JUSTICE PROGRAMS OFFICE
SCHOOL *of* PUBLIC AFFAIRS

Racial & Ethnic Disparities (RED)

ASSESSMENT

New York Treatment Courts
Statewide Report

NEW YORK STATE UNIFIED COURT SYSTEM

OFFICE *for* JUSTICE INITIATIVES
DIVISION of POLICY and PLANNING

Center
for
Court
Innovation

Racial & Ethnic Disparities (RED)

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New York Treatment Courts Statewide Report

OVERVIEW

In 2017, the New York State Unified Court System (UCS) released a statewide strategic plan for adult treatment courts. The strategic plan was developed by a statewide advisory committee led by the UCS's Office for Justice Initiatives - Division of Policy & Planning (DPP), with the assistance of the Center for Court Innovation. This effort was intended to create a comprehensive plan to guide the operation and coordination of the state's adult treatment courts. The advisory committee agreed that adherence to the National Association of Drug Court Professional's (NADCP) *Defining Drug Courts: The Key Components* (1997) and the *Adult Drug Court Best Practice Standards* (rev. 2018) would be critical to the effectiveness of adult treatment courts. Adherence with best practice standards ensures eligible individuals have equitable program access.

Adult Drug Court Best Practice Standard #2, "Equity and Inclusion," indicates that "individuals who have historically experienced sustained discrimination or reduced social opportunities because of their race, ethnicity, gender, sexual orientation, sexual identity, physical or mental disability, religion, or socioeconomic status receive the same opportunities as other individuals to participate and succeed in the Drug Court." This standard has become a primary focus for treatment courts based on national data that identified disparities in access, retention, and graduation.

In June 2020, amidst the hardships of an international pandemic that changed our way of life, our nation faced its most recent reckoning on issues of racism, bias, and inequality. The courts are no exception to this troubling reality. Chief Judge Janet DiFiore responded by commissioning former Obama Administration Cabinet member Jeh Johnson to conduct a thorough review on issues of racial bias within the New York State court system. The ensuing Equal Justice Report from Secretary Johnson and his law firm team identified that racism and bias remain very present throughout and within the court system, and set forth several recommendations in service of combating racism within the courts and promoting a more fair and equitable justice system for all. Deputy Chief Administrative Judge Edwina G. Mendelson, who leads the Office for Justice Initiatives, was assigned by Chief Judge DiFiore and Chief Administrative Judge Marks to lead the implementation of these recommendations within the court system.

Embracing this movement, and in furtherance of Judge Mendelson's work, DPP sought to identify and remedy the causes of racial and ethnic disparities in adult treatment courts and to renew our commitment to promoting equal justice under the law. Towards this end, DPP formulated a proposal to seek technical assistance from the Bureau of Justice Assistance (BJA) and the Center for Court Innovation (Center) so that New York's adult treatment courts could complete a racial and ethnic disparities assessment. The end goal was to encourage adult treatment courts to take affirmative steps to ensure that Black, Indigenous, people of color (BIPOC) participants had equal access, received equivalent services, and successfully completed the program at rates equivalent to their white counterparts.

In 2020, DPP partnered with American University (AU) to administer such a racial and ethnic disparities assessment. The Justice Programs Office (JPO), a research center in American University's School of Public Affairs, developed the Racial and Ethnic Disparities (RED) Program Assessment Tool to help treatment court professionals identify and examine areas where

racial and ethnic disparities may exist in their court programs. The JPO team of experts developed the RED Program Assessment Tool for treatment courts following two years of research and collaboration with professionals in the field, and several site visits to treatment courts in North Carolina, Missouri, and Louisiana. The RED tool is hosted on a free, web-based platform (https://redtool.org/) and is designed to capture information about treatment court operations and procedures in a secure, confidential database. The tool assesses treatment court programs through a series of open and closed-ended questions about general court information, intake, assessments, demographics, team members, training, drug choices, treatment and support services, and evaluation and monitoring. Descriptions of these topic areas are provided in each section of this report. The RED tool uses a rubric to provide treatment court teams with an overall assessment score, scores for each section of the assessment, and recommendations to alleviate racial and ethnic disparities.

