

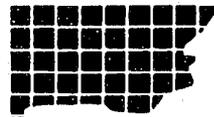


# OFFICE OF JUSTICE SYSTEMS ANALYSIS

*DRUGS, PROSECUTORS, PREDICATE FELONS, AND PRISON BEDS:  
A DESCRIPTION OF CHANGES IN FELONY ARRESTS  
AND FELONY CASE PROCESSING DECISIONS IN NYS, 1981-1989*

*November, 1992*

DIVISION OF  
**CRIMINAL  
JUSTICE  
SERVICES**



**NEW YORK  
STATE**



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**Drugs, Prosecutors, Predicate Felons, and Prison Beds:  
A Description of Changes in Felony Arrests and Felony Case Processing  
Decisions in NYS, 1981-1989**

November, 1992

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## Executive Summary

The number of inmates in New York State prisons increased from 25,499 in 1981 to 51,232 in 1989 (61,736 in September, 1992). This doubling seriously strained the State's ability to house inmates and finance programs.

This report describes changes in: 1) the number, type, and seriousness of felony arrests in New York State in the 1980s, 2) case processing decisions that occurred between arrest and final court disposition, and 3) sentencing decisions for persons convicted of felony crimes. It shows that increases in the number of felony drug arrests, increases in the rate at which persons arrested for drug offenses were convicted of a felony offense, and increases in the proportion of defendants with prior felony convictions substantially changed the number and the character of felony offenders who were presented to judges for sentencing. These changes accounted for almost all of the increases in prison populations.

- The number of felony drug arrests more than tripled from 13,901 in 1981 to 50,645 in 1989. By comparison, the number of arrests for Violent Felony Offenses increased from 43,948 to 57,822, and the number for all other types of felony offenses barely increased from 56,869 to 58,389.
- Prosecutors became increasingly efficient at obtaining felony convictions for persons arrested for DRUG offenses. The percentage of felony DRUG arrests that resulted in felony conviction doubled from 26 percent in 1981 to 50 percent in 1989.
- The percentage of persons convicted of a felony crime who had a prior felony conviction increased from 14 percent in 1981 to 24 percent in 1989. This increased the likelihood of a prison sentence because almost all of these offenders had to be sentenced to prison.

Increases in prison populations were not due to increases in the seriousness of arrest charges or to changes in the rate that judges sentenced comparably situated felony offenders to prison. The average arrest in 1989 was no more serious than the average arrest in 1981. Judges in most county regions sentenced comparably situated convicted felons to prison at the same rate in 1989 as they did in 1981.

The analyses also showed that judges increasingly sentenced felony offenders to jail followed by probation (a split sentence) and decreasingly sentenced them to straight probation. The largest changes in probation sentences occurred to felony offenders who were arrested for drug offenses. Among drug offenders who did not have a prior adult arrest record, the percentage sentenced to a split sentence increased from 20 percent in 1981 to 33 percent in 1989, while the percentage sentenced to straight probation decreased from 45 to 30 percent. Among drug offenders who had a prior arrest record but no prior felony convictions, the percentage sentenced to a split sentence increased

from 14 to 27 percent, and the percentage sentenced to probation decreased from 28 to 12 percent.

### Research Methods

The study was based upon the population of arrests for felony crimes between January 1, 1981 and December 31, 1989 that had a final disposition reported to the Computerized Criminal History repository by February of 1992.

### County Unit

The 62 counties of New York State were grouped by size and location into five county units. The units are defined below:

County Unit	Description	Counties in Unit
<b>NYC</b>	New York City	Bronx, Kings, New York, Queens, Richmond
<b>Metro NY</b>	Counties that surround NYC	Nassau, Rockland, Suffolk, Westchester
<b>Metro 3</b>	Metropolitan Counties outside of the NYC area	Erie, Monroe, Onondaga
<b>Large 6</b>	Counties with at least 200,000 in 1980	Albany, Broome, Dutchess, Niagara, Oneida, Orange
<b>Other 44</b>	Least Populous Counties	Other 44 counties

### Type of Arrest Charge

Arrest charges were classified as VFOs (violent felony offenses), DRUG offenses, and OTHER offenses. The type of arrest was defined by the top arrest charge. This charge was identified using a ranking procedure established by the Division of Criminal Justice Services. Generally, it corresponded to the charge that would have the longest prison sentence if the defendant were convicted and sentenced to prison for that charge.

The number of felony DRUG arrests increased from 13,901 in 1981 to 50,645 in 1989. Yearly increases ranged from 11 percent in the smallest counties to over 20 percent in Metro NY. By 1989, 32 to 33 percent of the arrests in NYC and Metro 3 were for DRUG charges. Fifteen to 24 percent of the arrests in the other county units were for DRUG charges.

The number of VFO arrests increased from 43,948 in 1981 to 57,822 in 1989. Most of the growth occurred in NYC and Metro 3, where the number of VFO arrests grew at 3 to 4 percent a year.

The number of **OTHER** arrests remained largely unchanged over time. They grew by less than 2 percent per year in NYC and decreased by 1 to 2 percent per year in other county units.

### **Prior Criminal Record**

Differences in prior criminal record were controlled by grouping defendants into three mutually exclusive and exhaustive categories: (1) no prior adult arrests, (2) at least one prior arrest but no prior felony convictions, and (3) at least one prior felony conviction<sup>1</sup>. The prior criminal records of arrestees became increasingly serious over time. Depending upon the type of arrest charge, between 13 and 15 percent of the defendants had prior felony convictions in 1981. By 1989, 22 percent of the defendants arrested for **VFO** or **OTHER** offenses, and 28 percent arrested for **DRUG** offenses had a prior felony conviction. The number of defendants with prior felony convictions increased by 26 percent per year for **DRUG** offenses, 9 percent per year for **VFOs**, and 7 percent per year for **OTHER** offenses.

Increases in the number of offenders with prior felony convictions significantly increased the number of prison sentences because felony offenders (persons convicted of a felony crime) who had a felony conviction within 10 years of the date of the present felony offense had to be sentenced to prison. Thirty-eight percent of the persons sentenced to prison sentences in 1981, and 55 percent in 1989, had prior felony convictions.

### **Measuring Arrest Seriousness**

New York's Penal Law indirectly defines charge seriousness by specifying types and ranges of sentences that could be used to punish persons convicted of specific classes of crime defined in the Penal Law. Ranges of permissible sentence lengths were defined by the class and violent character of the conviction crime, by the age and prior criminal record of the offender, by the cooperation of the defendant, and sometimes by aggravating and mitigating circumstances. The Penal Law does not explicitly define the seriousness of either arrest or conviction charges. It was possible for persons arrested for lower class felony crimes to be punished more harshly than persons arrested for higher class felony crimes.

Two arrest seriousness measures were developed by calculating the average number of days that arrested persons were actually sentenced to incarceration. Minimum prison terms were used to measure incarceration for persons sentenced to prison, and two-thirds of jail terms were used to measure incarceration for persons sentenced to jail. The jail sentences were reduced by one-third because offenders could have their sentences reduced this much for good behavior. Persons who were convicted but not sentenced to

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<sup>1</sup>Prior felony convictions that were replaced by Youthful Offender adjudications were not counted as felony convictions.

incarceration, as well as persons who were not convicted, were treated as if they were sentenced to zero days incarceration.

Average days incarcerated was used to measure charge seriousness because:

- Incarceration was the harshest sentence that judges could order.
- Statutory classes, for both felonies and misdemeanors, were largely distinguished from each other by the amount of time that judges could sentence offenders to prison or jail.
- Days incarcerated could be unambiguously added together and averaged.
- The measure yielded sensible summaries of the differences in how cases were processed from arrest to final case disposition. Average days incarcerated were particularly low for arrests that frequently resulted in case dismissals, and for cases that most often resulted in violation or misdemeanor convictions. Average days were particularly high for arrests that frequently resulted in felony convictions, and for cases that often resulted in long prison terms.
- Measuring seriousness by the average days incarcerated made it possible to unambiguously order the charge categories defined by combinations of crime type and felony class. Such an ordering was not provided by the Penal Law.

### **Changes in Charge Seriousness**

Charge seriousness is defined as the seriousness of the top arrest charge irrespective of the characteristics of the defendant. It was measured by the average days incarcerated for defendants who were not eligible for a YO adjudication and who were arrested for the first time. Averages were calculated for all combinations of arrest class by arrest type of the top arrest charge. Each arrest was categorized by the felony class and the crime type of the top arrest charge. Felony classes ranged from A (most serious) to E (least serious). Crime types were coded as Violent Felony Offenses (VFOs), DRUG offenses, and all OTHER felony offenses. The restriction to first time arrestees was undertaken to separate the seriousness of the top arrest charge from the seriousness of the defendant's prior criminal record. Defendants with prior felony convictions could be punished much more harshly than defendants without prior felony convictions. The averages were restricted to defendants who could not be adjudicated as YOs because YOs could be sentenced much more leniently than older adult offenders.

Averages were calculated for the entire 1981 to 1989 time period. The seriousness order defined by these averages did not always match the seriousness order implicit in the permissible sentences defined in the Penal Law. For example, average days incarcerated equaled 220 for B VFO arrests, 64 for B DRUG arrests, and 251 for B OTHER arrests. There is no indication in the Penal Law that B DRUG charges are less serious than B

**OTHER** charges. Yet, the averages show that **OTHER** arrests were sanctioned much more harshly than **DRUG** arrests at the same felony class.

To simplify notation, the averages used to measure charge seriousness were labeled *charge* seriousness scores. *Charge* seriousness scores were assigned to each defendant based solely upon the top arrest charge. Average *charge* seriousness scores were calculated by year, by type of arrest charge, and by county unit.

*Charge* seriousness changed little over time. The average *charge* seriousness score equaled 70 days in 1981 and 69 days in 1989. The average *charge* seriousness score for **VFO**s and **OTHER** offenses decreased or remained unchanged over time. The average *charge* seriousness score for **DRUG** arrests increased over time. The smallest increase occurred in **NYC**, where the average *charge* seriousness score for **DRUG** offenses increased from 77 days in 1981 to 82 days in 1989. The largest increase occurred in the **Other 44**, where the average *charge* seriousness score for **DRUG** arrests increased from 63 to 104 days. The sharp increase in the **Other 44** had little impact on statewide average scores because relatively few defendants were processed in this county unit. In 1989, 75 percent of all felony arrests occurred in **NYC**.

In general, the explosive growth in prison admissions during the 1980s could not be attributed to an increase in the seriousness of arrest charges. Statewide, *charge* seriousness remained unchanged over time. **DRUG** arrests became more serious while **VFO** arrests became less serious. The largest increases in the seriousness of **DRUG** arrests occurred outside of the New York metropolitan area. The largest decreases in the seriousness of **VFO** arrests occurred in **NYC**.

#### **Changes in Case Seriousness:**

##### ***Charge* Seriousness Taking Defendant Characteristics into Account**

The finding that *charge* seriousness remained relatively unchanged over time does not necessarily imply that the seriousness of criminal cases remained unchanged. The seriousness of criminal cases depended upon the seriousness of arrest charges, the defendant's age, and the extent of the defendant's prior criminal record.

*Case* seriousness refers to both the seriousness of the top arrest charge and to the prior criminal record and **YO** eligibility of the defendant. Differences between *charge* and *case* seriousness can be illustrated by considering a judge's options for sentencing defendants who were arrested and convicted for the same offense but who had different criminal records and ages. For example, consider defendants who were arrested and convicted for a 2nd degree Burglary (a Class C **VFO**). Assume that the first defendant had been convicted of a **VFO** three years before the present offense, and that the second defendant was under 19 at the time of the offense and had not been previously arrested. The *charge* seriousness score would equal 47 days in both cases. The judge would have to sentence the first offender to a prison term ranging from a minimum of half the maximum, to a maximum of 8 to 15 years. In New York, prison sentences are indeterminate. The maximum is set by the judge and the minimum is set by Penal Law to

equal one-third or one-half of the maximum depending upon circumstances. The judge would have the option of replacing the conviction for the second offender by a YO adjudication. As a YO, the judge could sentence the offender to unconditional discharge, conditional discharge, probation, fine, jail, prison, or to various mixtures of these sanctions. If he/she sentenced the offender to prison, the term could range from a minimum of one-third the maximum, to a maximum of 3 to 4 years. If the judge did not adjudicate the offender, then he/she would have to sentence the offender to a prison term ranging from a minimum of one-third the maximum, to a maximum of 4.5 to 15 years. Thus, depending upon age and prior record, defendants convicted for the same C VFO offense could be sentenced anywhere from unconditional discharge without a felony conviction to prison for at least 7.5 years and at most 15 years with a felony conviction.

The average number of days that defendants were sentenced to incarceration was calculated for the nine year reference period (1981-1989) for all combinations of felony arrest class, type of arrest charge, prior criminal record and YO eligibility. These averages were used to measure case seriousness and were referred to as *case seriousness scores*.

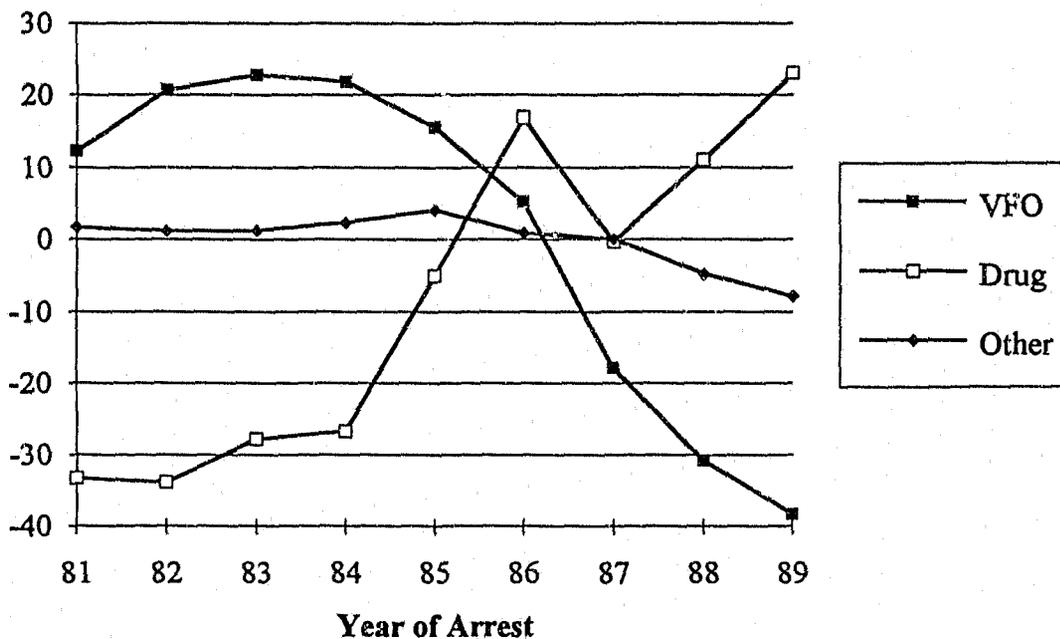
The impact that prior record and YO eligibility had in determining *case seriousness scores* can be illustrated by examining scores for defendants who were arrested for a C VFO. Among defendants who were not eligible for a YO adjudication, *case seriousness scores* equaled 47 days for defendants without a prior arrest record, 128 days for defendants with a prior arrest record but no prior felony convictions, and 435 days for defendants with a prior felony conviction. Among defendants who were eligible for a YO adjudication, *case seriousness scores* equaled 29 days for defendants without a prior arrest record and 109 days for defendants with a prior adult arrest record.

*Case seriousness scores* were assigned to each arrest based upon the top arrest charge and the defendant's YO eligibility and prior criminal record. Average *case seriousness scores* were calculated by year, by type of arrest charge, and by county unit.

Even though the average *charge seriousness score* remained relatively constant, the average *case seriousness scores* increased over time. The average *case seriousness score* increased from 139 days in 1981 to 167 days in 1989. It increased from 144 to 202 days for DRUG offenses; from 54 to 68 days for OTHER offenses, but decreased from 248 to 235 days for VFOs.

The average number of days that defendants were actually incarcerated each year was compared to the average *case seriousness score* to identify shifts in how extensively incarceration was used to punish similarly situated defendants over time. Differences in these averages, which are presented in the following graph, control for differences in prior criminal records, YO eligibility, felony class, and type of arrest charges. The graph shows that incarceration was increasingly often used to sanction persons arrested for DRUG offenses, was decreasingly often used to sanction persons arrested for VFOs, and was consistently used to sanction persons arrested for OTHER offenses.

**Average Days Incarcerated Minus Average Case Seriousness Score By Year of Arrest**



Average days incarcerated were compared to average *case* seriousness scores by county unit to learn whether incarceration was used more extensively in some county units. The least extensive use of incarceration occurred in NYC. Here the average days incarcerated equaled 156 and the average *case* seriousness score equaled 170. This difference showed that NYC cases generated an average of 14 fewer incarceration days per arrest than would be expected using statewide (*case* seriousness score) standards. The most extensive use of incarceration occurred in Metro NY, the counties immediately surrounding NYC. In these counties, the average days incarcerated equaled 186 but the average *case* seriousness score equaled 128. Metro NY cases generated an average of 58 more days per arrest than expected using statewide standards. The above comparisons showed that counties with the least extensive use of incarceration (NYC) were bordered by counties with the most extensive use of incarceration (Metro NY).

Increases in the number of prison sentences could not be explained solely by increases in the number and seriousness of criminal cases. Changes in case processing decisions over time were examined by estimating changes in 1) how defendants were processed from arrest to conviction, and 2) how often convicted defendants were sentenced to different types of sanctions. Changes in case processing decisions between arrest and conviction were attributed to changes in how prosecutors handled criminal cases, and changes in sanctions given conviction were attributed to changes in how judges sentenced offenders.

## Presentencing Decisions: The Prosecutor's Discretion

Defendants could be sentenced to prison only if they were processed in upper court and convicted of felony offenses. Prosecutors decided which cases to present to upper court. Cases that were not presented to upper court were processed in local criminal courts. Cases in local courts could be convicted of misdemeanor or violation offenses; they could be sentenced to jail but they could not be sentenced to prison.

Changes in presentencing decisions were analyzed by examining which defendants were convicted of any level offense, and which convicted defendants were convicted of a felony offense. The first analysis was equivalent to asking which cases were not dismissed, because almost all cases were either convicted or dismissed. Fewer than 1 percent of the felony arrests resulted in acquittals. The second analysis showed which convicted cases were convicted of a felony offense. Changes in felony conviction rates could profoundly affect demands on prison beds, because only defendants who were convicted of a felony offense could be sentenced to prison. The analyses showed that:

- With the exception of **Metro NY**, the percentage of cases that resulted in a conviction was inversely related to population size. The highest percentages occurred in **Metro NY**, the **Large 6**, and the **Other 44** counties. In 1989, about 80 percent of the persons arrested for felony crimes in these counties were convicted of a felony, misdemeanor, or violation offense. The lowest percentages occurred in **NYC** and **Metro 3**. In 1989, about 60 percent of the defendants in these counties were convicted. In other words, about 40 percent of the defendants in **NYC** and **Metro 3** had their cases dismissed.
- In **NYC** and **Metro 3**, the percentage of cases that resulted in a conviction decreased for persons arrested for **VFO** or **OTHER** types of charges. Among persons arrested for **VFOs**, the percentage of cases that resulted in a conviction decreased from about 60 percent in 1981 to about 50 percent in 1989. Among persons arrested for **OTHER** felony offenses, the percentage decreased from 71 to 64 percent in **NYC**, and from 69 to 61 percent in **Metro 3**.
- The percentage of cases that resulted in a conviction among persons arrested for a **DRUG** offense increased by about 1 percent per year in **NYC**, **Metro NY**, and in the **Large 6**. The increase in **Metro NY** was unexpected because it already had the highest conviction percentages for **DRUG** arrests in 1981. By 1989, 89 percent of the defendants arrested for a **DRUG** charge in **Metro NY** were convicted of some offense. By comparison, in 1989, 74 percent of the defendants arrested for a **DRUG** offense in **NYC** and 61 percent in **Metro 3** were convicted.

- There was a dramatic increase in the percentage of felony convictions among convicted defendants who were arrested for a felony **DRUG** offense. The largest increases occurred in **NYC** where the percentage of felony convictions given a conviction increased from 31 to 62 percent for defendants without a prior arrest record, from 34 to 68 percent for defendants with a prior arrest record, and from 41 to 64 percent for defendants with a prior felony conviction.
- The percentage of felony convictions among convicted defendants who were arrested for a **VFO** remained constant or decreased. Substantial decreases occurred in **Metro NY** and **Metro 3**. Smaller decreases occurred in **NYC**.
- The percentage of felony convictions among convicted defendants who were arrested for an **OTHER** felony offense increased slightly in **NYC** but decreased slightly in other county units.

In general, prosecution practices changed substantially during the 1980's. Offenders arrested for felony **DRUG** offenses were increasingly likely to be convicted of a felony crime but offenders arrested for **VFO**s were decreasingly likely to be convicted of a felony crime.

