

State of New York
Department of Correctional Services

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**Impact of the 2009 Drug Law Reform
On
Shock Incarceration in New York State**



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In July 1987, New York State established the Shock Incarceration Program by enabling legislation, which mandated that the Department of Correctional Services (DOCS) create a six-month program that would prepare young, non-violent inmates for early parole release consideration. The program was to operate in special facilities and to provide a schedule of rigorous physical activity, intensive regimentation, discipline, and drug rehabilitation. DOCS was directed to develop a process to select legally eligible inmates for participation.

When the Legislature considered its sweeping Drug Law Reform (DLR) that took effect on April 7, 2009, one of its goals was to expand the eligibility for the Shock Incarceration Program. Through April 1, 2009, over 39,000 inmates had completed the Program. The graduates had been tracked after being released from custody and demonstrated a significantly lower rate of return to prison over a three year period than comparison groups of similarly situated inmates.

Because of its early release component and the public safety record amongst its graduates, it was estimated that the Program had saved the taxpayers of New York State over \$1.3 billion in its first 23 years of operation.

Eligibility Criteria

Prior to April 2009, inmates were eligible for Shock if they were new court commitments under the age of 40, who were sentenced to a term of imprisonment for which the inmate became eligible for release on parole within three years from the date they entered DOCS. Offenders must have been between the ages of 16 and 39 years when they committed their instant offense. Inmates who had prior felony convictions for which they received prison sentences were not eligible for Shock. In addition, certain crimes of conviction precluded eligibility, including:

- a) a violent felony offense as defined in Article 70 of the Penal Law;
- b) an A-1 felony offense;
- c) manslaughter in the second degree, vehicular manslaughter in the second degree, vehicular manslaughter in the first degree, and criminally negligent homicide as defined in Article 125 of the Penal Law;
- d) rape in the second degree, rape in the third degree, sodomy in the second degree, sodomy in the third degree, attempted sexual abuse in the first degree, attempted rape in the second degree and attempted sodomy in the second degree as defined in Articles 110 and 130 of the Penal Law;
- e) any escape or absconding offense as defined in Article 205 of the Penal Law; and
- f) a Class B, second felony drug offense with a determinate sentence of 3 ½ years or more.

In addition to the legislatively mandated criteria, the law allowed DOCS to establish various suitability criteria to further restrict program participation. These suitability criteria permitted restrictions based on the medical, mental health, security classification, or criminal histories of otherwise legally eligible inmates. Additionally, inmates whose outstanding warrants, disciplinary records, or alien status made them a security risk could also be screened from participation.

Since Shock allows eligible inmates to be released prior to serving their judicially mandated minimum sentences, efforts were made by both the Legislature and DOCS to carefully restrict the eligibility criteria. These restrictions help ensure that those inmates who could benefit the most from this program participate, while those inmates who pose a risk to society are excluded.

In sum, the four major criteria restrict **age** (to reserve the program for relatively younger inmates), **offense type** (to eliminate violent offenders, sex offenders and escape risks from the program), **time to Parole Eligibility** (to set a limit on the time reduction benefits available to a successful participant and to further assure that these inmates have not been the perpetrators of serious crimes), and prohibit **prior service of an prison sentence** (to reserve the program opportunity for first-time commitments).

Since Shock is a voluntary program, inmates meeting all of the eligible criteria can still refuse to participate.

Because of the Program's documented success in saving taxpayer money without jeopardizing community safety, since its inception, the Legislature increased the maximum allowable age for participants four times prior to April 2009. Originally enacted for inmates 23 years of age or younger, 24 and 25 year-olds were deemed eligible in 1988; in 1989 the age limit was raised to 29; in 1992 inmates up to age 34 were allowed in the program; and in 1999, the Legislature expanded the eligibility age to include inmates who were between 35 and 39 when they came to DOCS. Each of these legislative changes in age eligibility resulted in substantial growth of the Shock program.

Shock Expansion- 2009

As part of the sweeping Drug Law Reform (DLR) Legislation enacted in April 2009, Shock became available to inmates up to and including 49 years of age.

A second change in the eligibility criteria permitted inmates who had been in DOCS' custody to "age into" the Shock Incarceration Program. Specifically, otherwise eligible non-violent inmates who entered DOCS' custody more than three years from their earliest release dates can be selected from general confinement facilities when, in the case of indeterminate sentences, they are within three years of parole eligibility; and in the case of inmates serving drug determinate sentences, they are within three years of conditional release. Prior to this change, eligible inmates had to be selected for the program from reception centers.

