



## DRUG LAW REFORM – DRAMATIC COST SAVINGS FOR NEW YORK STATE

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### EXECUTIVE SUMMARY

New life was given to reform of the Rockefeller Drug and Second Felony Offender Laws last year when both the Governor and the Assembly majority proposed bills that, while differing in scope, returned discretion to judges to sentence certain non-violent addicted offenders into mandated treatment instead of prison. Momentum has continued to grow this year as the Governor, Assembly, newspapers around the state, and the public have renewed their call for reform of these laws, and the Senate majority continues to support expansion of mandated treatment for appropriate offenders. Should reform pass, the return of discretion to judges will increase the number of individuals eligible for diversion from prison to community-based treatment.

The most important goals of reform are increased public safety and a fairer and more effective criminal justice system. Numerous studies have indicated that treatment is effective at reducing drug use and crime. Other studies have found that treatment is also less expensive than prison, so substantial cost savings for the state could be an additional benefit of reforming the drug laws. But just how much would New York State save by reforming the drug laws? This report by the Legal Action Center answers this question which, given the state's current fiscal plight, looms more important than ever.

To calculate the cost savings of sentencing reform, we relied heavily on methodology and statistics taken from two reports: the eleventh annual report of the Drug Treatment Alternative to Prison (DTAP) program issued by the King's County District Attorney, and a report issued by the Center for Court Innovation, entitled *Cost-Benefit Analysis of the Brooklyn Treatment Court*. Our report focuses on the cost savings associated with diverting second felony offenders from prison to community-based treatment, as they are the vast majority of drug offenders who are mandated into prison under current law and would be diverted into mandated treatment if the laws are reformed.<sup>1</sup>

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<sup>1</sup> Avoiding some costs associated with diverting first felony offenders and reducing the sentence of class A1 felons, while not included in our calculations, would increase the overall savings sentencing reform would yield.

Our findings take into account savings generated by the elimination of costs associated with incarceration and savings related to reduced health care costs and welfare rolls, and increased tax contributions. Savings in these latter three categories were only calculated for the first year after graduation, as these were the only numbers available; savings would almost certainly continue and increase in the following years. This study does not include savings that would result from a reduction in crime, decreased burden on the foster care system, and increased local economic benefits resulting from higher employment and increased wages, as they were also not available to us. Thus, the savings associated with diverting second felony offenders will be even higher than those in this report.

**FOR EVERY SECOND FELONY OFFENDER DIVERTED FROM PRISON TO COMMUNITY-BASED TREATMENT, NEW YORK STATE COULD SAVE FROM \$30,666 TO \$74,243.**

*Net Criminal Justice-Related Savings*

For each second felony offender diverted to treatment instead of prison, New York would save between **\$66,638 and \$83,042** in prison and jail costs.

These gross savings would be offset by additional costs incurred in providing treatment to the offenders diverted and in administering this type of diversion program. Additional treatments costs for the diverted offenders would range between **\$9,568 and \$31,915** per offender. Additional criminal justice costs associated with administering a diversion program would range between **\$3,942 and \$7,837 per offender**. Thus, total treatment and additional criminal justice related-costs would range from **\$13,510 to \$39,752**

Thus, total net savings in the criminal justice system from reform would range from **\$26,886** using the most conservative (lowest savings and highest cost) assumptions to **\$69,532** using the highest savings and lowest cost assumptions.

*Savings in Reducing Health Care and Welfare Costs and Increased Tax Contributions*

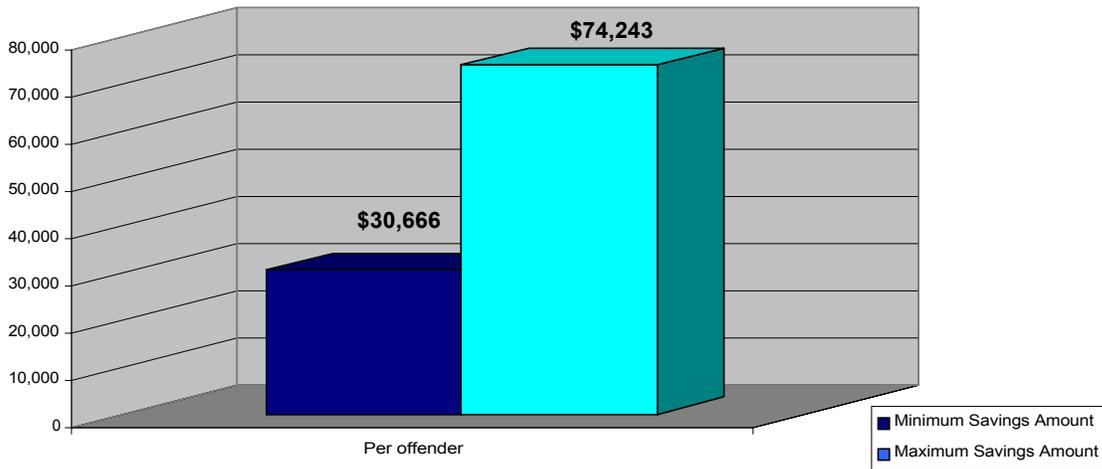
Diverting appropriate second felony offenders from prison to treatment would also save:

- \* From **\$661 to \$824** in reduced health care costs per offender.
- \* From **\$2,537 to \$3,161** in reduced welfare payments per offender.
- \* From **\$582 to \$726** in increased tax contributions per offender.

**Thus, adding together criminal justice and post-release savings and subtracting treatment and other costs, total savings for diverting a second felony offender from prison into community-based treatment ranges from a minimum savings total per offender of \$30,666 to a maximum of \$74,243.**

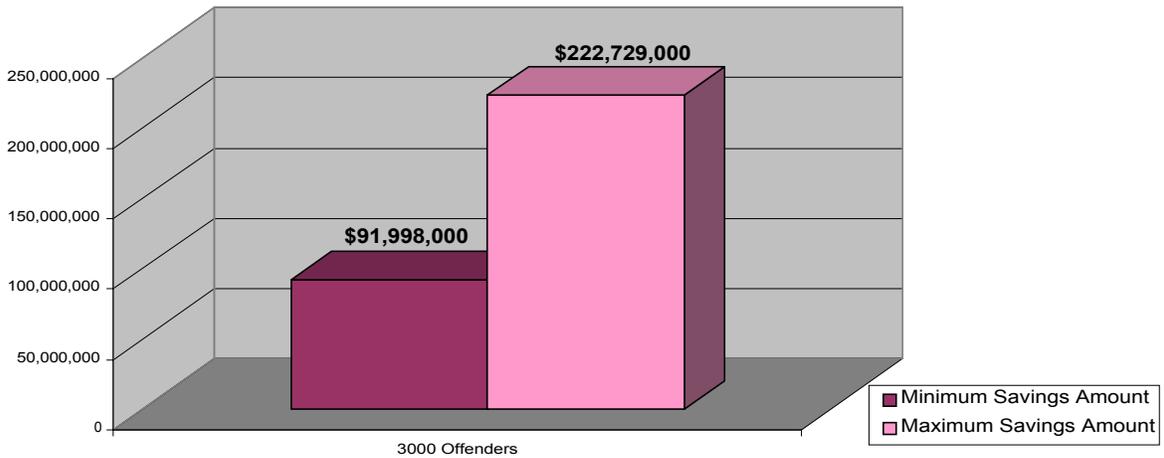
**IF 3,000 SECOND FELONY OFFENDERS WERE DIVERTED FROM PRISON TO COMMUNITY-BASED TREATMENT, NEW YORK COULD SAVE FROM \$91,998,000**

**Savings Realized by New York State For Every Second Felony Offender Diverted from Prison Into Community-Based Treatment (In Dollars)**



**TO \$222,729,000.**

**Total Savings Realized by New York State for Every 3,000 Second Felony Offenders Diverted From Prison Into Community-Based Treatment (In Dollars)**



## **BACKGROUND - THE PROBLEM**

Drug dependence is a serious public health problem with enormous social and economic costs to individuals, families, communities, government, and society as a whole.<sup>2</sup> According to a report recently released in January 2002 by the White House Office of National Drug Control Policy (ONDCP), drugs cost the nation a staggering \$143.4 billion from the U.S. economy in 1998.<sup>3</sup> Among the findings in the report:

- Drugs cost the U.S. economy \$98.5 billion in lost earnings, \$12.9 billion in health care costs, and \$32.1 billion in other costs, including social welfare costs and the cost of goods and services lost to crime.
- Crime-related costs account for \$88.9 billion, or 62% of 1998's \$143.4 billion total. These include goods and services lost to crime, property damage, work hours missed by crime victims and those incarcerated, and criminal justice system costs.
- Previous published estimates have turned out to be too low. The updated analysis reveals that drugs actually cost the economy \$126.5 billion in 1995, 15% higher than earlier estimates.
- Cost projections for 1999 and 2000 are \$152.7 billion and \$160.8 billion, respectively.

