

DRUG POLICY ALLIANCE

Reason. Compassion. Justice.

Questions and Answers about the Rockefeller Drug Laws

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What are the Rockefeller Drug Laws?

Enacted in 1973 under Governor Nelson Rockefeller, the Rockefeller Drug Laws mandate extremely harsh mandatory minimum prison terms for the possession or sale of relatively small amounts of drugs. Supposedly intended to target major dealers (kingpins), most of the people incarcerated under these laws are convicted of low-level, nonviolent offenses, and many of them have no prior criminal records. Nearly 12,000 people are locked up for drug offenses in New York State prisons, representing over 21% of the prison population and costing New Yorkers hundreds of millions of dollars every year.

Distorting the Judicial System: The Rockefeller Drug Laws strip judges of their discretion, requiring they give those convicted of drug offenses a mandatory minimum sentence based solely on the quantity of a drug involved in the offense. These sentences are mandatory regardless of the individual's background, character, role in the offense, and the circumstances of the offense. Whether the person is a first-time offender, for instance, is irrelevant. Under this system, prosecutors, not judges, control the sentencing process.

Since judges cannot take an individual defendant's circumstances into account during sentencing, the only way to receive a lower sentence is by cooperating with the prosecution. However, those who are in the best position to provide detailed information about the drug trade are those who are the most heavily involved. As a result, major players are able to bargain for reduced sentences, while those in low-level positions often end up serving longer sentences because they have little or no information to provide the prosecution.

Preventing diversion to effective alternative-to-incarceration programs: The Rockefeller Drug Laws restrict the ability of judges to divert people using drugs into community-based programs – like drug treatment, education and vocational programs – which have been proven to be far more effective and cheaper than prison at reducing recidivism and preventing drug misuse and abuse. Mandatory minimums give prosecutors unbalanced power over people charged with drug offenses. Unlike decisions made by judges, prosecutors' decisions under mandatory minimum sentencing structures are not subject to judicial oversight.

On the books for over 35 years, the racist Rockefeller Drug Laws have failed to curb drug use or abuse in New York, but have successfully destroyed thousands of lives—all at taxpayer expense.

Why are the Rockefeller Drug Laws called racist?

The Rockefeller Drug Laws have had a terrible impact on all of New York, but Black and Latino communities have been hit especially hard. Studies show that drug use, addiction, and selling are approximately equal between racial categories, based on their proportion in the population. Yet while Black and Latino people comprise approximately 34% of New York State's population, *they comprise nearly 90% of those currently incarcerated for drug felonies*. This horrendous racial disparity has been condemned by such international groups as Human Rights Watch and Physicians for Human Rights, along with the vast majority of New York residents.

Haven't the Rockefeller Drug Laws already been repealed?

No. In December 2004, the NY State Legislature passed limited reforms of the Rockefeller Drug Laws, including some sentence reductions, increases in "merit time", and reforms to harsh parole practices. These reforms were a small step forward, but they were not *real reform*. They did not restore judicial

discretion or provide funds for community-based alternatives to incarceration, for example. We still have a long way to go before we reach real reform. As then-Senate Majority Leader Joseph Bruno admitted, “This is only a small step, and we need to do more.” New York citizens are fed up with these draconian laws: Polling of New York residents found that 79% favor restoring sentencing discretion to judges presiding over drug cases.

What about the Second Felony Offender Law? Is that part of the Rockefeller Drug Laws?

Yes. Enacted in the same year as the Rockefeller Drug Laws, the Second Felony Offender law aggravates the severity of the Rockefeller Drug Laws. The Second Felony Offender laws mandate significantly increased sentences for a second (or subsequent) felony offense, regardless of whether both felonies were nonviolent drug offenses, whether the offender was a productive member of his or her community, or how many years passed between convictions.

Not surprisingly, together the Rockefeller Drug Laws and Second Felony Offender laws have resulted in an enormous expansion of the prison population. In 1980, 11% of the prison population was incarcerated for drug offenses; in 2008, 21% of the prison population is incarcerated on drug offenses. The increase is more staggering for women: 45% of the women currently in prison are incarcerated for drug crimes. More than 70% of these men and women have never been convicted of a violent felony.

I know someone in prison under the Rockefeller Drug Laws. Do they get relief under recent reforms?

If someone you know is imprisoned under the Rockefeller Drug Laws, contact the *Legal Aid Society* to learn more about how the latest sentencing reforms impact everyone serving Rockefeller time. You can reach the *Legal Aid Society* at (212) 577-3300.

Who is working to change these laws?

The *Drug Policy Alliance* is the nation's leading organization working to end the war on drugs. We envision new drug policies based on science, compassion, health and human rights and a just society in which the fears, prejudices and punitive prohibitions of today are no more.

New York's approach to drug policies is undergoing a transformation. New York is adopting a public health and safety approach to drug abuse and dependence which focuses on prevention, treatment, public safety and harm reduction. Incarcerating people for what is a health problem is ineffective, wasteful, unjust, and inhumane.

Any effort to end the Rockefeller Drug Laws must include the following:

- **Reducing sentences** for drug offenses. New York's harsh drug laws are drastically out of step with the rest of the nation
- **Restoring judicial discretion** and ending mandatory minimums.
- **Expanding and funding community-based alternatives to incarceration (ATI) programs**, including access to drug treatment, education, mental health, and vocational programs. ATIs are cheaper, more humane, and more effective than prison. Many states, such as California, are working hard to provide treatment rather than incarceration.
- **Delivering retroactive sentencing relief** to currently incarcerated Rockefeller prisoners serving unjustly long sentences.

Where can I get more information about the Rockefeller Drug Laws and efforts to repeal them?

Visit the Drug Policy Alliance website at www.drugpolicy.org. Join the *Drug Policy Alliance* Network and help determine the future of New York's drug policies. Send an email to nyc@drugpolicy.org or call gabriel sayegh at (212) 613-8048.