

# Alternatives to Incarceration: The New York Story

By Greg Berman and Robert V. Wolf

## Introduction

The misuse of incarceration in the United States is increasingly the subject of national concern.<sup>1</sup> Partially as a result of scrutiny from academics, advocates, policymakers, and politicians, incarceration rates have finally begun to inch downward after three decades marked by significant increases; in fact, 2013 “marked the fourth consecutive year of decline in the correctional population.”<sup>2</sup>

A closer look reveals that much of this recent reduction has been driven by a handful of states, among them New York.<sup>3</sup> New York reduced its prison population by 26 percent between 1999 and 2012.<sup>4</sup> This reflects a decline from 72,896 to 54,073 inmates.<sup>5</sup>

Even as New York’s jail and prison rolls have gone down, so too has crime, declining by 69 percent over two decades.<sup>6</sup> The transformation in New York City in particular has been remarkable. New York City had only 330 murders in 2013—the lowest number on record in modern times.<sup>7</sup>

“[New York’s] success is neither accident nor coincidence: it’s the product of a coordinated focus across our entire criminal justice system,” said New York City Mayor Michael Bloomberg in 2013.<sup>8</sup>

U.S. Attorney General Eric Holder, taking note of the New York phenomenon, said, “New York has been a leader...diverting some non-violent offenders into drug court programs and away from prison, and extending early release to other non-violent offenders who participate in treatment programs. And while national prison populations have consistently increased, in New York the state prison population has dropped steadily in the past decade.”<sup>9</sup>

The crime reductions in New York City have been the subject of numerous opinion pieces and books (the most persuasive of which is Franklin Zimring’s *The City That Became Safe: New York’s Lessons for Urban Crime and Its Control*),<sup>10</sup> but the reductions in incarceration have been less thoroughly analyzed. This essay takes a deeper look at one particular piece of the puzzle: New York’s vibrant network of alternative-to-incarceration programs.

New York has a long history of investing in community-based alternatives to jail and prison, including the



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founding of the country’s first pretrial release program in 1961.<sup>11</sup> Since then, an array of government agencies, in concert with non-profit organizations such as the Center for Employment Opportunities, Center for Alternative Sentencing and Employment Services, Vera Institute of Justice, Criminal Justice Agency, Center for Community Alternatives, Osborne Association, Women’s Prison Association, Fortune Society, Center for Court Innovation, and others, have worked to expand the availability of both pre-trial and post-adjudication alternatives to incarceration.<sup>12</sup>

Unlike some other states, which have engaged in substantial analysis, sentencing reform, and legislative change designed to reduce correctional spending (often under the banner of “justice reinvestment”), New York’s investment in alternatives to incarceration has not been the product of a concerted initiative on the part of the governor or Legislature. The Vera Institute of Justice notes that New York has “experienced significant drops in prison population without undertaking major legislative changes to achieve this.”<sup>13</sup>

This is not to say that Albany has played no role; however, at several key points, legislation has helped to support and expand alternative programs. For example, the state’s 1984 Classification/Alternatives to Incarceration Act provided funds for programs that divert convicted offenders from jail terms of at least 180 days.<sup>14</sup> The state legislature gave alternative-to-incarceration programs further support in 1996 by amending the Penal Code to give judges more flexibility in probation sentencing. The language, which specifically mentioned reducing incarceration as a goal, read: “the court may...require that the defendant comply with any other reasonable condition as the court shall determine to be necessary or appropriate to ameliorate the conduct which gave rise to the offense or to prevent the incarceration of the defendant.”<sup>15</sup> And in 2009, after decades of effort, a bipartisan initiative succeeded in reforming the Rockefeller drug laws, enhancing the discretion of New York judges to send felony-level offenders to treatment instead of lengthy prison sentences.<sup>16</sup>

A 2012 study by researchers at the Center for Court Innovation and NPC Research found that during the first year following the repeal of the Rockefeller drug laws, courts in New York State sent nearly 1,400 more drug-



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addicted offenders to treatment—an increase of 77 percent from the year before.<sup>17</sup> The increase in treatment referrals saved taxpayers \$5,144 per offender—savings that resulted primarily from a drop in re-offending and from the fact that community-based drug treatment is less costly than the sentences that treatment participants would otherwise have received.<sup>18</sup>

Today, the New York State Division of Probation and Correctional Alternatives funds approximately 165 alternative-to-incarceration programs.<sup>19</sup> And, under the leadership of Chief Judges Judith S. Kaye and Jonathan Lippman, dozens of drug courts, mental health courts, and community courts have been created by the New York state court system to link offenders to social services and community restitution in lieu of incarceration.

