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# **DTAP: AN ALTERNATIVE TO INCARCERATION**

Charles J. Hynes\*

During the past two decades, drug-related crime committed in New York City markedly increased. As the chief law enforcement officer of New York City's most populated county, I have instituted a rational, economical program called the Drug Treatment Alternative to Prison ("DTAP") which I believe is an essential step toward reducing drug-related crime. DTAP offers second felony drug offenders the alternative of residential drug treatment in place of incarceration in a New York State prison.

## **The Impetus for DTAP**

The concept of DTAP has its roots in the shocking information about the New York City criminal justice system that I received when I returned to local law enforcement after fifteen years in the State system and in private practice. Following my election as District Attorney of Kings County in November, 1989, and during the transition period that followed, I reviewed criminal justice data to learn how crime was fought during the previous fifteen-year period. I reviewed prosecution resources and staff sizes in both the District Attorneys offices and the police department, and case loads in the criminal courts.

I discovered that the solution to the problems of 1990 had been to throw more money at the same solutions used in 1975. I

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found that in New York City there were over 1,200 more assistant district attorneys and 10,000 more police officers than in 1975.<sup>1</sup>

I also learned about the incredible increase in jail beds. In 1975, New York City had approximately 6,000 jail cells to house those unable to make bail in criminal cases and for those serving jail terms of less than one year. In 1990, as a result of a jail building boom, there were about 22,000 jail cells.<sup>2</sup> In 1975, the New York State Correctional System, which houses a large percentage of New York City convicted criminals, had approximately 20,000 jail cells. By 1990, it had 55,000 cells.<sup>3</sup> Some of those jail cells were built at a cost of \$125,000 a bed.<sup>4</sup>

In addition to the salaries and fringe benefits of police officers and prosecutors, the cost of maintaining a prison system in New York State has become more than three billion dollars a

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<sup>1</sup> CITY OF NEW YORK OFFICE OF MANAGEMENT AND BUDGET, ADOPTED BUDGET FISCAL YEAR 1991, 78E, 368E, 370E, 372E, 374E & 376E; *see also* Anthony M. DeStefano, *As Crime Soars, Force Shrinks: Facing Tough Choices on Police Department*, *NEWSDAY*, Mar. 18, 1990, at 5.

<sup>2</sup> Eric Pace, *Police Proposal Prompts a Call for More Jails*, *N.Y. TIMES*, Sept. 19, 1990, at B1.

<sup>3</sup> Elizabeth Kolbert, *New York Plans to Double-Bunk Inmates in 10 State Prisons*, *N.Y. TIMES*, Mar. 1, 1990, at A1; *See also*, NEW YORK STATE, DIVISION OF CRIMINAL JUSTICE SERVICES, 1990 CRIME AND JUSTICE ANNUAL REPORT 277 [hereinafter "1990 CRIME REPORT"] (Total number of inmates in the New York State prisons rose from 12,444 inmates in December of 1972 to 54,895 inmates at the close of 1990).

<sup>4</sup> New York City Department of Correction, New York City Budget Commission and New York State Department of Correctional Services. *See e.g.*, THE CITY OF NEW YORK OFFICE OF MANAGEMENT AND BUDGET, PRELIMINARY CAPITAL BUDGET FISCAL YEAR 1993, CAPITAL PROJECT DETAIL DATA, City Wide, Vol. 2 at 748 (Construction project at Rikers Island, Bronx, New York involving two new buildings to house a total of 500 inmates, a new food service area and to accommodate inmate programs and staff support areas was budgeted at a total of \$82,507,000.00 for fiscal years 1992-1993).

year.<sup>5</sup> Today, it costs the taxpayers \$30,000 to support just one inmate upstate for one year.<sup>6</sup>

The huge increase in criminal justice resources can be directly correlated to a massive increase in drug-related crime. Back in 1975, heroin was the drug of choice and was smugly regarded as limited to the so-called ghettos. Heroin accounted for some 25% of all crime handled by the criminal justice system.<sup>7</sup> During the 1970's, the public was constantly warned that it faced a drug plague.<sup>8</sup> As it turned out, the public had no idea how disastrous the drug scourge was to become. By 1991, 69% of those arrested in New York City tested positive for drugs.<sup>9</sup>

