

Drug Law Reform

Excerpts from memo by A. O'Connor, NYS Defenders Assoc., Dec. 14, 2004 re Bill A.11895 now signed into law

Weights Doubled for Possession Offenses

The bill doubles the weight threshold for the Class A-1 felony of criminal possession of a controlled substance in the first degree from four to eight ounces, and for the Class A-II felony of criminal possession of a controlled substance in the second degree from two to four ounces. The weight thresholds for sale offenses remain the same.

Revised Sentencing Scheme

The reform bill calls for determinate sentences for all drug offenses. Class A felony convictions will be punishable as follows.

Class A-I Drug Offenses

First Felony Offense: 8 to 20 years
 2nd Felony (prior non-violent): 12 to 24 yrs
 2nd Felony (prior violent): 15 to 30 years
 Plus 5 years supervision (all cases)

Class A-II Drug Offenses

First Felony Offense: 3 to 10 years
 2nd Felony (prior non-violent): 6 to 14 years
 2nd Felony (prior violent): 8 to 17 years
 Plus 5 years supervision (all cases)

Class A-I Felony Convictions - Right to Petition For Resentencing

Inmates currently serving A-I felony sentences for drug offenses may petition for resentencing under the new determinate scheme. The bill grants these inmates a right to assigned counsel to prepare the resentencing application and to advocate for a determinate sentence under the new scheme. Counsel fees for such representation will be a county charge. Whenever possible, the application will be assigned to the original sentencing judge.

The court "may consider any facts or circumstances relevant to the imposition of a new sentence" including the inmate's institutional record. The inmate has the option to accept or reject the new determinate sentence. But in either case, he or she has the right to appeal from a determinate sentence so offered or imposed on the ground that it is harsh and excessive.

Revised Sentences – Class B through E drug and marijuana offenses

The new **determinate** sentences will be:

First Felony Offender

Class B: 1 to 9 years
 Class B (sale near school grounds): 2-9 yrs
 Class C (prison not mandatory): 1 to 5 ½ yrs
 Class D (prison not mandatory): 1 to 2 ½ yrs

Class E (prison not mandatory): 1 to 1 ½ yrs
Plus post-release supervision

Class B or C: 1 to 2 years
 Class D or E: 1 year

Second Felony Offender (prior non-violent)

Class B: 3 ½ to 12 years
 Class C: 2 to 8 years
 Class D: 1 ½ to 4 years
 Class E: 1 ½ to 2 years
Plus post-release supervision
 Class B or C: 1 ½ to 3 years
 Class D or E: 1 to 2 years

Second Felony Offender (prior violent)

Class B: 6 to 15 years
 Class C: 3 ½ to 9 years
 Class D: 2 ½ to 4 ½ years
 Class E: 2 to 2 ½ years
Plus post-release supervision
 Class B or C: 1 ½ to 3 years
 Class D or E: 1 to 2 years

Good Time and Merit Time Reductions

Determinate Sentences - All drug offenders serving determinate sentences will be eligible for a standard 1/7th reduction of the term as good time. They will also be eligible for an additional 1/7th reduction as merit time. To earn merit time, drug offenders will be required to participate in assigned work and treatment programs, and obtain a.) a GED, or b.) an alcohol and substance abuse certificate, or c.) a vocational trade certificate, or d.) perform 400 hours in a community work crew.

Indeterminate Sentences - Class A-I drug offenders serving indeterminate sentences may continue to earn up to 1/3 off their minimum terms as merit time, and Class A-II through E drug offenders may continue to earn up to 1/6th off their minimum terms. The bill includes a bonus 1/6th merit time allowance for Class A-II through E felony offenders who committed the offense prior to January 13, 2005, and received an indeterminate term. By participating in two or more of the above-listed programs, they will be eligible for an additional 1/6th merit time allowance, or a total of 1/3 off their minimum terms.

Early Termination of Parole – Indeterminate Sentences

The bill provides for mandatory early termination of parole after three years of unrevoked supervision for persons serving indeterminate sentences for Class A-I and A-II felony drug offenses, and after two years for all other drug offenses.

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Expanded CASAT and Judicial Placements

For drug offenses, the reform bill advances the CASAT eligibility date to inmates within 2 years and 6 months of their anticipated parole or conditional release date (giving advance credit for available good time and merit time credits). Second felony Class B drug offenders serving determinate sentences, however, must serve a minimum of 18 months (jail time and prison time) before transfer to a residential treatment program. The bill also authorizes judges to select defendants at the time of sentence for future participation in the CASAT program.

Not Real Reform

Excerpt from article by Robet Gangi in Newsday, 12/9/04

Despite the fanfare, the Rockefeller Drug Law modifications approved in Albany do not amount to real reform. The amendments reduce sentences for drug offenses but leave intact the harshest aspects of these statutes and don't address the most serious problems caused by these laws.

The mandatory sentencing provisions remain on the books, meaning that judges still cannot consider significant mitigating factors - such as an individual's role in the drug transaction or history of addiction - and fashion appropriate penalties to suit the offenses before them.