While any given program deals with a limited number of participants, taken together, New York's alternatives to incarceration work with thousands of defendants each year. Over time, the numbers begin to add up. According to Michael P. Jacobson and Martha King, "[t]he prison disposition rate [in New York] dropped because courts used 'conditional discharge,' diversion and alternative sentencing programs more frequently."<sup>20</sup> This helps explain why only 15 percent of defendants in New York City were sent to prison in 2008, a decline from about 22 percent in 1994.<sup>21</sup>

## The New York Approach

New York's alternative-to-incarceration programs have evolved organically, adapting to local needs, new research, and a changing policy landscape. New York has sought to be as inclusive as possible in its experimentation with incarceration alternatives. It has developed programs for people of all ages, including teens, misdemeanants, defendants with substance abuse problems and mental illness, and people in both high-density urban settings as well as suburban and rural settings.

New York has increased the diversity of its programming by collaborating with non-governmental providers. In New York City, a significant number of alternative-to-incarceration programs are operated by non-profit organizations funded through the Mayor's Office of Criminal Justice and the New York City Council.<sup>22</sup>

In recent years, many of these agencies have sought to implement evidence-based, research-supported practices.<sup>23</sup> This includes using validated screening tools to identify high-risk offenders.<sup>24</sup> The latest research suggests that there needs to be a continuum of non-incarcerative interventions for offenders, with the most intensive options reserved for populations that are both high-risk and high-need.<sup>25</sup>

New York has also invested in research and evaluation to document the work of pilot programs. For instance, at the same time it expanded drug courts to accommodate an influx of participants following the repeal of the Rockefeller drug laws, the state invested in a

comprehensive evaluation (using funds from the American Recovery and Reinvestment Act of 2009) to measure impacts and outcomes.<sup>26</sup>

Local mayors have played a significant role in expanding alternatives to incarceration, particularly in New York City, which because of its size drives so much of what happens in the criminal justice system statewide.

The judiciary has also played a key role. The judicial branch has led multiple efforts, including the building of community-based courts—such as the Red Hook and Brownsville Community Justice Centers—that steer appropriate defendants into services rather than jail, as well as initiatives housed in conventional courtrooms, such as the Human Trafficking Initiative, Adolescent Diversion Program, and Brooklyn Justice Initiatives.<sup>27</sup>

One of the wrinkles that has aided the judiciary's increased use of alternative sanctions has been the creation of new positions in many courtrooms: "resource coordinators" help judges, prosecutors and defense attorneys make informed decisions about alternative sentencing options. Judges are not required by legislation or sentencing guidelines to use alternative programs, but with the aid of resource coordinators, who build and maintain relationships with community-based providers and help match offenders with appropriate services, they are doing just that. The resource coordinators also hold service providers accountable by conducting site visits and monitoring how they carry out court mandates.

## New Developments

New York continues to experiment with alternative-to-incarceration programs, many of them driven by the judicial branch. Recent initiatives that the Center for Court Innovation has participated in developing include:

### Adolescent Diversion Program

In 2012, New York Chief Judge Jonathan Lippman established the Adolescent Diversion Program in nine pilot sites.<sup>28</sup>

The program was created to reform New York's approach to 16- and 17-year-olds, who are currently treated as adults, even for non-violent offenses such as possession of controlled substances, petty larceny, fare evasion, trespass, graffiti, and criminal mischief.<sup>29</sup> The initiative assigns the cases of 16- and 17-year-olds to judges in Criminal Court who have received special training and have access to an expanded array of dispositional options.<sup>30</sup> The goal is to remove the threat of incarceration and replace it with a more age-appropriate approach that combines social services and monitoring in a community-based setting.<sup>31</sup>

The initiative was led by the court system but requires "close collaboration with prosecutors, defense attorneys, probation departments, service providers and law enforcement," Lippman explained.<sup>32</sup>

A recent study compared participants in the Diversion Program with a matched group of non-participants, finding that the Diversion Program reduced the use of jail without increasing the likelihood of re-arrest.<sup>33</sup> Indeed the Adolescent Diversion Program sites reduced felony re-offending, although results were not consistent across the board.<sup>34</sup> The study found that high-risk offenders benefited the most from being diverted to services.<sup>35</sup>

### **Human Trafficking**

In September 2013, Chief Judge Lippman launched a statewide Human Trafficking Intervention Initiative.<sup>36</sup> Building on pilot programs in Queens, Midtown Manhattan, and Nassau County that connect those arrested for prostitution to counseling and social services in lieu of jail, the initiative tries to help defendants avoid a criminal record.<sup>37</sup>

Given the high rates of violence and the overlap between prostitution and sex trafficking, this initiative is essentially an effort to recognize that people arrested for prostitution are victims too.<sup>38</sup> By linking victims and potential victims of trafficking and violence with specialized services rather than sending them to jail, the justice system can potentially help people connect to resources, address their underlying needs, and make long-term changes in their lives.

