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## **A Natural Experiment in Reform: Analyzing Drug Policy Change In New York City**

Executive Summary to the National Institute of Justice  
Grant No: 2010-IJ-CX-0030

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## Executive Summary

### Background

A series of New York State sentencing statutes introduced in 1973 (the “Rockefeller Drug Laws”) mandated lengthy prison sentences for a range of felony drug offenses. Under the terms of these laws, a person convicted for selling two ounces or possessing four ounces of heroin, morphine, “raw or prepared opium,” cocaine, or cannabis faced a minimum prison term of 15 years and a maximum sentence of life in custody. An explosion in the prison population, with great racial and ethnic disparities, resulted from thousands of New York State (NYS) residents receiving long corrections sentences for drug offenses. In 2001 the ratio of African American males to white males aged 21-44 incarcerated for drug offenses in NYS was greater than 40 to one.<sup>1</sup>

In 2009, NYS passed the latest in a series of drug law reforms (DLR). DLR had two main prongs. First, it removed mandatory minimum corrections sentences. Second, it expanded diversion options for a range of felony charges, including defendants facing a B Felony drug charge for the first time, defendants with prior felony records who were facing B through E Felony drug charges,<sup>2</sup> and a range of “specified” property charges.<sup>3</sup> For example, prior to DLR,

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<sup>1</sup> See Drucker, E. (2002). Population impact of mass incarceration under New York’s Rockefeller Drug Laws: An analysis of years of life lost. *Journal of Urban Health*, 79(3), 434-435.

<sup>2</sup> Based on the New York State penal code, B Felony drug offenses refer to criminal possession or sale of a controlled substance in the third degree. C Felony drug offenses refer to criminal possession or sale of a controlled substance in the fourth degree. D Felony drug offenses refer to criminal possession or sale of a controlled substance in the fifth degree. E Felony drug offenses include criminal possession of methamphetamine manufacturing material in the first degree, or criminal possession of precursors of controlled substances or methamphetamine, etc.

<sup>3</sup> Based on Article 216, the following felony-level property offenses are eligible for judicial diversion: Burglary 3 (PL § 140.20); Criminal Mischief 3 (PL § 145.05); Criminal Mischief 2 (PL § 145.10); Grand Larceny 4 (PL § 155.30) (only as defined in subdivisions [1], [2], [3], [4],[5], [6], [8], [9] and [10]); Grand Larceny 3 (PL § 155.35); Unauthorized Use of Vehicle 2 (PL § 165.06); Criminal Possession of Stolen Property 4 (PL § 165.45) (only as

a defendant with a prior felony record who was convicted of a B Felony drug charge received a mandatory minimum sentence of three-and-a-half years and up to 12 years in prison. Following the reforms, the same defendant could be diverted to treatment as an alternative to incarceration (ATI) *or* receive a shorter custodial sentence. (In this instance, the mandatory minimum was reduced to two years). In other words, DLR expanded eligibility for treatment diversion to include all drug felony charges, apart from the most serious, Class A Felonies<sup>4</sup> and cases involving defendants with prior convictions on violent felony offenses (VFO). DLR also created a new “judicial diversion” sentencing option, allowing judges to divert felony defendants to treatment as an ATI without the approval of prosecutors.

**Table A. Summary of 2009 DLR (changes to sentencing statutes highlighted in bold)**

	B Felony	B Felony predicate*	C Felony predicate*	D Felony predicate*	E Felony predicate*
<i>Pre-DLR sentence options</i>	1-9 yrs prison; OR SHOCK±;	3½ - 12 yrs prison	2 - 8 yrs prison; OR SHOCK±	1½ - 4 yrs prison; OR SHOCK±; OR Willard°	1½ - 2 yrs prison; OR SHOCK±; OR Willard°
<i>Post-DLR sentence options (changes in bold)</i>	1-9 yrs prison; <b>OR jail term ≤ 1 yr; OR probation; OR judicial diversion; OR Willard°; OR SHOCK±</b>	2 - 12 yrs prison; OR judicial diversion; OR SHOCK±	<b>1½ - 8 yrs; OR jail term ≤ 1 yr; OR probation; OR judicial diversion; OR Willard°; OR SHOCK±</b>	1½ - 4 yrs prison; <b>OR jail term ≤ 1 yr; OR probation; OR judicial diversion; OR SHOCK±; OR Willard°</b>	1½ - 2 yrs prison; <b>OR jail term ≤ 1 yr; OR probation; OR judicial diversion; OR SHOCK±; OR Willard°</b>

\*With a prior *non-violent* offense; ±SHOCK is a 6-month boot camp program; post-DLRs, SHOCK can be court ordered; °Willard is a 90-day intensive treatment program; participants are under parole supervision

This study, conducted by a team of researchers based at the Vera Institute of Justice, John Jay College of Criminal Justice, and Rutgers University, used quantitative and qualitative data to describe the implementation of DLR in NYC, the impact of the reforms on reoffending, and the costs accrued by taxpayers and victims. The findings from this research are intended to inform

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defined in subdivisions [1], [2], [3], [5] and [6]); Criminal Possession of Stolen Property 3 (PL § 165.50) (except where the property stolen is a firearm, rifle, or shotgun); Forgery 2 (PL § 170.10); Criminal Possession of Forged Instrument 2 (PL § 170.25); Unlawful using slug 1 (PL § 170.60).

