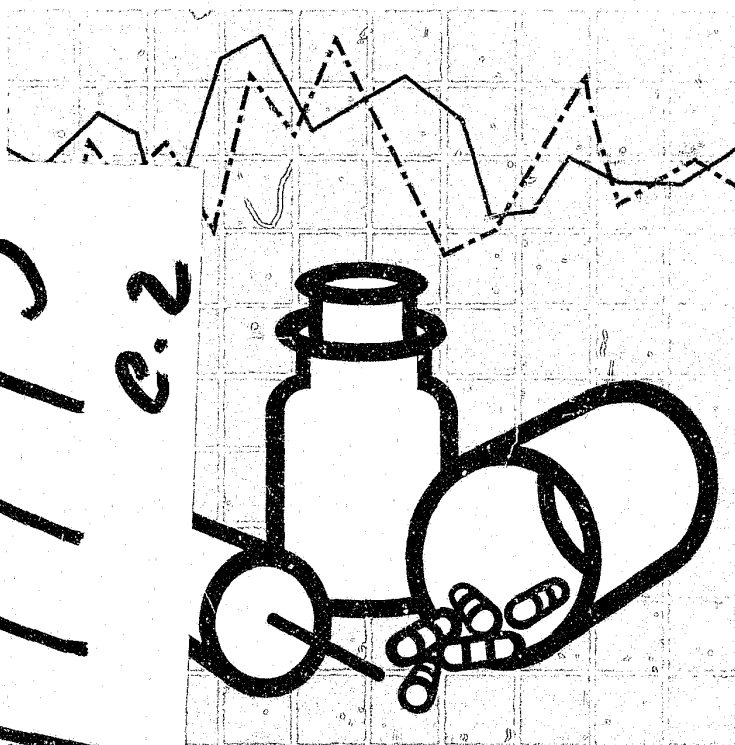


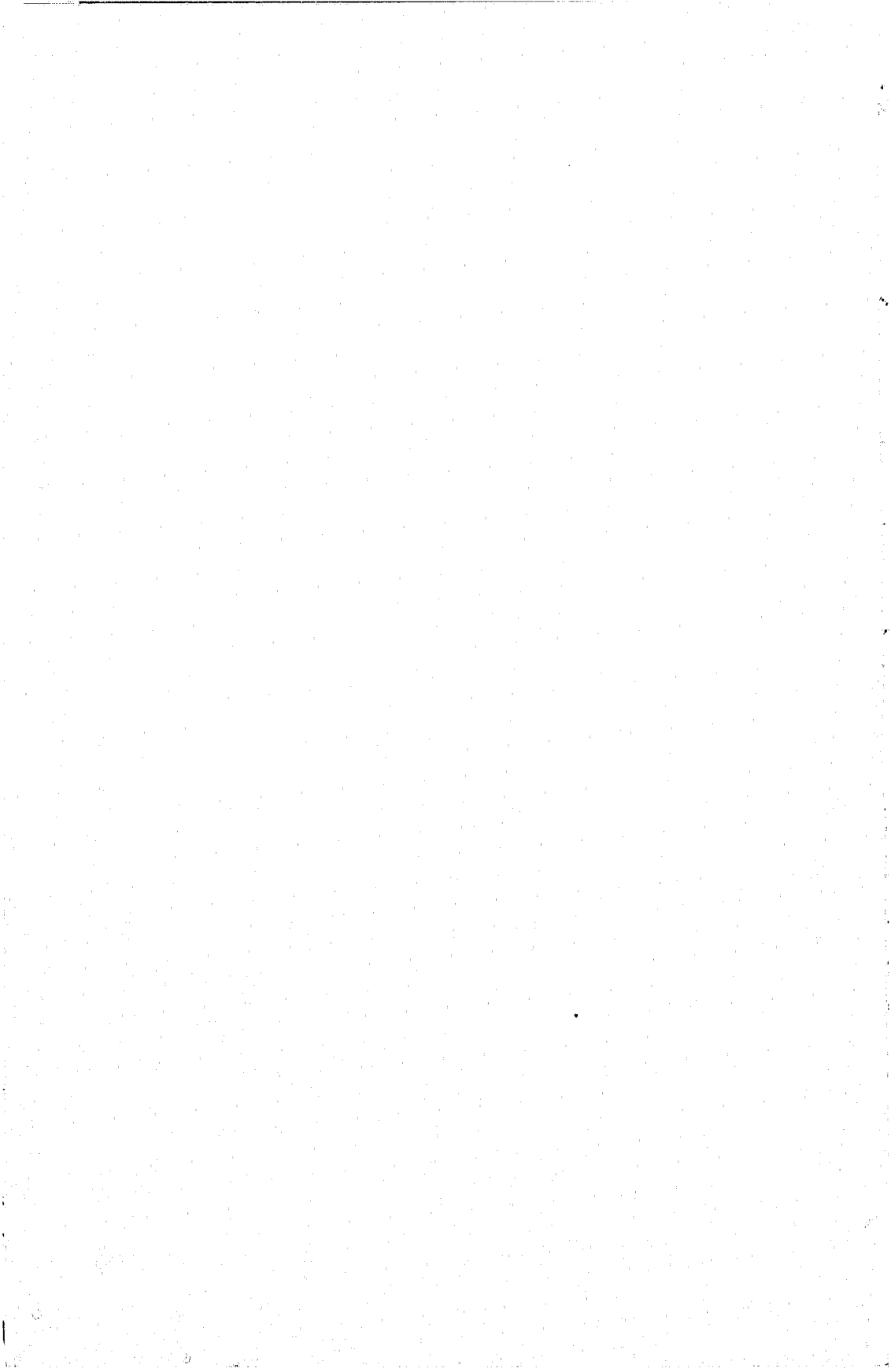
The Nation's Toughest Drug Law: Evaluating the New York Experience

Final Report of the Joint Committee
on New York Drug Law Evaluation

Executive Summary



National Institute of Law Enforcement and Criminal Justice
Law Enforcement Assistance Administration
United States Department of Justice



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March 1978



**National Institute of Law Enforcement and Criminal Justice
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United States Department of Justice**

**National Institute of Law Enforcement
and Criminal Justice
Blair G. Ewing, Acting Director**

**Law Enforcement Assistance Administration
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FOREWORD

When the New York State Legislature passed the 1973 drug law, the effects of which are evaluated in this study, the legislators hoped to stem the tide of widespread drug abuse and related socioeconomic effects that had not been notably checked by many years of prior national, state, or local control efforts.

The results, documented in this report, form an absorbing chapter in the continuing history of how societies have attempted to control crime by different strategies. Only recently, however, have societies tried consciously and systematically to evaluate how well their strategies have worked, or how and why they have failed to work. Intensive broad-based evaluations of the impacts of public policy changes are still relatively rare, probably because they tend to be costly, complex, time-consuming (and therefore often untimely), difficult, and likely to produce results that can be disquieting to all of the segments of society involved.

When the National Institute undertook this evaluation we recognized that any single study could not even hope to address, let alone resolve, all the research issues about legislative implementation processes and the impacts of this particular law that might be of interest for national, state, and local policy perspectives.

The evidence of this study and the daily newscasts indicate that the drug abuse problems this law addressed are still with us. If the New York drug law and the attendant efforts by criminal justice system administrators have not eliminated these problems, we know now, as a result of this evaluation, what it was that was done, why it was done, what effects it had, and what results were achieved. In short, we have increased the understanding which all of us have of a complex set of problems and of the difficulties which inhere in attempts to solve them. The continuing development of such knowledge and understanding is the best basis on which we can build future policies directed toward enlightened and effective control of drug abuse problems.

Blair G. Ewing
Acting Director
National Institute of Law
Enforcement and
Criminal Justice

PREFACE

This volume presents the conclusions of a three year study of the impact of New York State's strict drug law enacted in 1973. The study was undertaken by the Joint Committee on New York Drug Law Evaluation, established by The Association of the Bar of the City of New York and the Drug Abuse Council, Inc.

The complete Final Report of the Committee, which includes both these conclusions and the supporting data, is also published by the Government Printing Office.

A companion volume, *Staff Working Papers of the Drug Law Evaluation Project*, is available as well.

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The Joint Committee on New York Drug Law Evaluation and its staff are indebted to a great many individuals whose assistance made this study possible.

During the course of the Project, inquiries were made of legislators and their staffs, police officials, judges, prosecutors and defense attorneys, probation, parole and prison officials, and administrators of drug treatment programs and criminal justice agencies. At every turn, the Committee and its staff found the most cheerful and helpful cooperation.

Officials of the Federal government, and of state and local governments both within and outside New York State, were anxious to share their views and experiences concerning drug law enforcement, and often went to great trouble to meet numerous requests for data.

The Committee extends an enormous expression of thanks to the Drug Abuse Council for the financial support which made possible the organization of the Project and for the periodic counsel of its staff as the work progressed. The generous support of the National Institute of Law Enforcement and Criminal Justice of the Law Enforcement Assistance Administration made it possible for the Project to conduct a wide-ranging examination, and the Committee is extremely grateful for that support.

Heartly thanks are extended to the officers and staff of The Association of the Bar of the City of New York, in whose quarters the Project was housed. It would have been impossible to administer the Project effectively without the active assistance provided by the Association.

The Committee and its staff have benefited greatly from the advice of many experts in conducting their work and wish especially to thank the following individuals for their valuable contributions: Alfred Blumstein, Barbara Boland, Steven Brill, Donald T. Campbell, Samprit Chatterjee, Ruth Clark, Jacob Cohen, Paul Danaceau, Vincent Dole, Nathalie Friedman, David Greenberg, Pnina Grinberg, Bernard Gropper, Michael Grossman, Bertha Humez Hatvary, A.E. Jeffcoat, Robert Kasanof, Lee Konigsberg, Irving Lukoff, Mark H. Moore, Daniel Nagin, Robert Newman, Richard Parsons, Edward Preble, Benjamin Sackmar, Shlomo Shinnar, Nancy Spruill, James Q. Wilson, Franklin Zimring, and Norman Zinberg.

Joseph Bauman, Sandra Karpis, and Elizabeth Stanko are former members of the staff who made particularly outstanding contributions to the Project's work. Other former members of the Project's research staff are David Cummins, Martin Heilweil, Barbie Keiser, Richard McGahey, Peter Poryzees, Edward Reisner, Carole L. Reynolds, Gérard John Sheehan, and Jonathan Witty.

EXECUTIVE SUMMARY



Introduction

The 1973 Revision of the New York State Drug Law

In 1973, when the national "War on Drugs" was still fresh in mind, New York State radically revised its criminal law relating to illegal drug use. During the 1960s, the general policy of the State had been to divert low-level users of illegal drugs into drug treatment, and to invoke criminal penalties mostly against higher-level traffickers. By the early 1970s, it was commonly agreed that, as a device to limit illegal drug use and traffic, this approach had largely failed. In 1972, accidental narcotics deaths in New York State were six times what they had been in 1960. Thus, in 1973 the Governor and New York Legislature decided to try a new approach: the law was changed to prescribe severe and mandatory penalties for narcotic drug offenses at all levels and for the most serious offenses involving many other drugs.¹

The new drug law of 1973 had two principal objectives. First, it sought to frighten drug users out of their habit and drug dealers out of their trade, and thus to reduce illegal drug use, or at least contain its spread. Second, it aimed to reduce crimes commonly associated with addiction, particularly robberies, burglaries, and theft. It was believed that some potential drug offenders would be deterred by the threat of the "get-tough" laws, while at the same time some hardened criminals would be put away for long periods, and thus be prevented from committing further crimes.

