

Better by Half: The New York City Story of Winning Large-Scale Decarceration while Increasing Public Safety



JUDITH A. GREENE*

Director, Justice Strategies

VINCENT SCHIRALDI

Senior Research Fellow, Harvard Kennedy School, Program in Criminal Justice Policy and Management

For much of the latter part of the twentieth century, New York was a metaphor for the urban decay confronting so many American cities. With the number of murders topping 2,200 in 1990, New York's jail population was bursting at the seams, peaking at nearly 22,000 inmates in 1991, more than double today's population. Similarly, in 1998, the number of New York City residents in state prisons peaked at 47,315, a number which fell by more than half to 22,580 by May 2016.

Few could have imagined that in 2015, the City would experience 350 murders with steep declines in other crime categories as well.¹ Writing in 2011, University of California Law Professor Franklin Zimring dubbed New York City's crime decline "the largest and longest sustained drop in street crime ever experienced by a big city in the developed world."²

Given the dominance and popularity of incarceration as a crime-control strategy in the United States during this time period, a casual mid-'90s observer could be forgiven for hypothesizing that, if such a miraculous decline in crime were to occur over the next two decades, it would surely be the result of a massive increase in New York City's incarceration rate. But quite the opposite turned out to be true. Between 1996 and 2014, the City's jail and state prison combined incarceration rate declined by 55 percent, while the combined incarceration rate in the remainder of the United States rose by 12 percent. Despite the fact that the City's population grew by more than a million people between 1996 and 2014, the number of New Yorkers incarcerated in prisons and jails declined by 31,120 during that time period.

But from 1996 to 2014, the City's crime rate declined more rapidly than index crime declined nationally. Between 1996 and 2014, index crime in New York City declined by 58 percent, while index crime nationally declined by a more modest 42 percent.³

By 2014, this left New York City with the lowest crime rate of the nation's twenty largest cities and its second lowest jail incarceration rate, behind only Wayne County (Detroit), Michigan, much of which, unlike New York City, is suburban.

The time period discussed in this paper—from the 1990s to this year, depending on what data was available from various sources—was a time of great change in U.S. prison policy. When it began, there was broad policy-maker

consensus around increasing imprisonment as a crime control mechanism, peaking in the mid-'90s when the majority of U.S. states passed "three strikes" mandatory sentencing laws and Congress passed the Crime Control Act of 1996, which included funding for prisons and a federal "three strikes" provision. More recently, there is a growing, bipartisan consensus that mass incarceration should be ended (or, at least, curtailed).

One manifestation of America's fading love affair with prisons was the allocation of Justice Reinvestment Initiative (JRI) funds by Congress in 2010. The JRI strategy was described by Fabelo and Thompson, long-time JRI administrators at the Council of State Governments, as providing technical assistance to "support state leaders who demonstrate working across party lines."⁴ The process begins with the convening of "a bipartisan group of policymakers and stakeholders representing all three branches of government." CSG then conducts an analysis of the state's criminal justice data, which are "distilled into concise actionable reports for policymakers' consideration."

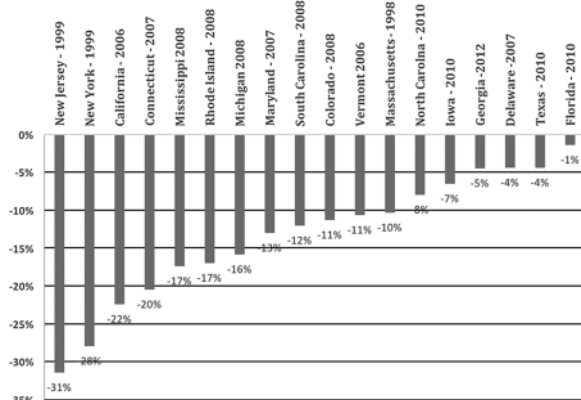
A 2013 assessment of the JRI written by a group of national criminal justice policy experts noted that "JRI's most enduring contribution to date may be its having created a space and a mindset among state officials to seriously entertain the possibility of lowering prison populations."⁵ While lauding its goals, the authors concluded that the original objectives of Justice Reinvestment—reducing correctional populations and budgets while reinvesting the savings to improve the daily lives of residents living in the neighborhoods that have been ravaged by mass incarceration—had faded along the way. The group expressed a concern that JRI's current implementation strategy might simply serve to institutionalize current levels of mass incarceration.

Fabelo and Thompson concede that "scientific findings supporting the case for 'less incarceration' will be insufficient to achieve dramatic shifts in the use of prison and jail."⁶ They write that it is hard to build broad, bipartisan support among state leaders for proposals focused on prison population reductions, even if cost savings could be realized by doing so, and that elected officials are not moved by arguments for social justice.

Near the end of the article they note that three states are achieving significant reductions in their prison populations—New Jersey, New York, and California—without

Federal Sentencing Reporter, Vol. 29, No. 1, pp. 22–38, ISSN 1053-9867, electronic ISSN 1533-8363.
© 2016 Vera Institute of Justice. All rights reserved. Please direct requests for permission to photocopy or reproduce article content through the University of California Press's Reprints and Permissions web page, <http://www.ucpress.edu/journals.php?p=reprints>. DOI: 10.1525/fsr.2016.29.1.22.

Chart 1
State prison population decline: Peak year to 2014



(Source: Bureau of Justice Statistics)

either a JRI frame or a “data-driven, consensus-based approach to lawmaking.”⁷ A quick look at eighteen states that have seen declining prison populations on Chart 1 shows that New Jersey, New York, and California, what we might call “do it yourself” states, have the greatest percentage declines in incarceration from their incarceration peak to 2014.

New Jersey’s prison population decline was triggered by a combination of parole and sentencing law reforms. Following a federal court decision in 2000 that found that the parole board was in violation of state law for failing to conduct timely hearings for 5,800 individuals, the state eliminated the backlog in less than two years. The Drug Policy Alliance and Families Against Mandatory Minimums, both of which established New Jersey offices, built broad public support for changes to the state’s mandatory sentencing laws for school-zone drug sales, resulting in their abolition in 2010.

In California, decades of vigorous advocacy for reducing the prison population by academics, advocates, and prison litigators seemed to fall on deaf ears in Sacramento until 2011, when the U.S. Supreme Court affirmed a federal court release order intended to reduce massive prison overcrowding. The state responded with a series of policies, including fiscally incentivizing counties to sentence persons convicted of nonviolent offenses to local sentences and reduce probation violations to prison, and devolving correctional responsibility for people convicted of non-serious, nonviolent, non-sex-registrant offenses from state to local jurisdictions. Voters subsequently, resoundingly approved ballot initiatives in 2012, modifying the state’s 25-to-life “three strikes law,” requiring that the third strike be a violent or serious felony (Proposition 36), and again in 2014, reducing several drug and property felonies to misdemeanors (Proposition 47). A ballot initiative drafted by the advocacy community, which shortens sentences for nonviolent offenders, expands good time, and returns discretion to judges to decide which youth are tried as adults (Proposition 57), is on the ballot for November 2016 with Governor Jerry Brown’s support.

With these robust outcomes for advocacy-driven prison population declines and less robust outcomes for the “insider”⁸ JRI approach, it seems fair to ask whether the Justice Reinvestment strategy, with its top-down reliance on technocratic data analysis and elite consensus-building, should be preferred to a vigorous bottom-up approach that flexes grassroots muscle and elicits broad public engagement, as well as litigation, to build powerful political demands for systemic change.

This article examines the case of New York City, whose 50-plus percent decline in incarceration starting in the mid-1990s occurred at a time when incarceration rates in the rest of the United States, taken as a whole, as well as in the remainder of New York State, were increasing. Our research reveals two noteworthy findings relative to New York’s incarceration experiment. First, it flowed from—or at the very least, coincided with—a bottom-up effort to amend, repeal, and reverse the laws, policies, and practices that swept our nation into the era of mass incarceration—most particularly those involving the War on Drugs. Second, the profound decline in incarceration in the nation’s largest city, which leaves it as one of the least incarcerated cities in America, occurred at a time when New York was also becoming the safest city in America, giving the lie to the notion that dominated criminal justice policy in the United States in the last four decades of the twentieth century that more incarceration was needed to provide more safety.

In short, we describe how New York City’s remarkable reversal of mass incarceration was spurred by grassroots advocacy and the growth of responsive and reform-minded public officials at both the local and state levels.

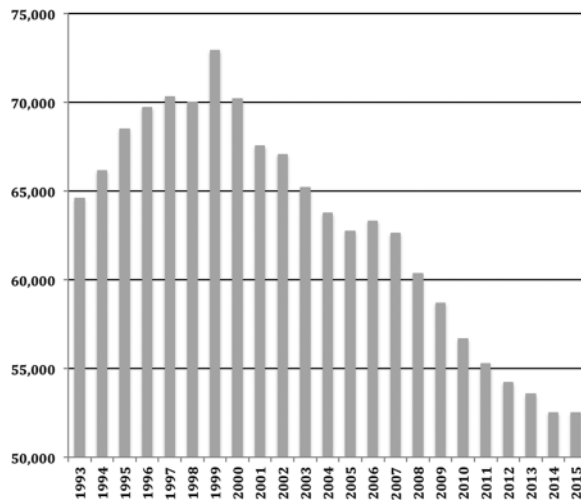
I. New York’s State Prison Population De-Escalates

One of the three most robust state experiences with decarceration has taken place in New York. During 1999, the state prison population hit an all-time high of 72,899.⁹ By the end of 2015, the population had fallen by 28 percent to just 52,344 (Chart 2).

As indicated in Chart 3, New York City is the sole driver of the state’s prison population decline. Indeed, if criminal justice officials in the rest of the state had followed the City’s lead in adopting new policies and programs, the state prison population might have fallen by another 13,000 people to reach an overall reduction of approximately 50 percent.

