
Up & Out

Toward an Evidence-Based Response to Misdemeanors

By Elise White, Sarah Picard-Fritsche, Yolaine Menyard, Kate Barrow, Elise Jensen,
and Julian Adler

Center
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© May 2018

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Acknowledgements

This study was funded by the Bureau of Justice Assistance of the U.S. Department of Justice (award #2013-DB-BX-K016). The opinions, findings, conclusions, and recommendations expressed in this report are those of the authors and do not necessarily reflect the positions or policies of the U.S. Department of Justice.

This project involved the hard work and dedication of a large team. We thank clinical staff from the Center for Court Innovation, led by Kate Barrow, for their invaluable contribution to the development of the Up & Out curriculum. We also thank Charmaine Dodd, Laurel Wright, Laina Yoswein, and especially Elizabeth Williams and Kimberly Spencer Suarez—clinical interns who dedicated many hours to reviewing the literature on best clinical practices, to collaborating on curriculum design, and to facilitating the short-term intervention.

We are grateful to the internal and external working group committee members, who provided key contributions during curriculum development; the staffs of Bronx Community Solutions and Midtown Community Court, without whom the pilot intervention would not have been possible; and the participants themselves, whose insights were invaluable in shaping the final curriculum.

From the Center for Court Innovation, we also thank Greg Berman, Executive Director, Amanda Cissner, Director of Research Writing, and Michael Rempel, Director of Jail Reform, for their comments on an earlier version of the report.

Data related to criminal history and recidivism was provided by the New York State Division of Criminal Justice Services (DCJS). The opinions, findings, and conclusions expressed in this publication are those of the authors and not those of DCJS. Neither New York State nor DCJS assumes liability for its contents or use thereof.

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Executive Summary

If not jail, then what? Jurisdictions across the country continue to grapple with this question, particularly in response to low-level criminal offending. In the absence of meaningful, legally-proportionate alternatives, many jurisdictions default to the use of short-term incarceration, which brings with it significant financial cost as well as negative outcomes for individuals and communities. Up & Out offers an alternative. It is a brief, non-custodial intervention designed for defendants with misdemeanor cases—i.e., a defendant population with serious treatment needs that cannot be sentenced to intensive long-term interventions (e.g., drug treatment) for reasons of proportionality.

The Up & Out project unfolded in two phases. Phase 1 began with the creation and validation of a risk-needs assessment for defendants with misdemeanor cases in New York City, designed to determine key criminogenic needs of the misdemeanor target population (Picard-Fritsche et al. 2018). Based on preliminary Phase 1 findings, Phase 2 involved developing the Up & Out curriculum; piloting the brief intervention in two New York City sites; and conducting a process and impact evaluation of the pilot. The current report summarizes findings from Phase 2.

Methods

Profile of Misdemeanor-Level Defendants

We created a risk-need profile of nearly 1,000 misdemeanor-level defendants recruited from three New York City diversion programs—the Midtown Community Court, the Red Hook Community Justice Center, and Bronx Community Solutions. Findings revealed the population to be chronically justice-system involved and “high-need” across most established criminogenic and behavioral health domains—including active substance use (61%); housing instability (50%); unemployment (32%); trauma exposure (51%); and mental health issues (45%).

Curriculum Design

Results of the risk-need profile of misdemeanor defendants informed the preliminary scope of the Up & Out curriculum with the goal of ensuring that the intervention would directly address prevalent underlying needs shown to contribute to recidivism. Subject area experts

helped inform the clinical approach, curriculum content, and facilitation structure. Feedback from court system stakeholders shaped eligibility criteria.

The following theories and evidence-based practices were woven together to create a unique three-session curriculum designed to help participants understand their criminal court involvement in the context of their broader life experiences and decisions:

- **Cognitive-Behavioral Therapy** approaches are used to increase participants' awareness of their individual thinking patterns and behaviors and to help participants consider how these behaviors are connected to justice-system involvement.
- **Procedural Justice** principles of respect and dignity are infused into the overall goals of the program and guide facilitators' treatment of all participants. Procedural Justice principles are also used to address perceptions that the justice system is unjust and discriminatory. Participants are led through activities that elicit their perceptions of and experiences with the justice system in a non-judgmental environment.
- **Trauma-Informed Practices** such as mindfulness practices and narrative therapy respond to the extensive trauma histories of misdemeanor-level defendants.
- **Ecological Systems Theory** offers a novel framework for addressing the high rates and broad range of criminogenic and clinical needs among participants in the context of their lived experience rather than divorced from it (a potential pitfall of some cognitive behavioral therapy practice).

Pilot Intervention

The initial version of the Up & Out intervention consisted of three 90-minute sessions. The intervention was pilot-tested with five cohorts of defendants with misdemeanor cases at two New York City locations: Bronx Community Solutions and the Midtown Community Court. Each cohort was facilitated by two clinical interns and observed by a trained staff member using a structured observation tool. The facilitators, the observer, and program staff reviewed the findings, discussing each activity's strengths and challenges as well as participant engagement and reaction, and made changes to the curriculum to address those challenges. Across all five cohorts, 99 individuals were mandated to participate in the pilot intervention,

and 50 attended at least one session. All participants were administered the C-CAT, a brief risk-need assessment tool prior to beginning the intervention.¹

Process Evaluation

A process evaluation was conducted to understand the experience of Up & Out participants and facilitators as well as to identify implementation challenges and problems with the curriculum's content. The process evaluation drew on structured observations of the pilot intervention, in-depth individual interviews with facilitators, a post-pilot group interview with observers, informal conversations with program participants, and an exit survey conducted with 32 participants who completed the intervention.

Five major themes emerged:

- 1. Positive Overall Responses:** Participant reaction to the curriculum was generally positive. Participants who had experienced other group therapeutic interventions in custodial contexts stated that they experienced Up & Out as a welcome departure from those programs, appreciating particularly the way the curriculum allowed participants to learn from each other and group problem-solve. Most participants (90%) felt that groups like Up & Out could help them. Additionally, 86% of participants felt that their experiences were respected in the group. This feedback confirmed one of the overarching goals of the curriculum, which was to use principles of procedural justice to create a safe space for participants to voice their thoughts and experiences.
- 2. Importance of Participant Voice:** Activities that engaged participants in defining the meaning of and relationship between their behaviors and life experiences rather than facilitators doing so saw much more sustained and active participation than did those activities that relied on a more standard, facilitator-driven approach.
- 3. Challenges of Navigating Group Dynamics:** The curriculum's focus on eliciting real reflection on the relationship between life experiences and criminal offenses meant that group dynamics were often challenging, for a number of reasons. Observers noted that exercises focusing on past interactions with the justice system or other traumatic events

¹ For more information on the brief assessment tool, see Picard-Fritsche, S., Rempel, M., Kerodal, A. & Adler, J. (2018). *The Criminal Court Assessment Tool: Development and Validation*. New York, NY: Center for Court Innovation.

