

Division of Criminal Justice Services

Criminal Justice Update



Andrew M. Cuomo
Governor

Michael C. Green
Executive Deputy Commissioner

www.criminaljustice.ny.gov

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Drug Law Series

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2009 Drug Law Changes

2014 Update

By Leslie Kellam and Leigh Bates

This is the latest in a series of reports on the impact of the 2009 drug law changes on arrests, indictments and commitments to prison for felony drug offenses. In addition, the report summarizes the impact of judicial diversion on admissions to felony drug court and associated recidivism rates. Reports in this series can be accessed at www.criminaljustice.state.ny.us.

Measuring the Impact of the 2009 Drug Law Reforms

New York's Rockefeller Drug Laws, enacted in 1973, mandated long prison sentences for many drug offenders. The State Legislature enacted significant changes to those laws over time. The most recent reforms to the state's drug laws came in April 2009.¹ At that time, mandatory prison sentences for some drug offenses were eliminated and minimum sentence lengths were reduced for others. In October 2009, Article 216 of the Criminal Procedure Law (CPL) took effect, expanding judicial discretion to provide drug court alternatives to certain addicted non-violent offenders without the approval of the district attorney. The Article also established a mechanism to request a judicial hearing on diversion to drug court and allowed for conditional sealing of cases upon graduation from a court-ordered drug diversion program.

The 2009 reform of New York's drug laws also included a requirement to study the impact of these changes (see Executive Law §837). The Division of Criminal Justice Services (DCJS) worked with other State agencies, including the Office of Court Administration (OCA), the Office of Alcoholism and Substance Abuse Services (OASAS) and the Department of Corrections and Community Services (DOCCS), as well as New York City agencies, district attorneys' offices and diversion programs, to obtain data. This report summarizes the impact of the 2009 reforms on incarceration rates and drug treatment diversion rates across the State. Other reports in this series can be found at www.criminaljustice.ny.gov.

2009 Drug Law Changes

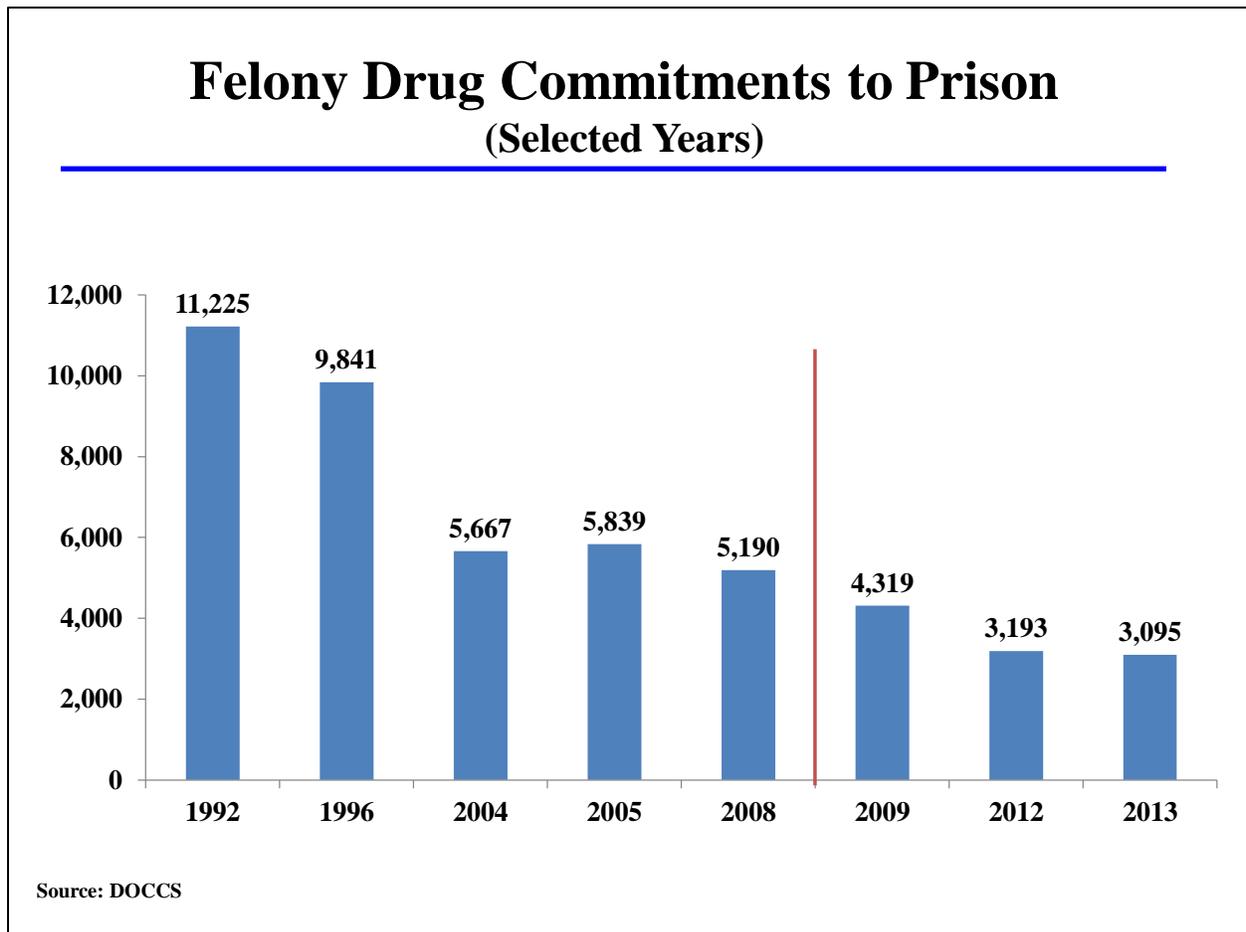
Effective Date	Key Provision
Apr 2009	Eliminated mandatory minimums for 1 st B felony drug convictions Eliminated mandatory minimums for 2 nd time C, D and E felony drug convictions Reduced mandatory minimum for 2 nd time B felony drug convictions Expanded eligibility for DOCCS-operated Shock incarceration and Willard Drug Treatment Campus Authorized discharge of non-violent drug offenders under community supervision prior to their maximum expiration date
Jun 2009	Conditional Sealing statute takes effect (CPL 160.58)
Oct 2009	Judicial Diversion takes effect (CPL 216.00) Resentencing for B felony drug offenders serving indeterminate sentences
Nov 2009	New crimes in effect: B felony Sale to a Child, A-I felony Operating as Major Trafficker

¹ For example, changes that became effective in 2005 established determinate sentencing for drug offenses, eliminating indeterminate maximum life sentences for most drug offenses. Other changes authorized resentencing for A-I and A-II felony drug offenders serving indeterminate sentences.