Thirty-one adult treatment court teams across NY state voluntarily completed the assessment. AU scored the individual court assessments and provided each court with an individualized report with recommendations to examine areas where racial and ethnic disparities may exist in the court program. AU also provided DPP with a statewide aggregate report, which is set forth below. Based on AU's report and data, the Center developed a detailed list of local and statewide recommendations. DPP plans to use this report and the recommendations contained herein to address inequities in New York's adult treatment courts. And while this report focuses on racial and ethnic disparities, DPP recognizes the intersectionality of other unserved groups and will apply the recommendations appropriately to ensure all groups are afforded access to adult treatment courts.

NEW YORK STATEWIDE RED TOOL REPORT INTRODUCTION

The 31 courts represented are Adult Treatment Courts. As of February 2021, New York had a total of 96 Adult Treatment Courts, meaning this convenience sample includes data from approximately 34% of this program type.

The oldest court in the RED tool sample opened 23 years ago in June 1996, while the newest is two years old, having opened in March 2019. The average length of operation is 18 years, suggesting that most courts are relatively well established. Most teams include at least one defense attorney and a prosecutor.

All programs predominantly serve white participants: a mean of 58% of past year participants are white, while 18% are Black, and 17% identify as Hispanic or Latino. However, these numbers are inconsistent with demographics reported among New York's justice-involved population. The New York State incarceration percentages are 26% white, 22% Latino and 53% Black.[1] There is a 74% graduation rate for white participants, 82% graduation rate for black participants, and 83% graduation rate for Hispanic/Latino participants.

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1.   Sakala, L. Breaking down mass incarceration in the 2010 census: State-by-state incarceration rates by race and ethnicity. *Prison Policy Initiative* (2014) https://www.prisonpolicy.org/reports/rates.html

REPORT HIGHLIGHTS

- Of the 31 New York courts assessed, the aggregate mean score across all courts on the RED assessment is 53%. That 53% is based on an average of the lowest scoring court and the highest scoring court.
- The courts, on average, scored highest for best practice compliance with RED in the following two assessed content areas: assessments, and treatment and support services.
- The courts, on average, scored lowest for best practice compliance with RED in the following two assessed content areas: court information, and monitoring and evaluation.
- Based on UCMS court data, the participant graduation rates by race and ethnicity are as follows:

  » 74% for white participants;
  » 82% for Black participants; and
  » 83% for Hispanic participants.

PART ONE: NEW YORK STATEWIDE OVERVIEW

The statewide overview data in part one reports on overall RED assessment scores in the following eight sections: 1) court information, 2) intake, 3) assessments, 4) demographics, 5) team members, 6) training, 7) drug of choice and treatment/support services, and 8) evaluation and monitoring. The section descriptions are provided in part two. An overall assessment of the state's compliance with RED best practices (all scored on a scale of zero to 100) are presented as mean, median, and ranges.

The demographic section of the assessment is not scored but is presented here to provide an overview of the reported makeup and graduation rates in adult treatment courts that completed the assessment.

STATEWIDE RESULTS OVERVIEW

Figure one shows the average scores for all 31 participating courts by section. The mean (average) score across all programs based on the RED assessment is 53%; the median is 49%. As for the range, the lowest 37% and the highest 81%.

The two lowest scoring sections are Section One – Court Information (mean 29%; median 22%; range 0%-96%), and Section Eight – Monitoring & Evaluation (mean 23%; median 0%; range 0%-100%). The two highest scoring sections on average were Section Three – Assessments (mean 72%; median 73%; range 0%-100%) and Section Seven – Treatment & Support (mean 76%; median 78%; range 51%-93%).