<sup>4</sup> In 2010, A-class felonies represented fewer than five percent of all drug felony arrests in NYC.

stakeholders in New York about the results of DLR and provide policymakers, advocates, and practitioners considering similar reforms elsewhere in the country with empirical information to guide their decision-making.

The research addressed the following questions:

1. Implementation of DLR: How were the changes to the law reflected in sentencing practices? What factors do judges, prosecutors, and defense attorneys consider when deciding drug cases? To what extent did changes to the law affect sentencing decisions and access to drug treatment?
2. Reoffending: What was the impact of increasing use of treatment alternatives on rates of reoffending?
3. Costs and benefits: What were the economic implications of DLR for taxpayers and crime victims in NYC? What are the costs and benefits of diverting an individual from a corrections sentence to drug treatment?

## **Methods**

The research used qualitative and quantitative methods to document the implementation and impact of DLR in the six NYC prosecutorial jurisdictions (Bronx County, Kings County, New York County, Queens County, Richmond County, and the Office of Special Narcotics Prosecutor (SNP)<sup>5</sup>).

*Implementation of DLR*: The quantitative study compared charging practices and sentencing outcomes for drug felony and specified property cases during two periods: a pre-DLR cohort of arrests (January 1, 2008 to September 30, 2008) that were disposed prior to April 7,

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<sup>5</sup> SNP is an independent prosecutorial jurisdiction operating in New York County that handles a subset of drug cases originating from arrests citywide.

2009, when the first component of DLR came into effect,<sup>6</sup> and an equivalent, post-DLR sample that included arrests from January 1, 2010 to September 30, 2010 with disposition dates prior to April 7, 2011.

To ensure comparability between the pre-DLR and post-DLR cohorts, propensity score matching was used to identify two samples with similar demographic characteristics, charges, and histories of criminal justice system involvement, including 14,410 cases from both the pre and post-DLR cohorts.

Researchers compared administrative records from the New York State Division of Criminal Justice Services (DCJS), the New York State Office of Court Administration (OCA), the NYC Department of Correction (DOC), and each of the NYC prosecutors' offices to describe changes in a range of charging, sentencing, and treatment diversion outcomes.

To further explore the factors that influence charging and sentencing decisions, researchers at John Jay College conducted 35 in-depth interviews with judges, prosecutors, and attorneys in Brooklyn (Kings County), the Bronx (Bronx County) and Manhattan (New York County). These interviews were designed to gather information on the political, situational, and logistical factors that may influence DLR but are not captured by the quantitative analysis. The John Jay team also reviewed a sample of 69 public defender case files and related criminal justice records for individuals indicted on predicate B Felony<sup>7</sup> drug charges without prior VFOs in Kings County and Bronx County during the pre and post-DLR periods.

*Reoffending:* To examine the link between treatment diversion and rates of reoffending, the study tracked rearrests for two samples, selected using propensity score matching: a pre-DLR group that received prison, jail, probation, or time served sentences ("sentenced sample") and a

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<sup>6</sup> Case disposition date in this study refers to the date of sentencing, withdrawal of charges, dismissal or diversion.

<sup>7</sup> B felonies with a prior felony conviction.

post-DLR group with similar baseline characteristics (charge, demographics, criminal history, and the county where the case was heard), that received treatment as an alternative to custody (“diverted sample”). The study tracked rearrests over a 19-35 month period for pre-DLR cases and 12-35 months post-DLR, using techniques to control for the differential follow-up periods between the two samples; survival analysis was used to compare time to rearrest, and t-tests were used to compare the number of rearrests, controlling for the time individuals spent in the community.

*Cost-benefit analysis:* Researchers conducted two sets of cost-benefit analyses (CBA) to explore the economic implications of DLR: 1) using the matched implementation samples of felony drug arrests to examine the annual impact of DLR on taxpayer and victim costs in NYC; and 2) using matched reoffending samples to describe the costs associated with diverting an offender to treatment as an ATI. Taxpayer costs included justice system expenses (law enforcement, courts, jail, prison, probation, and parole) and drug treatment expenses (short-term inpatient treatment, residential treatment, and outpatient treatment). Victim costs are the tangible and intangible costs incurred by crime victims. These costs were measured to estimate DLR’s impact on violence and property offenses.

## **Findings**

### **1. Implementation Analysis**

The study compared conviction rates, charging practices, sentencing, and treatment diversion for the matched pre and post-DLR implementation samples. While DLR expanded eligibility for treatment diversion to include all B through E Felony drug cases without prior VFOs, the use of treatment as an ATI is based on the discretion of judges and prosecutors. The research study found that there is wide variation on how this discretion is wielded, depending on the court where the case is heard.



**Three court systems handle the bulk of felony drug cases in NYC.** Post-DLR, the majority (81 percent) of felony drug cases were handled by three of the six NYC court jurisdictions: Bronx County (33 percent of citywide felony drug cases); Kings County (25 percent); and, New York County (23 percent). The remaining cases were handled by Queens County (11 percent), SNP (4 percent), and Richmond County (4 percent).

**Sentencing practices were shifting in NYC before DLR came into effect.** To put DLR into context, the study examined trends in felony drug arrests in NYC over a four-and-a-half-year period, using DCJS historical case data for arrests on felony drug charges between October 2006 and March 2011. Felony drug arrests declined over this period, from 8,556 arrests in the first quarter of 2007 to 5,723 in the first quarter of 2011. Furthermore, prison was used less frequently for felony drug cases, both in absolute number (from 942 to 367) and as a proportion of all arrests (from 11 percent to six percent).

