

The Rockefeller Drug Laws: Will They Ever Change?

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Drug use, drug abuse, and drug related crimes. Will we ever see an end? Ways to solve the problems that stem from the distribution of narcotic drugs will always be an issue. In New York State in the early 1970's, Governor Rockefeller saw a rise in heroin use, abuse and related crimes. By enacting, the Rockefeller Drug Laws, known today as some of the toughest out there, he felt that he would put a stop to heroin distribution and use. Today, there is huge controversy over the effect that these laws have had on New York's fight against drugs. I think that it is important to understand what these laws are, the effects that they have had on our criminal justice system, what they were enacted to solve and to see if they have done what they were created to do. Once I have done this I want to try and see why, if so many people agree that these laws need to be changed, have efforts been fruitless?

I work in the New York State court system for a Supreme Court Judge who hears criminal cases. I have seen a lot of people before him being charged with and found guilty of drug related crimes. Drug use and abuse play a big part in our society and if we could come to an agreement on how to solve them, our society as a whole would benefit greatly. Harsh mandatory sentencing may not be the answer. The only way to find out is by understanding the laws and why they have been ineffective, as well as understanding why reform has been unsuccessful on so many occasions despite agreement that these laws need to be changed in order to better solve New York's drug problems. I think that if I better understand the actual laws and their effects on many different things such as the system, families, and society, I will better understand the controversy and be able to see how I really feel about these laws.

The Rockefeller Drug Laws have become known as New York State's harsh drug laws. These laws require judges to sentence people convicted of selling two ounces or of possessing four ounces of a narcotic drug to mandatory sentences of 15 years to life, or more (Wilson). These laws came to be in 1973 when Governor Rockefeller wanted to stop the sale and use of drugs, namely heroin and cocaine, as well as reduce drug related crime in the State of New York (Wilson). There seemed to be a heroin epidemic at this time and the only way that the

Governor felt he could prevent this from becoming more widespread was to become very strict with the people who were supplying and using narcotics on all levels. "It was thought that rehabilitative efforts had failed; that the epidemic of drug abuse could be quelled only by the threat of inflexible, and therefore certain, exceptionally severe punishment" (People v. Broadie, N.Y. 2d 100,115). Initially it was thought that using a set of extremely harsh laws to instill the fear of severe punishment would help stop the spread of this drug problem.

According to a report by the Correctional Association of New York, the penalties for these drug laws are similar to the penalties for "murderers, arsonists, and kidnapers" and are more harsh than the sentences that are given for the crimes of armed robbery and rape. These sentences are imposed without taking into consideration people's background or the circumstances surrounding their offenses (4). Once someone is convicted of the crime, he or she must be given the mandatory sentence without the judge having any choice in the matter.

The statutes that were affected by these mandatory minimums were the felony charges under New York Penal Code 220.00. Crimes of sale and possession of specific amounts of a wider range of narcotic drugs were now being considered felonies instead of misdemeanors (West Group 6). New categories of felonies, A-II and A-III, were created specifically to deal with drug related crimes. The greater the quantity involved the greater the sentence, but with all amounts there is a correlating mandatory sentence time required.

In 1977, three years after the new drug laws were enacted, The Joint Committee on New York Drug Law Evaluations, a partnership between the Association of the Bar of the City of New York and the Drug Abuse Council, Inc., conducted a study of the "Rockefeller Drug Laws." According to their published report, The Nation's Toughest Drug Law: Evaluating the New York Experience, the Committee found that heroin related crime and heroin use were just as widespread as they were prior to the passing of the Rockefeller Drug Laws. This report also stated that heroin dealing was still occurring openly in the streets.

The Rockefeller Drug Laws have existed and been used for over 30 years and we are still encountering problems with drug use, drug distribution, and drug related crimes. There are a lot of people, including judges, lawyers, prosecutors, and families of loved ones who were sentenced under these laws, who feel that these laws are unnecessarily harsh and are not really solving the problems they were intended to solve. There have been numerous studies done to prove this, as well as to show alternatives to these extremely harsh laws. There are also many government officials who agree that these laws need to be reformed since they have caused many changes to our Criminal Justice system that were not anticipated in 1973 when they were enacted.

