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## PROFILE OF SECOND FELONY NON-VIOLENT OFFENDERS

The New York State Penal Law requires that persons convicted of a second felony offense be committed to state prison. Proposals before the New York State Legislature would amend the penal law to provide judges the option of considering alternatives to a state prison sentence for second felony offenders convicted of a class D or E non-violent crime. This report presents a profile of second felony offenders convicted of class D or E non-violent offenses who were committed to the Department of Correctional Services during 1990. Information on commitment offense, prior felony offense, minimum sentence, age, ethnicity, sex and region of commitment is presented. The report is preceded by a summary of the main findings.

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SUMMARY

1. Recent proposals before the New York State Legislature would amend the Penal Law to provide judges the option of considering alternatives to a State prison sentence for certain second felony offenders convicted of a class D or E non-violent crime.
2. In calendar year 1990, the New York State Department of Correctional Services received 4,891 new court commitments who were second felony offenders convicted of a class D or E non-violent felony crime and whose prior conviction was also a non-violent felony.
3. Of these 4,891 second felony class D and E non-violent commitments, 64% were convicted of drug offenses, 29% were convicted of property offenses, and 7% were convicted of offenses that had some element of coercion (see Table 2, p.6).
4. For these 4,891 offenders, the prior felony crime was a drug offense for 57% of the cases, a property offense for 32% of the cases and an offense involving some element of coercion for 11% of the cases (see Table 3, p.7).
5. The median minimum sentence for second felony class D and E non-violent offenders was 24 months. Seventy-six percent of these offenders received the lowest legally allowable minimum sentence (see Table 6, p.12 and Table 5, p.11).
6. Second felony class D and E offenders committed from New York City were most likely to be convicted of a drug offense (71% of cases), as were those committed from Suburban New York (56% drug offenses). For the Upstate counties, offenders in this group were most likely to have been convicted of a property offense (64%) (see Table 7, p.13).
7. Of the 4,891 second felony offenders committed for class D and E non-violent crimes, 89% were male, 11% female. Ten percent were white, 49% black, 40% Hispanic and 1% Asian or Native American (see Table 8, p.15).

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## PROFILE OF SECOND FELONY NON-VIOLENT OFFENDERS

The New York State Penal Law (Section 70.06) requires that persons convicted of a second felony offense must receive a sentence to state prison. This legislation was enacted in 1973 along with dramatic changes in the laws pertaining to use and sale of controlled substances (often referred to as the Rockefeller drug laws). In recent years, the question has been asked whether the incarceration of non-violent lower felony class category (e.g. class D and E) offenders is an appropriate use of criminal justice resources. The New York Times summarizes the issue as follows:

The law had one noble purpose. It was intended to insure prison time for recidivists who financed drug habits with muggings and burglaries. But as New York City police mounted aggressive sweeps to rescue neighborhoods from crack, huge numbers of small-time drug dealers became subject to the law. Now the state's severe fiscal problems force the question of whether it makes sense to imprison relatively minor, nonviolent offenders in cells that cost more than \$100,000 each to construct and \$25,000 per year to operate. (New York Times 2/25/91 Final Edition p. A-18)

In response to this concern, amendments to the New York State Penal Law and the New York State Criminal Procedure Law have been proposed which would permit judges to sentence certain class D and E non-violent felons to probation or some other sentencing alternative other than an indeterminate sentence to state prison. The information presented below provides a brief profile of the subset of second felony offenders that would be affected if recently introduced proposals were to be enacted into law.

### PROPOSED LEGISLATION REGARDING SECOND FELONY OFFENDERS

The most recent proposal concerning the second felony offender law is contained in the Community Corrections Act (Senate Bill #3014; referred to Senate Finance Committee; Assembly Bill 4514, referred to Assembly Ways and Means Committee). These proposals would provide greater discretion to prosecuting attorneys and to judges at sentencing.

### More Discretion to Prosecuting Attorney

The Community Correction Bill would amend subdivision 2 of section 400.21 of the Criminal Procedure Law to provide that a defendant could not be sentenced as a second felony offender (under 70.06 of the Penal Law) "unless a statement regarding a predicate felony conviction has been filed" (emphasis added). This predicate felony statement to be filed by the prosecutor contains the date and place of each alleged prior conviction along with the location and length (including specific dates) of any prior confinement that resulted from these prior convictions. Section 400.21 of the Criminal Procedure Law would be further amended to provide that the predicate felony statement (document setting forth date and place of each alleged predicate felony conviction) "...may be filed by the prosecutor before sentence is imposed..." In brief, a defendant cannot be sentenced as a second felony offender unless a predicate felony statement has been filed, and, it would be the option of the prosecuting attorney to file such a statement. This discretion is significant. A defendant not sentenced as a second felony offender under Article 70.02 would be sentenced as if he were a first felony offender which could mean a shorter sentence if a sentence to state prison is handed down (i.e. the minimum term for a first felony offender cannot exceed one-third of the maximum sentence; in contrast, the minimum period of imprisonment for a second felony offender must be fixed at one-half the maximum term; further, sentences for second felony offenders are generally more severe than those for first felony offenders). Furthermore, certain defendants convicted of class C, class D or class E offenses would (if not sentenced as a second felony offender under 70.06 of Penal Law) be eligible for alternative sentences such as probation, conditional discharge, unconditional discharge, fine, split sentence (jail followed by probation), restitution, or various combinations of these options (see Section 65.00 New York State Penal Law or New York State Sentence Charts 1990).

