



Speaker Sheldon Silver

Breaking New York's Addiction to Prison: Reforming New York's Rockefeller Drug Laws

In 1973 New York enacted, what were considered at the time, the harshest drug laws in the nation. The so-called Rockefeller Era Drug Laws eliminated judges' sentencing discretion and required them to impose harsh mandatory minimum prison sentences on drug offenders. New York spends millions of dollars per year incarcerating drug offenders.

More than 35 years after they were enacted, it is clear that the Rockefeller laws have effectively failed to combat drug abuse or impact the incidence of violent crime in New York State. What they have succeeded in doing is imprisoning tens of thousands of low-level non-violent offenders, who are predominantly African-American and Latino, with no prior history of committing violent crimes. It costs New Yorkers more than \$500 million a year to imprison all individuals convicted of drug offenses at the state level.

For nearly a decade, the New York State Assembly has passed legislation to reform these laws, emphasizing restoring discretion to judges and providing alternatives to incarceration where appropriate and drug treatment for offenders where needed.

In 2004, we successfully persuaded then-Governor Pataki and the Senate Majority, to take a first step to reform the Rockefeller Drug Laws. Because the Assembly insisted, New York lowered maximum prison sentences by converting all indeterminate sentences, eliminated life sentences, doubled the weights for the top two classes of drug offenses and provided sentencing relief. Further amendments we fought for have enabled some of those who were previously sentenced under the laws to seek reductions in their sentences.

Because the Assembly insisted, New York converted all indeterminate sentences into determinate ones, eliminated life sentences, doubled the weights for the top two classes of drug offenses and provided sentencing relief.

Despite these first steps, the core of the original Rockefeller laws remains in effect; judges still do not have real discretion. Mandatory minimum sentences remain for the most common, low-level non-violent drug offenses. African-Americans and Latinos continue to be disproportionately incarcerated for possessing small amounts of narcotics.

This year Governor David Paterson called on New York to finally reform the Rockefeller Drug Laws. The New York State Assembly is committed to joining him in making 2009 the year when New York finally restores common sense to drug policy.

Background: What Are the Rockefeller Drug Laws?

The Rockefeller Era Drug Laws were enacted in 1973, on the premise that the only way to quell drug abuse and stop violent crime was to impose harsh maximum prison sentences and mandatory minimum prison terms on drug offenders. Before 1973, courts had the discretion and flexibility to sentence drug offenders to many years in prison when circumstances warranted, or to probation and alternatives to state prison when the facts warranted it. The Rockefeller Era Drug Laws eliminated almost all judicial discretion and imposed a “one-size-fits-all” approach to drug abuse and its ramifications.

These laws ignored, and still ignore, the health and societal implications of drug abuse. The criminal justice system and the limited alternative to prison sentences form a matrix against which these problems cannot possibly be addressed. They ignore the inescapable fact that chemical dependence is perhaps the most serious health issue affecting this state. It has been estimated that untreated substance abuse costs the U.S. economy \$346 billion a year. Rather than addressing substance abuse addiction as an epidemic, thousands of individuals who played no major role in the drug trade but sold or used small quantities of drugs are incarcerated because of mandatory minimum sentences.

Efforts at Reform: 1975, 1979, 2004, 2005

The Legislature in 1975 and 1979 adjusted the lower end of sentences for a select group of upper-level drug offenders. This select group was still subject to a maximum sentence of life imprisonment.

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In 2004, under the leadership of the New York Assembly and drug law reform advocates, New York undertook a first step by lowering maximum prison sentences by converting indeterminate to determinate sentences (for example, rather than being sentenced to a possible maximum prison term of 8 1/3 years to 25 years for possession with intent to sell drugs, an individual now faces, depending on the circumstances, up to 9 years in prison—although under any scenario, an offender had to, and still has to spend time in the custody of state prison officials), eliminating life sentences, doubling weights for the top 2 classes of drug offenses and providing other sentencing relief. Further amendments have enabled some of those who were previously sentenced under the laws to seek limited reconsideration of their sentences.

Over the past seven years, the New York State Assembly has consistently passed legislation that would broaden reform and ameliorate even more of the harsher aspects of the drug laws, always with the goal of restoring to courts their inherent discretion to decide cases and provide sentencing alternatives. The Senate and past governors have been unresponsive to the Assembly's calls for reform.

The Rockefeller Drug Laws Today

More than 35 years after these laws were enacted, individuals convicted of a Class B felony drug offense, one of the most commonly charged drug offenses, (most typically "possession with intent to sell") **must go to** state prison, and those with any prior felony conviction can only receive an alternative to a prison sentence if a prosecutor consents.

In other words, under current law, anyone convicted of possessing with the intent to sell two sugar packet size bags of a narcotic must go to prison. Possessing narcotics with the intent to give or share them with someone else is a sale under New York law; the person who provides another with drugs does not have to receive any money.

Impact on Crime Rates

When the laws were enacted in 1973, there were 11 homicides per 100,000 inhabitants in New York State. After 17 years of enforcement, the murder rate increased to 14.5 homicides per

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100,000 New Yorkers. The same trend is seen in robbery rates, another important index crime.

