

**DRUG LAW RESENTENCING:
SAVING TAX DOLLARS
WITH MINIMAL COMMUNITY RISK**

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Summary of Findings

A review of the recidivism data from the first two rounds of re-sentencing petitions filed under New York's Rockefeller Drug Law reform shows that people who have been re-sentenced and released from prison have remarkably low rates of return to prison. The data supports the legislative judgment that drug law sentences were longer than necessary to protect the community. The process by which judges exercise discretion in deciding, on a case by case basis, which offenders to re-sentence to lesser terms has proven to be an effective screen that protects the community from new crime and, in addition, saves significant tax dollars.

Background

The Rockefeller Drug Law Reform Act of 2009¹ is the third of a series of drug law reform statutes. Each one allowed some of the people serving sentences under the draconian Rockefeller Drug Laws to apply to be re-sentenced in accordance with the new and generally shorter sentencing scheme. The New York State Department of Correctional Services estimates that New York State has saved \$41 million by the imposition of these shorter sentences which have saved the State the expense of financing years of confinement for hundreds of individuals.²

The first of these re-sentencing laws was enacted in 2004 when the legislature passed the The Drug Law Reform Act of 2004 (DLRA 1).³ This statute set up a new sentencing system for drug law crimes. Instead of the old "indeterminate" sentences with both a long minimum and a long maximum term, the new statute contained a set of shorter flat "determinate" sentences.

DLRA 1 also allowed the people who were sentenced as A-I felons under the old law to apply to

¹ L. 2009, ch. 56, part AAA

² Janon Fisher, *'Rocky' Road Back*, The New York Post, December 6, 2009

³ L. 2004, ch. 738

be re-sentenced in accordance with the terms of the new determinate sentences.⁴ At the time of passage 473 people were considered eligible to apply.

In 2005, a more modest drug law reform was enacted into law (DLRA 2).⁵ The 2005 reform allowed some of the people serving sentences for the next most severe level of drug convictions, the A-II felonies, to apply for re-sentencing. Initial estimates placed the number eligible to apply for re-sentencing at around 550 people.

This year's drug law statute (DLRA 3) enacted significant drug law reform. Following years of criticism about the inability of judges to use their discretion and place addicted offenders into treatment programs, sentencing judges were given broader discretion to place drug-addicted non-violent offenders into treatment programs. Judges were also given greater authority to choose probation as well as shorter incarcerative sentences. Options for judges to require short stays in the prison boot camp Willard and Shock programs were also expanded.

In addition to the new sentencing options, the new drug law reform gave people serving the old law indeterminate sentences for B level drug convictions the opportunity to apply for re-sentencing.⁶ The re-sentencing part of the statute became effective on October 7, 2009. The statute excluded from eligibility anyone with a B drug felony who has a violent felony conviction within the past 10 years. Around 1,000 people may be eligible to apply statewide. Each of the petitions for re-sentence will be reviewed for eligibility in the court that originally imposed the sentence. It is at the discretion of the sentencing judge, after a review of the facts of the case, to determine whether to allow the defendant to be re-sentenced.

⁴ L. 2004, ch. 738, §23

⁵ L. 2005, ch. 643

⁶ See the newly created CPL 440.46

In contrast to the A-level felonies, which involve larger quantities of drugs, those charged with B-level drug possession and sales tend to be street-level operators. Sale or possession with intent to sell even small amounts of a narcotic drug constitutes a B felony.⁷

As the courts, the District Attorneys and defense counsel gear up for this new round of sentence reviews for the B-level offenders, the District Attorneys are objecting to the release of all but the clear cut cases, a “distinct minority” of the eligible defendants.⁸ They have raised similar objections about the past groups of re-sentence cases.⁹ In order to assess the strength and validity of these objections, a review the recidivism record produced by the first two rounds of re-sentencing cases is appropriate.

Methodology

There are a number of different ways to measure recidivism. It can be measured by an arrest or any conviction or re-incarceration. For purposes of this study we have chosen to follow the method that the New York State Department of Correctional Services (DOCS) has historically measured it. Once a person is released into the community DOCS defines recidivism as any return to DOCS custody.¹⁰ This method records both the people who are sent to s custody to serve a sentence for a new crime and those who return as parole violators. The parole violator group consists of people who have committed a technical violation, such as failure to report to parole as instructed, or submission of a positive urine sample to the parole office, as well as those for whom a misdemeanor conviction formed the basis of the parole violation. One

⁷ PL 220.39(1), PL 220.16(1)

⁸ Alex, Ginsberg, William J. Gorta, Denise Buffa, Laura Italiano, *RockefellerReform Could Backfire if Dope Fiends Are Released*, The New York Post, November 23, 2009.

