with felonies, and 55% with misdemeanors and 3% with violations. About two-thirds were known to have prior arrests, and about 55% had prior convictions. About a third ultimately received jail or prison sentences, including "time served," for the charges for which they were released.

Differences by Type of Release

This overall profile of defendants released to the program differed somewhat across different types of release. The primary differences were as follows:

- Those determined to be not eligible for release as well as those released directly to the program by various courts tended to be somewhat older than the profile of those who were eligible.
- Perhaps somewhat surprisingly, those not found eligible were more likely to have misdemeanor charges (about 60%) than were eligible defendants. Those referred directly to the program without verification of release eligibility were also more likely to be on misdemeanor charges (63%).
- Not surprisingly, *those not eligible were much more likely to have had prior records*: 90% had been arrested, and 85% had at least one previous conviction.
- Although 20% of the PTR population, both eligible and direct referrals, were African-American, 30% of those determined to be not eligible were black. Looked at another way, *of all white defendants interviewed and verified, 41% were determined to be eligible for release, but among blacks, the eligible proportion was only 28%*. Of those not released to PTR (including both not eligible and eligible but not released to PTR), *black defendants were less likely to be released subsequently on bail and were significantly more likely to remain in custody throughout the pretrial period until sentencing* (between one-third and 40% were blacks in each category, compared with 20% in the rest of the pretrial population).

Blacks are less likely than whites to be eligible for release and more likely to remain in custody throughout pretrial period.

Differences by Courts

There were few differences across types of courts on the descriptive profiles of pretrial defendants. The one exception was race/ethnicity. In the City Courts, 30% of defendants who were

found by PTR to be eligible for release but who were not released to the program were black, and 11% were Hispanics, compared with 20% and 5%, respectively, in the overall release population.

Thus, *the data on both the program's release eligibility criteria and on release practices within the City Courts suggest that careful attention should be paid to both to ensure that no unintended bias exists.*

Impact of PTR Program

Each year the Pretrial Release program has reported successful release terminations in more than 80% of the cases it has supervised. Reasons for the reported 17% of unsuccessful terminations over the three years have typically been relatively evenly split among rearrests, failures to appear in court, and non-compliance with release conditions.

FTA and Rearrest Rates

According to program records, a total of 17 cases who had entered PTR through the middle of 2003 had been returned to court as a result of a rearrest which occurred while the defendant was released to the program on another charge. This pretrial rearrest rate of 5.9% is well within the acceptable range of pretrial programs across the country, and indeed is lower than the most typical national reported rates in the vicinity of 10%.

Failure to appear (FTA) rates, the key success measure on which pretrial programs are most typically held accountable, have generally been reported nationally as being at least as low for defendants released under supervision as for financial release, if not lower. National pretrial research in numerous jurisdictions has demonstrated that the use of non-financial forms of release is as safe as, and typically safer than money bail, in terms of both ensuring appearance at court and preventing rearrests. In the case of the types of notification and supervision provided by the Ontario County PTR program, rearrest and FTA rates are likely to be lower than for non-supervised releases due to the significant amounts of attention received by the defendants during the release period.

PTR's FTA rates are acceptably low by national standards.

Unfortunately, Ontario County does not currently maintain FTA records for all types of release, so no direct comparisons are possible. However, *for those supervised by the program, the three-year FTA rate has averaged between 4% and 5%, which is quite acceptable by national pretrial release program standards.* In fact it is even lower,

around 2%, among those defendants who were considered "eligible" for release. Among those referred to the program without the benefit of a verified release assessment screening, the FTA rate was slightly higher, a still respectable 6%. Among the relatively small number of "not eligible" defendants who were referred by judges for supervision, the FTA rate was closer to 10%, still better than in many release programs, but suggestive of the fact that there is at least some relationship between the release eligibility scores and the FTA rates the point scale is designed to predict.[6]

Non-Compliance Rates

In about 6% of all supervised cases, defendants have been returned to court because of non-compliance with release conditions. Although the program maintains considerable discretion over what is considered non-compliance, termination from the program for such reasons typically involves some violation of the conditions set at the time of the release to the program. The program typically reports such violations in writing to the judicial officer in charge of the case. Although the non-compliance rates have been relatively low during the course of the program, some of those we interviewed stated their belief that some of the non-compliance violations would not need to have been reported to the courts and could in the future be handled through additional supervision or discussions between the program and the defendant. This perspective argues that as long as the person continues to attend scheduled court appearances, relatively minor violations of conditions unrelated to judicial appearances "should be given wide berth and only rarely reported back to the court for termination from the program and possible return to jail."

Program Impact on Jail Days Avoided

As noted above, there is evidence that the existence of the Pretrial Release program, and the resulting focus placed on increasing the use of non-financial release, may well have led in recent years to more judges releasing defendants without booking them into the jail at all, and that others who *are* booked are subsequently released more rapidly than in the past. Such anecdotal information may well have a basis in fact, although the data presented earlier in this

[6]Given many other unknowns about the points and weights assigned to individual items, it still makes sense to formally evaluate the release risk assessment scale, and to make revisions as needed in the future.

chapter suggest that significant numbers of defendants continue to be detained for substantial periods of time while awaiting disposition of their cases.

Moving beyond anecdotal information, almost impossible hurdles are faced by anyone attempting to arrive at a precise indicator of the impact the release program has had on the county jail population. It is impossible to know with any degree of certitude whether everyone released to the PTR program would have remained in custody throughout the entire pretrial period without the program in place. In fact, based on the information reported above that many of those who were considered not eligible by the program nonetheless were subsequently released on bail or later on judges' orders, it seems clear that many of those released to PTR would not in fact have remained in jail throughout the pretrial period, even if the program had not existed. And yet, the program has made the assumption —as have many other pretrial programs, and even the State Department of Probation and Correctional Alternatives—that every day a defendant was released to the program up to the point of final case disposition should be counted as a jail day saved. *Such a formula is simply too generous and unrealistic, and significantly overstates the program's impact on the local jail population.*

Assumptions

Based on discussions with judges at all levels of the county's judicial system, the District Attorney, ATI and PTR staff, defense attorneys, Probation officials, and pretrial release experts in other jurisdictions, CGR developed and applied a number of different assumptions to our calculation of jail days saved by the release program. These assumptions included:

- A large number of days spent on pretrial release supervision would not have been spent in jail whether the PTR program existed or not.
- Some judges in some cases simply use PTR to add levels of supervision to defendants who in the past, without the program, would have been released ROR or on low bails, with minimal jail days spent.
- There should be no "one sizes fits all" estimate of jail days saved that applies across the board. The proportion of

days spent on pretrial release that represent true alternatives to days that would otherwise have been spent in pretrial custody varies by type of court, the types of cases and defendants they deal with, and the assumptions, judicial philosophy and practices of the judges/justices in those courts. Based on information obtained during the study, the proportion of release days that would otherwise have been spent in pretrial custody is assumed to be highest for County Court cases and lowest for town court defendants.

- The potential effect of "time served" must be factored into the equation about jail days saved by the release program. When defendants are sentenced, time already spent in jail pretrial is sometimes factored into any jail sentences, with time served sometimes reducing or eliminating any additional jail time. The relationship between release time and possible offsetting time served was factored into our calculations of the PTR impact on jail days avoided.

- Without the PTR program, some defendants now released would have been held in custody throughout the pretrial period, and others would have had higher bail amounts set that would have led to some pretrial detention, but many of those defendants would eventually have made bail and been released at some point during the pretrial process.

- On the other hand, we assume that the program should receive credit for the fact that some judges set lower bail than they otherwise would have for some defendants whom they do not release to the program, thereby expediting release sooner than would have occurred with higher bail amounts. Some jail days saved should be attributed to the release program for such cases, even though these defendants are not released to the program, because information from the program's risk assessment process helped influence the judges to set the lower bail amounts that resulted in earlier release from custody than would otherwise have occurred.

We factored all these assumptions—developed on the basis of experience and insights of those we interviewed, as well as analyses

of jail data related to custody for different types of defendants and release types—into calculations of estimated jail days avoided as a result of the existence and activities of the PTR program. We applied the assumptions to actual data from all PTR defendants who were interviewed or entered the program during 2002 (we used 2002 data since it enabled us to track virtually all pretrial cases who entered the program that year throughout their entire pretrial period). All 148 defendants in the program that year whose cases had been completed, and who had therefore completed their pretrial period, spent a total of 14,987 days on release—an average of 101.3 days per case. Under assumptions used heretofore by PTR and some other release programs, all 14,987 release days would have been considered to be jail days saved. Instead, based on the assumptions spelled out above, we estimated jail days saved as follows:

Estimated Actual Jail Days Avoided

Table 14: Estimates of Jail Days Avoided Due to Pretrial Release Program, 2002 PTR Defendants

Court (& # of Defendants)	# (& Avg.) Days Released Pretrial	Assumed % of Actual Jail Days Saved	Estimated # (and Avg.) Jail Days Saved
County (17)	1,789 (105)	75%	1,342 (79)
City (73)	6,647 (91)	50%	3,325 (46)
Towns (58)	6,471 (113)	15%	971 (17)
Total (148)	14,987 (101) *	38%	5,638 (38)
Added Days **	NA	NA	1,300

Source: CGR analysis of Pretrial Release data. * Total includes 80 days for one defendant from a court outside the county. ** Note that added days come from assumptions in text below.

The revised allocation of estimated jail days avoided as a result of the existence of the release program is based primarily on the assumptions that most of the County Court cases would have remained in custody on no bail or high bail throughout most of the pretrial period; that about half the release days associated with City Court cases could be considered as being in lieu of jail; and

that 85% of the release days associated with defendants in town courts would not have been spent in custody even without PTR. The cumulative effect of those assumptions is that across all defendants in the program, *an estimated 38% of the total number of days on pretrial release spent in the program would have been spent in pretrial custody had the program not existed.* An additional 1,300 days were added based on the following assumptions: (1) 1,000 days associated with earlier release due to lower bails set for defendants not released to the program, and (2) 300 days based on the fact that the average number of days actually spent in jail prior to release was 8.5 days for PTR defendants, compared to 10.5 days in 2002 for all other pretrial defendants, for an average savings of two days for 152 2002 PTR defendants.

The county jail would have had 19 additional inmates each day in 2002 without the PTR program's existence.

Thus CGR's estimate of *total jail days avoided for 2002 as a result of the introduction of the release program was 6,938—an average of 19 jail beds per day.* As previously stated, this does not mean that the average daily jail population has been reduced by 19 from pre-PTR days. But it does mean that *on the average, the county jail in 2002 would have had 19 additional inmates on an average day had the program not been in existence.*

In looking to the future, the program should be able to have additional impact in further reducing pretrial custody days. If the average PTR defendant is currently spending an average of 8.5 days in jail before being released, it does not seem unreasonable to assume that at least 3.5 of those days per defendant could be eliminated, bringing the average pretrial custody days to 5 per defendant in the program. It should not be unrealistic to think that the program could supervise at least 200 defendants rather than an average of about 150 per year. At a savings of 3.5 custody days saved per defendant, that would represent 700 additional jail days avoided.

Realistic changes in PTR and judicial release practices could prevent an additional 10+ inmates per day.

Additional changes to the program in the future, as suggested in the concluding section of this chapter, should enable further expansion of jail day savings. For example, the introduction of bail expediting practices, anticipated revision of the point scale to increase the proportion of defendants safely eligible for release, expanded numbers of cases released as a result of electronic home monitoring, and working with judges to modify release practices so that higher proportions of eligible defendants can be released in the future, *should add up to a cumulative total of at least an additional 10.4*

jail days saved per day in the future, as suggested earlier on page 23. Such an estimate may even prove to be understated. Such a goal should be attainable through the concerted efforts of the PTR program, ATI Coordinator and Advisory Board, Release Officer, District Attorney, and the county's judges.

PTR Program Assessed Against National Practices and Release Standards

National pretrial release practices have been established by the American Bar Association and by the National Association of Pretrial Services Agencies (NAPSA). Both sets of standards are similar, and are highly respected within the pretrial release field. An extensive survey of more than 200 local release programs across the country was recently completed by the Pretrial Services Resource Center on behalf of the Bureau of Justice Assistance of the U.S. Department of Justice. That survey in part assessed the extent to which the programs across the country are in compliance with the national standards. This section of the report compares the Ontario County PTR program and the county's overall release practices with selected findings from that survey and with the most important of the national standards.[7]

- *National standards emphasize that release should be on the least restrictive conditions needed to ensure a defendant's appearance at court, and that financial conditions should be the last option*, because of their potential to discriminate against poor defendants. Moreover, national studies indicate that non-financial conditions have been shown typically to be more effective in minimizing pretrial misconduct than financial conditions. Studies also provide reminders that using bail to detain defendants with serious charges may be counter productive, as those with serious charges and facing prison sentences are often among the most likely to appear in court under appropriate pretrial supervision. But even with reductions in proportions of pretrial defendants released on bail from the Ontario County jail in recent years, 57% of the pretrial detainees in 2003 were ultimately released on bail, suggesting that *there remains considerable room for improvement within the county against this standard.*

More defendants are released on bail in Ontario County than suggested by national standards.

[7] See *Pretrial Services Programming at the Start of the 21st Century: A Survey of Pretrial Services Programs*, July 2003. See also John Clark and D. Alan Henry, "The Pretrial Release Decision Making Process: Goals, Current Practices and Challenges," November 1996 (Pretrial Services Resource Center). Programs operate in states with different pretrial laws, so comparisons are not always "apples to apples." It is nonetheless instructive to compare Ontario's practices with national findings.

PTR is not in compliance with national standards suggesting that all defendants in custody should be interviewed.

- *The standards indicate that in <u>all</u> cases where a defendant is in custody, he/she should be interviewed by the pretrial program*, even if release is not likely or if there are holds or previous warrants on the individual, since circumstances may change, and the information should be collected in anticipation of the possibility of a future release. *The Ontario program is obviously not in compliance with this standard*, having screened out (not interviewed) an average of more than 125 defendants in each of its first three years in operation. To be fair, however, the program is in the majority on this standard. It may have more restrictions than some of the other programs, but it is consistent with most of its peers in that 84% of all programs nationally have some types of exclusions on whom they interview.
- The standards call for notifying the court of non-compliance with release conditions, but suggest discretion regarding the reporting of all violations of conditions—and emphasize that ideally the program should issue warnings to defendants upon initial non-compliance and try to resolve the issue, rather than routinely reporting all violations. Almost 90% of the programs indicate that they do issue such warnings where appropriate. Ontario's PTR program appears to be in the majority on this standard, and appears to be somewhat flexible in interpreting and reporting violations, although it is not clear that the program is as flexible as it might be in this regard. There are some indications that the program may report violations/non-compliance to the court in some cases where additional discretion and working with the defendant might better have occurred before reporting the violation.

To be in compliance with national standards, PTR should periodically conduct followup reviews of defendants still in pretrial custody.

- *Standards say that pretrial programs should periodically and routinely review the status of all defendants who are detained*, in case there are changes in eligibility and/or ways in which the program can help facilitate release, such as through bail expediting (see recommendations below). The NAPSA standards are even more prescriptive, saying that all programs should do a bi-monthly review of all defendants detained for more than 10 days. The PTR program does not routinely do such followup reviews, unless requested to do so for particular defendants by a judicial official. *Nationally, 47% of all programs are like PTR in not routinely doing such followup reviews.* Some programs do so occasionally, but only 20% conduct regular reviews.

- The standards suggest that programs should report compliance with PTR conditions to officers conducting Pre-Sentence Investigations. Nationally, 43% of the programs reported doing so routinely, 44% said they do so on request, and 13% said they never provided such information. The PTR program appears to be in the middle group, having provided such information in some cases. But it appears as if, historically, there has not been routine two-way exchange of information between Release staff and Probation officers conducting PSIs.

- Standards emphasize the need for programs to use objective risk assessment instruments, and the need for those instruments (the point scale) to be validated based on local research, rather than simply using approaches developed in other jurisdictions. *PTR is consistent with the standards in its use of a consistent objective measurement scale, but it is like many of its peers in not having conducted local research on the appropriateness for local circumstances of the scale and the weights assigned to it*: nationally, 48% of all programs have never validated their instruments, and only 30% have conducted such evaluations in the past five years.

PTR is consistent with national standards in using an objective pretrial risk assessment scale, but does not make explicit release recommendations.

- *National standards say that programs should make explicit release recommendations to court officials. Ontario appears to be out of step with the standards and with typical practices in most other programs.* Nationally, 78% of the programs reported that they make recommendations in all or most cases, while 10% said they do so only if requested by the court, and 12% said they never make specific recommendations. Ontario's program presents information on the defendant's verified eligibility, along with other circumstances perceived to be relevant to the release decision, but it does not make specific recommendations. And, based on interviews conducted during this study, *that seems to be the clear preference throughout the judicial system within the county at this point.*

- PTR is consistent with standards in that it calculates FTA rates. Only 55% of the programs across the country report doing so. But the program is like most of its peers in that, even among those that do monitor FTA rates, only about 14% do so for all released defendants, regardless of type of release. That is, most are like PTR in calculating FTA rates only for those under their direct supervision. Only 29% of the programs report calculating pretrial rearrest rates.

- PTR is like 10% of national organizations in being a one-person staff, and it is like 55% of its peers in operating only from Monday through Friday. More than 40% of the programs reported providing some weekend services.
- *Just over half of the programs (54%) reported that they use electronic home monitoring* among their conditions of release in some circumstances. Currently the PTR program does not do so.
- Nationally, 8% of all programs operate as independent agencies within county government; Probation operates 31% of the programs, and 29% are under auspices of local or state courts. Most programs are like PTR in being funded primarily with county taxes, but with a mixture of local and state funds.
- Nationally, 55% of the programs reported that their information systems are not integrated with other criminal justice information systems. Up to this point, PTR has had access to the NYSPIN criminal history sytem, and to local jail data, but has not been linked with Probation's PROBER system and its release component. This is beginning to change.