## **TREATMENT'S EFFECTIVENESS**

Numerous studies have found that treatment is effective at reducing drug use and crime, including the following:

- A 1997 Rand Corporation study found that drug treatment was 15 times more effective at reducing serious crimes committed against people and property by drug offenders than mandatory minimum sentences.
- The National Treatment Improvement Evaluation Study (NTIES, 1998) found that participants in reduced their drug use by 50 percent, including decreasing their crack use

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<sup>2</sup> According to a report by the National Institute on Drug Abuse and National Institute on Alcohol Abuse and Alcoholism, "The Economic Costs of Alcohol and Drug Abuse in the United States, 1992", Rockville, MD: May 1998, addiction, including alcoholism and drug dependence, costs the nation an estimated \$246 billion in 1992, including \$28.75 billion in health care costs, \$176.4 billion in lost productivity, and \$40.5 billion in other costs (such as crime, welfare, and motor vehicle crashes).

<sup>3</sup> "The Economic Costs of Drug Abuse in the United States; 1992 - 1998", Office of the National Drug Control Policy, September 2001.

by 50.7 percent and their heroin use by 46.5 percent.<sup>4</sup>

- The California Drug and Alcohol Treatment Assessment study (CALDATA, 1994) found that participants reduced their crack, powder cocaine, and amphetamine use by almost one-half, their heroin use by over one-fifth, and their alcohol use by almost one-third.<sup>5</sup>
- A study of 65,000 client treatment outcomes (CATOR, 1994) found that about 60 percent maintained total and continuing abstinence in the first year after treatment. Weekly participation in self-help groups, such as Alcoholics Anonymous (AA), boosted that number to 73 percent, and participation in once- or twice-weekly professional aftercare increased it to 85 percent.<sup>6</sup>

## **ILLICIT DRUG USE AMONG NEW YORK'S CRIMINAL JUSTICE POPULATION**

The vast majority of individuals involved in New York's criminal justice system have some involvement with illicit drug use, and a majority have been identified as addicted.

- According to the National Institute of Justice's Arrestee Drug Abuse Monitoring Program, 80% of arrestees in New York tested positive for illicit drugs (the highest percentage in the country).<sup>7</sup>
- While not every individual who tests positive is addicted, according to the report to Chief Judge Judith S. Kaye by the New York State Commission on Drugs and the Courts, the New York State Department of Correctional Services (DOCS) conservatively estimates that 67% of state prisoners have such a problem.<sup>8</sup> According to a February 2001 report by the New York State Office of Alcoholism and Substance Abuse Services, 70% of all offenders in the custody of DOCS are subsequently identified as addicted.

Thousands of individuals convicted of drug crimes are sent to state prison every year under the Rockefeller and Second Felony Offender Drug Laws. Most of these individuals have never been convicted of violent felony offenses. According to a report released by the Legal Action Center

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<sup>4</sup> Center for Substance Abuse Treatment, NTIES: The National Treatment Improvement Evaluation Study. Rockville, MD: CSAT, September 1996, p. 7.

<sup>5</sup> Dean R. Gerstein, *et. al. Evaluating Recovery Services: The California Drug and Alcohol Treatment Assessment. General Report.* Sacramento: California Department of Alcohol and Drug Programs, 1994, p. 25.

<sup>6</sup> James W. West, *The Betty Ford Center Book of Answers.* New York: Pocket Books, 1997, p. 145.

<sup>7</sup> National Institute of Justice, Arrestee Drug Abuse Monitoring Program, 2001a.

<sup>8</sup> New York State Commission on Drugs, *Confronting the Cycle of Addiction and Recidivism*, p. 15; estimates provided by DOCS; see also DOCS, *Identified Substance Abusers* (December 1998).

last year, 4,872 individuals committed to DOCS in 2000 were convicted of drug offenses which carried mandatory prison sentences under the Rockefeller and Second Felony Offender Drug Laws: 1,487 were first felony offenders convicted of class B drug felonies and 3,386 were second felony offenders convicted of class B, C, D, or E drug offenses who had no prior violent felony convictions.<sup>9</sup> Given, as the above cited study found, that at least 67% - 70% of these individuals were most likely addicted (and the percentage of drug abuse among the inmate population convicted of drug offenses is most likely higher than the rest of the inmate population), then over 3,300 individuals convicted of non-violent drug offenses could potentially have been diverted from prison into community-based treatment. The actual number, of course, depends on the type of reform enacted and a careful screening of these individuals to ensure that they meet the criteria established by the courts.

### **COST SAVINGS THAT CAN BE REALIZED THROUGH REFORM**

If the Rockefeller Drug and Second Felony Offender laws are reformed to afford judges some increased discretion to divert appropriate offenders to treatment, increased numbers of offenders will be eligible for diversion into community-based drug treatment rather than prison.<sup>10</sup> Reform of these laws would generate financial savings for New York State because increased numbers of offenders would not receive prison terms, thereby eliminating the costs associated with incarceration. For individuals who successfully complete treatment, reform also generates savings related to lower health care costs, smaller welfare rolls, increased tax contributions, reduction in crime, decreased burden on the foster care system, and increased local economic benefits resulting from higher employment and increased wages. While these savings would be offset partially by the cost of providing treatment in the community, treatment is significantly less expensive than prisons and jails.

Our findings take into account savings generated by the elimination of costs associated with incarceration, health care, and welfare, and increased tax contributions. Savings in the latter three categories were only calculated based on the first year after graduation, since numbers beyond the first year were unavailable; savings would almost certainly continue and increase in the following years. This study also does not include savings associated with a reduction in crime, decreased burden on the foster care system, and increased local economic benefits resulting from higher employment and increased wages, as these numbers were not available to us. The savings associated with reform will thus be even higher than those in our report.<sup>11</sup>

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<sup>9</sup> Individuals convicted of class A offenses were not included in this calculation. Legal Action Center report, "Drug Law Reform – How Dramatic the Impact," 2001.

<sup>10</sup> While, as of the date of the report, there has been no agreement between the Governor and the Legislature as to a final version of Rockefeller Drug and Second Felony Offender reform, all drug law reform legislation that has been introduced in some measure gives judges new discretion to divert certain categories of drug offenders to community-based treatment.

<sup>11</sup> Some savings will only be generated if the operational costs of prisons are reduced. This would occur if

Our report focuses on the cost savings associated with diverting second felony offenders from prison to community-based treatment, as they comprise the vast majority of drug offenders who are sentenced to prison under current law and would benefit from reform. Savings would also be generated from diverting prison-bound first felony drug offenders into community-based treatment, as well as from reducing the sentence of individuals convicted of class A-I felonies, so the total savings reform would yield would be greater than those identified in our report in this respect as well. The Center for Court Innovation's cost-benefit analysis, which examines savings associated with avoiding incarceration costs but not any other long-term post-release savings, estimates an \$18,405 savings per prison-bound first time felony drug offender.