According to a report, "Stupid and Irrational and Barbarous: New York Judges Speak Against the Rockefeller Drug Laws," by the Correctional Association of New York (CANY) we hear what aspects of the Criminal Justice System have

been affected, as well as what some Judges have to say about the harsh sentences they were forced to impose. According to this report and the statements from numerous judges that have had to sentence people under these laws, the judges feel that they are not given the discretion that they need in order to sentence people fairly according to circumstance. Judges cannot consider any other information when handing out a sentence since they are confined to the mandatory sentencing guidelines required by New York's strict drug laws.

Appellate Court Justice Leo Hayes summed up many judges' views:

I am totally against mandatory minimum sentencing. In my experience on the bench, I have seen sentences that are ridiculous. Judges should reserve it to themselves to impose sentences. DA's should have input, but judges should retain ultimate control. There are many sentencing alternatives available through the Probation Department. Judges should have discretion over who goes to prison versus alternative sentence. These laws were initially passed because DA's were dissatisfied with the disparity in sentencing. DA's do play an important part in the process. They often know things about the defendant that we don't know. They should work with the court and make their recommendation. But ultimately, sentencing court judges should decide, not Da[A]'s.

The Rockefeller Drug Laws don't work and they should be changed (CANY). Judges really have their hands tied as far as handing out sentences. There is no room for leniency. CANY documents comments made by judges that show just how they feel about the sentences they are forced to hand out:

Judge; Eugene Bergin, Supreme Court, Monroe County

Case/Conviction: Jan Warren, a single mother who had no prior criminal history, is convicted of Criminal Sale of a Controlled Substance.

Sentence: 15 years to life. (1987)

Quote: "I don't want to do this." The judge later told the defendants attorney that the situation was "a travesty."

Judge: Steven Fisher, Supreme Court, Queens County

Case/Conviction: A first offender, Miguel Arenas, who sold a quantity of drugs just barely over the limit to compel the harshest mandatory sentence, is convicted of Criminal

Sale of a Controlled Substance in the First Degree.

Sentence: 15 years to life.(1994)

Quote: "The wisdom of the drug laws is, of course, not for me to decide." After the trial, in an interview, Judge Fisher stated, "When the amount is just slightly over the threshold and you're sentencing someone to the same sentence they would get if they had been convicted of intentionally taking someone's life, sometimes you feel compelled just to comment" (CANY).

The report also shows us how these laws have burdened New York's Criminal Justice System by overcrowding prisons with inmates, "As of December 31, 2000, more than 21,000 drug offenders were locked up in New York State Prisons" (Correctional Association of New York 2). New prisons had to be built to house the overflow of prisoners, costing the state "nearly \$2 billion" (Goldstein B2). These inmates unnecessarily cost New Yorkers an exorbitant amount of money each year when, in fact, the majority of those who are incarcerated for drug related crimes have a drug problem and need drug treatment not incarceration.

These drug laws not only affect individuals and families, particularly in poor, minority communities where the majority of people tried under these laws are from. This affects the normal functioning of the family. They lose sons, brothers, husbands, fathers, mothers, daughters, sisters, and wives. Communities are losing valuable members of society and children are losing the people that are supposed to guide them into their futures.

The Human Rights Watch did an analysis of children in New York that have parents in prison for drug related offenses. They found that:

An estimated 23,537 children currently have parents in prison convicted of drug charges. An estimated 11,113 currently incarcerated drug offenders are parents of children. Since 1980, an estimated 124,496 children have at least one parent imprisoned on drug charges.

Some 50 percent of mothers and fathers in prison for drug convictions do not receive visits from their children (HRW).

The majority of the time these children are already struggling with coming from poor families, in poor communities that are stricken with drug use and crime. When one of their parents goes to prison, this only adds to their struggle. This event in their lives can effect their development on all levels (HRW). "Child experts agree that loss of a parent to prison can be a continuing emotional trauma for children. It can have a significant impact on the children's development, manifested in some cases by learning difficulties at school, aggressive behavior and involvement in crime" (HRW). Our children are important to the future of our state and we need to consider the effects that our harsh drug laws have on them when considering the reform of these laws.