⁹ Brad Hamilton, Susannah Calahan, *Dopey Law Frees Worst Drug Thugs*, The New York Post, June 18, 2006

¹⁰ See e.g., Leslie Kellam “2004 Releases: Three Year Post Release Follow-up” State of New York Department of Correctional Services, Division of Program Planning, Research & Evaluation, “19th Annual Shock Legislative Report 2007,” New York State Department of Correctional Services, 2007, <http://www.docs.s.ny.us/Research/Research.html>

advantage of following the usual DOCS method is that there is a better ability to compare the result with existing DOCS recidivism studies.

To conduct this study we reviewed September 2009 lists of people who have been re-sentenced and released under the A-I and A-II re-sentencing laws.¹¹ The lists provided the release date, the department identification number and the old and new sentences of the people who were re-sentenced. The A-I list consisted of 279 people. The A-II list added another 297 names. We then checked the DOCS website to determine whether that person had ever returned to DOCS custody for any reason.

Results

People who were re-sentenced and released early from prison have an overall recidivism rate of 8.5%. This return rate is considerably better than that produced by those prisoners serving drug offenses who were released in the usual way after serving their sentences. The recidivism rate for people who were re-sentenced and who are out of prison for three years is about 3 times better than that produced by the highly praised DOCS Shock program.

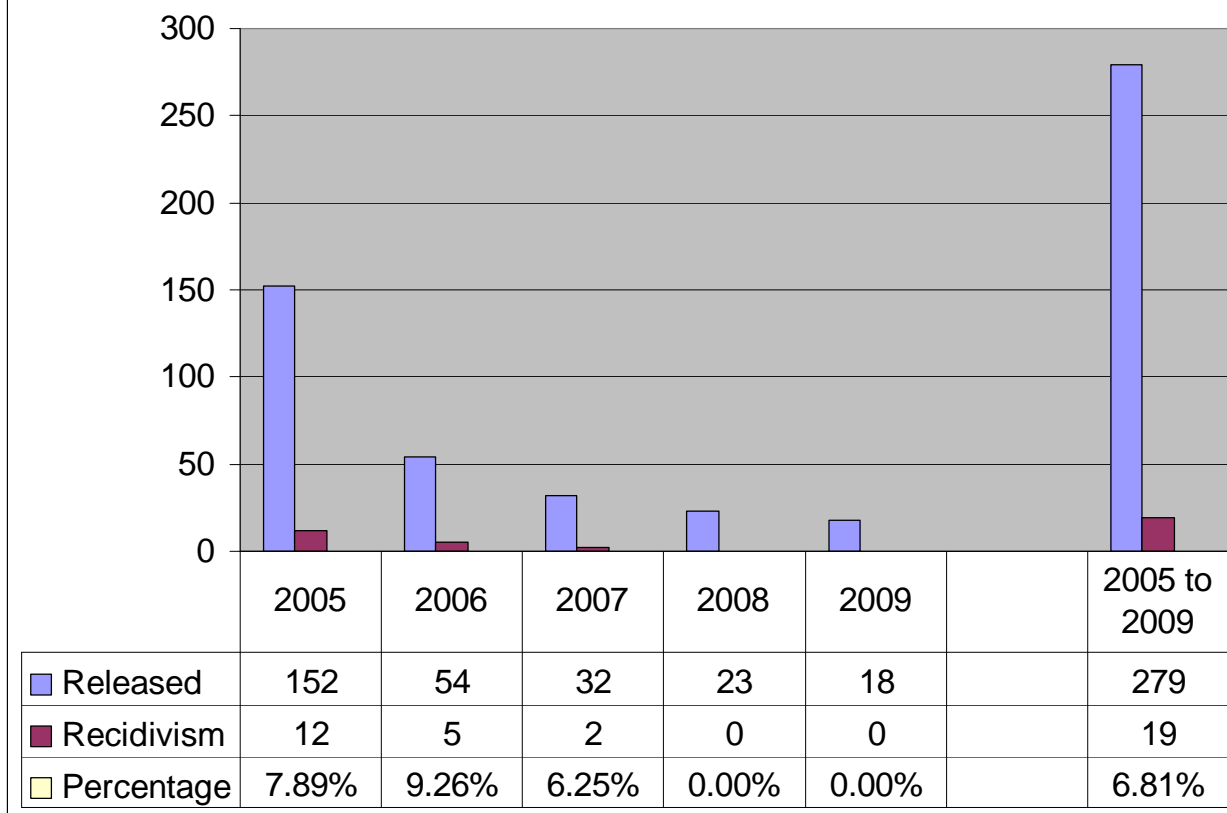
Our review of the A-I felony cases where people were re-sentenced shows that 19 of the 279 people who were released have returned to prison.¹² Of the 19, 7 or 2.5 % of the total returned due to the commission of a new felony and 12 or 4.3% returned because of a parole violation. The overall recidivism rate of the A-I felons who were released after being re-sentenced is 6.81%.