Recommendations for Changes in PTR and County Release Practices

Throughout this chapter, a number of issues have been raised that suggest the potential for change in the ways in which the Pretrial Release program specifically, and pretrial practices in the county in general, might operate in the future. This section presents specific suggestions and recommendations designed to improve the efficiency, fairness, quality, and impact of current practices. As indicated above, there are a number of strengths within the current practices upon which to build, but also areas in which improvement is needed and possible. Such improvements should help improve the overall quality of judicial proceedings within the county, and should help reduce the need for expansion of the county jail in the future.

These recommendations are offered in no particular order of priority. All are considered to have merit, and most have been suggested by one or more of those we interviewed during the study. It is suggested that the county's ATI Board initially review these recommendations, perhaps in conjunction with the Board of Supervisor's Public Safety Committee, in order to develop a set of priority actions in response to the recommendations, along with a strategic implementation plan and timetable.

- *Ideally the PTR program should have the capability of providing interview services in the jail on weekends and during times when the Release Officer is sick or on vacation.* Currently defendants detained pretrial during these times are not interviewed until the Officer returns. Potential consolidation of ATI with traditional Probation services (as recommended later in the report) should provide more staffing flexibility for cross-training and backup support. Such linkages should also make it possible to share information more effectively between PTR and Probation, including PSI information, and including access to Probation's PROBER software for pretrial programs.

- With the program's success record to date in ensuring court appearance in the vast majority of cases, *PTR should begin to explore opportunities to take more risks in releasing defendants in the future.* It might, for example, consider a pilot project of releasing and tracking court appearances for defendants with a point scale score of 4, just below the minimum current eligibility score of 5, to see if such releases could be made without sacrificing the integrity of the system. Furthermore, in about one-fifth of all cases not considered eligible for release, the defendant either met or exceeded the minimum eligibility score of 5 points (4%) or had no reported verified score (15%). The program should track what subsequently happens to such defendants and determine what their court appearance record is if they are subsequently released in other ways, to determine if such defendants could safely be released in the future. Moreover, *for the substantial portion of cases considered not eligible without a verified score, the program should consider ways of obtaining verified information by going back to the defendants again, or by exploring different approaches to verifying the information, even if it takes longer than normal to do so. If substantial proportions of those defendants could ultimately be considered eligible for release, the numbers involved (an average of about 40 per year) could have a significant impact in reducing pretrial jail days.*

- More specifically, *PTR should undertake an assessment of its point scale/release assessment procedures*, to determine if changes can be made in the scale, its scoring and its weighting of items, and verification practices to enable more defendants to be safely and reliably released in the future. Such research would mean that FTAs and warrants, and pretrial rearrests, would need to be monitored more consistently for all types of release in the future,

and not just for those released through PTR. Court appearance rates should also be monitored by court and types of characteristics to determine if there are differential impacts by personal characteristics, by court or judge, by type of release, etc.

- The program should also monitor over time whether differential levels and types of supervision and release conditions make a difference in improved outcomes, in order to *determine if it might be possible to reduce the amount of monitoring and supervision necessary for some types of defendants.*
- *The program should consider reducing the number of restrictions which now limit the numbers and types of defendants who can be interviewed by PTR to determine release eligibility.* Even if these individuals cannot be released at the time, it would be good to have basic information recorded for these defendants so that their progress can be monitored in case they are subsequently released, e.g., if holds are eventually removed or circumstances otherwise change.
- *The program should work with judges who have historically not followed PTR eligibility guidance in high proportions of cases*, and perhaps jointly with the District Attorney, to determine if there are changes in program and judicial decision-making practices that might increase the extent of timely non-financial release, and thereby help reduce the pretrial jail population while ensuring high levels of court appearance.
- The PTR program, ATI Board, judges and DA should *explore the possibility of having the program make more definitive release recommendations in the future,* rather than just presenting information on release eligibility. Clearly the judges would retain the ultimate decision-making authority, but the process of making specific recommendations might help encourage some releases that do not now occur, while bringing the program into greater compliance with peer programs and national standards.
- *The program should implement a "bail expediting" approach whereby it periodically revisits pretrial inmates who remain in custody after specified periods of time.* Monroe and Genesee are among the nearly pretrial release programs that have various processes in place to ensure that defendants who remain in jail have increased chances of being released. Such releases may occur under supervision of the PTR program—or where release can only occur by posting bail, the release program may be able to work with the judge to reduce the

bail amount and/or to work with family members, as in Monroe County, to help them understand the process and to find ways to raise and post the bail amounts needed to expedite the release. In Monroe County, the expedited release program was instrumental in 2002 in obtaining release within two days, either on bail or through program supervision, in 25% of the cases in which it conducted followup intervention. This process resulted in substantial numbers of jail days avoided by defendants who would otherwise never have been released pretrial, or would have been released only after significant numbers of additional days in custody. The State Department of Probation and Correctional Alternatives offers practical advice and technical assistance to counties interested in exploring such expediting approaches.

A tool which could help make such a process work already exists in Ontario County. Apparently a monthly report is currently circulated to judges which documents pretrial defendants currently in jail, with their length of pretrial detention and bail amounts listed. *This report has historically apparently not been shared with PTR. It should be in the future*, and it could become the basis for the followup procedures recommended here.

- *The PTR program should explore the use of electronic home monitoring (EHM) to create expanded options for release, especially among defendants with more serious charges and criminal histories who are not now considered by judges.* The program and judges would need to build in procedures as safeguards to help ensure that EHM is not simply added as an additional release condition for defendants already being released on other terms, and that it is only used for cases likely to remain in jail without the added monitoring potential offered by EHM. A majority of pretrial release programs in the country now use this approach to expand release opportunities. Since the county's Probation Department already has budgeted for the cost of EHM devices that are not currently in use, it could expand its use of the devices in the pretrial context, at no additional costs to the county budget, and with the potential to significantly reduce the pretrial jail population.

- The release program currently writes individual letters to courts to update the status of all defendants at each court appearance, even if there has been no change in circumstances, and no violations or concerns to report to the court. *The program and judges should explore*

ways of streamlining reporting practices, so that judges get the information they need in a timely fashion, but without placing unneeded burdens on the Release Officer. Perhaps the program could report to the courts only if there has been a problem or significant change in the defendant's circumstances, and/or use a more standardized form in which status can simply be checked off in a box, with space for narrative if necessary, but without staff having to write and type individual letters for every court appearance. By streamlining reporting approaches, it should become possible for PTR to interview and supervise more defendants, and thereby have more impact on the system.

- Through various recommended approaches, we anticipate that the numbers of pretrial defendants who are released on non-financial bail will increase. To that end, the number of defendants to be supervised by PTR is likely to expand as well. By working with judges to reduce unnecessary levels of supervision; by streamlining data input, access and monitoring through the PROBER system; and by streamlining reporting relationships with the courts, *it should be possible for the Release Officer to actively monitor expanded numbers of defendants at a time, thereby enabling the program to extend its impact on the jail population.*

- *County officials should consider ways of releasing more defendants with mental health and substance abuse problems through referrals to various treatment options.* The State offers various opportunities for training, advice and technical assistance through OASAS and OMH offices.

4. COMMUNITY SERVICE ATI PROGRAM

Ontario County's Community Service program is the oldest criminal justice alternatives program in the county, dating back to 1987. It was initially established primarily as an alternative to fines or other non-incarceration sentences, only rarely also being used as an alternative to short jail sentences. In 1991, with funding from the State Division of Probation and Correctional Alternatives (DPCA), the county established an expanded role for the Community Service (CS) program, with a more intentional focus on using community service options in lieu of jail sentences of 15 days or more. The purpose of the special funding support was to help the county alleviate overcrowding in the jail. This chapter assesses the value of the ATI portion of the program and how well it has accomplished its goals.

Program Description

The overall Community Service program in the county is actually made up of four separate components:

- The General CS program, the component of the program that serves the most people each year. It serves those convicted of misdemeanors or violations who are not considered to be jail-bound. Typically CS sentences would be alternatives to fines, rather than jail.

- Juvenile Delinquent program that serves 14- and 15-year-olds adjudicated in Family Court.

- Juvenile Diversion, which also serves 14- and 15-year-olds, and helps them avoid court if they perform CS and abide by other terms of a diversion agreement.

- The Alternatives to Incarceration CS program, discussed in this chapter.

Two full-time staff cover all four program components. Rather than each being responsible for selected components, the staff share responsibilities across all four program components, splitting assignments more along geographic than service lines. Core responsibilities of monitoring cases across various work sites are

similar for each segment of the overall program, so this allocation of responsibilities seems to make sense.

Because of the fact that this evaluation for the county is specifically focused on Alternatives to Incarceration within the *criminal* justice system, rather than on more general types of alternatives or alternatives within the *juvenile* justice system, the focus of this chapter is limited to the ATI portion of the overall CS program.

Costs of the ATI programs are dealt with together in one overall budget section later in the report, but it should be noted here that part of the ATI portion of the costs of the overall CS program are offset by state funding from the DPCA grant noted above. Originally about $32,000 annually, the annual value of the grant is now about $23,000. The remainder of the CS costs are borne by Ontario County.

The ATI Community Service program serves County, Canandaigua and Geneva City, and town/village courts throughout the county, as well as also providing community service monitoring for county residents sentenced and referred by courts outside Ontario County. The program is able to serve defendants charged with misdemeanors, violations and D and E felonies. About the only absolute restrictions, according to program officials, are offenders charged with A, B or C felonies "and any sex offenders." ATI Community Service cases are typically sentenced to at least 50, and more often 100 or more hours of community service. The general rule of thumb is that 100 hours of community service are considered to be the equivalent of 30 days in jail. Actual hours of sentencing, and the relation to actual jail days saved as a result, are discussed later in the chapter.

The program receives referrals from two different sources: direct referrals from a judge or town/village court justice, or through Probation, which may request CS, as part of a Pre-Sentence Investigation, to interview an offender and consider a possible placement site if that person should ultimately receive a CS sentence. No final decisions or specific placements are made for an individual until a final sentence has been officially determined by a judge. Only at that point can a CS placement be made.

Staff assign offenders who are sentenced to the CS program to what they consider to be the most appropriate available work site, given the circumstances of the individual offender. To the extent possible, they try to have the offender work in a community setting as close as possible to where the crime for which he/she is being sentenced occurred, although that is not always possible. In some cases, the sentence is spread out over a period of time and carried out, at least in part, on weekends, in order to minimize any disruption with jobs, family responsibilities, etc. Sometimes CS job sites are only available during the summer or at other seasonal times, so in some cases the actual onset of the sentence may need to be delayed. CS staff indicated that on average, the typical CS case stays open as long as eight months or so.

According to the program's most recent annual report, *the overall CS program (not just the ATI component) made use in 2002 of about 80 separate work sites in the public and non-profit sectors. Just over two-thirds of those (about 55) were located within Ontario County.* The others were mostly in contiguous counties, with a few in distant locations in which offenders sentenced to a community service sentence were monitored by a program in a different jurisdiction. Except for such distant transfers of cases, once an offender is placed in one of the sites, CS staff check in with the person and the work site periodically to monitor progress and determine if there are any problems that need to be addressed. Staff report any violations or failures to keep appointments back to the court of jurisdiction, and can terminate cases for failure to follow through, although the proportions of unsuccessful terminations have been relatively low over the years, as discussed further below.

One of the continual challenges of the CS program is to maintain the existing work sites—and their willingness to continue to provide CS opportunities along with the necessary on-site job supervision—while at the same time developing new job sites in an economy in which regular employees are not assured of being able to maintain their jobs. Thus the ability to maintain sufficient work sites to meet the needs of the program for placement opportunities remains a constant challenge, though staff indicate that, at least up to this point, the program has been able to continue to meet the demands for placement sites created by judicial CS decisions. However, an alternative perspective was

offered by some judges who expressed the hope that in the future, "we could sentence more people to community service because a greater variety of jobs would be available which would offer more meaningful assignments and challenges for the offenders." (This issue is addressed in more detail later in the chapter.)

Perceived Value of Community Service ATI Program

Those familiar with the Community Service program spoke highly of it and its helpfulness to those involved in the judicial system. One person familiar with CS programs in other communities referred to it as "the best-run CS program I'm aware of anywhere in the state." The program staff receive high marks for their thoroughness, preparation, and their communication with the courts and judicial officials. Several judges and town justices spoke of how much they appreciated the responsiveness of CS Sr. Counselor Steve Sherry and his previous Counselor, Kelly O'Donnell. They praised staff efforts to monitor cases and keep the courts informed through reports on the progress of those in the program, along with any problems or issues faced while serving their CS sentence.

Several spoke of the value of CS sentencing to the community as well as to the individuals involved. The offender is given the opportunity to "make amends" by contributing to society in the context of what is hopefully a meaningful experience through a form of labor and exposure to work that is both beneficial to the offender and to the community agency receiving the work. Some judges in particular noted their belief that the option can help some offenders better appreciate the value of work and, anecdotally, some indicated that the initial CS placement had in a few cases ultimately led to paid employment for the offender as a result of the experience (though no data have been maintained to document the extent to which such claims are true). The CS sentencing option is viewed by many as a means of providing individual accountability and of helping the individual offender to think about the consequences of his/her criminal actions, particularly in comparison to "the payment of a one-time fine, where it's over and done and forgotten about. At least with community service, there's an ongoing reminder when you're working of what you did and that there are consequences."

Community Service is valued as a sentencing option, even if not always as an alternative to incarceration.

The latter comment also raises the question of the extent to which CS is truly an alternative to *incarceration*, as opposed to simply an alternative form of sentencing. Clearly, as indicated above, it can

be both, and the history of CS in the county back to the 1980s was more as an alternative form of sentencing that rarely was in lieu of incarceration. The extent to which cases more recently sentenced to CS and attributed to the ATI component of the program truly represent actual alternatives to incarceration is addressed in more detail in the section below on the program's impact on jail days avoided. But even those who question how frequently the option is used instead of jail praised the value of having the option available, and acknowledged the importance of having in place an option that can provide benefits to the individual offender, help ensure accountability for the offense, and provide a form of "giving back and healing" for the community as a partial payment for the initial offense. As one of those interviewed put it, reflecting sentiments shared by several, "Maybe it's a true alternative to incarceration and maybe it isn't (and it's probably some of both at different times), but *at the very least it is a very good, visible sentencing alternative that gives judges choices and offers value to the community. What's wrong with that, even if it doesn't always keep people out of jail*?"

The primary offsetting view to the primary positive perceptions about the CS alternatives program relates to the fact that, as described in more detail later in the chapter, a number of the justice courts choose not to use the program, in large part because they rarely sentence offenders to jail anyway. Probation officials involved in developing pre-sentence investigations for judicial review indicate that some judges and justices are less likely to follow recommendations for CS than for other types of sentences. Moreover, with some judges known to be averse to using CS, Probation staff indicated that they rarely even consider recommending community service, knowing the response it will receive.

Extent of Use of Community Service ATI

Other than Pretrial Release, Community Service is the most frequently used ATI program. Table 15 on the next page provides an indication of the extent to which community service sentences characterized as alternatives to jail have been used by county judges since the mid-1990s:

Table 15: Community Service ATI Sentences, Hours Sentenced, and Terminated Cases, 1996 – 2002

	1996	1997	1998	1999*	2001*	2002	Avg.
# Sentences	81	84	141	111	96	121	106
Hours Sentenced (and Average per Sentence)	9,125 (113)	9,223 (110)	14,623 (104)	11,610 (105)	10,273 (107)	11,183 (92)	11,006 (105)
Terminated Cases	80	89	120	102	86	107	97

Source: CGR analysis of Community Service and ATI Annual Reports. * Annual Report Data not available for 2000. Note: "Terminated Cases" include successful and unsuccessful terminations each year, including some cases which began in the previous year. "Avg." is the average of all years 1996 – 2002.

Judges have used CS sentences more than 100 times a year where jail might otherwise have been served—with more than 100 community service hours per sentence.

Since 1996, judges and justices in the various criminal justice courts in the county have sentenced an average of more than 100 offenders a year to community service sentences where jail time might otherwise have been served in the absence of the CS option. The typical case averaged about 105 hours of community service. Each year, including cases which carry over from year to year, an average of just under 100 cases have been terminated—with a successful termination in more than 80% of the cases.

The determination of which CS cases are considered to be ATI cases is typically made by the CS Sr. Counselor for the county, based on a formula. Some judges indicate if they are sentencing someone to community service in lieu of jail, but most do not do so explicitly. In some cases, there may be a recommendation from a Probation pre-sentence investigation to provide guidance as to whether jail time would have been imposed in the absence of a CS sentence, but for the most part there are no clues on the record as to whether the alternative truly did prevent a jail sentence. Thus, given that there usually is neither a pre-sentence nor formal judicial indication of what might have factored into the decision to impose a CS sentence, the CS Sr. Counselor is left to an after-the-fact designation as to what is and isn't considered an ATI case, using the State's guidance. That guidance suggests that any community service sentence of at least 50 hours could be considered to have been in lieu of jail. Using the State DPCA "rule of thumb" that suggests that 100 hours of community

service is equivalent to a jail sentence of 30 days, this means that ATI cases are defined as those involving a sentence of at least 50 hours of CS in lieu of 15 or more jail days.

Given the DPCA formula, the average jail sentence in the county's community service ATI cases would, in the absence of the ATI option, have been just over 30 days. All of this presumes that the State's formula is an accurate reflection of judicial calculations and assumptions, and that all of these cases would indeed have resulted in jail time in the absence of CS as an alternative. As we discuss in more detail in the section later in the chapter on jail days avoided by the CS program, that presumption is questionable, but at the very least, even if the jail-days-saved assumption raises questions, the number of community service hours which were part of the initial sentences are not in question. The figures in the table suggest that judges have been fairly consistent over the past several years in making more than 100 sentences a year (and more than 117 per year since 1998) which typically involve slightly over 100 hours of community service per sentence.

Use of Community Service ATI, by Courts

Although CS is the most frequently-used ATI program other than Pretrial Release, unlike PTR, it is not used by every court. Several town justices emphasized the fact that they rarely consider jail as a sentencing option, and that therefore they rarely use CS as an alternative to jail. At least one town has expressed its opposition to using CS at all, due to concerns about liability if an injury should occur while an offender is performing community service—even though the county carries liability insurance covering all sites within the county, and even though offenders sentenced to CS by other courts are already working at sites within that town.