**In both the pre and post-DLR periods, most felony drug arrests in NYC did not result in a felony conviction.** In the matched pre-DLR sample 54 percent of drug felony arrests resulted in a misdemeanor conviction or violation.<sup>8</sup> 30 percent were dismissed or discharged, and 14 percent were convicted as felony. For the post-DLR sample, 50 percent of drug felony arrests were convicted as misdemeanors or violations. 29 percent were dismissed or discharged, and the proportion of felony convictions increased to 17 percent.<sup>9</sup>

**DLR led to an increase in B Felony convictions.** The removal of mandatory sentencing as a result of DLR significantly impacted the way that felony drug cases were charged in NYC. Prior to DLR, a B Felony conviction guaranteed a mandatory prison sentence, whereas post-DLR the courts had the option of diverting the same case to drug treatment as an ATI or imposing a

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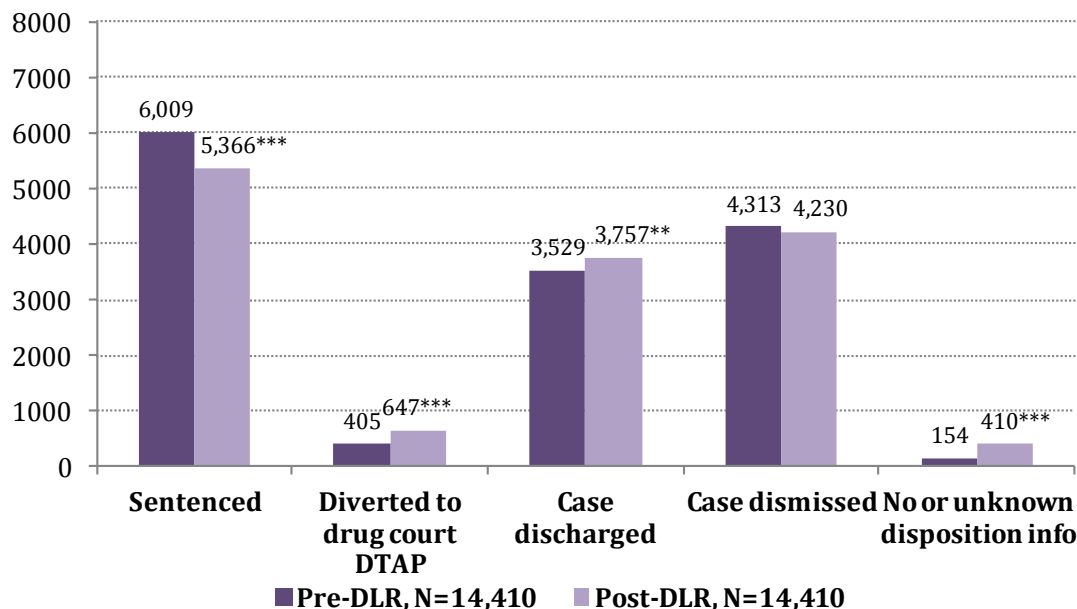
<sup>8</sup> Violations are lesser charges with a maximum jail sentence of 15 days.

<sup>9</sup> Categories did not add up to 100% because of missing disposition charge data.

non-custodial sentence. The pre-DLR and post-DLR matched samples included approximately the same number of cases with B Felony drug arrest charges (72 percent of all cases in both periods). Yet, there were 2.6 times as many cases disposed as B Felonies post-DLR, which can be partially explained by the enhanced discretion at sentencing. While far more arrestees were convicted on B Felony charges post-DLR, the number of B Felony *arrests* that resulted in a prison sentence dropped by 13 percent (from 769 to 672).

***The use of custodial sentencing decreased, but sentence length increased.*** Fewer felony drug arrests in the post-DLR sample resulted in a prison, jail, or time-served sentenced (see Figure A). Overall, the proportion of arrests resulting in any of these sanctions declined by 10 percent, from 42 percent of drug felony arrests in 2008 to 37 percent in 2010. However, reductions in the use of custodial sentences were counter-balanced by a statistically significant increase in sentence length post-DLR. On average, prison sentences increased by 10 percent, ( $p < .05$ ) and jail sentences increased by 24 percent ( $p < .01$ ) over this period.

**Figure A. Comparison of the 2008 and 2010 Matched Felony Drug Arrest Samples: Case Outcomes**



\*p<.05 \*\*p<.01 \*\*\*p<.001

Sentenced cases include all cases sentenced to jail, prison, split sentence, time served, probation and others.

*The use of treatment as an ATI increased citywide.* As Figure A shows, using matched samples to control for the number and type of felony drug arrests, treatment diversion increased from 3 percent of drug felony cases pre-DLR to 5 percent of cases post-DLR. Discounting drug felony cases that were not ultimately indicted on felony charges<sup>10</sup> and cases involving defendants with prior VFOs,<sup>11</sup> diversion was used in 15 percent and 21 percent of felony drug arrests for the pre and post-DLR periods, respectively. Indeed, the qualitative component of the study found that most court professionals believed that DLR had a limited impact on the number or type of cases that were diverted to treatment.

<sup>10</sup> A case cannot be disposed in NYC Criminal Court on felony charges. The majority of cases that are continued on felony charges are indicted in NYC Supreme Court following arraignment. In certain circumstances a Superior Court Information (SCI) may be used in lieu of a Supreme Court Indictment. In the quantitative implementation analysis, indictment includes both Supreme Court Indictment and SCI.

