

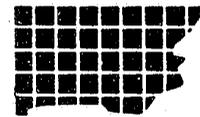
# OFFICE OF POLICY ANALYSIS, RESEARCH & STATISTICAL SERVICES

CRIMINAL SALE OF CONTROLLED SUBSTANCES  
ANALYSIS OF CRIMINAL JUSTICE PROCESSING

AUGUST, 1986

106249

DIVISION OF  
**CRIMINAL  
JUSTICE  
SERVICES**



**NEW YORK  
STATE**



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OFFICE OF POLICY ANALYSIS, RESEARCH AND STATISTICAL SERVICES  
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CRIMINAL SALE OF CONTROLLED SUBSTANCES:  
ANALYSIS OF CRIMINAL JUSTICE PROCESSING

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U.S. Department of Justice  
National Institute of Justice

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## EXECUTIVE SUMMARY

### Criminal Sale of Controlled Substances Analysis of Criminal Justice Processing

This report explores the criminal justice system processing of Penal Law offenses involving the criminal sale of controlled substances in New York State, with a particular focus on Class A-II and B Felony offenses. It does not analyze offenses involving the possession of controlled substances or the possession or sale of marijuana. The analyses provide baseline information to assist in considering possible policy changes in response to heightened public concern over the problem of increased drug use.

#### ARRESTS

- o Felony drug sale arrests rose 115 percent between 1981 and 1985.
- o New York City accounted for 87 percent of all statewide drug sale arrests in 1985.
- o Between 1981 and 1985, Class A-II felony drug sale arrests rose 24 percent and Class B felony drug sale arrests rose 129 percent.

#### 1985 PROCESSING OUTCOMES

- o New York City disposed of 44 percent of felony drug sale arrests in the upper courts while over 70 percent of such cases were disposed in the upper courts outside of New York City.
- o Of all felony sale arrests, almost 70 percent in New York City, 84 percent Upstate and 90 percent in the Suburban counties resulted in a conviction.
- o In New York City, 39 percent of dispositions were felony convictions as compared to 72 percent in the Suburban counties and 65 percent Upstate.
- o The majority of convictions resulting from Class A-II or Class B felony sale arrests were reduced at least one class level.

- o Twelve percent of the convictions on Class A-II arrests and eleven percent of the convictions on Class B arrests resulted in convictions for these offenses.

## SENTENCES

- o Thirty-seven percent of offenders disposed on felony sale arrests received a prison or jail sentence.
- o Seventeen percent of those disposed on a criminal drug sale arrest received a sentence to state prison.
- o Offenders sentenced to prison as a result of an arrest for a drug sale felony received a median minimum term of two years, and a median maximum term of four years.

This report shows clear differences in processing outcomes of felony drug sale arrests between New York City and other regions of the State. New York City prosecutes fewer drug sale felonies through the upper courts, convicts a lower proportion overall and a lower proportion on felonies. However, New York City incarcerates a slightly higher percentage of offenders than in the other regions of the State. The disparities appear related to the higher volume of cases that must be dealt with and the resulting burdens placed upon the New York City criminal justice system. A more detailed analysis is suggested to further examine the effect enhanced law enforcement efforts have on all components of the system. More focused research is needed before drawing definitive conclusions about reasons for differences in processing outcomes demonstrated in this report.

## I. INTRODUCTION

In 1985 there were 74,188 arrests involving drugs in New York State, 83 percent of which occurred in New York City. This represents an 86 percent increase from the 39,822 arrests in 1981. As measured by arrests, the problem of drug crime is clearly a growing one and one that is particularly acute in the City of New York. A coordinated response, based on the best information available, is needed from all levels of government.

This report explores the criminal justice system processing of Penal Law offenses involving the criminal sale of controlled substances in New York State. In particular, it focuses on two of the more serious sale offenses, PL 220.39 (Criminal Sale, Third Degree), a Class B felony, and PL 220.41 (Criminal Sale, Second Degree), a Class A-II felony. These specific offenses cover sales of a broad range of controlled substances. (These are listed in the statutes in Appendix B.) They were selected for this analysis to provide baseline information in considering possible policy changes in response to the problem of increased drug activity in New York State.

Class B felonies in the New York State Penal Law are subject to a mandatory sentence in State prison with a minimum term of from one year to one-third of the maximum. The maximum term must be set between three to 25 years. Class A-II felonies are subject to a mandatory term of from one to eight and one-third years with a maximum term of life. Both are subject to particular limitations, enhancements or reductions specified in the Penal Law.

This analysis is exploratory. It is intended to identify issues and problems and to highlight areas for more detailed study. Certain factors normally associated with differential case outcomes (such as the offender's prior record or the number and nature of other offenses charged) have not been considered in this analysis because of its exploratory nature. Caution is therefore advised before drawing definitive conclusions about reasons for the differences in processing outcomes demonstrated in this report.

## Structure of the Analysis

Data are presented for New York State as a whole and for three geographic regions: New York City, Suburban New York City (Nassau, Suffolk, Westchester and Rockland counties), and the remaining or "Upstate" counties.

Arrest trends for the two specific sale offenses as well as for all sale offenses in Penal Law Article 220 are presented for the years 1981 through 1985. These presentations enumerate arrests occurring in the designated year in which the specified drug sale offense was the most serious (or only) offense charged. Instances in which one of the felony drug sale offenses were excluded from the analysis because of a more serious accompanying charge were extremely rare; only 53 cases out of nearly 14,000 in 1985.