Individuals convicted of class A-I felonies currently must serve a minimum of 15 years to life. The Governor's Drug Law Reform Act of 2001 proposed reducing class A-I felonies to 10 years to life with a possibility of a reduction on appeal to 8.3 years to life. Under the Assembly's Drug Law Reform, Drug Treatment, and Crime Reduction Act of 2001, first time class A-I felons could receive a sentence of 5-15 years. Averaging the two proposals, it is reasonable to assume that an agreement on drug law reform might reduce the minimum sentence for a class A-I felony to 8.5 years, with the maximum anywhere from 15 years to life. Both proposals allow for retroactivity. This would mean that class A-I felons would serve on average 6.5 fewer years than under current law. If prison costs per inmate per year are approximately \$30,000 a year (see section on jail and prison costs), then New York State would save approximately \$195,000 for every class A-I inmate in prison.

## **METHODOLOGY** (A detailed methodology is attached)

Our analysis relies heavily on the methodology and statistics developed in two reports: the eleventh annual report of the Drug Treatment Alternative to Prison (DTAP) program issued by the King's County District Attorney, and the report issued by the Center for Court Innovation entitled *Cost-Benefit Analysis of the Brooklyn Treatment Court*. Both 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. The DTAP program included some of these post-release savings: those relating to health care, welfare and increased tax contributions.

Because these programs are both based in Brooklyn, and because results will differ depending on

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entire prisons or certain sections of these facilities are closed down. As noted above, well over 4,500 individuals incarcerated in DOCS in 2000, 3,386 of whom are second felony offenders convicted of non-violent offenses, would have been eligible for diversion if all felony drug offenders convicted only of nonviolent felonies were included in reform legislation.

a number of variables, including different lengths and costs of treatment and sentencing policies, we examined numerous other studies and reports, including the report to Chief Judge Judith Kaye by the New York State Commission on Drugs and the Courts, and the New York State Department of Correctional Services *Characteristics of Inmates Discharged, 2000*. We also spoke to treatment providers throughout New York to come up with numbers that reflected the range of experience across the state.

We found that in three areas – annual cost of treatment, length of treatment, and graduations rates – there was a considerable range in numbers. As a result, looking at a variety of variables, we came up with a range in the total savings per diversion of a second felony drug offender.

Based on the Center for Court Innovation’s formulation, there are four basic components to our cost savings analysis. The first three relate to the criminal justice system:

- 1) Criminal Justice savings from diverting second felony offenders from prison into treatment are calculated by looking at the savings from not sending individuals to jail and prison.

To calculate net saving from not sending individuals to jail and prison, the additional costs associated with treatment and extra operational costs must be subtracted from savings as follows:

- 2) Costs associated with treatment.
- 3) Extra operational costs associated with administering a diversion program, including court costs as well as jail costs.<sup>12</sup>

To calculate total savings, the following savings outside the criminal justice system are added to the above net criminal justice savings:

- 4) Post-release savings associated with lower health care costs and welfare rolls and increased tax contributions in the first year.

## **SAVINGS ASSOCIATED WITH AVOIDANCE OF COSTS OF INCARCERATION**

Our calculations of savings associated with avoidance of incarceration costs are based on the following assumptions:

### **Prison and Jail Costs**

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<sup>12</sup> Participants spend some time in jail before entering treatment, and may spend time in jail during treatment if the program is based on a model that uses jail time to sanction participants who relapse.

- Estimates of prison costs per inmate per year range from \$28,953/year<sup>13</sup> to \$32,000 per year when debt service is added.<sup>14</sup> We used a prison cost of \$30,477, which is the average of these two numbers.
- We calculated jail costs using the Center for Court Innovation’s figure of \$68,985 per year.

### **Length of Prison Sentence**

- Using DOCS’ *Characteristics of Inmates Discharged: 2000* report, we calculated an average sentence length for predicate drug felons, excluding Class A-I and A-II felons, of 2.81 years.

### **Graduation Rates**

- The Center for Court Innovation reported an 81% graduation rate for individuals participating in the Brooklyn Treatment Court. Those who “graduate” have completed their mandated treatment successfully and by doing so have satisfied their obligations to the criminal justice system. The report to Judge Kaye noted a 61% graduation rate for all adult drug treatment courts throughout the State (participants in these courts include misdemeanants). Since, according to the Center for Court Innovation, the graduate rates for second felony offenders is higher than for first time offenders or misdemeanants, our calculations reflect the range of graduation rates from 65% - 81%.

Using these assumptions, we calculated criminal justice savings from diverting second felony offenders from prison into treatment by multiplying incarcerations costs by the length of time that would have been spent in jail and prison and graduation rates. Since graduation rates ranged from 65% to 81%, we made different calculations based on each of those rates.

## **COSTS ASSOCIATED WITH DIVERTING OFFENDERS INTO COMMUNITY-BASED TREATMENT**

To calculate net savings, the gross savings as calculated above must be reduced by the additional costs associated with diverting offenders into community-based treatment, which vary according

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<sup>13</sup> This is the number used by the Center for Court Innovation. The report to Judge Kaye estimates prison costs at \$29,000.

<sup>14</sup> According to the report to Judge Kaye, citing the Citizens Budget Commission Report, May 25, 2000, the state spent almost \$3.2 billion (in 1997 dollars) in capital costs between fiscal years 1983 and 1997, in large part to build new prisons for the growing number of drug offenders. The Correctional Association in its “Basic Prison & Jail Fact Sheet” states that it costs approximately \$32,000 to maintain an inmate in a New York State prison for a year.

to the following factors:

- the annual cost of treatment (for individuals who successfully complete treatment as well as those who do not);
- the length of treatment; and
- graduation rates.

### **Annual Cost of Treatment**

Our calculations of costs associated with diverting offenders into community-based treatment are based on the following assumptions:

- According to the report from the Center for Court Innovation and the report to Chief Judge Kaye, residential treatment costs approximately \$18,400 per person per year and outpatient treatment \$5,100 per person per year.
- These costs are in line with a report by the New York State Office of Alcoholism and Substance Abuse (OASAS) in *Collaboration: OASAS and the Criminal Justice System*, published in February, 2001, which estimates that residential treatment costs less than \$20,000 per person per year, and outpatient treatment costs range from \$4,300 to \$7,500 per person per year.
- In speaking with providers throughout the state, we found that residential treatment can cost as much as \$25,000 per year, and outpatient treatment as much as \$10,000 per year. Additional costs associated with court mandated clients, such as court appearances and monthly reporting, could account for much of this difference.

To ensure that our calculations reflected the range of treatment costs cited by reports and providers, we made different calculations using both sets of treatment costs.

### **Length of Treatment**

Our calculations regarding the length of treatment are based on the following assumptions:

- Under the Brooklyn Treatment Court model, predicate felons spend an average of just over 18 months in residential treatment and just under 11 months in outpatient treatment.
- Other models anticipate a much shorter length treatment. The Governor's Drug Law Reform Act of 2001, for example, states that predicates convicted of possession offenses would have to spend a minimum of 6 months in residential treatment followed by a minimum of 6 months in outpatient treatment.

To ensure that our calculations reflected the range in length of treatment, we made different calculations using each of these lengths of treatment.

### **Graduation Rates**

- As noted above, the Center for Court Innovation reported an 81% graduation rate for individuals participating in the Brooklyn Treatment Court. We also used our more conservative estimate of 65%.

### **Operational Costs**

Extra operational costs associated with administering a diversion program include court costs as well as jail costs. Our calculations of operation costs are based on the following assumptions:

- Administrative court costs vary depending on how long offenders are required to participate in the program as well as success rates. We used the costs reported by the Center for Court Innovation and adjusted the number to calculate court costs for shorter programs and different graduation rates.
- Jail costs were calculated by looking at costs reported by the Center for Court Innovation and adjusting the number for shorter term treatment programs and different graduation rates.