Table one provides a detailed assessment analysis.
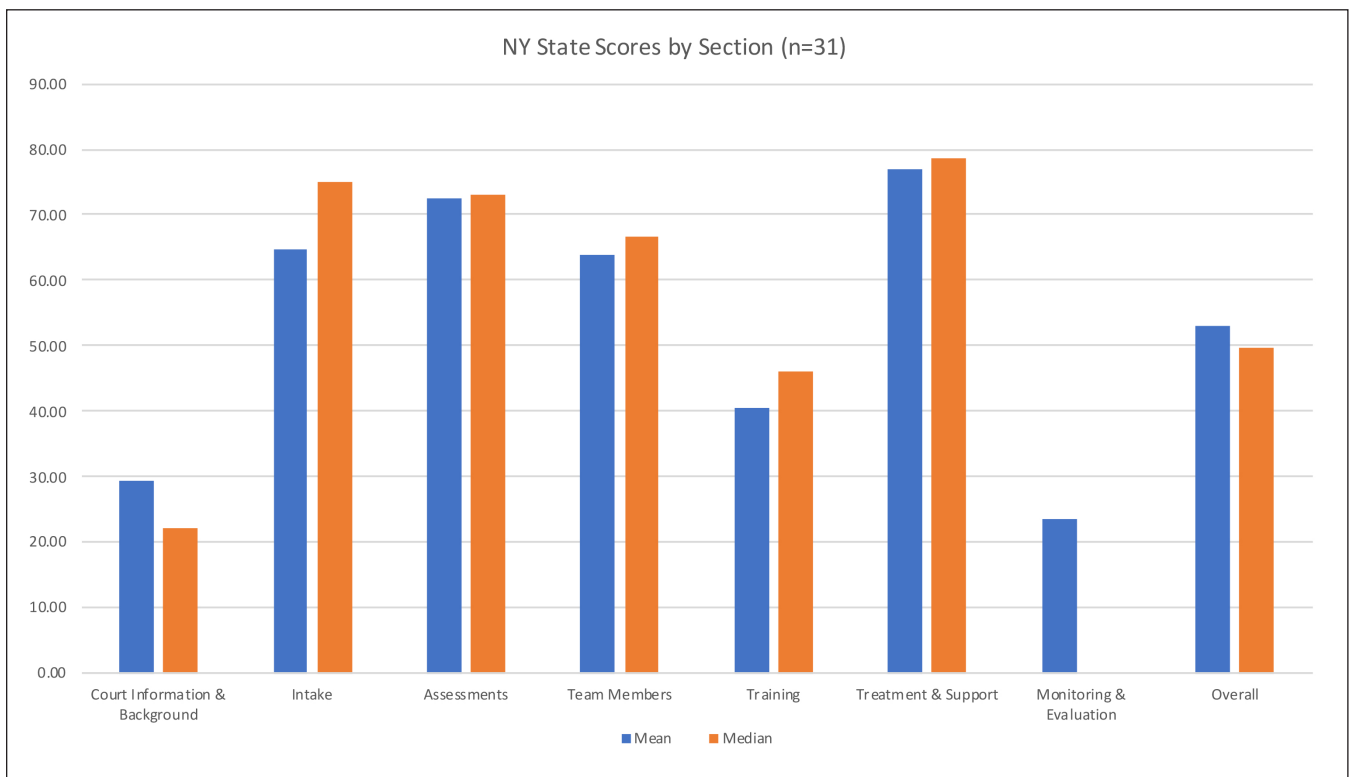
FIGURE 1 – OVERALL PROGRAM SCORES BY ASSESSMENT SECTION

NY State Scores by Section (n=31)

TABLE 1 – DETAILED OVERALL PROGRAM SCORES BY ASSESSMENT SECTION

	Mean	Median	Minimum	Percentiles		Maximum
				25	75	
Court Information	29.49	22.22	0.00	12.08	43.96	96.15
Intake	64.61	75.00	0.00	62.50	80.00	88.89
Assessment	72.37	73.13	0.00	60.42	86.04	100.00
Team Members	63.98	66.67	0.00	50.00	77.08	95.83
Training	40.40	46.15	0.00	0.00	65.51	96.88
Treatment & Support	76.99	78.69	51.11	66.82	86.11	93.81
Monitoring & Evaluation	23.66	0.00	0.00	0.00	50.00	60.14
Overall Aggregate	53.07	49.77	37.50	44.34	60.14	81.42

PART TWO: SECTION BREAKDOWN

Part two provides individual section descriptions and aggregate score breakdowns by section based on the assessment data provided by the courts.

Each section percentage includes a mean (average), median (middle), and range (minimum and maximum). The mean percentage is the sum score of each court divided by the number of courts that completed the assessment. The median percentage establishes the middle score on each section and the range percentage represents the lowest and highest scores to show the spread of the scores.

Within each section, AU has highlighted **common areas of success** in which 80-90% of courts scored highly and **common areas of need** in which 50–60% of courts scored poorly. Since scoring is based on a percentage of courts and not all courts, the sections with the higher scores are not excluded from improving court operations in these areas. Each participating court received a "local report" based on the data submitted by the that court. The disaggregate "local reports" reflect each court's individual data percentages by section.