<sup>11</sup> Defendants with a violent felony conviction in the preceding ten years are not eligible for diversion under the terms of the DLR statute.

***Sentencing outcomes differed widely by jurisdiction.*** Post-DLR, New York County and the SNP handled 27 percent of all drug felony arrests, but accounted for the majority (58 percent) of cases resulting in prison sentences. New York County courts sentenced 10 percent of those arrested on drug felony charges to prison compared to the citywide average of 7 percent. Cases handled by SNP almost always resulted in conviction (92 percent) and a large proportion of felony drug cases were sentenced to prison (36 percent).<sup>12</sup>

***The new judicial diversion mechanism accounted for less than half of the increase in diversion as an ATI.*** Forty-four percent of the increase in treatment was attributable to the new judicial diversion courts. However, judicial diversion was only used to any significant degree by New York County courts, including cases handled by the New York County DA and SNP. The increase in diversion in the other counties was largely the result of expanded use of existing drug court programs. The use of prosecutor-managed diversion programs, such as Drug Treatment Alternatives to Prison (DTAP), remained fairly constant over the study period.

***The proportion of assessed cases that were ultimately diverted to drug court almost doubled over the study period.*** The number of cases referred for drug court assessment to determine eligibility for diversion remained fairly constant over the study period. Most of the increase in diversion was associated with higher admission rates. Pre-DLR, 1,394 cases were assessed and 13 percent were admitted into drug court; in 2010, 1,885 cases were assessed and the admission rate was 25 percent.<sup>13</sup>

***The number of cases assessed for diversion eligibility varied widely by court.*** Post-DLR, 18 percent of New York County cases were assessed to determine whether the defendant met

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<sup>12</sup> SNP handles some of the most serious felony drug cases in NYC, which may partially explain the higher percentages of cases that resulted in a prison sentence.

<sup>13</sup> This analysis does not include cases diverted via the prosecutor administered DTAP program, which declined from 235 cases pre-DLR to 207 cases post-DLR.

DLR criteria for treatment diversion, compared to 46 percent of cases in Kings County. This disparity reflects the different procedures used to identify and refer cases for assessment.<sup>14</sup>

***About half of the defendants that are offered treatment as an ATI declined to participate.*** Prosecutors and defense attorneys interviewed as part of the qualitative study reported that many defendants prefer to “do the time” in prison or jail rather than accepting indeterminate treatment diversion offers which may result in longer periods in residential treatment settings than the custodial alternative. However, the quantitative analysis found that the declination rate *decreased* over the study period, from 60 percent to 42 percent.

***The profile of drug court participants shifted as a result of DLR.*** Post-DLR, on average, drug court participants were older, had more extensive histories of prior felony and misdemeanor convictions, and more prior convictions on drug charges than defendants who entered drug court pre-DLR. More people diverted to treatment post-DLR reported heroin or cocaine as their primary drug when compared to cases diverted pre-DLR.<sup>15</sup> Still, 40 percent of drug court participants from the post-DLR sample identified marijuana as their primary drug of choice, a population that may not require intensive treatment and court supervision.

***Courts mandated longer periods in treatment post-DLR and used residential treatment more often.*** Post-DLR, the average length of treatment plans in NYC (the time mandated by the courts for treatment participation) increased significantly. There was also a shift towards the use of residential treatment and away from outpatient treatment.<sup>16</sup> Pre-DLR, 47 percent of drug court cases included a residential treatment component, compared to 54 percent of cases post-DLR. Post-DLR, the average length of stay in residential treatment increased by 71 percent, from 279

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<sup>14</sup> While the DLR legislation defines eligibility for diversion based on charge, criminal history and the presence of drug use, each of the courts exercised discretion by applying their own –unpublished– criteria to determine cases that were suitable for diversion.

<sup>15</sup> The New York State Office of Court Administration only records one drug of choice form drug court participants.

<sup>16</sup> In New York State most court-mandated residential treatment services are operated as Therapeutic Communities.

days to 478 days (9.2 months to 15.7 months).<sup>17</sup> Multivariate regression modeling found that the increased use of residential treatment was associated with longer histories of drug offending and higher rates of heroin use among people who were diverted to treatment post-DLR. Several interviewees said that residential treatment was often used as a punitive sanction, motivated by the desire to restrict an individual's liberty rather than in response to a clinical assessment of the treatment that is most likely to lead to their recovery.

***Treatment graduation rates have remained constant.*** The proportion of people that successfully graduated from drug court-mandated treatment programs (defined differently by each program) increased slightly, although this increase was not significant, from 62 percent pre-DLR to 63 percent post-DLR. However, 28 percent of post-DLR cases still had open drug court cases in the data file, so this figure may not be an accurate measure of successful completion.

***Policies that prevent participants in court-mandated treatment programs from graduating if they are still receiving opiate substitution therapy may limit their effectiveness, for some groups.*** A number of interviewees noted that NYC court-mandated treatment programs do not allow participants to graduate if they are still receiving a prescription for methadone or other opiate substitutes, such as buprenorphine. Policies limiting the use of opiate substitutes may reduce the long-term effectiveness of these programs for a specific, often high-need population.