### More Discretion to Judges at Sentencing

The Community Corrections Act would also extend to judges the discretion to sentence certain second felony offenders convicted of class D or class E non-violent felonies to probation or other sentencing alternatives rather than to State prison. Subdivision 2 of Section 70.06 of the Penal Law (Sentence of Imprisonment for Second Felony Offender) requires that where the court finds the person to be a second felony offender "the court must impose an indeterminate sentence of imprisonment." The Community Corrections Act would add the following language to this Subdivision:

However, in cases involving class D and E felonies otherwise subject to sentence under this section, where the predicate offense did not subject the offender to a sentence pursuant to the provisions of Section 70.02 of this article, the court may, in the interest of justice, sentence the offender pursuant to the terms of Section 65.00 or 70.00 of this chapter.

In brief, for second felony offenders convicted of class D and E non-violent felony offenses and where the prior offense was not a legislatively designated violent felony crime, the judge may sentence the defendant to probation or other alternative sentence (under Section 65.00 of New York State Penal Law), or, where a state prison sentence is handed down, the judge may apply the less severe terms of imprisonment that apply to first felony offenders (under Section 70.00 of the Penal Law).

**PROFILE OF SECOND FELONY OFFENDERS  
CONVICTED OF CLASS D AND CLASS E NON-VIOLENT FELONY CRIMES**

During calendar year 1990 the New York State Department of Correctional Services received 7,247 new court commitments who were sentenced as second felony offenders and who had been convicted of class D and class E non-violent felony crimes. Felony offenses in New York State are grouped into felony class categories that range from A-I to E with the more serious crimes categorized as class A-I, class A-II or class B and the less serious offenses categorized as class D or class E. The "non-violent" distinction stems from the violent felony offender legislation enacted in 1978 in which the Legislature designated certain crimes as "violent felonies" and provided for more severe sentences for people convicted of these crimes and restrictions on plea negotiation for people arrested for these crimes. So, people affected by this legislation are those convicted of the less serious class D and class E felony offenses and where the instant offense is not a legislatively designated violent felony.

The proposal in the Community Corrections Act further stipulates that the predicate offense could not have been a legislatively designated violent felony. That is both the instant offense and prior offense must be a "non-violent felony." When this requirement is taken into consideration, the figure of 7,247 is reduced to 4,891 persons. Accordingly, the Department of Correctional Services received 4,891 new court commitments in 1990 who were second felony offenders convicted of a class D or class E non-violent felony offense and whose prior felony conviction was not a legislatively designated violent felony.

### Crime by Crime Class; Crime by Sex

Table 1 presents the felony crime class and the specific offenses that fall into the target group. Sixty percent of commitments are class D felony offenders, 40% are class E felony offenders. Four of the largest categories include Criminal Sale of Controlled Substance 5th (36.0%, N=1,759), Criminal Possession of Controlled Substance 5th (9.4%, N=461), Attempted Criminal Sale of Controlled Substance 5th (9.8%, N=480), and Attempted Criminal Possession of Controlled Substance 5th (6.5%, N=318). Other large categories include Burglary 3rd (5.8%, N=283), Attempted Burglary 3rd (5.5%, N=271), and Grand Larceny 4th (5.1%, N=247).

In Table 2, the specific offenses have been grouped into several larger categories. Overall, 64% of the class D and E non-violent group is made of people convicted of drug offenses, 29% for property and other felonies, 7% for offenses that involve some element of coercion such as Robbery 3rd or Attempted Assault 2nd.

It can also be seen in Table 2 that there is a higher concentration of drug offenders (84%) among female offenders convicted of class D and E non-violent felonies than among the males (61% drug offenders).

### Prior Conviction Offense

In the debate on the proposed legislation, a number of observers have indicated that the nature of the prior offenses is relevant. As noted above, the language of the proposed amendments to the penal law would require that neither the instant conviction nor the prior conviction could be a legislatively designated violent felony. Information on the nature of the prior conviction offense is available for 3,743 of the class D and E non-violent offenders in the study. Table 3 presents a distribution of these prior conviction offenses.

As shown in Table 3, the largest categories for prior conviction offense are Criminal Sale of Controlled Substance 3rd (31.4%), Criminal Sale of Controlled Substance 5th (8.9%), and Burglary 3rd (13.3%), and Robbery 3rd (9.0%). More generally, for 56.5% of the cases the prior crime was a drug offense, 32.3% a property offense, and 11.2% an offense involving some element of coercion.



TABLE 1  
 CRIME AND CRIME CLASS FOR 2ND FELONY CLASS D AND E NON-VIOLENT OFFENDERS  
 1990 NEW COURT COMMITMENTS; NEW YORK STATE DEPARTMENT OF CORRECTIONAL SERVICES