The new law became effective on September 1, 1973. It raised criminal penalties for the sale and possession of many controlled substances. Primary attention of the legislation was devoted to heroin, but other drugs were also included in the sweep of the statute. (The laws relating to marijuana were not substantively amended in 1973.)

1. The 1973 drug law was enacted as Chapters 276, 277, 278, 676, and 1051 of the 1973 Laws of New York State. Significant subsequent amendments are contained in Chapters 785 and 832 of the 1975 Laws and Chapter 424 of the 1976 Laws. The major provisions of the 1973 law are summarized in the Appendix.

The statute divided heroin dealers into three groups within the highest felony category in the State, class A, and required minimum periods of imprisonment plus mandatory lifetime parole supervision for each group.

- Class A-I was defined to include the highest-level dealers, those who sell one ounce or more, or possess more than two ounces.² These dealers were subjected to the most severe penalty: a prison sentence of indefinite length, but with a minimum of between 15 and 25 years and a lifetime maximum.
- Class A-II was defined to include middle-level dealers, those who sell one-eighth of an ounce or more, or possess one or two ounces. These offenders were subjected to prison sentences of indefinite length, with a minimum term of between six and eight and one-third years, and a lifetime maximum.
- Class A-III was defined to include street-level dealers, also referred to as "sharer-pushers," those who sell less than one-eighth of an ounce or possess up to an ounce with the intent to sell. These dealers were made liable to prison sentences of indefinite length, with a minimum term of between one year and eight and one-third years, and a lifetime maximum.

There were two exceptions to the mandatory prison terms: the law permitted a discretionary sentence of lifetime probation without imprisonment for certain informants; and, in the case of youthful offenders between the ages of 16 and 18, an ambiguity in the law gave rise to discretionary exceptions.³

Classifications of offenses were established for other narcotics as well as for heroin, and for non-narcotic drugs, the classification for each drug being based upon its own weight standards. Penalties for drug felonies less serious than class A crimes were also increased. As a general result of these recategorizations, fewer drug offenses were punishable as misdemeanors.⁴

Further, the 1973 law prohibited any person who was indicted for a class A-III offense from pleading guilty instead to a lesser charge. Those charged with class A-I or A-II offenses could plead guilty to a class A-III felony, but no lower. The statute thus mandated that *any* person (other than a Youthful Offender or informant) indicted for selling heroin must, if convicted, go to prison for an indeterminate period, ranging from one year to life.

2. These quantities refer to the gross weight of a substance containing heroin.

3. In 1975, the law was amended to remove the ambiguity, and discretion in sentencing was specifically permitted for offenders in this age group.

4. A felony is any crime punishable by more than one year in prison. A misdemeanor is one punishable by a jail term of up to one year.

The severity of the 1973 law was not limited to the mandatory sentences and restrictions on plea bargaining. Even if a person convicted of a class A drug felony were paroled after serving his minimum sentence, he would remain under the formal surveillance of parole officers for the rest of his life. The 1973 law also made some changes that were not limited to drug offenses; the most important of the changes reinstated mandatory prison terms for persons who were convicted of a felony if they had been convicted of a felony in the past.⁵

The 1973 pattern of criminal regulation remained substantially intact until July 1976, when the stringent limitations on class A-III plea bargaining were abolished. That change significantly altered the 1973 scheme, despite the retention of severe mandatory penalties for the most serious drug offenses.

The Drug Law Evaluation Project

Shortly after the 1973 law went into effect, The Association of the Bar of the City of New York and the Drug Abuse Council jointly organized a Committee and research Project to collect data about the 1973 law in a systematic fashion and to evaluate the law's effectiveness. Would the "get-tough" law achieve the hoped-for results? Since New York was the only state that had made this sharp change of policy, it provided a laboratory for study of the new approach. The Committee hoped that its study might not only provide guidance on problems of illegal drug use, but also be important as one of the few empirical evaluations that have been undertaken of the actual results of a legislative program designed to combat crime.

The objectives of the New York Drug Law Evaluation Project were:

- To ascertain what happened as a result of the 1973 drug law revision;
- To analyze, to the degree possible, why it happened; and
- To identify any general principles or specific lessons that can be derived from the New York experience and that can be helpful to New York or to other states as they wrestle with the problem of illegal drug use and related crime.

Since the New York Legislature significantly changed the 1973 drug law in 1976, the Project dealt with developments over the period September 1973-June 1976, when the 1973 law was in full force.

The work of the Project was conducted by a Committee and a professional staff. The Committee members, listed on page iii, represented a wide range of experience in medicine, law practice, prosecutorial work,

5. This stringent provision against recidivists had no application to persons convicted of a class A drug felony, since imprisonment was mandatory for these offenders even for a first conviction.

the judiciary, government, the police system, and academic analysis; the members were from New York State and other jurisdictions. Several disciplines were represented on the Project staff, including economics, public administration, criminology, statistical methodology, public policy analysis, and law.

Organization of the Project was made possible by an initial grant from the Drug Abuse Council. The major funding was provided by the National Institute of Law Enforcement and Criminal Justice, the research arm of the Law Enforcement Assistance Administration. Without this aid the Project would not have been possible.

In pursuit of the objectives of its study, the Project for three years systematically accumulated large quantities of data, conducted widespread interviews with knowledgeable persons, carried out extensive statistical analyses, and consulted scholars with relevant expertise. The range of the Project's inquiry was very wide. It included New York State agencies, courts at all levels, drug treatment authorities, prisons, police, prosecutors, and other sources of information that might enhance understanding of the operation and effect of the 1973 drug law.

The Project focused entirely on the effects of the 1973 revision. Thus it was beyond the scope of the Project to attempt to assess the causes of drug use, or to gauge the relative importance that should be given to medical-social versus criminal law approaches to the problem of non-medical use of dangerous drugs. Similarly, though the problems of the New York State criminal justice process are frequently referred to in this Report, the Project had neither the data nor the mandate to propose a comprehensive program for reforming the State's criminal justice system.

Following is a summary of the Committee's conclusions. The balance of the Committee's Report supplies detailed analysis and supporting data. In places, this Report treats New York City separately from the rest of the State because the scale of the City's problems of illegal drug use, crime, and court congestion is unique.

I

What Were the Effects of the 1973 Drug Law?

The available data indicate that despite expenditure of substantial resources neither of the objectives of the 1973 drug law was achieved. Neither heroin use nor drug-related crime declined in New York State.

Findings on Drug Use

New York City: Heroin use was as widespread in mid-1976 as it had been when the 1973 revision took effect, and ample supplies of the drug were available.

The evidence suggests that heroin use had been declining for about two years before the law took effect and remained stable for at least a year thereafter. In 1975, there were nearly the same number of deaths from narcotics as there had been in 1973, and there was also a rise in the incidence of serum hepatitis (a disease often associated with heroin use). Further evidence of widespread heroin use is the sustained high level of admissions to ambulatory detoxification programs between 1974 and mid-1976. These programs typically attract the most active users.

Moreover, a large influx of Mexican heroin in 1975 and the overt marketing of "brand-name" heroin were signs of easy access to the drug. The absence of widespread price increases, together with stable or slightly rising consumption, was also evidence that large supplies were consistently available. Police officials and drug treatment administrators agreed that the heroin marketplace was as open in mid-1976 as at any time in their experience.

New York City: The pattern of stable heroin use between 1973 and mid-1976 was not appreciably different from the average pattern in other East Coast cities.

Heroin use rose steadily in Washington, D.C. during 1974 and 1975 in contrast to the pattern of use in New York City. This comparison could be

read to indicate that the 1973 drug law had produced a sustained inhibiting effect in New York. But patterns of heroin use in other East Coast cities (Baltimore and Philadelphia) were not significantly different from patterns in New York City, and therefore it is more likely that it was Washington's pattern that was unusual during this time period, not New York City's.

New York City and Other New York State Jurisdictions: *The new law may have temporarily deterred heroin use.*

Enforcement and treatment program officials agree that heroin sellers temporarily became cautious and covert in the fall of 1973, when the new drug law first went into effect. There is also some slight numerical evidence suggesting that during 1974 the prospect of harsh criminal penalties may have temporarily induced some active heroin users in New York City to seek treatment in methadone programs. Admissions to such programs in New York City increased slightly during 1974, after a steady 15-month decline in 1972-73. But after 1974 they declined again.

New York State as a Whole and the Area of the State Excluding New York City: *There is no evidence of a sustained reduction in heroin use after 1973.*

For the State as a whole, the pattern of heroin use from 1973 to mid-1976 was similar to that of other eastern states.

For the State excluding New York City, heroin use did not decline between 1973 and mid-1976. There were no reliable data from out-of-state jurisdictions with which to compare this result.

New York City: *Most evidence suggests that the illegal use of drugs other than narcotics was more widespread in 1976 than in 1973, and that in this respect New York was not unique among East Coast cities.*

The illegal use of stimulants, barbiturates, tranquilizers, and sedatives — the so-called "soft" drugs — as well as cocaine was considerably more widespread than narcotics use. Some of these drugs pose a greater medical hazard to the user than narcotics.

Data for comparing changes in the extent of non-narcotic drug use in New York City to such changes in other East Coast cities are scarce and cover only the post-law period, precluding a comparative conclusion about the effects of the law on the use of these drugs in New York. Hospital emergency rooms reported that the number of patients treated for symptoms of non-narcotic drug use increased at least as much in New York City after 1973 as in Philadelphia and Washington, D.C.

Illicit use of methadone, a narcotic also widely dispensed legally in treatment programs, was considerably more extensive in New York than in

other East Coast cities, but did not follow the upward course of non-narcotic drugs. Judged by the frequency with which methadone was detected in hospital emergencies and in autopsies performed by the New York City Medical Examiner, unsupervised use of methadone declined between 1973 and mid-1976.

Findings on Crime

New York State: *Serious property crime of the sort often associated with heroin users increased sharply between 1973 and 1975. The rise in New York was similar to increases in nearby states.*

For New York State as a whole, felonious property crimes — theft, robbery, and burglary — climbed 15% per year between 1973 and 1975. The average rise in Pennsylvania, Maryland, and New Jersey was 14%.

New York City: *There was a sharp rise in non-drug felony crimes between 1973 and 1975. However, the rise was apparently unconnected with illegal narcotics use: non-drug felony crimes known to have been committed by narcotics users remained stable during that period.*

In New York City between 1973 and 1975, felonious property crimes rose 12% per year, much faster than the average increase of 7% in Washington, D.C., Philadelphia, and Baltimore.

However, the data indicate that of all non-drug felonies (i.e., felonies other than violation of the drug law itself) the *percentage* committed by narcotics users in New York City dropped steadily from 52% in 1971 to 28% in 1975. During the period 1973-1975, the *number* of crimes committed by narcotics users remained constant. Thus, while narcotics users still accounted for a large share of serious crime in New York City, it appears that the increase in crime during 1973-1975 was *not* related to narcotics use.

New York City: *The available evidence suggests that the recidivist sentencing (predicate felony) provision of the 1973 law did not significantly deter prior felony offenders from committing additional crimes.*

The 1973 penal law revision contained a so-called "predicate felony" provision that prescribed mandatory State prison sentences for all persons convicted of a felony who had been convicted of a felony theretofore. Under this provision, furthermore, any person who had been convicted of a felony and who was indicted for a subsequent felony was prohibited from plea bargaining, that is, from pleading guilty to a misdemeanor. (Persons indicted for class A drug crimes were not subject to these general predicate felony provisions, since such persons faced mandatory imprisonment and

plea bargaining restrictions under the 1973 drug law even without being previously convicted felons.)