By 1992, over 40% of the felony crimes in New York City were drug-related offenses.<sup>10</sup> Thousands of New Yorkers

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<sup>5</sup> 1992 New York State Executive Chamber Budget, Division of the Budget and the New York State Comptroller's Office. *See, e.g.,* STATE OF NEW YORK EXECUTIVE BUDGET 1993-1994 ANNUAL MESSAGE A26-27 (1993). ("Annual Message") (Final 1992 adjusted budget included over 1.4 billion dollars (\$1,494,566,700.00) for the Department of Correctional Services and over 200 million dollars (\$208,475,800.00) for the Division of Criminal Justice Services.) In addition, the 1993 adjusted budget for the City of New York included over 700 million dollars (\$723,999,049.00) for the Department of Corrections, over 1.5 billion dollars (\$1,597,910,523.00) for the Police Department and over 166 million dollars (\$166,803,435.00) for the combined District Attorneys' offices and the Special Narcotics prosecutor. CITY OF NEW YORK OFFICE OF MANAGEMENT AND BUDGET, ADOPTED BUDGET FISCAL YEAR 1993 3E-4E (1992).

<sup>6</sup> New York State Comptroller's Office, *see supra* note 5.

<sup>7</sup> John Kaplan, *The So-Called Non-Victim Crimes: Are the Costs of Enforcing the Laws Greater Than the Benefits?*, WASH. POST, VIRGINIA WEEKLY, Nov. 3, 1977, at Va. 19.

<sup>8</sup> *See e.g.,* N.Y. JUD. LAW § 177-a. (Also known as the Rockefeller Laws).

<sup>9</sup> U.S. DEPARTMENT OF JUSTICE, NATIONAL INSTITUTE OF JUSTICE: RESEARCH IN BRIEF 2 (Third Quarter, 1991) (Most recent unpublished data from this source indicates that 72.7% of those arrested tested positive for drugs).

<sup>10</sup> UNIFIED COURT SYSTEM STATE OF NEW YORK, THE STATE OF THE JUDICIARY 1992 21 [hereinafter "STATE OF THE JUDICIARY"] (Nov. 1992)

currently are addicted to crack and cocaine and commit virtually any crime to get the money to support their habits. Some dealers have expanded their operations and dropped their prices,<sup>11</sup> and today, dealers are selling crack at an all-time low price.<sup>12</sup>

### DTAP: The Program

In 1990, shortly after I assumed my position as District Attorney, I concluded that any rational analysis of the alleged criminal justice system had to focus on drugs and their impact on our society. The system required a program to battle drug abuse that was efficient and cost-effective. The program needed to acknowledge that law enforcement alone was not able to combat the drug plague. Finally, it was essential to recognize that incarceration was not the cure for many drug addicts.

In October, 1990, I established a program called the Drug Treatment Alternative to Prison ("DTAP"). DTAP offers second felony drug offenders an alternative to prison on the premise that they will return to society in a better position to resist drug use and crime after treatment than if they had been incarcerated for a comparable period of time. The program incorporates the lessons learned from research on retention in treatment and recidivism.<sup>13</sup>

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(Judicial Message prepared by former Chief Judge Sol Wachtler); *See also*, 1990 CRIME REPORT, *supra* note 3, at 283. In 1970, of the 4,250 inmates committed to the New York State Department of Correctional Services, ("DOCS"), 470 or 11.1% were convicted on felony drug charges. In 1990, of the 23,098 inmates committed to DOCS, 10,785 or 46.7% were convicted on felony drug charges. Of these 10,785 inmates, 6,286 or 58.3% were second felony offenders. 1990 CRIME REPORT, *supra* note 3 at 281.

<sup>11</sup> STATE OF THE JUDICIARY at 21.

<sup>12</sup> *Id.*

<sup>13</sup> *See, e.g.*, Paul Cushman, *Ten Years of Methadone Maintenance Treatment: Some Clinical Observations*, 4 AM. J. DRUG ALCOHOL ABUSE 543-53 (1977); Vincent P. Dole et al., *Successful Treatment of 750 Criminal Addicts*, 206 JAMA 2708-11; ROBERT L. HUBBARD ET AL., DRUG ABUSE TREATMENT: A NATIONAL STUDY OF EFFECTIVENESS, (1989) (Citing and interpreting the Treatment Outcome Prospective Study, "a long-term, large scale study of the nature of

In addition, the DTAP program saves taxpayer millions of taxpayer dollars because treatment costs are less than prison costs.

