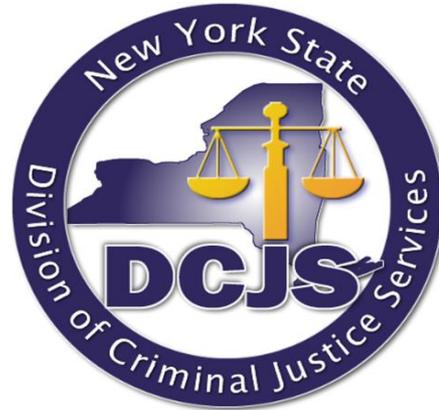


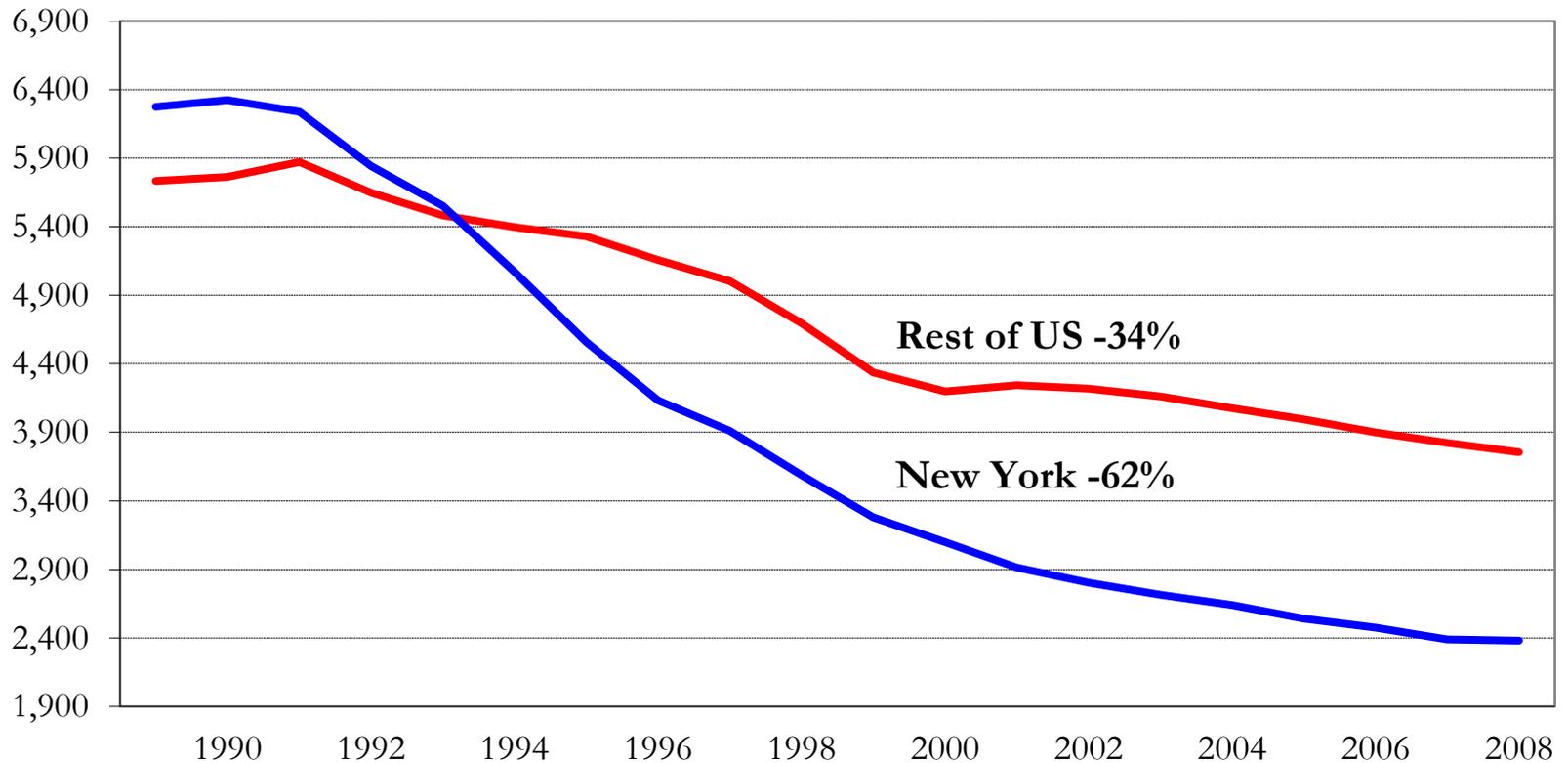
**Division of Criminal Justice Services
Office of Justice Research and Performance**



**2009 Drug Law Reform
Preliminary Update on Early Implementation**

February 2010

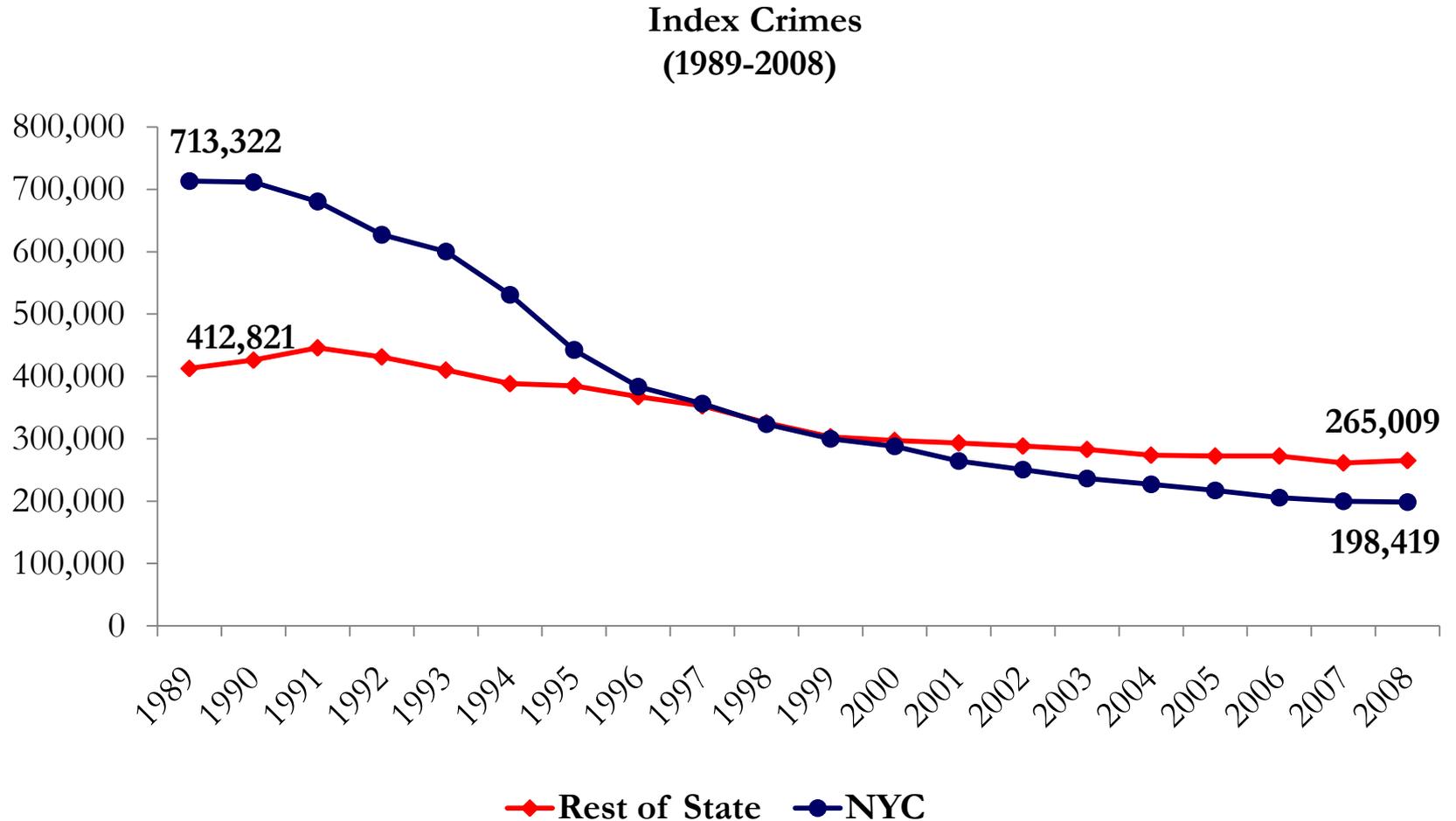
Over the Past 20 Years, NYS Crime Rate Has Declined At Almost Twice the Rate of the Rest of the Country



Source: FBI, *Crime in the United States* annual publications

Rate: Per 100,000 Population

NYC Crime Declined 72% and Crime in the Rest of the State Declined 36% Since 1989



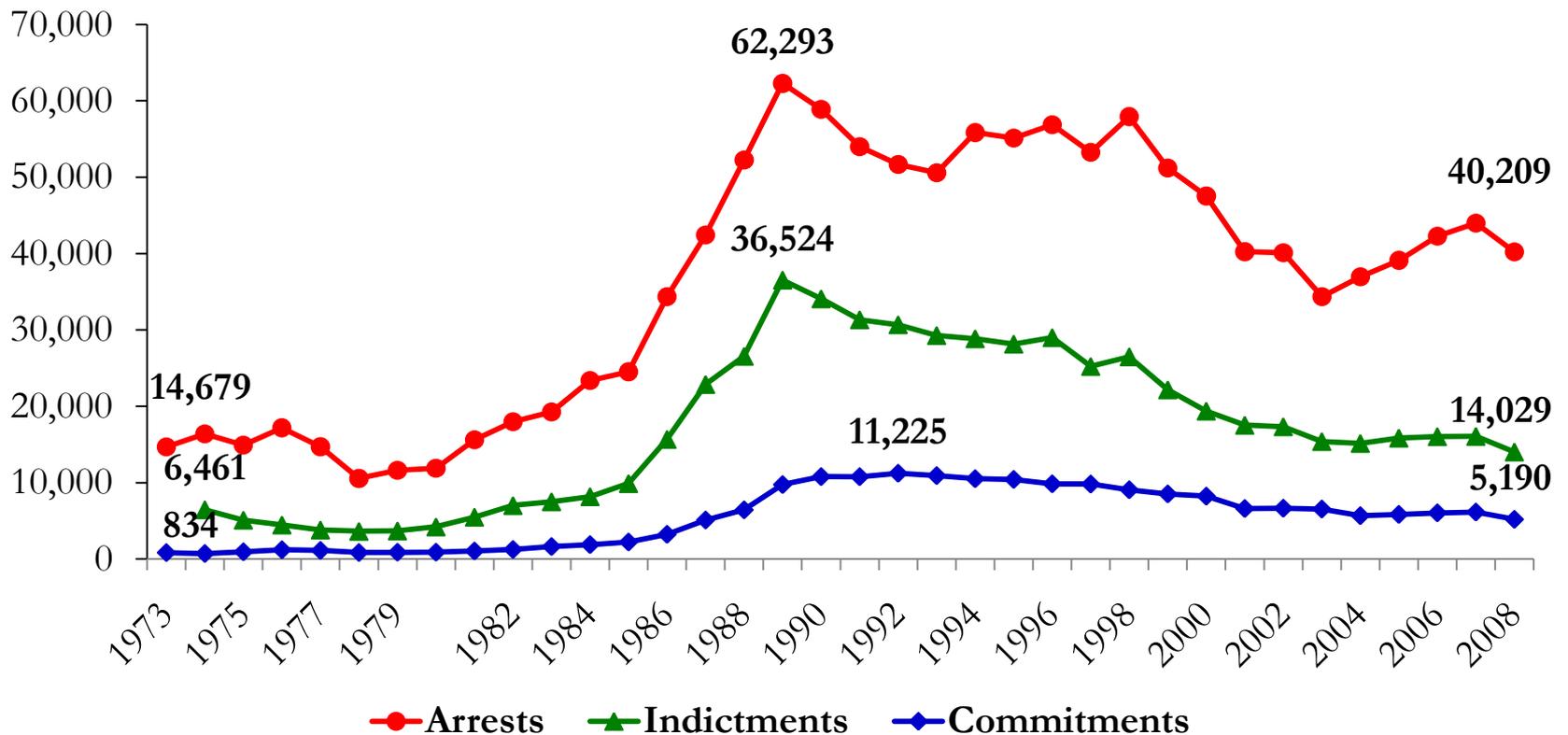
Crime Continued to Decline in New York State in 2009

Crimes reported to police continued to drop between 2008 and 2009.

- **New York City Police Department** reported a reduction of 5% in major crime categories; reported murders are down (-10%)
- **Departments Outside New York City** reported Index crime was down (-2%); Violent Index crime was down (-2%) as was property crime (-2%)

Statewide Felony Drug Trends

Felony Drug Arrests, Indictments and Commitments to Prison
1973- 2008



Source: DCJS Felony Processing File, Criminal History File, DOCS Admission file and Crime and Justice Report
Note: Indictments only available since 1974.