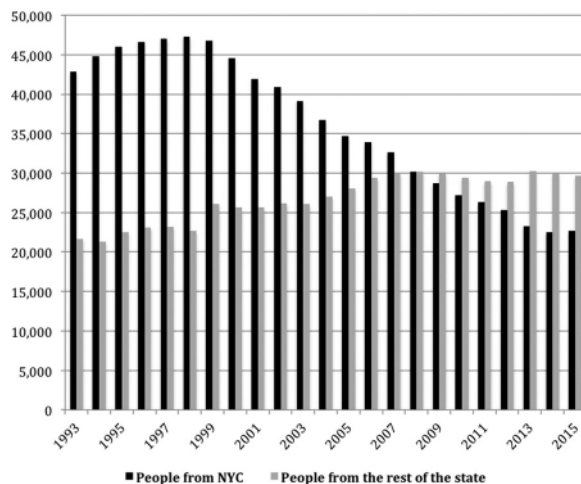
A remarkable policy shift at the New York City Police Department (NYPD) was the principal factor that set the trend in motion, after decades of costly prison construction was needed to manage a boom in population growth. Drug law enforcement in New York City had played a role in prison population trends since enactment in 1973 of Gov. Nelson Rockefeller’s notorious mandatory minimum drug law reform—the Rockefeller Drug Law. Sale of only two ounces, or possession of just four ounces, of a narcotic drug became a Class A felony, carrying a 15-to-life prison sentence. The majority of drug offense cases subject to the new

Chart 2
New York State prison population, 1993–2015



(Sources: Bureau of Justice Statistics; New York State Department of Corrections and Community Supervision)

Chart 3
Comparing people in New York State prisons sentenced in New York City with those sentenced in the rest of the State, 1991–2015



(Source: New York State Department of Corrections and Community Supervision)

law would involve much smaller weights, but the lesser-known Second Felony Offender Law, enacted along with the Rockefeller Drug Law, made a prison sentence mandatory for anyone convicted of any two felonies—no matter their nature—within ten years.

A national moral panic sparked in the mid-1980s by the so-called crack crisis did not exempt New York City, even though the state's drug laws were already among the toughest in the nation. Operation Pressure Point was piloted by the NYPD on the lower east side of Manhattan in 1985.¹⁰ Soon the drug enforcement dragnet was spread across City streets in other neighborhoods like East Harlem and Southeast Queens by NYPD's Tactical Narcotic Teams

(TNT). TNT mobilized roving cadres of plain-clothes and undercover narcotics officers to saturate targeted neighborhoods with intensive buy-and-bust operations over a three-month period before moving on to the next target.

Intensified street drug enforcement flooded prison capacity, with individuals committed to prison for drug offenses rising from just 834 in 1973 to 11,225 in 1992, a remarkable thirteen-fold increase. By 1994, one-third of all New York State prison beds were holding people serving time for a drug conviction.¹¹ Ninety percent of them were Black or Latino.

After enactment of the Rockefeller Drug Laws, New York legislators continued to constrict judicial discretion by toughening other sentencing laws. In 1978, longer sentences were enacted for “violent felony offenders” and “persistent violent felony offenders.” Another measure increased the likelihood that young people convicted of violent crimes would receive an adult prison sentence.

George Pataki defeated incumbent Gov. Mario Cuomo in 1994 on a platform of “truth in sentencing” and a pledge to restore the death penalty. Legislators soon followed his lead by amending Article 70 of the state Penal Laws to eliminate parole for people convicted as two-time persistent violent felony offenders, replacing discretionary release with fixed “determinate” sentences.

Running for reelection in 1998, Gov. Pataki signed “Jenna’s Law,” abolishing parole for *all* people convicted as violent felony offenders. His parole board marched in time with his get-tough philosophy. Between 1994 and 1999, the parole grant rate at first hearings dropped from 60 to 40 percent.¹² Both Cuomo and Pataki oversaw massive prison construction. Between 1988 and 1999, the state built twenty new prisons.

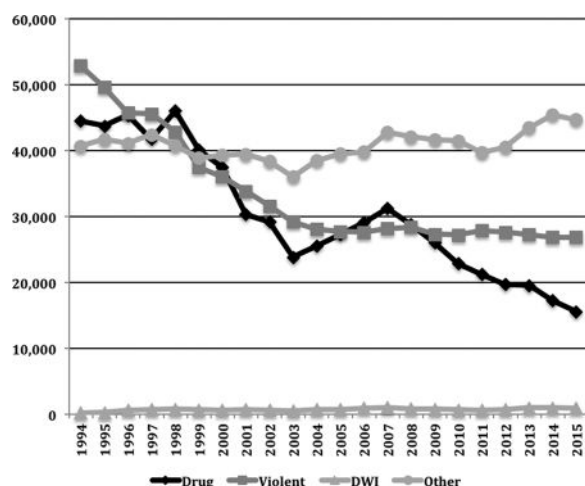
II. Developments in New York City

A. Violent Crimes and Arrests Decrease in New York City

New York City's reported crime data show a remarkable decrease in violent crime starting in 1991. By 2012, the City's violent crime rate had plummeted by 73 percent. Arrests for violent felonies also declined. In 1994, there were 70,880 arrests for violent felonies statewide. By 2015, that figure had fallen to 40,816. Within New York City, violent felony arrests fell by 49 percent, compared to just 22 percent in the rest of the state. During the same period, felony drug arrests in the City also took a dramatic tumble (Chart 4).

The Rockefeller Drug Laws met with opposition from the day the governor announced his intention to toughen sentencing laws. After the launch of TNT, criminal justice reform advocates and community activists intensified their opposition. In the late-1990s, an effort to organize students against the Rockefeller Drug Laws was taken up by Kevin Pranis under the banner of the Prison Moratorium Project (PMP), an organization founded by Eddie Ellis. Ellis had established a prison-based policy-reform think tank while

Chart 4
Felony arrests in New York City, 1994–2015



(Source: New York State Division of Criminal Justice Services)

he was serving a sentence at New York's Green Haven prison. State and City University of New York students marched in 1997 on the State Capitol carrying banners that featured a graph depicting a nearly dollar-for-dollar shift in state spending from higher education to prisons. Pranis was joined by Kyung Ji Rhee, who played a major leadership role in the PMP work.

PMP coined the term "Drop the Rock," which was embraced by the Correctional Association as the name of their own drug reform campaign, launched by CA executive director Robert Gangi in 1999. The campaign soon spawned a broad coalition of organizations, including the Center for Constitutional Rights, the Legal Aid Society, the United New York Black Radical Congress, the American Jewish Congress, the New York Civil Liberties Union, and the Fortune Society. In 2000, indie recording label Raptivism Records released *No More Prisons*, an album of performances by various rap and spoken-word artists in support of PMP, to galvanize the hip-hop community about the issue.

In 2000, the Drug Policy Alliance (DPA) was formed in New York City as a national organization from a merger of the Lindesmith Center and the Drug Policy Foundation, with Ethan Nadelmann as its first (and current) executive director. By 2001, DPA, whose Rockefeller Drug Law reform efforts were then led by Deborah Small, was producing Spanish-language television ads featuring family members of people serving prison terms under the Rockefeller Drug laws. DPA's sustained efforts throughout the decade to educate the public about the harshness of these laws served to broaden the various campaigns and alliances into a powerful movement for reform. In 2006, Gabriel Sayegh took on a key leadership role at DPA in guiding the reform strategy to legislative victory in 2009.

Felony drug arrests in the City suddenly began a sharp decline, from 45,978 in 1998 all the way to 15,507 in 2015—a drop of 66 percent, compared to a decline of less than 20

percent in the rest of the state—at a time when drug use in the City remained relatively stable.¹³

NYPD enforcement priorities had clearly begun to shift, and the results were dramatic. In just two years, the number of drug arrests had fallen by more than 8,000 from the high-water mark in 1998. It is plausible that the police were responding to burgeoning public pressure and/or a shift in attitudes toward the Drug War in New York City.

Indeed, in 1999, a well-publicized Zogby International poll of likely New York State voters had indicated that the Rockefeller Drug laws were highly unpopular.¹⁴ Twice as many voters responded that they were *more* inclined to vote for state legislators who would reduce drug sentences and give judges greater discretion, than the number who said they'd be *less* inclined to do so.

B. New York City Wins the War

Franklin Zimring has described changes in staffing patterns at the NYPD during the period when crime rates were falling in the City.¹⁵ He notes that during the 1990s, the number of officers assigned to special narcotics units grew by leaps and bounds, from 1,183 officers in 1990 to 2,800 in 1999. Yet by 2006, the narcotics force had shrunk back to three fewer officers (1,180) than its original size. Zimring speculates that the City had simply won the drug war on its own terms:

Did the department's priorities change that markedly? Or did New York City win its war on illegal drugs and then withdraw its troops? One very likely explanation is that the police had succeeded in achieving the two major strategic objectives that animated the narcotic unit's expansion—driving drug markets off the streets and reducing drug traffic-related violence.¹⁶

Zimring notes that drug-related hospitalizations and drug-overdose death trends remained relatively flat during the period. He surmises that the NYPD had never expected to curtail drug use or its harms with the TNT strategy. Perhaps their efforts were focused more on affecting the nature of the drug markets than they were on actually affecting drug trafficking and use:

Indeed, the almost 60 percent drop in narcotics unit strength is strong circumstantial evidence that the open air market and lethal violence aspects of drug traffic were the department's chief priorities all along.¹⁷

Whatever way the NYPD had measured the success of its drug enforcement effort, police brass were clearly ready to move on to other challenges. Mayor Rudy Giuliani appointed Bernard Kerik to serve as New York City Police Commissioner in 2000. Kerik had joined the force during the height of TNT and was soon working undercover, making scores of buy-and-bust arrests in Harlem and Washington Heights. By 1990, he'd made detective. The following year he was assigned to the New York Drug

Enforcement Task Force, a post he held until joining the protective detail for Mayor Giuliani. Having made his bones as a drug warrior, Commissioner Kerik was well-equipped to call a retreat in the City's drug war.

C. Misdemeanor Drug Arrests Also Decline

In 1994, Police Commissioner Bill Bratton introduced his trademark "broken windows" policing. He ended a long-standing NYPD policy that discouraged patrol officers from arresting people for petty drug offenses, encouraging them to be aggressive with people they saw committing "quality-of-life" crimes.¹⁸ Accordingly, misdemeanor drug arrests rose sharply from 1994 to 1996, after which Bratton returned to private life. The sharp rise continued throughout the regime of Commissioner Howard Safir, peaking in 2000 at 102,712.

Once Bernard Kerik replaced Commissioner Safir, however, misdemeanor drug arrests began a sharp decline that seems an echo of the felony drug arrest decline. In 2005, under Commissioner Ray Kelly, these arrests began to rise again to a secondary peak of 84,250 in 2011. By then drug reform advocates were loudly denouncing the tens of thousands of marijuana arrests that comprised more than 40 percent of misdemeanor drug arrests and appeared to be associated with excessive levels of "stop and frisk."¹⁹ The Drug Policy Alliance, in collaboration with the Marijuana Arrest Research Project, the Center for NuLeadership, and VOCAL-NY, organized a campaign to stop these arrests at both local and state levels. Commissioner Kelly responded by issuing a series of memos clarifying and liberalizing the NYPD's arrest policies for marijuana, and Mayor Michael Bloomberg called for the issuance of desk appearance tickets in lieu of arrests for marijuana possession.