It is too soon to evaluate the impact of the program, but during its first year, hundreds of people linked to services through the program have continued to work with specialized staff after the completion of their mandate—a positive outcome.

### **Brooklyn Justice Initiatives**

In his 2013 State of the Judiciary address, Chief Judge Lippman highlighted the need for bail reform in New York. Among other ideas, the chief judge sought to develop a supervised release program that would reduce reliance on pre-trial detention for misdemeanor defendants, minimizing the negative impact of detention on individual lives while enhancing the justice system's fairness. Brooklyn Justice Initiatives seeks to fulfill this mandate, ensuring misdemeanor defendants return to court by replacing detention with vigorous monitoring and links to voluntary services.

Brooklyn Justice Initiatives promotes compliance with release conditions through an automated appointment reminder system that sends customized messages to participants via text message and voicemail. Consistent with procedural justice research, staff craft all notification messages to include language that is easy to understand and respectful.

Brooklyn Justice Initiatives also provides judges in Kings County Criminal Court with a broad range of alternative sentencing options, including short-term social services, community restitution, and more intensive, longer-term clinical interventions. The goal is to reduce

the use of incarceration specifically for adolescent and young-adult offenders ages 16 to 21 living or arrested in the Brownsville or Red Hook neighborhoods.

Short-term services include psycho-educational groups, crafted to address the clinical and developmental needs of the young-adult population, and individual case management sessions. Group sessions cover a variety of topics, including anger management, decision-making, substance use, goal-setting, and employment skills. Services are provided onsite at Brooklyn Justice Initiatives, [as well as in community settings]. All services are rigorously monitored to ensure compliance.<sup>39</sup>

### **Brownsville Community Justice Center**

Currently in development, the Brownsville Community Justice Center will seek to reduce crime and the use of jail while improving public trust in justice.<sup>40</sup> It will be located in one of the most violent neighborhoods in New York City, a Brooklyn neighborhood that has been largely untouched by the public safety gains of the past generation.

The Brownsville Justice Center will experiment with multiple approaches to preventing incarceration.<sup>41</sup> It will have a special focus on young people, building “multiple off-ramps” for those who come into contact with the justice system at nearly any stage of the justice process, from arrest to prosecution to sentencing to aftercare following a stint in custody.<sup>42</sup> By offering educational, occupational, social, and health services, the Justice Center will seek to help young people “become law-abiding members of society.”<sup>43</sup>

When fully operational, the Justice Center will be an official branch of the New York State Court System, with a full-time judge who will have a broad array of community-based sanctions at his or her disposal, including community service, drug treatment, job training, and counseling.<sup>44</sup> The idea is to link individuals to the services and supports they need to avoid becoming recidivists.<sup>45</sup>

The Brownsville project is currently going through the city's land use review process, which requires approval by the local community board, the borough president, the city planning commission, and the city council. If approved, construction should begin in 2015.

### **Conclusion**

There is more still to come in terms of alternatives to incarceration in New York. In 2014, Governor Andrew Cuomo created a statewide commission to examine whether to raise the age of criminal responsibility in New York from 16 to 18.<sup>46</sup> The commission has not yet come back with its findings, but it is likely to highlight the need for more programs to serve adolescents who find themselves enmeshed in the justice system.

Also in 2014, New York City Mayor Bill de Blasio announced the creation of a Task Force on Behavioral

Health and the Criminal Justice System that will develop a strategic plan to improve the way the city's criminal justice system addresses the needs of individuals with behavioral and mental health issues.<sup>47</sup> Given that one of the goals of the task force is to reduce the population housed on Rikers Island, recommendations are likely to include more alternative-to-incarceration programs. In addition, the City of New York has also implemented a citywide initiative that created court-based intervention teams in each borough with an eye toward providing alternatives to incarceration for mentally ill defendants.

Alternative-to-incarceration programs are likely to play an ever larger role in New York and around the country as research documenting their effectiveness continues to emerge showing that alternatives to incarceration can meet all the classic goals of criminal sentencing: incapacitation, deterrence, retribution, and rehabilitation.<sup>48</sup> These findings support the claims of criminologists Todd R. Clear and James Austin that "an aggressive program to reduce prison populations can proceed without a substantial negative impact on public safety."<sup>49</sup>

Over the past generation, New York's alternative-to-incarceration programs have been able to test new ideas, figure out what works, and spread best practices. For states in search of a more effective approach to criminal justice that lowers costs and places fewer men and women behind bars without sacrificing public safety, the New York approach is one worth replicating.

## Endnotes

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22. PORTER ET AL., *supra* note 14, at 4.
23. See generally MICHAEL REMPEL, CTR. FOR COURT INNOVATION, EVIDENCE-BASED STRATEGIES FOR WORKING WITH OFFENDERS (2014), available at <http://www.courtinnovation.org/sites/default/files/documents/Evid%20Based%20Strategies.pdf>.
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