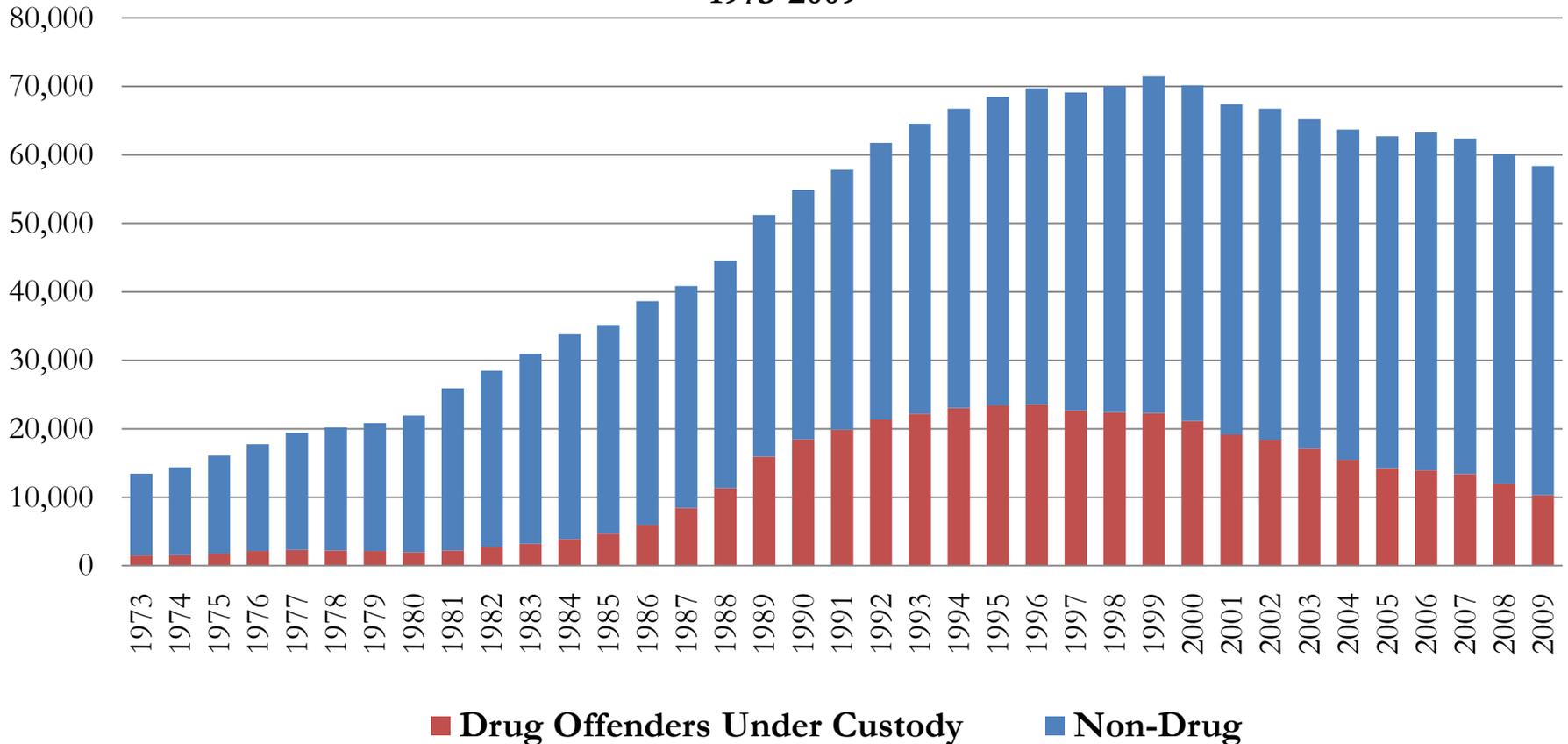
Steep Increases from 1970's to 1989 in Felony Drug Activity; Declines Since Then

- Felony Drug Arrests increased from 14,679 in 1973 to 62,293 in 1989
- Indictments increased from 6,461 in 1974 to 36,524 in 1989
- Drug commitments to State prison increased from 834 in 1973 to 11,225 in 1992
- Contributed to major increase in DOCS population, from 13,437 in 1973 to 71,472 in 1999

Drug Offenders In Prison

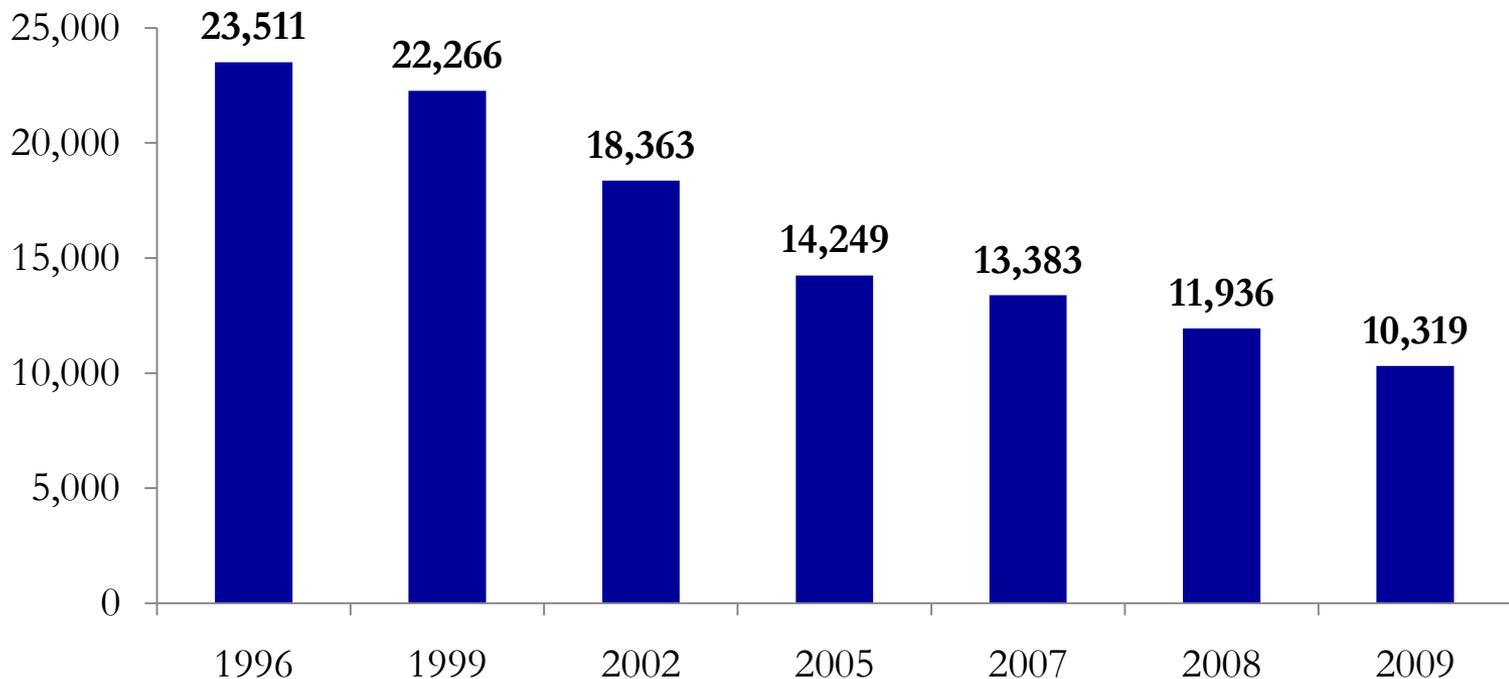
Peaked in 1996, Prison Population Peaked in 1999

Drug Offenders and Total Offenders Under Custody in NYSDOCS
1973-2009



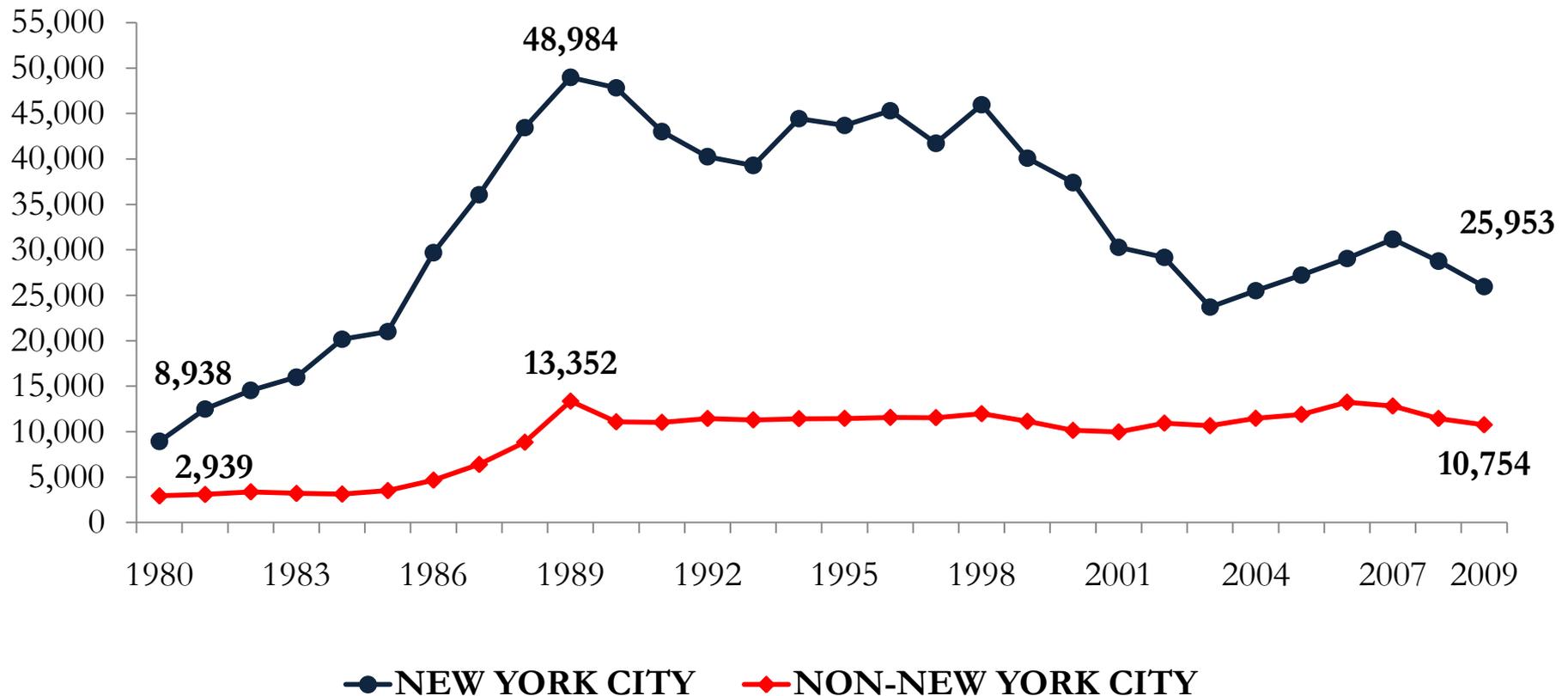
Drug Offenders in DOCS Declined 56% Since Peak in 1996; Down 1,617 in Past Year

Drug Offenders Under Custody
(Year End)



Felony Drug Arrests Declined 47% in NYC and 19% outside NYC Since 1989

Felony Drug Arrests
1980-2009

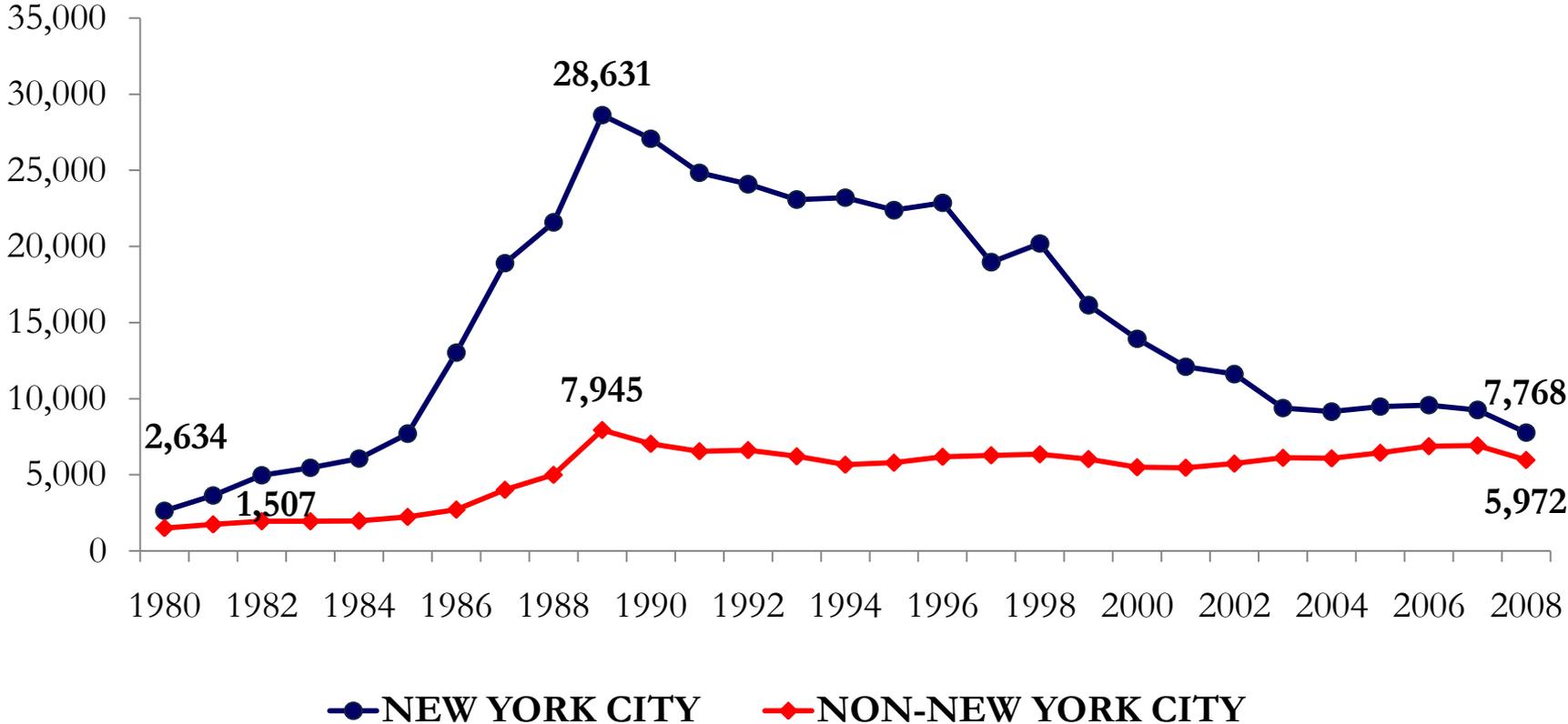


Arrest, Indictment and Commitment By Region

- After dramatic growth in the late 1980's and early 1990's, major decreases in arrests, indictments and commitments were driven by changes in New York City
- Until 2008, arrests, indictments and commitments outside of New York City had not changed much since 1990

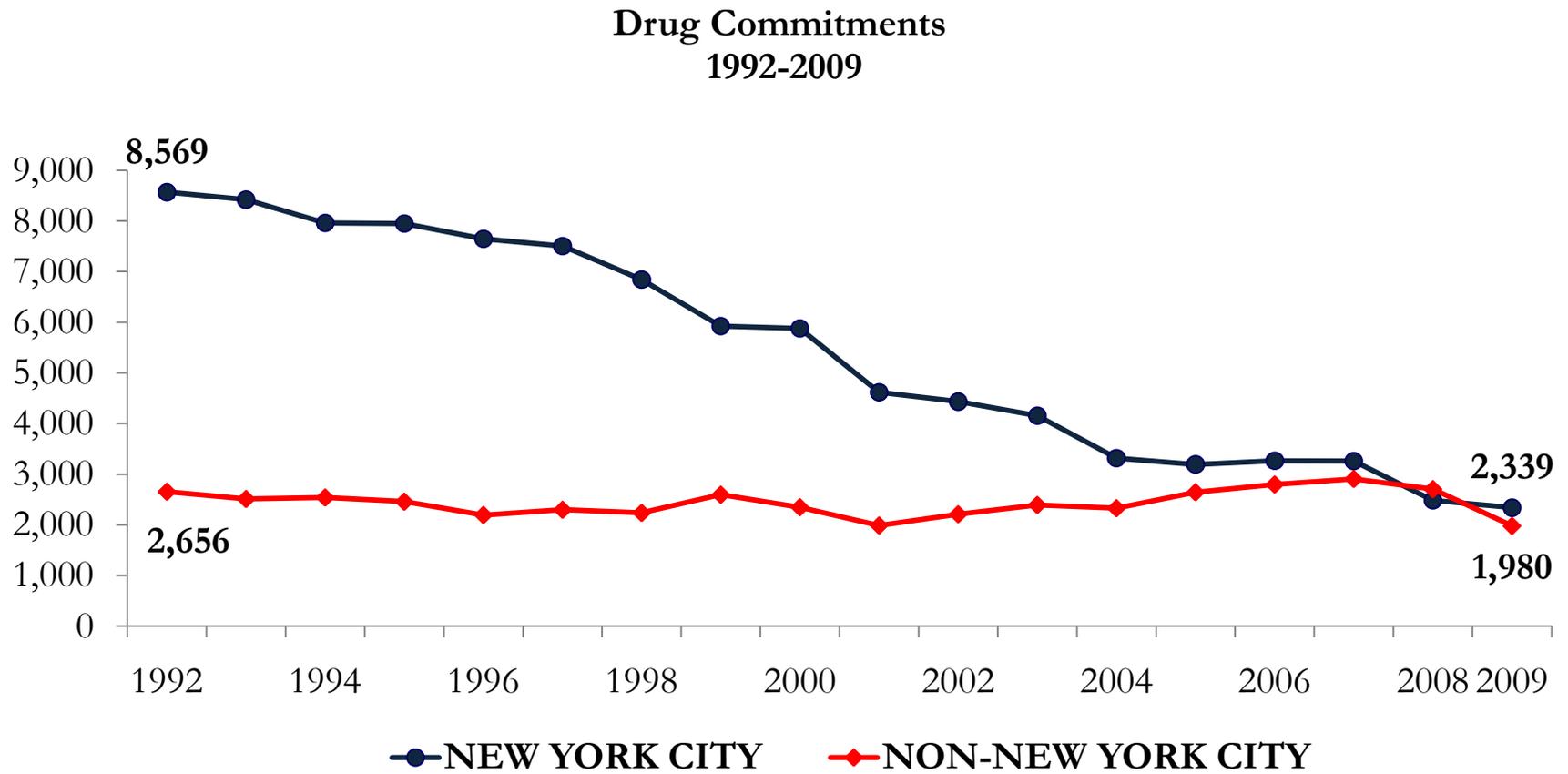
Felony Drug Indictments Declined 73% in NYC and 25% in Non-NYC Since Peaking in 1989