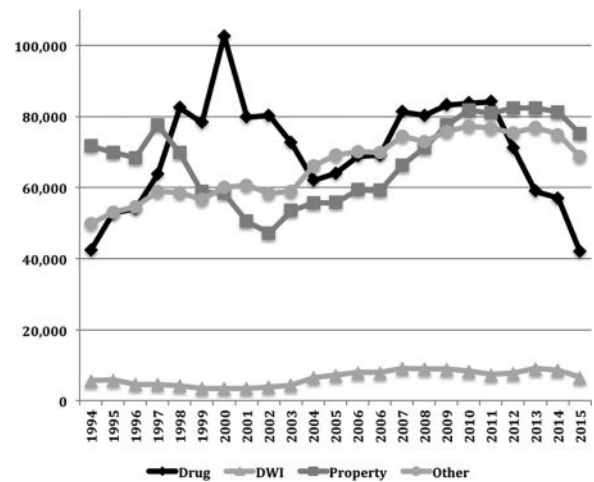
During the 2013 mayoral election campaign, there was general agreement by the candidates to reduce marijuana arrests. From 2011 to 2015, the number of misdemeanor drug arrests plummeted by 50 percent, back to the level before Commissioner Bratton told the patrol troops to crack down on petty street crime (Chart 5).

III. Prosecution and Sentencing in Drug Cases

Recent data indicates that prosecutors across New York State indict or file a superior court information for about 35 percent of felony drug arrests in order to prosecute them as felonies in the superior courts.²⁰ The decline in felony drug cases between 2006 and 2015 (the period for which data are available) has been significantly deeper than the decline in violent offenses.

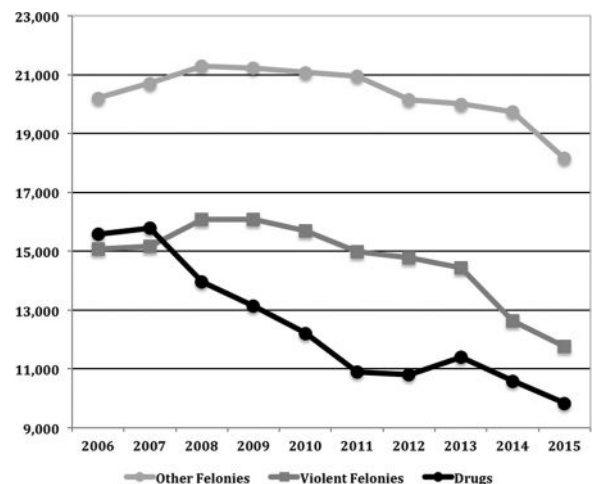
Reflecting the turn in public sentiment about the issue of drugs, sentencing practices had already begun to shift across the state before the NYPD shifted its priorities away from intensified drug enforcement, and almost two decades before Rockefeller Drug Law reform was enacted. In 1990, the newly elected Kings County (Brooklyn) District Attorney Charles J. Hynes decided that for many repeat felony drug offenders, their families and their communities would benefit more from a treatment alternative than from

Chart 5
Misdemeanor arrests in New York City, 1994–2015



(Source: New York State Division of Criminal Justice Services)

Chart 6
Indictments and court informations prosecuted in Superior Court, 2006–2015



(Source: New York State Division of Criminal Justice Services)

a mandatory prison term. Hynes struck an historic blow against the Second Felony Offender Law, agreeing to divert people with one or more prior felony convictions to treatment programs. Within a few years, district attorneys across the state were replicating Hynes' Drug Treatment Alternative-to-Prison (DTAP) program.

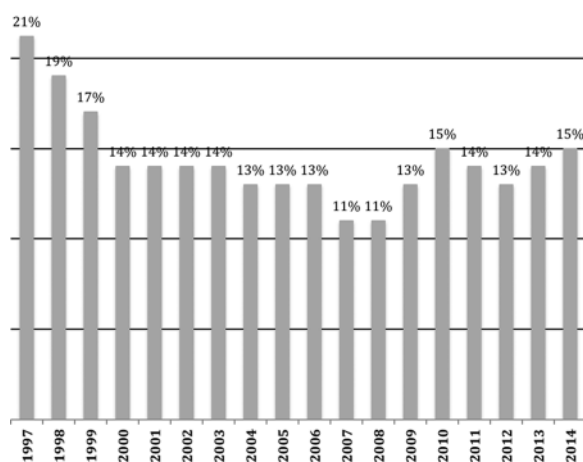
The DTAP program was evaluated by Columbia University's Center on Addiction and Substance Abuse.²¹ The CASA research team found that DTAP effectively diverted individuals from incarceration and reduced relapse and re-offense, even for those with significant criminal histories. DTAP participants were found to be 36 percent less likely to be reconvicted and 67 percent less likely to return to prison after two years than a matched comparison group.

The DTAP program joined an already robust network of ATI (alternatives to incarceration) programs that will be discussed in more detail below. The City's investments in ATI programs had been growing since the 1960s, when the Vera Institute of Justice first developed pretrial release and diversion programs that became national models, encouraging judges to send people to treatment, educational, or vocational programs instead of jail.

In the mid-1980s, New York State legislators were allocating hundreds of millions in tax dollars to expand the state's prison system, but they also began to provide substantial funding for an array of new ATI programs designed to target defendants thought to be "jail- or prison-bound" with advocacy and program interventions intended to reduce the courts' reliance on incarceration. Some charged that these programs were largely being misused by judges to "widen the net" of criminal justice control (i.e., diverting people who would probably not have been sent to jail or prison in the first place).

Yet despite a lack of conclusive evidence that ATI programs have had much impact on the state prison population, no one would argue that the network did not have a strong impact on the culture and climate of the courts—with scores of "court representatives" from nonprofit organizations and New York's criminal defense agencies actively advocating every day for noncustodial sentencing in carefully screened cases, and an array of program services ranging from behavioral health interventions, recovery, and employment services, to specialized services for women as well as for noncustodial fathers. Although ATI programs were not restricted to diverting drug cases alone, the proportion of felony drug cases that resulted in a prison sentence fell from 21 percent in 1997 to an all-time low of 11 percent in 2007 (Chart 7).

Chart 7
Percentage of disposed felony drug cases sentenced to prison, 1997–2014



(Source: New York State Department of Corrections and Community Supervision)

IV. Correctional Tools for Prison Population Management

At the state level, correctional managers were working on a right-sizing approach to managing the prison population. They set a number of policies and programs in place to gain more control of population levels as well as to encourage those in their custody to maintain good behavior and engage in constructive activities while serving time. These included:

A. Shock Incarceration

Established in 1997, participants in New York's Shock program were originally selected by correctional staff from among those age 23²² and younger who were already in prison to avoid widening the net of social control. Successful participation in substance abuse treatment resulted in early release from prison.

A 2007 report to the legislature noted that 80 percent of FY2005–2006 Shock participants had earned their GEDs. After release to parole, drug tests indicated an abstinence rate of 92 percent among Shock parolees.²³ By December 2015, 68,764 people had participated in Shock, with a success rate of 73 percent, who received early parole. Correctional officials estimated that their early releases had saved taxpayers \$1.498 billion.²⁴

B. Earned Parole Eligibility

New York's Earned Eligibility Program (EEP) was introduced in 1992 to provide people that are parole-eligible and who meet certain criteria with an "earned eligibility certificate" that enhances their chances for release at their first parole hearing. Most people who can be considered for a certificate by Department of Corrections and Community Supervision (DOCCS) staff receive one. But since 1995, when New York began to embrace truth-in-sentencing, the number of parole-eligible people in prison has declined, and many who remain parole eligible are people sent to prison years ago with very long terms to serve.

From October 2015 through March 2016, 3,941 people faced their initial parole hearing. 2,225 (57 percent) had been certified for early release. Of those certified, only 850 (38 percent) were granted parole. Of those denied a certificate, only 7 percent were granted parole.²⁵

C. Merit Time

The Merit Time Program, established in October 1997, allows people who are serving a prison term for a nonviolent, non-sex offense to earn a reduction of one-sixth off their minimum term, which qualifies them for early parole consideration. The reduction depends upon achievement of specific program goals—obtaining a GED or a vocational training certificate, completing an alcohol or drug abuse program, or performing 400 hours of service on a community work crew—provided there have been no serious disciplinary infractions.

Between the inception of Merit Time and December 2006 (the latest year that program statistics were made available), 37,914 people had earned a Merit hearing at the parole board, of whom 64 percent were released prior to

their designated parole eligibility date. On average, those granted Merit Time shaved about six months off their minimum sentence. A recidivism study found that the return-to-prison rate for Merit Time release was 31 percent, compared to 39 percent for all other releases. By 2006, DOCCS managers attribute \$384 million in savings to the Merit Time program.²⁶

D. Parole Release

While these population reduction programs were increasingly embraced by correctional managers, the state's most traditional tool for population management began to fall by the wayside. Until 1995, New York's penal code required that state prison sentences be "indeterminate," with judges sentencing people to a minimum typically set at one-third of the maximum. The parole board would review each case, with an initial hearing to be set in accordance with first eligibility at the minimum date. Good behavior could earn one-third off the maximum date. As such, unless they failed to earn "good time" credits, someone sentenced to, for example, three to nine years could count on being released after serving six years at the most.

The federal Violent Crime Control and Law Enforcement Act of 1994 allocated \$9.7 billion in prison expansion funding for states that gave assurances that new correctional policies (including truth-in-sentencing laws) would be implemented to provide "sufficiently severe punishment for violent offenders."²⁷

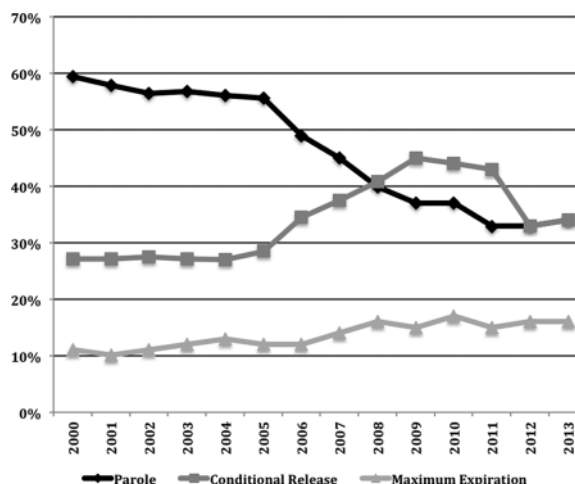
The New York State Legislature enacted a series of truth-in-sentencing laws that required determinate terms for someone convicted of a violent felony with a prior felony conviction within the previous ten years (1995), of a first-time violent felony (1998), of a drug felony (2004), and of a "non-violent sex offense" (2007). Those receiving a determinate sentence may only earn up to one-seventh time off for good behavior.

