

The Correctional Association of New York

FOUNDED 1844

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Statement Calling on
New York State Commission on
Sentencing Reform to Recommend
Rockefeller Drug Law Repeal

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CORRECTIONAL ASSOCIATION STATEMENT

We urge Sentencing Commission members to take advantage of the historic opportunity given them to recommend a long overdue reform of New York's penal code: Repeal of the notorious Rockefeller Drug Laws.

BACKGROUND

Enacted in 1973, when Nelson Rockefeller was Governor of New York, the Rockefeller Drug Laws require harsh prison terms for the possession or sale of relatively small amounts of drugs. The penalties apply without regard to the circumstances of the offense or the individual's character or background. Whether the person is a first-time or repeat offender, for instance, is irrelevant.

It is important to note that changes to the laws passed in December 2004 and August 2005 do not amount to meaningful reform. The severe aspects of these laws are still on the books: Mandatory sentencing provisions remain intact, meaning that judges still do not have discretion in deciding whether to send someone to prison or to an appropriate alternative-to-incarceration program. Prison terms, though reduced, remain unduly long – for example, under the new system, instead of 15 years to life, the most serious provision of the drug laws carries a determinate (or flat) sentence of between eight and 20 years for first-time, non-violent offenders. The main criterion for guilt remains the amount of drugs in a person's possession at arrest and not a person's actual role in the drug transaction. As a result, the major profiteers who rarely carry drugs will continue to escape the laws' sanctions. Finally, the vast majority of drug offenders in prison remain outside the pool of people affected by the retroactivity provisions included in the legislative changes enacted in 2004 and 2005. As of March 2007, of the more than 1,000 inmates eligible for re-sentencing under the drug law reforms, only 296 people had actually been released following their re-sentencing.

Despite the claims made for these laws when they were enacted nearly 35 years ago – that they would break the back of the drug trade and related criminal activities – there is widespread consensus today that these statutes have caused rather than solved problems.

THE PROBLEMS

The Waste

As of January 1st, 2007, there were over 13,900 drug offenders locked up in New York State prisons: 943 were women (33% of the total female prison population) and 12,985 were men (21% of the total male population.) It cost the state about **\$1.5 billion** to construct the prisons to house drug offenders. And the operating expense for confining them comes to over **\$510 million** per year.

Current trends, moreover, indicate that taxpayers will have to continue footing the bill for these high numbers. For example, notwithstanding the recent drug law modifications, more people were sent to state prison for non-violent drug offenses in 2006 – **6,039** – and in 2005 – **5,835** –

than in 2004 – **5,657**. And, in 2006, **36%** of the people sent to state prison were drug offenders. In 1980, the figure was only **11%**.

In addition, many of the state's imprisoned drug offenders cannot be considered, by any applicable standard, either dangerous or predatory. Here are several key facts supporting this analysis:

- About **39%** of the drug offenders in New York State prisons, more than **5,400** people, were locked up for drug possession, as opposed to drug selling.
- Of all drug offenders sent to New York State prisons in 1999, nearly **80%** were never convicted of a violent felony.
- Nearly **54%** of the drug offenders in New York State prisons were convicted of the three lowest level felonies – Class C, D, or E – which involve only small amounts of drugs. For example, only $\frac{1}{2}$ **gram** of cocaine is required for conviction of Class D felony possession, and **1,316 people** are locked up for that offense.

Skewed Law Enforcement

As the above statistics demonstrate, the Rockefeller Drug Laws often result in the arrest, prosecution, and long-term imprisonment of addicts, minor dealers, or persons only marginally involved in the drug trade. Major traffickers usually escape the sanctions of the laws. The problem is that the Rockefeller Drug Laws place the main criterion for culpability on the weight of the drugs sold or in a person's possession when he or she is apprehended, not on the actual role played in the narcotics transaction. Aware of the law's emphasis, drug kingpins are rarely foolish or reckless enough to carry narcotics; whereas teenagers, for example, employed as couriers by those same kingpins, are more likely to be picked up on the street and charged with a serious felony for having a relatively small amount of drugs in their possession.

Major dealers are also often able to take advantage of provisions permitting lifetime probation sentences in exchange for cooperation in turning other drug offenders over to authorities. Less centrally involved persons generally do not possess information that would be useful to prosecutors. They will sometimes decline to plea bargain and insist on a trial instead. If these persons are found guilty, they frequently are sentenced to a lengthy mandatory minimum prison term.

As a principal weapon of the so-called war against drugs, this statute results directly in the following misguided practice: law enforcement agencies focus their efforts on minor offenders who are the most easily arrested, prosecuted, and penalized, rather than on the drug trade's true masterminds and profiteers.

Racial Inequities

The drug laws have a harsh and disproportionate impact on communities of color. Studies have shown that the majority of people who use and sell drugs in New York State and the nation are white. Yet, about **91%** of the people doing time in New York State prisons for a drug offense are African-American or Latino. As of January 1, 2007, African-Americans comprised 57.7% of the drug offenders in state prison; Latinos, 33%; whites, 8%.

If larger numbers of whites participate in buying and dealing drugs, why are so many more blacks and Latinos in prison for these crimes? The problem – and it is a problem that is at least partially a function of having the drug laws in place – is that law enforcement efforts focus almost entirely on inner city communities of color. In New York City, for example, police squads carrying out recent anti-drug initiatives have been sent principally into such areas.