Sentencing Reforms

Commitments to Prison

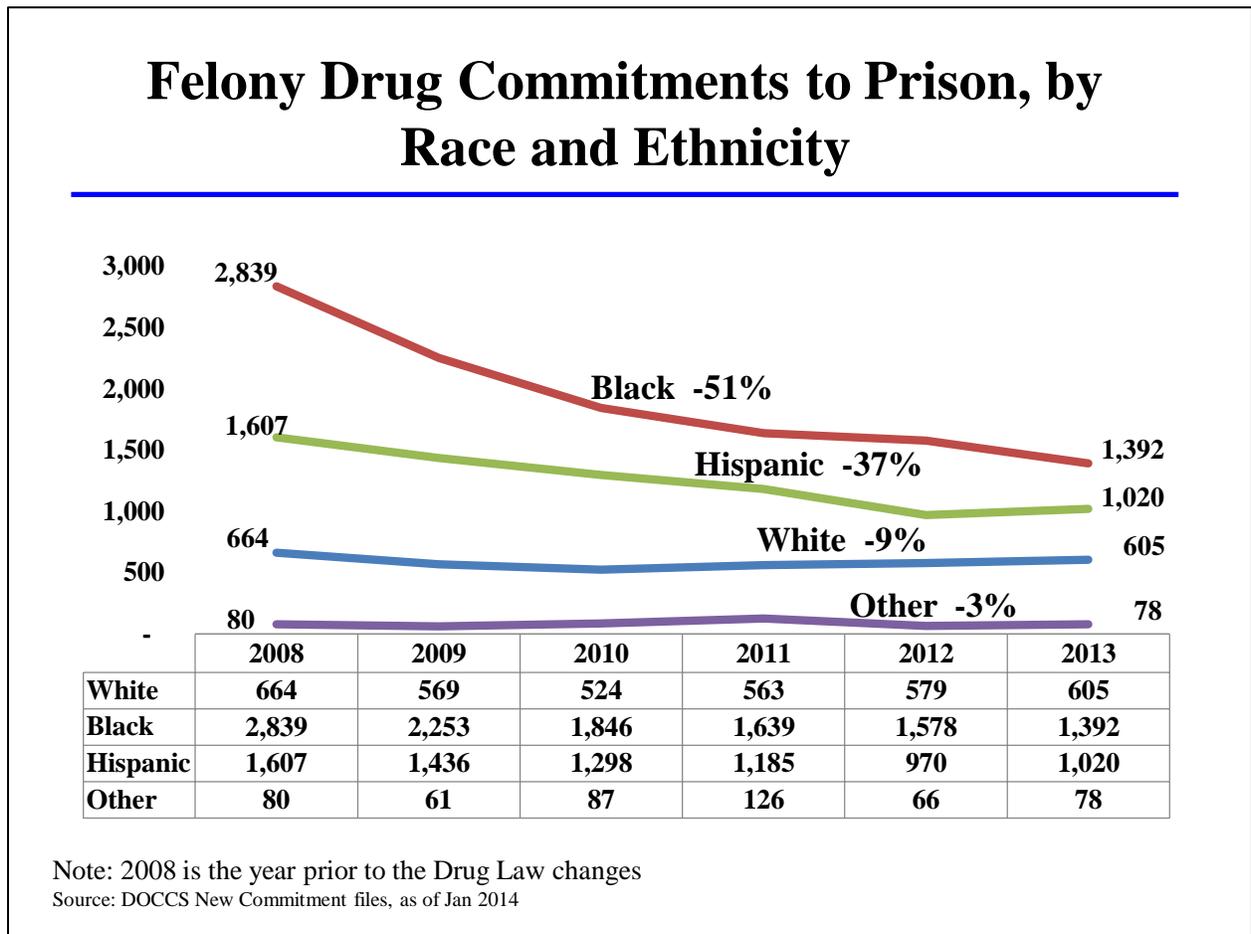
The drug law reforms changed many aspects of drug court case processing. First, the sentencing reforms eliminated mandatory prison terms for offenders convicted of B felony drug offenses who had no prior felony convictions. Mandatory prison terms also were eliminated for second offenders convicted of C, D or E felony drug offenses who had at least one prior felony conviction.² Instead of sentencing these offenders to prison, judges had the option of imposing a sentence to jail or probation. The chart below presents prison commitments for felony drug offenders for selected years. The red line denotes the 2009 drug law changes.



As the chart shows, commitments to prison for felony drug offenses have declined dramatically since the peak in 1992 and are down 40 percent since 2008, the year before the most recent drug law changes. Reductions are more modest in recent years, but commitments continue to decline.

² Convicted C, D, and E felons with a prior violent felony conviction remain subject to a mandatory prison sentence.

Reductions in felony drug commitments have differed by race, and declines in prison commitments are largest among black and Hispanic drug offenders. Since 2008, the year before the drug law reforms, commitments among black offenders have decreased 51 percent, and commitments among Hispanic drug offenders have declined by 37 percent. Felony drug commitments among white and other offenders have declined more modestly, by 9 percent and 3 percent, respectively. Although the number of white drug offenders committed to prison is small, the number committed has increased in each of the last three years.



