

Division of Criminal Justice Services  
Office of Justice Research and Performance

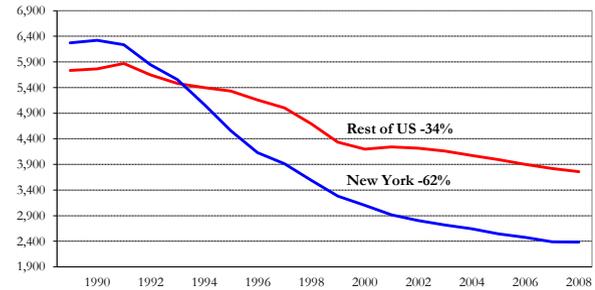


2009 Drug Law Reform  
Preliminary Update on Early Implementation

February 2010

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

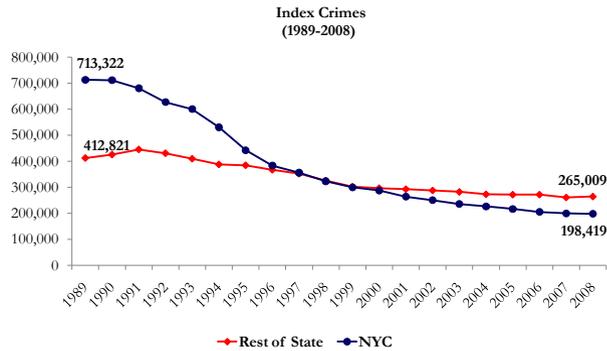


Source: FBI, *Crime in the United States* annual publications

Rate: Per 100,000 Population

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



Source: DCJS Uniform Crime/Incident Based Reporting system

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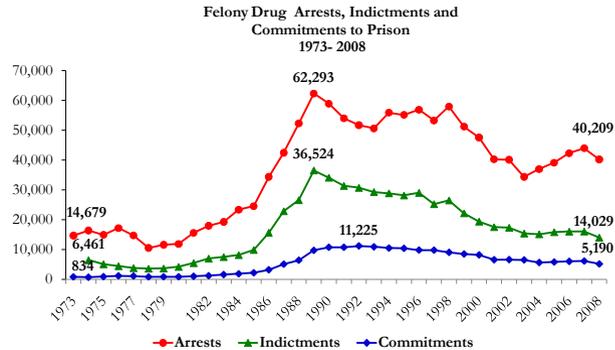
Crime Continued to Decline in New York State in 2009

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%)

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## Statewide Felony Drug Trends



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

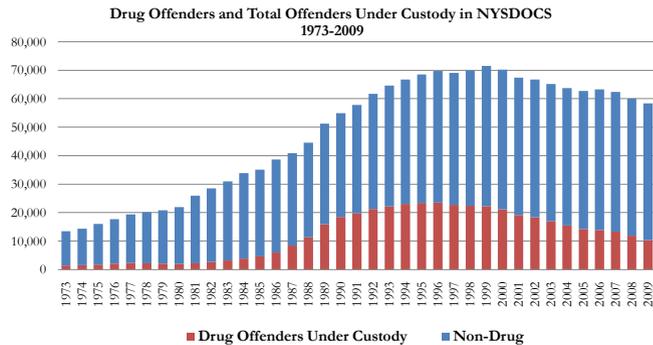
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## Steep Increases from 1970's to 1989 in Felony Drug Activity; Declines Since Then

- 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

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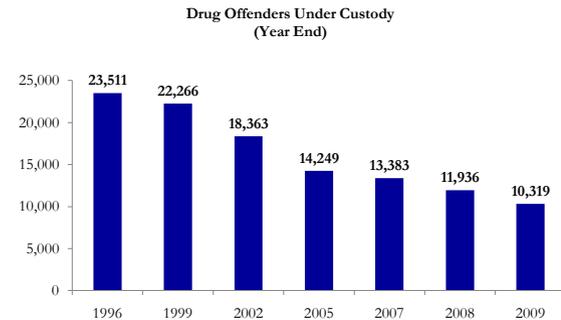
## Drug Offenders In Prison Peaked in 1996, Prison Population Peaked in 1999