CRIME AND FELONY CRIME CLASS	2ND FELONY NON VIOLENT	
	NUMBER	PERCENT
<b>CLASS D FELONY</b>		
ATT MANSLAUGHTER 2ND	1	.0%
VEHICULR MANSL 1ST	1	.0%
RAPE 2ND	2	.0%
ROBBERY 3RD	119	2.4%
RECK ENDANGER 1ST	17	.3%
VEHIC ASSAULT 1ST	1	.0%
BURGLARY 3RD	283	5.8%
GRAND LARCEN 2ND	1	.0%
ATT GRAND LAR 2ND	2	.0%
GRAND LARCEN 3RD	35	.7%
GR LAR 3RD AUTO	8	.2%
ATT STOLN PROP 2ND	2	.0%
STOLEN PROP 3RD	87	1.8%
FORGERY 2ND	31	.6%
POS FORGE INS 2ND	32	.7%
SODOMY 2ND	4	.1%
DRUG PARAPHER 1ST	1	.0%
ATT CSCS 4TH	20	.4%
ATT CPCS 4TH	66	1.3%
CSCS 5TH	1759	36.0%
CPCS 5TH	461	9.4%
ATT CR SALE MARI	1	.0%
ATT CR POS MARI1	1	.0%
CRIM SALE MARI 2	1	.0%
CRIM POS MARI 2	4	.1%
CRIM MISCHIEF 2ND	2	.0%
ESCAPE 1ST	2	.0%
CONTRABAND 1ST	1	.0%
HINDER PROSEC 1ST	1	.0%
COERCION 1ST	1	.0%
BAIL JUMPING 1ST	2	.0%
CRIM SOLI 2ND	1	.0%
ATT CRIM FACIL 2ND	3	.1%
<b>TOTAL</b>	<b>2953</b>	<b>60.4%</b>
<b>CLASS E FELONY</b>		
CRIM NEGLI HOMICIDE	5	.1%
RAPE 3RD	7	.1%
ATT ROBBERY 3RD	131	2.7%
ATT ASSAULT 2ND	46	.9%
ATT RECK ENDANG1ST	3	.1%
VEHIC ASSAULT 2ND	3	.1%
ATT BURGLARY 3RD	271	5.5%
GRAND LARCEN 3RD	1	.0%
ATT GRAND LAR 3RD	18	.4%
GRAND LARCEN 4TH	247	5.1%
GR LAR 3RD AUTO	4	.1%
UNAU USE VEHIC 2ND	19	.4%
ATT GR LAR 3RD AUTO	11	.2%
GR LAR 4TH AUTO	18	.4%
STOLEN PROP 2ND	1	.0%
ATT STOLN PROP 3RD	59	1.2%
STOLEN PROP 4TH	187	3.8%
FALSE INSTRUMENT	2	.0%
CRIM USURY 2ND	1	.0%
DEFRAUD 1ST	6	.1%
ATT FORGERY 2ND	23	.5%
ATT POS FORGE 2ND	18	.4%
ARSON 4TH	3	.1%
ATT SEX ABUSE 1ST	2	.0%
INCEST	1	.0%
ATT CSCS 5TH	480	9.8%
ATT CPCS 5TH	318	6.5%
ATT CR POS MARI2	1	.0%
CRIM SALE MARI 3	1	.0%
CRIM POS MARI 3	4	.1%
DRIVE INTOX 2 OFF	5	.1%
FALSE REPORT 1ST	1	.0%
PROMO BOOKMAKE 1ST	1	.0%
ATT CR MISCHIEF2ND	3	.1%
CRIM MISCHIEF 3RD	8	.2%
ESCAPE 2ND	1	.0%
ATT CONTRABAND 1ST	1	.0%
BAIL JUMPING 2ND	14	.3%
TAMPERING EVIDENCE	1	.0%
ATT BAIL JUMP 1ST	1	.0%
ATT BRIBING WITNESS	1	.0%
INTIMIDATE WIT 3RD	2	.0%
ATT BRIBERY 3RD	3	.1%
CONSPIRACY 4TH	3	.1%
CRIM FACIL 3RD	2	.0%
<b>TOTAL</b>	<b>1938</b>	<b>39.6%</b>
<b>GRAND TOTAL</b>	<b>4891</b>	<b>100.0%</b>

TABLE 2  
 CRIME BY SEX FOR 2ND FELONY CLASS D AND E NON-VIOLENT OFFENDERS  
 1990 NEW COURT COMMITMENTS; NEW YORK STATE DEPARTMENT OF CORRECTIONAL SERVICES

CRIME	MALE		FEMALE		TOTAL	
	NUMBER	PERCENT	NUMBER	PERCENT	NUMBER	PERCENT
<b>DRUG OFFENSES</b>						
DRUG OFFENSES	2666	61.2%	453	83.9%	3119	63.7%
SUBTOTAL	2666	61.2%	453	83.9%	3119	63.7%
<b>PROPERTY OFFENSES</b>						
BURGLARY 3RD	549	12.6%	5	.9%	554	11.3%
GRAND LARCENY	335	7.7%	30	5.6%	365	7.5%
FORGERY	86	2.0%	18	3.3%	104	2.1%
STOLEN PROPERTY	320	7.4%	16	3.0%	336	6.9%
DRIVE INTOXICATED	5	.1%	0	.0%	5	.1%
ALL OTHR FELONIES	52	1.2%	6	1.1%	58	1.2%
SUBTOTAL	1347	30.9%	75	13.9%	1422	29.1%
<b>OTHER COERCIVE</b>						
MANSLAUGHTER 2ND	1	.0%	0	.0%	1	.0%
OTHER HOMICIDE	6	.1%	0	.0%	6	.1%
ROBBERY 3RD	240	5.5%	10	1.9%	250	5.1%
ATT ASSAULT 2ND	45	1.0%	1	.2%	46	.9%
OTHER SEX OFFENSES	16	.4%	0	.0%	16	.3%
OTHER COERCIVE	32	.7%	1	.2%	33	.7%
SUBTOTAL	340	7.8%	12	2.2%	352	7.2%
GRAND TOTAL	4351	100.0%	540	100.0%	4891	100.0%

TABLE 3  
 PRIOR OFFENSE FOR 2ND FELONY CLASS D AND E NON-VIOLENT OFFENDERS  
 1990 NEW COURT COMMITMENTS; NEW YORK STATE DEPARTMENT OF CORRECTIONAL SERVICES

