Testing the Cost Savings of Judicial Diversion

Final Report

Submitted to:

- The New York State Unified Court System

Submitted by:

- NPC Research
  Portland, Oregon
- Center for Court Innovation
  New York, New York

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EXECUTIVE SUMMARY

In April 2009, New York State passed Rockefeller Drug Law Reform. The law eliminated mandatory prison sentences for most felony drug offenders. In addition, through a procedure defined as judicial diversion and codified in Article 216 of the criminal procedure law, the law provided judges with discretion to link an expanded array of felony-level drug and property offenders to treatment, primarily through specialized drug courts. Previously, judges lacked this discretion, making court-ordered treatment possible only with the consent of the prosecutor.

In passing drug law reform, policymakers intended for the use of imprisonment to decrease, and the use of court-ordered treatment to increase, among the target offenders. However, the new law merely gave judges newfound discretion, but did not require them to act one way or another. Concerning judicial diversion in particular, it remained possible that not all judges, and not all county court systems, would avail themselves of the opportunity provided by the new law to link more drug and property offenders to treatment. To understand the true impact of judicial diversion, it is therefore necessary to examine the actual results that ensued across the state.

With funding from the American Recovery and Reinvestment Act of 2009, NPC Research and the Center for Court Innovation sought to examine the statewide impact of judicial diversion. Specifically, we sought to answer the following three questions:

1. To what extent did court-ordered treatment participation actually increase in the year after the reform law was implemented as compared with the previous year?
2. To what extent did sentences differ between judicial diversion participants who enrolled after the reform law was implemented and otherwise similar defendants who received conventional sentences in the previous year? Specifically, did judicial diversion reform contribute to a reduction in the use of incarceration?
3. What are the costs and savings associated with judicial diversion as compared with conventional case processing and sentencing practices that were employed with similar defendants before the reform law was implemented?

Methodology

To determine the impact of the reform law on treatment participation, we compared such participation in the year before Article 216 went into effect (October 7, 2008, to October 6, 2009) and the year after it went into effect (October 7, 2009, to October 6, 2010). As background, the state's system of court-ordered treatment included 92 drug courts spread across 61 of the state's 62 counties; prosecutor-run Drug Treatment Alternatives-to-Prison (DTAP) programs in approximately 10 counties; specialized "judicial diversion parts" established in direct response to Article 216 legislation in approximately 11 counties; and additional treatment orders devised by individual judges and attorneys on a case-by-case basis. The data we had available included participants in all drug courts statewide, in the Brooklyn DTAP program, and in most of the judicial diversion parts. Based on the results of a policy survey sent to court administrators in all 62 counties, as well as additional knowledge gained from other sources, it is clear that our data successfully captured the vast majority of treatment participants.

The analysis itself was straightforward: We compared the change in treatment participation in the years before and after Article 216 implementation statewide, in each of four regions (New York City, suburbs, mid-sized cities, and upstate rural/semi-rural areas), and in each individual county. We also compared the change among different types of Article 216-eligible offenders: those charged with drug sales, drug possession, and property offenses. Finally, we analyzed the psychosocial characteristics of treatment participants to determine whether Article 216 made treatment available to new types of offenders who were previously excluded.

We then compared the sentencing outcomes between treatment participants under Article 216 and otherwise similar defendants who did not enroll in treatment. Specifically, we constructed a sample of treatment participants in the year after implementation. Utilizing propensity-score matching techniques, we matched these individuals to defendants with similar characteristics who did not receive treatment in the pre-implementation year. We then compared the samples on case dispositions, sentences, and days served in prison, jail, probation, and parole.

For the cost-benefit analysis, we extrapolated to the entire state results obtained through an in-depth comparison of costs associated with court-ordered treatment and conventional case processing in 10 counties collectively representing each key region: New York City (the Bronx and Brooklyn), suburban New York City (Nassau and Suffolk); mid-sized upstate counties (Monroe and Onondaga, which respectively house the county seats of Rochester and Syracuse); and rural/semi-rural upstate areas (Broome, Orange, Oswego, and Saratoga counties).

There were three main parts to the cost evaluation. The first part involved calculating the program costs of judicial diversion at 10 sites throughout the state, such as the costs associated with drug court hearings, treatment, drug testing, and jail sanctions. The second part involved determining the differential costs between court-ordered treatment cases in the post-legislation period and similar non-treatment cases in the pre-legislation period, such as the difference in costs that might result if one set of cases were sentenced to prison or probation for longer periods on average than the other. The third part of the cost evaluation involved estimating the longer term cost impact of judicial diversion on the criminal justice system, using the outcome findings from Cissner et al. (2013), which compared the 3-year recidivism results of 3,288 judicial diversion-eligible drug court participants to 3,141 similar comparison group offenders. These recidivism results included rearrests, days on probation, days in jail and days in prison. The costs associated with these recidivism events for those on judicial diversion were compared to the costs for the non-judicial diversion comparison group over the three year period.

The cost approach utilized in this research is called Transactional and Institutional Cost Analysis (TICA). The TICA approach views an individual's interaction with publicly funded agencies (e.g., through judicial status hearings, court-administered drug tests, treatment session, or case manager contacts) as a set of *transactions* in which the individual utilizes resources contributed from multiple agencies. (For example, a judicial status hearing involves the use of resources from the court, prosecutor, and defense agency, and potentially other agencies depending on who is present during the hearing.) Transactions are those points within a system where resources are consumed and/or change hands. In addition, in order to maximize the study's benefit to policymakers, a "cost-to-taxpayer" approach was used for this analysis. This simply means that costs were only considered that are ultimately absorbed by taxpayer-funded agencies.

Notably, marginal costs are not used in cost calculations performed under the TICA approach. All costs reported are fully loaded, total costs. Thus, the TICA approach does not assume that fixed costs, such as for building maintenance, utilities, salaries, or other overhead expenses, are

off-limits. Those costs are still borne by taxpayers and can change over time or be deployed for different purposes.

The TICA approach also does not make assumptions as to whether or not government agencies will change their budgets in ways that enable savings to be literally realized. All reported "savings" represent "opportunity resources" that are newly available to government actors to deploy as they choose. Rather than assume that direct dollars will be immediately saved (e.g., through reductions in the following year's budget), the TICA approach fully quantifies all taxpayer-funded resources (marginal or fixed)—such as a jail bed, treatment slot, or time spent in a court hearing—that are newly made available for a different offender or a different purpose.

Results

All results exclusively concern the target population—New York State defendants arraigned on felony-level drug or property charges specified in Article 216. Misdemeanants or other types of felony defendants may have also received treatment, but they are not the focus of the current study. Comparisons are between defendants processed in the respective one-year periods before and after October 7, 2009, when Article 216 went into effect, with the sole exception of recidivism costs, which are generated as described above using data in Cissner et al. (2013).

Impact on Treatment Enrollment

- Statewide Impact: Court-ordered treatment enrollment increased by 77% from 1,801 to 3,192 participants—representing 1,391 additional treatment participants. Ongoing tracking by the New York State Division of Criminal Justice Services (DCJS) indicates that treatment enrollment declined by about 20% in the second and third years post-implementation, while remaining higher than in the pre-implementation year. All projected benefits of judicial diversion hinge on increasing treatment volume. Accordingly, net benefits may vary from year to year depending on whether gains in treatment volume can be sustained or increased in the future.
- Charge Differences: Court-ordered treatment enrollment increased by 122% (from 641 to 1,426 participants) among those charged with illegal drug sales. The increase was smaller among those charged with illegal drug possession (46%) or property offenses (51%).
- Geographic Differences: The change in treatment enrollment varied widely by region and county, indicating that the precise impact of Article 216 depended largely on local practice. The greatest increase in enrollment was in the NYC suburban region. This region saw a 728% increase—mostly stemming from a change from 7 to 326 participants in Nassau County (which did not have a felony-level drug court prior to legislation) and 30 to 215 participants in Suffolk County. Of the state's 62 counties, enrollment increased by more than 200% in 13 counties and by 1% to 200% in 25 counties; whereas enrollment remained the same in 6 and decreased in 18 counties.
- Treatment Population: Article 216 made treatment available to a higher risk/higher need population. As compared with the pre-implementation period, treatment participants after Article 216 averaged a longer and more serious drug use history, a more extensive prior criminal history, and more serious charges on the current case. These trends may be interpreted as a positive development, in light of research showing that a high-risk/high-need population is most suited for intensive interventions such as drug courts (e.g., Andrews & Bonta, 2010; Lowenkamp, Latessa, & Holsinger, 2006; Marlowe, 2012).

IMPACT ON SENTENCING OUTCOMES

- Case Dispositions: Whereas 100% of the pre-Article 216 sample was convicted of a crime, 81% of the judicial diversion sample was convicted, since some diversion graduates have their criminal case dismissed. Charge dismissals were significantly more common in New York City (29%) than elsewhere (10% or less).
- Sentencing Outcomes: Judicial diversion participants were slightly more likely than the comparison group to receive prison time (23% vs. 20%). Judicial diversion participants were less likely than the comparison group to be sentenced to jail (11% vs. 27%), a split jail/probation sentence (2% vs. 8%), or straight probation (10% vs. 17%).
- Incarceration and Community Supervision: The samples did not differ in their average number of days serving prison sentences, but the judicial diversion sample averaged significantly fewer days in jail (27.88 vs. 59.78) and on probation (12.85 vs. 28.69).
- Drug vs. Property Offenders: Article 216 produced relatively better sentencing outcomes for drug than property offenders. Among those facing drug charges, judicial diversion participants averaged significantly fewer days in jail, on probation, and on parole than the comparison group (the difference in prison time was not statistically significant). By contrast, among those facing property charges, judicial diversion participants averaged significantly more days than the comparison sample in prison and on parole.
- Regional Differences: The New York City and suburban regions produced similar effects as the state overall. In the upstate region, judicial diversion participants averaged significantly more days on parole than the comparison sample, and time in jail or prison or on probation did not differ in either direction.

IMPACT ON COSTS AND SAVINGS

- Judicial Diversion Program and Case Processing Costs: The average cost per participant of the judicial diversion/drug court programs was $18,533. Treatment comprised 77% of total program costs per participant. Other significant costs were for judicial status hearings (10%) and case management (8%). Excluding treatment and detoxification, all other program transactions totaled only $3,674 per participant. For offenders in the comparison group, the average cost of processing a felony case was $13,347 per offender. The difference in program and case processing costs between judicial diversion and comparison cases is $5,186, with judicial diversion costing more than conventional case processing by that amount.
- Cost Due to the Sentence for the Instant Case: On the instant case that led either to judicial diversion or comparison group participation, judicial diversion offenders used fewer criminal justice system resources, with fewer days on probation, days in jail, and days in prison. The cost of the sentence for the instant case pre-legislation was $36,398 while the cost post-legislation was $31,374. The difference in cost between the pre-legislation comparison group cases and the post-legislation judicial diversion cases is the cost savings, which came to **$5,564** resources saved per offender.[1]

[1] As discussed previously, some savings take the form of "opportunity resources." That is, rather than direct dollars saved, the benefit is in having a resource, such as a jail bed, available for a different offender.

- Recidivism Costs: The total cost of 3-year recidivism, including re-arrests, new court cases, probation, parole, jail days, and prison days for those in judicial diversion per participant was $19,589, while the cost per comparison group individual was $25,787. The difference between the two groups represents a benefit of $6,198 per participant. When victimizations were included, the difference rises to a benefit of $11,083 per participant. If these outcomes are projected to 5 years the benefits come to **$10,330** per participant when not including victimizations or **$18,470** when they are included.
- Net Cost Savings per Offender: When computing the difference between the net investment costs required by judicial diversion ($5,186) and the outcome savings that judicial diversion produces over 5 years ($10,330), judicial diversion yields a net benefit of **$5,144** per offender. The resulting cost-benefit ratio comes to **1:2**. That is, for every taxpayer dollar invested in the program, there is a $2 return after 5 years from case start. When victimization costs are included, the net benefit is **$13,284** per offender, and the cost-benefit ratio increases to a return of $3.56 on the dollar. This ratio increases over time as the investment is repaid and the savings continue to accumulate. At 10 years the cost-benefit ratio rises to **1:4** (for a net benefit of $15,474 per offender) and, including victimization costs, the ratio rises to **1:7** (for a net benefit of $31,754 per offender). The net savings computed in this analysis are savings in criminal justice system resources only.[2] As previously discussed, these savings are "opportunity resources"—taxpayer dollars that are freed up for a different purpose; any efforts to impute some or all of these "savings" to the bottom-line budgets of different public sector agencies, or to assume that such budgets will experience a net reduction, would be speculative. The resulting actions taken by policymakers influence how opportunity resources will be reallocated.
- Savings by Agency: The analysis distinguished costs and savings for different criminal justice agencies and for treatment. Based on the above average net resources saved over 5 years (not including victimizations), the Department of Correctional Services (i.e., state prison) saw the greatest net benefit ($8,740) per participant, followed by county jails ($4,318), district attorneys ($3,990), and defense attorneys ($2,577). The treatment provided to judicial diversion participants produced a net cost of $14,248. Finally, law enforcement, probation, and the state court system all saw very little net cost or saving.
- System Savings: When the projected 5-year net taxpayer resources saved are multiplied by the number of additional offenders who were sentenced to judicial diversion in the first year after Article 216 was enacted (N=1,391), as compared with pre-implementation court-ordered treatment volume for similar offenders, the net benefit in taxpayer resources saved per year comes to over **$7 million ($7,155,304)**. When including victimization savings as well, the net benefit in taxpayer resources saved per year comes to over $18 million ($18,478,044). These benefits are highly dependent on judicial diversion case volume and may be greater or smaller in future years, depending on whether case volume decreases or increases. For example, the average 20% reduction in

[2] If other system costs, such as health care and child welfare were included, studies have shown that an even higher return on investment can be expected, up to $10 saved per $1 invested in the program (Finigan, 1998). In addition, even the criminal justice savings likely represent an underestimate of the actual benefits, because not all of the investment costs were included for the comparison group due to a lack of data on the comparison group's participation in treatment. Specifically, it is likely that some comparison group members received treatment through either voluntary treatment participation or subsequent court orders for which we lacked data; but our assumption for purposes of the analysis was that treatment costs for the comparison group were zero.

judicial diversion case volume in the second and third years following implementation (described above) would result in a substantially lower estimated net benefit of $3.8 million. In contrast, if the volume were to increase by 20% in some future year, the higher number of additional offenders would produce a net benefit for that year of over $10.4 million. It is also the case that, because judicial diversion participants who are facing felony drug charges create greater benefits than participants facing felony-level property charges, variations in future case volume within each of these charge categories will critically influence the net benefits that the system produces each year.

Furthermore, it is important to reiterate that the system-level taxpayer savings cited above represent full taxpayer resources that are now available for other uses (e.g., if a graduate from a judicial diversion program is not using a jail bed, that bed can be used by another offender and is not always "saved" in the sense of coming off the budget of the local Sheriff or county-level Department of Corrections). A "marginal" approach to cost would argue that some of the "savings" identified in this study are not true savings, because they exist in the form of "fixed costs" (e.g., jail facility costs such as employee salaries and utilities will not change, regardless of whether or not a jail bed has an offender in it), and therefore, even if agencies wished to the use newly available resources to reduce their budgets, the actual maximum amount of monetary savings that could be realized would be smaller than what this study implies. On the other hand, the assumption that certain costs are truly fixed might itself be seen as problematic, because whole facilities can certainly be closed; correctional staff whose services are no longer necessary can be sent to work in other public sector agencies, laid off, or offered buyouts; and the cost of various utilities can be renegotiated; nonetheless, it is reasonable to propose that some types of budgetary "savings" may be easier to realize than other types. In any case, because subsequent policymaker actions always influence how resources will ultimately be reallocated, the term "system savings" can be misleading if it is not interpreted with extreme care.

To quantify the potential implications of an analysis based on full costs as opposed to marginal costs, in this study in reference to the cost of the instant case (the case that led the offender to participate in judicial diversion), the full taxpayer cost for a jail bed day is $151.88. When this full cost is multiplied by the number of jail days saved by a judicial diversion participant (32 days per participant for the instant case), the amount of taxpayer resources made newly available to local jails for other uses is $4,860 (per individual). However, if the fixed costs are omitted, the remaining, or marginal, cost per day is $70.00. When this daily marginal cost is multiplied by the same number of jail days saved on the instant case (32 days), the amount saved per individual is $2,240, which may (or may not) more accurately represent an actual monetary savings that can be realized in the budgets of those local jails.

CHAPTER 1: INTRODUCTION

In April 2009, New York State passed Rockefeller Drug Law Reform. The law eliminated mandatory prison sentences for most felony drug offenders. In addition, through a procedure defined as judicial diversion, the law provided judges with discretion to link an expanded array of felony-level drug and property offenders to treatment, primarily through specialized drug courts.

With funding from the American Recovery and Reinvestment Act of 2009, NPC Research and the Center for Court Innovation sought to examine the statewide impact of the judicial diversion provisions of the Rockefeller reform. Specifically, we sought to answer the following three questions:

1. To what extent did court-ordered treatment participation actually increase in the year after the reform law was implemented as compared with the previous year?
2. To what extent did sentences differ between judicial diversion participants who enrolled after the reform law was implemented and otherwise similar defendants who received conventional sentences in the previous year? Specifically, did judicial diversion reform contribute to a reduction in the use of incarceration?
3. What are the costs and savings associated with judicial diversion as compared with conventional case processing and sentencing practices that were employed with similar defendants before the reform law was implemented?

This chapter provides a history and overview of the relevant New York State drug laws as well as a brief introduction to the drug court model, which comprised the principal means of court-ordered treatment under judicial diversion reform. The three subsequent chapters answer each of our three respective research questions. Those chapters also introduce relevant aspects of the study methodology.

Rockefeller Drug Law Reform: A Brief History

In 1973, New York State passed what was arguably the most punitive anti-drug law in the nation. Named after then Governor Nelson Rockefeller, the Rockefeller Drug Laws required a mandatory prison sentence for all felony-level drug sales and possession offenses, primarily involving cocaine, heroin, or marijuana. Included in the law was a mandatory minimum prison sentence of 15 years for any defendant convicted of selling at least two or possessing at least four ounces of an illegal substance.