(e.g., family death, interactions with state agencies like child protective services, community violence) could be emotionally challenging for participants. Participant reactions in these instances were unpredictable and often intense (e.g., pacing, verbal outbursts, tearfulness). Additionally, the group was typically diverse in its make-up, along identity lines (e.g., race, class, gender) but also in presence, degree, and type of mental illness, prior justice-system involvement, etc. Participants regularly expressed frustration about their experiences of housing instability, policing practices, and unemployment. Discussions at times became heated. Facilitators, observers, and participants felt these discussions were essential to the intervention’s goals, but also required the presence of seasoned clinicians.

4. Critical Role of Facilitator Selection & Training: Facilitators and observers expressed that facilitator selection and training were paramount to the emotional safety of participants and the overall efficacy of the intervention. Required facilitator skills included:

- A strong clinical background and understanding of trauma;
- Experience and/or robust training in facilitating conversations on identity, oppression, and privilege.

5. Need for Transparency and Clear Explanations of Activities: Clear, concrete framing of both the intervention and each activity emerged as a vital component of the curriculum. Activities that were not clearly explained at the outset resulted in participant confusion, leading participants to “check out” or become disengaged. Sometimes these issues arose because of lack of clarity within the curriculum; other times, facilitators veered from the written materials in an attempt to be responsive to the digressions of participants, inadvertently muddling activities’ specific learning goals or obscuring the relationship of activities to the larger intervention framework. As the curriculum progressed in its iterative development, more and more explicit framing instructions were incorporated. When facilitators provided clear information on what to expect—logistically and emotionally—at the beginning of the intervention and subsequent sessions/activities, participants were able to engage with the material with far less resistance. This focus on transparency (intimately connected to the procedural justice tenet of “respect”) involved facilitators’ validation of the full range of participant experiences and acknowledgment—within the group setting—of the structural and personal challenges imposed by the criminal justice system.

- 6. Help with Voluntary Services:** Nearly 40% of respondents felt confused about where to seek further services, suggesting that future iterations of the curriculum should place greater emphasis on informing participants of accessible and high-quality clinical and social services.

Impact Evaluation

Re-arrest among the 43 Up & Out participants who completed all three sessions was compared to a group of misdemeanor defendants who met the Up & Out legal and clinical eligibility criteria, but who were mandated to community service instead (n=69). Re-arrest was examined over a minimum tracking period of nine months following the program entry (to Up & Out or community service). After controlling for risk of recidivism, race, gender, age, and length of tracking period, there was no difference in re-arrest between participants (59%) and the comparison sample (59%). Given the small sample size for the impact analysis and the relatively short follow-up period, these findings should be interpreted with caution.

Next Steps

The Up & Out project attempted to offer a more meaningful alternative to jail that would address the underlying needs of individuals cycling through the system on misdemeanor offenses. The goal was to create an intervention that could be customized for jurisdictions across the country. Modifications were made to the curriculum based on the results of the project. The curriculum is now available in two versions: three 60-minute sessions and five 60-minute sessions. Future evaluations might explore the ability of the intervention to connect participants voluntarily to community based social services that address their underlying criminogenic needs, and to examine longitudinally the cumulative dosage and effects of involvement in these longer-term interventions or services. In addition, the impact of changes to curriculum dosage on participant engagement and completion should be explored.

Chapter 1

Introduction

On any given day, more than two million individuals are incarcerated—representing a 500% increase in just 40 years (Wagner and Rabuy 2017). In addition to producing an increase in state prison populations, policy changes of the past four decades have translated into ballooning local jail populations, with annual jail admissions nearly doubling from 6 million in 1983 to 11.7 million in 2013 (Minton et al. 2015; Subramanian et al. 2015). Importantly, many of these jail admissions are not unique individuals, but the same people arrested and incarcerated repeatedly. In New York City, for example, between 2008 and 2013, 473 people were admitted to jail 18 or more times each, accounting for more than 10,000 jail admissions. Of these, 85% were charged with a misdemeanor or a violation level offense (Mayor’s Task Force on Behavioral Health and the Criminal Justice System 2014).

New York City is not unique in this regard, as short-term incarceration remains a common response to low-level crime in many jurisdictions (Boruchowitz, Brink, and Dimino 2009; Geller 2016; Natapoff 2012). One of the rationales driving the increase in incarceration is the belief that time spent in jail or prison deters future crime. A growing body of research suggests that incarceration can stigmatize those who are confined and spawn anti-social attitudes among detainees, leading to increased recidivism after release (Cullen, Jonson, and Nagin 2011; Listwan et al. 2011; Loeffler 2013; Spohn 2007). One recent study found that as little as 48 hours in jail increases post-release recidivism (Lowenkamp, Van Nostrand, and Holsinger 2013). Additionally, most jail environments are ill-equipped to address the significant clinical and social service needs—for instance, substance abuse, mental health issues, and unstable housing—that often underlie chronic offending (Gehring and Van Voorhis 2014; Picard-Fritsche et al. 2018).

The current report represents the initial findings from a two-phase project to develop an innovative, problem-solving approach to lower-level crime. Phase 1 (The Misdemeanor Assessment Project) involved the creation and validation of a risk-needs assessment for misdemeanor-level defendants (Picard-Fritsche et al. 2018). Phase 2 began in 2013 with the purpose of applying preliminary findings from Phase 1 (i.e., findings regarding the key criminogenic needs of misdemeanor offenders) to the development of a brief, evidence-based intervention specifically tailored for misdemeanor-level defendants.

The Problem of Misdemeanor Crime

The scope of misdemeanor crime is extensive. At a national level, more than 13.2 million misdemeanor cases are filed each year (Stevenson and Mason 2018). In New York City in 2016 misdemeanor arrests were down overall citywide but still numbered almost 200,000 and accounted for more than four in five newly arraigned cases (Independent Commission on New York City Criminal Justice and Incarceration Reform 2017).

Recent New York City-focused research suggests that residents of low-income neighborhoods are more vulnerable to stop-and-frisk activities by the police (Fagan, Geller, Davies and West 2009; Floyd, Clarkson, Dennis, and Ourlicht vs. City of New York 2013; Fratello, Rengifo, and Trone 2013), while young Black men are disproportionately likely to be arrested on marijuana charges (Golub, Johnson and Dunlap 2007).

A growing awareness of the negative effects of jail for incarcerated individuals, combined with increasing fiscal constraints for jurisdictions nationwide, have left many searching for appropriate responses to misdemeanor crime beyond short-term jail sentences (Philadelphia Research Initiative 2010). Many jurisdictions look to diversion models and non-custodial sanctions for responses that are cost-effective and legally proportionate. At the same time, practitioners across the country are looking to reduce recidivism by beginning to address the underlying needs of misdemeanor offenders for treatment and meaningful social services.

Service Gaps for Misdemeanor Defendants

Research shows that interventions with offender populations are most effective when they are based on Risk-Need-Responsivity theory, a rehabilitative theory of crime prevention developed and tested by Canadian psychologists in the 1980s (Bonta and Andrews 2010). This theory holds that the intensity of treatment services should correspond with each offender's risk of re-offense, and that interventions should target specific criminogenic needs (e.g., substance abuse, employment problems). Further, the theory posits that the treatment should be tailored based on the results of a validated risk and needs assessment and should be designed to maximize efficacy by incorporating cognitive behavioral and social learning strategies (Andrews and Bonta 2007). While Risk-Needs-Responsivity theory has primarily been tested on felony populations, emerging evidence suggests that the model may hold potential for reducing recidivism among misdemeanor-level defendants as well (Gehring and Van Voorhis 2014; Rempel et al. 2018).

