

# SHOTS IN THE DARK:

an evaluation of  
New York's

## TARGET CRIME INITIATIVE PROGRAM

a report of the  
New York State  
Assembly

**Standing  
Committee  
on**

**Codes**

Assemblyman  
Sheldon Silver,  
Chairman

**Standing  
Committee  
on**

**Oversight,  
Analysis and  
Investigation**

Assemblyman  
Richard Brodsky,  
Chairman



Mel Miller,  
Speaker of Assembly

September 1989

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A Report of the New York State Assembly

Standing Committee on Codes  
(Assemblyman Sheldon Silver, Chairman)

Standing Committee on Oversight, Analysis and Investigation  
(Assemblyman Richard Brodsky, Chairman)

MEL MILLER, SPEAKER

September 1989

## ACKNOWLEDGEMENTS

This report reflects the contributions of many individuals. Ed Wassermann is the principal author and researcher; Andrea Zaretzki, Fred Jacobs and Charlie King provided editorial review and guidance along the way. Others assisting with research or commentary were Bob Carrothers, Brad Middlekauff, Tara Flynn, Michael Freedman and Richard Watts.

In conducting the research for this report, the Committees had the opportunity to interview many persons involved with implementing and administering the TCI program. First and foremost were the many local officials and other personnel who ran the programs. There was also extensive interaction with DCJS personnel. We found the staffs cooperative and forthcoming in their responses to our repeated questions and numerous requests for information and data. We believe that their candid responses were offered out of genuine concern that the various processes be improved and the deficiencies corrected. Without their input, our report would not have been as informed or comprehensive, and we thank them for their contributions. Readers should note that absent any compelling reason to link specific comments to these sources, they are referred to collectively as "staff" or "officials" throughout this report.

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THE ASSEMBLY  
STATE OF NEW YORK  
ALBANY

Dear Speaker Miller:

The Assembly's review of the Target Crime Initiative (TCI) program has proven timely. The 1989/90 Executive Budget urged the merger of TCI with several other criminal justice programs. According to the Governor's proposal, targeted programs such as TCI, the Major Offense Police Program and the Emergency Felony Program would cease to exist. In their place was proposed a State aid package no longer targeted by the State for particular criminal justice purposes. Instead, localities would be free to apply State funds to a multitude of purposes within such functional areas as prosecution, defense, crime laboratories and special narcotics prosecution.

The merger of the programs was not, in and of itself, a bad idea. Indeed, such a merger could yield greater coordination between the various criminal justice entities and, in turn, a more effective operation. However, without focusing and targeting the spending of State dollars, we would endanger the role the State has traditionally played in support of local criminal justice efforts. That role is to supplement with State aid, and not supplant, local criminal justice efforts.

Armed with the information learned during the Assembly's oversight review of TCI, we supported the Governor's proposal to merge the programs, contingent on the establishment of a process "tight" enough to ensure accountability, yet flexible enough to accommodate local needs. The budget as enacted preserved the principle of targeting, yet recognized the need for a more comprehensive and intensive study to determine new areas for a redirection of State resources. Until such a determination is made, the budget also made clear that all criminal justice funds appropriated as aid to localities "shall, where appropriate, be made available to recipients of prior year funding ... at the same level of funding as the prior year for services and expenses not inconsistent with the goals and objectives of such predecessor programs." As we "freeze" the programs to develop a new fiscal and programmatic direction, we must draw upon the lessons of the State's TCI experience as outlined in this report.

We are pleased to submit this oversight report for your review. As we seek to carry out the new Fiscal Year mandates, be assured of our continued commitment to closely monitor the use of State dollars in the criminal justice system.

Sincerely,

A handwritten signature in cursive script, reading "Sheldon Silver".

Sheldon Silver  
Chairman  
Codes Committee

A handwritten signature in cursive script, reading "Richard Brodsky".

Richard Brodsky  
Chairman  
Oversight, Analysis and Investigation  
Committee

## EXECUTIVE SUMMARY

What was the original purpose behind the Target Crime Initiative program? How did it operate? How did it get there? Did the program need fixing and, if so, what needed to be done? These are the key questions addressed in this report.

The TCI program was created on April 1, 1983, as a consolidation of the State Felony Program (1973), the Major Violent Offense Trial Program (1978) and the Major Offense Prosecution Program (1981). The intent of these programs was to provide funds to localities for the special handling of serious and/or repeat felony offenders. To date, New York State has spent over \$618 million on these programs by supplementing 30 county budgets (including New York City) for prosecution, public defense, probation, crime laboratory, and sheriff/correction services. Specifically, over \$293 million has been spent on the TCI program (see Appendix A) and over \$325 million on the three predecessor programs which became TCI in 1983 (see Appendix B).

Because of its legislative oversight responsibilities and the substantial outlay of State resources involved, the New York State Assembly began an extensive examination of the TCI program in 1987. A joint oversight project was begun between the Codes Committee and the Oversight, Analysis and Investigation Committee.

The Assembly's review revealed that there was nothing very "targeted" about the TCI program in terms of either case type or case management. Localities were, for the most part, free to target any cases they desired in any way they desired.

Thus, while the TCI program, as implemented, was little more than a mechanism to funnel non-targeted local assistance funding, that was not the original intent. Perpetuation of this practice would have posed a multitude of risks; certainly, codification of such a practice would have been an irresponsible and inefficient use of State resources.

Programmatic integrity must exist at both the State and local ends of the criminal justice funding stream. This Assembly report identifies problem areas and offers solutions to ensure the effective, targeted use of State resources, and the means to assist local governments in their primary role as operators of the criminal justice system. The following findings and recommendations highlight the need for, and represent the means to, a more accountable public policy for criminal justice expenditures.

### FINDINGS

- (1) Confusion over the legislative intent behind the TCI program at both the State agency and local levels;
- (2) Ineffective State agency oversight of program operations;
- (3) Collection of meaningless data and reporting of such data as proof that the program "worked";
- (4) Resource gaps which impeded the ability of some components to effectively process targeted cases.

### RECOMMENDATIONS

- (1) Codify State-funded criminal justice programs;
- (2) Establish meaningful and measurable goals, objectives and priorities which apply to each criminal justice component;
- (3) Create new reporting systems;
- (4) Take steps to eliminate resource gaps;
- (5) Create an intergovernmental working group.



## RESEARCH METHODOLOGY AND SAMPLE POPULATION

The goal of this oversight project was to produce a descriptive study of the Target Crime Initiative program. The methodology involved surveying, site visits, review of agency files, and interviews with agency and local personnel. (See Appendix C for a sample copy of the surveys used in this review.)

Data on the TCI program was collected from 80 percent of all TCI-funded agencies (63 of 79 components). The 63 components which comprised the sample population accounted for 97 percent of the total TCI funds disbursed for FY 87/88 (\$50,652,507 of \$52,440,200).

Specifically, data was collected from 25 of 30 district attorney offices; 16 of 27 public defense offices; 8 of 8 probation offices; 7 of 7 crime laboratories; and 7 of 7 sheriff or correction offices. (See Appendix D for a comprehensive list of those components on which data was supplied and/or collected for this oversight project, as well as additional information on the research methodology.)

## I. LEGISLATIVE INTENT OF TCI

The TCI program was created pursuant to the State Budget on April 1, 1983, "as the result of a recommendation by the Governor to the Legislature to merge three previously-funded but somewhat disparate programs into one comprehensive anti-crime package."<sup>1</sup> The program was to be administered through the State Division of Criminal Justice Services (DCJS).

Because the TCI program was not described in statute, an examination of the three predecessor programs is necessary to understand the original legislative intent of TCI.

### A. State Felony Program (SFP).

The State Felony Program (SFP) was the largest and oldest of the predecessor programs. It was established by statute in 1973 in response to the "Rockefeller drug laws" of that same year which substantially increased penalties (and severely restricted plea bargaining opportunities) for predicate felons and drug offenders.<sup>2</sup>

Anticipating a rise in felony trials as a result of the corresponding Penal Law amendments, the State authorized 100 percent reimbursement for costs related to any additional court parts opened in response to the law. The result was the establishment of 49 fully-staffed court parts dedicated to enhanced processing of drug and/or predicate felony matters.

The 1973 changes in the Penal Law created heavier workloads for district attorneys, public defense offices, probation departments, crime laboratories, and sheriff or correction departments. Hence, State monies were made available to some or all of these components, depending on the jurisdiction.

Table A lists by county the criminal justice components which received State assistance under the State Felony Program:

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<sup>1</sup> See New York State Division of Criminal Justice Services Budget Request for FY 1986/87; see also DCJS Newsletter, Target Crime Initiative Program, Vol. 1/No. 2 (October 1986), p.1.

<sup>2</sup> Chapter 603, L. 1973.

TABLE A

County	Prosecution	Defense	Probation	Lab	Sheriff/Correction
Bronx	x	x	x	x	x
Kings	x	x	x	x	x
New York	x	x	x	x	x
Queens	x	x	x	x	x
Richmond	x	x	x	x	x
Erie	x	x	x	x	x
Monroe	x	x	x	x	x
Nassau	x	x	x	x	x
Suffolk	x	x	x	x	x
Westchester	x	x	x	x	x
Onondaga	x	x	x	x	
Albany	x	x	x		

#### B. Major Violent Offense Trial Program (MVOTP)

The Major Violent Offense Trial Program (MVOTP) was established by statute in 1978.<sup>3</sup>

In addition to creating two new categories of offenders called "juvenile offenders" and "armed felony offenders", the specific purpose of MVOTP was "to provide additional resources to the courts and local criminal justice agencies to insure swifter and more effective processing of certain criminal actions and proceedings, and to reduce the administrative pressures for inappropriate plea bargaining in such cases."<sup>4</sup>

The State intended MVOTP to accomplish the following:

- \* Enhance case processing and sentencing of certain violent felony offenses;<sup>5</sup>

- \* Restrict plea bargaining in such cases;<sup>6</sup>

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<sup>3</sup> Chapter 481, L. 1978, sec. 61.

<sup>4</sup> See c. 481, L 1978, sec. 61(2).

<sup>5</sup> See c. 481, L 1978; see also the following New York State Division of Criminal Justice publications: Semi-Annual Report-Violent Felony and Juvenile Offenses in New York State, August 1981, p. 1; DCJS Budget Request, 86/87; Report on the Implementation of the Major Violent Offense Trial Program, February 15, 1979, p. 126; Career Criminal Prosecution Programs-Final Report, section 4 (undated).