## **SAVINGS ASSOCIATED WITH LOWER HEALTH CARE COSTS AND WELFARE ROLLS AND INCREASED TAX CONTRIBUTIONS**

Our calculations of post-release savings also included savings related to reduced health care costs and lower welfare rolls, and increased tax contributions (but not savings associated with a reduction in crime,<sup>15</sup> decreased burden on the foster care system<sup>16</sup>, and increased local economic

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<sup>15</sup> Research shows that drug treatment is much more effective than incarceration in reducing recidivism. The DTAP report asserts a 1-year re-arrest rate of 11% as opposed to 26% for those released from incarceration and a three-year re-arrest rate of 23% as opposed to 47% for those incarcerated. The report to Judge Kaye asserts that less than 10% of drug court participants were arrested while enrolled (less than 1% for violent crimes) and that among graduates, most drug courts report 1-year re-arrest rates of less than 15%. The Center for Court Innovations report on the Brooklyn Treatment Court reports a 1-year re-arrest rate of 12% (6% for drug crime) with a conviction rate of 7% (3% for drug crime). Because there is a wide range of data regarding how many crimes a drug addict can be expected to commit per year and how much financial damage these crimes do, we could not calculate a cost savings associated with a reduction in crime. However, no matter which of those numbers are used – and in combination with the court and incarceration costs that would result from such crimes – it is undeniable that treatment would save money as a result of reduced criminal activity, when compared to incarceration.

<sup>16</sup> In the report to Judge Kaye, it is estimated that the average cost of foster care is \$15,000 per child, per year, and as of 12/31/2000 there were 43,560 placements in New York State. The average length of a child's stay in

benefits resulting from higher employment and increased wages,<sup>17</sup> as these numbers were not available to us).

Our calculations of savings associated with reduced health care costs and welfare rolls and increased tax contributions are based on the following assumptions:

- Health care: The DTAP report calculated health care savings by looking at program graduates and coming up with the average amount spent on health care for each graduate in the year prior to their entry into treatment and the year after their release (the difference came to \$1,017 per graduate). We adjusted this number to account for the variation in graduation rates.
- Welfare: The DTAP report found that prior to treatment, 60% of graduates received an average of \$879 per month in assistance for the year prior to treatment and that number dipped to 23% in the year following treatment. We used this number, adjusting it to account for the variation in graduation rates.
- Tax contribution: The DTAP reports found that prior to treatment, 24% of the employable program graduates were working and paying an average of \$2,000 of taxes per year. After DTAP, 88% of the employable graduates were working and paying an average of \$2,000 in taxes per year. DTAP also reports that of the program graduates, 70% were deemed “employable” and that this number remains constant pre- and post-treatment. We adjusted these numbers to account for the variation in graduation rates.

## **FINDINGS**

### **Net Savings From Drug Law Reform in Criminal Justice System**

#### ***Incarceration Savings***

As noted above, in calculating the total savings, we first examined the savings that would be generated for each second felony offender who was diverted into treatment and thus saved the

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New York City foster care was 4.5 years as of 1997. We could not find a statistic on the number of children in foster care who have a custodial parent in prison. However, looking at above numbers, it is evident that successful drug treatment programs would result in significant savings to the foster care system.

<sup>17</sup> In looking at the employment boost experienced by DTAP graduates in the year following treatment (as discussed in the section on reduced welfare rolls), it is evident that successful drug treatment also creates financial advantages for those who complete the program and the extra money in graduates’ pockets would inevitably help the local economies in which these people live, earn, and spend money. While coming up with specific numbers regarding these types of economic benefits is beyond the scope of this report, it is clear that treatment diversion would provide further savings in this area.

cost of incarceration. The following numbers remained constant in all of our calculations:

Average prison sentence for non-violent, Class B/C/D/E predicate felony offenders: 2.81 years  
Estimated proportions of time served in jail (awaiting transfer) and prison: 15.6% and 84.4%

Average annual jail bed cost: \$68,985

Average annual prison bed cost: \$30,477

The only factor that varied in our calculations was the graduation rate, meaning the percentage of offenders who successfully complete treatment in satisfaction of their sentence. Multiplying these figures together and using the more conservative 65% graduation rate, the total incarceration savings are **\$66,638 per offender diverted**. At the higher 81% graduation rate, this total rises to **\$83,042**.

These gross savings would be offset by additional costs incurred in providing treatment to the offenders diverted and in administering this type of diversion program, as follows:

### ***Treatment Costs***

The next factor that we examined was the cost of treatment. In this calculation, we examined different variables for each of the categories involved:

#### Length of Treatment

For our more conservative estimate, we used a treatment length of 553 days inpatient treatment and 333 days outpatient treatment for graduates and 57 days inpatient (0 days outpatient) for failures. In calculating the maximum possible savings, we used an inpatient stay of 180 days and an outpatient length also of 180 days for graduates and 19 days inpatient (0 days outpatient) for failures.

#### Cost of Treatment Per Year

In calculating the total treatment costs, we used the more conservative figure of \$25,000 per year in inpatient treatment costs and \$10,000 per year in outpatient treatment costs and, for the maximum possible savings, \$18,400 per year in inpatient treatment costs and \$5,100 per year in outpatient costs.

#### Graduation Rate

The last figure adjusted was the graduation rate, which we again varied between 65% and 81%.

#### Total Treatment Costs

In reaching our most conservative total, we used the higher treatment costs and length of stay

together with the lower graduation rate, giving us a total treatment cost of **\$31,915** per offender. In calculating the maximum savings, we used the lower treatment costs and length of stay with the higher graduation rate, giving us a total treatment cost of **\$9,568**.

### ***Additional Criminal Justice Costs Associated with Administering a Diversion Program***

The additional criminal justice costs associated with administering a diversion program can be broken down into three areas: pre-placement jail costs, jail sanctions costs and administrative costs.

#### Pre-Placement Jail Costs

Pre-placement jail time remained constant at **\$1,987** throughout our calculation. The factors involved in making this calculation were:

Proportion of offenders remanded to jail prior to placement: 75%

Average time remanded to jail prior to placement: 14 days

#### Jail Sanctions Costs

The next area involved with the additional criminal justice-related costs calculation was jail sanction time. In some treatment court models, participants may spend some time in jail during treatment if they relapse. In this calculation, the annual jail cost remained constant at \$68,985. The other factors in the calculation varied according to the method we used. For our most conservative calculation, the average length of jail sanction time served by graduates was 6.55 days and the average time for failures was 29.54. In calculating the maximum savings, we used a jail sanction time of 2.13 days for graduates, 9.85 days for failures. We also altered the numbers to reflect the different graduation rates.

To calculate the most conservative total, we used the longer sanction lengths with the lower graduation rate, giving us a total cost of **\$2,756 per offender**. For the maximum savings, we used the shorter sanction length with the higher graduation rate, giving us a total of **\$689**.

#### Administrative Costs

The last area involved in calculating the additional total criminal justice costs were the administrative costs. In calculating this figure, we used the Brooklyn Treatment Court's constant figure of \$4.84 for each day a participant was in the active caseload. Other than the graduation rate, the only number that varied in the different models was the length of time a participant spent in the active caseload. For our more conservative calculation, we used an average length of time of 688 days in the active caseload for graduates and 549 days for failures. In reaching our maximum saving figure, we used a figure of 280 days in the active caseload for graduates and 183 days for failures.

In our most conservative calculation, we used the longer caseload duration with the lower graduation rate, giving us a total cost of **\$3,094 per offender**. For the maximum figure, we used the shorter duration with the higher graduation rate, which gave us a total of **\$1,266**.

Total Additional Criminal Justice Costs

Thus, the total additional criminal justice related-costs using the most conservative (highest cost) assumptions are:

Pre-placement jail:	\$1,987
Jail sanctions:	\$2,756
Administration:	<u>\$3,094</u>
<b>Total</b>	<b>\$7,837</b>

Additional criminal justice related-costs using the lowest cost assumptions are:

Pre-placement jail:	\$1,987
Jail sanctions:	\$ 689
Administration:	<u>\$1,266</u>
<b>Total</b>	<b>\$3,942</b>

***Total Treatment and Additional Criminal Justice-Related Costs***

Total treatment and additional criminal justice related-costs using the most conservative (highest cost) assumptions are:

Treatment:	\$31,915
Criminal justice:	<u>\$ 7,837</u>
<b>Total:</b>	<b>\$39,752</b>

Total treatment additional criminal justice related-costs using the lowest cost assumptions are:

Treatment:	\$ 9,568
Criminal justice:	<u>\$ 3,942</u>
<b>Total:</b>	<b>\$13,510</b>

### ***Total Net Criminal Justice System-Related Savings***

To calculate the total criminal justice system-related savings from diverting second felony offenders from prison in community-based treatment, we took the savings generated by avoiding the cost of incarceration calculated above – \$66,638 per offender diverted using the most conservative (lowest savings) assumptions, \$83,042 per offender using the assumptions that would yield the highest savings – and subtracted the total treatment and additional criminal justice system-related costs, which came to \$39,752 using the most conservative assumptions and \$13,510 using the lowest cost assumptions. Thus, the net criminal justice savings reform would generate range from **\$26,886** (\$66,638 - \$39,752) to **\$69,532** (\$83,042 - \$13,510).