Over the last 30 years, a number of evidence-based cognitive behavioral programs that draw on Risk-Need-Responsivity theory and focus on reducing recidivism have been developed. Some well-known examples include Thinking for a Change, Reasoning and Rehabilitation, and Multisystemic Therapy for Juveniles.² Integrating such programs into the criminal justice system is a top priority for many policymakers (Landberger and Lipsey 2005). Unfortunately, most of these interventions require a minimum of six months to complete, making them largely inappropriate for misdemeanor-level defendants due to legal proportionality concerns. Many existing models ignore the importance of procedural justice principles for effective court-based interventions.

The subsequent chapters describe the development, pilot implementation, and evaluation of a brief intervention (“Up & Out”) that is designed to be legally proportionate, acknowledge underlying needs that may contribute to recidivism, and provide participants with a procedurally fair experience.

² Detailed information on existing evidence-based curricula for offenders is available at: <https://nicic.gov/library/package/ebppackage>.

Chapter 2

Project Design

The project unfolded in two distinct stages: (1) development of a pilot curriculum and facilitation protocols (Chapter 3); and (2) a pilot implementation with five cohorts of misdemeanor-level defendants in two New York City community courts (Bronx Community Solutions and Midtown Community Court in Manhattan). Results from both process and impact evaluations of the pilot implementation (Chapter 4) informed revisions of the curriculum.

Curriculum Development

The pilot curriculum initially drew on data gathered as a part of Phase 1, which involved the administration of a comprehensive risk and need assessment to 964 misdemeanor defendants in the Bronx, Brooklyn, and Manhattan. Simultaneously, project staff met with court-system stakeholders (judges, prosecutors, community court directors) to gain an understanding of current sentencing practices—i.e., typical sentence types and lengths—for misdemeanor cases in New York City. Based on Phase 1 findings, which suggested significant need in the areas of substance use, trauma, and improving perceptions of the fairness of the legal system (i.e., “legal cynicism”), the project team designed a preliminary scope of content for the intervention. Based on current court practices with misdemeanor-level defendants (and concerns about proportionality), the intervention was developed to be conducted over three sessions.³

With the intervention structure determined, project staff then conducted a literature review to identify existing evidence-based interventions targeting criminogenic needs (e.g., Thinking for a Change) that have been used in a criminal court context and could serve as models for the new curriculum. Further, the project team assembled two working groups comprised of internal (i.e., Center for Court Innovation staff) and external experts in the following key areas: legal and social issues facing misdemeanor defendants; clinical and cognitive

³ Ultimately, a five-session version of the curriculum was also developed for cases in which a longer mandate may be warranted.

behavioral interventions for offenders; and the substantive need areas addressed by the intervention (e.g., trauma). During the early stages of the project, the panels were assembled periodically to review draft curricula, while in later stages they acted as consultants responding to specific issues and questions that arose during implementation.

Using the information gathered through the efforts detailed above, project staff with the assistance of clinical interns (advanced graduate students in clinical psychology and social work) created a draft curriculum and facilitation protocols for the pilot intervention. These initial materials were reviewed by the working groups and, based on the groups' feedback and recommendations, finalized as the pilot Up & Out curriculum.

Intervention Implementation

Following finalization of the Up & Out curriculum and protocols, the intervention was piloted with five cohorts of misdemeanor defendants diverted to two New York City community courts: Bronx Community Solutions and the Midtown Community Court.⁴ At Bronx Community Solutions, the pilot intervention was approved for defendants the court mandated to either three to five days of community service or an existing two-session mental health group. During the spring and summer of 2015, a total of 60 Bronx clients in three cohorts were assigned to participate in the intervention. Each cohort was facilitated by two clinical interns and observed by a staff member using a structured observation tool.

Following the first three cohorts of the pilot intervention, an additional 50 Bronx Community Solutions clients who met the same legal criteria were identified as a comparison group. These clients were assigned to community service.

Two additional pilot tests were conducted at the Midtown Community Court. Similar to the participant cohorts developed in the Bronx, Midtown clients who would have been mandated to three sessions of social services (e.g., group interventions held at the court or individual counseling sessions) were approved to be referred to Up & Out in lieu of usual community court services. In the fall of 2015, Midtown Community Court staff enrolled 39 participants

⁴ The Midtown Community Court, located in Midtown Manhattan, and Bronx Community Solution, located in the Bronx Community Court, are projects of the Center for Court Innovation that serve defendants arrested on misdemeanor charges in specific catchment areas.

into two Up & Out group cohorts and assigned an additional 24 individuals to the comparison condition (i.e., a comparable community service mandate).

Across all five cohorts, 99 individuals were mandated to participate in the pilot Up & Out intervention; 74 individuals were enrolled in the comparison group condition. Individuals in both those groups were assessed immediately following court arraignment using the short risk-need assessment tool developed during Phase 1 of this project. Individual risk-need assessment results were combined with structured intervention observations and post-intervention client surveys to inform evaluation and revision of the curriculum.

Process and Impact Evaluations

A qualitative process analysis was conducted in the interest of understanding the participant experience, and identifying implementation challenges or problems with curriculum content. The process evaluation drew on observations of the pilot intervention, in-depth interviews with facilitators, and a focus group with internal working group members. Each pilot Up & Out cohort was observed by a trained staff member (who was not responsible for facilitating the intervention). Observers used a structured observation form to track fidelity to the curriculum, participant and facilitator responses to each activity, and overall observations about each session. After the pilot implementation was complete, individual interviews were conducted with the two clinical interns who facilitated the five cohorts; a group interview was conducted with 3 staff members who observed the pilot implementation. Findings from the process evaluation are described in Chapter 4 and were critical to informing the final curriculum and facilitator guide.

The impact of the intervention was assessed by examining re-arrest rates during the six months following program entry. Re-arrest rates of Up & Out participants were compared to those of the comparison sample. Prior research suggests that interventions drawing on the principles of procedural justice and Risk-Need-Responsivity theory are effective in reducing recidivism (Lipsey, Landenberger, and Wilson 2007; Tyler et al. 2007). Accordingly, we hypothesized that the structure and content of the Up & Out intervention might effectively reduce recidivism among participants, despite the fact that the intervention is—by legal necessity—significantly shorter than many evidence-based interventions for criminal offenders. Bivariate and multivariate analytic techniques were used to assess whether being in the treatment group affected recidivism (defined as re-arrest on any charge over a minimum of 6-months) after controlling for factors such as risk level, total time exposed to

arrest, age, and gender. Interpretation of results was further informed by an exit survey of 32 Up & Out participants who completed the program mandate.

Modifications to the Project Design

There were two noteworthy departures from the originally-proposed project design. First, we initially intended to include an assessment of psychosocial functioning for both the treatment and comparison samples pre- and post-program (i.e., prior to any intervention, and 60 days after receiving the court mandate). The additional assessment information would have allowed us to examine program impacts beyond recidivism. However, the follow-up assessments proved impractical, based on significant obstacles to finding and recruiting study participants for a second assessment after their court mandate had ended. Second, the initial proposal included a third site for the intervention to be piloted: the Red Hook Community Justice Center in Brooklyn. However, once the intervention criteria were finalized, it was determined that the defendant population at this site was predominately ineligible (legally and/or clinically) and the third site was dropped from the study.