A breakdown of the recidivism rates by year of release is provided in the following chart.

¹¹ Those wishing to review our data should contact the authors for a copy of these lists.

¹² One person returned twice, once as a parole violator and once as a new commitment. We have counted his case as a new commitment. One person on the list had his charges dismissed on appeal and a second had his conviction reversed. Since both of these people were initially re-sentenced we have counted their cases as re-sentences.

New York Rockefeller Drug Law Resentencing A-I Felony Recidivism Rates for Released Prisoners

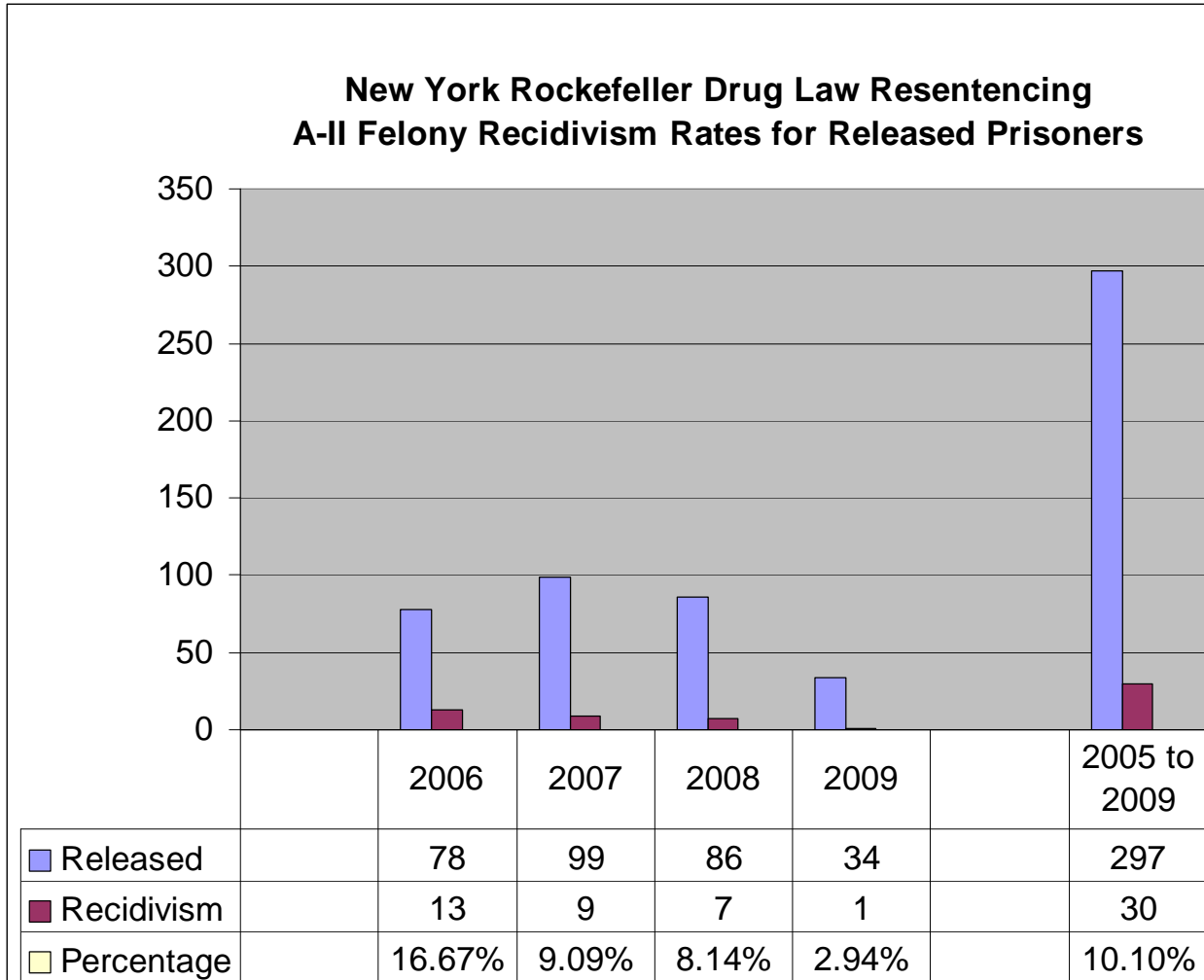


A breakdown by the number of new crimes and parole violations is provided in this chart.

A1 Felony Recidivism

| <u>Year</u> | <u>Released</u> | <u>Recidivism Parole Violation</u> | <u>Percentage Parole Violation</u> | <u>Recidivism New Charges</u> | <u>Percentage New Charges</u> | <u>Total Recidivism</u> | <u>Percentage Total Recidivism</u> |
|--------------------|-----------------|--|--|---------------------------------------|---------------------------------------|-----------------------------|--|
| 2005 | 152 | 7 | 4.61% | 5 | 3.29% | 12 | 7.89% |
| 2006 | 54 | 3 | 5.56% | 2 | 3.70% | 5 | 9.26% |
| 2007 | 32 | 2 | 6.25% | 0 | 0.00% | 2 | 6.25% |
