



THE ASSEMBLY
STATE OF NEW YORK
ALBANY

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Speaker

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February 3, 2009

Dear Commissioner O'Donnell:

I write to express my deep disappointment with the final report of the Commission on Sentencing Reform. Unfortunately, the Commission's report represents a historic missed opportunity to advance meaningful reform of New York's antiquated "Rockefeller-era Drug Laws". The Commission held in its hands a unique opportunity to help undo thirty-five years of failed drug policy and set New York on the path to establishing a more just, more humane and more effective approach to combat drug crime and drug abuse.

I am saddened that it failed to do so.

More than 35 years after they were enacted, it is clear that the Rockefeller laws have failed to combat drug abuse or effectively impact the incidence of violent crime across New York State. Rather, they have succeeded in imprisoning tens of thousands of low-level non-violent offenders, who are predominantly African-American and Latino, with no history of committing violent crimes at a cost of hundreds of millions of dollars to taxpayers. By restoring to judges their discretion not to mandate a prison sentence when they deem it inappropriate, non-violent drug offenders and taxpayers will be better served by driving resources toward strategies that have been proven far more effective at combating substance abuse and the street level crime associated with it.

For nearly a decade, the New York State Assembly, led by Assemblymember Jeffrion Aubry, has passed legislation to reform these laws, with an emphasis on restoring discretion to judges and providing alternatives to incarceration where appropriate and drug treatment for offenders where needed. Policy reforms encapsulated in that legislation were proposed to this Commission by Assemblymember Joseph Lentol. I was very sorry to learn that the Commission rejected them.

I am troubled that the Commission's report fails to address a system that has ignored, and still ignores, the health and societal implications of drug abuse, and has ignored the failed laws that have led to African-Americans and Latinos constituting 90% of those incarcerated in our state prisons for drug offenses. This profound discriminatory impact is even more shocking when the rates of illicit drug use are 8.1 percent for Whites, 7.2 percent for Latinos and 8.7 percent for African-Americans.

In 2004, under the leadership of the New York State Assembly and drug law reform advocates, New York undertook an important first step in correcting failed policies by lowering maximum prison sentences through converting indeterminate to determinate sentences, eliminating life sentences, doubling weights for the top 2 classes of drug offenses and providing other sentencing relief. Further amendments have enabled some of those who were previously sentenced under the laws to seek limited reconsideration of their sentences.

But still, more than 35 years after enactment of the Rockefeller Drug Laws, individuals convicted of a class B felony drug offense must go to state prison, often regardless of the quantity, quality or type of drugs involved and regardless of other options that combat drug crime and drug abuse.

While I believe the Commission missed a historic opportunity to address these issues, the Assembly is committed to ensuring that in 2009, New York finally enacts real reform of the Rockefeller-era Drug Laws. We believe the following principles should guide any efforts at enacting reform:

Mandatory minimum sentences for low-level non-violent offenders must go. Judges must have the discretion to impose sentences that make sense. Mandating that judges sentence drug users and very low level street sellers to state prison has not appreciably impacted crime or reduced addiction but, rather, has led to a massive increase in New York's prison population with a disproportionate number of Latinos and African-Americans being incarcerated. Thus, real reform means untying the hands of our judiciary by ending mandatory minimum prison sentences for Class B felony drug offenses and second time, non-violent drug offenders, and placing an emphasis on probation, alternatives to incarceration, and treatment. Except for the most serious and violent crimes, judges in New York already have had and continue to have the discretion to fashion appropriate sentences for criminal acts. Judges should have the ability to make an informed decision whether circumstances warrant imposing a state prison sentence in drug crimes just as they do in cases of many assault, larceny, property damage and any number of other crimes.

Illegal drugs should remain illegal. Adults who sell drugs to children, individuals who use guns in drug deals, and drug kingpins deserve harsh punishment. In addition, existing maximum determinate sentences for first and second class B level felony and below offenders should also be maintained so that if a judge decided circumstances warrant, those who commit the crime will do serious time.

District Attorneys should continue to play a key role in the process, but they should not be able to veto a judge's discretion. Indeed, to the extent there are district attorney-sponsored initiatives, such as Drug Treatment Alternative to Prison (DTAP) programs that have proven success rates with the limited populations they serve, judges will have the discretion to continue them.

This approach is fair, sensible and cost effective. We spend almost \$45,000 per year incarcerating each drug offender in state prison, many of whom are non-violent individuals suffering from substance abuse. This is money that could be spent on breaking the cycle that has driven New York's apparent addiction to sending people to prison rather than ending the drug abuse and recidivism.

I reiterate my disappointment at this missed opportunity. I remain committed to eliminating the most ineffective and inhumane aspects of the Rockefeller-era Drug Laws. I am hopeful that this year my colleagues in the Legislature can create a partnership with the Governor to complete this work.

Sincerely,



Sheldon Silver
Speaker
New York State Assembly

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