Source: DOCS

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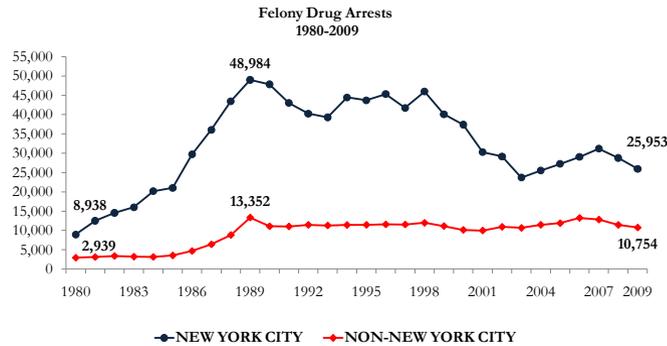
## Drug Offenders in DOCS Declined 56% Since Peak in 1996; Down 1,617 in Past Year



Source: DOCS

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



Source: DCJS - Criminal History File

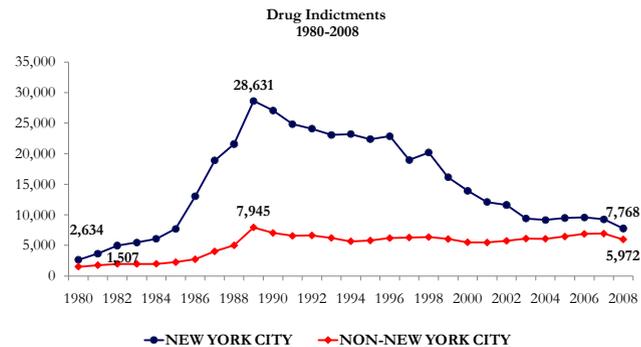
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### Arrest, Indictment and Commitment By Region

- 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

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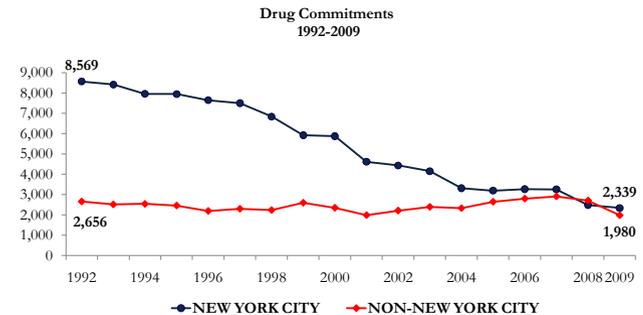
### Felony Drug Indictments Declined 73% in NYC and 25% in Non-NYC Since Peaking in 1989



Source: DCJS - ISS and Felony Processing files

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



Source: DOCS Admission file

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## 2009 Drug Law Changes Effective April 2009 – Sentencing Changes

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

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## 2009 Drug Law Changes – Implementation Dates Staggered

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### June 2009

- Conditional sealing provisions took effect

### October 2009

- Judicial diversion statute became effective
- Resentencing authorized for indeterminate 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

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## Resentencing Update As of 2-19-10

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- 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

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

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| 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      |
| Eric     | 1      | Ontario    | 3      | Ulster      | 1      |
| Fulton   | 4      | Orange     | 10     | Warren      | 4      |
| Greene   | 1      | Oswego     | 1      | Westchester | 1      |
| Kings    | 17     | Queens     | 8      | Wyoming     | 1      |

Source: DOCS

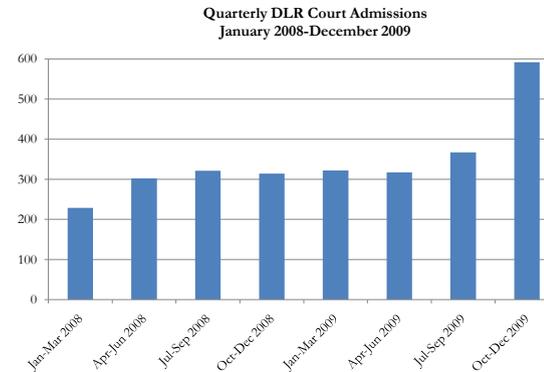
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## Judicial Diversion – Defining Drug Law Reform (DLR) Cases

- 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

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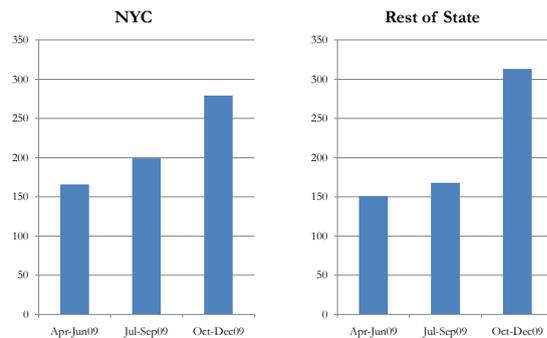
## DLR Drug Court Admissions More Than Doubled since 2008



