



**Board of Directors**

Daniel K. Mayers  
*Chairman*  
Elizabeth Bartholet  
*Vice Chair*  
Eric D. Balber  
Derrick Cephas  
Suzanne B. Cusack  
Stephen M. Cutler  
Edward J. Davis  
Jason Flom  
Mary Beth Forshaw  
Diana R. Gordon  
Brad S. Karp  
Richard C. Lee  
Doug Liman  
Elaine H. Mandelbaum  
Michael Meltsner  
Mark C. Morrill  
Mary E. Mulligan  
William C. Paley  
Dallas Pell  
Sandra Ruiz Butter  
Ed Shaw  
Jane Velez

**Trustee Emeritus**

Allan Rosenfield, MD

**Founding Chairman**

Arthur L. Liman  
*From 1972 to 1997*

**Executive Staff**

Paul N. Samuels  
*Director and President*  
Catherine H. O'Neill  
*Senior Vice President*  
Anita R. Marton  
*Vice President*  
Martha R. Acero  
*Vice President/CFO*  
Sally Friedman  
*Legal Director*

**DRUG LAW REFORM 2009 – DRAMATIC COSTS SAVINGS FOR NEW YORK STATE**

**Executive Summary**

Despite the fact that an astonishing 70-80% of individuals involved in the criminal justice system have a drug or alcohol problem, drug sentencing reform efforts to-date have not enabled *even one* additional addicted individual to be sent to community-based treatment instead of prison. These reforms have provided relief from some of the harshest provisions of the Rockefeller Drug laws by changing the length of sentences individuals must serve for drug convictions and, as a result, as of October 2008, have saved New York approximately \$99.22 million.<sup>i</sup> However, the reforms did not give judges any discretion to divert any addicted individuals from prison to treatment or provide any other mechanism to expand use of mandated community-based treatment for addicted individuals.

Numerous studies have indicated that treatment is more effective than prison at reducing alcohol and drug use and crime, and less expensive than prison. Thus, by reforming its drug laws so that judges have the discretion to send individuals to treatment instead of prison, New York would increase public safety and have a fairer and more effective and cost-efficient criminal justice system. But just how much would New York State save by reforming the drug laws? This report answers this question which, given the state's current fiscal plight, looms more important than ever.

In 2002, the Legal Action Center issued a report that found that for every individual charged with a second felony drug offense diverted from prison into community-based treatment, New York State could save at least \$30,666 to \$74,243, averaging approximately \$52,000 a person.<sup>ii</sup> There have been several changes since we issued our report in 2002, thus prompting our reexamination of costs savings from drug law reform. New York's crime rates and prison census have gone down, resulting in higher prison costs per person incarcerated. Treatment costs have also risen, though not as high or fast as prison costs. And New York's fiscal climate has grown increasingly grim.

**IN SUM, IN 2008: NEW YORK STATE COULD SAVE \$267,660,000 A YEAR WHEN DRUG LAW REFORM IS FULLY OPERATIONAL.**

**1. Individuals Charged with Second Felony Drug Offenses with No Prior Violent Felony Predicate**

- For every such person charged with a second felony drug offense diverted from prison to community-based treatment, New York would save \$62,492 a year.<sup>iii</sup> 2,359 of these individuals were sentenced to prison in 2007.
- If only 60% – or 1,415 – of these individuals were diverted into community-based treatment, New York state would save \$88,451,000 a year.

**2. Individuals Charged with Second Felony Non-Drug, Non-Violent, Non-Sex Offenses with No Violent Felony Predicate**

- For every such person charged with a second non-drug, non-violent, non-sex offense diverted from prison to community-based treatment, New York State would save \$88,892 a year.<sup>iv</sup> 1,529 of these individuals were sentenced to prison in 2007.

**New York**

225 Varick Street New York, New York 10014  
Phone: 212-243-1313 Fax: 212-675-0286  
E-mail: lacinfo@lac.org

**Washington**

236 Massachusetts Avenue, NE Suite 505 Washington, DC 20002  
Phone: 202-544-5478 Fax: 202-544-5712  
Email: lacinfo@lac-dc.org

- If only 60% – or 917 – of these individuals were diverted into community-based treatment, New York State would save \$81,550,000 a year.

