



Division of Criminal Justice Services

2009 Drug Law Reform Update

June 2010

April 2009

Sentencing Changes Took Effect

- Eliminated mandatory minimum prison sentences for 1st B drug convictions (jail or probation now an option)
- 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)
- Expanded eligibility for participation in the Department of Correctional Services Shock Incarceration Program: age limit increased 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

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 3th and 4th (excluding firearms), Forgery 2nd, Possession of Forged Instrument 2nd, Unauthorized Use of Motor Vehicle 2nd, Unlawfully Using Slugs 1st
- Resentencing authorized for indeterminately sentenced B felony drug offenders in State DOCS custody

Reports and information on the drug law changes can be found at: <http://criminaljustice.state.ny.us/drug-law-reform/index.html>

Research and Evaluation Plan

- Division of Criminal Justice Services (DCJS) coordinating with Office of Court Administration (OCA), Office of Alcoholism and Substance Abuse Services (OASAS), Department of Correctional Services (DOCS), Division of Parole (DOP) and Division of Probation and Correctional Alternatives (DPCA) to monitor and report on all aspects of reform
- Excellent cooperation among agencies
- Research will link criminal justice, treatment and diversion data for the first time
- Will greatly improve what we know about diversion and treatment outcomes
- Research uses calendar year 2008, the last full year of processing prior to law changes, to be “baseline year”

Criminal Justice Consent Form

- TRS-49 form with the NYSID should be used by all probation departments, parole offices, district attorneys offices and courts that are referring individuals to treatment as a condition of supervision or as an alternative to incarceration.
- The form allows OASAS to match cases by New York State Identification Number (NYSID) to criminal justice records for confidential research purposes.
- NYSID must be provided to study treatment outcomes for criminal justice clients – and understand what works.
- This form should be used for all criminal justice referrals in the adult system age 16+, not just drug law reform cases.

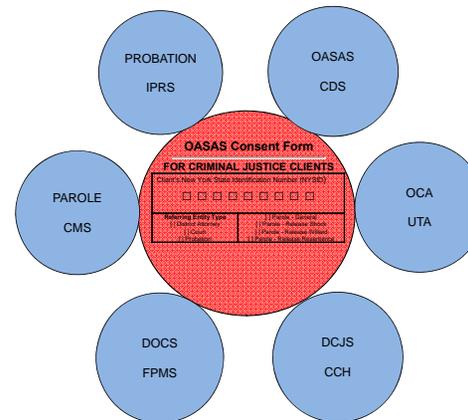
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TRS-49 Criminal Justice Consent Form

NEW YORK STATE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES CONSENT TO RELEASE OF INFORMATION CONCERNING CHEMICAL DEPENDENCE TREATMENT FOR CRIMINAL JUSTICE CLIENTS Client's New York State Identification Number (NYSID) <input type="checkbox"/> <input type="checkbox"/>		Client's Last Name: _____ First: _____ MI: _____ Referring Entity's Staff Member's Name: _____ Referring Entity's Name & Address: _____
Referring Entity Type <input type="checkbox"/> District Attorney <input type="checkbox"/> Court <input type="checkbox"/> Probation <input type="checkbox"/> Parole - General <input type="checkbox"/> Parole - Release Shock <input type="checkbox"/> Parole - Release Willard <input type="checkbox"/> Parole - Release Resentence	INSTRUCTIONS: 1) SEND A COPY OF THIS COMPLETED FORM TO THE CLIENT'S TREATMENT PROVIDER. 2) ADD A COPY OF THIS COMPLETED FORM TO THE CLIENT'S CRIMINAL JUSTICE FILE, AND 3) PROVIDE A COPY OF THIS COMPLETED FORM TO THE CLIENT/DEFENDANT. I, the undersigned, Client/Defendant, hereby CONSENT and authorize communication between the above named Referring Entity, my Chemical Dependence Treatment Provider, _____ and the following: _____ I CONSENT TO DISCLOSURE OF INFORMATION concerning my current and past individual assessment or evaluation, intake summary, diagnosis, treatment recommendation, date of admission, and status as a patient including course and level of treatment (i.e. residential, community based, individual, or group), my progress and compliance including but not limited to: my attendance or lack of attendance at treatment, dates and results of toxicology/urinalysis, cooperation with my treatment program, prognosis, treatment completion or reason(s) for termination, date of discharge, discharge status, and discharge plan. Such disclosure is for the PURPOSE of enabling the entities listed above to communicate as to my treatment needs, activities, history and attitude towards my evaluation and treatment for purposes of monitoring the terms and conditions of treatment, release, case management purposes, and for carrying out other official duties; AND 2) I further CONSENT and authorize communication between and among the above named Referring Entity and the New York State Office of Alcoholism and Substance Abuse Services (OASAS); and OASAS to DISCLOSE INFORMATION to the New York State Division of Criminal Justice Services (DCJS), concerning admission and discharge data for the PURPOSE of research and program evaluation activities. I understand that any reports or studies compiled from my records disclosed pursuant to this release will not include personally identifiable information which will remain confidential and protected from further re-disclosure.	

Form Can Be Accessed At:

<http://www.oasas.state.ny.us/mis/forms/trs/TRS-49.pdf>



Today's Presentation: Data Caveats and Limitations

Data Challenges

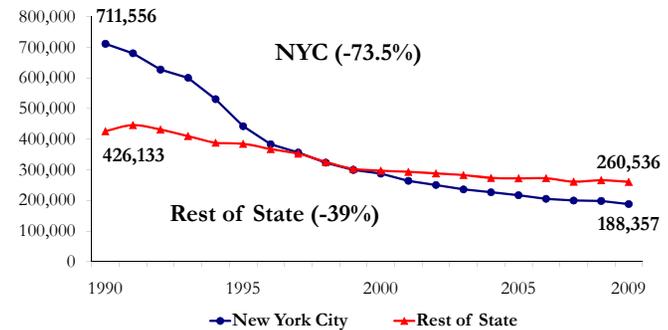
- Still fine-tuning data matching methodologies among agencies
- Working to incorporate diversion activity outside of drug courts (DTAP, TASC, etc) into the analysis
- Criminal justice consent forms needed for treatment records to be matched with criminal justice records; many are still not coming in

Still Very Early in Implementation and All Data is Preliminary!