Despite a subsequent law passed in 1979 that exempted marijuana from the harshest penalties, the Rockefeller Drug Laws precipitated a massive increase in statewide imprisonments for drug offenses—from 470 offenders in 1970 to 886 in 1980 to 10,785 in 1990 (see New York State Commission on Drugs and Courts, 2000). Although the crack epidemic and greater police enforcement of drug-related criminal activity led arrests on felony-level drug charges to increase during this same period, the resulting increase in the number of court filings only partially explained skyrocketing levels of imprisonment. Whereas the number of drug arrests increased fourfold between 1980 and 1990, the number of prison sentences that resulted from those arrests increased by more than tenfold (see New York State Commission on Drugs and Courts, 2000).

More punitive drug laws and enforcement policies, however, did not appear to stem the tide of drug abuse. For instance, among criminal defendants arrested in New York City in 2001, whether for drug offenses or offenses ostensibly unrelated to drugs, 76% of males and 77% of females tested positive for illegal substances. Furthermore, 50% of males and 45% of females reported "heavy" drug use, defined as 13 or more days out of the previous 30 (ADAM, 2001).

Seeking to mitigate these trends, countervailing public policies gained steam throughout the 1990s and early 2000s. In part reflecting a more critical stance towards the value of incarceration, annual imprisonments for drug offenses dipped under 10,000 by the end of the 1990s and stood at 5,190 in 2008, the last full year before Rockefeller Drug Law Reform passed (DCJS, 2012). Even prior to the more sweeping 2009 reform law, in 2004, the state doubled the weight threshold for illegal drug possession to trigger the most serious Class A-I and Class A-II felony drug charges. The earlier 2004 reform law also reduced the length of the minimum prison sentence from 15 years to 8 years for first-time felony offenders convicted of a Class A-I drug felony.

In addition, beginning in the 1990s, New York and other states began making greater use of court-ordered treatment as an alternative to conventional case processing. Specialized drug courts emerged as an especially popular treatment model. By 2009, 1,317 adult criminal drug courts had opened nationwide (Huddleston & Marlowe, 2011), with 92 of these programs located in New York State.

Limiting the reach of New York State's drug courts, however, the Rockefeller Drug Laws required the consent of the prosecutor to facilitate the necessary plea arrangements that enabled felony drug defendants (those recently affected by Article 216) to participate. Through collaboration with the country prosecutor, some jurisdictions did enroll felony drug defendants in their local drug court; however, many of the state's drug courts enrolled misdemeanor defendants and opted to exclude those arrested on drug sales charges, even where an underlying drug addiction may have been present. These limitations to the scope of drug court eligibility did not always represent the influence of the prosecutor alone, as local court culture and other considerations clearly influenced eligibility policies in many jurisdictions (Rempel et al., 2003). Nonetheless, the existing legal framework effectively made the prosecutor a powerful gatekeeper with respect to enrolling felony drug defendants. The end result of this is that in 2007, adult drug courts in 21 of the state's 62 counties did not enroll any participants who were arrested on a felony drug charge, and only 14 counties enrolled more than 10 participants who were arrested on felony drug charges (Office of Court Administration, 2007).

In this context, the 2009 reform law meant a potential sea change in state drug laws and policies. The law eliminated mandatory prison sentences for first-time Class B and both first-time and second-time Class C, D, and E felony drug offenders. Combined, these categories of offenders encompassed more than four in five of those who were imprisoned for felony drug offenses in 2008, the year before the reform law was passed (DCJS, 2010). Instead of requiring prison outright, the new law gave judges the option of imposing prison time, a 5-year probation sentence, a sentence of 1 year or less in a local jail, or a sentence to parole supervision. Furthermore, where judges still opted for a prison sentence, the law reduced the length of the mandatory minimums for nearly all classes of felony drug offenses. Stemming from these changes, as well as a simultaneous decline in drug arrests statewide, annual imprisonments for felony drug offenses declined 33% from 5,190 in 2008 to 3,513 in 2011 (DCJS, 2012).

The current study, however, does not focus on these sentencing provisions, but rather on a different part of the reform law that sought to increase access to court-ordered treatment. Known

as judicial diversion and codified in Article 216 of the state's Criminal Procedure Law, these provisions made it easier for an expanded array of felony-level drug and property defendants to enroll in drug courts or other forms of court-ordered treatment. Specifically, Article 216 provided judges with discretion, above the prosecutor's objection if necessary, to order a clinical assessment and, based on its results, to order substance abuse treatment for Class B, C, D, and E felony drug defendants. (Only the most serious Class A drug felonies were excluded.) The same provisions also applied to defendants charged with certain nonviolent felony-level property offenses.[3] Although some parts of the reform law took effect immediately when the legislation was signed on April 7, 2009, Article 216 was implemented 6 months later, on October 7, 2009.

Although Article 216 restored discretion to judges in the decision of whether or not to order treatment, the law did not *require* judges to act one way or another. It remained possible that not all judges, and not all county court systems, would take steps to avail themselves of the opportunity provided by the legislation to link more defendants to treatment. Accordingly, the current study tests whether the intentions that motivated policymakers to pass the judicial diversion provisions came to fruition—whether Article 216 in fact led more defendants to receive treatment as an alternative to incarceration or community supervision. The current study also tests whether the benefits to taxpayers of expanding the use of court-ordered treatment outweigh the costs of administering drug court programs and providing community-based treatment to more drug-addicted individuals.

This study complements two other programs of research that are currently underway. First, the New York State Division of Criminal Justice Services previously issued two reports that show an increase in drug court enrollment among Article 216-eligible cases immediately after passage of the reform law. These reports also point to a subsequent decline in enrollment, although not to pre-reform levels, in the second year after passage (DCJS, 2011; 2012). In addition, the Vera Institute of Justice is currently conducting an in-depth policy study of the impact of the entire Rockefeller Drug Law Reform legislation on sentencing, imprisonment, plea bargaining, and judicial decision-making specifically within New York City. The Vera Institute is expected to issue a final research report in 2014.

Drug Courts and Other Court-Ordered Treatment Options in New York

New York State is home to just over 90 adult drug courts, the largest number of any state outside of California. The state's first drug court opened in Rochester in 1995. The vast majority of these programs opened in the early 2000s as a result of a coordinated rollout by the state's Unified Court System. This rollout followed recommendations issued by a statewide judicial commission in 2000 to make drug court participation available to drug-addicted defendants throughout the state (New York State Commission on Drugs and Courts, 2000).

The judicial diversion legislation invokes drug courts explicitly as a preferred treatment option, yet does not require court-ordered treatment to take place in a drug court. Nonetheless, given the state's vast drug court infrastructure, it was inevitable that drug courts would handle most of the additional treatment cases that Article 216 might produce.

[3] The following felony-level property offenses are eligible for judicial diversion: Burglary 3 (Class D Felony), Criminal Mischief 3 (Class E felony), Criminal Mischief 2 (D class felony), Grand Larceny 4 (Class E Felony), Grand Larceny 4 (Class D Felony), Unauthorized Use of a Vehicle 2 (Class E Felony), Criminal Possess of Stolen Property 4(Class E Felony), Forgery 2 (Class D Felony), Criminal Possession of a Forged Instrument 2 (Class D Felony), and Unlawfully Using Slugs 1 (Class E Felony).

THE DRUG COURT MODEL

Nationwide, the first drug court opened in Miami-Dade County in 1989. There are currently an estimated 2,459 drug courts in operation, of which 1,317 serve adult criminal defendants. (Other drug court models serve drug-addicted juvenile defendants, family court respondents, DWI offenders, and members of Native American tribes, per Huddleston and Marlowe, 2011).

Adult drug courts involve a combination of community-based treatment and judicial oversight, generally for 1 year or longer. Depending on assessed clinical needs, treatment can involve attendance at either residential or outpatient programs. Judicial oversight involves regular drug testing at both community-based treatment programs and the court, meetings with court-affiliated case managers, and frequent judicial status hearings before a dedicated judge, who is typically trained in the pharmacology of addiction. The judicial status hearings take place as often as weekly or every 2 weeks toward the outset of drug court participation and then generally less often over time. At these hearings, the judge and participant directly interact, while the prosecutor and defense attorney often do not speak at all. The judge applies a system of sanctions and incentives to motivate participants to achieve and sustain a drug-free life. Participants who relapse, fail to attend treatment, or miss a scheduled court appearance will commonly receive an interim sanction, such as a weekend in jail, community service, or a switch to a more intensive treatment modality, rather than having their participation terminated altogether. Generally, drug courts do not fail their participants except in response to repeated noncompliance or to a particularly serious new arrest. Drug courts seek to reduce drug use and improve the quality of life of their participants. Larger anticipated benefits to society include lower recidivism, improved public safety, and costs savings for the criminal justice system.

Numerous evaluations have found that adult drug courts are effective in reducing recidivism, as compared with conventional prosecution (Carey & Waller, 2011; GAO, 2011; Gutierrez & Bourgon, 2009; Mitchell, Wilson, Eggers, & MacKenzie, 2012; Rossman et al., 2011; Shaffer, 2011). Three recent meta-analyses, which synthesize the reported results obtained from other studies, variously concluded that adult drug courts reduce the re-arrest or re-conviction rate by an average of 8 to 13 percentage points—although the precise magnitude of impact can vary substantially from one drug court to another (Gutierrez & Bourgon, 2009; Mitchell et al., 2012; Shaffer, 2011).

Concerning adult drug courts in New York, an evaluation of six programs that had opened in the mid to late 1990s, prior to the broader statewide rollout, found that all six reduced recidivism, producing an average reduction that generally mirrored the national literature (Rempel et al., 2003). A more recent statewide evaluation includes 86 of the state's adult drug courts and explores which court policies and practices, and which target populations, produce relatively greater or lesser impacts on recidivism (Cissner et al., 2013). Data obtained from this evaluation will be applied in the current cost-benefit analysis to estimate recidivism-related savings that are likely to accrue should Article 216 lead more defendants to participate in drug courts.

OTHER COURT-ORDERED TREATMENT OPTIONS

New York is also home to a number of other court-ordered treatment models. Both before and after the passage of drug law reform, some felony drug defendants enrolled in prosecutor-run Drug Treatment Alternative-to-Prison (DTAP) programs. DTAP programs are broadly similar to drug courts, except they are managed by the county prosecutor instead of the court, and they omit

ongoing judicial oversight (i.e., frequent status hearings, court-based case management, interim sanctions and incentives, etc.).

Outside of formal programs such as drug court or DTAP, some defendants participate in more ad hoc treatment stemming from individual plea bargains reached among the judge, prosecutor, and defense attorney in a specific case. In many counties of the state, the nationwide case management agency known as Treatment Alternatives for Safer Communities (TASC) manages treatment orders that arise through such plea arrangements.

Finally, in a significant new development, following passage of Article 216, some county court systems decided to supplement their drug court docket with specialized "judicial diversion parts." The presiding judge in these parts usually, although not in every county, differs from the local drug court judge. These parts may operate essentially like a drug court or may vary in ways small or large. (It is beyond the scope of this report to document precise policy variations that characterize each such part.) The judicial diversion parts all serve exclusively the felony-level drug and property defendants who are singled out in the 2009 reform law. The new parts do not serve defendants who are charged with other offenses, whereas many of the state's preexisting drug courts serve either misdemeanants or defendants with other types of felony charges.

COURT-ORDERED TREATMENT UNDER ARTICLE 216

We sought to understand the basic structure of court-ordered treatment under Article 216 both by interviewing state court administrators and distributing a policy survey to all 62 counties. In most counties, we distributed the survey to the local drug court coordinator, based on advice from Unified Court System personnel that these coordinators would be the most knowledgeable individuals about treatment policies both in and outside of drug courts. For some counties, we found that the survey responses contradicted accurate knowledge we had gained separately; thus, our conclusions reflect a combination of survey findings and other information.

In their survey responses, after passage of Article 216, 27 of the state's 62 counties (44%) reported "often" ordering felony drug defendants to a drug court, 14 counties (23%) reported "sometimes" ordering these defendants to a drug court, and 20 counties (33%) reported "rarely" or "never" doing so. Court-ordered treatment outside of drug courts was reportedly less common. Only 8 of the state's 62 counties (14%) reported "often" ordering felony drug defendants to treatment *outside* of drug courts, with 23 counties (40%) reporting that they do so "sometimes" and 26 counties (46%) reporting that they do so "rarely" or "never."[4]

Regarding specialized judicial diversion parts, 10 counties either reported on the survey or were otherwise known to have established one or more such parts after the passage of Article 216. As noted above, some of these specialized parts adopted drug court policies wholesale. Some of these parts also share clinical and case management staff with the local drug court. In addition, 8 overlapping counties have a DTAP program run by the local prosecutor. However, data separately compiled by the state's Division of Criminal Justice Services (2011) indicate that most DTAP programs enroll, at most, a couple dozen participants per year. For instance, only the largest DTAP programs in Bronx, Brooklyn, Manhattan, and Nassau counties reported enrolling at least 30 participants in 2010, and only Bronx and Brooklyn counties exceeded 40 participants that year. (Both Bronx and Brooklyn exceeded 100 participants, see DCJS, 2011.) Notably, the Nassau

[4] The survey respondents in four of the state's 62 counties did not answer this question. Thus, the reported percentages in parentheses are out of 58 total respondents.

County DTAP program ultimately ended following judicial diversion implementation and was replaced with the county's first felony-level drug court.

Interestingly, some of the findings obtained in our county surveys foreshadowed the results that our quantitative analysis will report in the chapters that follow. Specifically, Article 216 did not appear to produce uniform statewide effects. For example, nearly a third of the state's counties (20 of 62) still reported rarely or never ordering felony drug defendants to a drug court, even after Article 216 took effect. Moreover, the reform law appears to have led some counties to make significant structural changes like creating a new judicial diversion part; other counties to make modest structural changes but to absorb a greater number of treatment cases into an established drug court; and yet other counties to make minor policy changes, or none at all. The retrospective data analysis will allow us to gain a precise understanding of the impact of Judicial Diversion on local court practices and the costs and savings of such practices.

CHAPTER 2: IMPACT ON TREATMENT ENROLLMENT

The purpose of this chapter is to examine whether and to what extent Article 216 produced an increase in the actual practice of court-ordered treatment in New York. The analysis compares the number of charge-eligible defendants who enrolled in court-ordered treatment 1 year before and 1 year following the implementation of Article 216 in October of 2009.

The specific policy question addressed in this chapter is: To what extent did court-ordered treatment participation actually increase in the year after the reform law was implemented as compared with the previous year?

Sampling Frame and Methodology

The analytic timeframe encompassed a 2-year period, 1 year before and 1 year following the implementation of Article 216 (judicial diversion), which occurred on October 7, 2009. The pre-implementation sample included the population of defendants charged with an Article 216-eligible offense who enrolled in a court-ordered treatment program between October 7, 2008, and October 6, 2009. The post-implementation sample included the population of defendants charged with an eligible offense who enrolled in treatment between October 7, 2009, and October 6, 2010. A total of 4,993 defendants, spanning 60 of New York State's 62 counties, were included in the analysis. (Two counties, Greene and Hamilton, did not have any court-ordered treatment participants throughout the sampling period.) The vast majority of the sample (about 85%) was diverted to a drug court. Most of the remaining defendants enrolled in the Brooklyn DTAP program (about 4% of the total) or in a specialized judicial diversion part (about 11%), primarily one of several such parts that were established in the five boroughs of New York City. Importantly, defendants who enrolled in court-ordered treatment but were charged with misdemeanor offenses or select felony offenses that are not covered by Article 216 were omitted from the sample.

The quantitative data were drawn from two sources, the New York State Universal Treatment Application (UTA) and the New York State Division of Criminal Justice Services (DCJS) database. The UTA is a statewide drug court management information system. Besides those participating in drug courts, the UTA also houses data on participants in the Brooklyn DTAP program and most of the state's specialized judicial diversion parts. The DCJS dataset includes information on demographic characteristics, current charges, and criminal history for all criminal defendants in New York State, regardless of whether they participated in treatment or not.

A merged data file including UTA and DCJS measures was utilized to identify the Article 216-eligible sample. Specifically, official charge information provided in the DCJS data file was utilized to identify defendants who had Article 216-eligible arraignment charges (i.e., a felony drug charge or designated felony-level property charge). The treatment participation date and status information provided in the UTA dataset were utilized to isolate those defendants who enrolled in court-ordered treatment within our sampling timeframe.

As discussed in Chapter 1, some defendants in both the pre- and post-implementation periods undoubtedly enrolled in court-ordered treatment through programs and procedures other than drug courts. Among these defendants, the UTA houses data on participants in the Brooklyn DTAP program and, by all appearances, houses data on most, if not all, of the defendants who enrolled in treatment through newly established judicial diversion parts. Data separately collected and

reported by DCJS (2011) indicate that the Bronx DTAP program, for which we lack data in this study, was enrolling more than 200 participants per year before and after the passage of Article 216, with this number only changing at the margins after passage (225 participants in 2008 and 252 in 2010). Otherwise, based on information learned from our survey of the state's 62 counties, as well as information we gained separately from other sources, we believe that we are missing data for a relatively small fraction of all other Article 216 treatment participants statewide. Nonetheless, we cannot rule out the possibility that our lack of data on some court-ordered treatment participants (e.g., who enroll in other DTAP programs or through ad hoc arrangements reached amongst individual judges and attorneys) may create small biases in some of our findings. Such biases might arise, for example, in the event that treatment through arrangements we cannot track became systematically more or less prevalent after Article 216 went into effect.

In undertaking our analysis, we sought not only to examine statewide trends but also to distinguish patterns for key geographic and demographic subgroups. We assumed that policies, practices, and regional context may vary across the state's 62 counties and across the more than 100 drug courts and judicial diversion parts whose participants are represented in our sample. Not only does New York State have the most populous city in the United States (New York City), but on the other end of the spectrum, a large portion of the state's counties are considered rural or semi-rural. In contrast to the population of 2.5 million in Brooklyn (the largest borough in New York City), there are 11 counties in the state with populations of less than 50,000.[5] Given this population diversity, we sought to compare the numbers of charge-eligible defendants who received court-ordered treatment, examining both statewide trends and regional and county differences in those trends between the pre- and post-implementation periods.