**COMBINING CATEGORIES 1 AND 2 ABOVE, NEW YORK WOULD SAVE \$170,001,000 A YEAR IF 60% – OR 2,332 – OF THE 3,888 INDIVIDUALS CHARGED WITH SECOND NON-VIOLENT, NON-SEX OFFENSES WITH NO VIOLENT FELONY PREDICATE WERE DIVERTED FROM PRISON TO COMMUNITY-BASED TREATMENT.<sup>v</sup>**

### **3. Individuals Charged with Non-Violent, Non-Sex Offenses with a Violent Predicate Offense**

- For every such person charged with a second non-sex, non-violent (drug and non-drug) offense diverted from prison to community-based treatment, New York State would save \$75,987. 2,142 of these individuals were sentenced to prison in 2007.
- If only 60% – or 1,285 – of these individuals were diverted into community-based treatment, New York State would save \$97,659,000 a year.

**COMBINING CATEGORIES 1, 2 AND 3 ABOVE, NEW YORK STATE WOULD SAVE APPROXIMATELY \$267,660,000 A YEAR IF 60% – OR 3,618 – OF THE 6,030 INDIVIDUALS CHARGED WITH SECOND NON-VIOLENT, NON-SEX OFFENSES REGARDLESS OF THE NATURE OF THE PREDICATE OFFENSE WERE DIVERTED FROM PRISON TO COMMUNITY-BASED TREATMENT.**

Our report focuses on the cost savings associated with diverting individuals charged with second felony offenses from prison to community-based treatment, as they are the vast majority of individuals sent to prison under current law and would be the largest population diverted into treatment if the laws are reformed.<sup>vi</sup> The report excludes individuals charged with Class A felonies. These savings will only be completely realized once drug law reform is fully operational. Because the average length of sentence is 2.4 years for individuals with second felony drug offenses, and 3 years for individuals serving non-drug, non-violent, non-sex second felony offenses, full drug law reform savings will be achieved in approximately 3 - 4 years. **The full savings will only be generated if the operational costs of prison are reduced, which could occur if entire prisons or certain sections of these facilities are closed down.** If a portion of these savings were invested in further expansion of drug and alcohol treatment, then additional savings could be achieved.

We have broken our savings calculations into 3 categories – 1) savings associated with diverting individuals convicted of second felony drug offenses who have had no prior violent felony convictions, 2) savings associated with diverting individuals convicted of second non-drug, non-violent, non-sex offenses who have had no prior violent felony convictions (we also added these categories together to come with a combined savings total), and 3) savings associated with diverting individuals in category 2 (those convicted of non-violent, non-sex offenses) but with violent predicates. We then added all three categories together, to reach a total savings of \$270,279,000. From a public health perspective, all addicted individuals involved in the criminal justice system should, when appropriate, be given an opportunity to receive community-based drug treatment. However, given political realities, we have limited this cost saving analysis to those individuals charged with drug and other non-violent, non-sex crimes.

To calculate the cost savings of sentencing reform, we have relied heavily on methodology and statistics taken from three reports -- the *DTAP Sixteenth Annual Report*, the Columbia Center for Addiction and Substance Abuse's (CASA) *Crossing the Bridge: An Evaluation of the Drug Treatment Alternative-to-Prison (DTAP) Program*, and *A Benefit-Cost Analysis of the King's County District Attorney's Office Drug Treatment Alternative to Prison (DTAP) Program*. As with the previous study, this calculation includes savings generated by the elimination of costs associated with incarceration and savings related to reduced health care costs and welfare rolls, increased tax contributions, as well as reduced recidivism and incarceration. However, unlike our previous study, it also includes foster care savings. It does not include savings that would result from a reduction in crime and increased local economic benefits

resulting from higher employment and increased wages, as those numbers are not available to us. Thus, the savings associated with diverting these individuals into treatment is even higher than what we have reported. Additionally, the treatment completion rates that we are using are very conservative and our calculations do not include savings to cities and counties as most individuals incarcerated for second felony offenses spend a percentage of their sentence in local facilities. Furthermore, we did not include the savings that could be accrued from diverting individuals with first-time B felony offenses, a population that we believe should be probation eligible.