The analyses of system processing and sentencing are based on the most serious disposition occurring in 1985 of a felony drug sale arrest. Note that these dispositions may be for any charge and not necessarily a drug sale felony. Section IV analyzes how the class of the most serious charge changes from arrest to conviction.

### Data

Data for this analysis are obtained from the Computerized Criminal History/Offender Based Transaction Statistics data system maintained by the Division of Criminal Justice Services. The reporting of dispositions to this system through the Office of Court Administration is known to be incomplete. For 1985, it is estimated that as many as 20 percent of dispositions were unavailable for this analysis with possibly higher percentages missing from the non-New York City regions. This may result in an underrepresentation of the number and different types of dispositions reported, particularly for the regions outside of New York City.

In the sentencing analysis, median minimum and maximum terms are presented for all sentences to state prison other than those with "life" maximum terms. The number of cases with life terms is also listed. The median is the midpoint of a distribution of values (prison sentences in this case); one-half of the

cases had longer sentences imposed than the median value and one-half received shorter sentences. This statistic is used in preference to the more familiar arithmetic mean because it is less sensitive to extreme values in the distribution than the mean.

The analysis summarizes minimum and maximum terms independently. They should not be interpreted as a range similar to the term to which an individual offender would be sentenced.

### The Context for this Analysis

In 1985, 421,470 individual criminal arrest events were reported to the Division of Criminal Justice Services pursuant to Article 35 of the Executive Law.

Drug offenses, including marijuana offenses covering both Articles 220 and 221, were the most serious charges in 67,448 arrest events in 1985. An additional 6,740 events contained controlled substance or marijuana offense as a secondary charge. In New York City there was a total of 61,734 drug arrests; 55,921 in which the drug offense was the most serious charge and an additional 5,813 with secondary drug charges. These figures are summarized in Table 1.

The present analysis examines only drug offenses involving controlled substances as defined in Article 220; marijuana offenses are not considered. The specific offenses contained in Article 220 are listed in Appendix A. Furthermore, the study focuses specifically on offenses involving the sale of a controlled substance and not drug possession. In 1985, there was a total of 13,635 felony arrests involving such crimes.

TABLE 1  
 SELECTED ARREST STATISTICS  
 NEW YORK STATE  
 1985

Total Arrests	421,470
Felony	151,229
Misdemeanor	270,241
Selected Offenses	
Homicide	2,595
Rape	2,111
Robbery	19,712
Assault	21,671
Burglary	19,464
Larceny	66,151
Drugs	67,448
(Controlled Substances <u>and</u> Marijuana)	

Drug Arrests (Controlled Substances and Marijuana)

	NYS	NYC
Most Serious Charge	67,448	55,921
Secondary Charge	6,740	5,813
TOTAL	74,188	61,734

Controlled Substances Arrests (excluding marijuana)  
 (most serious charge)

Sales	13,635
Possession	8,891
TOTAL	22,535

## II. ARREST TRENDS (1981-1985)

This section highlights 1981-1985 trends in arrests for Criminal Sale of Controlled Substances. Table 2 presents regional arrest trend data for all felony drug sale offenses. Tables 3 and 4 present trend data for the Class A-II felony, PL 220.41 (CSCS 2d) and the Class B felony PL 220.39 (CSCS 3d). The number of arrest events is shown with the percent change from the previous year.

Table 2  
ARRESTS FOR CRIMINAL SALE OF A CONTROLLED SUBSTANCE  
(PL 220) BY REGION 1981-1985

Region	1981		1982		1983		1984		1985	
	N	N	% Chg	N	% Chg	N	% Chg	N	% Chg	
New York State	6,352	9,384	47.7	10,513	12.0	12,655	20.4	13,635	7.7	
New York City	5,142	7,790	51.5	8,924	14.6	11,160	25.1	11,895	6.6	
Suburban New York City	646	830	28.5	837	0.8	825	- 1.4	888	7.6	
Upstate Counties	564	764	35.5	752	-1.6	670	-10.9	852	27.2	

**Felony drug sale arrests more than doubled between 1981 and 1985.**

According to data presented in Table 2, arrests in New York State for felony drug sales (PL 220) increased from 6,352 to 13,635 or 115 percent between 1981 and 1985. The upward trend in arrests was considerably greater in New York City (131 percent increase) than in Suburban New York City (37 percent increase) or in the Upstate Counties (51 percent increase).

**The vast majority of felony drug sale arrests occur in New York City.**

Since 1981, New York City has accounted for increasing proportions of the State's felony drug sale arrests, representing 81 percent of the statewide total in 1981 and 87 percent in 1985.

**Class A-II felony drug sale arrests rose 24 percent from 1981 to 1985.**

Table 3 shows that arrests for Class A-II felony sales (PL 220.41) increased 24 percent between 1981 and 1985, from 310 to 383 arrests. Overall, New York City arrests increased 24 percent during this period while in the Suburban counties arrests declined 13 percent. Arrests rose 88 percent in the Upstate counties. There has been, however, no consistency to this trend during this period. For example, arrests in New York City declined 32 percent from 1981 to 1984, then increased dramatically by 83 percent between 1984-1985; Suburban New York City arrests rose 36 percent from 1981 to 1983, then declined by the same amount from 1983 to 1985. In 1985, New York City accounted for 47 percent of all Class A-II sale arrests statewide as compared with 24 percent from Suburban New York City and 29 percent from the Upstate counties. The 383 statewide arrests for this offense in 1985 comprised only 3 percent of all felony drug sale arrests (13,635) during the year.