<sup>6</sup> Chapter 481, L. 1978, sec. 61(2).

\* Allow for representation by a single counsel throughout various stages of such cases (vertical representation);<sup>7</sup>

\* Absorb the potential increased workload created by predicted increased trial rates in such cases;<sup>8</sup> and

\* Reduce delay in the disposition of these cases.<sup>9</sup>

Table B lists by county the criminal justice components which received State assistance under MVOTP:

TABLE B

County	Prosecution	Defense	Probation	Lab	Sheriff/Correction
Bronx	x	x	x		x
Kings	x	x	x		x
New York	x	x	x		x
Queens	x	x	x		x
Richmond	x	x	x		x
Erie	x	x	x		x
Monroe	x	x	x		x
Suffolk	x	x	x		x
Westchester	x	x	x		x
Onondaga	x	x	x		x

#### C. Major Offense Prosecution Program (MOPP)

The Major Offense Prosecution Program was established in 1981 pursuant to the FY 1981/82 State Budget.

MOPP began as a federally-funded program in 1973 that was based on research showing that a relatively small number of high-rate offenders (recidivists) were responsible for a disproportionate share of serious criminal acts.<sup>10</sup> The theory was

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<sup>7</sup> See DCJS Semi-Annual Report, August 1981, *supra*, note 5.

<sup>8</sup> Id.

<sup>9</sup> Id.; see also c. 481, L. 1978, sec. 61(2).

<sup>10</sup> M. Wolfgang, R. Figlio & T. Sellin, Delinquency in a Birth Cohort (1972). Several researchers have since reaffirmed Wolfgang, et al, that a small number of offenders account for a disproportionate amount of crime. See J. Petersilia, Focusing Attention on Career Criminals - An Idea Whose Time Has Come (RAND P-6112, 1978); K. Williams, The Scope and Prediction of Recidivism (INSLAW, Promis Research Publication No. 10, 1979).

developed that by imprisoning these offenders, crime would be reduced significantly.<sup>11</sup> That theory has never been validated, and the art of "predicting which offenders will be high-rate offenders remains as yet an inexact science."<sup>12</sup>

One of the first test sites for the original research was the Bronx County District Attorney's office which received federal funds in 1973 to establish the nation's first Major Offense Bureau.<sup>13</sup> The purpose of the Bronx Bureau was to expedite the processing of serious felony cases involving homicide, robbery, rape, assault, and burglary.<sup>14</sup> The Bureau was to serve as the prototype for over 100 Career Criminal Prosecution Programs (CCPPs) to be established by the federal government in 30 of the 50 states, including several sites in New York.<sup>15</sup> Based on the Bronx experience, CCPPs nationwide did, in fact, share a few common features:

- \* independent organizational units;
- \* a system of prompt notification of potentially qualifying cases to the special unit from law enforcement;
- \* investigative coordination with law enforcement;
- \* standardized intake procedures to identify qualifying offenders (emphasis was placed on the nature of the offense, the defendant's criminal history, and the strength of the case);
- \* vertical prosecution;
- \* limited plea bargaining;

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<sup>11</sup> James Q. Wilson has been a major proponent of this position. See, J. Wilson, Thinking About Crime (1975); Wilson and Boland, "Crime", in The Urban Predicament 179 (1976).

<sup>12</sup> See J. Stewart, "NIJ Director's Message", in N. Morris & M. Miller, "Predictions of Dangerousness in the Criminal Law" (NIJ - Research in Brief - March 1987), p. 1.

<sup>13</sup> W. DeJong, Policy Briefs - Career Criminal Programs, U.S. Department of Justice (September 1980), p. 1, et seq.

<sup>14</sup> See CCPP Final Report, supra, note 5, at section 2.

<sup>15</sup> See Chaiken & Chaiken, Selecting "Career Criminals" for Priority Prosecution (NIJ, June 1987), p. 1; see also Springer, Phillips & Cannady, The Effectiveness of Selective Prosecution by Career Criminal Programs (NIJ, December 1985), pp. 2-3.

- \* coordination with the courts, including a priority scheduling procedure and separate trial sessions; and
- \* coordination with corrections, including involvement in parole determinations.<sup>16</sup>

In 1978, New York State received a \$2 million federal grant to jointly fund a 13-county CCPP with the federal government.<sup>17</sup> The objective of the CCPP, which contained only a prosecution component at the time, was "to strengthen and coordinate prosecutorial capability to give priority emphasis to the investigation, identification, prosecution, conviction and eventual incarceration of career criminals so as to reduce opportunities to commit subsequent criminal offenses."<sup>18</sup> Facing the dissolution of the federally-funded LEAA program, then Assembly Codes Committee Chairman Mel Miller identified the career criminal program as important enough to continue, supported wholly with State dollars. Following his lead, the State completely took over funding of the CCPP in 1980, and from 1981 until 1983 continued to fund the program but under a new name - the Major Offense Prosecution Program.<sup>19</sup> At this point, the defense component, pursuant to an Assembly initiative, was also funded.

Table C lists by county the criminal justice components which received State assistance under MOPP:

TABLE C

County	Prosecution	Defense	Probation	Lab	Sheriff/Correction
Bronx	x	x			
Kings	x	x			
New York	x	x			
Queens	x	x			
Richmond	x	x			
Erie	x	x			

<sup>16</sup> See DeJong, supra, note 13, at 2-3.

<sup>17</sup> The grant added the crimes of arson and kidnapping to the list of those crimes originally prosecuted by the Bronx Bureau. The program targeted "felony offenders who had repeatedly eluded proper punishment because of the financial limitations of the criminal justice system." See CCPP Final Report, supra, note 5, at sections 2 & 6.

<sup>18</sup> Id.

<sup>19</sup> Target crimes were expanded in 1981/82 to include offenses which involved the use of certain weapons and narcotics.

TABLE C

(continued)

County	Prosecution	Defense	Probation	Lab	Sheriff/Correction
Monroe	x	x			
Nassau	x	x			
Suffolk	x	x			
Westchester	x	x			
Onondaga	x	x			
Albany	x	x			
Broome	x	x			
Chemung	x	x			
Orange	x	x			
Rockland	x	x			
Steuben	x	x			
Ulster	x	x			

#### D. Target Crime Initiative Program (TCI)

As previously mentioned, TCI was created pursuant to the State Budget on April 1, 1983, to merge the three predecessor programs described above. The intent behind the TCI program was emphasized by the following:

\* Then Assembly Codes Committee Chairman Mel Miller noted in his 1983/1984 Assembly Codes Committee Report that the new Target Crime Initiative program was intended to aid "local district attorneys and judges, probation officers and sheriffs, correction departments and crime laboratories to process, investigate and prosecute cases of serious offenders. It joins together three previously independently funded programs (Career Criminal, State Felony and Major Violent Offense Trial) and centralizes their operations. Localities will set their own priorities for the types of serious crimes which they wish to target and permits change consistent with fluctuating crime patterns, public policy concerns and programming trends."

\* Then-DCJS Commissioner Richard Condon noted that "the primary goal of TCI is to combat serious and violent felony crime and target the swift adjudication of habitual and violent offenders."<sup>20</sup>

\* Governor Cuomo later reiterated that the TCI program was a vehicle for "allocating funds to ... prosecutors and other local agencies for targeting and putting away the hardcore, repeat offenders who are responsible for such a disproportionate amount of serious crime"; he stated further that "[t]argeted enforcement

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<sup>20</sup> See DCJS internal memorandum from Commissioner Condon, Statewide Briefing Notes: Target Crime Initiative Program (February 11, 1986), p.1.

programs are an essential element in the State's plan for crime control."<sup>21</sup>

\* Current DCJS Commissioner John J. Poklemba recently noted that the main goal of the TCI program was "to expedite the adjudication of serious/violent felony and repeat offenders."<sup>22</sup>

\* A full 80 percent of the sample population for this oversight project thought that the original intent behind the TCI program was indeed targeted toward the special processing of serious and/or repeat felony offenders.

The TCI program was expanded by FY 1987/88 to include prosecution and defense components in 12 new counties in addition to the counties and components funded under the predecessor programs.<sup>23</sup> Table D lists by county the criminal justice components which received State assistance under TCI:

TABLE D

County	Prosecution	Defense	Probation	Lab	Sheriff/Correction
Bronx	x	x	x	x	x
Kings	x	x	x	x	x
New York	x	x	x	x	x
Queens	x	x	x	x	x
Richmond	x	x	x	x	x
Erie	x	x	x	x	x
Monroe	x	x	x	x	x

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<sup>21</sup> See Cuomo, "New York State's Efforts to Target Career Criminals", Police Federation News (September 1985), p. 3.

<sup>22</sup> See letter from DCJS Commissioner John J. Poklemba to the State Deputy Comptroller (October 31, 1988), p. 5.

<sup>23</sup> The counties newly introduced into TCI were suburban and rural counties of moderate size. Distribution of TCI funds within the new jurisdictions was patterned after that of already-funded TCI jurisdictions of similar size which, in turn, drew their funding patterns exclusively from the predecessor MOPP. Unfortunately for the defense, MOPP produced the least equitable distribution of funds between the prosecution and defense. (The prosecution/defense ratio in MOPP was 4/1, while in SFP and MVOTP it was 1.4/1.) Thus, as counties were introduced into TCI, the defense received a disproportionately smaller share of the funds. In addition, probation departments, crime laboratories, and sheriff or correction departments within these jurisdictions received no funds, thus paralleling the predecessor MOPP program (See Appendix E).