## **BACKGROUND – THE PROBLEM**

Chemical dependence is one of our State's most serious public health problems with enormous social and economic costs to individuals, families, communities, government, and society as a whole:

- Untreated alcohol and drug addiction drains the U.S. economy of at least \$346 billion per year.<sup>vii</sup> Seventy-five percent of people with alcohol and drug problems are employed, and their problems cost employers more than \$144 billion annually.<sup>viii</sup> Alcoholism alone is responsible for 500 million lost work days each year.<sup>ix</sup> Individuals with untreated drug and alcohol problems, employed or not, compound their costs to society when they become chronic consumers of criminal justice, public health, and social welfare resources.
- Untreated addiction places an enormous burden on the nation's health care system. Nearly 1.3 million emergency department visits in 2004 were related to harmful drug use, and that figure does not include uncounted visits related to alcohol alone.<sup>x</sup> Approximately 120,000 deaths each year are due to harmful drug and alcohol use in the U.S.<sup>xi</sup>; however this figure is a drastic underestimate since it excludes deaths from associated diseases such as drug injection-transmitted HIV/AIDS, and drug-related accidents and homicides.<sup>xii</sup> Drug-related homicides alone accounted for 14,860 deaths in 2005.<sup>xiii</sup>
- Addiction affects one in ten Americans and one in four children. In 2007, the National Survey on Drug Use and Health reported that an estimated 23.2 million Americans aged 12 or older, or 9.0 percent of Americans in that age group, needed treatment for substance use disorders.<sup>xiv</sup> These numbers are conservative since they do not count homeless, incarcerated, and hospitalized populations.
- According to a February 2001 report by OASAS, 70% of all individuals in the custody of DOCS are subsequently identified as addicted.

Numerous studies have proven that mandatory drug and alcohol treatment is cost effective, reduces recidivism and enhances public safety:

- The Brooklyn District Attorney's office estimates its DTAP program has saved \$45.1 million in correction, health care, public assistance and recidivism costs, combined with tax revenues generated by DTAP graduates. A report from the National Center on Addiction and Substance Abuse at Columbia University, found that, compared to a matched group, DTAP participants are 67% less likely to return to prison two years after leaving the program, and graduates had re-arrest rates that were 33% lower; had re-conviction rates that were 45% lower; and were 87% less likely to return to prison and three and one-half times likelier to be employed.<sup>xv</sup>
- According to a 2006 recent study of the impact of California's Proposition 36 conducted by the Justice Policy Institute, California reduced its drug-possession prison population by over 34%, while at the same time experiencing a dramatic drop in violent crime. This study follows one by UCLA that showed that Proposition 36 saves California \$2.50 for every dollar invested in the program. Over a 30-month follow-up period, this represented a savings to state and local government of \$173.3 million.

- According to a meta-analysis conducted on 78 studies of drug treatment conducted between 1965 and 1996, “drug abuse treatment has both a statistically significant and a clinically meaningful effect in reducing drug use and crime....”<sup>xvi</sup>

## **DRUG LAW REFORM EFFORTS**

Despite the fact that numerous studies have indicated that treatment is cheaper and more effective at reducing alcohol and drug use and crime than prison, thousands of non-violent individuals who have no substantial role in the drug trade but who use or sell small quantities of drugs to support their own habits are locked up every year. Drug law reforms efforts to date, while reducing sentences for some drug offenses, have done nothing to expand the use of mandated community-based treatment for addicted individuals. New York’s Rockefeller-era drug laws have continued to deprive children of their parents, wasted enormous human and financial resources, and failed to address effectively the addiction that underlies most drug offenses. These laws have had a particularly onerous impact on communities of color. Although their rates of drug use are similar to those of whites, African Americans and Latinos comprise over 91% of the drug offenders in New York State prisons.

Until recently, drug reform efforts focused on giving judges discretion to divert addicted individuals charged or convicted of drug crimes from prison to community-based treatment. However there has been a growing awareness that if the important goals of drug law sentencing reform – increased public safety and a fairer and more effective and cost-efficient criminal justice system – are to be fully achieved, then a more expansive view of sentencing reform is needed. The Second Felony Offender law, one of the two sets of laws enacted in the 1970’s that are known as the Rockefeller Drug Laws, removed discretion from judges in sentencing decisions and requires prison time for anyone convicted of a second felony offense, not just those individuals convicted of drug crimes. Thus the Legal Action Center and other advocates have been urging that judges should have the discretion to send to community-based treatment not only individuals who are addicted and charged or convicted of drug offenses; but also those who are addicted and charged or convicted of non-violent offenses other than drug offenses.

