

Division of Criminal Justice Services

Criminal Justice Interim Update



David A. Paterson
Governor

Sean M. Byrne
Acting DCJS Commissioner

Drug Law Reform Series

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Preliminary Impact of 2009 Drug Law Reform October 2009 – September 2010

New York State fully implemented changes to its drug laws on October 7, 2009. This report provides a preliminary update of the impact during the first year. More comprehensive reports will be issued in the coming months. The preliminary review shows that because of the drug law changes:

- Approximately 1,000 fewer people went to state prison in the past 12 months:
 - 300 individuals avoided state prison due to the elimination of certain mandatory prison sentences. These offenders were sentenced to jail or probation.
 - 700 offenders who would have been sentenced to prison were instead enrolled into court-monitored judicial diversion programs.
- 327 Class B offenders were resentenced and released from prison.
- The number of individuals judicially diverted to drug court has increased substantially, with 46% admitted into residential treatment and 54% admitted into outpatient treatment.

This report and other related reports are available at: <http://wwwdev:84/drug-law-reform/index.html>.

**Preliminary Impact of
2009 Drug Law Reform
October 2009 – September 2010**

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Summary of Statutory Changes and Effective Dates

April 2009

Sentencing Changes Took Effect

- Eliminated mandatory minimum prison sentences for 1st B drug convictions (jail or probation now an option). Class B drug offenses include criminal sale or possession of a controlled substance in the 3rd degree, criminal sale of a controlled substance in or near school grounds, and unlawful manufacture of methamphetamine in the 1st degree.
- Reduced minimum prison sentence length for 2nd B drug convictions from 3½ years to 2 years.
- Eliminated mandatory minimum prison sentences for 2nd C, D, and E drug convictions (jail or probation now an option). There are many class C, D and E drug offenses. For complete descriptions, see New York Penal Law Sections 220 and 221.
- Expanded eligibility for participation in the Department of Correctional Services (DOCS) Shock Incarceration Program: age limit increased from 40 to 49; “aging in” from general confinement authorized; B 2nd drug offenders now eligible; judges may now “court-order” individuals to Shock.
- Expanded eligibility for a direct sentence to parole supervision, which requires 90 days at the Willard Drug Treatment Campus, to include those convicted of 1st felony B drug offenses, 2nd felony C drug offenses, and third degree burglary.
- Division of Parole authorized to discharge non-violent drug offenders prior to their maximum expiration date.

June 2009

- Conditional sealing provisions took effect. 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.

October 2009

- Judicial diversion statute took effect. Individuals charged with felony level B, C, D, or E drug offenses and specified property offenses eligible. Specified property offenses are: Burglary 3rd, Criminal Mischief 2nd and 3rd, Grand Larceny 3rd and 4th (excluding firearms), Criminal Possession of Stolen Property 3rd and 4th (excluding firearms), Forgery 2nd, Possession of Forged Instrument 2nd, Unauthorized Use of Motor Vehicle 2nd, Unlawfully Using Slugs 1st.
- Resentencing authorized for previously sentenced B felony drug offenders in State DOCS custody.

Impact on Admissions to State Prison

DCJS has analyzed nine months of case processing and treatment admissions data, as well as 12 months of DOCS admissions data to quantify the impact of the 2009 drug law changes. To present meaningful comparisons, Office of Court Administration (OCA) drug court data was partially estimated for the 12 month period of October 2009 through September 2010, the first full year following the statutory changes. The estimates for this most recent 12 month period were then compared to calendar year 2008, the year prior to the reform.

Compared to the 2008 baseline year, the number of annual prison commitments for felony drug and specified property offenses has declined by approximately 1,600 annually.

- Drug commitments to State prison have declined by about 1,400, from 5,190 in calendar year 2008 to 3,772 in the most recent 12 month period. This represents a decrease of 27 percent.
- Commitments to State prison for specified property offenses declined by about 200, from 2,052 to 1,851 in the most recent 12 month period. This represents a decrease of 10 percent.

The 1,600 decline in felony drug and specified property commitments to prison (1,400 fewer drug and 200 fewer property) can be attributed to three factors:

- 600 fewer due to fewer felony drug arrests – This is the 3rd year of a decline in the number of felony drug arrests and indictments, which has led to fewer prison commitments. This decline is not related to the 2009 drug law changes.
- 300 fewer due to elimination of mandatory minimums – The 2009 drug law changes eliminated mandatory prison sentences for 1st B and 2nd C, D, and E convictions (effective April 2009). In the past year, about 300 offenders were sentenced to jail or probation instead of prison. These individuals are not participating in court-ordered treatment.
- 700 fewer due to judicial diversion to drug court as an alternative to prison – From October 2009 through September 2010, there has been a net increase of approximately 1,600 felony drug and specified property offenders entering drug court or other diversion programs. The net increase results from 1,750 additional individuals entering drug court, mitigated by 150 fewer individuals diverted through other diversion programs (such as DTAP) that existed prior to the law changes. It is estimated that of the 1,600 additional individuals in diversion since the law changed, approximately 700, or 44%, would have otherwise been sentenced to prison. This includes about 500 drug offenders and 200 property offenders.