For a defendant to qualify for the program, not only must the pending criminal offense be non-violent, but he or she must have no violent crime in his or her background. The program targets defendants arrested on B felony "buy and bust" charges who have a prior *non-violent* felony conviction. DTAP chose B felony "buy and busts" because they are based on sales to undercover police officers that can be successfully prosecuted even if the defendant stays in the program for several months but drops out before completing treatment.

### DTAP: Procedures for Entry

In order for a defendant to be considered for DTAP<sup>14</sup>, he or she must temporarily waive two statutory rights. First, the defendant, at arraignment, must temporarily waive his or her statutory right to the speedy disposition of their case. The right to speedy disposition requires the prosecution to release a

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treatment, clients and client behaviors before, during and after treatment"); Thomas A. McClellan et al., *Alcohol and Drug Abuse Treatment in Three Different Populations: Is it predictable?*, 12 AM. J. DRUG ALCOHOL ABUSE 101-20 (1986); Thomas A. McClellan, et al., *Is Treatment for Substance Abuse Effective?* 247 JAMA 1423-1428 (1982); Charles E. Riordan et al., *Successful detoxification from methadone maintenance: Followup study of 38 patients*. 235 JAMA 2604-07; D. Dwayne Simpson, *The Relation of Time Spent in Abuse Treatment to Post Treatment Outcome*, 136 AM. J. PSYCHIATRY 1449-53 (1979); D. Dwayne Simpson, *Followup Outcomes and Length of Time in Treatment for Drug Abuse*, IBR Report 90-9 (1980); D. Dwayne Simpson, *Treatment for Drug Abuse: Followup Outcomes and Length of Time Spent*, 38 ARCH. GEN. PSYCHIATRY 875-80.

<sup>14</sup> Defendants may decide to reject DTAP at arraignment and enter not-guilty pleas for a number of reasons. Some defendants may reject DTAP because they have not had an adequate opportunity to confer with counsel. Others may be "coming down" off drugs and are therefore unable to commit to long-term treatment. However, court records indicate that Legal Aid Society attorneys and attorneys from the 18-B Panel have now made a concerted effort to explain to eligible defendants the option of DTAP prior to arraignment so the treatment option will not be lost.

defendant five days after arrest if a grand jury has not voted to indict on the charges.<sup>15</sup> This waiver allows DTAP sufficient time to complete its screening process. In addition, a defendant who wishes to participate in DTAP must temporarily waive his or her statutory right to a speedy trial.<sup>16</sup> This statutory and constitutional<sup>17</sup> right differs from the right to speedy disposition in that it refers to the progress of a criminal action after its commencement.<sup>18</sup> This waiver permits the defendant to be prosecuted should the defendant be accepted to, but subsequently leave, the program. A defendant is advised that prosecution is deferred with the understanding that if treatment is not completed, prosecution on the original charges will go forward and, if convicted, he or she will receive substantial prison time as a second felony offender. However, if the defendant successfully completes the drug treatment program, the charges will be dismissed.

If, after arraignment, a senior assistant district attorney determines that the evidence against a defendant is strong, the defendant may be offered an opportunity to participate in the program. In this situation, the severity and certainty of prison time is coercive and has the potential to increase retention.

DTAP's Enforcement Team then verifies the defendant's residence through a home visit. If the contact information provided by the defendant cannot be verified and the team concludes that the defendant would be difficult to locate if he or she were to leave the treatment facility, the defendant is rejected from the program.

After arraignment, staff from the drug treatment providers interview the defendant to assess his or her suitability for residential drug treatment. DTAP rejects defendants who have

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<sup>15</sup> N.Y. CRIM. PROC. LAW §180.80 (McKinney 1992).

<sup>16</sup> N.Y. CRIM. PROC. LAW art. 30 (McKinney 1992).