- Sentencing changes and judicial diversion in place a short time
- Early trends may not represent longer term trends
- Counts will be adjusted as data is fine-tuned

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Since 1990, Statewide Crime Declined 60.5% with 688,796 Fewer Crimes Reported in 2009



Source: DCJS, Uniform Crime/Incident Based Reporting systems (5/13/10)

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In 2009, Crime Down (-3.3%) From 2008

	2008	2009	% Change 2008-2009
Index Total	464,304	448,893	-3.3%
Violent Total	77,450	74,856	-3.3%
Murder	834	782	-6.2%
Rape	2,782	2,572	-7.5%
Robbery	31,772	28,063	-11.7%
Agg. Assault	42,062	43,439	3.3%
Property Total	386,854	374,037	-3.3%
Burglary	65,367	62,420	-4.5%
Larceny	296,411	289,861	-2.2%
MV Theft	25,076	21,756	-13.2%

Source: DCJS, Uniform Crime/Incident Based Reporting systems (5/13/10)

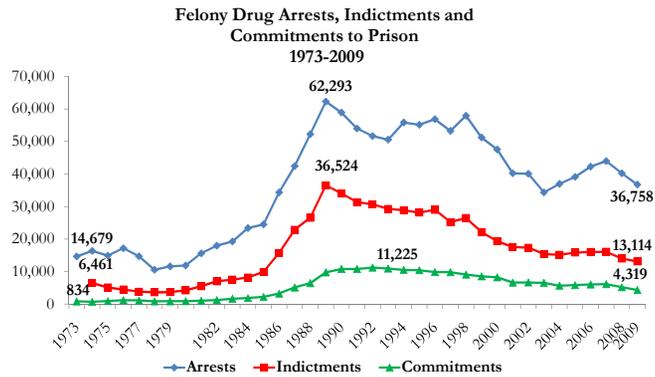
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New York State Crime Trends and Public Safety

- DCJS monitors the number of index crimes reported as part of the Uniform Crime Reporting program
- Crime continued to decline in 2009
- Drug Law Reform will be monitored and evaluated in terms of public safety impacts
- Long-term effort

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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.

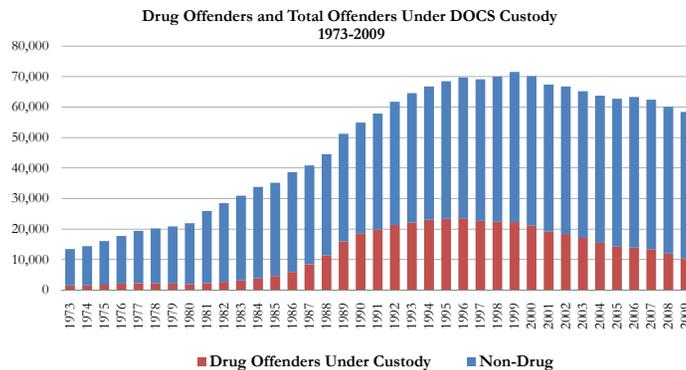
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Steep Increases from 1970s to 1989 in Felony Drug Activity; Declines Since Then

- 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, steady decline since then.
- Drug commitments to State prison increased from 834 in 1973 to 11,225 in 1992, declined to 4,319 in 2009.
- Contributed to major increase in DOCS inmate population, from 13,437 in 1973 to 71,472 in 1999.
- Drug offenders in DOCS custody down 60%

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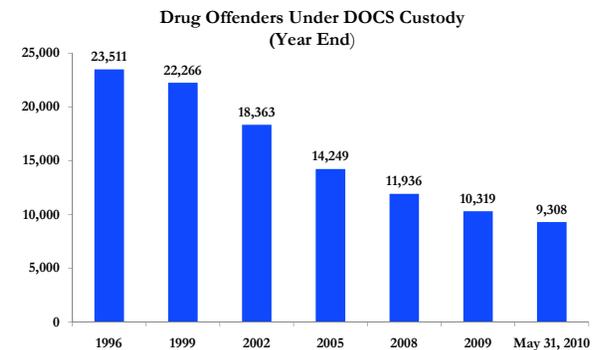
Drug Offenders in Prison Peaked in 1996, Prison Population Peaked in 1999



Source: DOCS

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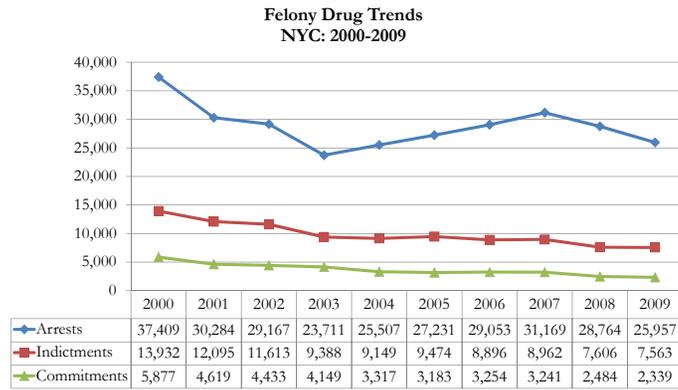
Drug Offenders in Prison Declined 60% since Peak in 1996; Down 2,628 in past 17 months



Source: DOCS

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NYC 10-Year Felony Drug Trends



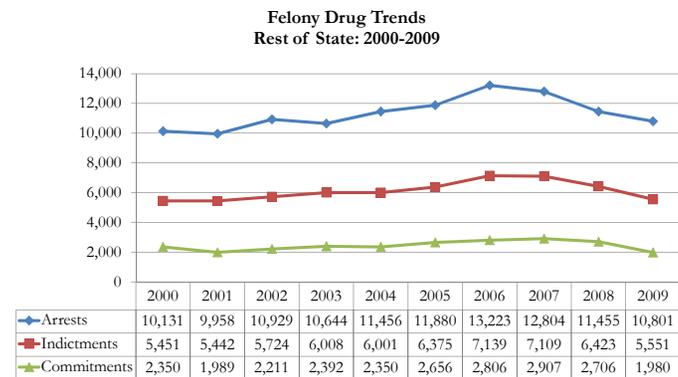
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Closer Look at Regional Felony Drug Processing Trends – Recent Years

- NYC felony drug arrests declined through 2003 then increased to 2007, and have been declining since.
- NYC indictments showed fairly steady decline from 2000 through 2009 despite increase in arrests, with drug commitments to prison trending downward along with indictments
- Rest of State showed increase in felony drug arrests through 2006, then showed three years of decreases.
- Rest of State indictments followed the felony drug arrest trend.
- Rest of State commitments dropped substantially in 2009 – a trend that was underway before the drug law changes were enacted.