As a result, from 1995 forward, the number of people sentenced to indeterminate prison terms and therefore eligible for parole release steadily decreased. In 2000, 59 percent of those released from prison gained release by the parole authorities, while only 27 percent were released at their conditional release date. By 2008, the number of conditional releases exceeded the number of parole releases for the first time, and by 2013, only 34 percent of releases resulted from parole board decisions. That same year, 16 percent of those released from prison had "maxed-out" without any grant of "good time," a modest but steady increase from only 11 percent in 2000 (Chart 8).

Today, the bulk of those subject to indeterminate sentences are people still serving long terms for serious crimes committed prior to truth-in-sentencing laws. As the pool of parole-eligible people dwindled, the rate of parole board approvals took a nose-dive (Chart 9).

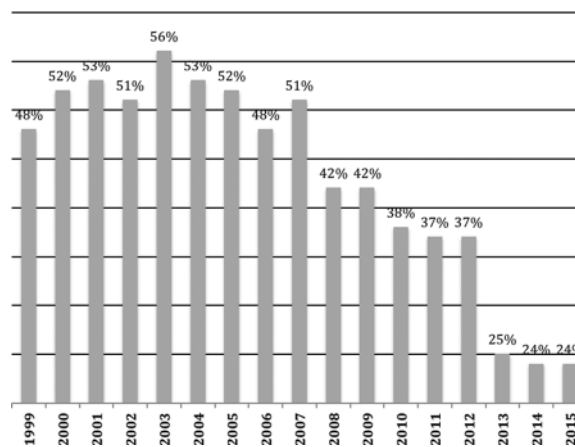
Advocates charge that the increasingly elderly parole-eligible pool of people in DOCCS prisons are being denied release purely on the basis of their conviction charges. They say that the board is not taking account of their in-prison

Chart 8
Prison release type, 2000–2013



(Source: New York State Department of Corrections and Community Supervision)

Chart 9
Percentage of parole-eligible people approved, 1999–2015



(Source: New York State Department of Corrections and Community Supervision)

behavior, their readiness for release, or their likelihood of recidivating.²⁸

V. Finally, Drug Policy Reform by Legislative Action

As described above, decades of intensifying advocacy by proponents of drug policy reform and alternatives to incarceration began to outweigh the harsh rhetoric of drug "hawks" and the "tough-on-crime" movement during the late 1990s, resulting in an unprecedented reduction in New York's state prison population. Most of that advocacy arose out of New York City, and not surprisingly, the entire decline in the state's prison population was the result of the decline in persons imprisoned emanating from New York City. Yet an entire decade would pass before legislators caught up with public sentiment, and the Rockefeller Drug Laws themselves would see substantial revision.

At the urging of Gov. Pataki, some modest reform measures were granted in 2003 and 2004 by the legislature. These included: (1) extending Merit Time credits to those serving 15–life mandatory sentences; (2) expanding the earned eligibility program from people serving a minimum sentence of six years to a minimum term of eight years; and (3) allowing people who had no prior violent felony record, and who were serving time for a nonviolent conviction, to apply for “presumptive release” after serving five-sixths of their minimum term. In 2004, a reform bill ended indeterminate sentences for drug crimes and doubled the weight thresholds that triggered the harshest mandatory prison sentences.

November 2004 saw yet stronger winds billowing the sails of drug reform in New York when a political upset in a closely watched race for District Attorney in Albany defeated the incumbent DA. David Soares, an assistant district attorney, ran against his boss on a drug reform platform. He built a political base spanning Albany’s urban core to the affluent suburbs with a bold denunciation of the Rockefeller Drug Laws. Soares’ victory galvanized drug policy reformers across the state and set many other elected DAs on edge. Soares’ campaign was backed by philanthropist George Soros, a key funder of the Drug Policy Alliance.²⁹

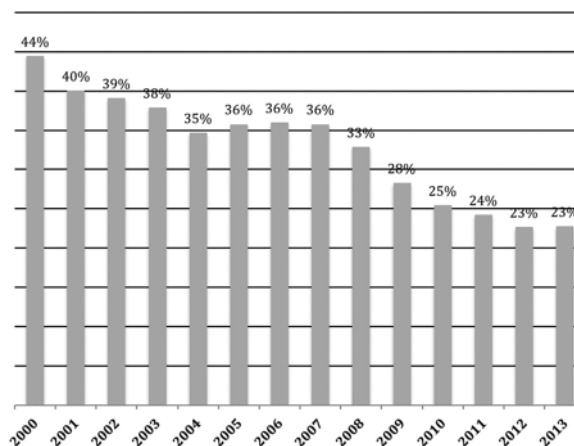
In the fall of 2008, key members of the New York State Assembly convened unprecedented joint hearings involving the combined leadership of six legislative committees for day-long sessions in both New York City and Rochester. National experts, public health practitioners, and local reform advocates alike voiced the need to establish a public health–based approach to the problem of drugs.

In January 2009, more than 300 people—health professionals, law enforcement veterans, elected officials, reform advocates, drug treatment specialists, and active drug users—gathered in New York City for a conference convened jointly by the Drug Policy Alliance and the New York Academy of Medicine to spur reform.

The Speaker of the Assembly responded with a pledge that 2009 would be the year that reform of the Rockefeller Drug Laws would be won. On April 7, 2009, New York’s Governor David Paterson signed Article 216 of the Criminal Procedure Law. Key elements of the reform included:

- Judicial discretion to place people convicted of drug offenses into treatment and to offer second chances when appropriate
- Diversion for people who commit crimes other than drug offenses because of issues stemming from substance dependence
- Diversion eligibility for people convicted of second felony offenses
- Opportunities to try community-based treatment without the threat of a longer sentence for failure
- Plea deferral options, especially for non-citizen green-card holders who would become deportable if

Chart 10
Percentage of drug admissions among all new admissions, 2000–2013



(Source: New York State Department of Corrections and Community Supervision)

they take a plea to any drug felony conviction, even if it is later withdrawn

- Opportunities for resentencing for more than 900 people who were still in prison under the longer pre-2004 indeterminate terms
- Sealing provisions that protect people who finish their sentences from employment discrimination based on the past offense
- The option to dismiss a case in the interests of justice when the accused has successfully completed a treatment program.

Along with Rockefeller Drug Law reform, New York’s legislators also strengthened DOCCS population-control valves, extending Shock eligibility, extending Merit Time to college participation, and establishing medical parole.

VI. The Impact of Drug Reform on the State Prison Population

The proportion of people admitted to serve a felony drug sentence had been declining among all new admissions since 2000, but the 2009 reform spurred a yet deeper decline (Chart 10).

The average sentence for people convicted of a drug felony also fell, along with the percentage of people serving time for a drug conviction within the overall prison population (Charts 11, 12).

In 1996 there had been 24,000 people serving a felony drug sentence in New York’s state prisons. At the end of 2014 there were less than 6,700, a breathtaking 72 percent decline.

The cumulative effect of refocusing NYPD drug enforcement priorities, the shifting drug sentencing trends in the City courts, the use of incentivized release programs at DOCCS, and the legislative reforms—including the long-fought-for 2009 Rockefeller Drug Law reform—can be

Chart 11
Average minimum sentence for people with a drug conviction, 2000–2013 (in months)

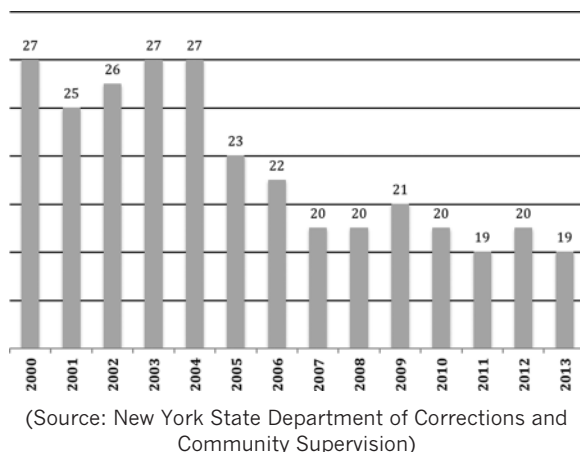
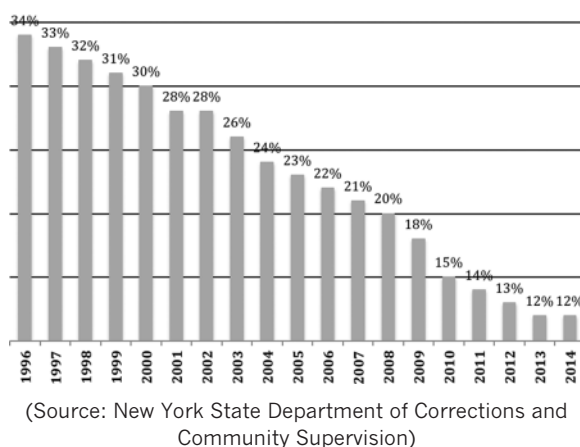


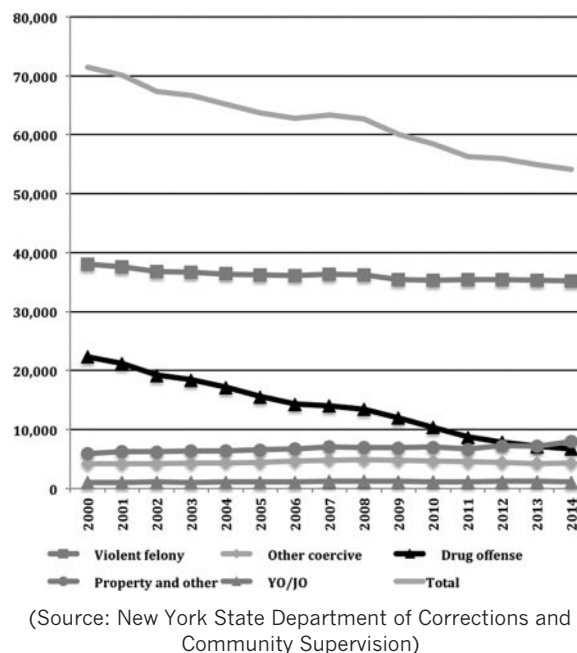
Chart 12
Percentage of people with drug convictions in New York State prisons, 1996–2014



clearly seen on Chart 13. Between 2000 and 2014, with 15,601 fewer people serving time on a drug conviction, the overall prison population level fell by 17,289.