**Class B felony drug sale arrests rose 129 percent from 1981 to 1985.**

Data presented in Table 4 show that arrests for PL 220.39 (CSCS-3d, B felony) increased 129 percent statewide between 1981 and 1985, from 4,402 to

10,099 arrests. New York City arrests for this offense increased 132 percent during this period as compared with Suburban New York City (66 percent increase) and the Upstate region (173 percent increase). In 1985, New York City accounted for 90 percent of all PL 220.39 arrests statewide. The Suburban counties accounted for 5 percent and the balance of the State an additional 5 percent. Overall, the 10,099 statewide arrests for this offense in 1985 represented 74 percent of felony drug sale arrests (13,635) during the year.

Table 3

ARRESTS FOR CRIMINAL SALE OF A CONTROLLED SUBSTANCE - 2<sup>0</sup>  
(PL 220.41) CLASS A-II BY REGION 1981-1985

Region	1981	1982		1983		1984		1985	
	N	N	% Chg						
New York State	310	349	12.6	341	- 2.3	282	-17.3	383	35.8
New York City	144	142	- 1.4	114	-19.7	98	-14.0	179	82.7
Suburban New York City	107	140	30.8	145	3.6	108	-25.5	93	-13.9
Upstate Counties	59	67	13.6	82	22.4	76	- 7.3	111	46.1

Table 4

ARRESTS FOR CRIMINAL SALE OF A CONTROLLED SUBSTANCE - 3<sup>0</sup>  
 (PL 220.39) CLASS B BY REGION 1981-1985

Region	1981		1982		1983		1984		1985	
	N	N	% Chg	N	% Chg	N	% Chg	N	% Chg	
New York State	4,402	6,861	55.9	7,883	14.9	9,457	20.0	10,099	6.8	
New York City	3,906	6,121	56.7	7,075	15.6	8,620	21.8	9,075	5.3	
Suburban New York City	308	411	33.4	416	1.2	449	7.9	510	13.6	
Upstate Counties	188	329	75.0	392	19.1	388	- 1.0	514	32.5	

### III. CRIMINAL JUSTICE PROCESSING

Tables 5 through 7 summarize the criminal justice processing of drug sale arrests that reached final disposition during 1985. The number and percent of dispositions processed through the upper and lower courts, conviction rates, and a breakdown of the types of sentences received for these convictions are presented for arrests on all drug sale offenses, for the Class A-II offense (PL 220.41) and for the Class B offense (PL 220.39). The convictions cited in these tables may be for any charge, not necessarily for one of the specified drug sale arrest offenses.

#### Prosecution

In New York State, all controlled substances sale offenses enter the criminal justice system as felony arrests. Disposition in the lower courts which have only preliminary jurisdiction over felony cases, generally indicates that the felony charge was dropped prior to the issuance of an indictment or a Superior Court Information (SCI). Charges are often reduced in circumstances where the prosecutor cannot obtain witness cooperation or when other evidentiary problems arise, thus resources limit the ability to sustain charges at the felony level. Cases prosecuted in the upper courts can be assumed to have retained at least one felony charge through the indictment/SCI stage of processing.

There was substantial variation among the regions in the proportion of cases processed through the upper courts.

In the Suburban and Upstate regions, over three-quarters (77 percent) of all disposed felony drug sale arrests were processed in the upper courts. In New York City fewer than half (44 percent) of such cases were processed in the upper courts (Table 5). A similar disparity exists for both the Class A-II (PL 220.41) arrest cases (Table 6) and for the Class B (PL 220.39) cases (Table 7).

The regional variation suggests a different pattern of prosecuting such cases that may be a function of the vastly higher volumes and greater diversity

TABLE 5

CRIMINAL JUSTICE SYSTEM PROCESSING SUMMARY  
 CRIMINAL SALE OF A CONTROLLED SUBSTANCE (PL 220)  
 ARRESTS DISPOSED IN 1985

Dispositions	STATE TOTAL		REGION					
			NEW YORK CITY		SUBURBAN NEW YORK CITY		UPSTATE COUNTIES	
	N	%	N	%	N	%	N	%
TOTAL DISPOSED	11,622	100.0	10,206	100.0	804	100.0	612	100.0
Prosecuted in:								
Lower Court	5,905	50.8	5,588	54.8	161	20.2	156	25.5
Upper Court	5,546	47.7	4,463	43.7	636	79.1	447	73.0
Total Convictions	8,309	71.5	7,075	69.3	723	89.9	511	83.5
Felony Convictions	4,971	42.8	3,990	39.1	582	72.4	400	65.4
Misdemeanor/Lesser Convictions	3,338	28.7	3,085	30.2	141	17.5	111	18.1
Sentences to:								
Prison	1,998	17.2	1,652	16.2	209	26.0	137	22.4
Jail	2,305	19.8	2,170	21.3	73	9.1	62	10.1
Total Incarcerations	4,303	37.0	3,822	37.4	282	35.1	199	32.5
Probation and Jail	1,079	9.3	792	7.8	190	23.6	97	15.8
Probation	1,569	13.5	1,199	11.7	207	25.7	163	26.6
Other	1,358	11.7	1,262	12.4	44	5.5	52	8.5
Prison Terms (Median Months)								
Minimum	24		24		18		23	
Maximum	48		48		46		49	
No. of Life Sentences	237		136		79		22	

## Notes:

- The percentages of cases processed in the upper and lower courts do not add to 100% because of decline to prosecute actions or a failure to return a bill of indictment.
- Disposition/Sentence data are based on the year of reported final disposition, or for convictions, the year of the sentencing.
- Disposition/Sentence data are based on an event unit of count; Sentences to prison may not correspond to actual prison admissions.