On July 1, 2009, the Department activated procedures to screen general confinement inmates willing to participate in the six- month Shock Incarceration Program.

Additionally, class B, second felony drug offenders, who were expressly barred from Shock when drug offense sentences were changed from indeterminate to determinate in 2004, were permitted to participate in Shock beginning in 2009.

After an automated screening to identify potentially eligible candidates, Department staff screen each inmate to determine if he or she is suitable for the program. To do this, facility staff thoroughly read the inmate's entire criminal history, the circumstances underlying the commitment offense, and anything in the record from the judge or the district attorney. An inmate cannot appeal an unsuitability determination.

If an inmate is found suitable for Shock, facility health services staff determine whether the inmate has a medical or mental health diagnosis that would preclude participation. For example, certain types of cardiovascular disorders or hematologic disorders might medically disqualify an inmate from participation.

Court Ordered Shock

The DLR also permits the sentencing court to order DOCS to enroll a drug defendant into the Shock Incarceration Program when the defendant meets the legal eligibility requirements. The law mandates DOCS to establish a special alternate, six-month program for any court-ordered Shock defendant who requires a degree of medical care or mental health care not available at a Shock facility. The inmate must be notified of the alternative placement. If the inmate objects in writing to placement in such alternative program, DOCS must notify the sentencing court and explain the alternative proposal. The court must then conduct a proceeding and may modify its original sentence accordingly. Any inmates who successfully complete an alternative to shock program are treated in the same manner as if they had completed Shock.

Data Section

SCREENING OF LEGALLY ELIGIBLE INMATES

Shock Expansion Impact

As a result of the DLR changes, as of April 30, 2010, an additional 471 offenders were allowed to participate in Shock, although due to DLR provisions diverting more low-level drug offenders into treatment rather than prison, and due to the overall decline in the inmate population, the total number of Shock participants has and continues to decrease. Below is a breakdown of the status of these 471 offenders as of the end of April 2010. **(See Table 1)**

Entered the Program: There were 471 additional offenders sent to shock as a result of DLR. 249 inmates were sent to Shock from general confinement facilities (including 32 over the age of 40) while another 138 inmates sent from reception were over age 40. Additionally, another 84 Class B, second felony drug offenders under 40 years old were sent from reception. **(See Table 1)**

In Program: There were 178 additional offenders actively participating in the Shock Program as a result of DLR on April 30, 2010: 77 inmates were from general confinement facilities (including 6 over the age of 40), another 69 inmates from reception were over age 40 and another 32 were Class B, second felony drug offenders under 40 years old from reception. (**See Table 1**)

Removed: There were 54 inmates who had been removed from the Shock Program in this pool; 27 inmates removed from Shock were from general confinement facilities (including 8 over the age of 40), 15 removed inmates were over 40 year olds who came from reception, and 12 Class B, second felony drug offenders were under 40 years old who came from reception. (**See Table 1**) The possible reasons for an inmate's removal from the program include such things as misbehavior, unsatisfactory program participation, or a voluntary removal.

Graduated: There were 239 inmates who graduated from Shock as a result of DLR; 145 inmates who entered Shock were from general confinement facilities (including 18 over the age of 40), 54 graduates who came from reception were over age 40, and 40 Class B, second felony drug offenders were under 40 years old who came from reception. (**See Table 1**)

TABLE 1									
Expanded Shock Status as of April 30, 2010									
	General Confinement			Reception			TOTAL		
	Under 40 yrs. old	40 +	Total GC	Class B Drug 2nd Fel Under 40 yrs. Old	40 +	Total Recp	Under 40 yrs. old	40 +	Grand Total
Sent	217	32	249	84	138	222	301	170	471
Grads	127	18	145	40	54	94	167	72	239
Removed	19	8	27	12	15	27	31	23	54
In Program	71	6	77	32	69	101	103	75	178

Court Ordered Shock Cases Summary:

As of the end of April 2010, there were 89 inmates ordered by the courts to participate in Shock. Virtually all of the 89 would have been likely participants in the program even without a court order.

A review of the status of these inmates at the end of April 2010 shows that: 50 were active in the traditional Shock program, 1 was removed from Shock and 10 had graduated from the program.

Another 9 inmates were found suitable to participate in Shock and were awaiting transfer to the program.