The predicate felony provision was intended to reduce recidivist crime in two ways: it was argued that the fear of automatic mandatory imprisonment would deter previously convicted felons from committing additional crime; and, if that failed, imprisonment itself would reduce crime by isolating from society a number of individuals who, if they remained at large, would probably commit additional crimes.

Between 1974 and mid-1976, over 5,100 repeat felony offenders were sentenced to State prison under the predicate felony provision. Of these, approximately 3,650 were from New York City.

In order to compare the criminal activity of convicted felony offenders before and after the 1973 predicate felony provision took effect, the Project examined the records of two parallel groups of convicted felony offenders. The first group consisted of 223 cases of persons who had been convicted of a felony during 1970 and 1971. The Project traced criminal records of these offenders for a two-year period ending August 1973, just prior to the effective date of the new predicate felony rule. The other group consisted of 220 cases of persons who had been convicted of a felony during 1972 and 1973, and their records were traced for a two-year period through August 1975; persons in the second group, unlike those in the first, faced mandatory prison sentences under the 1973 revision if they should again be convicted.⁶

Deterrence by Threat of Punishment

Comparative study of these two groups does not suggest that the new statute had the effect of deterrence by threat of punishment. The percentage of prior convicted felons who were arrested for a second felony during a two-year period after their earlier felony convictions proved to be exactly the same for the two groups studied—20%. Arrest alone does not establish guilt, of course, and these data may mainly attest to the consistency of the arrest practices of the police before and after the 1973 statute. But there is no reason to suppose that the quality of police arrests declined after the 1973 law went into effect, and therefore the likelihood is that these data reflect an underlying reality: namely, that the rate of

6. For statistical and other reasons, this study sample was limited to offenders who were convicted of non-drug felonies. Further, the study sample necessarily excluded offenders imprisoned after their first conviction, since few such persons were soon at large again and thus able to be repeat offenders. Limiting the sample to those not imprisoned may have biased the results, but, if so, the bias was probably in the direction of eliminating from the sample the most hardened criminals — those individuals most likely to have been imprisoned after a subsequent conviction even under the old law, and least likely to be deterred from future crime by the new law.

recidivism was the same before and after the effective date of the 1973 predicate felony provision.

Deterrence Through Incarceration

There is also little evidence to indicate that the predicate felony provision had a deterrent effect by increasing the number of prison sentences imposed upon repeat felony offenders.

Under the 1973 predicate felony provision there was an increase in the proportion of convicted repeat felony offenders who were sentenced to prison. Out of a sample of 26 repeat offenders who were convicted under the old law, 58% were sentenced to State prison. The corresponding figure under the new law was 76% (19 prison sentences out of 26 convictions in the sample). At the same time, however, as appears more fully below (pp. 22-24), there was a decline in the proportion of *arrested* repeat felony offenders who were sentenced to prison. Given that decline, the only way by which there could have been an increase in the total number of imprisonments of repeat felony offenders was by a dramatic increase in the total number of arrests of prior offenders. The Project estimates that it would have been necessary for arrests of prior offenders to increase by 50% from 1971-73 to 1974-76 to produce that effect. There are no direct data available on total arrests of prior offenders to bring to bear on the question; but the fact that total arrests of all persons for non-drug felonies in New York City increased by only 10% between those two periods makes it highly improbable that the arrest rate of prior felony offenders could have increased by such a large amount.

Findings on Other Results of the 1973 Law

Measured in Dollars, the Experiment of the 1973 Law Was Expensive.

It was recognized from the beginning that the approach taken in 1973 would require additional judges, and 49 of them were added to deal with the expected increased workload. Thirty-one of the new judges were allocated to New York City — constituting over one-third of the total Supreme Court capacity available in the City to administer *all* felony laws. The judges, prosecutors, defense counsel, and support staff established specifically to deal with the 1973 law cost the State \$76 million between September 1973 and mid-1976. Not all of this \$76 million was spent on drug law cases, for the new resources were used for other cases as well. A reasonable estimate is that approximately \$32 million was spent in the effort to enforce and implement the 1973 drug law.

Some of the Fears Voiced by Critics of the 1973 Law Were Not Realized.

Some critics of the 1973 law argued that it would jail many young people. This did not occur. The number of 16 to 18-year-olds incarcerated

each year for drug law offenses declined.⁷ Moreover, the exercise of sentencing discretion permitted by law for Youthful Offenders meant that for the 16 to 18-year-olds who were convicted the risk of a prison or jail sentence was less under the new law than under the old.⁸ Nor did the total number of first offenders incarcerated increase under the 1973 law, even though a higher percentage of offenders convicted of a felony for the first time did go to prison or jail.

Some police officials and prosecutors predicted that the new drug law would inhibit the recruitment of informants, who are of great importance to successful drug prosecutions. On the contrary, law enforcement officials agree that under the 1973 law there were more informants than before at all levels of the drug distribution system.

Some analysts predicted that the 1973 drug law would cause the prisons to overflow. In fact, drug law sentences under the 1973 law did not constitute a significantly larger fraction of annual new commitments to State prisons than in the past; they accounted for 13% of all commitments in 1972 and 1973 and for 16% in the first nine months of 1976. The population of the State prison system did indeed increase rapidly, from 12,845 at the end of June 1973 to 16,074 at the end of 1975 and further to 17,108 at the end of June 1976. But offenders in prison as a result of drug felonies accounted for only 11% of the June 1973 population and still accounted for only 11% of the December 1975 population. (Information for 1976 was not available.) The proportion of drug offenders in prison may increase in the future as the courts catch up on their backlog of class A cases (see below, pp. 17-18) and as drug offenders spend longer terms in prison as a result of the heavier penalties prescribed by the 1973 law. There will be, however, an offsetting factor—a smaller number of commitments in class A-III cases as a result of the 1976 amendment to the law.

7. Although police officers in New York City occasionally noted contact with very young people in the heroin distribution system, there was no great increase in arrests of youths under the new drug law.

8. All offenders incarcerated for terms of more than one year are sent to State prisons. Offenders incarcerated for periods of up to one year are sent to local jails.

II

What Accounts for the Disappointing Results of the 1973 Drug Law?

The premise of the 1973 drug law was that severe mandatory sentences can significantly deter illegal drug use and traffic. In fact, however, severe difficulties of administration prevented a complete test of this premise. For such a law to be an effective deterrent, it had to be effectively enforced and the threat of the law's sanctions had to be clearly perceived by drug users and traffickers as an ever-present reality. Apparently, however, most offenders and would-be offenders never felt the full threat of the law.

The Criminal Justice Process as a Whole did not Increase the Threat to the Offender.⁹

Mandatory sentencing laws directly affect only an end product of a long criminal justice process — the convicted offender. Under the 1973 law, a higher percentage of offenders convicted in superior courts were incarcerated and for longer periods of time than in the past. But the criminal justice process from felony arrest to felony conviction has many steps, and actions at each step combine to determine the ultimate deterrent power of the law. Few cases make it all the way through the process. The steps are:

Arrest

Drug law offenders have always enjoyed extremely low odds of being arrested for any single offense. That low risk of arrest apparently did not increase under the 1973 law.

9. The discussion in this section concerns the drug crime provisions of the 1973 law. Further discussion of the predicate felony provision can be found below, p. 22.

In New York City, the police had always been in a position to make large numbers of street level arrests for drug (especially narcotics) offenses. It was not the policy of the Police Department to do so, however. The Department had been disappointed with past efforts at mass arrests because they were very expensive and did not appear to hamper the narcotics trade. The 1973 law did not induce a change in arrest policy, in part because of that experience, and in part because the Department believed that the courts would be unable to manage the workload that a mass arrest policy would produce. (On this point, the data collected by the Project support the Department's view.)

Outside New York City, drug markets were not as open and widespread, and therefore the police could not increase arrests as easily.

Bail

Although the traditional purpose of bail is to ensure appearance of defendants at court hearings, release on bail is unfortunately seen by the public (and possibly also by law violators) as diluting the threat of penal sanctions. The 1973 law did not change bail practices, and the evidence is that they were in fact substantially the same in drug felony cases under the new as under the old law.

The diluting effect of immediate bail release might not be great if cases were promptly and speedily processed. But the slow handling of drug law cases reinforced the impression that the law was not being, or could not be, enforced.

Indictment

Of all drug felony arrests under the old drug law in 1972 and 1973, 61% were disposed of in preliminary proceedings, and only 39% resulted in an indictment. By the first half of 1976, only 25% of arrests resulted in an indictment.

The decline from 39% to 25% should not be attributed to the 1973 law. First, there was a comparable decline in the frequency with which non-drug felony arrests resulted in indictments. Second, it was only *after* an indictment had been returned by a grand jury that a defendant fell under the plea bargaining restrictions of the 1973 law. Although it would have been possible for prosecutors to react to the plea bargaining restrictions by bargaining with arrestees *before* indictment—as some people had predicted—in general it appears that prosecutors did not follow that course.¹⁰

10. During early 1976, just prior to enactment of the amendment relaxing plea bargaining restrictions, the Special Narcotics Prosecutor in Manhattan did begin to offer misdemeanor pleas prior to indictment in some class A-III cases, provided prison sentences of at least six months were imposed.

Conviction

Convictions as a Percentage of Indictments

For reasons unknown, there was a slight decline under the 1973 law in the frequency with which convictions were obtained after an indictment. Convictions fell from 86% of dispositions in 1972 to 80% in early 1976 (the conviction rate in non-drug felony cases continuing virtually unchanged during this period).¹¹ Thus, only one-fifth of those originally arrested in 1976 for drug felonies were ultimately convicted (80% of the 25% indicted), a decline from roughly one-third under the old law.

Total Convictions

The total number of convictions for drug offenses in felony courts in the period 1974 to mid-1976 was lower than would have been expected during the same period under old law disposition patterns.

The slowdown in the criminal justice process that will be described below led to a decrease of 900 in the number of persons convicted during 1974-76 as compared with the number who might have been convicted under the old law. There were a total of 5,800 convictions for new law drug offenses in the State's superior courts between 1974 and mid-1976. The shortfall of convictions occurred during 1974, when the courts disposed of only two-thirds of the drug law indictments returned. During 1975 and the first half of 1976, the courts kept up with the new indictments returned, but in New York City they were not able to reduce the backlog accumulated during 1974. Courts in other parts of the State were generally successful in cutting into their pending caseload during 1975 and 1976.

Prison Terms

Incarceration became more likely for those ultimately convicted, and between 1974 and June 1976, 2,551 new law drug offenders were sentenced to either State prison or local jail after a superior court conviction. During 1972 and 1973, 33% of persons convicted of drug crimes in the State's superior courts received either State prison or local jail terms. By the first half of 1976, that percentage had grown to 55%, a direct result of the plea bargaining restrictions and mandatory sentencing provisions of the 1973 law.^{12,13} This change of 22% was a major increase, but it was barely enough

11. The decline was not due to a lower conviction rate among cases decided by a jury.

12. For the 1974-June 1976 period as a whole, the percentage was 44%. If the percentage of convicted offenders incarcerated during this period had continued at its old law value of 33%, then 637 fewer drug offenders would have been incarcerated.

13. One reason the incarceration percentage did not approach 100% is that about half of the post-1973 convictions were in lower class felony cases which did not fall under the mandatory sentencing provisions that governed class A cases; in cases below the class A level, there was a decline in prison sentences as a percentage of convictions, from 32% to 21%.

to offset the decline from 1974 to mid-1976 in the likelihood of ever being convicted.

