

DRUG POLICY ALLIANCE

Reason. Compassion. Justice.

Background on New York's draconian Rockefeller Drug Laws

A criminal justice approach to drug use and addiction

Enacted in 1973 under then-Governor Nelson Rockefeller, the Rockefeller Drug Laws mandated extremely harsh prison terms for possession or sale of relatively small amounts of drugs. Although intended to target “kingpins,” most people incarcerated under the laws were convicted of low-level, nonviolent, first-time offenses. 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. New York's Rockefeller Drug Laws became the national policy model for the drug war: throughout the 1970s other states followed and enacted their own versions of the Rockefeller Drug Laws, as did Congress in the 1980s. These policies were driven not by evidence but largely by politicians and special interest groups with a stake in appearing “tough on crime.”

Waste of lives and taxpayer dollars

Today, approximately 11,000 people remain incarcerated for drug offenses in New York, representing nearly 20% of the prison population (at their height, more than 23,000 people were incarcerated under the laws). Nearly 66% have previously never been to prison, and 80% have never been convicted of a violent felony. The state spends nearly \$500 million per year to incarcerate people for drug offenses – approximately \$45,000 per person per year. Treatment costs on average \$15,000 per year, and is almost 15 times more effective at reducing crime and recidivism.

Extreme racial disparities

The RDL's and their implementation led to astonishing racial disparities and inequities in New York's criminal justice system, further marginalizing communities of color. Studies show that rates of addiction, illicit drug use and sales are approximately equal between racial groups. But while Black and Latino people make up only 33% 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 anywhere in the nation. This institutional racism is a human rights disgrace.

Distorting the Judicial System

The Rockefeller Drug Laws stripped 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. Under this system, prosecutors, not judges, control the sentencing process.

Mandatory minimum sentences require incarceration regardless of the individual's background, character, role in the offense, and the circumstances of the offense. Whether it was the person's first arrest, for example, is irrelevant. 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 restricted the ability of judges to divert people convicted of drug offenses into community-based programs – like drug treatment, education and vocational programs – which have 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 failed to curb drug use or abuse in New York, but successfully disrupted low income communities of color and tens of thousands of lives through mass incarceration—all at taxpayer expense.

Reforming the Rockefeller Drug Laws

In December 2004 and July 2005, the New York passed limited reforms of the RDL's, including some sentence reductions, increases in “merit time”, and reforms to harsh parole practices. These reforms were a small step forward, but did not constitute *real reform*. For instance, they did not restore judicial discretion or provide funds for community-based alternatives to incarceration.

In 2008, coinciding with the Rockefeller Drug Laws' 35th anniversary, the NY Assembly held two unprecedented hearings – the first on May 8, in New York City, and the second in Rochester on May 15. For the first time, the joint hearings were convened by six different Assembly committees – Codes, Corrections, Judiciary, Public Health, Alcohol and Drug Addiction, and Social Services – to explore a public health approach to New York's draconian drug policies.

In January 2009, DPAN and the New York Academy of Medicine convened *New Directions for New York*, a historic conference that assembled stakeholders from the community, government and the fields of public health, treatment and criminal justice to explore a public health approach to drug policy. Top elected officials joined the conference as well, including Assembly Speaker Sheldon Silver, who issued his first policy paper – focused on reforming the Rockefeller Drug Laws – at the Conference.

New Directions for New York: A Health and Public Safety Approach to Drug Policy

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 Laws and the criminal justice model of drug policy they represent, and toward an approach to drug policy that emphasizes health and public safety.

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