



New York State

**Division of Probation and
Correctional Alternatives**

Annual Report

Probation Eligible Diversion Program
2005 Operations

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New York State Division of Probation and Correctional Alternatives

Probation Eligible Diversion Program

Annual Report: 2005

Table of Contents	Page
Section One: Description of the Probation Eligible Diversion Program.....	1
History.....	1
Current Status.....	1
Program Models.....	2
Drug Treatment Courts.....	2
Interim Supervision.....	2
Sentenced Cases.....	2
Probation Violators	2
Funding.....	3
Section Two: PED Program Descriptions.....	4
Section Three: 2005 Program Operations Data.....	11
Probationers Received and Targets.....	11
Service Referrals	15
Program Completions.....	15
Summary and Conclusion.....	17
Appendix A: Case Anecdotes.....	18

Section One: History of the Probation Eligible Diversion Program

History

Begun in 1994 as Operation 360, the goal of the Probation Eligible Diversion Program (PED) was to divert 360 probation eligible felons from the State Department of Correctional Services (DOCS) at a time when prison populations in New York and nationwide were growing at a brisk pace. The figure of 360 was based on diverting 10% of offenders convicted of a probation eligible offense that would otherwise be remanded to DOCS. Once sentenced to probation, these offenders would be seen by probation officers at a more intensive level than those on the general caseload, be subject to graduated sanctions, and would receive substance abuse treatment and service referrals as needed.

In the interest of public safety, the program was only available to non-violent, first-time felony offenders. In 1995, under Executive Order #13, sex offenders were excluded from participation.

The program required Legislative approval for its inception and re-appropriation on a recurring annual basis. As funding has decreased since the 2000-2001 state budget, many County Legislatures have allocated funds to keep their local programs operating. The 2004-2005 state budget allocated \$1,200,200 to the PED program.

Current Status

In an effort to support local Probation Department abilities to take advantage of the current state of knowledge in the area of recidivism, treatment and desistance from crime, the Division has allowed departments to identify offenders and recruit from four different sources: drug treatment courts, interim supervision cases¹, sentenced cases, and probation violators. Diversionary targets are based on local factors: probation population characteristics; services and other programs available locally; and the presence of a Drug or Treatment Court. Public safety is always a factor in screening and selecting offenders for participation.

Departments must complete a short application every year to receive continued funding. In this application the Departments discuss the target for the previous year; local factors that affected

¹ New York Criminal Procedure Law § 390.30(6) governs interim supervision. Standards developed by DPCA may be found at <http://www.dpca.state.ny.us/standards.htm>

CPL § 390.30(6) Interim probation supervision. In any case where the court determines that a defendant is eligible for a sentence of probation, the court, after consultation with the prosecutor and upon the consent of the defendant, may adjourn the sentencing to a specified date and order that the defendant be placed on interim probation supervision. In no event may the sentencing be adjourned for a period exceeding one year from the date the conviction is entered. When ordering that the defendant be placed on interim probation supervision, the court shall impose all of the conditions relating to supervision specified in subdivision three of Section 65.10 of the Penal Law and may impose any or all of the conditions relating to conduct and rehabilitation specified in subdivisions two, four and five of section 65.10 of such law; provided, however, that the defendant must receive a written copy of any such conditions at the time he or she is placed on interim probation supervision. The defendant's record of compliance with such conditions, as well as any other relevant information, shall be included in the presentence report, or updated presentence report, prepared pursuant to this section, and the court must consider such record and information when pronouncing sentence.

how well that target was met, or in many cases exceeded; any changes to the program; identification of local service providers; how the offender's needs are assessed, referrals to service providers made and monitored; and what constitutes individual success within the program.

Program Models

To accommodate local circumstances and to distinguish the program from the Intensive Supervision Program in counties that operate such, the Division has allowed PED Departments to draw from four offender-types:

1) Drug Treatment Court: Many, if not all counties now have felony drug treatment courts initiated by the New York State Office of Court Administration. PED funds are used to support Probation Department representation on the local Drug Court Team, Probation Officer(s) assigned to supervise Drug Court participants, and incidental expenses to ensure offender compliance, such as supplemental drug testing, electronic monitoring, cognitive intervention programs, or travel costs for home visits.

All Drug Treatment Court models are involved, including those that use Interim Probation Supervision or sentenced cases where the original conviction is reduced from a felony to a misdemeanor upon successful completion.

2) Interim Supervision: A small number of jurisdictions have interim supervision programs aside from Drug Courts. PED funds may be used to supervise these probationers during the time period in which they "earn" a sentence of probation rather than state prison. These cases tend to be those where a judge has a compelling reason to keep the offender in the community but wants to see how the offender will behave under community supervision prior to sentencing. PED Department staff are often involved in identifying offenders who are appropriate and advocating for interim supervision.

3) Sentenced Cases: PED departments have the option of identifying cases at the pre-trial or pre-sentence investigation stage and requesting that the offender be sentenced with a condition to participate in the PED program. Other cases present themselves as appropriate shortly after sentencing and are then included in the PED program.

4) Probation Violators: A handful of departments use their PED funding in an effort to divert persons who are facing a DOCS sentence upon disposition of a violation filed based on a technical offense (non-compliance with the orders and conditions of the court for probation supervision) or for a new offense. Generally, Probation Officers or Supervisors screen for appropriate cases when a violation is pending or is being considered. Recently, in one county, a review panel including local substance abuse assessment and treatment providers was created to review the cases and make recommendations to the Judge. In some cases, violators may be processed through Drug Court, and are thus counted as Drug Court participants rather than as probation violators.

PED Departments are required to provide quarterly reports on new placements, service referrals and monitoring, and program completions. These data are presented in section three.