CRIME AND FELONY CLASS	NUMBER	PERCENT
<b>DRUG OFFENSES</b>		
SALE DNG DRUGS 3	1	.0%
POS DNG DRGS 3RD	1	.0%
USE NARCOTIC 1ST	1	.0%
PUBLIC HEALTH LAW	1	.0%
CRIM POS PRECURSORS	1	.0%
CSCS 1ST	2	.0%
CPCS 1ST	2	.1%
CSCS 2ND	13	.3%
CPCS 2ND	8	.2%
CSCS 3RD	1174	31.4%
CPCS 3RD	132	3.5%
CSCS 4TH OLD LAW	17	.5%
CPCS 4TH OLD LAW	8	.2%
CSCS 4TH	162	4.3%
CPCS 4TH	93	2.5%
CSCS 5TH	332	8.9%
CPCS 5TH	149	4.0%
CPCS 6TH	8	.2%
CRIM SALE HARI 1	1	.0%
CRIM SALE HARI 2	1	.0%
CRIM POS HARI 2	2	.1%
CRIM POS HARI 3	4	.1%
CSCS AT SCHOOL	1	.0%
CRIM SALE DRUGS 2ND	2	.1%
<b>SUBTOTAL</b>	<b>2115</b>	<b>56.5%</b>
<b>PROPERTY AND OTHER OFFENSES</b>		
PROMOTING SUICIDE	1	.0%
BURGLARY 3RD	497	13.3%
GRAND LARCEN 2ND	22	.6%
GRAND LARCEN 3RD	66	1.8%
GRAND LARCEN 1ST	1	.0%
GRAND LARCEN 2ND	8	.2%
GRAND LARCEN 3RD	41	1.1%
GRAND LARCEN 4TH	97	2.6%
GR LAR 2ND AUTO	9	.2%
GR LAR 3RD AUTO	26	.7%
UNAU USE VEHIC 1ST	2	.1%
UNAU USE VEHIC 2ND	1	.0%
GR LAR 3RD AUTO	1	.0%
GR LAR 4TH AUTO	6	.2%
CPSP 1ST	30	.8%
CPSP 2ND	30	.8%
CPSP 1ST	17	.5%
CPSP 2ND	12	.3%
CPSP 3RD	60	1.6%
CPSP 4TH	74	2.0%
1409.00	9	.2%
FALSE INSTRUMENT	1	.0%
DEFRAUD 1ST	2	.1%
FORGERY 1ST	1	.0%
FORGERY 2ND	35	.9%
POS FORGE INS 2ND	26	.7%
POS FORGE DEVICE	1	.0%
PROMO PROSTI 2ND	1	.0%
PROMO PROSTI 3RD	2	.1%
SEXUAL MISCOND	15	.4%
MFG TRANS WEAP	1	.0%
USE WEAPON 1ST	1	.0%
DRIVE INTOX 2 OFF	14	.4%
LEAVE ACCIDENT SCENE	1	.0%
PROMO GAMBLING 1ST	1	.0%
PROMO BOOKMAKE 1ST	1	.0%
CRIM MISCHIEF 2ND	2	.1%
CRIM MISCHIEF 3RD	7	.2%
CRIM TRESPASS 1ST	1	.0%
ESCAPE 1ST	1	.0%
ESCAPE 2ND	4	.1%
ABSCONDING 1ST	1	.0%
BAIL JUMPING 2ND	5	.1%
BAIL JUMPING 1ST	8	.2%
BRIBERY 2ND	3	.1%
BRIBERY 1ST	1	.0%
WITNESS REC BRIBE	1	.0%
ACCEPT COM BRIBE 1ST	1	.0%
BRIBERY 3RD	2	.1%
CRIM SOLI 2ND	1	.0%
CRIM SOLI 3RD	1	.0%
CRIM FACIL 1ST	1	.0%
CRIM FACIL 2ND	2	.1%
CRIM FACIL 3RD	1	.0%
UNSPECIFIED FELONY	53	1.4%
<b>SUBTOTAL</b>	<b>1209</b>	<b>32.3%</b>
<b>OTHER COERCIVE</b>		
HANSLAUGHTER 2ND	20	.5%
CRIM NEGLI HOMICIDE	6	.2%
RAPE 2ND	1	.0%
RAPE 3RD	9	.2%
ROBBERY 3RD	338	9.0%
RECK ENDANGER 1ST	23	.6%
ARSON 3RD	8	.2%
ARSON 4TH	3	.1%
SODOMY 2ND	1	.0%
SODOMY 3RD	1	.0%
INCEST	1	.0%
UNLAWFUL IMPRIS 1ST	1	.0%
COERCION 1ST	1	.0%
TAMP WITNESS 2ND	1	.0%
RIOT 1ST	1	.0%
CONSPIRACY 2ND	1	.0%
CONSPIRACY 4TH	3	.1%
<b>SUBTOTAL</b>	<b>419</b>	<b>11.2%</b>
<b>GRAND TOTAL</b>	<b>3743</b>	<b>100.0%</b>

Table 4 presents a crosstabulation of instant offense by prior conviction offense for the 3,743 cases where information on the nature of the prior conviction is available. Looking first at those whose current crime is a drug offense, it can be seen that for 77% of these cases the prior crime was also a drug offense, for 15% of the cases the prior crime was a property offense and for 8% an offense involving some element of coercion. So, for most of the class D and E non-violent offenders whose current crime is a drug offense, the prior conviction crime is also a drug offense.

For cases where the instant conviction is a property offense, 70% had a prior felony conviction for a property offense, 15% for a drug offense, and 15% for other coercive offenses. Those convicted of the low level property offenses tend to repeat these same low level property offenses. Persons convicted of other coercive offenses do not show the strong concentration in any of the prior offense categories. Forty-seven percent were previously convicted of a property offense, 30% for a coercive offense, and 23% for a drug offense.

Since the proposed legislation would exempt persons whose prior conviction was a legislatively designated violent felony, it is not unexpected that the prior convictions would be for such offenses as sale of drugs, third degree burglary, or criminal possession of stolen property.