In sum, a defendant arrested for a drug felony under the old law faced an 11% chance of receiving a prison or jail sentence in superior court; under the 1973 law, the chance was an identical 11%.

If indictment and conviction rates had not fallen, then the rise in the ratio of incarceration to conviction that did occur would have increased an arrestee's risk of incarceration from 11% to 18%. That was the maximum effect on risk which the mandatory sentencing provision could have provided. It is impossible to say whether an increase of that magnitude would have generated a perceived threat great enough to deter any potential offenders from illegal drug trafficking, or, if so, how many.

Prison for Class A Offenders

Over 80% of persons convicted of class A felonies under the 1973 drug law were sent to prison, compared to 66% of offenders convicted of similar crimes and sentenced to prison or jail under the old law between 1972 and 1974. The other 20% of class A offenders received discretionary non-prison sentences because they were either informants or between the ages of 16 and 18.

Punishment

Punishment became more severe under the 1973 law. Drug law offenders sentenced to prison under the 1973 law would spend more time there than they would have under the old law. Between 1972 and 1974 under the old law, only three percent of those convicted and sentenced to prison for drug felonies received a minimum sentence of more than three years. During 1974 and 1975, when the new law was in effect, 22% received minimum sentences of more than three years.

Under the old drug law, lifetime prison sentences had been extremely rare: they were imposed only in cases involving large amounts of drugs. By contrast, some 1,777 persons convicted under the new drug law were sentenced to lifetime terms (imprisonment plus parole) between September 1973 and June 1976.

As a result of these developments, some of which worked to limit the impact of the 1973 drug law, only the relatively small number of drug felons who were convicted encountered the real difference between the old drug law and the new—a more likely and longer prison sentence. Drug traffickers as a group were not likely to see the new law as a serious threat.

The short disruption in the heroin trade that did occur—possibly because of the State's extensive publicity about the new law—suggests that

if the actual threat of the law had matched the threat conveyed by the publicity, a stronger deterrent to drug use would have been achieved. Unfortunately, it is not clear what level of enforcement would have been necessary to bring about that deterrent, or whether it could have been achieved at reasonable cost and with reasonable protection for individual rights.

In New York City, the Time Required to Process Drug Law Cases Lengthened Dramatically.

The threat of the 1973 drug law suffered further dilution through the large increase in the average time required to dispose of a drug law case in the New York City Supreme Court. Between 1973 and 1976 that time nearly doubled, although there was no similar increase for other felony cases. By mid-1976 half the drug law cases then being disposed of were over one year old and the backlog had increased to over 2,600 pending cases, nearly a year's workload for the courts. This had occurred in spite of the addition of 31 new courts in New York City.

Two factors contributed to the slow-down. First, the demand for trials rose sharply. Under the old law during 1972 and 1973, only 6% of all drug indictments in New York City had been disposed of by trial. Under the 1973 law, trials rose to 16% of dispositions. Trials in non-drug cases also increased during this period, but rose only from 6% to 12% of all dispositions. A trial took up to ten to fifteen times as long to complete as a non-trial disposition.

The reason for the increase in trials lay in the 1973 law's combination of mandatory prison sentences and restrictions on plea bargaining. Since defendants in class A-III cases were forbidden to plead guilty to a lower charge, they had a major incentive to demand a trial rather than simply to plead guilty. Class A-III indictments accounted for 41% of all class A drug law indictments in New York City and 61% of the class A trial workload during the period 1974-June 1976, and thus contributed heavily to the City's court congestion.

Second, the productivity of the new courts created under the 1973 drug law failed to match that of established courts.¹⁴ Between 1974 and 1976, the average case in the new courts required 21 court appearances, compared with between 10 and 15 appearances for cases disposed of in other courts. If the new courts had matched the productivity of the established courts, there would have been no more than a small growth in the drug felony backlog.

14. Productivity, as used here, is measured by the number of dispositions for each day a court is in session.

Contributing to the low productivity of the new courts was the fact that even in drug law cases which did not result in a trial, defense counsel typically posed many challenges and objections in the process of entering a guilty plea. This was to seek dismissal or to defer for as long as possible the start of the defendant's mandatory prison sentence and the lifetime parole supervision that would follow.

Court Delays Reduced the Threat of the New Law.

As a result of delays in processing new law cases—delays which were most pronounced in New York City—fewer drug law cases were disposed of between 1974 and June 1976 than during a similar period of time under the old drug law. The State's felony courts imposed 2,551 sentences of incarceration in new law drug cases between early 1974 and mid-1976—about 700 fewer than would have been expected under the old law, or between 200 and 300 fewer per year.¹⁵ This was true even though the chances of incarceration after conviction rose considerably, as noted above.

The threat embodied in the words of the law proved to have teeth for relatively few offenders.

If ways had been found to counteract administrative problems, and if the backlogs had not materialized, the new drug law would have led to approximately 560 more prison and jail sentences each year across the State than under the pre-1973 law.¹⁶ This would have meant an increase of about 36% over the 1,500 drug law sentences imposed in 1973. There is no way to judge whether an increase of that scale would have been enough to cause a significant drop in illegal drug use and crime.

Within the State's Criminal Justice System, There Was Little Enthusiasm for the 1973 Drug Law.

Although there is no evidence that police officers, prosecutors, and judges were derelict in carrying out the 1973 drug law, it is nonetheless evident that there was very little enthusiasm among these groups for it. It is impossible to gauge the effects of this dim view, but it probably did contribute to the disappointing outcome of the 1973 revision.

Many judges and prosecutors felt that the mandatory sentencing

15. These estimates are derived by "allowing" the courts to dispose of nearly all new drug indictments, as they did during 1972 and 1973, and then by applying the old law conviction rate (86%) and the old law imprisonment rate (33%) to the resulting dispositions.

16. This estimate is derived by "allowing" the courts to dispose of nearly all new drug indictments, and then by applying the actual conviction rate (80%) and the actual imprisonment percentage (55%) to the resulting dispositions.

provisions reduced the possibility of individual treatment of offenders, and, therefore, the quality of justice. Some were troubled because the penalties imposed on low-level drug traffickers were more severe than those applicable to crimes that most citizens consider heinous. Some judges have suggested that, reluctant to imprison offenders whom they considered prime candidates for rehabilitation programs, they granted continuances more readily than usual, thus slowing down the process of judicial disposition.

New York City prosecutors tended to believe that the 1973 law was forcing them to scatter their limited resources on what they considered relatively minor offenses. And the judges, worrying about other criminal backlogs that had built up before 1973, urged that the new drug courts be allowed to work on non-drug cases. In 1974, despite the increasing backlog of drug law cases, approximately 1,000 non-drug cases were assigned to the new courts in Manhattan, and in early 1975 the courts prevailed upon the Governor to relax the administrative distinction between the old and the new courts so that the former drug courts could be used regularly for non-drug cases.

As for the police, the New York City Police Department believed that a policy of all-out street level enforcement would be only marginally productive and would hopelessly inundate the courts.

Experience Outside New York City

Courts outside New York City were generally able to handle cases under the 1973 law without bogging down; they had fewer serious drug cases on their dockets, and 18 new drug law courts shared the work. However, most of these courts still had trouble processing the more serious drug cases, and the pace of disposition in drug law cases did not improve.

The following sections summarize the effects of the 1973 law in the State's five largest counties outside New York City. Together, Erie, Monroe, Nassau, Suffolk, and Westchester counties included half the State's population and accounted for roughly half of the State's felony drug arrests outside the City.

Prison and jail sentences in drug cases went up dramatically in several counties; yet in none of them was there evidence of a sustained drop in the extent of drug use. Officials in each county did report a marked retrenchment of the heroin market at about the time the 1973 law became effective, apparently signaling apprehension over the law among heroin dealers. According to limited statistical evidence, however, this market reaction did not persist for long.

Erie County

Erie County presents a good example of efficient administration of the 1973 drug law. Arrests for drug felonies increased sharply after the law went into effect. There was also a rise in drug felony indictments, contrasting to the decline in New York City. Convictions increased both in number and as a proportion of drug indictments, as dismissals of such indictments fell. There was a fivefold increase in the number of drug offenders sentenced to prison or jail between 1973 and the first half of 1976. The risk of incarceration also rose for those arrested for drug offenses, although by mid-1976 it was still no higher than the statewide average.

These improvements in criminal justice system performance can be attributed to an increased emphasis on drug law enforcement and prosecution, and to the efficient use of the three new court parts opened in Erie to implement the 1973 law. One reason for the lack of persistent delays in the courts is that the demand for trials in drug cases did not increase, as it did in most other parts of the State. The chief reason for this surprising result is that defendants in class A-III cases were offered prison sentences with short minimum terms in exchange for guilty pleas.

And yet, in spite of this efficient implementation of the drug law, there was no evidence of a sustained decrease in the use or availability of heroin in Erie County. Administrators of drug treatment programs and enforcement officials believed, however, that they had noted a decrease in heroin use for six months to a year following implementation of the law, and some support for this view can be drawn from the records of narcotics deaths and serum hepatitis. Perhaps for a longer time than was evident in New York City, heroin dealing was driven "underground" and users became more secretive about their habits. However, the decline in use did not persist, and the evidence is that heroin was as prevalent in Erie County during the first half of 1976 as before the law took effect.

Monroe County

The criminal justice system in Monroe County met with moderate success in its efforts to implement the 1973 drug law. Arrests, indictments, convictions, and prison sentences for drug offenses all rose sharply after 1973. This stepped-up enforcement of the drug laws in Monroe appears to be attributable both to the passage of the 1973 law and to the establishment of an interagency Drug Enforcement Task Force, which included representatives from Federal, State, and local police forces.

In contrast to the courts in Erie County, however, Monroe County courts had some difficulty in keeping up with the processing of the most serious drug law cases. The number of trials in class A drug cases rose considerably, and fewer than half were disposed of during the first two

years the law was in effect. Although these delays softened the potential impact of the 1973 law, local officials believed that the law had affected the patterns of heroin trafficking by causing dealers to conduct transactions less openly. At about the same time the new law went into effect, dealers appeared to be selling smaller amounts of heroin in each transaction in order to avoid a class A-I or class A-II arrest, and sales to unknown purchasers were rare.

Nonetheless, observers reported that the reductions in heroin use caused by these new patterns had not been large enough to have a lasting impact on the extent of use in the County. Narcotics deaths and serum hepatitis both increased after 1973.

Westchester County

Criminal justice officials in Westchester County reported that implementation of the 1973 law proceeded smoothly. In 1976 it still took much longer to process drug cases there than in Erie and Monroe counties, but a marked improvement in case processing had occurred since 1973. Like Erie County, Westchester saw prison and jail sentences in drug cases rise substantially under the new law, from 34 in 1973 and 1974 to 60 in 1975 and 75 in 1976. Even so, it was not until 1976 that the number of sentences exceeded the number during 1972. The number of drug indictments and convictions did not increase in Westchester; prison and jail sentences went up solely as a result of the increased severity in penalties.

Changes in heroin use patterns in Westchester appear to have paralleled the changes evident in Erie County. Limited data tend to confirm the observation of officials in Westchester that a brief dislocation of the heroin market soon after the law became effective was not sustained long enough to have a lasting effect on trafficking or use.

Nassau County

Like its neighbor, New York City, Nassau County had difficulties in implementing the 1973 law.