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Rest of State 10-Year Felony Drug Trends



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Felony Drug Trends in First Qtr 2010 Compared to First Qtr 2009

- Felony drug arrests down (-11%) in NYC; up (+3%) in the rest of the state
- Felony drug indictments down (-3%) in NYC and down (-14%) in the rest of the state
- Felony drug commitments to State prison are down (-28%) in NYC and down (-21%) in the rest of the state.*

*Commitments trend is for Jan-May 09 vs Jan-May 10

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Changes in Drug Commitments to Prison 2008 vs. Recent 6 Months Annualized

Felony Class	Commitment Year		% Change
	2008	Oct 09-Mar 10 Annualized*	
A 1st and 2nd	276	312	13%
B 1st	1,198	812	-32%
B 2nd	743	898	21%
C 2nd	1,012	486	-52%
D 2nd	945	484	-49%
E 2nd	180	132	-27%
C 1st	421	252	-40%
D 1st	378	258	-32%
E 1st	37	36	-3%
Total	5,190	3,670	-29%

Offenses no longer requiring a mandatory prison sentence are presented in bold.
*Represents the six month period of Oct 2009-Mar 2010 multiplied by 2.
Source: DOCS

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What is Driving the Annualized 1,500 Decline in Drug Commitments to Prison?

- 400 – Multi-year decline in felony drug arrests, indictments, and resulting commitments. Decline began in 2007; not related to law changes.
- 500 - Elimination of mandatory prison sentences for 1st B, 2nd C, D, and E convictions (effective 4/09). Instead of prison, offenders sentenced to jail or probation.
- 600 - Judicial diversion option (effective 10/09). Estimated number of individuals entering drug court programs who were diverted from prison. (The increase in admissions is larger than 600 because not every additional admission would have gone to prison).

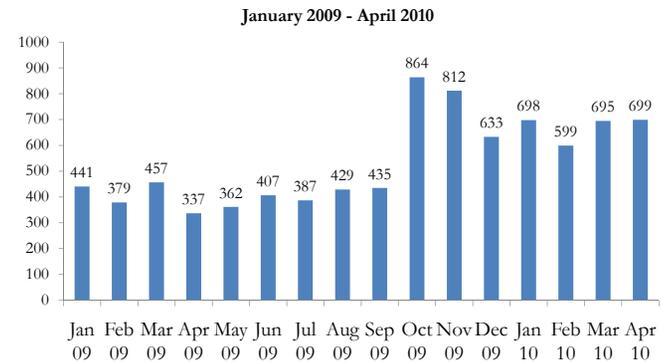
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Judicial Diversion – How DCJS is Defining Drug Law Reform (DLR) Cases

- Counting rules developed to allow comparisons of similar cases before and after Oct 2009
- Counts includes cases involving felony class B-E drug offenses and property offenses specified in Article 216 of the Criminal Procedure Law
- Eligible cases include some felony drug charges that do not require a prison sentence (1st Bs, 1st and 2nd C, D and Es)
- Cases must remain in felony court to be counted
- Cases counted by DCJS in “post-reform” group (after 10/09) are not always identified as Article 216 diversion type by the courts

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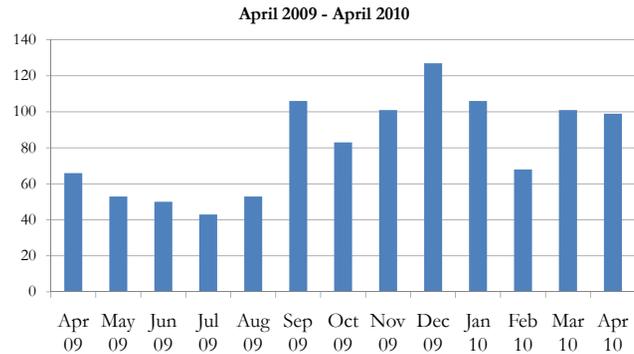
DLR Drug Court Screenings



Source: OCA UTA

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NYC: DLR Drug Court Admissions (Preliminary Data Subject to Change)



Source: OCA UTA

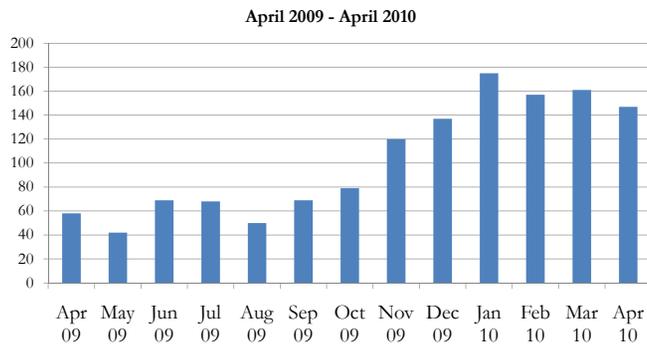
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NYC: DLR Drug Court Admissions

- In NYC, DLR drug court admissions averaged about 100 per month since DLR began, compared to about 70 per month prior to reform
- This is an increase of about 30 admissions per month
- 9 out of 10 of the NYC DLR drug court admissions were indicted on a drug offense; the rest were indicted for one of the specified property offenses

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Rest of State: DLR Drug Court Admissions (Preliminary Data Subject to Change)