Funding

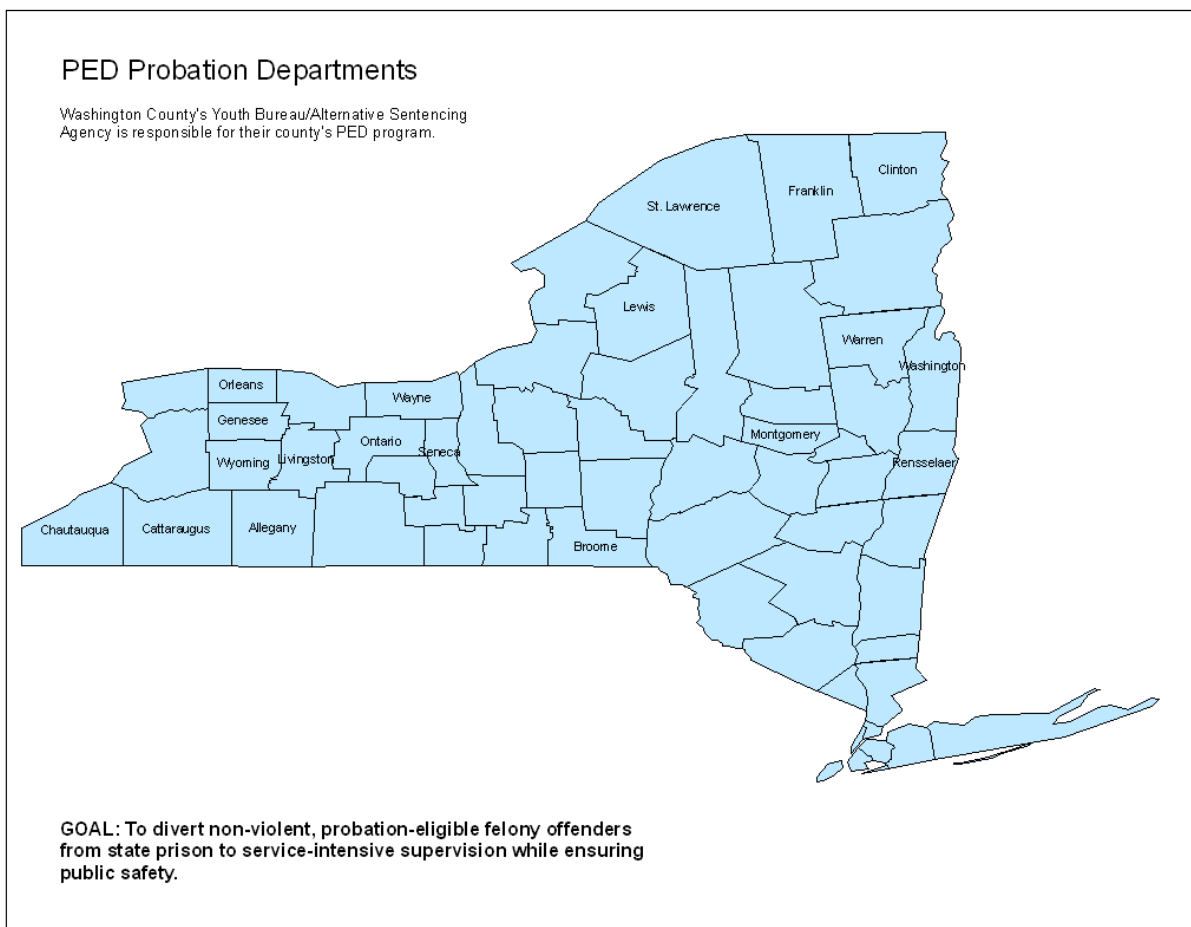
Departments are required to report the entire program budget, a portion of which is reimbursed based on their allocation. All expenses that are statutorily approved for state reimbursement may be reimbursed by PED funding. In most cases, funding provides full or partial salary for a PED Probation Officer. Additional funds may be spent on electronic monitoring, drug testing supplies, mileage for home visits, and equipment to support the recruitment of participants. The funding for some smaller departments is used to supplement supervision by paying for overtime for a PED Probation Officer rather than salary. The table below breaks down the funding by department.

Table One: Program Budgets and State Allocations, 2005

County	Total Program Budget	State Funds	County Funds	Personal Service	Fringe Benefits	Equipment	Supplies	Travel and Subsist.	Contractual	Total Budget
Allegany	\$22,691	\$20,100	\$2,591	\$18,909	\$3,782	\$0	\$0	\$0	\$0	\$22,691
Broome	\$114,295	\$99,417	\$14,878	\$76,066	\$29,429	\$0	\$3,000	\$800	\$5,000	\$114,295
Cattaraugus	\$50,495	\$36,100	\$14,395	\$42,079	\$8,416	\$0	\$0	\$0	\$0	\$50,495
Chautauqua	\$63,302	\$42,300	\$21,002	\$42,300	\$21,002	\$0	\$0	\$0	\$0	\$63,302
Clinton	\$94,687	\$76,900	\$13,696	\$73,987	\$16,395	\$100	\$250	\$3,300	\$655	\$94,687
Franklin	\$58,700	\$57,800	\$0	\$41,208	\$8,242	\$1,134	\$1,863	\$2,560	\$3,693	\$58,700
Genesee	\$64,533	\$28,900	\$0	\$42,942	\$20,560	\$0	\$731	\$300	\$0	\$64,533
Lewis	\$14,500	\$14,500	\$0	\$11,311	\$2,263	\$0	\$426	\$500	\$0	\$14,500
Livingston	\$16,625	\$16,625	\$0	\$8,445	\$815	\$5,787	\$1,238	\$340	\$0	\$16,625
Montgomery	\$22,547	\$22,000	\$547	\$16,726	\$3,345	\$0	\$905	\$1,106	\$465	\$22,547
Ontario	\$50,800	\$50,800	\$0	\$34,802	\$0	\$0	\$2,500	\$700	\$12,798	\$50,800
Rensselaer	\$167,150	\$162,500	\$4,650	\$98,871	\$19,774	\$0	\$2,000	\$55	\$46,450	\$167,150
Seneca	\$7,200	\$7,200	\$0	\$7,100	\$0	\$0	\$0	\$100	\$0	\$7,200
St. Lawrence	\$74,183	\$66,100	\$8,083	\$52,411	\$18,566	\$0	\$1,500	\$1,706	\$0	\$74,183
Warren	\$63,562	\$27,200	\$26,362	\$40,664	\$18,798	\$0	\$1,000	\$2,250	\$850	\$63,562
Washington ATI	\$132,586	\$112,700	\$19,886	\$98,189	\$19,637	\$0	\$500	\$5,300	\$8,960	\$132,586
Wayne	\$137,152	\$27,100	\$110,052	\$114,044	\$22,808	\$0	\$0	\$300	\$0	\$137,152
Wyoming	\$29,869	\$13,400	\$16,469	\$23,164	\$4,633	\$0	\$0	\$1,272	\$800	\$29,869