#### Minimum Sentence Length

Felony offenders committed to prison in New York State receive an indeterminate sentence. That is, the defendant receives a minimum sentence (fixed by the court) which reflects the minimum period that must be served prior to consideration for parole and a maximum sentence which reflects the longest period of time that the state has legal custody of an individual. The sentence for a particular crime depends in part on the felony class category of the offense (e.g., class A-I, class B). Within each felony class category there is an upper and lower limit on the length of the minimum and maximum sentence and the judge must select a sentence that falls within the legally prescribed range.

For a second felony offender convicted of a class D or E non-violent felony offense the legally permissible range of maximum sentences is 4 to 7 years; the corresponding range of minimum sentences is 2 to 3 1/2 years. At the class E level the maximum sentence range is from 3 to 4 years and the minimum sentence from 1 1/2 to 2 years.

TABLE 4  
CURRENT CRIME BY PRIOR FELONY CRIME FOR 2ND FELONY CLASS D AND E NON-VIOLENT OFFENDERS  
1990 NEW COURT COMMITMENTS; NEW YORK STATE DEPARTMENT OF CORRECTIONAL SERVICES

CURRENT CRIME	PRIOR OFFENSE						TOTAL	
	DRUG OFFENSES		PROPERTY AND OTHER OFFENSES		OTHER COERCIVE		NUMBER	PERCENT
	NUMBER	PERCENT	NUMBER	PERCENT	NUMBER	PERCENT		
<b>DRUG OFFENSES</b>								
DRUG OFFENSES	1902	77.4%	366	14.9%	190	7.7%	2458	100.0%
SUBTOTAL	1902	77.4%	366	14.9%	190	7.7%	2458	100.0%
<b>PROPERTY OFFENSES</b>								
BURGLARY 3RD	45	10.7%	316	75.1%	60	14.3%	421	100.0%
GRAND LARCENY	57	21.0%	167	61.4%	48	17.6%	272	100.0%
FORGERY	4	5.4%	57	77.0%	13	17.6%	74	100.0%
STOLEN PROPERTY	43	17.5%	173	70.3%	30	12.2%	246	100.0%
DRIVE INTOXICATED	0	.0%	0	.0%	2	100.0%	2	100.0%
ALL OTHR FELONIES	11	26.2%	24	57.1%	7	16.7%	42	100.0%
SUBTOTAL	160	15.1%	737	69.7%	160	15.1%	1057	100.0%
<b>OTHER COERCIVE</b>								
MANSLAUGHTER 2ND	1	100.0%	0	.0%	0	.0%	1	100.0%
OTHER HOMICIDE	1	20.0%	1	20.0%	3	60.0%	5	100.0%
ROBBERY 3RD	40	24.0%	75	44.9%	52	31.1%	167	100.0%
ATT ASSAULT 2ND	8	30.8%	12	46.2%	6	23.1%	26	100.0%
OTHER SEX OFFENSES	0	.0%	8	80.0%	2	20.0%	10	100.0%
OTHER COERCIVE	3	15.8%	10	52.6%	6	31.6%	19	100.0%
SUBTOTAL	53	23.2%	106	46.5%	69	30.3%	228	100.0%
<b>GRAND TOTAL</b>	<b>2115</b>	<b>56.5%</b>	<b>1209</b>	<b>32.3%</b>	<b>419</b>	<b>11.2%</b>	<b>3743</b>	<b>100.0%</b>

One possible indicator of whether judges might consider alternative sentences if they had the option is the percent of offenders who received the lowest legally permissible minimum term. For persons sentenced as second felony offenders the minimum sentence must be fixed at one-half the length of the maximum sentence. As noted above, the judge may select the maximum term from a range of legally permissible maximum sentences. The judge's decision regarding an appropriate minimum sentence is reflected by his decision on length of maximum sentence (since the minimum term will be one-half the maximum term).

Table 5 shows the number of cases in each specific offense category where the defendant received the shortest legally permissible minimum term, those that received the longest permissible term, and those that received a minimum term that fell somewhere between the high and low end of the range.

Looking at the bottom row of Table 5, it can be seen that 76% of second felony class D and E offenders received the lowest legally permissible minimum term, 18% a sentence that fell between the highest and lowest possible term, and 6% received the longest legally permissible term. For class E felony offenders, 88% received the minimum-minimum sentence. For class D felony offenders 69% received the minimum-minimum. In general, the large majority of class D and E second felony offenders received the shortest legally permissible minimum sentence.

Table 6 presents information on length of minimum sentence by conviction offense. The average minimum sentence for class D and E second felony offenders is 23.5 months (see bottom right-hand corner of Table 6). The far right-hand column in Table 6 shows the minimum sentence distribution for offenders in the study. The three largest categories of minimum sentence length are those whose minimum was 18 months (36%), 24 months (44%), and 30 months (15%).

#### Age, Ethnic Status, Sex and Region of Commitment

Table 7 shows the crime distribution for class D and E second felony offenders according to the region of the state from which the offender was committed. For persons committed from New York City fully 71% are convicted of drug offenses, 23% for property offenses and 6% for other coercive offenses. Among persons committed from Suburban New York (Rockland, Suffolk, Westchester and Nassau Counties), 56% were convicted of drug offenses, 39% for property offenses and 6% for other coercive offenses. The Upstate counties show a marked contrast in conviction offense. For both upstate urban counties (those upstate counties with a city of 50,000 or more) and upstate rural

TABLE 5  
 CRIME AND CRIME CLASS BY MINIMUM SENTENCE CATEGORY FOR 2ND FELONY CLASS D AND E NON-VIOLENT OFFENDERS  
 1990 NEW COURT COMMITMENTS; NEW YORK STATE DEPARTMENT OF CORRECTIONAL SERVICES