Since these laws were enacted 30 years ago it has become apparent that there are alternatives to the harsh sentences imposed by these laws that can help

people arrested and accused with drug related crimes, as well as help fight the drug problem (Herman 777-9). A vast majority of criminal justice professionals agree that the non-violent, drug offender greatly benefits from alternate punishment. Many alternatives to incarceration programs (ATI's) have been implemented, particularly in New York City. For example, in Brooklyn there is the Drug Treatment Alternative to Prison Program (DTAP). There is also the Drug Court, which is used for first time felony offenders who plead guilty to a lesser charge. These courts try to evaluate the offender and find out if drug use or addiction was the reason the person committed the offense. If this is determined to be the case then treatment is offered as an alternative to prison for this particular person. Usually it is long-term drug treatment, and it is only given to people who are non-violent offenders. Once treatment is successfully completed the offense charged against the person is dropped or reduced. According to the CANY, "Three years after completing the program, graduates are half as likely to be rearrested as offenders with similar criminal records who have been sent to prison" (4). There are also many non-profit organizations and programs which are used as ATI's. These programs usually consist of counseling, skill training, and social services. While in these programs the offender is monitored by the judge until completion. Another ATI is what is known as boot camp. This is run similarly to military boot camp, combining academic instruction, substance abuse education, and counseling. Other alternatives to long-term incarceration that seem to be working in other states are prison-based treatment programs and prison-based programs which include aftercare.

The reason that alternatives are so important is because the kingpins (high level leaders and distributors of drug operations) that these laws were intended for are not the ones that are being caught. Low-level offenders are the ones that are being caught and prosecuted, not the high-level drug dealers that these laws were intended for (Nakdai). The amounts that are needed in order for a person to be charged with a drug crime are so low. The couriers or addicts selling to support their habit, or the person trying to make a few extra bucks are the ones that are caught, prosecuted, and sentenced to harsh mandatory sentences. Often, they are the ones that would benefit from an alternative such as a treatment program in order to be rehabilitated. Jail is not the answer for these types of offenders. Treatment as an alternative would help individuals with drug problems come clean, help cut crime, save taxpayers money, and help families stay together.

Advocates have been arguing for a long time for the need to reform the "draconian" drug laws of New York State. Governor Pataki called for reform in 1995, and is still trying to accomplish this task. It has been impossible for state lawmakers to come to an agreement on how to reform these laws; "Proposals have come and gone over the last two years without any law clearing both the Assembly and the Senate" (Vitulo-Martin 1). There have been numerous efforts to reform, starting with reducing sentences imposed based on the offense committed, all the

way to doing away with the mandatory sentencing all together. The big problem here is controversy over who is best suited to have discretion over the sentence imposed; is it the court officials, judges or the prosecutors?

According to the article, "Drug Law Reform Failed Again," by Julia Vitullo-Martin, the Democrats and the Republicans in the Assembly do not have the same views on reform. When it comes to giving judges more discretion and taking away some of the discretion from the prosecutors, Assembly Democrats are all for this and the State Republicans are not. Rehabilitation, treatment, and lessened sentences are what Democrats want, while the Republicans do not. If you boil it down, the real controversy that is hindering the reform of these laws is about giving judges discretion when sentencing people accused of drug related crimes (Nakdai).

The drug laws have increased our prison population, requiring us to build new prisons (Nakdai). These prisons are mostly built in upstate New York. These prisons create jobs in the upstate areas where they are built. The government representatives in these areas of the state are not supporters of the reform since it is their constituents that are benefiting from the boom in prison population.

As far as I can see, the Rockefeller Drug Laws have been reformed to some extent without the passing of any legislation, by using ATI's and DTAP. But I think that each situation that comes before the court is different and each judge should be able to use his or her discretion when sentencing a person committed of a drug related crime. I think that a person's history and the circumstances that surround the situation should play a role in what punishment an individual is given (Herman 777-9). Each person is an individual and not all punishments suit all individuals. Some people might deserve long prison sentences, and I do believe that those individuals should receive them. But if we can send someone to drug treatment and help them become an honorable member of society then I think that should be done. Mandatory sentences are not the answer. They have not solved the drug problem in New York. It all comes down to politics and egos. If our lawmakers could put aside their differences and look harder into this topic, I think they might come to an agreement about reforming these laws. If not, I guess we will have to continue to take this matter into our own hands and continue to use the alternatives that we have been using.