Section Two: PED County Program Descriptions

Figure One: PED Probation Departments



Program Descriptions

All programs require screening for and participation in substance abuse assessment and treatment programs, and engage local service providers for an array of services including in-patient and out-patient substance abuse treatment; One-Stop employment centers sponsored by the New York State Department of Labor; mental health screenings and treatment; social support services (Medicaid, shelters, half-way houses); domestic violence intervention programs; various support groups; services for the developmentally disabled; traumatic brain injury issues; and any other services as appropriate and available. Service referrals are made to neighboring counties if no services are available locally.

Programs are allowed to be up to 24 months in length. Probationers are stepped down or transitioned to a regular case load after successfully completing the program. In departments working with Drug Courts, probationers may complete PED when they graduate from Drug Court; continue in transition status until they are stepped down to a lower level of supervision; or be released from supervision altogether as part of the Drug Court structure.

Drug testing is consistently used across the programs, but electronic monitoring is program-specific. In departments accepting Drug Court cases, these tools of supervision enhance the drug testing also done by the court.

Allegany: This PED program consists primarily of Drug Court participants, but it also accepts non-Drug Court interim supervision cases. The emphasis is on repeat Driving While Intoxicated (DWI) offenders and those whose conviction is related to a substance abuse issue. When the probationer completes Drug Court through graduation, their participation in the PED program is completed as well.

Probation staff participate in all aspects of Drug Court, including a three stage screening process, through the Investigative Review Team made up of local criminal justice representatives. PED supervision terminates when the probationer completes Drug Court, but they do continue on probation after graduation. Offenders who violate their probation and are likely to be re-sentenced to DOCS are also eligible to participate in PED. Electronic monitoring is recommended for probationers who are not in in-patient treatment or a residential half-way house. Home visits are required on a monthly basis.

Broome: The focus of this PED program is on felony drug offenders who are identified at the pre-trial or pre-sentence investigation stage or have been sentenced to probation, and who also have multiple needs (mental health, employment, substance abuse, housing, or education/training). If determined to be eligible, the PED Probation Officer completes the pre-sentence investigation. Probation violators are also screened for participation and if appropriate, a recommendation is made to the judge to return the offender to probation to participate in the PED program. This particular PED program has a strong focus on employment/education issues and works closely with local service providers so that appropriate services are available to probationers. Upon successful completion, probationers are transferred to the general supervision caseload for a minimum of one year before being considered for probation discharge.

Cattaraugus: The majority of probationers in this PED program are under interim supervision or have been sentenced, but probation violators are also taken. The program is up to 24 months long, with the first year as interim supervision. In cases where other types of intervention services are warranted, the probationer is transferred to a different program to meet those needs upon completion of interim supervision. The department works with the court and the district attorney to screen cases for participation. Cases on interim supervision are reviewed by the court after the first six months of interim supervision and return to court at 12 months for sentencing.

Participants must report weekly and abide by curfew. The PED Probation Officer delivers a cognitive intervention program created and supported by the National Institute of Justice called "Thinking For a Change." The probation officer also has extensive contacts in the community and is quite successful at getting beds at treatment facilities or half-way houses for probationers in the program despite high demand.

Chautauqua: This PED program draws from all population models and focuses on felony DWI offenders, burglary convictions with prior Youthful Offender adjudication², second felony drug offenders through Drug Court, and probation violators.

Probation Supervisors or the department's Director attend pre-trial conferences at County Court to promote the program and screen participants. Probationers are referred out for services and participation is monitored by the supervising probation officer. Electronic Home Monitoring as ordered by the court (usually for at least 90 days) and periodic drug screening are utilized to further enhance the PED program.

Clinton: The majority of offenders in the PED program are also participating in Drug Court, and tend to be repeat felony DWI offenders. Many of the offenders entering this PED program are also probation violators who are accepted into Drug Court in lieu of a sentence to the NYS Department of Correctional Services. Upon graduation from Drug Court and prior to completing the PED program, probationers are seen at a higher level of supervision for a brief period of time before they are stepped down to a lower level of supervision. However, they continue supervision under the ISP program for a minimum of six months. Probation staff participates in the Drug Court planning team that meets bi-weekly.

Two commercially-available cognitive intervention programs are provided by probation staff: The Lifeskills Offender Corrections (L.O.C. – a personal development self-awareness program) addresses cognitive and life skills issues; and an interactive journal titled “Drug Court: A Program of Positive Values and Personal Responsibility.”