### ***Savings in Reducing Health Care and Welfare Costs and Increased Tax Contributions***

#### Health Care

To calculate the health care savings total, we used the DTAP report's figure of \$1,017 in reduced health care costs per graduate. We then applied our two graduation rates, giving us the more conservative saving of **\$661** per participant during the first year and a maximum savings of **\$824** per participant in the first year.

#### Social Welfare

In calculating the welfare savings, we again used the DTAP report's figures of \$879 per month (\$10,548 per year) in welfare payments with a 37% reduction in the welfare caseload among graduates. Using our two graduation rates, this gave us a first-year savings of **\$2,537** using the more conservative graduation rate and a **\$3,161** maximum first-year savings.

#### Tax Contribution

Here again we used the DTAP report's figures, which calculated that 70% of graduates were "employable," and that, on average, those who were working paid \$2,000 in taxes in the first year following treatment, and that there was a 64% increase in the number of graduates working after completing treatment. Using our two graduation rates, we calculated a conservative increase in the tax contribution of **\$582** per participant in the first year and a maximum of **\$726** per participant in the first year.

### ***Total Savings in Reducing Health Care and Welfare Costs and Increased Tax Contributions***

By adding up these figures, we reached a conservative savings figure of **\$3,780** (\$661 + \$2,537 + \$582) and a maximum figure of **\$4,711** (\$824 + \$3,161 + 726) in the first year following treatment.

### ***Total Savings***

To calculate the minimum total savings that drug law reform would provide, we added the most conservative figures for total criminal justice system-related savings and savings in other systems:

**Minimum Savings Total:** \$26,886 + \$3,780 = **\$30,666**

To calculate the maximum figure, we used the same model, this time using the maximum numbers.

**Minimum Savings Total:** \$69,532 + \$4,711 = **\$74,243**

**IN SUM, FOR EVERY SECOND FELONY OFFENDER DIVERTED FROM PRISON TO COMMUNITY-BASED TREATMENT, NEW YORK STATE COULD SAVE FROM \$30,666 TO \$74,243.**

**FOR EVERY 3000 SECOND FELONY OFFENDERS DIVERTED FROM PRISON TO COMMUNITY-BASED TREATMENT, NEW YORK STATE COULD SAVE FROM \$91,998,000 TO \$222,729,000.**

**Savings in reduced health care and welfare costs and increased tax contributions past the first year and savings associated with a reduction in crime, decreased burden on the foster care system, and increased local economic benefits resulting from higher employment and increased wages are not included in these numbers.**

### **INCREASED FUNDING FOR TREATMENT**

In order for reform to succeed, drug treatment will have to be expanded substantially to accommodate increased diversion from incarceration of appropriate offenders.<sup>18</sup> According to OASAS, there are currently 9,319 long-term residential beds in the treatment system.<sup>19</sup> According to the Therapeutic Communities Association of New York, at any given in point there is an overall 90%- 95% utilization, which would translate into 466 - 932 beds, mostly located downstate, currently available for new referrals.<sup>20</sup> Capital construction costs, which would

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<sup>18</sup> Funding for the full continuum of substance abuse treatment will be needed – both capital and operational funding – to create sufficient new capacity to treat the individuals who will be diverted through drug law reform.

<sup>19</sup> OASAS, “2002 County Resource Book, Volume1: Service Need and Utilization”, Table 6.

<sup>20</sup> Not all beds are fungible – some are designated for women or adolescents or other special populations

represent a one-time expense, would eventually be more than compensated by the savings which the state would generate from diverting individuals into treatment instead of incarcerating them.<sup>21</sup>

Since current residential capacity is such that many offenders could be diverted immediately, even before any money is spent on constructing new facilities, the State could begin generating savings as soon as reform is implemented.<sup>22</sup>

## 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 offenders 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 from \$30,666 to \$74,243 for every second felony offender diverted, under drug law reform, from prison to community-based treatment. This comes to a savings of from \$91,998,000 to \$222,729,000 if 3,000 second felony offenders were diverted from prison into community-based treatment, and indeed even more when savings accrued in other ways not addressed in this report are factored in. In addition, New York would save \$195,000 for every class A 1 inmate in prison whose sentence would be reduced under drug law reform and \$18,405 for each prison-bound first time felony drug offender diverted into treatment.

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.

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and thus would not be appropriate for offenders who do not meet that profile.

<sup>21</sup> In 2001, DOB negotiated a \$55,000 a cost per bed number with a treatment programs in New York City that is building a new facility with a large number of beds. This number did not include the cost of the land, which in this program's case was not a major expense. Construction costs go up by approximately 5% a year; construction costs will increase by 20% in five years. Constructions costs could vary from \$55,000 - \$70,000 per bed depending on size and location of the program

<sup>22</sup> Many individuals remain in residential treatment longer than is therapeutically necessary because they have no safe, stable housing in which to move. The lack of such housing both threatens long term recovery and produces a bottleneck in the treatment system which keeps individuals in higher levels of care longer than necessary. The State should, therefore, invest in increasing not only residential and outpatient treatment, but also halfway house capacity to open up residential beds sooner for those to follow.



## Drug Law Reform: Dramatic Cost Savings For New York State

### METHODOLOGY

This appendix describes in detail the methodology we used to calculate potential financial savings that would result if New York reforms the Rockefeller Drug and Second Felony Offender laws. These savings include both net reductions in resources invested in the criminal justice system and reductions in health care and welfare costs as well as increased tax contributions.

### CRIMINAL JUSTICE-RELATED COST-SAVINGS FROM PLACING SECOND FELONY DRUG OFFENDERS IN TREATMENT

This section provides a detailed explanation of the methodology we used when calculating savings related to the criminal justice system. A detailed explanation of the methodology we used when calculating savings relating to reduced health care costs and welfare rolls, and increased tax contributions can be found in the next section.

#### *Background*

In calculating the amount of money that would be saved by diverting predicate drug felony offenders to treatment instead of incarcerating them, we made significant use of the model provided by a report by Michael Rempel, the deputy research director at the Center for Court Innovation, entitled *Cost-Benefit Analysis of the Brooklyn Treatment Court*, which was completed in June of 2000. The calculations in this analysis seemed particularly reliable because it made significant use of figures gathered through the Court's actual operations. We also chose this report because it provided by far the most comprehensive and detailed explanation of what calculations and assumptions had been made to figure out the savings generated by the court. In particular, the report explained and factored in such areas as how much time participants spent in jail prior to being admitted to treatment, how much time they spent in jail on sanctions for failing to meet program conditions (calculated for both successes and failures), daily averages of how long predicate felons spent in treatment (again separated by successes and failures), and any additional administrative costs incurred by the court due to additional staff and services not required by other courts.

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The study's focus was entirely on savings in the criminal justice system generated by diverting defendants into treatment and did not take into account any external benefits from reduced criminal behavior and incarceration, reduced health care and welfare costs, or increased employment and taxation.

In addition to the above-mentioned report, we also examined numerous other studies and reports, including the eleventh annual report of the Drug Treatment Alternative to Prison (DTAP) program issued by the King's County District Attorney, the report to Chief Judge Judith Kaye by the New York State Commission on Drugs and the Courts, and the New York State Department of Correctional Services' *Characteristics of Inmates Discharged, 2000*. We also spoke to treatment providers throughout New York to come up with numbers that reflected the range of experience across the state.