The net effect of these concerns and realities is that, *over the past five years, CS program data indicate that five of the county's 17 town/village courts have never used CS as an alternative to incarceration.* In addition, two of the other courts have only used this ATI option once in the five years, one has used it twice, and two have used it three times. Most of the courts which have made little or no use of the CS option as an alternative to jail are among the smaller justice courts. *The net effect is that 11 of the 17 justice courts have used CS in an ATI context three or fewer times during the past five years.* Only three of the justice courts—Farmington, Hopewell and Victor—have used the

Community Service as an ATI is rarely used by 2/3 of the county's justice courts.

ATI option more than an average of three times per year, with the most frequent user averaging about seven cases a year.

Table 16 below provides a more complete profile of the extent to which various types of courts have used community service as an alternative to jail, given the assumptions outlined above.

As shown in the table, over the past four and a half years (1999 through mid-2003), despite the fact that most justice courts make little use of community service as an alternative to incarceration, the remaining town/village courts have cumulatively been the second-highest court users of CS as an alternative to jail (27% of all such cases)—though well below the number and proportion of sentences that would be expected by sheer volume of cases coming through the justice court system.

Table 16: Use of Community Service as an Alternative to Incarceration, and Extent of Successful Termination of Cases, by Type of Court, Between 1999 and 2003*

Disposition of Cases	County Court	Canand. City Ct.	Geneva City Ct	Town Courts	Out of County	Total
Successful Terminations	42	38	92	85	50	307
Unsuccessful Terminations	2	5	17	15	10	49
Cases in Process	19	6	12	13	9	59
Total CS Sentencing Cases (and % of Total)	63 (15.2%)	49 (11.8%)	121 (29.2%)	113 (27.2%)	69 (16.6%)	415
% of Completed Cases Successfully Terminated	95.4%	88.4%	84.4%	85.0%	83.3%	86.2%

Source: CGR analysis of Community Service case data. * 2003 data included first half of the year only.

Since 1999, judges in Geneva City Court have been the most frequent users of community service as an alternative to incarceration, at least according to the ATI formula. They have used the option in an average of more than 25 cases per year. Compared to Canandaigua City Court, CS as an alternative to jail

has been used well over twice as often by Geneva City Court judges. Canandaigua City Court has been the least frequent user of CS as an ATI of any of the different court types in the county.

Beyond courts within the county, in fully 17% of all ATI cases supervised by the county's Community Service staff, the originating court has been outside Ontario County. These are cases usually involving county residents who were arrested and convicted in another county, typically contiguous to Ontario, and Ontario has agreed to monitor the community service case for the other jurisdiction. Not shown in the table is the fact that the reciprocal also occurs: in an average of about eight cases a year, community service cases under local court jurisdiction are transferred to an offender's home county for CS supervision.

Despite differences in usage by type of court, Table 16 indicates that there has been a consistently high proportion of cases that successfully complete the community service sentence, with *fewer than 15% of the cases overall returned to the court for failure to successfully complete terms of the community service.* (In addition, an average of six or seven offenders a year who have violated probation or been arrested for a new crime while serving community service have been returned to court for reasons not related to their satisfactory performance in completing their CS expectations. If such cases are also counted against the program, successful termination rates would be reduced by a few percentage points, but the overall success rates would still exceed 80%.)

At the level of individual judicial users of CS as an ATI sentence, the primary users have been the County Court judges, three City Court judges, and a handful of town/village court justices. All of the primary judicial users of the program have had similar records of successful completions of cases.

Profile of Offenders Sentenced to ATI Community Service

The key descriptive characteristics of the offenders who have been sentenced to community service as an alternative to jail have remained relatively consistent from year to year. This section briefly describes the key characteristics by offenders' gender, age, race/ethnicity, charge, and prior record. In addition to describing the offender profile on each of these dimensions, the descriptive proportions of cases receiving CS are compared with the proportions of cases entering the criminal justice system to

determine if any significant differences exist in the use of CS as an ATI. Differences in use of this alternative by court type are also noted.

Gender

Fairly consistently in recent years, about 38% of all community service ATI cases have involved females, compared to about 25% among the total pretrial population who spent at least some time in pretrial custody. *This difference would seem to suggest that the courts have been somewhat more likely to use the CS option as an alternative to jail with women offenders than with men.* To the extent this is true, and that the CS sentence truly has been an alternative to jail time, this sentencing option might have helped maintain a relatively high proportion of unused female beds in the local jail in recent years.

Differences by Court: County and Canandaigua City Courts have been more likely to sentence males to community service (about 75% males), while all other types of courts have been closer to a 60-40 ratio of males to females. It is not clear from data available to us how these ratios compare to the overall gender ratio of all cases in each court.

Age

Community Service as an ATI is typically used for relatively young offenders.

Nearly half (46%) of all ATI community service cases in recent years have involved offenders 21 and younger, with 24% between the ages of 22 and 30, and 29% over 30 (including 12% older than 40). The corresponding proportions for the pretrial custody population were 40%, 20%, and 40% (with 18% over 40). *It appears from these data that judges for the most part tend to use community service as an alternative to jail for relatively young offenders.*

Differences by Court: In all courts except Geneva City and the out-of-county courts, about 55% of all of those receiving an ATI community service sentence in recent years have been 21 or younger. In Geneva City and the out-of-county courts, by contrast, the corresponding proportions were about 30%. Almost half (45%) of the out-of-county cases were 31 or older, compared with about 29% of all cases involving courts within the county. The focus in most courts on community service for younger offenders seems consistent with what was said in many of our interviews: that one of the important uses of community service sentences is to get the attention of offenders and to help them assume responsibility and learn to be accountable for their actions. Some judges indicated their preference for using this approach to

getting the attention of younger offenders, rather than sentencing them to jail or to a fine.

Race/Ethnicity

Among community service ATI cases across all courts in recent years, 7.5% of all cases have involved African-American offenders, and about 5% have involved Hispanics/Latinos. The latter proportion is consistent with the proportion of pretrial detainees and overall jail inmates over the same years, but the proportion of blacks receiving ATI community service sentences is significantly lower than the 19% to 20% black proportions of the pretrial and overall jail population.

CS appears to be used less frequently as an ATI among black offenders.

The Community Service program data seem to at least suggest that CS is used less often as an alternative to jail among blacks than might be expected from their proportions in the pretrial and overall jail population.

Differences by Court: In general, the proportions of black or Hispanic offenders receiving a CS sentence instead of jail have been consistently low in all courts. Only in Geneva City Court have significant numbers of minority offenders received a CS sentence deemed to be an alternative to jail: 13% of all such sentences involved blacks, and 12% Hispanics. In County Court, 12% involved blacks and 2% Hispanics. In the other courts, the proportions for both were typically 5% or less, including *no blacks or Hispanics in Canandaigua City Court receiving an ATI community service sentence in the past five years.*

Type of Charge

Those sentenced to community service as an alternative to jail have disproportionately involved misdemeanor offenses: 72%, compared with 25% felonies and 3% violations. This contrasts with the overall pretrial detainee proportions of 43% felonies, 55% misdemeanors and 3% violations. In part, this difference can be explained by the fact that three levels of felonies are not eligible for community service sentences, but *the numbers at least raise the question as to whether CS could be used as an alternative to jail with higher proportions of felony charges.*

Data suggest that Community Service could be used as an ATI more often with felony charges.

Differences by Court: In Geneva City Court and the justice courts, more than 90% of the cases receiving CS in lieu of jail involved cases initially charged as misdemeanors, with only about 5% involving initial felony charges. County Court of course involved almost all felonies (a few were negotiated down to

misdemeanors). Initial felony charges were involved in 21% of the Canandaigua City Court CS-as-alternative cases, and 32% of the out-of-county cases involved initial felony charges. It is not clear from the data whether the almost exclusive use of this sentence with initial misdemeanors in Geneva City Court and the justice courts suggests that it is such cases where judges/justices feel that they can best get across the notion of accountability and consequences, or whether in reality relatively few of these misdemeanor cases really would have received a jail sentence in the absence of the CS option.

Prior Record

It is not clear from the way in which the CS prior criminal history data are classified whether they are directly comparable to pretrial population data, but to the extent they are comparable, they suggest that community service as an ATI is used less frequently with offenders with previous criminal records than might be expected from the proportion of all defendants with prior records. That is, among the overall pretrial custody population, two-thirds had prior arrests, and 55% reportedly had prior convictions. But among those sentenced to community service as an alternative to jail, only one-third were recorded by the CS program as having prior convictions. For almost 40%, this was listed as their first offense of any type, including juvenile, YO, etc. *The overall pattern seems to emphasize one of using CS to help teach accountability and responsibility with offenders with relatively less serious offenses and relatively infrequent prior criminal histories.*

Differences by Court: Only 18% of Canandaigua's CS cases had prior convictions, compared with 43.5% of those in Geneva. Geneva Court judges seem willing to use CS as an ATI option with offenders with a prior record, while the Canandaigua Court pattern is just the opposite. Among town court justices, use of CS as an alternative rarely involves convicted prior offenders (20%) and typically is reserved for those for whom this is the first offense of any type (55%). By contrast, 48% of the out-of-county cases involved offenders with prior convictions.

Summary of Differences by Court

Overall, the following patterns appear to characterize how the different courts have used CS as at least a possible alternative to jail:

Town courts: Appear to rarely take chances, tending to offer this option primarily to young offenders charged with misdemeanors with little prior criminal involvement.

Geneva City Court: Virtually only those with initial misdemeanor charges, but 44% with prior convictions, and relatively older offenders than in other courts within the county.

There have been considerable differences across courts in use of CS as possible alternatives to incarceration.

Canandaigua City Court: Least frequent user of CS as an alternative to jail. Higher proportion of males than in other courts. Mostly young offenders, few with prior convictions, and no black or Hispanic offenders.

County Court: No major differences from the overall profile of offenders sentenced to CS as an alternative to incarceration.

Out-of-county Courts: Compared to courts within the county, higher proportions of initial felony charges (except for County Court) and prior convictions, and a substantially older group of offenders.

Impact of ATI Community Service Program

Given the patterns of court usage of this program, as identified above, this section assesses the impact of the program in terms of its value to the community in terms of services provided, and its impact in terms of jail days avoided. Ideally, the evaluation would also have assessed any impact the program has had on subsequent recidivism within the criminal justice system, but county officials were concerned that the necessary data to complete such an analysis would not be readily available, so any recidivism analyses were deleted by the county from the original proposal.

Community Service Work Performed

Table 17 on the next page provides an indication of the amount of community service work actually performed under the ATI program. The data in the table show the hours originally sentenced (from Table 15) compared to hours actually completed by offenders in the program, by year. Based on the program's assumption that each completed hour of community service was worth $5 to the community agency for which the work was completed, a labor value of the work was calculated by the program, and is included in the table.

Table 17: Sentenced Versus Successfully Completed Community Service Hours, ATI CS Program, 1996 – 2002

	1996	1997	1998	1999*	2001*	2002	Avg.
Hours Sentenced	9,125	9,223	14,623	11,610	10,273	11,183	11,006
Hours Worked	7,357	7,655	10,885	8,884	6,265	6,398	7,907
Estimated Work Benefit	$36,785	$38,275	$54,425	$44,420	$31,325	$31,990	$39,537

Source: CGR analysis of Community Service and ATI Annual Reports. * Annual Report Data not available for 2000. Note: "Hours Worked" for the first four years include an average of 413 hours/year completed by Unsuccessful Terminations from the program. The last two years do not include such information. "Estimated Work Benefit" was calculated by the program based on $5 per completed hour of community service. "Avg." is the average of all years 1996 – 2002.

The difference between sentenced and actual hours served each year is attributable to several factors, including the fact that the two totals are not based on identical offenders, as persons sentenced one year may not complete their sentence until the next year. All hours of completed work are only counted in the year in which the sentence is completed. But the primary factor in the difference between the numbers is the number of cases who do not successfully complete the program, typically because they do not complete their initial sentenced-hour commitment. (In the future, it would be helpful for the program to compare sentenced vs. actual hours served for the same individuals, showing the proportion of original sentenced hours actually completed for successful completers vs. those for offenders unsuccessfully terminated from the program.)

Allowing for some inconsistencies in the program's data, as explained in the notes in the table, the successful completers of the program averaged about 105 hours of completed work per case through 1999, equivalent to the average hours of the initial sentences. Through 1999, the total number of actual hours completed represented about 80% of the original sentenced hours, which is consistent with the fact that just over 80% of all cases were successfully terminated. But what is unclear is why the numbers and proportions of hours successfully completed declined so significantly in 2001 and 2002. Instead of completing about 80% of the sentenced hours, the proportion in the last two

recorded years declined to about 60% of the sentenced totals. Instead of an average of about 105 hours of completed service for successful completers of the program, the average per case declined in the past two recorded years to 92 in 2001 and 74 in 2002. The original average number of sentenced hours was somewhat lower to begin with in 2002 (see Table 15), but not enough to account for such a decline in the average amount of service completed. It is not known if changes were made in program record-keeping which might account for some of these differences, or if offenders were allowed in recent years to successfully terminate from the program without having to complete the entire initial number of sentenced hours.

Data inconsistencies and uncertainties notwithstanding, the ATI portion of the CS program has attributed over the years an average of just under $40,000 in value per year to the community service work completed for various organizations in the public and non-profit sectors. Whether one agrees with the assumptions underlying these calculations by the program or not, and without making any assumptions about how essential the completed tasks were (and the extent to which they would have been completed, or even needed to be completed, by someone else if not the CS participant), the reality is that significant numbers of hours were spent, and tasks completed, as a direct result of this program. This evaluation does not attempt to pass judgment on the monetary value assigned to the completed work, but *it seems fair to say that a number of community organizations have received work of some value to them over the years as a direct result of this ATI program.*

Program Impact on Jail Days Avoided

In theory at least, it should be possible to have a relatively clear indication on the record of the impact on jail days saved as a result of community service sentences. Such a record could be possible if judges would state as part of any CS sentences whether or not the sentence is in lieu of jail (and how many days), or whether CS is part of a sentence that would include some jail but reduce the number of days that would otherwise be part of the sentence. In fact, there is a form that has been used to provide such input, but it has not always been filled out accurately, and often not at all, so in effect that approach is now ignored, leaving any estimate of jail days saved to the discretion of the CS Sr. Counselor, based on the

application of the DPCA formula to the numbers of sentenced community service hours for each case.

However, based on comments received from a wide range of officials involved in various aspects of the criminal justice system, including those most directly involved in the process of providing information and making decisions about community service sentencing, it is clear that the "one size fits all" nature of the State formula of 100 CS hours to 30 jail days saved is simply not appropriate for use across all situations, all courts, and all judges. Too many different assumptions, judicial philosophies and individual case factors shape the decisions about each case to be able to apply one formula consistently across the board.

Assumptions and Observations Affecting Jail Days Avoided

Based on our observations, data analyses, and discussions with key officials, CGR has applied the following observations and assumptions to our calculation of jail days saved by the CS alternatives program:

- In the absence of any other information, the use of the State formula is appropriate, and the county should not apologize for having used it in the past. It is, after all, what the State has promoted, and many other counties have used the same formula. However, with the new information available from this study, other assumptions should be used in the future.

- Even if the formula were to continue to be used, it would be important to modify it to reflect the fact that full jail sentences are rarely served. In the past, the assumption has been made that the equivalent jail days saved by CS, based on the formula, would be saved at full value. The reality is that actual sentenced days are routinely discounted by one-third, i.e., sentences are routinely reduced by a third for "good time," so *counting the full number of days allowed by the formula overstates the actual days saved by that one-third. Our calculations have adjusted for that reality.*

- CS cases monitored for county residents on behalf of other jurisdictions outside the county have heretofore counted toward jail days saved. It is reasonable to count these as

jail days avoided, but the reality is that they should not be counted as part of the Ontario County total, since any days saved would be in the jail of the county in which the court of jurisdiction resides. In a few of these cases, there could be real savings to Ontario County, if the jurisdiction of the case is transferred to a court within Ontario, as occasionally happens, but this is rare, and for the most part, the initial court continues to maintain jurisdiction until terms of the sentence are fulfilled. *Thus the vast majority of any jail days saved as a result of these out-of-county CS cases should not be attributed to the Ontario County jail.*

- Technically, the State formula does not count community service sentences of less than 50 hours as alternatives to incarceration, as it assumes that sentences of such length are really alternatives to fines or other non-jail sentences. Yet a number of such sentences are included among the county ATI cases. However, rather than delete those from consideration in our calculations, we have chosen to retain them because such cases can be considered as saving jail days if they have been part of sentences that grew out of pre-sentence investigation recommendations. The data base made available to CGR did not include information as to whether these cases had been part of PSIs, but we chose to err on the side of caution, and assumed that these were all cases that could legitimately continue to be included as ATI cases, subject to the other assumptions laid out here.

- The general sense of most of those with whom we spoke during our evaluation was that *the number of CS cases considered by the formula to be ATI cases has probably been overstated in the past, and that at least some of those cases have in reality represented alternatives to fines, restitution, conditional discharge, or other non-jail sentences.* Without clear articulation on the record of when CS is and when it isn't an alternative to jail, there is no perfect way to determine the actual jail days saved as a result of the program. Thus all CGR could do was to develop the best possible estimates, based on the assumptions noted above, plus the best modeling possible of decisions made within specific types of courts.

- To that end, we have made assumptions about the differential proportion of jail days saved in ATI community service cases in different types of courts, based on the ways in which CS is used in those courts. Although there is considerable variation in how CS is used within the same court, and even within the same judge from case to case, there appear to be overall relatively consistent patterns in the use of CS that characterize and distinguish between different types of courts. We have attempted to factor those different patterns into our calculations of jail days saved, rather than using a single formula which cannot adjust for variations in many factors that are part of the reality that shapes judicial decisions. Thus our estimates of jail days saved are based on the information and assumptions gleaned from (1) our data analyses of the types of cases and defendants dealt with in each type of court, and (2) our conversations about how decisions are made, and the assumptions, judicial philosophy and practices of the judges/justices in those courts.