Through 2005, the program required that probationers in our PED program perform community service work on the supervised community service work crew through the Probation Department. In January 2006 that portion of the program was discontinued due to budget cuts. Community service is still recommended as a condition of probation but is not completed under a supervised work crew run by the Probation Department.

Franklin: Operating as solely a Drug Court PED program, probation staff work closely with Drug Court staff to screen offenders for participation. Probationers who violate the orders and conditions of the court may also be referred for Drug Court screening. Most participants complete the program within the 12 months of interim supervision, but are allowed to continue under PED supervision until they complete all substance abuse treatment requirements. Aftercare is a component of continuing supervision upon the completion of treatment, and the program reports that in-patient treatment followed by residential half-way house appears to be the most successful method. PED Probation Officers maintain regular contact with service providers to monitor attendance and

² A Youthful Offender is a special treatment for certain offenders between 14 and 19 which allows the criminal record to be sealed and does not disqualify a person from public employment or licensing. For more information on the Youthful Offender Statutes, see New York Criminal Procedural Law, Article 720 – Youthful Offender Procedure.

progress. Random urine screens and arrangements for community service are provided by the PED Probation Officer.

Genesee: All defendants in this PED program spend 12 months on interim supervision before being sentenced to probation and placed on Level I supervision. Referrals are accepted from the Court, District Attorney and Public Defender's Offices, including private defense attorneys. Defendants are assessed and referrals are made to outside agencies for cognitive interventions, substance abuse treatment and employment. In addition to drug testing, defendants with a felony drinking driving offense are eligible for the county's SCRAM^{TM3} Project where alcohol consumption is monitored 24 hours per day, seven days per week. The PED officer has a flexible schedule that permits unannounced home visits at anytime of the day or night.

Lewis: All four populations are accepted into this PED program, however, the emphasis is on Drug Court and violations of probation. Offenders are screened prior to indictment or superior court information being filed. Using a graduated sanctions model, offenders who violate their terms are given short terms of local incarceration or electronic monitoring as long as they are progressing in their treatment goals.

Participants enter into a contract with the Drug Court that outlines the sentence, depending on success or failure. Failure results in either a sentence to DOCS or 2 years local incarceration, depending on the amount of progress made during participation. Successful sentences range from conditional discharge to fines or probation. Once Drug Court is successfully completed, the offender usually receives a non-probation sentence. Due to the limited financial allocation, funds are used to support Probation Officer overtime for home visits, and supplement drug testing.

Livingston: Cases are primarily Drug Court, but interim supervision and violation cases are also accepted. All probation staff are involved in the identification and screening of individuals at the pre-trial stage. The Drug Court team, on which Probation is represented, screen and select Drug Court candidates. Identification of issues requiring referrals for services occurs at the pre-plea or pre-sentence investigation stage with a focus on mental health, substance abuse, employment and education needs. The Department reports that electronic monitoring and the Sobriotor^{®4} have been helpful in monitoring PED probationers.

³ **DPCA does not endorse particular electronic monitoring companies or equipment.** SCRAM stands for "...the Secure Continuous Remote Alcohol Monitor. SCRAM is a...three-part alcohol testing system designed to automatically test subjects at least once each hour, around-the-clock, for alcohol consumption. SCRAM uses state-of-the-art technology to collect, store, and transmit subject alcohol test results right to your desktop, every day." http://www.alcoholmonitoring.com/products/the_technology.html

⁴ **DPCA does not endorse particular electronic monitoring companies or equipment.** "Sobriotor[®] uses a powerful combination of advanced voice recognition technology and alcohol content measurement to provide one of the most reliable and accurate alcohol monitoring systems... At scheduled or random intervals, the client simply follows voice prompts given by Sobriotor. Sobriotor verifies the identity of the client using advanced voice verification technology. Sensors ensure that the client maintains contact with Sobriotor throughout the duration of the test, preventing one person from passing the voice identification test and someone else from taking the alcohol test. The Sobriotor breath test measures the client's Breath Alcohol Content (BrAC), which is directly proportional to the client's blood alcohol content. The client's intoxication level is reported to a monitoring computer over telephone

Montgomery: This PED program has worked with their local Drug Court since its inception in 2001. Participation rates have increased over time. Initially, offenders were placed on six to nine months of interim supervision and then moved to Intensive Supervision Probation. More recently, participants have remained on PED supervision because it was believed that they already received a period of intense supervision through Drug Court participation. Probation participates in all aspects of Drug Court, and provides supplemental drug testing, home visits, and collateral contacts with family, friends and employers. Progress in treatment is monitored through regular contact with service providers.

Ontario: Historically, this PED program targeted felony DWI offenders for one year of interim supervision followed by five years of probation. Currently, the largest number of participants is comprised of Drug Court participants, including violators who may be identified by the supervising Probation Officer and referred for participation. A small number of sentenced cases and violators who are not referred to Drug Court are PED cases. An in-house cognitive thinking group is provided by a local service provider. Probation Officers monitor attendance and progress at treatment. High risk DWI offenders may remain under enhanced PED supervision for their entire sentence, exceeding the 24 month cap for PED participation.

Orleans: Participants are involved in PED from all four population models. Service referrals focus on mental health, substance abuse and employment issues. Probation staff participate in weekly case conferences with the Drug Court, complete home visits, maintain collateral contacts to monitor compliance and progress in service referrals, and utilize urine screens and breathalyzers at both home and office visits.

Rensselaer: Most participants in this PED program have come from Drug Court. Due to changes within the Drug Court and Department, the program has created a review board to focus on screening and referring violators who are at high risk to fail on probation and thus face state prison time. The local Treatment Alternatives for a Safer Community (TASC) is involved in the review panel, and provides substance abuse assessment and case management functions within the Department. Drug Court cases are maintained on the PED caseload upon completion if they are still participating in substance abuse treatment, or have residential or vocational/educational needs that are, as yet, unmet.