Prison terms, especially for the highest categories of drug offenses, remain excessive.

Mandatory sentencing schemes like the Rockefeller Drug Laws do not eliminate discretion; they remove it from the judge's hands and place it in the prosecutor's offices. Under the new system - as under the old one - the district attorneys will maintain power to control the outcome of drug cases, and the old imbalance associated with the drug laws will persist. The deck will still be stacked.

Another problem is that the legislature did not include any additional resources for drug treatment and other alternatives to incarceration. Drug treatment is a well-documented success. Fully funded rehabilitation programs not only cost less than imprisonment, they are also much more effective in helping individuals recover from addiction and in reducing the crime.

Why Some Politicians Need Their Prisons to Stay Full

Excerpts from article in NY Times, December 27, 2004
By Brent Staples

The Rockefeller Laws introduced the country to mandatory sentencing policies that barred judges from deciding who goes to jail and for how long. Instead, the laws required lengthy sentences - 15 years to life - for nonviolent, first-time offenders, many of whom would have received brief sentences, drug treatment or community service under previous laws.

Nearly all of the prisoners ended up in upstate New York, where failing farms and hollowed-out cities offered a lot of room for building. Politicians in these sparsely populated districts caught on quickly and began to lobby to have the new prisons located in their communities. As a result, nearly 30 percent of the people who were counted as moving into upstate New York during the 1990's were prison inmates.

The influx of inmates has brought desperately needed jobs to the region and resulted in districts whose economies revolve around prison payrolls and whose politics are dominated by the union that represents corrections officers. The inmates also helped to save political careers in areas where legislative districts were in danger of having to be merged because of shrinking populations. Inmates, as it turned out, were magically transformed into "residents," thanks to a quirk in the census rules that counts them as living at their prisons.

Felons are barred from voting in 48 of 50 states -including New York. Yet in New York, as in the rest of the country, disenfranchised prisoners are included in the population counts that become the basis for drawing legislative districts.

An eye-opening analysis by Prison Policy Initiative's Peter Wagner found seven upstate New York Senate districts that meet minimal population requirements only because prison inmates are included in the count.

The Senate Republicans, in turn, rely on their large upstate delegation to keep that majority. ...The advantages extend beyond jobs and political gerrymandering. By counting unemployed inmates as residents, the prison counties lower their per capita incomes - and increase the portion they get of federal funds for the poor. This results in a transfer of federal cash from places that can't afford to lose it to places that don't deserve it.

ACTION ALERT! Dare to Care!

Write to your Congressman and tell what you think about a **Second Chance**. Write to Senator Joseph L. Bruno, Senate Majority Leader, 909 LOB, Albany, NY 12247, and to Assembly Speaker Sheldon Silver, 932 LOB, Albany, NY 12248, and to your district legislators, and tell them how you feel about **mental illness** and **parole practices**.

Have friends write, too, stating their views (whatever they may be) on merit time, drug laws, the elderly, and restorative justice.

PLEASE DO IT NOW!

Maybe CRD Can Help

If there's a **pattern of abuse**, write to the relevant section in the **Civil Rights Division (CRD)** of the U.S. Department of Justice (DOJ).

DOJ does not handle cases on behalf of individuals. However, they do review complaints and if they compile sufficient information to suggest there is a widespread problem, they might investigate.

(1) "BRUTALITY UNDER THE COLOR OF LAW"

The types of correctional staff misconduct covered include excessive force, sexual assault, willful deprivation of property, or the intentional fabrication of evidence resulting in a loss of liberty to another.

Explain what happened and mail your letter to: Criminal Section, CRD, DOJ, 950 Pennsylvania Ave. NW, Wash. DC 20530.

(2) "UNCONSTITUTIONAL CONDITIONS"

These conditions can include a lack of serious deficiencies in medical care, mental health care, fire safety, sanitation, access to courts and protection from abuse by staff and other inmates.

DOJ is not authorized to investigate conditions in federal prisons, issues relating to an inmate's trial, conviction, sentence or parole and individual complaints about particular incidents or conditions.

There must be a pattern of illegal conduct creating unconstitutional conditions of confinement.

Explain these conditions in a letter to: Special Litigation Section, CRD, DOJ, 950 Pennsylvania Ave. NW, Washington, DC 20530.

(3) "DISABILITY RIGHTS"

The Americans with Disabilities Act (ADA) applies to all state and local governments, but Not to the federal government.** The ADA protects discrimination on the basis of disability. Examples of disability discrimination

include unnecessary restraint or segregation of persons with mental disabilities; failure to provide sign language interpreters when interrogating persons who are deaf; refusal to allow the use of medically prescribed wheelchairs, prosthetic devices, braces, canes or crutches where they do not pose a security risk; and refusal to allow prescribed medication or medical treatment.

Buildings constructed before 1992 do not have to be fully accessible in ADA compliance. Thus, a new prison or jail building constructed or even an old building altered after 1992 must be in ADA compliance.