Drug Indictments
1980-2008



Source: DCJS – ISS and Felony Processing files

Drug Commitments Declined 73% in NYC and 25% outside NYC since 1992



2009 Drug Law Changes

Effective April 2009 – Sentencing Changes

- Eliminated mandatory minimum for 1st B Drug (can now go to jail or probation)
- Reduced minimum prison sentence for 2nd B's from 3½ years to 2 years
- Eliminated mandatory minimum for 2nd C, D, and E Drug (jail or probation now an option)
- Expanded eligibility for Shock participation and sentences to Willard Drug Treatment Campus

2009 Drug Law Changes – Implementation Dates Staggered

June 2009

- Conditional sealing provisions took effect

October 2009

- Judicial diversion statute became effective
- Resentencing authorized for indeterminately sentenced drug offenders in DOCS custody

November 2009

- New Crimes in effect:
 - B Felony Sale to a Child
 - A-I Operating as a Major Trafficker

Resentencing Update As of 2-19-10

- Eligibility estimates: 1,100 possible, 700 likely eligible
- 203 individuals resentenced & 127 released as of 2-19-10
- No centralized data collected on approvals vs. denials
- Most of those who were resentenced and are still in prison have time left to serve on new sentence
- So far: 74% released to post release supervision; for others, time already served in DOCS covered the newly-imposed sentence and the post release supervision period
- Major effort by DOCS and Parole to expedite release and arrange services has been successful
- Cases still being resentenced at a steady pace

B Felony Drug Offenders Resentenced as of February 19, 2010 (203 To Date)

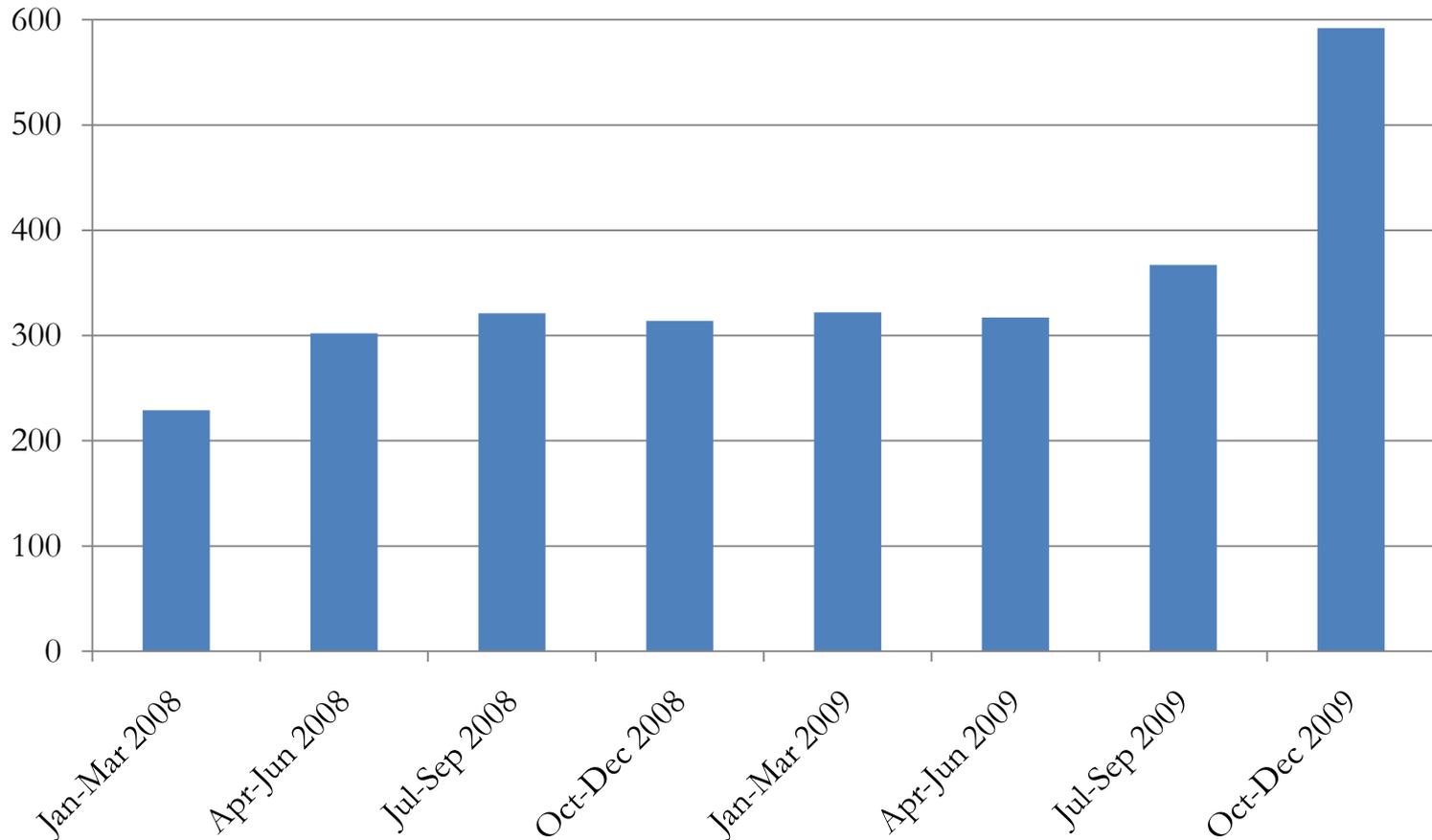
County	Number	County	Number	County	Number
Albany	11	Monroe	5	Rensselaer	3
Allegany	1	Montgomery	1	Richmond	1
Bronx	52	Nassau	4	Rockland	6
Broome	3	New York	35	Saratoga	1
Clinton	2	Oneida	1	Suffolk	3
Columbia	2	Onondaga	18	Tompkins	2
Erie	1	Ontario	3	Ulster	1
Fulton	4	Orange	10	Warren	4
Greene	1	Oswego	1	Westchester	1
Kings	17	Queens	8	Wyoming	1

Judicial Diversion – Defining Drug Law Reform (DLR) Cases

- Counting rules developed to allow comparisons of similar cases before and after October 2009
- Counts includes cases involving felony class B-E drug offenses and property offenses specified in the CPL Article 216
- Cases must remain in felony court to be counted
- Includes cases identified as 216 diversion type by the courts as well as drug court cases that involve charges included in CPL Article 216

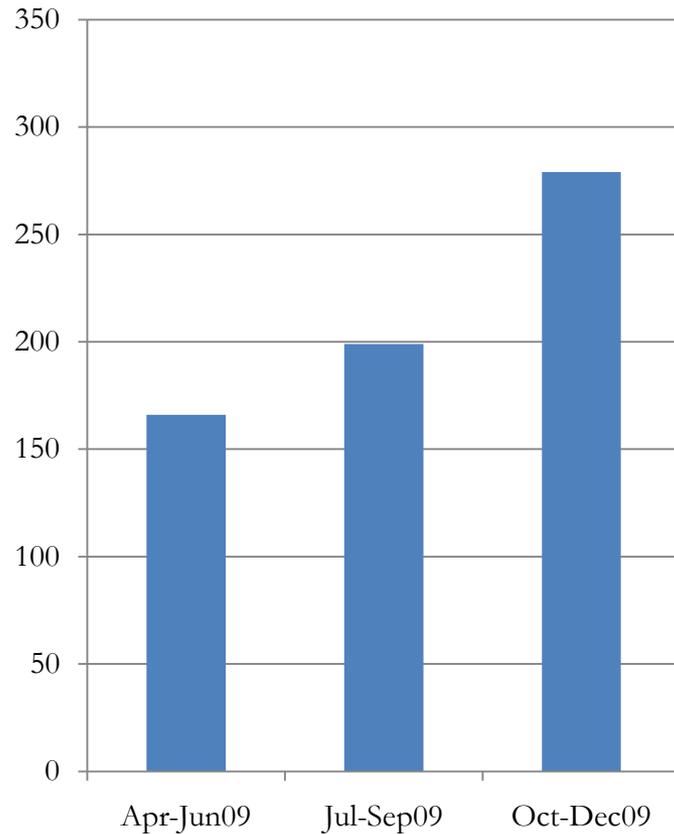
DLR Drug Court Admissions More Than Doubled since 2008

Quarterly DLR Court Admissions
January 2008-December 2009

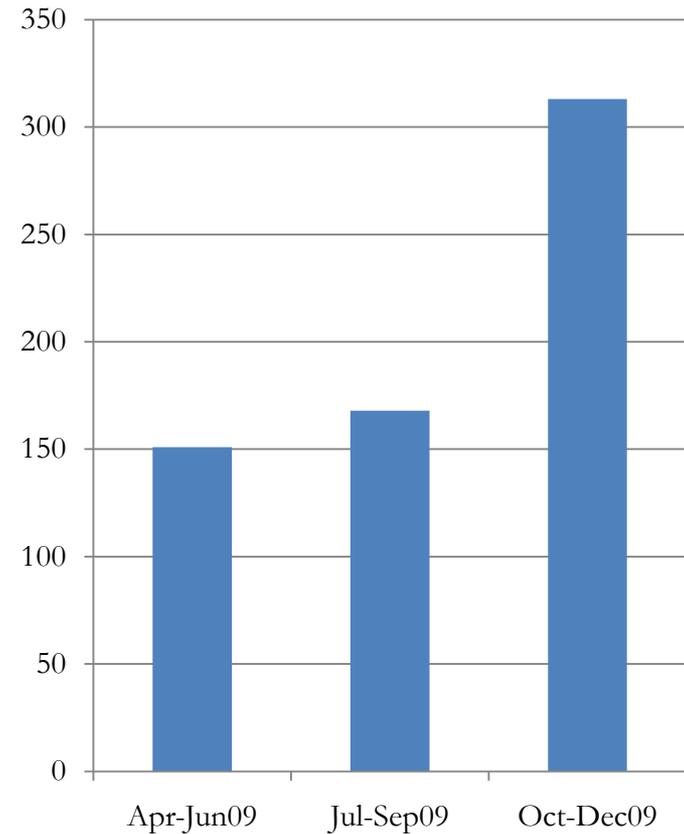


DLR Drug Court Admissions

NYC



Rest of State

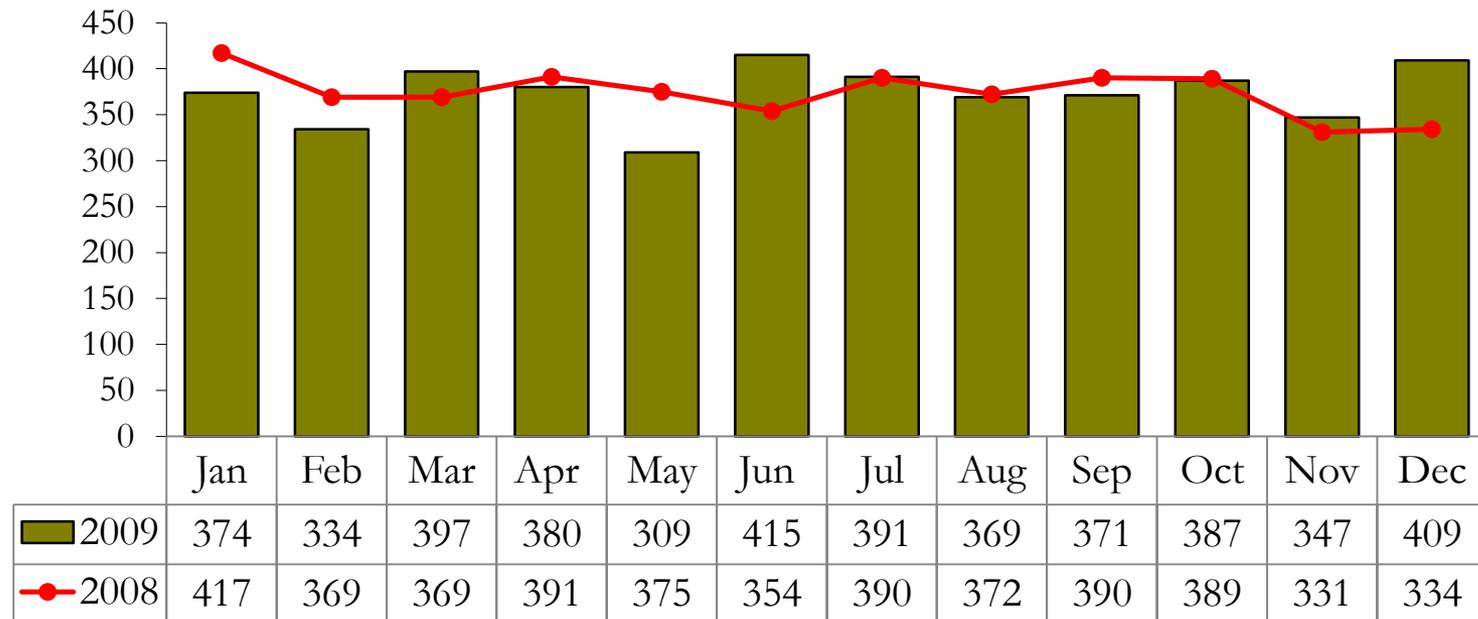


Judicial Diversion – What Will Take More Time

- Very early! Diversion program just getting underway, and files are still incomplete
- Still reconciling data from several data sources, including newly created datasets; still addressing missing and conflicting data
- More time & analysis needed to determine treatment impact and admissions to residential vs. outpatient
- Assessment data, and who accepts or rejects diversion offer not yet analyzed
- Still confirming number of cases enrolled over DA objection