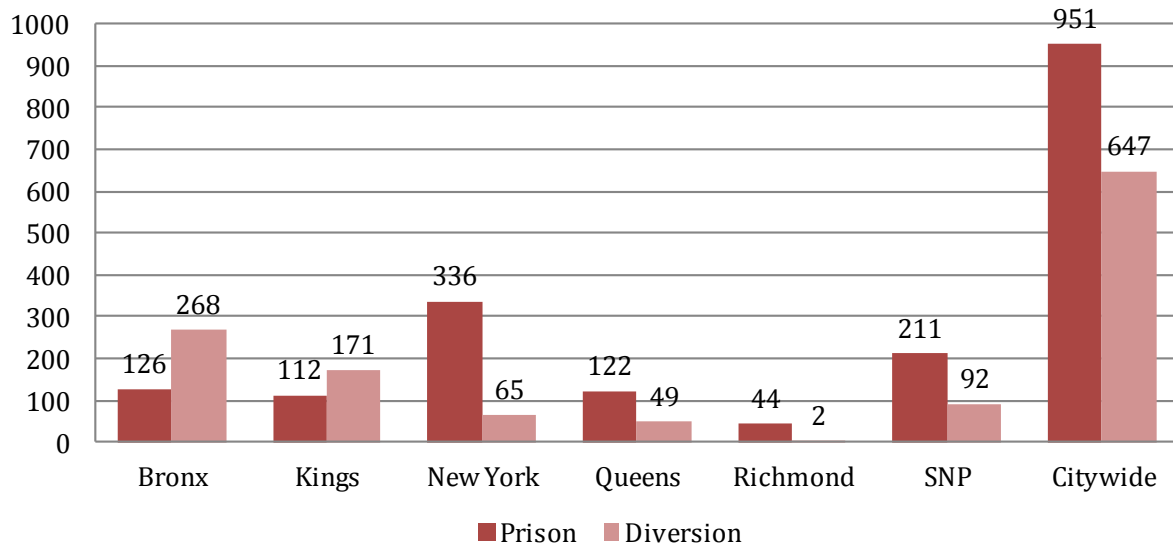
***DLR has done little to equalize pre-existing differences in sentencing and diversion between counties.*** As Figure B demonstrates, post-DLR, courts in Bronx County and Kings County diverted more drug felony cases to treatment than they sent to prison, by a significant margin of 2.1 to 1 and 1.5 to 1, respectively. In contrast, New York County and SNP were far

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<sup>17</sup> The median length of stay for residential participants was 228 days for the pre-DLR sample and 503 for the post-DLR sample.

more likely to sentence someone to prison, with diversion to prison ratios of 1 to 5.2 and 1 to 2.3 respectively.<sup>18</sup>

**Figure B. Comparison of Post-DLR Matched Felony Drug Arrest Samples: Prison Sentence and Treatment Diversion by Disposition Jurisdictions**



*The willingness of prosecutors to consider treatment as an ATI is an important determinant of rates of diversion.* Prosecutors, defense attorneys, and judges in Bronx and Kings Counties interviewed as part of the qualitative study described their collegial relationship and mutual support of treatment diversion. Defense attorneys interviewed in New York County reported that the District Attorney was less amenable to the use of treatment as an ATI.

*DLR has not adequately addressed racial disparities in drug felony arrests and sentencing.* One of the primary criticisms of the Rockefeller Drug Laws was their disparate impact on communities of color. In the pre-DLR sample, 51 percent of those arrested on drug felony charges were black, 39 percent were Hispanic, and 9 percent were white. Accounting for

<sup>18</sup> In Queens County there was a similar disparity (2.5 to 1) in the use of prison compared to treatment in drug felony cases. When controlling for DLR eligible cases, the ratio of treatment to prison was 1:3.1 in New York County and 1:1 for cases handled by SNP.

the demographic profile of NYC residents this means that blacks were 8.3 times more likely to be arrested for drug felony offenses, and Hispanics 5 times more likely, when compared to whites<sup>19</sup> despite similar rates of self-reported drug use across races.<sup>20</sup> In 2010, this disparity had narrowed somewhat, but blacks were still 5.7 times more likely to be arrested for a drug felony offense, and Hispanics had about four times the risk of arrest, when compared to whites. Once involved in the justice system, people of color arrested on drug felonies were more likely to be sentenced to prison; post-DLR, blacks and Hispanics arrested on drug felony charges were approximately twice as likely to receive a prison sentence when compared to whites (see Figure C). These disparities are not fully explained by differences in charge, criminal history, or demographic factors other than race.

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<sup>19</sup> Based on the 2010 census, whites accounted for 33.3 percent of the NYC population, blacks accounted for 22.8 percent of the population and Hispanics accounted for 28.6 percent of the population.