As noted above, from a public health perspective, all addicted individuals involved in the criminal justice system should, when appropriate, be given an opportunity to receive community-based drug treatment. However, given political realities, this cost saving analysis has been limited to those individuals charged with drug and other non-violent, non-sex crimes.

## **METHODOLOGY**

As noted above, our analysis relies heavily on the methodology and statistics developed in three reports - the *DTAP Sixteenth Annual Report*, the Columbia Center for Addiction and Substance Abuse’s (CASA) *Crossing the Bridge: An Evaluation of the Drug Treatment Alternative-to-Prison (DTAP) Program*, and *A Benefit-Cost Analysis of the King’s County District Attorney’s Office Drug Treatment Alternative to Prison (DTAP) Program*. We also relied on the methodology utilized by the Center for Court Innovation, entitled *Cost-Benefit Analysis of the Brooklyn Treatment Court*, and utilized a report issued by the Erie County District Attorney that focuses on the Buffalo Drug Court. These reports based their analyses on the actual performance of program participants. The Center for Court Innovation report provided the most detailed explanation of the calculations and assumptions they made in arriving at the savings generated by the Brooklyn Treatment Court. We used their formula for calculating criminal justice costs and savings (adjusting for a number of variables described below). The Center for Court Innovation examined the savings associated with avoiding incarceration costs but not any other long-term post-release savings. Both the DTAP program and Buffalo Drug Court included some of these post-release savings: those relating to health care, welfare, increased tax contributions and decreased incarceration.

As discussed in the attached detailed methodology, in the context of this report, criminal justice savings per inmate resulting from sentencing reform is defined as the average cost of treating an individual for drug dependency, subtracted from the cost of incarcerating the individual.

Our calculations of savings associated with avoidance of incarceration costs included the following variables: the cost of incarceration in state prison and the length of prison sentences; cost of treatment; numbers of individuals diverted; and percentage of individuals who complete their mandated treatment successfully thereby satisfying their obligations to the criminal justice system. We estimated that approximately 60% of individuals charged with non-violent crimes would actually be diverted to community-based treatment. This is because, while it is estimated that 70-80% of individuals in DOCS facilities have drug problems, judges will no doubt not be willing to divert all these individuals into treatment, and some addicted individuals will not be interested in going to treatment.

To calculate net savings, gross savings from reduced incarceration must be reduced by the additional costs associated with diverting individuals into community-based treatment. This includes the cost of treatment (for individuals who successfully complete treatment as well as those who do not), the length of treatment, and graduation rates. We also included the extra operational costs associated with administering a diversion program, including court costs as well as jail costs. Our calculation of post-release savings also include savings related to reduced health care costs and lower welfare rolls, decreased burden on the foster care system, increased tax contributions, and reduced re-incarceration (but not all savings associated with a reduction in crime and increased local economic health benefits resulting from higher employment and increased wages, as these numbers were not available to us).

## **CONCLUSION**

This report demonstrates that reform of the Rockefeller Drug and Second Felony Offender laws, which would send an increased number of non-violent addicted individuals to community-based treatment instead of incarceration, is a win-win situation for the criminal justice system, for the people of the State of New York and for individuals whose criminality is driven at least in part by their addiction. This report shows giving non-violent addicted offenders the opportunity to be diverted into community-based treatment will save New York State many tens of millions of dollars every year.

New York State could save approximately **270,279,000 A YEAR** when drug law reform is fully operational by diverting non-violent addicted individuals from prison to treatment. This is on top of the approximately \$99.22 million New York has already saved with drug reform efforts to-date. Studies have shown that treatment is more effective at reducing serious crimes committed against people and property by drug addicted individuals than mandatory minimum sentences. This report shows that it is considerably less expensive as well.

## METHODOLOGY

As noted, in the context of this report, criminal justice savings per inmate resulting from sentencing reform is defined as the average cost of treating an individual for drug dependency, subtracted from the cost of incarcerating the individual. The average savings for New York State per inmate diverted to drug treatment can therefore be defined as:

$$\text{Savings} = (\text{Cost of Imprisonment} - \text{Cost of Treatment})$$

Cost of Imprisonment is defined as the annual cost of housing an inmate in a New York State prison multiplied by the average sentence served by a newly diversion-eligible individual. Cost of Treatment is defined as the average cost of treatment in New York multiplied by the average length of time spent in treatment by a graduate before successfully completing the program as well as the administrative costs of running a drug court/DTAP program in New York State. A more detailed explanation of these figures is provided in the next section.