Drug Offenders Under Custody

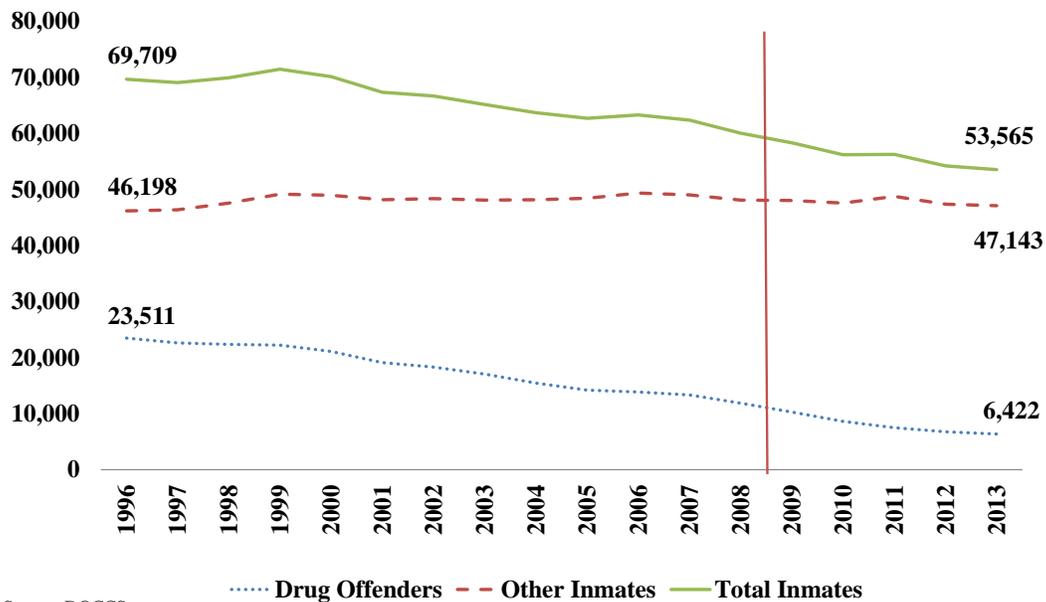
Commensurate with decreases in commitment rates, the number of drug offenders under DOCCS custody also has declined, as the table and chart on Page 5 illustrate. In 2013, there were 53,565 inmates under DOCCS custody and drug offenders were 12 percent of the total inmate population, which was the smallest percentage of drug offenders in the under-custody population in nearly 30 years. Overall, the decline in the total inmate population is mostly attributable to the sustained decline in drug offenders. In 2013, the number of drug offenders under custody (6,422) was down 73 percent from the peak in 1996 (23,511), while the number of other offenders was relatively stable, at about 46,000 inmates during the same time frame.

Drug Offenders Under DOCCS Custody

Year End	Drug Offenders Under Custody		Total Inmates Under Custody
	Number	Percent	
1970	1,085	9%	12,579
1980	1,983	9%	21,929
1990	18,459	34%	54,895
1996	23,511	34%	69,709
1997	22,670	33%	69,108
1998	22,389	32%	70,001
1999	22,266	31%	71,472
2000	21,144	30%	70,154
2001	19,164	28%	67,395
2002	18,363	28%	66,745
2003	17,081	26%	65,197
2004	15,486	24%	63,699
2005	14,249	23%	62,732
2006	13,953	22%	63,304
2007	13,427	21%	62,599
2008	12,006	20%	60,368
2009	10,375	18%	58,666
2010	8,724	15%	56,645
2011	7,564	14%	55,436
2012	6,811	13%	54,243
2013	6,422	12%	53,565

Source: DOCCS

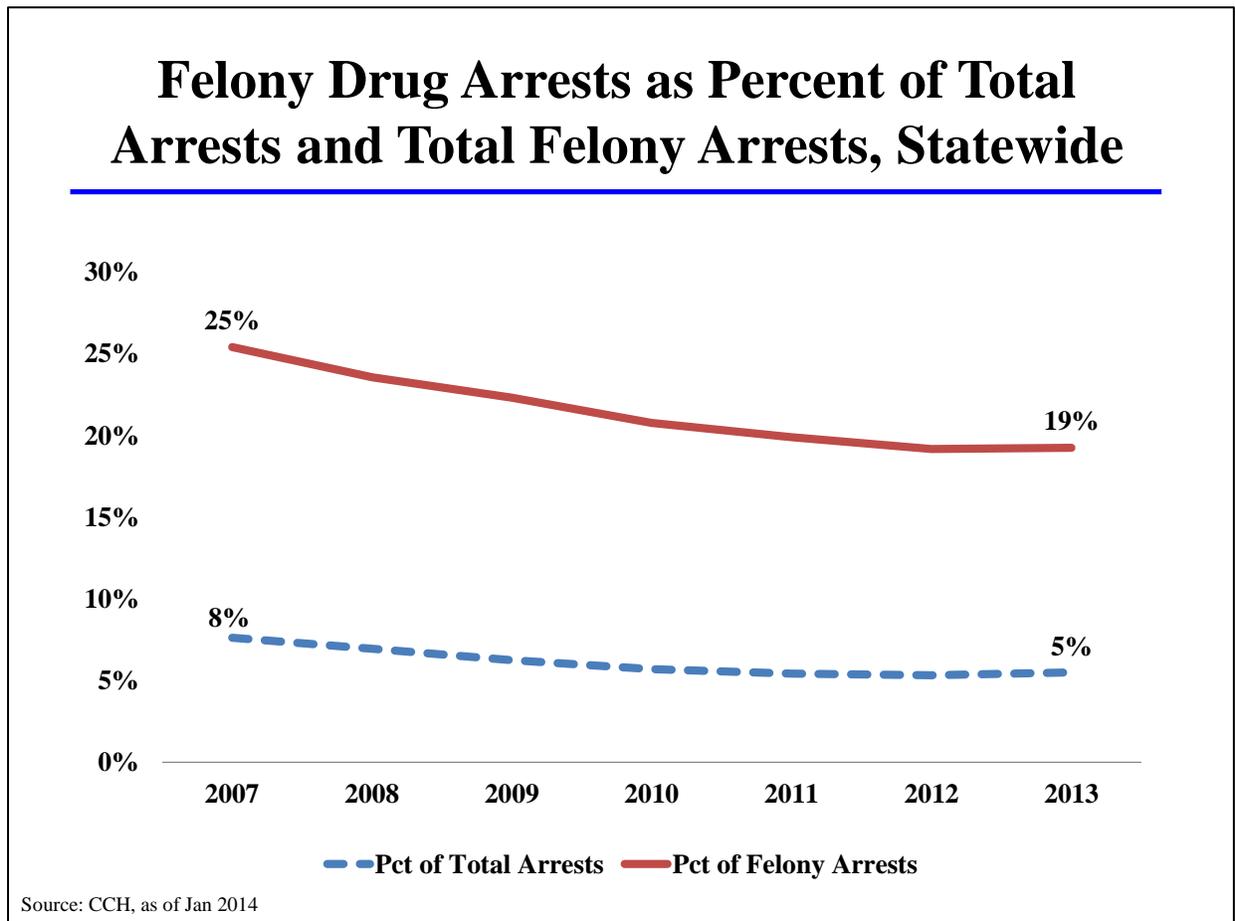
Drug Offenders and Total Offenders Under DOCCS Custody: 1996-2013