St Lawrence: This PED program accepts both Drug Court cases and Interim Probation Supervision cases, the latter are often trying to earn Youthful Offender status. Offenders are screened during a pre-trial application and interview stage. After one year of successful participation in the program and substance abuse treatment, probationers are stepped down to a lower level of supervision. The Probation Officer who completes the pre-sentence investigation usually supervises the probationer. Other supplements to

lines. In addition, Sobrietor monitors and reports interruptions in telephone connectivity or power as well as any attempts to tamper with the device.”

<http://www.bi.com/content.php?section=products&page=products&detail=sobrietor>

supervision are used when appropriate, such as electronic monitoring, community service, or participation in the Temporary Assistance to Needy Families program.

Seneca: The focus in this PED program is on DWI offenders participating in Drug Court. Department staff are involved in the selection process through the Drug Court team. Service referrals focus on mental health and substance abuse issues. Upon completion of Drug Court, probationers are moved to the general caseload for the duration of their sentence.

Warren: Both Drug Court and violation cases are accepted, with a focus on the latter. Interim supervision is an important component of the Drug Court structure, and defendants are placed on interim supervision for the first six months of participation to assess their level of engagement, compliance, and progress. Department staff are involved in all stages of Drug Court and participate in case conferences. Most participants are DWI offenders, but family offenses and drug-related crime are also targeted.

Cognitive interventions include criminal thinking groups, peer group participation, and attendance at self-help meetings. The Probation Officer, the Treatment Court Coordinator, and the probationer work together on case planning. Supervision is supplemented by Probation staff providing unannounced home visits, random drug testing, and weekly treatment court sessions. Upon completion of Drug Court, participants are sentenced to a five year term of probation.

Washington County Alternatives to Incarceration and Youth Bureau: The target for this PED program is offenders ranging in age from 16 -25 who are participating in Drug Court, but Interim and violation cases are also accepted. Based on the concept of balanced and restorative justice, participants are required to perform 75 hours of community service or participate in victim/offender mediation. Electronic monitoring is required for the first 60 days with probationers earning release through compliance and passing drug screens. Offenders are required to maintain daily contact with staff and submit itineraries. In-house services include mental health status exams and life skills training.

The program operates with two tracks (Drug Court and non-Drug Court) with four phases each. Offenders must earn passage to another stage, each with its own requirements. Staff make use of an extensive list of community resources. When offenders complete the program their supervision is transferred to the Washington County Probation Department, or they are released from supervision by the sentencing judge.

Wayne: A combination of Drug Court, Interim Supervision and violation cases are accepted into this PED program targeting substance abuse and mental health issues. Screening is conducted at pre-trial conferences, which includes representatives of the District Attorney's Office and Probation, the Defendant's counsel, and the presiding magistrate. Referrals for cognitive, substance abuse and mental health programs are made

to local service providers. Successful completion by felony Interim Supervision cases results in a guilty plea to a misdemeanor and three years probation.

Wyoming: All participants in this PED program are referred by Drug Court, where the focus is on drug or economic crimes driven by a substance abuse issue, or DWI offenders. While in Drug Court, participants are placed on interim supervision while they complete the requirements of the program, and are monitored more closely than other probationers. Participants sign a contract with the court, and upon successful completion, they receive the conviction and/or sentence agreed on in the contract. Probation staff take part in weekly case conference meetings. Mental health and employment issues are also addressed through service referrals. Graduated sanctions are used for non-compliance, and include essays, community service, electronic monitoring, short jail terms and demotion to a previous phase. Upon successful completion, most participants receive a sentence to probation.

Section Three: 2005 Program Operations Data

The original goal of the Probation Eligible Diversion Program was to divert 360 offenders per year from State prison and to serve their sentences on probation. In recent years, the targets have increased despite decreases in funding. In 2005, the programs exceeded their own goal of diverting 473 probationers by 24 offenders, for a total of 497 new participants. The majority of individual programs met or exceeded their diversionary goals, with only 4 failing to reach the 80 percent mark. Programs were predominately involved with Drug Court offenders (68.2% of new participants) followed by interim supervision cases (23.1%). See table two.

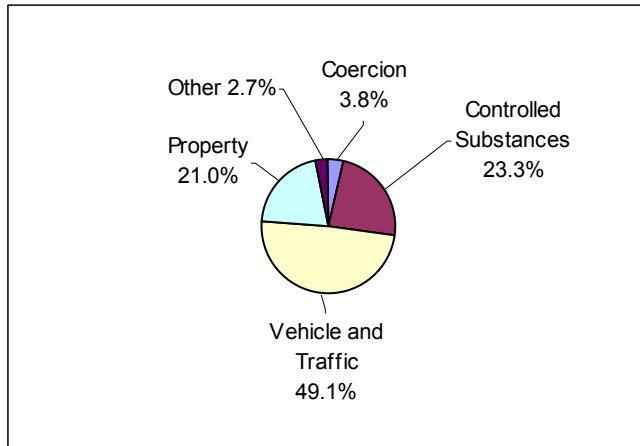
Table Two: Probationers Received and Targets for 2005

