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A Natural Experiment in Reform: Analyzing Drug Policy Change In New York City

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Abstract

Purpose: The Vera Institute of Justice (Vera) worked collaboratively with John Jay College of Criminal Justice (John Jay) and Rutgers University (Rutgers) to evaluate a series of recent landmark reforms to New York State (NYS) drug laws. The 2009 drug law reforms (DLR) removed mandatory minimum sentences for defendants facing a range of felony drug and property charges and created new options for diverting defendants to treatment as an alternative to incarceration (ATI). This study used a combination of quantitative and qualitative methods to provide an initial assessment of the implementation of DLR in New York City (NYC) for a cohort of cases relating to arrests in 2010, soon after the reforms came into effect, including its impact on reoffending and cost implications. The research documents New York City's unfolding experiences of DLR, providing local and national stakeholders with empirical evidence and recommendations to inform decisions about sentencing options for drug offenders.

Methods: To examine *the implementation of DLR*, the research team used administrative records from the NYS Division of Criminal Justice Services (DCJS), the NYS Office of Court Administration (OCA), the NYC Department of Correction (DOC) and the six District Attorney's offices with jurisdiction in the city. These data were used to track outcomes for felony drug and specified property cases with arrest and disposition dates during two equivalent time periods in 2008 and 2010, pre- and post-DLR. Propensity Score Matching (PSM) was used to select comparable samples controlling for baseline differences in case and individual level characteristics, resulting in a total of 15,331 matched pairs (14,410 felony drug cases and 921 specified property cases from each period). To further examine the factors that influence charging and sentencing decisions, researchers at John Jay College interviewed 35 legal

professionals (judges, prosecutors, and defense attorneys) in three NYC counties and reviewed 69 case files provided by indigent defense organizations in Bronx County and Kings County (Brooklyn).

To explore *the impact of DLR on reoffending*, researchers compared rearrest data for two equivalent groups selected using PSM: defendants indicted on DLR-eligible charges and diverted to treatment as an ATI post-DLR and a sample of defendants arrested on the same charges who received corrections sentences (jail, prison, probation, or "time-served") pre-DLR (N=638 in both samples). Survival analysis and Cox regression were used to determine differences in time to first arrest between the two samples. Independent sample t-tests were used to compare overall rearrest rates. Researchers controlled for the incapacitation effect of jail, prison and residential treatment (which could skew the analysis) by using 'community time' to assess rates of reoffending. The study does not include arrests that occurred outside of NYS, or in the federal system within NYS, and may undercount the true prevalence of reoffending for both the pre and post-DLR samples.

Vera conducted two sets of cost-benefit analyses (CBA) to explore the *cost implications of DLR*: 1) using data from the implementation analysis to examine the impact of DLR on taxpayer and victim costs; and 2) using data from the reoffending analysis to describe the costs associated with diverting a defendant to treatment as an ATI.

Findings: DLR changed the way that courts in NYC handle felony drug cases, including a statistically significant citywide increase in rates of diversion to treatment as an ATI for defendants indicted on felony drug charges without prior violent felony convictions (the eligibility criteria for diversion under the new drug laws). Pre-DLR, 15 percent of eligible defendants were diverted to treatment as an ATI compared to 21 percent post-DLR ($p < .001$).

Over the same period the proportion of diversion-eligible defendants that were sentenced to prison declined from 29 percent to 19 percent (p<.001). While the overall number of drug felony arrests declined between 2008 and 2010, for a range of reasons largely unrelated to DLR, diversion has been expanded to include arrestees with more extensive criminal records. This shift in the use of diversion is supported by research that demonstrates the importance of targeting high-need groups with high-intensity treatment services. The research found that treatment diversion was associated with statistically significant reductions in the overall daily rearrest rate (P<.05), the daily felony rearrest rate (P<.01) and the time to first rearrest (p<.001). DLR did not have a statistically significant impact on the daily misdemeanor rearrest rate.

However, the majority of defendants who met the basic charge and criminal history eligibility criteria for diversion were not offered this option. There was considerable variation in rates of diversion depending on the court jurisdiction where the case was heard, ranging from 10 percent of all eligible felony drug cases in New York County to 29 percent of all eligible cases in Bronx County. The use of residential, as opposed to outpatient, treatment increased over the DLR period, and the average length of stay in residential treatment increased by 71 percent. The CBA found that, when holding the number of arrests constant and controlling for other factors, the implementation of DLR in NYC had a net annual cost of $7.3 million from the combined perspectives of taxpayers and victims. The total annual taxpayer cost to process felony drug arrests included in the matched sample of cases increased by 7 percent, from $257.1 million to $274 million, and half of the increase was reimbursed through federal revenue. Savings to law enforcement, corrections and victims, resulting from decreased rates of recidivism, were outweighed by an increase in treatment costs–largely resulting from the shift towards residential treatment. DLR has narrowed the longstanding racial disparity in rates of incarceration for drug

offenses. However, blacks and Hispanics arrested on felony drug charges in NYC were still 1.9 and 2.1 times as likely to be sentenced to prison respectively, when compared to whites.

DLR in New York State was the culmination of decades of lobbying and advocacy to address a set of laws that were widely perceived to be racially biased and led to a dramatic upsurge in the number of people held in state prison following conviction on felony drug charges. However, DLR is still its infancy, and there are a number of practical barriers that may limit the extent to which the new laws achieve their legislative intent. This study provides a detailed description of the early years of DLR in NYC and offers a series of practical, empirically based recommendations for enhancing its impact and reach.