

MEASURING THE IMPACT OF LEGISLATIVE CHANGE:

THE 1973 NEW YORK STATE DRUG LAWS

by

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A. The 1973 New York State Drug Laws

In 1973, the New York State Legislature enacted laws which radically changed the State's traditional policy toward the problem of drug abuse. These laws were designed to deal with the problem of rising street crime committed by narcotics addicts. The laws introduced long-term mandatory prison sentences for many types of drug offenses, and restricted the scope of plea bargaining on the part of defendants indicted for serious drug felonies.

Prior to 1973, the general policy of New York State had been to encourage the diversion of lower-level users of illegal drugs to drug treatment programs, while concentrating criminal penalties on higher-level drug dealers. The new laws, however, were specifically aimed at street-level drug dealers and addicts. The goal of the legislation was to reduce drug-related crime by deterring drug activity at the street level.

Under the new laws, many drug offenses were reclassified upward as class A felonies under New York State law. Prior to 1973, class A felonies included only the most serious offenses, such as homicide and kidnapping. Under the new laws, the sale of any amount of a narcotic drug was reclassified upward as a class A felony.

*Drug Law Evaluation Project, The Association of the Bar of the City of New York and the Drug Abuse Council, Inc.

The possession of one ounce or more of a narcotic drug was also reclassified upward as a class A felony.

The laws further specified that any defendant convicted of a class A drug felony should receive a mandatory State prison sentence, regardless of his or her age or prior conviction record. The prison sentences were to be indeterminate in nature, with varying minimum lengths, but with mandatory lifetime maximums. On release from confinement, all defendants sentenced for class A drug felonies were to be subject to lifetime parole supervision. Under the terms of the new laws, the existing penalties for marijuana offenses remained unchanged.

Besides introducing mandatory prison terms, the laws specified that defendants indicted for class A drug felonies should not be permitted to plea bargain to a charge below the class A level, and thereby to avoid a prison sentence on conviction. In this respect, the penalties for many kinds of drug offenses were made more severe than the existing penalties for crimes such as homicide.

Since the new laws made plea bargaining less attractive and less amenable to defendants indicted for drug felonies, it was expected that drug defendants would take their cases to trial more frequently than before. Accordingly, the Legislature specified that additional judgeships should be created to cope with the anticipated increase

in the workload faced by the courts. Under the 1973 legislation, 49 new judgeships were created, 31 of which were allocated to New York City.

The new drug laws generated considerable controversy throughout the State, especially among officials of the criminal justice system. A majority of judges believed that the harsh penalties embodied in the laws were inappropriate for street-level drug sellers and addicts. A number of judges were opposed to the restrictions placed upon their sentencing discretion under the new laws. Many prosecutors, particularly in New York City, believed that the laws forced them to expend their resources on what they considered to be relatively minor offenses. Finally, the New York City Police Department was opposed to a policy of making mass street-level drug arrests. In 1971, the Department had officially abandoned its policy of making mass arrests because, in the Department's view, such a policy did not have a long-term impact on the narcotic trade and, in addition, created serious workload problems for the courts.

In spite of widespread opposition to the new laws, however, some district attorneys and police officials expressed support for the new legislation and believed that the severe penalties were appropriate in the light of the seriousness of the State's drug abuse problem.

Examples of the Reclassification of
Drug Crimes to High Degree Felonies

CRIME	ALLOWABLE PENALTY					
	CLASS	NEW LAW		CLASS	OLD LAW	
		MINIMUM SENTENCE	MAXIMUM SENTENCE		MINIMUM SENTENCE	MAXIMUM SENTENCE
1. Sale 1 oz. heroin	A-I	15-life	25-life	C	Probation	5-15 yrs.
2. Sale 5 gm. stimulant	A-II	6-life	8 ¹ / ₃ -life	D	Probation	2 ¹ / ₃ -7 yrs.
3. Sale of less than 1/8 oz. of a narcotic drug	A-III	1-life	8 ¹ / ₃ -life	C	Probation	5-15 yrs.
4. Possession 1-5 mg. L.S.D. (similar for comparable amounts of depressants, stimulants, etc.)	C	1-3 yrs.	5-15 yrs.	A-Misd.	Uncond. Discharge	1 yr.
5. Sale 25 Marijuana cigarettes	C	Probation	5-15 yrs.	C	Probation	5-15 yrs.

NOTES:

1. The minimum sentence is the most lenient sentence that could be issued for the offense. The maximum sentence is the harshest sentence that can be imposed.
2. "Life" indicates mandatory lifetime parole after serving at least the minimum term in prison. After serving the minimum term in prison, the offender's future is in the hands of the State Board of Parole. Parole may be granted at any time after the minimum term has been served. There is no such thing as a definite lifetime prison sentence for any crime in New York State.
3. Offenses involving marijuana were not reclassified by the 1973 laws. Neither were penalties for marijuana offenses changed.
4. A second sale of small amounts of LSD or depressants is now a class A-III felony while first offenses are class C or D felonies.