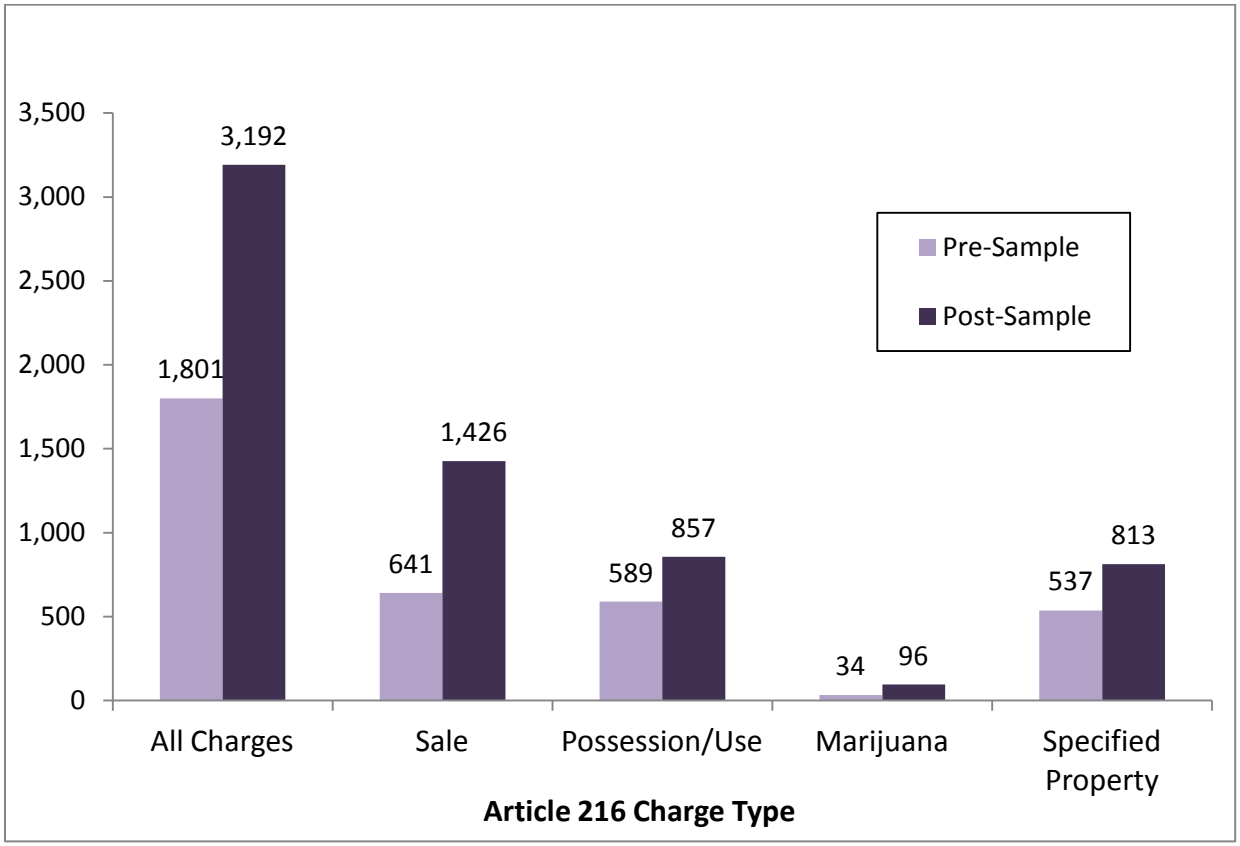
Another question of interest was whether the socio-demographic composition of treatment cases changed, perhaps because the reform law made judicial diversion available to defendants with different types of characteristics from those who were already able to receive court-ordered treatment in the previous status quo. Therefore, among those receiving treatment, we examined differences in their demographic characteristics, social ties, drug use patterns, treatment history, criminal history and charges. Of particular interest was whether general trends in the use of court-ordered treatment applied similarly when comparing eligible drug and property offenders, or whether trends and patterns applicable to the drug and property subgroups were distinct.

The Impact of Article 216 on Treatment Participation

Figure 2.1 presents a pre-post comparison of Article 216-eligible treatment enrollment numbers by charge type, including drug sales, possession, marijuana, and eligible property charges. (New York State lists marijuana charges in a separate section of the penal code from other types of drug charges, leading us to distinguish marijuana offenses in our own breakdown as well.)

[5] Based on the 2010 U.S. Census, Kings County (Brooklyn) has a population of 2.5 million, whereas the 11 counties with populations of less than 50,000 are Allegany, Cortland, Delaware, Essex, Lewis, Orleans, Schoharie, Schuyler, Seneca, Wyoming, and Yates.

Figure 2.1: Statewide Impact of Article 216 on Judicial Diversion Enrollment



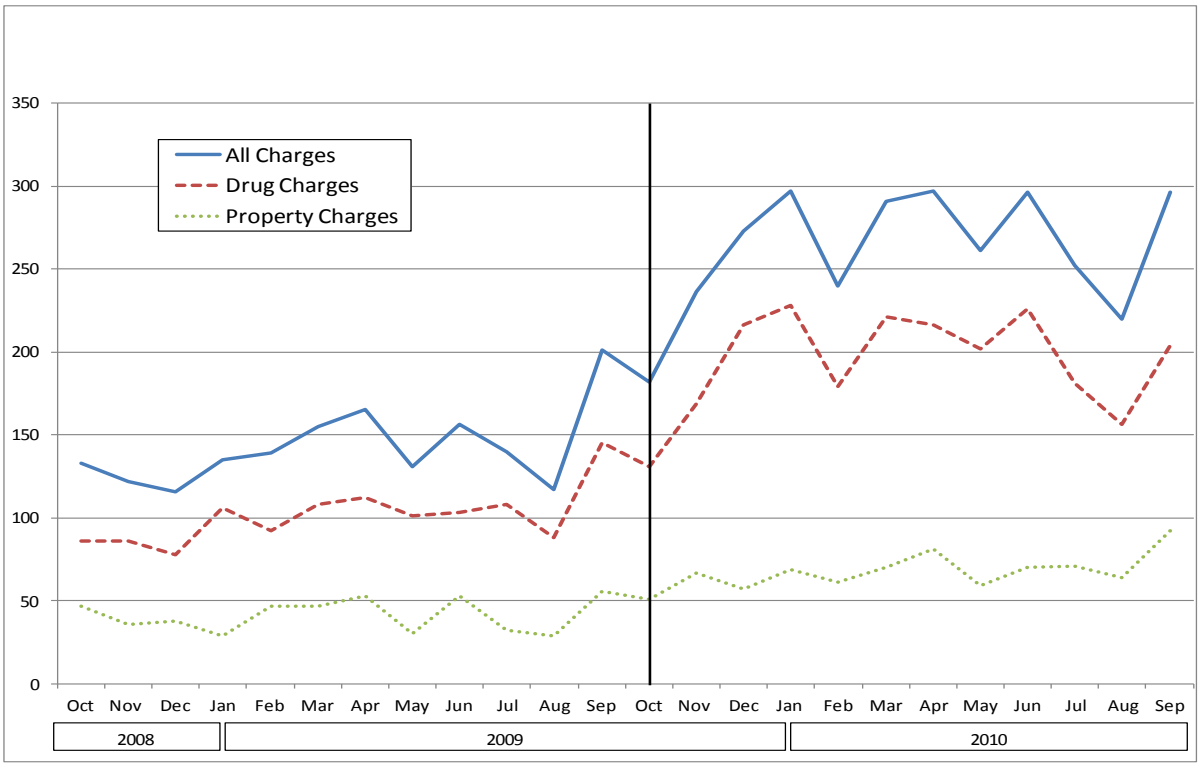
In the pre-implementation period, a total of 1,801 eligible defendants enrolled in court-ordered treatment, compared with 3,192 defendants in the post-implementation period—representing a relative statewide increase of 77% and involving 1,391 additional individuals. The greatest relative change, a 182% increase in enrollment, occurred among defendants with felony-level marijuana charges, although these charges still only accounted for a small number of cases overall (increasing from 34 to 96 cases from the pre to the post periods). The second largest relative increase in enrollment occurred among defendants with drug sales charges (involving sales of illegal drugs other than marijuana). For this group, court-ordered treatment enrollment increased by 122%, from 641 to 1,426 defendants, from the pre to the post periods. In addition, there was a 51% relative increase in the enrollment of defendants with eligible felony property charges (from 537 to 813 defendants) and a 46% increase in the enrollment of defendants with (non-marijuana) felony possession charges (589 to 857). In terms of the raw number of individuals involved, the data show that 785 additional defendants charged with felony drug sales enrolled in treatment in the year after Article 216 was implemented, a larger number of additional treatment cases than for any other charge type.

Figure 2.2 presents overall trend data, distinguishing the number of treatment participants enrolling each month from October 2008 through September 2010.[6] While there is fluctuation from month-to-month, a pronounced increase in enrollment was observed almost immediately after Article 216 went into effect in October 2009. In fact, the beginnings of this increase were evident a month prior to implementation perhaps because the reform would soon be in effect,

[6] The vertical line at the October 2009 data-point denotes the implementation of Judicial Diversion (Article 216).

leading plea bargaining practices to shift in anticipation. The month-by-month trends were relatively similar for defendants with an eligible drug charge (collapsing the drug sales, drug possession, and marijuana charge categories) and property charge.

Figure 2.2: Judicial Diversion Enrollment by Month (October 2008 – September 2010)



Utilizing generally comparable data, the New York State Division of Criminal Justice Services extended the analyses represented in Figure 2.2 to the second and third years after judicial diversion implementation (DCJS 2013) and will report complete findings in a forthcoming publication. The DCJS analysis demonstrates that although treatment volume has continued to exceed pre-implementations levels, the second and third years saw a reduction in court-ordered treatment cases of approximately 20% relative to the first year.

Figure 2.3 presents findings on the differential impact of Article 216 by geographic region. The analysis reveals that the greatest increase in treatment enrollment occurred in the New York City (NYC) suburban region.7 The suburban region witnessed a 728% relative increase between the pre and post periods (from 75 to 621 treatment participants). NYC suburban was followed by the New York City region,8 which experienced a 53% increase in treatment enrollment between the pre and post periods (from 962 to 1,473 participants). In addition, the mid-sized cities9 and semi-rural/rural regions experienced relative enrollment increases of 42% and 45%, respectively.

[7] The suburbs of New York City include the following four counties: Rockland, Nassau, Suffolk, and Westchester. Nassau and Suffolk comprise Long Island, to the immediate east of New York City, whereas Rockland and Westchester are respectively located northwest and due north of New York City.
[8] New York City includes the following five counties: the Bronx, Kings (Brooklyn), New York (Manhattan), Queens, and Richmond (Staten Island).
[9] The mid-sized cities have a population of 97,856 (Albany) or greater (Buffalo, Rochester, and Syracuse). These cities are all located in the upstate region and are surrounded largely by rural or semi-rural areas.

Figure 2.3: Impact of Article 216 on Judicial Diversion Enrollment by State Region

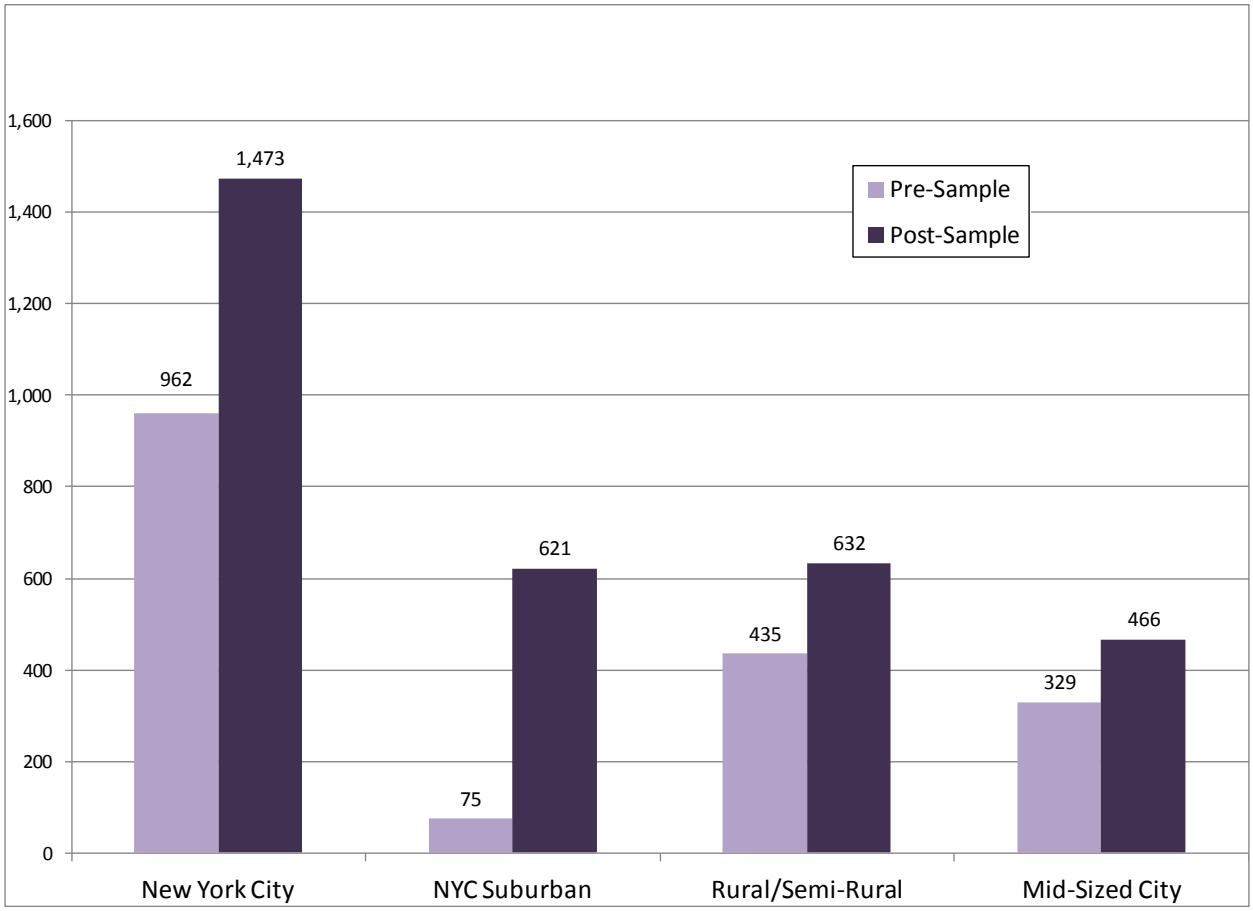


Table 2.1 presents additional details concerning the change in treatment enrollment between the pre- and post-implementation periods, including a breakdown for each of the state's 62 counties. Although there was a net statewide increase in treatment enrollment, analysis of trends at the county level reveals divergent patterns. For example, in New York City, a significant increase was found in Manhattan (New York County), whereas Brooklyn (Kings County) and Staten Island (Richmond County) reported small decreases in enrollment. Brooklyn, in particular, had already enrolled more than two and a half times as many Article 216-eligible defendants as the next highest county during the pre-implementation period. Evidently, the judiciary and prosecutor in Brooklyn were already enrolling large numbers of treatment cases prior to the passage of Article 216, leaving little room for this legislation to have any additional impact. (In effect, in Brooklyn, the judges may have had less need than elsewhere for the discretion afforded them by Article 216, since Brooklyn's elected prosecutor, Charles Hynes, was already amenable to high levels of court-ordered treatment among those charged with Article 216-eligible offenses.)

Table 2.1: Impact of Article 216 on Judicial Diversion Enrollment by County

Jurisdiction	Pre-Implementation (N = 1,801)	Post-Implementation (N = 3,192)	Percent Change
Statewide	**1,801**	**3,192**	**77%**
New York City	**962**	**1,473**	**53%**
Bronx	202	535	165%
Brooklyn	550	499	-9%
Manhattan	63	280	344%
Queens	74	87	18%
Richmond	73	72	-1%
NYC Suburban	**75**	**621**	**728%**
Nassau	7	326	4557%
Rockland	10	34	240%
Suffolk	30	215	617%
Westchester	28	46	64%
Upstate New York	**764**	**1,098**	**44%**
Albany*	56	43	-23%
Allegany	5	7	40%
Broome	18	26	44%
Cattaraugus	4	4	0%
Cayuga	4	9	125%
Chautauqua	15	16	7%
Chemung	5	7	40%
Chenango	1	12	1100%
Clinton	5	3	-40%
Columbia	4	3	-25%
Cortland	5	3	-40%
Delaware	4	1	-75%
Dutchess	2	35	1650%
Erie*	102	116	14%
Essex	1	0	-100%
Franklin	1	5	400%
Fulton	3	7	133%
Genesee	7	6	-14%
Greene	0	0	0%
Hamilton	0	0	0%
Herkimer	5	3	-40%
Jefferson	14	11	-21%
Lewis	2	5	150%
Livingston	0	3	300%
Madison	0	2	200%

Jurisdiction	Pre-Implementation (N = 1,801)	Post-Implementation (N = 3,192)	Percent Change
Monroe*	101	216	114%
Montgomery	2	2	0%
Niagara	40	48	20%
Oneida	35	34	-3%
Onondaga*	102	132	29%
Ontario	12	6	-50%
Orange	23	53	130%
Orleans	12	20	67%
Oswego	23	38	65%
Otsego	4	4	0%
Putnam	8	7	-13%
Rensselaer	20	38	90%
Saratoga	10	25	150%
Schenectady	30	40	33%
Schoharie	2	6	200%
Schuyler	1	4	300%
Seneca	9	3	-67%
St. Lawrence	2	20	900%
Steuben	15	7	-53%
Sullivan	4	9	125%
Tioga	2	5	150%
Tompkins	8	10	25%
Ulster	13	8	-38%
Warren	1	5	400%
Washington	5	0	-500%
Wayne	8	10	25%
Wyoming	8	20	150%
Yates	1	1	0%

* The county is one of the four mid-size cities in upstate, New York. (Albany is in Albany County, Buffalo is in Erie County, Rochester is in Monroe Country, and Syracuse is in Onondaga County.)

Within the NYC suburban region, the greatest increase in enrollment occurred in Nassau County (which did not have a felony-level drug court prior to Article 216 legislation), with a 4,557% increase from 7 to 326 treatment participants. Suffolk also experienced a 617% increase from 30 to 215 treatment participants, whereas the increases in Rockland and Westchester counties were modest by comparison.

The upstate region (combining the upstate mid-sized cities and rural/semi-rural areas) saw similar variation from county to county. Although many counties saw slight to moderate increases in treatment enrollment, there were six upstate counties that reported no percentage change in either direction and an additional 16 counties that reported a decrease in enrollment during the post-implementation period. In general, whereas several of the larger upstate counties showed a

meaningful increase in enrollment (e.g., Monroe County, home to the mid-sized city of Rochester, more than doubled enrollment from 101 to 216 participants), most of upstate New York saw only small changes, with single-digit or, at most, several dozen enrollees in total during *both* the pre- and post-implementation years.