NYC CJ Admissions to Residential Treatment

NYC CJ Admissions to Residential Treatment
Jan 2008 - Dec 2009



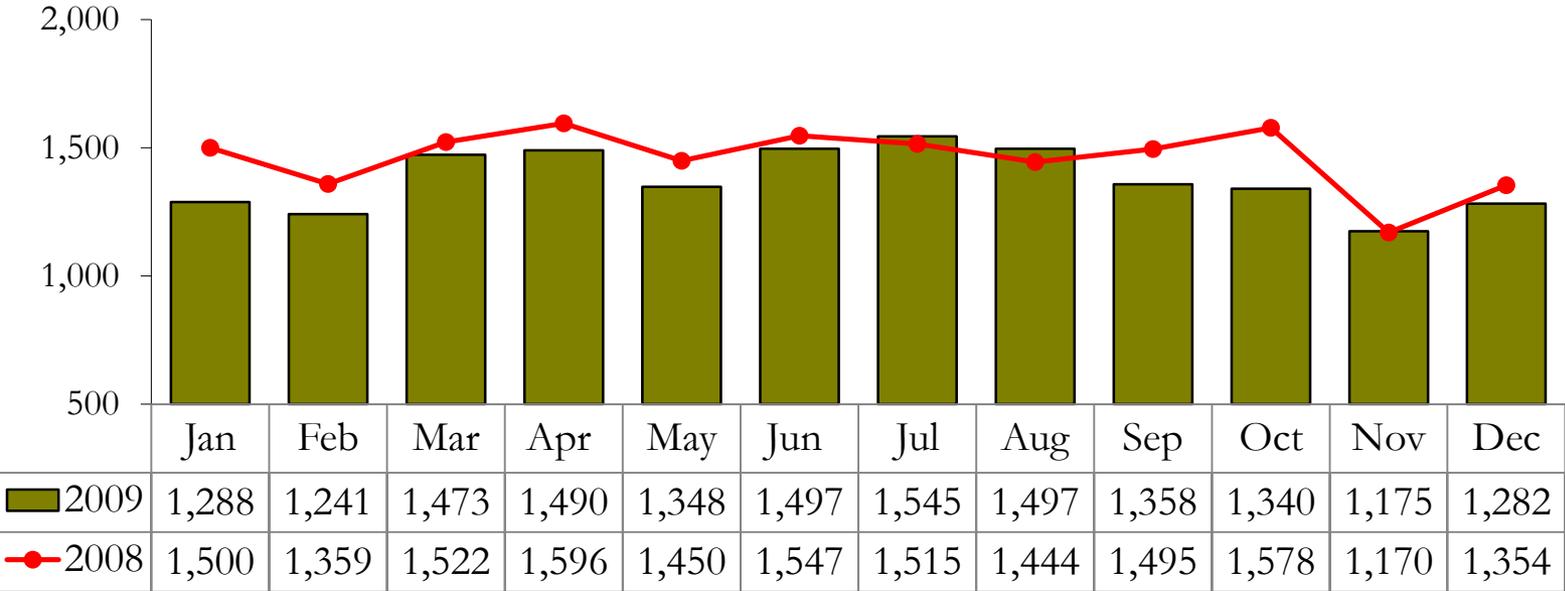
Source: OASAS

Criminal Justice Admissions to OASAS Programs

- Statewide, there are more than 60,000 Criminal Justice Admissions annually
- About 40% of treatment admissions are criminal justice-related
- Most criminal justice admissions are unrelated to Reform, but it is expected that admissions will increase as a result of Reform
- DCJS, Parole, DPCA, OCA and OASAS are working to link information while protecting client confidentiality

NYC CJ Admissions to Outpatient Treatment

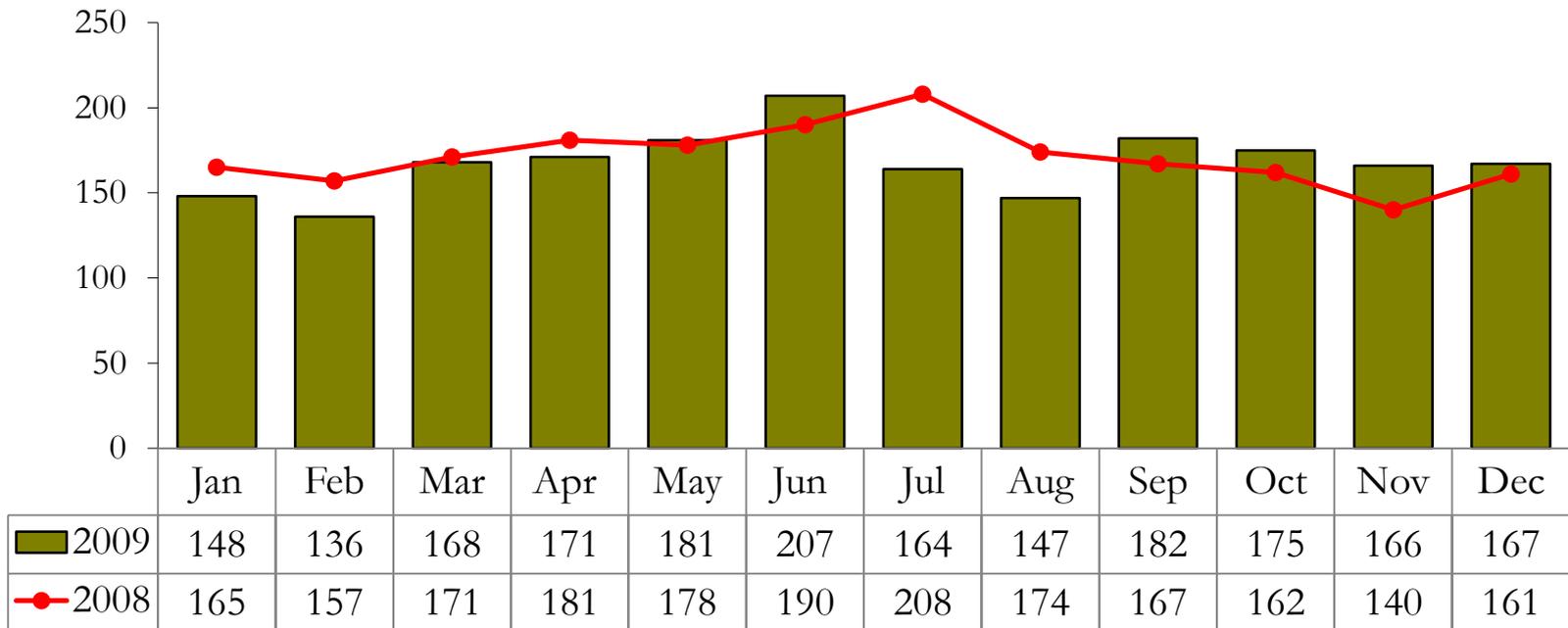
NYC CJ Admissions to Outpatient Treatment
Jan 2008 - Dec 2009



Source: OASAS

Rest of State CJ Admissions to Residential Treatment

Rest of State CJ Admissions to Residential Treatment
January 2008 –December 2009



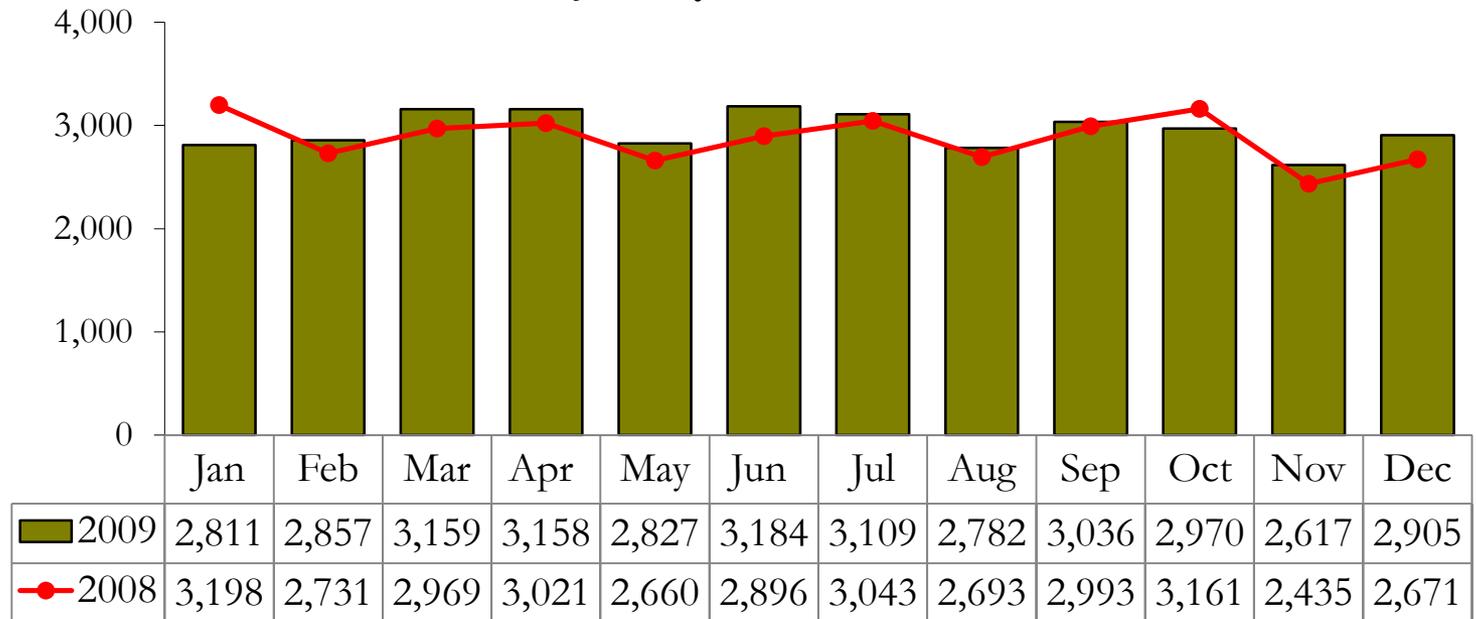
Source: OASAS

Monitoring Criminal Justice Treatment Participation

- DCJS and OASAS are monitoring overall Criminal Justice admissions to treatment
- October-December 2009 is very early implementation of new judicial diversion—but monitoring procedures are in place
- New tracking mechanisms will provide greater understanding of treatment participation among criminal justice clients

Rest of State CJ Admissions to Outpatient Treatment

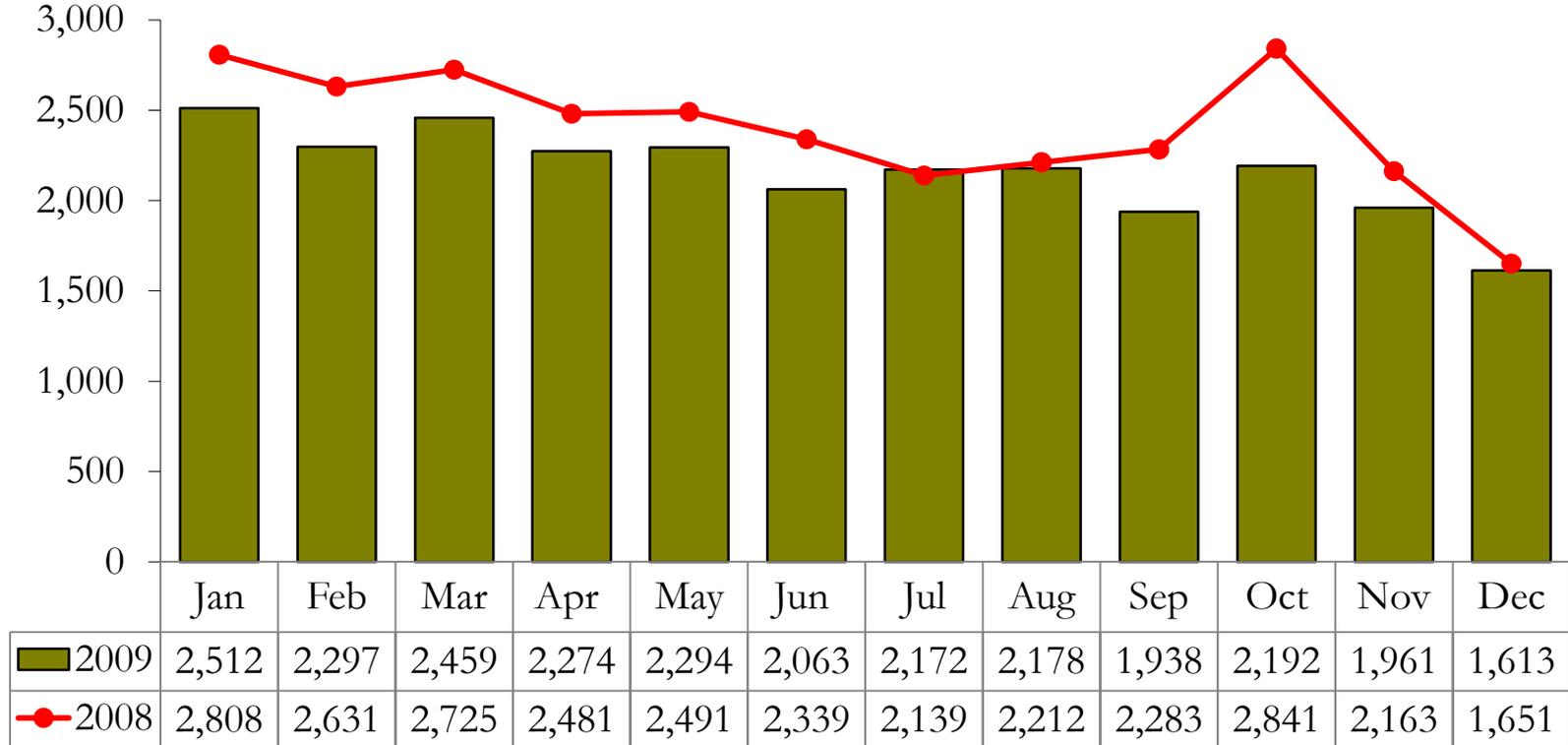
Rest of State CJ Admissions to Outpatient Treatment
January 2008 – December 2009