B. The Drug Law Evaluation Project: Hypotheses Used as a Basis for Evaluating the Impact of the 1973 Laws

The Drug Law Evaluation Project of The Association of the Bar of the City of New York was established in 1974 with the goal of assessing what impact the new legislation would have on the problem of drug abuse in New York State and on the State's criminal justice system.

In evaluating the laws, the Project developed a number of hypotheses about the kinds of consequences which might be expected to occur if the laws were indeed successful in achieving their objectives. These hypotheses included the following:

Firstly, that the risk of imprisonment facing a defendant indicted and convicted of a drug felony would increase and that the absolute number of defendants sentenced to prison for drug offenses would rise.

Secondly, that there would be an increase in the average length of prison terms imposed on felony drug offenders.

Thirdly, that overall levels of illegal drug use in the State would show a decline, or at least be contained, and that the threat of prosecution would encourage narcotics addicts to enroll in treatment programs in increasing numbers..

In addition to these central hypotheses, the Project developed a number of subsidiary hypotheses about probable or possible consequences of the new laws. It was hypothesized, for example, that non-drug crime attributable to drug

users would decline, that police departments throughout the State would step-up their enforcement activities against narcotics offenders, and that prosecutors would devote more resources to narcotics prosecution. Finally, it was hypothesized that drug defendants would go to trial in increasing numbers, so that the length of time required to process an average drug case would increase.

C. Data Sources and Research Design

Because of the complexity of the issues which the Project chose to examine, a very broad, eclectic methodology was employed, and a variety of different types of data were examined in attempting to test the hypotheses. In the area of criminal justice, we had to rely to a great extent upon aggregate, official statistics for information on drug arrests, indictments, convictions and sentences. These data were available from a number of official sources, including the New York State Division of Criminal Justice Services in Albany, the New York City Police Department, and the Administrative Office of the New York City criminal courts.

From these sources, we were also able to obtain data on trial rates, guilty plea rates and dismissal rates

for drug offenses, and data on the length of time required to process drug cases through the courts. Most of these data were examined within a simple "pre-law - post-law" framework in order to measure changes which occurred after the laws took effect. We had hoped to employ a more sophisticated time series analysis of the data, but were unable to obtain a sufficient number of data-points for the pre-1973 data.

In addition to relying upon official data, the Project undertook its own sample survey of drug cases disposed of in the New York State courts. Data were obtained on about 1,600 individuals who were indicted and convicted of drug felonies throughout the State between 1972 and 1975 (about 10% of the universe). Demographic data on these individuals was gathered from such sources as pre-sentence reports from Probation Department files. These data were used to examine such questions as whether a large number of younger offenders or offenders without criminal records were being sentenced to prison under the new mandatory sentencing provisions. We found that there had been no significant increase in the number of prison sentences imposed on youthful offenders or on offenders without prior records.

In order to examine whether non-drug crime committed by narcotics users had been affected by the new laws, the Project collected data from the New York City Department of Correction's Prison Detoxification Program. Under this program, all persons arrested in New York City who are unable to post bail and who are found to be users of narcotics are sent to the Detoxification Unit prior to being returned to the regular jail population. By examining data from this program, we were able to monitor whether any change had occurred in the percentage of burglary and robbery arrestees who were narcotics users. These data were used as a rough basis for estimating changes in the proportion of non-drug crime attributable to users of narcotics.

In the area of drug abuse, the Project found from a survey of existing drug abuse research that there exist no direct means of measuring levels of narcotics use or of measuring the actual numbers of narcotics addicts in any given jurisdiction. The most sophisticated drug abuse research to date has relied upon selected indicators which are thought to provide the best estimates of actual trends in narcotics use. The most commonly used indicators include statistics of serum hepatitis cases (available from the Center for Disease Control in Atlanta), statistics of narcotic drug mentions in hospital emergency rooms (available from the Drug Abuse Warning Network), and

statistics of narcotic-related deaths (available from State and local Departments of Health). These statistics are currently available for most major cities in the country.

These indicators only provide measures of "crisis situations" associated with narcotics use, such as disease or overdose. They cannot, therefore, be used as accurate measures of actual levels of narcotics use, but, when analyzed as a group, they provide the best available estimates of actual trends in narcotics use at any given time.

In trying to measure the impact of the 1973 laws on trends in narcotics use in New York State, the Project has relied heavily on available statistics for each of these major indicators. Data on these indicators was also collected for a number of "comparison" cities in the Northeast including Washington, Philadelphia and Baltimore. These and other cities were selected as "controls", so that the Project could determine whether observed trends in narcotics use in New York City were significantly different from trends in other cities in the region. Wherever possible, time series data for each of the indicators was collected from 1970 onwards. Trends in the data were analyzed by means of Interrupted Time Series Analysis.