Probation Department	Carried from 2004	Drug Court	Violation of Probation	Interim Supervision	Sentenced Cases	Transfer Cases	Total New Cases	Total Cases 2005	Annual Target	% of Target
Allegany	7	17	0	0	0	0	17	24	20	85.0%
Broome	47	0	0	0	15	0	15	62	32	46.9%
Cattaraugus	36	0	2	18	1	1	21	58	20	105.0%
Chautauqua	20	0	0	50	0	0	50	70	35	142.9%
Clinton	19	20	0	0	0	0	20	39	20	100.0%
Franklin	20	6	0	0	2	0	8	28	30	26.7%
Genesee	0	0	0	7	0	1	7	8	4	175.0%
Lewis	2	8	0	0	0	0	8	10	5	160.0%
Livingston	8	4	1	5	4	0	14	22	20	70.0%
Montgomery	18	38	0	0	0	0	38	56	30	126.7%
Ontario	28	10	0	0	3	0	13	41	20	65.0%
Orleans	6	7	3	7	5	1	22	29	25	88.0%
Rensselaer	37	51	0	0	0	0	51	88	20	255.0%
St Lawrence	43	11	0	16	0	0	27	70	40	67.5%
Seneca	14	14	0	0	0	0	14	28	15	93.3%
Warren	75	27	5	0	0	0	32	107	32	100.0%
Washington ATI	14	88	0	0	0	0	88	102	60	146.7%
Wayne	40	16	0	12	2	2	30	72	20	150.0%
Wyoming	39	22	0	0	0	0	22	61	25	88.0%
Total	473	339	11	115	32	5	497	1,472	473	105.1%
Percent of Total/New Cases		68.2%	2.2%	23.1%	6.4%	1.0%	100.0%			

Probation Department staff are often involved with the courts as early as the pre-trial release stage, and may be able to identify PED candidates early in the criminal justice process. Participants may also be identified during a pre-sentence investigation or during a post-sentence needs assessment. However, the Judge and District Attorney have the final decision on program participation. Targets are usually set based on the prior year's participation rates.

Programs may fall short of their targets if there is a new District Attorney or Judge who may differ on their views of probation versus incarceration. It may take time for the Judge or District Attorney to determine that the program can provide the level of public protection or offender supervision that they feel is appropriate. PED Program staff work to provide information to the Courts on the merits and successes of the program. Targets are evaluated annually and bi-annually if necessary.

Figure Two: New Placements by Conviction Charge



As illustrated by Figure Two and Table Three, PED probationers fall into three main categories: 49.1% were convicted of Vehicle and Traffic Law offenses (VTL §1192, Driving While Intoxicated and §511 Aggravated Unlicensed Operation of a Motor Vehicle); 23.3% were convicted of controlled substance (NY Penal Law §220 and §221); and another 21.0% were convicted of property offenses.

Table Three: Probationers Received by Offense Type by County, 2005*

Probation Department	Coercion	Controlled Substances	Vehicle and Traffic	Property	Other	Total
Allegany	0	5	11	0	1	17
Broome	0	13	0	0	0	13
Cattaraugus	1	2	16	2	1	22
Chautauqua	DATA NOT REPORTED					0
Clinton	0	2	17	0	1	20
Franklin	0	1	6	1	0	8
Genesee	DATA NOT REPORTED					0
Lewis	1	0	7	0	0	8
Livingston	3	2	5	3	1	14
Montgomery	0	8	20	10	0	38
Ontario	1	0	6	6	0	13
Orleans	0	10	6	6	1	23
Rensselaer	0	25	18	8	0	51
St Lawrence	0	7	7	10	3	27
Seneca	0	0	14	0	0	14
Warren	2	2	24	4	0	32
Washington ATI	3	14	41	29	1	88
Wayne	4	10	7	8	3	32
Wyoming	2	2	12	6	0	22
Total	17	103	217	93	12	442
Percent of Total	3.8%	23.3%	49.1%	21.0%	2.7%	100.0%

* Coercion Offenses include (NY PL 120/125/130/ 135/150/160/205/ 215/265); Controlled Substance Offenses include (NY PL 220/221); Vehicle and Traffic Offenses includes (NY VTL 511/1192); and Property Offenses includes (NY PL 140/145/155/ 165/170/176/185/190).

A majority of PED participants are white (81.0%) males (78.5%) of non-Hispanic origin (95.0%). The highest proportion of female participants were found in Ontario County, which served predominantly female probationers (8 of 13, or 61.5%). As expected, the counties with larger cities tended to be more diverse (Broome with Binghamton; and Rensselaer with Troy). In Broome County, ten of twelve participants were identified as Black (83.3%); in Rensselaer County, eighteen of 51 were identified as Black (35.2%). It should be noted that many PED programs include local residency as a requirement for participation.

Figure Three: Overall Age at Program Entry, 2005

Participants tended to be older offenders, with nearly two thirds of participants ranged in age from 21 to 44. Only 17.8% of participants were under age 21.

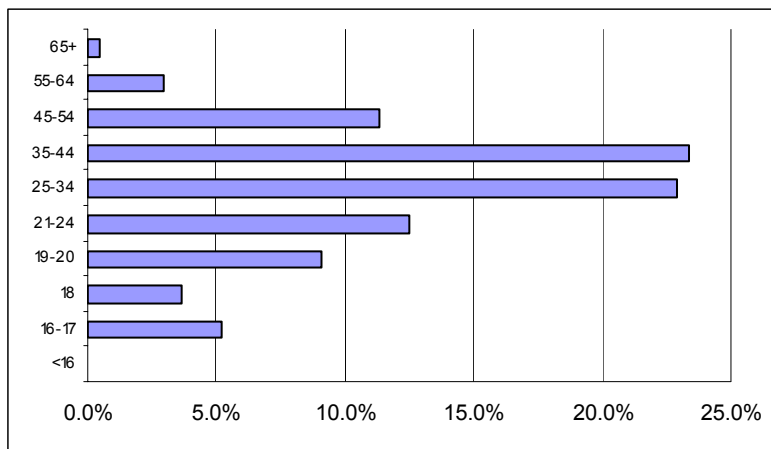


Table Four: Age at Program Entry for New Participants by County, 2005.