Source: Office of Court Administration

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## DLR Drug Court Admissions



Source: Office of Court Administration

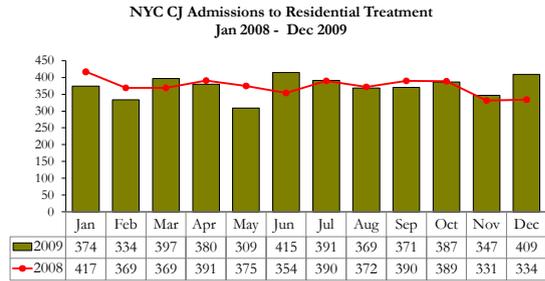
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## Judicial Diversion – What Will Take More Time

- 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

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## NYC CJ Admissions to Residential Treatment



Source: OASAS

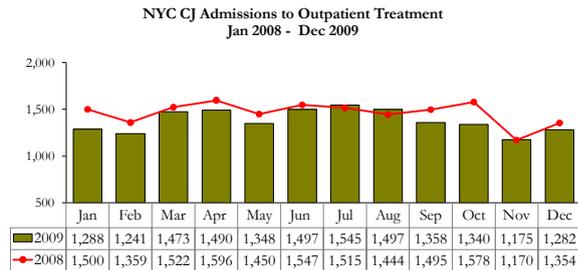
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## Criminal Justice Admissions to OASAS Programs

- 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

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## NYC CJ Admissions to Outpatient Treatment



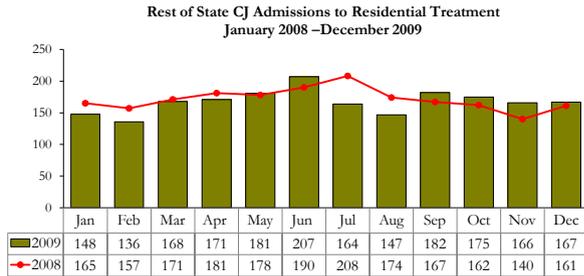
Source: OASAS

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### Rest of State CJ Admissions to Residential Treatment



Source: OASAS

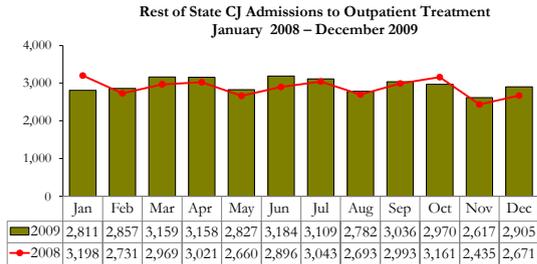
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### Monitoring Criminal Justice Treatment Participation

- 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

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### Rest of State CJ Admissions to Outpatient Treatment



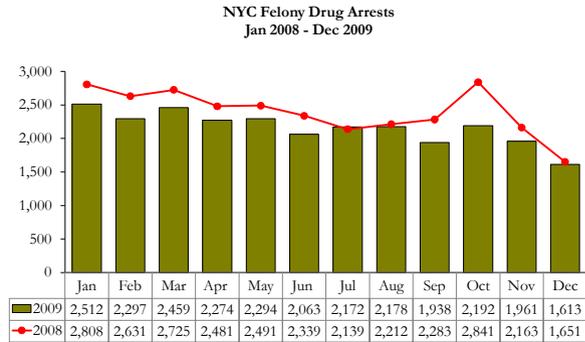
Source: OASAS

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### NYC Felony Drug Arrests Down (-10%) in 2009; 2<sup>nd</sup> Year of Decline



Source: DCJS - Criminal History file

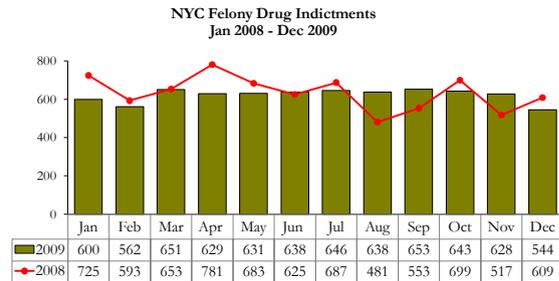
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### Recent Felony Drug Trends In New York City