Source: DOCCS

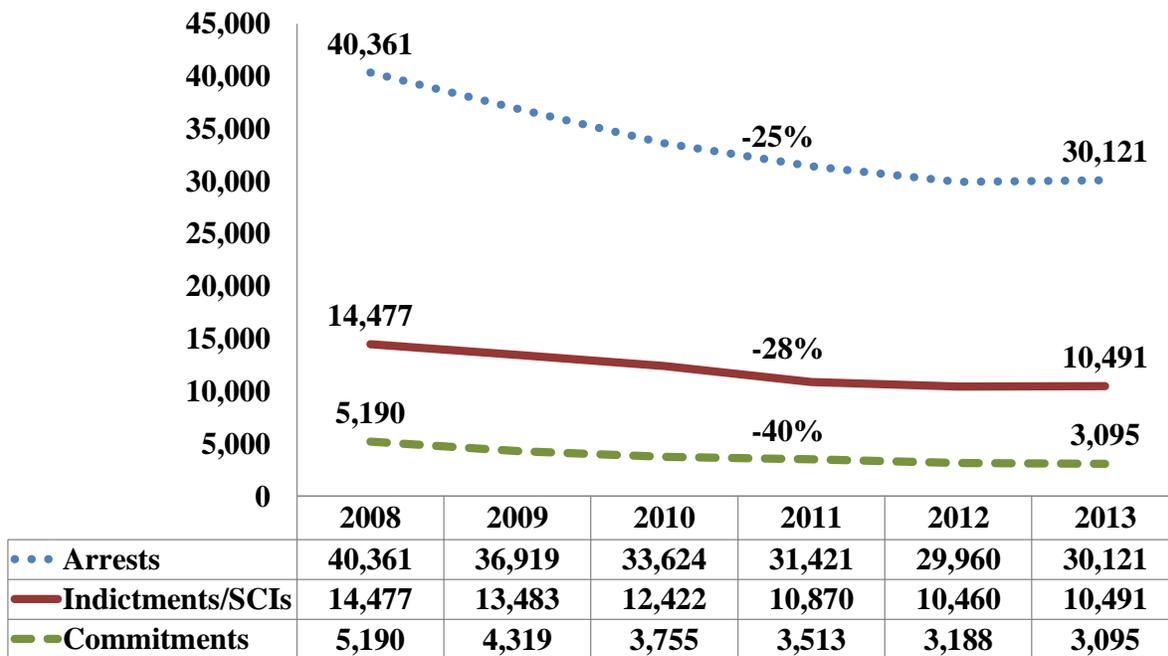
Felony Drug Arrests and Indictments

The 2009 law changes took effect when felony drug arrests were declining. The chart below shows that felony drug arrests were becoming a smaller proportion of arrests made each year. The blue bottom line presents felony drug arrests as a percentage of total arrests. In 2007, felony drug arrests comprised 8 percent of total arrests made during the year. The percentage declined to 5 percent in 2013. When limited to felony arrests only (the top red line), the difference is more notable. Felony drug offenses accounted for 25 percent of all felony arrests in 2007 and 19 percent in 2013.



While the elimination of mandatory prison sentences contributed to New York's declining prison population, decreases in prison commitments also were affected by a reduction in felony drug arrests and indictments. The chart on Page 7 presents arrests, indictments and commitments for felony drug offenses. Arrests declined 25 percent between 2008 and 2013 and indictments declined 28 percent in the same time period. The number of offenders committed to prison reflects changes in sentencing, as well as reductions in the number of felony drug offenders being arrested and indicted (and potentially sentenced to prison) each year.