TABLE D

(continued)

County	Prosecution	Defense	Probation	Lab	Sheriff/Correction
Nassau	x	x	x	x	x
Suffolk	x	x	x	x	x
Westchester	x	x	x	x	x
Onondaga	x	x	x	x	
Albany	x	x	x		
Broome	x	x			
Chemung	x	x			
Orange	x	x			
Rockland	x	x			
Steuben	x	x			
Ulster	x	x			
Oneida	x	x			
Dutchess	x	x			
Niagara	x	x			
Saratoga	x	x			
Rensselaer	x	x			
Schenectady	x	x			
Chautauqua	x	x			
St. Lawrence	x	x			
Oswego	x	x			
Jefferson	x	x			
Ontario	x	x			
Sullivan	x	x			

## II. PROGRAMMATIC OVERSIGHT

### A. The Agency View

As seen, the intent behind the TCI program, like its predecessors, was to focus State resources on the special handling of cases involving serious and/or repeat felony offenders. It is clear, however, that DCJS administered the program with few, if any, strings attached. DCJS officials told us that "serious efforts were never made" to enforce DCJS guidelines or set standards; that "any case" could qualify for TCI depending on what the component "wished to target"; and that they had "no idea" if TCI funds were having their desired effect or if TCI staff were indeed working on TCI cases. Capsulating the agency's current view, DCJS Executive Deputy Commissioner Barry C. Sample noted, "the original concept underlying funding of non-prosecution components was ... to enhance their overall

capacity."<sup>24</sup>

#### B. The Component View

Given the agency's view of its programmatic oversight function, it was not surprising to learn the following from local TCI components: 76 percent commented that monitoring visits were, at best, perfunctory; and 65 percent complained that new DCJS personnel were not familiar with the history of the TCI program, at least with regard to their components (e.g., "we always had to fight over old ground with new DCJS personnel"). One local official we interviewed had this to say about the Assembly's oversight review of the TCI program: "We'd been expecting something like this for years. The program went from strict guidelines ten years ago to practically anything we wanted. We couldn't figure out the purpose of TCI anymore."

#### C. The Reality - Confusion and Drift From Original Intent

The following data, collected over the course of this review, highlight component confusion resulting from a drift from the original intent behind the TCI program:

- \* 43 percent of the sample population (27 components) considered misdemeanants to be eligible for TCI designation and 81 percent of that sub-population (22 components) applied TCI funds to the handling of these and other cases. One of these components funded its entire misdemeanor program with TCI funds.

- \* only 21 percent of the sample population (13 components) considered serious and/or repeat felons to be exclusively eligible for TCI designation, and just 38 percent of that sub-population (five components) reserved TCI funds for the handling of those cases; the remaining 62 percent of that sub-population (eight components) continued to apply TCI funds to the handling of other cases as well. In other words, while this group correctly understood that the intent was to target serious offenders, their actions proved otherwise.

- \* 17 percent of the sample population (11 components) claimed greater expediency in the handling of TCI-designated cases than in non-TCI cases of similar seriousness.

- \* only 14 percent of the sample population (nine components) claimed that additional resources were more likely to be applied to TCI-designated cases than to non-TCI cases of similar

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<sup>24</sup> See letter and memorandum from Executive Deputy Commissioner Barry Sample to Assemblyman Sheldon Silver entitled Preliminary Plan for Periodic Reports on Target Crime Initiative Program (August 4, 1988), p. 14.

seriousness.

\* only 32 percent of the sample population (20 components) claimed that caseloads for staff handling TCI-designated cases were lower (and then only slightly) than for staff handling non-TCI cases of similar seriousness. The remainder of the sample population claimed an officewide reduction in staff caseload by virtue of TCI funds.

\* only 24 percent of the district attorney offices in the sample population (6 of 25 offices) claimed more restrictive plea bargaining policies on TCI-designated cases than on non-TCI cases of similar seriousness prior to arraignment in felony court.<sup>25</sup>

\* only 5 percent of the sample population (three components) reported significant coordination with other criminal justice components (e.g., law enforcement, courts, other TCI components) in the handling of TCI cases.

\* 21 percent of the sample population (13 components) considered prior felony arrests in deciding whether or not to designate a case as TCI; 29 percent of the sample population (18 components) considered prior misdemeanor convictions in designating cases as TCI.

#### D. The Causes

DCJS officials contended that a primary cause for the problems with programmatic oversight was that TCI lacked real "teeth" and was a "non-program" in need of a clear statutory mandate. As a result, these officials complained of being "frustrated" administratively in their dealings with local components unwilling to cooperate for the amount they received through the TCI program.<sup>26</sup>

DCJS also contributed to the problems of oversight in its

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<sup>25</sup> This percentage may be underrepresentative as the issue was not addressed uniformly as part of the data collection process. Rather, the issue was addressed only during the site visit and follow-up processes with select TCI components.

<sup>26</sup> This claim contradicted the statements of most TCI recipients we spoke to. Most had come to rely heavily on the TCI funds, no matter how small a percentage of their total budget, and expressed a willingness to alter operations to continue receiving the State assistance. Regardless, since the contractual "ground rules" for receiving State aid included compliance with DCJS-established guidelines, the monitoring agency had a responsibility to hold the components accountable.

development of the guidelines for use in the State contract with TCI-funded entities. The guidelines - which included four priorities, one goal and seven objectives - were either dysfunctional and thus ignored, or unevenly applied.<sup>27</sup>

#### 1. The Priorities

The priorities developed by DCJS for the TCI program were as follows:

- (1) repeat offenders, as defined by the county, and charged with a violent felony classification of robbery, rape, burglary, homicide or aggravated assault;
- (2) violent felony offenders;
- (3) repeat offenders charged with a non-violent felony offense;
- (4) all other felony offenders.

Appendix C to the State contract allowed prosecutors to move flexibly between and among the priorities; the defense and other components were contractually bound to the order as stated.<sup>28</sup> Interestingly, some DCJS officials were unaware of the variance and hence claimed not to hold any of the components to the priority ranking. As a practical matter, most of the non-prosecution components were as little bound to the priorities as the prosecutors and were in fact instructed by DCJS to choose as needs dictated. The result? A full 75 percent of the components in the sample population proceeded immediately to the fourth category and designated any felony offender as eligible for TCI treatment; 43 percent went "off the board" totally and also considered misdemeanants as TCI; only 8 percent of the components in our sample population dedicated TCI funds exclusively to the processing of serious and/or repeat felony offenders.

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<sup>27</sup> Consequently, we also agree with the State Comptroller that "an overall evaluation of the [TCI] contractor is not developed because the Division does not have expected performance standards," nor has it "consistently applied objective methods for monitoring contractor compliance with the terms of the contract." See State Comptroller Report, 87-S-117, Division of Criminal Justice Services - Contract Management (December 1, 1988), p. 4, MS-1.

<sup>28</sup> See Appendix F.

## 2. The Goal and Objectives - As Applied to the Non-Prosecution Components.

As seen below, the goal and objectives were prosecution oriented, having little to no application to the daily work of the other TCI-funded components - defense, probation, laboratories and correction or sheriff offices:<sup>29</sup>

The goal: "Expeditious prosecution of repeat offenders, violent felony offenders, and/or felony offenders."

Objective #1: "Facilitate the flow of prosecution funds provided by the State of New York."

Objective #2: "Maintain an enhanced level of resources to expedite the processing of felony cases through the criminal justice system."

Objective #3: "Increase the number of indictments against repeat offenders by concentrating resources in this area."

Objective #4: "Eliminate plea bargaining except under extraordinary circumstances in cases involving repeat offenders."

Objective #5: "Limit the caseloads of attorneys assigned to prosecute repeat offenders when feasible."

Objective #6: "Increase the rate and level of conviction for defendants prosecuted by TCI attorneys."

Objective #7: "Enhance efforts to increase the number and length of state prison sentences for TCI defendants."

Defense components, for example, complained that each year they were requested by DCJS to sign a contract for TCI funds that required them, among other things, to increase "the number of indictments", "the rate and level of conviction" and "the number and length of state prison sentences for TCI defendants"; they, of course, refused, the process was delayed and "precious time" was wasted on matters thought to be resolved. Also, as pointed out by 73 percent of the defense components, the guidelines ran counter to their constitutionally-based mandate to effectively

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<sup>29</sup> As of 12/1/88, the State Comptroller also viewed the TCI program as enhancing "the prosecution of repeat and violent felonies" (See State Comptroller Report, supra, note 27, at 1).

represent those accused of crime.<sup>30</sup>

Additionally, 66 percent of all non-prosecution components complained that the forms they were asked to fill out for use by DCJS failed to reflect the functions they provided; only 14 percent of the laboratory and sheriff/correction components viewed the guidelines as applying to them; 64 percent of those offices said in response to the survey that they viewed TCI funds as straight local assistance; 42 percent indicated a misunderstanding as to what the program was about; one lab component that received TCI funds since 1983 asked, quite offhandedly, "What's a TCI case?" Thus, DCJS was correct in pointing out that "[p]robation, lab and correctional services are unlikely even to be aware which cases are TCI vs. non-TCI."<sup>31</sup>

### 3. The Goal and Objectives - As Applied to the Prosecution Component.

It is clear that the component most affected by the guidelines was the prosecution. Unfortunately, oversight of even the prosecution was impossible because the guidelines were impractical for that component as well. The goal and objectives presented inherent problems for the prosecution which resulted in sporadic compliance. In this regard, the goal and each objective is discussed below:

The goal: "Expeditious prosecution of repeat offenders, violent felony offenders, and/or felony offenders."

The goal of "expeditious prosecution" was, for the most part, not being satisfied and was probably unattainable for the TCI program as designed by DCJS. Only 24 percent of the prosecutors in the sample population reported expediency in the handling of TCI cases over non-TCI cases of similar seriousness.

Indeed, the introduction of additional resources into the processing of a case can increase rather than decrease disposition time. A 1980 study of the career criminal unit within the Los Angeles County District Attorney's office showed that unit attorneys devoted five to seven times as many attorney hours to achieve a conviction via plea or trial of habitual offenders than to cases of other offenders processed through regular

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<sup>30</sup> Note that this percentage, as well as others cited in this section, may be underrepresentative for the reasons stated, supra, in note 25.

<sup>31</sup> See letter and memo from Executive Deputy Commissioner Sample to Assemblyman Silver (August 4, 1988), p. 14.

prosecution.<sup>32</sup> A significant portion (percentages not available) of these prosecutors also reported early intervention, prosecutorial involvement in filing initial complaints, and immediate scheduling of preliminary hearings on targeted cases. Apparently, these factors had no impact on expediency in the processing of those caseloads. A review of the California Career Criminal program revealed that expediency was the only area in which the program units had not met the stated program objectives successfully: there was no decrease in the amount of time required to prosecute targeted cases.<sup>33</sup> Why? The study failed to specify, but other research suggested that it was due to "the complex processes that govern program success" which were largely beyond the control of the prosecution.<sup>34</sup> This explanation would appear to hold true for New York State, as 35 percent of the components in the sample population claimed that the courts and/or crime laboratories were the primary bottlenecks in the system.<sup>35</sup>

Another problem with the goal of expediency regarded the issue of "tradeoff". For some of New York's prosecutors, expediency was sometimes "traded off" to achieve other objectives, e.g., the elimination of plea bargaining, an increase in the number of indictments, an increase in the rate and level of conviction, and an increase in the number and length of prison sentences.