- 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

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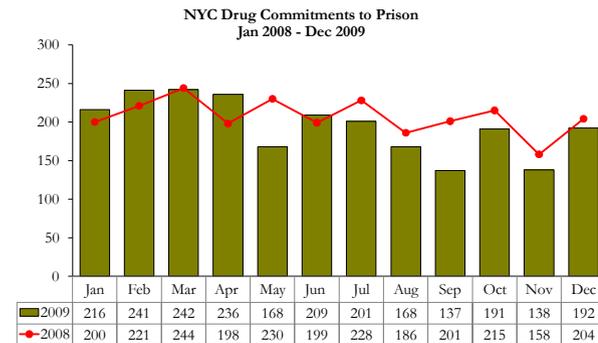
### NYC Felony Drug Indictments Down (-2%) in 2009



Source: DCJS - Felony Processing file

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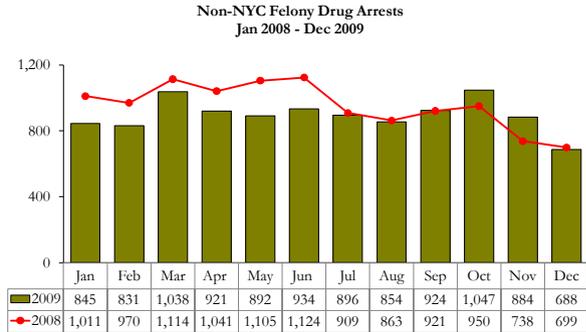
### NYC Drug Commitments Down (-6%)



Source: DOCS Admission file

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### Non-NYC Felony Drug Arrests Down (-6%) in 2009



Source: DCJS - Criminal History file

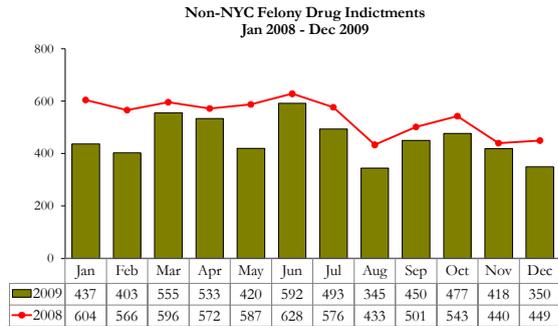
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### Recent Felony Drug Trends In Rest of State

- Non-NYC Felony drug arrests declined (-6%) for the 2<sup>nd</sup> 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

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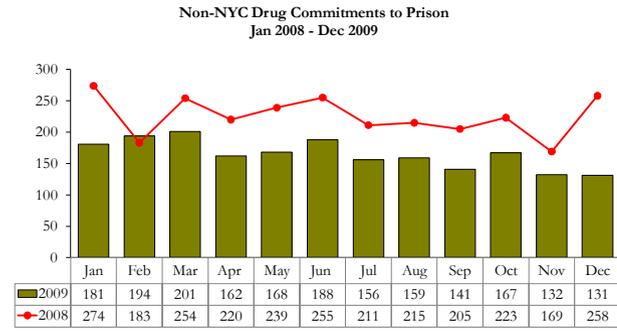
### Non-NYC Felony Drug Indictments Down (-16%) in 2009



Source: DCJS - Felony Processing file

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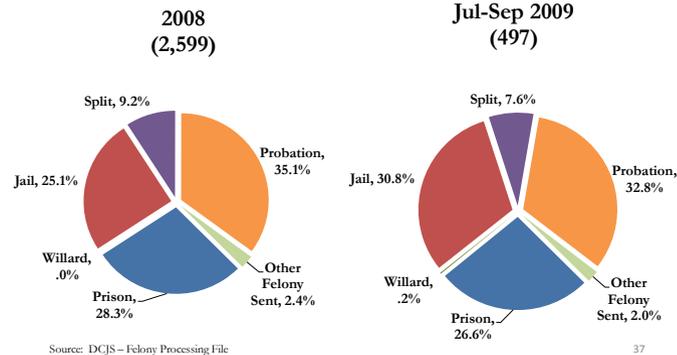
### Non-NYC Drug Commitments Down (-27%)



Source: DOCS Admission file

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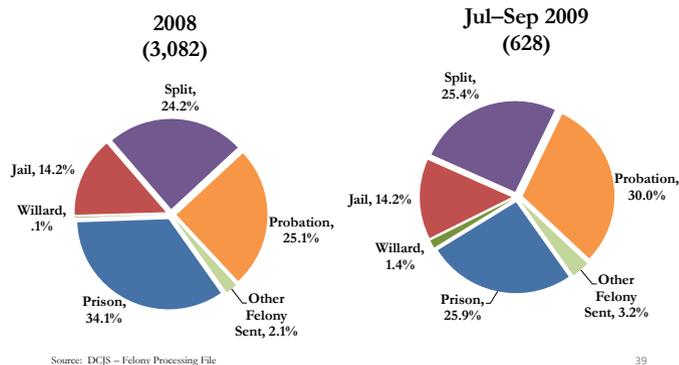
## NYC Sentences for 1<sup>st</sup> B, C, D, and E Felony Drug Convictions (Excludes Diversions)



