

# DRUG POLICY ALLIANCE

Reason. Compassion. Justice.

## Drug Policy in New York: From the Rockefeller Drug Laws to a Health and Public Safety Approach

### Explaining the 2009 Reforms

---

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.

#### Background on New York's 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 looking “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 – while treatment costs an average of \$15,000 per year, and is proven to be almost 15 times more effective at reducing crime and recidivism.

***Extreme racial disparities:*** The Rockefeller Drug Laws and their implementation have led to astonishing racial disparities in New York's criminal justice system, and a range of collateral consequences for marginalized communities of color. 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 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. It is rightly considered a human rights disgrace.

## **Components of the 2009 Reform Legislation**

### ***Eliminating 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. Nearly 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.
- Of the nearly 11,000 people incarcerated under the Rockefeller Drug Laws, nearly 10,000 (90 percent) are serving prison terms for B, C, D and E felony drug offenses.
- Approximately 50% of the 11,000 people currently incarcerated under the Rockefeller Drug Laws would have been eligible for judicial diversion at sentencing under the new reforms.
- 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. Approximately 10% of all drug cases are A-I and A-II felonies.

### ***Expanding drug courts, probation and other alternatives to incarceration; reducing penalties***

- Expands drug treatment, alternatives to incarceration, and re-entry services, and invests 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 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.

### ***Providing retroactive resentencing for about 1,200 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. Re-sentencing is not automatic; judges make the decision.
- 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.”

## Moving towards a Health and Public Safety Approach to Drug Policy

After nearly 40 years of a misguided criminal justice approach to drug policy, New York is embarking on a new direction that emphasizes health and public safety. The new policy vision is based on the *Four Pillars Model*, (comprised of Prevention, Treatment, Enforcement and Harm Reduction). This strategy seeks to ensure coordination among various agencies, communities, levels of government, and stakeholders to achieve healthier, safer communities. First implemented in Switzerland and Germany in the 1990s, the Four Pillars Model is now employed in many cities and countries in Europe, North America, Australia and Asia, including Vancouver and Toronto. The Four Pillars approach has resulted in a dramatic reduction in the death, disease, crime, and suffering associated with drug use and addiction, and the collateral consequences of excessive incarceration. Realizing a new approach, however, will not be automatic or easy.

The immediate task is to ensure that the Rockefeller reforms are implemented effectively. Proper implementation also opens up unprecedented opportunities for structural changes across New York's criminal justice, health, treatment, education and human service systems. More urgently, successful implementation will have an immediate impact on the lives of thousands, if not tens of thousands, of New Yorkers. For example, implementing the reforms could lead to the release of over 1,000 people currently incarcerated under these failed laws; end punitive parole supervision for thousands, allowing them to get their lives back on track; and ensure that tens of thousands of people convicted of low-level nonviolent drug offenses will receive treatment and human service—not long prison terms in upstate prison cells.

Achieving proper implementation will require a high level of collaboration between stakeholders and a shared understanding that substance abuse is a public health problem. Currently, the sectors working on prevention, treatment, harm reduction, and enforcement are almost completely segregated from one another, and in some instances, their relationship has historically been adversarial, *e.g.*, tensions between the police and syringe exchange outreach workers still persist. The Four Pillars Model draws its strength from the potential breadth and diversity of its stakeholders—government officials and community members, service providers and advocates, treatment professionals and lawyers, members of the law enforcement community and drug users and their families. Expanding the alliance of stakeholders, building consensus, and moving this process forward will require a great deal of planning, coordination, and follow-up. We hope you'll join us in this effort.

For more information, please contact gabriel sayegh at 212-613-8048 or [gsayegh@drugpolicy.org](mailto:gsayegh@drugpolicy.org)