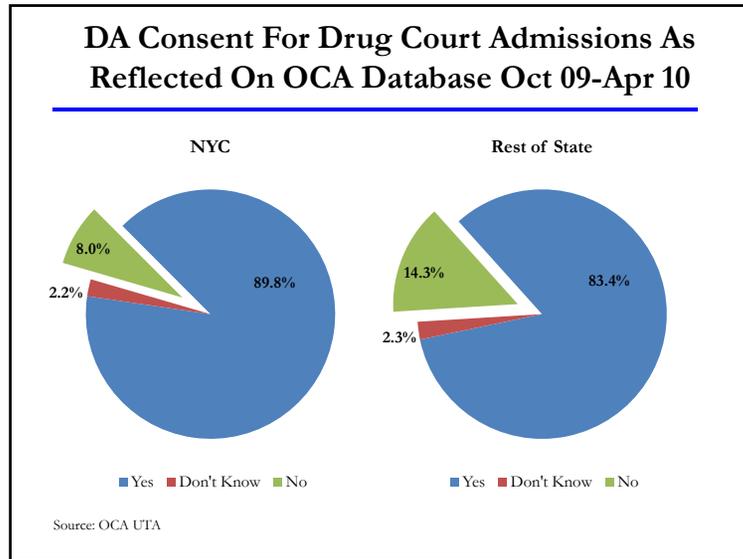
Source: OCA UTA

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Rest of State: DLR Drug Court Admissions

- In the Rest of State, DLR admissions averaged 140 per month since October 2009, compared to about 60 per month before the reform
- This is an increase of about 80 admissions per month
- 64% of the DLR drug court admissions were indicted for a drug offense, and 36% for a property offense
- A few counties show substantial increases, but most have shown modest increases
- County specific data will be provided after data issues are resolved

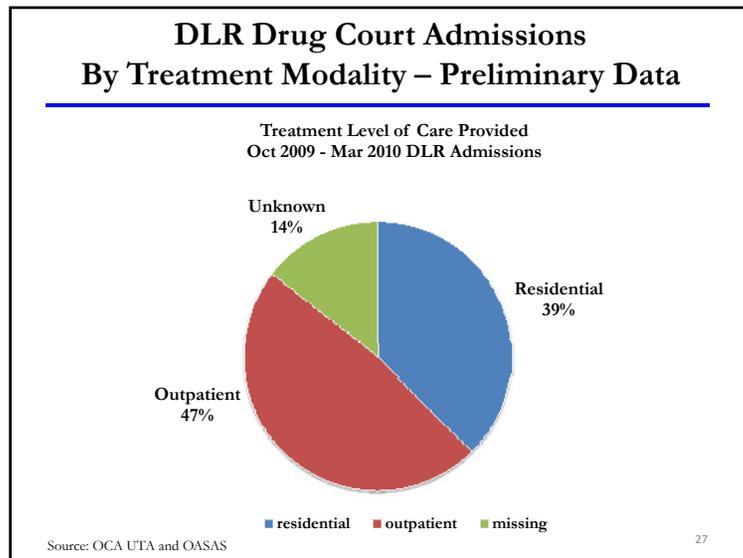
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DA Consent for Drug Court Admissions

- In large majority of cases that are admitted to Drug Court, District Attorneys' Offices are consenting to participation
- DAs objected to participation in 8% of cases admitted in New York City and 14% of cases admitted in the Rest of the State

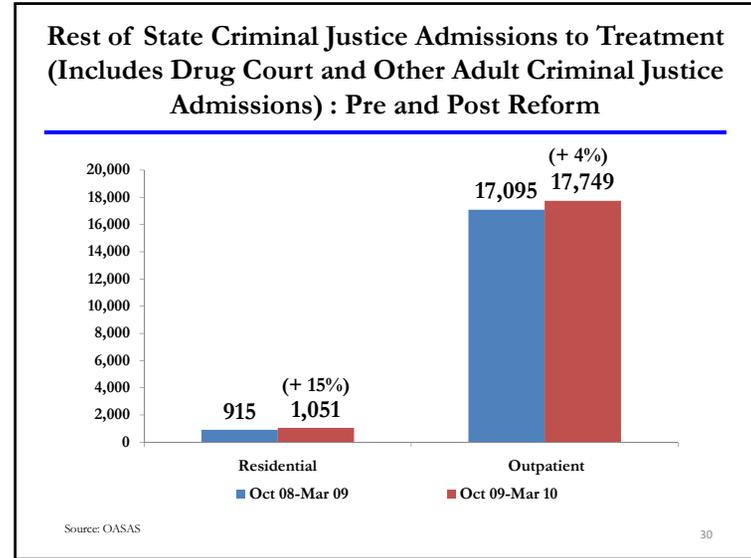
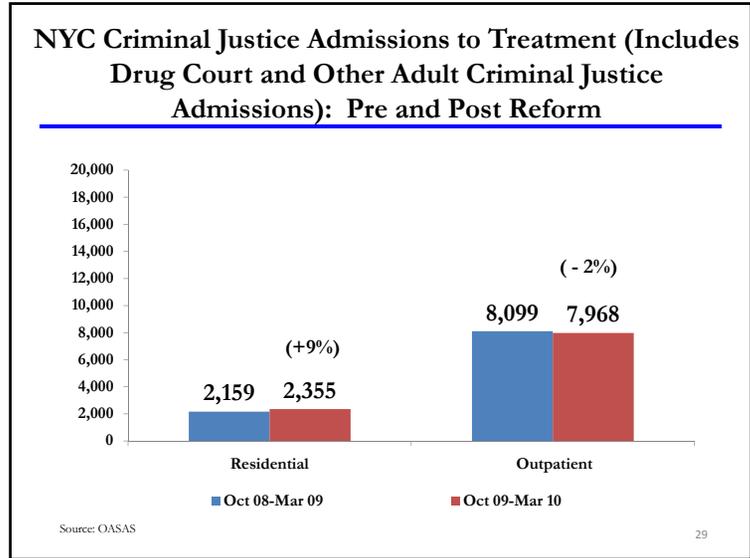
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Treatment Modality for Drug Court Admissions

- 39% of DLR admissions reported a residential treatment placement
- 47% reported an outpatient treatment placement
- When the percentages are adjustment for missing information, 45% of known placements went into residential treatment