Objective #1 - "Facilitate the flow of prosecution funds provided by the State of New York."

This objective was more a "means" to an end than a clear program objective. Furthermore, it was difficult to discern what

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<sup>32</sup> See W. Rhodes, Investment of Prosecution Resources in Career Criminal Cases (1978), p. 120.

<sup>33</sup> See Phillips and Cartwright, "The California Career Criminal Prosecution Program One Year Later," The Journal of Criminal Law and Criminology, 1980, Northwestern University School of Law, pp. 107, 110.

<sup>34</sup> See J. Bartolomeo, "Practitioners' Attitudes Toward the Career Criminal Program," The Journal of Criminal Law and Criminology (1980), p.113.

<sup>35</sup> The impact of local court culture on system adjudication is well recognized in New York State. See, Church, Examining Local Legal Culture Practitioner Attitudes in Four Criminal Courts (Washington, D.C.: U.S. Department of Justice, National Institute of Justice - 1982); Justice Delayed: The Pace of Litigation in Urban Trial Courts (Williamsburg, VA: National Center for State Courts - 1978).

exactly was meant by "facilitate", thus making it impossible to accurately measure whether this "objective" was being successfully implemented.

Objective #2 - "Maintain an enhanced level of resources to expedite the processing of felony cases through the criminal justice system."

Aside from the fact that expedience was unattainable for the reasons mentioned above, the resource issue remained a legitimate one for all TCI components. However, given that most prosecution offices failed to either reduce caseloads among TCI staffers or make auxiliary resources more available in TCI cases than in non-TCI cases, the objective was seldom met.

Objective #3 - "Increase the number of indictments against repeat offenders by concentrating resources in this area."

Objective #6 - "Increase the rate and level of conviction for defendants prosecuted by TCI attorneys."

Objective #7 - "Enhance efforts to increase the number and length of state prison sentences for TCI defendants."

The first problem with these objectives was the "tradeoff" issue mentioned above. It has been shown that some New York State district attorneys who demonstrated strong performance on one objective often demonstrated significantly weaker performance on others.<sup>36</sup> For example, some prosecutors who achieved high conviction rates often sacrificed high grade convictions and longer prison sentences (the reverse was also true). And those who achieved high indictment rates often did so at the expense of strict plea bargaining practices.<sup>37</sup> Thus, for some prosecutors these desirable objectives, when put into actual practice, were exclusive of others.

Second, the fulfillment of these objectives was often determined by factors which remained unaffected by increased prosecutorial resources, e.g., availability of witnesses, strength of evidence, judicial discretion at sentencing.<sup>38</sup> Thus, it would be very difficult to hold prosecutors accountable for not implementing these objectives - a difficulty shown to exist when attempting to oversee any program that seeks to gauge its success by measuring certain "outcomes" like indictment, conviction and incarceration rates or sentence length. For

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<sup>36</sup> See Springer, *supra*, note 15, at 7.

<sup>37</sup> Id.

<sup>38</sup> See L. Wilkins, J. Kress, D. Gottfredson, J. Calpin and A. Gelman, Sentencing Guidelines: Structuring Judicial Discretion (1978).



example, one study revealed that the probability of conviction, as well as the probability of prison sentence, depended on more than the expenditure made on prosecution. In fact, it has been statistically demonstrated that the probability of conviction in one jurisdiction actually decreased as the expenditure on criminal cases increased.<sup>39</sup> It is thus clear that "the belief that simply providing the prosecutor with added resources will produce direct effects on criminal justice system performance measures does not fully consider the complexities of that system and the limited role that the prosecutor plays in its operation."<sup>40</sup> It has been noted that "[t]he outcomes that evaluation researchers study are similar to those that concern prosecutors, e.g., incarceration rate and sentence length. Nevertheless,... this approach is truncated and ultimately unconstructive. The unconstructive quality of evaluation research stems from its failure to appreciate the complex processes that govern program success \*\*\* [T]hese studies cannot avoid generating frustrations among practitioners and policymakers alike, no matter how favorable their results."<sup>41</sup>

Finally, these objectives do not lend themselves to simple quantification because there are many case characteristics which must be accounted for when undertaking program evaluation. DCJS Commissioner Poklemba recently confirmed this problem with these objectives: "In terms of evaluation, it must be acknowledged that certain of these objectives are not readily subject to quantification ... It would not be possible to unequivocally state (or statistically prove) that TCI enhancement was solely responsible for the ultimate adjudication of targeted cases \*\*\* While it may be possible to evaluate the success of these programs through overall comparison, it would involve identifying many confounding variables, finding a research methodology to control for all of these confounding variables, and on the whole would prove a very costly venture."<sup>42</sup>

In summary, the use of the outcome measures expressed in these objectives was problematic because (1) they were often

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<sup>39</sup> See Rhodes, *supra*, note 32, at 121-123.

<sup>40</sup> See E. Chelimsky and J. Dahmann, "The Mitre Corporation's National Evaluation of the Career Criminal Program: A Discussion of the Findings," The Journal of Criminal Law and Criminology (1980), pp. 105, 106.

<sup>41</sup> See Bartolomeo, *supra*, note 34, at 117; Springer, *supra*, note 15, at 1, *et seq.*

<sup>42</sup> See letter from Commissioner Poklemba to the Deputy Comptroller (October 31, 1988), pp. 5, 9, 10.

exclusive of other desirable objectives; (2) many of the factors influencing the outcomes could not be affected by increased prosecutorial resources; and (3) to the extent increased resources made a difference, that difference was difficult to discern without extensively matching the targeted cases with a control group.

**Objective #4 - "Eliminate plea bargaining except under extraordinary circumstances in cases involving repeat offenders."**

This objective failed to mirror New York practice. Only 12 percent of the prosecution components claimed to have eliminated plea bargaining altogether for TCI cases prior to felony court arraignment; 55 percent of the sampled prosecutorial components reported a firm policy of not accepting negotiated pleas on TCI cases after the cases were arraigned in felony court; and 36 percent of the sampled prosecutors viewed plea bargaining as a means to obtain other objectives of the program, e.g., high rate/level of conviction, expedience, number/length of prison sentence, etc. For them, an elimination of plea bargaining ultimately "traded off" these other desired objectives.

**Objective #5 - "Limit the caseloads of attorneys assigned to prosecute repeat offenders when feasible."**

For the most part, this objective had a great deal of merit. But an objective that allows for implementation only "when feasible" must be questioned as to its ultimate utility.

Reduced caseloads, in addition to channeling more attorney resources to targeted cases, can assist prosecutors to achieve greater interaction with victims, witnesses and law enforcement. However, only 8 percent of prosecutors claiming reduced caseloads reported increased interaction with, for example, law enforcement on TCI cases.<sup>43</sup> Overall, only 32 percent of the sample population claimed to reduce staff caseloads on targeted cases as a result of State funding.<sup>44</sup>

Finally, this objective, though desirable, should be adopted only with full recognition of its limitations. The objective raises the expectation that a limited caseload will impact on

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<sup>43</sup> Interaction with police, as part of a career criminal program, was perceived as the most important objective by district attorneys in New York State and other jurisdictions according to research conducted in 1980. See Bartolomeo, supra, note 34, at 115.

<sup>44</sup> A full 88 percent of the components in our sample population claimed that TCI funds also resulted in an officewide lowering of caseloads.

case processing when in fact local court culture may be more determinative.<sup>45</sup>

#### 4. Data Collection

##### a. General Problems

DCJS collected a great deal of information from TCI components that did not assist the agency in satisfying its oversight responsibilities. Data was collected on case types, case management and case outcomes, and DCJS generated an equal amount of performance (or component) data via statistical reports on rates of conviction, acquittal, indictment, state incarceration, etc.<sup>46</sup> The amount of effort that went into the "collection and crunching" of this data was labor intensive, from the perspective of some local components and DCJS officials - especially DCJS officials.<sup>47</sup>

When asked about the data collection process, a DCJS official responded, "it's a lot of work that produces questionable results." Other key agency officials said that some TCI components failed to supply data on the program; of those who did, many supplied forms filled out by support personnel who were unfamiliar with the intricacies of the TCI program. Agency officials questioned the accuracy of those forms as well as the overall value in collecting TCI data for oversight purposes.

Moreover, DCJS added to the data problems by issuing reports based on low-quality input and through other means. For example, the agency was requested to supply a list of all components receiving TCI funds. The list that was supplied was apparently used as the TCI master mailing list. It was inaccurate as to both address and contact information and the actual number of components receiving TCI funds.

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<sup>45</sup> See Church, *supra*, note 35.

<sup>46</sup> Most district attorneys routinely supplied information on the DCJS-1020 Indictment Statistical System report form (an offshoot of a form used under MOPP), as well as quarterly reports; TCI defense components submitted quarterly reports (and a new defense quarterly report form was being field tested); other components submitted monthly or quarterly reports.

<sup>47</sup> Only 8 percent of the components complained that the reports were too cumbersome to fill out; 66 percent of the non-prosecution components in the sample population complained, however, that the forms were prosecution-oriented and were, hence, an inadequate measure of their particular functions. These percentages may be underrepresentative for the reasons stated, *supra*, in note 25.

It was not surprising then to learn that DCJS officials could not determine whether TCI funds were having their desired effect. Predictable also was the response from 76 percent of the sampled TCI components that DCJS "stats" were of little to no value to them. These components claimed to review the data only to ensure that DCJS had not "misrepresented" the intake numbers from their respective offices;<sup>48</sup> 16 percent of these components reported that they relied on locally-generated statistics which provided the "permutations" uniquely required within their jurisdictions.<sup>49</sup>

#### b. Specific Problems

Our oversight review revealed three specific problems with the TCI data collected by DCJS since 1983; each is discussed below:

i) A TCI case did not always represent the work of a TCI-funded staffer.