### ***Graduation Rates***

The first figure reported by the Center for Court Innovation study was the graduation rate with "graduates" defined as those who have completed their mandated treatment successfully and, by doing so, have satisfied their obligations to the criminal justice system. For predicate felons, this number was reported at 81%. This number was calculated by examining the program's two-year retention rate and calculating what percentage of the population had either graduated or were still involved in the program after this period of time. The researchers then reduced this number by 4% to compensate for the fact that some of those who had not yet graduated might still drop out of treatment, although they emphasized that they saw this number as "a conservative estimate that [would] more likely understate than overstate the actual graduation rate."

Because the graduation for the Brooklyn Treatment Court program was so high, we decided to do the same calculations a second time, using a more conservative graduation estimate of 65% in calculating savings. We chose this number by examining the retention rates of the King's County DTAP program (70.3%), as well as examining the retention rates of other drug courts cited in the report to Judge Kaye, which found an average graduation rate of 61%. These courts frequently divert misdemeanants as well as first and second felony offenders. Because the Brooklyn Treatment Court's experience suggests that second felony offenders have higher graduation rates, we adjusted this conservative graduation rate to 65%.

### ***Incarceration Costs and Savings***

The Center for Court Innovation's researchers' next step was to calculate the reduction in costs created by not incarcerating program graduates. They generated this figure by looking at the average length of the prison sentence program participants would have served if they had not been put into treatment (3.1 years). Then, using data from "Characteristics of Inmates Discharged: 1997" published by the State Department of Correctional Services (DOCS), they

calculated the average proportion of this sentence that predicate felons spent in jail (.156). Then, using a figure of \$68,985 for jail costs and \$28,953 for prison costs, they calculated the total cost of incarceration for predicate felons had they not participated in the Court's treatment program.

In our calculations, we made two modifications to these figures. Our first assumption was that sentence length would actually be lower had participants not been diverted, as it is likely that most would have been offered a lower sentence had they not been given the option to enter community-based treatment. Using DOCS' *Characteristics of Inmates Discharged: 2000* report, we calculated an average sentence length for predicate drug felons, excluding Class A-I and A-II felons, of 2.81 years. The other important modification we made was in the cost of prison incarceration. From various sources we saw the cost of incarceration range from \$28,953 to \$32,000 when the \$3.2 billion in debt service is included. The number we eventually used, \$30,477, is an average of the two numbers. Placing these numbers into the report's model, we then calculated the savings created by not incarcerating successful participants at both the Court's graduation rate and at the lower, 65% rate.

### ***Jail-Related Costs***

The next calculation in the report was the cost of remanding participants to jail prior to their placement in treatment. (Pre-placement jail-time is subtracted from a failure's maximum sentence but does not affect the minimum, so will probably not have an effect on a failure's incarceration costs). Because we had no other sources for these figures, we took this number directly from the Brooklyn Treatment Court's report, which was calculated by multiplying the proportion of participants remanded to jail (.75), the average amount of time they spent in jail (14 days), and the cost of jail (\$68,985). The possible limitations in this calculation include the fact that the cost of jail time would be lower for those upstate (and the fact that many of these costs would still be incurred by the local Corrections Departments). Furthermore, the length of pre-treatment jail time and the proportion of those remanded might differ in other courts and might also be affected by an increase in the number of individuals diverted and the consequent increase in demand for treatment. However, because this was the only source available for this figure, we felt it was better to include it in the calculation than to ignore this cost incurred by the criminal justice system.

The last calculation for figuring out the total costs and savings to the jail and prison systems from diverting predicate felons into treatment was the cost of placing participants in jail as part of their sanctions for failing to meet program conditions. In order to make this calculation, researchers examined how long on average both graduates and failures spent in jail on sanctions. For graduates, this figure was 6.55 days; for failures, it was 29.54 days. They then multiplied these figures by the annual jail cost and calculated what the total cost per participant would be at the 81% graduation rate. We repeated these calculations using both the 81% rate and the lower, 65% graduation rate. Having come up with the totals at both graduation rates, we also decided to modify the number of days spent in jail sanction. The reason for this modification was that the

Brooklyn Treatment Court requires that predicate felons spend a minimum of 18 months in residential treatment. However, under the Governor's proposed bill for reforming the Rockefeller Drug Laws, this group would spend a minimum of six months in residential treatment and six months in outpatient treatment. We, therefore, assumed that the ratio between jail sanction time and time spent in residential treatment would remain the same. We also assumed that the ratio between the average amount of time spent in treatment by failures and graduates would remain the same under the Governor's bill. Using these two assumptions, we calculated a new total for sanction lengths for graduates (2.13 days) and failures (9.85 days) and used these figures to calculate the total cost of jail sanctions for graduates and failures at both the 81% and the 65% graduation rate.

Having completed these calculations, we were able to calculate the total savings to the corrections system generated by the Drug Court model, using both the 65% and 81% graduation rates and both the Brooklyn Treatment Court's model for average treatment length and the Governor's treatment model.

Once we had calculated the total costs and savings to the corrections system generated by the Drug Court model, we then examined what new costs were generated by the Drug Court model which did not exist in the traditional incarceration system. Using the model provided by the report, there appeared to be two areas responsible for additional costs – the treatment itself, and the Court's additional administrative costs, which were not necessitated by the traditional court system.

### ***Treatment Costs***

For the first calculation of treatment costs, we simply used the numbers provided by the report. Using actual participants, the researchers found that graduates spent an average of 553 days in inpatient treatment and 333 days in outpatient treatment, while program failures spent only 57 days in inpatient treatment and never entered an outpatient program. Researchers then used the estimated statewide averages for inpatient (\$18,400 per year, \$50.41 per day) and outpatient treatment (\$5,100 per year, \$13.97 per day). These numbers are very much in line with those found in most of the literature on the topic, including reports produced by the New York State Office of Alcoholism and Substance Abuse Services (OASAS). Using these figures, the researchers then calculated the average cost of treatment for both graduates and failures. Then, using the program's estimated graduation rate of 81%, they calculated the total cost of treatment per participant.

Using this model, we then modified all the variables in different combinations to calculate the range of costs of putting participants through treatment. The first variable that we altered was the graduation rate, again using both 81% and 65%. The next figure we altered was the length of treatment, using both the Brooklyn Treatment Court's model and the plan put forth by the Governor of six months (180 days) inpatient and six months outpatient treatment. As described

earlier, we assumed that the ratio of time spent in treatment between graduates and failures would remain the same, so we estimated that failures would now be spending an average of 19 days in treatment prior to dropping out. Using these new treatment lengths, we then calculated the average cost of treatment per participant at both the 81% and 65% graduation rates. Lastly, by examining reports from treatment providers, we found figures for treatment costs that were significantly higher than those normally found in most of the literature. The cost of inpatient treatment, according to these sources, was estimated to be approximately \$25,000 per bed per year (\$68.49 per day), while outpatient treatment was estimated at \$10,000 per year (\$27.40 per day). Using these new figures, we again calculated the cost of treatment per individual using all four possible combinations of the different treatment lengths and graduation rates.

### ***Administrative Costs***

The last cost increase generated by the court came from the increase in a variety of administrative needs, including additional staff (management, program, and technical) and services (e.g. drug testing). To calculate how much these additional features cost, researchers calculated an average caseload for 1998 and 1999 (535 participants) and an average cost for the additional personnel and services for those two years (\$944,461) and used these figures to calculate the increased cost per participant (\$1,765 per year, \$4.84 per day). Although not all this cost goes toward program participants (some of it, for example, is used to screen out ineligible defendants), because the researchers wanted to find out how much the program cost per participant, they assumed that screening out those who were ineligible was part of the cost of finding eligible defendants.