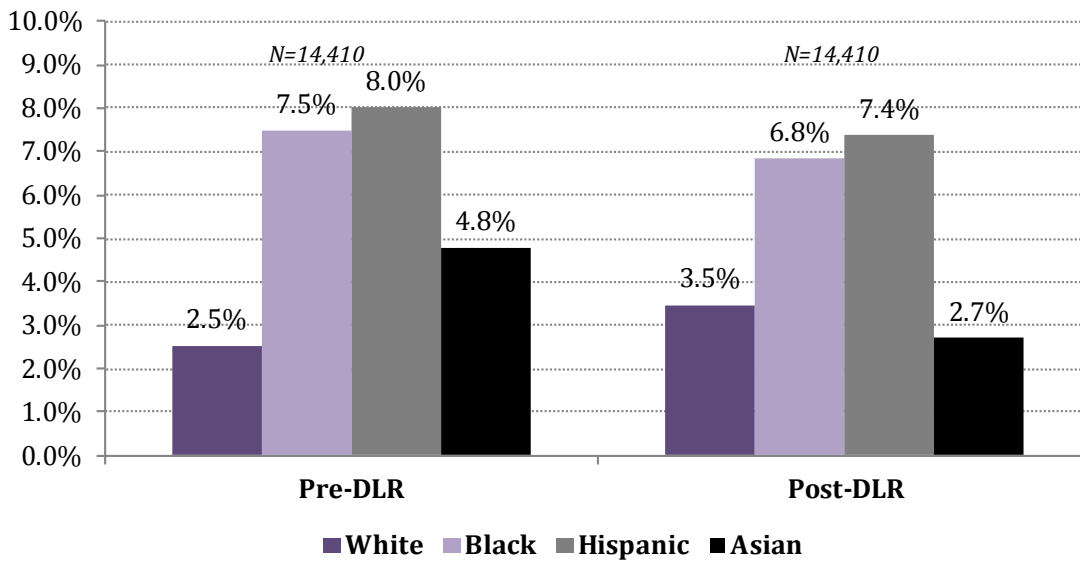
[http://www.nyc.gov/html/dcp/pdf/census/census2010/t\\_pl\\_p2a\\_nyc.pdf](http://www.nyc.gov/html/dcp/pdf/census/census2010/t_pl_p2a_nyc.pdf)

<sup>20</sup> Based on the 2012 National Survey on Drug Use and Health conducted by the Substance Abuse and Mental Health Services Administration (SAMHSA), among people aged 12 or older, the rate of substance dependence or abuse was 8.7 for whites, 8.8 for Hispanics and 8.9 for blacks.

<http://www.samhsa.gov/data/NSDUH/2012SummNatFindDetTables/NationalFindings/NSDUHresults2012.pdf>



**Figure C. Comparison of the 2008 and 2010 Matched Felony Drug Arrest Samples: Prison Sentence by Race of Defendant**



## 2. Reoffending

*Treatment diversion was associated with significant reductions in rearrest.* Survival analysis demonstrated that nearly two thirds (64 percent) of those who were diverted to treatment post-DLR remained arrest-free after two years in the community, compared to 46 percent of the pre-DLR sentenced sample. For those who were rearrested at least once, time to rearrest was significantly shorter for the pre-DLR sentenced sample: after six months in the community 26 percent of the diverted sample had been rearrested compared to 43 percent of the sentenced group; 12 months out, 36 percent of the diverted sample had been rearrested compared to 54 percent of the sentenced sample. As Table B shows, diversion to treatment was also associated with a statistically significant reduction in the *average daily felony rearrest rate* (a measure of felony arrests designed to control for different follow-up periods in the community, accounting for time in correctional custody or residential treatment).

**Table B. Comparing Re-arrest Rate between Matched Pre-DLR Sentenced Sample and Post-DLR Diverted Sample**

	<b>Pre-DLR sentencing sample N=638</b>	<b>Post-DLR diversion sample N=638</b>
<i>Average number of rearrests per person</i>	<i>1.00</i>	<i>0.57***</i>
Average violent felony rearrests	0.08	0.04**
Average property felony rearrests	0.05	0.03
Average drug felony rearrests	0.19	0.11**
Average misdemeanor rearrests	0.65	0.37***
<i>Average community time (days)</i>	<i>537.32</i>	<i>465.39***</i>
<i>Average daily re-arrest rate</i>	<i>0.0025</i>	<i>0.0018*</i>
Average daily felony rearrest rate	0.0011	0.0007**
Average daily misdemeanor rearrest rate	0.0014	0.0012
<i>Average yearly re-arrest rate</i>	<i>0.91</i>	<i>0.67*</i>
Average yearly felony rearrest rate	0.40	0.26**
Average yearly misdemeanor rearrest rate	0.51	0.44

*While already low, rates of rearrest on violent felony charges were halved.* The number of violent felony rearrests over the study period was very low for both the pre and post-DLR samples; only 6 percent of the corrections sentenced sample and 3 percent of the diverted sample were rearrested on violent felony charges. This point was echoed by a judge interviewed for the study, who emphasized that DLR applied mainly to a “non-violent population” who do not pose a risk to public safety.

### **3. Costs and Benefits**

The cost benefit analysis (CBA) component of the study assessed the economic implications of DLR, using matched samples to compare taxpayer and victim costs for the pre- and post-DLR periods to answer two research questions: “What are the economic implications of DLR for taxpayers and crime victims?” and “What are the costs and benefits of diverting an individual from a corrections sentence to drug treatment?” One strength of this analysis is the use of marginal justice-system costs to calculate the net taxpayer effect of DLR. Marginal, rather

than average costs provide a more accurate measurement of the budgetary effects of policy changes because they exclude fixed costs, which are not affected by DLR.<sup>21</sup>

**Table C. Summary of Annual Costs and Benefits of DLR in New York City, Matched Implementation Samples**

Costs	Pre-DLR (n=14,410)	Post-DLR (n=14,410)	Net Benefit/ (Cost)
Law Enforcement	\$25,399,846	\$23,528,765	\$1,871,081
Courts	\$48,246,195	\$50,060,231	(\$1,814,036)
Corrections	\$163,646,801	\$157,336,662	\$6,310,139
Treatment	\$19,878,026	\$43,091,008	(\$23,212,982)
<b>Total taxpayer costs</b>	<b>\$257,170,868</b>	<b>\$274,016,667</b>	<b>(\$16,845,798)</b>
Victim costs	\$190,946,759	\$181,448,965	\$9,497,794
<b>Net Benefit / (Cost)</b>	<b>\$448,117,627</b>	<b>\$455,465,632</b>	<b>(\$7,348,004)</b>