TABLE 6

CRIMINAL JUSTICE SYSTEM PROCESSING SUMMARY  
 CRIMINAL SALE OF A CONTROLLED SUBSTANCE - 2<sup>o</sup> (PL 220.41)  
 CLASS A-II ARRESTS DISPOSED IN 1985

Dispositions	Region							
	STATE TOTAL		NEW YORK CITY		SUBURBAN NEW YORK CITY		UPSTATE COUNTIES	
	N	%	N	%	N	%	N	%
TOTAL DISPOSED	310	100.0	141	100.0	103	100.0	66	100.0
Prosecuted in:								
Lower Court	81	26.1	61	43.3	11	10.7	9	13.6
Upper Court	221	71.3	77	54.6	90	87.4	54	81.8
Total Convictions	228	73.5	85	60.3	89	86.4	54	81.8
Felony Convictions	197	63.5	64	45.4	83	80.6	50	75.8
Misdemeanor/Lesser Convictions	31	10.0	21	14.9	6	5.8	4	6.1
Sentences to:								
Prison	111	35.8	46	32.6	39	37.9	26	39.4
Jail	22	7.1	11	7.8	6	5.8	5	7.6
Total Incarcerations	133	42.9	57	40.4	45	43.7	31	47.0
Probation and Jail	34	11.0	9	6.4	17	16.5	8	12.1
Probation	46	14.8	8	5.7	24	23.3	14	21.2
Other	15	4.8	11	7.8	3	2.9	1	1.5
Prison Terms (Median Months)								
Minimum	12		13		13		19	
Maximum	37		38		37		51	
No. of Life Sentences	20		7		7		6	

## Notes:

- The percentages of cases processed in the upper and lower courts do not add to 100% because of decline to prosecute actions or a failure to return a bill of indictment.
- Disposition/Sentence data are based on the year of reported final disposition, or for convictions, the year of the sentencing.
- Disposition/Sentence data are based on an event unit of count; Sentences to prison may not correspond to actual prison admissions.

TABLE 7

CRIMINAL JUSTICE SYSTEM PROCESSING SUMMARY  
 CRIMINAL SALE OF A CONTROLLED SUBSTANCE - 3<sup>o</sup> (PL 220.39)  
 CLASS B ARRESTS DISPOSED IN 1985

Dispositions	Region							
	STATE TOTAL		NEW YORK CITY		SUBURBAN NEW YORK CITY		UPSTATE COUNTIES	
	N	%	N	%	N	%	N	%
TOTAL DISPOSED	8,447	100.0	7,652	100.0	431	100.0	364	100.0
Prosecuted in:								
Lower Court	4,064	48.1	3,902	51.0	94	21.8	68	18.7
Upper Court	4,274	50.6	3,645	47.6	334	77.5	295	81.0
Total Convictions	6,043	71.5	5,333	69.7	396	91.9	314	86.3
Felony Convictions	3,874	45.9	3,296	43.1	317	73.5	261	71.7
Misdemeanor/Lesser Convictions	2,169	25.7	2,037	26.6	79	18.3	53	14.6
Sentences to:								
Prison	1,426	16.9	1,287	16.8	61	14.2	78	21.4
Jail	1,541	18.2	1,467	19.2	39	9.0	35	9.6
Total Incarcerations	2,967	35.1	2,754	36.0	100	23.2	113	31.0
Probation and Jail	944	11.2	718	9.4	147	34.1	79	21.7
Probation	1,199	14.2	979	12.8	121	28.1	99	27.2
Other	933	11.0	882	11.5	28	6.5	23	6.3
Prison Terms (Median Months)								
Minimum	24		24		24		23	
Maximum	48		48		51		54	
No. of Life Sentences	8		4		2		2	

## Notes:

- The percentages of cases processed in the upper and lower courts do not add to 100% because of decline to prosecute actions or a failure to return a bill of indictment.
- Disposition/Sentence data are based on the year of reported final disposition, or for convictions, the year of the sentencing.
- Disposition/Sentence data are based on an event unit of count; Sentences to prison may not correspond to actual prison admissions.

of arrests with which the New York City justice system must contend. Enhanced law enforcement efforts increase the number of cases with which that system must deal, and may affect the system's ability to prepare strong evidentiary cases. This may make it more difficult for prosecutors to sustain felony charges through the indictment process. Such arrests may result from so-called "sweeps" aimed at ridding neighborhoods of undesirable drug activity. While these have a valid law enforcement purpose, they may be less likely to involve the carefully prepared investigative work that is essential to build a strong case for Grand Jury presentation.

### Conviction

In Tables 5-7, the "total conviction" percentage reflects the proportion of disposed felony drug sale arrests that resulted in a conviction to any charge. Convictions are further broken down in these tables into convictions for a felony offense or for a misdemeanor or lesser offense. Most of the misdemeanor convictions are known to result from cases processed in the lower courts; a smaller number result from indicted cases reduced to misdemeanors upon conviction.