With thousands of empty prison beds, New York's correctional managers have been able to greatly reduce their prison capacity, saving money and making the prisons safer for both correctional staff and the people they guard. During the Pataki administration, DOCCS managers deactivated 2,700 dormitory beds. After the sweeping changes to the Rockefeller Drug Laws enacted in April 2009, three small minimum security prisons were closed and annexes were shuttered at six prisons that otherwise remained in operation. The DOCCS estimate was that some \$52 million was saved over the next two years.³⁰ By 2014, DOCCS managers had closed a total of 13 prison facilities, and \$24 million in economic development money had been allocated to assist local communities affected by prison closures.³¹

Chart 13
New York State prison population, 2000–2014



VII. New York City's Use of Jail

As with the New York State prison population, the decline in New York City's jail population has been dramatic and driven by the shift in NYPD priorities along with substantial changes in courtroom decisions that have eschewed the use of jail. The degree of decarceration within the City system has sparked serious discussions among policymakers and advocates, with substantial media support, to close the notorious jail facilities on Rikers Island and relocate persons incarcerated in New York City's jails to smaller, borough-based facilities.³²

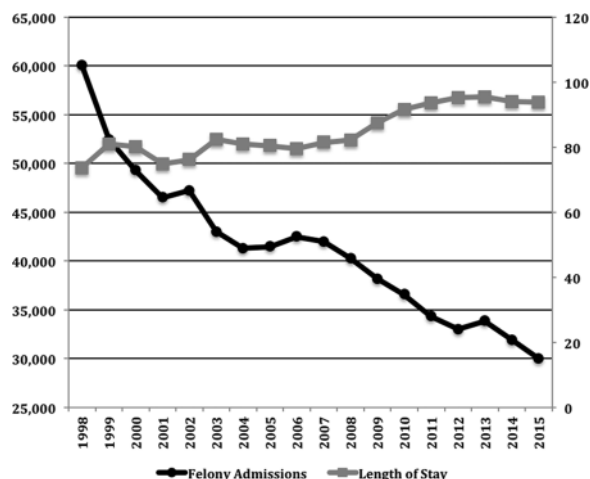
The population of the New York City Department of Correction has declined from an historic high of 21,688 in 1991 to 9,762 at the end of April 2016, a remarkable 55 percent decline. Jail population levels are determined by two factors: the number of people who enter the jail, and the amount of time they are confined until released. Since 1998,³³ the average length of stay for both felonies and misdemeanors has increased somewhat, but admissions for both offense categories have greatly decreased (Charts 14, 15).³⁴

A. Pretrial Release in New York City

Since the overwhelming majority of those in NYC Department of Correction custody are detained pretrial (87 percent as of May 26, 2016) what happens with the pretrial population has an important impact on New York City's jail population. New York City detains fewer of those arrested than most other large urban jurisdictions, and over the past decade or so, releases of defendants at arraignment have increased.

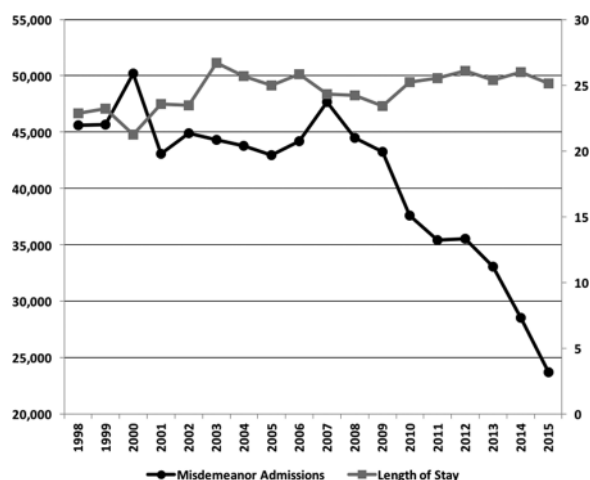
Criminal Justice Agency (CJA) staff screen and make recommendations for defendants held for arraignment in

Chart 14
Felony admissions and average days to release, 1998–2015



(Source: New York City Department of Correction)

Chart 15
Misdemeanor admissions and average days to release, 1998–2015



(Source: New York City Department of Correction)

New York City Courts, 24 hours a day, seven days a week, in all five boroughs. Founded in 1973 as the Vera Institute's Manhattan Bail Project, CJA evolved from the nation's pioneer in the use of a risk assessment instrument to advise courts about the likelihood that if released on recognizance (ROR'ed) in lieu of bail, a defendant would return to court on their next required court date.

Recent research on pretrial release shows that defendants in New York City were more likely to be released prior to case disposition (74 percent) than was the case for the 75 other largest urban areas nationally (58 percent). Non-financial release in New York City also made up a larger portion of releases (50 percent) than was the case for the other large urban areas (25 percent).³⁵

From 2004 to 2014, the percentage of persons released on their own recognizance increased.³⁶ For those

individuals recommended for release by CJA, 83 percent were ROR'ed in 2014, compared to 78 percent in 2004, and for people evaluated by CJA as medium risk, 72 percent were ROR'ed in 2004, compared to 79 percent in 2014. But arraignment judges appear to have become more liberal in general over this period, since 50 percent of those for whom CJA did *not* recommend release were released on recognizance anyway in 2014, compared to only 38 percent in this category who were ROR'ed in 2014.³⁷

A substantial majority of individuals made their court appearances as required in all recommendation categories, although lower failure-to-appear rates were associated with positive CJA recommendations. In 2014, 7 percent of defendants in both felony and non-felony cases who were recommended for release failed to appear, as did 11 percent of those evaluated as moderate risk. By comparison, defendants in 22 percent of non-felony cases who were not recommended for release failed to appear.

In addition to near-universal screening of defendants for release on their own recognizance, in 2014, CJA operated bail-expediting (BEX) programs in the four largest NYC boroughs, which assisted defendants for whom bail was set to contact relatives and friends for help in posting bail. In 2014, Mary Phillips, Deputy Director of Research at CJA, studied thousands of defendants in New York's four largest boroughs, with the following percentages making bail either in court or within two days of being detained:

- The Bronx: 26 percent of 5,150 made bail
- Brooklyn: 21 percent of 7,988 made bail
- Manhattan: 24 percent of 7,330 made bail
- Queens: 33 percent of 4,333 made bail.³⁸

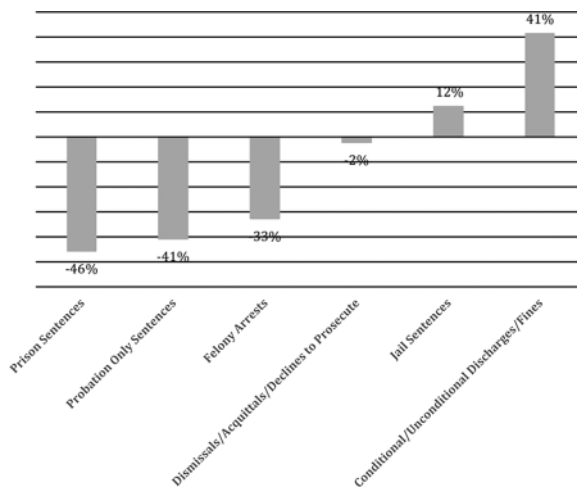
B. The Sentenced Population

In addition to the decline in felony arrests—and particularly felony drug arrests—described above, there has been a dramatic change in dispositions of persons arrested for felonies and misdemeanors in New York during this time period.

According to the New York State Division of Criminal Justice Services, felony cases fell by one-third between 1996 (125,703) and 2014 (84,505). Prison sentences declined sharply as a portion of all felony case dispositions, while jail dispositions rose slightly (Chart 16). Overall, this substantial reduction in prison commitments makes a large contribution to reducing the City's combined incarceration rate³⁹ since people committed to prison have longer lengths of stay than those committed to jail.

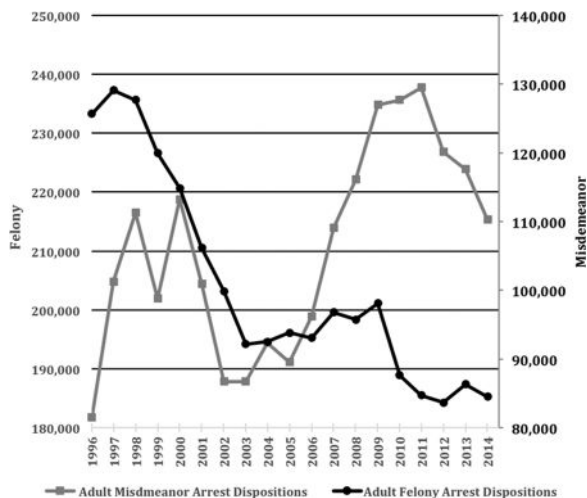
Furthermore, even though jail sentences rose as a *percent* of all felony cases disposed of, the overall *number* of jail sentences declined by 4,738 due to the 33 percent decline in felony cases disposed of by New York City Courts between 1996 and 2014. In other words, the decline in felony arrests accounted for *all* of the decline in jail commitments for felony arrests, and then some.

Chart 16
Change in arrest dispositions for felony arrestees
in New York City, 1996–2014



(Source: New York State Division of Criminal Justice Services)

Chart 17
Felony and misdemeanor arrest dispositions in
New York City, 1996–2014



(Source: New York State Division of Criminal Justice Services)

A different trend appears with the misdemeanor arrests and dispositions, although the misdemeanor trend also nets out to substantially fewer jail commitments. Misdemeanor arrests rose from 181,817 in 1996 to a peak of 237,818 in 2011 before falling to 215,352 in 2014, a net increase of 18 percent or 33,535 misdemeanor arrests (Chart 17).

But the small number of misdemeanor acquittals rose, and New York courts and prosecutors diverted, dismissed, or declined to prosecute an increasing portion of misdemeanor cases, even as misdemeanor arrests mushroomed. As such, even though there were 33,535 more misdemeanor arrests in 2014 than in 1996, because of a 34 percent

increase in dismissals, acquittals, and declinations, 6,653 fewer misdemeanor convictions were obtained in 2014 than in 1996.