- Accordingly, we make the following assumptions about the proportion of jail days that are actually saved within each type of court:

  County Court: A mixture of cases, some of which involve use of CS as a true alternative to jail, some where jail would not be the alternative, and a few in which the sentence involves both CS and some jail time. Our estimate is that 60% of the formula's "saved" sentenced jail days should realistically be claimed as actual sentenced jail days saved (before applying the "good time" discounts).

  Canandaigua City Court: Although the court (other than some individual justice courts) that makes the least use of community service as an ATI (see Table 16), and has the shortest average community service sentences, the vast majority of the sentences seem to be legitimately "in lieu of jail" days that would otherwise have been imposed without the CS program in place. Therefore we estimate that 80% of the relatively small number of formula-derived

Canandaigua sentenced jail days saved should be claimed as actually avoided.

Geneva City Court: Although jail is likely to be imposed if a person fails to successfully complete his/her community service sentence, in most cases the initial CS sentences seem more likely to have been imposed as ways to increase the offender's sense of responsibility and accountability for her/his actions, and as such are more likely to be considered alternatives to types of sentences other than incarceration. Clearly some of the cases are true alternatives to incarceration, but our data and discussions suggest that only about 20% of the jail days allowed by the formula should actually be considered as realistic sentenced days avoided.

Justice Courts: Nearly all town/village court justices contacted, as well as others who talked about their perceptions of how justices make their decisions—as well as our independent data analyses—all suggested that relatively small proportions of CS cases in town/village courts involve true alternatives to jail, and that even where they do, the ratio of 100 community service hours to 30 jail days saved is probably too high. Thus we have assumed that 15% of the formula's jail days saved should actually be counted, and if anything, that estimate may be high.

Out-of-county Courts: The discussion above suggests that the jail days saved for these cases should all be allocated to other counties. We have assumed that 5% of the days might be counted toward Ontario County savings, based on the assumption that an occasional case has its jurisdiction shifted from the original court to a court within Ontario.

Estimated Actual Jail Days Avoided

We factored all of these assumptions into calculations of estimated jail days avoided as a result of the existence and activities of the ATI component of the Community Service program. We applied the assumptions to actual data from all Community Service ATI offenders who entered the program in 2002. We used that year because it was the most recent year for which all of the CS cases had sufficient time to complete the program, thereby providing

the most realistic current assessment of actual jail days that could be attributed to the program, based on application of the above assumptions. The calculated estimated jail days avoided are summarized in Table 18:

Table 18: Estimates of Jail Days Avoided Due to Community Service ATI Program, 2002 Community Service Cases

Courts (& Number of Offenders)	# (& Avg.) Days Saved by Formula	Assumed % of Actual Jail Days Saved	Estimated # (and Avg.) Jail Days Saved
County (9)	422 (47)	60%	253 (28)
Canandaigua City (21)	363 (17)	80%	290 (14)
Geneva City (14)	383 (27)	20%	77 (5.5)
Towns (29)	545 (19)	15%	82 (3)
Out-of-County (14)	353 (25)	5%	18 (1)
Total (87)	2,066 (24)	35%	720 (8)

Source: CGR analysis of Community Service data.

The Community Service ATI program prevents about 1.3 jail inmates per day.

Factoring in all of the assumptions laid out above, the estimated number of Ontario County jail days avoided in 2002 across all courts would be about 720 days *if all those days were actually served in jail.* But since the further assumption is that one-third of all sentenced days would never be served because of "good time," another 240 days would need to be deleted from the total in the table. *Thus, the practical reality is that the Community Service ATI program, under the most realistic set of assumptions we could provide, in 2002 saved the county about 480 jail days, the equivalent of about 1.3 beds per day.*

Implications

Compared to what the program has in the past touted as annual jail days saved, these data appear at first glance to suggest that CS has not been successful as an alternative to incarceration. We would draw a different, broader conclusion. *Our analyses suggest that the program currently has some limited value as an alternative to incarceration, but by all accounts has a much more significant value in addressing needs of individual offenders within the criminal justice system, in providing courts with*

a mechanism for making offenders more accountable for their criminal actions, and in providing services to numerous agencies within the county.

In addition, the analyses suggest that this may serve as a wakeup call to ATI officials and judges throughout the county. As the previous analyses suggested, *there appear to be opportunities to make more extensive use of the CS option among a number of target groups and in several courts within the judicial system.* By using these data to focus attention on the program, it may be possible to develop new strategies to expand the ATI impact of the program in the future. From an immediate perspective, it would be helpful to develop a means of having judges specify when they actually use CS in lieu of jail time, so the estimates used in this evaluation can either be confirmed or refuted with more accurate data on a systemwide basis.

Community Service has value as a sentencing option, but has the potential to become more of an alternative to jail.

Our overall conclusion is that at the present time, the CS program is perceived to be an effective sentencing alternative which provides courts with "an accountability tool" which many of them value—but that it currently only rarely acts as a true alternative to *incarceration* per se. *It has the potential, to some extent in justice courts and to a greater extent in City and County Courts, to become more of an alternative to incarceration in the future, if certain changes occur in the program and in the way in which judicial decisions are made* (see recommendations below).

Recommendations for Changes in Use of Community Service

Throughout this chapter, a number of issues have been raised that suggest the potential for change in the Community Service program, and in the ways in which CS as an alternative sentencing option are used by judicial officials in courts throughout the county. This section presents specific suggestions and recommendations designed to expand the use of CS as a true alternative to incarceration, while still retaining its value as an alternative to other types of non-jail sentences as well. The recommendations are offered in no particular order of priority, and are offered for the consideration of the ATI Board and those involved in the county's judicial system.

- *There appears to be considerable opportunity to change judicial practices to expand the use of community service as a true alternative to incarceration in appropriate cases.* The program and ATI officials should develop ways of working with the District Attorney and with judges and

town/village justices to understand the implications of this report for such expanded future use of CS.

- In particular, the report has raised questions that should be explored systematically concerning whether community service sentences could be used more frequently, with beneficial effect, with expanded numbers of offenders in such apparently-underserved demographic groups as the following: males, older offenders, blacks, those with prior records, and those with initial felony charges. Offenders in each of these groups who have received community service sentences have had high proportions of successful program completions, yet relatively small proportions of offenders in each group have received CS sentences in lieu of incarceration.

  Opportunities also appear to exist to expand the appropriate use of CS as an alternative to jail in some justice courts that now rarely if ever consider its use. In addition, Geneva City Court, which makes more frequent use of jail sentences than most other courts in the county, might be able to make more frequent use of CS as an alternative sentence in more of those cases. Canandaigua City Court seems to have proportionately most frequently used CS as a true alternative to jail, yet has used the option relatively infrequently. There may be significant opportunities to expand such usage in these various courts for the benefit of the larger community. *Such composite actions across the judicial system, across courts and target groups of offenders, implemented thoughtfully over time, could have significant future impact on increasing the reduction of sentenced days spent in the local jail.*

- *The implementation of such changes in practice should be carefully monitored to assess their impact on the system*, including their impact on jail days saved, on the proportions of offenders who successfully complete their community service sentences, and on future recidivism.

- *Judges should be requested to consistently indicate when they are sentencing someone to CS as an alternative to jail.* Ideally they should complete a form that indicates they are making this sentence in lieu of a specified number of jail days, or as part of a combined sentence that reduces the number of jail days by some amount, compared to what it would otherwise have been. The CS staff should monitor such data and use them to more accurately assess the true impact of CS on jail day reductions. Similarly, PSIs that recommend CS

in lieu of jail, or that suggest equivalent options of jail days or community service, should be monitored over time to determine how many of those recommendations are followed, and with what effect.

- In order to further expand the numbers of cases in which judges may be willing to consider CS as an alternative to jail, *expanded numbers of work sites will need to be developed for CS placement.* In particular, at least two judges spoke of the importance of developing new types of placement opportunities which offer offenders "more meaningful assignments, with the opportunity to not just fold laundry, but actually get their hands dirty and experience the pain and suffering of people that will help open their eyes in ways that may change their attitudes and future behavior." These judges are concerned that the CS experience be more than just putting in 100 hours of time, but that the time expose them to new ways of looking at life, and help them better understand the consequences of criminal behavior. *Both judges indicated a significant willingness to expand their use of CS as an alternative to incarceration if more such "more meaningful" placement opportunities were available to which they could sentence offenders.*

- To that end, we recommend that *a key priority for ATI Board and staff, and particularly the CS staff, over the next two years should be to focus on expanding the numbers of employers willing to provide CS work sites, "meaningful work opportunities," and appropriate supervision to make the placements work effectively.* It is acknowledged that in this economy, adding placement sites will not be easy, but it is in the community's long-term interest to find ways to reduce crime, to develop responsible citizens, to help improve the job prospects of offenders so they can become more productive in the future, and to reduce the future costs of the local jail. Thus the efforts to expand CS job sites should be widely publicized, should enlist the support of the local business community, and should involve a concentrated focus of attention by ATI officials, including advocacy support from key judges, to help make this expansion possible.

- *The county should consider ways of reducing the liability concerns that currently limit the extent to which some judges and courts are willing to consider the use of CS.* The fact that the county pays for insurance to cover liability

for work sites in any town should be emphasized to all town/village officials and town/village court justices.

- *Better linkages should be established between the courts, Probation's pre-sentence investigation process, Community Service, and Pretrial Release.* Such linkages could be very helpful to the expanded use of CS to the extent that PTR can help show Probation and the courts that a defendant has been responsible during the pretrial period, thereby perhaps suggesting that he/she would be an appropriate candidate for an effective experience in a community service sentence.
- In the future, *analyses should be undertaken by CS and ATI officials to monitor the recidivism of those sentenced to varying levels of community service*, analyzed against various characteristics of offenders and by court type, to determine the long-term impact of CS on various types of offenders.
- For any CS cases that are not successfully terminated, *CS and ATI staff should monitor any jail days added by the court in response to the failure, as a means of determining better estimates of the true impact of successful CS sentences.*
- *The county should consider ways of sharing support staff resources between Probation and the Community Service staff* to help free up CS and ATI resources to spend less time on record-keeping and more on job site creation and working with judicial officials to expand the use of the CS sentencing alternative (see consolidation recommendations later in the report).

5. DAY REPORTING PROGRAM

Under the direct supervision of the Probation Department, the county established a Day Reporting Program as a sentencing option in 2000. Of the three ATI programs discussed thus far, it was the most unambiguously designed as a true alternative to incarceration, as its stated purpose was to improve services and to reduce the use of jail among an experienced offender population. For reasons to be discussed in this chapter, Day Reporting ceased to admit new participants around the middle of 2003 (though the program continued to serve those already in the program), and is no longer considered to be an official program of the county. Whether the decision to terminate the program should stand or not will also be discussed below.

Program Description

The Day Reporting Program (DRP) was established as an alternative to traditional sentencing options, and was viewed as an intermediate sanction between a traditional probation sentence and incarceration. It was available to those charged with both felony and misdemeanor charges. It was designed primarily for offenders with a history of previous criminal arrests and convictions, and in some cases for those with unsatisfactory experiences under probation supervision who were deemed to need more attention than possible under traditional probation.

Typically offenders receiving a DRP sentence would have been expected, without Day Reporting, to receive either shock probation (six months jail plus up to five years of probation) or a jail sentence of up to a year. Instead, DRP sentences typically involved either no jail time or time in the DRP combined with a shorter jail sentence than would otherwise have been imposed—typically four months or less, compared to six months to a year that would have been the sentence without DRP.

The Day Reporting Program actually evolved less as a full-scale day reporting model than as a form of intensive supervision. Program involvement typically lasted for up to six months, with a few cases extended beyond that time as needed. The program as implemented contained the following primary components:

- Intensive probation supervision, including two face-to-face contacts per week, up to two urine screens a week, and occasionally unannounced home visits.

- In addition to the individual weekly contacts, all participants were part of a weekly Commitment to Change group—a cognitive, behavioral therapy group focused on identifying and addressing thought processes and behaviors underlying and contributing to the offenders' criminal actions. This group met for 20 to 24 weeks. All program participants were supervised by the same Probation Officer who co-facilitated the group, along with a substance abuse counselor from the local FLACRA organization.

- Most of those in the program were also subject to up to six months of electronic home monitoring as a means of tracking their location at any given time.

- Referrals were also made as appropriate for individual offenders to various educational, vocational, substance abuse and mental health services in the community.

Beginning in 2001, DRP was staffed by a single Sr. Probation Officer dedicated exclusively to the program. In the program's initial year, cases had been scattered among several Probation Officers, but additional funding in 2001 made it possible to concentrate the program and its participants under a single Officer—a much more effective use of staff which enabled a more focused approach to the program.

The program typically had an active caseload of about 20 offenders at a time. Most of those had been identified as appropriate for the program as a result of a pre-sentence investigation, but about 20% of the cases were typically referred directly by a judge, in the absence of a PSI recommendation.

Although called a Day Reporting Program, the program as fully implemented fell short of that reality. The initial intent had been to establish a fully-operational program with a single "one-stop shopping" reporting center where the offender would come each day, and would receive a range of services as needed, all of which would be provided in that one location. However, this more

traditional view of day reporting never occurred, either at the level of a centralized service center, or at the level of daily reporting requirements. Typically contacts were made with each defendant on an average of three times a week, including the Commitment to Change group, with some additional contacts some weeks through home visits.

In the final analysis, the program was probably incorrectly named, since it did not involve daily reporting, and never became the centralized one-stop center for service provision as initially intended. But it did provide a more intensive form of supervision than a typical probation sentence would involve, and it made possible the existence of a concentrated multi-week intensive guided group discussion focused on how offenders can change their thinking patterns to change behaviors. How effective this modified version of a true Day Reporting Program has been will be addressed in the remaining sections of this chapter.

The Day Reporting Program was in reality more of an intensive form of supervision than a true DRP.

Extent of Use of Day Reporting Program, by Courts

As shown in Table 19, the use of the Day Reporting Program peaked in 2001. In each year of its existence, County Court judges were the predominant users of the program.

Table 19: Number of Day Reporting Cases Opened Each Year, by Court, 2000 – 2003

Year	County Court	City Courts	Justice Courts	Out-of-County	Total
2000	12	2	1	0	15
2001	32	7	5	2	46
2002	13	1	6	3	23
2003	6	1	0	1	8
Total (& % of All Cases)	63 (68%)	11 (12%)	12 (13%)	6 (7%)	92

Source: CGR analysis of Day Reporting Program data. Note: numbers in each year differ slightly from DRP data reported in ATI Annual Reports for 2001 and 2002, but are based on case-specific data supplied by DRP. Total numbers across the years, however, are consistent across the different sources. No cases were admitted in the second half of 2003.

From the program's beginning, County Court judges have been by far the most frequent users of the Day Reporting Program. Over the course of the three and a half years of the program's existence, two-thirds of all participants in the program were sentenced by County Court judges. *Relatively small numbers of cases have been sentenced to DRP by either of the two City Courts* (about a half dozen from each court in the entire three-plus years the program was admitting offenders), and only two of those were in 2002 or 2003. A similar number of DRP sentences over the years have come from the justice courts, with most in 2001 and 2002. *Of the 12 justice court sentences, eight came from the town court in Manchester, with three other courts sharing the remaining four sentences.*

Except for County Court and Manchester town court, few courts have made much use of Day Reporting.

Half of all DRP sentences entered the program in 2001. Even before the cessation of new referrals to the program in mid-2003, the numbers had begun to dwindle significantly by 2002. These declines coincided with the initiation in the fall of 2001 of the countywide Finger Lakes Drug Court for misdemeanors, and the opening in June 2002 of the county's Felony Drug Treatment Court. Both of the Drug Courts are viewed by numerous officials familiar with judicial proceedings and with ATI programs as having siphoned off a number of cases which would previously have been likely to receive DRP sentences. During the life of the DRP, about 55% of all cases sentenced to it involved either DWI or drug-related offenses, not to mention other cases in which the offender was likely to have drug problems. *One of the reasons specifically given by Probation for the elimination of the Day Reporting Program, in addition to the need to reduce costs, was the decline in number of cases "due to the increased use of the two local Drug Courts."*

Use of Day Reporting dwindled in the past two years, especially as Drug Courts expanded.

Perceived Value of Day Reporting Program

Most of those interviewed during the evaluation spoke positively about the program and its value, both to defendants and to the judicial and criminal justice systems. Several spoke of the valuable option it provides for judges, and in turn the potential the program has for helping offenders better understand and hopefully correct the kinds of thinking that gets them into criminal situations. Even though several expressed concerns that the program never became the full-scale day reporting center that had been initially advocated in the county, they indicated that the program nonetheless offered the ability to make referrals for offenders to receive mental health, job training, educational and other types of needed services.

On the other hand, during three and a half years, the option was used only a few times by City Court judges and by a total of only four of the 17 justice courts in the county. As a true alternative to incarceration, the program was viewed as inappropriate in the vast majority of "non-jail" cases that came before most town justices, though some acknowledged that there may have been some cases where its use would have been appropriate. Some noted the possibility of having missed some opportunities for using DRP constructively within City Courts as well. Some seemed uncertain as to who should have been using the program, and others were unclear about the purpose of the program and how it was supposed to function.

Others attributed the relatively infrequent use of the program by many judges to insufficient efforts to orient the judges and justices to the program and to educate them concerning its value and when it was appropriate to use it. This perspective argues that there was little focus on helping judges, especially those in the justice courts and the two City Courts, to understand what the program was about, to whom it was targeted, why the judges and selected offenders they were sentencing would benefit from the program, and why it would be an effective alternative to jail for various repeat offenders able to profit from the focus on understanding the thinking underlying their criminal behavior. Some added that if the program "had received the same attention and promotion with judges that Drug Court has received, the DRP would have been used more often, even with the introduction of the Drug Courts."

Day Reporting was perceived to be a valuable ATI, though used infrequently outside County Court. Strong support was expressed for continuing the program in the future.

Nearly all of those we interviewed, including some who rarely if ever had used the DRP—and including judges with vested interests in expanding the use of the Drug Courts—emphasized their concern that it would "be a mistake to allow the Day Reporting Program to disappear." Some said it would be "penny wise and pound foolish to eliminate the alternative program that probably has the most effect of all in reducing jail days and helping offenders make changes in their lives." Some argued that the program should be reactivated as a true day reporting center, with centralized one-stop services and daily reporting. Others would be comfortable just continuing with the intensive supervision and the Commitment to Change program that focuses on changing thinking and resulting behaviors. But *the common thread across nearly*

all those different perspectives was that the DRP sentencing option—particularly since the option is clearly viewed as an alternative to incarceration—is needed in the county in the future.