Source: OASAS

NYC Felony Drug Arrests Down (-10%) in 2009; 2nd Year of Decline

NYC Felony Drug Arrests
Jan 2008 - Dec 2009

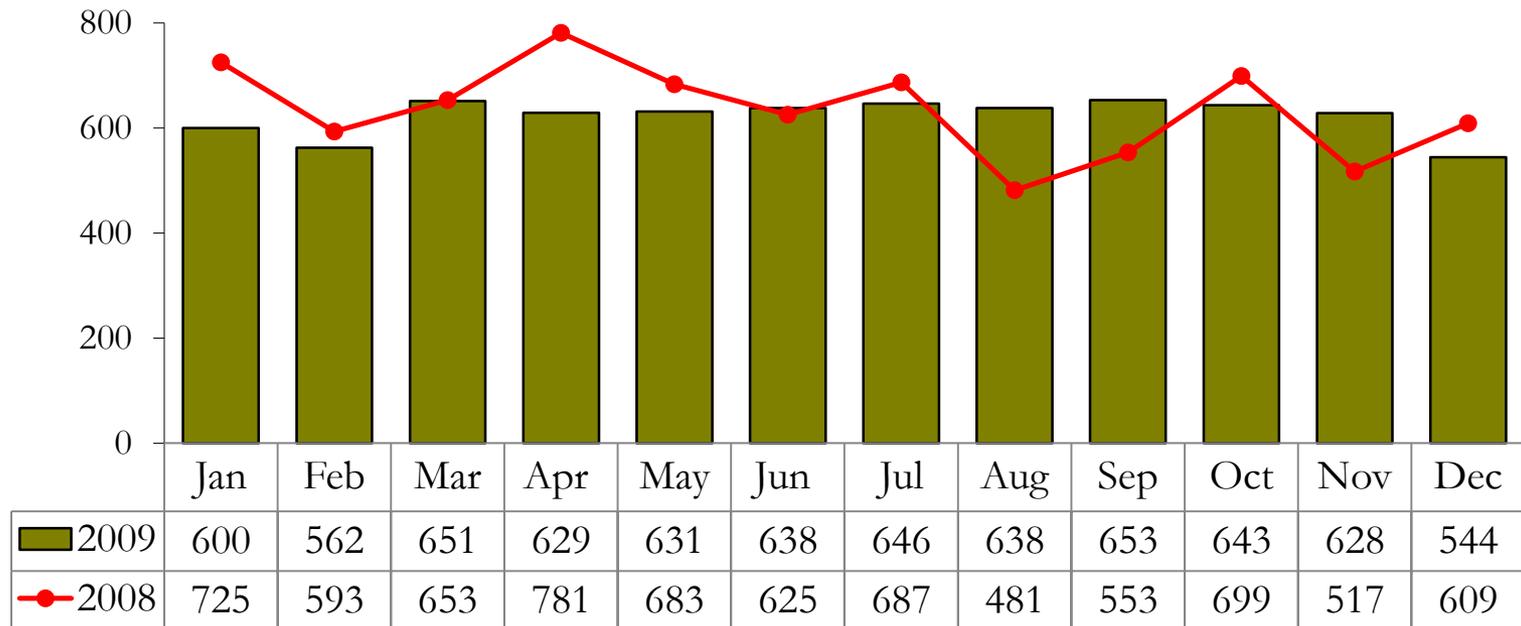


Recent Felony Drug Trends In New York City

- Monthly data shows trends underway when statutory change was enacted in 2009
- Arrests down (-10%) in 2009, the second year of decline
- Indictments dropped (-2%) despite larger decline in arrests; indictment activity very stable month-to-month in 2009
- NYC commitments declined (-6%) with decline noted from May onward

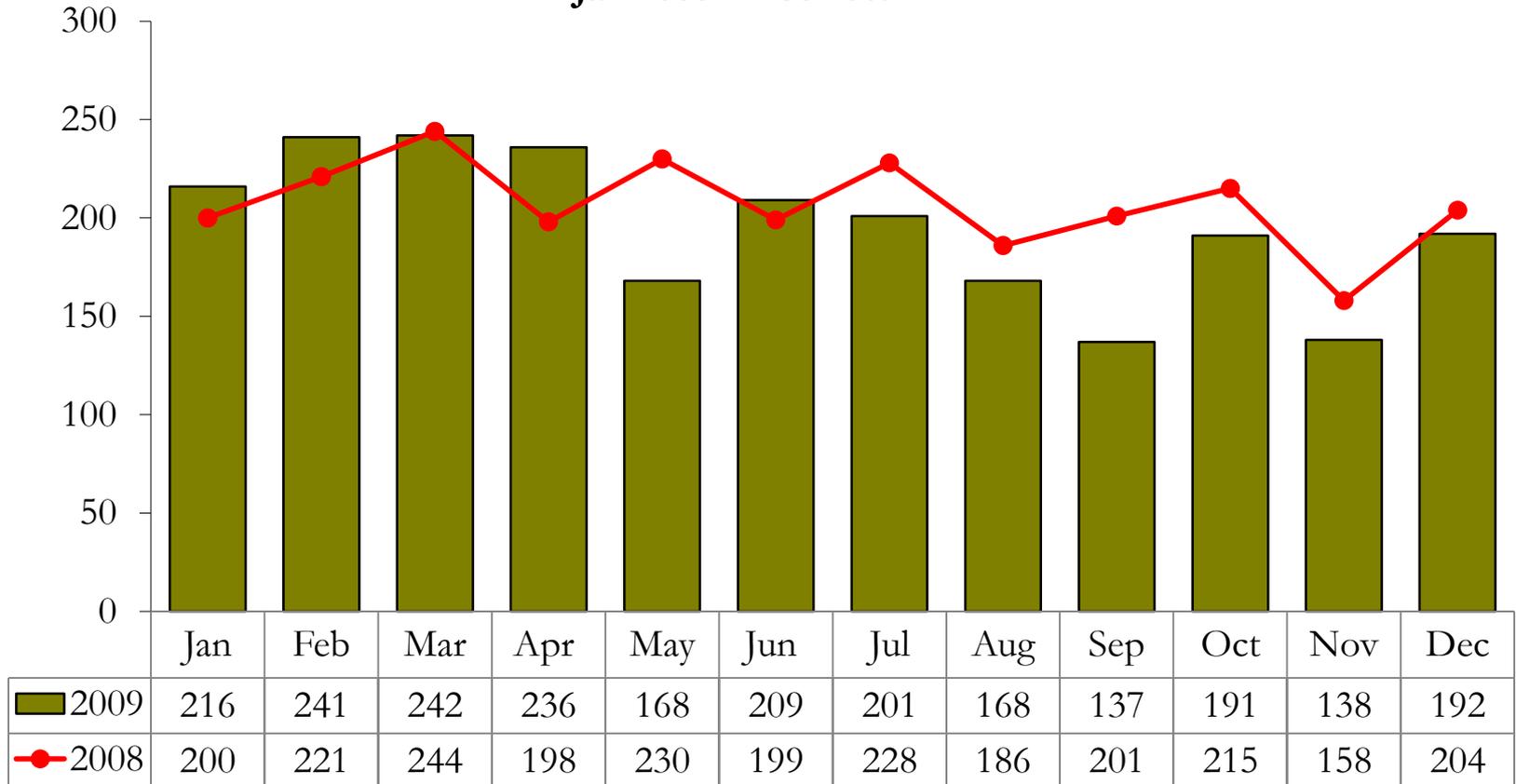
NYC Felony Drug Indictments Down (-2%) in 2009

NYC Felony Drug Indictments
Jan 2008 - Dec 2009



NYC Drug Commitments Down (-6%)

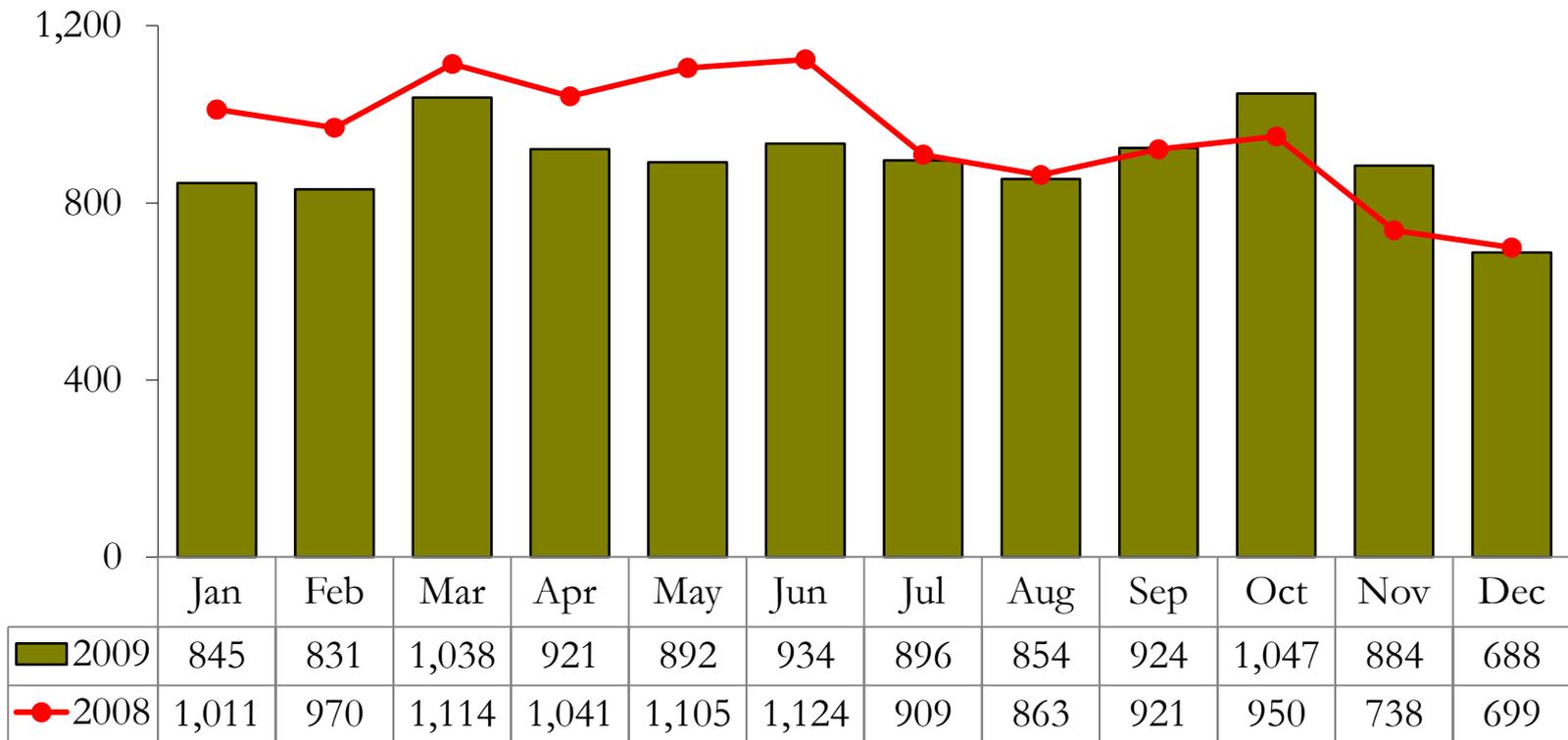
NYC Drug Commitments to Prison
Jan 2008 - Dec 2009



Non-NYC Felony Drug Arrests

Down (-6%) in 2009

Non-NYC Felony Drug Arrests
Jan 2008 - Dec 2009

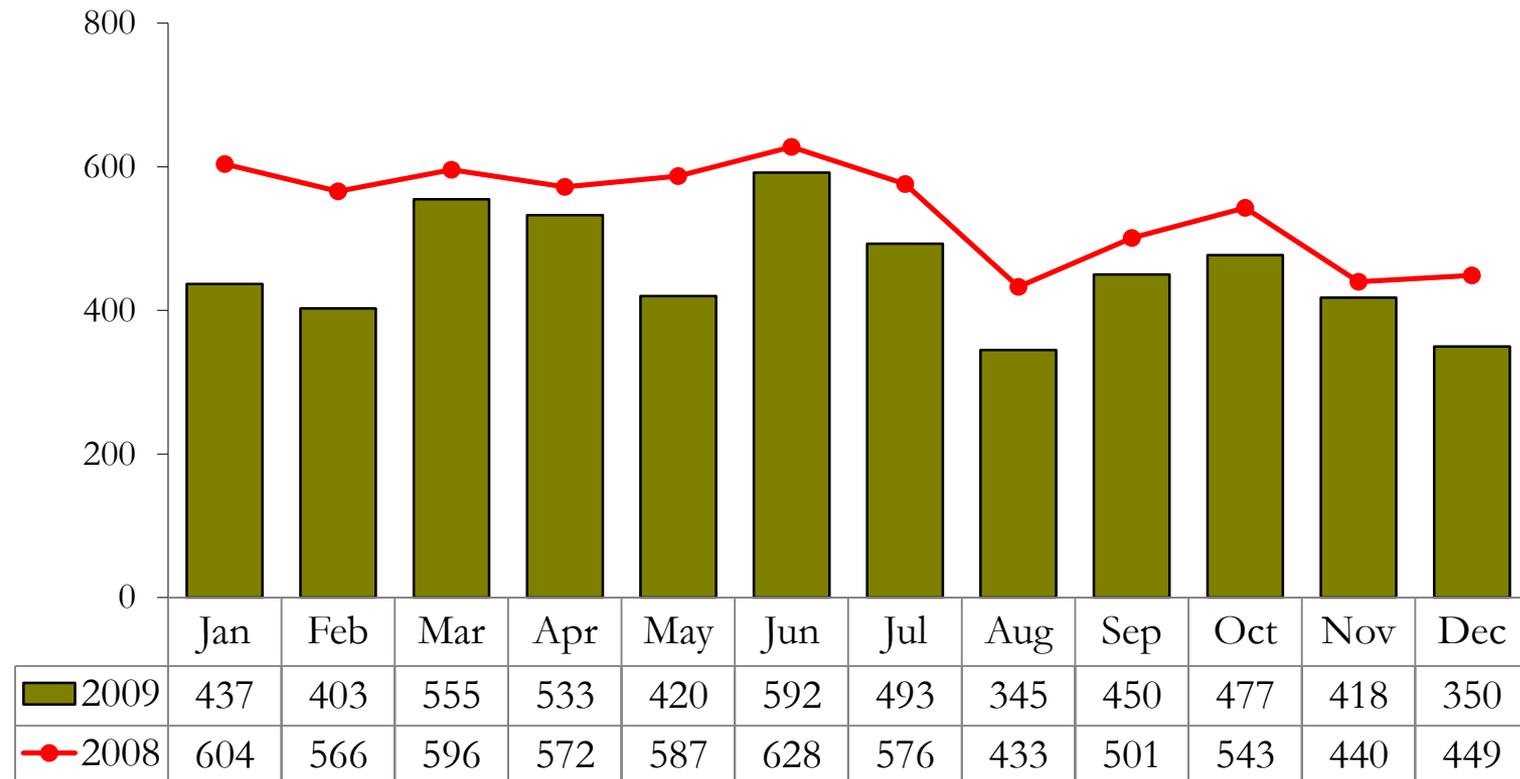


Recent Felony Drug Trends In Rest of State

- Non-NYC Felony drug arrests declined (-6%) for the 2nd year in a row.
- Decline in indictments (-16%) much greater than decline in arrests
- Decline in commitments (-27%) even greater
- Important Note: Many 2009 commitments arrested indicted prior to 2009 - shown with arrests and indictments to illustrate overall trends

