

~~HS 89~~

~~3536~~

5

**REMARKS
HONORABLE JUDY HARRIS KLUGER
BEFORE THE ASSEMBLY PANEL STUDYING THE
ROCKEFELLER DRUG LAWS
THURSDAY, MAY 8, 2008
NEW YORK ASSEMBLY HEARING ROOM
250 BROADWAY - ROOM 1923
NEW YORK CITY**

**Remarks Before Assembly Panel
Studying Rockefeller Drug Laws
Thursday, May 8, 2008 @ 3:00pm**

Good afternoon. I want to thank you for inviting me to testify on behalf of the New York State Courts and for seeking our perspective on the impact of the Rockefeller Drug Laws.

In 1973, the state legislature sought to reduce the use and sale of drugs by enacting certain and severe punishment for those convicted of drug offenses. While the legislature's goals were well intentioned, those sentencing laws did not achieve the desired outcomes particularly as to non violent drug offenders. The prison population of felony drug offenders rose from 9% in 1980 to 32.2% in 1997.¹ Clearly, tough sentencing laws did not stem the tide of either use or sale of illicit drugs.

While it is not generally our role to comment on matters that touch on substantive criminal justice policy, the judiciary over time found that the sentencing structure for drug addicted offenders limits judicial discretion in some cases where drug treatment would be more appropriate than a jail sentence.

¹ See B.F. Lewis and R. Ross, Retention in Therapeutic Communities: Challenges for the Nineties, Therapeutic Community: Advances in Research and Application, eds. F.M. Tims, G. DeLeon, and N. Jainchill. NIDA, Rockville, MD (1994).

I'd like to talk to you today about New York State's Drug Treatment Courts, a criminal justice intervention that has produced some of the outcomes sought by the Rockefeller laws and to urge you to restore the judicial discretion necessary to offer this intervention to the greatest number of appropriate offenders. Drug Courts offer treatment as an alternative to incarceration. They achieve better outcomes by reducing recidivism, producing more productive citizens and saving public resources in the process. Reform of the Drug Laws would help our efforts in this area by increasing the reach and effectiveness of drug courts.

As Deputy Chief Administrative Judge and Director of Drug Court Programs, I oversee the planning, implementation and operation of problem-solving courts, which includes Drug Treatment Courts.

The first drug court in New York State opened more than ten years ago and today we have a total of **196** drug treatment courts that are either operational or in the planning stages. These include criminal courts, family treatment courts and juvenile drug courts. Over **18,250** individuals have graduated from a drug court and over **7,200** are current participants.

We have been moving drug courts into the mainstream of court operations as an integral part of our criminal and family justice programs.

These courts have given a fresh start not only to thousands of addicts charged with nonviolent crimes, but also to the **623** drug-free babies born to drug court participants.

The primary goal of our drug courts is to address the underlying problem that brings a defendant or litigant into the court system and to provide a disposition and resolution of the case that addresses that problem. In drug courts, the underlying problem is addiction and treatment is offered as an alternative to incarceration.

Drug Treatment Courts have dedicated judges and court parts that handle cases from early in the proceedings through disposition. Judges and staff in these courts are trained in the issues that commonly arise in these cases, and court teams work closely with other agencies both inside and outside of the court system to coordinate the delivery of services for litigants and their families. The courts engage more closely with litigants, primarily through intensive judicial monitoring, and are able to react quickly to relapse, misconduct or noncompliance. Participants are drug tested regularly to insure compliance while in treatment. Our drug courts are based on the principle that eligible defendants have a disease or disorder that is the root cause of whatever behavior brought them into the court system and that it can be treated.

To successfully complete the program, a defendant must meet all of the requirements contained in a participation agreement. In addition to completion of any mandated drug treatment, other requirements may include completing a GED, obtaining employment, attending vocational training and paying any outstanding fines, fees or child support.

New York's Drug Treatment Courts follow three basic models: the plea and deferred sentence model, where sentencing is postponed to allow a defendant to partake in drug treatment; the post-sentence model, where participation in drug court is a condition of a defendant's sentence; usually probation and, the pre-plea model, where a guilty plea is not required to participate in drug court.²

² The most commonly used model is the plea and deferred sentence model, where a guilty plea is accepted by the court and sentencing is adjourned pending the outcome of drug treatment and the completion of other program requirements. Relapses are not an unexpected part of drug treatment and are addressed with graduated sanctions, the final and most severe resulting in termination from the program and the imposition of a sentence.

The legal rewards for a defendant's successful completion of the drug treatment court program range from the imposition of a revocable sentence, such as probation or a conditional discharge, to the withdrawal of the guilty plea and complete dismissal of the case. Failure, in most cases, will result in a sentence of incarceration.

In the post-sentence model, participation in drug court is a condition of a sentence of probation. Successful completion of the program may result in an early discharge from probation. Failure will result in the filing of a violation of probation.

The third model, the pre-plea model, is used as a tool for early intervention, often in the case of a first time offender. In this model, a guilty plea is not required as a condition of participation. Success in the program may result in dismissal of all charges or a charge reduction and a non jail sentence. In the event of failure, the case proceeds to trial.