<sup>17</sup> Peter Preiser, *Practice Commentaries*, N.Y. CRIM. PROC. LAW § 30.20 (McKinney 1992) at 151. A "speedy trial is guaranteed by the U.S. Constitution's XIth Amendment, applied to the states through the Due Process Clause of the XIVth Amendment . . . as well as by certain aspects of due process under the New York Constitution (art. I § 6)."

<sup>18</sup> *Id.*

severe psychiatric or medical problems, or those who are not drug addicts.

Supervisory staff of the New York City Department of Probation and the New York State Division of Parole must review those cases where a defendant is under their supervision. If a violation of probation or parole is pending at the time of a new arrest, the defendant may also be rejected from the program. When the Department of Probation approves a defendant, the judge who sentenced the defendant must review the case and give his or her approval. Finally, the recommendation of the District Attorney to defer prosecution and place a defendant in residential drug treatment must be approved by the presiding judge in the Narcotics Part. From October 15, 1990 (when DTAP began) to March 31, 1993, 308 of the 955 defendants who were eligible for DTAP have opted for and were accepted into the program.

Over two-thirds (67%) of the defendants accepted into DTAP during the program's first eighteen months of operation were Hispanic. Five of every 100 defendants were white and just under thirty of every 100 defendants (28%) were black. Nearly eighty of every 100 defendants were male (77%). Twenty-two percent of those accepted were between the ages of 18 and 24; forty-three percent were between the ages of 25 and 30; and twenty-one percent were between the ages of 31 and 35.<sup>19</sup>

Following the screening process, DTAP sends defendants for residential drug treatment at either Daytop Village<sup>20</sup> or

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<sup>19</sup> CHARLES J. HYNES & SUSAN A. POWERS, *DRUG TREATMENT ALTERNATIVE TO PRISON OF THE KINGS COUNTY DISTRICT ATTORNEY: SECOND ANNUAL REPORT* (Oct. 15, 1990 - Oct. 15, 1992), Nov. 1992 (Report available from the Kings County District Attorney).

<sup>20</sup> Daytop is a non-profit drug-free treatment and prevention program founded by Monsignor William B. O'Brien in 1963. Daytop currently services 4,300 people daily at 26 residential and ambulatory sites throughout New York, New Jersey, Texas, Florida and California. Daytop has consultive status with the United Nations and has helped establish 56 international treatment centers. *DAYTOP FACT SHEET*, (photo reprint 1993) (provided by Daytop's Administrative Offices at 54 West 40th Street, New York, NY 10018).

Samaritan Village.<sup>21</sup> During the first two years of the program, half the participants initially spent forty-five days in the Substance Abuse Intervention Division ("SAID") program at Rikers Island. SAID monitored the inmates and introduced them to therapeutic community treatment. DTAP sent the other half directly to rehabilitation to set up a controlled model designed to determine whether spending the initial phase at SAID improved long term retention in treatment. A two year comparison of the two approaches revealed no difference. Therefore, today, only those defendants whose medical problems may delay their entry into a residential treatment provider continue to spend forty-five days in the SAID program.

### DTAP: Treatment

Treatment at Daytop or Samaritan Village lasts 15 to 24 months. Daytop and Samaritan Villages are therapeutic "self-help" community programs that provide long-term residential treatment. These community programs are highly structured. They rely heavily on the use of program graduates as peer counselors, administrators, and role models. Treatment consists of three stages varying in time depending on an individual's rate of progress.

The first or "induction" stage is the most structured stage, consisting of an orientation and a program that teaches the "rules" of treatment. This stage is designed to prepare the resident for the main treatment stage.

In the second or "treatment" stage, the emphasis is on schooling for young adults and job training for adults. There is extensive counselling that takes the form of group, individual and family therapy. The counselling sessions are usually

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<sup>21</sup> Samaritan Village began serving New York State as a neighborhood youth counseling storefront in Astoria Queens in 1959; then it pioneered in 1974 in the development of a residential treatment model for heroin addicts and today it serves nearly 700 residents in drug free residential services in New York City and Ellenville, New York. SAMARITAN VILLAGE, INC., (photo reprint, 1993); DRUG TREATMENT ALTERNATIVE TO PRISON, D.T.A.P. (photo reprint, 1993) (brochures provided by the Community Relations offices of Samaritan Village Inc., 97-77 Queens Boulevard, Suite 616, Rego Park, NY 11374).

confrontational and stress openness and honesty. Counselors give residents work assignments, recreational opportunities and educational seminars. As residents move through this stage, they gain more freedom and responsibility for themselves and other, newer residents.