Chapter 3

Developing the Curriculum

As summarized in Chapter 2, the initial curriculum and intervention design drew on results from the Misdemeanor Assessment Project (Phase 1 of this project), along with an extensive review of relevant literature and the expertise of working group members. This chapter details the development of the initial curriculum.

Misdemeanor Assessment Project Results

As part of the Misdemeanor Assessment Project, staff interviewed 964 misdemeanor-level defendants across New York City to create a profile of their specific criminogenic risks and needs. Initial analyses showed significant clinical and criminogenic needs and high rates of legal cynicism, described in detail below. These findings were influential in the development of the original curriculum for the current project.

Criminogenic and Clinical Needs

Table 3.1 displays findings from Phase 1 regarding the key areas of need among misdemeanor defendants in New York City. As shown in Table 3.1, substance abuse, housing instability, unemployment, and low educational attainment emerged as the most important criminogenic need areas.⁵ Specifically, nearly two-thirds of respondents (61%) reported current illegal drug use, defined as using illegal drugs at least once per month over the past year. Housing instability and homelessness were particularly prominent among respondents, with half (50%) reporting that they were in transitional housing of some kind or that they were homeless or living out of cars. One-third of the sample (32%) had less than a high school education. More than half of respondents were unemployed at the time of the interview (56%) and a third (33%) had been unemployed for a year or more.

⁵ Respondents were also asked about social networks, mental health history, trauma, relationship stress (i.e., whether they currently have a primary intimate partner and if they went through a breakup or divorce in the last year), prior experiences in the justice system, and were asked to respond to scales regarding impulsivity and criminal thinking.

Table 3.1. Reported Needs, Trauma, and Mental Illness among NYC Misdemeanants

Total Number of Misdemeanants	964
Criminogenic Needs	
Current Illegal Drug Use	61%
Housing Instability ¹	50%
Education ²	33%
Employment ³	32%
Trauma & Mental Illness	
Lifetime Trauma Exposure ⁴	51%
Current Symptoms of Mental Illness ⁵	45%
Current PTSD Symptoms	23%
Lifetime Mental Health Hospitalization	24%

¹ Homeless or in a transitional living situation.

² No high school diploma or GED.

³ Unemployed for one year or longer.

⁴ Includes self-reported sexual, physical, or emotional abuse and having been the victim of a violent crime.

⁵ Including symptoms of depression, anxiety, or active psychosis, as indicated by the Brief Mental Health Jail Screen.

While trauma and mental health are not typically found to be direct predictors of recidivism, research suggests that interventions that ignore these important responsivity factors are ultimately less effective (Taxman 2014). As Table 3.1 demonstrates, mental health issues including a history of hospitalization (24%) and current symptomology (45%) as indicated by a validated instrument (the Brief Mental Health Jail Screen) were prominent in the Phase 1 sample. Half of respondents (51%) reported lifetime exposure to trauma—including physical, emotional, or sexual abuse or witnessing a violent event—while almost a quarter (23%) screened positive for symptoms of post-traumatic stress disorder. These findings were taken as a strong indication that curriculum for the current project should be trauma-informed.

Legal Cynicism and Procedural Justice

Legal cynicism and procedural justice can be viewed as two sides of the same coin. While procedural justice reflects the individual’s direct experience of the justice system as fair or unfair, legal cynicism reflects an individual’s overall views of the law and enforcement agents as illegitimate or unresponsive (Kirk and Matsuda 2011; Tyler 2003). In simpler terms, legal cynicism is the perception that the system and legal players are unfair, which

may be influenced in part by past experiences in the system. As Table 3.3 clearly shows, defendants interviewed during Phase 1 of the project had, on average, more negative than positive views of both the law and law enforcement agents.

Table 3.3. Legal Cynicism Among NYC Misdemeanants¹

Total Number of Misdemeanants	964 % Who Agree ²
There are two systems of justice, one for poor people and one for the wealthy.	65%
Police often do worse things than the "criminals" they lock up.	64%
Anything can be fixed in court if you have the right connections.	51%
Laws do not protect people like me.	47%

¹ Items were selected from full legal cynicism scales developed for Phase 1 of this project (the Misdemeanor Assessment Project). Respondents were asked to rate their agreement with the statements on a 5-point Likert scale from Strongly Agree to Strongly Disagree.

² Percentage of misdemeanants who respond that they "agree" or "strongly agree" with the statement.

Relevant to the current project, procedural justice is widely viewed as a promising strategy for increasing the perceived legitimacy of the justice system and its players, in addition to its documented efficacy for increasing compliance with court orders. In practical terms, such strategies would involve integrating the following into court practice—including therapeutic interventions sponsored by the court (Rempel 2014; Tyler 2003):

- **Voice:** Justice-involved individuals are asked to share “their side of the story.”
- **Respect:** Justice-involved individuals are treated with dignity and respect.
- **Neutrality:** The decision-making process is unbiased, transparent, and consistent.
- **Understanding:** Justice-involved individuals understand how decisions are made and why.

Given the high degree of legal cynicism among the Phase 1 population, achieving procedural justice through curriculum content, intervention structure, and facilitator training became a key goal of the current project.

Cognitive Behavioral Programming

Traditional cognitive behavioral therapy utilizes practices grounded in social-cognitive theory to identify the relationship between thoughts, feelings, and behaviors, and is frequently used when treating individuals with drug and alcohol problems and post-traumatic stress disorder. Using a goal-oriented approach, this form of psychotherapy aims to help individuals develop alternative ways of thinking that lead to more positive emotional and behavioral reactions. Research in the Risk-Need-Responsivity field has consistently found interventions drawing on cognitive-behavioral therapy effective for reducing recidivism. Indeed, studies consistently show that cognitive behavioral interventions reduce recidivism by 20–30%, with some studies showing reductions as high as 50% (Aos and Drake 2013; Landenberger and Lipsey 2005; Lipsey, Chapman, and Landenberger 2001; Wilson, Bouffard, and MacKenzie 2005).

It should be noted that evaluations of cognitive-behavioral programs for offenders are not uniformly positive, however, with some negative findings particularly relevant to the current project. For instance, to date there is limited evidence that such programs are effective for offenders with mental illnesses (Skeem, Steadman, and Manchak 2015). Additionally, where cognitive-behavioral interventions are implemented jurisdiction-wide—as opposed to being tailored to certain offender groups—the results have been less positive (e.g., see Cann et al. 2003).⁶

Beyond empirical evaluations of impact, some academics have been critical of cognitive-behavioral programs from a conceptual perspective, identifying a lack of space within these programs to deal with intimate personal problems or issues specific to the experiences of people of color (e.g., see Lösel 2012). Others have observed the strong emphasis on “individual responsibility” (e.g., focus on obtaining work and the presentation of any job as desirable) in many interventions for offenders as problematic:

Whenever structural problems were acknowledged, such as the difficulties involved in finding stable employment and racial discrimination within criminal justice, correctional

⁶ There were no significant differences in the two-year reconviction rates for either adult men or young offenders who started a prison-based cognitive skills program and their matched comparison groups (there was a small difference between the program *completers* and their comparison groups at one year).

officers dismissed such concerns by claiming that social and economic inequalities were only problematic *because of poor individual choices or deficiencies*. (Kramer, Rajah, and Sung 2013: 553, our emphasis)

Additional obstacles exist when attempting to apply traditional cognitive-behavioral models specifically to the misdemeanor population. Previous meta-analyses suggest that 100 hours of treatment is required to produce recidivism reductions among moderate-risk offenders, and 200 hours for high-risk offenders (Bourgon and Armstrong 2005). Such long-term interventions often violate legal proportionality in misdemeanor cases.