A. COURT INFORMATION & BACKGROUND

The *Court Information* section covers general information about the court (e.g., geographic location), policies, procedures, and interactions with non-English speaking participants. This section also asks specific questions that address the contact adult treatment courts have with non-English speaking or English as-a-second language participants in the past five years and whether the non-English speaking or English as-a-second language participants are provided a translator, treatment court materials in their native language, or a community-based outreach specialist.

Twenty-Six (84%) of 31 adult treatment courts were identified as scoring below 50% in this section. Below is a court information and background section snapshot of the mean (average), median (middle), and range (lowest to highest) scores and the common areas of success and need.

COURT INFORMATION AND BACKGROUND PERCENTAGE SCORES:

- Mean: 29%
- Median: 22%
- Range: 0%–96%

COMMON AREAS OF SUCCESS:

From this section, all (or almost all) courts assessed scored highly on the following:

Translation services are available to all courts and court users via the Office of Language Access. Of the 25 courts surveyed that serve non-English speaking participants, 68% reported that they provide translators/translation services.

B. INTAKE

The *Intake* section addresses the referral process and the court's eligibility requirements. Questions pertain to written eligibility requirements and factors used in establishing eligibility. In this section, the tool solicits information about individuals (e.g., court coordinator, probation officer, or treatment provider) who are responsible for referring participants to the treatment court. The tool has questions on factors such as an ability to pay treatment-related fees, access to transportation, and diagnosis of a substance use disorder that affects a participant's eligibility for entry.Five (16%) of the 31 adult treatment courts were identified as scoring below 50%. Below is a snapshot of the mean, median, and range scores for this section, an intake section snapshot of the mean (average), median (middle), and range (lowest to highest) scores, and the common areas of success and need.

Five (16%) of the 31 adult treatment courts were identified as scoring below 50%. Below is a snapshot of the mean, median, and range scores for this section, an intake section snapshot of the mean (average), median (middle), and range (lowest to highest) scores, and the common areas of success and need.

INTAKE PERCENTAGE SCORES:

- Mean: 64%
- Median: 75%
- Range: 0% - 88%

COMMON AREAS OF SUCCESS:

From this section, all (or almost all) courts assessed scored highly on the following:

- 87% of courts have their eligibility requirements in writing (but only 33% share those requirements with all referral sources).
- 100% of courts use at least one appropriate referral method to their programs.

COMMON AREAS OF NEED:

From this section, all (or almost all) courts assessed scored poorly on the following:

- 100% of courts rely on at least one subjective measure (such as a recommendation from a judge).
- 23% of programs exclude participants for a lack of access to transportation.
- 23% of programs exclude participants for inability to pay treatment-related costs

C. ASSESSMENTS

The Assessments section includes questions on risk and needs, substance use disorder, and mental health assessments. Topics cover the purpose, utility, and validity of assessments. For each type of assessment, questions address whether the risk assessment has been validated based upon the population characteristics of participants in the jurisdiction, specifically their racial and ethnic group(s). This section also asks whether risk assessment data is used to place participants in appropriate programming, covers staff training of assessment tools, including their ability to interpret assessment tool results. Finally, this section covers the transfer the assessment findings to individualized treatment planning and communicating the findings to participants.

Three (9%) of 31 adult treatment courts were identified as scoring below 50%. Below is a snapshot of the mean, median, and range scores for this section, an assessment snapshot of the mean (average), median (middle), and range (lowest to highest) scores, and the common areas of success and need.

ASSESSMENTS PERCENTAGE SCORES:

- Mean: 72%
- Median: 73%
- Range: 0% - 100%

COMMON AREAS OF SUCCESS:

From this section, all (or almost all) courts assessed scored highly on the following:

- 65% of courts use a risk assessment and, of these, 75% use it for purposes such as determining eligibility, services, and intensity of and number of services.
- 81% of courts use a mental health (MH) assessment and, of these, 84% use it to determine services for participants.
- 87% of programs use a substance use disorder (SUD) assessment and, of these, 97% use it to determine eligibility.