A substantial majority of dispositions of felony drug sale arrests result in a conviction.

Statewide, nearly 72 percent of dispositions were convictions. In New York City, the rate was 69 percent; in the Suburban counties, it was nearly 90 percent and it was 84 percent in the Upstate region (Table 5). Similar conviction levels are seen for the Class B arrest cases (Table 7). Conviction rates for the A-II felony arrests (PL 220.41) were somewhat lower across all regions, ranging from 60 percent in New York City to 86 percent in the Suburban counties (Table 6).

The rate of conviction on felonies varied across regions.

In New York City, 39 percent of dispositions of drug sale arrests were felony convictions as compared to 72 percent in the Suburban counties and 65 percent Upstate (Table 5).

For dispositions of Class A-II sale arrests, 45 percent were felony convictions in New York City versus 81 percent in the Suburban counties and 76 percent Upstate (Table 6). Felony conviction rates for the B felony arrests (PL 220.39) were lower overall than for the A-II: 43 percent for New York City, 74 percent for the Suburban counties and 72 percent for the Upstate counties (Table 7).

The lower rate of conviction on felonies in New York City may again be a function of the volume and type of arrests made. If several people are charged with a drug sale offense stemming from the same event, further investigation may show that not all of those arrested were involved to the same degree. In such circumstances, it would be common to reduce the charges for certain offenders.

The conviction indicators are consistent with the prosecution indicators. Compared to the other regions of the State, New York City prosecutes proportionally fewer cases through the upper courts, convicts a lower proportion generally and a lower proportion on felonies. Taken together, these facts suggest that the special burdens under which the New York City criminal justice system operates affects its ability to respond as effectively as the systems elsewhere in the State.

### Sentencing

Prison sentences may only be given on a conviction for a felony. The "total incarceration" category is a summary of all sentences where either a prison or jail term was imposed.

Sentences resulting from arrest for all drug sale offenses:

Approximately one offender out of three (37 percent) disposed on a felony sales arrest received a sentence of incarceration.

Rates were slightly higher in New York City (37 percent) than they were in the Suburban region (35 percent) or Upstate (33 percent).

One offender in six (17 percent) received a state prison sentence upon disposition for a drug sale arrest.

For New York City dispositions, the rate was very slightly lower (16 percent of dispositions) while in the Suburban counties it was 26 percent. It was 22 percent in the Upstate counties. Despite the differences in these rates, New York City accounted for the substantial majority (83 percent) of all prison sentences statewide: 1,652 versus a total of 346 from both of the other regions.

Jail sentences were far more common for convictions on drug sale arrests in New York City than they were elsewhere.

Over 21 percent of dispositions received jail sentences in New York City compared to about 10 percent in each of the other regions (Table 5).

On the other hand, "split" sentences involving some combination of jail and probation were considerably less common in the City. Split sentences were ordered in 8 percent of the dispositions in New York City, in 24 percent in the Suburban region and in 16 percent in the Upstate counties (Table 5).

Probation was more than twice as likely to be used in the Suburban and Upstate regions than in New York City.

More than one out of four dispositions received probation in the non-New York City regions; numerically more cases than received state prison sentences. For New York City, probation was ordered in approximately one out of eight dispositions (12 percent) (Table 5).

Sentences resulting from Class A-II drug sale arrests (PL 220.41):

Almost half (43 percent) of the dispositions resulting from felony A-II sale arrests involved a sentence to incarceration (prison or jail).

Overall incarceration percentages were slightly higher outside of New York City (47 percent Upstate and 44 percent in the Suburban counties) than in New York City (40 percent) (Table 5).

More than one-third of the dispositions on A-II arrests involved a sentence to state prison.

The proportion was slightly higher for the Suburban (38 percent) and Upstate (39 percent) regions than it was for New York City (33 percent). Felony convictions following an arrest for the Class A-II sale offense resulted in a prison sentence nearly three out of four times in New York City and only about one out of two times elsewhere in the State.

Jail sentences were relatively uncommon for dispositions of A-II arrests, accounting for seven percent of dispositions statewide.

Only 22 such cases were reported for the entire state. Relative use of jail across the regions was similar; eight percent in New York City and the Upstate counties and six percent in the Suburban counties.

Split sentences accounted for an additional 11 percent of dispositions statewide; however, these sentences were less common in New York City (six percent) than elsewhere (Suburban, 17 percent; Upstate, 12 percent) (Table 6).

Probation sentences were used in one out of six (15 percent) dispositions statewide, but were far more common outside of New York City than in the City.

Absolute numbers were low (46 statewide); New York City employed probation in six percent of disposed cases, the Suburban counties in 24 percent, and the Upstate counties in 21 percent (Table 6).

It must be remembered that these sentences are for convictions on any charge resulting from an A-II drug sale arrest. Variation in the pattern of sentences is due in large part to differences in the levels of the convictions obtained.

Sentences resulting from Class B drug sale arrests (PL 220.39):

Overall incarceration rates for convictions on B felony sale arrests were very similar to those for all drug sale offenses; 35 percent of cases served some form of incarceration.

The use of incarceration was more common in New York City (36 percent of disposed cases) than in the Upstate region (31 percent) and in the Suburban counties (23 percent) (Table 7).

Statewide, 17 percent of B felony sale dispositions resulted in sentences to state prison.