### ***Calculating Net Savings***

Having found this number, the researchers then calculated the average amount of time participants spent in the active caseload: graduates spent an average of 688 days and failures, 549 days. Using these figures, they then calculated the average administrative costs for both graduates and failures. Then, using the 81% graduation rate, they calculated the average administrative cost per participant. Using this model, we again modified the variables to calculate the costs according to our different models. First, we calculated the cost at both graduation rates. Then, because participants would obviously spend less time in the active caseload under the Governor's plan, we assumed that the ratio between the time spent in the caseload and the total amount of time spent in both inpatient and outpatient treatment would remain the same, giving new totals of 280 days in the caseload for graduates and 183 days for failures. We used these totals to figure out the cost per graduate and per failure and then to calculate the total cost per participant at each graduation rate.

Having calculated all of the costs and savings, we then added each of the possible models for treatment and administrative costs and subtracted these from the total savings to the correction

system to create a total for the net saving per individual diverted into treatment from incarceration. Due to the number of variables, we came up with eight possible results for the size of the savings. Unsurprisingly, in light of the number of variables and how significantly each of these figures differed from one another, the range in the total savings was very large: \$42,646 difference between the lowest and highest savings model. Using the most conservative model involving the highest treatment cost, the lowest graduation rate, and the Brooklyn Treatment Court's longer treatment model, the total savings were still \$26,886 per participant. On the other hand, using the usual, lower treatment cost, the higher graduation rate, and the Governor's proposed treatment length, the savings rose to \$69,532 per participant.<sup>23</sup>

### **Maximum Criminal Justice-Related Savings Model**

Estimated Graduation Rate: 81%

#### ***Savings:***

##### *Jail and prison savings from diverting offenders into community-based treatment*

Average prison sentence for non-violent non-A-I/A-II predicate felony offenders: 2.81 years

Estimated proportions of time served in jail (awaiting transfer) and prison: .156 and .844 respectively.

Jail cost:  $.81 * 2.81 * .156 * \$68,985 = \$24,495$

Prison cost:  $.81 * 2.81 * .844 * \$30,477 = \$58,547$

Total cost:  $\$24,495 + \$58,547 = \$83,042$

**Total Savings = \$83,042**

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<sup>23</sup> In order for reform to succeed, the full continuum of drug treatment will have to be expanded substantially to accommodate increased diversion from incarceration of appropriate offenders. According to OASAS, there are currently 9,319 long-term residential beds in the treatment system. According to the Therapeutic Communities Association of New York, at any given in point there is an overall 90%- 95% utilization, which would translate into 466 - 932 beds, mostly located downstate, currently available for new referrals. However many of these beds are designated for women or adolescents or other special populations and thus would not be appropriate for offenders who do not meet that profile. Capital construction costs could vary between \$55,000 and \$70,000 a bed, depending on size and location of the program. These are one time expenses which would eventually be more than compensated for by the savings which the state would generate from diverting individuals into treatment instead of incarcerating them. And, because hundreds, if not a thousand, individuals can be diverted immediately, even before any money is spent on constructing new facilities, the State could begin generating savings towards the expense of the construction immediately.

**Costs:**

*1. Cost of treatment:*

Graduates: Average days in treatment: 180 inpatient and 180 outpatient

Failures: Average days in treatment: 19 inpatient and 0 outpatient

Average cost of treatment for graduates:  $(180 * \$50.41) + (180 * \$13.97) = \$11,588$

Average cost of treatment for failures:  $(19 * \$50.41) + (0 * \$13.97) = \$958$

Total cost:  $(.81 * \$11,588) + (.19 * \$958) = \$9,568$

***Total Treatment Costs = \$9,568***

*2. Cost of remanding participants to jail pre-placement*

Proportion remanded to jail: .75

Average time remanded to jail: 14 days = .0384 years

Cost:  $.75 * .0384 * \$68,985 = \$1,987$

*3. Cost of sanctioning participants to jail during their participation in diversion program*

Average days predicate felony graduates serve on jail sanctions: 2.13 = .006 years

Average days predicate felony failures serve on jail sanctions: 9.85 = .027 years

Jail sanction costs for graduates:  $.81 * .006 * \$68,985 = \$335$

Jail sanction costs for failures:  $.19 * .027 * \$68,985 = \$354$

Total cost:  $\$335 + \$354 = \$689$

*4. Administrative costs:*

Graduates: Average time in the active caseload: 280 days

Failures: Average time in the active caseload: 183 days

Average Administrative costs for graduates:  $280 * \$4.84 = \$1,355$

Average Administrative costs for failures:  $183 * \$4.84 = \$886$

Total cost:  $(.81 * \$1,355) + (.19 * \$886) = \$1,266$

***Total Criminal Justice Costs = \$1,987 + \$689 + \$1,266 = \$3,942***

**Total Treatment and Criminal Justice Costs:  $\$9,568 + \$3,942 = \$13,510$**

**Net Savings per Participant:  $\$83,042 - \$13,510 = \$69,532$**

**Minimum Criminal Justice-Related Savings Model**

Estimated Graduation Rate: 65%

### ***Savings:***

#### *Jail and prison savings from diverting offenders into community-based treatment*

Average prison sentence for non-violent non-A-I/A-II predicate felony offenders: 2.81 years

Estimated proportions of time served in jail (awaiting transfer) and prison: .156 and .844

Jail cost:  $.65 * 2.81 * .156 * \$68,985 = \$19,656$

Prison cost:  $.65 * 2.81 * .844 * \$30,477 = \$46,982$

Total cost:  $\$19,656 + \$46,982 = \$66,638$

**Total Savings = \$66,638**

### ***Cost***

#### *1. Cost of treatment:*

Graduates: Average days in treatment: 553 inpatient and 333 outpatient

Failures: Average days in treatment: 57 inpatient and 0 outpatient

Average cost of treatment for graduates:  $(553 * \$68.49) + (333 * \$27.40) = \$46,999$

Average cost of treatment for failures:  $(57 * \$68.49) + (0 * \$27.40) = \$3,904$

Total cost:  $(.65 * \$46,999) + (.35 * \$3,904) = \$31,915$

***Total Treatment Costs = \$31,915***

#### *2. Cost of remanding participants to jail pre-placement*

Proportion remanded to jail: .75

Average time remanded to jail: 14 days = .0384 years

Cost:  $.75 * .0384 * \$68,985 = \$1,987$

#### *3. Cost of sanctioning participants to jail during their participation in diversion program*

Average days predicate felony graduates serve on jail sanctions: 6.55 = .0179 years

Average days predicate felony failures serve on jail sanctions: 29.54 = .0809 years

Jail sanction costs for graduates:  $.65 * .0179 * \$68,985 = \$803$

Jail sanction costs for failures:  $.35 * .0809 * \$68,985 = \$1,953$

Total cost:  $\$803 + \$1,953 = \$2,756$

#### *4. Administrative costs:*

Graduates: Average time in the active caseload: 688 days

Failures: Average time in the active caseload: 549 days

Average Administrative costs for graduates:  $688 * \$4.84 = \$3,330$

Average Administrative costs for failures:  $549 * \$4.84 = \$2,657$

Total cost:  $(.65 * \$3,330) + (.35 * \$2,657) = \$3,094$

***Total Criminal Justice Costs = \$1,987 + \$2,756 + \$3,094 = \$7,837***

**Total Treatment and Criminal Justice Costs:**  $\$31,915 + \$7,837 = \$39,752$

**Net Savings per Participant:**  $\$66,638 - \$39,752 = \$26,886$

### **SAVINGS IN REDUCED HEALTH CARE COSTS AND WELFARE PAYMENTS AND INCREASED TAX COLLECTIONS FROM PLACING SECOND FELONY DRUG OFFENDERS IN TREATMENT**

In addition to the immense savings related to the costs associated with incarceration, drug treatment diversion also produces a variety of post-release savings. In the year following graduation, treatment diversion produces a savings range of \$3,780 - \$4,710 per offender in reduced health care and welfare costs and increased tax collections.<sup>24</sup>

To calculate these savings, we used a variety of numbers taken from DTAP's 2001 annual report and then adjusted them, controlling for variable treatment graduation rates to come up with a range of savings for each area in question. We used a range of graduation rate of 65% to 81%. (For an explanation of how we calculated this range, see previous section on criminal justice system-related cost-savings from placing second felony offenders in treatment.)