To define the total potential savings for New York, we multiplied our savings estimate per inmate by the number of inmates who would have been eligible for diversion into treatment in 2007, excluding a certain percentage who either did not have a drug problem or who would not have chosen to be diverted into treatment. We then multiplied this savings by the average rate of graduation for drug treatment programs.

Additionally, in any drug treatment program, there will inevitably be a certain percentage of non-completers, which would impose additional costs on any diversion program. For the purposes of this report, we therefore subtracted the cost of non-completion from our total estimated savings.

We defined the cost of failure as:

$$\text{Cost of Failure} = [(\text{Rate of non-completion}) \times (\text{\#of Inmates Eligible for Diversion})] \times \{[(\text{cost of DTAP}) \times (\text{Avg. Time to Failure})] + [(\text{Cost of Prison}) \times (\text{Avg. Time in Prison})]\} + (\text{Cost of Court Processing and pre-adjudication detention})$$

Finally, we added to this calculation the estimated savings to New York State resulting from reduced dependence of graduates on public assistance, increased tax contribution resulting from employment, reduced health care costs and reduced recidivism. We termed these savings Collateral Benefits. Therefore, the total savings are defined as:

$$\text{Savings} = [\text{Cost of Imprisonment} - (\text{Cost of Treatment} \times \text{Rate of Graduation}) - (\text{Cost of Failure} \times (1 - \text{Rate of Graduation})) + (\text{Collateral Benefits} \times \text{Rate of Graduation}) \times (\text{\# of Inmates Eligible for Diversion} \times \text{Percentage Diverted})]$$

### 1. The Cost of Incarceration

The average cost of incarceration per individual per year in 2007 was \$44,000. The 2008 state budget allocated \$2.7 billion in state operations for the New York Department of Corrections. As of October 9, 2008, there were 61,260 individuals in DOCS facilities. This comes to \$44,000 per inmate per year.

Because the average length of sentence for individuals with second felony drug offenses is 2.4 years, and 3 years for individuals serving non-drug, non-violent, non-sex second felony offenses, full drug law reform savings will be achieved in approximately 3 - 4 years.

The average cost of incarcerating individuals with second-felony B, C, D, and E drug offenses is **\$105,600 per individual.**

The average cost of incarcerating individuals with second-felony B, C, D, and E non-violent, non-sex, non-drug offenses is **\$132,000 per individual**

## 2. Cost of Treatment

According to OASAS, the estimate for cost of treatment provided to individuals referred to treatment by the criminal justice system is \$30,000.

## 3. DTAP Screening Costs

Zarkin and Dunlap, in their study of the Brooklyn DTAP, provide a detailed analysis of the court-processing costs associated with DTAP pre-treatment assessments. This includes time spent on the initial prosecutorial review of treatment candidates, verification of community links by warrant officers, court processing costs, and pre-trial detention costs. These numbers were obtained by asking court personnel to keep diaries detailing the amount of time spent per staff person per inmate on each task, and multiplying those numbers by the average hourly wage of each court employee. They estimated an average pre-DTAP screening cost of \$635 in 2001 or **\$724 per DTAP participant in 2006**. (This cost would be incurred whether the individual succeeded in treatment or failed.) Since, according to a 2007 report of the Fiscal Policy Institute on wage, salary and cost of living differentials in local government, employees in Kings County are among the highest paid in the state, we use this as a conservative estimate of pre-trial screening costs. Screening would likely cost less in areas with lower average wages for state and local employees.<sup>xvii</sup>

(Zarkin and Dunlap also determined that DTAP participants spent an average 34.5 days in pre-trial detention at a cost of \$187 per inmate per day in 2001. However, because this savings would not go to the State and because we are not including savings to local jails in our savings calculations, we decided to exclude this number from our costs.)

## 4) Treatment Graduation Rates

There are a number of factors affecting rates of graduation from court-mandated drug treatment courts in New York. Among these are: whether the treatment facility deals with misdemeanor or felony charges; whether court assignment to the facility was in lieu of incarceration (deferred sentencing) or in lieu of a criminal trial (deferred prosecution); the program's average length of treatment; the program's geographic location; the type of treatment (long-term residential, short-term residential, out-patient methadone, or out-patient drug free); and whether the program's participants were primarily first-time or recidivist individuals.