#### **Sentencing Decisions: The Judge's Discretion**

The huge growth in prison sentences was not due to changes in the rate at which judges sentenced convicted felons to prison. Once differences in type and class of the arrest charge, the defendant's prior criminal record, and the county of processing were taken into account, the percentage of felony offenders (persons convicted of a felony crime) who were sentenced to prison remained relatively constant in all but the **Other 44**. In this county unit, the percentage of felony offenders sentenced to prison who were arrested for a **DRUG** offense increased each year. These increases were not responsible for the rapid increase in the number of persons sentenced to prison in New York State, because relatively few felony offenders were sentenced in this county unit.

Even though judges sentenced comparably situated felony offenders to prison at a nearly constant rate over time, the percentage of felony offenders sentenced to prison increased because the percentage of offenders with serious criminal records increased. In 1981, 17.6 percent of all felony offenders had a prior felony conviction. By 1989, 27.3 percent had a prior felony conviction. Regardless of the actual level of the conviction charge, almost all of these offenders had to be sentenced to prison because of predicate sentencing laws.

Somewhat surprisingly, judges in **NYC** sentenced comparably situated felony offenders to prison slightly more often than did judges in other county units. This suggests that the earlier finding that **NYC** cases generated an average of 14 fewer incarceration days than expected using statewide standards occurred because judges dismissed an unusually high percentage of cases.

Substantial increases occurred in the use of split sentences in all counties, for all types of arrest charges, and for offenders with and without prior arrest records. The largest increases occurred to offenders whose first arrest was for a DRUG offense in either NYC or Metro NY. In 1981, 17 percent of these offenders in NYC and 31 percent in Metro NY were sentenced to a split sentence. By 1989, these percentages soared to 31 and 51 percent, respectively. Overall, the use of split sentences almost doubled from 9 percent in 1981 to 17 percent in 1989.

The percentage of felony offenders who were sentenced to straight probation remained constant for VFO and OTHER arrests, but decreased sharply for DRUG arrests. In 1981, 45 percent of the offenders without a prior arrest record who were arrested for a DRUG charge were sentenced to probation. This percentage decreased to 30 percent in 1989. The corresponding percentages for defendants with a prior arrest record equaled 28 and 12 percent, respectively. The large decrease in straight probation sentences for offenders who were arrested for DRUG charges was largely balanced by increases in split sentences and straight jail sentences in NYC.

### Discussion

The increasingly percentage of drug defendants who were convicted of a felony offense in the 1980s arose in part from a belief that DRUG use and trafficking promote violence. Ironically, while prosecutors and judges increased how severely they punished persons arrested for DRUG offenses, they decreased how severely they punished persons arrested for violent felony offenses.

The increasing number of felony DRUG arrests (18.2 percent per year) combined with the increasing percentage of DRUG arrests that resulted in a felony conviction (from 26 percent in 1981 to 50 percent in 1989) substantially changed the character of felony offenders who were presented to judges for sentencing. One in seven felony offenders who was arrested in 1981 had been arrested for a felony DRUG offense. One in two felony offenders who was arrested in 1989 had been arrested for a felony DRUG offense. This shift from one in seven to one in two was the same for offenders who were arrested for the first time, for offenders who had a prior arrest record, and for offenders who had a prior felony conviction.

The increase in the number of DRUG offenders with prior felony convictions radically changed the impact of predicate offender laws on incarceration. In 1981, 52 percent of all felony offenders who had a prior felony conviction were arrested for a VFO and 13 percent were arrested for a DRUG offense. By 1989, 29 percent of these offenders were arrested for a VFO and 52 percent were arrested for a DRUG offense. In just nine years, the primary impact of the predicate offender laws shifted from violent to DRUG crimes. It is questionable whether the framers of the predicate offender laws in 1973 intended to focus so much prison resource on non-violent offenders.

The increasing size of the pool of predicate felons who were arrested for DRUG offenses suggests that prison overcrowding could be relieved by reducing recidivism among drug offenders. A good place to start would be to investigate whether some types of punishments and treatment programs are better than others at reducing recidivism among first time felony offenders. For example, it is unknown whether the expanded use of jail sentences for felony DRUG offenders that occurred in the 1980s affected recidivism rates. Probation, one of the cheapest alternatives to incarceration, has not been evaluated in New York State since 1983. Most of the alternatives to incarceration programs established in the 1980s have not been evaluated.

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**Drugs, Prosecutors, Predicate Felons, and Prison Beds:  
A Description of Changes in Felony Arrests and Felony Case Processing  
Decisions in NYS, 1981-1989**

**I. The Problem**

The number of inmates in New York State prisons increased from 25,499 in 1981 to 51,232 in 1989 (61,736 in September, 1992). This doubling created serious strains on the State's ability to house inmates and finance programs.

This report shows that the explosive growth in prison populations was due to a rapid growth in the number of felony drug arrests, a substantial increase in the rate at which prosecutors obtained felony convictions for felony drug arrests, and a moderately large increase in the proportion of convicted defendants who had prior felony convictions. Increases in prison populations were not due to changes in the rate at which judges sentenced similarly situated offenders to prison.

**II. Research Methods**

The study was based upon the population of felony arrests between January 1, 1981 and December 31, 1989. It was limited to cases that had a final disposition entered in the CCH/OBTS (the Computerized Criminal History/Offender-Based Transaction Statistical System) by February 5th of 1992.

**A. Arrest Unit of Count**

Each arrest was treated as a separate case. This method over counted the number of sentences because some defendants were sentenced to the same punishment for crimes that occurred on different arrest dates, and because some punishments took precedence over others. The effect of over counting sentences for admission to prison is illustrated in the following table:

Table 1: Number of Persons Admitted to Prison by Court Order and Number of Prison Sentences by Year, NYS, 1981-1989

Year	Number of Court Ordered Admissions*	Number of Sentences	Ratio: Sentences/Admissions
1981	10,303	12,134	1.18
1982	10,406	13,797	1.33
1983	12,536	13,776	1.10
1984	12,247	14,619	1.19
1985	12,420	15,246	1.23
1986	14,919	18,476	1.24
1987	15,705	19,202	1.22
1988	17,386	21,955	1.26
1989	21,521	24,312	1.13
Total	127,443	153,517	1.20
Growth	8.9%	8.8%	
R sq	0.93	0.96	

\*Data from the 1990 Crime and Justice Annual Report.

Table 1 shows that the number of sentences was 20 percent larger than the number of court ordered admissions.<sup>1</sup> Even though counting sentences and counting admissions produced different numbers, both series display similar increases over time. Admissions increased at 8.9 percent per year and sentences increased at 8.8 percent. The similarity of these growth percentages suggests that similar conclusions about changes over time would be reached by studying sentences or admissions. This study focused upon arrests because case processing begins at arrest, and because it is much easier to analyze arrests as separate events than it is to aggregate arrests to study how defendants charged with different offenses over time were processed.

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<sup>1</sup>This does not necessarily mean that counting sentences over estimated prison admissions by 20 percent. The number of admissions was based upon the year of admission whereas the number of sentences was based upon the year of arrest. Some of the persons who were arrested and eventually sentenced to prison were not actually sentenced until the following year. Half the persons who were sentenced in 1991 received their sentence more than 136 days after indictment (DCJS, 1991a). In addition, some of the persons who were sentenced to prison one year were not admitted to prison until the next year because of space limitations. These defendants were housed in jail and not counted in the prison admission for the year of their sentence.

### B. Time Period 1981-1989

The 1981 to 1989 time period represents a period of exceptional growth in prison population that was not significantly affected by changes in the laws governing case processing. This period was, however, affected by changes enacted in the 1970s. Substantial legislative changes occurred in 1973 (Mandatory imprisonment for predicate felons, mandatory imprisonment for certain felony classes, Rockefeller Drug Laws), 1978 (Violent Felony Offenses defined and juvenile offender laws), and 1980 (gun laws). Few changes occurred after 1981 (Chapman, 1986).<sup>2</sup>

The study period ended with arrests that occurred on December 31, 1989. The data were abstracted from the CCH/OBTS data file in February of 1992. This allowed cases at least 25 months to have final dispositions entered into the computerized file. Ending the study in 1988 would have increased the accuracy of recording final dispositions at a cost of excluding more recent case processing decisions.<sup>3</sup>

### C. Growth Rates in Number of Cases and Changes in Processing Decisions

Yearly growth rates in the number of cases and average yearly changes in how defendants were processed were measured by regression equations. Annual growth rates in the number of cases were estimated by regressing the logarithm of the number of cases on the year number. The growth rate per year equals the antilog of the slope coefficient.<sup>4</sup> Yearly changes in how cases were processed were measured by regressing the percentage of defendants receiving a particular disposition on the year number. The average change per year equals the slope coefficient. The regression slopes in both cases smoothed irregularities that occurred in the data.

A linear regression equation's ability to describe growth or change over time can be evaluated by the R square (R sq) statistic, the proportion of variance that can be attributed to constant linear change each year. This statistic ranges between 0 and 1. The R sq statistics in the previous table were close to 1 showing that the logarithm of the number of

<sup>2</sup>In 1982, 3rd degree Arson was added as a mandatory imprisonment offense.

<sup>3</sup>The limitation of 25 months to reach a final disposition for persons arrested in December of 1989, of 26 months to reach a final disposition for persons arrested in November of 1989, etc. may have depressed the average days incarcerated for persons arrested in 1989. According to a recent DCJS (1991b) report, the median time to sentencing persons disposed in 1991 equaled 136 days for guilty pleas, 270 days for non-jury trials, and 326 days for jury trials. In general, persons disposed by trial were sentenced to prison more often and for longer periods than persons disposed by guilty pleas. Omitting cases that took a long time to process could underestimate the proportion of defendants who were sentenced to prison and could underestimate of the average prison sentence. The underestimate was expected to be small though because relatively few cases were disposed by trial. Fewer than 5 percent of the cases disposed in 1991 were disposed by trial.

<sup>4</sup>Let  $N_t$  represent the number of felony arrests for year  $t$ , let  $a$  represent the intercept for a linear regression equation, and let  $b$  represent the slope. The linear regression equation can be represented as  $\log(N_t) = a + bt$ , which can be expressed as  $N_t = \exp(a) \times \exp(bt)$ , where  $\exp(x)$  is the exponent of  $x$ . Now consider years  $t$  and  $t+1$ . The change between any two consecutive years can be expressed as  $N_{t+1}/N_t = [\exp(a) \times \exp(b(t+1))]/[\exp(a) \times \exp(bt)]$ , which equals  $\exp(b)$ , the antilog of the slope coefficient.

cases increased in a linear manner between 1981 and 1989. This means that the growth percentages did an excellent job of describing change.

Low R sq statistics demonstrate that yearly changes could not be described by straight lines. Low R sq statistics occur when there are no changes over time, when changes occur in one direction in some years but in the opposite direction in other years, or when changes occur in a curvilinear manner over time.

**D. County of Processing**

Nelson (1991a, 1991b) showed that case processing decisions in New York State differed significantly by county. To account for county variability, the 62 counties of New York State were grouped by size and location into five county units. The five counties of New York City (Bronx, Kings, New York, Queens, Richmond) were combined to create the NYC unit. The four counties that surround New York City (Nassau, Rockland, Suffolk, Westchester) were combined to create the Metro NY unit. The three metropolitan counties outside of the New York City area (Erie, Monroe, Onondaga) were combined to create the Metro 3 unit. The six remaining counties with at least 200,000 persons in 1980 (Albany, Broome, Dutchess, Niagara, Oneida, Orange) were combined to create the Large 6 unit. The 44 least populous counties were combined to create the Other 44 unit. These five county groupings are called "counties" in the rest of this report. The number of felony arrests by county and year are presented in Table 2.<sup>5</sup>

Table 2: Number and Percentage of Felony Arrests by County and Year

Year	County						Percentage				
	NYC	Metro NY	Metro 3	Large 6	Other 44	State	NYC	Metro NY	Metro 3	Large 6	Other 44
1981	80,457	13,230	8,108	5,165	7,758	114,718	70%	12%	7%	5%	7%
1982	85,488	13,287	8,926	5,381	8,041	121,123	71%	11%	7%	4%	7%
1983	85,474	12,739	8,352	5,620	7,809	119,994	71%	11%	7%	5%	7%
1984	92,572	12,605	8,318	5,312	7,632	126,439	73%	10%	7%	4%	6%
1985	92,166	13,038	8,457	5,602	8,085	127,348	72%	10%	7%	4%	6%
1986	106,008	13,397	8,819	5,961	8,799	142,984	74%	9%	6%	4%	6%
1987	109,338	13,325	9,381	5,538	7,785	145,367	75%	9%	6%	4%	5%
1988	119,709	15,102	9,480	5,773	8,165	158,229	76%	10%	6%	4%	5%
1989	126,010	16,322	10,176	5,950	8,398	166,856	76%	10%	6%	4%	5%
Total	897,222	123,045	80,017	50,302	72,472	1,223,058	73%	10%	7%	4%	6%
Growth	5.9%	2.3%	2.3%	1.4%	0.8%	4.8%					
R sq	0.96	0.54	0.71	0.64	0.26	0.95					

<sup>5</sup>Counties throughout this report refer to the county of arrest. In almost all cases, this was also the county of final disposition. The probability that the county of final disposition was the same as the county of arrest equaled .998 for NYC, .997 for Metro NY, .991 for Metro 3, .978 for the Large 6, and .973 for the Other 44.

Table 2 shows that NYC experienced an unusually sharp increase in felony arrests. The number of felony arrests increased at almost 6 percent per year. In contrast, the number of felony arrests increased by less than 1 percent to slightly more than 2 percent per year in the other counties. Statewide, the number of felony arrests increased at about 5 percent per year.<sup>6</sup>

The sharp growth of arrests in NYC resulted in its processing an increasingly higher proportion of the State's defendants. In 1981, 70 percent of all felony arrests were processed in NYC. By 1989, 76 percent of all felony arrests were processed there.

#### **E. Type of Arrests**

Arrest charges were classified as VFOs (violent felony offenses), DRUG offenses, and OTHER offenses. The type of arrest was defined by the type of the top arrest charge. This charge was defined by an algorithm developed by the Division of Criminal Justice Services. In most cases, it was the charge that had the longest prison sentence.

VFOs were enumerated in the Penal Law. They had longer prison sentences than non-VFOs sharing the same felony class. VFOs include crimes against persons (attempted murder, attempted kidnapping, arson, manslaughter, rape, sodomy, assault, sexual abuse, robbery, intimidation) as well as crimes that could result in personal injury (household burglary, illegal weapons possession). Even though they are not specified as VFO crimes in the Penal Law, all Class A felony crimes against persons were classified as VFO crimes in this report.

The number and percentage of persons arrested for each type of offense are presented in Table 3. The table shows that increases in arrests varied by type of charge. DRUG offenses increased at 18 percent per year, VFOs at 3 percent, and OTHER offenses at less than 1 percent. The low  $R^2$  value for OTHER offenses shows that their growth was not well described by the growth percentage. The number of OTHER arrests decreased from 1981 to 1983, increased from 1983 to 1986, decreased in 1987, increased in 1988, and remained unchanged in 1989.

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<sup>6</sup>The  $R^2$  statistics show that the most consistent growth occurred in NYC. The least consistent growth occurred in the Other 44 counties. In these counties, the number of arrests increased in some years but decreased in other years.

Table 3: Number and Percentage of Arrests by Type of Charge and Year

Year	Type of Arrest Charge				Percentage		
	VFO	Drug	Other	Total	VFO	Drug	Other
1981	43,948	13,901	56,869	114,718	38%	12%	50%
1982	50,393	16,070	54,660	121,123	42%	13%	45%
1983	49,470	17,166	53,358	119,994	41%	14%	44%
1984	51,631	20,602	54,206	126,439	41%	16%	43%
1985	50,483	21,352	55,513	127,348	40%	17%	44%
1986	54,510	29,836	58,638	142,984	38%	21%	41%
1987	54,005	36,302	55,060	145,367	37%	25%	38%
1988	56,269	43,860	58,100	158,229	36%	28%	37%
1989	57,822	50,645	58,389	166,856	35%	30%	35%
Total	468,531	249,734	504,793	1,223,058	38%	20%	41%
Growth	2.8%	18.2%	0.7%	4.8%			
R sq	0.85	0.97	0.31	0.95			

The huge increase in the absolute number of DRUG arrests drove up the percentage of arrests characterized as DRUG offenses. In 1981, 12 percent of all arrests were classified as DRUG offenses. By 1989, 30 percent of all arrests were so classified. OTHER arrests decreased from 50 percent in 1981 to 35 percent in 1989. VFO arrests decreased from 42 percent in 1982 to 35 percent in 1989<sup>7</sup>.

The percentage of arrests classified by type of offense, county, and year are presented in Table 4. The growth percentages show that all counties experienced substantial increases in DRUG arrests. Yearly increases ranged from 11 percent in the Other 44 to over 20 percent in Metro NY. By 1989, one-third of the arrests in NYC and Metro 3 were for DRUG charges. One-sixth to one-quarter of arrests in other county units were for DRUG offenses.

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<sup>7</sup>Data for 1982 are presented because there appeared to be an atypically small number of VFO arrests in 1981.

Table 4: Percentage of Arrests by Type of Offense, County, and Year\*

Year	Percentage Classified as VFO					Percentage Classified as Drug				
	NYC	Metro NY	Metro 3	Large 6	Other 44	NYC	Metro NY	Metro 3	Large 6	Other 44
1981	41%	32%	34%	32%	26%	14%	9%	6%	7%	6%
1982	44%	37%	39%	37%	31%	15%	9%	7%	8%	7%
1983	43%	36%	40%	37%	31%	17%	9%	7%	8%	7%
1984	42%	37%	41%	37%	31%	19%	10%	7%	8%	7%
1985	41%	34%	41%	36%	30%	20%	11%	7%	9%	7%
1986	39%	33%	41%	36%	30%	24%	15%	9%	11%	7%
1987	38%	32%	41%	37%	31%	28%	21%	10%	14%	10%
1988	36%	31%	41%	34%	30%	31%	23%	13%	18%	13%
1989	36%	28%	39%	31%	29%	33%	32%	17%	24%	15%
81-89	40%	33%	40%	35%	30%	23%	16%	9%	12%	9%
Growth	3.3%	-0.1%	3.6%	0.8%	1.3%	18.4%	20.6%	14.6%	17.0%	11.2%
R sq	0.90	0.01	0.80	0.08	0.25	0.98	0.85	0.83	0.86	0.76

Year	Percentage Classified as Other					Total Number of Arrests				
	NYC	Metro NY	Metro 3	Large 6	Other 44	NYC	Metro NY	Metro 3	Large 6	Other 44
1981	45%	59%	59%	61%	67%	80,457	13,230	8,108	5,165	7,758
1982	41%	54%	54%	55%	62%	85,488	13,287	8,926	5,381	8,041
1983	40%	54%	53%	55%	62%	85,474	12,739	8,352	5,620	7,809
1984	38%	53%	52%	55%	62%	92,572	12,605	8,318	5,312	7,632
1985	39%	55%	52%	56%	63%	92,166	13,038	8,457	5,602	8,085
1986	36%	53%	50%	53%	62%	106,008	13,397	8,819	5,961	8,799
1987	34%	47%	49%	50%	59%	109,338	13,325	9,381	5,538	7,785
1988	33%	46%	46%	48%	57%	119,709	15,102	9,480	5,773	8,165
1989	32%	40%	44%	45%	56%	126,010	16,322	10,176	5,950	8,398
81-89	37%	51%	51%	53%	61%	897,222	123,045	80,017	50,302	72,472
Growth	1.8%	-1.5%	-0.9%	-1.6%	-0.9%	5.9%	2.3%	2.3%	1.4%	0.8%
R sq	0.72	0.46	0.31	0.47	0.18	0.96	0.54	0.71	0.64	0.26

\*Growth percentages measure yearly changes in the number of cases.

The number of VFO arrests grew at 3 to 4 percent a year in NYC and in Metro 3. This number grew at less than 1 percent in other counties. The growth in VFO arrests was uneven and not well described by growth percentages in Metro NY and the Large 6. The number of VFO arrests declined slightly in Metro NY.

The number of OTHER arrests grew by less than 2 percent per year in New York City and decreased by 1 to 2 percent per year in other counties. The decreases were uneven in several counties.

In general, every county experienced a boom in DRUG arrests. VFO arrests increased in some but not in other counties. OTHER arrests increased in New York City but decreased in all other counties. These patterns demonstrate substantial changes in both the number and type of arrests in the 80's.

## **F. Defendant Characteristics**

Sentencing options in New York State depended upon the class and type of the conviction charge, the defendant's age, and the defendant's prior criminal record. Defendants who were under 19 at the time of the offense could be adjudicated as YOs (Youthful Offenders). These adjudications replaced convictions and increased the judge's ability to impose lenient sentences. For example, among persons convicted of B felony VFO charges, adults had to be sentenced to prison but YOs could be discharged without doing any jail or prison time.

### **1. Prior Criminal Record**

Prior felony convictions profoundly affected sentencing decisions. Felony offenders (defendants convicted of a felony crime) who had felony convictions within 10 years of the instant offense, adjusted for time incarcerated, had to be sentenced to prison regardless of the class and type of felony conviction. Furthermore, they were not allowed to plea bargain to a misdemeanor offense following an indictment for a felony offense (Criminal Procedure Law 220.30(3)(b)(ii)).