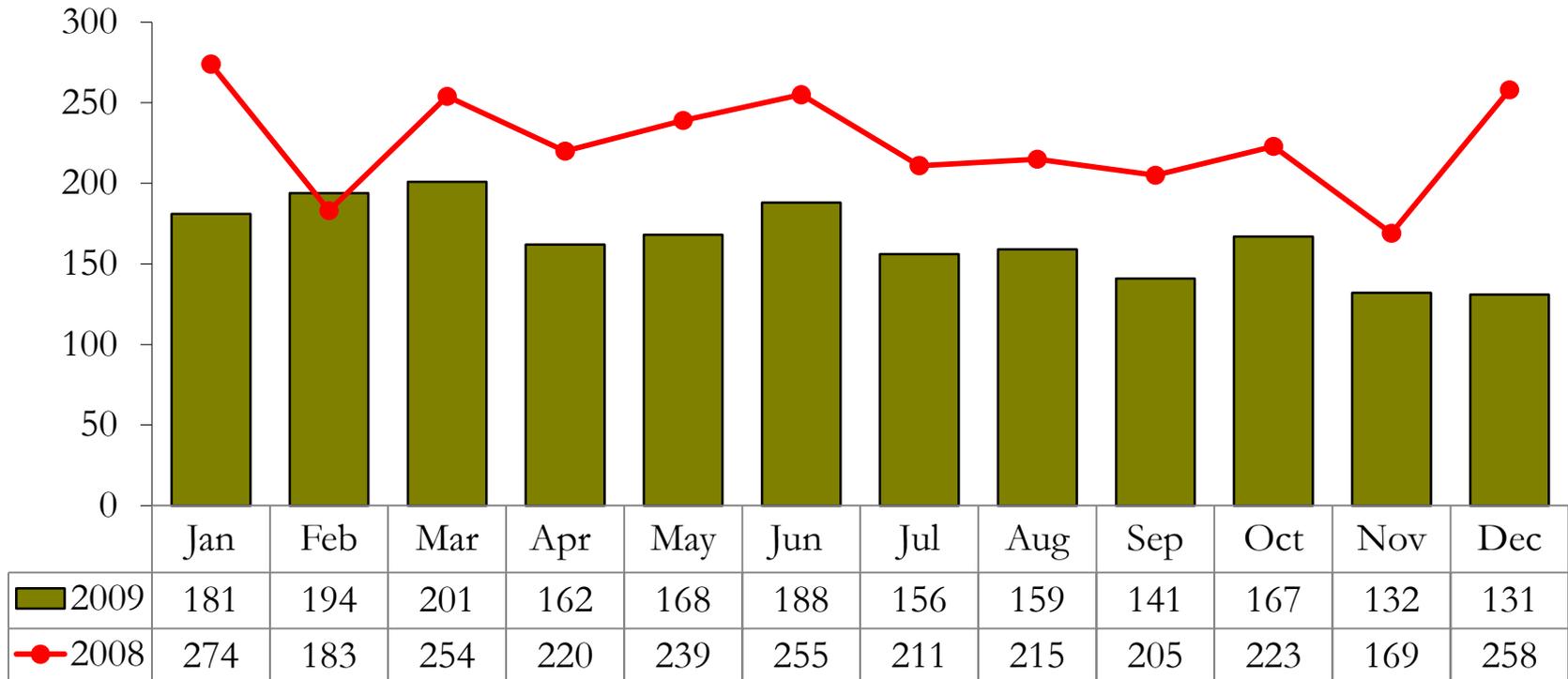
Non-NYC Felony Drug Indictments Down (-16%) in 2009

Non-NYC Felony Drug Indictments
Jan 2008 - Dec 2009



Non-NYC Drug Commitments Down (-27%)

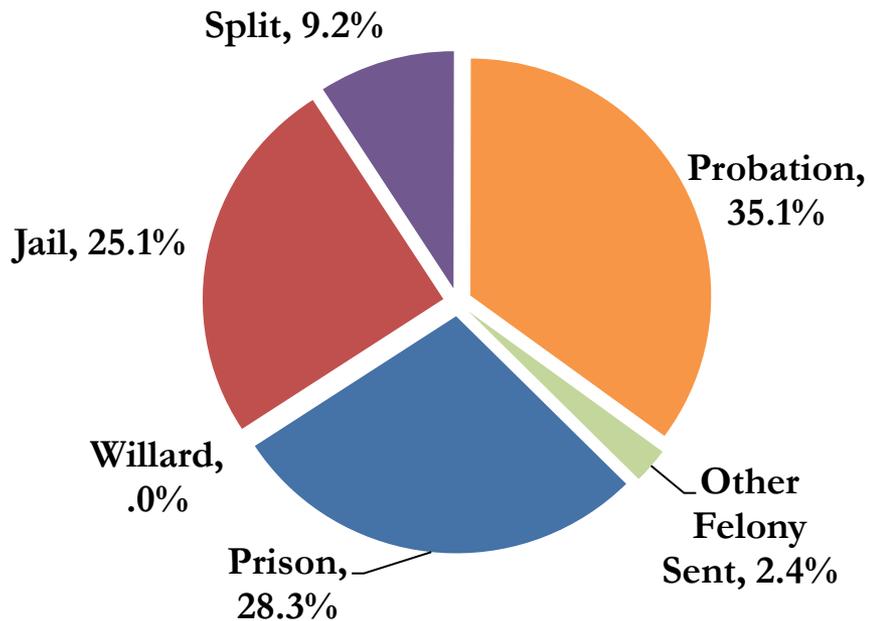
Non-NYC Drug Commitments to Prison
Jan 2008 - Dec 2009



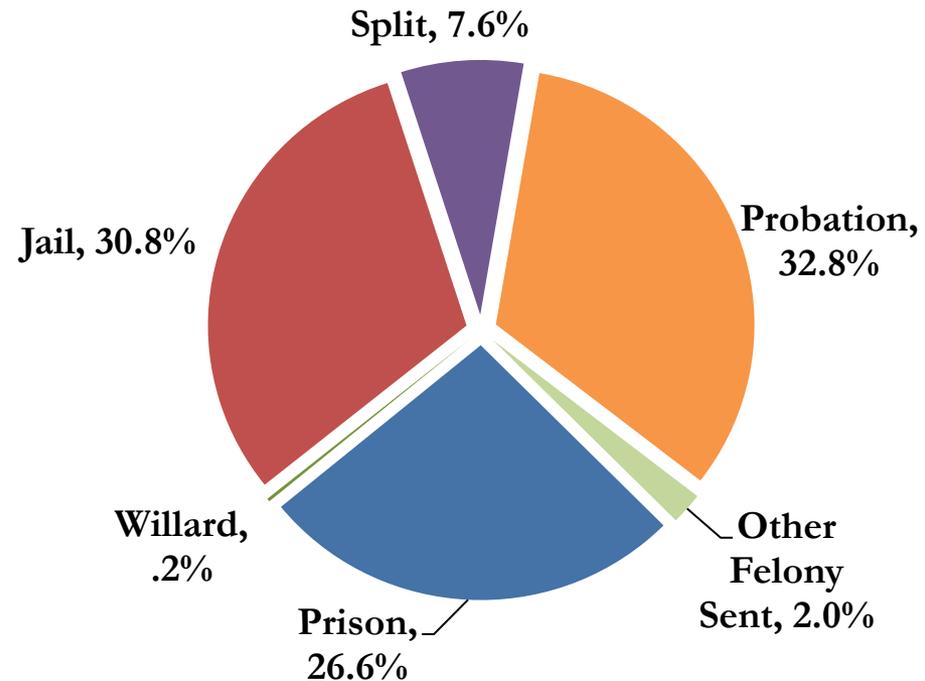
Source: DOCS Admission file

NYC Sentences for 1st B, C, D, and E Felony Drug Convictions (Excludes Diversions)

2008
(2,599)



Jul-Sep 2009
(497)

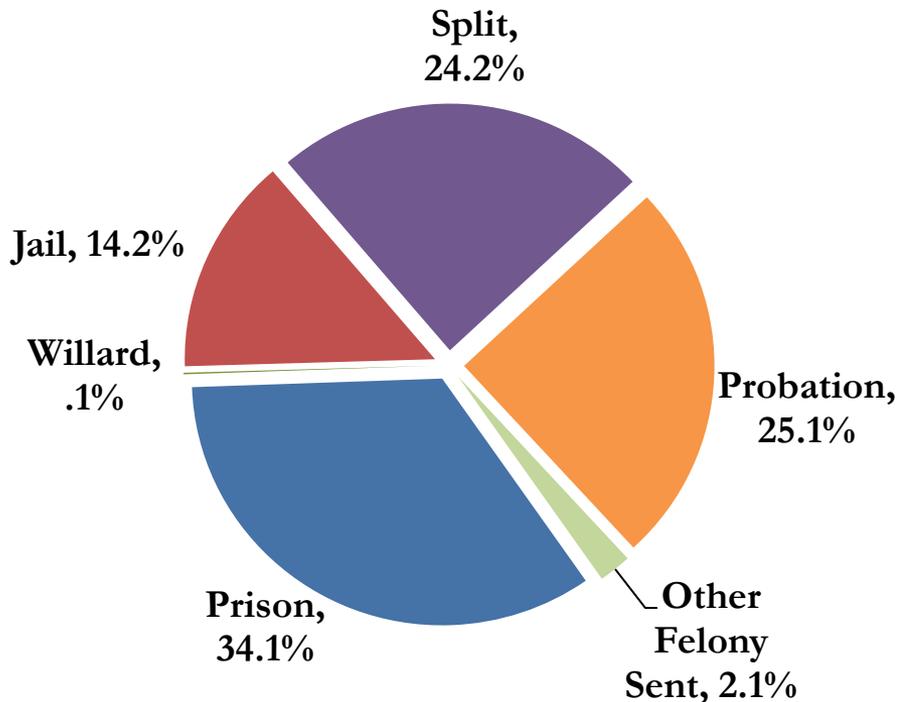


Elimination of Mandatory Minimums for 1st B Convictions Mean Fewer to Prison

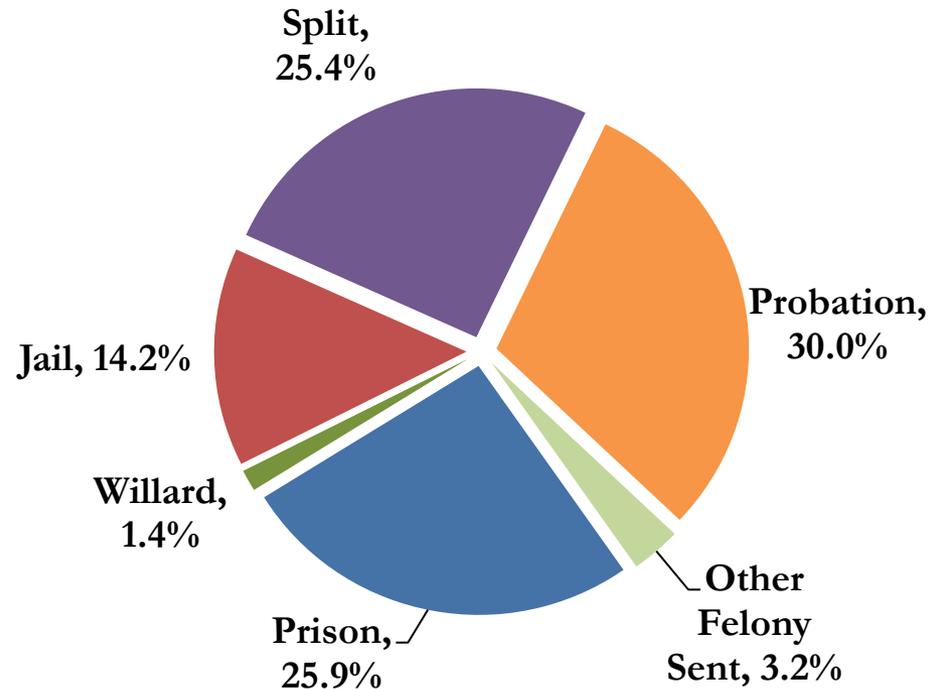
- Does not include persons entering diversion or completing diversion – only those convicted of a 1st felony B, C, D or E drug offense
- The quarter shown pre-dates the implementation of judicial diversion – only shows changes in sentencing for those convicted of a felony drug offense
- 1st B's are shown along with 1st C, D and E convictions to show net impact after any shifts in plea practices

Rest of State Sentences for 1st B, C, D, and E Felony Drug Convictions (Excludes Diversions)

2008
(3,082)



Jul-Sep 2009
(628)

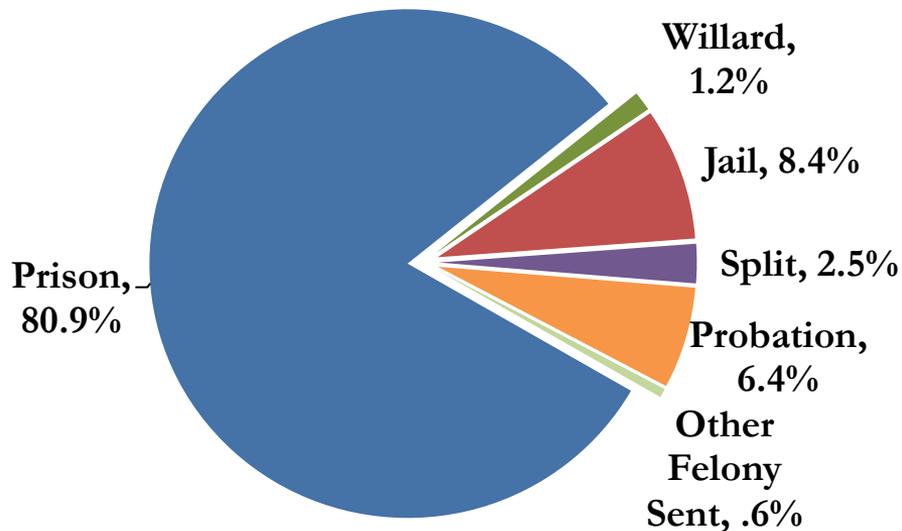


Sentences are Changing for 1st B, C, D, and E Felony Drug Convictions

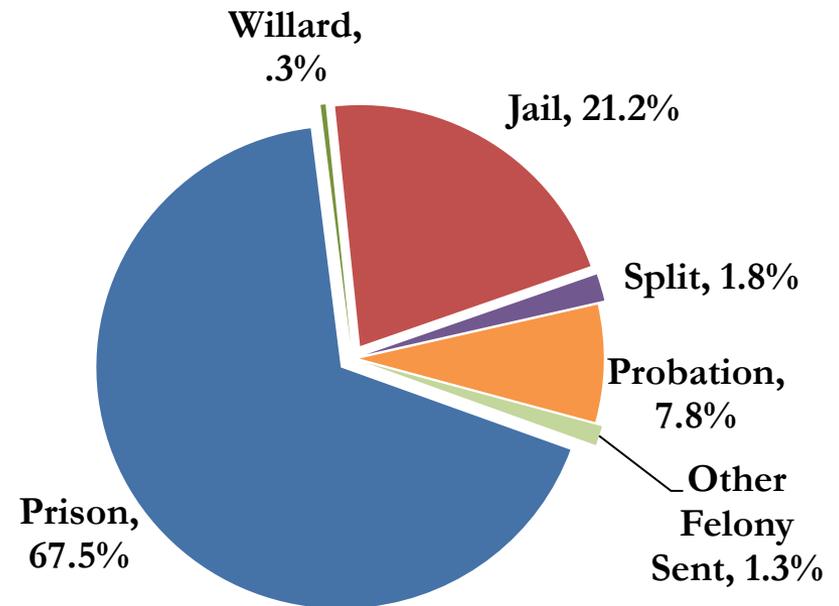
- In NYC, the proportion of first felony drug offenders who received prison only dropped slightly from 28.3% to 26.6%; NYC also shifted to more jail sentences, slightly fewer to probation for 1st felony offenses
- Outside NYC – proportion sentenced to prison down more dramatically from 34.1% to 25.9%
- The proportion sentenced to probation, split sentences and jail increased outside NYC