COMMON AREAS OF NEED:

From this section, all (or almost all) courts assessed scored poorly on the following:

- Only 30% of courts know if their risk assessment is validated for their populations.
- Only 40% of programs say staff can accurately interpret the risk assessment results.
- Only 16% of courts reported that staff who use the MH assessment are trained to use it with all populations.
- Only 33% of courts know if their SUD assessment is validated for their populations.

D. DEMOGRAPHICS

Program demographics are not scored but are provided here to provide an overall picture of the courts that participated in the assessment. Although questions in this section pertain to the race and ethnicity of treatment court participants during the past calendar year and a break-down by race and ethnicity of participants who successfully completed the program are asked of the respondents, this section includes official data provided by the NYS Office of Court Administration Division of Court Research.

Table 2 shows the aggregate make-up of the court participants over the past 12 months. Consistent with general research literature[2,3] the adult treatment courts in this sample skew heavily white.

Table 3 shows limited disparities in graduation rates by race. The average graduation rate shown for this sample of courts is approximately 81% (higher than the literature on the national average for treatment court graduation rates).[4]

TABLE 2 – RACE/ ETHNICITY FOR ALL PARTICIPANTS*

Asian/ Pacific Islander	1%
Black	25%
Hispanic / Latino	19%
Multiracial	2%
Other Race	1%
Unknown	12%
White	40%
Total	**100%**

*Participation was determined by having a participation or contract date entered in
  UCMS and a closed reason in 2019 of Failed, Graduated, or ACD.

TABLE 3 – GRADUATION RATES BY RACE FOR ALL PARTICIPANTS

Asian/ Pacific Islander	100%
Black	82%
Hispanic / Latino	83%
Multiracial	70%
Other Race	86%
Unknown	72%
White	74%
Average	**81%**

2. Anne Dannerbeck et al., "Understanding and Responding to Racial Differences in Drug Court Outcomes," *Journal of Ethnicity in Substance Abuse 5,* no. 2 (Winter 2016): 1-22 https://www.tandfonline.com/doi/abs/10.1300/J233v05n02_01.

3. DeMatteo, D. et al. "Outcome trajectories in drug court: do all participants have serious drug problems?" *Criminal Justice and Behavior,* no. 4 (2009): 354-368. https://journals.sagepub.com/doi/10.1177/0093854809331547

4. DeMatteo, D. et al. "Outcome trajectories in drug court: do all participants have serious drug problems?" *Criminal Justice and Behavior,* no. 4 (2009): 354-368. https://journals.sagepub.com/doi/10.1177/0093854809331547

E. TEAM MEMBERS

The *Team Members* section covers the racial and ethnic makeup of the team. In addition, this section covers topics such as team member understanding of factors that contribute to racial and ethnic disparities and their understanding of the cultural needs of participants. Collective team opinions are considered for the purpose of generating a dialogue among team members and to gauge commitment to racial and ethnic equity. The treatment court team completing the RED tool were asked to come to a consensus on statements such as:

- Our team is racially and ethnically diverse.
- Our team is racially and ethnically representative of the racial and ethnic composition of our treatment court participants.
- Our team has a good understanding of the individualized cultural needs of the treatment court participants.
- Our team is committed to racial and ethnic equity within the treatment court.
- Team members have a good understanding of factors that contribute to racial and ethnic disparities in treatment court outcomes (e.g., graduation and recidivism rates).
- Team members collaborate with participants in establishing culturally responsive treatment goals and objectives.

Nine (29%) of 31 adult treatment courts were identified as scoring below 50%. Below is a snapshot of the mean, median, and range scores for this section, a team members section snapshot of the mean (average), median (middle), and range (lowest to highest) scores, and the common areas of success and need.

TEAM MEMBERS PERCENTAGE SCORES:
- Mean: 63%
- Median: 66%
- Range: 0% - 95%

COMMON AREAS OF SUCCESS:
From this section, all (or almost all) courts assessed scored highly on:

- 94% of courts agree with the statement that their team is committed to reducing disparities in their program.
- 77% of courts agree that their team has a good knowledge of how to individualize the program for different participants.

COMMON AREAS OF NEED:
From this section, all (or almost all) courts assessed scored poorly on:

- Most teams are lacking key team members (including Tx and MH providers).
- Less than 10% of the sample contained non-white individuals in positions of authority in the court (DA, judge, etc.).