Ultimately, staff of the current project felt that some aspects of existing cognitive-behavioral models should be retained, despite the identified challenges, particularly given their consistency with the Risk-Need-Responsivity model of offender assessment and treatment.

Expert Collaboration

Feedback from the expert working groups was integral to finalizing the curriculum prior to piloting. Working group members expressed support for the integration of procedural justice, trauma-informed, and cognitive-behavioral frameworks.

Panel members also had a number of specific suggestions that influenced the first iteration of the curriculum:

- Make the intervention open-ended enough to accommodate the wide variety of clinical and social service needs found in misdemeanor populations (e.g., homelessness, drug addiction, unemployment, mental health issues);
- Create sufficient structure to allow this same diverse range of participants to engage in the group safely and to benefit from participation;
- Have concrete goal-setting activities and resources available after the last session to ground the intervention in practical, achievable, and relevant goals; and
- Be explicit about definitions of interpersonal (e.g., domestic violence) and community trauma (e.g., police violence).

Drawing on a combination of findings from Phase 1, theory, existing intervention models, and expert feedback, the core project staff—which included research staff, senior clinical

staff at Center demonstration projects, and clinical interns—developed the final curriculum used for the pilot study.

Toward an Ecological Model of Intervention

Over the course of the initial intervention development, expert working group members and project staff continuously returned to several themes:

- The strong evidence for the efficacy of elements of cognitive-behavioral intervention models, as well as the practical implementation challenges and emerging content critiques of such models;
- The high rates coupled with the broad range of criminogenic and clinical needs found among Phase 1 participants (e.g., education, employment, trauma, prior justice system involvement) and the need to be comprehensively responsive to these needs; and
- The likely influence of larger structural factors on justice-system involvement (e.g., lack of meaningful job opportunities and prior justice system involvement) on how participants would perceive their justice system involvement and the intervention.

Experts and program staff felt strongly that a modification to traditional intervention models was called for and developed a curriculum that held at its core an interest in examining ecological factors and their relationship to participants' justice-system involvement. This "ecological cognitive-behavioral approach" adheres to aspects of traditional evidence-based practice, while simultaneously acknowledging the realities of participants' lived experiences (Onifade et al. 2011). A departure from traditional cognitive-behavioral interventions, the final curriculum infused cognitive-behavioral principles with lessons learned from procedural justice and trauma-informed clinical practice to address individual thoughts, behaviors, and actions *in the context of* lived experience rather than divorced from it. Activities were designed to step participants through the relationship between their justice-system involvement and common experiences like structural disadvantages (e.g., barriers to employment), high levels of lifetime trauma, and negative prior experiences with the justice system.

An Iterative Process

Once the initial pilot curriculum was developed, it was then honed iteratively throughout the pilot period. Clinical intern-facilitators, the various observers, and program staff met after

each cohort to review the structured observation findings and the facilitators' experiences of each session. Discussions involved fidelity to the curriculum, facilitation methods, and facilitator and participant reaction and engagement with each of the activities. The group identified strengths and challenges, making relevant changes to the curriculum for pilot in each subsequent cohort.

Chapter 4 describes the pilot intervention cohorts and summarizes findings from the process and impact evaluations of the intervention.

Chapter 4

Piloting and Evaluating the Up & Out Intervention

In order to assess the feasibility and effectiveness of the Up & Out curriculum, the intervention was pilot-tested with five cohorts of misdemeanor defendants at community courts in the Bronx and Midtown Manhattan. In total, 99 participants were mandated to the pilot intervention across the two sites (60 at Bronx Community Solutions, 39 at Midtown Community Court).⁷ An additional 74 misdemeanor defendants across the two sites (24 at Bronx Community Solutions, 50 at Midtown Community Court) who met the Up & Out eligibility criteria were instead mandated to traditional community service, in order to provide a comparison sample for the impact evaluation. This chapter details the implementation and evaluation of the pilot intervention.

Piloting the Up & Out Curriculum

The preliminary curriculum was structured to be implemented as three 90-minute sessions over a one-week period. In preparation for the pilot, clinical interns who had assisted in finalizing the pilot curriculum were trained to facilitate it. Both interns were trained to provide the lead and supportive roles in co-facilitating curriculum activities.

Between July 2015 and September 2015, the trained facilitators conducted three pilot cohorts at Bronx Community Solutions and two at the Midtown Community Court. Table 4.1, below, shows the breakdown of the pilot cohorts by location, date, number of participants attending the first session, and number of participants attending the final session.

⁷ Twenty-three of the 60 individuals assigned to the Bronx Community Solutions did not attend the first session of the intervention and were not included in the treatment sample. Risk-need data were also missing for four mandated participants in the Midtown Community Court. These 27 individuals were therefore excluded from the risk-need profile (Table 4.2).

Table 4.1. Up & Out: Overview of Pilot Intervention Cohorts¹

Cohort Number	Location	Intervention Dates	# of Mandated Misdemeanants	# of Participants, Session 1	# of Participants, Session 3
1	Bronx Community Solutions	7/13/2015- 7/16/2015	20	8 (40%)	7 (88%)
2	Bronx Community Solutions	7/27/2015 - 7/30/2015	20	12 (60%)	10 (83%)
3	Bronx Community Solutions	8/10/2015 - 8/13/2015	20	17 (85%)	17 (100%)
4	Midtown Community Court	8/17/2015 - 8/20/2015	16	6 (30%)	5 (83%)
5	Midtown Community Court	9/8/2015 - 9/10/2015	23	7 (35%)	3 (43%)
<i>Total Participants, All Cohorts</i>			99	50 (51%)	42 (84%)

¹ While a total of 99 defendants were court-mandated *Up & Out*, only 50 attended the first session and were retained as participants for the purposes of analysis. Ultimately, 7 of these 50 had to be dropped from the impact evaluation for data matching reasons.

The intervention was designed for delivery to 10- to 12-person cohorts. On the recommendation of the internal working group, approximately 20 participants were enrolled in each of the pilot cohorts, to compensate for anticipated no-shows. As table 4.1 demonstrates, both initial attendance and completion rates were noticeably better in the Bronx cohorts when compared with the Manhattan cohorts. The Bronx cohorts had an average first session attendance rate of 63%, compared to Manhattan’s rate of 34%. Of those who attended Session 1, 84% completed all three sessions (92% in the Bronx and 62% in Manhattan).