Expansion of Drug Court Activity (Judicial Diversion)

New felony drug courts were established in Nassau, Suffolk, Westchester, Dutchess, Madison and St. Lawrence counties. Existing drug courts were expanded in Manhattan, Brooklyn, Queens, Bronx and Staten Island.

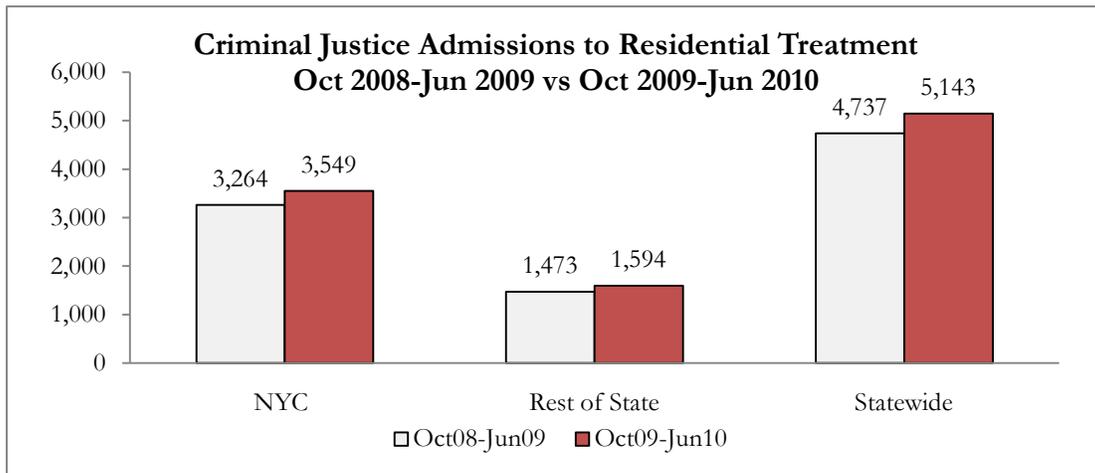
- During the most recent 12 month period, an estimated 2,800 individuals entered a felony drug court for a class B, C, D or E felony drug offense or one of the property offenses specified in CPL Article 216, compared to 1,050 who entered during 2008. This is an increase of 1,750, more than double the number of drug court entrants during the baseline year.
- The increase in individuals entering felony drug court includes both those who were potentially facing a prison sentence and those potentially facing jail or another type of sentence.
- Among the estimated 2,800 admissions to drug court since October 2009, about 2,050 (73%) were drug offenders and 750 (27%) were indicted for one of the property crimes specified in CPL Article 216.
- In assessing the total number of cases diverted from possible incarceration, diversion programs that existed prior to the reforms must be considered. For example, the number of Article 216-eligible offenders entering diversion programs operated by District Attorneys' offices (such as DTAP and Road to Recovery) has declined about 17% statewide since implementation of judicial diversion. The annual number of treatment admissions from these programs decreased from about 900 during 2008, to about 750 in the most recent 12 month period. Program admissions in some jurisdictions, particularly those where new drug courts were established, declined substantially.
- From October 2009 through June 2010, OCA records indicate that District Attorneys objected to 13% of the 2,114 drug court entrants who had felony drug or property charges specified in Article 216.
- A review of OCA and Office of Alcoholism and Substance Abuse Services (OASAS) records show that 46% of the drug court participants were admitted into residential treatment programs and 54% were admitted into outpatient programs.

Resentencing of B-Drug Offenders

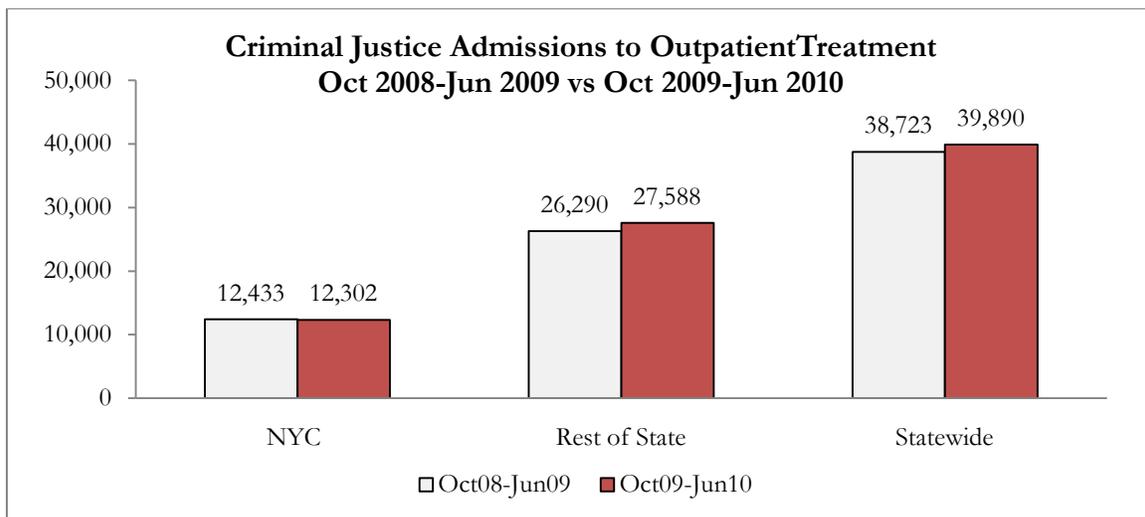
- As of September 30, 2010, 421 B drug felons serving indeterminate sentences with more than a 3-year maximum in State prison have been resentenced; 327 have been released. In 2009, DOCS and Parole implemented comprehensive procedures to expedite release. Individuals not yet released still have time left to serve on their new sentence.
- B drug felons resentenced and released through September 30, 2010 left DOCS custody an average of 10 months before their previously calculated earliest release dates.