Rates were relatively uniform across the regions; New York City, 17 percent, Suburban counties 14 percent and Upstate counties 21 percent. The proportion of felony convictions resulting in prison sentences was generally lower than that noted for dispositions of the A-II arrests, ranging from 36 percent in New York City (1287 of 3296) to 19 percent in the Suburban counties (61 of 317) (Table 7).

The use of jail and split sentences for these convictions showed wide variation across the regions.

Jail was imposed about twice as frequently in New York City (19 percent) than in either of the other regions (less than 10 percent in each).

Split sentences, however, show a reverse pattern with more than one-third (34 percent) of dispositions receiving this sentence in the Suburban counties, compared with 22 percent Upstate and 9 percent in New York City.

Probation was utilized for convictions on B sale arrests in one out of seven (14 percent) dispositions statewide.

Probation was far more commonly used outside of New York City (28 percent in the Suburban counties, 27 percent Upstate) than in New York City (13 percent). There were more cases sentenced to probation than to state prison in both of the non-New York City regions (Table 7).

## Sentence Terms

Displayed at the bottom of Tables 5, 6 and 7 are data on the length of the minimum and maximum terms ordered for state prison sentences and the number of sentences with life maximum terms. Life maximums may be ordered for convictions on Class A felonies or for convictions on B,C or D felonies for certain repeat offenders.

Offenders sentenced to prison as a result of an arrest for a drug sale felony received a median minimum term of two years, and a median maximum term of four years.

The sentence terms for both New York City and the Upstate region were very similar with the minimum terms of about 24 months and maximum terms of about 48 months. Minimum terms for Suburban county cases were lower with a median of 18 months, while the maximum term in this region was 46 months. The proportion of life sentences varied considerably across the regions. Eight percent of all prison sentences in New York City involved life maximums, 38 percent in the Suburban region and 16 percent in the Upstate region (Table 5).

Median terms for offenders arrested for Class A-II offenses and sentenced to prison were approximately one year (minimum term) and three years (maximum term)

For these cases, New York City and the Suburban counties were similar with approximately one year minimums and three year maximums. Minimum terms in the Upstate counties were about six months longer (19 months) and the maximum terms were more than one year longer (51 months). Although numerically very low, the proportion of life sentences varied from 15 percent of prison sentences in New York City to 23 percent in the Upstate counties (Table 6).

Median sentence terms for dispositions on Class B sale arrests (PL 220.39) were longer than for the dispositions on the Class A-II arrests.

These sentence terms showed strong uniformity across all regions with median minimum terms of approximately two years and median maximums of about four years. Life sentences on these convictions were relatively rare, particularly in New York City. Approximately three percent of prison sentences

for these cases resulted in life terms in the two non-New York City regions, and less than one percent in New York City (Table 7).

The fact that sentence terms were longer for offenders disposed following a Class B felony arrest than for offenders disposed following Class A-II arrests is surprising. It must be remembered that sentences are based on the level of the conviction charge which, as the following section will show, is generally one to two felony class levels lower than the arrest charge. Also, actual sentences may be mitigated by the application of Youthful Offender (YO) status for some convictions, allowing shorter sentences than that which might otherwise be mandated. Conversely, sentences for repeat offenders may be increased under certain provisions of the law.

To attempt to explain the apparent anomaly between the sentences for the Class B and Class A-II arrest cases, a brief examination was made into the YO and prior record status of offenders sentenced to prison in each group. If the Class B arrest group showed relatively more predicate offenders and fewer YO cases, this would help to explain the findings.

Among cases sentenced to prison as a result of a Class B drug sale arrest, 54 percent were repeat offenders. Among those similarly sentenced following the A-II sale arrest, only 21 percent were. In neither group did the number of Youthful Offenders amount to more than one percent of the total number of sentences to prison, and these are not considered to have had an effect on the sentence terms. It is possible, however, that the higher proportion of repeat offenders among those sentenced to prison following a Class B sale arrest does account for at least some portion of the longer minimum and maximum terms noted for this group. More rigorous analyses, focusing on prior record, other offenses charged at both arrest and conviction, as well as other factors would be necessary to more fully understand this phenomenon.

#### IV. CONVICTION CHARGE OUTCOMES

Tables 8 and 9 display the class level of convictions resulting from A-II felony arrests (PL 220.41) and B felony arrests (PL 220.39) respectively. A table for all drug sale arrests is not included because of the difficulty in interpreting the degree of charge reduction without controlling for the class of the arrest offense. The percentage of all convictions where both the most serious arrest and conviction offenses are the same is also provided. Note that the percentages in these tables are based on the total number of convictions and will differ from the felony and misdemeanor/lesser conviction rates presented in Tables 5-7.

**Fourteen percent of convictions that result from Class A-II felony sale arrests are convictions to Class A crimes.**

Data presented in Table 8 show that statewide, 12 percent of A-II felony sale arrests (PL 220.41) resulted in a conviction for the same offense. An additional 2 percent resulted in conviction on another Class A offense. The "same offense" conviction rate was lower for New York City than elsewhere: 8 percent in New York City and 15 percent in each of the non-New York City regions (Table 8).

**Most A-II arrest cases were reduced one level, to Class B offenses, upon conviction.**

The degree of reduction in the class of conviction offense varied across regions. One class reductions were more common in the Suburban region (46 percent) and New York City (41 percent) than Upstate (30 percent). The percentage of conviction offenses reduced two classes (to Class C) was higher in the Upstate counties (24 percent) and in Suburban New York City (23 percent) than in New York City (11 percent). Also, a greater proportion of convictions in New York City were to non-felony offenses (25 percent) than in the other regions of the State (approximately 7 percent in each region) (Table 8).