CRIME AND FELONY CRIME CLASS	MINIMUM SENTENCE LENGTH			TOTAL
	MINIMUM MINIMUM	MIDDLE RANGE	MAXIMUM MINIMUM	
<b>CLASS D FELONY</b>				
ATT MANSLAUGHTER 2ND	0	1	0	1
VEHICULR MANSL 1ST	0	1	0	1
RAPE 2ND	0	1	1	2
ROBBERY 3RD	73	37	9	119
RECK ENDANGER 1ST	12	3	2	17
VEHIC ASSAULT 1ST	0	1	0	1
BURGLARY 3RD	192	66	25	283
GRAND LARCEN 2ND	1	0	0	1
ATT GRAND LAR 2ND	2	0	0	2
GRAND LARCEN 3RD	28	7	0	35
GR LAR 3RD AUTO	5	2	1	8
ATT STOLN PROP 2ND	2	0	0	2
STOLEN PROP 3RD	61	21	5	87
FORGERY 2ND	17	11	3	31
POS FORGE INS 2ND	26	4	2	32
SODOMY 2ND	1	2	1	4
DRUG PARAPHER 1ST	1	0	0	1
ATT CSCS 4TH	9	11	0	20
ATT CPCS 4TH	45	20	1	66
CSCS 5TH	1186	563	10	1759
CPCS 5TH	352	94	15	461
ATT CR SALE MARI	1	0	0	1
ATT CR POS MARI	1	0	0	1
CRIM SALE MARI 2	0	1	0	1
CRIM POS MARI 2	3	0	1	4
CRIM MISCHIEF 2ND	2	0	0	2
ESCAPE 1ST	2	0	0	2
CONTRABAND 1ST	1	0	0	1
HINDER PROSEC 1ST	0	0	1	1
COERCION 1ST	1	0	0	1
BAIL JUMPING 1ST	1	1	0	2
CRIM SOLI 2ND	0	1	0	1
ATT CRIM FACIL 2ND	3	0	0	3
TOTAL	2028 -68.7%	848 28.7%	77 2.6%	2953 100.0%
<b>CLASS E FELONY</b>				
CRIM NEGLI HOMICIDE	2	0	3	5
RAPE 3RD	5	0	2	7
ATT ROBBERY 3RD	120	2	9	131
ATT ASSAULT 2ND	38	0	8	46
ATT RECK ENDANGIST	2	0	1	3
VEHIC ASSAULT 2ND	2	0	1	3
ATT BURGLARY 3RD	243	2	26	271
GRAND LARCEN 3RD	0	0	1	1
ATT GRAND LAR 3RD	16	0	2	18
GRAND LARCEN 4TH	203	2	42	247
GR LAR 3RD AUTO	2	0	2	4
UNAU USE VEHIC 2ND	11	0	8	19
ATT GR LAR 3RD AUTO	8	0	3	11
GR LAR 4TH AUTO	15	0	3	18
STOLEN PROP 2ND	1	0	0	1
ATT STOLN PROP 3RD	52	4	3	59
STOLEN PROP 4TH	162	1	24	187
FALSE INSTRUMENT	1	1	0	2
CRIM USURY 2ND	1	0	0	1
DEFRAUD 1ST	4	0	2	6
ATT FORGERY 2ND	19	0	4	23
ATT POS FORGE 2ND	15	1	2	18
ARSON 4TH	3	0	0	3
ATT SEX ABUSE 1ST	1	1	0	2
INCEST	1	0	0	1
ATT CSCS 5TH	451	0	29	480
ATT CPCS 5TH	285	9	24	318
ATT CR POS MARI2	1	0	0	1
CRIM SALE MARI 3	1	0	0	1
CRIM POS MARI 3	4	0	0	4
DRIVE INTOX 2 OFF	4	0	1	5
FALSE REPORT 1ST	0	0	1	1
PROMO BOOKMAKE 1ST	1	0	0	1
ATT CR MISCHIEF2ND	3	0	0	3
CRIM MISCHIEF 3RD	8	0	0	8
ESCAPE 2ND	1	0	0	1
ATT CONTRABAND 1ST	1	0	0	1
BAIL JUMPING 2ND	10	0	4	14
TAMPERING EVIDENCE	1	0	0	1
ATT BAIL JUMP 1ST	1	0	0	1
ATT BRIBING WITNESS	1	0	0	1
INTIMIDATE WIT 3RD	0	0	2	2
ATT BRIBERY 3RD	3	0	0	3
CONSPIRACY 4TH	3	0	0	3
CRIM FACIL 3RD	2	0	0	2
TOTAL	1708 88.1%	23 1.2%	207 10.7%	1938 100.0%
<b>GRAND TOTAL</b>	<b>3736 76.4%</b>	<b>871 17.8%</b>	<b>284 5.8%</b>	<b>4891 100.0%</b>

TABLE 6  
 MINIMUM SENTENCE BY CRIME FOR 2ND FELONY CLASS D AND E NON-VIOLENT OFFENDERS  
 1990 NEW COURT COMMITMENTS; NEW YORK STATE DEPARTMENT OF CORRECTIONAL SERVICES