Differences in prior criminal record were controlled by categorizing defendants into three mutually exclusive and exhaustive categories: (1) no prior adult arrests, (2) at least one prior arrest but no prior felony convictions, and (3) at least one prior felony conviction that did not result in a YO adjudication. The second group was included because Nelson (1989; 1991a, 1991b) demonstrated that persons who were arrested for the first time were sanctioned less harshly than persons who had at least one prior arrest but no prior felony convictions. These patterns occurred despite the fact that very few sentencing decisions were legally affected by prior misdemeanor convictions (see CPL 400.14), and no sentencing decisions were legally affected by prior arrests that did not result in criminal convictions. A review of the arguments made for including prior record variables in case processing decisions can be found in Hagan and Bumiller (1983).

The identification of a prior felony conviction in this study did not necessarily match the predicate felony status determined by the court. The court determined predicate status by counting the number of felony convictions within 10 years of the offense adjusted for time incarcerated. Felony convictions in other states and in the military were included in this total. The identification of prior felony convictions used in this study was based solely upon prior felony convictions listed in the CCH/OBTS data base. No adjustments were made for when prior felony convictions occurred; felony convictions that occurred outside of NY State were not counted as felony convictions; and, sometimes, felony convictions that resulted in YO adjudications were incorrectly counted as felony convictions because of errors in reporting YO adjudications<sup>8</sup>.

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<sup>8</sup>The adjustment for YO adjudications depended upon courts sending YO adjudication information to DCJS, and upon DCJS accurately matching this information to arrest records. In an unknown number of cases, YO adjudications were not matched to arrest records. In these cases, the data base listed defendants as having predicate felony convictions when court records showed YO adjudications.

The number of arrests by type of charge, prior criminal record, and year of arrest are presented in Table 5. The large R sq values demonstrate that the number of defendants with prior felony convictions, as well as the number of defendants arrested for DRUG offenses, increased quite regularly over time. The number of defendants with prior felony convictions increased at 26 percent per year among persons arrested for DRUG offenses, at 9 percent per year among persons arrested for VFOs, and at 7 percent per year among persons arrested for OTHER offenses.

Except for DRUG offenses, the arrests of defendants without a prior felony conviction remained fairly constant over time. The number of OTHER arrests decreased slightly, and the number of VFOs arrests increased by less than 2 percent per year. In contrast, the number of DRUG arrests increased at 16 percent per year.

Table 5: Number of Arrests by Type of Offense, Prior Criminal Record, and Year of Arrest

Year	VFO Charges			Drug Charges		
	0 Priors	1+Arrests	Fel Conv	0 Priors	1+Arrests	Fel Conv
1981	14,712	22,918	6,318	4,112	7,647	2,142
1982	16,571	26,218	7,604	4,367	8,863	2,840
1983	15,981	25,045	8,444	4,777	9,210	3,179
1984	16,692	25,516	9,423	5,271	11,011	4,320
1985	16,140	24,399	9,944	6,093	10,889	4,370
1986	16,909	26,517	11,084	8,683	15,174	5,979
1987	16,509	26,140	11,356	9,726	18,348	8,228
1988	17,122	26,736	12,411	10,431	21,823	11,606
1989	17,987	27,217	12,618	11,749	24,875	14,021
81-89	148,623	230,706	89,202	65,209	127,840	56,685
Growth	1.6%	1.5%	8.7%	15.7%	16.4%	26.2%
R sq	0.66	0.55	0.95	0.96	0.96	0.98

Year	Other Charges			All Charges		
	0 Priors	1+Arrests	Fel Conv	0 Priors	1+Arrests	Fel Conv
1981	19,957	29,378	7,534	38,781	59,943	15,994
1982	18,505	28,467	7,688	39,443	63,548	18,132
1983	17,862	27,331	8,165	38,620	61,586	19,788
1984	18,174	27,289	8,743	40,137	63,816	22,486
1985	18,855	27,503	9,155	41,088	62,791	23,469
1986	18,787	29,281	10,570	44,379	70,972	27,633
1987	17,214	26,959	10,887	43,449	71,447	30,471
1988	17,372	28,597	12,131	44,925	77,156	36,148
1989	17,753	27,970	12,666	47,489	80,062	39,305
81-89	164,479	252,775	87,539	378,311	611,321	233,426
Growth	-1.2%	-0.2%	7.3%	2.6%	3.6%	11.9%
R sq	0.47	0.04	0.98	0.90	0.88	0.99

The percentage of defendants having various prior criminal records are presented by type of charge and year of arrest in Table 6. This table shows that defendants had increasingly serious criminal records over time. Depending upon arrest type, from 13 to 15 percent of the defendants in 1981 had a prior felony conviction. By 1989, 22 percent of the defendants arrested for VFO or OTHER offenses and 28 percent arrested for DRUG offenses had a prior felony conviction.

Table 6: Percentage of Defendants Having Various Prior Criminal Records by Type and Year of Arrest Offense

Year	VFO Charges			Drug Charges		
	0 Priors	1+Arrests	Fel Conv	0 Priors	1+Arrests	Fel Conv
1981	33%	52%	14%	30%	55%	15%
1982	33%	52%	15%	27%	55%	18%
1983	32%	51%	17%	28%	54%	19%
1984	32%	49%	18%	26%	53%	21%
1985	32%	48%	20%	29%	51%	20%
1986	31%	49%	20%	29%	51%	20%
1987	31%	48%	21%	27%	51%	23%
1988	30%	48%	22%	24%	50%	26%
1989	31%	47%	22%	23%	49%	28%
81-89	32%	49%	19%	26%	51%	23%
Change	-0.4%	-0.7%	1.0%	-0.6%	-0.8%	1.4%
R sq	0.86	0.92	0.95	0.48	0.95	0.90

Year	Other Charges			All Charges		
	0 Priors	1+Arrests	Fel Conv	0 Priors	1+Arrests	Fel Conv
1981	35%	52%	13%	34%	52%	14%
1982	34%	52%	14%	33%	52%	15%
1983	33%	51%	15%	32%	51%	16%
1984	34%	50%	16%	32%	50%	18%
1985	34%	50%	16%	32%	49%	18%
1986	32%	50%	18%	31%	50%	19%
1987	31%	49%	20%	30%	49%	21%
1988	30%	49%	21%	28%	49%	23%
1989	30%	48%	22%	28%	48%	24%
81-89	33%	50%	17%	31%	50%	19%
Change	-0.6%	-0.5%	1.1%	-0.7%	-0.6%	1.2%
R sq	0.87	0.91	0.98	0.91	0.93	0.99

2. *Youthful Offender Eligibility*

Defendants who were less than 19 at the time of the instant offense, who did not have a prior felony conviction, who did not have a YO adjudication substituted for a previous felony conviction, and who were not convicted of a class A-I or a class A-II felony, could be adjudicated a YO following conviction. YO eligibility in this study was defined for defendants at the time of arrest by acting as though the top arrest charge was the most serious conviction charge. Using this criterion, defendants who were arrested for

A-I or A-II felony crimes were considered ineligible for YO adjudications at arrest even though they may have subsequently become eligible by being convicted of less serious offenses. This procedure was adopted to describe trends in the characteristics of arrestees. The number and percentage of defendants who were eligible for and who were granted YO status are presented in Table 7.

Table 7: Number and Percentage of Defendants Who Were Eligible for and Who Were Adjudicated as Youthful Offenders by Year

Year	Number YO Eligible	Number YO Adjudications	Percentage Eligible Arrestees	Percentage YO Given Arrest	Percentage YO Given Eligible	Percentage YO Given Eligible & Convicted
1981	25,843	9,087	23%	8%	35%	49%
1982	24,259	8,470	20%	7%	35%	47%
1983	21,910	8,047	18%	7%	37%	49%
1984	20,697	7,870	16%	6%	38%	51%
1985	19,955	7,488	16%	6%	38%	50%
1986	21,390	7,475	15%	5%	35%	49%
1987	21,935	7,555	15%	5%	34%	50%
1988	23,939	7,547	15%	5%	32%	47%
1989	24,794	7,528	15%	5%	30%	47%
81-89	204,722	71,066	17%	6%	35%	49%
Growth Change	-0.3%	-2.1%	-0.9%	-0.4%	-0.6%	-0.1%
R sq	0.01	0.73	0.79	0.97	0.44	0.04

Table 7 shows that the number of YO eligible defendants at arrest decreased from 1981 to 1985, but increased from 1985 to 1989. The increase in numbers from 1985 to 1989 did not increase the percentage of YO eligible defendants though. From 1986 to 1989, 15 percent of all defendants at arrest were YO eligible. The number of eligible defendants increased after 1985 at the same rate as the total number of defendants.

Table 7 also shows that the percentage of eligible defendants at arrest who were adjudicated a YO decreased from a high of 38 percent in 1984 to a low of 30 percent in 1989. This drop could have been caused by an increase in the percentage of case dismissals or a decrease in the percentage of convicted defendants who were adjudicated a YO.

The last columns of Table 7 shows that the percentage of YO adjudications among convicted YO eligible defendants remained relatively constant. This suggests that judges adjudicated defendants as YOs at a constant rate throughout the period, and consequently the decreasing use of YO adjudications among eligible arrested populations occurred before, rather than following, conviction. In other words, the decrease in the percentage YO adjudications among eligible defendants at arrest appears to be due more to an

increase in the percentage of eligible cases who had their cases dismissed than to a decrease in how often judges adjudicated eligible defendants following conviction.

In summary, the 1980s witnessed a sharp increase in the number of defendants who had serious prior criminal records, and a small decrease in the percentage of defendants who could be adjudicated a YO. Increases in the population of defendants with prior felony convictions were large enough to significantly increase the number of defendants sentenced to prison.

### **III. Changes in Arrest Seriousness**

The 8.8 percent growth in prison sentences (presented in Table 1) was considerably higher than the 4.8 percent growth in arrests (presented in Table 2). This imbalance could reflect an increase in the seriousness of arrest charges, an increase in the percentage of defendants with serious prior criminal records, an increase in the felony conviction rate, or an increasing reliance on prison to punish offenders. This section examines changes in the seriousness of arrest charges and prior criminal records. Later sections examine changes in felony conviction rates and in the types of sentences imposed upon convicted felons.

#### **A. Seriousness of Conviction Charges**

New York's Penal Law indirectly defines charge seriousness by specifying ranges of punishments that could be used to sanction persons convicted of crimes. The ranges were defined by the class and violent character of the crime, by the age and prior criminal record of the offender, by the cooperation of the defendant, and sometimes by aggravating and mitigating circumstances. The key factors affecting punishment ranges based upon conviction charges were used to develop measures of arrest and case seriousness. They are reviewed below.

#### **Class of the Offense**

The class of the top charge was the most general indicator of seriousness. Felony classes ranged from Class A (most serious) to Class E (least serious) offenses. Misdemeanor classes included Class A (most serious), Unclassified (seriousness depended upon laws outside the Penal code), and Class B (least serious crimes). The least serious offenses were classified as violations. They could result in jail terms of up to 15 days but were not classified as crimes. Felony offenses were more serious than misdemeanor offenses because they could result in prison sentences, and because they established criminal records that had substantial impacts on future case processing decisions. Misdemeanor offenses could result in at most a one year sentence to jail. They established criminal records that had a limited bearing upon future case processing decisions.

#### **Violent Felony Offenses**

Class B, C, and D felonies were categorized as VFOs (Violent Felony Offenses) and non-VFOs. Among persons convicted for crimes within the same felony class, persons

convicted of VFOs generally had to be sentenced to longer prison terms than persons convicted of non-VFOs. Among persons convicted of Class C felony crimes, persons convicted of VFOs had to be sentenced to prison but persons convicted of non-VFOs generally did not have to be sentenced to prison.

Certain combinations of class and VFO status could not be uniquely ordered by sentence lengths specified in the Penal Law. For example, almost all first time felony offenders convicted of a B non-VFO had to be sentenced to prison for a maximum ranging from 3 to 25 years, and all first time felony offenders convicted of a C VFO felony have to be sentenced to a maximum ranging from 4.5 to 15 years. Ordering these offenses by the shortest maximum sentence suggests that B non-VFOs were considered less serious than C VFOs. However, ordering them by the longest maximum sentence suggests that B non-VFOs were considered more serious than C VFOs.

### **Age of the Defendant**

As was noted earlier, many defendants who were under age 19 at the time of the offense could have a felony conviction replaced with a YO adjudication. This gave the judge considerable latitude in sentencing the defendant and kept the offender from developing a felony record.

### **Prior Criminal Record**

Defendants who have a prior conviction for a felony offense within 10 years of the date of the instant offense, not counting time incarcerated, were considered to have a predicate felony conviction. Having a predicate felony curtailed plea bargaining options and required judges to sentence offenders to prison if they were convicted of any felony class offense. Predicate felons who were convicted of Class B or lower felony offenses had to be sentenced to longer minimum terms than non-predicates.

### **Multiple Charges and Counts**

With relatively few exceptions, the Penal Law (section 70.25) allowed the court to determine whether convictions for more than a single crime that resulted in incarcerative sentences were to be served consecutively or concurrently. When the court did not specify the manner in which sentences were to be imposed, then sentences to prison were assumed to run concurrently. This suggests that the maximum length of most incarcerative sentences was determined by the conviction charge having the longest sentence.

### **An Example of Sentencing Options Based Upon Class, Prior Record, and YO Eligibility Factors**

New York's Penal Law allowed YO eligibility and prior criminal record to have a considerable impact on setting sentences for persons convicted of felony crimes. The importance of these variables can be illustrated by considering sentencing options for two

defendants who were convicted of a Class C VFO. Assume that the first defendant had been convicted of a VFO three years before the present offense, and that the second defendant was under 19 at the time of the offense and did not have a prior arrest record. The judge would have to sentence the first offender to an indeterminate prison term ranging from a minimum of half the maximum, to a maximum of 8 to 15 years. The judge would have the option of replacing the conviction for the second offender by a YO adjudication. As a YO, the judge could sentence the offender to unconditional discharge, conditional discharge, probation, fine, jail, prison, or to various mixtures of these sanctions. If sentenced to prison, the term could range from a minimum of one-third the maximum, to a maximum of 3 to 4 years. If the judge did not adjudicate the offender as a YO, then he/she would have to sentence the offender to a prison term ranging from a minimum of one-third the maximum, to a maximum of 5 to 15 years. Thus, depending upon YO eligibility and prior record, defendants convicted for the same class C VFO could be sentenced anywhere from unconditional discharge without a felony conviction to at least 7.5 but no more than 15 years in prison with a felony conviction.

#### **B. Seriousness of Arrest Charges: Average Days Incarcerated**

The Penal Law indirectly defined the seriousness of conviction charges by the nature of the crime and by the characteristics of the defendant. These same distinctions were used to define the seriousness of the arrest charges.

Two methods were used to measure arrest seriousness. Both quantified seriousness by the average number of days that defendants who were arrested between 1981 and 1989 were sentenced to incarceration. Incarceration was measured by the minimum sentence length for offenders sentenced to prison and by two-thirds of the jail sentence length for offenders sentenced to jail. Jail sentences were reduced by one-third because sentence lengths could be reduced by that amount for good behavior. Incarceration time was set to zero for defendants who were convicted but not sentenced to incarceration, and for defendants who were not convicted but whose cases had a final disposition. Arrests that did not have a final disposition were ignored in these calculations because the study was limited to arrests that had a final disposition.

The average days incarcerated was chosen to measure seriousness because: incarceration was the harshest sentence that judges could order; felony and misdemeanor classes were largely distinguished from each other in the Penal Law by the amount of time that judges could sentence offenders to prison or jail; days could be unambiguously added together and averaged; and incarceration summarized differences in how cases were processed from arrest to final case disposition. Averages were calculated for all combinations of the top arrest charge (defined by felony class and type of offense) by the defendant's prior criminal record (defined by the three category scale) and by the defendant's YO eligibility at the time of arrest.<sup>9</sup> These averages are presented in Table 8.

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<sup>9</sup>Ignoring lesser charges and multiple counts for the same charge simplified the analysis. Later studies might be able to incorporate this information into a simple analytical framework. Ignoring lesser charges

Blank entries are presented in cells that contained fewer than 50 cases. The table shows that the averages were related to all variables in the table.

Table 8: Average Days Incarcerated by Arrest Class, Prior Record, Type of Arrest Charge, and YO Eligibility: 1981-1989

Arrest Class	VFO Charges			Drug Charges			Other Charges		
	0 Prior Arrests	1+Prior Arrests	Prior Fel Convn	0 Prior Arrests	1+Prior Arrests	Prior Fel Convn	0 Prior Arrests	1+Prior Arrests	Prior Fel Convn
Not YO Eligible at Arrest									
A	1,721	2,241	3,083	556	606	1,058			
B	220	352	877	64	132	443	251	323	485
C	47	128	435	27	53	194	59	91	250
D	9	32	134	12	37	135	15	64	235
E				4	13	60	5	30	107
Average	112	210	577	127	136	405	13	49	183
Number	102,511	189,835	89,197	53,373	114,901	56,685	111,759	212,421	87,530
YO Eligible at Arrest									
A	1,834	2,370	*	162	289	*			*
B	125	283	*	42	108	*	20	82	*
C	29	109	*	10	51	*	36	117	*
D	8	41	*	11	37	*	10	54	*
E			*	3	8	*	4	29	*
Average	76	189	*	41	96	*	8	45	*
Number	46,082	40,836	0	11,835	12,936	0	52,691	40,319	0

\*Defendants with a prior felony conviction were not eligible for a YO adjudication.

The seriousness order defined by the average days incarcerated did not always match the seriousness order implied by permissible sentences in the Penal Law. For example, average days incarcerated for defendants who were arrested for the first time equaled 220 for B VFOs, 64 for B DRUG offenses, and 251 for B OTHER offenses. There was no indication in the Penal Law that B DRUG charges were to be considered substantially less serious than B OTHER charges. Yet, the averages show that OTHER offenses were sanctioned much more harshly than DRUG offenses. Likewise, average days for defendants who were arrested for the first time equaled 9 for D VFOs, 12 for D DRUG offenses, and 15 for D OTHER offenses. While the Penal Law provided longer sentences for D VFO than for D OTHER or D DRUG offenses, the averages show that D VFO charges were punished less harshly than other types of Class D offenses.

### C. Charge Seriousness

Charge seriousness refers to the seriousness of the criminal act irrespective of the age and prior criminal record of the defendant. It was measured by the average days incarcerated for defendants who were not eligible for a YO adjudication and who were arrested for the first time. For example, regardless of the defendant's prior criminal

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and counts was consistent with usual sentencing practices of sentencing offenders to concurrent rather than consecutive sentences.

record, charge seriousness was set to 225 days for B VFOs and to 65 days for B DRUG offenses. This measure did not confound differences in arrest charges with differences in offender characteristics. To keep from confusing the averages used to construct measures of charge seriousness with other averages discussed in this report, those used to measure charge seriousness are called *charge* seriousness scores. The construction and application of charge seriousness scores can be summarized as follows:

1. A *charge* seriousness score was derived for each combination of crime type (VFO, DRUG, OTHER) and statutory class. The score for each combination was defined as the nine-year statewide average number of days of incarceration resulting from arrests in that class and crime type category that involved defendants who had no prior adult arrests and who were not YO eligible.
2. Each arrest included in the study was assigned a *charge seriousness score* according to the crime type and statutory class of the top arrest charge. The score for each arrest characterized the seriousness of that arrest by relating it to the average outcome for similar arrests in a specified reference period (1981-1989). Although the score for each arrest is expressed as "days incarcerated" the score provides no information about the actual disposition of any specific arrest.
3. The *charge* seriousness scores were averaged for various sub groups of arrests to examine differences among counties and over time in the mix of arrest charge seriousness.

Changes in charge seriousness over time could increase the percentage of defendants who were sentenced to prison. The average *charge* seriousness score is presented by type of arrest charge, county, and year in Table 9. The table shows a number of patterns:

- Statewide, the average *charge* seriousness score remained fairly constant over time. It equaled 70 days in 1981 and 69 days in 1989.
- The highest average *charge* seriousness scores involved VFOs. Statewide, VFOs averaged 129 days for the 9 year period. The average score for VFOs was directly related to population size. The highest average occurred in NYC (137 days) and the lowest average occurred in the Other 44 (92 days).
- DRUG charges had somewhat lower average scores than VFO charges. Statewide, DRUG arrests averaged 91 days. The lowest average score occurred in NYC (85 days). The highest average score occurred in Metro NY (126 days).
- The lowest average *charge* seriousness scores involved OTHER offenses, which averaged 13 to 14 days in all county units.

- The average *charge* seriousness score for VFOs decreased over time in most counties. The largest decreases occurred in NYC and Metro 3, where the average score decreased by 3 to 4 days each year.
- The average *charge* seriousness score for DRUG arrests increased in all but Metro NY. Increases ranging from 5 to 9 days per year occurred outside the New York City area. Increases of 1 day per year occurred in NYC. The average *charge* seriousness score for DRUG arrests decreased by 7 days a year in Metro NY.