TABLE 8

CHARGE OUTCOME ANALYSIS OF ARRESTS FOR  
CRIMINAL SALE OF A CONTROLLED SUBSTANCE - 2<sup>0</sup> (PL 220.41)  
CLASS A-II FELONY DISPOSED IN 1985 BY REGION

Class of Conviction Offense	Region							
	STATE TOTAL		NEW YORK CITY		SUBURBAN NEW YORK CITY		UPSTATE COUNTIES	
	N	%	N	%	N	%	N	%
Same Offense	28	12.3	7	8.2	13	14.6	8	14.8
Other Class A Felony	5	2.2	3	3.5	1	1.1	1	1.9
Class B Felony	92	40.4	35	41.2	41	46.1	16	29.6
Class C Felony	42	18.4	9	10.6	20	22.5	13	24.1
Class D Felony	22	9.6	8	9.4	7	7.9	7	13.0
Class E Felony	8	3.5	2	2.4	1	1.1	5	9.3
Misdemeanor/Lesser	31	13.6	21	24.7	6	6.7	4	7.4
Total Convictions	228	100.0	85	100.0	89	100.0	54	100.0

TABLE 9

CHARGE OUTCOME ANALYSIS OF ARRESTS FOR  
CRIMINAL SALE OF A CONTROLLED SUBSTANCE - 3<sup>0</sup> (PL220.39)  
CLASS B FELONY DISPOSED IN 1985 BY REGION

Class of Conviction Offense	Region							
	STATE TOTAL		NEW YORK CITY		SUBURBAN NEW YORK CITY		UPSTATE COUNTIES	
	N	%	N	%	N	%	N	%
Same Offense	652	10.8	569	10.7	37	9.3	46	14.7
Class A Felony	9	0.1	4	0.1	1	0.3	4	1.3
Other Class B Felony	37	0.6	34	0.6	1	0.3	2	0.6
Class C Felony	1,292	21.4	1,001	18.8	186	47.0	105	33.4
Class D Felony	1,806	29.9	1,628	30.5	88	22.2	90	28.7
Class E Felony	78	1.3	60	1.1	4	1.0	14	4.4
Misdemeanor/Lesser	2,169	35.9	2,037	38.2	79	19.9	53	16.9
Total Convictions	6,043	100.0	5,333	100.0	396	100.0	314	100.0

Approximately twelve percent of convictions resulting from Class B drug sale arrests were for a Class B or higher offense.

The distribution of the class level of convictions resulting from Class B felony sale arrests (PL 220.39) is displayed in Table 9. The percentage of "same offense" convictions for these cases was somewhat lower than for the A-II arrests; ranging from 9 percent in Suburban New York City to 15 percent in the Upstate counties. An additional one to two percent of cases were convicted of a Class A offense or of another Class B. In rare instances, a more serious charge may be added at the arraignment or indictment stage based on the investigation of the case. These account for the small number of cases convicted on a higher charge (Table 9).

In New York City, Class B arrests were most likely to have been reduced to a misdemeanor or lesser offense upon conviction (38 percent of convictions).

Although the number of cases was substantially lower than for New York City, Class B arrests outside of the City were generally reduced only one felony class, to C felonies. One class reductions accounted for 47 percent of convictions in the Suburban counties and 33 percent Upstate (19 percent in New York City). Reductions to misdemeanor/lesser charges were less common in these regions than in New York City (Suburban, 20 percent; Upstate 17 percent) (Table 9).

The disparity in processing between New York City and the other regions noted previously is also evident in these data. Higher proportions of both A-II and B arrests were reduced to misdemeanors upon conviction in New York than elsewhere. Particularly for the Class B arrests, one class reductions were far less likely for New York City cases than for cases in the other regions.

The reductions to misdemeanors can be explained by the high proportion of cases diverted to lower court processing as shown in Tables 6 and 7. These

courts are not empowered to dispose of felony cases; the only possible conviction outcome can be on a misdemeanor or lesser charge.

High case volume and quality of arrest issues may also help explain the greater degree of reduction, even among cases convicted as felonies. Again, the inability to prepare strong supporting cases, particularly for cases involving drug "sweep" arrests, may weaken the prosecutor's ability to obtain indictments at the same level as the arrest charge. Even for cases indicted, these factors may weaken the prosecutor's position in negotiating conviction outcomes.

Further study is indicated in this area to explain the findings of this exploratory analysis. As with most issues in criminal justice, it is likely that consideration of many factors will be necessary to understand these observations.

## V. CONCLUSION

Felony drug sale arrests have more than doubled between 1981 and 1985. This increased volume of system activity is reflected in a heightened public concern over the problem of drug abuse in New York State. In 1985, more than three out of four of these arrests were for the more serious sale offenses classified as Class A-II and Class B felonies. All regions of the State reported increased activity, but New York City accounted for the overwhelming majority of statewide drug sale arrests. The high volume of cases in New York City place limitations on its criminal justice system's ability to respond.