The problem, from a statistical standpoint, was that many components reported cases to DCJS as TCI when in fact they represented the work of staff not on TCI-funded lines. There was often no direct relationship between TCI funds and TCI cases, with the number of reported TCI cases far exceeding the number that could actually be covered with the TCI allotment for that component.

The local practice of "backfilling" accounted for this situation, whereby TCI funds were used in whole or in part to hire non-TCI staff to "backfill" positions so more experienced staff could handle targeted cases. A full 17 percent of the sample population used all of their TCI funds to backfill positions with non-TCI staff (as mentioned earlier, one component used TCI funds entirely on its misdemeanor caseload); 41 percent used a portion of their TCI funds to backfill; 20 percent did not use TCI funds to backfill and were surprised to discover that others were allowed to engage in this practice with State monies.<sup>50</sup>

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<sup>48</sup> One DCJS official concurred: "DCJS supplies components with performance data so that they can verify TCI-intake statistics."

<sup>49</sup> The stated percentage may be underrepresentative for the reasons stated, supra, in note 25.

<sup>50</sup> Information on backfilling from 22 percent of the sample population could not be obtained.

This helps explain the State Comptroller's finding that "the program data gathered by the Division from the contractors and reported as examples of TCI program achievement is not always an appropriate measure of program activity. For example, the information base does not trace specific TCI cases to work performed by TCI personnel ... Eight of the 27 counties reported that TCI attorneys handled a disproportionate percentage of the county caseload, as measured by felony indictments handled. For example, Rensselaer County reported that while TCI attorneys accounted for 25 percent of the county's attorneys they handled 93 percent of the county's caseload, and Chautauqua County reported that 20 percent of its attorney workforce was funded by TCI but they handled 70 percent of the caseload. Therefore, these counties have either not achieved the program goal of limiting TCI attorney caseloads or are reporting TCI indictments that are not a result of TCI attorneys. Our review of Division records for ten counties indicated that six of the counties do in fact report as TCI cases those handled by non-TCI attorneys."<sup>51</sup>

The primary reason for "backfilling" offered by 92 percent of the sample population that engaged in the practice was that TCI funds were inadequate to guarantee their most experienced staffers the salary increases and fringe benefit package enjoyed by locally-funded staff. For example, while local cost-of-living increases may be 7 percent, the State may only be 4 percent.<sup>52</sup>

It is revealing to note that 27 components in the sample population which do not backfill (or backfill only in part) handled this problem by splitting salary lines between local and State funds, usually reserving the fringe and cost-of-living portions for local funding and dedicating base salary to the TCI line. Five of the components which did engage in "backfilling" claimed that such a split would present administrative problems for them, but problems which they could "probably" overcome.

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<sup>51</sup> See State Comptroller Report, supra, note 27, at MS-3, 6. As seen, the Assembly oversight investigation revealed the problem of backfilling to be far more pervasive than described by the State Comptroller.

<sup>52</sup> DCJS actually encouraged "backfilling" as a means to get "the biggest bang for the buck."

ii) A TCI case did not have a uniform meaning for TCI components between or within counties.

As previously mentioned, TCI components selected TCI cases based on different criteria. For example, 75 percent of the sample population selected all felonies as TCI; 43 percent considered misdemeanors; 21 percent considered serious and/or repeat felons; 24 percent of the components considered prior arrest when designating cases as TCI; 29 percent considered prior misdemeanor convictions in so designating. As noted by one DCJS official, a TCI case was anything the component "wished to target."

Variance in case selection also highlighted the fundamental problem of lack of coordination between various criminal justice components. Such variance existed between TCI components statewide, as well as between components of the same county. Of the 25 counties on which data was collected, components within 14 counties disagreed as to what constituted a TCI case.

For these reasons, the data lacked meaning for comparative use within and between counties by local components or by the State for oversight purposes.

iii) A TCI case was reported by different components from different stages of the criminal justice process.

Twenty five percent of the defense components in the sample population claimed to report TCI cases to DCJS from a pre-indictment stage (more expressed a desire to do likewise, but were "prohibited" in so doing by DCJS). In contrast, the district attorney components almost universally reported TCI cases from the point of indictment.<sup>53</sup> This variance in reporting practices was usually the product of the different mandates between prosecution and defense. Defense components were seeking to avoid an indictment while the prosecution was attempting to obtain one. Thus, the pre-indictment work of a defense office reflected significant attorney activity which defense components wished to have noted. While understandable, these reporting variances also added to the confusion of case counting and to the

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<sup>53</sup> Information on 10 percent of the prosecution components was not provided in this regard.

dilemma of effective oversight.<sup>54</sup>

### III. RESOURCE GAPS

During the course of this oversight review, a number of resource gaps were identified by some components as impeding their ability to effectively process cases.

#### A. Auxiliary Services

Over 70 percent of the prosecution and defense components claimed a need for additional funds for so-called auxiliary services, i.e., investigative, forensic and other services. The prosecution had come to rely on other criminal justice components to provide much of those services: local, State and Federal law enforcement (investigations); crime laboratories (forensic services); probation (pre-sentence investigation reports). Still, prosecutors complained of an inadequate level of funding for psychiatric and other psychological services. TCI defense components, on the other hand, despite a constitutional mandate to include auxiliary services for their clients in appropriate cases, noted funding deficiencies for such services in all regards.<sup>55</sup> Significantly, most of these defenders complained that an absence of funds for such services had, in many cases, thwarted their attempts to effectively process serious felony cases.

#### B. Base Funding

Most components complained of an inequity in their TCI allotment based on their relative workloads. Six of seven crime laboratories noted inequities when comparing their workloads to those of their counterparts in other jurisdictions. Twelve defense components urged the adoption of a "parity per case" formula that recognized the similarities, rather than traditional differences, in actual prosecution and defense workloads. It was pointed out to us that while prosecutors, unlike defenders, must prepare a case for presentation to the grand jury, the defense has the burden of investigating a case without the assistance of local, State, or Federal law enforcement (as well as preparing a

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<sup>54</sup> DCJS maintains only indictment information and aggregate arrest data, thus making county-specific pre-indictment workload comparisons between prosecutors and public defense components impossible given current reporting practices.

<sup>55</sup> The constitutional mandate with regard to auxiliary services is delineated in Ake v. Oklahoma, 105 S.Ct. 1087 (1985); see also Redick and Martin, "The Right to Experts in Criminal Cases - The Implications of Ake v. Oklahoma," The Defender (July/August 1985), p. 9.

pre-sentence investigation report without outside systemic assistance). Consequently, it was argued that the actual workloads of these two components were far more similar than once thought.

### C. Coordination

A number of prosecutors (nine components) expressed that existing resources could be more effectively utilized if law enforcement were better coordinated with the prosecution.<sup>56</sup> These prosecutors confirmed that "career criminal programs do not operate in a vacuum. Program operation depends on effective coordination with and support from other personnel in the criminal justice system \*\*\* [and] the lack of such cooperation often blunt[s] program effectiveness."<sup>57</sup> As mentioned previously, however, only 5 percent of the sample population (three prosecutors offices) reported significant coordination with law enforcement.

### D. Criminal Histories

Over 80 percent of the defense components in our sample population told us that they must rely on district attorneys for "rap sheet" information (State NYSID reports) and had not received them in a timely fashion for TCI and other purposes (if they received them at all). Case processing was thus stalled. One public defense attorney told us that the district attorney in his county actually provided them with an "edited" version of the State NYSID report. This was so despite current law which mandates that the court, upon receiving a copy of the "rap sheet" from the recipient police agency, furnish a copy to counsel for the defendant.<sup>58</sup> Time delays in getting court files had prompted some defense components to engage in other attempts at gathering this much-needed information.

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<sup>56</sup> It was not surprising to discover that prosecutors in other states also considered police to be the "most important other group" with which to coordinate efforts within a career criminal program; they also noted that the program "required successful interaction with courts and corrections." See Bartolomeo, *supra*, note 34, at 115.

<sup>57</sup> See Bartolomeo, *supra*, note 34, at 113, 115; Springer, *supra*, note 15, at 18, 20; Chaiken, *supra*, note 15, at 1.

<sup>58</sup> See CPL section 160.40.



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RECOMMENDATIONS  
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The following recommendations derive from findings in our study of TCI, but have relevance to the newly devised criminal justice funding stream created in the 1989/90 Budget and to all future criminal justice funding program decisions.

(1) Codify State-funded criminal justice programs.

Statutory language is necessary to specify the legislative intent behind programs like TCI. Legislation should outline the State's desire to (a) target for special processing certain crimes which pose a particular threat to the public safety or welfare; (b) provide guidelines for case processing; (c) make funds available to local governments to supplement - not supplant - the efforts of their various criminal justice components; and (d) monitor the program to ensure that State dollars are achieving their desired ends.<sup>59</sup>

(2) Establish meaningful and measurable guidelines for each criminal justice component.

As with any State-funded initiative, the TCI program was in need of guidelines which ensured that the program operated effectively and as originally intended. As shown, however, the goal, objectives and priorities of the TCI program failed in that regard. We can, however, learn a great deal from that experience.

Consider first the priorities.

The first three TCI case priorities targeted serious and/or repeat felony offenders and presented a programmatically sound response to increases in the index crime rates for those offenses.<sup>60</sup> However, the

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<sup>59</sup> The California code should be referenced in drafting statutory language for New York State.

<sup>60</sup> See DCJS, Office of Justice Systems Analysis - Violent Felony Offenses in New York State - 1979-1985 (May 1987) ("Between 1979 and 1985, approximately 40 percent of all felony arrests in the State were for violent felony offenses"), p. 1; see also Office of Justice Systems Analysis Bulletin - Uniform Crime Reporting (October 1988) ("Violent Crime Increased 8.8% Statewide" and "Property Crimes Increased 6.5% Statewide" from January - June 1988), p. 3.

fourth category - "all other felony offenders" - was overly broad and should not have been included. A new category reflecting current crime trends - such as "all felony drug sale offenders" - should have been substituted. Five of the components in our sample population were already using TCI funds to process felony drug sale cases; eight others expressed a desire to do likewise.<sup>61</sup> (Note that drug offenses now constitute the single largest category of felony arrests; felony drug sale arrests increased twice as fast as drug possession arrests between 1983 and 1987; only homicide arrests were more likely to result in a felony prosecution.)<sup>62</sup>

The goal of the program, as shown above, was also inappropriate. A new and more comprehensive goal, against which all objectives could have been measured, should have been adopted. Consider the following as an alternative for inclusion in the new funding stream:

The goal: To supplement the efforts of local criminal justice components in the special processing of targeted cases through an accountable system of State funding.