Table 2.2 summarizes the distribution of counties based on the relative degree to which enrollment changed in one direction or another. Overall, 18 of the state's 62 counties showed a decrease in enrollment of Article 216-eligible treatment cases, and 6 counties showed no change in either direction. Twenty-two of the 24 counties with either a decrease or with no change were located in the upstate region. The table then shows the number of counties with a percentage increase in treatment enrollment at several cut-off levels (from 1-50%, 51-100%, etc.). On the highest end of the spectrum, 5 counties, 2 from the NYC suburbs and 3 from upstate, reported a relative increase in enrollment of greater than 500% (although the three upstate counties that reported changes at this high relative percentage still saw comparatively few treatment cases in either period).

Table 2.2: Distribution of County-Specific Changes After Implementation

	New York City	NYC Suburban	Upstate New York	All Counties
Total Number of Counties	**5**	**4**	**53**	**62**
Average Change in Enrollment	**53%**	**728%**	**44%**	**77%**
Number of Counties with Each Change				
Decrease in enrollment	2	0	16	18
No change in enrollment	0	0	6	6
Increase in enrollment by 1-50%	1	0	10	11
Increase in enrollment by 51-100%	0	1	3	4
Increase in enrollment by 101-200%	1	0	9	10
Increase in enrollment by 201-500%	1	1	6	8
Increase in enrollment by more than 500%	0	2	3	5
Total Number of Counties	5	4	53	62

This distribution reveals important variation not only at the regional level but also at the county level. Given the number of upstate counties that have no change or a decrease in treatment enrollment between the pre and post periods, it is not surprising that this region reports the smallest net percentage increase of 44%. On the other end of the spectrum is the 728% relative increase within the NYC suburban region. This increase can be attributed primarily to the change in two counties, Nassau and Suffolk, both of which showed a relative increase of greater than 600% and an increase in the raw numbers of treatment participants from, respectively, 7 to 326 (Nassau) and 30 to 215 (Suffolk).

It is clear that the passage of Article 216 did not produce automatic policy implications on the ground. Rather, the data suggest that the impact of state legislation is mediated by local culture and practice. The criminal justice players in some counties (e.g., Brooklyn) had already made a significant commitment to court-ordered treatment for defendants with Article 216-eligible charges, so new legislation was not required to increase treatment volume. Other counties had not made such a commitment to court-ordered treatment, and even after the passage of Article 216, the local judiciary did not use its enhanced discretion to place more defendants into treatment. Still other counties saw anywhere from a true sea change in practice (e.g., Nassau or Suffolk) to a small upward change (and every level of impact in between).

The Impact of Article 216 on the Treatment Participant Population

Table 2.3 presents a comparison between Article 216-eligible defendants who enrolled in court-ordered treatment in the pre and post periods, based on six socio-demographic categories: region, demographics, social ties, drug use and treatment history, criminal history, and current charges.

REGION

Table 2.3 shows a significant difference in the percentage of treatment participants originating in each region. Specifically, when comparing the pre and post periods, the representation of three of the four regions declined modestly as a percentage of the total, whereas the representation of the NYC suburban region increased from 4% to 20% of all treatment cases (due primarily to the massive increases in Article 216-eligible treatment participants in Nassau and Suffolk counties).

DEMOGRAPHICS

Table 2.3 shows a statistically significant but substantively modest increase in mean age at enrollment, a decrease in percent female, and no change in the racial make-up or percent born in the USA.

SOCIAL TIES

Table 2.3 shows a significant increase in the percent of judicially diverted participants that reported ever having been homeless ($p<.05$) and having a high school degree or GED ($p<.001$), but a decrease in the percentage employed or in school ($p<.05$). There was no significant change among those reporting current homelessness or in marital status.

Table 2.3: Characteristics of Judicial Diversion Participants

	Pre-Implementation (N = 1,801)	Post-Implementation (N=3,192)
Region	***	
New York City	53%	46%
New York City Suburban	4%	20%
Rural/Semi-Rural	24%	20%
Mid-Sized City	18%	15%
Demographics		
Mean Age at Entry	30.98**	32.04
Female	23%**	19%
Race		
Black	37%	38%
Hispanic	22%	22%
White	41%	40%
Asian	1%	1%
Born in USA	97%	96%
Social Ties		
Ever Homeless	29%*	33%
Currently Homeless	5%	5%
High School Degree/GED	57%***	66%
Employed/In School	35%*	31%
Marital Status	14%	13%
Drug Use/Treatment History		
Mean Age of First Drug Use	15.64	15.79
Mean Years of Drug Use	14.63**	15.71
Primary Drug of Choice	**	
Alcohol	7%	6%
Cocaine	10%	11%
Crack	13%	12%
Heroin	16%	21%
Other opiates	6%	7%
Marijuana	43%	37%
Other	5%	6%
Ever in Treatment	52%***	60%
Ever Used Alcohol	91%	89%
Ever Used Marijuana	86%	87%
Ever Used Cocaine	50%**	56%
Ever Used Crack	32%	31%
Ever Used Heroin	26%***	32%
Ever Used Hallucinogen	11%**	15%
Ever Used PCP	5%*	7%
Ever Used Benzodiazepines	10%***	15%

	Pre-Implementation (N = 1,801)	Post-Implementation (N=3,192)
Other Tranquilizers	0%*	1%
Prescription Drugs	1%**	2%
Designer Drugs	8%**	11%
Criminal History		
Number of Prior Arrests	6.82***	8.22
Prior arrest	78%**	81%
Prior Felony Arrest	58%***	65%
Prior Misdemeanor Arrest	73%*	76%
Prior VFO Arrest	27%***	32%
Prior Drug Arrests	59%***	64%
Prior Weapons Arrest	25%***	31%
Number of Prior Convictions	2.92***	3.79
Prior Conviction	48%***	55%
Prior Felony Conviction	25%***	34%
Prior Misdemeanor Conviction	45%***	50%
Prior VFO Conviction	4%**	6%
Prior Drug Conviction	36%***	43%
Prior Weapons Conviction	5%***	9%
Current Charges		
Current Charge Severity	+	
B Felony	58%	62%
C Felony	4%	4%
D Felony	25%	23%
E Felony	13%	11%
Article 216 Charge Type	***	
Drug Sales (PL 220)	36%	45%
Drug Possession (PL 220)	33%	27%
Marijuana (PL 221)	2%	3%
Select Property	30%	26%

+ <p .10 * p < .05 ** p < .01 *** p <.001

Note: Statewide sample size can vary between measures due to missing data for select cases.

DRUG USE AND TREATMENT HISTORY

Analysis also found significant changes in self-reported drug use and treatment history. For example, in comparison to their pre period counterparts, participants in the post period averaged a significantly longer history of drug use and were significantly more likely to have reported a past treatment experience and to have reported ever used cocaine, heroin, hallucinogens, PCP, benzodiazepines, tranquilizers, prescription drugs, and designer drugs. In addition, there was a significant change in the distribution of primary drugs of choice from the pre to the post period. For example, within the pre period, 43% of participants reported marijuana as their primary drug of choice and 16% reported heroin. Within the post-period, 37% participants reported marijuana

as their primary drug of choice and 21% reported heroin. In general, all of the changes represented in Table 2.3 signify that drug law reform brought in a higher-need pool of defendants.

CRIMINAL HISTORY

All 14 of the criminal history measures shown in Table 2.3 significantly increased between the pre and post periods. These findings point to the influx of a higher risk (i.e., more serious criminal history) population that was, perhaps, excluded from court-ordered treatment in the past due to legal restrictions or prosecutorial discretion that Article 216 removed by placing discretion solely with judges.

CURRENT CHARGES

Among current charges, changes in charge severity approached significance ($p < .10$). A somewhat higher percentage of the treatment population was arraigned on the most serious Class B felony charges (58% to 62%), whereas the percentages arraigned on Class C, D, or E felonies either remained the same or declined slightly. As with the aforementioned changes in criminal history, these shifts in the charge distribution similarly point to a more serious defendant population (more defendants charged with Class B felonies). (The most serious Class A felonies were excluded from Article 216 legislation and are therefore not represented.)

In addition, the distribution of charge types significantly changed between the pre and post periods ($p < .001$). In the pre period, 36% of Article 216-eligible treatment participants were charged with a drug sales offense in comparison to 45% of participants in the post period. Again, the greater accessibility of court-ordered treatment to defendants charged with drug sales in the post-implementation period almost certainly reflects the impact of legislation.

Summary

Since the implementation of Article 216, there has been a significant increase in the number of charge-eligible defendants enrolling in court-ordered treatment. Qualifying this net increase, the data also point to divergent patterns across different regions and individual counties. In the first year after Article 216 went into effect, the analysis found that some counties had not altered their practices at all, whereas other counties had implemented dramatic changes. Nassau County provides a striking illustration, with a percentage increase in Article 216-eligible treatment participants of 4,557% (7 to 326 treatment participants).

Equally important, the analysis revealed that the pre and post samples significantly differed on a number of key psychosocial characteristics, including age, gender, social ties, prior drug use, treatment history, criminal history, and current charges. Across many of these characteristics, the evidence indicates that Article 216 led a higher risk and higher need pool of defendants to participate in drug courts and other court-ordered treatment programs. As compared with the pre-implementation period, treatment participants in the post period averaged more severe prior drug use, longer prior criminal records, and more serious current charges. Since research on drug courts (e.g., Cissner et al., 2013; Fielding, Tye, Ogawa, Imam, & Long, 2002; Marlowe, 2012; Rossman et al., 2011), and a range of other offender interventions (e.g., Andrews & Bonta, 2010; Lowenkamp, Latessa, & Holsinger, 2006) point to high-risk/high-need defendants as particularly suitable for intensive interventions, a shift towards treating such a population is consistent with evidence-based treatment principles.

CHAPTER 3: IMPACT ON SENTENCING OUTCOMES

The analysis presented in Chapter 2 demonstrated a significant increase in the number of defendants with Article 216-eligible charges who participated in court-ordered treatment after the reform law was implemented. The analysis also revealed significant differences in the psychosocial characteristics (socio-demographics, drug use history, criminal history, and current charges) of the populations receiving treatment pre- and post-implementation. The existence of these differences suggests that Article 216 made treatment available to new categories of defendants whose characteristics differed from the kinds of felony-level drug and property defendants who previously had access to treatment.

The policy question addressed in this chapter is: To what extent did sentences differ between judicial diversion participants who enrolled after the reform law was implemented and otherwise similar defendants who received conventional sentences in the previous year? Specifically, did judicial diversion reform contribute to a reduction in the use of incarceration?

Sampling Frame and Methodology

Quantitative data were drawn from the New York State Universal Treatment Application (UTA) and the New York State Division of Criminal Justice Services (DCJS) database. Data from these sources were merged to identify charge-eligible defendants who did and did not participate in court-ordered treatment in the year prior to Article 216 implementation. Specifically, the official charge information provided in the DCJS data file was utilized to identify defendants who had Article 216-eligible arraignment charges in the pre-implementation year. The treatment participation date and status information provided in the UTA data file were utilized to identify those charge-eligible defendants who, because both the judge and prosecutor were amenable, actually enrolled in a drug court or other court-ordered treatment program in the pre-implementation year. To this pre-implementation dataset, we then added data on Article 216 charge-eligible defendants who participated in court-ordered treatment during the first year after implementation. (See Chapter 2 for further discussion of these data sources.)

In order to determine the impact of Article 216 on sentencing outcomes, our first step was to identify and isolate the "new" judicial diversion participants—those additional defendants who were diverted to court-ordered treatment *because of* Article 216. To complete this step, we utilized a propensity score matching strategy (Rosenbaum & Rubin, 1983; Rubin, 1973). Propensity score matching can be utilized in quasi-experimental studies to reduce the observed differences between two groups (typically a "treatment" group and a "comparison" group). Based on an assortment of observed baseline characteristics (drug use history, criminal history, etc.) a single propensity score is produced for each case and represents the probability that a subject will be in one group and not the other. These propensity scores are then utilized to match similar cases from the two groups. Once this process is complete, the baseline characteristics for the matched cases will be statistically similar.

In the first step of the analysis, we matched similar treatment participant cases from the pre- and post-implementation periods. The pre-implementation sample included the 1,801 charge-eligible cases that enrolled in treatment in the pre-implementation year. The post-implementation sample included the 3,192 cases that enrolled in treatment in the post-implementation year. A total of 39 baseline characteristics, including a range of socio-demographic, drug use history, criminal history, and charge measures, were utilized to determine the similarities and differences between the pre and post treatment samples. Cross-tabulation and t-test analyses confirmed the existence

of significant differences between the two samples on all but seven of the baseline characteristics that we examined prior to propensity score matching (see Appendix A). In other words, Article 216 not only increased the volume of court-ordered treatment cases but also significantly changed their baseline characteristics. (The substance of these changes was discussed in Chapter 2.) Accordingly, a one-to-one propensity score matching strategy was utilized to match the cases that had the same or similar scores, resulting in a matched sample of 1,801 pre and 1,801 post cases. Diagnostics were conducted and revealed that only 4 of the 39 baseline measures[10] remained significantly different between the matched samples, validating the success of the matching strategy (see Appendix B).

Having completed this first matching process, all matched cases were then deleted, leaving the 1,391 unmatched post-implementation cases. In effect, we conceived of those 1,391 unmatched cases to be those whose characteristics made them most representative of the kinds of cases that received court-ordered treatment in the post period as a result of Article 216. (That is, these are the cases that would not likely have received treatment had their cases been processed before legislation went into effect).

The second step in the analysis entailed matching these 1,391 cases to a pre-implementation comparison sample. The initial comparison sample was composed of 25,078 cases that met the same Article 216-eligible charge criteria, were convicted on the instant case, but received a standard sentence in the year prior to reform implementation.[11] Propensity score modeling followed by a one-to-one matching scheme was utilized again to create a final sample in which there was little or no statistical difference between the 1,391 post-implementation treatment cases and the final matched sample of 1,391 pre-implementation comparison (i.e., no treatment) cases. As shown in Table 3.1, the final matched samples were significantly different on only 1 of 21 measures (region, $p<.001$), validating the overall success of the matching strategy. The baseline characteristics of the final post-implementation court-ordered treatment sample and the final comparison sample were almost indistinguishable.

The matched samples were then further modified to remove 877 treatment cases (and their 877 matched comparison cases) whose court-ordered treatment participation had not ended as of the data collection date. Having removed these cases, we then had to account for the fact that, of the 503 treatment and 503 matched comparison cases that remained, there was an overrepresentation of those who failed the court-ordered treatment program—which was, in the vast majority of cases, a drug court. This imbalance was inevitable, because it typically takes 15 months or longer to graduate from drug courts in New York State, whereas participants can fail at any point due to a serious re-arrest, repeated noncompliance, or voluntary decision to drop out. Thus, it takes less time on average to fail than to graduate from drug court, meaning that the cases that had reached a final resolution (were not still pending as of the data collection date) would be disproportionately likely to have failed. The solution to this bias was straightforward. Utilizing a sample of 2005-2006 drug court entrants that met the same charge-eligible criteria, we determined that their final graduation rate was 59%. We then weighted the cases in our current sample to accord program graduates with 59% of the overall weight and program failures with 41% of the overall weight in the analysis. This strategy involved assigning a weight of 1.24 to each of the 239 graduates in our

[10] Variables include: Region ($p<.001$), high school degree/GED ($p<.01$), ever used marijuana ($p<.01$) and ever used cocaine ($p<.01$).

[11] We required the pre-implementation comparison group to be convicted on the assumption that no defendant whose case was headed for a dismissal would have agreed to participate in judicial diversion with or without Article 216 legislation.

final sample and a weight of 0.78 to each of the 264 cases whose participation was unsuccessful (i.e., they either failed outright or were closed as incomplete due to a mental or physical illness).

Table 3.1: Baseline Characteristics of Judicial Diversion Participants, Pre and Post Samples Before and After Propensity Score Matching

	Pre-Matching		Final Comparisons	
Sample Size	**Comparison Sample (N = 25,078)**	**Judicial Diversion Sample (N=1,392)**	**Comparison Sample (N =1,391)**	**Judicial Diversion Sample (N=1,391)**
Region	***		***	
New York City	49%	43%	47%	43%
New York City Suburban	16%	25%	16%	25%
Rural/Semi-Rural	23%	18%	25%	18%
Mid-Sized City	12%	14%	13%	14%
Demographics				
Mean Age at Entry	32.3**	33.21	33.5	33.2
Female	18%**	15%	15%	15%
Race	***			
Black	45%	38%	36%	38%
Hispanic	24%	22%	25%	22%
White	30%	39%	38%	39%
Asian	1%	1%	1%	1%
Born in USA	92%***	96%	97%	96%
Criminal History				
Number of Prior Arrests	8.78**	9.89	9.89	9.89
Prior arrest	79%***	85%	85%	85%
Prior Felony Arrest	67%***	74%	74%	74%
Prior Misdemeanor Arrest	72%***	79%	79%	79%
Prior VFO Arrest	40%	40%	39%	40%
Prior Drug Arrests	60%***	70%	71%	70%
Prior Weapons Arrest	37%	37%	35%	37%
Number of Prior Convictions	4.29**	4.92	4.78	4.92
Prior Conviction	59%***	64%	65%	64%
Prior Felony Conviction	40%***	49%	49%	49%
Prior Misdemeanor Conviction	52%***	58%	59%	58%
Prior VFO Conviction	13%***	8%	9%	8%
Prior Drug Conviction	44%***	52%	53%	52%
Prior Weapons Conviction	13%	14%	13%	14%
Current Charges				
Current Charge Severity	***			
B Felony	49%	64%	64%	64%

	Pre-Matching		Final Comparisons	
Sample Size	**Comparison Sample (N = 25,078)**	**Judicial Diversion Sample (N=1,392)**	**Comparison Sample (N =1,391)**	**Judicial Diversion Sample (N=1,391)**
C,D or E Felony	51%	36%	36%	36%
Article 216 Charge Type	***		+	
Sales	29%	53%	51%	53%
Possession	30%	25%	29%	25%
Other Select Property	41%	22%	20%	22%

+ <p .10 * p < .05 ** p < .01 *** p <.001
Note: Statewide sample size can vary between measures due to missing data for select cases.

Impact of Article 216 on Sentencing Outcomes

We sought to determine how sentences differed between those who participated in judicial diversion under Article 216—but who would have been statistically unlikely to have received treatment in the pre-implementation period—and our comparison group of similar defendants who received standard sentences in the pre-implementation year.