MINIMUM SENTENCE (IN MONTHS)	DRUG OFFENSES	PROPERTY OFFENSES						OTHER COERCIVE					GRAND TOTAL	
	DRUG OFFENSES	BURGLARY 3RD	GRAND LARCENY	FORGERY	STOLEN PROPERTY	DRIVE INTOXICATED	ALL OTHR FELONIES	HANSLAUGHTER 2ND	OTHER HOOMICIDE	ROBBERY 3RD	ATT ASSAULT 2ND	OTHER SEX OFFENSES		OTHER COERCIVE
12.00	3 .1%	3 .5%	3 .8%		2 .6%	3 60.0%				1 .4%			1 3.0%	16 .3%
16.00			1 .3%											1 .0%
18.00	753 24.1%	247 44.6%	258 70.7%	39 37.5%	227 67.6%	1 20.0%	37 64.9%		2 33.3%	125 50.0%	38 82.6%	6 37.5%	9 27.3%	1740 35.6%
19.00			1 .3%				1 1.8%							2 .0%
20.00	1 .0%				1 .3%					2 .8%				4 .1%
21.00	8 .3%	2 .4%	1 .3%	1 1.0%	4 1.2%							1 6.3%	1 3.0%	18 .4%
22.00										1 .4%				1 .0%
24.00	1615 51.8%	210 37.9%	87 23.8%	41 39.4%	74 22.0%	1 20.0%	14 24.6%		2 33.3%	74 29.6%	8 17.4%	3 18.8%	15 45.5%	2144 43.8%
25.00	1 .0%				1 .3%									2 .0%
27.00	10 .3%	2 .4%								2 .8%				14 .3%
28.00	1 .0%													1 .0%
30.00	621 19.9%	35 6.3%	8 2.2%	9 8.7%	9 2.7%		2 3.5%		1 16.7%	20 8.0%		1 6.3%	2 6.1%	708 14.5%
31.00	1 .0%													1 .0%
32.00	1 .0%						1 1.8%							2 .0%
33.00	10 .3%	1 .2%		1 1.0%	2 .6%									14 .3%
36.00	57 1.8%	28 5.1%	3 .8%	5 4.8%	10 3.0%			1 100.0%	1 16.7%	14 5.6%		1 6.3%	2 6.1%	122 2.5%
42	37 1.2%	26 4.7%	3 .8%	8 7.7%	6 1.8%		2 3.5%			11 4.4%		4 25.0%	3 9.1%	100 2.0%
TOTAL	3119 100.0%	554 100.0%	365 100.0%	104 100.0%	336 100.0%	5 100.0%	57 100.0%	1 100.0%	6 100.0%	250 100.0%	46 100.0%	16 100.0%	33 100.0%	4890 100.0%
AVERAGE	24.2	23.3	20.1	25.8	21.0	15.6	21.1	36.0	25.0	23.1	19.0	38.1	25.4	23.5
MEDIAN	24.0	24.0	18.0	24.0	18.0	12.0	18.0	36.0	24.0	18.0	18.0	24.0	24.0	24.0



TABLE 7  
 CRIME BY REGION FOR 2ND FELONY CLASS D AND E NON-VIOLENT OFFENDERS  
 1990 NEW COURT COMMITMENTS; NEW YORK STATE DEPARTMENT OF CORRECTIONAL SERVICES

CRIME	NEW YORK CITY		SUBURBAN NEWYORK		UPSTATE URBAN		UPSTATE RURAL		TOTAL	
	NUMBER	PERCENT	NUMBER	PERCENT	NUMBER	PERCENT	NUMBER	PERCENT	NUMBER	PERCENT
<b>DRUG OFFENSES</b>										
DRUG OFFENSES	2716	70.7%	285	55.7%	58	21.9%	60	22.0%	3119	63.7%
SUBTOTAL	2716	70.7%	285	55.7%	58	21.9%	60	22.0%	3119	63.7%
<b>PROPERTY OFFENSES</b>										
BURGLARY 3RD	326	8.5%	84	16.4%	65	24.5%	79	28.9%	554	11.3%
GRAND LARCENY	255	6.6%	43	8.4%	35	13.2%	32	11.7%	365	7.5%
FORGERY	21	.5%	17	3.3%	37	14.0%	29	10.6%	104	2.1%
STOLEN PROPERTY	240	6.2%	48	9.4%	22	8.3%	26	9.5%	336	6.9%
DRIVE INTOXICATED	1	.0%	1	.2%	2	.8%	1	.4%	5	.1%
ALL OTHR FELONIES	37	1.0%	5	1.0%	7	2.6%	9	3.3%	58	1.2%
SUBTOTAL	880	22.9%	198	38.7%	168	63.4%	176	64.5%	1422	29.1%
<b>OTHER COERCIVE</b>										
MANSLAUGHTER 2ND	1	.0%	0	.0%	0	.0%	0	.0%	1	.0%
OTHER HOMICIDE	2	.1%	2	.4%	0	.0%	2	.7%	6	.1%
ROBBERY 3RD	200	5.2%	20	3.9%	19	7.2%	11	4.0%	250	5.1%
ATT ASSAULT 2ND	29	.8%	5	1.0%	7	2.6%	5	1.8%	46	.9%
OTHER SEX OFFENSES	2	.1%	0	.0%	3	1.1%	11	4.0%	16	.3%
OTHER COERCIVE	13	.3%	2	.4%	10	3.8%	8	2.9%	33	.7%
SUBTOTAL	247	6.4%	29	5.7%	39	14.7%	37	13.6%	352	7.2%
GRAND TOTAL	3841	100.0%	512	100.0%	265	100.0%	273	100.0%	4891	100.0%

counties, only 22% of class D and E second felony offenders are persons convicted of drug offenses; approximately 64% have been convicted of property offenses, and approximately 14% for other coercive offenses.

In brief, offenders committed from New York City and, to a lesser degree, from Suburban New York tend to be convicted of drug offenses. Those from upstate counties tend to be concentrated among property offenses.

Table 8 shows the age, ethnic status, and sex breakdown of persons who fell into the second felony class D and E non-violent offense category. Eighty-nine percent are males, 11% are females. In 1990, females made up 7.3% of total new court commitments, and, as noted, females make up 11% of the second felony class D and E group. The proposed legislation might have a greater proportional impact on the number of females committed to state prison than on males.

Ten percent of the offenders in this group are white, 49% black, 40% Hispanic and 1% are Asian or Native American.