Table 4.2 provides a demographic summary of a sample of 72 mandated to Up and Out who also completed the C-CAT risk-need assessment, broken down by site. The profile of mandated participants suggests significant differences between the sites, which may help to explain the lower compliance rates in the Midtown site. As shown, participants at Midtown Community Court had more extensive criminal histories; they were less likely that participants in the Bronx to be first-time offenders (6% v. 38%), had more prior convictions (66% v. 35%), and were more likely to have previously been incarcerated (94% v. 57%). Midtown participants also assessed with higher needs than participants in the Bronx: they were more likely to report housing needs (26% v. 6%); and to have been hospitalized for mental health reasons (23% v. 15%). Given these differences, it is unsurprising that Up & Out participants in Manhattan were more likely to be assessed as high risk than those in the Bronx (37% v. 5%), suggesting that risk is related to court compliance in this population.

Table 4.2. Up & Out Participant Profile¹

	Midtown Community Court	Bronx Community Solutions
Total Participants	35	37
Demographics		
Mean Age (years)	45	32
Male	82%	89%
Race/Ethnicity		
African American	35%	41%
Hispanic	56%	57%
White	9%	3%
Criminal History		
First Time Offender	6%	38%**
3+ Prior Misdemeanor or Violation Convictions	66%	35%**
Any Prior Incarceration Sentence ²	94%	57%***
Education, Employment, and Housing		
Graduated High School/Received a GED	74%	68%
Currently Employed	40%	37%
Homeless or in Transitional Living	26%	6%*
Substance Use		
Current Illegal Drug User	37%	57%
Emotional and Mental Health Needs		
Lifetime Hospitalization for a Mental Health Need	34%	11%*
Positive on Short PTSD Scale	6%	5%
Risk for Recidivism		
Mean Risk Score (Range = 0-70)	31	23
Low-Risk (0-21)	17%	46%
Moderate-Risk (22-32)	46%	49%
High-Risk (33-70)	37%	5%**

+p<.10 *p<.05 **p<.01 ***p<.001

¹ As previously noted, assessment data were missing for 27 participants across both sites. Eighty-five percent of these were mandated defendants that did not show up for the intervention in the Bronx. Criminal history data is derived from official records provided by the New York Division of Criminal Justice Services; all other measures derived from participant response to the brief risk-need assessment tool, the Criminal Court Assessment Tool (C-CAT), developed for Phase I of this project.

² Includes jail and prison sentences.

Site-specific differences aside, Table 4.2 illustrates that the defendants deemed appropriate for the short intervention by the courts were at moderate- to high-risk for a new arrest and had significant underlying clinical and social service needs. These findings dovetail with those of the larger sample in Phase 1 of this project, as well as other research with misdemeanants (e.g., see Gehring and Van Voorhis 2014, Rempel et al. 2018).

Process Evaluation

The primary purpose of the process evaluation was to understand the experience of Up & Out for both participants and facilitators. Secondly, the process evaluation aimed to identify modifications necessary to bring the intervention to scale. To these ends, two distinct methods were used.

- **Structured Program Observations:** Clinical and research staff conducted structured observations of each pilot cohort, including notes on the structure, content, and implementation of the intervention, as well as the real-time reactions of participants and facilitators.
- **Program Staff Feedback:** At the end of the pilot study, individual interviews were conducted with the Up & Out facilitators and a focus group was conducted with those who conducted structured program observations.

Three major themes emerged from the process evaluation that are particularly relevant to the efficacy and future implementation of the Up & Out intervention: participant voice, challenging group dynamics and facilitation, and transparency.

Participant Voice

Traditional cognitive-behavioral therapy focuses on the relationships between participants' thoughts, feelings, and behavior. Undesirable and anti-social behavior are cast as flaws in decision-making and understood as individual pathology. Often, the facilitator's job is to point out faulty logic and help participants see how their thinking is faulty and might be corrected to achieve desired behavioral outcomes.

The Up & Out curriculum is uniquely designed to elicit participant experiences with the justice system and to promote core tenets of procedural justice (i.e., treat participants with respect and make sure participant voices are heard). Its ecological cognitive-behavioral

approach shifts the lens from one exclusively focused on individual decision-making to one that supports participants' examination of their justice-system involvement in relation to their broader life experiences. To this end, activities in all three sessions (e.g., "Criminal Justice Associations;" "Criminal Justice Spectrum;" "Surviving and Thriving;" and "Resource Mapping") explored participants' perceptions of and experiences with the criminal justice system and its actors (e.g., judges, police, victims, "criminals"); elicited conversation around common "criminal thinking" patterns; highlighted connections between participants' life experiences and their justice-system involvement; and helped the group collectively identify realistic, alternative coping strategies to help them avoid future justice-system involvement. As measured by frequent participant engagement and intra-group dialogue, informal post-session discussions, as well as post-session reflection by observers and facilitators, the sessions and activities that were most successful were vehicles for participants to identify important life experiences and draw connections for themselves. This shift actualizes the "respect" and "voice" tenets of procedural justice.

Detailed observation notes bear out the importance of participant voice and its relationship to this ecological cognitive-behavioral approach. For example, participants stressed the collateral consequences of justice system involvement (e.g., barriers to employment) and the irony that such consequences make it harder to avoid involvement in criminal activity additional contact with the system.

- "[Criminal] is a label that never disappears."
- "[H]aving a felony stops you from getting a job, so sometimes it feels like you really don't have any other options."

Indeed, participants across cohorts possessed a nuanced understanding of the influence of both individual and environmental push factors that led to their own justice-system involvement.

- "I'm very hardworking. I've been working since I was 15. And [in my neighborhood] I *still* have to be careful to stay away from police."
- "Some people choose the wrong [illegal] route because it works better for them; everyone has their own reasons."

- “[I agree it’s okay to break the law to get what you need] because we don’t get the social services we need.”

Structured observation notes and post-pilot interviews revealed that facilitators and observers uniformly identified as most engaging and productive those activities that provided space for participants to share their experiences and thoughts with one another, without instruction or interjection from facilitators. Facilitators explained:

- “[The exercise on] criminal justice associations [Session 1, Exercise 1] ... it's successful for a lot of reasons... the biggest being that it sets the tone for the rest of the sessions. [The tone is] for the participants to feel safe and comfortable discussing being in the system, which is critical.”
- “So when they're talking about encounters that they've had with the cops over the course of their lives or any other sort of [...] interactions with the system [...] they're as much having conversations with each other as they are with [facilitators].”

This sentiment was mirrored by one program participant’s comments in-group:

- “I never been in a program like this before. I done all those prison programs, but none asked me what *I* thought about where I was or let us all talk to each, learn from each other.”

Up & Out’s trauma-informed and ecological approach proceeds from the tenet that much of the behavior that brings participants into contact with the criminal justice system is the result of efforts to either manage painful or traumatic life experiences (e.g., substance use) or to handle challenging community issues (e.g., fighting). An activity in the final program session focused on identifying safe stress management techniques and practical strategies for staying out of jail in the future generated some themes that might not emerge in a traditional, facilitator-dominated curriculum:

- In four of the five cohorts, drug use was consistently identified as an illegal *but safe* coping strategy.
- Similarly, in the three Bronx cohorts, gun possession was identified as a key strategy for self-protection, despite being perceived as illegal.