Jail as a disposition for misdemeanor arrests also declined during this time period. In 1996, 25 percent of all misdemeanor cases were sentenced to jail, compared to only 20 percent in 2014. In total, despite the fact that there were 33,535 more misdemeanor arrests in 2014 than in 1996, there were 1,954 fewer cases in NYC ending in a jail sentence in 2014 than in 1996.

During this time period, jail lengths of stay for individuals with felony charges increased by 28 percent, from 74 days in 1996 to 94 days in 2013, adding nearly three weeks of incarceration for thousands of individuals.⁴⁰ According to the Mayor's Office of Criminal Justice, only 5 percent of all people discharged from Rikers Island in 2014 filled 44 percent of the jail's beds because they each spent over 270 days on Rikers waiting for disposition of their case, prompting the Mayor's office to launch an effort to reduce case processing times and to allocate \$17.8 million for pre-trial supervision programming.⁴¹ Clearly, had case processing times not increased for persons with felony charges, the declines in New York City's jail population would have been even greater.

As with state prison sentences, incarceration of persons for drug offenses led the way in reducing the jail population in New York City. From 1996 to 2016, there was a 73 percent decline in the number of people incarcerated in New York City's jails for drug offenses, which made up more than half (52 percent) of the entire jail population decline during that time period.

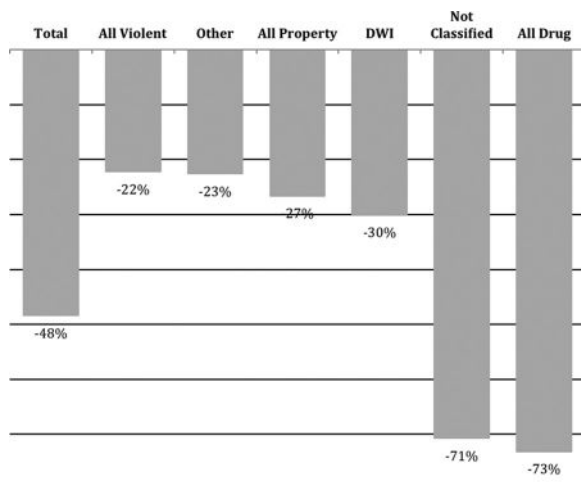
Unclassified offenses (e.g., warrant holds, violations, loitering/prostitution, and missing cases) made up only 24 percent of the decline, and people held for violent offenses accounted for only 13 percent of the decline. People incarcerated for property offenses comprised 5 percent of the decline from 1996 to 2014, and those incarcerated for driving while intoxicated comprised 6 percent of the decline (Chart 18).

Formal probation supervision can be another route to incarceration for some individuals insofar as failure to abide by conditions of probation can result in jail or, less frequently, prison terms. From 1996 to 2014 in New York City, probation sentences and the number of people on probation declined considerably, early discharges from probation increased, face-to-face supervision decreased, and probation violations were substantially reduced.

In 1996, 7 percent of felony cases and 0.7 percent of misdemeanor cases were sentenced to probation, and in 2014, those rates were 4 percent and 0.3 percent, respectively. All told, the number of people sentenced to probation declined by two-thirds from 1996 to 2014, declining from 16,285 to 5,313. An analysis by the State Division of Criminal Justice Services for this article found that the number of people on probation in New York City declined by 33 percent between 1996 and 2015, compared to a 20 percent decline in the rest of the state.

Chart 18

Change in the incarcerated population by offense type in New York City, 1996–2016



(Source: New York City Department of Correction)

In addition to these court-driven changes, the New York City Probation Department itself reduced the onerous nature of probation and probation violations. In 1996, NYC Probation reduced face-to-face supervision by initiating monthly reporting to an electronic kiosk rather than more frequent face-to-face supervision for low-risk and otherwise deserving people on probation. Further, early discharges from probation increased nearly six-fold between 2007 and 2012.⁴² A state analysis showed that only 3 percent of those discharged early from probation in 2011 were reconvicted of a felony within a year of discharge.

The Probation Department's use of violations declined significantly. Just between 2009 and 2013, probation violations declined by 45 percent.⁴³ By 2013, only 3 percent of people on probation in New York City experienced probation violations, compared to 11 percent in the rest of New York State.⁴⁴

Overall, in 2014, the number of felony and misdemeanor cases resulting in conditional and unconditional sentences and fines exceeded the number sentenced to probation, jail, and prison *combined* (Chart 19).

As such, as New York was becoming a safer city; its courts were dismissing many more cases, and relying less frequently on prison, jail, and probation, and more heavily on fines and conditional and unconditional discharges.

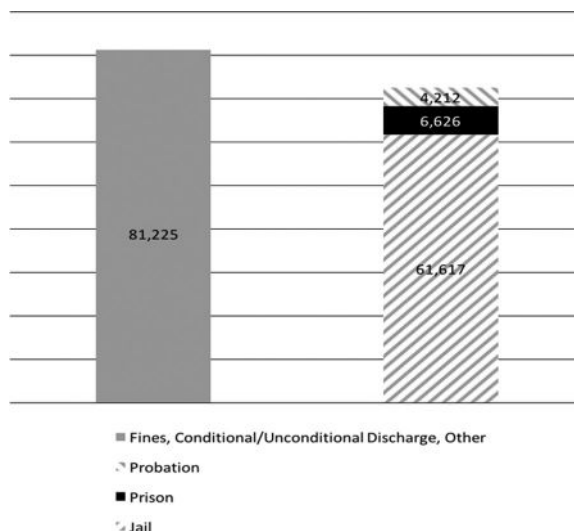
VIII. Crime and Incarceration in the Nation's Largest City

From the mid-1990s to the present day, New York City experienced a well-publicized decline in crime that Franklin Zimring has described as the "Guinness Book of World Records Crime Drop," exclaiming that the decline in crime in New York was "so dramatic we need a new way of keeping score."⁴⁵

Less well-publicized has been the City's dramatic and simultaneous decline in incarceration—a decline we've described in this paper. New York City's dramatic

Chart 19

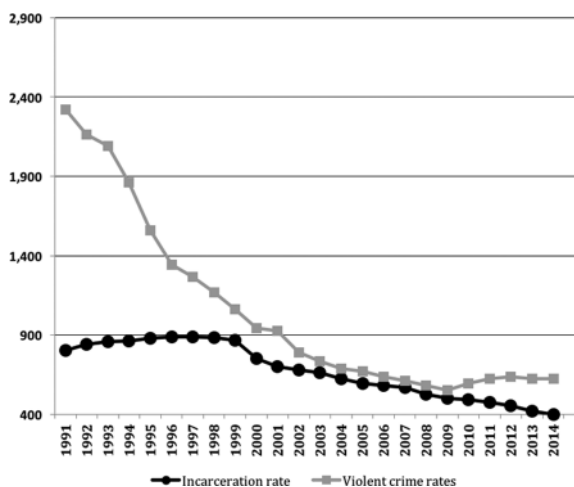
Felony and misdemeanor sentence dispositions in New York City, 2014



(Source: New York State Division of Criminal Justice Services)

Chart 20

Combined jail and prison incarceration rate and violent crime rate in New York City, per 100,000 residents, 1991–2016



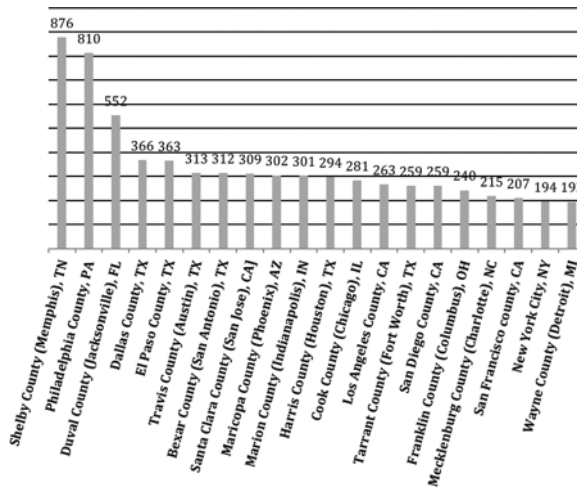
(Sources: Federal Bureau of Investigation; New York State Department of Corrections and Community Supervision; New York City Department of Correction)

combined reduction in incarceration and crime has left it as one of the safest and least incarcerated cities in the United States. And while the City's incarceration rate fell by 48 percent from 1991 to 2014, the violent crime rate fell by 73 percent (Chart 20).

Although it was not possible for the purposes of this report to ascertain jail *and* prison populations for the nation's twenty largest cities, thanks to a recent on-line source for county jail populations created by the Vera Institute of Justice, we were able to calculate the jail

Chart 21

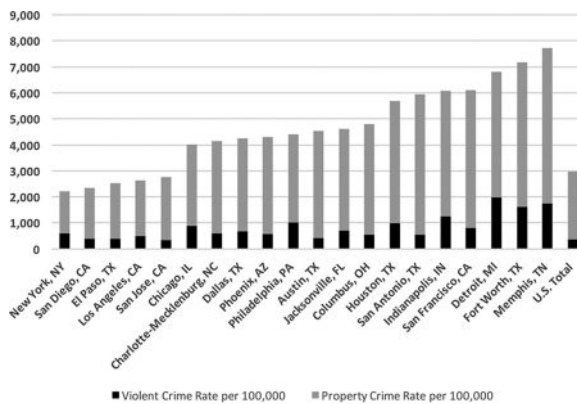
Jail incarceration rates per 100,000 residents in the nation's 20 largest cities, 2014



(Source: Vera Institute of Justice)

Chart 22

Violent and property crime rates in 20 cities and the United States as a whole, 2014



(Source: Federal Bureau of Investigation, Uniform Crime Report)

incarceration rates for the counties containing the twenty largest cities. As you can see from Chart 21, New York City has the nation's second lowest jail incarceration rate, behind only Wayne County (Detroit), Michigan.⁴⁶

Further, New York City had the lowest overall crime rate of the nation's twenty largest cities in 2014 (Chart 22).

Based on data like these, it would be hard to argue that either New York City's reduction in reliance on prison or jail sentences, or its low combined incarceration rate, are jeopardizing the public safety of the City's residents. On the contrary, while New York's incarceration rate fell by 55 percent between 1996 and 2014, its violent crime rate fell by 54 percent. This, at a time when incarceration in the rest of the country and New York State continued to rise (Chart 23).

In terms of sheer numbers, the contrast between New York City and the rest of the nation is even more dramatic.