#### ***Health Care***

The DTAP report found a first-year savings in health care costs of \$1,017 per graduate. They arrived at this number by looking at the 552 program graduates and coming up with the average amounts spent on health care for each graduate in the year prior to their entry into treatment and the year after their release. The average spent in the year after release from treatment was then subtracted from the amount spent in the year before entry to come up with the average difference. This difference – \$1,017 – was then used as an average amount saved related to the first year after release. To come up with an average savings per offender diverted (rather than per graduate) we multiplied the above number by the low and high estimated graduation rates to

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<sup>24</sup> This calculation does not include savings associated with decreased criminal costs, decreased burden on the foster care system, and increased economic benefits stemming from increased wages. The reason that the latter variables were left out of the calculation is that there is a lack of reliable information related to these issues and, as such, speculation seemed unwise. However, though these variables were not included in the calculation, they would certainly add to the total savings as will be demonstrated below.

come up with the applicable savings range of \$661.05 ( $\$1,017 * .65 = \$661.05$ ) to \$823.77 ( $\$1,017 * .81 = \$823.77$ ) per offender in the first year after release.

### ***Social Welfare***

Regarding welfare, the DTAP report found that prior to treatment, 60% of graduates received an average of \$879 per month in assistance for the year prior to treatment and that number dipped to 23% in the year following treatment. In the year after treatment, this translates into 37% ( $60 - 23 = 37$ ) fewer people receiving an average of \$879 per month (\$10,548 per year) in welfare payments when compared to the year prior to treatment. When multiplied by the percentage difference outlined above, this translates into a savings of \$3,903 ( $\$10,548 * .37 = \$3,903$ ) per graduate for the year following release. To find the per-offender range, we multiplied the average per-graduate savings by the range of graduation rates to come up with an average public assistance savings range of \$2,537 ( $\$3,903 * .65 = \$2,537$ ) to \$3,161 ( $\$3,903 * .81 = \$3,161$ ) per offender in the first year after release.

### ***Tax Contribution***

Regarding increased tax contributions, the DTAP report found that prior to treatment, 24% of the employable program graduates were working and paying an average of \$2,000 of taxes per year. After DTAP, 88% of the employable graduates were working and paying an average of \$2,000 in taxes per year. This translates into 64% ( $88 - 24 = 64$ ) more employable graduates working and paying \$2,000 per year in taxes in the year after treatment as compared to the year prior to beginning treatment for an average increased tax contribution of \$1,280 ( $\$2,000 * .64 = \$1,280$ ) per employable graduate. The DTAP report asserts that of the program graduates, 70% were deemed "employable." This number remains a constant pre- and post-treatment. To find the average savings per graduate (as opposed to per employable graduate) we multiplied the savings per employable graduate by the percentage of graduates deemed employable for an average savings of \$896 ( $\$1,280 * .7 = \$896$ ) per graduate. To find the per-offender range, we multiplied the average per-graduate savings by the two graduation rates to come up with an average increased tax contribution of \$582.40 ( $\$896 * .65 = \$582.40$ ) to \$725.76 ( $\$896 * .81 = \$725.76$ ) per offender in the first year after release.

### ***Totals***

Adding the average per offender savings related to health care, welfare, and tax contribution, we find a total savings range of \$3,780 ( $\$661.05 + \$2,537 + \$582.40 = \$3,780.45$ ) to \$4,711 ( $\$824 + \$3,161 + \$726$ ) in decreased health care and welfare costs and increased tax contributions in the first year after release alone.

## **Total Savings**

### **Maximum:**

To calculate the maximum savings we added the maximum criminal justice-related savings from placing second felony drug offenders in treatment and the highest external savings estimate.

$\$69,532 + \$4,711 = \$74,243$  per offender.

### **Minimum:**

To calculate the minimum savings we added the minimum criminal justice-related savings from placing second felony drug offenders in treatment and the lowest external savings estimate.

$\$26,886 + \$3,780 = \$30,666$  per offender

## **ADDITIONAL POTENTIAL SAVINGS NOT ADDRESSED BY THIS STUDY**

Savings associated with a reduction in health care and welfare costs as well as increased tax contributions were only calculated based on the first year after graduation, since numbers beyond the first year were unavailable; savings would almost certainly continue and increase in the following years.

Our report focuses on the cost savings associated with diverting second felony offenders from prison to community-based treatment, as they are the vast majority of drug offenders who are sentenced to prison under current law and would benefit from reform. Savings would also be generated from diverting prison-bound first felony drug offenders into community-based treatment, as well as from reducing the sentence of individuals convicted of class A-I felonies, so the total savings reform that would yield would be greater than those identified in our report. The Center for Court Innovation's cost-benefit analysis, which examines savings associated with avoiding incarceration costs but not any other long-term post-release savings, estimates an \$18,405 savings per prison-bound first time felony drug offender.

Individuals convicted of class A-I felonies must currently serve a minimum of 15 years to life. The Governor's Drug Law Reform Act of 2001 proposed reducing class A-I felonies to 10 years to life with the possibility of a reduction on appeal to 8.3 years to life. Under the Assembly's Drug Law Reform, Drug Treatment, and Crime Reduction Act of 2001, first time class A-I felons could receive a sentence of 5-15 years. Averaging the two proposals, it is reasonable to assume that an agreement on drug law reform might reduce the minimum sentence for a class A-I felony to 8.5 years, with the maximum anywhere from 15 years to life. Both proposals allow for retroactivity. This would mean that class A-I felons would serve on average 6.5 fewer years than under current law. If prison costs per inmate per year are approximately \$30,000 a year (see section on jail and prison costs), then New York State would save approximately \$195,000 for every class A-I inmate in prison.

In addition to the areas of savings included in the previous totals, there are other areas in which it is clear that treatment diversion would save money. Three such areas for which we could not find data specific enough to warrant inclusion in our calculations are savings in reduced crime, foster care costs, and increased economic benefits.

### ***Crime Costs***

In looking at recidivism rates, it is clear that drug treatment saves money when compared to incarceration. The DTAP report asserts a 1-year re-arrest rate of 11% as opposed to 26% for those released from incarceration and a three-year re-arrest rate of 23% as opposed to 47% for those incarcerated. The Kaye report asserts that less than 10% of drug court participants were arrested while enrolled (less than 1% for violent crimes) and that among graduates, most drug courts report 1-year re-arrest rates of less than 15%. The report to Judge Kaye Center on the BTC reports a 1-year re-arrest rate of 12% (6% for drug crime) with a conviction rate of 7% (3% for drug crime). There is a wide range of data regarding how many crimes a drug addict can be expected to commit per year and how much financial damage these crimes do. However, no matter which of those numbers are used – and in addition to the significant savings in court and incarceration costs that would result from a decrease in such crimes – it is undeniable, given the above data regarding recidivism, treatment would save money when compared with incarceration.

### ***Foster Care***

The report to Judge Kaye estimated that 70% of Family Court abuse and neglect of children cases involved parents with substance abuse problems (1995-1999). The average cost of foster care is estimated at \$15,000 per child, per year, and as of 12/31/2000 there were 43,560 placements in New York State. The average length of a child's stay in New York City foster care was estimated at 4.5 years as of 1997. Looking at these numbers, it is evident that successful drug treatment programs could not possibly avoid but significantly lower foster care's financial burden. However, data concerning the number of incarcerated offenders with children in foster care who could retain custody if they were not incarcerated is not available.

### ***Economic Benefits***

In looking at the employment boost experienced by DTAP graduates in the year following treatment (as outlined in the paragraph above on welfare), it is evident that successful drug treatment also creates financial advantages for those who complete the program. Furthermore, the extra money in graduates' pockets would also inevitably help the local economies in which these people live, earn, and spend money. It is not possible for us to calculate these types of economic benefits, but it is clear that treatment diversion would provide further savings in this area.

### ***Final Note***

In closing, it is necessary to emphasize that the above calculations were made only with regard to the first year after graduation from treatment. Over time, these savings could only increase. Therefore, it is important to note that the numbers in this study, while instructive, are by no means comprehensive in that they were calculated in relation to a conservatively limited time frame.