Disposition data for 1985 show clear regional differences in the processing outcomes of felony drug sale arrests. Outside of New York City over 75 percent of disposed arrests are processed in the upper courts and nearly 70 percent result in a felony conviction. New York City prosecutes fewer drug sale felonies through the upper courts, convicts a lower proportion overall and a lower proportion on felonies. Disparities also exist in regional sentencing practices with proportionally fewer prison sentences imposed in New York City than in the other regions of the State. However, felony convictions on drug sale arrests were more likely to result in a state prison sentence in New York City (41 percent) than in Suburban counties (36 percent) or Upstate jurisdictions (34 percent). Overall, sentence data show that 17 percent of those disposed on a felony sale arrest received a sentence to state prison and those sentenced received a median minimum term of two years, and a median maximum term of four years.

The ability to process Criminal Sale of Controlled Substances offenses effectively is largely a function of the volume of cases and criminal justice resources available to respond to arrests. The concentration of drug sale arrests in the New York City area appears to be an important factor in the regional processing disparities discovered. Enhanced law enforcement efforts

aimed at reducing drug activity not only increase the number of cases which that system must process, they may also affect the system's ability to prepare strong evidentiary cases, making it difficult for prosecutors to sustain charges at the felony level. Increased activity places special burdens on all components of the criminal justice system when their resources are not enhanced in response. More focused research is indicated to determine reasons for the disparities in processing outcomes demonstrated in this report and provide a basis for specific policy action. This report suggests that a logical starting point for this research would be a closer examination of New York City processing with a particular focus on the question of how the extensively high volume of cases may be more effectively dealt with.

APPENDIX A

Summary of Article 220 of the New York State Penal Law

Penal Law Article and Section	Title	Class
220.20	Controlled substances; definitions	
220.03	Criminal Possession - Seventh degree	(A Misdemeanor)
220.05	Criminal Possession - Sixth degree	(E Felony)
220.06	Criminal Possession - Fifth degree	(D Felony)
220.09	Criminal Possession - Fourth degree	(C Felony)
220.16	Criminal Possession - Third degree	(B Felony)
220.18	Criminal Possession - Second degree	(A-II Felony)
220.21	Criminal Possession - First degree	(A-I Felony)
220.25	Criminal Possession; presumption	
220.31	Criminal Sale - Fifth degree	(D Felony)
220.34	Criminal Sale - Fourth degree	(C Felony)
*220.39	Criminal Sale - Third degree	(B Felony)
*220.41	Criminal Sale - Second degree	(A-II Felony)
220.43	Criminal Sale - First degree	(A-I Felony)
220.45	Criminally Possessing a Hypodermic Instrument	(A Misdemeanor)
220.46	Criminal Injection of a Narcotic Drug	(E Felony)
220.50	Criminally Using Drug Paraphernalia - Second degree	(A Misdemeanor)
220.55	Criminally Using Drug Paraphernalia - First degree	(D Felony)
220.60	Criminal Possession of Precursors of Controlled Substances	(E Felony)

\*Sale offenses examined in this analysis.

APPENDIX B

TEXT OF PL 220.39 AND PL 220.41

§ 220.39. Criminal sale of a controlled substance in the third degree - B  
Felony.

A person is guilty of criminal sale of a controlled substance in the third degree when he knowingly and unlawfully sells:

1. a narcotic drug; or
2. a stimulant, hallucinogen, hallucinogenic substance, or lysergic acid diethylamide and has previously been convicted of an offense defined in article two hundred twenty or the attempt or conspiracy to commit any such offense;
3. one gram or more of a stimulant; or
4. one milligram or more of lysergic acid diethylamide; or
5. twenty-five milligrams or more of a hallucinogen; or
6. one gram or more of a hallucinogenic substance; or
7. one or more preparations, compounds, mixtures or substances of an aggregate weight of one-eighth ounce or more containing methamphetamine, its salts, isomers or salts of isomer; or
8. two hundred fifty milligrams or more of phencyclidine; or
9. a narcotic preparation to a person less than twenty-one years old.

Criminal sale of a controlled substance in the third degree is a class B felon.

§ 220.41. Criminal sale of a controlled substance in the second degree - A-II  
Felony.

A person is guilty of criminal sale of controlled substance in the second degree when he knowingly and unlawfully sells:

1. one or more preparations, compounds, mixtures or substances of an aggregate weight of one-half ounce or more containing a narcotic drug; or
2. one or more preparations, compounds, mixtures or substances of an aggregate weight of one-half ounce or more containing methamphetamine, its salts, isomers or salts of isomers; or
3. five grams or more of stimulant; or
4. five milligrams or more of lysergic acid diethylamide; or
5. one hundred twenty-five milligrams or of a hallucinogen; or
6. five grams or more of a hallucinogenic substance; or
7. three hundred and sixty milligrams or more of methadone.

Criminal sale of a controlled substance in the second degree is a class A-II felony.

## APPENDIX C

### SELECTION OF CHARGE AND DISPOSITION FOR ANALYSES

The following rules apply to the selection of charge and disposition for the analysis:

- At arrest, if there was more than one charge, the most serious charge was selected.
- If the charges in the arrest event resulted in more than one disposition, the most serious disposition type was selected. (Disposition types were ranked as follows: Conviction, Acquittal, Dismissal, Other, No True Bill, Prosecution Declined.)
- If there was more than one charge within the selected disposition type, the most serious charge within that type was selected.

Charge seriousness was determined by the class of offense. Within classes, specific offenses were ranked with personal crimes considered most serious, followed by property crimes, drug offenses, and "public order" offenses (e.g., forgery, prostitution).