Likewise, new objectives for the TCI program, which were both measurable and supportive of the goal, should have been implemented. Consider the following objectives as alternatives:

a) To improve coordination of the program components with each other as well as other criminal justice entities.

This objective would reflect the State's concern - especially in times of austerity - to first coordinate and target existing State criminal justice dollars before backing the crime-fighting effort with added revenue. Serious consideration should have been given to better coordinating certain State and local criminal justice components in this effort. For example, the TCI program should have been coordinated with the Major Offense Police Program (MOPP) given MOPP's focus on major felony offenders and its natural link to coordinated efforts with the prosecution; and the

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<sup>61</sup> This number may be underrepresentative for the reasons stated, supra, in note 25.

<sup>62</sup> See DCJS, New York State Trends in Felony Drug Offense Processing - 1983 - 1987 (October 1988), p. iii, et. seq.

Special Narcotics Program should also have been coordinated with TCI given its focus on the prosecution of cases involving illegal drugs.<sup>63</sup> Improved coordination with the courts, as under SFP, was also desired by six of the TCI components, and greater technical assistance from the State and the Office of Court Administration should also have been given to such coordination.

b) To limit caseloads for staff handling TCI cases.

Statewide and/or local standards should have been established with regard to caseload levels. As learned during the oversight review, this objective drove the success of the program to a large degree. Lower caseloads are not only an effective case management tool but also add considerably to job satisfaction and the prevention of "burnout" for those charged with processing particularly demanding cases.

c) To employ experienced staff in the handling of targeted cases.

Statewide and/or local standards should have been established with regard to appropriate experiential criteria for those handling targeted cases. Although DCJS officials noted the difficulty in creating experiential criteria for TCI cases ("five years of experience might not be as telling as two years in a given case"), the creation of experiential criteria should have been pursued.

Importantly, the desire to dedicate experienced staff to the handling of targeted cases, subject to special case management procedures, can be accomplished in the absence of separately organized units. A full 60 percent of the sample population told us that the creation of a separate unit in their offices would, in practice, be impossible because they could not afford to assign staff exclusively to certain cases and because it would cut across existing unit lines, creating administrative havoc with long-standing office practices.<sup>64</sup> A unit structure, where practicable, should be implemented, but it is not a prerequisite to

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<sup>63</sup> See DCJS, 1977 Annual Report, pp. 44-45.

<sup>64</sup> This percentage may be underrepresentative for the reasons stated, *supra*, in note 25.

program effectiveness.<sup>65</sup>

- d) To provide vertical representation by the prosecution and defense components for all targeted cases.

Vertical representation was the most widely adopted and acclaimed policy for career criminal programs by district attorneys nationwide. In fact, vertical representation was the only "consensus pick" under the original LEAA guidelines by Career Criminal Prosecution Programs (CCPPs).<sup>66</sup> One district attorney, typical of those employing vertical representation in either a prosecution or defense component, claimed "vertical representation is what the TCI program is all about."

The definition of vertical representation may differ slightly between components, but our survey revealed that of the 71 percent engaging in the practice, 83 percent did so from arraignment through disposition (and the filing of a notice of appeal when necessary).<sup>67</sup>

- e) To earmark enhanced resources to the handling of TCI cases.

The provision of enhanced resources for targeted cases is discussed below under Recommendation #4.

### (3) Create new reporting systems.

This recommendation is perhaps the key to effective oversight of program operations. The failings in implementation of the TCI program resulted in great effort being expended on tasks which produced largely meaningless data. Using the TCI experience as an example, the following process would have, we think, resulted in the collection and reporting of more meaningful data which could have been used for purposes

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<sup>65</sup> On this point we disagree with the State Comptroller who recently advocated the creation of separate TCI units. See State Comptroller Report, supra, note 27, at 4-5.

<sup>66</sup> See Chaiken, supra, note 15, at 1; Springer, supra, note 15, at 3, 22.

<sup>67</sup> Problems in implementing a program of vertical representation were identified by two counties in the sample population. Even there, those problems were beginning to be addressed.

of oversight and reform.

Quarterly reports from all TCI components should have included information on case type, case management, case outcome and case coordination.

All TCI components should have segregated "TCI-actual" from "TCI-eligible" cases when reporting to DCJS; both sets of data, however, should have been reported to assist in the development of a funding rationale based on actual and potential TCI workloads. A "TCI-actual" case should have been defined as one that was guided by the TCI priorities and reflected the activity of a TCI-funded staffer. (For purposes of the prosecutorial components, the 1020 form could require that an ADA handling TCI cases be designated a three-digit code [ADA identifier] which would first appear before the case was "counted" by DCJS as a TCI case.)

Greater consideration should have been given to designating all TCI cases at initial arraignment based upon arrest charge. This practice, undertaken by 24 percent of district attorney and public defense components in our sample population, encouraged true vertical representation as well as improved coordination between prosecutors and police in terms of early investigation and case building.

For reporting purposes, the TCI-designated caseloads of the prosecution should have been allowed to drive the TCI caseloads of certain other components. It is difficult to understand why, at a minimum, the TCI caseloads of the probation and the laboratory components were not driven by the prosecution. From the perspective of developing a better coordinated prosecution, in which all available resources are brought to bear on a set of serious cases, the mirroring of the prosecution's TCI selections with probation departments and crime laboratories would have seemed to make sense. Note, for example, that 45 percent of the prosecution and laboratory components in our sample population complained that serious delays in drug analysis were causing problems in meeting the mandate of CPL 180.80 (which requires the release of a defendant from custody upon the failure of a timely disposition). But only one of the crime laboratories claimed to consider the district attorney's TCI priorities in setting his own; if more were required to do so, the delay problem on these serious cases may have been better addressed. Also, only one probation office in our sample population claimed to completely mirror the county district attorney in TCI case

selection; four other probation offices claimed to do so in part; none of the sheriff and correction offices made such claims. Regarding the defense component, it was advisable to allow it to continue to designate TCI cases independent of the prosecution (given its unique constitutional mandate to zealously and independently represent those accused of crime, and the fact that coordination between the defense and prosecution has less of an impact on prosecutorial effectiveness than coordination with crime laboratories, probation, and police, for example). The oversight review, however, revealed that, as a practical matter, the defense mirrored the prosecutor's TCI selections in most cases.

(4) Take steps to eliminate resource gaps.

As discussed, certain resource gaps were alleged to impede the ability of some components to effectively process targeted cases.

It was clear from the Committees' review that all TCI components had come to rely on TCI funds as an integral part of their daily operations. However, a funding rationale was lacking and 13 components complained that their funding levels, relative to the workloads of similar components in other counties or to that of interrelated components in the same county, were far less than they should have been.<sup>68</sup>

A rationale for budgetary increases could have been based on information generated under the "new" reporting system described above which would provide a

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<sup>68</sup> This number may be underrepresentative for the reasons stated, *supra*, in note 25; note also that the State Comptroller was impressed with the funding "rationale" for the TCI program. In his recent audit on DCJS contract management, the Comptroller urged that MOPP emulate the "original and logical approach" of the TCI program to fund disbursements. In his Report 87-S-117 (December 1, 1988), the State Comptroller said "TCI developed a formula to distribute prosecution activity funds of approximately \$25 million annually based on recent felony conviction statistics which help ensure that funds are distributed to those localities with the greatest need (See Report at MS-4 & 9). The Report goes on to say that "In addition, the TCI program has recommended a formula to the Division of Budget as the basis for distributing most of the remainder of the program's funds" (See Report at 9). It is clear, however, that there was never a funding rationale that comprehensively addressed the needs of all the components within the TCI or predecessor programs. DCJS attempted to develop one, but abandoned the effort.

better picture of current and projected workloads. The prosecution component would also be in a position to assist in the development of a funding rationale for the defense. For example, distribution of TCI funds to the defense should be premised upon the number of publicly-defended cases designated as TCI by the prosecution on the DCJS 1020 intake form. The prosecution must be required to designate the type of defense (public v. private) on that form, as envisioned in the 1987 Report of the Fiscal Committees on the Executive Budget.<sup>69</sup> Based on such workload information, a TCI county would receive defense funds based on the defense's TCI caseload relative to the prosecution's TCI caseload. For example, if the public defense system in County X handled 75 percent of the prosecution's TCI caseload, it should receive 75 percent of the TCI funds which were provided to the prosecution. A TCI county would be granted the latitude to disburse TCI funds to its public defense components as it saw fit (assigned counsel v. public defender or legal aid office).

Any decision to reallocate component funding must also take into consideration the need to free up resources for auxiliary services where local funding gaps existed. Twelve components complained of such a gap.<sup>70</sup> An analysis by DCJS of current needs of the prosecution and defense components for such services should immediately be undertaken.

Finally, as stated earlier, it was alleged by most TCI defense components that they suffered a serious resource gap in that "rap sheets" (State NYSID reports) were not being provided in a timely fashion, if at all. Consideration should be given to altering State law to provide timely access to defense components of this vital information; inclusion of the defense within the NYSPIN computer network should also be explored.<sup>71</sup>

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<sup>69</sup> New York State Legislature, Report of the Fiscal Committees on the Executive Budget - FY April 1, 1987 - March 31, 1988, p. 47.

<sup>70</sup> This number may be underrepresentative for the reasons stated, *supra*, in note 25.

<sup>71</sup> On this issue, the Philadelphia defender system should be compared; note also that DCJS had submitted a departmental bill (not passed during the 1989 Legislative Session) that sought to address the issue of defense access to "rap sheet" information, among other things (see DCJS Departmental bill #1R-89; A 8189).

(5) Create an intergovernmental working group.

It is strongly advised that an intergovernmental working group, comprised of appropriate Executive and Legislative representatives, be immediately established to implement the foregoing recommendations.

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CONCLUSION  
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The 1989/90 Budget provided over \$100 million in funds to assist localities in implementing needed changes in the criminal justice area, some of which have been described here. This report has identified shortcomings of earlier approaches and provides direction for making future decisions in allocating criminal justice resources.