NYC Sentences for 2nd B, C, D, and E Felony Drug Convictions (Excludes Diversions)

2008
(2,450)



Jul-Sep in 2009
(612)

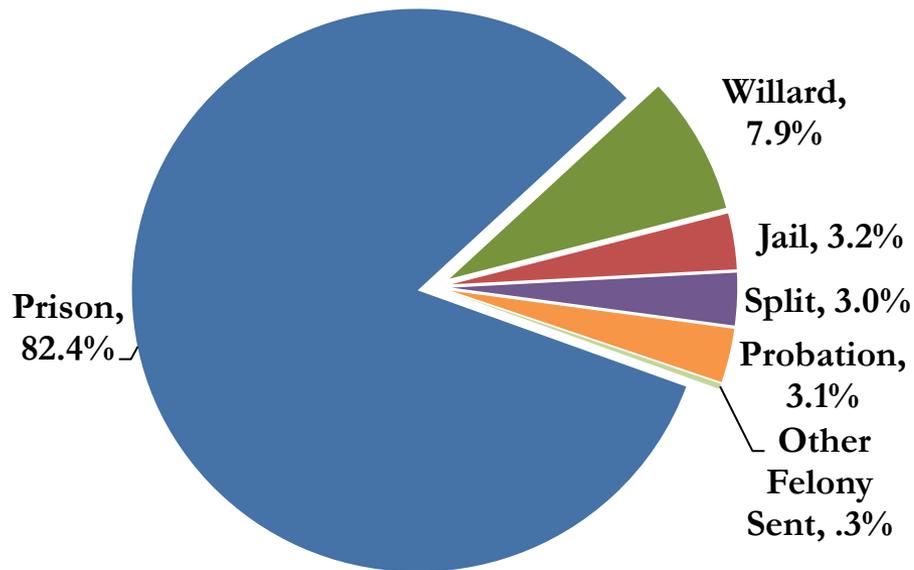


Elimination of Mandatory Minimums for 2nd C, D, E Convictions

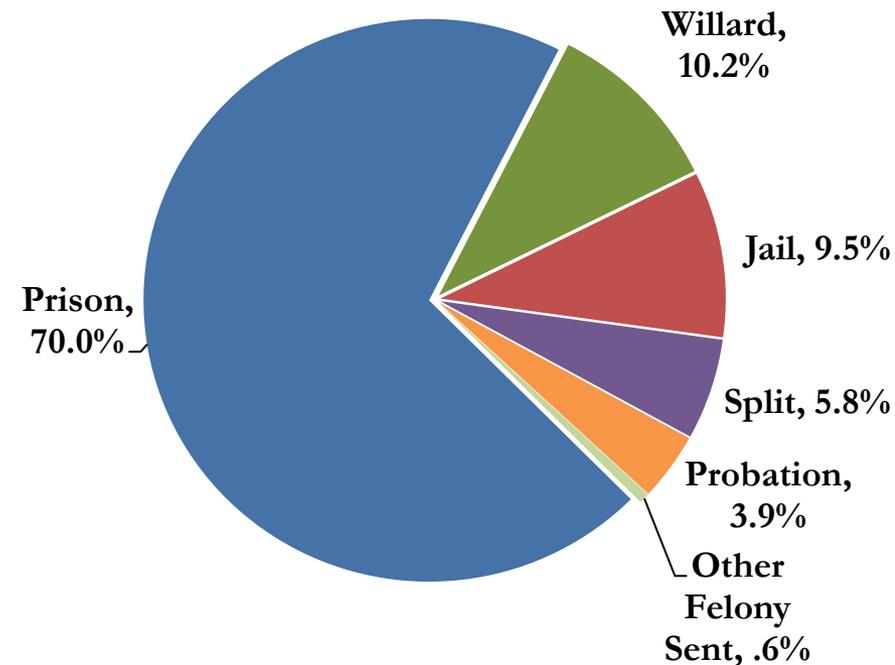
- Decrease in the proportion sentenced to prison for all 2nd Felony drug convictions is significant, both within and outside NYC
- NYC – proportion sentenced to prison down from 80.9% to 67.5%
- Rest of State declined from 82.4% to 70.0%
- Unrelated to diversion – solely related to sentencing changes for those convicted of drug felonies and not diverted

Rest of State Sentences for 2nd B, C, D, and E Felony Drug Convictions (Excludes Diversions)

2008
(2,093)



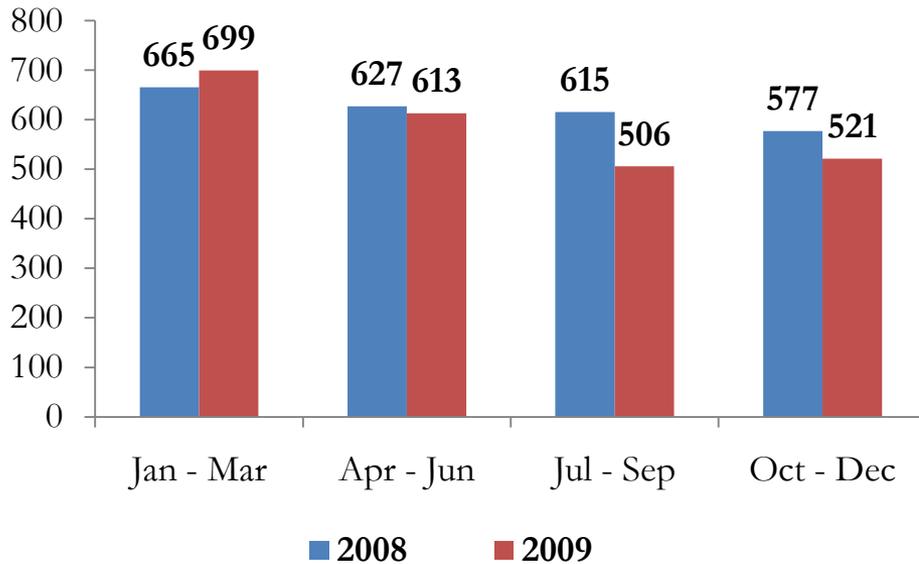
Jul-Sep 2009
(463)



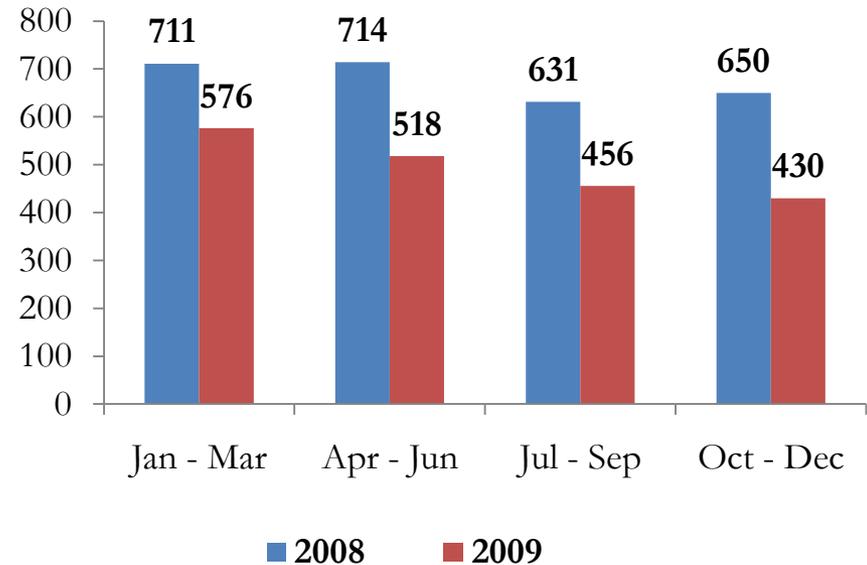
4,319 Drug Commitments in 2009 Declined by 871 from 2008

Drug Commitments to Prison: Quarterly Comparison 2008 – 2009

NYC



Non-NYC



Profile of DOCS Commitments

- In 2008, there were 3,335 sentences to prison for 1st B's, and 2nd C, D, and E drug offenses, offenses which no longer require prison; these offenses made up 64% of the 2008 drug commitments
- In 2009, there were 2,529 commitments for same offenses – decrease of 24%
- 1st B's, and 2nd C, D, and E offenses made up 58% of the 4,319 commitments in 2009
- Sentencing changes were effective for less than 9 months of 2009

Changes in Drug Commitments to Prison 2008 vs. 2009

Felony Class	Commitment Year		2008 vs. 2009
	2008	2009	% Change
A 1st and 2nd	276	298	8%
B 1st	1,198	930	-22%
B 2 nd	743	870	17%
C 2nd	1,012	728	-28%
D 2nd	945	709	-25%
E 2nd	180	162	-10%
C 1 st	421	300	-29%
D 1 st	378	278	-26%
E 1 st	37	44	19%
Total	5,190	4,319	-17%

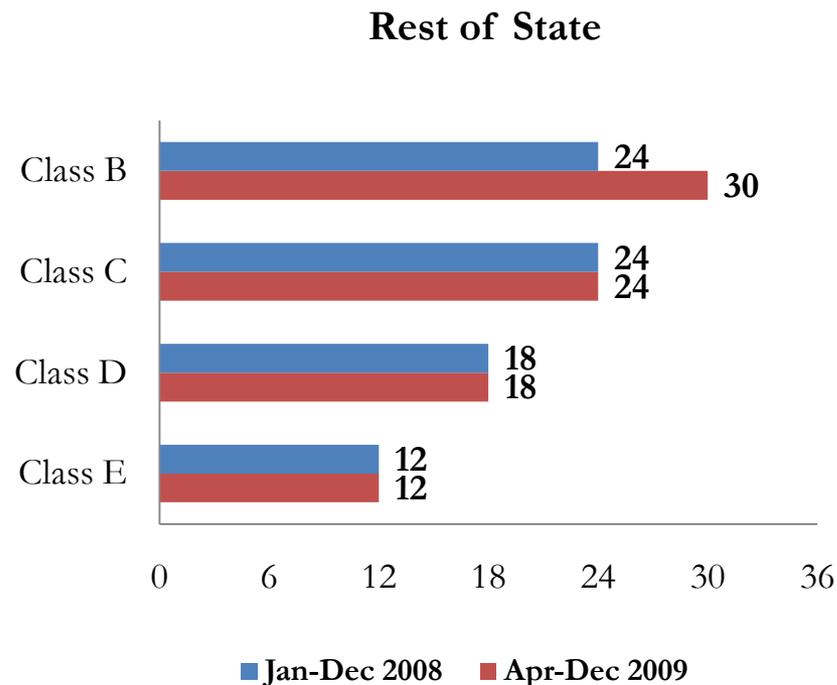
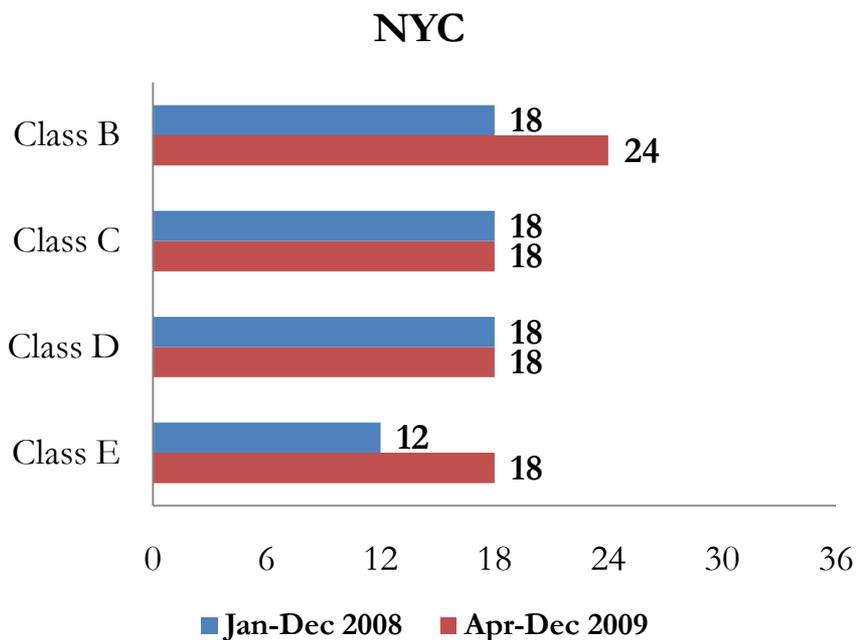
Source: DOCS Admission file and DCJS Criminal History file

Majority of Felony Drug Arrests and Indictments Class B's; Will Be Analyzing Plea Practices

Felony Offense Class of Drug Arrests and Indictments, 2008				
Felony Offense Class	Arrests		Indictments	
	#	%	#	%
Class A-I	1,019	2.5%	423	3.0%
Class A-II	1,023	2.5%	319	2.3%
Class B	28,395	70.6%	9,346	66.6%
Class C	2,691	6.7%	1,436	10.2%
Class D	5,851	14.6%	2,094	14.9%
Class E	1,230	3.1%	411	2.9%
Total	40,209	100.0%	14,029	100.0%

B 1st Sentences Increased An Average of 6 Months

Median Sentence in Months – B-E First Felony

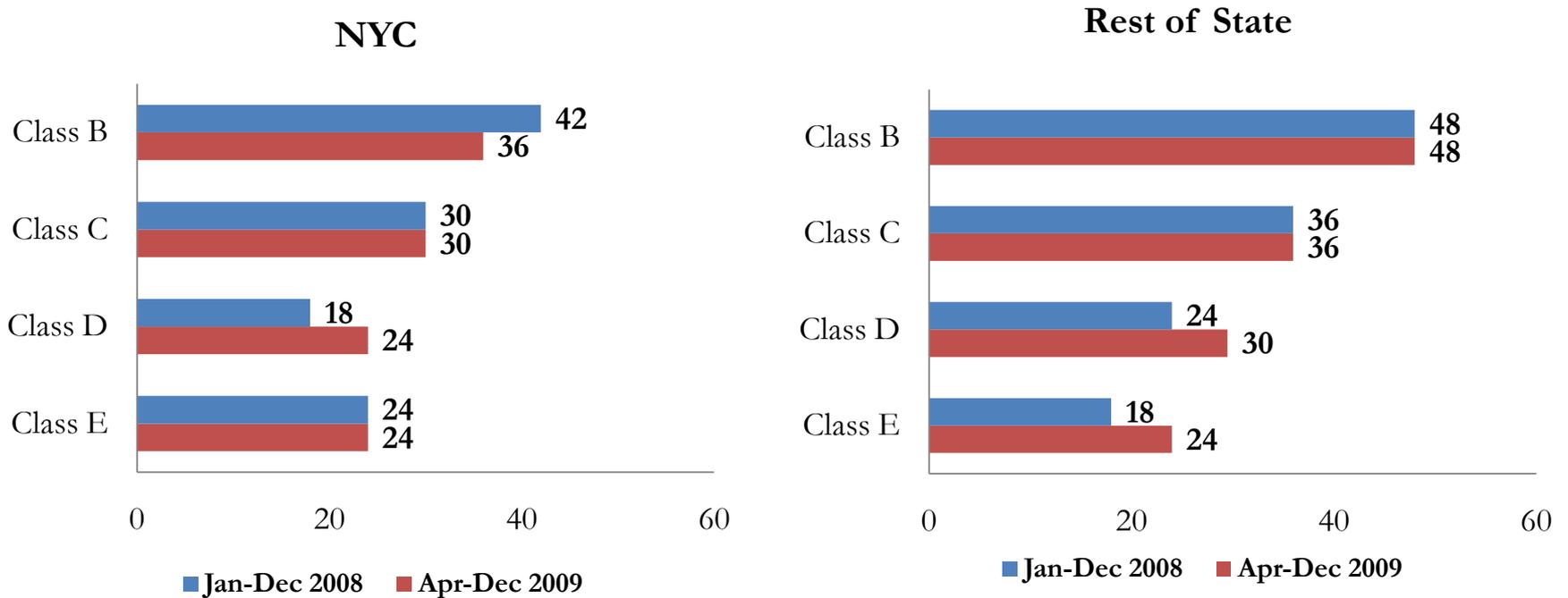


Early Changes – For First Felony Drug Commitments

- 1st B determinate sentence range is 1 to 9 years
- In both regions, sentences for 1st B commitments increased by 6 months
 - Since prison is no longer required for 1st B's, those committed after sentencing change are more likely than before to get a longer sentence
- When prison was mandatory for 1st B's, there were a larger number of commitments that received the 1 year minimum sentence