This report draws primarily on *The New York State Drug Court Evaluation: Policies, Participants, and Evaluation*, a detailed 2004 survey by the Center for Court Innovation (CCI) which examines the statistical effectiveness of eleven DTAPs across New York State. Along with outlines of DTAP programs, requirements, and demographics, the report presents data on one-year, two-year, and three-year retention rates for each of the treatment programs examined. As graduation rates were not explicitly calculated, we used CCI's calculation that three year retention rates were approximately three percentage points within the overall graduation rate in deciding to use the three-year retention rate of each program as its graduation rate.

Overall, the study projected graduation rates that exceeded the national average of 48% determined by the Congressional General Accountability Office (GAO) in 1997. Eight of the eleven courts had graduation rates exceeding 50% (the exceptions being Syracuse, Rochester, and Buffalo), with three (Queens, Suffolk, and Tonawanda) far exceeding national averages with 69%, 63%, and 78% graduation rates, respectively. While there is no statewide average graduation rate presented, we estimate a weighted **average three-year retention rate of 53%** for these treatment programs (this estimate is derived by dividing the total number of three-year retentions reported by all programs by the total number of participants reported).

5) Collateral Benefits

The collateral savings to New York State, including the reduced cost of health care, reduced dependence on public assistance, increased tax contributions, and the savings resulting from reduced recidivism, have been calculated by several studies. Columbia's Center for Addiction and Substance Abuse's (CASA) evaluation of Brooklyn DTAP, the Center for Court Innovation's evaluation of New York State DTAPs, and the New York State Commission on Drugs and the Courts 2000 report to Judge Judith Kaye all confirm that drug treatment alternatives decrease state financial burdens. At the end of 2006, Brooklyn DTAP, using CASA's data, estimated the additional savings from diversion for the 1115 who have graduated since the program's inception as:

*Health Care Savings = \$1,084,122; \$972/Inmate*  
*Welfare Savings = \$4,047,900; \$3,630/ Inmate*  
*Tax Contribution Increase = \$1,010,566; \$906/ Inmate*  
*Recidivism Savings = \$3,307,346; \$2966/ Inmate*  
*Corrections Savings = \$33,015,953; \$29611 /Inmate*  
*Total = \$38,085/ Inmate*

A 1999 study of the Buffalo Drug Treatment Court by the Buffalo Court and the Erie County Department of Social Services came to similar conclusions. Their estimate for health and welfare savings was slightly higher than that of Brooklyn (a combined \$6,975 as opposed to a combined \$4,518). In addition, Buffalo factored in some different savings and excluded others (they included child support increase and foster care savings, while excluding increased tax contributions). In a study of 143 graduates, they estimated:

*Welfare and Health Savings = \$809,378; \$5,659/inmate (\$6,975 in 2006)*  
*Foster Care Savings = \$488,010; \$3,412/ inmate (\$4,205 in 2006)*  
*Child Support Increase = \$96,000; \$671/ inmate (\$837 in 2006)*  
*Total = \$9,742/ Inmate (\$12,017 in 2006)*

In our calculation, we included the child support, foster care, and tax contributions from each of the studies in our estimate. For welfare and health savings, we used the more conservative DTAP/CASA estimate of \$4,602 per inmate. More circumstantial results such as savings from babies born drug-free as opposed to drug-exposed were not included, though these estimates do exist. This estimate of additional savings is limited in scope: actual savings to the state, and larger and less tangible savings to society at large, are almost certainly higher and would only accrue over time.

CASA also found that DTAP graduates were three and one half times more likely to be employed after completing DTAP than before, and that they were nearly three times less likely to recidivate than their non-participating peers. Graduates were also two times less likely to spend money on drugs than non-participants and six times less likely than dropouts. Graduates were 36 percent less likely to be reconvicted of a crime and sixty seven percent less likely to return to prison [CASA]. According to the Center for Court Innovation's study, drug treatment graduates in New York were anywhere from 1.5 to six times as likely to be employed after graduation than before, and significant percentages had entered or re-entered school and had regained custody of children [CCI]. However, we did not include these potential benefits in our estimates of potential savings to the state because of the difficulty in uncovering and estimating these numbers.