In addition to relying upon quantitative data, the Project staff conducted a large number of interviews with judges, law enforcement officials and drug treatment program directors, both in New York City and in upstate communities such as Buffalo, Albany and Rochester. Respondents were asked to state their impressions about the impact of the 1973 laws both on the criminal justice system and on drug activity at all levels.

The eclectic methodology adopted by the Project was made necessary by the many complex problems involved in attempting to measure the impact of legislative change. In evaluating the drug laws, we were required to monitor the activities of several hundred different criminal justice agencies across the State. We also had to analyze the impact of the laws on the addict population itself. These tasks posed problems not usually confronted by the more traditional kinds of evaluative research. The researcher who wishes to evaluate the impact of a prison rehabilitation program, for example, is able to utilize a sophisticated research design, employing carefully selected control and experimental groups. In such a case, the researcher is able to collect data by means of direct observation, and is usually able to obtain adequate data both prior to and after the implementation of the program. The researcher in this case can also control both the timing of the

program's implementation and the degree to which the program is actually implemented. In evaluating legislative change, however, the opportunity for carefully structured research design or for direct observation of target populations is far more limited.

D. Findings of the Evaluation

The Project's findings to date indicate that the 1973 laws did not have their expected impact on the State's criminal justice system. During 1972 and 1973, in fact, the number of drug defendants sentenced to prison or local jail actually declined from the 1972 level. In 1976, the number of drug defendants sentenced to prison increased, but still did not rise above 1972 levels. As a result, fewer prison sentences were imposed on drug offenders during the first three years that the laws were in operation than would have been expected if 1972 disposition patterns had been maintained (see Table I).

One of the major factors responsible for this situation was that, as expected, drug defendants went to trial in much larger numbers than before. In 1972, for example, about 6% of all drug felony indictments in New York City were disposed of by trial. After 1973, about 23% of all drug felony defendants took their cases to trial. The increase in the trial rate was particularly noticeable

TABLE I

DRUG CASES IN NEW YORK STATE, 1972-1976*

	<u>1972</u>	<u>1973</u>	<u>1974</u>	<u>1975</u>	<u>Jan-June 1976</u>
Felony Arrests	19,269	15,594	17,654	15,523	8,166
Indictments	7,528	5,969	5,581**	4,276**	2,073**
Dispositions	6,991	5,580	3,815**	3,957**	2,173**
Convictions	6,033	4,739	3,085	3,147	1,742
Prison & Jail Sentences	2,039	1,555	1,074	1,369	954
(As a percentage of convictions)	33.8%	32.8%	34.8%	43.5%	55.3%
(As a percentage of arrests)	10.6%	10.0%	6.1%	8.8%	11.7%

among defendants indicted for new class A felonies. The rise in the number of drug trials in New York City was accompanied by an increase in the average length of time taken to dispose of new law drug felonies from about six months in 1974 to about one year in 1976.

Because of the increased trial activity, there was a sharp fall-off in the annual number of drug cases disposed of by the courts. This was particularly true of class A indictments to which the mandatory sentencing provisions of the new laws applied. During 1974 and 1975, fewer than one half of all class A indictments were disposed of by the courts. Only in the second half of 1976 did the backlog

* Source: New York State Division of Criminal Justice Services, except asterisked figures which are estimates by the Drug Law Evaluation Project.

of drug cases in the New York City courts begin to level off. Even the additional judgeships created under the 1973 legislation proved insufficient to cope with the increased workload confronting the courts.

In addition to the problems faced by the courts, the Project found no evidence that either police departments or district attorneys stepped up their enforcement activities against narcotics offenders after the 1973 laws took effect. In New York City, in fact, the number of felony drug arrests and indictments actually declined from 1972 levels.

Because of these factors, the overall number of drug convictions in New York State actually declined after the new laws came into effect. In 1972, more than 6,000 drug convictions were obtained in the State's superior courts. After 1973, this figure fell to an annual average of about 3,000. As Table I indicates, the risk of incarceration facing a convicted drug defendant increased from about 33% in 1972 to more than 55% in the first half of 1976 - a direct result of the mandatory sentencing provisions. However, the decline in the overall number of drug convictions has considerably diluted whatever impact the new laws may have had.

E. Implications

Because of the problems encountered by the courts in implementing the 1973 legislation, the issue is raised of whether the new laws have actually been put to a fair test. Perhaps the major finding of the Project so far is that mandatory sentencing laws of this kind may undermine the plea bargaining system on which the smooth operation of the courts depends. If such laws leave the defendant too little incentive to plead guilty, they may create implementation problems for the courts and have a reverse impact on sentencing patterns as a whole.



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