

DRUG POLICY ALLIANCE

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New York's Rockefeller Drug Laws: Explaining the Reforms of 2009

In April 2009, Governor David Paterson signed legislation enacting real reform of the draconian Rockefeller Drug Laws. The changes include eliminating mandatory minimums and returning judicial discretion in most (but not all) drug cases; reforming sentences; expanding drug treatment and alternatives to incarceration; and allowing resentencing of some currently incarcerated people who are serving sentences under the old laws. With these reforms, New York begins its shift away from the Rockefeller Drug Law regime, and toward an approach to drug policy based on public health and safety.

The 2009 reform legislation:

Eliminates mandatory prison sentences for most drug offenses

- Prison terms are no longer mandatory for those convicted of first time Class B, C, D and E drug felonies. Judges can sentence to probation, treatment or other alternatives to incarceration, or prison.
- Prison terms are no longer mandatory for those convicted of second time Class C, D, and E drug felonies and certain non-violent property offenses. Judges can sentence to probation, treatment or other alternatives to incarceration, or prison.
- Prison terms are no longer mandatory for those convicted of second time Class B drug felonies who are deemed by the court as drug dependent or to have abused drugs or alcohol. Judges can sentence to treatment or other alternatives to incarceration, or prison.
- Mandatory prison terms are still required for second time Class B drug felonies if the defendant was convicted of, or had pending, a *violent felony* in the prior 10 years. In this case *there is no judicial discretion*.
- Mandatory prison sentences remain for those convicted of Class A-I and A-II felonies – *there is no judicial discretion*. Penalties for these offenses were reduced in 2004/2005, but remain unduly harsh.

Expands drug courts and other alternatives to incarceration, and reduces penalties

- Expands drug treatment, alternatives to incarceration, and re-entry services by investing nearly \$71 million into those programs.
- Allows the court to conditionally seal records of drug and some non-drug, nonviolent offenses upon a defendant's successful completion of treatment or other alternative programs. Police and prosecutors will continue to have access to these records as needed for criminal investigations.
- Reduces the minimum penalty for those convicted of a second time Class B drug offense with a prior nonviolent felony conviction from 3 ½ years to 2 years.
- Reduces the minimum penalty for those convicted of a second time Class C drug offense with a prior nonviolent felony conviction from 2 years to 1 ½ years.

Allows retroactive resentencing for about 1,500 currently incarcerated people

- Allows those convicted of a Class B drug felony before 2005, now serving an indeterminate sentence with a maximum term of more than 3 years, to petition the court to be re-sentenced under new sentencing provisions. Judges then make a decision on re-sentencing – it is *not* automatic.
- Allows those eligible for re-sentencing for Class B indeterminate drug sentences to petition the court for re-sentencing for Class C, D or E felonies “which were imposed by the sentencing court at the same time or were included in the same order of commitment” as the Class B felony.

- Excludes from resentencing those serving Class B indeterminate sentences if they have a violent felony conviction in the preceding 10 years (excluding time in custody); are incarcerated for a merit-time ineligible offense; or were convicted as a “second violent felony offender” or “persistent violent felony offender”.

Unfortunately, the reforms also create new, harsher drug crime statutes

- Establishes a “kingpin” provision as a Class A-I felony requiring a mandatory prison term of 15 years to life. This restores life sentences for drug offenses, initially eliminated in 2004, and is a step in the wrong direction.
- Establishes a new Class B drug felony of “Criminal sale of a controlled substance to a child” which is committed when an adult over 21 years of age sells a controlled substance to a minor under 17 years of age. This new crime is not probation eligible but those deemed by a court to be drug dependent or to have a history of substance abuse can be diverted to judicially supervised treatment as an alternative to prison.

Background on New York’s Rockefeller Drug Laws

Using prison to address drug abuse: The Rockefeller Drug Laws, enacted in 1973 under then-Governor Nelson Rockefeller, mandated extremely harsh mandatory minimum prison terms for possession or sale of relatively small amounts of drugs. Although intended to target “kingpins”, most of the people incarcerated under these laws were convicted of low-level, nonviolent offenses, and many had no prior criminal records. The laws marked an unprecedented shift towards addressing drug use and abuse through the criminal justice system instead of through the medical and public health systems. It was a shift that New Yorkers would soon discover didn’t work and come to regret.

Waste of taxpayer dollars: Approximately 12,000 people remain locked up for drug offenses in New York State prisons, representing nearly 21% of the prison population. The state spends over \$525 million per year to incarcerate people for drug offenses – 66% have previously never been to prison, and 80% have never been convicted of a violent felony. It costs approximately \$45,000 to incarcerate a person for one year in New York, while treatment costs an average of \$15,000 per year, and is proven to be 15 times more effective at reducing crime and recidivism.

Extreme racial disparities: The laws have led to extraordinary racial disparities in the state’s criminal justice system. Studies show that rates of addiction, illicit drug use and illicit drug sales are approximately equal between racial groups. But while Black and Latino people make up only 34% of New York State’s population, they comprise nearly 90% of those currently incarcerated for drug felonies. This is one of the highest levels of racial disparities in the nation, and is widely considered a human rights disgrace.

Limited changes in 2004 and 2005: After years of vigorous advocacy, in December 2004 the NY State Legislature passed limited reforms of the laws, including some sentence reductions, increases in merit time, and improvements to parole. These reforms were a small step forward, but did not constitute real reform – for instance, the changes did not restore judicial discretion or provide funds for community-based drug treatment. As then-Republican Senate Leader Joseph Bruno admitted, “This is only a small step, and we need to do more.”

Today: Toward a Public Health and Safety Approach to Drug Policy in New York

Real reform of the Rockefeller Drug Laws sets the stage for the development of a public health and safety approach to drug policy in New York City and State – policies that can successfully reduce the death, disease, crime, and suffering associated with drug dependency and abuse. New Yorkers are prepared and have already begun outlining the best practices of this new approach. In January 2009, DPA and The New York Academy of Medicine convened *New Directions for New York*, a historic assembly of hundreds of stakeholders from the community, NY City and State government, and the fields of public health, treatment, and criminal justice, gathered to explore a coordinated public health and safety approach to drugs. Lessons from that gathering will help shape the future of drug policy in New York.

Join us to develop a New Direction for New York

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