Role of a Judge in Drug Court:

In the drug court model, the judge is not just a detached and distant arbiter. Rather, the judge views his or her role as an opportunity for the entire justice system to intervene and not only punish the individual but, just as critically, address root causes to achieve a better outcome for that litigant and his or her family, and for our communities.

The reason these courts work so well is because they emphasize offender accountability and compliance with court orders. Offenders' participation in drug treatment is strictly monitored by the judge through regular court appearances. Noncompliance is punished swiftly to reinforce the importance of meeting the conditions set by the court and to drive home notions of individual responsibility.

Our Chief Judge, Judith S. Kaye, has long advocated reform of the Rockefeller Drug Laws by giving judges more sentencing discretion to divert defendants to drug treatment. Mandatory sentences of imprisonment for felony drug offenders do not effectively reduce recidivism for non violent offenders or help make our communities safer. Although incarceration is warranted in cases involving high-level drug dealers, the unfortunate reality is that many people arrested for drug-related offenses are addicts.

Drug treatment programs are a viable alternative to incarceration and judges should have discretion, within guidelines, to decide on an individual basis whether treatment or incarceration is an appropriate resolution. Limiting judicial discretion to certain categories of offenses, excludes offenders who might otherwise benefit from such services. Judges should be able to assess each case based upon the nature of the offense, as well as the offender's age, background, prior record, past treatment efforts, if any, and the availability and amenability of the offender to current treatment options. Excluding offenders from treatment based solely upon the crime charged is counterproductive to efforts to reduce recidivism. Prosecutors should be encouraged to continue to identify and recommend to the court suitable candidates for treatment, but any new legislation should grant judges broader discretion to offer addicts drug treatment as an alternative to incarceration. Our judges, especially those who preside in drug courts, have particular expertise in addressing these cases. As Judge Kaye said of the Rockefeller Drug Laws in her 2002 State of the Judiciary Address: "Aside from failing in their objectives, these laws also hamper the drug court program. The limitations on judicial sentencing discretion mean that many nonviolent offenders who are otherwise good candidates are not eligible for court-supervised drug treatment."

Research:

Research tells us that offenders in drug courts complete treatment at more than twice the rate of those who voluntarily enter treatment. Studies have shown that drug courts reduce recidivism. More than forty studies have compared the recidivism rates of drug court participants and a “comparison group” composed of otherwise similar defendants who did *not* participate in drug court. From examining these studies, including one by the U.S. Government Accountability Office, it can be concluded that drug courts produce significant recidivism reductions.³ A statewide evaluation of our drug treatment courts completed in October 2003, showed that recidivism was reduced an average of 29% over the first three years following the arrest that led the offender into drug court. Even more impressive, participants who actually completed the program re-offended 71% less than the comparison group. These findings show that the combination of judicial monitoring and drug treatment continue to have beneficial effects well after participants leave the criminal justice system.

³ See Government Accountability Office, *Adult Drug Courts: Evidence Indicates Recidivism Reductions and Mixed Results for Other Outcomes*, United States Government Accountability Office, Report to Congressional Committees (February 2005). See also S. Aos, P. Phipps, R. Barnoski, and R. Lieb, *The Comparative Costs and Benefits of Programs to Reduce Crime Version 4.0* (Olympia, WA: Washington State Institute for Public Policy, 2001); J. Roman and C. DeStefano, “Drug Court Effects and the Quality of Existing Evidence,” In, *Juvenile Drug Courts and Teen Substance Abuse*, eds. J. Butts and J. Roman (Washington, DC: Urban Institute Press, 2004); and D. Wilson, O. Mitchell, and D. L. MacKenzie, “A Systematic Review of Drug Court Effects on Recidivism,” *Journal of Experimental Criminology* 2 (2006): 459-487.

Research further supports that the primary reason that drug courts achieve these higher retention rates is the legal pressure entailed in a court mandate.

The benefits also include savings to the State in tens of millions of dollars in incarceration costs [not an insignificant consideration today]. The result is that we don't have to reuse precious resources prosecuting, defending and incarcerating the same people over and over again. In fact, one California study concluded that drug courts save an average of \$8,629 per participant compared to offenders whose cases are not adjudicated in Drug Court.⁴

Overall, the major conclusions to be drawn from this testimony are that adult drug courts are an effective model for increasing retention in treatment and reducing future recidivism and drug use. Furthermore, the benefits of drug courts are maximized when strong legal incentives are in effect, when courts have the discretion to fashion appropriate sanctions and oversee the treatment process.

⁴ See S.M. Carey, D. Crumpton, M.W. Finigan, and M. Waller, California Drug Courts: A Methodology for Determining Costs and Benefits: Phase II: Testing the Methodology: Final Report. Submitted to the Administrative Office of the Courts, Judicial Council of California, Portland, OR: NPC Research (2005).

Conclusion:

New York's Drug Treatment Courts work. They have proven to be an effective alternative for drug-addicted offenders in the criminal justice system. By permitting more judicial discretion in these types of cases, we can reach more defendants and magnify the positive effects of the drug courts.