Chart 23

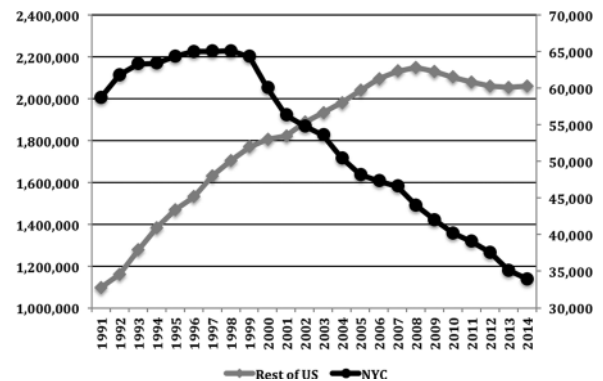
Incarceration rates of people in state prisons and local jails, per 100,000 residents, comparing New York City with the rest of the United States, 1991–2014



(Source: Bureau Justice Statistics)

Chart 24

People in state prisons and local jails, comparing New York City with the rest of the United States, 1991–2014



(Source: Bureau of Justice Statistics)

From 1991 to 2014, the City held 46 percent fewer people in jail and prison, while the rest of the nation increased the number of people behind bars by 34 percent. And although national data is not yet available for comparison, the combined prison and jail population decline for New York City reached 50 percent at the end of April 2016, down from its highest level at the end of 1998 (Chart 24).

IX. What Does It All Mean?

Inspired by the refrain from *New York, New York*, "If I can make it there, I'll make it anywhere," we believe that a number of lessons can be drawn from the New York experience with reducing prison and jail populations.

Lesson 1. A 50 percent reduction in the incarceration rate is not an unrealistic goal (and advocates can help to get

us there). Several criminal justice reform organizations and advocates like Glenn Martin of JustLeadershipUSA,⁴⁷ Van Jones, CNN Commentator and founder of #Cut50,⁴⁸ and James F. Austin of JFA Institute,⁴⁹ have urged that the U.S. prison population be reduced by 50 percent. George Soros' Open Society Foundation has granted the American Civil Liberties Union \$50 million to organize a campaign to cut U.S. prison populations by half, a grant that has helped to spur a left-right coalition to reduce mass incarceration.⁵⁰

Whereas calls to reduce America's incarceration rate by 50 percent may seem outlandish to some, our findings support the notion that a 50 percent reduction in incarceration is not an unrealistic goal, at least for large American cities. New York City's experience also points up that advocacy-driven decarceration efforts are more likely to seek and win audacious goals—like a 50 percent reduction in incarceration—than are technocratically driven approaches.

As will be discussed, it will take yet more difficult policy choices to reach a goal of a 50 percent reduction in the New York State prison population as a whole. But the momentum toward decarceration has in no way abated in the City. With sustained and vigorous campaigning by advocates to address the other drivers of incarceration, efforts by the Mayor's Office, and major funding from philanthropies like the MacArthur Foundation, we can expect to see more progress in New York City in future years.

New York City is not alone in reducing its incarceration rates while enjoying salutary impacts on crime. Over the past two decades, a third of all states have experienced prison population declines (see Chart 24). Moreover, from 2001 to 2013, juvenile incarceration rates across the United States have fallen by 53 percent. The rate of juvenile incarceration fell in all but one state, and the rates in the five largest states fell by nearly two-thirds during that time period.⁵¹

Lesson 2. Less can be more when it comes to incarceration and supervision. During this period of sharply declining crime and incarceration in New York City, New York's judges, prosecutors and probation officials made less use of prison, jail, and probation while increasing their use of pretrial release, dismissals, adjournments in contemplation of dismissal, conditional and unconditional discharges, and fines—all sanctions whose connection with incarceration is attenuated. In a national criminal justice system awash in punishment and control during this time period, the de-escalation of New York's system stands out as something for other jurisdictions to consider and for researchers to delve more deeply into.

Not only are 2.2 million people in prison and jail in America, but 4.7 million people—one in 54 adults—are on probation or parole. Designed originally as either a front-end alternative to incarceration (probation) or a back-end release valve for overcrowding (parole), community supervision all too often serves as a trip wire to incarcerate those under supervision for trivial acts or technical, non-criminal violations.⁵² Indeed, about one-third of prison admissions

are a result of parole violations,⁵³ and in 2004, 330,000 people on probation were revoked for non-compliance.⁵⁴

In 2014 in New York City, 32,696 (39 percent) of the 84,505 people arrested for felonies were acquitted, had their cases dismissed, or were declined for prosecution, and another 21,752 (26 percent) received fines and conditional or unconditional discharges. By contrast, 18,159 (21 percent) were sentenced to jail, 6,442 (8 percent) were sentenced to prison, and 3,652 (4 percent) were sentenced to probation. Dismissals, acquittals, declinations, fines, and conditional/unconditional discharges were used almost twice as frequently as prison, jail, and probation, combined.

Research has found that providing services and supervision to people who present a low risk of reoffending not only wastes resources but can increase the likelihood of rearrest, as informal forms of social attachment and control are replaced by less effective government controls and supervision.⁵⁵ New York policy makers may have discovered that a justice system that reduces incarceration and supervision in favor of informal, less intrusive dispositions and community-based programs (discussed next) addresses public safety in a less dehumanizing and more effective manner.

Lesson 3. Programs may be having an impact, but they need to be evaluated. Harder to document numerically than the impact of changes in arrests, dismissals, and sentencing is the role played by community-based programs designed to support justice-involved individuals and/or divert them from incarceration. New York City has a wide array of alternatives to incarceration, funded by federal, state, local, and philanthropic dollars. Indeed, in FY2015, the state and city budgets for New York City's array of alternatives to incarceration amounted to \$12 million and \$11 million, respectively. The City also spent an additional \$18 million to fund the Criminal Justice Agency.

Although some research has found that some of New York City's alternative programs have had salutary impacts on recidivism vs. matched jail inmates⁵⁶ and have diverted prison-bound defendants,⁵⁷ no comprehensive, systemic analysis exists on the impact of the City's impressive array of alternative programs on crime and incarceration. But even if they did reduce crime and the likelihood of incarceration, most of those programs existed when the incarceration rates were much higher as well, so it is difficult to tease out their impact on the City's declining incarceration rate. Clearly, this is an area in need of further study.

It is also possible that this robust program environment helped to support formerly incarcerated persons so that crime rates did not rise as incarceration rates declined. It is also plausible that the combination of advocacy, retail stakeholder education, and service provision that these non-profit organizations engaged in influenced key decision makers like judges, prosecutors, and probation authorities, to make more parsimonious use of incarceration. Austin and Jacobson⁵⁸ suggest that this network of programs, which existed in New York City but are neither as ubiquitous nor as focused on diverting people from incarceration

statewide, may help explain why commitments to state prison fell in the City but not in the rest of New York State.

Finally, it is common for management staff from these programs to move back and forth between high-level government positions, spreading their influence in the halls of power. Upper managers and/or board members of CASES, the Center for Community Alternatives, the Center for Court Innovation, the Center for Economic Opportunity, the Fortune Society, and the Vera Institute of Justice have served in key positions in City Hall at the Department of Budget and in the Mayor's Office of Operations, and as Deputy Mayor, in addition to serving as Correction Commissioners and Probation Commissioners, and as Criminal Justice Coordinator for New York City during the time period covered by this essay.

X. Conclusion

If one were to characterize briefly the New York experience as distinct from the justice reinvestment strategy described by Fabelo and Thompson, one might say that New York's unprecedented reduction in reliance on incarceration has been a bottom-up, advocacy-driven, community-focused strategy, as opposed to their top-down, technocratic, elite-consensus approach. In New York, public officials and policy makers have been relentlessly pressured by vigorous demands from advocates, organizers, and activists, who have also worked tirelessly to educate the public about the need for a more humane and effective criminal justice system. And some of those same advocates traveled in and out of the corridors of power, influencing the City's system to make more parsimonious use of incarceration.

The experiences in California and New Jersey suggest that a determined drug policy reform campaign is just one effective arrow in the decarceration quiver. Strategic use of litigation to spur a long-overdue devolution of correctional responsibilities and costs to local authorities, or just to wake up a slumbering parole board, can be highly effective. In states where ballot measures and referenda are available, they can be employed to make end-runs around obstinate elected officials, provided they are accompanied by the sophisticated, adequately funded political campaigns that have succeeded in California.

New York City, New Jersey, and California have made impressive progress toward reversing mass incarceration. These three states have come to lead the nation in terms of reducing reliance on incarceration, but each state has accomplished this distinction using different decarceration strategies over different time frames. What they all share in common is that they won large reductions that corresponded with better-than-average declines in crime, proving that the level of public safety actually being provided by mass incarceration may indeed be, as the National Academy of Sciences' National Research Council has concluded, "highly uncertain."⁵⁹

As states and localities look to downsize incarceration, they may also need to bolster their community-based

services, supports, and opportunities to successfully absorb people returning to communities from jail and prison, as well as to increase confidence among court officials and other system stakeholders that locking them up in the first place may be avoided.

We hope that people in states where there is still plenty of "low-hanging fruit" (e.g., people sentenced to jail or prison for low-level drug and property crimes, or violation of the requirements of community supervision) will find encouragement in these three states' accomplishments to move more boldly along this trajectory. Our view is that, judging from what has been accomplished so far in the leading states, the necessary elements for success have been bold reform agendas, organizational moxie, and powerful public engagement.

But as enormous challenges remain, we look to the three leading states to tackle yet more ambitious agendas. Our prisons have become mental health institutions by default. Sentences for people convicted of violent offenses are grossly excessive, compared to such sentences in our nation's history and in other well-developed democracies. Our zeal for mandatory sentencing enhancements, "truth in sentencing," and "three strikes" sloganeering must give way to permit greater judicial discretion in dealing with defendants as individuals. And we must foster a realization among the public that if the goal is public safety, long prison terms are far more costly and generally less effective than treatment interventions.

These problems will not lend themselves easily to technocratic top-down solutions. They will take years of bottom-up advocacy, organizing, and public engagement to effect systemic change and promote more effective and humane solutions. But we are confident that the states already in the lead will continue to struggle with these challenges.

Notes

* The authors would like to thank the following people for providing insights and data for this article: David Aziz, Director of Research, New York State Department of Corrections and Community Supervision; Reagan Daly, Associate Research Director, Institute for State and Local Governance, City University of New York; Brian Leung, Juvenile Justice Planner, New York City Mayor's Office of Criminal Justice; Freda Solomon, Senior Research Fellow, New York Criminal Justice Agency; and Eric Sorenson, Director of Population Research, NYC Department of Correction.

