

Panel #20 ✓

**NEW YORK
CITY BAR**

TESTIMONY OF ROBERT C. GOTTLIEB, ESQ.
ON BEHALF OF THE NEW YORK CITY BAR ASSOCIATION
MAY 8, 2008

My name is Robert Gottlieb. I am appearing before you on behalf of the New York City Bar Association. I am a former Assistant District Attorney in Manhattan and I have been a criminal defense attorney here in New York for nearly thirty years. On behalf of the New York City Bar Association, I urge the Assembly to continue its positive reform of the criminal drug laws of New York State.

It has been nearly three years since the Legislature passed the Drug Law Reform Acts of 2004 and 2005, reforming the existing Rockefeller drug laws and bringing much needed changes to the sentencing structure for narcotics felonies in New York State. In that time, the reforms to the Rockefeller drug laws have given hundreds of defendants in prison for Class A-I and Class A-II drug felonies the opportunity to seek reductions in their prison sentences. The City Bar commends the Legislature for giving these non-violent drug offenders the opportunity for release, to return to their families and contribute to their communities.

Currently, nearly all of the defendants eligible to seek relief under the current legislation have done so. But the City Bar believes that more needs to be done – both to bring much needed reductions in prison time to other felony drug defendants serving Draconian sentences under the old Rockefeller sentencing structure, and to improve and reform current laws concerning non-violent drug offenders to allow them to enter drug treatment, not prison.

Today, the 35th anniversary of the enactment of the Rockefeller Drug Laws, gives us the opportunity to readdress the long prison sentences for non-violent felony drug offenders which remain in place even under the most recent legislative reforms and which continue to harshly punish drug defendants but do not rehabilitate them. On behalf of the New York City Bar Association, I urge the Assembly to take the initiative on a number of reforms in order to create a more just and balanced system of criminal justice.

We urge the Assembly to broadly reduce sentences even further for non-violent drug offenders. Even with the improvements under the Drug Law Reform Acts, our prisons are still filled with thousands of drug offenders, with a significant number from New York City, many of whom are low-level offenders with no history of violence in their backgrounds. While they remain imprisoned, their families and communities suffer from their absence, emotionally and financially. The long prison sentences currently in place do not afford these defendants the opportunities for treatment and rehabilitation which many of them so desperately need. Research has shown that providing community-based substance abuse treatment and other services to offenders in lieu of imprisonment is the most effective way of reducing recidivism. Therefore, the City Bar supports further reduction in prison sentences for non-violent drug offenders, including the possibility of probation, at the discretion of the judge, who would be required to state on the record his or her reasons for non-incarceration, even without a prosecutor's consent.

Hand in hand with this reform is the need to extend the retroactivity provisions of the Drug Law Reform Acts to allow all non-violent drug offenders convicted of Class A-II and even Class B felonies not covered by existing legislation to apply for immediate resentencing under the current sentencing scheme. Often, those defendants who received harsh prison sentences under the old Rockefeller laws were convicted of non-violent B-felony-level possession or sale offenses which were motivated by problems with substance abuse that we now see could perhaps have been better addressed with treatment. After years of imprisonment, those offenders should now be given the same opportunity as the Legislature has given Class A-I offenders to leave prison and return to their homes and communities.

Another issue of immediate concern is Court of Appeals review for resentencing applications. The current statutory scheme must be amended to allow the Court of Appeals the power to review legal challenges regarding the Drug Law Reform Acts. For example, there is currently a split between the First Department and the Second Department regarding eligibility criteria for resentencing for Class A-II felons. The Court of Appeals has said that it is unable to resolve this legal issue, as the language of the Drug Law Reform Acts and the Criminal Procedure Law does not give our state's highest court the power to do so.

Other issues relating to resentencing eligibility have emerged as applications have moved through our courts, creating other potentially unresolvable differences among our judicial departments. The inherent injustice that could allow a defendant in one borough to be eligible for release sooner than a defendant in another based on nothing more than the location of the sentencing court must be addressed by an amendment to the current law to allow an order of the Appellate Division on a resentencing application to be appealed to the Court of Appeals. There must be some avenue for the Court of Appeals to resolve the legal issues surrounding something as important as sentencing in these serious criminal cases.

The recent legislative reforms have reflected an enlightened view of how our society should address our continuing drug problem. The New York City Bar Association urges the Legislature to choose drug treatment and rehabilitation over prison for non-violent drug offenders.