Much of the drug activity among white people takes place behind the closed doors of offices and living rooms. By contrast, most of the drug trade in low-income black and Latino neighborhoods is carried out on the streets where it is much easier to make arrests.

In addition, more violence is involved in the drug trade in low-income, inner city communities. The drug trade there is more visible and more disruptive, and the call for a police response is therefore greater. Moreover, because poor communities of color lack political clout, there are also few repercussions when police carry out drug raids and no-knock warrant busts.

Finally, white middle- and upper-class people involved in the drug trade often have the resources and political influence to resist law enforcement attempts to punish them. Well-paid, high-powered attorneys, for example, can successfully derail the effective prosecution of their clients' crimes.

In words that are unfortunately as true today as when he expressed them over 15 years ago, Commander Charles Ramsey, former head of the Chicago Police Department's Narcotics Division, summed up the war on drugs' inequity in this way:

There is as much cocaine in the Stock Exchange as there is in the black community. But those guys are harder to catch. Those deals are done in office buildings, in somebody's home, and there is not the violence associated with it that there is in the black community. But the guy standing on the corner, he's almost got a sign on his back. These guys are just arrestable.¹

The rationale for the policy that produces this outcome might make sense superficially, but the practices are ultimately discriminatory and have a devastating impact on communities of color by uprooting individuals and breaking up families.

¹ Harris, Ron, "Blacks Feel Brunt of Drug War," *Los Angeles Times*, April 22, 1990.

A System Imbalance

Mandatory sentences have a fundamentally negative effect on the administration of justice. These sentencing schemes do not abolish discretion; they remove it from the judge's hands and place it in the prosecutor's office. Whoever sets the charge (the district attorney) determines the outcome of the case. In our adversarial criminal justice system, these laws stack the deck in favor of one side.

As Justice James Yates of the New York County Supreme Court has stated:

If some defendants are to receive lesser sentences than others for the same crime, the question becomes, how do you decide who will receive the benefits of a reduction? Under current law, that determination is made by an assistant district attorney who is not bound by written public guidelines or standards, is not compelled to hear arguments in favor of reduction, is not required to explain or justify the decision, is not held accountable by the public or through judicial processes and the decision is not reviewable by any court

[In contrast], in a system where a judge has authority to set sentences, there are proceedings on a record in public, with advocacy on both sides and a decision by a neutral party who must explain his or her decision and can be held accountable.²

THE REMEDY

Many studies, including several sponsored by the National Institute on Drug Abuse and a 1997 report by RAND'S Drug Policy Research Center, have demonstrated that drug treatment programs are, on the whole, more successful than imprisonment in reducing drug abuse and crime rates and in increasing drug offenders' ability to find and hold jobs. The cost of keeping an inmate in a New York State prison for one year is **\$36,835**. In comparison, the cost of most drug free outpatient care runs between **\$2,700-\$4,500** per person per year; and the cost of residential drug treatment is **\$17,000-\$21,000** per participant per year.

Although alternative programs are more effective and less expensive than imprisonment, the imposition of mandatory sentencing laws limits the court's ability to make appropriate use of them. In fact, it is fair to state that as long as the Rockefeller Drug Laws remain on the books, New York's governor and legislature of over three decades ago have more to say about the outcomes of today's narcotics cases than the judges who sit on the bench and hear all the evidence presented.

The Rockefeller Drug Laws are outdated, wasteful, ineffective, unjust, and marked by racial bias. They distort law enforcement practices and foster imbalance in the adjudication of drug cases. It is time to remove the stain of these statutes from New York's penal code. Commission members can achieve this long overdue objective by including in their report the recommendation to

² Interview, James A. Yates, New York Supreme Court Judge, New York City, November 21, 1996, "Cruel and Unusual: Disproportionate Sentences for New York Drug Offenders," Human Rights Watch, March 1997.

eliminate the mandatory minimum provisions of the Rockefeller Drug Laws and return sentencing discretion to judges in all drug cases.

If commission members are wary of the political liabilities that they would incur by adopting such a measure, they can seek insulation and take courage from the widespread support that the public has shown for reforming the Rockefeller Drug Laws. For example, according to an October 2002 *New York Times* poll, 79% of New Yorkers favor restoring sentencing discretion to judges in drug cases.

In addition, this past June the United States Conference of Mayors, a body representing the mayors of America's large cities, unanimously approved a resolution stating that the war on drugs has failed. The resolution also condemned mandatory minimum sentences and the incarceration of drug offenders, and called for more funding for treatment programs. Regarding this issue, Cory Booker, the Mayor of Newark, New Jersey, has said: "The drug war is causing crime. It's chewing up young black men. And it's killing Newark."³

The Commission can take an important step to reverse the destructive course of New York's current drug policy. By proposing Rockefeller repeal, they would join a growing chorus of voices being heard in the mainstream political arena. More significantly, they would, in effect, lend critical support to a constructive policy reform that would likely result in, among other benefits, the substantially expanded use of drug treatment alternatives, the reduction of drug trade-related crime, savings to relevant government agencies, and the restoration of fairness to the administration of justice.

³ Curley, Bob, "U.S. Mayors Declare Drug War a Failure," *www.jointogether.org*, July 18, 2007.