## APPENDICES

TCI Historical Distribution .  
01-JUN-1988

Component	1983-84	1984-85	1985-86	1986-87	1987-88	1988-89	Total 6 Years
Prosecution	\$20,576,838	\$23,280,909	\$24,462,744	\$25,427,060	\$26,544,200	\$27,659,100	\$147,950,851
Defense	\$12,712,333	\$15,041,196	\$15,857,021	\$16,481,790	\$17,191,100	\$17,958,500	\$95,241,940
Labs	\$1,241,556	\$1,345,514	\$1,410,667	\$1,488,980	\$1,548,000	\$1,613,500	\$8,648,217
Probation	\$2,114,640	\$2,262,665	\$2,351,175	\$2,443,810	\$2,541,600	\$2,648,400	\$14,362,290
Corrections	\$1,918,359	\$2,452,644	\$2,548,162	\$2,648,560	\$2,754,500	\$2,870,200	\$15,192,425
Sheriffs	\$896,003	\$958,723	\$1,005,572	\$1,045,190	\$1,087,000	\$1,132,600	\$6,125,088
Leasing	\$1,218,971	\$1,277,549	\$1,240,099	\$744,060	\$773,800	\$806,300	\$6,060,779
All Components	\$40,678,700	\$46,619,200	\$48,875,440	\$50,279,450	\$52,440,200	\$54,688,600	\$293,581,590

Figures supplied by  
Assembly Ways and Means.

(1983 - 1989)

TCI Historic Fiscal  
Distribution  
(Aggregate)

APPENDIX A

APPENDIX B  
TCI Predecessor Programs  
Historic Fiscal Distribution  
(Aggregate)  
(1973 - 1982)

State Felony Program - as listed under "Emergency Dangerous  
Drug Control Program

1973:	53,300,000
1974:	35,298,610
1975:	20,473,010
1976:	20,564,000
1977:	19,070,000
1978:	19,642,000
1979:	20,666,500
1980:	20,886,700
1981:	24,723,100
1982:	26,453,717

Major Violent Offense Trial Program -

1978:	7,144,000
1979:	9,289,000
1980:	11,422,000
1981:	11,222,100
1982:	12,007,647

Major Offense Prosecution Program -

1981:	6,150,000
1982:	6,880,000

APPENDIX C

This survey was distributed to prosecution and defense components; a shorter version, containing questions relevant to other TCI components, was distributed to the probation, crime laboratory and correctional components.

TCI SURVEY

PLEASE FILL OUT AND RETURN THIS SURVEY BY NOVEMBER 7, 1988 TO:

ASSEMBLY LEGISLATIVE OVERSIGHT  
ROOM 508  
STATE CAPITOL BUILDING  
ALBANY, NEW YORK 12248

IF YOU HAVE ANY QUESTIONS, PLEASE CALL ED WASSERMANN AT (518)  
455-3039 OR MICHAEL FREEDMAN AT (518) 455-4477

-----  
Office Name, Address, Phone \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Name and Title of Person Filling Out Survey \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date \_\_\_\_\_  
-----

NOTE: IF YOU ARE UNABLE TO ANSWER A QUESTION, PLEASE EXPLAIN THE  
REASON IN THE MARGIN.

1) What is your understanding of the legislative purpose behind  
the TCI program? (Check all that apply.)

- \_\_\_ a) Funds to handle selected cases in a special manner, e.g.,  
vertical representation, lower caseloads, more resources,  
increased trials, etc.)
  - \_\_\_ b) Funds to be spent exclusively on cases involving serious  
and/or repeat offenders
  - \_\_\_ c) Funds to supplement efforts of local offices in the  
processing of general caseloads
  - \_\_\_ d) other purposes (please specify)
- \_\_\_\_\_  
\_\_\_\_\_

3) Please provide us with a line item breakdown of your 1987/88 TCI budget. (Use attachments if necessary.)

AMOUNT OF TCI FUNDS

[illegible][illegible]

Other than Personnel Services (OTPS) (please specify)

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\_\_\_\_\_

\_\_\_\_\_

4) Do the TCI-funded personnel listed on the previous page actually handle all cases designated by you as TCI, i.e., reported by you to DCJS as TCI?   Y     N  

If no, please describe specifically how you effectuate the goals of the program (e.g., backfilling of positions, use of locally funded staff to handle some TCI cases), and explain why you use this method.

5) How many cases did you designate as TCI for the 1987/88 fiscal year?

6) How many full-time staff were (or would have been) required to handle your TCI-designated cases for the 1987/88 fiscal year?

7) What was your average salary for a staffer representing TCI-designated cases during the 1987/88 fiscal year? \$                     

8) How many cases involving violent felony offenses did you open for the 1987/88 fiscal year?                      How many cases involving non-violent felony offenses?                     

9) Do you use TCI monies:

- to supplement staff salaries?
- to replace staff salaries?
- to either supplement or replace salaries?
- other (please specify)?

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10) Do you have any professional staff handling TCI-designated cases exclusively?   Y     N  

If yes, how many?           

If no, why not?

11) What are the current and desired yearly caseloads (number of cases opened) for the following applicable staff classifications (assume a 15% trial rate when listing your desired caseloads)?

	CURRENT	DESIRED
For staff exclusively handling TCI-designated cases (if applicable)?	<u>      </u>	<u>      </u>
For staff handling TCI-designated cases as well as other types of cases (if applicable)?	<u>      </u>	<u>      </u>
For staff exclusively handling cases of similar seriousness to a TCI case, but not designated TCI (if applicable)?	<u>      </u>	<u>      </u>
For staff handling cases of similar seriousness to a TCI case (but not designated TCI), as well as other types of cases (if applicable)?	<u>      </u>	<u>      </u>

12) In your opinion, what would be the current yearly caseloads for staff handling TCI-type cases in the absence of TCI funding?

13) Does your office engage in vertical representation for TCI-designated cases?

       Y  
       N

If yes, please define the scope of vertical representation, e.g., from arraignment through disposition, and tell us if vertical representation applies to all TCI-designated cases, all felony cases, all cases in your office, etc.

14) What is the average length of time (from arrest to disposition) to dispose of a TCI-designated case? \_\_\_\_\_

Of cases eligible for TCI treatment but not designated as TCI? \_\_\_\_\_

15) How many of your 1987/88 TCI-designated cases were disposed of via plea bargaining? \_\_\_\_\_

Of your 1987/88 cases eligible for TCI treatment but not designated as TCI? \_\_\_\_\_

16) How likely are you to utilize the following resources more often in the processing of TCI-designated cases (compared to cases of similar seriousness, but not designated TCI)?

- a) Investigative - very likely \_\_\_ somewhat likely \_\_\_ not likely \_
- b) Laboratory - very likely \_\_\_ somewhat likely \_\_\_ not likely \_
- c) Psychiatric -- very likely \_\_\_ somewhat likely \_\_\_ not likely \_
- d) Psychological - very likely \_\_\_ somewhat likely \_\_\_ not likely \_
- e) Other services (specify below and rank along same scale)

17) With regard to your TCI caseload, what bottlenecks do you see which impede case processing? (check all that apply and then explain.)

- \_\_\_ a) courts
- \_\_\_ b) prosecution
- \_\_\_ c) defense
- \_\_\_ d) probation
- \_\_\_ e) laboratories
- \_\_\_ f) all of the above
- \_\_\_ g) none perceived
- \_\_\_ h) other (specify) \_\_\_\_\_

Please explain your response(s):



18) On average, how many years of professional experience are reflected by the following staff members?

Professional staff handling cases other than those that are TCI-designated? \_\_\_\_

Professional staff handling TCI-designated cases? \_\_\_\_

19) Please rank the following according to their frequency in your TCI-designated caseload (1 = most frequent; 8 = least frequent; NA = not applicable)

- \_\_\_ a) repeat felony offenders charged with a violent felony offense
- \_\_\_ b) repeat felony offenders charged with a non-violent felony offense
- \_\_\_ c) first-time violent felony offenders
- \_\_\_ d) first-time non-violent felony offenders
- \_\_\_ e) repeat felony offenders charged with a misdemeanor
- \_\_\_ f) repeat misdemeanants (prior misdemeanor records only)
- \_\_\_ g) first time misdemeanants
- \_\_\_ h) other (specify) \_\_\_\_\_

20) Who in your office designates cases as TCI? (list name(s) and position(s)).

21) At what point is a case designated as TCI, e.g., arrest, arraignment, etc.?

22) We would like to learn more about the way you select TCI cases. Please analyze the following three hypothetical cases; assume they are being reviewed by your office for possible TCI designation. Consider your own TCI resource limitations in determining whether one, two, or all three cases should be designated "TCI". Then answer the questions that follow.

CASE ONE: Bill Robinson is 45 years old, an ex-boxer, divorced, an itinerant laborer. It is rumored that he physically abused his wife and child before the divorce. Since 1980, Mr. Robinson has had three prior felony arrests for barroom brawls (assault second, class D felonies - all dismissed), one prior felony conviction (assault first, a C felony) and one prior

conviction for misdemeanor trespass (criminal trespass third degree - a B misdemeanor). He was recently picked out of a lineup by a middle-aged businessman as the person who repeatedly punched and kicked him to the ground and took his wallet. Mr. Robinson was arrested for robbery second, a class C felony (Penal Law 160.10(2)(a)).

CASE TWO: In an area of your city known for drug trafficking, police, during a sting operation and upon valid probable cause, stopped and frisked John Williams, a reputed drug dealer frequently seen "hanging around" the city's schoolyards. Mr. Williams was found in possession of 500 milligrams of phencyclidine and arrested for criminal possession of a controlled substance in the fourth degree, a C felony (Penal Law 220.09(11)). Mr. Williams is 20 years old, unemployed and a high school dropout; he has one prior arrest for felony drug possession (dismissed); he has no prior convictions.

CASE THREE: Pauline Jones, a member of the city's largest and most notorious gang - the Youngbloods - was arrested for burglary first, a B felony (Penal Law 140.30(2)), following a midday high speed chase through the city's main business section - a chase resulting in physical injury to a pedestrian. A search of her trunk revealed certain property stolen from the home of the police captain. A motion to suppress the evidence was denied. Ms. Jones is 22 years old, the unmarried mother of two; she has three prior felony arrests (all burglaries dismissed for lack of probable cause) and two prior misdemeanor convictions (both criminal trespass third, B misdemeanors).