| 2008 | 23 | 0 | 0.00% | 0 | 0.00% | 0 | 0.00% |
| 2009 | 18 | 0 | 0.00% | 0 | 0.00% | 0 | 0.00% |
| 2005 to 2009 | 279 | 12 | 4.30% | 7 | 2.51% | 19 | 6.81% |

Our review of the A-II felony cases showed that 30 of the 297 people who were released were returned to s prison. Of the 30, 6 or 2.02 % of the total, returned due to the commission of a new felony and 24 or 8.08 % returned because of a parole violation. The overall recidivism rate for A-II felons who were released is 10.10 %. A breakdown of the recidivism rates by year of release is provided in the following chart.



A breakdown of the A-IIIs by new crimes and parole violations is provided in this chart.

A2 Felony Recidivism

| <u>Year</u> | <u>Released</u> | <u>Recidivism Parole Violation</u> | <u>Percentage Parole Violation</u> | <u>Recidivism New Charges</u> | <u>Percentage New Charges</u> | <u>Total Recidivism</u> | <u>Percentage Total Recidivism</u> |
|--------------|-----------------|--|--|---------------------------------------|---------------------------------------|-----------------------------|--|
| 2006 | 78 | 9 | 11.54% | 4 | 5.13% | 13 | 16.67% |
| 2007 | 99 | 9 | 9.09% | 0 | 0.00% | 9 | 9.09% |
| 2008 | 86 | 6 | 6.98% | 1 | 1.16% | 7 | 8.14% |
| 2009 | 34 | 0 | 0.00% | 1 | 2.94% | 1 | 2.94% |
| 2006 to 2009 | 297 | 24 | 8.08% | 6 | 2.02% | 30 | 10.10% |