Profile of Offenders Sentenced to DRP

This section briefly describes the key characteristics of offenders sentenced to the Day Reporting Program during its relatively short life: by gender, age, race/ethnicity, charge, and prior record. Any significant differences by type of court are noted.

Gender

About three-quarters of all offenders sentenced to DRP were males. This was primarily the case with the majority of the DRP cases which were sentenced to the program by County Court judges. Slightly higher proportions of the cases sentenced to DRP from other courts were women: about 30% of those from the City Courts and a third of those from the justice courts.

Age

For the most part, *in contrast to those sentenced to the ATI Community Service program, offenders sentenced to Day Reporting tended to be older.* Whereas 46% of the ATI community service cases were 21 or younger, and only 29% were older than 30, among DRP participants, the corresponding proportions were 21% and 54%, respectively. That is, more than half of all DRP offenders were older than 30. Most reflective of that tendency were the justice courts: Of the relatively few offenders sentenced to DRP from any of the town/village courts, 83% were older than 30. *The age variable is one of several user characteristics that underscore judicial consistency in practice of using the program primarily for more experienced, serious offenders with criminal histories.*

The typical DRP case was an older, more experienced offender.

Race/Ethnicity

Across all types of courts, relatively few African-American or Hispanic/Latino offenders were sentenced to Day Reporting. *As with community service sentencing, the DRP data at least suggest that Day Reporting may be used less often among blacks and Hispanics than might be expected from their proportions in the pretrial custody and overall jail populations in the county.* There were no significant differences in this pattern across types of courts. The implicit implication, that would need to be checked more carefully against data on jail sentences throughout the county, is that *blacks and Hispanics may receive disproportionately more jail sentences, and fewer ATI sentences, compared with their representation in the county's offender population.*

Type of Charge

Here there were significant differences by type of court. As would be expected, in all County Court DRP cases, a felony charge was involved, but only 10% or less of the DRP cases originating in City Courts or in the justice courts involved initial felony charges, thus at least suggesting the possibility that the DRP option could be used as an alternative sentence with higher proportions of cases originating as felony charges in those courts in the future. To the extent that some such cases are ultimately returned to lower courts as reduced misdemeanor charges, consideration should be given to using DRP more frequently as a sentencing option where appropriate for such cases.

Prior Record

Consistent with the stated targeting of the Day Reporting Program to offenders with more serious criminal histories, almost 90% of all offenders sentenced to DRP during its life had prior arrests, and almost 85% had previous convictions. These proportions were consistent across all types of courts.

Impact of Day Reporting Program

The Day Reporting Program is perceived to be of value by most of those we talked with during the evaluation, as noted above. Despite the fact that this sentencing option was not widely used during its relatively short life, *the overall perceived value translated into widespread support for continuing the program, and a strong belief that to eliminate it would prove to be a mistake in the long run.* This section attempts to determine whether there is factual merit behind the expressed degree of support for the continuation of the program.

Successful Termination Rates

Over the DRP's life, 78% of its participants successfully completed the program without incidents or arrests leading to resentencing. Offenders could be unsuccessfully terminated from DRP for a variety of reasons, including a rearrest while in the program, or various other violations of terms of the program. Typically, a violation led to a return to court for what often turned out to be a new jail sentence. CGR could not determine from program data the extent of the reasons for the unsuccessful terminations, beyond the fact that only slightly more than half of the terminations were due to rearrests (see section immediately following). Among DRP offenders sentenced in County Court, the unsuccessful termination rate over the life of the program was about 16%, compared to 40% of the relatively small number of City Court DRP cases.

Rearrest Rates

No data were available concerning the long-term recidivism rates of those served by the DRP, or of comparable offenders sentenced to jail. Thus there was no benchmark against which to compare the program's rearrest rate, but over the three-plus years of the program's existence, 11.5% of all DRP participants had been rearrested either in the program or while continuing to serve out the remainder of their probation sentences following successful termination from DRP. Given the extensive prior arrest and conviction records of nearly all of those in the program, this could be viewed as a relatively small rearrest record for such a high-risk population, although no definitive statement to that effect could be made without better long-term comparative recidivism data. The rearrest rates were relatively comparable across the different types of courts.

Program Impact on Jail Days Avoided

In contrast to Pretrial Release and Community Service programs, the determination of jail days avoided by Day Reporting was relatively straightforward. The myriad assumptions needed to shape the calculations of jail days saved for those programs were not necessary for the DRP. Based on information available to the program, primarily from judges and from PSI investigations, DRP was able to state fairly clearly for each participant the number of jail days to which the person was sentenced, if any, and the number of sentenced jail days that were avoided by successful completion of the DRP sentence. Actual days spent in jail could have been for either or both of the following: (1) a jail sentence in conjunction with the DRP sentence, whereby the number of sentenced jail days would have been less than what would have been the case had it not been combined with DRP, and/or (2) a post-DRP sentence as a result of failing to successfully complete the terms of the program, thus resulting in a return to court and subsequent sentence. Table 20 indicates the numbers of jail days actually sentenced, and the number of sentenced days avoided, by all those admitted to the program through mid-2003, broken down by court type.

Table 20: Sentenced Jail Days Served and Avoided by Offenders in Day Reporting Program, 2000 - 2003

Sentenced Jail Days	County Court (N=55)	City Courts (N=10)	Justice Courts (N=12)	Out-of-County (N=4)	Total (N=82)*
Days Served (& Avg./Case)	3878 (70)	605 (60)	1174 (98)	790 (197)	6447 (79)
Days Avoided (& Avg./Case)	9358 (170)	1306 (131)	1860 (155)	241 (60)	12,906 (157)

Source: CGR analysis of Day Reporting Program data for all program admissions for whom DRP services had been completed, successfully or not.. * Court type was missing for one case.

Of the 82 offenders who had completed DRP services, 34 (41.5%) spent no time at all in jail for the charge on which they were sentenced to Day Reporting. Another 38% of the offenders in the program, though saving jail days as a result of their DRP sentences, also spent some time in jail as a result of the original DRP-plus-jail sentence. Those sentences typically were for 30, 60, or 120 days. The remaining 17 offenders (21%) were subsequently sentenced to six months or more, including 8 (10%) who were sentenced to a full year in the county jail. These 17 represented most of those who were unsuccessfully terminated from the program. For those individuals, the program resulted in no jail days saved.

The sentenced jail days saved ranged from 60 to a full year. *Almost 60% of the cases saved sentences of at least five months, including a quarter of all cases who avoided sentences of eight months or longer*—10 of whom (12% of the total) avoided what would otherwise have been full year sentences as a result of successful completion of their DRP sentences.

Cases sentenced to Day Reporting typically saved substantial amounts of jail days.

As shown in the table above, *for every jail day sentenced to be served by those in the Day Reporting Program, about two sentenced days were avoided by involvement in the program.* The average person in the program was sentenced to 79 days and avoided 157 sentenced days. The proportion of sentenced days avoided to those served was highest in County Court, and slightly lower than the 2:1 ratio among cases sentenced by town justices. (Among out-of-county cases, more time was served than saved, but the number of cases was small.)

Applying the one-third "good time" discounts to the above figures, the actual days that would have been served in jail by DRP cases throughout its existence totaled 4,298, and *the actual days avoided since 2000 totaled 8,608, for an average of 105 actual days of jail avoided per person who had completed Day Reporting at some point during its existence.*

DRP prevented almost 16 jail inmates per day in its only fully-functioning year of operation.

Using 2001 as the one program year in which the DRP was fully functioning, without any scaling back of referrals to the program because of Drug Court competition (or due to a full carryover caseload from a previous year), *an estimated 5,743 jail days were avoided as a result of sentences to the program that one year (after applying the "good time" discount). This represents the equivalent of 15.7 county jail beds not filled each day in that year alone as a direct result of the program's existence.*

Recommendations for Changes Related to Future of the DRP

This section presents specific suggestions and recommendations designed to address issues raised throughout this chapter. They are all based on the premise that some form of Day Reporting Program should be reactivated and continue to exist in Ontario County.

- *The county should find a way to reactivate the DRP as soon as possible.* The program has a documented record of saving the county more than 8,600 jail days during its short existence, including more than 5,700 days in its one year of full admissions. It was responsible in that year alone for a reduction of almost 16 inmates per day in the county jail. As the county looks to the future—and attempts to keep its operational and capital costs as low as possible to meet taxpayer concerns—*it would appear to be short-sighted to save the cost of one Sr. Probation Officer while increasing the odds of adding jail days that could increase and expedite the need to build and staff a new POD in the county jail—at costs far greater than the cost of maintaining the Day Reporting Program.* (See further discussion of the budget implications later in the report.)
- *We recommend that ideally the county would add back a Probation Officer position to provide dedicated focus on the Day Reporting Program.* If funds are not available to reinstate such a position, the Probation Director should restructure existing caseloads and organizational responsibilities to enable a dedicated Sr. Probation Officer to resume responsibility for the DRP. But the data justify, we

believe, the investment in a new position (actually a reinstatement of a position that existed until 2003) to oversee this program, perhaps in combination with expanded responsibilities for additional Commitment to Change group leadership (see below).

- Ideally at some point the county would consider expanding the Day Reporting Program to a full-scale full-day reporting center, but we recognize that that is not likely to be practical at this time. Thus *we suggest at this point simply restoring the DRP to the intensive supervision approach in place during the program's existence, with the Commitment to Change group as a pivotal component of the program.*

- To address the decline in numbers of offenders sentenced to DRP in the last two years of the program's existence, *ATI and Probation leadership should consider developing approaches to orient and educate judges in City Court and town/village court justices concerning the value of DRP*, the types of cases for which consideration of DRP as a sentencing option would make sense, the potential value to selected offenders as well as to the community of using the program more often, the implications of the program for reducing the number of needed jail cells, when it would be appropriate to use DRP as an option versus when it might be appropriate to use Drug Court, etc. It would also make sense to have the District Attorney be part of such discussions, so common understandings about the use of the program could be jointly developed and talked through.

- *Particular consideration should be given to helping to develop strategies for ensuring that black and Hispanic offenders facing sentencing in various courts receive the same consideration for ATI options as do white offenders.*

- *ATI and Probation leadership, along with judges and the District Attorney, should develop criteria for consideration as to which types of offenders might be most appropriate for DRP sentencing, and which for Drug Court referrals.* In the initial years of these programs, there appears to have been at least the impression by many of those we interviewed that a number of cases were being referred to Drug Courts that in the past would have resulted in sentences to the DRP (i.e., offenders with charges or underlying problems related to alcohol/substance abuse problems). Officials should develop careful criteria or guidelines to help sentencing decisions to be made on consistent, rational grounds rather than being determined in part based on the need for "sufficient numbers" in particular programs, as some acknowledged has happened in the past, to some extent at least.

- Related to such discussions, *DRP should consider what types of offenders it might be most effective working with in the future.* During its existence to date, many of those it served had drug/alcohol-related arrests or underlying problems, but many other types of offenders might also be appropriate for consideration by judges and the District Attorney for DRP sentencing in the future. The program was also used with a number of offenders charged with various types of burglaries and assaults. Broader use of this option with expanded numbers of such cases might be appropriate in the future. Others have suggested making productive use of the program with younger males (e.g., 16-21) with early evidence of criminal behavior patterns, with the preventive goal of helping them to understand the reasons they are engaging in such behavior and developing ways of changing their behavior patterns before they become ingrained. Others have suggested that "chronic misdemeanants" seen repeatedly in justice and City Courts might also be logical candidates for DRP in the future.

- We recommend that ATI and Probation leadership also *consider the possibility not only of continuing to use the Commitment to Change group process as part of a renewed DRP, but also of using it more frequently with a broader array of offenders within the system, including younger offenders* as well perhaps as some already sentenced to probation for whom traditional probation supervision doesn't seem to be working. Developing the capacity to use this group strategy with those who may be likely to be violated on probation (thereby becoming likely for jail sentences), may prove to further enhance the benefits of components of the DRP in helping to further reduce jail sentences. It may make sense for several Probation Officers to be trained to become co-facilitators of the Commitment to Change groups, in order to maximize their potential use with various groups of offenders.

- *It may also be possible to expand the combination of two of the components of the DRP program—electronic home monitoring linked in combination with Commitment to Change—to more offenders as alternatives to jail, without needing to expose them to the entire DRP program.*

- *Analyses should be undertaken on an ongoing basis of recidivism of those exposed to the DRP program* and/or any of the components of the program suggested above, to determine the impact of these alternatives on reducing crime among various types of offenders.

6. FELONY DIVERSION PROGRAM

In 1995 the county established the Felony Diversion program (FD) under the direct supervision of the Probation Department. The program—part of a State-funded Probation Eligible Diversion Program initiative—is designed to reduce the number of non-violent felony offenders sentenced to State prisons. The program is targeted to Probation-eligible offenders who would otherwise be likely to be sentenced to State prison, given their extensive criminal histories and/or the nature of the offenses for which they are being sentenced. The State has provided continuous full funding for the program since its inception.

Program Description

Within the overall guidelines of the State's diversion initiative, each county has some flexibility in how it structures its program. The Ontario program consists of the following components:

- Sentences of up to six months in the county jail, in lieu of a year or more in State prison;
- Up to six months of home detention monitored by an electronic home monitoring device;
- Intensive probation supervision throughout a probation sentence that typically would involve three to five years, with the supervision including weekly face-to-face contacts (typically at least two a week initially, with fewer as needed the longer a person is in the program), plus urine screening and unannounced home visits by field service teams of Probation Officers;
- Weekly group counseling sessions designed to provide individual support and improve offender decision-making, anger-management, and problem-solving skills;
- Referrals to other services as deemed appropriate, such as substance abuse or mental health services.

All offenders in the program are sentenced to FD by County Court judges. All are supervised by a Sr. Probation Officer who has responsibility for monitoring all program participants, as well

as for co-facilitating the group sessions. Up to 60% of the Sr. PO's time is devoted to this program. The FD program is targeted to no more than eight new cases per year. It is designed for a caseload of up to 15 offenders at a time (new and ongoing cases), although over the past year or so, the number of active participants has typically been closer to 10. Offenders are part of the intensive supervision throughout their time on probation, and are not considered for termination from the FD program until they have satisfactorily completed a minimum of three years of probation.

Extent of Use of Felony Diversion Program

Because offenders remain part of this program throughout their time on probation, there is relatively little turnover from year to year. *Between 2000 and 2003, the Felony Diversion program has served a total of 25 different offenders.* Of those, almost half (11) were already active at the beginning of 2000. Since then, according to program data reported in the Probation 2002 Annual Report, seven new cases were sentenced to the program during 2000, five in 2001, and two in 2002. Because of uncertainties throughout most of 2003 about if and when State funding would become available during the year to continue support of the program, FD was scaled back during the year. As a result, only one new Felony Diversion case was initiated in 2003. The decline in referrals to the program—combined with the fact that each year a few defendants are discharged from FD (six in 2000, three in 2001, and two in 2002)—has resulted in the reduction in size of the current active caseload to about two-thirds of its capacity.

In the past 4 years, the Felony Diversion alternative has been used relatively infrequently.

Perceived Value of the FD Program

Because relatively few judges have direct knowledge of the Felony Diversion program (only County Court judges have sentenced offenders to FD), most of those we interviewed had few comments about or perceptions of the program and its value to the community. And even among the judges, District Attorney, jail officials, and handful of Probation and other ATI officials who were sufficiently familiar with the program to comment on it, there was little consistency in the comments.

Several had trouble distinguishing the FD program, and to whom it is targeted, from the Day Reporting program, and even in some cases from the Felony Drug Court. This was particularly true given its high concentration of DWI cases, given that high proportions of both

DRP and Drug Court offenders also have been charged with DWI. Some were also uncertain as to the difference between the counseling group sessions of FD and the Commitment to Change group within DRP. The goals of both sound similar to many, and the distinction between the content and value of the groups was not clear to several of those to whom we spoke. Some wondered if all three program initiatives (FD, DRP, Drug Court) are needed, or if some merging of the approaches might be possible.

There is expressed confusion and uncertainty about the Felony Diversion program, its use, its primary focus, and its impact.

Some viewed the FD program as one that was only appropriate as an alternative for a Probation-eligible offender who would otherwise have been sentenced to State prison—the stated focus of the program. Others were less certain, and thought that in some cases, it might be appropriate as an alternative to a year's sentence to the local jail. This uncertainty and difference of opinion also contributed to some questions as to the ultimate value of the program as a jail reduction strategy. Those who viewed the possibility of using FD as an alternative to a full year in the county jail saw the program as saving local jail days. On the other hand, those who insisted that the only focus of the program should be on those who would otherwise have been sent to State prison saw the FD program as actually adding to days in the county jail at the same time as it was saving prison days for the State. And of the latter, some concluded that the program was of questionable value to the community if it was adding local jail days, while others said it was worth the added jail days to keep the offenders closer to home with other support services, rather than sending them off to "the tougher State system with fewer supports and probably greater future recidivism as a result."

Profile of Offenders Sentenced to FD

There is very little variation in the characteristics of offenders in the Felony Diversion program—although the profile of characteristics does vary substantially from that of some of the other ATI programs.

The most distinguishing characteristic of the FD program is that, contrary to each of the other alternatives, all cases come from one Court—County Court. And, accordingly, all FD cases have involved felony charges (not including sexual offenders and assaultive behaviors, because of their potential disruptive effect on the group processes). Although the FD program was not designed specifically for those charged

with DWI, all but two of the dozen or so new admissions to the program in recent years have had felony DWI charges. If indeed the program is a true alternative to the State prison system, this concentration of felony cases is certainly appropriate, as misdemeanants, and offenders from lower courts, would not be sentenced to the State system.

Not unlike other alternative programs, about three-quarters of those sentenced to Felony Diversion since 2000 were males. Also, similar to Community Service and Day Reporting programs, only one African-American offender and no Hispanics have received FD sentences since 2000.