PLEASE ANSWER THE FOLLOWING QUESTIONS (USE ATTACHMENTS IF NECESSARY)

a) Which of the cases did you select for TCI designation and why?

b) If you designated more than one case as "TCI", please rank them by priority.

23) Please list any material you receive from either state or local government which you find helpful in selecting and processing TCI cases, e.g., rap sheets, statistical reports, etc.

24) Please use this space to comment on such material as to timeliness, accuracy, etc.

25) What information not currently available to you would you find helpful in improving the TCI program in your office?

26) Please use this space to comment on the forms which you fill out in complying with the state TCI-reporting requirements.

27) Please use this space to provide suggestions as to how the TCI program can be improved.

PLEASE RETURN THIS SURVEY BY NOVEMBER 7, 1988 TO:

ASSEMBLY LEGISLATIVE OVERSIGHT  
ROOM 508  
STATE CAPITOL BUILDING  
ALBANY, NEW YORK 12248

## APPENDIX D

The following is a comprehensive list of those components on which data was supplied and/or collected for this oversight project:

Albany County District Attorney  
Albany County Public Defender  
Albany County Probation  
Broome County District Attorney  
Broome County Public Defender  
Bronx County District Attorney  
Chautauqua County District Attorney  
Chautauqua County Public Defender  
Chemung County District Attorney  
Dutchess County District Attorney  
Dutchess County Public Defender  
Erie County District Attorney  
Erie County Legal Aid Society  
Erie County Assigned Counsel  
Erie County Probation  
Erie County Laboratory  
Erie County Sheriff  
Jefferson County District Attorney  
Monroe County District Attorney  
Monroe County Public Defender  
Monroe County Probation  
Monroe County Laboratory  
Monroe County Sheriff  
Kings County District Attorney  
Nassau County District Attorney  
Nassau County Legal Aid Society  
Nassau County Probation  
Nassau County Laboratory  
Nassau County Sheriff  
New York City Legal Aid Society  
New York City Department of Probation  
New York City Police Laboratory  
New York City Department of Correction  
New York County District Attorney  
Oneida County District Attorney  
Oneida County Public Defender  
Orange County District Attorney  
Onondaga County District Attorney  
Onondaga County Assigned Counsel  
Onondaga County Probation  
Onondaga County Laboratory  
Onondaga County Sheriff  
Queens County District Attorney  
Rensselaer County District Attorney  
Rensselaer County Public Defender  
Richmond County District Attorney  
Rockland County District Attorney  
Saratoga County District Attorney

Saint Lawrence County District Attorney  
Steuben County District Attorney  
Steuben County Public Defender  
Suffolk County District Attorney  
Suffolk County Legal Aid Society  
Suffolk County Probation  
Suffolk County Laboratory  
Suffolk County Sheriff  
Ulster County District Attorney  
Ulster County Public Defender  
Westchester County District Attorney  
Westchester County Legal Aid Society  
Westchester County Probation  
Westchester County Laboratory  
Westchester County Sheriff

Data on the program was obtained in the following manner:

1) Site Visits

The following 21 components (representing 27% of the total TCI components and 64% of the total TCI program funds for FY 87/88) were the subject of site visits:

New York County District Attorney  
Kings County District Attorney  
New York City Legal Aid Society  
New York City Department of Probation  
New York City Department of Correction  
New York City Police Laboratory  
Monroe County District Attorney  
Monroe County Public Defender  
Monroe County Probation  
Monroe County Sheriff  
Monroe County Laboratory  
Suffolk County District Attorney  
Suffolk County Legal Aid Society  
Suffolk County Probation  
Suffolk County Sheriff  
Suffolk County Laboratory  
Rensselaer County District Attorney  
Rensselaer County Public Defender  
Erie County District Attorney  
Erie County Legal Aid Society  
Erie County Assigned Counsel<sup>92</sup>

2) Surveys

The remaining 58 components were surveyed; 36 components responded to the survey (representing 62% of

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<sup>92</sup> The three components from Erie County were late additions to the site visit process. These components also filled out surveys.

the remaining total and 23% of the total TCI funds for FY 87/88) (See Appendix B for sample copies of the component-specific surveys).

### 3) Review of Agency Files

Files housed at DCJS were reviewed to develop the survey instrument and prepare for all site visits.

The files were also reviewed in our search for missing data on the 22 components for which no information was available. Assembly researchers were able to obtain the data necessary to include six of those components as part of the sample population for this oversight review. These six components represented 8% of the total number of TCI components and 10% of the total TCI funds for FY 87/88.

Our search had limited success given the "integrity" of DCJS files on the TCI program: much of the historical information no longer exists. Those files which were helpful contained historical information as well as state/county contracts, fiscal reports (cost reports/state aid vouchers/grant status reports), program reports, performance (or component) data forms, monitoring notes, miscellaneous correspondence, annual reports, and agency data sheets.

### 4. Outreach

Specific outreach to various components continued over the duration of the project, and invaluable anecdotal information was acquired in the process.

### 5. Other Sources of Information

Assistance on this project was provided by administrative and technical personnel of DCJS, and thanks are extended to those who actively took part in the process.

TCI and Predecessor Programs  
Component Specific  
Fiscal Distribution  
(1982 - 1984)

	82-83 MOPP*	82-83 MVOTP	82-83 STATE FEL.	82-83 TOTAL	83-84 TCI
<u>NYC</u>					
Pros.	3,359,802	4,274,772	5,123,591	12,758,165	14,010,034
Def.	672,000	3,689,433	4,826,025	9,187,458	9,752,146
Prob.		476,310	669,944	1,146,254	1,215,030
Corr.		399,969	1,080,440	1,480,409	1,569,234
Lab.			562,838	562,838	596,608
<u>Suffolk</u>					
Pros.	286,146	295,903	429,165	1,011,214	1,066,502
Def.	57,066	205,295	262,624	524,985	577,624
Prob.		71,967	57,670	129,637	137,416
Sheriff		39,523	90,918	130,441	138,267
Lab			74,924	74,924	79,419
<u>Westchester</u>					
Pros.	272,679	505,265	488,021	1,265,965	1,340,816
Def.	55,140	323,033	348,295	726,468	771,159
Prob.		101,723	91,747	193,470	205,078



	82-83 MOPP	82-83 MVOTP	82-83 STATE FEL.	82-83 TOTAL	83-84 TCI
Sheriff		66,840	98,370	165,210	175,122
Lab.			162,080	162,080	171,805
<u>Onondaga</u>					
Pros.	163,078	174,470	169,872	507,420	537,204
Def.	33,233	44,800	40,121	118,154	125,908
Prob.		25,926	35,300	61,226	64,900
Sheriff		22,540		22,540	23,892
Lab.			59,807	59,807	63,395
<u>Nassau</u>					
Pros.	254,860		357,374		686,936
Def.	51,600		319,762		416,676
Prob.			201,498		213,588
Correction			329,363		349,125
Lab.			107,435		113,881

82-83  
MOPP

82-83  
MVOTP

82-83  
STATE FEL.

82-83  
TOTAL

83-84  
TCI

Monroe

Pros.	212,352	149,203	330,638	732,863
Def.	52,589	108,702	292,814	482,414
Prob.		28,601	81,848	117,071
Sheriff		24,031	63,690	92,984
Lab.			101,469	107,556

Erie

Pros.	248,922	274,523	343,470	978,207
Def.	50,391	115,708	107,855	321,904
Prob.		38,261	70,290	115,064
Sheriff		167,876	271,499	465,738
Lab.			102,729	108,892

Albany

Pros.	147,940	89,443
Def.	24,080	49,842
Prob.		43,862

	82-83 MOPP	82-83 MVOTP	82-83 STATE FEL.	82-83 TOTAL	83-84 TCI
<u>Broome</u>					
Pros.	140,009				147,843
Def.	28,618				31,014
<u>Chemung</u>					
Pros.	95,364				100,699
Def.	19,702				21,278
<u>Orange</u>					
Pros.	124,027				130,966
Def.	25,437				27,472
<u>Rockland</u>					
Pros.	127,324				134,448
Def.	26,050				28,134

	82-83 MOPP	82-83 MVOTP	82-83 STATE FEL.	82-83 TOTAL	83-84 TCI
<u>Steuben</u>					
Pros.	56,674				59,845
Def.	11,952				12,908
<u>Ulster</u>					
Pros.	105,070				110,949
Def.	21,628				23,358

1. The State Felony Program consisted of three components: "state felony", special narcotics and emergency felony. In 1983-84, only the "state felony" portion was absorbed into TCI.

\*Note: The defense/prosecution ratio was significantly more disparate in MOPP than the other two programs. Because the TCI budgets of the non-urban counties were derivatives of MOPP only, they remained more disparate in TCI than did the budgets of the urban counties.

APPENDIX C

TARGET CRIME INITIATIVE PROGRAM

DEFINITION FOR PROSECUTION COMPONENTS

GOAL:                   Expeditious prosecution of repeat offenders, violent felony offenders, and/or felony offenders.

OBJECTIVES:           Facilitate the flow of prosecution funds provided by the State of New York;

Maintain an enhanced level of resources to expedite the processing of felony cases through the criminal justice system;

Increase the number of indictments against repeat offenders by concentrating resources in this area;

Eliminate plea bargaining except under extraordinary circumstances in cases involving repeat offenders;

Limit the caseloads of attorneys assigned to prosecute repeat offenders when feasible;

Increase rate and level of conviction for defendants prosecuted by TCI attorneys; and

Enhance efforts to increase the number and length of state prison sentences for TCI defendants.

PRIORITIES:           Emphasis shall be placed upon the prosecution of:

- 1) repeat offenders, as defined by the county, and charged with a violent felony classification of robbery, rape, burglary, homicide or aggravated assault;
- 2) violent felony offenders;
- 3) repeat offenders charged with a non-violent felony offense;
- 4) all other felony offenders.

APPENDIX C-1  
TARGET CRIME INITIATIVE PROGRAM  
DEFINITION

OBJECTIVES:

The component shall provide services for the effective, expedient processing of targeted offenders/cases in the following order of priority:

- 1) repeat offenders, as defined by the county, and charged with a violent felony classification of robbery, rape, burglary, homicide or aggravated assault;
- 2) violent felony offenders;
- 3) repeat offenders charged with a non-violent felony offense;
- 4) all other felony offenders.