Up to September 1975, only one-fifth of all class A indictments had been disposed of. The major factor in these delays was apparently the large number of young people accused of class A-III offenses. Many class A-III cases were held open by the courts until the Legislature, in 1975, exempted 16 to 18-year-olds from mandatory prison sentences. In addition, a large number of class A-III offenders were sentenced to probation as informants, and cases involving informants reportedly took extended periods of time to resolve. Trials did not increase markedly in Nassau, as they did in most other jurisdictions.

As a result of these factors, the number of prison and jail sentences

imposed on drug offenders fell during 1974 and 1975. After the end of 1975, however, the courts succeeded in stabilizing the backlog of class A cases, and prison and jail sentences for drug offenses began to return to their pre-law level.

Drug use patterns were particularly difficult to isolate in Nassau, which has none of the urban centers in which drug use is usually concentrated. Local officials reported that the most troublesome problems of illicit drug use were recent rises in the use of cocaine, and an increased prevalence of poly-drug use. They also reported that there had been no measurable decline in heroin trafficking or use in Nassau County since enactment of the 1973 law, an observation which the available indicators of narcotics use tend to confirm.

Suffolk County

Suffolk County too had difficulty in implementing the 1973 law. The 1973 law generated an increased demand for trials in drug cases during 1974 and 1975, when the County's superior court was experiencing a trial backlog in other cases as well. A substantial proportion of drug indictments filed were for class A cases, and defendants in these cases sought to delay disposition by obtaining continuances and by pressing motions to limit evidence. The general press of court activity provided a context in which these efforts were largely successful.

The addition of three superior court parts in early 1976 greatly alleviated the congestion of the court system. In addition, the 1976 amendment to the law, relaxing plea bargaining restrictions in class A-III cases, aided the disposition of drug cases by plea. Hence, the felony drug case backlog was reduced and a significantly increased number of trials held.

No notable decline in heroin use was detected in Suffolk County after 1973. Officials noted that there had been a recent rise in the use of barbiturates and cocaine, and that a form of poly-drug use involving alcohol, marijuana, and barbiturates was the most common drug problem in the County.

New York City: Despite the Introduction of Mandatory Prison Sentences for Repeat Felony Offenders, for Any Felony Offender Arrested for a Subsequent Felony the Risk of Imprisonment Was Lower After the 1973 Revision Than It Had Been Before the Law Was Enacted.

As noted earlier, the 1973 predicate felony provision had the effect of increasing substantially the percentage of convicted repeat offenders who were sentenced to prison. At the same time, however, though it may appear anomalous, the risk of imprisonment facing a newly arrested prior felony

offender declined. This was the result of the fact that although convicted repeat offenders faced a higher chance of incarceration if they were convicted following the effective date of the 1973 predicate felony provision, that rise was more than offset by the decreasing likelihood that arrest would lead to indictment and indictment to conviction.

A key fact to be borne in mind is that even before the predicate felony provision went into effect, persons convicted of a felony in New York City were usually sentenced to State prison if they had been previously convicted of a felony—the figures being between 50% and 60%.¹⁷ Furthermore, the rate of prison sentencing in New York City rose in the early 1970s independently of the 1973 provision; thus, in 1971 only 28% of all convicted non-drug offenders (including first offenders) received prison sentences, but in the first half of 1976 46% of all convicted non-drug offenders (including first offenders) received prison sentences. Accordingly, it is evident that the rate of imprisonment of repeat offenders would have risen during the period in question even in the absence of the 1973 revision.

Nonetheless, the 1973 predicate felony provision did have an affirmative effect in that it increased the rate of imprisonment of convicted repeat offenders. Out of a sample of 26 repeat offenders who were convicted under the old law, 58% were sentenced to State prison; the corresponding figure under the new law was 76% (19 prison sentences out of 25 convictions in the sample).

But offsetting this rise in the imprisonment rate was the fact that in New York City indictment was less likely to follow the arrest of a repeat felony offender after the 1973 law than it had been before. Study of a small sample of arrests of prior non-drug felony offenders indicated that under the old law, between 1971 and 1973, 40% of such arrests led to felony indictments (there were 78 arrests in the sample); whereas under the new law only 24% of the arrests led to a felony indictment (there were 146 arrests in the sample). (Similarly, there was a decline in indictments as a percentage of arrests in the case of defendants who did not have prior convictions.)

In addition, during this period there was a decline in convictions as a percentage of indictments of prior felony offenders. Under the old law, 90% of such offenders who were indicted were convicted (28 out of 31 indictments in the sample); under the new law during the time in question, only 71% of such indictments resulted in conviction (25 out of 35 indictments). The reasons for this decline are unknown; it may be

17. The percentage was about 85% for persons who were convicted of a felony and who had earlier been *imprisoned* for commission of a felony.

observed, however, that the conviction rate for first-time offenders in non-drug cases also declined during this period, though to a slightly lesser degree.

The combined effects of the higher rate of imprisonment after conviction and the lower likelihood of indictment and conviction after arrest yielded the following results: under the old law, 20% of the arrests in the sample eventually resulted in a sentence to State prison; under the 1973 predicate felony provision, only 13% of arrests of prior felony offenders ultimately resulted in a sentence to State prison (19 sentences out of 146 arrests in the Project's sample).¹⁸

As noted above, an estimate of the increase in arrests of prior felony offenders that would have been necessary to offset this reduction in the risk of imprisonment suggests that the total number of repeat offenders imprisoned under the predicate felony provision between 1974 and mid-1976 was less than the number imprisoned in the two and one-half year period immediately preceding the effective date of the new law.

An unexpected anomaly encountered by the Project was that, as actually administered, the 1973 predicate felony provision did not invariably result in imprisonment for the convicted repeat felony offender. In the course of review of 25 repeat felony offender cases, the Project's research identified six instances between 1973 and 1975 in which convicted repeat felony offenders did *not* in fact receive prison sentences upon repeat conviction. In five of these cases, information on the offender's previous conviction seems not to have been in the file that came to the judge, prosecutor, and probation department at the time of sentencing. If such procedural or administrative lapses occurred with significant frequency, they can only have contributed to reduce the threat of punishment that was originally anticipated from the predicate felony provision.

18. The point of this section may also be stated in reverse, i.e., that the rise in the ratio of imprisonment to conviction (58% to 76%) served to offset the declines in indictment and conviction rates, which might have occurred even in the absence of the predicate felony provision. If it were to be assumed that in the absence of the predicate felony provision only 58% of convicted repeat felony offenders would have been sentenced to prison between 1974 and mid-1976, then it is estimated that approximately 300 fewer repeat felony offenders would have been imprisoned each year in New York City under the old law than were in fact sentenced to prison under the predicate felony provision.

III

Observations and Lessons for the Future

The Difficulties of Implementation

Court Congestion

New York City suffered from heavy congestion of its court system prior to the enactment of the 1973 law. In any state or city suffering from similar court congestion, it would make little difference whether laws like New York's were passed or not. If enacted, such statutes would be likely to founder in the implementation process; the major result would probably be an increase in the amount of money spent. It is possible that a community with a smoothly functioning criminal justice process might find a drug law like the 1973 law to be effective, but the limited evidence from Erie County, and to some extent from Monroe and Westchester counties, is not encouraging.

The key lesson to be drawn from the experience with the 1973 drug law is that passing a new law is not enough. What criminal statutes say matters a great deal, but the efficiency, morale, and capacity of the criminal justice system is even more of a factor in determining whether the law is effectively implemented.

Whatever hope there is that statutes like the 1973 revision can deter anti-social behavior must rest upon swift and sure enforcement and a dramatic increase in the odds that violators will in fact be punished. Until New York's criminal justice process is reformed so that it can do its work with reasonable speed and reasonable certainty, the Legislature does not in reality have serious policy options to choose from. Without implementation there is no policy; there are only words.

The 1973 law not having been fully implemented in New York State as a whole, it is not possible to conclude from the New York experience what

the consequences of that law would have been if it had been fully implemented.

Other Administrative Problems

Police, courts, and prosecutors alike saw the law as a new drain on resources which in their view were already inadequate. But court congestion was not reduced even after the application of large amounts of new resources.

The addition of 31 judges avoided any diversion of existing resources to drug cases, but existing pressures on the courts made it difficult to absorb the new judges and other personnel productively. These additions were made to the court system without producing additional dispositions, and there is no assurance that a larger number of judges would have made the implementation process any more effective.

It was apparently not a scarcity of resources which was to blame for the administrative difficulties the 1973 law encountered. A portion of the new resources was required because — partly as a result of a rise in trials—new law drug cases took significantly more court time than drug cases under the old law (1.7 court days for each disposition compared to 1.0 court days under the old law, statewide). The balance was absorbed in the adjudication of non-drug cases, providing a substantial benefit to the court system as a whole.

Another indication that a shortage of judges was not the primary problem facing the courts came from the growth of the New York City Supreme Court system as a whole. In early 1972, there were 50 courts operating in criminal matters; by 1975, there were 117 courts in operation. There were 21,900 indictments disposed of in each of those years. And between late 1973, when new judges were furnished to implement the drug law, and the first half of 1976, processing times in the courts lengthened.

Cost

The cost of court resources furnished to administer the 1973 law was high, although, as it developed, only a portion of those resources was actually needed to process new law cases. Rigorous enforcement of similar statutes in other jurisdictions, if possible at all, might require large expenditures not only for judges but for police and defense and prosecutorial staffs. If long prison sentences were to be legislatively mandated or judicially imposed in large numbers, still further costs would be incurred to build, maintain, and staff new correctional facilities.

The New York experience suggests that it would not be wise for other jurisdictions to undertake such large expenditures unless the outlook for successful implementation were favorable. It is unlikely that the deficiencies of an existing criminal justice system can be overcome solely by the simultaneous application of tough laws and additional resources.

What Could Have Been Done to Improve Implementation?

Restricting the New Courts to Drug Cases

Administration of the 1973 law in New York City might have been marginally improved if all the resources supplied to the courts had been used for drug law cases. Some resource diversion occurred because without it courts would have been idle while waiting for new cases; but if the courts had been dedicated solely to new law cases early in the implementation process, when the backlogs were building up most quickly, additional pressures might have been applied to avoid idle courts and to speed the disposition process.

Efficiency in court operation could have been improved by reducing the number of appearances and processing times; management improvements can raise the courts' productivity to some extent. But it is unlikely that such improvements could have been achieved in time to make a significant contribution to administration of the 1973 law.

Altering the Penalties

Another possible approach would have been to mitigate the severity of the penalties. There is little agreement today about the degree to which any specific penalty structure can function as an effective deterrent to crime. However, changes in the penalty provisions of the 1973 law would have eased administrative burdens and made it somewhat easier to test the proposition that a system of mandatory sentences, however specified, can be an effective deterrent. Their deterrent effects will never be known unless the sentences in fact can be and are imposed.

As an example of an alternative approach, the legislators' goal of increasing the risk of punishment through prescribed prison sentences could have been approached without the extremely long indeterminate sentences embodied in the 1973 law. It would have been possible, for instance, to create mandatory prison terms in which the indeterminate period was for a short time, such as one to three years instead of one year to life. Another alternative would have been to impose a mandatory one-year sentence in a local jail. Prison terms of definite length could also have been prescribed, but with departures allowed if the judge stated in writing his reasons for imposing an alternative sentence.

Adoption of any of these approaches for drug cases would have reduced the demands for trials and the resulting drain on judicial resources. Such penalties would also have fitted in more reasonably with penalties imposed for crimes of violence.

Easing the Plea Bargaining Restrictions

The 1976 amendment to the New York drug law made a much-needed

change in the existing law when it changed the plea bargaining restrictions to allow persons charged with class A-III narcotics felonies to plead guilty to a lower charge.