The last or "re-entry" phase of the program concentrates on preparing the residents for return to the community. Since research has shown that inadequate jobs and scarce housing are the principal causes of post-treatment relapse,<sup>22</sup> the treatment programs require residents to have school or jobs lined up before they may leave. DTAP works with a Business Advisory Council composed of Brooklyn business leaders to provide jobs to graduates of the program.

Of the 308 defendants accepted into DTAP from October, 1990 to March 31, 1993, 31 completed the program, 166 are in treatment, 81 absconded from the treatment providers, 27 were expelled for violating program rules, and 3 were discharged for serious health reasons (See Figure 1 at end of this article).

This office returned 101 of the 111 participants (91%) who left the program since October 15, 1990 to court for prosecution.<sup>23</sup> The Enforcement Team is responsible for returning participants who leave treatment. The Team's ability to verify contacts previously supplied by the defendants and to locate participants for whom warrants have been issued accounts for its excellent success rate and reinforces the legal coercion premise of the program.

### DTAP: The Cost

How much does the program cost? The most appropriate way to measure the rehabilitation cost of DTAP is to compare it to the costs of City detention and State incarceration for a similar number of defendants. The cost of treating 100 DTAP residents for 1½ years is approximately \$2,700,000. In addition, there are

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<sup>22</sup> See, e.g., DRUG ABUSE TREATMENT, *supra* note 14, at 82-86, 126, 130-38.

<sup>23</sup> In addition, the three participants who left the program due to their medical condition returned to court voluntarily.

detention costs during drug screening for these participants (approximately \$292,300) and detention costs for the corrections drug program for these participants (approximately \$355,500). The total cost of DTAP for 100 defendants would therefore be \$3,347,800. But since DTAP expects only 60 of every 100 residents to complete the program, those costs must be calculated into the program.<sup>24</sup> The cost for those 40 residents who fail to complete the program and who, as a result, are incarcerated is approximately \$2,064,900.<sup>25</sup>

The cost of incarcerating 100 defendants arrested on B felony "buy and bust" charges who have a prior conviction is approximately \$6,786,750 (City corrections costs for pretrial detention are approximately \$1,731,750<sup>26</sup> and State prison costs after sentencing are approximately \$5,055,000).<sup>27</sup>

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<sup>24</sup> 60% of \$3,347,800 equals \$2,008,680.

<sup>25</sup> The figure for these 40 residents is derived using provider treatment costs (the average length of stay before a resident drops out of the program is 71 days) (\$144,000), and eventual state prison costs (\$1,920,900).

<sup>26</sup> After arraignment, all felony drug cases in Brooklyn are assigned to the "N" (Narcotics) Parts which have been established to expedite the disposition of narcotics cases. For every 100 defendants, an average of 30 defendants have their cases disposed of in those Narcotics Parts within an average of 28 days of detention at a cost of \$158 per day equalling \$132,000. The remaining defendants are transferred to the Conference or AP parts and their cases are submitted to grand juries. For every 100 defendants, an average of 25 are indicted and make bail or are "released on recognizance." There are no City detention costs for these defendants. For every 100 defendants, an average of 45 are indicted and either cannot make bail or are remanded for an average of 225 days at \$158 per day totaling \$1,599,750. *See generally*, STEVEN BELENKO ET AL., CRACK AND NEW YORK CITY COURTS: A STUDY OF JUDICIAL RESPONSE AND ATTITUDES (1990) (Final report to the State Justice Institute, Alexandria, Virginia; Available from the New York City Criminal Justice Agency).

<sup>27</sup> 63% of the defendants would have pled guilty to an "E" felony and served a minimum of 1½ years at a cost of \$30,000 per year. 37% of the defendants would have pled guilty to a "D" felony and served a minimum of 2 years at a cost of \$30,000 per year.