*DLR led to a net cost increase.* As Table C demonstrates, the analysis found that the implementation of DLR in NYC had a net cost of \$7.3 million for each annual cohort of felony drug arrests. This cost is the sum of net costs and benefits from the perspective of taxpayers (\$16.8 million cost) and victims (\$9.4 million benefit) over the 35-month follow-up period and amounts to less than one tenth of a percent of the \$10 billion the City spends annually on law enforcement and corrections alone. Total annual taxpayer costs to process felony drug arrests increased 7 percent, from \$257.1 million to \$274 million, and half of this increase was reimbursed through federal revenue.

*Providing drug treatment as an ATI was more expensive than the equivalent corrections sentence.* Despite significant reductions in rates of recidivism for those who were

<sup>21</sup> As Mark Cohen (2000) explains: “Unless fixed costs change with a policy decision under review, they should be ignored for the purpose of assessing that policy... There is a fundamental economic principle at work here: Only the costs (and benefits) that vary with the decision should be considered. This is a general rule that should be applied to virtually any policy decision.”

diverted to ATIs, the analysis found that drug treatment had a net cost of \$12,989 per diversion, including taxpayer and victim costs over the 12 to 35- month follow-up period.

*Most of the cost increase is accounted for by greater use of residential rehabilitation and longer court-ordered treatment mandates.* In the pre-DLR sample, 47 percent of drug court participants spent some time in residential treatment and the average total length of stay in residential treatment for all drug court participants was 4.6 months. Post-DLR, 54 percent of those diverted were sent to residential treatment and the sample-wide average was 9.1 months. As a result, while DLR led to annual benefits to law enforcement, corrections, and victims, totaling more than \$17.6 million, this was outweighed by \$23.2 million in additional treatment costs. Residential treatment costs tripled as a result of DLR, accounting for 75 percent of the increase in spending on treatment. The budgetary implications of the increase in average cost per drug felony case and per treatment diversion are dwarfed by the savings associated with the citywide decline in drug felony arrests that met the study's basic criteria; from 17,853 arrests in 2008 to 14,745 arrests in 2010.<sup>22</sup>

## **Conclusion and recommendations**

New York was one of the first states to mandate lengthy prison sentences for felony drug offenses and one of the first large jurisdictions to repeal mandatory minimums. DLR led to moderate, but significant changes in the way that courts in NYC handle drug felony cases, including an increase in rates of diversion to treatment as an ATI and a slight decline in the use of prison and jail. Diversion has also been expanded to include arrestees with more extensive criminal records, a move which is supported by research that demonstrates the importance of

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<sup>22</sup> This includes NYC drug felony cases with arrest dates between 1/1/2008 and 9/30/2008 that were disposed by April 6, 2009 and drug felony cases with arrest dates between 1/1/2010 and 9/30/2010 that were disposed by April 6, 2011.

targeting high-need groups with high-intensity treatment services. This research found that treatment diversion was associated with significant reductions in reoffending.

However, the majority of defendants who met the basic charge and criminal history eligibility criteria for diversion were not offered the option of treatment as an ATI, and there was considerable variation in rates of diversion depending on the court jurisdiction where the case is heard—ranging from 2 percent of all felony drug arrests in New York County to 6 percent of all felony drug arrests in Bronx County. Because so many cases are dismissed following arrest or convicted on misdemeanor charges, this under-represents the use of diversion. Excluding cases that are not indicted in Supreme Court, 21 percent of eligible cases were diverted to treatment, ranging from 10 percent in New York County to 29 percent in Bronx County.<sup>23</sup> Courts across the city relied on residential treatment for a range of cases, including those where marijuana was identified as the primary drug. The reliance on residential treatment means that DLR has increased the overall taxpayer costs associated with drug felony cases by seven percent over the study period, although this figure does not account for the citywide decline in the number of felony arrests. DLR has narrowed the longstanding racial disparity in rates of incarceration for drug offenses. However, blacks and Hispanics arrested on felony drug charges in NYC were still 1.9 and 2.1 times as likely to be sentenced to prison respectively, when compared to whites

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<sup>23</sup> Eligible cases include cases arrested on B through E Felony drug charges, indicted or continued using a Superior Court Information (SCI), and defendants with no prior VFO convictions.

To address these and other issues this research has the following recommendations:

**Finding A:** DLR was associated with a moderate decline in custodial sentencing but an increase in the average length of prison and jail sentences. The removal of mandatory minimum sentences for defendants facing B Felony charges has altered plea-bargaining practices, leading to an uptick in the overall number of B Felony convictions.

**Recommendation:** *Courts should conduct ongoing monitoring of factors associated with sentence length; including characteristics of the case (e.g. number and type of charges), defendant (e.g. demographics, prior convictions), and court (e.g. county, judge, court part, type of counsel).*

**Recommendation:** *The longer term implications of the shift in charging practices should be tracked to determine: a) the extent to which a B Felony conviction has collateral impacts on future sentencing decisions for those who are re-arrested; and, b) if people who plead guilty to a B Felony charge as a condition of diversion, but do not comply with treatment requirements, ultimately serve longer prison sentences than they would have done pre-DLR.*

**Finding B:** DLR expanded diversion to include defendants with extensive criminal records, and diversion led to significant reductions in rearrest for this “high risk” population.