Felony Drug Trends: Statewide

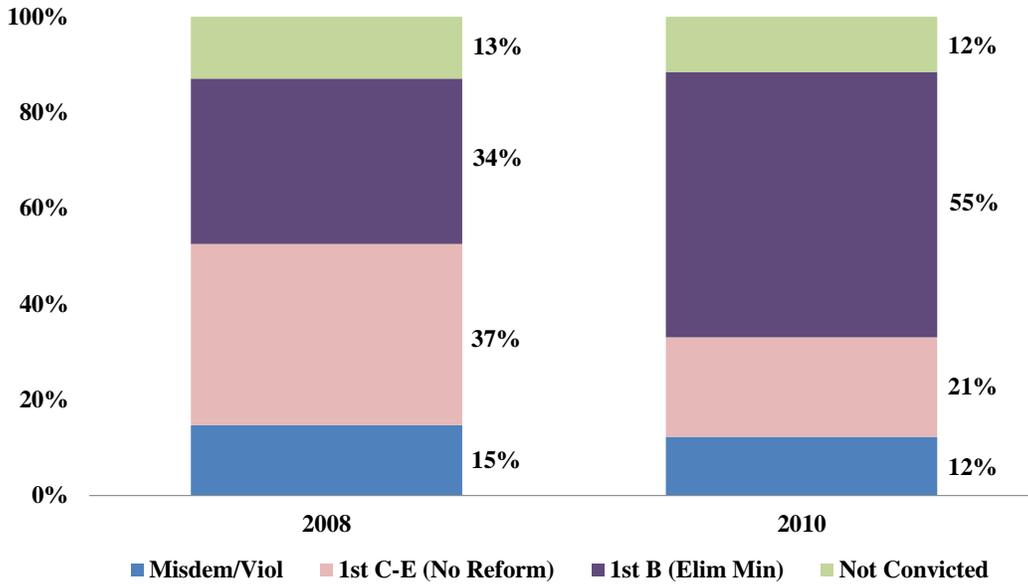


Plea Bargaining Practices

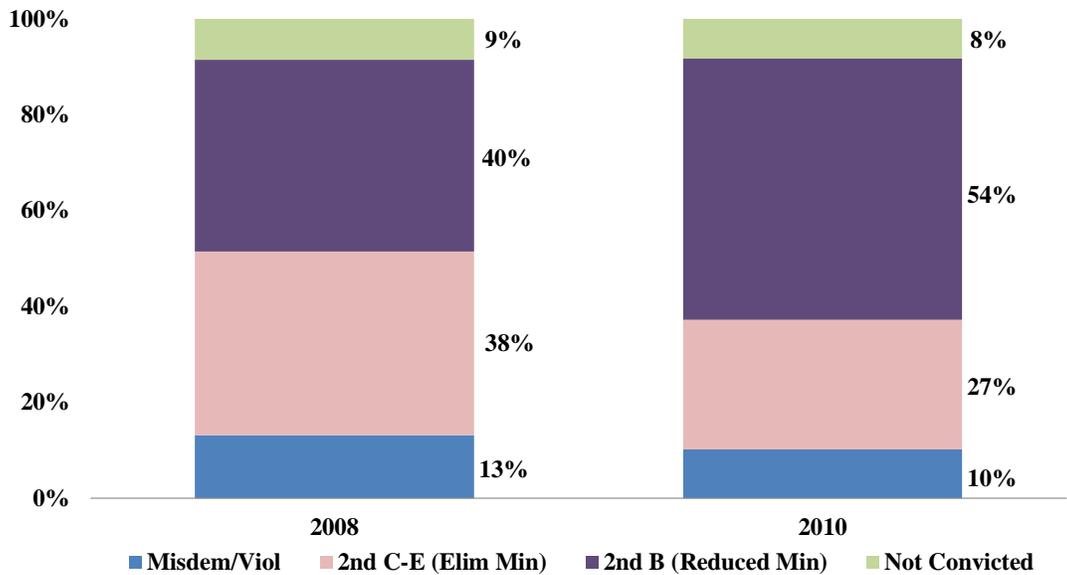
Although felony drug arrests were declining, the elimination and reduction of mandatory minimum prison sentences appear to have affected plea bargaining practices for first and second felony drug defendants. Offenders indicted on first and second B felony drug offenses were more likely to be convicted of B felonies after the reforms took effect. Before the reforms, such cases were more likely to be resolved by pleas to lower-level felonies that did not carry mandatory prison sentences. As a result, even though fewer drug cases were being indicted, B felony cases that reached indictment were much more likely to be convicted as B felony drug offenses.

In 2008, 34 percent of first felony B drug indictments were convicted of B felony offenses, compared to 55 percent of those indicted in 2010. Similarly, in 2008, 40 percent of second felony B drug indictments were convicted of B felony offenses, compared to 54 percent of 2010 indictments (see charts on Page 8). This is particularly notable, given the declines in prison commitments during the same period. Even though defendants were more likely to be convicted of B felony drug offenses after the drug law changes, they were less likely to be sentenced to prison.

Conviction Class among 1st B Felony Drug Indictments



Conviction Class among 2nd B Felony Drug Indictments



CPL Article 216: Judicial Diversion

Effective Oct. 7, 2009, Article 216 gave judges discretion to order drug-involved defendants charged with certain offenses, including B, C, D and E felony drug offenses and some property crimes, into substance abuse diversion programs.³ Previously, the decision to allow defendants to participate in drug court required the consent of the district attorney prosecuting the case. Article 216 eliminated the need for DA consent and established a mechanism for defendants to request a judicial hearing on diversion to drug court.

Prior to the passage of the 2009 drug law changes, New York State routinely diverted substantial numbers of offenders into substance abuse treatment. These individuals participated in programs established in district attorneys' offices, drug courts and other alternative-to-incarceration (ATI) programs. In 1990, the Kings County District Attorney established the Drug Treatment Alternative to Prison Program (DTAP); by 1999 DTAP was operating in the five boroughs of New York City and Nassau County. In the rest of the state, the Road to Recovery/Structured Treatment to Enhance Public Safety (STEPS) program was implemented in 2003, operating out of district attorneys' offices in 16 counties.⁴ As of 2008, more than 9,000 offenders had participated in district attorney-operated diversion programs throughout the State.

Drug courts also operated in most counties prior to the drug law changes in 2009. As of Dec. 31, 2008, there were 170 drug treatment courts operating in New York State, including 62 felony drug treatment courts. New York's first felony drug court opened in 1995. By the end of 2008, more than 5,000 felony offenders had participated in these 62 court programs. Despite the existence of drug court and other diversion programs, the treatment and criminal justice communities anticipated an increase in drug diversion cases as a result of the law. In order to meet the expected demand and to ensure that defendants in every county had access to this diversion option, OCA established new felony drug courts in St. Lawrence, Dutchess, Madison, Nassau, Suffolk and Westchester counties, and expanded existing felony drug courts in New York City.