* Explain how your disability rights were violated and mail your letter to the Disability Rights Section-NYA, CRD, DOJ, 950 Pennsylvania Ave. NW, Washington, DC 20530.

(4) "DISCRIMINATION COMPLAINTS"

Explain the discrimination by the prison or jail administration concerning race or color, national origin, sex, religion, age and disability. The letter should be mailed to Coordination and Review Section, CRD, DOJ, 950 Pennsylvania Ave. NW, Washington, DC 20530.

** While federal prisoners are not covered under (3) "disability rights" they are covered in number (4) "discrimination complaints". This includes disabilities.

WHERE ELSE SHOULD I WRITE?

ACLU-National Prison Project, 733 15th St. NW #620, Washington, DC 20005, has filed class-action lawsuits that have improved medical care for prisoners, changed cruel prison policies that stacked eight men in a cell made for one; and protected prisoners from sexual assaults.

Don't Slow Down Now!

Yes, we've had some victories; but there's so much more that needs to be done. **You** are still needed! CURE-NY, and its thousands of readers, along with our many alliance friends, need to help educate many on the truth and opportunities in criminal justice, and to advocate for more *restorative justice*, and hence more public safety.

If you're not already a member, or if your membership has expired (see the expiration date on the addressing label), take a minute now to join (or rejoin) CURE-NY.

Please fill in and mail this membership application to:
CURE-NY, PO Box 102, Katonah, NY 10536

Name _____
 Address _____
 City State & Zip Code _____
 Phone _____ email _____
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Please check type of membership and Annual Dues

- | | | | |
|-----------------------------------|----------|-------------------------------------|----------|
| <input type="checkbox"/> Prisoner | \$ 2.00 | <input type="checkbox"/> Sustaining | \$ 50.00 |
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| <input type="checkbox"/> Family | \$ 20.00 | <input type="checkbox"/> Benefactor | \$500.00 |

Many Thanks

To the steady band of CURE-NY Members who are the financial rock on which this newsletter depends; and especially to the Hudson River Presbytery for their collaboration and financial aid in this and other prison ministry. - The CURE-NY Editors

Restoring the Avenues of Hope

Excerpts from a letter by an inmate at Eastern Correctional Facility

Historically, men and women who serve long prison sentences have been very successful when released. Many come to prison at a young age and take advantage of the opportunities for personal growth. As a result, they often become different people by the time they are eligible for release.

In the past ten years, parole policies have changed. Instead of releasing this group on their first or second parole board appearance, they routinely are given many additional years to serve even when it is acknowledged that they are good candidates for release. Henry Ruth and Kevin Reitz in their book: *The Challenge of Crime: rethinking our response*, state the following:

"As Norval Morris has said,..The best social science for adult criminals tells us that, for every three criminals who fit the profile of future 'dangerous, offender,' only one of the three will actually confirm our fear... In order to be reasonably sure that the incapacitation net is wide enough to catch one true future offender before the crime is committed, society must be prepared to accept the human cost of the needless confinement of two innocent people." They go on to state: "...aggressive control measures visit predictable injustices on large numbers of needlessly incarcerated persons." (Pages 278-279)

What Ruth and Reitz are basically saying is that statistics show 70% would be crime free if released. When the critical factors of educational achievement, family ties, community support, spiritual growth, vocational skills, and concrete personal goals are added, the success rate may rise to well over 90%. Studies relative to these factors tend to support this view.

Perhaps the greatest loss as a result of the recent parole policies of the past ten years has been the elimination of hope. This has been the most serious development as a result of "the incapacitation net." In *The Divine Comedy*, Dante encounters the inscription over the door of The Inferno: *"You who enter here, leave all hope behind."* Many believe this is the present reality for the long term inmate.

CURE-NY

The New York Chapter of National CURE

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The church claims to be the guardian of hope and therefore cannot allow the elimination of hope in the political and social structures of our society. We believe the church cannot afford to make the theological concession that people in prison cannot change. There are many studies, facts, and witnesses to the reality that profound change does take place. We need to renew our faith in the potential for change and renew the hope for long term inmates that when they commit themselves to a life-changing and life-giving path there will be fair consideration by the parole board for release.

There is within this group of long term violent offenders many who have made significant contributions to the well being of society after release. We are aware of over one hundred men and women who, after release have become pastors, counselors, lawyers, social workers, family providers, business people, and authors. We believe further, that there are others still in the prisons with the same potential. They reflect the same characteristics and achievement but are being denied parole due to the present policy that supports the "incapacitation net," and "aggressive control measures." This practice denies the reality that people in prison can change and it eliminates a viable hope that should be an important part of the prison experience. We believe that the long term violent offender should be judged on the factors that lead to personal transformation as well as the nature of the original offense.

* * *

CASA reports: **Seventy percent** of the child abuse and neglect is due to drug and alcohol-abusing parents. **Eighty percent** of the men and women in prison are behind bars for drug and alcohol-related crimes.