Probation Department	Less than 16	16-17	18	19-20	21-24	24-34	35-44	45-54	55-64	Over 65	Un-known
Allegany	0	0	0	2	2	6	4	2	1	0	0
Broome	0	3	0	3	0	3	4	0	0	0	0
Cattaraugus	0	3	1	1	0	5	7	3	2	0	0
Chautauqua	DATA NOT REPORTED										
Clinton	0	0	0	1	1	7	5	5	0	0	0
Franklin	0	0	0	0	2	3	2	1	0	0	0
Genesee	DATA NOT REPORTED										
Lewis	0	0	0	0	4	1	1	2	0	0	0
Livingston	0	1	0	4	4	2	2	0	1	0	0
Montgomery	0	0	0	3	4	12	13	4	2	0	0
Ontario	0	0	1	3	0	1	6	1	1	0	0
Orleans	0	2	2	6	2	5	3	3	0	0	0
Rensselaer	0	0	0	0	8	20	17	5	0	2	0
St Lawrence	0	3	4	5	3	4	6	1	1	0	0
Seneca	0	0	0	0	1	3	5	5	0	0	0
Warren	0	1	0	0	2	12	10	6	2	0	0
Washington ATI	0	7	5	5	10	8	8	4	3	0	38
Wayne	0	3	3	5	7	5	3	5	0	1	0
Wyoming	0	0	0	2	5	5	7	3	0	0	0
Total	0	23	16	40	55	102	103	50	13	3	38
Percent of Total	0.0%	5.2%	3.6%	9.0%	12.4%	23.0%	23.3%	11.3%	2.9%	0.7%	8.6%

A very important component of the PED program is intervention to achieve a reduction in behavior associated with the propensity to commit new crimes. Intervention may include referrals to participate in substance abuse treatment or cognitive intervention programs, and addressing employment or educational deficits. PED Departments have made strong connections with local service providers in a variety of areas, as illustrated by Table Five. Although probationers convicted of a sex offense are not eligible for participation in the program, if a need for sex offender treatment is identified, a referral is made. When services are not available locally, probationers are referred to neighboring counties for services.

PED Departments made 1,842 service referrals during 2005, with the majority constituting substance evaluation and treatment (1,072 or 58.2%). Mental health (211), employment (207), education/GED (149), and cognitive or behavioral service referrals (146) constitute the remainder.

Table Five: Referrals for Local Service Providers 2005

Probation Department	Substance Abuse Evaluation	Substance Abuse Treatment	Mental Health Services	Cognitive/ Behavioral	Educational / GED	Employment / Training	Sex Offender	Other
Allegany	39	39	39	0	32	39	0	0
Broome	21	9	6	0	8	23	0	0
Cattaraugus	31	53	28	16	24	26	0	21
Chautauqua	DATA NOT REPORTED							
Clinton	10	13	6	12	5	4	0	0
Franklin	5	2	2	2	4	7	0	0
Genesee	DATA NOT REPORTED							
Lewis	6	12	4	3	5	6	0	0
Livingston	10	18	4	1	2	1	1	0
Montgomery	36	17	8	0	0	19	0	0
Ontario	18	18	0	15	0	0	0	0
Orleans	39	24	11	0	6	7	0	0
Rensselaer	81	68	0	0	0	0	0	0
St Lawrence	7	18	7	0	1	1	0	1
Seneca	14	9	7	0	0	5	0	0
Warren	32	32	4	32	7	1	0	0
Washington ATI	14	12	7	2	13	13	0	37
Wayne	168	168	73	63	42	55	0	0
Wyoming	22	22	5	0	0	0	0	0
Total	535	534	211	146	149	207	1	59

“Other” includes halfway house, in-patient treatment, parenting classes.

Successful Completion

PED departments are requested to discuss the criteria that make a case a successful outcome, aside from simply completing the program or not having a new arrest. While avoidance of re-arrest is considered the universal measure of a program’s success, the departments provided

many other short-term outcomes to consider. Abstinence from drugs/alcohol and passing any related urine or saliva drug/alcohol screenings; successful completion of all substance abuse treatment requirements; obtaining or maintaining employment; no violations filed or “alerts” if on electronic monitoring; payment of any financial obligations such as restitution, fines or court fees; completion of community service, if imposed; compliance with the court orders and conditions of probation; and when there is no longer a threat of the probationer being sent to DOCS on the original charge.

Table Six below presents data on program completions. Readers are cautioned that the success rate is not based on individual completions, but on the aggregate number of persons entering and exiting the program. In other words, success rates are calculated based on the number of successful and unsuccessful participants in a given reporting period (success rate equals the number of successful completions divided by the total of successful and unsuccessful completions). Furthermore, the data below do not reflect rearrests, the traditional measure of recidivism. Sixteen of 19 programs were over the 50.0% success rate.

Table Six: Probationers Completing PED in 2005

Probation Department	<u>Successful Completions</u>		<u>Unsuccessful Completions</u>			Neutral Terminations*	Success Rate
	Maximum Expiration or Early Discharge	Moved to Non-PED Caseload	Sentenced to Local Incarceration	Sentenced to State Incarceration	Other		
Allegany	0	1	5	1	0	0	14.3%
Broome	7	8	7	5	0	1	55.6%
Cattaraugus	0	21	0	7	0	5	75.0%
Chautauqua	18	5	4	6	0	1	69.7%
Clinton	1	7	1	6	0	1	53.3%
Franklin	0	10	1	1	0	2	83.3%
Genesee	2	0	0	1	0	3	66.7%
Lewis	0	2	0	0	0	0	100.0%
Livingston	0	11	0	1	1	0	91.7%
Montgomery	2	0	0	3	0	0	40.0%
Ontario	11	1	1	1	0	0	85.7%
Orleans	1	8	2	2	2	2	69.2%
Rensselaer	5	11	10	1	0	4	59.3%
St Lawrence	13	26	2	2	0	1	90.7%
Seneca	0	6	1	2	0	0	66.7%
Warren	14	10	1	5	0	0	80.0%
Washington ATI	0	7	7	2	3	1	43.8%
Wayne	0	26	3	5	1	6	76.5%
Wyoming	2	26	1	1	1	0	93.3%
Total	76	186	46	52	8	27	72.8%

* The majority of neutral terminations were due to transfers (70.4%).