¹ Pervaiz Shallwant & Mark Morales, *NYC Officials Tout New Low in Crime, but Homicide, Rape, Robbery Rise*, Wall St. J., Jan. 4, 2016.

² Franklin Zimring, *How New York Beat Crime*, Scientific American, Aug. 1, 2011.

³ Both crime and incarceration have continued to decline in New York City to the present day, but 2014 is the most recent time period for which national comparisons are possible. The FBI Uniform Crime Reports indexes crimes in two categories: violent crimes (aggravated assault, forcible rape, murder, robbery) and property crimes (arson, burglary, larceny-theft, motor vehicle theft).

⁴ Tony Fabelo & Michael Thompson, *Reducing Incarceration Rates: When Science Meets Political Realities*, Issues in

- Science and Technology (Fall 2015), available at <http://issues.org/32-1/reducing-incarceration-rates-when-science-meets-political-realities/>.
- James Austin, Eric Cadora, Todd Clear, Kara Dansky, Judith Greene, Vanita Gupta, Marc Mauer, Nicole Porter, Susan Tucker & Malcolm Young, *Ending Mass Incarceration: Charting a New Justice Reinvestment* (2013), available at <http://www.justicestrategies.net/publications/2013/ending-mass-incarceration-charting-new-justice-reinvestment>.
- Fabelo & Thompson, *supra* note 4.
- Id.*
- By contrast, the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative (JDAI), with its robust emphasis on juvenile detention population declines, is an example of an "insider" initiative that has achieved measurable juvenile detention population reductions in jurisdictions throughout the country. See Chief Justice Earl Warren Institute on Law and Social Policy, University of California, *Jdai Sites and States—An Evaluation of the Juvenile Detention Alternatives Initiative: Jdai Sites Compared to Home State Totals* (2012). JDAI focuses on juvenile pretrial populations, which are less influenced by the kind of penal law restrictions, like mandatory minimums and truth-in-sentencing laws, that contribute to adult prison population growth. Last year, the MacArthur Foundation launched its Safety and Justice Challenge to reduce jail incarceration rates also with a strong emphasis on reducing incarcerated populations by working with governmental stakeholders—an initiative that is too early in its implementation to assess.
- Allen J. Beck, U.S. Dep't of Justice, *Prisoners in 1999* (2000), available at <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=928>.
- Lynn Zimmer, *Proactive Policing Against Street-Level Drug Trafficking*, 9 Am. J. Police 43 (1990), available at http://www.popcenter.org/responses/police_crackdowns/pdfs/zimmer_1990.pdf.
- State of New York, Division of Criminal Justice Services, *New York State Felony Drug Arrest, Indictment, and Conviction Trends 1973–2008* (2010), available at www.criminaljustice.ny.gov/pio/annualreport/baseline_trends_report.pdf.
- Mary Beth Pfeiffer, *Parole Denials Negate Crime Drop*, Poughkeepsie J., Nov. 16, 2000.
- Franklin E. Zimring, *The City that Became Safe: New York's Lessons for Urban Crime and Its Control* (2011).
- Holly Catina, *Politics of Drug Reform*, N.Y. Times, May 26, 1999.
- Zimring, *supra* note 13.
- Id.* at 116.
- Id.*
- Judith A. Greene, *Zero Tolerance: A Case Study of Police Policies and Practices in New York City*, 45 Crime & Delinq. 171 (1999).
- Queens College Professor Harry Levine has compiled marijuana arrest data since 1997. His analysis is available at <http://qcpages.qc.cuny.edu/~hlevine/>.
- In New York a felony may be prosecuted pursuant to the action of a grand jury or by superior court information (SCI), which is a written accusation by a district attorney filed in a superior court. An SCI has the same force and effect as a felony indictment. See NY Criminal Procedure Law § 200.15, <http://codes.findlaw.com/ny/criminal-procedure-law/cpl-sect-200-15.html#sthash.LzEOJ2HP.dpuf>.

Data for indictments and FSIs earlier than 2006 is not available from the New York State Division of Criminal Justice Services.
- National Center on Addiction and Substance Abuse at Columbia University, *Crossing the Bridge: An Evaluation of the Drug Treatment Alternative-to-Prison (DTAP) Program* (2003), available at <http://www.centeronaddiction.org/addiction-research/reports/crossing-bridge-evaluation-drug-treatment-alternative-prison-dtap-program>.
- Over the ensuing twelve years, the eligibility age was raised to 49 in three stages.
- State of New York, Dep't of Corrections & Community Supervision, *Shock Incarceration 2007 Legislative Report* (2007), available at http://www.doccs.ny.gov/Research/Reports/2007/Shock_2007.pdf; State of New York, Dep't of Corrections & Community Supervision, *Impact of 2009 Drug Law Reform* (2010), available at <http://www.doccs.ny.gov/Research/Reports/2010/DrugLawReformShock.pdf>.
- Email communication from David Aziz, Director of Research at DOCCS, dated June 24, 2016.
- State of New York, Dep't of Corrections & Community Supervision, *Earned Eligibility Program Summary Semiannual Report: October 2015–march 2016* (2016), available at http://www.doccs.ny.gov/Research/Reports/2016/EEP_Report_Oct15-Mar16.pdf.
- State of New York, Dep't of Corrections & Community Supervision, *Merit Time Program Summary, October 1997–December 2006* (2007).
- H.R. 3355, 103rd Cong. (1993–1994), <http://thomas.loc.gov/cgi-bin/query/z?c103:H.R.3355.ENR>.
- Correctional Association of New York, *The Elderly and Aging in Prison*, http://www.correctionalassociation.org/resource/the-elderly-and-aging-in-prison#_edn4.
- N.Y. Judge Slaps Soros-Backed Party*, United Press Int'l, Oct. 15, 2004.
- State of New York, Dep't of Corrections & Community Supervision, *Fact Sheet: 2009 Prison Closures*, <http://www.doccs.ny.gov/FactSheets/PrisonClosure09.html>.
- State of New York, Dep't of Corrections & Community Supervision, *Press Release: Department of Corrections Details the State's Plan to Right-Size the New York's Prison System*, Feb. 5, 2014, http://www.doccs.ny.gov/PressRel/2014/Budget_Testimony_2014-15.html.
- Neil Barsky, *Shut Down Rikers Island*, N.Y. Times, July 17, 2015.
- This is the time for which length of stay data is available.
- These population totals include, in addition to felonies and misdemeanors, a variety of other categories (people jailed for violations or held on bench warrants, etc.). Length-of-stay data for each category were not available.
- Mary T. Phillips, Criminal Justice Agency, *A Decade of Bail Research in New York City* (2012).
- CJA's recommendation process changed in 2003 so only data from then until 2014, the most recent year available, are reported here. Mary T. Phillips, Russell F. Ferri, & Raymond P. Caliguire, *Criminal Justice Agency, Annual Report 2014* (2016).
- People interviewed by CJA staff generally fall into three recommendation categories depending on their risk score: Recommended for ROR (low risk); Moderate Risk for ROR; Not Recommended for ROR (high risk). Mary T. Phillips & Raymond P. Caliguire, *Criminal Justice Agency, Annual Report 2004* (2006); Phillips, Ferri, & Caliguire, *supra* note 36.
- Phillips, Ferri, & Caliguire, *supra* note 36.
- The combined incarceration rate is the rate at which people are in the custody of the City's jail complex, combined with the rate at which people are serving sentences imposed by City judges in the custody of the state DOCCS.
- These data are for individuals jailed both pretrial and post-conviction. Lengths of stay for persons with misdemeanor charges increased by 0.8 days, or 0.03 percent. Combined lengths of stay for those with felony and misdemeanor charges rose from 53 days to 55 days.

- ⁴¹ New York City, Office of the Mayor, *Mayor de Blasio Announces \$17.8 Million to Reduce Unnecessary Jail Time for People Waiting for Trial*, July 8, 2015.
- ⁴² New York City, Department of Probation, *Do More Good: A Progress Report from the Nyc Department of Probation* (2014).
- ⁴³ *Id.*
- ⁴⁴ State of New York, Office of Probation and Correctional Alternatives, *State Probation Plan Data Summary* (2013).
- ⁴⁵ Joe Domanick, *The New York "Miracle,"* *The Crime Report*, Oct. 16, 2011.
- ⁴⁶ Whereas New York is city of 8.4 million made up of five urban counties, Wayne County is a county of 1.8 million population made up of urban and suburban areas, of which Detroit accounted for 688,701 in 2013. Suburban areas tend to have lower crime and incarceration rates.
- ⁴⁷ See <https://www.justleadershipusa.org/>.
- ⁴⁸ See <http://www.cut50.org/>.
- ⁴⁹ James F. Austin, *Reducing America's Correctional Populations: A Strategic Plan*, 12 Just. Res. & Pol'y 1 (2010).
- ⁵⁰ Erik Eckholm, A.C.L.U. in \$50 Million Push to Reduce Jail Sentences, *N.Y. Times*, Nov. 6, 2014.
- ⁵¹ Pew Charitable Trusts, *Juvenile Commitment Rate Drops 53%*, November 9, 2015, <http://www.pewtrusts.org/en/multimedia/data-visualizations/2015/juvenile-commitment-rate-drops-53-percent>.
- ⁵² Ronald P. Corbett, Jr. *The Burdens of Leniency: The Changing Face of Probation*, 99 U. Minn. L. Rev. 1697 (2015).
- ⁵³ P.M. Guerino et al., U.S. Dep't of Justice, prisoners in 2010 (2011), available at <http://www.bjs.gov/content/pub/pdf/p10.pdf>.
- ⁵⁴ Pew Center on the States, *When Offenders Break the Rules: Smart Responses to Parole and Probation Violations 3* (Nov. 2007), available at http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2007/when20offenders20break20the20rulespdf.pdf.
- ⁵⁵ Harvard Kennedy School Program in Criminal Justice, Executive Session on Community Corrections, Consensus Paper (forthcoming).
- ⁵⁶ Juka Savolainen, Criminal Justice Agency, *The Impact of Felony Ati Programs on Recidivism* (2003).
- ⁵⁷ Mary T. Phillips, Criminal Justice Agency, *Estimating Jail Displacement for Alternative-to-Incarceration Programs in New York City* (2002).
- ⁵⁸ James F. Austin & Michael Jacobson, Brennan Center for Justice, *How New York City Reduced Mass Incarceration: A Model for Change?* (2013).
- ⁵⁹ Comm. on Causes and Consequences of High Rates of Incarceration, Nat'l Research Council of the Nat'l Academies, *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (2014).