## Elimination of Mandatory Minimums for 1<sup>st</sup> B Convictions Mean Fewer to Prison

- Does not include persons entering diversion or completing diversion – only those convicted of a 1<sup>st</sup> 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
- 1<sup>st</sup> B's are shown along with 1<sup>st</sup> C, D and E convictions to show net impact after any shifts in plea practices

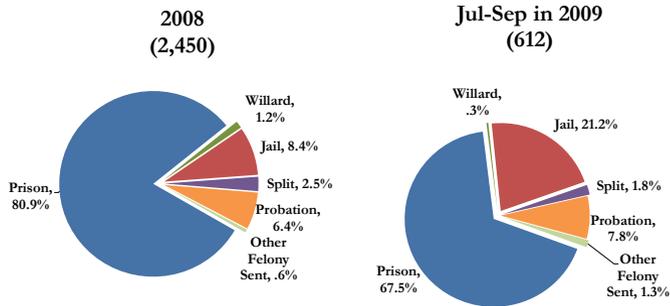
## Rest of State Sentences for 1<sup>st</sup> B, C, D, and E Felony Drug Convictions (Excludes Diversions)



## Sentences are Changing for 1<sup>st</sup> 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 1<sup>st</sup> 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 2<sup>nd</sup> B, C, D, and E Felony Drug Convictions (Excludes Diversions)



Source: DCJS - Felony Processing File

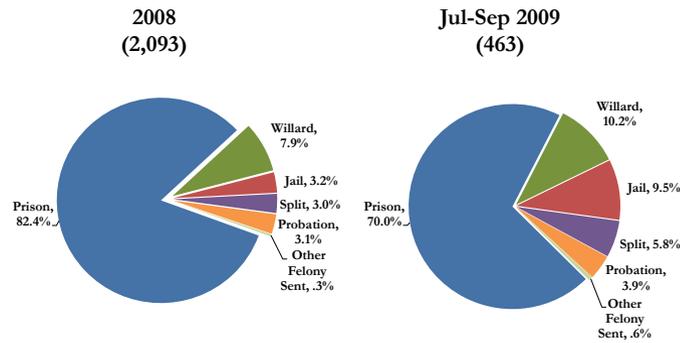
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### Elimination of Mandatory Minimums for 2<sup>nd</sup> C, D, E Convictions

- Decrease in the proportion sentenced to prison for all 2<sup>nd</sup> 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

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



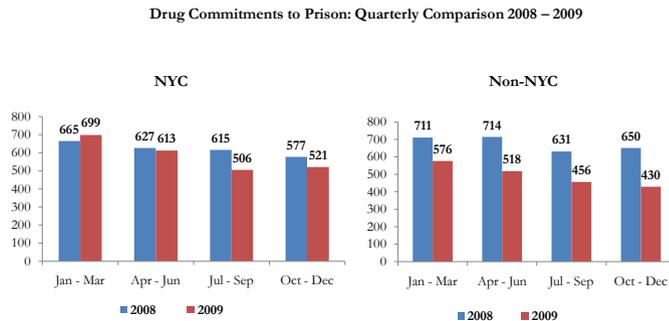
Source: DCJS - Felony Processing File

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



Source: DOCS Admission file

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## Profile of DOCS Commitments

- In 2008, there were 3,335 sentences to prison for 1<sup>st</sup> B's, and 2<sup>nd</sup> 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%
- 1<sup>st</sup> B's, and 2<sup>nd</sup> 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

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## Changes in Drug Commitments to Prison 2008 vs. 2009