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- ## Counting Criminal Justice Admissions to Treatment
- Because the drug law reforms have the potential for many system changes, DCJS and OASAS are monitoring all criminal justice admissions to treatment
 - About half of non-crisis admissions to OASAS certified programs are criminal justice involved
 - Charts show the number of admissions referred from drug court, other courts, ATI, programs, parole offices, probation departments and district attorneys' offices
 - Counts exclude clients under 16, family court referrals and DWIs
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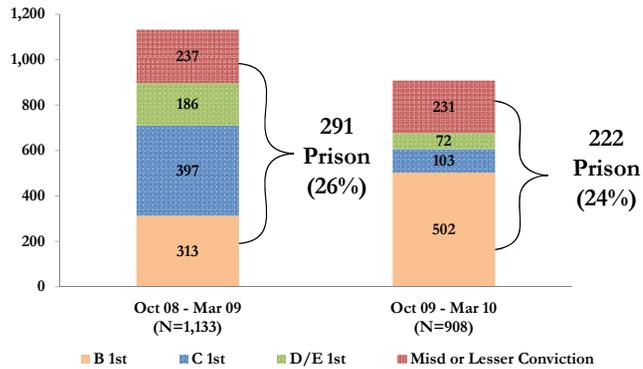
Majority of Felony Drug Arrests and Indictments In New York State are Class Bs

Felony Offense Class of Drug Arrests and Indictments, 2009				
Felony Offense Class	Arrests		Indictments	
	#	%	#	%
Class A-I	910	2.5%	375	2.8%
Class A-II	932	2.5%	319	2.4%
Class B	25,737	70.0%	8,983	67.9%
Class C	2,339	6.4%	1,251	9.5%
Class D	5,644	15.4%	1,960	14.8%
Class E	1,204	3.3%	348	2.6%
Total	36,766	100.0%	13,236	100.0%

Source: DCJS - Felony Processing File and Criminal History file

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1st Felony B Drug Indictments in NYC: Convicted and Sentenced



Note: Excludes all diversion. Includes only cases convicted and sentenced.

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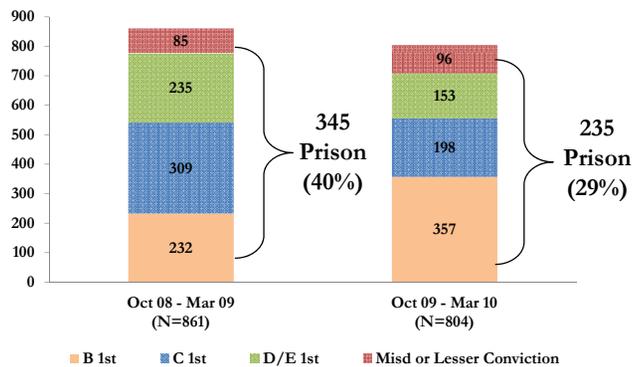
NYC: 1st Felony B Indictments

Comparison of first 6 months of full implementation with prior year shows:

- Number of 1st felony B indictments convicted and sentenced declined by 20% (from 1,133 to 908)
- Proportion of 1st B indictments convicted of B felonies increased from 28% (313 of 1,133) to 55% (502 of 908)
- Proportion convicted of misdemeanors increased from 21% to 25%
- Proportion convicted of Cs and Ds decreased dramatically
- Number sentenced to prison decreased (from 291 to 222); proportion also declined (from 26% to 24%)

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1st Felony B Drug Indictments in Rest of State: Convicted and Sentenced



Note: Excludes all diversion. Includes only cases convicted and sentenced.

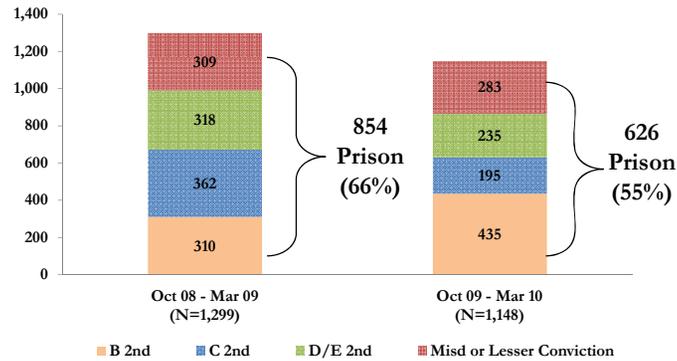
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Rest of State: 1st B Indictments

- Number of convicted and sentenced declined by 7% (from 861 to 804)
- Proportion of 1st B indictments convicted of B felonies increased from 27% (232 of 861) to 44% (357 of 804)
- Proportion convicted of misdemeanors increased from 9% to 11%
- Proportion convicted of Cs and Ds decreased
- Number sentenced to prison decreased (from 345 to 235); proportion also declined (from 40% to 29%)

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2nd B Felony Drug Indictments in NYC: Convicted and Sentenced



Note: Excludes all diversion. Includes only cases convicted and sentenced.

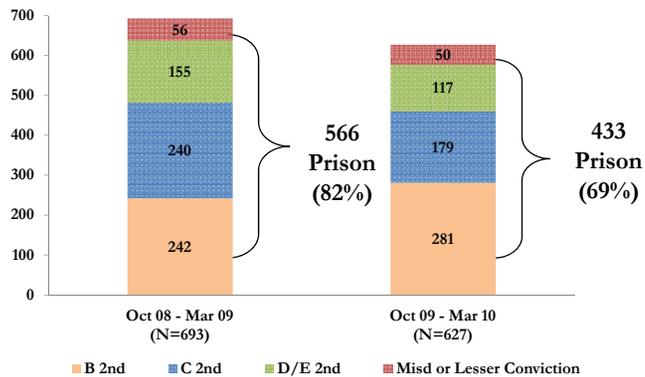
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NYC: 2nd Felony B Indictments

- Number of 2nd felony B indictments convicted and sentenced declined by 12% (from 1,299 to 1,148)
- Proportion of 2nd B indictments convicted of B felonies increased from 24% (310 of 1,299) to 38% (435 of 1,148)
- Proportion convicted of misdemeanors remained about the same (24%)
- Proportion convicted of Cs and Ds decreased
- Number sentenced to prison decreased (from 854 to 626); proportion also declined (from 66% to 55%)

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2nd B Felony Drug Indictments in Rest of State: Convicted and Sentenced



Note: Excludes all diversion. Includes only cases convicted and sentenced.