Table 3.2 displays the results of the analysis. They reveal that final dispositions are significantly different between the judicial diversion and comparison samples. One hundred percent of the comparison group was convicted, but because some program graduates ultimately receive the legal incentive of having their case dismissed, only 81% of judicial diversion participants were ultimately convicted as the outcome of their treatment participation.

The judicial diversion and comparison groups also differed in their sentencing outcomes. Specifically, our analysis revealed the percentage of judicial diversion cases receiving state prison time (involving a sentence length of at least 1 year) was slightly greater than the comparison group (23% vs. 20%, respectively). On the other hand, judicial diversion participants were significantly less likely than the comparison group to be sentenced to jail or probation. Specifically, 11% of the judicial diversion sample compared to 27% of the comparison group received a jail sentence; and 2% of the judicial diversion sample compared to 8% of the comparison group received a "split" sentence involving some jail and some probation time. Finally, 10% of the judicial diversion sample compared to 17% of the comparison group received a straight probation sentence.

Whereas prison, jail, and probation sentences were more common in the comparison group, due to the effect of program graduation in leading many judicial diversion participants to have their case dismissed or to avoid imposition of a sentence, outcomes not involving a sentence were significantly more common in the judicial diversion sample (34% vs. zero).

Table 3.2 also compares the samples on the average number of days sentenced to prison, jail, and probation (counting zeros for any cases that did not receive those respective sentences). There were no significant variations in prison and parole days between the judicial diversion and comparison samples. However, the judicial diversion group averaged significantly fewer days sentenced to jail (27.89 vs. 59.78) and to probation (12.85 vs. 28.69).

Table 3.2: Impact on Sentencing Outcomes

	Judicial Diversion (N = 503)	Comparison (N = 503)
Disposition Type	***	
Pled Guilty/Convicted	81%	100%
Dismissed	17%	0%
ACD	1%	0%
Other	0%[2]	0%
Sentence Type	***	
Prison	23%	20%
Jail	11%	27%
Jail/Probation Split	2%	8%
Straight Probation[3]	10%	17%
Other Sentence (No Correctional Supervision)[4]	21%	29%
No Sentence/Case Dismissed	34%[5]	0%
Days of Incarceration and Supervision		
Average Prison Days	186.77	193.17
Average Jail Days	27.88***	59.78
Average Probation Days	12.85***	28.69
Average Parole Days	59.23	38.13

+ <p .10 * p < .05 ** p < .01 *** p <.001

Note: Cases were matched and weighted.

[2] The actual percentage was less than one-half of one percent.

[3] Straight probation also includes 9 cases sentenced "direct to parole."

[4] Other sentences primarily include conditional discharges, fines, and time served sentences.

[5] Sixty-six judicial diversion cases that were convicted did not receive a sentence beyond their participation in judicial diversion.

Table 3.3 compares sentences between the two samples within each region. The results for New York City and the NYC suburban region largely mirror those for the entire sample, with comparison cases consistently having more jail or probation sentences and, conversely, judicial diversion cases having more case dismissals. However, results in the upstate region differed from these patterns. Upstate, there was not a significant difference in the average numbers of jail or probation days to which judicial diversion and comparison cases were sentenced. In addition, upstate, judicial diversion cases spent significantly more days on parole than comparison cases, whereas the other regions did not see any difference in parole days. Thus in general, whereas judicial diversion appeared to reduce the use of incarceration and community supervision in New York City and the suburbs, this effect was not apparent in the upstate region.

Table 3.3: Distribution of Sentence Outcomes by Region

	New York City (N = 442)		New York City Suburban (N = 176)		Upstate (N = 388)	
	Judicial Diversion (N = 216)	Comparison (N = 226)	Judicial Diversion (N = 89)	Comparison (N = 87)	Judicial Diversion (N = 198)	Comparison (N = 190)
Disposition Type	***		**		***	
Pled Guilty/Convicted	71%	100%	89%	100%	90%	100%
Dismissed	29%	0%	10%	0%	6%	0%
ACD	0%	0%	1%	0%	3%	0%
Other	0%	0%	0%	0%	1%	0%
Sentence Type	***		***		***	
Prison Sentence	20%	20%	24%	20%	26%	21%
Jail Sentence	9%	34%	8%	28%	16%	19%
Jail/Probation Split	1%	3%	0%	14%	4%	11%
Straight Probation[3]	0%[2]	12%	3%	18%	24%	22%
Other Sentence (No Correctional Supervision)[4]	16%	32%	32%	21%	20%	28%
No Sentence/Case Dismissed	53%	0%	33%	0%	11%	0%
Days of Incarceration and Supervision						
Average Prison Days	175.29	169.71	186.83	180.54	200.60	226.86
Average Jail Days	25.63***	65.97	19.19***	76.77	34.87	44.62
Average Probation Days	1.87***	18.59	3.25***	40.59	30.81	35.25
Average Parole Days	20.93	44.45	57.61	27.29	106.23**	35.57

+ <p .10 * p < .05 ** p < .01 *** p <.001
Note: Cases were matched and weighted.
[2] The actual percentage was less than one-half of one percent.
[3] Straight probation also includes 9 cases sentenced directly to parole supervision.
[4] Other sentences primarily include conditional and unconditional discharges, fines, and time served sentences.

Of final interest, judicial diversion participants in New York City were particularly likely to receive a case dismissal or ACD (29%), whereas these outcomes were less prevalent both in the suburbs (11% case dismissals and ACDs combined) and upstate (9%). (An ACD, or adjournment in contemplation of dismissal, involves a promise of future case dismissal in exchange for good behavior over either a 6-month or 1-year period, depending on the charge.) These differences undoubtedly reflect the tendency in the New York City drug courts to dismiss the charges of drug court graduates as a matter of policy.

Table 3.4 compares sentences between the judicial diversion and comparison groups for each of the two basic types of Article 216 offenses. The results indicate that Article 216 had a more positive impact with drug offenders than with property offenders. Specifically, for property offenders, the percentage receiving a prison sentence, and the average number of days sentenced to prison, was markedly higher in the judicial diversion than the comparison sample. Conversely, drug offenders participating in treatment saw a reduction in days spent on probation; among property offenders, the average number of probation days was statistically identical between the samples. Finally, among those in judicial diversion, drug offenders averaged fewer (property offenders averaged more) days spent on parole than their respective comparison groups.

Summary

Defendants who received treatment due to Article 216 were less likely than otherwise similar defendants in the pre-implementation period to be sentenced to jail or probation. Conversely, defendants receiving treatment due to Article 216 were more likely than the comparison group to have their case dismissed (due to successful treatment participation) and to receive relatively less serious sentences that did not involve incarceration or community supervision. We also found that the positive effects of Article 216 were somewhat less pronounced in the upstate region of the state than in New York City or its suburbs; and we found that the positive effects were less pronounced among property offenders than among drug offenders.

Table 3.4: Distribution of Sentence Outcomes by Charge Type

	Drug Charge (N = 774)		Property Charge (N = 232)	
	Judicial Diversion (N = 377)	Comparison (N = 397)	Judicial Diversion (N = 126)	Comparison (N = 106)
Disposition Type	***		**	
Pled Guilty/Convicted	78%	100%	91%	100%
Dismissed	20%	0%	8%	0%
ACD	2%	0%	1%	0%
Other	0%[2]	0%	0%	0%
Sentence Type	***		**	
Prison Sentence	21%	22%	32%	13%
Jail Sentence	9%	26%	19%	31%
Jail/Probation Split	1%	8%	4%	6%
Straight Probation[3]	8%	16%	16%	19%
Other Sentence (No Correctional Supervision)[4]	21%	28%	18%	31%
No Sentence/Case Dismissed	41%	0%	11%	0%
Incarceration and Supervision				
Average Prison Days	181.86	218.06	203.61*	99.94
Average Jail Days	22.65***	59.27	45.80	61.65
Average Probation Days	10.08***	30.36	22.35	22.40
Average Parole Days	0+	22.54	262.21**	96.49

+ <p .10 * p < .05 ** p < .01 *** p <.001
Note: Cases were matched and weighted.
[2] The actual percentage was less than one-half of one percent.
[3] Straight probation also includes 9 cases sentenced directly to parole supervision.
[4] Other sentences primarily include conditional and unconditional discharges, fines, and time served sentences.

CHAPTER 4: IMPACT ON COSTS AND SAVINGS

The analysis presented in Chapter 2 demonstrated a significant increase in the number of defendants with Article 216-eligible charges who participated in court-ordered treatment after the reform law was implemented. The analysis in Chapter 3 illustrated that the Article 216-eligible cases that newly received treatment ended in significantly different sentences than a matched sample of pre-implementation cases, specifically less time incarcerated and less time on probation.

Chapter 4 examines the cost implications of these observed changes. The main policy question of interest in this chapter is: What are the costs and savings associated with judicial diversion as compared with conventional case processing and sentencing practices that were employed with similar defendants before the reform law was implemented?

This cost evaluation was designed to address the following research questions:

1. What are the program costs associated with judicial diversion?
2. What are the outcome costs for the instant case (the case eligible for Article 216) post-legislation that received treatment compared to similar cases pre-legislation that did not receive treatment? What are the statewide cost implications due to the additional individuals that received treatment post-legislation?
3. What is the statewide cost impact on the criminal justice system of judicial diversion?

This section of the report describes the research design and methodology used for the cost analysis of New York's use of judicial diversion.[12] The next section presents the cost results.

Cost Evaluation Design and Methodology

COST EVALUATION DESIGN

Transaction and Institutional Cost Analysis

The cost approach utilized in this research is called Transactional and Institutional Cost Analysis (TICA). The TICA approach views an individual's interaction with publicly funded agencies as a set of *transactions* in which the individual utilizes resources contributed from multiple agencies. Transactions are those points within a system where resources are consumed and/or change hands. In the case of judicial diversion, when a participant appears in court or has a drug test, resources such as judge time, defense attorney time, court facilities, and urine cups are used. Court appearances and drug tests are transactions. In addition, the TICA approach recognizes that these transactions take place within multiple organizations and institutions that work together to create the program of interest. These organizations and institutions contribute to the cost of each transaction that occurs for program participants. TICA is an intuitively appropriate approach to conducting costs assessment in an environment such as judicial diversion, which involves complex interactions among multiple taxpayer-funded organizations.

[12] The terms judicial diversion and drug court are used interchangeably in this report, as many counties in New York decided to hear judicial diversion cases in pre-existing drug courts while others created specialized "judicial diversion parts" (i.e., the latter are court parts exclusively dedicated to hear judicial diversion cases).

Cost to the Taxpayer

In order to maximize the study's benefit to policymakers, a "cost-to-taxpayer" approach was used for this evaluation. This focus helps define which cost data should be collected (costs and avoided costs involving public funds) and which cost data should be omitted from the analyses (e.g., costs to the individual participating in the program).

The central core of the cost-to-taxpayer approach in calculating benefits (avoided costs) for judicial diversion specifically is the fact that untreated substance abuse will cost various tax-dollar funded systems money that could be avoided or diminished if substance abuse were treated. In this approach, any cost that is the result of untreated substance abuse and that directly impacts a citizen (through tax-related expenditures or through crimes perpetrated by a substance abuser) is used in calculating the benefits of substance abuse treatment.

The TICA approach uses *full costs*, rather than marginal costs, for each transaction. The TICA approach does not assume that fixed costs, such as for building maintenance, utilities, salaries, or other overhead expenses, are off-limits. Those costs are still borne by taxpayers and can change over time or be deployed for different purposes.

The TICA approach has demonstrated that the business as usual (non-diversion) costs to the system are often vastly underestimated, particularly for the addicted criminogenic population. If the full costs of both the treatment and comparison group are not measured, the real cost savings are missed. These cost savings occur because for this addicted criminal group there are fewer continuances and bench warrants and more compliance with continuous treatment in the diversion segment as opposed to the "business as usual" side.

Opportunity Resources

Finally, this cost approach looks at publicly funded costs as "opportunity resources." The concept of opportunity *cost* from the economic literature suggests that system resources are available to be used in other contexts if they are not spent on a particular transaction. The term opportunity *resource* describes these resources that are now available for different use. For example, if substance abuse treatment reduces the number of times that a client is subsequently incarcerated, the local sheriff may see no change in his or her budget, but an opportunity resource will be available to the sheriff in the form of a jail bed that can now be filled by another person, who, perhaps, possesses a more serious criminal justice record than does the individual who has received treatment and successfully avoided subsequent incarceration.

The TICA approach does not make assumptions as to whether or not government agencies will change their budgets in ways that enable savings to be literally realized. All reported "savings" in the results in this chapter represent "opportunity resources" that are newly available to government actors to deploy as they choose. Rather than assume that direct dollars will be immediately saved (e.g., through reductions in the following year's budget), the TICA approach fully quantifies all taxpayer-funded resources (marginal or fixed)—such as a jail bed, treatment slot, or time spent in a court hearing—that are newly made available for a different offender or a different purpose.

COST EVALUATION METHODS

The cost evaluation involves calculating the program costs of judicial diversion at 10 sites throughout the state, determining the costs due to sentence differences for the instant case (the case eligible for Article 216) post-legislation that received court-ordered treatment compared to similar cases pre-legislation that did not receive treatment (using a matched sample of 503 judicial

diversion cases and 503 comparison cases as described in Chapter 3), and estimating the statewide cost impact on the criminal justice system due to judicial diversion (using the outcome findings from Cissner et al., 2013, which compared the 3-year recidivism results of 3,288 judicial diversion-eligible drug court participants to the outcome results of 3,141 judicial diversion-eligible comparison group offenders, and the change in judicial diversion case volume post-Article 216). The outcome transaction cost results for New York are applied to the outcome data results to determine the per-person cost savings of judicial diversion participation. That savings can then be multiplied by the increased judicial diversion caseload (post-Article 216) to determine the overall statewide cost savings of judicial diversion.

The 10 counties selected for the program cost analysis were chosen to ensure a broad cross section of all geographical regions in New York, as well as a variety of court sizes and urban sizes, including rural locations. Two sites chosen were from New York City (Bronx County and Kings County [Brooklyn]), 2 from suburban New York City (Suffolk and Nassau counties), 2 upstate urban counties (Onondaga [Syracuse] and Monroe [Rochester]), and 4 upstate rural counties (Broome, Orange, Saratoga, and Oswego).

TICA Methodology

NPC's TICA methodology is based upon six distinct steps. Table 4.1 lists each of these steps and the tasks involved. Step 1 (determining the process) was performed through analysis of court and judicial diversion program documents, and through interviews with key informants. Step 2 (identifying program transactions) and Step 3 (identifying the agencies involved with transactions) were performed by analyzing the information gathered in Step 1. Step 4 (determining the resources used) was performed through extensive interviewing of key informants, and by collecting administrative data. Step 5 (determining the cost of the resources) was performed through interviews with judicial diversion/drug court and other court staff and with agency finance officers, as well as analysis of budgets found online or provided by agencies.[13] Step 6 (calculating cost results) involved calculating the cost of each transaction and multiplying this cost by the number of transactions. All the transactional costs for each individual were added to determine the overall cost per participant. This was generally reported as an average cost per person for the program, and outcome/impact costs due to re-arrests, jail time and other recidivism costs. In addition, due to the nature of the TICA approach, it was also possible to calculate the cost for judicial diversion processing for each agency as well as outcome costs per agency.

The costs to the criminal justice system outside of the program consist of those due to re-arrests, subsequent court cases, probation time, parole time, jail time, prison time, and victimizations. Program costs consist of judicial status hearings, case management, treatment, drug tests, and jail sanctions.

[13] For certain transactions, NPC used calculated costs or rates taken directly from agency staff or agency Web sites, as long as the cost or rate is a cost to taxpayers and incorporates all of the components of TICA (i.e., the fully loaded rate including all salaries, benefits, indirect support and overhead costs).

Table 4.1: The Six Steps of TICA

	Description	Tasks
Step 1:	Determine flow/process (i.e., how program participants move through the system)	Interviews with key informants (agency and program staff) using a drug court typology and cost guide (See guide on www.npcresearch.com)
Step 2:	Identify the transactions that occur within this flow (i.e., where clients interact with the system)	Analysis of process information gained in Step 1
Step 3:	Identify the agencies involved in each transaction (e.g., court, treatment, police)	Analysis of process information gained in Step 1
Step 4:	Determine the resources used by each agency for each transaction (e.g., amount of judge time per transaction, amount of attorney time per transaction, number of transactions)	Interviews with key program informants using program typology and cost guide Administrative data collection of number of transactions (e.g., number of court appearances, number of treatment sessions, number of drug tests)
Step 5:	Determine the cost of the resources used by each agency for each transaction	Interviews with budget and finance officers Document review of agency budgets and other financial paperwork
Step 6:	Calculate cost results (e.g., cost per transaction, total cost of the program per participant)	Indirect support and overhead costs (as a percentage of direct costs) are added to the direct costs of each transaction to determine the cost per transaction The transaction cost is multiplied by the average number of transactions to determine the total average cost per transaction type These total average costs per transaction type are added to determine the program and outcome costs.

Cost Evaluation Results

PROGRAM COSTS

Research Question 1: What are the program costs associated with cases diverted to treatment due to judicial diversion?[14]

As described in the cost methodology, the Transactional and Institutional Cost Analysis (TICA) approach was used to calculate the costs of each of the transactions that occurred while participants were engaged in the program. Transactions are those points within a system where resources are consumed and/or change hands. Program transactions for which costs were calculated in this analysis included judicial status hearings, case management, treatment, drug tests, and jail sanctions. The costs for this study were calculated to include taxpayer costs only. All cost results provided in this report are based on fiscal year 2012 dollars.