During the 35 years since the Rockefeller Drug Laws were enacted, the data shows crime rates rising across the board until the mid-1990s when crime began to decrease in all categories. Many factors unrelated to mandatory sentencing for drug offenders have caused great fluctuation in the crime rate over the last 35 years. However, it should be noted that the number of people in prison for drug offenses started to level off during the 1990s at the same time the crime rate began to drop.

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Impact on Drug Abuse

According to the National Household Survey on Drug Use conducted by the U.S. Department of Health, illicit drug use among New Yorkers has not abated since the 1973 passage of the Rockefeller Drug Laws.

The overwhelming number of people sent to prison still suffer from unaddressed substance abuse issues. For example, one study shows that 83 percent of inmates in state prison have an identified substance abuse (82 percent of male inmates and 88 percent of female inmates).¹ Another study indicates that drug use by state prison inmates in the month before their offense increased between 1991 and 1997 from 50 percent in 1991 to 57 percent in 1997. Similarly, drug use at the time of offense for state prison inmates increased from 31 percent in 1991 to 33 percent in 1997. The same report found that more than 77.5 percent of arrestees in New York City test positive for drugs at the time of arrest.²

Disproportionate Impact of Rockefeller Drug Laws on Communities of Color

A 2004 report found that rates of illicit drug use are 8.1 percent for whites, 7.2 percent for Hispanics, and 8.7 percent for African-

Ninety percent of those incarcerated in state prison for drug offenses are African-American or Latino.

¹ *Identified Substance Abuse, 2007*, New York State Department of Correctional Services.

² White House Office of National Drug Control Policy, Drug Policy Information Clearinghouse, Fact Sheet, Drug Use Trends, 2002.

Americans. Further, drug use rates among youths ages 12 to 17 are higher for whites than for African-Americans and Latinos.³

Yet today 90 percent of those incarcerated in state prison for drug offenses are African-American or Latino. African-Americans comprise 58.5 percent of drug offenders in state prison; Latinos, 31.5 percent; and whites, 8.9 percent.⁴

There are currently more than 13,400 drug offenders in state prison representing 21 percent of male inmates and 33 percent of female inmates. Thirty-nine percent of these drug offenders in state prison are there for drug possession rather than selling, and 80 percent of drug offenders in state prison have never been convicted of a violent offense.⁵

Drug abuse is not only a criminal justice issue but also a public health issue.

Principles for Real Rockefeller Drug Law Reform

The Assembly is committed to finally reforming the Rockefeller Drug Laws in 2009. We believe the following principles should guide any efforts at enacting reform:

- Illegal drugs should remain illegal. Adults who sell drugs to children, individuals who use guns in drug deals, and drug kingpins deserve harsh punishment.
- Mandatory minimum sentences for low-level offenders must go. Mandating that judges sentence drug users and very low level street sellers to state prison has not impacted crime or reduced addiction but, rather, has led to a massive increase in New York's prison population with a disproportionate number of Latinos and African-Americans being incarcerated.
- Real judicial discretion means an end to mandatory minimum prison sentences for Class B felony drug offenses and second time, non-violent drug offenders and the placing of an equal emphasis on alternatives to incarceration and treatment. Except for the most serious crimes, judges in New York already have the discretion to fashion appropriate sentences for criminal acts. Judges should have the ability to make an informed decision whether circumstances warrant imposing a state prison sentence

³ 2004 *National Survey on Drug Use and Health*, U.S. Department of Health, SAMHSA

⁴ Testimony submitted by Correctional Association of New York before Hearings of Joint Committees of the New York State Assembly, held May 8, 2008, New York City.

⁵ *Id.*

in drug crimes just as they do in cases of many assault, larceny, property damage and any number of other crimes.

- District Attorneys should continue to play a key role in the process, but they should not be able to veto a judge's discretion. Indeed, to the extent there are district attorney-sponsored initiatives, such as Drug Treatment Alternative to Prison (DTAP) programs that have proven success rates with the limited populations they serve, judges will have the discretion to continue them.
- Existing maximum determinate sentences for first and second class B level felony and below offenders should be maintained so that if a judge decided circumstances warrant, those who commit the crime will do serious time.

It is estimated that New York has already saved \$99.22 million for the limited drug law reform it has implemented.

Treating Drug Abuse as a Public Health Issue

Drug abuse is not only a criminal justice issue but also a public health issue—and if we can address the public health problem, much of the criminal justice issue will be addressed as well; this means creating more alternatives to incarceration. The state already has underutilized resources (including, by some estimates, as many as 800 treatment beds that could be easily made available) that should be marshaled to end a cycle from addiction to prison, where defendants remain addicted, and then return to society where the revolving door keeps turning. Successful reforms will break this cycle.

Cost Savings of Rockefeller Reform

It is estimated that New York has already saved \$99.22 million for the limited drug law reform it has implemented to date. It costs approximately \$45,000 a year to incarcerate an inmate in a state prison, and according to the Department of Correctional Services, there are over 13,000 offenders who are in prison on drug-related offenses (about one-fifth of all male inmates and one-third of all female inmates). The estimated savings to the state, if fully implemented, would not only be incarceration costs but other collateral benefits such as health care and welfare savings, added to the increased productivity of people saved from the draconian effects of this regimen of laws.