A note of caution on success rates is in order. The percent considered successful is heavily influenced by the number of participants. For example, while one PED program had a success rate of 100%, it is based on two completions and no terminations. Another PED program reported a success rate of 90.7% based on 43 program completions and terminations. Furthermore, a low success rate may not be what it appears upon closer examination. For example, one department reported a 14.3% success rate based on one successful and six unsuccessful completions. This is influenced by a few factors specific to that county's criminal justice operations. The department had recently created a Drug Court (2004), which was not fully staffed and implemented until mid-2005. Furthermore, the participants who are likely to fail did so quickly, while many of the successes were still in the program at the time the calculations were made.

Of the 262 successful completions, 186 were moved off the PED caseload but continued on a lower level of supervision. Sixty-one cases reached their maximum expiration date while 15 were given an early discharge by the Court for compliance with the orders and conditions of probation. While a probation department may initiate an early discharge request, discharge is granted at the discretion of the sentencing Judge. It is likely that the early discharges were related to Drug Court participation.

Table Seven: Unsuccessful Outcomes.

Incarceration		
Charge	DOCS	Local
Original	40	43
New	10	3
Total	50	46
% Total		
	13.7%	12.6%

Table Seven indicates the overall outcomes for unsuccessful participants. Of the 366 participants completing PED in 2005, 96 were subsequently incarcerated (50 at the Department of Correctional Services (DOCS); and 46 were sentenced to Local Incarceration). Of all successful and unsuccessful discharges, only 13.7% were sentenced to DOCS and 12.6% were sentenced locally. There were 31 neutral program terminations (7.8% of 397 total completions). Of those 31, nineteen terminated due to transfer to another jurisdiction.

Summary and Conclusion

Through the creativity and hard work of local Probation Directors and PED Probation Officers, the PED program has continued to be successful in diverting offenders from State Prison and providing intervention services on the local level. Indeed, the programs surpassed the target of 360 diversions by 38 percent. Only 50 offenders were sentenced to the Department of Correctional Services due to program failure or a new charge. As the data and anecdotes indicate, probationers have been able to change their lives for the better, which impacts their families and the community. This funding has allowed Probation to play an active role in local Drug Courts and engage probation violators. The PED program is flexible enough to accommodate changes in local criminal justice practice. As new challenges arise, these probation departments are equipped to handle the change.

Appendix A: Successful Case Anecdotes

These success stories are quoted directly from the quarterly reports submitted by each program.

- A 24 year old single mother was dependent on social services to support herself and her child. She came to our area from New York City. She initially avoided obtaining an evaluation/counseling due to concerns over her pregnancy, health issues, finding stable housing, and applying for welfare upon her release from jail. She was cooperative to reporting as directed and eventually started receiving mental health counseling at a local hospital. Outpatient and inpatient drug and alcohol counseling services were available at this same hospital which would allow for a smooth transition to those services as appropriate. She began attending a local community college in January of this year, and her child attends day care on campus. This young woman loves school, successfully completed her first semester, is proud of her accomplishment and is motivated to continue her education, remain law-abiding, and provide a better life for herself and her child. Her alternative sentencing was reduced and she will be transitioned to regular supervision.
- We had a 44-year-old male who had been on probation three times in the past. On every previous time, VOP's were filed as the result of continuous marijuana usage. He had been unable to remain clean and sober. Since starting the PED program, about 2 years ago, he has had clean urines, completed drug and alcohol treatment, has gotten and maintained full time employment, and has stayed involved in a self help group. He will say that he is actually happy about his new life. He actually reports to probation with a smile on his face.
- J.P. (age 21) entered the PED caseload in May of 2005 as a Felony Probation Violator who was facing felony assault charges. J.P. also had a lengthy legal history as both an adult and juvenile. The PED program and Drug Court were to be his "last chance". J.P. is actively involved in Alcohol and Substance Abuse Treatment, is subject to daily call in, drug testing, attends a GED program two evenings a week and is involved with the Drinking Driver Program one night a week. J.P. is working with the local One Stop on employment skills, resume writing and job referral, and receives services from the Transition to Independent Program (TIP) through the Mental Health Clinic. There was some concern voiced by J.P.'s defense counsel that allowing him to participate in the PED program would "set him up for failure." Thus far, this concern is unfounded. J.P. has graduated to Level II of Drug Court, is actively involved in the various facets of his program, and is demonstrating a higher level of self-confidence and optimism about his situation that was not evident in the past. The program has allowed him to accomplish goals, get positive feedback for his accomplishments and received one negative consequence (a week in jail) for missing a treatment appointment. The program seems to be a good match for J. P.'s needs and has afforded him a chance to succeed.
- Laurie M. was a 36 year old crack addict with an 8 year old son when she entered the Treatment Court on February 3, 2004. She became involved in the sale of the drug to support her habit and was convicted of Criminal Possession of a Controlled Substance

5th, a D Felony. After a positive test for alcohol in the early stages of her involvement in the program, Laurie settled in and progressed very well. She obtained treatment for her addictions as well as to address her mental health issues. She became actively involved in volunteering to work with people struggling with dual diagnosis and became a leader and positive role model for her fellow participants in the Treatment Court program. On October 13, 2005, she graduated from Treatment Court and remains on probation. She is still in compliance with her probation conditions, actively attends self help groups, continues her volunteer work, has full custody of her son and is very actively involved in his life.