Table 9: Average Charge Seriousness Score by Type of Charge, County, and Year

Year	VFO Charges						Drug Charges					
	NYC	Metro NY	Metro 3	Large 6	Other 44	State	NYC	Metro NY	Metro 3	Large 6	Other 44	State
1981	152	115	117	101	87	141	77	119	64	87	63	80
1982	148	109	115	86	94	137	77	164	84	92	62	83
1983	147	109	109	100	82	136	82	169	84	88	86	88
1984	131	101	108	90	96	124	79	182	115	85	87	86
1985	128	108	112	87	88	122	86	157	132	134	99	93
1986	126	97	106	93	96	120	89	144	149	108	111	95
1987	124	110	99	95	88	119	86	136	146	122	137	93
1988	124	97	97	104	85	117	86	107	135	119	147	91
1989	118	102	90	86	84	113	82	79	104	117	104	84
81-89	137	109	109	97	92	129	85	126	119	113	107	91
Change	-4	-1	-3	0	-1	-4	1	-7	8	5	9	1
R sq	0.90	0.43	0.89	0.01	0.07	0.92	0.47	0.36	0.50	0.53	0.72	0.26

Year	Other Charges						All Charges					
	NYC	Metro NY	Metro 3	Large 6	Other 44	State	NYC	Metro NY	Metro 3	Large 6	Other 44	State
1981	12	12	12	12	13	12	79	54	52	46	36	70
1982	12	13	12	12	13	12	82	62	57	46	42	73
1983	12	12	12	13	12	12	82	62	56	51	39	74
1984	11	13	12	12	12	12	75	62	58	47	43	70
1985	11	13	12	13	12	12	74	61	62	50	41	69
1986	12	13	13	12	12	12	76	59	63	51	45	70
1987	13	15	12	13	14	13	76	71	61	58	49	72
1988	13	14	12	16	14	13	76	61	63	64	52	72
1989	13	14	12	14	13	13	73	59	58	61	47	69
81-89	13	14	13	13	14	13	79	63	61	54	45	73
Change	0	0	0	0	0	0	-1	0	1	2	2	0
R sq	0.59	0.43	0.01	0.42	0.04	0.53	0.58	0.10	0.51	0.80	0.77	0.06

In general, the boom in prison admissions during the 1980s was not due to an increase in *charge* seriousness. Statewide, the average *charge* seriousness score remained constant over time. The average DRUG charge became more serious while the average VFO charge became less serious. The largest increases in the seriousness of DRUG charges occurred outside of NYC and Metro NY. The largest decreases in the seriousness of VFO charges occurred in NYC and Metro 3.

**D. Case Seriousness**

Case seriousness refers to both the seriousness of the criminal act and the prior criminal record and YO eligibility of the defendant. It was defined by all of the averages presented in Table 8. For example, case seriousness for persons arrested for B DRUG offenses who were ineligible to receive a YO adjudication was set to 64 days for defendants without a prior arrest record, to 132 days for defendants with a prior arrest record, and to 443 days for defendants with a prior felony conviction. The dependence of case seriousness measures on prior criminal records shows that the average B DRUG case could become more serious over time if the percentage of defendants having a prior record increased over time. To reduce confusion, the averages presented in Table 8 are referred to as *case seriousness scores*.

The average *case seriousness score* and the average (actual) days incarcerated (also using minimum prison sentences and two-thirds of jail sentences) are presented by year and type of arrest charge in Table 10. The center panel shows that the average *case seriousness score* increased by 8 days per year for DRUG offenses, by 2 days per year for OTHER offenses, and decreased by 1 day per year for VFOs. The relatively large increases in the seriousness of DRUG cases and the relatively small decrease in the seriousness of VFO cases were mostly due to increases in the proportion of defendants with serious prior criminal records rather than due to increases in the seriousness of arrest charges. Recall that the average *charge seriousness score* decreased by 4 days per year for VFOs, and increased by 1 day per year for DRUG offenses.

Table 10: Average Days Incarcerated and Average Case Seriousness Score by Type of Arrest Charge and Year

Year	Average Days Incarcerated			Average Case Seriousness Score			Average Days - Average Case		
	VFO	Drug	Other	VFO	Drugs	Other	VFO	Drug	Other
81	261	111	56	248	144	54	12	-33	2
82	267	125	56	246	159	55	21	-34	1
83	275	142	57	252	169	56	23	-28	1
84	262	146	59	240	173	57	22	-27	2
85	257	173	61	242	178	57	16	-5	4
86	249	202	61	244	185	60	5	17	1
87	226	199	65	243	199	65	-18	0	0
88	212	222	63	243	211	67	-31	11	-5
89	197	225	61	235	202	68	-38	23	-8
81-89	244	188	60	244	188	60	0	0	0
Change	-9	15	1	-1	8	2			
R sq	0.80	0.97	0.69	0.50	0.94	0.90			

**1. Differences Between Average Case Seriousness Scores and Average Days Incarcerated**

Averages based upon *case* seriousness scores were compared to averages based upon actual days incarcerated to identify shifts in case processing decisions over time and across county units. These comparisons are illustrated with hypothetical data before they are applied to the data in Table 10. This hypothetical example assumes that there was only one type of felony arrest charge, that all defendants were either arrested for the first time or had a prior arrest record, and only considers 1981 and 1982. The example was constructed to show that *case* scores do not necessarily describe case processing decisions that actually occurred in any particular year, that differences between average *case* scores across years describe changes in the mixture of defendants that were processed each year, and that differences between average days incarcerated and average *case* seriousness scores measure change in sanctioning after controlling for differences in the mixture of defendants processed each year. Changes in the mixture of defendants in this simple example refer to changes in the proportion of defendants who had a prior record and changes in the number of arrests each year. In general, changes in the mixture of defendants refer to changes in frequency of any of the variables that were used to define the case seriousness scores. The hypothetical data are presented in Table 11.

Table 11: Average Days Incarcerated, Average *Charge*, and Average *Case* Seriousness Scores by Year and Prior Record, Hypothetical Data

Year and Variable	No Prior Arrests	Prior Arrests	All Defendants
1981:			
Average Days Incarcerated	35	100	50
Average <i>Charge</i> Seriousness Score	38	38	38
Average <i>Case</i> Seriousness Score	38	113	55
Average Days - Average <i>Case</i>	-3	-13	-5
N of Cases	100	30	130
1982:			
Average Days Incarcerated	41	120	71
Average <i>Charge</i> Seriousness Score	38	38	38
Average <i>Case</i> Seriousness Score	38	113	66
Average Days - Average <i>Case</i>	3	7	4
N of Cases	100	60	160

The average days incarcerated in Table 11 show that case processing became harsher over time. The average sentence for defendants who were arrested for the first time increased from 35 days in 1981 to 41 days in 1982. Weighting these averages by 100 defendants in 1981 and 100 in 1982 shows that the average sentence for defendants without a prior record equaled 38 days. This average is the *charge* seriousness score. It does not necessarily equal the average number of days incarcerated in either year.

The average *case* seriousness score in this example equals the average days incarcerated calculated separately for defendants with and without prior arrest records. The average sentence for defendants with a prior record increased from 100 days in 1981 to 120 days in 1982. Weighting these averages by 30 defendants in 1981 and 60 in 1982 produces a *case* seriousness score of 113 days.<sup>10</sup> The *case* seriousness score for defendants without a prior arrest record equals 38, the *charge* seriousness score.

The average *case* seriousness score increased from 55 days in 1981 to 66 days in 1982. The increase occurred because the mixture of defendants changed. There was a larger proportion of defendants with a prior record in 1982 than in 1981. This increase shows that if there were no changes in how cases were processed in 1981 and 1982, then the average sentence would increase by 11 days from 1981 to 1982 because of an increase in the proportion of defendants with a prior arrest record.

Differences between the average days incarcerated and the average *case* seriousness score show how the use of incarceration changed over time after controlling for changes in the mixture of defendants. These differences equaled -5 days in 1981 and +4 days in 1982. They show that after controlling for differences in prior records, the average incarceration sentence increased by 9 days from 1981 to 1982. The increase of 9 days was considerably smaller than the observed difference of 21 days between the average days incarcerated in 1981 and 1982. Differences in the observed averages are hard to interpret because they combine differences due to a change in the mixture of defendants with differences due to a change in the use of incarceration to punish similarly situated defendants.

The comparisons in Table 11 measure change by contrasting average days incarcerated and average *case* seriousness scores by year. The year variable could be replaced with a county variable to measure differences across locations. It could be replaced with a demographic variable to measure differences across groups of defendants. It could be replaced by combinations of year, location, and demographic variables.

The comparisons that follow apply the above method to situations that define seriousness by the statutory level of the top arrest charge, the type of the top arrest charge, the defendant's YO eligibility, and the defendant's prior criminal record. In these comparisons, the average *case* seriousness scores represent statewide standards for measuring the seriousness of the mixture of defendants being processed. These scores or

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<sup>10</sup>The average of 113 is closer to 120 than it is to 110 because more defendants with a prior record were processed in 1982 than in 1981.

standards do not necessarily describe case processing standards that were actually used in particular counties or at particular times.

**2. Trends in the Use of Incarceration**

The second row from the bottom of Table 10 shows that the average days incarcerated for DRUG arrests increased faster (15 days/year) than the average case seriousness score (8 days/year), while the average days incarcerated for VFO arrests decreased faster (-9 days/year) than the average case seriousness score (-1 day/year). These patterns suggest that DRUG cases were sanctioned more harshly while VFO cases were sanctioned less harshly over time.

Differences between average days incarcerated and average case seriousness scores are plotted by year in Figure 1. The graph demonstrates that the use of incarceration for OTHER charges was relatively stable over time, that the use of incarceration for DRUG charges increased, and that the use of incarceration for VFO charges decreased.

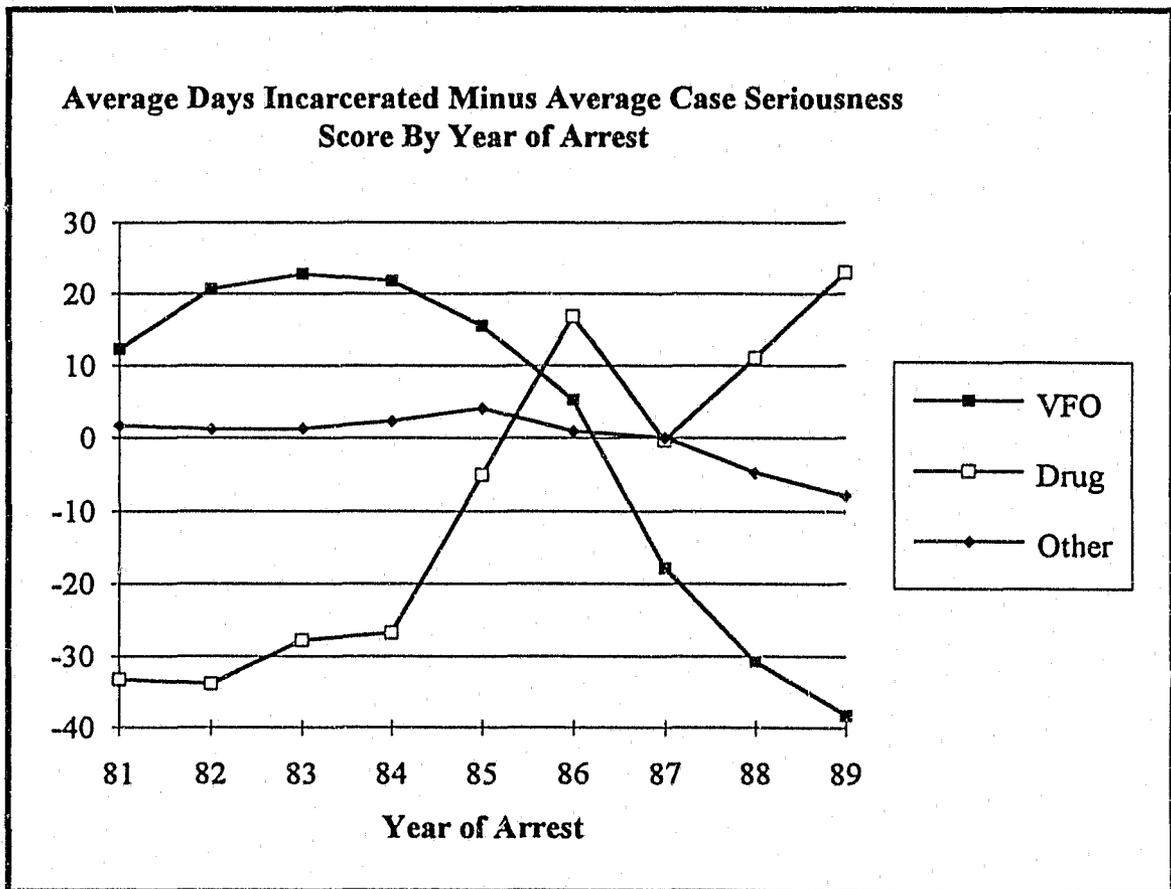


Figure 1: Difference Between Average Days Incarcerated and Average Case Seriousness Score by Year and Type of Arrest Charge

3. *Trends in the Use of Incarceration by Type of Arrest Charge*

Average days incarcerated and average *case* seriousness scores are presented by type of arrest charge for each county in the next three tables. Comparisons of average *case* seriousness scores show the extent to which counties processed cases of a similar seriousness and the extent to which case seriousness changed over time. Differences between average days incarcerated and average *case* seriousness scores show the extent to which different counties used incarceration, and how their use of incarceration changed over time.

a) *VFO Arrests*

Average days incarcerated and average *case* seriousness scores for VFO arrest charges are presented in Table 12. The highest average scores occurred in NYC (257 days) and in Metro 3 (220 days). The lowest average score occurred in the Other 44 (172 days).

Table 12: Average Days Incarcerated and Average Case Seriousness Score by County and Year: VFO Arrest Charges

Year	Average Days Incarcerated					Average Case Seriousness Score				
	NYC	Metro NY	Metro 3	Large 6	Other 44	NYC	Metro NY	Metro 3	Large 6	Other 44
81	257	306	258	277	223	264	204	223	189	160
82	269	307	240	219	231	264	197	223	164	167
83	270	338	274	291	217	271	205	220	190	157
84	253	329	254	272	272	253	201	223	184	180
85	251	339	259	217	243	255	208	229	177	173
86	239	335	237	256	271	256	207	218	191	185
87	217	308	224	209	246	253	221	224	199	180
88	204	279	212	245	205	254	212	221	208	172
89	190	302	144	198	220	246	216	201	184	168
81-89	237	316	231	242	237	257	208	220	187	172
Change	-10	-3	-11	-7	-1	-2	2	-1	2	2
R sq	0.85	0.12	0.60	0.32	0.00	0.67	0.66	0.28	0.25	0.23

Year	Average Days-Average Case					Total Man-Years				
	NYC	Metro NY	Metro 3	Large 6	Other 44	NYC	Metro NY	Metro 3	Large 6	Other 44
81	-8	102	35	88	63	-720	1,176	264	400	355
82	4	110	17	55	64	462	1,487	164	303	436
83	-1	133	54	101	60	-59	1,685	496	568	395
84	1	128	31	88	92	83	1,632	291	473	604
85	-4	131	31	39	71	-426	1,603	291	217	467
86	-17	128	19	65	86	-1,945	1,539	187	378	628
87	-37	86	-1	10	66	-4,142	1,024	-8	54	433
88	-50	66	-9	37	33	-5,912	842	-97	198	223
89	-56	86	-58	15	52	-6,903	1,062	-633	75	347
81-89	-20	108	11	55	65	-19,561	12,051	956	2,666	3,887
Change	-7	-5	-10	-9	-2					
R sq	0.78	0.30	0.64	0.59	0.12					

Average *case* seriousness scores for VFO arrests remained relatively unchanged over time. They decreased by 2 days per year in NYC and by 1 day per year in Metro 3. They increased by 2 days per year in all other places. The changes were not well described by regression slopes (they had low R sq values) outside the New York City Metropolitan area (NYC and METRO NY).

Differences between average days incarcerated and average *case* seriousness scores measure the extent to which incarceration was used to sanction comparably situated defendants in each county relative to statewide (*case* seriousness score) standards. These differences for the entire 81 to 89 period show that the average defendant in Metro NY was sentenced to 108 more days than expected using *case* seriousness scores. In sharp contrast, the average defendant in NYC was sentenced to 20 fewer days than expected.

The effect that differences in the use of incarceration had on incarcerated populations depended upon the number of defendants processed in each county. Differences between the average days incarcerated and the average *case* seriousness score were multiplied by the number of affected defendants to estimate the number of man-years incarceration that were used to sanction defendants relative to case seriousness score standards. The table shows that NYC used 19,561 fewer years incarceration than would be expected based upon its average *case* seriousness scores between 1981 and 1989. In contrast, Metro NY used 12,051 more years than expected.

b) *DRUG Offenses*

Average days incarcerated and average *case* seriousness scores for DRUG arrests are presented Table 13. The highest average scores occurred in Metro NY (200 days) and NYC (189 days). The lowest average score occurred in the Other 44 (158 days).

Table 13: Average Days Incarcerated and Average Case Seriousness Score by County and Year: DRUG Arrest Charges

Year	Average Days Incarcerated					Average Case Seriousness Score				
	NYC	Metro NY	Metro 3	Large 6	Other 44	NYC	Metro NY	Metro 3	Large 6	Other 44
81	110	134	75	175	78	149	152	94	127	86
82	115	210	123	207	103	160	204	119	138	90
83	125	295	85	309	167	171	204	128	139	127
84	130	298	184	208	255	170	232	174	133	132
85	161	264	209	313	166	176	209	186	191	142
86	189	296	280	282	261	184	209	214	176	152
87	187	285	242	222	298	197	213	225	195	200
88	212	278	216	233	382	211	206	218	200	222
89	214	315	177	271	257	207	185	175	191	172
81-89	177	279	187	251	239	189	200	179	176	158
Change	15	15	18	6	30	8	2	14	10	15
R sq	0.95	0.52	0.51	0.12	0.72	0.95	0.07	0.69	0.79	0.82

Year	Average Days-Average Case					Total Man-Years				
	NYC	Metro NY	Metro 3	Large 6	Other 44	NYC	Metro NY	Metro 3	Large 6	Other 44
81	-39	-18	-19	48	-8	-1,217	-59	-26	48	-11
82	-45	6	4	69	13	-1,622	21	6	86	20
83	-46	91	-43	169	39	-1,803	293	-66	209	59
84	-41	66	10	75	123	-2,003	223	15	84	172
85	-15	55	24	122	23	-739	209	41	159	34
86	6	88	66	106	109	394	469	142	184	191
87	-10	72	17	27	98	-880	544	44	56	205
88	1	71	-2	34	159	103	687	-6	98	447
89	7	129	1	81	85	735	1,843	7	309	296
81-89	-12	79	8	75	81	-7,031	4,230	156	1,233	1,413
Change	7	13	4	-4	15					
R sq	0.80	0.62	0.14	0.05	0.54					

The average *case* seriousness score increased by substantial amounts in most county units. Case seriousness increased by 15 days per year in the **Other 44**, by 14 days per year in **Metro 3**, by 10 days per year in the **Large 6**, and by 8 days per year in **NYC**. There was no clear increase in **Metro NY** (note the small **R sq** value).

In spite of the large increases in average *case* seriousness scores, there were even larger increases in the average days incarcerated. The change row in Table 13 shows that differences between average days incarcerated and average *case* seriousness scores increased by at least 4 to at most 15 days per year in all but the **Large 6**. These patterns demonstrate significant increase in the use of incarceration to punish persons arrested for **DRUG** offenses during the 1980s. The increases were particularly evident in **NYC**: in 1981, **DRUG** defendants were incarcerated an average of 39 days less than expected by *case* seriousness scores; in 1981, they were incarcerated 7 days more than expected.

The fourth panel of the table shows that NYC sentenced defendants to 7,031 fewer years than expected using average case seriousness scores, and that Metro NY sentenced defendants to 4,230 more years than expected. The negative years for NYC were mostly due to a low use of incarceration early in the 1980s.

c) *OTHER Arrest Charges*

Average days incarcerated and average case seriousness scores for OTHER arrests are presented in Table 14. The highest average case score occurred in NYC (64 days). Average case seriousness scores ranged from 49 to 57 days in other county units. The average case seriousness score increased by 0 to 2 days per year depending upon county.