Program Transactions

A judicial status hearing, for the majority of judicial diversion cases (which are handled in a drug court), is one of the most staff and resource intensive program transactions. These sessions typically include representatives from the following agencies:

- County/Criminal Court (Judge, Court Clerk, Coordinator, Case Manager)
- District Attorney (Assistant District Attorney)
- Defense Attorney (Public Defender/Legal Aid attorney, or contracted private defense attorney)
- Probation Department (Probation Officer)
- Treatment (Program Manager, Case Manager, Counselors)

The cost of a ***Judicial Diversion Court Appearance*** (the time during a session when a single program participant interacts with the judge) is calculated based on the average amount of court time (in minutes) each participant interacts with the judge during the court session. This includes the direct costs of each diversion program team member present, the time team members spend preparing for the session, the agency support costs, and jurisdictional overhead costs. The average cost for a single judicial diversion court appearance at the 10 sites in this study is **$73.53** per participant per appearance (costs ranged from $39.14 to $134.64 per participant per appearance).[15]

Case Management is based on the amount of staff time dedicated to case management activities during a regular work week and is then translated into a total cost for case management per participant per day (taking staff salaries and benefits, and support and overhead costs into account).[16] The agencies involved in case management are typically the Court, Probation, and

[14] As mentioned before, many counties in New York chose to hear judicial diversion cases in pre-existing drug courts while others created specialized judicial diversion courts, which are in essence drug courts.
[15] Due to a lack of information or responses, proxies were used in the following drug court appearance and case management cost calculations: Kings County—benefits rate for Kings County Court staff, support rate for Palladia, Inc.; Orange County—Legal Aid Society staff salary and benefits, District Attorney staff time commitment; Oswego County—benefits rate for District Attorney staff; Saratoga County—support rate for Public Defender.
[16] Case management includes meeting with participants, evaluations, phone calls, referring out for other help, answering questions, reviewing referrals, consulting, making community service connections, assessments, documentation, file maintenance, and residential referrals.

treatment. The average daily cost of case management at the 10 sites in the cost study is **$3.28** per day per participant (costs ranged from $1.26 to $4.56 per day per participant).

Drug Treatment costs used in this analysis are from the New York State Office of Alcoholism and Substance Abuse Services Web site, and the same statewide rate is used for each of the 10 sites.[17] Residential detoxification is **$322.16** per day (an average of the upstate and downstate rates). Outpatient detoxification is **$210.65** per day (an average of the upstate and downstate rates). Short-term rehabilitation is **$273.82** per day (based on the statewide per diem fee). Long-term inpatient treatment is **$86.58** per day. Day treatment is **$127.01** per day (an average of the upstate and downstate rates for Outpatient Rehabilitation-Full Day). Methadone treatment is **$19.71** per day. Intensive outpatient treatment is **$97.58** per day (an average of the upstate and downstate rates). Outpatient treatment is **$95.26** per day (an average of the upstate and downstate rates for Outpatient Rehabilitation-Half Day).

Urinalysis (UA) Drug Testing rates were obtained from program coordinators, treatment agencies, and probation departments (depending on which agencies mainly conducted the drug testing at each site). The average cost per UA test at the 10 sites included in the cost study is **$5.11** (costs ranged from $1.10 to $10.00 per test).[18]

Jail Sanctions are typically provided by the Sheriff's Office (except for New York City where the Department of Correction handles jail). The cost of jail was acquired from representatives of the Sheriff's Office or from budget and average daily population information found online. The average cost of jail per day at the 10 sites included in this costs study is **$151.88** (costs ranged from $70.00 to $232.70 per day).[19]

Program Costs

Table 4.2 displays the average unit cost per program-related event, the average number of events, and the average cost *per individual* for each of the program events. The averages in the table below are based on the individual program cost results from the 10 sites included in this study. The sum of these averaged transactions is the total per participant cost of judicial diversion. The table includes the average for all participants (N = 2,788), regardless of completion status. It is important to include participants who were discharged as well as those who graduated as all participants use program resources, whether they graduate or not.

[17] From Medicaid Chemical Dependence Services and Corresponding Fees, Rates, and Billing Codes at http://www.oasas.ny.gov/admin/hcf/APG/Index.cfm and http://www.oasas.ny.gov/admin/hcf/ffschart.cfm, and communication with the New York Office of Alcoholism and Substance Abuse Services staff.

[18] Due to a lack of information or responses, the following proxies were used in the drug testing cost calculations: Onondaga County and Suffolk County—$5.11 per UA test (average for the UA costs at the 8 other sites that had rates available).

[19] There are currently two other studies underway assessing the impact of Rockefeller reforms—one by the New York State Division of Criminal Justice Services (DCJS) and the other by the Vera Institute of Justice—both of which use some form of marginal costs in their analyses, as opposed to the total costs used in this TICA analysis. DCJS plans to use a marginal cost figure for prison of $51 per day and a marginal cost figure for jail of $70 per day.

Table 4.2: Average Program Costs per Participant

Transaction	Average Unit Cost[20]	Average Number of Events per Participant	Average Cost per Participant
Judicial Status Hearings	$73.53	25.27	$1,858
Case Management	$3.28	447.10	$1,466
Residential Detoxification	$322.16	0.97	$312
Outpatient Detoxification	$210.65	0.04	$8
Short-Term Rehabilitation	$273.82	11.62	$3,182
Long-Term Inpatient Treatment	$86.58	68.97	$5,971
Day Treatment	$127.01	0.32	$41
Methadone Treatment	$19.71	2.46	$48
Intensive Outpatient Treatment	$97.58	34.41	$3,358
Outpatient Treatment	$95.26	20.36	$1,939
UA Drug Tests[21]	$5.11	52.08	$266
Jail Sanctions	$151.88	0.55	$84
TOTAL			**$18,533**

The average cost per participant of these drug court programs was $18,533.[22] Table 4.2 illustrates that the main contributors to the cost of the program are long-term inpatient treatment ($5,971), intensive outpatient treatment ($3,358), and short-term rehabilitation ($3,182). Other significant costs are for drug court sessions ($1,858) and case management ($1,466). Excluding treatment and detoxification, all other program transactions total only $3,674 of total program costs per participant. The range of costs found across the 10 study sites is shown in Table 4.3 below.

[20] All unit costs are per day, except for Drug Court Sessions and Drug Testing.
[21] Due to a lack of administrative data on drug tests, the calculation for the cost per individual for UA drug tests used a proxy at each of the 10 sites for the average number of drug tests. The proxies used were based on program policy on minimum number of tests per week or month, according to phase.
[22] If the DCJS marginal cost figures were used in the program cost analysis (which would result in a mixture of marginal costs for jail and average costs based on actual expenditures for every other transaction), the average program costs per participant would be $18,488 versus the $18,533 using the TICA methodology that relies on actual expenditures.

Table 4.3: Range of Program Costs per Participant

Transaction	Range of Unit Costs	Range of Events per Participant	Range of Costs per Participant
Judicial Status Hearings	$39.14 - $134.64	15.07 – 47.31	$836 - $4,377
Case Management	$1.26 - $4.56	404.88 – 509.85	$584 - $2,188
Residential Detoxification	$322.16	0.00 – 16.19	$0 - $5,216
Outpatient Detoxification	$210.65	0.00 – 1.57	$0 - $331
Short-Term Rehabilitation	$273.82	0.00 – 26.14	$0 - $7,158
Long-Term Inpatient Treatment	$86.58	0.82 – 126.45	$71 - $10,948
Day Treatment	$127.01	23.06[23]	$2,929
Methadone Treatment	$19.71	0.00– 9.91	$0 - $195
Intensive Outpatient Treatment	$97.58	0.00 – 68.11	$0 - $6,646
Outpatient Treatment	$95.26	5.17 – 56.55	$492- $5,387
UA Drug Tests	$1.10 - $10.00	24.19 – 101.38	$27 - $588
Jail Sanctions	$70.00 - $232.70	0.00 – 3.43	$0 - $384
TOTAL			**$4,494 - $31,082**

Table 4.3 shows that the number of events (e.g., the number of court sessions, number of drug tests, etc.) as well as the associated costs vary widely across programs. Some programs focus more on inpatient treatment while others spend more on outpatient. Some programs find ways to pay for treatment through less costly direct contracts with the court while others pay a variety of agencies at their regular rates. Some programs have learned ways to perform drug testing at lower cost, while others continue to send all tests to expensive laboratories. It may be useful for different program administrators to talk with each other and learn where others have found cost efficiencies while maintaining program quality.

[23] Only 1 of the 10 sites used day treatment, according to the treatment data used for this analysis.

Program Costs per Agency

Another useful way to examine program costs is by agency. Table 4.4 displays the cost per participant by agency.

Table 4.4: Average and Range of Program Costs per Participant by Agency

Agency	Average Cost per Participant	Range of Costs per Participant
Court	$3,323	$1,521 - $4,434
District Attorney	$344	$0 - $1,432
Defense Attorney[24]	$203	$0 - $438
County Jail[25]	$102	$0 - $384
Probation	$313	$0 - $1,922
Treatment	$14,248	$926 - $26,874
TOTAL	**$18,533**	**$4,494 – $31,082**

Table 4.4 shows that treatment agencies (providing treatment, and often also providing drug testing and case management) bear 77% of the total program costs, on average, with the criminal justice system bearing the remaining 23% of program costs. Out of the 23% for the criminal justice system, the largest portion (18%) is for the Court due to its support of court sessions and case management. Of the remaining 5%, the District Attorney, Defense Attorney, County Jail, and Probation each bear between 1% and 2% of total program costs.

Program Costs Summary

In sum, the largest portion of judicial diversion program costs by far is due to treatment services (including residential detoxification, outpatient detoxification, short-term rehabilitation, long-term inpatient, day treatment, methadone, intensive outpatient, and outpatient treatment). Since one of the key goals of these judicial diversion programs is to divert participants into treatment, these results demonstrate that judicial diversion is succeeding in this goal. Court sessions ($1,858, or 10% of total costs) and case management (an average of $1,466, or 8%) are also significant program costs. When program costs are evaluated by agency, the largest portion of costs accrues to treatment agencies (77% of total costs) for drug and alcohol treatment services, drug testing, and case management. The court has the next largest portion of costs (18% of total costs) for court sessions and case management.

[24] Depending on the county, this can include Public Defender offices, Legal Aid Society offices, and Assigned Counsel.

[25] This includes the City of New York Department of Correction and other counties' Correction Department (which is often part of the county's Sheriff's Office, but sometimes its own separate agency).

IMPACT/OUTCOME COSTS

What are the costs for the instant case (the case eligible for Article 216) post-legislation that received judicial diversion compared to similar cases pre-legislation that did not receive judicial diversion? What are the statewide cost implications due to the additional individuals that received judicial diversion post-legislation?

What is the statewide cost impact on the criminal justice system of judicial diversion?

Outcome Costs

The Transactional and Institutional Cost Analysis (TICA) approach was used to calculate the costs of each of the criminal justice system outcome transactions. Outcome transactions for which costs were calculated in this analysis included re-arrests, subsequent felony court cases, probation time, parole time, jail time, prison time, and victimizations. Only costs to the taxpayer were calculated in this study. All cost results represented in this report are based on fiscal year 2012 dollars or were updated to fiscal year 2012 dollars using the Consumer Price Index.

The outcome cost analyses include determining the outcome costs for 1) the instant case (the case eligible for Article 216) post-legislation that received judicial diversion treatment compared to similar cases pre-legislation that did not receive treatment (using a matched sample of 503 judicial diversion cases and 503 comparison cases), and 2) estimating the statewide cost impact on the criminal justice system due to judicial diversion (using the outcome findings from Cissner et al., 2013, which compared the 3-year recidivism results of 3,288 judicial diversion-eligible drug court participants to the outcome results of 3,141 judicial diversion-eligible comparison group offenders, along with the change in judicial diversion case volume post-Article 216). As discussed in Chapter 2, judicial diversion case volume increased 77% after the implementation of Article 216 on October 7, 2009 (from 1,801 in the year prior to 3,192 in the year after implementation, or an additional 1,391 cases). Because judicial diversion participants both pre- and post-Article 216 went to drug courts, any increase in the number of offenders diverted to treatment after Article 216 implementation can then be multiplied by the cost savings of treatment participation versus traditional court processing to determine the overall benefit of Article 216.

The outcome costs discussed below do not represent the entire cost to the criminal justice system. Rather, the outcome costs include the transactions for which the research team was able to obtain outcome data and cost information. However, we believe that the costs represent the majority of criminal justice system costs. Outcome costs were calculated using information and budgets found online from state and local agency Web sites and from representatives of each study site's Court, District Attorney, Public Defender (or Legal Aid Society or privately contracted defense attorney for counties without a Public Defender Office), Probation Department, Sheriff's Office (or Department of Correction in the case of New York City), county-run and private treatment agencies, and the police departments within each county chosen for the cost evaluation. The methods of calculation were carefully considered to ensure that all direct costs, support costs and overhead costs were included as specified in the TICA methodology followed by NPC.

Finally, note that some possible costs or cost savings related to potential outcomes are not considered in this study. These include outcomes such as the number of drug-free babies born, health care expenses, and drug treatment court participants legally employed and paying taxes. The gathering of this kind of information is generally quite difficult due to HIPAA confidentiality laws and due to the fact that much of the data related to this information are not collected in any one place, or collected at all. Although NPC examined the possibility of obtaining this kind of data, it was not feasible within the time frame or budget for this study. In

addition, the cost results that follow do not take into account other less tangible outcomes for participants, such as improved relationships with their families and increased feelings of self-worth. Although these are important outcomes to the individual participants and their families, it is not possible to assign a cost to this kind of outcome. (They are priceless.) Other studies performed by NPC have taken into account health care and employment costs and found positive outcome for diversion programs. For example, Finigan (1998) performed a cost study in the Portland, Oregon, adult drug treatment court which found that for every dollar spent on the drug treatment court program, $10 was saved due to decreased criminal justice recidivism, lower health care costs and increased employment.

Outcome Transactions

The cost of an ***Arrest*** was gathered from representatives of the main law enforcement agencies located within each study county, with a few smaller agencies also included (not every police department or sheriff's office responded, but the research team was successful in obtaining cost information from almost all of the agencies contacted, with the notable exception of the New York City Police Department). The cost per arrest incorporates the time of the law enforcement positions involved in making an arrest, law enforcement salaries and benefits, support costs and overhead costs. The average cost of a single arrest in the 10 selected cost sites is **$226.29** (costs ranged from $169.49 to $336.55 per arrest).[26]

Court Cases for the purposes of this study include all felonies brought to County Court (or the Supreme Court in the case of New York City, and District Court in the cases of Nassau and Suffolk Counties). Court case costs are shared among the Court, the District Attorney, and the Public Defender (or Legal Aid Society/contracted defense attorney for sites without a Public Defender Office). Using budget and caseload information obtained online and from agency representatives of the New York State Unified Court System, local District Attorney offices and Public Defender office, the average cost of a felony Court case in the 10 study sites was found to be **$7,782.77** (costs ranged from $4,434.23 to $13,892.62 per court case).

Probation costs were acquired from a representatives of each study site's Probation Department or from probation budget and caseload (or actual published probation rate) information found online. The average cost per person per day of probation in the 10 study sites is **$4.84** (costs ranged from $3.75 to $6.39 per day).

Parole is provided by the New York State Department of Corrections and Community Supervision. The statewide cost of parole was acquired online[27] using statewide budget and caseload information. The cost per person per day of parole is **$12.32**.

Jail is typically provided by the Sheriff's Office in each study location (except for New York City where the Department of Correction handles jail). Jail costs were acquired from representatives of the Sheriff's Office or from budgetary and average daily jail population information found online.

[26] Law enforcement agencies included in this analysis were: Broome County Sheriff's Office, Binghamton Police Dept., Monroe County Sheriff's Office, Rochester Police Dept., Nassau County Police Dept., Onondaga County Sheriff's Office, Syracuse Police Dept., Orange County Sheriff's Office, Middletown Police Dept., Port Jervis Police Dept., Oswego County Sheriff's Office, Fulton Police Dept., Oswego Police Dept., Saratoga County Sheriff's Office, Saratoga Springs Police Dept., Suffolk County Police Dept., and the Shelter Island Town Police Dept. Proxy costs (based on average time estimates from the other agencies in this study and salary rates found online for New York City Police Dept. positions) were used for the New York City Police Department due to its refusal to provide information for this study.

[27] See http://www.budget.ny.gov/pubs/archive/fy0910archive/eBudget0910/agencyPresentations/pdf/parole.pdf and http://bjs.ojp.usdoj.gov/content/pub/pdf/ppus08.pdf.

The average cost of jail in the 10 study sites is **$151.88** per day (costs ranged from $70.00 to $232.70 per day).

Prison is provided by the New York State Department of Corrections and Community Supervision. The statewide cost of prison was acquired online[28] using statewide budget and average daily population information. The cost per person per day of prison is **$141.07**.

Victimizations were calculated from the National Institute of Justice's *Victim Costs and Consequences: A New Look (1996).*[29] The costs were updated to fiscal year 2012 dollars. ***Property crimes*** are **$12,881** per event and ***person crimes*** are **$41,728** per event.

Outcome Cost Results for Instant Case Sentencing

What are the outcome costs for the instant case (the case eligible for Article 216) post-legislation that received judicial diversion compared to similar cases pre-legislation that did not receive judicial diversion? What are the statewide cost implications due to the additional individuals that received judicial diversion post-legislation?

This part of the cost analysis involves determining the outcome costs for the instant case (the case eligible for Article 216) post-legislation that received judicial diversion compared to similar cases pre-legislation that did not receive judicial diversion (using a matched sample of 503 judicial diversion cases and 503 comparison cases). The outcome transaction cost results for New York were applied to the outcome data results on the matched sample to determine the per person cost savings of judicial diversion participation. That savings can then be multiplied by the increased judicial diversion caseload (post-Article 216) to determine the overall statewide cost savings of judicial diversion in the 12 month period after Article 216 went into effect.

The same 10 counties selected for the program cost analysis were used in calculating the unit costs for each outcome transaction. Outcome transactions for which costs were calculated in this analysis included probation time, parole time, jail time, and prison time that resulted from the sentence on the instant case.

Table 4.5 shows the average outcome costs per person for judicial diversion participants post-legislation (regardless of graduation status) and the comparison group (pre-legislation and non-treatment) on the instant case, or the original case that was eligible for Article 216.

[28] See http://publications.budget.state.ny.us/eBudget1011/agencyPresentations/pdf/docs.pdf

[29] The costs for victimizations were based on the National Institute of Justice's *Victim Costs and Consequences: A New Look (1996).* This study documents estimates of costs and consequences of personal crimes and documents losses per criminal victimization, including attempts, in a number of categories, including fatal crimes, child abuse, rape and sexual assault, other assaults, robbery, drunk driving, arson, larceny, burglary, and motor vehicle theft. The reported costs include lost productivity, medical care, mental health care, police and fire services, victim services, property loss and damage, and quality of life. In our study, arrest charges were categorized as violent or property crimes, and therefore costs from the victimization study were averaged for rape and sexual assault, other assaults, and robbery and attempted robbery to create an estimated cost for violent crimes, arson, larceny and attempted larceny, burglary and attempted burglary, and motor vehicle theft for an estimated property crime cost. All costs were updated to fiscal year 2012 dollars using the consumer price index (CPI).