- Across all cohorts, physical activities (e.g., gyms, walking, yoga) were identified as important survival or coping strategies.
- The importance participants placed on “staying off the street” and “staying in the house” as survival strategies suggests that being outside and/or maintaining peer relationships is often perceived as dangerous by many participants.
- Repairing personal relationships—particularly with children and parents—was noted as a key strategy for staying out of the system.

The length of the Up & Out curriculum limits the ability of the intervention to include extensive instrumental support to participants (e.g., drug treatment or assistance with safe housing). However, a participant-led resource mapping exercise, wherein participants are asked to identify the more positive supports in their lives, allows the intervention to be more responsive by suggesting services that participants actually need or might readily access, which could help them move closer to their goals. Future evaluations of the curriculum should examine the specific service needs, supports, and resources identified by participants during this exercise, as well as the types of referrals actually given to participants.

Challenging Group Dynamics

While the structured observation findings and post-pilot interviews suggest that the curriculum’s trauma-informed and ecological approaches were overall effective at engaging participants in critical dialogue, participants’ emotional reactions to these dialogues varied depending on cohort, exercise, group composition, and location. It was not uncommon for observers to note that exercises focusing on past interactions with the justice system or other traumatic events could be challenging for participants. In a life mapping exercise, observers noted that some participants discussed extremely sensitive topics, including family death, physical/sexual abuse, childhood involvement with child protective services, community violence, chronic homelessness, and long-term incarceration. Observers likewise noted that other participants found the material too intense and opted out (either expressly or put their heads down, asked to go to the bathroom, etc.) or expressed concerns about sharing their responses with the group.

Additionally, facilitators were faced with a significant level of diversity among participants in terms of age, prior experience in the justice system, and presenting social and clinical

needs. Such diversity at times perceptibly affected group dynamics. In one group, a participant left the group repeatedly to take calls from his children's mother, eventually returning after a prolonged absence (20 minutes) appearing to be intoxicated. In several cohorts, participants with mental health issues struggled to follow exercises and dominated some components of the session, leading to intra-group tension and escalation. In yet another cohort, female participants tried to resolve a tense exchange between two men in the group. Observers noted that the clinical interns' relative lack of experience was evident during such situations as they sometimes struggled to find ways to keep the group on subject while simultaneously responding in clinically-appropriate ways to each situation (interns were in the final stages or had just completed their graduate degrees). Based on these and similar incidents documented by session observers, as well as follow-up interviews with facilitators and clinical experts in the working group, it is strongly recommended that at least one of the facilitators for this intervention be a seasoned, trained social worker with experience in group facilitation or justice system settings.

Because the curriculum asks participants to be honest, rapidly, in a context that many felt was inherently threatening (due to location in courthouses, mandated nature, etc.), structured observation notes indicate that those instances where a group member was willing to share something personal early in a discussion and "be real," in one participant's words, meant that those who were reticent often followed suit resulting in a richer and more therapeutically productive discussion. Clinical interns and one cohort of participants suggested that a co-facilitation model between a clinical professional and a trained individual with prior involvement in the justice system—preferably as a defendant—be considered, believing such a structure to hold strong potential for enhancing the effectiveness of the intervention.

Participants' diversity and the curriculum's emphasis on voice and on eliciting perspectives on the justice system meant that explicit discussions about race, gender, and class in particular were raised by participants in every cohort. Participants in one cohort, for instance, voiced frustration at the different framing of criminal offenses when committed by people of different racial identities: "If someone kills someone else and they're black, they're a 'thug.' If they're Spanish, they're 'criminal,' and if they're Arab, they're 'a terrorist.' If you're white, it's 'oh, it's not his fault. He has a mental illness.'" Structured observations and post-pilot interviews show that participants in nearly every cohort also challenged or pushed back against facilitators where they differed in age, class, gender, and racial identities. This happened directly (e.g., "Excuse me, miss, but you're Caucasian, am I right? So a cop is going to treat you a lot better than they going to treat all of us") and indirectly (e.g., "Now

women getting jobs, now they feel like they can talk to us dirty”). While at times uncomfortable for facilitators, both facilitators and observers felt that the conversations happening around these differences—particularly as they nearly always touched on justice-system involvement—were vital to the success of the curriculum and to the procedural justice project of recognizing and respecting participants’ voices.

Facilitator Selection & Training

This data, combined with the intensity of the material the curriculum elicits and its effort to engage participants in reflection on the relationships between such major life events and their justice-system involvement, indicates facilitator selection is paramount to the emotional safety of participants and the overall success of the intervention.

In post-pilot interviews, facilitators and observers recommended that extreme importance be placed on the training of facilitators in the theoretical foundation of the curriculum (procedural justice, trauma-informed care, risk-need-responsivity, cognitive behavioral therapy), as well as anti-oppressive clinical practice to arm facilitators with strategies to safely and effectively manage these controversial conversations without silencing, devaluing, or prioritizing any particular experience. Required facilitator skills included:

- A strong clinical background and understanding of trauma;
- Experience and/or robust training in facilitating conversations on identity, oppression, and privilege.

Additionally, facilitators and observers both felt that facilitation benefitted when facilitators were aligned with participants either by virtue of having had prior experience with the criminal justice system or had a shared racial and/or gender identity with the majority of the participants.

Transparency

Finally, observations of the pilot intervention suggested that there was frequently confusion among group members about the purpose of the intervention and activities in the curriculum. Observers noted during several sessions that participants appeared confused during specific activities (e.g., “Life Mapping,” “Closing Meditation”). Participants of at least one cohort appeared to the observers to be uncomfortable during the closing meditation, which

observers felt was dominated by too much talk from facilitators. Observers also noted that the resource mapping exercise, in particular, could benefit from a more concrete framing. In one cohort, while all the participants identified personal connections as the most important resource for avoiding future justice system involvement, the facilitators did not press participants to identify specific strategies for coping with precise scenarios. (E.g., What do you do if you are homeless or strung out or in an abusive relationship? What are specific resources you can access?). Sometimes these issues arose because of lack of clarity within the curriculum; other times, facilitators veered from the written materials, allowing participant-sharing to morph into allowing them to set the agenda. As the curriculum progressed in its iterative development, more and more explicit framing instructions were incorporated and this occurred with less frequency.

During follow-up interviews with facilitators and observers, the issue of facilitator confusion and its effect on the groups dynamics were discussed at length. There was consensus that facilitators needed to open the intervention with a clear and transparent description of program goals. Specifically:

- Exploring participant views and experiences of the criminal justice system;
- Analyzing how participants' previous life experiences connect to present situations;
- Planning for safe and legal futures outside of the criminal justice system; and
- Developing stress management skills.

Transparency may also include acknowledgement on the part of facilitators that the system itself needs to change to become more fair.

Impact Evaluation

The Up & Out project staff were interested in understanding the impact of the intervention on participants in two distinct ways: (1) the immediate reaction of participants to the intervention and (2) possible reductions in re-arrest in the short-term.