Breaking News

As of December 7, 2004, the New York State Assembly and Senate have agreed to change some aspects of the Rockefeller Drug Laws (Cooper).

Under the legislation (S.7802/A.11895), the current indeterminate sentencing system would be changed to a determinate sentencing system,

which would provide lower sentences for non-violent drug offenders.

Specific charges include:

- Sentences for certain non-violent, A-I felony offenders would be reduced from 15-to-25 years to life to 8-to-20 years;
- Current life maximum sentences for A-I and A-II felons would be eliminated and replaced with determinate sentences;
- Sentences for most non-violent first offenders with prior non-violent felony convictions would decline moderately.
- Sentences for some classes of drug offenders with prior violent felony convictions would increase (New York State Legislature).

As far as quantity is concerned, the amount needed to constitute an A-I felony possession of “heroin or cocaine” will double (Eaton and Baker Bl).

As you can see, the changes are only minimal and there is still a long way to go. According to Robert Gangi, executive director of the Correctional Association of New York, “Judges must still sentence drug offenders to prison, rather than to alternatives like drug treatment” (qtd. in Eaton and Baker Bl). Discretion is still not in the hands of the judges and addicts still have to go to jail instead of getting treatment. This is only the first little step in a reform that is long overdue. I guess something is better than nothing. Hopefully, this is the first of many changes to the Rockefeller Drug Laws.

Works Cited

Association of the Bar of the City of New York and the Drug Abuse Council, Inc. The Nation’s Toughest Drug Law: Evaluating the New York Experience.

Cooper, Michael. “New York State Votes to Reduce Drug Sentences.” New York Times 8 Dec. 2004.
<<http://www.nytimes.com/2004/12/08/nyregion/08albany.html>>.

Correctional Association of New York. “Effective Alternatives to the Drug Laws: What Works Best for the Nonviolent Offenders.” Feb. 2001.
<<http://www.droptherock.org/effective.htm>>.

Correctional Association of New York. “Stupid and Irrational and Barbarous: New York Judges Speak Against the Rockefeller Drug Laws.” Dec. 2001.
<<http://www.correctionalassociation.org/judgesreport.pdf>>.

Eaton, Leslie and Al Baker. “Changes Made to Drug Laws Don’t Satisfy Advocates.” New York Times 9 Dec. 2004: B1.

Goldstein, Tom. “The Rockefeller Drug Law After 6 Years, Officials Question Its Effectiveness - Carey and Legislative Chiefs Planning Changes.” New York Times 14 May 1979 : B2. Historical New York Times. City U of New York, York College Lib. 8 Nov. 2004.

Herman, Susan N. “Measuring Culpability by Measuring Drugs? Three Reasons to Reevaluate the Rockefeller Drug Laws.” Albany Law Review 63.3 (2000): 777-799. Academic Search Premier. City U of New York, York College Lib. 25 Oct. 2004.

New York State Legislature. Bruno and Silver Announce Agreement on Partial Rockefeller Drug Law Reform. 7 Dec. 2004. 8 Dec. 2004
<<http://www.assembly.state.ny.us/press/20041207/>>.

Nakdai, Lisa R. “Are New York’s Rockefeller Drug Laws Killing the Messenger for the Sake of the Message?” Hofstra Law Review Winter 2001.
Westlaw 26 Oct. 2004.

People v. Broadie. No. 37 2nd District Ct of NY. 1975. Westlaw, 4 Nov.2004.

Vitulo-Martin, Julia. “Drug Law Reform Failed Again”. Gotham Gazette 7 July 2002. <<http://www.gothamgazette.com/article/cnme/20020701/4/222>>.

West Group. “Article 220 - Controlled Substances Offenses.” McKinney’s Consolidated Laws of New York. 39 (2000): 6-36.

Wilson, Aaron D. “Rockefeller Drug Laws Information Sheet,” Partnership for Responsible Drug Information. Aug. 2000. 2 Nov. 2004.
<<http://www.prdi.org/rocklawfact.html>>.