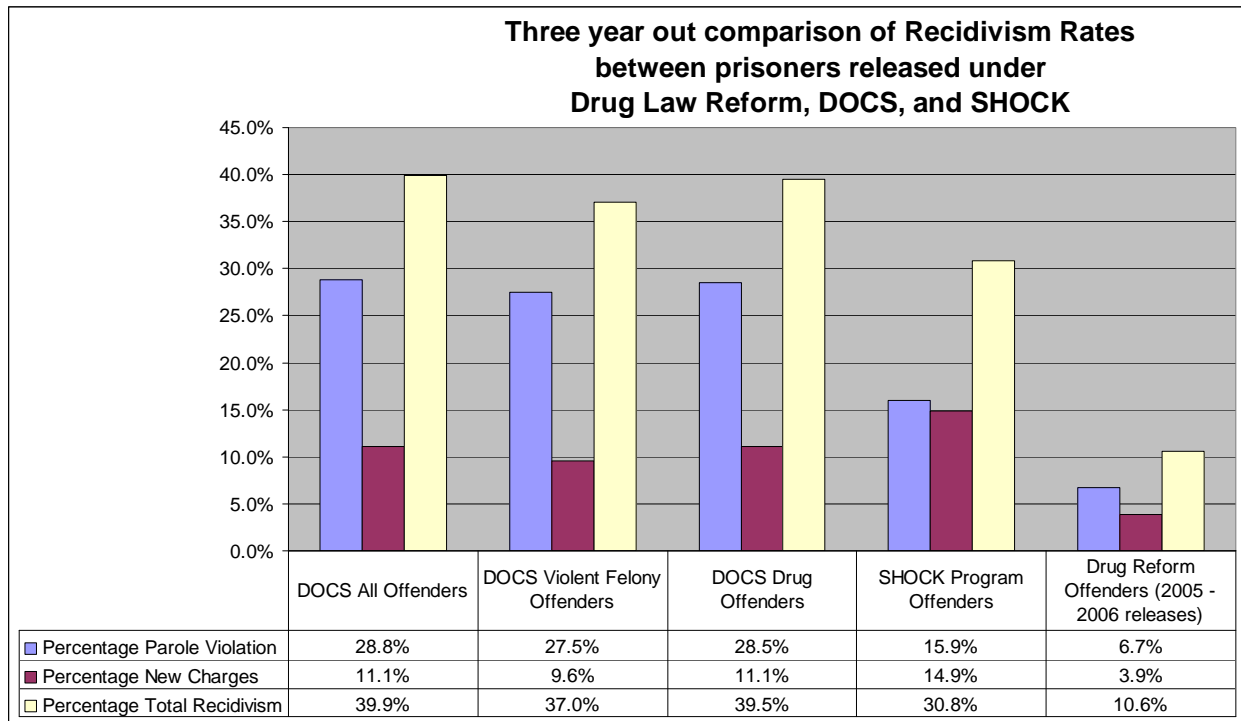
It is useful to compare the recidivism rate for the people who were re-sentenced and released under the drug law reform laws with other groups of offenders who are released from DOCS custody. In its study reporting a three year follow-up of prisoners released in 2004 DOCS reported a 39.9% return rate for all offenders over the course of the three year period. 11.1% of them were convicted of a new felony offense and were returned on a new commitment and 28.8% returned as parole violators. Violent felony offenders returned at a 37%, rate with 9.6% as new criminal commitments and 27.5% as parole violators. Drug offenders returned at a 39.5% rate with 11.1% at new criminal commitments and 28.5% as parole violators.¹³

A further point of comparison comes from the DOCS operated Shock program that has been considered highly successful in reducing recidivism. Shock is operated as a 6 month boot camp program with a focus on treatment. As a result it has a greater than usual number of drug offenders. Low risk prisoners are usually selected for this program. The 2007 Shock report showed that people who had successfully completed the Shock program returned at a rate of

¹³ Leslie Kellam “2004 Releases: Three Year Post Release Follow-up” State of New York Department of Correctional Services, Division of Program Planning, Research & Evaluation, p. 10, http://www.doc.s.ny.us/Research/Reports/2009/2004_releases_3yr_out.pdf

7.6% in the first year after release. After two years the return rate increased to 21.3% and to 30.8% for those who were out for three years.¹⁴

Unlike the above reported DOCS study groups, the drug law re-sentencing group was not released from prison on or before a certain date. The vast majority of the releases occurred in 2005 and 2006, within a reasonable time after passage of the authorizing legislation. Some people, however, have continued to be released until the present day. In order to permit a more similar comparison of the recidivism rates of the various groups we have broken out the re-sentencing release people who have been out of prison for 3 years or more (the A-I group includes a fourth year) and compared those recidivism rates with those produced when prisoners are out of prison for three years after having served their full term or were released early through the Shock program.



¹⁴ “19th Annual Shock Legislative Report 2007,” New York State Department of Correctional Services, p.49, http://www.doc.s.ny.us/Research/Reports/2007/Shock_2007.pdf

Conclusion

Despite claims of dangerous consequences by District Attorneys in opposing re-sentencing petitions, the people released so far under the drug law re-sentencing provisions have proven to pose a low risk to the community. Early release from prison has not only created considerable cost savings, but has also resulted in a very low rate of return to prison.

The data supports the legislative judgment that the old drug law sentences were excessive and longer than necessary to protect the community. The process by which judges exercise discretion in deciding , on a case by case basis, who among the list of eligible people should be re-sentenced and for what length of time is proving to act as an effective screen. The majority of those re-sentenced and released under the new drug law reform have not committed new crimes.