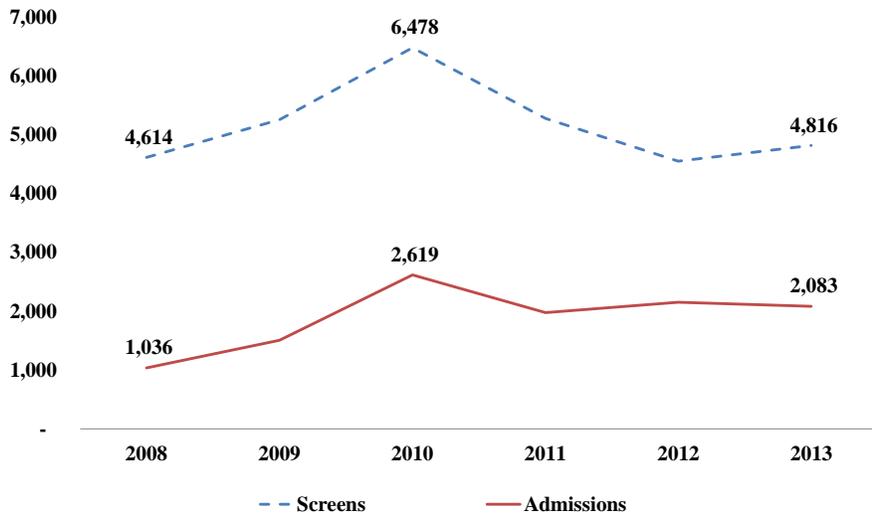
Screenings and Admissions to Felony Drug Court

Screenings and admissions to felony drug court for eligible offenses spiked immediately following enactment of Article 216. Because the effective date was six months after enactment, it appears that the processing of some arrests in 2009 was postponed until after the effective date to take advantage of the new provisions. After the initial swell of cases moved through the system, the number of cases being screened and admitted declined. Notably, those trends changed in 2013, when screenings exceeded the number done in 2008, and admissions to drug court were double the number in pre-reform years.

³ Eligible property offenses include: third-degree burglary, second- and third-degree criminal mischief, third- and fourth-degree grand larceny - excluding firearms, third- and fourth-degree criminal possession of stolen property - excluding firearms, second-degree forgery, second-degree criminal possession of a forged instrument, second-degree unauthorized use of a motor vehicle, and first-degree unlawfully using slugs.

⁴ The STEPS program has since been discontinued.

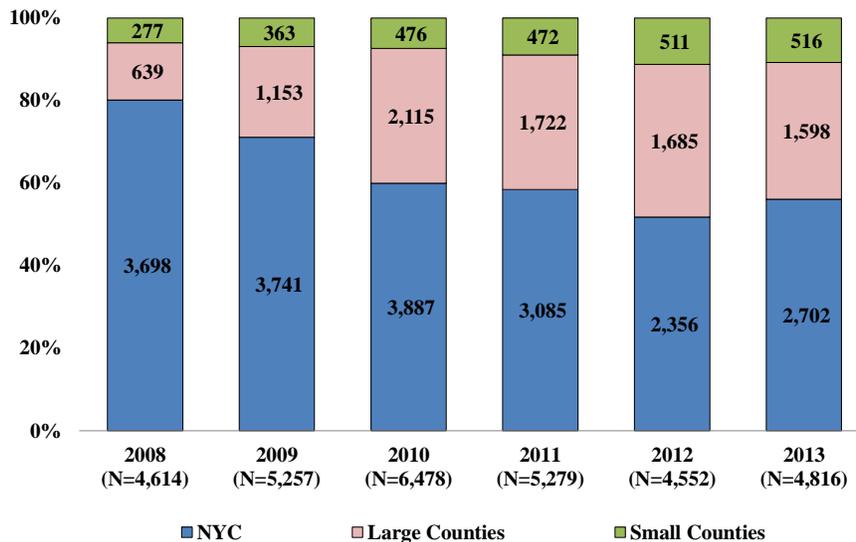
Article 216-Eligible Screens and Admissions to Drug Court