There were 8 inmates who did not physically qualify to participate in the traditional Shock program and were provided with alternative treatment in DOCS facilities. One of them graduated and none were removed from these alternative programs.

Five court ordered offenders were found to be ineligible for Shock (all were recidivists) and two refused to participate.

The remaining four inmates were not yet placed in Shock because of their long sentences.

Since it appears that only the eight inmates in alternative Shock placement (due to medical or mental health issues) would have previously been ineligible for Shock, the impact of this portion of the DLR on increasing Shock participation has so far been minimal.

Screening of Legally Eligible Inmates: General Confinement vs. Reception Inmates

A comparison of the Shock screening data for inmates who come from reception or from general confinement is presented below. There are key differences in screening results for these two groups. Specifically, the refusal rate for inmates screened from general confinement (45%) is five times higher than for those offenders screened for Shock in reception (9%). (**See Table 2**)

This finding was expected. Despite the opportunity to spend less time in prison, Shock participation for inmates in general confinement results in a reduction in the amount of personal property they have accumulated as well as a reduction in the number of personal liberties that inmates became accustomed to in general confinement. It should also be noted that the time savings, especially for this first cohort of retroactively eligible inmates, could have been quite short compared to the savings offered through the Merit Time Program. [*For more information on Merit Time see "Merit Time Program Summary October 1997 – December 2006" New York State Department of Correctional Services, Albany, New York 12226 (2007).*]

On the web at http://www.docs.state.ny.us/Research/Reports/2007/Merit_Time_Through_2006.pdf]

TABLE 2				
Screening of Custody Inmates For Shock Eligibility				
June 2009 Thru April 2010				
Category	General Confinement	%	Reception Inmates	%
Auto Screened Time Eligible Inmates	3,478		2,904	
Found Eligible For Further Screening	1,784		1,739	
Found Ineligible	1,694		1,165	
Suitable Inmates Eligible for For Additional Screening	1,784	100%	1,739	100%
Refused Shock Participation	811	45%	150	9%
Inmates Manually Screened	973		1,589	
Approved for Shock	336	35%	1,364	86%
Disqualified	637	65%	225	14%
Disqualification Reasons				
Medical	69		46	
Psychiatric	1		0	
Pending Charges	81		25	
Criminal History	137		33	
Foreign Born	10		4	
Judge Refused	6		1	
PE Date	4		1	
Disciplinary	5		0	
Public Risk	147		24	
Crime of Commitment	151		88	
Weapons Offense	3		0	
Prior Shock	4		3	
Owning Facility(CASAT,WR)	17		0	
Executive Review	2		0	

Of the inmates suitable for participation who volunteered for Shock, the rate of disqualification for those from general confinement (65%) was more than four times higher than it was for reception inmates (14%). Although the inmates from general confinement were disqualified at a higher rate, the reasons for disqualification were not significantly different. The three disqualification reasons of Public Risk, Nature of the Instant Offense and Criminal History accounted for roughly two-thirds of the disqualifications for both groups. (See Table 2)

DLR Impact on Shock: Fewer Drug Offenders in DOCS

The number of offenders committed for drug crimes to DOCS custody has been declining in the past few years as a result of legislative reforms to the state's drug laws. These reforms were further modified by the Drug Law Reform of 2009 as steps were taken to expand the role of Drug Courts and community-based treatment options in order to divert drug offenders from prison.

A review of the 62,027 inmates screened as legally eligible for Shock participation between 1987 and April 2009 shows that 66% were committed for drug crimes. Of the 3,101 inmates screened as legally eligible for Shock participation between April 2009 and April 2010, shows that only 41% were committed for drug crimes. (Data not provided in any Table)

Table 3 shows that the reduction of drug offenders committed to DOCS has also changed the composition of the participants in the Shock program.

Between April 2006 and April 2010 the proportion of drug offenders in DOCS declined from 23% on April 30th 2006 to 16% on April 30th 2010. During that same period the proportion of drug offenders in the Shock program declined from 56% on April 30th 2006 to 43% on April 30th, 2010. This period also saw a decline in the overall number of Shock participants from 973 to 890. (See Table 3).

TABLE 3				
Proportion of Drug Offenders in Shock				
April 2006 - April 2010				
	Shock	Percent	DOCS	Percent
April 30	Population	Drug Offenders	Population	Drug Offenders
2006	973	56%	63,013	23%
2007	1,108	57%	63,480	22%
2008	971	56%	62,382	21%
2009	935	50%	59,991	19%
2010	890	43%	57,425	16%

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