Experience under the 1976 revision should be watched carefully. It may enhance the deterrent power of the law by causing penalties to follow swiftly upon indictment and conviction for low-level drug defendants. (If added deterrence is to occur, jail terms of reasonable duration must still accompany the speedier disposition.) Such a speed-up in processing, by releasing court resources for other cases, should also cause improvement in processing cases involving the more serious drug offenses.

Possibilities for Future Improvement

Neighborhood Protection

An additional opportunity was opened up by the 1976 amendment. The painfully visible traffic of drugs on the street has always been largely made up of class A-III offenders. So long as persons charged with class A-III felonies were not allowed to plead guilty to a lower charge, massive street arrests of these offenders would have led inevitably to equally massive court congestion. Now, however, the police and prosecuting authorities in New York City are in a position to change their enforcement policy. With the 1976 amendment, the police can bring regular and reasonable pressure on notorious market areas and confront small dealers and purchasers with a heightened risk at the "front end" of the criminal justice process. Such a widened scope of minor arrest practice is not likely to have a substantial effect on the drug market or the drug supply. But a police arrest policy that ignores an open illegal marketplace has the unfortunate by-product of appearing to condone well-established criminal activity, to the desperation and helpless rage of the innocent citizens who live and work in the neighborhood. Police should not allow local conditions to deteriorate to the point where there is little appearance of civil order, where the neighborhood seems to have been abandoned, and where its citizens finally demand that the police "sweep the streets." With the 1976 amendment, the police are now in a position to forestall that chain of events without hopelessly flooding the prosecutorial and judicial system.

Predicate Felony Administration

Administration of the predicate felony provision of the 1973 law could be improved if courts required prosecutors to find out at the beginning of the court process whether or not a defendant had a previous felony conviction. Prosecutors would then know the bargaining latitude available to them.

At present, the records of past convictions available to prosecutors are

sometimes incomplete, and past convictions may be overlooked, as they have been on occasion. For a modest investment—perhaps the cost of one court part in New York City—the necessary records could be brought up to date as soon as a new felony arrest is made. This should be done.

Reevaluation of the Relationship between Narcotics Use and Non-drug Crime

In the years 1971 to 1975, the percentage of non-drug felonies committed by narcotics users dropped steadily in New York City. Efforts should be made by other cities and states to obtain comparable data. A major impetus behind the adoption of the 1973 revision was the widespread belief that narcotics use, or at least narcotics addiction, is a primary cause of other felonies. If narcotics users are found to be responsible for less and less crime, or if it is prohibitively expensive to attempt to enforce "get tough" drug laws, then the limited resources available to fight crime might be better employed in directions other than an escalated assault on the narcotics trade.

Research

We are just entering the era in which social science research can begin to be of real help in designing our criminal law system. Control of crime, including illegal drug use, is a field in which additional social science research is both feasible and promising.

After decades of debate, there is still little evidence about the extent to which the use of narcotics or other drugs actually causes users to commit crime. Moreover, it is not known what proportion of crimes committed by drug users would have been committed by the same persons in the absence of drug use. New knowledge on this topic would bear directly upon the choices of public policy to be followed to combat crime and the illegal use of drugs.

Similarly, there is little systematic information about the share of serious crime that is committed by recidivists. If most crime is committed by career criminals, then there is greater justification for harsh sentencing policies, since incarceration can prevent crime by isolating those who commit most of it, and since few of those sent to prison would be low-risk offenders.

The findings of this Project would be statistically more powerful if a more comprehensive data base had been available dealing with illegal drug use and the criminal justice process for the period prior to the effective date of the 1973 revision. The Project has now built up more than three years' statistical time series data concerning these matters in New York and, to a lesser degree, elsewhere. With this platform built, it would be extremely unfortunate if compilation of these data were to terminate with the

conclusion of this particular Project. Arrangements should be made to continue to collect these data so that future analysts can evaluate the long-term effects of the State's existing drug law and, eventually, the operational effects of future amendments to it.

General Observations

This study Project has neither the data nor the expertise to seek to develop an overall recommendation to deal with the multiple problems of illegal drug use. The Committee and its staff have, however, had the benefit of a research experience that has ranged widely over many aspects of the drug trade and illegal drug use. On the basis of that experience, three general observations seem justified.

First, the use of heroin and other opiates is but one element of a larger problem. The misuse of all dangerous drugs—alcohol, cocaine, opiates, and other mood-changing drugs, some prescribed and some sold over the counter—all together constitutes "the drug problem." Problems with so many components do not yield to one-dimensional solutions. As no single drug treatment method is suitable for all users, so there is not likely to be a single legal approach that is suitable for all offenders.

Second, whether or not illicit drug use is for the most part a medical concern as some contend, it is incontrovertibly deeply rooted in broader social maladies. Narcotics use in particular is intimately associated with, and a part of, a wider complex of problems that includes family break-up, unemployment, poor income and education, feeble institutional structures, and loss of hope.

The final observation is a corollary of the second: it is implausible that social problems as basic as these can be effectively solved by the criminal law.

APPENDIX



APPENDIX

The 1973 New York State Drug Law

The 1973 drug law was enacted as Chapters 276, 277, 278, 676, and 1051 of the 1973 Laws of New York State. Significant subsequent amendments are contained in Chapters 785 and 832 of the 1975 Laws and Chapter 480 of the 1976 Laws.

The 1973 Drug Law and Its Context

New York State law divides crimes into seven classifications, five felony and two misdemeanor, ranging from class A felony, the most serious, to class B misdemeanor, the least serious. The 1973 law divided the class A felony category into three subclassifications, A-I, A-II, and A-III. Classes A-II and A-III were created especially and exclusively for drug crimes.

TABLE A-1
CRIME CLASSIFICATION AND SELECTED EXAMPLES
UNDER NEW YORK STATE PENAL LAW

Classification	Drug Crime Example	Non-Drug Crime Example
A-I Felony	Sale of 1 oz. of heroin	Murder 1° and 2°
A-II Felony	Sale of between 1/8 oz. and 1 oz. of heroin	None
A-III Felony	Sale of less than 1/8 oz. of heroin	None
B Felony	Second offender, class C drug crime	Rape 1°, Robbery 1°
C Felony	Possession of 1/2 oz. of methamphetamine	Assault 1°, Burglary 2°
D Felony	Sale of any amount of any controlled substance	Grand Larceny 2°, Forgery 2°
E Felony	None	Perjury 2°, Criminal Contempt 1°
A Misdemeanor	Possession of any amount of any controlled substance	Unauthorized use of a Vehicle
B Misdemeanor	None	Menacing

Sentencing possibilities are provided for each classification of crime. Under the 1973 law, indeterminate sentences to State prison were made mandatory for convicted class A and B felons. Certain class C and D crimes also carried mandatory indeterminate sentences. An indeterminate

TABLE A-2
FIRST OFFENDER PENALTIES FOR CLASSES OF CRIME UNDER
NEW YORK STATE PENAL LAW
(as of June 1977)

Classification	INDETERMINATE SENTENCE TO STATE PRISON		Alternatives to a State Prison Sentence ^a
	Minimum	Maximum	
A-I Felony	15-25 yrs.	Life	None ^b
A-II Felony	6-8 1/3 yrs.	Life	None
A-III Felony	1-8 1/3 yrs.	Life	None ^c
B Felony	1-8 1/3 yrs.	3-25 yrs.	None
C Felony	1-5 yrs.	3-15 yrs.	Probation (5 yrs.), conditional discharge, unconditional discharge ^{d,e,f,g}
D Felony	1-2 1/3 yrs.	3-7 yrs.	Probation (5 yrs.), local jail (1 yr.), intermittent imprisonment (1 yr.), conditional discharge, unconditional discharge ^{e,f,g}
E Felony	1-1 1/3 yrs.	3-4 yrs.	Probation (5 yrs.), local jail (1 yr.), intermittent imprisonment, conditional discharge, unconditional discharge ^{e,f,g}
A Misdemeanor	None	None	Local jail (1 yr.), intermittent imprisonment, probation (3 yrs.), conditional discharge, unconditional discharge ^{f,g,h}
B Misdemeanor	None	None	Local jail (3 months), intermittent imprisonment, probation (1 yr.), conditional discharge, unconditional discharge ^{f,g}

^aExcluding fines.

^bMurder in the first degree (of a police officer under particular circumstances) is a class A-I felony that carries a mandatory death sentence.

^cBut informants who aid in the investigation or prosecution of a drug felony may be sentenced to lifetime probation.

^dDefendants indicted for class A-III felonies who plead guilty to a class C felony, as authorized by the 1976 amendment to the law, may receive a local jail sentence of up to one year instead of an indeterminate sentence to State imprisonment.

^eNo alternative is available for defendants convicted of certain specified class C and class D felonies. Conditional discharge and unconditional discharge are not available to defendants convicted of drug felonies.

^fOffenders who are adjudicated Youthful Offenders may not receive a State prison sentence with a maximum of more than four years.

^gOffenders who have been found to be narcotics addicts under the procedures set forth in the New York State Mental Hygiene Law must receive either a probation sentence requiring treatment for their addiction or a sentence to either State prison or local jail.

^hOffenders who are adjudicated Youthful Offenders in a local criminal court and who have not previously been so adjudicated or convicted of a crime may not receive a definite sentence of more than six months.

sentence means that the actual length of time the convicted felon will spend incarcerated is not established by the court. Typically, the sentencing judge chooses a maximum term, the longest time the defendant may be incarcerated, from the range of maxima provided by law. The parole board then sets the minimum term, the period during which the convicted felon is not eligible for parole, and subsequently decides the actual term after the minimum term has been served. However, in class A felony cases (and in predicate felony cases discussed below), the sentencing judge must set the minimum as well as the maximum term. In other felony cases, a sentencing judge may set a minimum term of up to one-third of the maximum he has set, provided he specifies his reason for doing so in the court record.

The 1973 law instituted an important difference between the lifetime maximum sentence required for class A drug felonies and the lifetime maximum mandated for other class A felonies. Both drug and non-drug class A felons are eligible for release from prison on parole after serving the minimum sentence set by the court. Non-drug class A felons are then eligible for release from parole supervision after five years of successfully living under this supervision. The 1973 drug law provided, however, that class A drug felons could never be discharged from parole supervision. Class A drug lifetime sentences were thus truly for the life of the convicted felon.

Drug Crime Under the 1973 Law

The 1973 law reclassified most drug crimes as more serious offenses than they had been before. In this reclassification, illustrated in Table A-3, the new law made detailed distinctions among various substances and amounts possessed or sold. A complete list of drug crimes under the 1973 law is presented in Table A-4.