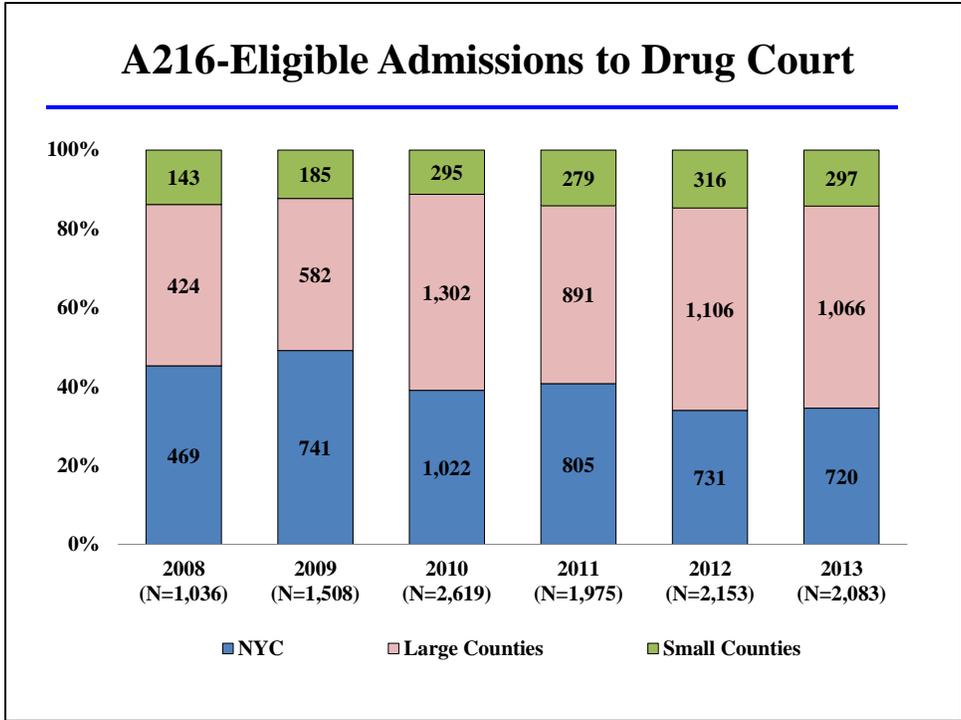


Source: OCA UTA as of Jan 2014

While statewide screenings and admissions remain higher than 2008, the impact of Article 216 varied by region, with the largest impact being seen in large upstate counties outside New York City. This was true for both screenings and admissions to drug court. The initial increases in intakes and admissions have been sustained over time in counties outside NYC. Large and small counties outside NYC now make up 65 percent of admissions, compared to 55 percent in 2008. Again, however, the NYC trend partially reflects reductions in felony drug arrests.

A216-Eligible Screenings to Drug Court





Initial Case Dispositions of Felony Drug Arrests

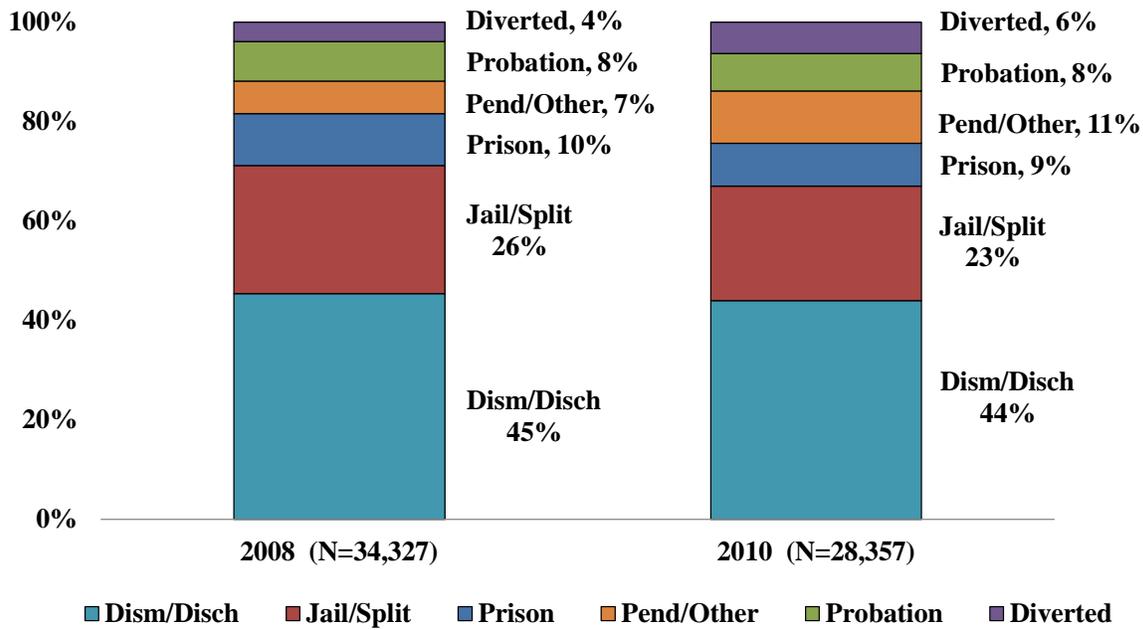
To gauge the impact of the reforms on judicial diversion, DCJS tracked all eligible felony drug arrests in 2008 (before the reforms) and 2010 (the first full year after the reforms took effect). Cases were followed from arrest through initial disposition, or the first decision by the court to dismiss the case, divert the defendant into substance abuse treatment or sentence the offender to probation, jail, prison or some other sanction.

Although there was an increase in the use of judicial diversion between 2008 and 2010, the percentage of defendants being diverted to substance abuse treatment was a small portion of the eligible arrests in 2010.⁵ Cases were most likely to result in dismissal or discharge (44 percent). Another 23 percent were sentenced to jail or jail/probation split; 11 percent of cases were still pending at the time of the evaluation⁶; 9 percent were sentenced to prison; 8 percent were sentenced to probation without jail, and 6 percent were diverted into substance abuse treatment.

⁵ Note: only drug-involved offenders would be diverted into treatment. While substance abuse and criminal behavior are correlated, not all arrestees have substance abuse issues or need treatment services.

⁶ Dispositions were updated in October 2013.