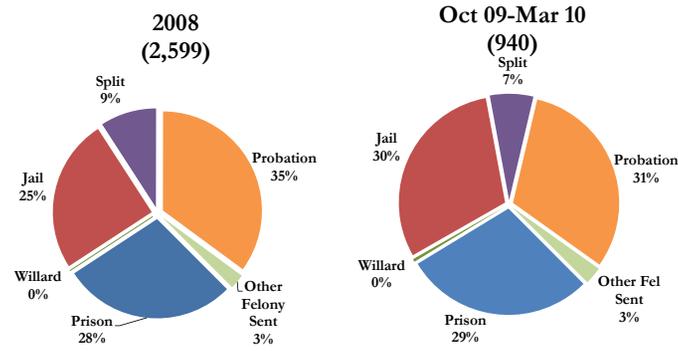
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Rest of State: 2nd Felony B Indictments

- Number of 2nd felony B indictments convicted and sentenced declined by 10% (from 693 to 627)
- Proportion of 2nd B indictments convicted of B felonies increased from 35% (242 of 693) to 45% (281 of 627)
- Proportion convicted of misdemeanors remained the same (8%)
- Proportion convicted of Cs and Ds decreased
- Number sentenced to prison decreased (from 566 to 433); proportion also declined (from 82% to 69%)

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



Source: DCJS – Felony Processing File

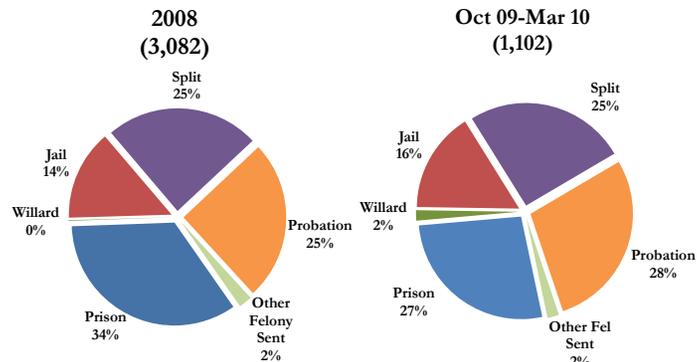
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NYC: Sentences are Changing for 1st Felony Drug Convictions

- Charts do not include persons entering diversion or completing diversion – only those convicted and sentenced for a 1st felony B, C, D or E drug offense
- 1st felony B-E convictions are combined to show overall sentence changes given shifts in plea practices
- In NYC, the proportion of 1st felony drug convictions who received prison increased from 28% to 29%, but fewer overall were convicted
- Proportion sentenced to jail increased from 25% to 30%
- Proportion sentenced to probation decreased from 35% to 31%

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



Source: DCJS – Felony Processing File

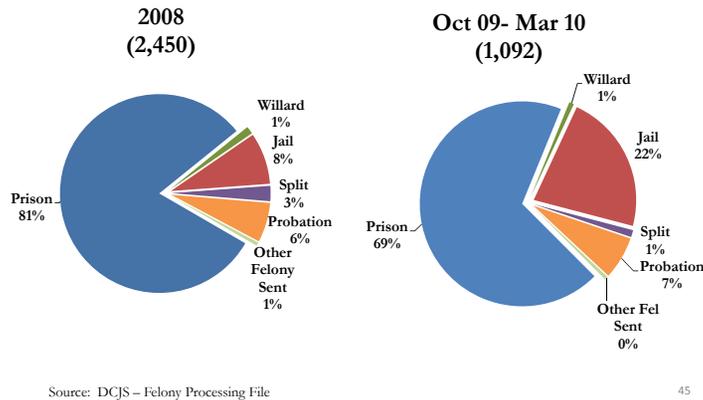
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Rest of State: Sentences are Changing for 1st Felony Drug Convictions

- Rest of State – proportion sentenced to prison decreased from 34% to 27%
- The proportion sentenced to probation increased from 25% to 28%
- The proportion sentenced to jail increased from 14% to 16%
- Willard sentences increased from 0% to 2%, given that 1st felony B convictions are now eligible
- Total number of convictions decreased

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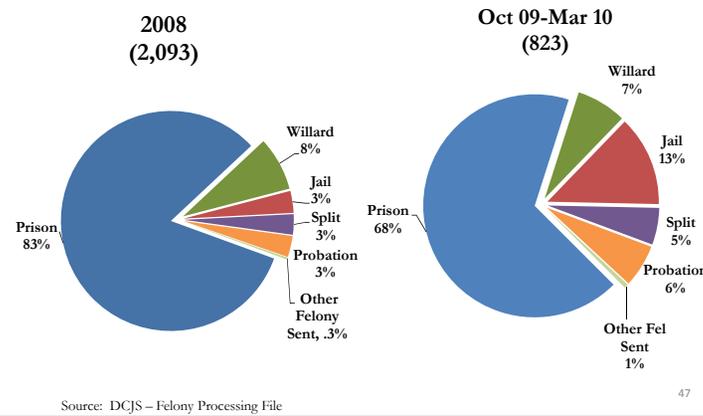
NYC Sentences for 2nd B, C, D, and E Felony Drug Convictions (Excludes Diversions)



NYC: Elimination of Mandatory Minimums for 2nd C, D, E Convictions Means Fewer to Prison

- Fewer overall cases resulting in felony conviction due to increased diversions and more pleas to misdemeanors
- For those convicted of 2nd felony drug crimes, the decrease in the proportion sentenced to prison is significant, both within and outside NYC
- The NYC proportion sentenced to prison decreased from 81% to 69%
- NYC proportion to jail increased from 8% to 22%
- These changes appear unrelated to judicial diversion option; solely related to sentencing changes for those convicted of drug felonies