**Recommendation:** *Courts in NYC should further expand treatment as an ATI to include those who are at greater risk of reoffending.*

**Finding C:** The use of assessments to determine eligibility for diversion varied widely by county, and most people facing felony drug charges were not assessed, constraining the use of treatment as an ATI.

***Recommendation:** Courts should adopt routine procedures for identifying cases that meet the basic criteria for diversion, by screening all cases for “paper” eligibility, based on charge and criminal history, and increasing the number of cases referred for clinical assessment..*

***Recommendation:** Agencies should monitor rates of diversion and document the specific reasons for declining diversion placement requests.*

**Finding D:** Interviewees reported that decisions about the terms of court-mandated treatment were often based on a range of extra-clinical factors. Residential treatment was included in the majority of treatment mandates, including cases where the primary treatment need was related to chronic marijuana use. Under the terms of DLR, the courts gained the authority to condition graduation from court-mandated treatment on achievement of additional “holistic” goals, including but not limited to securing housing and gaining educational qualifications.

***Recommendation:** While determining which cases to divert is a legal matter, courts should adopt policies to ensure that decisions about appropriate treatment options are based solely on an assessment of clinical need conducted by trained treatment professionals.*

***Recommendation:** Further research is needed to track the proportion of drug court participants who are achieving “holistic” treatment goals (such as finding stable housing or employment) and their impact on subsequent recidivism.*

**Recommendation:** *The courts should reassess the balance of inpatient, outpatient and residential treatment options that are available, including outpatient programs designed to serve drug users who require low-intensity treatment services.*

**Recommendation:** *Rules preventing ATI participants from graduating from court mandated treatment while they are taking opiate substitutes, such as methadone or buprenorphine, should be reevaluated.*

**Finding E:** There are persistent and significant racial disparities in sentencing decisions for drug felony cases.

**Recommendation:** *It is essential to establish metrics that track the racial impact of arrest and sentencing policies at each stage of the court process and provide a way of holding the police, prosecutors, and courts accountable for the disparate impact of their decisions.*

### **Study limitations and implications for further research**

This study adopted a multi-method research design to document the implementation of a series of sentencing reforms that fundamentally altered New York State's response to drug offending. The 2009 drug law reforms provided courts with the discretion to divert defendants facing all but the most serious felony drug charges and a range of property offenses to treatment as an alternative to incarceration. These reforms rolled back a series of punitive laws, commonly referred to as the 'Rockefeller Drug Laws', that led to thousands of New Yorkers serving long mandatory sentences, swelling the state prison population to unprecedented levels. This research documents the early results of these drug law reforms and provides a series of recommendations



for increasing their impact. Findings and recommendations are based on analyses of administrative records from city and state agencies, interviews with justice professionals working in the New York City courts, and a review of case files provided by two public defender agencies. This collaborative study was guided by an advisory committee which included judges, prosecutors, defense attorneys, treatment professionals, advocates, academics and researchers.

While this research provides the most detailed analysis of the 2009 drug law reforms in New York City to date, it is also important to note a number of limitations, many of which are inherent to studies that track the impact of policies using quasi-experimental designs. These are discussed in detail in the full study technical report.<sup>24</sup> First, to allow sufficient opportunity to assess case outcomes and track rates of recidivism, it was necessary to select a cohort of cases from 2010, and the operation of the courts may have changed since this time. Based on ongoing analysis conducted by the New York State Division of Criminal Justice Services, rates of admission to drug court have fluctuated between 2011 and 2013.<sup>25</sup> Second, a significant proportion of defendants in the post-DLR sample were under correctional supervision or court-mandated treatment at the end of the tracking period, and it was necessary to estimate the total length of stay for these cases. Third, to assess the impact of DLR, researchers compared 2010 cases with a matched sample of defendants arrested in 2008. While the analysis included a series of checks to ensure that these two samples were comparable, it is possible that there are important differences that may have affected the outcomes of their cases independently of the drug law reforms. Finally, the criminal history and rearrest data that provides a basis for much

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<sup>24</sup> See p.195-198 of the full Technical Report for a detailed discussion of study limitations.

<sup>25</sup> See New York State Division of Criminal Justice Services (DCJS), Office of Justice Research and Performance. (2013). *2009 Drug Law Reform Updates. (Presentation)*. Albany, NY: DCJS  
<http://www.criminaljustice.ny.gov/drug-law-reform/documents/drug-law-reform-presentation-june2013.pdf>

of the analysis was provided by the New York State Division of Criminal Justice Services and does not include information on arrests that occurred outside of the state or by federal agencies.

The full project report notes a number of approaches for building upon and supplementing the current research in order to address unanswered questions. For instance, the perspectives of clinicians and drug treatment providers, important and often overlooked partners in drug law reform, should be included. A number of the court professionals that we interviewed for the study described treatment as a form of quasi-punishment that was often motivated by the desire to restrict the liberty of felony defendants. However, exploring this critical issue was beyond the scope of the current study. Analysis that tracks recidivism and other outcomes over a longer time period is also needed. Specifically, further research should assess: i) racial disparities in sentencing outcomes, and; ii) whether reductions in reoffending as a result of increased access to treatment lead to cost savings in the long run.