Even more so than among DRP offenders, those sentenced to FD have been much older than those involved with any of the other ATI programs. Since the beginning of 2000, only one offender in the FD program has been under the age of 21, and all others have been older than 30, including 54% over the age of 40. *Clearly the program has been targeted, presumably intentionally, to a more experienced, older criminal population than have any of the other ATI initiatives.*

The Felony Diversion program is targeted to the oldest, most experienced criminals of all the county's ATI programs.

Consistent with the more experienced "career criminal" aspect of the program, all but one of the offenders who entered the program since 2000 had been previously arrested and convicted—a proportion somewhat similar to that of those in the Day Reporting program and much higher than among those in the Community Service or Pretrial Release programs.

Impact of Felony Diversion Program

It is difficult to offer definitive judgments about the impact of this program, in part because of the small numbers of offenders who have completed FD in recent years, and in part because of the uncertainty as to whether it has truly been used as an alternative to prison as opposed to an alternative to a longer county jail sentence.

Rearrest and Successful Termination Rates

Between the beginning of 2000 and the middle of 2003, 11 offenders were terminated from the FD program. Of those, six were considered by the program to be successful discharges, and five were revoked as failures, two for new offenses and three for "technical violations." On the other hand, given the criminal histories of these offenders, a relatively small proportion had been

rearrested during their lengthy stays in the program: Of the 13 most recent admissions to FD, three (23%) had been rearrested.

Program Impact on Jail Days Avoided

The FD program has not maintained data over the years on the actual numbers of jail days program participants have served in the county jail versus the actual number of days avoided either in the local jail or in State prisons. In large part, this is because the program has not obtained information from judges on whether the alternative to the FD sentences really would have been prison or a longer stay in the local jail. Also, with many recent admissions to FD still active in the program, formal determination is not yet possible as to their actual jail days served or avoided. Thus there is no way from available data to offer definitive statements of the impact the program has had on the local jail population.

However, these limitations notwithstanding, the program has provided information for 12 of the most recent admissions to the FD program (from 2000 through 2002) which can be used to at least put some brackets or ranges around the potential impact. That information is summarized in Table 21, and its implications are discussed below.

Table 21: Estimated Days Sentenced to Local Jail and Potential Sentenced Days Avoided for Offenders Admitted to Felony Diversion Program, 2000 – 2002

	Sentenced Days	Estimated Days Avoided
Sentenced Days (& Avg. per Person)	2,100 (175)	1,865 (155)
Estimated Actual Days (Minus "Good Time")	1,400	1,243
Average Inmates per Day per Year	1.3	1.1

Source: CGR analysis of Felony Diversion Program data for new program admissions.

The first data column in the table includes the number of days the 12 offenders were sentenced to the county jail, ostensibly in lieu of sentences of a year or more in prison. The sentences for all but one of the offenders were 180 days, with the remaining sentence

for 120 days. Factoring in good time reductions, those 12 offenders could be expected to actually spend 1,400 days in the county jail as part of their Felony Diversion sentences, or an average of 1.3 inmates per day over the three years. The question is how these days should be counted.

If indeed all of these offenders would actually have been sentenced to prison, then the alternative of having them typically spend half a year in the county jail as part of their Felony Diversion sentence actually would represent an added burden to the local jail. That is, instead of the prison system absorbing these defendants, the county jail would be serving additional inmates never otherwise intended for a county jail sentence. *In order to save the State system at least a year or more of time for each of these offenders, the county would over the three years have been required to absorb an additional 1,400 jail days, i.e., house 1.3 additional offenders per day each year.*

If, on the other hand, the reality would have been that in actuality there would have been no prison sentences, but full-year local jail sentences instead, then the data in the second column of Table 21 would pertain. The sentenced days in the first column, as part of the FD sentence package, would then have actually *prevented or saved* the county almost 1,250 days over the three years, for an average of 1.1 inmates per day per year who would not have been housed in the jail as a result of the FD program.

In short, Felony Diversion over the past three years has had a relatively negligible impact either way on the local jail. Under one set of assumptions, it has added to the county jail population by a factor of about 1,400 days over the three years and 1.3 inmates per day during that time. Under the other set of assumptions, the county would have actually avoided an estimated 1.243 days, or 1.1 inmates per day. Given the combination of assumptions and uncertainties about how this sentencing option is actually used, it is probably reasonable, based on the comments we received about the program, to assume that the program is sometimes used in lieu of prison and sometimes in lieu of a full year in the county jail. If so, the net effect is probably somewhere in the middle of these two sets of figures, meaning that the net effect is probably close to zero. That is, *the existence of the Felony Diversion program appears to have*

The FD program has had no practical net impact in either direction on the county jail population in the past 3 years.

had virtually no practical net impact in either direction on the average population of the jail over the past three years.

Recommendations for Changes Related to Future of Felony Diversion

This section presents suggestions and recommendations related to issues raised in this chapter.

- The bottom line is that the Felony Diversion program may actually add to local jail time, and probably doesn't avoid much if any. Thus *we recommend that if the State should discontinue its funding for this program in the next State budget, or in subsequent years, Ontario County should not absorb the cost of the program.* There appears to be too little net value to the county, and possibly even some costs, to justify picking up responsibility for about $50,000 in current State-funded costs to maintain the program.

- *If on the other hand the State continues to fund the program, County Court judges should consider using the FD sentence as often as possible as an alternative to a year in the local jail, rather than only as an alternative to State prison sentences, thereby enhancing its impact on the county jail.* Judges should be encouraged to state their intentions and the logic behind their decision to sentence someone to this option, so that a true future measure of the program's real impact on both the local jail and State prisons can be determined.

- Given the fact that some within the criminal and justice systems see little practical distinction between the Day Reporting and Felony Diversion programs in terms of targeted populations and program components (other than the much longer required involvement in the FD program), *ATI and Probation leadership should consider ways of using the State funding for the program, if it continues, to help subsidize portions of the costs of DRP. This might even include merging the two programs.*

  Counties have some flexibility in terms of how the Felony Diversion funds from the State are used, and up to this point, Ontario has attempted to use the funds to at least encourage adherence to the true intent of the funding, i.e., to reduce State prison inmates. By broadening the interpretation of the funding slightly, to help cover costs of Day Reporting, which is also a clear alternative to incarceration, the county could in effect begin to merge the types of cases now served by both programs, and to integrate the services more effectively. Given that both programs have a primary focus on understanding offender thinking patterns

and resulting behavior, and thereby helping to improve future offender decision-making, it is not unreasonable to conclude that a broader interpretation of the use of FD State funding could over time have a direct impact on reducing prison populations—by changing the behaviors of offenders with significant criminal histories and thereby reducing the numbers of offenders who would ultimately need to be sentenced to prison in the future. Such an interpretation would also provide additional funding to help justify the cost of reinstating the Day Reporting Program.

- Similarly, *more of the types of offenders historically sentenced to FD could perhaps just as effectively be sentenced to Day Reporting.* It may be that the extensive supervision for three to five years, the norm under FD, is more than would be needed to accomplish the same objective, and that using more of the DRP model, with less total time in the system, might accomplish the same objective—and enable more people to be served than the relatively small number of offenders who can be served by Felony Diversion, given the relatively small turnover within the program, which thereby limits the numbers of new offenders who can be absorbed by the program at any given time. Such a modified approach could be tested and evaluated on a pilot project basis.

- If FD were to continue to be funded as is, *consideration should be given to strengthening the monitoring component of the FD program*, to the point that expanded use of electronic home monitoring, home visits and substance abuse screening could perhaps be used even more extensively as a way of reducing the six-month local jail sentence currently the norm with this sentencing alternative. This approach could be tested on a pilot basis and evaluated to determine if rearrest rates are affected in any way by the new approach. *If there is little difference in performance in the program and rates of successful termination under such a scaled-back approach (i.e., more monitoring, less upfront local jail time), then it may be possible in the future to reduce both local jail and State prison time as a result of the modified FD sentencing option.*

- *Ongoing analyses should be undertaken of recidivism of those exposed to the FD program, or any of the modified versions of the program suggested above.*

7. DRUG COURTS

CGR was not asked to evaluate the impact of Drug Courts as part of this ATI evaluation. And indeed, the two Drug Court programs currently serving the county have not been in effect long enough for an accurate, objective assessment of their impact to be undertaken. However, their existence clearly has an impact on some of the other Alternatives to Incarceration programs in existence within the county, as suggested in earlier chapters of the report. As such, this chapter simply attempts to put the two Drug Courts in context, and suggests ways in which their existence and future operations should be more effectively coordinated with existing ATI programs and leadership.

Summary of Drug Court History

The Finger Lakes Drug Court became operational in August 2000 in Canandaigua City Court, and received "Hub Court" designation in October 2001 to enable it to begin to serve all misdemeanor courts in the county. It is designed to provide a variety of treatment and support services to criminal offenders who have alcohol and/or drug dependencies underlying their criminal behavior. Participants commit to spending at least a year in the program before being eligible to graduate.

According to program staff, by late 2003 a total of 96 cases had been referred to the misdemeanor Drug Court from City Court judges, town/village justices, and the Probation Department, in some cases where the offender had been facing a violation of probation. Of the 96 referrals, 70 had been recommended for admission by a staff team of county and non-profit agency officials and service practitioners that reviews all referrals to the Court. Of those 70, 64 accepted the offer and had been admitted to the formal Drug Court program. As of late 2003, 37 of those individuals were still actively involved in the program's services.

Meanwhile, in mid-2002, the Felony Drug Court began to accept referrals involving felony charges directly involving drugs or alcohol abuse (such as felony DWI charges), and/or in which those charged with the crimes had alcohol and/or drug dependencies underlying their criminal behavior.

As with the Finger Lakes Drug Court for misdemeanors, Felony Drug Court has become busy in a short period of time. According to program staff, by late 2003 121 referrals had been made to the Felony Court. Following screening by a program case manager and a team review, 68 of those were formally recommended for admission to the program, and 65 of those accepted and entered. As of late 2003, 47 of those individuals were still actively involved in receiving program services.

No county dollars, but significant in-kind staff contributions, support the two Drug Courts.

Both Drug Courts are considered part of the State court system. All direct costs for both Drug Courts are covered through Office of Court Administration and federal grant funding. County in-kind staff contributions have been significant, but no direct county dollars have been involved to date in either program.

Impact of Drug Court Programs

The short, honest answer is that it is much too early to assess the impact of either of these Drug Court programs. Most of those we talked to during the evaluation are strong believers in the concept of Drug Court and the potential value of the treatment services they provide for offenders with drug/alcohol dependencies. Most of those involved with the criminal justice and judicial systems in the county believe that the Drug Courts are, and will prove to be, effective alternatives to incarceration, and that they will prove to be effective in reducing future recidivism. These claims may well prove to be true, but thus far it is too early for any definitive statements to be made in support of those claims.

On the positive side, supporters of Drug Court successes claim that both Courts are saving the county thousands of jail days avoided as a result of successful completion of the Drug Court treatments and related services. Based on jail sentences likely to have been served in the absence of Drug Court sentences, proponents had claimed savings through 2002 of more than 9,300 days for misdemeanor offenders and more than 43 years of jail or prison days avoided at the felony level. But these projected savings all assume that everyone in the Drug Courts will be successful, and that full "in lieu of" sentences will all be avoided.

Preliminary data suggest otherwise. The less positive view of the numbers above is that early returns from both Drug Courts indicate that many are not successfully completing the programs, thereby suggesting that many of the projected jail days saved will not in fact materialize. For example, data

supplied by staff of the two Drug Courts indicate that, through late 2003, there had been 27 cases terminated from the misdemeanor Court at that point: nine successful terminations, and 18 unsuccessful, including both voluntary and involuntary terminations. Similarly, among felony cases, four had successfully completed Drug Court to date, and 14 had terminated unsuccessfully. This is not to suggest that these ratios will hold up with more experience. It may well be that the vast majority of those cases who remain in the two Courts will, having survived the early stages of treatment, go on to successfully complete all treatment and service goals of the programs. But the point is that it is simply too early to know what the ultimate outcomes will be for most of those admitted to the Courts, and that it is quite premature to offer any suggestions as to what the impact on local jails or State prisons may ultimately prove to be.

It is premature to assess the impact of the local Drug Courts, tho some State findings are promising.

A hopeful perspective on all this is provided by an October 2003 evaluation conducted by the Center for Court Innovation for the NYS Unified Court System and the U.S. Bureau of Justice Administration, entitled *The New York State Adult Drug Court Evaluation: Policies, Participants and Impacts.* Emphasizing that there are numerous different practices, policies, graduation requirements, services and sanctions in drug courts throughout the state, the evaluators concluded that the cumulative impact of these various different drug court approaches has been positive. Their *findings across the state indicate that drug courts reduce recidivism when compared with conventional forms of prosecution*, and that these reductions last well beyond the immediate involvement in the programs. *Findings concerning jail sentences and incarceration are more mixed across the different settings, though more settings show savings than not. The authors speculate that there will be long-term reductions in jail time, both from the immediate charges and especially in light of reduced recidivism.*

Considerations for the Future

Because we did not formally evaluate the impact of the Drug Courts, it would be premature and inappropriate to offer specific recommendations concerning their future. However, the following reflections and suggestions are offered for ATI consideration, based on available information and our preliminary observations:

- As suggested in previous chapters, ATI officials need to be able to ensure that Drug Court, Felony Diversion and Day Reporting

programs are not "cannibalizing" each other by drawing similar offenders away from each other. As State courts, the Drug Courts are not subject to local ATI control. Nonetheless, good working relationships have developed between the Courts and local officials. As such, ATI, Probation, DA and judicial officials need to consult with each other to develop strategies that ensure that the most appropriate sentences are being used for different types of offenders, and that the alternative programs are targeted to those most likely to benefit from them, to the community's ultimate benefit. O*fficials should develop careful criteria or guidelines to help ensure that sentencing decisions are made on consistent, rational grounds.*

- Those sentenced to Drug Courts may need more intensive monitoring and alcohol/substance abuse screenings and tests, to ensure that offenders remain drug free while in the program. This is likely to require more home visits and screenings, which in turn is likely to mean the need for more visitation by law enforcement personnel. Much of that screening, especially that which is done now on weekends, is done with the support of sheriff deputies and local police officers, as there have to date been few resources available for the program to pay for such screening and home visitation staff support. Some of those with whom we spoke suggested that in the future this should be more of a role for Probation Officers. *The need to ensure the adequacy of resources to make adequate screening possible is viewed as critical to the ongoing effectiveness of Drug Courts by many of their supporters, and the pros and cons of various ways of making that possible need to be carefully considered by ATI officials.*

- *Issues related to Drug Courts and their interrelationships with other ATI efforts should be coordinated in a centralized manner,* in order to ensure that the needs of Drug Courts are appropriately met, and that relationships between those Courts and other ATI programs are carefully thought through and modified as needed to best meet the needs of the overall justice system. Such discussions could be part of a more centralized structure for future planning and resource allocation across all alternative programs in the county, as discussed in more detail in the next chapter.

- *As the number of referrals to Drug Court continues to increase, so does the need for a formal evaluation in the next year or two to determine the impact of the Courts on incarceration and recidivism rates of Drug Court participants*, compared with those exposed to other sentencing options.

8. OVERSIGHT AND ADMINISTRATION OF ATI PROGRAMS

The Ontario County Alternatives to Incarceration initiatives are overseen by the County Board of Supervisors, its Public Safety Committee, and an ATI Advisory Board. The Advisory Board is chaired by a member of the County Board of Supervisors. In the past it has also included two other members of the County Board, though that is not now the case. The Advisory Board also includes several judges and town/village court justices, the District Attorney and Sheriff as well as three other staff members from their respective offices, the Probation Director, and representatives of such organizations and constituent groups as local law enforcement, substance abuse programs, mental health services, other agencies, attorneys, community members at large, the Community Service program Sr. Counselor, and the ATI Coordinator. Although the county has some flexibility in who is included on the Advisory Board, several of its members are prescribed by State law.

Some have asserted that the Advisory Board is too large and unstructured to be effective, but it has played a key role over the years in expanding the number and types of alternative programs in Ontario County, in promoting the value of alternatives to judges and the larger community, and in being an advocate for change where needed in the criminal justice and judicial systems within the county. It has focused attention on strengthening services for offenders, consistent with community safety; reducing reliance on incarceration; providing support for victims; developing new approaches where appropriate; and evaluating the impact of various alternative approaches.

In order to provide full-time attention to issues related to alternatives, the County Board of Supervisors in 1999 authorized the creation of a new ATI Coordinator position. The Coordinator reports to the ATI Advisory Board, and administratively directly to the County Administrator and Deputy Administrator. The Coordinator is responsible for oversight of the county's ATI

efforts in general, and specifically supervises the staff of the Pretrial Release and Community Service programs.

However, although the Coordinator is responsible in broad terms for all ATI-related initiatives and advocacy within the county, direct supervisory responsibility for two of the county's ATI programs—Day Reporting and Felony Diversion—remained within the Probation Department. In addition, the two recently-created Drug Courts, while working closely with the ATI Coordinator and in some cases with other ATI programs, are not formally part of the ATI administrative structure. Thus, although high levels of coordination, cooperation and communication typically exist between the various alternative programs and services within the county, *there is no single administrative structure or set of formal reporting relationships that ensure that all alternative programs are consistently working together* in the most efficient manner and in ways that are always mutually supportive and completely consistent with each other. *That for the most part the various ATI programs have collaborated and worked well together speaks more to the individuals and to the personal working relationships that have evolved than to an effective organizational structure.*

This chapter assesses the strengths and limitations of the current ATI structure, and suggests changes which the ATI Board and ultimately the County Board of Supervisors may wish to consider in the ways in which ATI programs and oversight are organized in the future.

Issues and Concerns

Although most of those we interviewed expressed their belief that the county is on the right track with its evolving array of alternative sentencing options, and expressed confidence in the overall leadership being provided on behalf of county ATI initiatives and policies, concerns were expressed about a series of issues that most believe need to be addressed. Those concerns revolved around a few basic themes, and are summarized below.

Accountability

As characterized by several of those we interviewed, a conscious decision was made initially to create an ATI administrative structure separate from Probation, in order to give ATI a separate identity distinct from the myriad of initiatives under "the original alternative sentencing option, Probation." A growing consensus now appears to believe it is time to rethink that original decision.