To estimate the average collateral savings per individual diverted to treatment, we added the various savings calculated. Therefore:

**Collateral Savings = (\$4,602+\$906+\$3,412+\$671+\$2966+29611) = \$42,168/ person**

6) Cost of Failure

The economic cost of failure for Drug Treatment Alternative Programs includes three factors: the cost of the average amount of time spent in treatment before failure; the cost of warrant enforcement and resentencing for failures; and the cost of incarceration.

a) Cost of Treatment: According to the Center for Court Innovation, the mean time spent before failure in the eleven DTAPs studied ranged from 8.6 months to 15.2 months. As we are using an average cost of treatment of \$30,000 for a complete 19 month program, we estimate the cost of treating one non-graduate to be between \$20,000 and \$25,000.

b) In their evaluation of the King's County DTAP, Zarkin and Dunlap used diaries maintained by warrant enforcement teams and pay scales for warrant enforcement officers to calculate the actual labor costs associated with prosecuting DTAP non-completers. Their estimates, which include both actual warrant enforcement activity and associated administrative tasks, came to \$1,492 per non-completer in 2001, or \$1,747 in 2006.

c) Zarkin and Dunlap's study, which tracked a cohort of 148 DTAP participants and 130 non-DTAP drug individuals over six years, found that DTAP non-completers served slightly lower sentences than those who were not diverted to DTAP. DTAP non-completers spent an average of 663 days in prison for their initial offense (or 1.81 years), compared to 840 days for non-participants. We estimate the cost of an average prison sentence for a DTAP non-completer, therefore, at: [\$44,000/ per year x 1.81 year average sentence], or \$79,640

Therefore, we estimated the cost of failure as:

**\$20,000 + \$1,747 + \$79,640 = approx. \$101,400 (low estimate)**

**\$25,000 + \$1,747 + \$79,640 = approx. \$106,400 (high estimate)**

**Average estimate = \$103,900**

**VI. Cost Savings Estimate**

Using the following formula:

**Savings = [Cost of Imprisonment – DTAP Screening Costs – (Cost of Treatment x Rate of Graduation) – (Cost of Failure x (1 – Rate of Graduation) + (Collateral Benefits x Rate of Graduation) x (# of Inmates Eligible for Diversion)]**

Individuals with second-felony non-violent B, C, D and E class drug convictions:

Savings = [\$105,600 – \$724 – (\$30,000 x 0.53) – (\$103,900 x 0.47) + (42,168 x 0.53)]  
= **\$62,492 per individual**

There were 2,359 such individuals convicted for drug offenses in 2007 who had no prior violent felonies. DOCS' estimates that 76% of individuals incarcerated in New York State have substance abuse problems. We conservatively assumed that a further 16% would choose not to enter treatment. Therefore, if New York diverted just 60% of those convicted of second felony drug crimes without any prior violent felonies, the state could have achieved **total savings of \$88,451,000** in 2007 alone.

Individuals with second-felony non-drug, non-sex, non-violent B, C, D and E felonies:

Savings = [\$132,000 – \$724 – (\$30,000 x 0.53) – (\$103,900 x 0.47) + (\$42,168 x 0.53)]  
= **\$88,892 per individual**

There were 1,529 such individuals incarcerated in 2007 who had no prior violent felonies. DOCS' estimates that 76% of individuals incarcerated in New York State have substance abuse problems.

We conservatively assumed that a further 16% would choose not to enter treatment. Therefore, if New York diverted just 60% of those convicted of second felony non-drug, non-violent, non-sex crimes who had no prior violent felonies, the state could have achieved **total savings of \$81,550,000** in 2007 alone.

**The average savings New York could accrue for every individual who is convicted of a second-felony offense who has no prior violent felonies is: \$72,874 per individual.**

***Additional Savings from including those with prior violent felonies***

*Individuals with second-felony non-violent B, C, D and E class drug convictions who have prior violent felonies:*

There were 1,047 such individuals incarcerated for drug offenses in 2007. DOCS' estimates that 76% of individuals incarcerated in New York State have substance abuse problems. We conservatively assumed that a further 16% would choose not to enter treatment. Therefore, if New York diverted just 60% of those convicted of second felony drug crimes who have prior violent felonies, the state could have achieved **total savings of \$39,257,000** in 2007 alone.