Table 4.5: Average Instant Case Outcome Costs per Person

Transaction	Average Unit Cost per day	# of Events per Comparison Group Individual (N= 503)	Average Cost per Comparison Group Individual	# of Events per Judicial Diversion Participant (N= 503)	Average Cost per Judicial Diversion Participant
Probation Days	$4.84	28.69	$139	12.85	$62
Parole Days	$12.32	38.13	$470	59.23	$730
Jail Days	$151.88	59.78	$9,079	27.88	$4,234
Prison Days	$141.07	193.17	$27,250	186.77	$26,348
TOTAL			**$36,938**		**$31,374**

Overall, as demonstrated in Table 4.5, judicial diversion participants use fewer criminal justice system resources than the comparison group with fewer days on probation, days in jail, and days in prison. Judicial diversion participants had more parole days, however. Table 4.5 shows that the majority of outcome costs for the judicial diversion group are due to prison days (an average of $26,348, or 84% of total costs) and jail days (an average of $4,234, or 13% of total costs). The majority of outcome costs for the comparison group were also due to prison days (an average of $27,250, or 74% of total costs) and jail days (an average of $9,079, or 25% of total costs). The largest outcome cost savings for the judicial diversion sample (when compared to the comparison group) was for jail days, with an average savings per participant of $4,845 (or 87% of total outcome cost savings). The difference in cost between the judicial diversion and comparison groups is **$5,564** per participant. This difference is the benefit, or savings, due to treatment participation.

Outcome Cost Results for Instant Case Sentencing by Agency

These same outcome costs were also examined by agency. Table 4.6 provides the cost of the sentence for the instant case for each agency and the difference in cost between the treatment and comparison groups per person. A positive number in the difference column indicates a cost savings for treatment participants.

Table 4.6: Average Instant Case Outcome Costs per Person by Agency

Agency	Average Cost per Comparison Group Individual	Average Cost per Judicial Diversion Participant	Difference in Cost
County Jail[30]	$9,079	$4,234	$4,845
Probation	$139	$62	$77
Department of Correctional Services[31]	$27,720	$27,078	$642
TOTAL	**$36,938**	**$31,374**	**$5,564**

Table 4.6 reveals that every agency has a benefit, or savings, as a result of judicial diversion. Similar to many of the drug court studies in which NPC has been involved, greater outcome savings associated with drug court participants accrue to some agencies than others. In the case of judicial diversion, County Jail (which includes the Sheriff's Department, the City of New York Department of Correction, and other counties' Correction Department if not already part of the Sheriff's Office) realizes the greatest financial benefit from the different sentencing outcomes for post-judicial diversion compared with pre-judicial diversion.

As demonstrated in Tables 4.5 and 4.6, the total outcome cost for the judicial diversion participant's instant case was $31,374, while the cost per comparison group individual was $36,938. The difference between the two groups represents a benefit of **$5,564** per participant. The cost savings (or opportunity resources) illustrated in Table 4.6 are those that have accrued for a single instant case that was eligible for judicial diversion. These savings to the state and local criminal justice systems are generated for each case that is diverted to judicial diversion.[32]

Summary of Cost Results for Instant Case Sentencing

The cost savings per judicial diversion participant on the instant case sentencing shown above can be multiplied by the number of additional individuals that went to judicial diversion (drug court) after Article 216 implementation to show the statewide cost impact on the criminal justice system of Article 216 legislation. The benefit due to significantly reduced sentencing outcomes per judicial diversion participant included in this analysis came to $5,564 per case. As discussed in Chapter 2, judicial diversion case volume increased 77% after the implementation of Article 216 on October 7, 2009 (from 1,801 in the year prior to 3,192 in the year after implementation, or an additional 1,391 cases). The $5,564 in resources saved per participant multiplied by an additional 1,391 cases diverted to treatment comes to a total **$7,739,524** taxpayer resources saved in the 12 months after implementation. Importantly, some of these taxpayer savings take the form of opportunity resources (resources, such as jail beds, that are now available for a different

[30] This includes the New York City Department of Correction, and other counties' Correction Department (if they were not already part of the county's Sheriff's Office)
[31] This includes the Division of Parole and all parole costs.
[32] If the DCJS marginal cost figures for jail ($70 per day, versus $151.88 full costs from TICA) and prison ($51 per day, versus $141.07 full costs from TICA) were used in the analysis of the instant case outcome costs per person, the average cost per comparison group individual would be $14,646 and the average cost per Judicial Diversion participant would be $12,269, resulting in a difference in costs between the two groups of $2,377 per individual.

use), rather than actual dollars that will come off the budgets of public sector agencies. For example, if a graduate from a judicial diversion program is not using a jail bed that bed can be used by another offender and is not always "saved" in the sense of coming off the budget of the local Sheriff or county-level Department of Corrections.

Moreover, a "marginal" approach to cost would argue that some of the savings identified in this study are not true savings, because they exist in the form of "fixed costs" (e.g., jail facility costs such as employee salaries and utilities will not change, regardless of whether or not a jail bed has an offender in it), and therefore, even if agencies wished to the use newly available resources to reduce their budgets, the actual maximum amount of monetary savings that could be realized would be smaller than what this study implies.

To quantify the potential implications of an analysis based on full costs as opposed to marginal costs, in this study in reference to the cost of the instant case (the case that led the offender to participate in judicial diversion), the full taxpayer cost for a jail bed day is $151.88. When this full cost is multiplied by the number of jail days saved by a judicial diversion participant (32 days per participant for the instant case), the amount of taxpayer resources made newly available to local jails for other uses is $4,860 (per individual). However, if the fixed costs are omitted, the remaining, or marginal, cost per day is $70.00. When this daily marginal cost is multiplied by the same number of jail days saved on the instant case (32 days), the amount saved per individual is $2,240, which may (or may not) more accurately represent an actual monetary savings that can be realized in the budgets of those local jails.

The taxpayer savings (or taxpayer resources that may be reallocated for other purposes) will also continue to grow with the number of new participants that enter judicial diversion each year. If judicial diversion continues to serve an additional cohort of **1,391** new participants annually, the annual savings of $7,739,524 can then be multiplied by the number of years Article 216 remains in operation. For example, if Article 216 remains in effect for the next 5 years and judges continue to divert offenders, the cost savings that accrue after 5 years come to a total of **$38,697,620** (**nearly $39 million)**. These findings indicate that judicial diversion is both beneficial to judicial diversion participants and to New York taxpayers.

Outcome Cost Results for Statewide Impact of Judicial Diversion

What is the statewide cost impact on the criminal justice system of judicial diversion?

The following analysis that estimates the statewide cost impact on the criminal justice system due to judicial diversion uses the outcome transaction costs from the TICA approach along with the outcome findings from Cissner et al., 2013 (which compared the 3-year recidivism results of 3,288 judicial diversion-eligible drug court participants to the outcome results of 3,141 judicial diversion-eligible comparison group offenders)[33], and the change in judicial diversion case volume post-Article 216.

Table 4.7 shows the average outcome costs per person for all judicial diversion participants (regardless of graduation status) and the comparison group over 3 years.

[33] The individuals in this study were tracked through administrative data for at least 3 years post drug court program entry (and a similar time period for the comparison group) to compare recidivism for the two groups. All participants included in the analysis had exited the program (graduated or were unsuccessful at completing the program).

Table 4.7: Average Outcome Costs per Person Over 3 Years from Program Entry

Transaction	Average Unit Cost	# of Events per Comparison Group Individual (N= 3,141)	Average Cost per Comparison Group Individual	# of Events per Judicial Diversion Participant (N= 3,288)	Average Cost per Judicial Diversion Participant
Re-Arrests	$226.29	1.72	$389	1.28	$290
Felony Court Cases	$7,782.77	0.69	$5,370	0.51	$3,969
Probation Days	$4.84	84.60	$409	64.94	$314
Parole Days	$12.32	18.96	$234	18.96	$234
Jail Days	$151.88	23.42	$3,557	25.10	$3,812
Prison Days	$141.07	112.20	$15,828	77.76	$10,970
SUBTOTAL			**$25,787**		**$19,589**
Property Victimizations	$12,881.00	0.49	$6,312	0.37	$4,766
Person Victimizations	$41,728.00	0.31	$12,936	0.23	$9,597
TOTAL			**$45,035**		**$33,952**

Overall, as demonstrated in Table 4.7, judicial diversion participants use fewer criminal justice system resources than the comparison group with fewer re-arrests, new felony court cases, days on probation, days in prison, and victimizations. Judicial diversion participants use slightly more jail days, and both groups have the same number of parole days. Excluding victimizations, Table 4.7 also shows that the majority of outcome costs for the treatment group are due to prison days (an average of $10,970, or 56% of total costs) and felony court cases (an average of $3,969, or 20% of total costs). The majority of outcome costs for the comparison group were also due to prison (an average of $15,828, or 61% of total costs) and felony court cases (an average of $5,370, or 21% of total costs). The largest outcome cost savings for the judicial diversion sample (when compared to the comparison group) was for prison, with an average savings per participant of $4,858 (or 78% of total outcome cost savings). The difference in cost between the judicial diversion and comparison groups is $6,198 per participant.[34] This difference is the

[34] If the DCJS marginal cost figures for jail ($70 per day) and prison ($51 per day) were used in the analysis of the average outcome costs per person over 3 years from program entry, the average cost per comparison group individual would be $13,763 and the average cost per Judicial Diversion participant would be $10,530 resulting in a difference in costs between the two groups of $3,233.

benefit, or opportunity resources saved, due to judicial diversion participation. When victimization costs are included in the analysis, the difference in cost between the treatment and comparison groups rises to $11,083 per participant. [35]

Outcome Costs per Agency

These same outcome costs were also examined by agency. The transactions shown above are provided by one or more agencies. If one specific agency provides a service or transaction (for example, the New York State Department of Corrections and Community Supervision provides prison days), all costs for that transaction accrue to that specific agency. If several agencies all participate in providing a service or transaction (for example, the Court, District Attorney, and Public Defender are all involved in court cases), costs are split proportionately amongst the agencies involved.[36] Table 4.8 provides the cost for each agency and the difference in cost between the judicial diversion and comparison groups per person. A positive number in the difference column indicates a cost savings for judicial diversion participants.

[35] The average numbers of jail, prison, and probation days are based on recidivism cases taken from Cissner et al. (2012) and the sentences stemming from any re-arrests up to 3 years after the initial arrest. The jail days and prison days variables attempt to estimate time served, but are based on the sentence, not on Department of Corrections reports of actual time served. To provide a likely estimate, they reflect 2/3 of any jail sentence (in New York, offenders typically serve 2/3 of their jail sentences for "good time") and, wherever the prison sentence is indeterminate (e.g., 2-4 years, 1-3 years, etc.), the estimates assume that the offender served the minimum. The prison assumption underestimates actual time served, although in drug-related cases, most offenders are truly paroled at or close to the minimum, so the under-estimate shouldn't be large. In addition, the average number of parole days is calculated based on an assumption that on all indeterminate prison sentences, the offenders would serve the remaining time up to the maximum on parole.

[36] For this analysis, the following breakdown was used for court cases, based on average outcome costs results from the 10 study sites: 29.69% of costs accrue to the court, 42.84% accrue to the District Attorney, and 27.47% accrue to the Defense Attorney.

Table 4.8: Average Outcome Costs per Person Over 3 Years by Agency

Agency	Average Cost per Comparison Group Individual	Average Cost per Judicial Diversion Participant	Difference in Cost
Court	$1,594	$1,179	$415
District Attorney	$2,301	$1,701	$600
Defense Attorney[37]	$1,475	$1,090	$385
County Jail[38]	$3,557	$3,812	-($255)
Probation	$409	$314	$95
Law Enforcement	$389	$290	$99
Department of Correctional Services[39]	$16,062	$11,203	$4,859
SUBTOTAL	**$25,787**	**$19,589**	**$6,198**
Victimizations	$19,248	$14,363	$4,885
TOTAL	**$45,035**	**$33,952**	**$11,083**

Table 4.8 shows that every agency has a benefit, or savings, as a result of judicial diversion except for the agencies providing county jail (due to a slightly greater number of jail days for judicial diversion participants, possibly as a result of jail sanctions). Similar to many of the drug court studies in which NPC has been involved, greater outcome savings associated with drug court participants accrue to some agencies than others. In the case of judicial diversion, the Department of Correctional Services realizes the greatest financial benefit. While the Department of Correctional Services may not see a change in their overall budget due to less recidivism from judicial diversion participation, opportunity resources will be available to focus on other offenders.

As demonstrated in Tables 4.7 and 4.8, the total cost of recidivism per judicial diversion participant (regardless of graduation status) was $19,589, while the cost per comparison group individual was $25,787. The difference between the two groups represents a benefit of **$6,198** per participant. Including victimizations, the difference between the two groups rises to a benefit of **$11,083** per participant. The resource savings illustrated in Table 4.8 are those that have accrued in just the 3 years since program entry. Many of these savings are due to positive outcomes while the participant is still in the program. Therefore, it is reasonable to state that

[37] Depending on the county, this can include Public Defender offices, Legal Aid Society offices, and Assigned Counsel.
[38] This includes the City of New York Department of Correction, and other counties' Correction Department (which is often part of the county's Sheriff's Office, but sometimes its own separate agency).
[39] This includes prison, as well as all parole costs (since the Division of Parole is a part of the Department of Correctional Services).

savings to the state and local criminal justice systems are generated from the time of participant entry into judicial diversion.

Statewide Impact of Judicial Diversion Cost Conclusion

The cost savings (or opportunity resources available) per judicial diversion participant from reduced recidivism shown above can now be multiplied by the number of additional individuals that went to judicial diversion (drug court) after Article 216 implementation to show the statewide cost impact on the criminal justice system of Article 216 legislation. The total benefit due to significantly reduced recidivism per treatment participant over the 3 years included in this analysis came to $11,083, or $3,694 per year. As discussed in Chapter 2, judicial diversion case volume increased 77% after the implementation of Article 216 on October 7, 2009 (from 1,801 in the year prior to 3,192 in the year after implementation, or an additional 1,391 cases). The benefit of $3,694 per year per participant multiplied by an additional 1,391 cases diverted to treatment comes to $5,138,354 per year. It is important to remember that these are criminal justice system benefits only. If other system costs, such as health care and child welfare were included, the savings would likely be much higher. If judicial diversion participants continue to have positive outcomes in subsequent years (as has been shown in drug courts NPC has evaluated, e.g., Carey, Finigan, Waller, Lucas, & Crumpton, 2005; Finigan, Carey, & Cox, 2007) then these cost savings can be expected to continue to accrue over time, repaying the program investment costs and providing further savings in opportunity resources to public agencies.

The resulting resource savings will also continue to grow with the number of new participants that enter judicial diversion each year. If judicial diversion continues to serve an additional cohort of **1,391** new participants annually, the conservative three-year savings of $6,198 per participant (not including victimizations) results in a total savings of $8.6 million per cohort, which can then be multiplied by the number of years Article 216 remains in operation. When victimizations are included, the 3-year savings of $11,083 per participant results in a total savings of $15.4 million per cohort. After 5 years, the accumulated benefit, including victimization savings, total over **$77 million** in taxpayer dollars and opportunity resources.

Estimates based on the number of new participants should be viewed with caution, however. Judicial diversion volume can either increase or decrease over time, program implementation quality can change, and the characteristics of the treatment population can change towards a target population that is either more or less conducive to positive cost impacts. The latest data shows an approximate 20% reduction in treatment enrollment during the second and third years following judicial diversion implementation as compared to the first year following implementation (DCJS 2013). This 20% reduction in volume in the second year results in an estimate of about 753 (instead of 1,391) additional offenders sentenced to judicial diversion in the second year compared to the year pre-implementation, which results in a savings of just $4.7 million instead of $8.6 million. Moreover, a specific implication of this study is that judicial diversion is particularly effective—and hence conducive to a favorable cost-benefit ratio—with felony drug offenders as compared to felony property offenders. Accordingly, efforts to sustain and increase treatment volume with the felony drug population will produce particularly positive cost impacts both on a per participant basis and a cumulative basis.

Chapter 2 of this report demonstrated that there was a significant increase in the number of defendants with Article 216-eligible charges who participating in court-ordered treatment after the reform law was implemented. The analysis in Chapter 3 illustrated that the Article 216-eligible cases that newly received treatment ended in significantly different sentences outcomes than a matched sample of pre-implementation cases, specifically eligible cases that received treatment had

less time incarcerated and less time on probation. Chapter 4 examined the cost implications of these observed changes and determined that there were substantial cost savings associated with both the instant case and with recidivism that occurred after participation in treatment. These findings indicate that judicial diversion is beneficial to Article 216-eligible offenders, beneficial to the criminal justice system and beneficial to the New York taxpayers.

Cost-Benefit Analysis

To do a true cost-benefit analysis, outcome costs must be examined in light of the investment (or program) costs. The average investment cost for judicial diversion was $18,533 per participant. It is important to note that the criminal justice system is also investing in the comparison group for traditional case processing, and the investment costs for both judicial diversion and the comparison groups must be included in the analysis. Therefore, it is necessary to estimate the investment cost in traditional case processing for a felony case. The overall processing of this case includes the cost to the court, prosecution and defense for the case, and the sentence served for that case.[40]

To create an estimate of the investment cost for traditional case processing for non-diversion cases, the cost of a felony court case ($7,783, taken from the outcome cost analysis) was added to the difference in the average instant case sentencing costs for the pre-legislation non-treatment group and the post-legislation judicial diversion group (a total of $5,564, see Table 4.6)[41] for a total investment in traditional case processing of $13,347 per offender. This is likely an underestimate of the actual cost for the comparison group's business-as-usual processing due to the fact that no treatment costs are included (due to lack of data on treatment use in the comparison group). The investment cost of judicial diversion per participant ($18,533) minus the investment cost for the comparison group case ($13,347) leaves us with an overall net investment cost of $5,186 per judicial diversion participant. This is the amount invested in a judicial diversion case over and above the amount invested in traditional case processing.