Participant Response

Of 42 participants who completed the full three-session intervention, 32 (74%) completed a post-intervention survey. Survey responses are displayed in Table 4.3 below. As the Table suggests, participant reactions were generally positive (90% felt that groups like this could help them) and confirmed that the intervention successfully integrated principles of procedural justice (86% felt that their experiences were respected in the group). Less positive, nearly 40% of respondents felt confused about where to seek future services, suggesting that future iterations of the curriculum should place greater emphasis on informing participants of accessible and high-quality clinical and social services.

Table 4.3. Post-Intervention Participant Perceptions

	N	32 % Who Agree ¹
Programs such as Up & Out have the ability to help me.		90%
My experiences were respected in the group.		86%
The topics discussed in group relate to my life.		86%
I feel safe in the group.		79%
My experiences were heard in the group.		71%
I feel confused about how to seek future services.		39%

¹ Percentage of misdemeanants who respond that they "agree" or "strongly agree" with the statement.

Participants were also asked by observers for their reactions to the curriculum and intervention at the end of Session 3. In general, participant feedback was positive.

- “[Up & Out] helps you so you don’t fall back into criminal activities.”
- “That exercise from yesterday really got me thinking. I went home and did it with some of the kids on the block so they could start really thinking about what they’re doing before they get where I’m at.”
- “I’m surprised I’m even here right now. This is the first thing I’ve ever had to do for court that I’ve finished. I have anxiety, and when I get stressed I just walk. I’m surprised I haven’t done that yet. This program is type good. I’ll tell anybody about it.”

Recidivism

As outlined in previous chapters, the causes of recidivism among misdemeanor-level defendants in New York City are complex, and may include both individual (e.g., criminogenic needs) and environmental (e.g., neighborhood policing policies) factors. However, it was hypothesized that the dual emphases of Up & Out on promoting procedural justice and responsivity to participant needs could have a measurable impact on recidivism. To assess this, we compared re-arrest among Up & Out participants and a comparison group of misdemeanor defendants referred to Bronx Community Solutions and Midtown Community Court during the same time period who met the Up & Out legal eligibility criteria, but mandated to community or social services rather than the Up & Out intervention. Re-arrest was tracked from the point at which each participant or comparison group member was assessed and referred either to the program or comparison group (immediately after arraignment) and followed for a minimum of nine months. Specific tracking periods ranged from 9-17 months and were controlled for in the final analysis.

For the purposes of the recidivism analysis, Up & Out participants were defined as those individuals mandated to the group who attended at least one session and for whom complete risk and need information were available (n=43).⁸ Misdemeanor defendants mandated to Up & Out but who never attended a session were excluded from the analyses (n=49). Four potential comparison group cases were excluded from the pool, due to risk scores outside the range of the treatment group, leaving a total comparison sample of 69 misdemeanor defendants.

Table 4.4 provides a baseline comparison of the participant and comparison groups in terms of demographics, key criminogenic and other needs, and risk category. As shown, there were few significant differences between the two groups, with the exceptions of higher rates of both employment and housing instability in the comparison group. Importantly, risk for recidivism was comparable across groups. Specifically, although slightly more Up & Out participants fell into the lowest risk category, neither this difference or the mean risk scores for the groups were statistically significant.

⁸ Seven participants from the Midtown Community Court were also excluded due to data matching issues.

Table 4.4. Profile of Up & Out Participants v. Comparison Group

	Up & Out Participants	Comparison Group
N	43	69
Demographics		
Mean Age (years)	33	33
Male	88%	90%
Race/Ethnicity		
African American	43%	24%
Hispanic	52%	68%
White	5%	7%
Criminal History		
First Time Offender	35%	35%
3+ Prior Misdemeanor or Violation Convictions	37%	41%
Any Prior Incarceration Sentence ²	61%	62%
Education, Employment, and Housing		
Graduated High School/Received a GED	70%	59%
Currently Employed	32%	55%*
Homeless or in Transitional Living	7%	14%+
Substance Use		
Current Illegal Drug User	50%	30%
Emotional and Mental Health Needs		
Lifetime Hospitalization for a Mental Health Need	21%	16%
Positive on Short PTSD Scale	7%	4%
Risk for Recidivism		
Mean Risk Score (Range = 0-70)	23	24
Low-Risk (0-21)	44%	35%
Moderate-Risk (22-32)	47%	55%
High-Risk (33-70)	9%	10%

+p<.10, *p<.05, **p<.01, ***p<.001

¹ Criminal history data is derived from official records provided by the New York Division of Criminal Justice Services; all other measures derived from participant response to the brief risk-need assessment tool developed for Phase I of this project (the Misdemeanor Assessment Project).

² Includes jail and prison sentences.

Table 4.4 uses a multivariate model to examine whether participation in the Up & Out intervention affected the likelihood of re-arrest, after controlling for other potentially important factors (i.e., recidivism risk, race, gender, age, and length of tracking period). As shown, the predicted re-arrest rate was 59% for both groups, suggesting no intervention impact. Given the small sample size and relatively short follow-up period for the impact analysis, these findings should be interpreted with caution.

Table 4.5. Adjusted Six Month Re-arrest Rate, Up & Out Participants v. Comparison Group

	Up & Out Participants	Comparison Group
N	43	69
Adjusted Re-Arrest Rate	59%	59%

+p<.10 *p<.05 **p<.01 ***p<.001

Chapter 5

Conclusions and Directions for Future Work

The Up & Out project emerged in response to the overuse of short-term incarceration for misdemeanor offenses in New York City. The project's goal was to create a more meaningful, legally-proportionate, and evidence-informed alternative to jail that could be adapted by jurisdictions across the country. As an increasing number of jurisdictions work to decrease the use of jail, this project is of the utmost relevance to both pretrial and post-sentencing practice.

The evaluation of the Up & Out intervention included process and impact components, which revealed generally positive responses from participants and facilitators—along with some suggestions for improvement—yet reflected no impact on participant re-arrest (versus standard community service mandates).

The initial process evaluation highlighted the following keys to successful implementation: (1) participant voice—i.e., participants should be able to express their thoughts and feelings without judgment; (2) facilitators should be trained on a variety of clinical topics and facilitation techniques, and able to fully respond to participant needs as they arise; (3) facilitators could benefit from having relevant personal and/or professional experience with the criminal justice system, including an understanding of some of the limitations and biases of the system; (4) the program should have a clear statement of goals at the onset to help solidify participants' expectations and maximize program benefit; (5) facilitators should be able to direct participant discussion toward identifying and accessing available supports and services; and (6) participants should complete the intervention having developed a set of techniques for managing stress and strategies for avoiding future involvement in the justice system.

Given that the Up & Out intervention was developed around the needs and perceptions of a New York City-based sample of misdemeanor defendants (n=964) and that the impact analysis was based on an even smaller sample (n=43 participants), the intervention would ultimately benefit from a higher-volume randomized controlled trial or quasi-experimental

study with a matched comparison group. Modifications were made to the curriculum based on the results of the pilot study, including participant eligibility criteria, group composition recommendations, and new dosage options. Future evaluations of the newly differentiated three- and five-session curricula should be conducted, including a comparison of participant engagement, program completion, and re-arrest rates. Evaluations should also examine the intervention's ability to connect individuals through voluntary referrals to long-term social services that address underlying criminogenic needs.

Up & Out is still in the initial stages of development. As further implementation generates additional participant insights and outcomes, the intervention will continue to evolve.

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