*Individuals with second-felony non-drug, non-sex, non-violent B, C, D and E felonies who have prior violent felonies:*

There were 1,095 such individuals incarcerated in 2007. DOCS' estimates that 76% of individuals incarcerated in New York State have substance abuse problems. We conservatively assumed that a further 16% would choose not to enter treatment. Therefore, if New York diverted just 60% of those convicted of second felony non-drug, non-violent, non-sex crimes with prior violent felonies, the state could have achieved **total savings of \$58,402,000** in 2007 alone.

**Total additional savings from diverting individuals charged with second felony offenses:**

**\$97,659,000 or \$75,987 per individual**

---

<sup>i</sup> Information received from DOCS on October 20, 2008.

<sup>ii</sup> We made both conservative (lowest savings and highest cost) assumptions as well as highest savings and lowest cost assumptions, resulting in the range of savings. In 2003, the Legal Action Center received a request from the New York State Assembly asking us to calculate the savings that would accrue to New York if the Assembly's drug law reform legislation was enacted. We found that for every individual charged with a second felony drug offense, New York would save approximately \$60,000.

<sup>iii</sup> We used the New York State Department of Corrections *Statistical Overview: Discharges 2006* report to come up with the average sentence served for a second drug felony conviction. The DOCS report does not distinguish between second drug felony convictions sentences where the predicate was a violent offense and where the predicate was a non-violent offense.

<sup>iv</sup> We used the New York State Department of Corrections *Statistical Overview: Discharges 2006* report to come up with the average sentence served for a second drug felony conviction. The DOCS report does not distinguish between second drug felony convictions sentences where the predicate was a violent offense and where the predicate was a non-violent offense.

<sup>v</sup> DOCS estimates that 76% of individuals in prison have drug problems. Because not every person with a drug problem will be interested in being diverted into community-based treatment, we have calculated savings using a 60% number.

<sup>vi</sup> Making individuals charged with first time class B drug offenses eligible for probation would increase the overall savings sentencing reform would yield.

<sup>vii</sup> See NIDA chart showing \$161B on abuse of illicit drugs, and \$185B spent on abuse of alcohol.

<http://www.nida.nih.gov/about/welcome/aboutdrugabuse/magnitude/> Also see December 2004 ONDCP report, which estimates the cost of illicit drug abuse alone to be \$180.9 billion.

[http://www.whitehousedrugpolicy.gov/publications/economic\\_costs/e\\_summary.pdf](http://www.whitehousedrugpolicy.gov/publications/economic_costs/e_summary.pdf).

<sup>viii</sup> \$128.6 billion in lost productivity plus \$15.8 billion in substance use-related employee health care costs. See second paragraph under "Employee Assistance is Cost Effective" [http://www.hbo.com/addiction/treatment/374\\_battling\\_addiction.html](http://www.hbo.com/addiction/treatment/374_battling_addiction.html)

<sup>ix</sup> Ibid.

<sup>x</sup> See DAWN report highlights at <http://dawninfo.samhsa.gov/files/DAWN2k4ED.htm#High3>

<sup>xi</sup> Department of Health and Human Services Fact Sheet, "SUBSTANCE ABUSE -- A NATIONAL CHALLENGE: PREVENTION, TREATMENT AND RESEARCH AT HHS." January 13, 2006. <http://www.hhs.gov/news/factsheet/subabuse.html>

<sup>xii</sup> RWJ report, pages 6 and 54: <http://www.rwjf.org/files/publications/other/SubstanceAbuseChartbook.pdf>

<sup>xiii</sup> <http://www.ojp.usdoj.gov/bjs/dcf/duc.htm>

---

<sup>xiv</sup> <http://www.oas.samhsa.gov/nsduh/2k7nsduh/2k7Results.pdf>

<sup>xv</sup> "Crossing the Bridge: An Evaluation of the Drug Treatment Alternative-to-Prison (DTAP) Program", a federally-funded five-year evaluation of the DTAP program.

<sup>xvi</sup> Prendergast ML, Podus D, Chang E, Urada D. The effectiveness of drug abuse treatment: a meta-analysis of comparison group studies. *Drug Alcohol Depend.* 2002 Jun 1;67(1):53-72.

<sup>xvii</sup> "New York State Local Wage, Salary, Cost of Living Differentials," Fiscal Policy Institute, January, 2007.