FIGURE 4 – AGGREGATE PERCENTAGES OF NON-WHITE STAFF BY ROLE (MEAN)

% of non-white staff by role
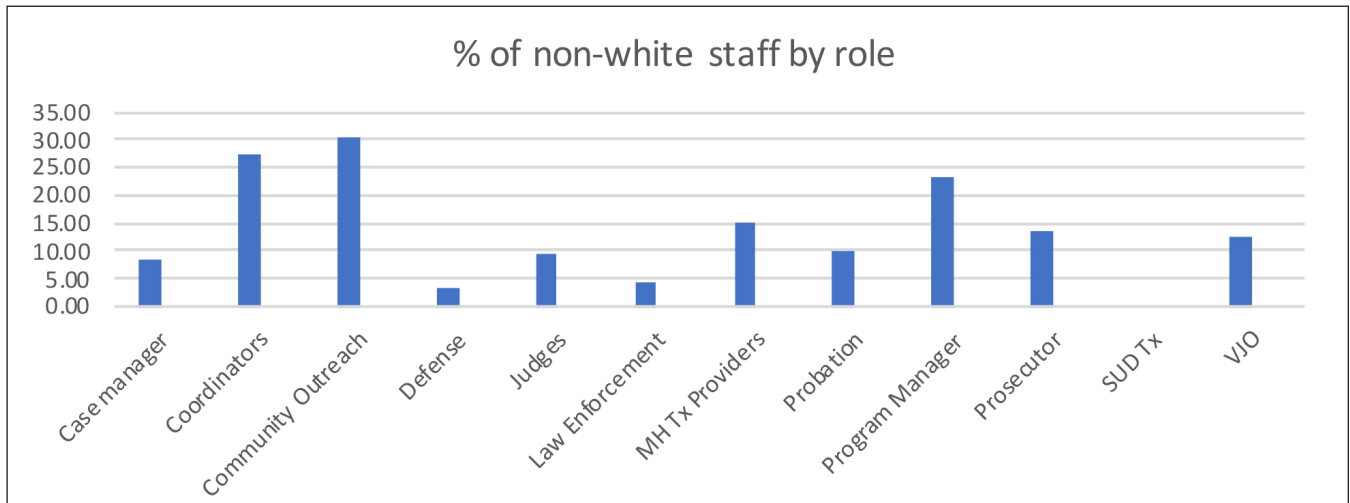
F. TRAINING

The *Training* section focuses on treatment court team members' experience with racial and ethnic disparities and cultural competency training. For each of these topics, questions specifically pertain to the frequency of training, whether such training is mandatory and for which team member (role), agency offering training, and changes the court implemented after completing the training.

Twenty (65%) of 31 adult treatment courts were identified as scoring below 50%. Below is a snapshot of the mean, median, and range scores for this section, a training section snapshot of the mean (average), median (middle), and range (lowest to highest) scores, and the common areas of success and need.

TRAINING PERCENTAGE SCORES:

- Mean: 40%
- Median: 46%
- Range: 0% - 96%

COMMON AREAS OF SUCCESS:

From this section, all (or almost all) courts assessed scored highly on:

- 68% of courts received RED training in the past five years.
- 61% of teams received cultural competency training in the past five years.
- 79% of the courts received cultural competency training at least once a year.

COMMON AREAS OF NEED:

From this section, all (or almost all) courts assessed scored poorly on:

- 15% of courts required all team members to attend RED trainings.
- Less than 50% of judges and 40% of prosecutors attended RED trainings.

- 19% of programs made any changes following RED training and 21% following cultural competency training.

G. DRUG OF CHOICE AND TREATMENT AND SUPPORT SERVICES

No (0%) adult treatment courts were identified as scoring below 50%. Below is a snapshot of the mean, median, and range scores for this section. Below is a drug of choice and treatment and support services section snapshot of the mean (average), median (middle), and range (lowest to highest) scores and the common areas of success and need.

> The *Drug of Choice and Treatment/Support Services* section focuses on participants' primary drug(s) of choice, treatment available, incentives, sanctions, and support services. This section begins with selecting top three drugs for participants in the treatment court with follow-up questions on racial and ethnic breakdown of participants who have each drug as their primary drug of choice and access to appropriate treatment services to address each drug of choice by race and ethnicity. Additional questions aim to assess Black, Indigenous, people of color (BIPOC) participants' access to treatment, quality of programming, and challenges in completing the program.