Table 8 also shows the breakdown of sex by ethnic status. Black males make up 44% and Hispanic males 35% of the class D and E second felony group.

Table 8 also shows the age distribution for sex and ethnic status subgroups. In general, males in the second felony class D and E group tend to be younger than females. Twenty-seven percent of males are 24 or younger compared with only 20% of females.

Table 9 presents the region of commitment for sex and ethnic status subgroups. White males are spread across the four regions. When compared to blacks and Hispanics, white males show the lowest percent of commitments from New York City (30%) and the highest percent of commitments from upstate rural counties (31%). Black males are committed primarily from the New York City (75%) and then from Suburban New York (15%). Hispanic males are almost exclusively (95%) committed from New York City.

More so than males, white females in the class D and E second felony group tend to be committed from New York City (57%). Black females, like black males, are committed primarily from New York City (77%) with some representation in Suburban New York (15%). Hispanic females are almost exclusively committed from New York City (96%).

Looking briefly at modal categories, the class D and E second felony offender group would be described as black or Hispanic male, average age 29, committed for Criminal Sale of Controlled Substance 5th, and whose prior offense was also for sale of drugs.

TABLE 8  
SEX, ETHNIC STATUS AND AGE OF 2ND FELONY CLASS D AND E NON-VIOLENT OFFENDERS  
1990 NEW COURT COMMITMENTS; NEW YORK STATE DEPARTMENT OF CORRECTIONAL SERVICES

SEX AND ETHNIC STATUS	AGE AT RECEPTION												TOTAL	
	16-18 YR	19-20 YR	21-24 YR	25-29 YR	30-34 YR	35-39 YR	40-44 YR	45-49 YR	50-54 YR	55-59 YR	60-64 YR	65 AND OVER	NUMBER	PERCENT
MALE														
WHITE	6	35	87	147	99	48	17	10	6	4	1	3	463	9.5%
BLACK	22	113	468	686	463	233	100	36	12	9	4	0	2146	44.1%
HISPANIC	17	87	327	500	349	200	109	51	36	9	10	1	1696	34.9%
OTHER	1	5	3	10	6	0	1	0	0	0	0	0	26	.5%
SUBTOTAL	46	240	885	1343	917	481	227	97	54	22	15	4	4331	89.0%
FEMALE														
WHITE	0	1	6	5	7	7	6	2	1	0	0	0	35	.7%
BLACK	0	4	39	88	70	29	17	5	2	1	0	0	255	5.2%
HISPANIC	1	7	49	73	57	35	13	5	2	1	0	0	243	5.0%
OTHER	0	0	0	0	1	0	0	0	0	0	0	0	1	.0%
SUBTOTAL	1	12	94	166	135	71	36	12	5	2	0	0	534	11.0%
GRAND TOTAL	47	252	979	1509	1052	552	263	109	59	24	15	4	4865	100.0%
ETHNIC STATUS														
WHITE	6	36	93	152	106	55	23	12	7	4	1	3	498	10.2%
BLACK	22	117	507	774	533	262	117	41	14	10	4	0	2401	49.4%
HISPANIC	18	94	376	573	406	235	122	56	38	10	10	1	1939	39.9%
OTHER	1	5	3	10	7	0	1	0	0	0	0	0	27	.6%
TOTAL	47	252	979	1509	1052	552	263	109	59	24	15	4	4865	100.0%

TABLE 9  
SEX, ETHNIC STATUS AND REGION OF COMMITMENT FOR 2ND FELONY CLASS D AND E NON-VIOLENT OFFENDERS  
1990 NEW COURT COMMITMENTS; NEW YORK STATE DEPARTMENT OF CORRECTIONAL SERVICES

SEX AND ETHNIC STATUS	REGION OF COMMITMENT								TOTAL	
	NEW YORK CITY		SUBURBAN NEWYORK		UPSTATE URBAN		UPSTATE RURAL		NUMBER	PERCENT
	NUMBER	PERCENT	NUMBER	PERCENT	NUMBER	PERCENT	NUMBER	PERCENT		
MALE										
WHITE	139	30.0%	89	19.2%	89	19.2%	146	31.5%	463	100.0%
BLACK	1618	75.4%	324	15.1%	131	6.1%	73	3.4%	2146	100.0%
HISPANIC	1607	94.8%	49	2.9%	14	.8%	26	1.5%	1696	100.0%
OTHER	18	69.2%	3	11.5%	1	3.8%	4	15.4%	26	100.0%
SUBTOTAL	3382	78.1%	465	10.7%	235	5.4%	249	5.7%	4331	100.0%
FEMALE										
WHITE	20	57.1%	2	5.7%	7	20.0%	6	17.1%	35	100.0%
BLACK	195	76.5%	37	14.5%	12	4.7%	11	4.3%	255	100.0%
HISPANIC	234	96.3%	5	2.1%	1	.4%	3	1.2%	243	100.0%
OTHER	1	100.0%	0	.0%	0	.0%	0	.0%	1	100.0%
SUBTOTAL	450	84.3%	44	8.2%	20	3.7%	20	3.7%	534	100.0%
GRAND TOTAL	3832	78.8%	509	10.5%	255	5.2%	269	5.5%	4865	100.0%
ETHNIC STATUS										
WHITE	159	31.9%	91	18.3%	96	19.3%	152	30.5%	498	100.0%
BLACK	1813	75.5%	361	15.0%	143	6.0%	84	3.5%	2401	100.0%
HISPANIC	1641	94.9%	54	2.8%	15	.8%	29	1.5%	1939	100.0%
OTHER	19	70.4%	3	11.1%	1	3.7%	4	14.8%	27	100.0%
SUBTOTAL	3832	78.8%	509	10.5%	255	5.2%	269	5.5%	4865	100.0%