TABLE A-3
RECLASSIFICATION OF SELECTED DRUG CRIMES UNDER
THE 1973 LAW

Crime	Old Law Classification	New Law Classification
Sale of 1 oz. heroin	C Felony	A-I Felony
Sale of 1/8-1 oz. heroin	C Felony	A-II Felony
Sale of less than 1/8 oz. heroin	C Felony	A-III Felony
Sale of 5 mg. LSD	D Felony	A-II Felony
Possession of 5.25 mg. LSD	A Misdemeanor	A-III Felony
Possession of 2 oz. methamphetamine	A Misdemeanor	C Felony

TABLE A-4
CONTROLLED SUBSTANCE (DRUG) CRIMES UNDER 1973 NEW YORK STATE DRUG LAW

Class	Unlawful sale of	Amount	Unlawful possession of	Amount	INDETERMINATE SENTENCE TO STATE PRISON	
					Minimum	Maximum
A-I Felony	Narcotic drug	1 oz. or more	Narcotic drug	2 oz. or more	15-25 years	Life ^b
	Methadone ^a	2880 mg. or more	Methadone ^a	5760 mg. or more		
A-II Felony	Narcotic drug	1/8 oz. up to 1 oz.	Narcotic drug	1 oz. up to 2 oz.	6-8 1/3 years	Life ^b
	Methadone ^a	360 mg. up to 2880 mg.	Methadone ^a	2880 up to 5760 mg.		
	Methamphetamine	1/2 oz. or more	Methamphetamine	2 oz. or more		
	Stimulant	5 gm. or more	Stimulant	10 gm. or more		
	LSD	5 mg. or more	LSD	25 mg. or more		
Hallucinogen	125 mg. or more	Hallucinogen	625 mg. or more			
Hallucinogenic substance	5 gm. or more	Hallucinogenic substance	25 gm. or more			
A-III Felony	Narcotic drug	Up to 1/8 oz.	Narcotic drug with intent to sell	Any amount	1-8 1/3 years	Life ^c
	Methamphetamine	1/8 oz. up to 1/2 oz.	Methamphetamine with intent to sell	1/8 oz. or more		
	Stimulant	1 gm. up to 5 gm.	Stimulant with intent to sell	1 gm. or more		
	LSD	1 mg. up to 5 mg.	LSD with intent to sell	1 mg. or more		
	Hallucinogen	25 mg. up to 125 mg.	Hallucinogen with intent to sell	25 mg. or more		
	Hallucinogenic substance	1 gm. up to 5 gm.	Hallucinogenic substance	1 gm. or more		
	Any amount of a stimulant, hallucinogen, hallucinogenic substance, or LSD after a previous conviction for a drug offense		Stimulant	5 gm. up to 10 gm.		
		LSD	5 mg. up to 25 mg.			
		Hallucinogen	125 mg. up to 625 mg.			
		Hallucinogenic substance	5 gm. up to 25 mg.			

TABLE A-4 (continued)
 CONTROLLED SUBSTANCE (DRUG) CRIMES UNDER 1973 NEW YORK STATE DRUG LAW

Class	Unlawful sale of	Amount	Unlawful possession of	Amount	INDETERMINATE SENTENCE TO STATE PRISON	
					Minimum	Maximum
A-III Felony (cont.)			Any amount of a stimulant, hallucinogen, hallucinogenic substance or LSD with intent to sell after a previous conviction for a drug offense		1-8 1/3 years	Life ^c
B Felony	Narcotic preparation to a person under 21 A class C felony sale crime charted below (with the exception of marijuana and methadone ^a) after a prior conviction for a class C felony sale crime charted below (with the exception of marijuana and methadone ^a)	Any amount	A class C felony possession crime charted below (with the exception of marijuana and methadone ^a) after a prior conviction for a class C felony possession crime charted below (with the exception of marijuana and methadone ^a)		4 1/2 - 12 1/2 years	9 - 25 ^d years
C Felony	Narcotic preparation Dangerous depressant Depressant Marijuana Methadone ^a	Any amount 10 oz. or more 2 lbs. or more Any amount Up to 360 mg.	Narcotic drug Narcotic preparation Methadone ^a Methamphetamine Stimulant LSD Hallucinogen Hallucinogenic substance Dangerous depressant Depressant Marijuana	1/8 oz. up to 1 oz. 2 oz. or more 360 mg. up to 2880 mg. 1/2 oz. up to 2 oz. 1 gm. up to 5 gm. 1 mg. up to 5 mg. 25 mg. up to 125 mg. 1 gm. up to 5 gm. 10 oz. or more 2 lbs. or more 1 oz. or more, or 100 or more cigarettes	1-5 years	3-15 years ^e

TABLE A-4 (continued)
 CONTROLLED SUBSTANCE (DRUG) CRIMES UNDER 1973 NEW YORK STATE DRUG LAW

Class	Unlawful sale of	Amount	Unlawful possession of	Amount	INDETERMINATE SENTENCE TO STATE PRISON	
					Minimum	Maximum
D Felony	Any drug	Any amount	Any drug with intent to sell Narcotic preparation Marijuana	Any amount 1/2 oz. or more 1/4 oz. or more, or 25 or more cigarettes	1-2 1/3 years	3-7 years ^f
E Felony	No drug offenses in this category.					
A misdemeanor	No drug offenses in this category.		Any drug	Any amount	Up to 1 year local jail ^g	
B misdemeanor	No drug offenses in this category.					

^aClassification of methadone effective August 9, 1975. Prior to that date methadone was classified as a narcotic drug.

^bAn indeterminate sentence to State prison is mandatory. Defendants indicted for these crimes may not plead guilty to less than a class A-III felony.

^cAn indeterminate sentence to State prison is mandatory with two exceptions: (1) informants may receive a sentence of lifetime probation, (2) defendants 16 through 18 years of age may be treated as Youthful Offenders (effective August 9, 1975). Since July 1, 1976 defendants indicted for these crimes may plead guilty to a class C felony and receive a local jail sentence of up to one year instead of an indeterminate sentence to State prison.

^dAn indeterminate sentence to State prison is mandatory. However, plea bargaining is unrestricted for defendants indicted for class B felonies, unless the defendant has a predicate felony record.

^eAn indeterminate sentence to State prison is mandatory, except for marijuana and methadone crime (see footnote a) and except for defendants who are originally indicted for class A-III felonies and who plead guilty to this class of felony (see footnote c). However, plea bargaining is unrestricted for defendants indicted for class C felonies unless the defendant has a predicate felony record.

^fAn indeterminate sentence to State prison is *not* mandatory. Plea bargaining is unrestricted for defendants indicted for class D felonies unless the defendant has a predicate felony record.

^gA jail sentence is not mandatory.

Mandatory indeterminate State prison sentences were provided for class A and B drug felonies, and for class C drug felonies except those involving marijuana. To assure that the mandated sentences would be imposed on class A offenders, plea bargaining was limited for defendants indicted for class A crimes. They were not permitted to plead guilty to a crime for which a State prison sentence was not mandated. In 1976, the law was amended to permit defendants indicted for class A-III felonies to plead down to as low a charge as a class C felony. Those defendants who pleaded down from class A-III crime to a class C crime faced mandatory incarceration, but an alternative to an indeterminate State prison sentence was provided by the amendment: up to one year in a local jail.

TABLE A-5
PLEA BARGAINING POSSIBILITIES FOR INDICTED DRUG DEFENDANTS
UNDER THE 1973 LAW

Indictment Charge	Lowest Permissible Guilty Plea For First Offender	Least Restrictive Sentence with Lowest Permissible Plea
A-I Felony	A-III Felony	State imprisonment, 1 yr. to life
A-II Felony	A-III Felony	State imprisonment, 1 yr. to life
A-III Felony	A-III Felony, prior to 7/1/77 C Felony, after 6/30/77	State imprisonment, 1 yr. to life Local jail, 1 day
B Felony	Unrestricted	Unconditional discharge
C Felony	Unrestricted	Unconditional discharge
D Felony	Unrestricted	Unconditional discharge

Recidivism Under the 1973 Law

The 1973 law contained two types of provision governing recidivism. Certain drug crimes were reclassified as more serious felonies if they were second or subsequent offenses. For example, possession of one milligram of LSD was made a class C felony, but if the defendant charged with possessing this amount of LSD had previously been convicted of a drug offense, the charge became a class A-III felony.

The second type of recidivism provision, the second felony offender or predicate felony provision, was much wider in scope. A defendant indicted for any felony crime (drug or non-drug) who had a prior felony conviction was not permitted to plead down to a misdemeanor charge, and if convicted became a second felony offender. (A predicate felony conviction is one for which sentence was passed within ten years of the alleged commission of the new felony. Any period of incarceration served by the defendant for the predicate felony conviction is not counted when

calculating this ten year period.)

A second felony offender faced a mandatory State imprisonment sentence with specified minimum and maximum periods greater than those for first offenders. Since class A felony convictions required the imposition of a lifetime indeterminate sentence, the second felony offender provision of the 1973 law was not made applicable to class A cases.

TABLE A-6
PREDICATE FELONY PLEA BARGAINING AND SENTENCING
UNDER THE 1973 LAW

Indictment Charge	MANDATORY INDETERMINATE SENTENCE		Lowest Permissible Plea
	Minimum	Maximum	
B Felony	4 1/2-12 1/2 yrs.	9-25 yrs.	E Felony
C Felony	3-7 1/2 yrs.	6-15 yrs.	E Felony
D Felony	2-3 1/2 yrs.	4-7 yrs.	E Felony
E Felony	1 1/2-2 yrs.	3-4 yrs.	E Felony

A NOTE ABOUT METHODOLOGY

Illicit Drug Use and Crime

To gauge the effectiveness of the 1973 law in reducing narcotics use, narcotics use trends in New York State during a six-and-one-half year period (1970 to mid-1976) were compared with trends during the same period in neighboring states which did not change their drug law. Similar comparative analyses of narcotics use trends were undertaken between New York City and other large East Coast cities. In this way, events unique to New York jurisdictions after September 1, 1973 could be isolated. Changes in narcotics use were inferred from changes in the available indicators of narcotics use, including accidental overdose deaths, cases of serum hepatitis, drug treatment program admissions, and visits to hospital emergency rooms for narcotics-related disorders. The chief statistical tool was Interrupted Time Series Analysis, a technique particularly useful for measuring the effects of a policy change. Trends in the use of non-narcotic drugs were developed from data supplied by public agencies and from data furnished by several large New York City employers who screen prospective employees for drug use.

To measure the effect of the 1973 law in curbing narcotics-related crime, property crime trends in New York State, as measured by the FBI, were compared with trends in neighboring states between 1971 and 1975. A similar comparison was made between property crime trends in New York City and other large East Coast cities.

More detailed analysis of changes in drug-related crime was undertaken by examining a sample of approximately 3,500 records of persons arrested for non-drug felonies in Manhattan over a five-year period. The narcotics use status of these persons was determined and estimates were made of the number of non-drug felonies committed by users of narcotics over the five-year period.

Criminal Justice System

To examine the effect of the new law on drug law enforcement and on processing drug cases in the courts, data concerning drug felony arrests, indictments, court dispositions, and sentences were obtained from numerous State and local agencies. The information obtained included both published and unpublished data. Special analyses prepared by the agencies at the Project's request were also used. From the same sources, information was gathered on selected aspects of court performance in drug

cases, including the frequency of trials, dismissals and convictions, court processing times, and changes in court backlogs. For most of the analyses, data was collected not only for the State as a whole, but also for New York City and for several counties outside New York City.

In order to collect more specific data on drug case processing than were available from official sources, the Project conducted a sample survey of drug felony indictments which resulted in a conviction and sentence in New York State between 1972 and 1975. Information was collected from court records on over 1,600 defendants in 28 New York State counties. The sample included both old law and new law cases. Data were gathered on such items as the defendant's age and prior arrest record, the type of drug involved in the case, the indictment and conviction charge, and the type of sentence imposed. These data were used to analyze changes in sentencing patterns and plea bargaining practices between the old and new law.

To study the effect of the recidivist sentencing provision of the 1973 law, the Project developed a sample of approximately 450 individuals who had been convicted of non-drug felonies. Subsequent arrest histories of these individuals both before and after the effective date of the 1973 law were traced to determine whether the recidivist sentencing provisions had a significant deterrent impact on subsequent criminality among individuals with prior felony convictions. In addition, where subsequent arrests did occur among the offenders in the sample, the new arrests were traced through the courts to determine whether there had been changes in patterns of case processing of defendants with prior felony convictions under the new provisions.