Thus, the total cost of the DTAP program for 100 persons is approximately \$4,073,580 (\$2,008,680 for those who successfully complete the program plus \$2,064,900 for those who do not). The total cost of detaining 100 defendants in prison is approximately \$6,786,750. The cost savings is approximately \$2,713,170.

### DTAP: The Results

Twenty-six of the former addicts who graduated the program are now employed. Two are in job training programs, one is in college and two are seeking employment. These former addicts no longer require public assistance, nor do they have significant health care costs which need to be borne by an overburdened public hospital system. They have ceased committing crimes to support their habits. The graduates who are employed are now paying taxes. Instead of draining tax dollars from the criminal justice system, they are helping to pay for others who need the program.

DTAP has demonstrated the value of inducing non-violent drug addicts facing serious criminal charges to enter and remain in treatment. By March 31, 1993, the program had graduated 31 participants, had maintained a higher than originally anticipated retention rate of those in the program, and had returned to court over 91% of those defendants who absconded or who were expelled from treatment.

### Conclusion

In his January, 1992 Message to the Legislature, Governor Mario Cuomo praised DTAP and requested funding for the program's replication.<sup>28</sup> In response, the State Division of Substance Abuse Services provided 300 new residential treatment beds and the New York State Division of Criminal Justice Services allocated \$700,000 in federal Anti-Drug Abuse Act monies in fiscal

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<sup>28</sup> See also, ANNUAL MESSAGE, *supra* note 5 at M65, (In his January 1993 message, Governor Cuomo called for expansion of DTAP to upstate New York).

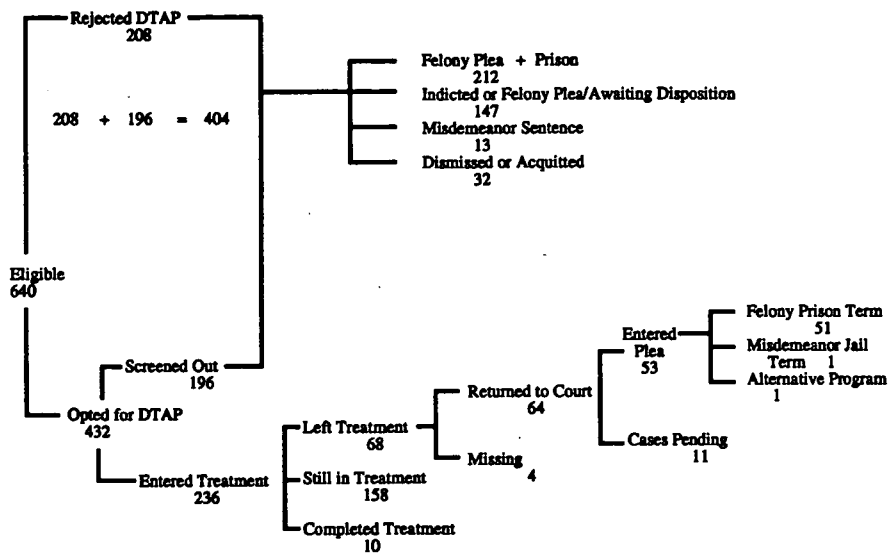
year 1992-93 to support the DTAP model in Brooklyn and to make possible its replication by other prosecutors in New York City.<sup>29</sup> The replication of DTAP by other prosecutors is perhaps the most concrete evidence of the respect that the program has won.

The ability to obtain additional treatment capacity is the next crucial phase in the replication and expansion of DTAP. With adequate funding for new treatment beds, DTAP may move beyond its success in redirecting the lives of a few addicted dealers to realize its larger ambition, improving our society by turning drug-addicted offenders who prey on our communities into productive citizens who contribute to them. The program's success in diverting drug addicts from prison not only results in a monetary savings to society but, also a positive response to a drug plague that continues to cause the current public health and public safety crises. By expanding DTAP, the first major reduction of drug-related crime in decades is foreseeable.

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<sup>29</sup> 1992 N.Y. LAWS 62 § 2(e).

FIGURE 1: STATUS OF DEFENDANTS ELIGIBLE FOR DTAP<sup>30</sup>  
AS OF OCTOBER 15, 1992



<sup>30</sup> Reprinted from "DTAP Report" *supra* note 19.