Drug of Choice and Treatment and Support Services Percentage Scores:

- Mean: 76%
- Median: 78%
- Range: 51% - 93%

COMMON AREAS OF SUCCESS:

From this section, all (or almost all) courts assessed scored highly on:

- 94% of programs believe they have access to the appropriate drug treatment for white participants, compared to 74% for Black and 64% for Hispanic.
- 94% of the programs use evidence-based treatment practices.
- 100% of programs agree that judges treat participants with respect regardless of race.

COMMON AREAS OF NEED:

From this section, all (or almost all) courts assessed scored poorly on:

- 42% of courts agree with the statement, non-white participants don't face more barriers to completion than white participants.
- 6% of courts provide childcare, and only 26% provide financial assistance for transportation.
- 16% of programs offer formal aftercare.

H. EVALUATION AND MONITORING

The *Evaluation and Monitoring* section addresses the types of evaluation that have been conducted in the past. There are evaluation questions that assess participants' outcomes and whether the evaluation results showed the existence of racial and ethnic disparities within the treatment court.

27 (87%) of 31 adult treatment courts were identified as scoring below 50%. Below is a snapshot of the mean, median, and range scores for this section, an evaluation and monitoring section snapshot of the mean (average), median (middle), and range (lowest to highest) scores, and the common areas of success and need.

EVALUATION AND MONITORING PERCENTAGE SCORES:
- Mean: 23%
- Median: 0%
- Range: 0% - 100%

COMMON AREAS OF SUCCESS:

From this section, all (or almost all) courts assessed scored highly on:

- None.

COMMON AREAS OF NEED:

From this section, all courts (or almost all) courts assessed scored poorly on:

- 23% of courts track graduate outcomes post program
- 16% of courts regularly examine graduate rates to determine disparities.
- 3% of courts have conducted a local evaluation to determine disparities in outcomes.

CONCLUSION

This report reflects the aggregated data of AU's Racial and Ethnic Disparities assessment of the policies and practices of thirty-one New York adult treatment courts included in this sample. While the sample is unlikely to be fully reflective on statewide practices due to limited participation, the general findings are in line with current research on RED in adult treatment courts.

Based upon this report, it appears that adult treatment courts in New York effectively utilize validated assessments to assess both risk and need for all potential program participants and offer a wide variety of standardized services to participants. However, few programs provide sufficient training for staff to meet the needs of a diverse drug court population. While programs express an internal commitment to equity in their programs, few, if any outward facing documents reflect these commitments, which may be deterring non-white participants. Additionally, programs struggle to accurately track their demographic data over time, and where data is tracked, it shows that courts need to work on recruitment and retention of non-white participants in their programs.

At the same time, the aggregated scores suggest there is much to be proud of, both in terms of the data being collected, and the program staffs' evident willingness to work on making their programs more equitable. This report reflects significant success in serving the needs of non-white participants and provides a springboard to continue this good work.

ENDNOTES

1. Michael Rocque, "Racial Disparities in the Criminal Justice System and Perceptions of Legitimacy: A Theoretical Linkage," Race and Justice 1, no. 3 (Summer 2011): 292-315. https://doi.org/10.1177%2F2153368711409758.
2. Anne Dannerbeck et al., "Understanding and Responding to Racial Differences in Drug Court Outcomes," Journal of Ethnicity in Substance Abuse 5, no. 2 (Winter 2016): 1-22 https://www.tandfonline.com/doi/abs/10.1300/J233v05n02_01.
3. DeMatteo, D. et al. "Outcome trajectories in drug court: do all participants have serious drug problems?" Criminal Justice and Behavior, no. 4 (2009): 354-368. https://journals.sagepub.com/doi/10.1177/0093854809331547
4. Sakala, L. Breaking down mass incarceration in the 2010 census: State-by-state incarceration rates by race and ethnicity. Prison Policy Initiative (2014) https://www.prisonpolicy.org/reports/rates.html
5. Marlowe, D.B. et al "Painting the current picture: A national report on drug courts and other problem-solving courts in the United States." National Drug Court Institute (2016)   https://www.researchgate.net/publication/331374798_Painting_the_Current_Picture_A_National_Report_on_Drug_Courts_and_Other_Problem-Solving_Courts_in_the_United_States#fullTextFileContent