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

Source: DOCS Admission file and DCJS Criminal History file

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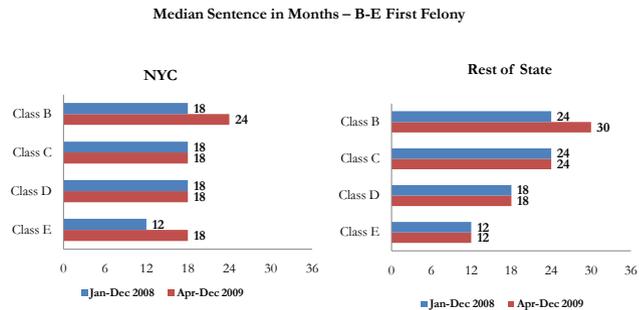
## Majority of Felony Drug Arrests and Indictments Class B's; Will Be Analyzing Plea Practices

| 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%          |
| <b>Class B</b>   | <b>28,395</b> | <b>70.6%</b>  | <b>9,346</b>  | <b>66.6%</b>  |
| 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%          |
| <b>Total</b>   | <b>40,209</b> | <b>100.0%</b> | <b>14,029</b> | <b>100.0%</b> |

Source: DCJS – Felony Processing File and Criminal History file

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## B 1<sup>st</sup> Sentences Increased An Average of 6 Months



Source: DOCS Admission file

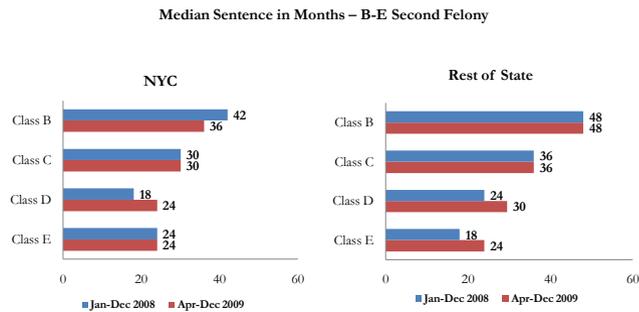
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## Early Changes – For First Felony Drug Commitments

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

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## Average Sentences Decreased for B 2<sup>nd</sup>'s in NYC, Unchanged Rest of State



Source: DOCS Admission file

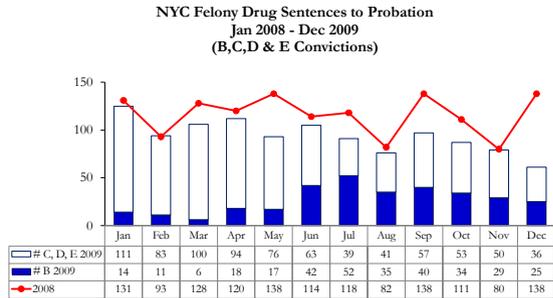
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## Early Changes – For Second Felony Drug Commitments

- The mandatory minimum sentence for 2<sup>nd</sup> 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 2<sup>nd</sup> C's and D's were committed; median sentence length increased for 2<sup>nd</sup> D's
- With prison no longer required for these convictions, those committed after sentencing change more likely than before to get a longer sentence

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



Source: DCJS - Felony Processing file

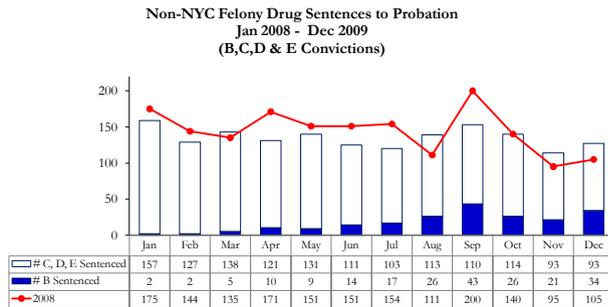
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## Changes in Probation Sentences

- The proportion of cases sentenced to probation is up for both 1<sup>st</sup> and 2<sup>nd</sup> felony drug convictions
  - More 1<sup>st</sup> B and 2<sup>nd</sup> 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

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

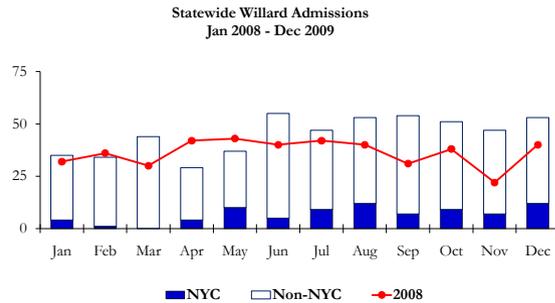


Source: DCJS - Felony Processing file

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



Source: DOCS Willard Admissions

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## 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

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## 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

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## 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)

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## Working with NYC Offices to Incorporate DTAP Data

| NYC DTAP DA DIVERSION PROGRAM ADMISSIONS<br>(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

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## 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

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## 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

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## Baseline Reports on DCJS Website at [www.criminaljustice.state.ny.us](http://www.criminaljustice.state.ny.us)

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