Average Sentences Decreased for B 2nd's in NYC, Unchanged Rest of State

Median Sentence in Months – B-E Second Felony

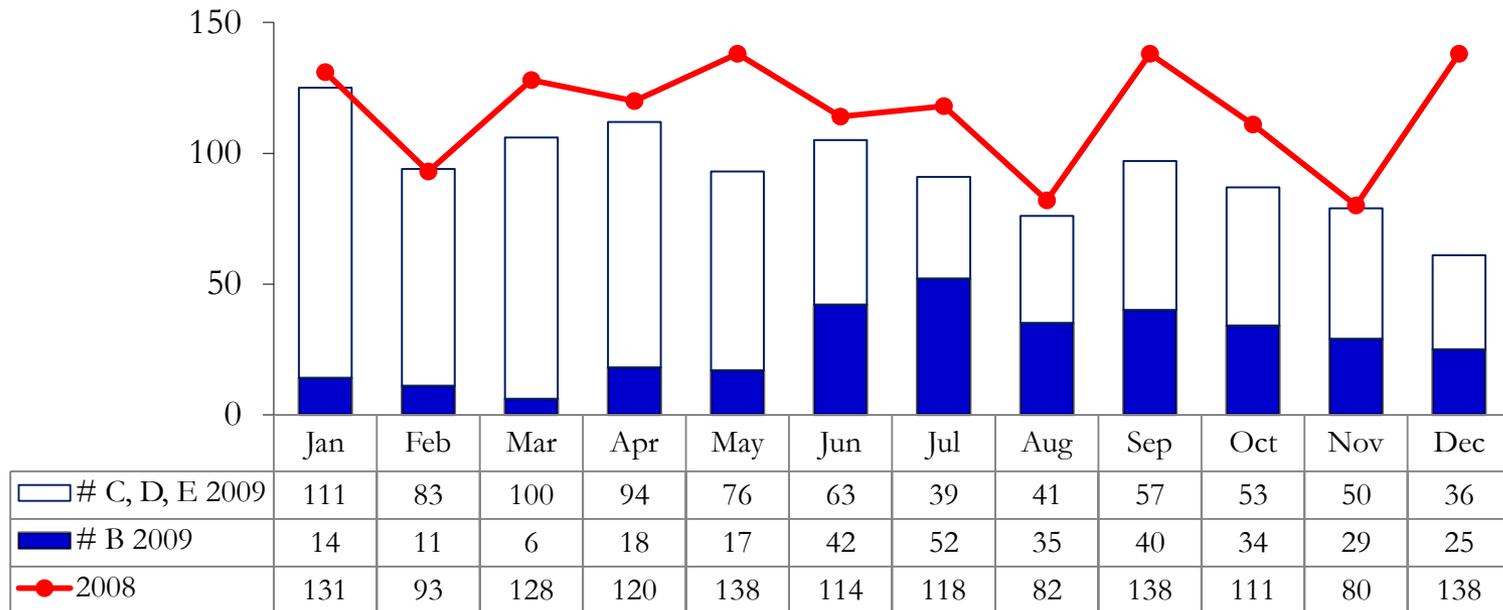


Early Changes – For Second Felony Drug Commitments

- The mandatory minimum sentence for 2nd B's was reduced from 3 ½ to 2 years
- The median sentence decreased in NYC from 42 to 36 months; no change seen yet outside NYC
- 500 fewer 2nd C's and D's were committed; median sentence length increased for 2nd D's
- With prison no longer required for these convictions, those committed after sentencing change more likely than before to get a longer sentence

NYC Felony Drug Sentences to Probation Down, But Higher Proportion of B's

NYC Felony Drug Sentences to Probation
Jan 2008 - Dec 2009
(B,C,D & E Convictions)



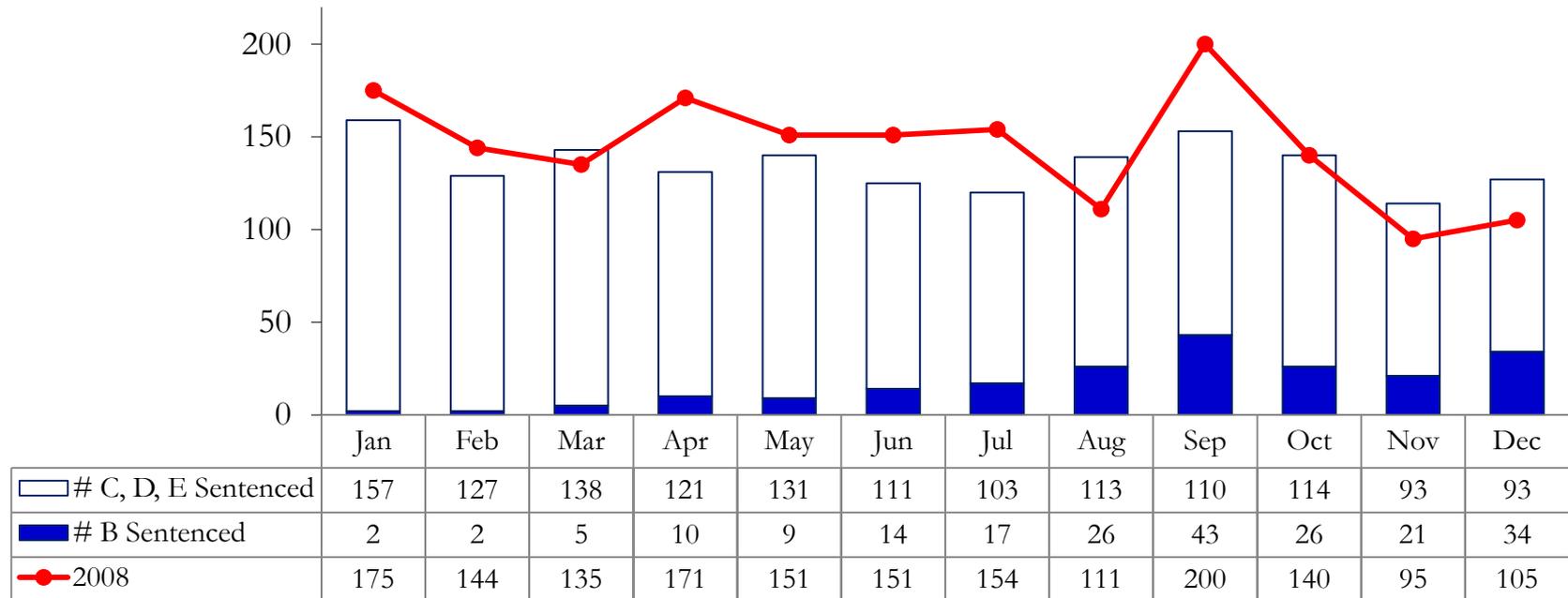
Source: DCJS – Felony Processing file

Changes in Probation Sentences

- The proportion of cases sentenced to probation is up for both 1st and 2nd felony drug convictions
 - More 1st B and 2nd C, D, E drug offenders now receiving a probation sentence
- Outside New York City, fewer indictments have meant fewer dispositions so although the proportion of convictions resulting in a probation sentence is up, the number is down

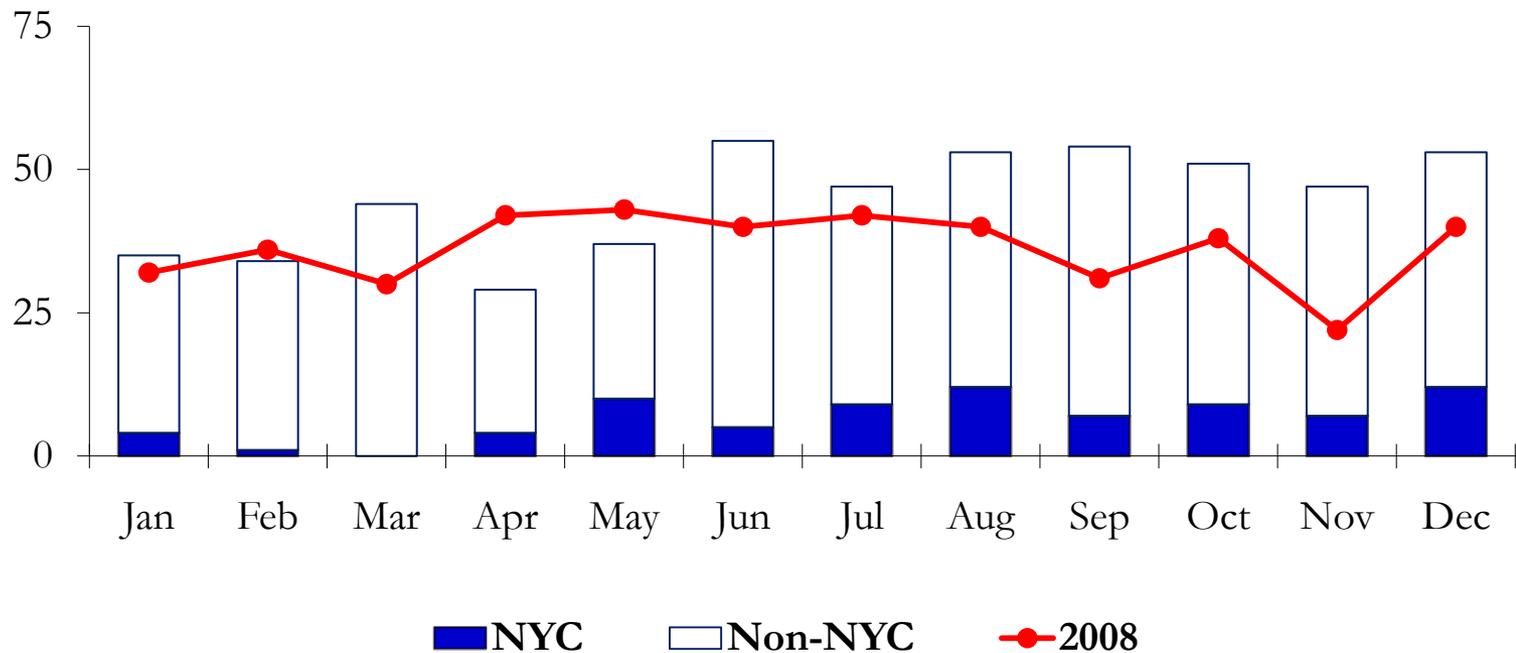
Non-NYC Drug Sentences to Probation Down, with B Sentences Increasing

Non-NYC Felony Drug Sentences to Probation
Jan 2008 - Dec 2009
(B,C,D & E Convictions)



Statewide Direct Judicial Sentences to Willard Are Up (+30%)

Statewide Willard Admissions
Jan 2008 - Dec 2009



Expanded Eligibility for DOCS Shock Incarceration Program

As of January 2010:

- 105 Retroactive cases graduated from Shock (including 20 who were 40+ years old)
- 12 additional 40+ individuals entered Shock and graduated
- 87 Aging-In cases are currently participating in the program (including 17 over 40 years old)
- 29 40+ individuals currently in the program arrived directly the Reception Centers
- 945 currently participating in Shock (lowest since April 2009); number of Shock eligible offenders entering DOCS continues to decline
- Five Court Ordered inmates who did not meet the physical or psychological requirements of the program are participating in alternative programs

Parole Merit Termination

- Effective April 7, 2009, the Division of Parole can authorize to discharge certain nonviolent drug offenders from supervision prior to their maximum expiration date
- As of December 31, 2009, 1,146 nonviolent parolees who were under supervision for drug offenses were discharged

Conditional Sealing

- Effective June 7, 2009, upon successful completion of a judicial diversion program, the court may conditionally seal the instant offense and up to three prior misdemeanors
 - If the defendant is re-arrested, the records are unsealed
- Seven conditional seals have been processed by OCA and DCJS as of February 12, 2010
- Rensselaer (3) , Schenectady (1), Suffolk (1), Steuben (1), Kings (1)

Working with NYC Offices to Incorporate DTAP Data

NYC DTAP DA DIVERSION PROGRAM ADMISSIONS (1999-2009)*											
County	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	Jan-Sep 2009
Bronx	306	344	334	297	270	244	321	264	257	232	249
Kings	161	179	238	206	273	155	157	235	139	109	127
New York (in fiscal years)	na	na	na	47	na	34	44	32	48	8	na
Special Narcotics Prosecutor	141	145	109	129	146	190	195	143	96	119	96**
Queens	26	31	42	43	73	59	37	48	34	31	26
Richmond	8	26	48	33	21	25	23	27	19	10	9
New York City Total	642	725	771	755	783	707	777	749	593	509	507

*The programs included in this chart differ substantially in selection criterion, treatment modalities utilized, enforcement methods and completion requirements.

** SNP includes January – December 2009

Note: All data is preliminary and under review

Research and Evaluation Plan

- DCJS coordinating with OCA, OASAS, DOCS, Parole, DPCA to monitor all aspects of reform
- Excellent cooperation among agencies
- Agreements in place with OCA and OASAS
- Sharing among other CJ agencies will continue
- Will link criminal justice, treatment and diversion data for the first time
- Will greatly improve what we know about diversion and treatment outcomes

Next Steps – More Analysis Needed

- Cohort analyses will provide more complete information; need more complete files to analyze changes in plea practices
- Treatment activity is critical, but too early to analyze
- Baseline reports on DCJS website
- DCJS coordinating development of formal evaluation plan (more long term)
- Seeking input into formal evaluation from all stakeholder groups
- Preliminary data updates (like this one) will be shared through 2010

Baseline Reports on DCJS Website at
www.criminaljustice.state.ny.us

Division of Criminal Justice Services
Office of Justice Research and Performance
518-457-7301

Terry Salo, Deputy Commissioner
Terry.Salo@dcjs.state.ny.us

Leslie Kellam, Research Coordinator
Leslie.Kellam@dcjs.state.ny.us