The outcome benefits due to significantly reduced recidivism for judicial diversion participants over the 3 years included in this analysis came to $6,198. Comparing this 3-year outcome savings to the net investment costs results in a cost-benefit ratio of 1:1.20. [42] If the outcome cost savings are projected just 2 more years (to 5 years) the savings come to **$10,330** per participant resulting in a cost-benefit ratio of **1:2** over 5 years. That is, for every taxpayer dollar invested in the program, there is a $2 return after 5 years from case start. When victimization costs are included, the cost-benefit ratio increases to a $3.56 return after 5 years. This ratio increases over time as the investment is repaid and the savings continue to accumulate. At 10 years the cost-benefit ratio rises to **1:4** and to 1:7 when victimization costs are included. These are criminal justice system savings only. If other system costs, such as health care and child welfare were included, studies have shown that an even higher return on investment can be expected, up to $10 saved per $1 invested in the program (Finigan, 1998).

[40] Because few, if any, judicial diversion cases go through the full adjudication process before entering judicial diversion/drug court (they typically plead guilty with a deferred sentence and are diverted before adjudication), the cost of the judicial diversion program is not in addition to the cost of a regular court case—in fact, the cost of the judicial diversion program may be compared directly to the cost of traditional case processing.

[41] The *difference* in instant case sentence costs was used because those that received diversion to drug court also received a sentence (particularly those that terminated from the program and served time in jail and prison, and on probation) that must be taken into account in their total investment cost for the case.

[42] This is an underestimate of the actual benefit because not all of the investment costs were included for the comparison group due to a lack of data on treatment.

Figure 4.1 illustrates the net investment per participant for each agency in judicial diversion cases (the cost) and Figure 4.2 illustrates the 5-year savings due to positive outcomes per participant for each agency (the benefit).

Figure 4.1: Net Investment in Judicial Diversion per Case

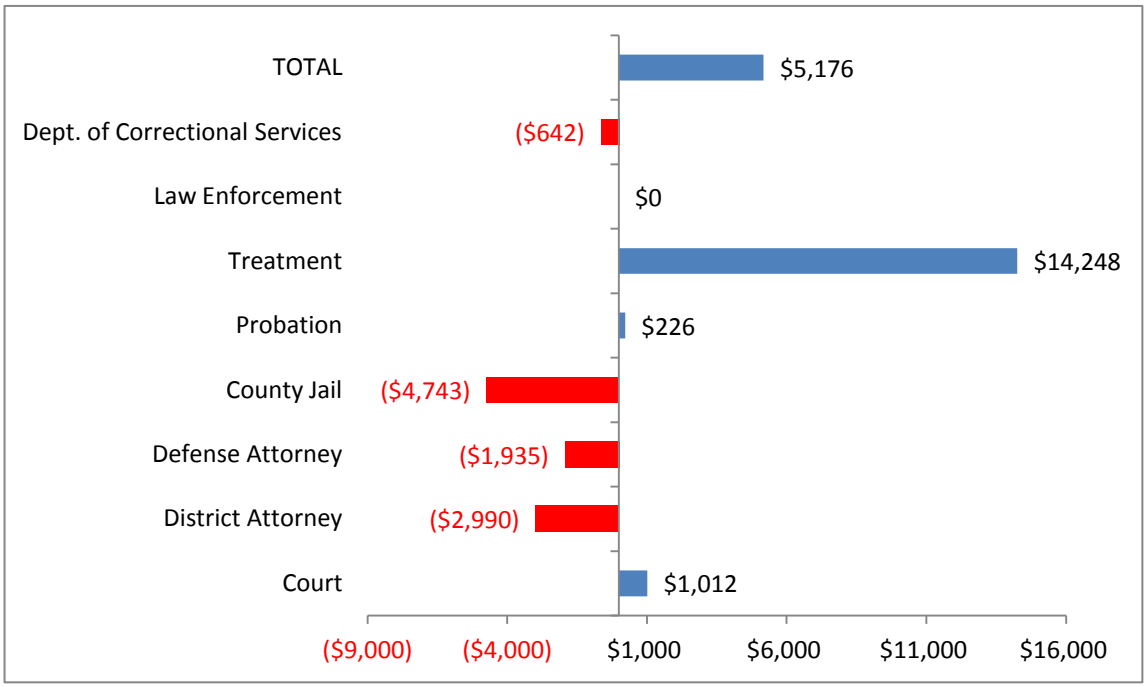
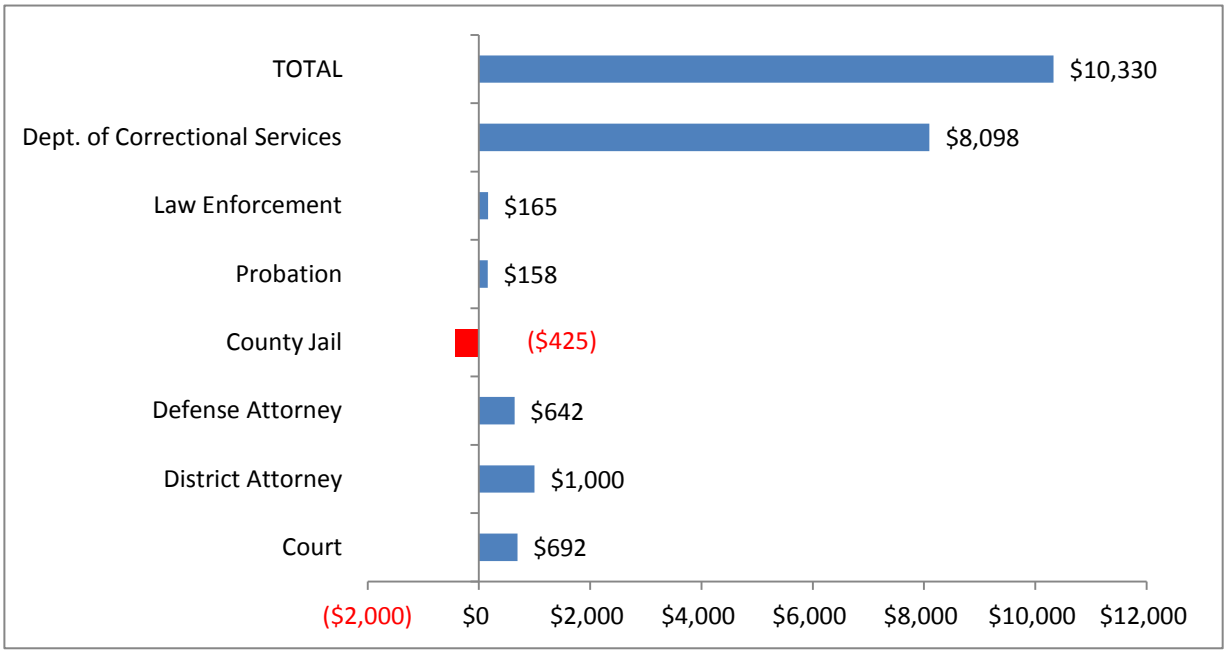


Figure 4.1 shows that some agencies (District Attorney, Defense Attorney, County Jail, and the Department of Correctional Services) actually invested substantially less per offender in judicial diversion than they did in traditional case processing. Treatment clearly has the largest net investment, but treatment data were not available on the comparison group, so this number is an overestimate of the actual net investment in treatment for judicial diversion cases.

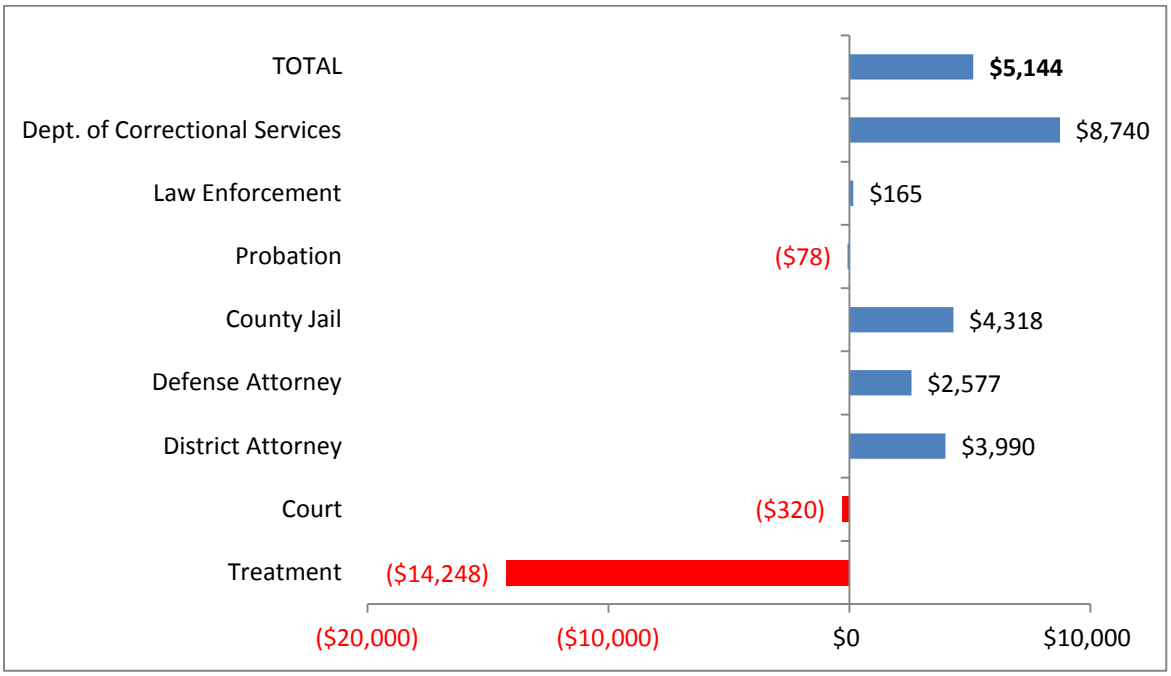
Figure 4.2 shows that almost every agency experiences savings due to reduced recidivism for judicial diversion participants. The Department of Correctional Services sees the vast majority of the benefit due to less time in prison. The County Jail shows a small loss due to judicial diversion participants spending slightly more time in local jail.

Figure 4.2: Five-Year Benefit/Savings per Judicial Diversion Participant



Finally, Figure 4.3 illustrates the overall combined net benefit per participant for each agency when both investment and outcome costs over 5 years are included in the equation. The majority of agencies have a net benefit even after their investment in the program. The Department of Correctional Services sees the largest benefit as it has the least investment in judicial diversion. The County Jail sees the next largest benefit followed closely by the District Attorney and Defense Attorney. Although the Court and Probation experience savings due to reduced recidivism (see Figure 4.2) the savings does not yet repay the investment after 5 years (though these agencies would likely see savings by the 6th year, if the lower recidivism continues). Treatment is included in this graph because of the large investment; however, there were no data available on treatment for the comparison group, or any treatment received in the outcome time period. Therefore this net "loss" is highly overestimated. Nevertheless, other studies have shown that treatment does not generally experience a savings as court-ordered treatment participants that have experienced treatment have a tendency to use treatment more often than non-program participants into the future (even after leaving the program). Since the purpose of diversion programs is to link drug involved offenders with treatment, this large treatment cost can be considered a success of this process. Finally, in spite of the large investment in treatment, Figure 4.3 shows that there is an overall net benefit of $5,144 per judicial diversion participant. When this savings is multiplied by the number of offenders who have been sentenced to diversion in the first year since Article 216 was enacted (N=3,192), the total net benefit comes to over **$16 million ($16,419,648).** (This number does not include victimization costs, as these costs are difficult to attribute to a particular agency). Provided that more judicial diversion participants continue to be sentenced each year as compared to the pre-implementation period, this net benefit will continue to grow, saving substantial taxpayer dollars.

Figure 4.3: Overall net Benefit (investment and outcome costs) 5 Years from Judicial Diversion Entry



In sum, although treatment costs are high, this can be considered a victory for the diversion process. Even with the high treatment investment, there is an overall net benefit due to positive outcomes for judicial diversion participants. Several agencies experience these net benefits, most notably the Department of Correctional Services and County Jail as well as the District Attorney and Defense Attorney. Overall, the implementation of Article 216 (judicial diversion) appears to have resulted in significant cost savings and a return on taxpayer investment.

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APPENDIX A: CHANGE IN DISTRIBUTION OF JUDICIAL DIVERSION ENROLLMENT BY COUNTY

Change in Distribution of Judicial Diversion Enrollment by County

Article 216-Eligible	Pre-Implementation (N=1,801)	Post-Implementation (N =3,192)
Albany	3.1%	1.3%
Allegany	0.3%	0.2%
Bronx	11.2%	16.8%
Broome	1.0%	0.8%
Cattaraugus	0.2%	0.1%
Cayuga	0.2%	0.3%
Chautauqua	0.8%	0.5%
Chemung	0.3%	0.2%
Chenango	0.1%	0.4%
Clinton	0.3%	0.1%
Columbia	0.2%	0.1%
Cortland	0.3%	0.1%
Delaware	0.2%	0.0%
Dutchess	0.1%	1.1%
Erie	5.7%	3.6%
Essex	0.1%	0.0%
Franklin	0.1%	0.2%
Fulton	0.2%	0.2%
Genesee	0.4%	0.2%
Greene	0.0%	0.0%
Hamilton	0.0%	0.0%
Herkimer	0.3%	0.1%
Jefferson	0.8%	0.3%
Kings	30.5%	15.6%
Lewis	0.1%	0.2%
Livingston	0.0%	0.1%
Madison	0.0%	0.1%
Monroe	5.6%	6.8%
Montgomery	0.1%	0.1%
Nassau	0.4%	10.2%
New York	3.5%	8.8%
Niagara	2.2%	1.5%
Oneida	1.9%	1.1%

Article 216-Eligible	Pre-Implementation (N=1,801)	Post-Implementation (N =3,192)
Onondaga	5.7%	4.1%
Ontario	0.7%	0.2%
Orange	1.3%	1.7%
Orleans	0.7%	0.6%
Oswego	1.3%	1.2%
Otsego	0.2%	0.1%
Putnam	0.4%	0.2%
Queens	4.1%	2.7%
Rensselaer	1.1%	1.2%
Richmond	4.1%	2.3%
Rockland	0.6%	1.1%
Saratoga	0.6%	0.8%
Schenectady	1.7%	1.3%
Schoharie	0.1%	0.2%
Schuyler	0.1%	0.1%
Seneca	0.5%	0.1%
St. Lawrence	0.1%	0.6%
Steuben	0.8%	0.2%
Suffolk	1.7%	6.7%
Sullivan	0.2%	0.3%
Tioga	0.1%	0.2%
Tompkins	0.4%	0.3%
Ulster	0.7%	0.3%
Warren	0.1%	0.2%
Washington	0.3%	0.0%
Wayne	0.4%	0.3%
Westchester	1.6%	1.4%
Wyoming	0.4%	0.6%
Yates	0.1%	0.0%
Total	**100%**	**100%**

APPENDIX B: BASELINE CHARACTERISTICS OF JUDICIAL DIVERSION PARTICIPANTS: PRE- AND POST-IMPLEMENTATION SAMPLES BEFORE AND AFTER PROPENSITY SCORE MATCHING

Baseline Characteristics of Judicial Diversion Participants: Pre- and Post-Implementation Samples Before and After Propensity Score Matching

	Pre-Matching		Final Comparisons	
	Pre (N = 1,801)	Post (N = 3,192)	Pre (N = 1,801)	Post (N = 1,801)
Region	***		***	
New York City	53%	46%	53%	49%
New York City Suburban	4%	20%	4%	15%
Rural/Semi-Rural	24%	20%	24%	21%
Mid-Sized City	18%	15%	18%	15%
Demographics				
Mean Age at Entry	30.98**	32.04	30.98	31.13
Female	23%**	19%	23%	23%
Race				
Black	37%	38%	37%	37%
Hispanic	22%	22%	22%	23%
White	41%	40%	41%	40%
Asian	1%	1%	1%	1%
Born in USA	97%	96%	97%	96%
Social Ties				
Ever Homeless	29%*	33%	29%	31%
Currently Homeless	5%	5%	5%	5%
High School Degree/GED	57%***	66%	57%**	63%
Employed/In School	35%*	31%	35%	34%
Marital Status	14%	13%	14%	12%
Drug Use/Treatment History				
Mean Age of First Drug Use	15.64	15.79	15.64	15.59
Mean Years of Drug Use	14.63**	15.71	14.63	15.04
Primary Drug of Choice	**		+	
Alcohol	7%	6%	7%	6%
Cocaine	10%	11%	10%	12%
Crack	13%	12%	13%	11%
Heroin	16%	21%	16%	10%
Other opiates	6%	7%	6%	7%
Marijuana	43%	37%	43%	40%
Other	5%	6%	5%	6%
Ever in Treatment	52%***	60%	52%	53%

	Pre-Matching		Final Comparisons	
	Pre (N = 1,801)	Post (N = 3,192)	Pre (N = 1,801)	Post (N = 1,801)
Ever Used Alcohol	91%	89%	91%*	88%
Ever Used Marijuana	86%	87%	86%	87%
Ever Used Cocaine	50%**	56%	50%*	54%
Ever Used Crack	32%	31%	32%	32%
Ever Used Heroin	26%***	32%	26%	28%
Ever Used Hallucinogen	11%**	15%	11%	13%
Ever Used PCP	5%*	7%	5%	6%
Ever Used Benzodiazepines	10%***	15%	10%	10%
Designer Drugs	8%**	11%	8%	9%
Criminal History				
Number of Prior Arrests	6.82***	8.22	6.82	6.93
Prior arrest	78%**	81%	78%	78%
Prior Felony Arrest	58%***	65%	58%	58%
Prior Misdemeanor Arrest	73%*	76%	73%	73%
Prior VFO Arrest	27%***	32%	27%	26%
Prior Drug Arrests	59%***	64%	59%	60%
Prior Weapons Arrest	25%***	31%	25%	26%
Number of Prior Convictions	2.92***	3.79	2.92	2.91
Prior Conviction	48%***	55%	48%	47%
Prior Felony Conviction	25%***	34%	25%	22%
Prior Misdemeanor Conviction	45%***	50%	45%	44%
Prior VFO Conviction	4%**	6%	4%	4%
Prior Drug Conviction	36%***	43%	36%	36%
Prior Weapons Conviction	5%***	9%	5%	5%
Current Charges				
Current Charge Severity	*			
B Felony	58%	62%	58%	60%
C,D or E Felony	42%	38%	42%	40%
Article 216 Charge Type	***			
Sales	36%	45%	36%	39%
Possession	34%	29%	34%	33%
Other Select Property	30%	26%	30%	28%

+ <p .10 * p < .05 ** p < .01 *** p <.001
Note: Statewide sample size can vary between measures due to missing data for select cases.