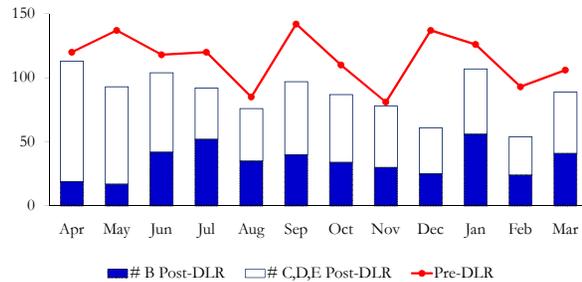
Rest of State Sentences for 2nd B, C, D, and E Felony Drug Convictions (Excludes Diversions)



Rest of State also Impacted by Changes to Mandatory Minimums for 2nd C, D and E

- For 2nd felony drug convictions, sentences to prison outside of New York City decreased from 83% to 68%
- The proportion sentenced to jail increased from 3% to 13%
- Sentences to probation for 2nd drug convictions increased from 3% to 6%
- Split sentences increased from 3% to 5%

NYC Felony Drug Sentences to Probation Apr 2008 - Mar 2010



Source: DCJS - Felony Processing file

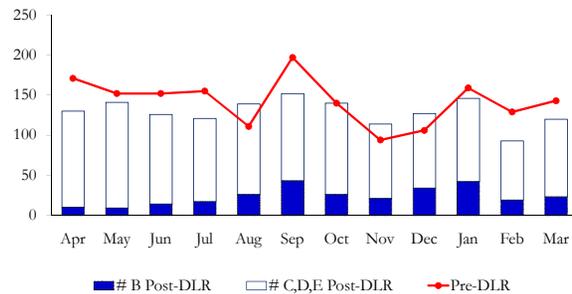
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Changes in Probation Sentences New York City

- 1st B and 2nd C, D and E drug offenders now eligible for probation sentences (these convictions formerly required a prison sentence)
- The proportion of felony drug convictions sentenced to probation has not changed much, but the number of cases has declined
- Total number of NYC felony drug sentences to probation down (-24%), but higher proportion are Bs
- B felonies are now 48% of all drug offenders sentenced to probation in New York City

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Rest of State Drug Sentences to Probation Apr 2008-Mar 2010



Source: DCJS - Felony Processing file

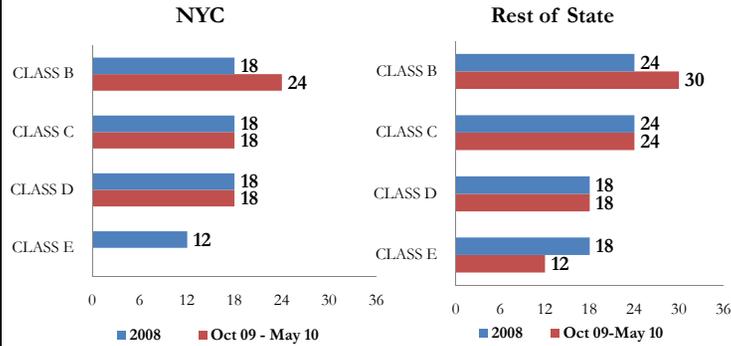
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Changes in Probation Sentences Rest of State

- 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
- 23% of felony drug sentences to probation outside New York City are now class B felonies
- Rest of State sentences to probation have declined by 9%; but trend varies from county to county
- 24 counties are showing some increase in the number of felony drug sentences to probation

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B-E First Felony Drug Commitments Median Sentence in Months



Source: DOCS Admission file
Note: There were only 2 1st E felonies from NYC, median not shown

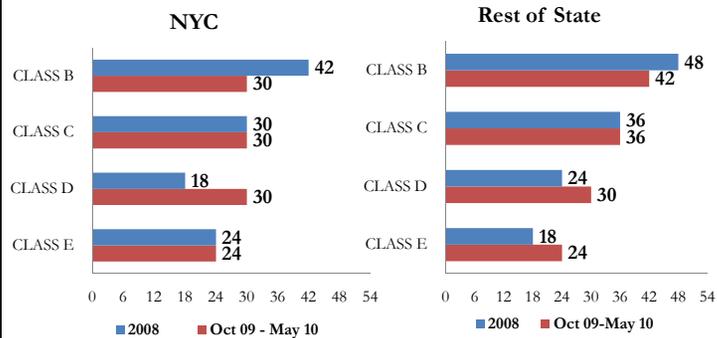
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Changes in Prison Sentence Length for 1st Felony Drug Commitments

- 1st B determinate sentence range is 1 to 9 years
- Prison is no longer required for 1st Bs and 32% fewer 1st Bs are entering prison
- In both regions, sentences for 1st B commitments increased by 6 months
- When prison was mandatory for 1st Bs, there were a larger number of commitments that received the 1 year minimum.
- 1st Bs committed after sentencing change are more likely than before to get a longer sentence

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B-E Second Felony Drug Commitments Median Sentence in Months



Source: DOCS Admission file

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Changes in Prison Sentence Length for 2nd Felony Drug Commitments

- In April 2009, the minimum prison sentence allowable for second felony Bs was reduced from 3½ to 2 years.
- Median sentences for second felony Bs decreased 12 months in NYC and 6 months in the Rest of State
- The number of 2nd D felons committed to prison declined by 49%
- For those D felons committed from Oct 09-May 10, the average sentences increased by 12 months in NYC and 6 months in the Rest of State

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B Felony Drug Offenders Resentenced as of June 18, 2010 (365 To Date)

County	Number	County	Number	County	Number
Albany	18	Monroe	18	Richmond	3
Allegany	1	Montgomery	1	Rockland	9
Bronx	68	Nassau	11	Saratoga	2
Broome	6	New York	60	Schenectady	14
Clinton	2	Oneida	1	Suffolk	9
Columbia	5	Onondaga	23	Tompkins	2
Erie	4	Ontario	9	Ulster	3
Fulton	5	Orange	13	Warren	5
Greene	1	Oswego	2	Wayne	2
Kings	37	Queens	22	Westchester	2
Livingston	1	Rensselaer	5	Wyoming	1