In order to obtain first-hand observations concerning the operation of the 1973 law, over 150 interviews were conducted with police officials, prosecutors, defense counsel, judges, and drug treatment program directors throughout New York State.

GLOSSARY

- ACQUITTAL.** A verdict by a judge or jury, after a trial, finding that the defendant has not been proven guilty of the crime with which he has been charged.
- ADDICTION, DRUG.** In this study, a physiological dependence on a drug, produced by regular use of that drug, such that the user undergoes withdrawal symptoms if he stops using it.
- ARRAIGNMENT.** The occasion on which a defendant in a criminal case first appears before a judge: the defendant is informed of the charge against him, bail is set, and future proceedings are scheduled. In a felony case, there may be two arraignments: one in the lower criminal court, and one in the superior court after indictment.
- BAG.** The common package of heroin for sale on the street ("retail" level). A bag generally contains 0.1 gram of a substance containing some heroin. The amount of heroin in a bag can vary considerably.
- BAIL.** The financial security given by a defendant to guarantee that he will appear in court when required. There are two types, cash bail and bail bond, and the judge may direct the amount and type to be posted.
- CERTIFICATION, CIVIL** (of narcotic addicts). A procedure by which individuals who are found to be narcotic addicts under the New York State Mental Hygiene Law are committed to the care and custody of the New York State Office of Drug Abuse Services for treatment.
- CONTROLLED SUBSTANCE.** See DRUG.
- CONVICTION.** The entry of a plea of guilty by a defendant, or a verdict of guilty by a judge or jury against a defendant.
- CONVICTION RATE.** The proportion of indictments which are disposed of by conviction, as opposed to acquittal or dismissal, in a specified time period.
- COURT, LOWER CRIMINAL.** One of the two types of criminal court in New York State (the other is superior court): the New York City Criminal Court, or a district, city, town or village court in jurisdictions outside New York City. A local criminal court has jurisdiction to try misdemeanor cases, and to process felony cases up to the point of indictment.
- COURT, SUPERIOR.** One of the two types of criminal court in New York State (the other is lower criminal court): the Supreme Court in New York City, and usually the county court in jurisdictions

outside New York City. A superior court has jurisdiction to try felony cases.

CRIME. An offense against the law. The two categories of crime in New York State are **FELONY** and **MISDEMEANOR**.

CRIME, DRUG. The illegal sale of, possession of, or possession with intent to sell any drug.

CRIME, DRUG-RELATED. In this Report, the non-drug felonies committed by drug users. The most numerous felonies in this group are robbery, burglary, and grand larceny.

CRIME, NON-DRUG. All crimes *except* drug crimes.

DEFENDANT-INDICTMENT. A unit of count used to measure the inflow of cases into a superior court. It is a summation of all defendants indicted and all indictments processed as follows: (1) When several defendants are named in one proceeding or indictment, each defendant is counted separately. (2) When one defendant is named in multiple proceedings or indictments, each indictment is counted separately.

DISMISSAL. A decision by a judge to discontinue a case without a determination of guilt or innocence. Dismissals may be of two types: a "merit dismissal" is a decision to discontinue a case on such grounds as insufficient evidence against the defendant; a "non-merit" dismissal is a decision to discontinue a case for such reasons as the consolidation of an indictment with another indictment pending against the same defendant.

DISMISSAL RATE. The proportion of indictments (or lower court filings) disposed of by dismissal, as opposed to conviction or acquittal, in a specified time period.

DISPOSITION. Any final action of the superior court on an indictment, including conviction, acquittal, or dismissal. As used in this Report, disposition does not include consolidation or abatement of actions against defendants.

DISPOSITION RATE. The ratio of court dispositions to new indictments during a specified time period, usually expressed in percentage terms. The ratio may be less than or greater than 100%, according to whether the pending caseload is growing or shrinking.

DRUG. A controlled substance, that is, any substance listed in Schedules I through V of Section 3306 of the New York State Public Health Law. The 1973 drug law uses several terms for particular groups of drugs:

(1) Narcotic drug: includes heroin, morphine, opium, and cocaine. Included methadone until August 9, 1975.

(2) Narcotic preparation: includes codeine, morphine, and opium mixtures that have therapeutic uses.

(3) Hallucinogen: includes psilocybin, and tetrahydrocannabinols other than marijuana.

(4) Hallucinogenic substance: includes mescaline and certain forms of amphetamine.

(5) Stimulant: includes most amphetamines.

(6) Dangerous depressant: includes barbiturates and methaqualone.

(7) Depressant: includes diazepam (Valium), chlordiazepoxide (Librium), and meprobamate (Miltown, Equanil).

DRUG ADDICTION. See ADDICTION, DRUG.

DRUG-FREE TREATMENT. Treatment of drug users relying on counseling, group therapy, and work.

DRUG USE. In this study, any regular or frequent use of drugs without medical supervision; drug users include both addicted and non-addicted users. **POLY-DRUG** is the regular or frequent use of two or more drugs, often including alcohol.

DRUG, ILLICIT. Any drug used in violation of a statute.

DRUGS, NARCOTIC. Opium and opium alkaloids and their derivatives such as heroin, morphine, and codeine; and synthetic analgesics such as demerol and methadone. These drugs produce physiological and psychological dependence in the regular user. The 1973 drug law defined narcotic drugs to include cocaine but not (since August 9, 1975) methadone.

DRUGS, NON-NARCOTIC. A wide range of drugs, including barbiturates and hallucinogens. As used in this Report, the term "non-narcotic drugs" does not include marijuana or hashish.

FELONY. The more serious of the two categories of crime under New York law (the less serious is misdemeanor). After initial processing in lower criminal court, a felony is prosecuted by indictment in a superior court.

GRAND JURY. A body of between 16 and 23 people which hears and examines evidence concerning criminal offenses. Only a grand jury may return an indictment.

HEPATITIS, DRUG-RELATED. Types of hepatitis associated with intravenous drug use. Any of the three types (infectious type A, serum or type B, and "type unspecified") may be associated with intravenous drug use.

HEPATITIS, SERUM. A form of hepatitis often transmitted through contaminated hypodermic needles, and thus associated with intravenous drug (usually heroin) use. Also known as "hepatitis type B."

IMPRISONMENT. Incarceration in a State prison, as opposed to local jail.

IMPRISONMENT, INTERMITTENT. A sentence of incarceration up to one year in length. Typically, the offender spends weekdays at his regular employment and weekends in jail. Intermittent imprisonment is a discretionary sentence for first offenders convicted of many class D felonies and all class E felonies, as well as for all offenders convicted of misdemeanors.

IMPRISONMENT RATE. The proportion of convictions resulting in sentences to State prison or local jail.

INDICTMENT. A written accusation by a Grand Jury charging a person with a crime. Indictments are used generally only in felony cases. An indictment forms the basis for prosecution in a superior court.

INDICTMENT RATE. The proportion of felony arrests that results in indictment.

JAIL. As distinguished from a State prison, a local institution to which offenders are committed for a sentence that is both of definite length and of a duration of one year or less.

METHADONE MAINTENANCE. A form of treatment for chronic heroin users which involves daily administration of methadone to clients in clinics licensed by State and/or Federal governments.

MISDEMEANOR. The less serious of the two categories of crime under New York law (the more serious is felony). Misdemeanors are punishable by a definite sentence to jail of up to one year.

NARCOTIC. See **DRUGS, NARCOTIC.**

NARCOTICS-RELATED DEATHS. Deaths attributable to an overdose of narcotic drugs, usually as determined by a coroner or medical examiner. Does not include suicides, homicides, or accidental deaths in which narcotics are found.

OFFENDER. An individual convicted of a crime (as opposed to a defendant, who has been accused but not convicted).

OPIATE. A group of narcotic drugs derived from opium. See **DRUGS, NARCOTIC.**

PAROLE. (1) Release of an institutionalized inmate serving a State prison sentence after he has served his minimum sentence (after which the parolee lives in the community under the supervision of a parole officer); or (2) release on recognizance during the pendency of a criminal proceeding in a court. See **RECOGNIZANCE.**

PLEA BARGAINING. The exchange of prosecutorial and/or judicial concessions (commonly a lesser charge, the dismissal of other pending charges, a recommendation by the prosecutor for a reduced sentence, or a combination thereof) for a plea of guilty by the defendant.

PLEAD DOWN. To plead guilty to a lesser charge. See PLEA BARGAINING.

POLY-DRUG USE. See DRUG USE.

PREDICATE FELONY. A prior felony conviction for an individual offender for which sentence was passed within ten years of the commission or alleged commission of a new felony. Time spent incarcerated because of the prior felony is not counted when calculating this ten-year period. Under the 1973 law, indicted defendants with a predicate felony record could not plead down to a misdemeanor. If a defendant with a predicate felony record were convicted of a felony, he was a "second felony offender," and subject to mandatory State imprisonment.

PRISON, STATE. A correctional facility operated by the New York State Department of Correctional Services for the confinement of persons under sentence of imprisonment. Persons receiving an indeterminate sentence after conviction for a felony are committed to State prisons. State prison is distinguished from JAIL.

PROBATION. A sentence of a court imposed on a convicted defendant, in lieu of incarceration, requiring him to comply with conditions specified by the court. Such conditions may be any the sentencing judge deems reasonably necessary to insure that the defendant will lead a law-abiding life or to assist him in doing so. Probation sentences for a convicted narcotic addict may include a requirement that he undergo up to one year of treatment and rehabilitation in an inpatient treatment program. Compliance with conditions set is supervised by the offender's probation officer.

RECOGNIZANCE, RELEASE ON. Release of a defendant during the pendency of a criminal proceeding without requirement of any form of guarantee (bail) other than the defendant's agreement that he will return to court when required.

SENTENCE, DEFINITE. A sentence to jail. Definite sentences may be up to one year in length. Defendants convicted of certain class C, D, and E felonies or of misdemeanors may receive a definite sentence.

SENTENCE, INDETERMINATE. A sentence to State prison for a felony. The sentencing judge sets the maximum length of time the offender can spend in prison, and in some cases also sets the minimum term, i.e., a period of parole ineligibility. In other cases, the parole board sets the minimum term. In all cases where an indeterminate sentence is imposed, the actual term of imprisonment is decided by the parole board. That term must lie between the minimum and maximum terms.

SUBSTANCE, CONTROLLED. See **DRUG.**

TRIAL. The examination of issues of fact and law in a case following a plea of not guilty by a defendant. A trial is completed when a verdict of guilty or of acquittal is reached, either by a jury (jury trial) or by a judge (bench trial).

TRIAL RATE. The proportion of indictments (or lower court filings) which are disposed of by trial, rather than by guilty plea or dismissal.

YOUTHFUL OFFENDER. A legal category that may be assigned to a person charged with a crime alleged to have been committed when he was at least 16 years old, but younger than 19. During the prosecution of a defendant who is eligible to be designated a Youthful Offender, court records are held confidential from the public and the public may be excluded from attendance at court proceedings against him. After conviction, a Youthful Offender finding may be substituted for the full-fledged conviction, and, if so, the offender may not receive an indeterminate sentence of four years or more. In addition, all official records relating to the case (police and court records) are sealed and become confidential. Under State law prior to August 9, 1975, persons charged with class A felonies were not eligible for Youthful Offender treatment. After August 8, 1975, persons charged with class A-III felonies were made eligible. In the First Judicial Department (New York and Bronx counties in New York City), persons charged with any class A felony became eligible for this treatment as a result of a court decision in 1974.

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