Criminal Justice Admissions to Treatment Programs

Because the drug law changes have impacted many aspects of the criminal justice system, DCJS and OASAS are monitoring most types of adult criminal justice admissions to treatment. The charts below show the number of adult admissions referred from drug court, other courts, ATI programs, parole offices, probation departments and district attorneys' offices. DWI offenders are excluded, but offenders charged with misdemeanor level penal law offenses are included. For more recent months, the number of admissions may increase as data entry is completed.



- Between October 2009 and June 2010, there were 5,143 criminal justice admissions to residential treatment programs statewide, an increase of 406 (+9%) over the number of residential admissions during the same period in 2008-2009. The number of criminal justice residential admissions increased by 285 (+9%) in NYC and 121 (+8%) in the rest of the state.



- Over the same 9-month period, there were 39,890 criminal justice admissions to outpatient programs statewide. This is an increase of 1,167 (+3%) over the number of criminal justice outpatient admissions during October 2008-June 2009. Outpatient criminal justice admissions decreased by 131 admissions (-1%) in NYC and increased 1,298 (+5%) in the rest of the state.

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. Through September 30, 2010, 18 offenders have had conditional seals processed by OCA and DCJS. In the case of two offenders, OCA and DCJS processed two seals each.
- Five of the seals were from Saratoga County, four were from Rensselaer County, and four were from Schenectady County. The following counties had one seal: Albany, Kings, New York, Onondaga, Richmond, Steuben, and Warren.
- Three of the seals were for property offenses (all felonies) and the remaining 17 were for drug offenses (eight misdemeanors and nine felonies). In total, twelve of the seals were for felony offenses while eight were for misdemeanors.
- For seven offenders, the 160.58 seal resulted in a clean criminal history.
- One of the eighteen offenders was arrested after the seal date (the arrest was for prostitution).

Merit Discharges from Parole

Effective April 2009, the Division of Parole is authorized to discharge nonviolent drug offenders from supervision prior to their maximum expiration date. Through September 30, 2010, Parole has discharged 1,706 nonviolent parolees who have been under supervision for drug offenses and who were successful while being supervised.

Willard Drug Treatment Campus

Criteria for the 90-day Willard Drug Treatment Campus were expanded in April 2009 to include first felony B and second felony C drug offenders as well as second felony Burglary 3 offenders with underlying substance abuse. Specified second felony D and E property crimes remain eligible to participate; cases involving class D offenses no longer require the district attorney's approval. As a result of the reform, Willard admissions have increased from 36 per month in 2008 to 42 per month since implementation.

DOCS Shock Incarceration

- “Aging in”: Inmates in general confinement facilities otherwise eligible for Shock can now be approved for Shock when they are within three years of parole eligibility (for indeterminately sentenced inmates) or conditional release (for those who are determinately sentenced). As of September 30, 2010, 296 inmates from general confinement who were under age 40 began Shock.
- Expanded Age Eligibility: Inmates age 40-49 at commitment to DOCS are now eligible to be reviewed for Shock. As of September 30, 2010, 248 inmates over age 40 were approved for Shock.
- Class B Second Felony Offender Ban Lifted: Through September 30, 2010, 118 second felony class B drug offenders who were under the age of 40 when committed to DOCS began Shock directly from a Reception Center.
- Court Ordered Shock: As of the end of September 2010, 192 inmates were ordered into Shock by the court. DOCS’ review of case characteristics shows that almost all would have been approved for Shock without the court order.

New Crimes in Effect

- Effective November 1, 2009, two new crimes were established: criminal sale of a controlled substance to a child involves an offender over 21 selling drugs to a person under 17; operating as a major trafficker (A-I felony) targets top and mid-level management within a drug organization that sells drugs worth at least \$75,000. As of September 27, 2010, there have been two arrests reported to DCJS for operating as a major trafficker (PL220.77) and two arrests reported for criminal sale of a controlled substance to a child (PL220.48).

Program Outcomes

- Since most drug court programs have an average length of 18 months, very few of those diverted under the 2009 reforms could have completed their diversion program by September 2010. When a sufficient number of program participants have had an opportunity to complete the full drug court program, DCJS will be reporting on recidivism and other program outcomes.