Initial Disposition Among A216-Eligible Felony Drug Arrests



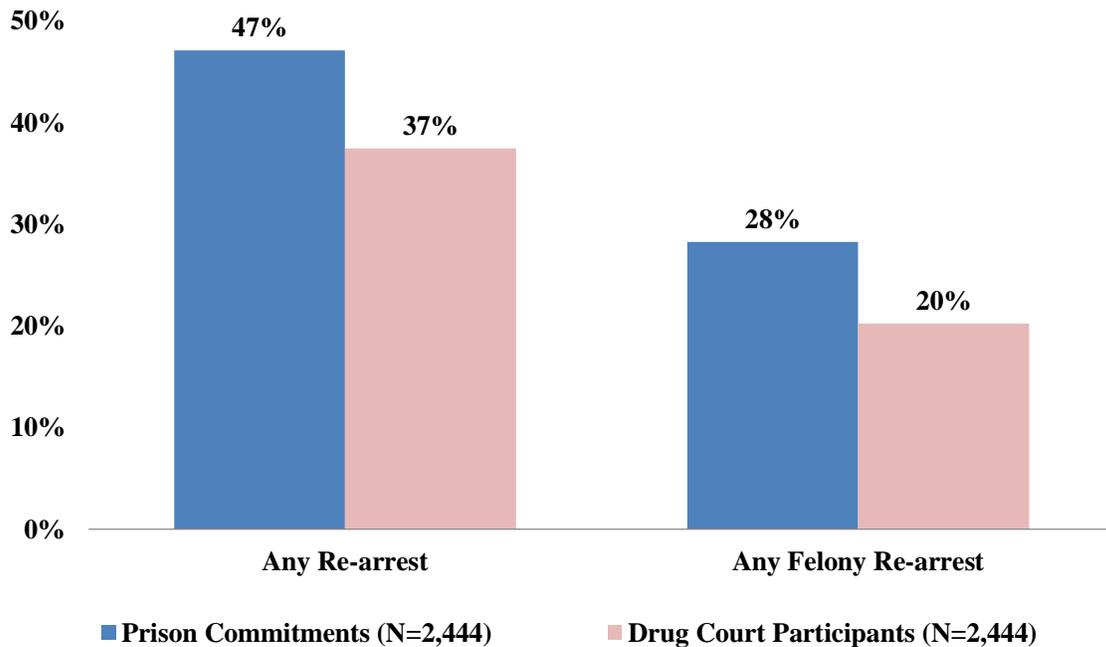
Felony Drug Court Outcome Evaluation

The drug law reforms were intended to reduce unnecessary confinement for eligible offenders, reducing and eliminating mandatory prison sentences for non-violent felony drug offenders who, historically, would have been incarcerated. The question posed in the evaluation was how diversion might influence re-offending among the specific group of offenders targeted by the reforms. Any observed differences in re-offending would be particularly relevant for policymakers interested in reducing confinement while maintaining public safety.

To examine the effect of drug court participation on re-arrests, the evaluation compared 2010 drug court participants to similar offenders who were sentenced to prison in 2008.⁷ Offenders were followed for 24-months in the community, excluding any time spent incarcerated (in jail or prison). Results showed that drug court participants had significantly lower recidivism rates than similarly situated offenders who were sentenced to prison. This was true for both measures of recidivism: any re-arrest and any re-arrest for a felony-level offense. Results suggest that drug court could be a safe and cost-effective option for high-risk offenders facing prison sentences. These results are consistent with extensive prior research on the effectiveness of drug courts in reducing recidivism.

⁷ Offenders sentenced to prison in 2008 would likely be released to the community around 2010, when drug court participants were enrolled in their diversion programs. Follow-up for the two groups would then begin at about the same time.

Percent Re-arrested Among Drug Court Participants and Offenders Sentenced to Prison



Other Drug Law Reforms

Expanded Eligibility for Shock Participation and Willard Drug Treatment Campus

Reforms effective in April 2009 also expanded eligibility for participation in the Shock Incarceration Program and the Willard Drug Treatment Campus.⁸ Admissions to Willard increased 24 percent, from 436 in 2008 to 540 in 2009. Annual admissions to Willard have remained fairly consistent since the initial increase. In 2013, there were 539 admissions to Willard Drug Treatment Campus.

Resentences for B Felony Drug Offenders

The 2009 drug law changes also authorized resentencing for indeterminately sentenced B felony drug offenders serving a prison sentence. As of January 2014, 777 B felons were resentenced. Resentences are still being approved. Of offenders resentenced as of January 2014, 562 had been resentenced and released, 184 had been resentenced after release, and 31 had been resentenced before release.

⁸ The number of admissions to Shock Incarceration Programs increased immediately after the 2009 changes took effect. However, subsequent changes further expanded Shock eligibility, making it difficult to evaluate the specific impact of the drug law changes on Shock participation. Such an analysis is beyond the scope of this report.

New Crimes

The 2009 reforms also created two new crimes: Penal Law (PL) 220.48 – criminal sale of a controlled substance to a child (Class B Felony), and PL 220.77 – operating as a major trafficker (Class A-I Felony). As of Dec. 31, 2013, there were 16 individuals charged at arrest or arraignment with PL 220.48 and 79 individuals charged at arrest or arraignment with PL 220.77.

Conditional Sealing

CPL Article 160.58 authorized sealing of cases for drug-involved offenders who successfully completed court-ordered substance abuse treatment. In addition, graduates of court-ordered treatment could petition the judge to have up to three prior misdemeanor cases sealed. However, seals would be conditional, meaning any subsequent arrests would result in the unsealing of all conditionally sealed cases. As of December 2013, 205 offenders had 279 cases sealed and 26 offenders had 29 cases unsealed. Cases sealed by county are presented in the table on Page 15.

Conditional Seals Granted Statewide, by County and Year Sealed

County	Year Sealed					
	2009	2010	2011	2012	2013	Total
ALBANY	0	1	2	1	0	4
BRONX	0	0	0	3	0	3
BROOME	0	1	0	0	1	2
CATTARAUGUS	0	0	0	1	0	1
CORTLAND	0	0	1	0	0	1
FULTON	0	0	0	3	2	5
GENESEE	0	0	0	0	1	1
JEFFERSON	0	5	0	1	1	7
KINGS	1	0	1	0	1	3
LEWIS	0	0	0	1	0	1
MADISON	0	0	2	0	0	2
MONROE	0	1	5	9	2	17
NASSAU	0	0	6	26	47	79
NEW YORK	0	1	1	9	5	16
NIAGARA	0	0	5	0	1	6
ONEIDA	0	0	0	1	0	1
ONONDAGA	0	1	0	0	0	1
ONTARIO	0	0	1	0	0	1
OSWEGO	0	0	1	0	0	1
QUEENS	0	0	0	6	3	9
RENSSELAER	6	4	7	14	9	40
RICHMOND	0	2	0	0	3	5
ROCKLAND	0	0	0	4	1	5
SARATOGA	0	13	6	1	12	32
SCHENECTADY	2	6	0	5	2	15
STEUBEN	1	0	0	0	0	1
SUFFOLK	6	1	0	1	2	10
TOMPKINS	0	1	1	0	1	3
ULSTER	0	0	1	0	0	1
WARREN	0	2	4	1	0	7
WESTCHESTER	0	2	0	0	0	2
WYOMING	0	0	0	0	1	1
Total	16	41	44	87	95	283

Source: CCH as of 1/29/14