Table 14: Average Days Incarcerated and Average Case Seriousness Score by County and Year: Other Arrest Charges

Year	Average Days Incarcerated					Average Case Seriousness Score				
	NYC	Metro NY	Metro 3	Large 6	Other 44	NYC	Metro NY	Metro 3	Large 6	Other 44
81	49	71	66	65	63	56	50	56	50	46
82	51	66	66	59	66	58	50	55	51	46
83	52	68	64	75	65	59	51	56	51	47
84	51	76	69	73	75	59	52	58	51	50
85	56	74	65	65	69	59	53	56	52	48
86	58	71	60	66	63	63	54	59	53	50
87	65	72	51	66	72	69	57	60	58	53
88	59	77	50	74	76	72	58	60	62	54
89	59	80	37	59	67	74	59	54	56	51
81-89	56	73	59	67	68	64	54	57	54	49
Change	2	1	-3	0	1	2	1	0	1	1
R sq	0.76	0.55	0.73	0.00	0.19	0.89	0.95	0.10	0.69	0.76

Year	Average Days-Average Case					Total Man-Years				
	NYC	Metro NY	Metro 3	Large 6	Other 44	NYC	Metro NY	Metro 3	Large 6	Other 44
81	-7	21	10	15	16	-669	445	138	131	229
82	-7	16	11	8	20	-633	313	146	68	278
83	-7	17	7	24	18	-665	320	87	206	241
84	-8	24	11	22	26	-748	451	134	177	330
85	-3	21	10	13	22	-314	405	114	112	306
86	-5	17	1	13	13	-516	327	18	116	197
87	-4	16	-8	8	19	-453	268	-105	61	236
88	-13	18	-10	12	22	-1,358	344	-117	92	280
89	-15	21	-17	3	15	-1,643	374	-214	19	198
81-89	-8	19	2	13	19	-6,998	3,249	199	982	2,296
Change	-1	0	-4	-1	0					
R sq	0.26	0.00	0.81	0.29	0.01					

The change row shows that difference between average days incarcerated and average case seriousness scores decreased between 0 and 4 days per year depending upon county. The only consistent decrease, however (judged by the R sq statistics) occurred in Metro 3. The man-years panel shows that NYC used 6,998 fewer years than expected by

average *case* seriousness scores; Metro NY used 3,249 more years than expected, and the Other 44 used 2,296 more than expected.

d) *Distinguishing Counties by Incarceration Patterns in 1989*

Differences between average days incarcerated and average *case* seriousness scores were used to order counties on how extensively they used incarceration to sanction similarly situated defendants. Differences for 1989 are presented in Figure 2. The graph shows that incarceration was used least extensively in NYC and Metro 3. Differences between average days incarcerated and average *case* seriousness scores were almost identical in these counties. Incarceration was used more extensively in the Large 6 and the Other 44 than in NYC and Metro 3. Incarceration was used more extensively in the Other 44 than in the Large 6 to process persons arrested for VFOs. Finally, incarceration was used more extensively in Metro NY than in the Other 44 to sanction persons arrested for either DRUG or VFO offenses.

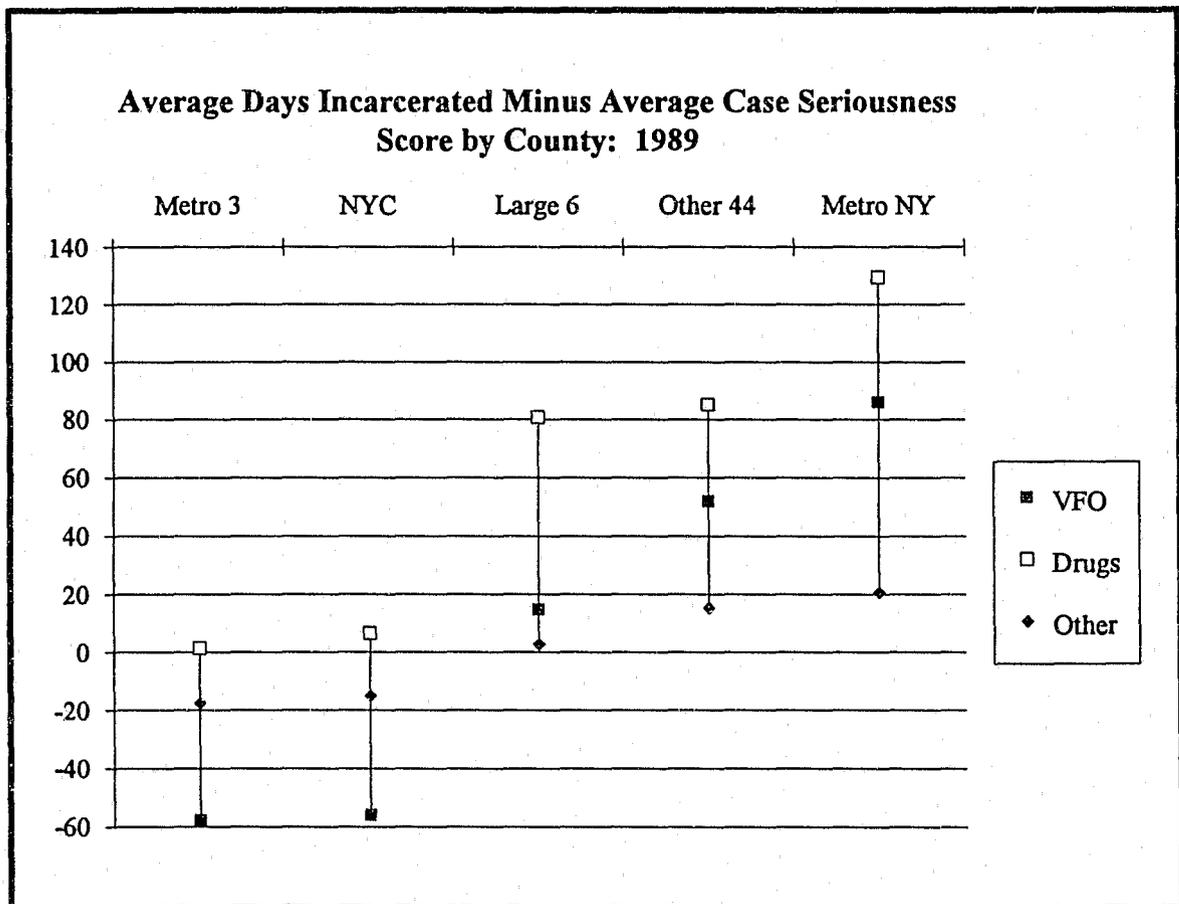


Figure 2: Average Days Incarcerated Minus Average Case Seriousness Scores by County for Arrests in 1989

4. *Summary of Changes in Days Incarcerated Controlling for Differences in Case Seriousness Scores*

Arrest *charge* seriousness scores changed little over time: VFO arrests became less serious or remained at a constant level; OTHER arrests remained at a constant level; and DRUG arrests became more serious in most county units. The smallest increases in the seriousness of DRUG arrest charges occurred in NYC, which processed most of the State's DRUG cases. The largest increases occurred in the Other 44.

If there were no changes in how defendants were processed between 1981 and 1989, then the average days incarcerated would have increased throughout the period because the proportion of defendants with serious prior records increased. Depending upon county, the average *case* seriousness score increased by 2 to 15 days a year for DRUG arrests, by 1 to 2 days a year for OTHER arrests, and increased or decreased by 2 days a year for VFO arrests.

Controlling for differences in prior criminal records, YO eligibility, and the class and the type of the top arrest charge did not account for all changes in the use of incarceration during the 1980's. Incarceration was increasingly used to sanction persons arrested for DRUG offenses but was decreasingly used to sanction persons arrested for VFOs. The shifts in the use of incarceration could be due to changes in the rate at which defendants were sentenced to incarceration, to changes in sentence lengths, or changes in both rates and sentence lengths.

The use of incarceration differed by county. Counties with the least extensive use of incarceration (NYC) were surrounded by counties with the most extensive use of incarceration (Metro NY).

#### IV. Presentencing Decisions: The Prosecutor's Discretion

Defendants could be sentenced to prison only if they were processed in upper (superior) court and convicted of felony offenses. Prosecutors decided which cases to present to upper court. Cases that were not presented to upper court were processed in local criminal courts. Cases in local courts could be convicted of misdemeanor or violation offenses. They could be sentenced to jail but they could not be sentenced to prison.<sup>11</sup>

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<sup>11</sup>Manti (1987) outlined steps needed to obtain felony convictions. In most cases, persons arrested for felony offenses were arraigned in local criminal courts. Here they were informed of the charges against them. Cases could be disposed in local courts if prosecutors agreed to reduce charges to misdemeanors or violations. Following arraignment, prosecutors presented cases to felony hearings where they attempted to establish reasonable cause for believing defendants committed the alleged crimes. At these hearings, local courts either supported felony charges, found probable cause to support misdemeanor but not felony charges, or failed to find probable cause to support any allegations. Regardless of the outcome of these hearings, prosecutors could enter felony cases into upper court by presenting them to grand juries for indictments or by getting defendants to waive their rights to grand jury hearings. Manti found that

Presentencing decisions were reviewed by showing 1) which defendants were convicted of an offense, and 2) which convicted defendants were convicted of felony offenses. The first analysis is equivalent to asking which cases were dismissed, because almost all cases were either convicted or dismissed. Fewer than 1 percent of the felony arrests resulted in acquittals. The second analysis shows which convicted cases were convicted of felony offenses. Changes in felony conviction rates could profoundly affect demands on prison beds because only defendants convicted of felony offenses could be sentenced to prison.

Changes in conviction and felony conviction percentages are interpreted as if they were due to changes in how prosecutors handled cases during this period. They could also be due to differences in how defendants presented their cases, and how police made arrests.

#### A. Convictions

The percentage of felony arrests that resulted in a conviction (at any level) are presented by type of arrest charge, prior criminal record, county, and year in Table 15. The table presents percentages for 1981 and 1989, and summarizes changes between 1981 and 1989 with regression slopes or question marks. Slopes are presented when the variance explained by the regression equation ( $R^2$ ) exceeded .40. Slopes are presented by question marks in other cases. Changes between 1981 and 1989 were not well described by regression slopes when  $R^2$  was less than .40.

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almost 80 percent of the cases processed in upper courts in 1983 and 1984 resulted in felony convictions. A large proportion of felony arrests were not, however, prosecuted in upper court.

Table 15: Percentage Convicted in 1981, in 1989, and Average Yearly Change by Type of Arrest, Prior Criminal Record, and County\*

Prior Record	Year	County					State	County					State
		NYC	Met NY	Metro 3	Large 6	Other 44		NYC	Met NY	Metro 3	Large 6	Other 44	
***** VFO Arrests *****							***** Drug Arrests *****						
No Arrests	1981	51%	71%	61%	70%	77%	56%	60%	80%	58%	74%	76%	64%
	1989	38%	70%	53%	75%	77%	44%	69%	87%	62%	80%	81%	71%
	Yr Chng	-2.2%	?	-0.8%	?	?	-1.9%	1.0%	?	?	1.0%	?	0.8%
1+ Arrests	1981	62%	73%	63%	68%	79%	64%	72%	85%	56%	73%	81%	72%
	1989	52%	76%	51%	79%	78%	56%	76%	89%	60%	83%	87%	78%
	Yr Chng	-1.6%	?	-1.3%	1.2%	?	-1.3%	0.5%	?	?	1.4%	?	0.6%
Felony Convn	1981	62%	72%	59%	56%	75%	64%	66%	80%	??	??	??	66%
	1989	54%	74%	51%	71%	75%	57%	73%	89%	63%	79%	83%	74%
	Yr Chng	-1.4%	?	?	?	?	-1.2%	0.7%	1.0%	?	-3.3%	?	0.8%
All Defns	1981	59%	72%	62%	68%	78%	61%	68%	82%	57%	74%	79%	69%
	1989	48%	74%	51%	76%	77%	52%	74%	89%	61%	82%	84%	75%
	Yr Chng	-1.7%	?	-1.1%	0.8%	?	-1.4%	0.7%	0.7%	?	1.2%	?	0.7%
***** Other Arrests *****							***** All Felony Arrests *****						
No Arrests	1981	60%	79%	68%	74%	80%	67%	56%	77%	65%	73%	79%	62%
	1989	51%	78%	60%	75%	77%	60%	51%	78%	58%	76%	78%	57%
	Yr Chng	-1.7%	?	-0.9%	?	?	-1.1%	-1.1%	?	-0.8%	?	?	-1.0%
1+ Arrests	1981	76%	82%	70%	78%	83%	77%	70%	79%	66%	74%	82%	72%
	1989	69%	84%	62%	79%	82%	71%	65%	83%	57%	80%	82%	68%
	Yr Chng	-1.2%	0.3%	-0.7%	0.5%	?	-0.9%	-0.8%	0.5%	-0.9%	0.9%	?	-0.6%
Felony Convn	1981	77%	77%	69%	73%	83%	77%	69%	75%	65%	70%	81%	70%
	1989	70%	86%	60%	80%	82%	71%	66%	84%	57%	76%	80%	68%
	Yr Chng	-1.3%	0.9%	-0.9%	0.9%	?	-0.9%	-0.7%	1.0%	-0.9%	0.8%	?	-0.5%
All Defns	1981	71%	80%	69%	76%	82%	73%	66%	78%	66%	73%	80%	68%
	1989	64%	82%	61%	78%	80%	68%	62%	82%	57%	78%	80%	65%
	Yr Chng	-1.3%	0.3%	-0.8%	0.4%	?	-0.9%	-0.8%	0.5%	-0.9%	0.7%	?	-0.6%

\*Change is summarized by the regression slope when R sq >.40. Otherwise it is summarized by "?".  
 ?? is reported as the percentage when n < 50.

Table 15 displays a number of patterns:

- With the exception of Metro NY, conviction percentages were inversely related to population size. The highest conviction percentages occurred in Metro NY, the Large 6, and the Other 44. In 1989, about 80 percent of the defendants in these counties were convicted. The lowest conviction percentages occurred in NYC and Metro 3. In 1989, about 60 percent of the defendants in these counties were convicted.
- With the exception of NYC, prior criminal record did not affect conviction percentages. In NYC, however, defendants who were arrested for the first time were convicted less often than defendants who had prior arrests or prior felony convictions. These patterns suggest that prosecutors in NYC gave first timers a break by allowing their cases to be dismissed at a higher rate than they allowed for defendants with prior records.

- Conviction percentages for **VFO** and **OTHER** types of arrest charges decreased in **NYC** and **Metro 3**, the two counties with the lowest conviction percentages for these offenses in 1981. In 1981, approximately 60 percent of the defendants arrested for **VFOs** and 70 percent arrested for **OTHER** offenses were convicted. By 1989, approximately 50 percent of the defendants arrested for **VFOs** and 62 percent arrested for **OTHER** offenses were convicted.
- Conviction percentages for **VFO** and **OTHER** types of arrest offenses remained largely unchanged in the other county units. Approximately 80 percent of the defendants who were arrested for **OTHER** offenses and from 68 to 78 percent of the defendants who were arrested for **VFOs** were convicted in 1981. The only appreciable change in these percentages by 1989 occurred in the **Large 6**, where the conviction percentage for **VFOs** increased from 68 percent in 1981 to 76 percent in 1989.
- Conviction percentages for **DRUG** arrests increased in all counties. Significant changes gauged by **R sq** statistics occurred in **NYC**, **Metro NY**, and in the **Large 6**. Conviction percentages increased from 68 to 74 percent in **NYC**, from 82 to 89 percent in **Metro NY**, and from 74 to 82 percent in the **Large 6**.
- Conviction percentages for **DRUG** arrests were uncommonly low in **Metro 3**. By 1989, only 61 percent of the **DRUG** arrests in this county resulted in a conviction.
- The type of arrest with the highest conviction percentage changed over time. In 1981, arrest types were ordered **OTHER** offenses (73 percent), **DRUG** offenses (69 percent), and **VFOs** (61 percent). In 1989, arrest types were ordered **DRUG** offenses (75 percent), **OTHER** offenses (68 percent), and **VFOs** (52 percent).
- The simplest changes in conviction percentages occurred in **NYC**. Here, conviction percentages decreased for **VFO** and **OTHER** offenses, and increased for **DRUG** arrests.
- Outside of **NYC**, changes in the conviction percentages varied by arrest offense and county. In most county units, conviction percentages for **VFOs** and **OTHER** offenses remained relatively constant over time. However, in **Metro 3**, they decreased. Conviction percentages for **DRUG** offenses increased to some extent in all counties.

## **B. Felony Convictions**

Not all convictions resulted in a prison sentence. Persons convicted of misdemeanor crimes or violations could not be sentenced to prison. This section identifies changes in the percentage of defendants who were convicted of felony crimes given that they were convicted of some offense. In other words, it shows what happened to cases that were not dismissed or acquitted. The percentage of offenders (defendants who were convicted of some charge) who were convicted of a felony crime is presented in Table 16.

Table 16: Percentage of Offenders Convicted of a Felony Crime in 1981, 1989, and the Average Yearly Change by Type of Arrest and County\*

Prior Record	Year	County					State	County					State
		NYC	Met NY	Metro 3	Large 6	Other 44		NYC	Met NY	Metro 3	Large 6	Other 44	
***** VFO Arrests *****							***** Drug Arrests *****						
No Arrests	1981	47%	46%	37%	37%	39%	46%	32%	54%	34%	34%	47%	37%
	1989	44%	40%	26%	33%	39%	41%	63%	65%	47%	58%	56%	62%
	Yr Chng	-0.3%	-1.1%	?	?	?	-0.5%	4.5%	?	?	2.8%	1.6%	3.6%
1+ Arrests	1981	51%	57%	54%	35%	47%	51%	34%	60%	47%	43%	57%	37%
	1989	48%	47%	40%	36%	44%	47%	67%	74%	55%	62%	69%	68%
	Yr Chng	-0.6%	-1.6%	-1.2%	?	?	-0.7%	4.8%	1.4%	?	?	1.9%	4.4%
Felony Convn	1981	60%	67%	64%	46%	65%	60%	41%	65%	??	??	??	42%
	1989	54%	59%	39%	39%	60%	53%	64%	77%	49%	68%	69%	65%
	Yr Chng	-1.0%	-1.7%	-2.9%	?	?	-1.1%	3.1%	1.4%	?	?	?	3.1%
All Defns	1981	51%	54%	50%	38%	46%	51%	35%	58%	42%	39%	52%	38%
	1989	48%	47%	36%	35%	45%	47%	65%	73%	52%	62%	65%	66%
	Yr Chng	-0.5%	-1.2%	-1.4%	?	?	-0.6%	4.4%	1.3%	?	2.4%	2.0%	3.9%
***** Other Arrests *****							***** All Felony Arrests *****						
No Arrests	1981	14%	22%	15%	23%	30%	18%	29%	32%	22%	28%	33%	30%
	1989	18%	18%	11%	21%	21%	18%	42%	35%	22%	33%	30%	38%
	Yr Chng	0.8%	?	?	?	-0.9%	?	2.0%	?	?	0.8%	?	1.3%
1+ Arrests	1981	15%	33%	32%	27%	38%	22%	31%	43%	40%	30%	42%	34%
	1989	21%	26%	20%	23%	29%	22%	46%	49%	33%	37%	40%	45%
	Yr Chng	1.0%	-0.6%	-1.0%	?	-0.9%	?	2.1%	?	?	0.6%	?	1.5%
Felony Convn	1981	20%	44%	46%	39%	46%	27%	38%	53%	52%	42%	52%	41%
	1989	26%	35%	30%	29%	50%	28%	49%	58%	37%	42%	56%	50%
	Yr Chng	0.9%	-1.0%	-1.9%	-1.0%	?	?	1.3%	?	-1.7%	?	?	0.9%
All Defns	1981	16%	30%	28%	27%	35%	21%	32%	40%	36%	31%	39%	34%
	1989	21%	25%	18%	23%	28%	22%	46%	47%	31%	36%	39%	45%
	Yr Chng	1.0%	-0.4%	-0.9%	?	-0.7%	0.4%	2.0%	0.6%	?	0.7%	?	1.5%

\*Change is summarized by the regression slope when R sq >.40. Otherwise it is summarized by "?".  
 ?? is reported as the percentage when n<50.

Table 16 shows that:

- The probability of a felony conviction given a conviction was much higher for VFOs and DRUG arrests than for OTHER arrests. This pattern is not surprising because VFO and DRUG arrests were comprised of more serious felony class charges than OTHER arrests.
- The probability of a felony conviction given a conviction increased dramatically for DRUG arrests. The largest increases occurred in NYC. Here the probability increased from .31 to .62 for defendants without a prior arrest record, from .34 to .67 for defendants with a prior arrest record, and from .41 to .64 for defendants with a prior felony conviction. The smallest increases occurred in Metro 3. Here the probability increased from .34 to .47 for defendants without a prior arrest record, and from .47 to .55 for defendants with a prior arrest record. (There were not enough cases in 1981 to estimate probabilities for defendants with prior felony convictions.)

- The probability of a felony conviction given a conviction either remained unchanged or decreased for VFO arrests. Substantial decreases occurred in Metro NY and Metro 3, and smaller decreases occurred in NYC.
- The probability of a felony conviction given a conviction increased slightly in NYC but decreased slightly in other counties for OTHER arrests.

A substantial shift occurred in the rate at which prosecutors obtained felony convictions during the 1980's. Offenders arrested for DRUG offenses were increasingly likely but offenders arrested for VFOs were decreasingly likely to be convicted of a felony offense. By 1989, the probability of a felony conviction given a conviction was higher for persons arrested for DRUG offenses than for persons arrested for VFOs in all comparisons controlling for differences in county and prior criminal record variables.

### **C. Number of Felony Offenders by Type of Charge, County, and Prior Record**

Increases in the number of felony DRUG arrests, increases in the rate at which persons arrested for DRUG offenses were convicted of a felony offense, and increases in the proportion of defendants with prior felony convictions substantially changed the character of felony offenders who were presented to judges for sentencing. The number of felony offenders (defendants convicted of a felony offense) in 1981, in 1989, and yearly changes are presented by county, type of arrest charge, and prior criminal record in Table 17.