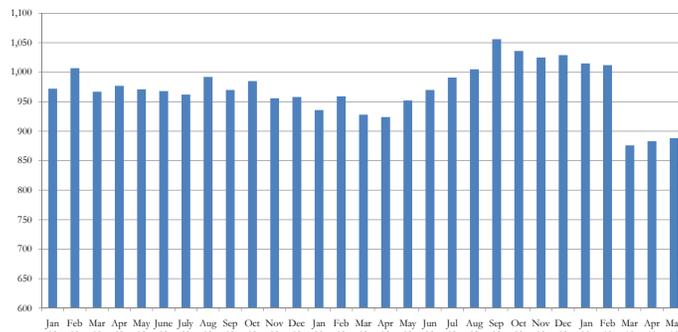
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Resentencing Update As of 6-18-10

- Original eligibility estimates: 1,100 possible, 700 likely eligible
- 365 individuals resentenced & 271 released
- 19 of the 271 were women
- 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
- Cases still being resentenced at a pace of 5 to 10 a week

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DOCS Shock Population January 2008-May 2010



Source: DOCS

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Expanded Eligibility for DOCS Shock Incarceration Program

- 888 Shock participants on May 31, 2010
- 184 (21%) are in Shock due to expanded eligibility:
 - 84 (incl. 6 age 40+) “aged-in” from general confinement
 - 31 second felony B drug offenders
 - 69 new commitments age 40+
- Shock population declined after the one-time “retro” pool, who moved into Shock from general confinement when reforms were enacted, graduated the program

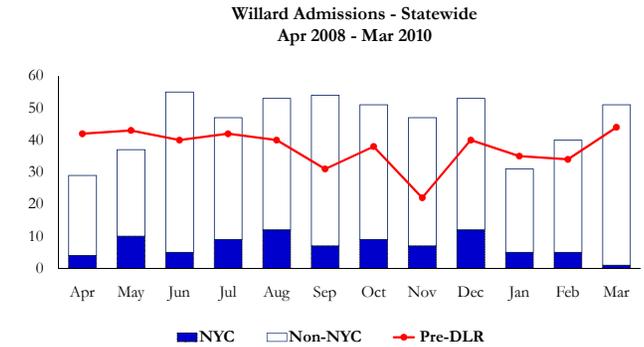
60

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
- Fifteen conditional seals have been processed by OCA and DCJS as of 6-7-10
- Saratoga (3), Rensselaer (2), Schenectady (3), Suffolk (1), Steuben (1), Kings (1), Albany (1), Onondaga (1), New York (1), Warren (1)

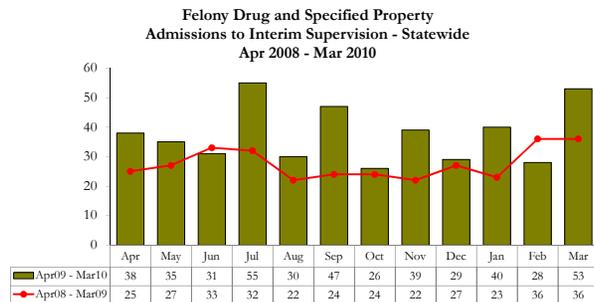
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Statewide Direct Judicial Sentences to Willard Are Up (+22%)



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Statewide Interim Probation Supervision Up (+36%)



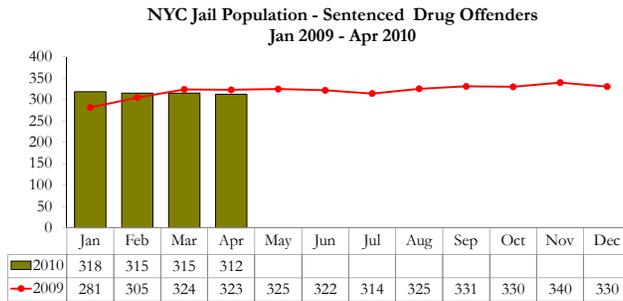
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Parole Merit Termination

- Effective April 7, 2009, the Division of Parole can discharge certain nonviolent drug offenders from supervision prior to their maximum expiration date
- As of May 31, 2010, 1,505 non-violent parolees who were under supervision for drug offenses were discharged

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Rikers Sentenced Drug Felony Offenders Population Stable



Source: NYCDOC

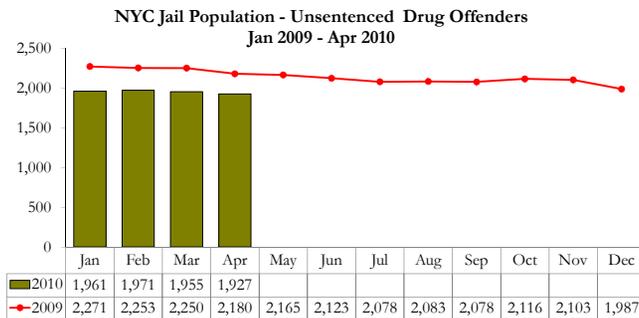
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Impact on Jail Populations

- The average daily census for jails outside of New York City is monitored by DCJS, but only summary data is reported; the trend for drug offenders only is not known
- NYCDOC has provided average daily population data for drug offenders who are in custody

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Rikers Felony Drug Offenders Unsented Population Down



Source: NYCDOC

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Impact on Jail Populations

- Although there was an increase in the proportion of drug offenders sentenced to jail in New York City, the number of sentenced drug offenders under NYCDOC custody in April 2010 (312) was lower (-3%) than April 2009
- The unsentenced drug offender population in NYC is down (-12%) from April 2009

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Summary

- Reforms enacted when felony drug arrests, indictments and drug commitments to prison were declining.
- Due to judicial diversion - more individuals participating in drug court and community treatment instead of prison.
- Due to elimination of mandatory minimum prison sentences - more individuals receiving sentences in the community (local jail or probation) instead of prison.
- There have been shifts in plea practices as a result of the reform.
- Two baseline reports with county specific detail are available at <http://criminaljustice.state.ny.us/drug-law-reform/index.html>
- Additional reports with county specific data will be available in the future

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