Many expressed a need for clearer lines of accountability for all alternatives.

Several comments spoke to the need for clearer, more consistent lines of accountability to be established for all alternative initiatives. The comments are summarized below:

- Perhaps there was some logic to enabling ATI to grow and establish itself apart from Probation initially, but now that has happened, and we need to have one common voice speaking on behalf of all alternatives.
- *There should be one central ATI place and voice speaking for alternatives, that can look at the big picture and assess the community's need for alternatives, see where the gaps are, and assess the impact of what's already in place.* We also need one overall ATI office that can help ensure that we're all working effectively together and not at cross purposes, and that we're constantly improving how we operate and how we serve the public.
- We need one office that can be held accountable by the county for the impact alternatives are having overall. Now, with different responsibilities for some programs under the current ATI office, for others under Probation, and for the separate Drug Courts under different auspices, it's very difficult to hold anyone accountable for making sure everyone is working together, and that we're getting the best return on the investment in all our programs.
- No one person or office is now responsible for assessing the strengths and limitations of our alternatives system. Probably the closest to that is the ATI Board, but it can't function in a staff role to look at the big picture and be responsible for making sure all the pieces fit together and complement each other and operate efficiently. One central office is needed to provide those assurances and to act on any concerns raised by the Advisory Board and by the County Administrator and Board of Supervisors.
- The ATI Coordinator now works closely with the two Drug Courts, but in more of a liaison, coordinating role. Probation also plays a similar, but separate role with the Drug Courts. This is inefficient to have top leadership from both areas providing similar roles. There should be less duplication and more ability to speak with one voice and help shape Drug Court decisions and make sure they are consistent with overall ATI directions. Some proponents of strong Drug Courts felt they would be best served

by bringing them administratively under a single ATI administrative structure.

- Similarly, *operational decisions made about Pretrial Release and Community Service programs are now made by different people than are making decisions about Day Reporting and Felony Diversion (including whether they will even exist).* The ATI Coordinator and even the ATI Advisory Board appear to have little overall say in what happens with the latter two programs, even though they are key components of the county's mix of alternative options. That doesn't make much sense.
- *In effect the ATI office and Probation are currently doing similar work around different aspects of ATI issues and programs.* This is inefficient, and probably leads to some different (and probably worse) decisions and directions than would occur if there were a single alternatives office and voice.
- *The programs would operate much more efficiently if there were the opportunity to more easily cross-train at least some of the staff* so they could cover for each other when needed, or at least understand each others' functions better so there could be better and more appropriate exchange of information across programs.

Information Sharing

Several issues were raised concerning the need for more efficient sharing of information across alternative programs:

- Up to now, Probation has had a comprehensive management/ information system, PROBER, which has the capacity to help both Pretrial Release and Community Service. There are existing software packages or modules related to both that could be helpful in streamlining the ways in which information is used and shared across organizations. But *in the past, Probation has been unwilling or unable to make those data resources available to either of those programs.*
- One issue that has at least contributed to the inability to have Pretrial Release and Community Service benefit from the relevant modules in the PROBER system has supposedly had to do with licensing agreements and fees. In the past that has proved to be a stumbling block because ATI and those programs were not part of the Probation system.

There is a clear need for better sharing of information between ATI programs.

- *There should be no reason why Pretrial or Community Service data on individuals they have information on shouldn't be shared routinely with each other and with Probation Officers doing pre-sentence investigations, and vice*

versa. That information could be mutually beneficial to each of those areas, and to defendants and offenders in the system, for whom better decisions might be made with access to more complete information about them. Now this exchange of information happens sometimes on a relatively informal basis, but not routinely. It should happen routinely in the future.

- If operations were merged, there could be a person focused on linking programs, data bases, sharing of information about cases, procedures, etc.

Better Use of Programs

Throughout this report, concerns have been raised about the most appropriate use of specific programs for particular types of offenders, and about the potential for creating greater efficiencies, sharing of resources, and perhaps even mergers between programs. Opportunities to address such issues have been complicated by the different organizational structures and reporting relationships between the programs. Among the expressed issues and concerns were the following:

Although cooperation occurs between ATI programs, there is a need and potential for greater efficiencies and sharing of resources between programs in the future.

- It would be great if ATI and Probation were linked more formally, for a lot of reasons, but one of the main ones is that it would allow for some cross-training that could make sure that there was always some backup capability for Pretrial Release, so there could always be someone to go into the jail and interview inmates each day, even if the Pretrial Officer was not available that day.
- *Drug Courts need a strong monitoring presence to go into homes and do drug screenings on unannounced visits, and also to help collect restitution. Some people think these are logical roles for Probation Officers to play*, but in the past for the most part that hasn't happened, for a variety of reasons, including resource constraints. As a result, "a lot of makeshift procedures have been put in place, including Drug Court Coordinators going out with Sheriff's Deputies or local police officers on weekends." The consensus view appears to be that Drug Courts as a result have not been able to do as many on-site screenings as needed to make the programs successful, and that there needs to be a heightened level of cooperation in the future that makes more such visits feasible. Most of those we interviewed (including several Probation staff) believe Probation should play a more active role in this process, and there is hope that this will become more possible with new Probation

leadership. Funding for such resources is also a concern that needs to be addressed.

- An issue raised frequently during our interviews concerned the use of electronic home monitoring (EHM) and the need for that resource to be shared more effectively across programs. In the past, its use has been primarily focused on alternative programs under the direct control and supervision of Probation, but *several judges and others specifically noted that it would be helpful to have the ability to use the EHM option to increase the numbers of cases for whom Pretrial Release would be considered. Up to now, with EHM under Probation and PTR under ATI, this linkage has not occurred. There are early indications that this will change under the new Probation Director.*

- *Concerns were expressed that the Drug Courts need to be more explicitly and formally tied in with ATI.* There is currently a close and supportive working relationship between the Courts and the ATI Coordinator, but ATI has little real clout or direct ability to influence what the Drug Courts decide to do, other than through the power of persuasion and personal influence. Some believe that there should be a more direct reporting relationship, or at least a reduced sense of independence between the Drug Courts under State authority and other ATI programs.

- *Many spoke to the need for a unified ATI presence that can bring key parties across programs together in single staff meetings to address common issues.* Among other things, such joint discussions could help determine the most effective use of resources to address particular issues and types of offenders. This could include developing criteria and guidelines for what types of ATI programs are most appropriate for particular types of offenders; determining how to make best use of resources devoted to Felony Diversion; determining the best use of group programs used by FD and by Day Reporting; and determining how to address issues raised and left unresolved by the elimination of the Day Reporting Program.

- *Some expressed the view that it would be helpful for those in Probation who are involved in pre-sentence investigations to receive additional orientation concerning the various alternative programs currently in place, and the appropriate use of each.* It is perceived that this would be easier to do, and would have beneficial impact on a number of sentencing decisions in the courts, if ATI and Probation functions were formally merged.

Advisory Board

A few of those we interviewed spoke of their concerns about the role and structure of the ATI Advisory Board:

- A few comments suggested that the Board is too large and somewhat "unwieldy." Those expressing that concern understood the value in being broadly inclusive and having many key people "around the table to discuss key issues," but added that it becomes much easier to get bogged down and never make any strategic decisions because of the number of people on the Board, and the "desire not to offend anyone."
- Others were as concerned with who does not come as with the size of the Board, suggesting that some key people in the system often are not present at the Board meetings.
- Some raised the question as to whether the Board needs to meet so often. Several said they questioned whether there was enough of significance that happens or that needs action from month to month to justify meeting so frequently. Some suggested that an alternative might be to go to meetings every other month or even quarterly.
- Consistent with the latter perspective were suggestions that the full Board meet less frequently, but that an Executive Committee be established that meets monthly and addresses concerns on the full Board's behalf.
- Others expressed the concern that the Advisory Board is not always as forceful or effective as it could be in taking on certain issues and advocating on their behalf. One person asked, "What is the point of the Advisory Board if we are not willing to become stronger advocates for programs and issues that affect alternatives in the community?"

Some concerns were expressed about needing to strengthen the role and makeup of the ATI Advisory Board.

Expressed Thoughts About Consolidation

Most of those we interviewed expressed support for some type of consolidation of ATI programs and responsibilities "under one roof," though not all were certain of the need to do so. Comments typically fell into three categories: those who were comfortable with the status quo, those who preferred consolidation within Probation, and those who preferred consolidation under an independent ATI structure. Those comments are summarized as follows:

General support was expressed for consolidating all ATI programs and responsibilities.

Status Quo Option

A few were comfortable with the current arrangement:

- Those proponents of the status quo seemed to think things were working pretty well as is, with no real value to be added by an administrative merger. One person said he wouldn't oppose consolidation, but couldn't think of any clear reasons why it was needed.
- Others suggested that it is now clear who to go to around particular issues, and that there would be no notable benefits or greater efficiencies that could be expected from a merged structure.
- One comment focused on the fact that there are "a number of fiefdoms" whose needs must be addressed in dealing with alternatives, but suggested that they seem to be managed effectively within the current structure, with no need for change.
- A final comment indicated confidence in the current ATI Coordinator and suggested that the county has made good progress in developing alternatives under the current structure, "so why would we need to change and go to a single consolidated office?"

Consolidation Within Probation

A slight majority of those interviewed expressed some preference for consolidation of all ATI functions within Probation:

A slight majority favor consolidation of ATI functions within Probation.

- Since Probation already has a full administrative structure in place, several saw a merger within Probation as the most logical consolidation strategy. Since the ATI Coordinator was previously a Sr. Probation Officer and the Pretrial Officer was qualified previously on the Probation list, it would be easy to transfer them to Probation, if that were the desire, and no problems were anticipated bringing the Community Service staff under the Probation "umbrella."
- One of the major factors arguing in favor of consolidation within Probation is the fact that some of the current ATI costs now borne by the county would become eligible for State aid under Probation.
- Under this consolidation scenario, ATI could become a separate division of Probation, incorporating all ATI functions and responsibilities within it. Proponents of this approach believe that by creating a full ATI unit within Probation, the philosophy and degree of independence needed by alternative programs could be

retained, without becoming subsumed or undermined by the larger Probation organization. At the same time, merging within Probation would make it easy to take full advantage of the PROBER information system within the department.

- This scenario would be consistent with the State Department of Probation and Correctional Alternatives.
- Some expressed the view that since Probation was the original alternative program, it makes sense to have the department house all alternatives. With new leadership in the Probation Department, and a person supportive of alternative programs, some saw this as the perfect opportunity to make this shift.

Consolidation Under Independent ATI Structure

A solid minority of those interviewed expressed preferences for a consolidated structure, but one that would retain ATI as an independent county governmental entity separate from any existing departmental structure. Those comments covered the following points:

- The primary fear of merging within Probation was that "ATI would lose its identity under an expanding Probation empire." If ATI were to be integrated within Probation, advocates of independence urged that strong assurances be provided that alternatives would not be compromised, and that the Advisory Board will play a strong role in insisting on a strong independent ATI presence if it does become merged within Probation.
- A related concern was that by consolidating within Probation, traditional Probation services could take precedence and receive more attention, whereas alternatives would receive more attention under an independent office. The concern was expressed that in a budget crisis, alternative programs and staff would be the first to go if all ATI programs and administration are brought under Probation, and the example of the proposed elimination of Day Reporting was cited as the prime example of why such a concern was "a justifiable fear." Others remembered that Probation years ago had established a small Pretrial Release program, but that had also ceased to exist.
- Some view Probation as a form of ATI program—Probation as an alternative option—rather than the reverse—ATI as a Probation program.

- Concerns were expressed about differing missions of Probation and ATI. Even though Probation is a form of alternative, its primary focus is viewed by many as being the protection of the public, which is certainly not incompatible with ATI, but that is only one of several other different goals and concerns of ATI programs.

Recommended Approach to Future ATI Oversight Structure

CGR recommends that all ATI programs and functions should be merged under one overall ATI administrative office. Even though the current structure works reasonably well, we see no compelling reasons to continue the status quo, and instead believe there are a number of significant reasons to support the change to a more centralized, consolidated ATI organization.

All ATI programs and functions should be consolidated under a single ATI administrative office.

The advantages to consolidating all ATI responsibilities "under one roof" have been addressed in the previous sections of this chapter. In effect, the reasons supporting consolidation are to address the types of issues and concerns enumerated above. In short, CGR believes that consolidation of all ATI activities and responsibilities will improve overall services, streamline administrative tasks and reduce unnecessary duplication of efforts, enable accountability for ATI performance to be centralized in one office, increase the overall impact and level of performance of ATI programs, strengthen the capacity and quality of services of each program, enable those programs to work more efficiently and effectively together, maximize the flexibility and overall use of scarce ATI resources, and ensure that "the overall ATI whole will be greater in impact than the sum of its individual parts."

Recommended Consolidation Under Probation

With some reluctance, *we further recommend that the ATI functions be merged as a separate unit within the Probation Department.* We share some of the misgivings of those who advocated for a strengthened independent ATI office, and who were concerned about the potential for losing identity and focus under Probation, but ultimately we have chosen to recommend a merger within Probation for the following reasons, and with the following understandings:

All ATI functions should merge as a single unit within Probation, with cost savings to the county.

- *Consolidation within Probation will save county taxpayers more than $50,000 each year, as a result of State aid available within Probation that would not be available to the county in any other configuration* (see budget discussion below).

- Under the Probation "umbrella," the Pretrial Release and Community Service programs have direct access to the PROBER information and management system that has heretofore proved difficult to access.
- The county has just hired a new Probation Director who has demonstrated a commitment to alternatives and has already taken steps to implement some of the recommendations in this report, and has shown inclinations to provide strong support for a number of actions that would strengthen the role of alternatives in the community. The timing of his hiring makes it possible, we believe, to establish this new office within Probation with the appropriate safeguards and protections built in that should enable ATI to establish a strong foundation and a strong commitment of organizational support for alternatives within the department.
- Any final agreement to implement the consolidation strategy recommended here should include a written commitment from Probation and as part of any resolution by the County Board of Supervisors outlining the fact that the ATI unit will include full responsibility for all ATI programming and activities within the county; that Probation is fully supportive of, and philosophically in agreement with the goals of those programs; and that the ATI Coordinator position will be created at a Probation Supervisor level reporting directly to the Probation Director.

Recommended Structure

We recommend that as part of this consolidation, the Probation Department be renamed "The Ontario County Department of Probation and Community Alternatives." Such a title change would demonstrate the county's full commitment within the department to a strong focus on pretrial and sentencing alternatives throughout the community. We considered using the term "correctional alternatives," as the State does, but we considered that to be slightly too limiting. We suggest a slightly broader focus than just corrections since the term "corrections" technically does not include pretrial services, and we believe the title should explicitly incorporate the existence of the Pretrial Release program, which is targeted to defendants not yet convicted or sentenced, and therefore not technically considered offenders served by the correctional system. We also chose not to limit the title to alternatives to incarceration, since the range of alternatives to be overseen by this office may include, and to some extent already does include, sentencing alternatives that

are not necessarily alternatives to jail (e.g., the non-ATI components of the Community Service program).

Accordingly, we recommend that the name of the new alternatives unit within the Probation Department be called the "Alternatives Unit." (On the other hand, if it is politically important to maintain the existing "Alternatives to Incarceration" name, in part to meet any State requirements, that would clearly be appropriate.)

We recommend that the following programs and staff become part of this new and expanded unit:

The centralized Alternatives Unit should have responsibility for all alternatives programs.

- The ATI Coordinator/Supervisor position, along with the Office Specialist position that currently provides staff support to the ATI office;
- Pretrial Release Officer;
- Community Service program staff (Community Service Sr. Counselor and CS Counselor)
- Day Reporting Program (assuming that our recommendation to reinstate this program is followed);
- Felony Diversion Program (with its 50 - 60% Sr. Probation Officer staff);
- Coordinators of the county's two Drug Courts (as part of the State courts system, the Coordinators and Court activities cannot technically be directly supervised by the ATI Coordinator/Supervisor, but ideally they would nonetheless be at least part of a centralized ATI office structure for coordinating and support purposes);
- Any additional alternative programs that the county may choose to add in the future.

It is recognized that this recommendation would have the effect of moving existing Probation staff responsible for the Felony Diversion Program and the hopefully-reconstituted Day Reporting Program under a different reporting/supervisory arrangement. We believe this is an essential part of demonstrating a full

comprehensive commitment within the new structure to an alternatives unit that truly is focusing on all county alternatives programs, including full supervisory responsibility for each program. Similarly, even though the Drug Court staff have heretofore not been directly connected to the ATI office, we believe that it is important to have them fully connected to and coordinated with this more comprehensive unit focusing on all aspects of alternatives programs and services within the county.

The Supervisor of the Alternatives Unit would have similar responsibilities to those of the current ATI Coordinator, except that there would be increased direct supervisory responsibilities. Beyond that, and the continuation of the existing overall focus on advocacy for alternatives programs in the county, the specific issues on which we would expect the Coordinator/Supervisor to focus would be those discussed in the recommendations sections of the previous chapters.

Alternatives Budget

Excluding the costs of the two Drug Courts and the Felony Diversion Program—excluded because 100% of the costs of those programs are covered by State, federal or grant funds, with no direct county costs—the remaining costs of the Alternatives budget are estimated by ATI and Probation officials to be about $306,329 (including estimated fringe benefits which may ultimately vary slightly from the amounts included in this total). From that total, the county can subtract two sources of revenue from the State: an estimated $23,300 in State ATI support for the Community Service ATI component, and $52,594 in Probation State aid that would not be available unless the consolidation under Probation occurs. *Subtracting those revenues from the original total would leave a total county share of about $230,735—far less than the cost of staffing an additional POD in the county jail.* We will discuss cost implications of the Alternatives programs versus jail costs in more detail in the final chapter of the report, but suffice to say at this point that *this relatively small, effectively-leveraged investment on the county's part in alternative services provides significant benefits to county residents that more than justify the costs.*

It should be noted that we have not at this point included any costs for the Day Reporting Program. This is for two reasons: (1) there is no assurance that the program will be reinstated, and (2) if

it is (as we have recommended), we believe that it will be possible to cover the costs either from the existing Probation budget through reallocation of tasks across existing staff or through at least partial reallocation of Felony Diversion State funds (as suggested in Chapter 6). But even if none of these assumptions prove to be realistic, and the total costs of the Sr. Probation Officer to run the program need to be added to the above costs, figures provided in the fall by the Probation Department indicate that the total Alternatives budget would increase to $362,344, and with State aid on the DRP costs factored in, the remaining county share would be $274,687. Thus, *even with the worst-case cost picture on the table, the costs to the county of a full-blown Alternatives program would still be lower than the annual operating costs of adding a new POD, which would be very likely to be needed without the continuation of the county's ATI efforts* (see Chapter 10).