Table 17: Number of Felony Offenders in 1981 and 1989 and Yearly Growth Percentages by Type of Arrest, Prior Criminal Record, and County\*

Record	Year	NYC	Met NY	Metro 3	Large 6	Other44	State	NYC	Met NY	Metro 3	Large 6	Other44	State
No Arrests	1981	***** VFO Arrests *****						***** Drug Arrests *****					
	1989	2,679	512	171	127	243	3,732	563	246	40	41	79	969
	Growth	2,382	367	140	142	242	3,273	3,998	642	144	212	187	5,183
1+ Arrests	1981	5,432	900	548	219	377	7,476	1,562	273	75	52	112	2,074
	1989	5,103	817	440	266	434	7,060	10,177	1,832	320	374	407	13,110
	Growth	-2.2%	-3.3%	?	?	?	-2.1%	28.8%	27.8%	20.2%	24.7%	16.2%	27.8%
Felony Convn	1981	1,859	240	147	71	103	2,420	527	47	11	16	13	614
	1989	2,974	396	160	96	167	3,793	5,616	888	79	116	106	6,805
	Growth	4.5%	5.0%	?	?	6.5%	4.6%	34.5%	44.3%	28.6%	29.0%	25.8%	34.9%
All Defts	1981	9,970	1,652	866	417	723	13,628	2,652	566	126	109	204	3,657
	1989	10,459	1,580	740	504	843	14,126	19,791	3,362	543	702	700	25,098
	Growth	?	-2.4%	?	?	?	?	30.8%	24.1%	20.0%	24.1%	15.7%	28.8%
No Arrests	1981	***** Other Arrests *****						***** All Felony Arrests *****					
	1989	959	560	171	180	535	2,405	4,201	1,318	382	348	857	7,106
	Growth	990	347	101	153	304	1,895	7,370	1,356	385	507	733	10,351
1+ Arrests	1981	2,226	1,010	551	318	815	4,920	9,220	2,183	1,174	589	1,304	14,470
	1989	2,714	663	287	240	524	4,428	17,994	3,312	1,047	880	1,365	24,598
	Growth	4.2%	-3.7%	-6.4%	?	-4.3%	?	8.9%	4.4%	-3.0%	3.3%	0.5%	6.9%
Felony Convn	1981	835	301	198	93	155	1,582	3,221	588	356	180	271	4,616
	1989	1,804	325	113	89	227	2,558	10,394	1,609	352	301	500	13,156
	Growth	11.0%	?	?	?	5.4%	7.1%	15.0%	11.5%	?	7.5%	8.0%	13.3%
All Defts	1981	4,020	1,871	920	591	1,505	8,907	16,642	4,089	1,912	1,117	2,432	26,192
	1989	5,508	1,335	501	482	1,655	8,881	35,758	6,277	1,784	1,688	2,598	48,105
	Growth	5.4%	-2.7%	-5.9%	?	-3.1%	?	10.1%	4.5%	-4.4%	4.2%	1.0%	7.8%

\*Change is summarized by the regression slope when R sq > .40. Otherwise it is summarized by "?".

Percentages are not reported when n < 50. These percentages are reported as "??".

The number of felony convictions arising from DRUG arrests soared from 3,657 in 1981 to 25,098 in 1989. In sharp contrast, the number of felony convictions arising from VFO arrests (from 8,907 to 8,881) and from OTHER arrests (from 13,628 to 14,127) hardly changed. The frequencies in Table 17 can be combined to show that 14 percent of all felony offenders in 1981, but 52 percent in 1989, had been arrested for DRUG offenses.

About half of the jump from 14 to 52 percent was attributable to increases in the percentage of defendants who were arrested for DRUG offenses. Twelve percent of all felony defendants in 1981 and 31 percent in 1989 were arrested for DRUG offenses. The over representation of offenders arrested for DRUG offenses among felony offenders in 1989 (52 rather than 31 percent) was attributable to increases in the rate at which prosecutors obtained felony convictions for DRUG arrests, and to increases in the seriousness of DRUG cases (as shown in Table 10).

The fastest growth in the number of felony offenders who had been arrested for DRUG charges occurred in NYC, where these offenders increased at 31 percent a year. The slowest growth occurred in the Other 44, where they increased at 16 percent a year. By 1989, 55 percent of the felony convictions in NYC, 54 percent in Metro NY, 42

percent in the **Large 6**, 30 percent in **Metro 3**, and 27 percent in the **Other 44** were based upon **DRUG** arrests.

The number of felony offenders who had a prior felony conviction increased from 4,616 in 1981 to 13,156 in 1989. These offenders represented 18 percent of all offenders in 1981 and 27 percent in 1989. Offenders with prior felony convictions increased at 5 percent per year for **VFO** arrests, at 7 percent per year for **OTHER** arrests, and at an incredible 35 percent per year for **DRUG** arrests. In 1981, one in eight offenders (13 percent) who had a prior felony conviction had been arrested for a **DRUG** offense. By 1989, one in two offenders (52 percent) who had a prior felony conviction had been arrested for a **DRUG** offense.

The increase in the percentage of felony offenders with prior felony convictions significantly increased the number of offenders sentenced to prison because with few exceptions (e.g., more than 10 years between felony convictions, or errors in the **CCH/OBTS** data base) predicate felony offenders had to be sentenced to prison. Mandatory sentences based upon prior felony convictions would represent 38 percent of all prison sentences in 1981 and 55 percent in 1989<sup>12</sup>.

## V. Sentencing: The Judge's Discretion

The types of sentences imposed upon felony offenders were reviewed to learn whether judges changed how they sentenced similarly situated offenders in 1980's. Even though attorneys and victims could affect sentencing decisions, changes in sentencing decisions were attributed to judges because they were ultimately responsible for these decisions.<sup>13</sup>

### A. Number and Type of Sentences

The number and type of sentences are presented by year of arrest and seriousness level of conviction charge in Table 18. Sentences were categorized by the most serious sanction. For example, a sentence to jail and to pay a fine was categorized as a sentence to jail. The yearly growth rate for specific type of sentences should be compared to 3.8 percent, the yearly growth rate in the total number of sentences.<sup>14</sup>

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<sup>12</sup>The total percentage of mandatory prison sentences would be higher because some felony conviction charges had to result in prison sentences regardless of prior record.

<sup>13</sup>Prosecutors affected sentences by arranging plea bargains and by allocating resources to prosecute cases. Plea bargains were entered into by prosecutors, defense attorneys, defendants, and judges. They included specific lists of conviction charges. Informally, they may have also included agreements affecting the type and length of sentence. Prosecutors, defense attorneys, and victims also affected sentences by presenting arguments at presentence hearings.

<sup>14</sup>Growth in the number of sentences (3.8 percent) can be compared to 4.7 percent, growth in the number of arrests (presented in Table 10). The faster growth of arrests to sentences was due to an increasing use of dismissals for persons arrested for **VFO** or **Other** arrest charges. This pattern was displayed in Table 14.

Table 18: Number and Type of Sentence by Year

Year	Number of Sentences to:								Total
	Prison	Jail	Jail and Prob'n	Prob'n	Cond'l Dischg	Fine	Fine Served	Uncond'l Dischg	
81	12,134	18,326	3,693	16,116	14,937	7,886	4,021	968	78,081
82	13,797	19,189	4,667	16,886	16,388	8,641	3,882	945	84,386
83	13,776	19,215	5,220	16,550	15,356	9,540	3,606	782	84,053
84	14,619	19,323	5,677	16,734	15,321	10,416	4,967	684	87,750
85	15,246	20,088	6,188	16,223	15,586	11,067	4,789	493	89,680
86	18,476	22,904	7,728	16,039	15,952	10,204	5,253	534	97,091
87	19,202	22,272	8,451	16,122	16,747	7,036	5,890	529	96,249
88	21,955	24,922	8,934	15,064	18,905	6,038	6,418	452	102,688
89	24,312	27,806	9,673	15,338	19,454	3,977	6,535	387	107,482
Total	153,517	194,044	60,231	145,072	148,647	74,805	45,360	5,775	827,460
Growth	8.8%	5.0%	12.5%	-1.1%	2.9%	-7.1%	7.8%	-10.9%	3.8%
R Sq	0.96	0.89	0.98	0.59	0.68	0.38	0.88	0.93	0.97
Conv'n Charge									
Felony	153,041	47,286	47,481	70,654	3,144	648	1,653	194	324,102
Misde'or	454	131,554	12,684	74,180	67,996	37,003	23,585	1,992	349,447
Viol'n	0	15,210	46	231	77,527	37,178	20,152	3,602	153,946

Table 18 shows that sentences became harsher over time:

- The number of prison sentences increased at 8.8 percent per year. CCH/OBTS files showed 12,134 prison sentences in 1981 and 24,312 in 1989. Among convicted defendants, prison sentences represented 16 percent of all sentences in 1981 and 23 percent in 1989. Almost half (47 percent) of all felony offenders between 1981 and 1989 were sentenced to prison.<sup>15</sup>
- The number of jail sentences grew at 5.0% per year. One-fourth of the jail sentences (47,286 out of 194,050) were used to sanction felony offenders.
- The number of split sentences (a sentence to jail followed by a period of probation) increased 12.5 percent a year, while the number of straight probation sentences decreased 1.1 percent per year. Almost 80 percent of the split sentences and half of the probation sentences were used to sanction felony offenders.
- The number of conditional discharge sentences increased at 2.9 percent a year. Conditional discharges represented 19 percent of all sentences in 1981 and 18 percent in 1989. Fewer than 1 percent of the felony offenders were sentenced to conditional discharge.

<sup>15</sup>The 454 persons who were convicted of a misdemeanor crime and sentenced to prison are due to reporting errors. Persons convicted of misdemeanors cannot be sentenced to prison.

- The number of fines decreased during this period.<sup>16</sup> Fewer than 1 percent of the felony offenders were only sentenced to pay a fine, without a more serious sanction.
- The number of time served sentences increased at 7.8 percent per year. Time served sentences represented 5 percent of all sentences in 1981 and 6 percent in 1989. Fewer than 1 percent of the felony offenders were sentenced to time served.

In general, the 1980s was a decade of increasing incarceration. The number of prison, jail, and split sentences increased while the number of straight probation sentences decreased. The next section explores the extent to which judges changed how often they sentenced felony offenders to these sanctions.

### 1. *Prison Sentences*

The percentage of felony offenders who were sentenced to prison in 1981, in 1989, and the yearly change in percentages are presented by prior criminal record, type of arrest, and county in Table 19. The table shows that once differences in the aforementioned variables were taken into account, the percentage of felony offenders sentenced to prison remained relatively stable over time. The largest changes occurred to felony offenders who were arrested for DRUG offenses in the **Other 44**. The percentage of these offenders who were sentenced to prison increased from 20 to 30 percent among offenders who were arrested for the first time, and from 22 to 46 percent among offenders with prior arrest records. These increases could not account for the rapid increase in the number of prison sentences in the state, though, because relatively few felony offenders were sentenced in these counties. In general, the huge growth in prison sentences was not due to a change in how often judges sentenced comparably situated felony offenders to prison.

Table 19 also shows that prior criminal record was strongly related to prison sentences. Felony offenders who were arrested for the first time were sentenced to prison much less often than felony offenders who had a prior arrest record but no prior felony convictions, and felony offenders with prior felony convictions were sentenced to prison much more often than other offenders.

The reader may wonder why some offenders with prior felony convictions were not sentenced to prison. With few exceptions, the Penal Law specified that persons who were convicted of a felony offense and who had one or more prior felony convictions within 10 years of the instant offense, adjusted for time incarcerated, must be sentenced to prison. The percentage of felony offenders who had prior felony convictions who were sentenced to prison was less than 100 percent in Table 19 because the number of prior felony

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<sup>16</sup>Part of the decrease was due to reporting errors. The reporting of sentences to "pay a fine or go to jail" was recorded as a sentence to jail in NYC and in some other large counties starting in 1989 because of a change in reporting systems. While this reporting problem made it impossible to distinguish jail and fine sentences for persons convicted of misdemeanor or violation crimes, it had almost no impact on felony convictions because hardly anyone convicted of a felony was sentenced to a fine.

convictions were calculated without regard to when they occurred before the instant offense, because of errors recording YO adjudications in the CCH/OBTS data base, and possibly because of improper sentences. The percentage of felony offenders who had prior felony convictions and who were sentenced to jail, jail and probation, and straight probation are presented in succeeding sections even though these would be ordinarily be impossible sentences for offenders with predicate felony convictions. Changes in these percentages are not commented on because there is no easy way to explain why they occurred.

Table 19: Percentage of Felony Offenders Sentenced to Prison in 1981, 1989, and Yearly Changes by Type of Arrest, Prior Record, and County\*

Record	Year	NYC	Met NY	Metro 3	Large 6	Other 44	State	NYC	Met NY	Metro 3	Large 6	Other 44	State
		***** VFO Arrests *****						***** Drug Arrests *****					
No Arrests	1981	36%	26%	26%	32%	22%	33%	23%	20%	??	??	20%	22%
	1989	32%	32%	26%	25%	30%	31%	23%	22%	33%	34%	30%	24%
	Chng	?	1.1%	?	?	?	?	?	?	4.5%	?	2.4%	?
1+ Arrests	1981	60%	49%	51%	54%	48%	57%	36%	30%	23%	50%	22%	34%
	1989	55%	49%	38%	50%	40%	52%	36%	28%	33%	51%	46%	36%
	Chng	?	?	-1.0%	?	?	?	?	?	1.5%	?	3.9%	?
Felony Conv'n	1981	96%	94%	93%	92%	91%	95%	89%	??	??	??	??	89%
	1989	96%	96%	90%	88%	87%	95%	94%	94%	72%	95%	85%	94%
	Chng	?	0.3%	?	?	?	?	0.9%	2.0%	?	5.4%	?	0.8%
All Defns	1981	60%	48%	53%	54%	45%	57%	44%	25%	23%	50%	21%	39%
	1989	62%	57%	47%	50%	47%	59%	50%	44%	39%	53%	48%	49%
	Chng	?	1.3%	?	?	?	?	0.8%	1.9%	2.9%	?	4.5%	1.2%
		***** Other Arrests *****						***** All Felony Arrests *****					
No Arrests	1981	10%	8%	6%	6%	5%	8%	28%	17%	16%	17%	11%	23%
	1989	12%	11%	15%	10%	10%	11%	24%	22%	26%	24%	22%	24%
	Chng	?	?	?	?	0.6%	0.4%	?	0.6%	1.3%	?	1.2%	?
1+ Arrests	1981	29%	22%	23%	26%	20%	25%	48%	34%	36%	39%	28%	43%
	1989	26%	21%	20%	23%	18%	24%	40%	32%	32%	43%	34%	38%
	Chng	?	?	?	-0.8%	?	?	-1.1%	?	-0.4%	?	0.8%	-0.7%
Felony Conv'n	1981	92%	90%	88%	83%	80%	90%	94%	92%	90%	87%	84%	93%
	1989	93%	89%	83%	87%	86%	91%	95%	94%	84%	90%	86%	94%
	Chng	0.3%	?	-0.7%	?	?	0.4%	0.2%	0.5%	-0.7%	?	?	0.3%
All Defns	1981	38%	29%	33%	29%	21%	32%	52%	36%	42%	40%	28%	46%
	1989	45%	35%	33%	30%	30%	41%	53%	45%	41%	46%	40%	50%
	Chng	1.1%	0.7%	?	?	1.1%	1.1%	?	1.0%	?	?	1.6%	0.4%

\*Change is summarized by the regression slope when R sq >.40. Otherwise it is summarized by "?".

Percentages are not reported when n<50. These percentages are reported as "?".

Somewhat surprisingly, Table 19 shows that except for felony offenders who were arrested for DRUG offenses in the Large 6, judges in NYC sentenced defendants to prison more often than judges in other counties. This suggests that the earlier finding that NYC was characterized by the least extensive use of incarceration and that Metro NY was characterized by the most extensive use of incarceration was not attributable to unusually lenient sentences by judges in NYC.

The possibility that judges sentenced comparably situated felony offenders to prison at similar rates in all counties was investigated by plotting the percentage of felony

offenders sentenced to prison in each county in 1989 against the average case seriousness score calculated for felony offenders in 1989. This plot is presented in Figure 3. It shows that except for **Metro 3**, the percentage of prison sentences was closely related to the average case seriousness score for felony offenders. An analysis in a subsequent section will show that judges in **Metro 3** sentenced offenders to prison less than judges in other counties because they sentenced offenders to probation more often than judges in other counties. The strong relationship between prison sentences and average case seriousness scores for felony offenders suggests that judges in **NYC** sentenced offenders to prison at a higher rate than judges in **Metro NY** because they handled more serious cases.

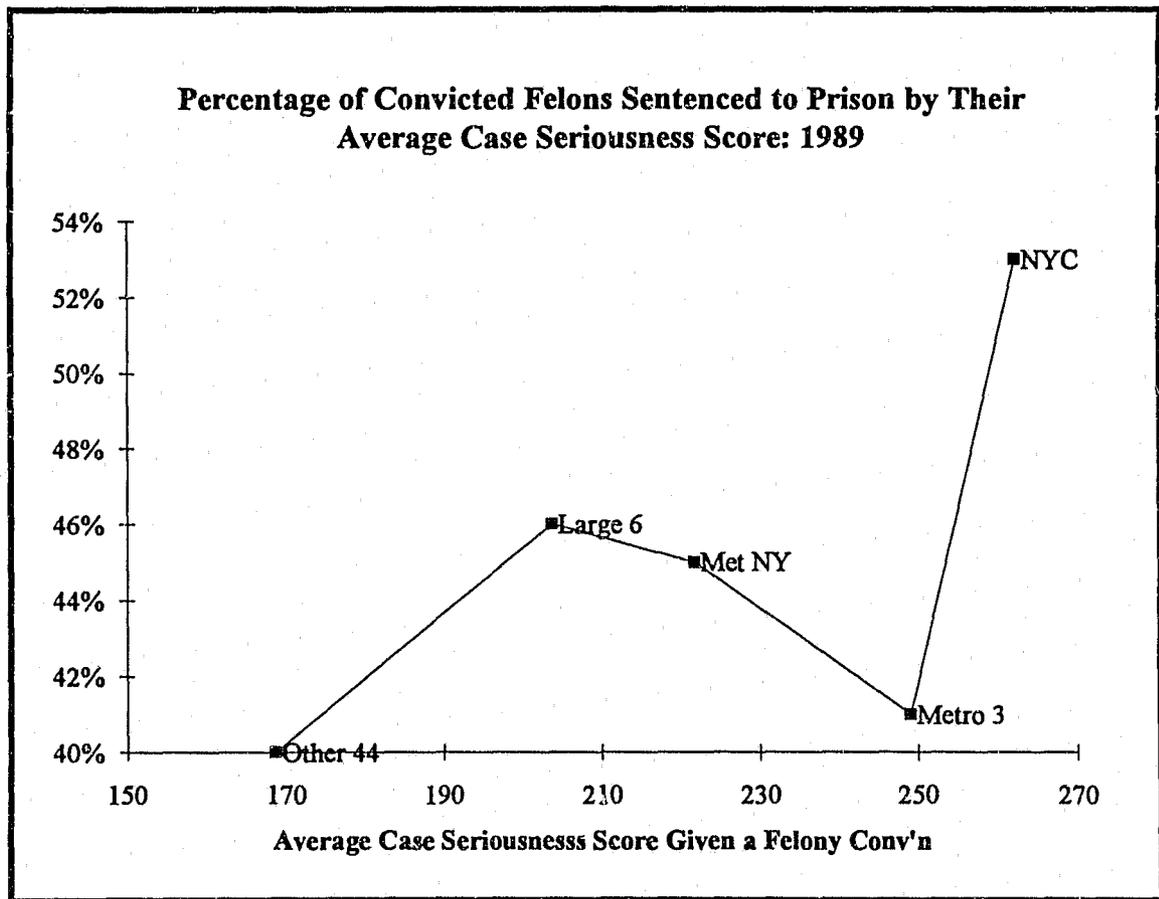


Figure 3: Percentage of Felony Offenders Sentenced to Prison by Their Average Case Seriousness Score in 1989

2. Jail Sentences

The percentages of felony offenders sentenced to jail are presented in Table 20. Ignoring defendants with a prior felony conviction, the table shows that offenders who had prior arrests were sentenced to jail about twice as often as offenders who were arrested for the first time, and that most counties decreased their use of jail sentences. The largest decreases occurred in Metro NY, Metro 3, and the Large 6. In these counties, the percentage of felony offenders sentenced to jail decreased by 4 to 21 percentage points between 1981 and 1989 depending upon the type of arrest charge and extent of prior criminal record. Somewhat smaller decreases (as well as one small increase) occurred in the Other 44. In NYC, the percentage of felony offenders who were sentenced to jail decreased by 2 to 3 percentage points for offenders who were arrested for VFO or OTHER offenses, but increased by 6 percentage points for offenders who were arrested for DRUG offenses.

Table 20: Percentage of Felony Offenders Sentenced to Jail in 1981, 1989, and Yearly Change by Type of Arrest, Prior Record, and County\*

Record	Year	NYC	Met NY	Metro 3	Large 6	Other 44	State	NYC	Met NY	Metro 3	Large 6	Other 44	State
No Arrests		***** VFO Arrests *****						***** Drug Arrests *****					
	1981	10%	11%	13%	11%	13%	10%	7%	13%	??	??	10%	9%
	1989	7%	5%	3%	4%	10%	6%	13%	9%	6%	7%	12%	12%
Chng	-0.3%	-0.7%	-1.4%	-0.7%	?	-0.4%	0.7%	?	0.8%	?	?	?	0.4%
1+ Arrests	1981	18%	24%	20%	15%	22%	19%	20%	28%	19%	15%	19%	21%
	1989	16%	13%	14%	9%	18%	15%	26%	23%	10%	9%	11%	25%
	Chng	?	-0.9%	-1.1%	-0.9%	-0.8%	-0.3%	0.9%	?	-1.2%	?	-1.3%	0.6%
Felony Conv'n	1981	2%	5%	5%	4%	7%	3%	5%	??	??	??	??	5%
	1989	2%	2%	4%	6%	7%	2%	3%	2%	8%	3%	8%	3%
	Chng	?	-0.4%	?	?	?	-0.1%	-0.4%	?	?	-1.8%	?	-0.4%
All Defns	1981	13%	17%	16%	12%	17%	14%	14%	21%	19%	15%	15%	15%
	1989	10%	9%	10%	7%	14%	10%	17%	15%	9%	8%	11%	16%
	Chng	-0.3%	-0.9%	-1.0%	-0.8%	-0.6%	-0.4%	?	?	-1.1%	?	-1.1%	?
No Arrests		***** Other Arrests *****						***** All Felony Arrests *****					
	1981	14%	12%	10%	13%	13%	13%	10%	12%	11%	12%	13%	11%
	1989	11%	7%	1%	6%	5%	8%	10%	8%	4%	6%	8%	9%
Chng	?	-0.8%	-1.0%	?	-0.9%	-0.4%	?	?	-1.0%	-0.6%	-0.5%	?	
1+ Arrests	1981	35%	34%	36%	28%	28%	34%	23%	29%	27%	22%	25%	24%
	1989	32%	23%	15%	13%	21%	27%	24%	21%	13%	10%	17%	22%
	Chng	?	-1.3%	-2.2%	-1.7%	-1.0%	-0.6%	0.6%	?	-1.8%	-1.3%	-1.2%	?
Felony Conv'n	1981	5%	7%	7%	12%	9%	6%	3%	6%	6%	9%	8%	4%
	1989	4%	5%	6%	2%	7%	5%	3%	3%	5%	4%	7%	3%
	Chng	-0.2%	-0.6%	?	?	?	-0.3%	-0.1%	-0.5%	?	?	?	-0.2%
All Defns	1981	24%	23%	25%	21%	21%	23%	16%	21%	20%	17%	19%	17%
	1989	19%	14%	10%	9%	13%	17%	15%	13%	10%	8%	13%	14%
	Chng	-0.4%	-1.1%	-1.5%	-1.2%	-1.0%	-0.7%	?	-0.8%	-1.3%	-1.0%	-0.9%	?

\*Change is summarized by the regression slope when R sq > .40. Otherwise it is summarized by "?". Percentages are not reported when n < 50. These percentages are reported as "??".

3. Split Sentences: Jail followed by Probation

The percentages of defendants who were sentenced to a split sentence are presented in Table 21. The table demonstrates substantial increases in the use of split sentences. The increases occurred in all counties, for all types of arrest charges, and for defendants with and without prior arrest records. The largest changes occurred to offenders arrested for DRUG charges in NYC and in Metro NY. In 1981, 17 percent of the felony offenders without prior records in NYC and 31 percent in Metro NY were sentenced to jail followed by probation. By 1989, these percentages rose to 31 and 51 percent, respectively. Overall, split sentences almost doubled from 9 percent in 1981 to 17 percent in 1989.

Table 21: Percentage of Felony Offenders Sentenced to Jail and Probation in 1981, 1989, and Yearly Change by Type of Arrest, Prior Record, and County\*

Record	Year	NYC	Met NY	Metro 3	Large 6	Other 44	State	NYC	Met NY	Metro 3	Large 6	Other 44	State
No Arrests	1981	7%	25%	12%	17%	22%	11%	17%	31%	??	??	14%	20%
	1989	11%	29%	21%	30%	24%	15%	31%	51%	15%	25%	34%	33%
	Chng	0.6%	?	1.7%	1.3%	?	0.6%	2.3%	3.0%	?	?	?	1.9%
1+ Arrests	1981	5%	13%	8%	14%	10%	7%	13%	23%	11%	21%	12%	14%
	1989	11%	25%	17%	27%	24%	15%	24%	43%	17%	25%	26%	27%
	Chng	0.8%	1.1%	1.6%	1.7%	1.4%	0.9%	1.5%	2.2%	?	?	?	1.5%
Felony Conv'n	1981	0%	0%	1%	0%	0%	0%	2%	??	??	??	??	2%
	1989	1%	2%	1%	3%	4%	1%	2%	2%	6%	2%	3%	2%
	Chng	?	?	0.1%	0.4%	?	?	?	-0.6%	?	-2.8%	?	?
All Defns	1981	5%	15%	7%	13%	13%	7%	12%	27%	11%	21%	13%	14%
	1989	8%	20%	14%	23%	20%	11%	19%	34%	15%	22%	24%	21%
	Chng	0.4%	?	1.2%	1.2%	?	0.5%	1.2%	1.1%	?	?	?	1.0%
No Arrests	1981	6%	19%	8%	14%	16%	12%	8%	24%	10%	16%	18%	13%
	1989	7%	25%	20%	29%	24%	15%	21%	38%	18%	28%	26%	24%
	Chng	?	?	1.4%	1.7%	?	?	2.0%	1.6%	1.4%	1.3%	0.9%	1.6%
1+ Arrests	1981	7%	18%	6%	13%	17%	11%	7%	17%	7%	14%	14%	9%
	1989	16%	30%	24%	30%	26%	21%	19%	36%	19%	27%	25%	22%
	Chng	0.9%	1.4%	2.0%	2.1%	?	0.9%	1.6%	2.0%	1.5%	1.7%	?	1.5%
Felony Conv'n	1981	0%	1%	2%	3%	3%	1%	1%	1%	1%	2%	2%	1%
	1989	1%	3%	4%	1%	3%	2%	1%	2%	3%	2%	3%	2%
	Chng	?	?	0.3%	?	?	?	?	?	0.2%	?	?	0.1%
All Defns	1981	5%	16%	6%	12%	15%	10%	6%	17%	7%	13%	14%	9%
	1989	9%	22%	19%	24%	20%	14%	14%	28%	16%	23%	21%	17%
	Chng	?	?	1.5%	1.5%	?	?	1.1%	1.2%	1.2%	1.2%	?	1.0%

\*Change is summarized by the regression slope when R sq > .40. Otherwise it is summarized by "?". Percentages are not reported when n < 50. These percentages are reported as "??".

4. *Straight Probation*

Percentages for straight probation sentences are presented in Table 22. The table shows that the percentage of felony offenders sentenced to straight probation remained unchanged for offenders arrested for VFO and OTHER offenses, but decreased sharply for offenders arrested for DRUG offenses. In 1981, 45 percent of the offenders whose first arrest was for a felony DRUG offense were sentenced to probation. This percentage decreased to 30 percent in 1989. The corresponding percentages for offenders with prior arrest records decreased from 28 to 12 percent.

Table 22: Percentage of Felony Offenders Sentenced to Straight Probation in 1981, 1989, and Yearly Change by Type of Arrest, Prior Record, and County\*

Record	Year	NYC	Met NY	Metro 3	Large 6	Other 44	State	NYC	Met NY	Metro 3	Large 6	Other 44	State
		***** VFO Arrests *****						***** Drug Arrests *****					
No Arrests	1981	45%	36%	44%	35%	37%	43%	48%	33%	??	??	54%	45%
	1989	48%	33%	46%	41%	33%	45%	31%	16%	42%	31%	22%	30%
	Chng	?	?	?	?	?	?	-2.6%	-2.4%	-5.3%	?	?	-2.2%
1+ Arrests	1981	16%	12%	20%	16%	17%	16%	29%	16%	45%	13%	43%	28%
	1989	17%	12%	28%	12%	16%	17%	13%	5%	38%	13%	15%	12%
	Chng	?	?	?	?	?	?	-2.6%	-1.5%	?	?	-2.6%	-2.4%
Felony Conv'n	1981	1%	1%	1%	4%	0%	1%	3%	??	??	??	??	3%
	1989	1%	0%	3%	3%	2%	1%	1%	1%	10%	1%	4%	1%
	Chng	?	?	?	?	?	?	-0.4%	-0.9%	-0.7%	?	?	-0.4%
All Defns	1981	21%	18%	21%	20%	21%	21%	28%	24%	45%	13%	48%	29%
	1989	19%	14%	26%	18%	18%	19%	13%	6%	35%	16%	15%	13%
	Chng	-0.4%	-0.7%	?	?	?	-0.4%	-2.2%	-2.5%	-1.7%	?	-3.1%	-2.2%
		***** Other Arrests *****						***** All Felony Arrests *****					
No Arrests	1981	64%	55%	65%	58%	56%	60%	50%	44%	55%	49%	50%	49%
	1989	64%	52%	61%	50%	54%	59%	41%	30%	49%	40%	39%	40%
	Chng	?	?	?	?	?	?	-1.6%	-1.4%	-1.2%	-0.8%	-1.2%	-1.4%
1+ Arrests	1981	25%	23%	32%	29%	30%	27%	21%	18%	27%	23%	28%	21%
	1989	24%	22%	38%	34%	32%	26%	15%	10%	34%	18%	22%	16%
	Chng	?	?	1.1%	?	0.5%	?	-0.9%	-0.8%	0.8%	?	?	-0.8%
Felony Conv'n	1981	2%	1%	3%	1%	6%	2%	2%	1%	2%	2%	3%	2%
	1989	1%	2%	4%	9%	3%	2%	1%	1%	5%	4%	3%	1%
	Chng	-0.2%	?	0.4%	?	?	-0.1%	-0.1%	?	0.4%	?	?	-0.1%
All Defns	1981	30%	29%	32%	34%	37%	31%	24%	24%	27%	27%	33%	26%
	1989	24%	25%	35%	35%	32%	26%	17%	12%	31%	22%	23%	17%
	Chng	-1.0%	?	?	?	?	-0.6%	-1.2%	-1.3%	?	?	-1.0%	-1.1%

\*Change is summarized by the regression slope when R sq > .40. Otherwise it is summarized by "?".

Percentages are not reported when n < 50. These percentages are reported as "?".

The use of straight probation sentences varied by county. The most frequent use occurred in Metro 3. In 1989, 31 percent of the felony offenders in this county were sentenced to straight probation. In contrast, 12 to 23 percent of the felony offenders in other county units were sentenced to straight probation. The relatively high use of straight probation in Metro 3 complemented its unusually low use of prison noted in the previous discussion of Figure 3. These patterns suggest that judges in Metro 3 sentenced

offenders more often to straight probation and less often to prison than did judges in other counties.

**B. Changes in Sentencing Patterns for DRUG Arrests by County**

The sentencing analyses identified changes in specific types of sentences across counties and over time. While this approach made it possible to identify changes in prison, jail, split sentences, and straight probation it did not show how changes in one type of sentence were related to changes in other types.

The sentencing analysis was concluded by simultaneously examining changes in sentencing decision within each county. This analysis was limited to felony offenders who had prior arrest records but no felony convictions, and who were arrested for DRUG offenses. The analysis focused upon DRUG charges because the average days incarcerated for DRUG arrests increased sharply during the 1980's. It ignored offenders who had prior felony convictions because most of these offenders had to be sentenced to prison as predicate felons. It ignored offenders who were arrested for the first time because there were not enough cases to make meaningful comparisons in all counties.

1. NYC

The percentage of defendants sentenced to prison, jail, split, and probation sentences are plotted against year of arrest in Figure 4. This figure shows that the percentage of probation sentences decreased while the percentages of jail and split sentences increased. The percentage of prison sentences decreased, increased, and then decreased again.

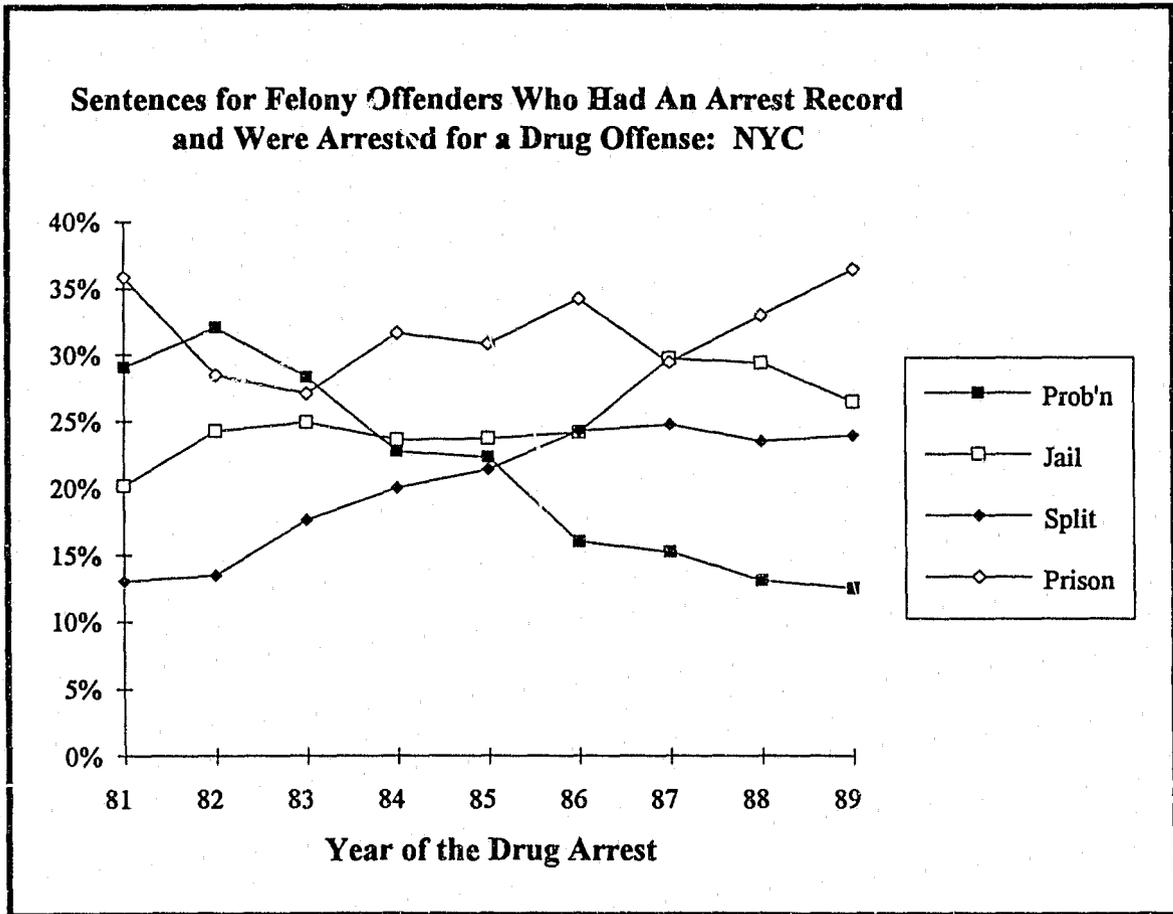


Figure 4: Percentage of Felony Offenders Who Had an Arrest Record but No Prior Felony Convictions and Who Were Arrested for a DRUG Offense: NYC

Changes in the percentage of offenders sentenced to each type of sentence are summarized in the yearly trends column in Table 23. These trends were presented in Tables 19 through 22. For NYC, they show that probation sentences decreased at 2.6 percent a year, split sentences increased at 1.5 percent a year, and jail sentences increased at .9 percent a year. No trends are presented for prison sentences because the  $R^2$  statistic for the regression of prison percentages on year of arrest was less than .40.

Table 23: Correlation Coefficients Between Different Types of Sentences Between 1981 and 1989 by County for Felony Offenders Who Had An Arrest Record But No Felony Convictions When They Were Arrested for a Felony DRUG Offense\*

County	Probation and Jail	Probation and Split	Probation and Prison	Jail and Split	Jail and Prison	Split and Prison	Yearly Trends
NYC	-0.69	-0.94	?	0.70	?	?	Prob -2.6% Split +1.5% Jail +.9%
Met NY	?	?	?	?	?	?	Split +2.2% Prob -1.5%
Metro 3	?	?	-0.67	?	?	?	Prison +1.5%
Large 6	-0.70	?	-0.81	-0.73	0.67	-0.74	
Other 44	?	?	-0.79	?	-0.72	?	Prison +3.9% Prob -2.6% Jail -1.3%

\*Relationships between different types of sentences are summarized by correlation coefficients when  $R_{sq} > .40$ . Otherwise they are summarized by "?".

The correlation coefficients within the body of the Table 23 summarize the strength of linear relationships between pairs of sentence types. They can range between -1.0 showing a perfect inverse relationship to +1.0 showing a perfect positive relationship. Question marks are presented when the  $R_{sq}$  statistic for the regression of one of these variables on the other did not exceed .40. This is equivalent to entering question marks whenever the absolute value of the correlation was less than .6486. Restricting the analysis to "large" correlations made it easier to describe the major relationships between different types of sentences.

The correlation coefficients in NYC show that probation was inversely related to jail and to split sentences, and that jail sentences were positively related to split sentences.<sup>17</sup> These patterns suggest that the judges in NYC replaced sentences to probation with sentences to jail and sentences to jail followed by probation.

<sup>17</sup>The positive relation between jail and split sentences could have arisen from the other relationships. That is, as the use of probation decreased, both the use of jail and the use of split sentences increased. The simultaneous increase in jail and split sentences induced a positive correlation between jail and split sentences.

2. *Metro NY*

The percentage of offenders sentenced to the most commonly occurring sentences in Metro NY are plotted against year of arrest in Figure 5. The figure shows that split sentences increased over time and that straight probation sentences decreased. Prison and jail sentences increased in some years but decreased in others.

There were no large correlations between different types of sentences for the 1981 to 1989 period. However, there were large correlations for the 1985 to 1989 period. Jail was inversely related to probation, and split sentences were inversely related to prison sentences (correlation equaled  $-.97$  in both cases). These correlations combined with the patterns evident in the graph suggest that starting in about 1985, judges balanced a decreasing use of probation with an increasing use of jail and balanced a decreasing use of prison with an increasing use of split sentences. This pattern was not evident in the earlier analysis of jail sentences (Table 20) because that discussion focused on changes between 1981 and 1989.

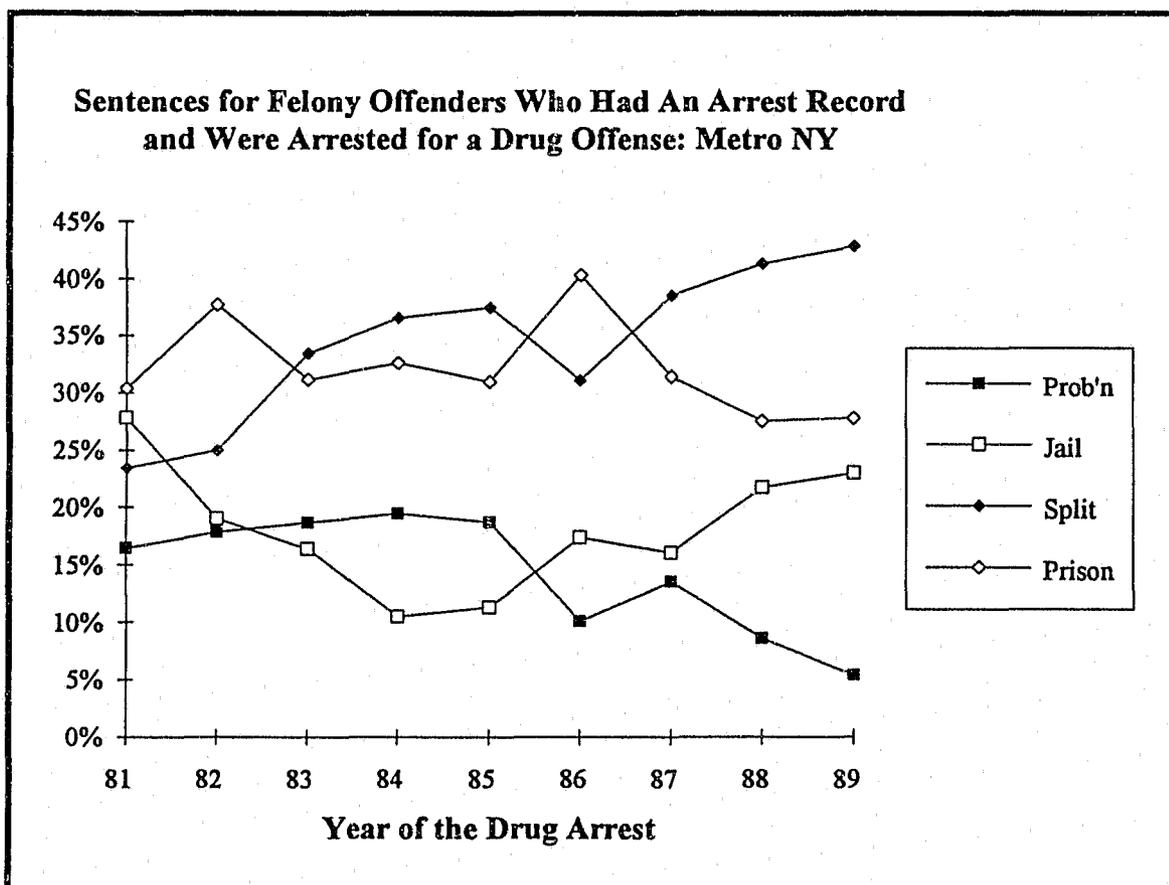


Figure 5: Percentage of Felony Offenders Who Had an Arrest Record but No Prior Felony Convictions and Who Were Arrested for a DRUG Offense: Metro NY.