The county costs of funding the full Alternatives program are less than the costs of staffing a new POD in the jail.

Suggested Changes in Board Structure

Although we did not specifically address the Advisory Board (AB) structure as part of the evaluation, we offer a few suggestions, based on comments received during the study:

- *Consideration could be given to reducing the size of the ATI Advisory Board somewhat.* For example, the current AB includes three people from the Sheriff's and District Attorney's offices who are not the Sheriff or the DA. It may not be essential to continue to have each of those staff remain on the Board, although it would make sense to continue to retain at least the Chief Corrections Officer of the jail, since that position is integral to understanding many of the issues faced by the Board. The other two positions could at least be considered for elimination from the Board, though their presence should be welcomed at the Board meetings, but not as official voting members of the Board. Similarly, it probably does not make sense for the head of one of the ATI programs (in this case, Community Service) to be on the Board, although again, it may make sense to have staff present as needed for discussion of issues.
- *Beyond that, it may make sense to create an Executive Committee of the Advisory Board which would meet monthly and conduct much of the Board's business, with full Board meetings occurring only quarterly or every other month.* Other committees could meet as needed in the interim. This may help ensure fuller participation in the full Board meetings, which would presumably have more substantive focused

discussions with less frequent meetings, compared to some of the current monthly meetings which apparently are more information-sharing than substantive discussions, in many cases. The needed information could be shared with all AB members in between meetings, and substantive issues needing full Board attention could be held for the less frequent meetings, with other business addressed in the meantime by the Executive Committee.

- *The Advisory Board should be encouraged to become a more forceful advocate for change and for adoption of particular approaches by the county government that relate to alternatives to incarceration.* By accounts of several AB members, the Board has sometimes fallen short of even its advisory status and chosen not to make recommendations or advise the Board of Supervisors on issues that were within the AB purview to discuss. Consideration should be given to becoming more of a vocal advocate in support of matters affecting alternatives where appropriate.

9. FUTURE EVALUATION STRATEGIES

Throughout this report, we have referred to the need for future research to evaluate the impact of various types of ATI programs and/or new approaches. This chapter briefly summarizes the major types of evaluation that the county should undertake on an ongoing basis, in order to assess what is working best with what types of offenders. Responsibility for planning and overseeing the evaluations, and for acting on the implications of the findings, should rest with the Alternatives Unit proposed in the previous chapter. Much of what needs to be done can be tracked by Alternatives staff, with support in some cases from jail staff. *Some larger evaluation projects may need to be contracted out, but most of what is proposed can be tracked within the county once the mechanisms are set up and the data collected.* What follows represents CGR's recommendations for the most important future evaluation strategies and approaches for the county to consider over the next two years, in order to effectively build on the foundation created by this report.

- As an overall guide to future evaluation research, the types of assumptions used in this evaluation should be incorporated into the county's approaches. That is, *the more conservative and more realistic assumptions about jail days saved should be used, rather than the more generous and unrealistic assumptions used by the county (and often by the State) in the past.*

Future assessments of the impact of ATI programs should use the most realistic assumptions about jail days saved.

Even better, *ATI officials should work closely with judges and justices to record, wherever appropriate, indications of where they are imposing an alternative sentence in lieu of jail, or in combination with a sentence of a reduced number of days than would have been the sentence without the alternative.* Similarly, Probation Officers conducting pre-sentence investigations should also provide information concerning the number of cases in which they would have recommended incarceration if not for an alternative sentence. Judges and POs should not see such a request as representing any threat to their record, as they are not being evaluated in terms of the outcomes of the case. The *programs* are being evaluated, not the judges or POs. But in order to assess the impact of the programs and any new initiatives on jail days saved, the most realistic and accurate way of drawing definitive judgments about jail days avoided is to know

the decision-maker's best estimate of what would have happened in the absence of the sentence actually imposed. Such information would be far superior to using the assumptions we developed for this evaluation. Those assumptions represent the best approach available for estimating jail days saved in the absence of direct information from the judges, but if in the future all, or even most of the judges and justices are willing to take the short time to convey such information on a form for each case sentenced to an ATI program, that would immensely improve the quality of future analyses of jail days avoided.

- Using either our assumptions or, if available, the better "in lieu of" information from judges and PSIs, *program impact on jail days saved should be updated annually for each program.* Using spreadsheets of data for each case coming into each program in the future, by incorporating the types of demographic and case-specific information provided by the ATI programs in response to our requests for this study, the tracking of jail days avoided by type of program and type of defendant/offender should be relatively straightforward and easy to do.

- *Analyses of the impact on pretrial cases should be tracked separately by various types of release.* Within the Pretrial Release Program, jail days saved should be separately tracked for defendants determined to be eligible for release and actually released to the program, those not eligible but released to PTR anyway, those released to the program without the benefit of any eligibility information, and those not eligible and not released. Those eligible but not released to PTR should also be tracked. For any not released to the program, information should be tracked against the type of release by which they ultimately left the jail (e.g., bail, subsequent judge's order, only released at the time of sentencing, etc.). PTR records should routinely record the date when a defendant first entered the jail, the date of the interview (and dates of any subsequent follow-up interviews), when eligibility information was provided to the judge/justice, when and how the defendant was actually released, and the date of final disposition of the case (and if the disposition involved a subsequent jail sentence or time served).

- *For PTR cases, the program should also conduct over the next year or so an evaluation of its pretrial point scale risk assessment tool, to determine how well the total score and the individual items predict court appearance rates.* Total

scores, answers to individual items, and the weights of those items should be assessed against defendant failure-to-appear rates to either confirm that the current point scale is accurately calibrated, or to make modifications as needed in the scale. In order to conduct such research, it will be important to track court appearances for all defendants interviewed by PTR, whether released to the program or not, to determine subsequent release and appearance rates for all release types, for various types of defendants and charges.

- *ATI staff, in conjunction with jail officials, should continue to track jail data for trends in annual sentenced versus unsentenced populations, and to track the pretrial population in particular by types of release from the jail, to determine trends in average days in custody for different release types.* The information needed for these types of analyses is maintained routinely by the jail, and can be analyzed in the same ways in which our data are presented in this report.

- *The most important new evaluation that needs to be undertaken should be an evaluation of the impact of the two Drug Courts on recidivism and jail days served and saved.* Data will need to be tracked over the time that an offender is in one of the Drug Court programs, as well as after leaving the program, and should include information obtained for both successful and unsuccessful terminations.

- *For all ATI programs, recidivism should be monitored both while offenders are in the program, as well as for selected periods of time post-program, e.g., using one-year follow-up periods, two years, etc.* Ideally, the data needed to conduct such recidivism analyses for participants in each type of program should be available from the NYSPIN criminal history database, and/or through PROBER. If it becomes too time-consuming and unrealistic to track all cases who enter or continue to be involved in each program during a year, it may be reasonable to establish a representative sample of participants (e.g., every third or fifth case to enter the program during the year) and track the data for that group of offenders, rather than attempting to be comprehensive in monitoring every case. As suggested above, the key is to establish the key information in a database for all cases as they enter the program, and then to simply update appropriate data fields as new information becomes available.

10. Conclusions and Recommendations for Consideration

The primary conclusion from this evaluation is that Alternatives to Incarceration make a significant difference in preventing days that would otherwise be spent by inmates in the Ontario County jail. Without the ATI programs, the county would already be facing a likely need to expand the new jail, at significant cost to taxpayers.

The Impact of Alternatives Simply Existing

At the most basic level, simply having in place an array of ATI programs has enabled the county to reduce the number of offender classifications in the jail from 12 to four. The impact of this is substantial in terms of the numbers of PODs that would otherwise be needed in the jail. If Ontario County at any time in the future were to decide to eliminate, or possibly even substantially curtail, the ATI initiatives currently in place, it is quite likely that the State Commission of Correction would intervene and force the county to reinstate a more extensive classification system. Any such increase in the number of classifications would in all likelihood force the county to expand the number of PODs in the jail, at significant cost to the county.

The simple existence of ATI programming, regardless of individual program impact, prevents costly jail expansion.

Jail officials estimate that expansion of the classification system would automatically create a need for at least one new large and one small POD, despite the new jail and the fact that many current cells are not occupied. Simply creating new classifications would have that impact. Other modifications leading to renovation costs would probably also be needed. Officials estimate that the construction costs associated with having to respond to such a revised classification scheme would total at least $1.5 million, and probably more. In addition, given estimates of about $300,000 a year to staff each POD, annual operating costs of adding two PODs would be at least $450,000, and probably closer to $600,000.[8]

[8] For discussion of costs associated with new PODs, see page 14. Jail staff estimate construction costs of slightly more than $1 million per POD (we assumed half that for a smaller POD) and $300,000 a year to operate a POD, regardless of size. To be conservative, we assumed that perhaps half the staff and costs could be sufficient for a small POD created in response to adding new classifications. This assumption may not be justified, and the higher staff size and cost may be required.

All of this discussion becomes moot if Ontario maintains its commitment to ATI programming. But this "worst case" scenario is presented because it could absolutely occur if the county were to back away from that ATI commitment. For example, if the State were to renege on its commitments to help fund ATI programs and to provide State aid to cover ATI staff within Probation, county costs of maintaining previously-existing ATI programs could go from a low estimate of about $230,000 per year to as much as about $362,000 (see budget discussion on pages 111-112). It is conceivable that such an increase could potentially lead some Supervisors to at least raise the question of whether the county should continue to afford its commitment to ATI programs.

The answer to that question should be unequivocal: Yes it should. Even under the worst case scenario of the county having to pay up to $362,000 a year to maintain ATI programming, that would be much less expensive than having to pay at least $450,000 a year, and probably more, in added operating costs of an expanded jail, not to mention the one-time construction costs of an estimated $1.5 million to $2 million to meet the classification needs that would result from a county decision to eliminate ATI programming.[9]

[9] County jail officials have raised a different possibility: that there may be no consequences even if the county were to eliminate its ATI programs. They have suggested the possibility that the State Commission of Correction may choose not to intervene to force the county to expand its jail classification system, even if the county ceased to provide ATI programs. However, CGR's interpretation of relevant State laws suggests that the CoC would indeed be likely to intervene "where it is determined that the county does not have an approved service plan in effect…or is found to be in non-compliance." (Correction Law, Section 500-b-8) If out of compliance, the Correction Law specifies that CoC would have up to six months to review the classification of inmates in the county jail and to adjust the classification categories if necessary. Decisions made at that time would determine subsequent needs for possible additional PODs. In order to be in compliance, the State Executive Law (Article 13-A, Section 261) states that an alternatives service plan must be in place which provides ATI programs which "assist the court…in identifying and avoiding the inappropriate use of incarceration [which] may include, but shall not be limited to, new or enhanced specialized probation services which exceed those probation services otherwise required to be performed…, a pre-trial alternative to detention program,…alternatives to post-adjudicatory incarceration programs, including community service, and management information systems…to identify appropriate persons for alternatives to …incarceration." The absence of such a plan and programs would seem to require the CoC to investigate, potentially change the inmate classification system and thereby, according to jail officials, in all probability force the construction of additional PODs within the county jail.

And these costs would not include additional costs likely to ensue as a result of eliminating ATI programs which have proven their ability to save jail days. The elimination of such programs could lead to even more cells needed in the future.

Cumulative Impact of ATI Programs on Jail Days Saved

If the county chooses to continue its support of ATI programs regardless of the level of future State funding support, it is reasonable to expect that the ATI programs will continue to have at least the impact on the jail population documented earlier in this report. To summarize, we have calculated that annual impact to be equal to the following numbers of inmates per day who are not in jail due to the existence of ATI programs:

- 19.0 inmates per day attributable to Pretrial Release;

- 1.3 inmates per day attributable to Community Service;

- 15.7 inmates per day attributable to Day Reporting.

This represents a total of an additional 36 inmates per day in a typical year who would have been in the county jail had it not been for the efforts of these three ATI programs. Assuming the county continues to offer something similar to the Day Reporting Program, as we strongly recommend, there is no reason to expect that such savings would not continue on an annual basis. *Moreover, these numbers do not include an additional 10.5 inmates per day that we estimate could be avoided within the next year or two with the introduction of various pretrial release modifications that are practical and relatively easy to implement. Adding that figure to the original total yields an estimated 46.5 inmates per day, within the next year or two, who would not be in the county jail because of the existence of ATI programs.* Even if Day Reporting is not reinstated, that would still leave a net impact of about 31 inmates avoided per day.

ATI programs will prevent an estimated 46.5 inmates a day over the next year or two, with all programs in place and modified as recommended.

Either way, using the high or low estimate, the cumulative impact of ATI programs has been demonstrated to save the county substantial jail days each year. *If those additional 31, or 46.5, inmates had to be housed by the jail each day, at least one additional POD would be needed in the jail almost immediately. And, depending on the characteristics of the inmates, it is possible that two PODs (one large and one small) might be necessary to address those added needs.* Thus it is realistic to conclude that *the county's likely ongoing annual investment in ATI programs of about $230,000, assuming continuing State aid to Probation and to ATI programs,*

is already saving much more than that in annual jail operating costs and in avoided substantial construction costs. And those savings and avoided cells may be even greater in the future—when more is known about the jail impact of Drug Courts, and with additional jail day savings likely as a result of other recommendations throughout the report, designed to expand the impact of alternatives even further.

Net Impact of Alternatives

Putting all this together, CGR concludes the following: For about $230,000 per year in county funds (and a maximum of $362,000 under the worst-case scenario), the county has avoided, and continues to avoid, immediate jail expansion costs of at least one large and one small POD, at construction costs of $1.5 million or more and at estimated annual operating costs of between $450,000 and $600,000. In addition, within the next year or two, ATI programs will be preventing about 46.5 jail inmates per day, given the documented impact on jail days already saved by programs to date (36), plus conservative assumptions of additional impacts likely if our recommendations are followed (about 10.5).

For a county annual investment of $230,000 (and worst-case costs of $362,000), ATI programs enable the county to avoid annual jail operating costs of at least $750,000, and $2.5 million or more in construction costs.

Those numbers suggest, in the aggregate, at least one additional POD that would be needed, without ATI programs in place, over and above the PODs saved by simple existence of the ATI programs (because of the reduced classifications). *Thus the combined impact of the county's ATI initiatives is estimated to be at least one small and two large PODs avoided by the county—at annual avoided operating costs of between $750,000 and $900,000, and avoided construction costs of $2.5 million to $3 million.* Even if there is some overlap in these cost estimates, and some savings are possible through construction efficiencies and staffing efficiencies between PODs, the savings made directly possible by the county's investment in ATI programming are clearly substantial.[10]

[10] As indicated earlier on page 14, county jail officials have noted the possibility of some offsetting Federal funding to help pay for one new POD. They estimate possible Federal support of about $250,000. Even if this uncertain possibility were to occur, the remaining county share of construction costs would still be at least $2.25 million. If as many as 10 Federal prisoners were housed each day in a new POD, at $95 a day, maximum annual revenues would total about $350,000, still leaving net county operating costs of between $400,000 and $550,000 each year, to be borne by county taxpayers. Thus, even if Federal support materializes, county taxpayers would pay far more in new jail expansion costs than they would to maintain the existing commitment to ATI programs.

Recommendations

Thus the most basic core recommendation resulting from this study is that Ontario County should continue its commitment to funding the full array of ATI programs, including reinstatement of the Day Reporting Program. Such a continuing commitment represents a clear investment which is saving taxpayers many times more than the costs of maintaining the services, and will continue to save even more in the future.

The second core recommendation is to implement the consolidation of all programs and responsibilities for pretrial and sentencing alternatives under one Alternatives Unit within the Probation Department, as outlined in Chapter 8.

The third core recommendation is to implement ongoing extensive program evaluations, as outlined in Chapter 9.

Numerous other recommendations have been scattered throughout the earlier chapters of the report and will not be repeated here. In addition, *we offer the following suggestions for possible expansion of alternatives programming at some point in the future, after the recommendations offered in this report have been implemented and stabilized.*

- The county may wish to consider establishing a pretrial diversion program for young offenders in their teens and early 20s. This would represent a targeted intervention with young offenders developing an early record of criminal behavior, for whom a relatively early intervention could turn lives around and help prevent future criminal activity. Such a program would focus on issues underlying the young offender's criminal behavior patterns. Wayne County has successfully implemented a similar program, as have Monroe and other jurisdictions around the country.
- As suggested earlier, it makes sense to consider expanding the Commitment to Change program to a broader range of offenders than only those in the Day Reporting Program. Either on its own, or at some point perhaps in conjunction with a young offenders diversion program, it may make particular sense to implement such a program with young offenders in the 16-21 age range, said to be a group with one of the highest failure rates among various groups on probation.
- Several of those we interviewed suggested the need for special alternatives programming for those involved with domestic

violence and the need for increased anger management programs—in many cases, the two may overlap. CGR cannot independently verify the need for either of these programs, but we suggest that consideration be given to either or both, based on the frequency with which they were suggested during the study.

- Suggestions were also offered to expand victim/offender reconciliation programs, in cases where the victim wishes to confront the offender and reach some level of closure concerning the circumstances of the crime, and wishes to help the offender understand and hopefully learn from the impact his/her activity had on the victim and the larger community.
- Either through the ATI process, or perhaps at the larger county level, consideration should be given to hiring a grantwriter who would be responsible for systematically researching and following up on opportunities to pursue grants that might enable the county to expand or improve its alternatives programming and the impact the programs have on the community.
- Finally, it is recommended that this report be widely distributed to help county decision-makers, funders, and citizens better understand the value of alternatives and the impact they can and do have on the community.