3. Metro 3

Percentages for Metro 3 are presented in Figure 6. They show that prison sentences increased from 1981 until 1986, and decreased slightly from 1986 through 1989. Straight probation sentences decreased from 1981 until 1985, and then increased from 1985 until 1989. It should be noted that the use of probation sentences did not increase in any other county. These changes suggest that increases in straight probation starting in 1986 was partially balanced by decreases in use of prison sentences starting in 1987.

There were no strong relationships between split and jail sentences. Split sentences were unusually high in 1983 and 1984. Jail sentences decreased from 1985 until 1987, and then increased slightly in 1988.

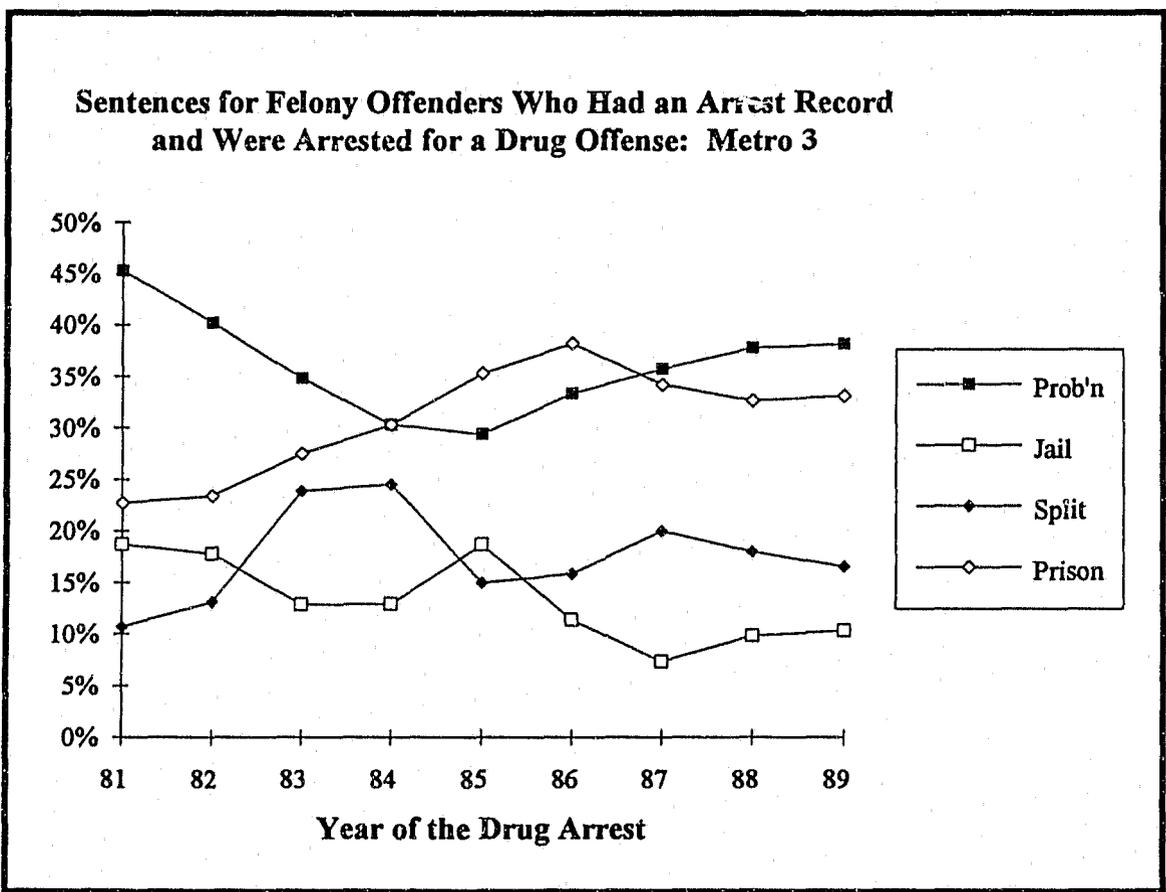


Figure 6: Percentage of Felony Offenders Who Had an Arrest Record but No Prior Felony Convictions and Who Were Arrested for a DRUG Offense: Metro 3.

4. Large 6

Data for the Large 6 are presented in Figure 7. This figure is quite complex. While no type of sentence increased or decreased uniformly through out the period, almost all types of sentences either increased then decreased or decreased then increased during the period. The fact that almost every type of sentence was inversely related to every other type may only show that as judges increased the use of one type of sentence they necessarily decreased the use of other types. It is unclear whether the large number of changes in sentencing percentages were due to changes in sentencing decisions or to sampling variability associated with relatively small numbers of cases.

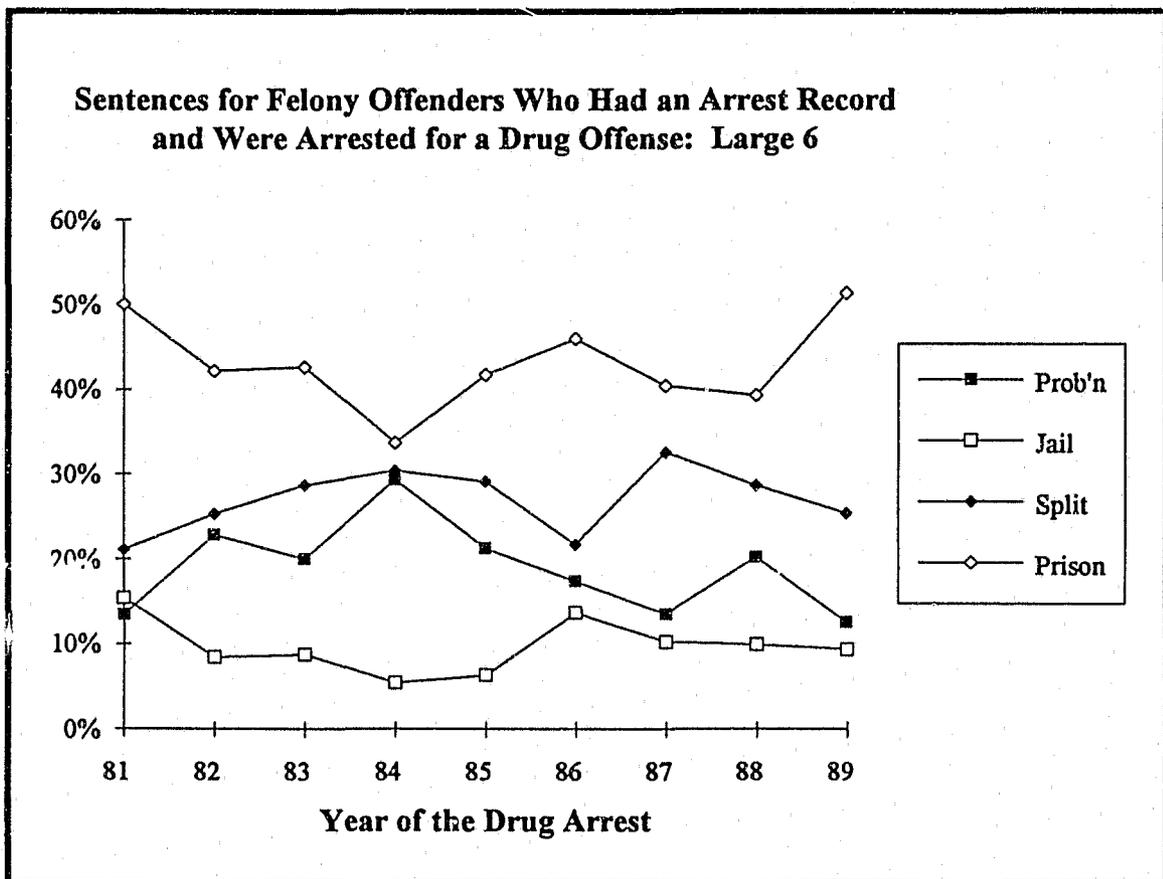


Figure 7: Percentage of Felony Offenders Who Had an Arrest Record but No Prior Felony Convictions and Who Were Arrested for a DRUG Offense: Large 6.

5. *Other 44*

Percentages for the **Other 44** are presented in Figure 8. The figure shows that prison sentences increased sharply during the period. Increases in prison sentences were accompanied by decreases in probation and jail sentences. This pattern suggests that judges got tough on **DRUG** offenders by sentencing them more often to prison and less often to jail or probation.

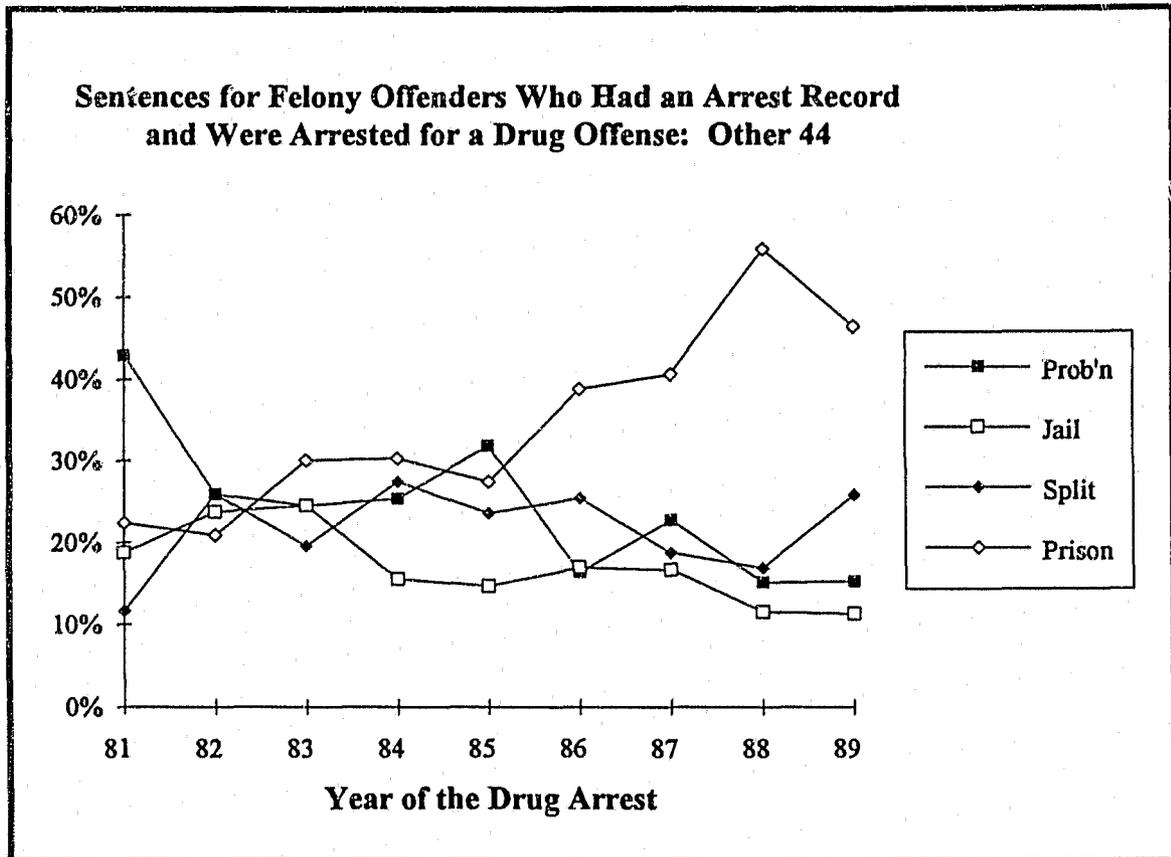


Figure 8: Percentage of Felony Offenders Who Had an Arrest Record but No Prior Felony Convictions and Were Arrested for a **DRUG** Offense: **Other 44**.

#### 6. *Summary of Changes in Judicial Sentencing Decisions for Felony Drug Offenders Who Had a Prior Arrest Record*

Judges changed the type of sentences they imposed in the 1980's, but the changes had little impact on prison populations. Judges in the most populous counties, NYC and in Metro NY, increasingly sentenced DRUG offenders to jail or jail followed by probation and decreasingly sentenced them to straight probation. Judges in the least populous counties, the Other 44, increasingly sentenced DRUG offenders to prison and decreasingly sentenced them to straight probation. Substantial increases in prison sentences hardly affected the State's prison populations, because relatively few offenders were sentenced in this county unit. Starting in about 1986, judges in Metro 3 decreased their use of prison sentences and increased their use of straight probation. This increase did not occur in any other county. This was the only county unit that exhibited a decrease in severity of sentencing decisions for DRUG offenders. This decrease also had little impact on prison populations because it did not begin until 1986, and because relatively few offenders were sentenced in this county unit.

The absence of a significant correlation between probation and prison sentences in NYC and in Metro NY combined with the presence of significant negative correlations between these sentences in Metro 3, the Large 6, and the Other 44 county units suggests that probation was used as an alternative to prison more often outside than inside the New York City area. In NYC, and to a lesser extent in Metro NY, probation appears to have been used as an alternative to split or jail sentences rather than as an alternative to prison sentences.

### VI. Summary

The 1980's experienced an unprecedented growth in prison sentences. The number of prison sentences increased from 12,134 in 1981 to 24,312 in 1989. This boom was not due to increases in the seriousness of arrest charges or to changes in sentencing practices by judges. Charge seriousness remained constant throughout this period and judges in the most populous counties of the State did not change their prison sentencing practices. The boom occurred because:

- The number of felony arrests for DRUG offenses sharply increased from 13,901 in 1981 to 50,645 in 1989. By comparison, the number of felony arrests for VFOs increased from 43,948 to 57,822 and the number of felony arrests for OTHER felony offenses increased from 56,869 to 58,389.

- Prosecutors became increasingly efficient at obtaining felony convictions for persons arrested for DRUG offenses. The percentage of felony DRUG arrests that resulted in felony conviction doubled from 26 percent in 1981 to 50 percent in 1989.<sup>18</sup>
- Increases in the number of DRUG arrests combined with increases in the rate at which DRUG cases resulted in a felony conviction changed the number and type of defendants presented to judges for sentencing. In 1981, 14 percent of the 26,192 persons convicted of felony charges had been arrested for a DRUG offense. By 1989, 52 percent of 48,105 persons convicted of felony charges had been arrested for a DRUG offense.
- The percentage of felony offenders with a prior felony conviction increased. In 1981, 18 percent of the felony offenders had a prior felony conviction. One in eight of these offenders had been arrested for a DRUG offense. By 1989, 27 percent of the felony offenders had a prior felony conviction. One in two of these offenders had been arrested for a DRUG offense.

Once differences in prior records, arrest charges, YO eligibility, and county of processing were taken into account, the percentage of felony offenders sentenced to prison remained fairly constant between 1981 and 1989 in all but the **Other 44** county unit. In this unit, the percentage of felony offenders sentenced to prison who were arrested for DRUG offenses increased from 21 percent in 1981 to 48 percent in 1989. Part of this increase was due to an increase in the average seriousness of DRUG arrests. Part of it appears to have been due to a get tough policy on DRUG offenders.

The percentage of felony offenders sentenced to straight probation dropped sharply for offenders arrested for DRUG offenses, but remained relatively unchanged for offenders arrested for VFO or OTHER types of offenses. Among felony offenders who were arrested for DRUG charges, the percentage sentenced to probation decreased from 45 percent in 1981 to 30 percent in 1989 for offenders who did not have a previous arrest record, and from 28 to 12 percent for offenders who had a prior arrest record but no prior felony convictions.

The use of straight probation varied by county. In 1989, 31 percent of the felony offenders in **Metro 3** were sentenced to probation. In contrast, 12 to 23 percent of the felony offenders in other counties were sentenced to probation. Apparently the relatively high use of straight probation in **Metro 3** was balanced by relatively low use of prison sentences.

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<sup>18</sup>The percentage of defendants convicted of a felony equals the percentage convicted of a crime or violation (presented in Table 14) multiplied by the percentage of defendants convicted of a felony who were convicted of a crime or violation (presented in Table 15).

Decreases in the use of straight probation sentences were largely balanced by increases in the use of split and jail sentences. The largest increases occurred in NYC. Here the percentage of felony offenders who were arrested for DRUG offenses and sentenced to a split sentence increased from 17 percent in 1981 to 31 percent in 1989 for offenders arrested for the first time; and from 13 to 24 percent for offenders with a prior arrest record. The corresponding percentages for jail sentences increased from 7 to 13 percent for offenders arrested for the first time, and from 20 to 26 percent for offenders with a prior arrest record.

In NYC, the decreasing use of straight probation, the increasing use of split sentences, and the consistent use of prison sentences for felony offenders arrested for DRUG charges suggests that probation was not used as an alternative to incarceration. Instead, probation appears to have been used as an alternative to jail or to split sentences. The declining use of straight probation suggests that NYC judges got tough on DRUG offenders by sentencing them to some time in jail.

Outside the New York City area, decreases in the percentage of straight probation sentences were partially balanced by increases in the use of prison sentences. Starting in about 1986, in Metro 3, decreases in the use of prison sentences were accompanied by increases in straight probation. These patterns suggest that straight probation was sometimes used as an alternative to prison.

### Discussion

The increasingly severe sanctioning of DRUG offenders in the 1980s arose in part from a belief that DRUG use and trafficking promote violence. For example, the 1991 Anti-Drug Abuse Strategy Report produced by the Governor's Statewide Anti-Drug Abuse Council (Lundine, 1991) attributed a 4 percent per year increase in the number of violent crimes known to the police to an increase in drug trafficking and drug and alcohol use.<sup>19</sup> Ironically, while prosecutors and judges increased how severely they punished persons arrested for DRUG offenses, they decreased how severely they punished persons arrested for violent felony offenses. The chances that a VFO arrest resulted in a felony conviction decreased throughout the 1980s in the most populous counties (NYC and Metro 3) of the State.

The increase in the number of DRUG offenders with prior felony convictions radically changed the impact of predicate offender laws on incarceration. In 1981, 52 percent of all felony offenders who had a prior felony conviction were arrested for a VFO and 13 percent were arrested for a DRUG offense. By 1989, 29 percent of these offenders were arrested for a VFO and 52 percent were arrested for a DRUG offense. In just nine

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<sup>19</sup>The report stated that violent offenses known to the police increased by 30 percent in the seven year period preceding 1990. Using a compound interest formula, this increase is equivalent to a 3.8 percent increase each year starting in 1983. Violent crimes included murder, forcible rape, robbery, and aggravated assault. The number of crimes reported to the police does not equal the number of arrests.

years, the primary impact of the predicate offender laws shifted from violent to DRUG crimes. It is questionable whether the framers of the predicate offender laws in 1973 intended to focus so much prison resource on non-violent offenders.

The increasing number of felony DRUG arrests combined with the increasing percentage of DRUG arrests that resulted in a felony conviction produced an increasingly large pool of males with a prior felony conviction. This increase is a major problem to the criminal justice system because these males use a disproportionate fraction of the criminal justice system's resources. Van Alstyne (1992) found that males with a prior felony conviction were arrested for felony offenses at 9 to 10 times the rate of males without a prior felony conviction. Once arrested for a felony crime, males with a prior felony conviction were 1.5 times more likely to be convicted of a felony crime than males without a prior felony conviction; they were twice as likely to be sentenced to prison.

The increasing size of the pool of predicate felons who were arrested for DRUG offenses suggests that prison overcrowding could be relieved by reducing recidivism among DRUG offenders. A good place to start would be to investigate whether some types of punishments and treatment programs are better than others at reducing recidivism among first time felony offenders. For example, it is unknown whether the expanded use of jail sentences for felony DRUG offenders that occurred in the 1980s affected recidivism rates. Probation, one of the cheapest alternatives to incarceration, has not been evaluated in New York State since 1983. Most of the alternatives to incarceration programs established in the 1980s have not been evaluated.

With few exceptions, the predicate felony offender laws in New York State make it impossible to sentence non-violent predicate DRUG offenders to anything other than prison. The Drug Treatment Alternatives-to-Prison, DTAP, demonstration program, operated by the Brooklyn District Attorney's Office, offers a novel way of getting around these laws. Under this program, the district attorney can offer to dismiss certain felony drug charges against defendants who have prior non-violent felony convictions if they successfully complete an intensive drug treatment program. Rather than taking a chance of being convicted and going to prison, defendants get the chance of remaining in the community and cooperating with a drug treatment program. Hopefully, this program, or others like it, can be developed to sanction non-violent DRUG offenders in a way that meets the public's need for retribution, that helps the offender deal with his/her DRUG problem, that decreases recidivism, that promotes public safety, and that saves the cost of imprisonment. The DTAP program is currently being evaluated. Understanding how sanctions affect recidivism, and developing new sanctions that make it possible to punish defendants without necessarily sentencing them to prison, could go a long way to relieving the over crowding in New York State's prisons.

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