



## Trying—Again—to Change the Drug Laws

by David King

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For decades, activists have pressed leaders in New York State to repeal laws that mandate long sentences for drug offenders. The legislature has made some changes to the so-called Rockefeller drug laws, but advocates have considered those efforts half-hearted. Now, with a new Democratic majority in the state Senate, advocates say the time is right for a large-scale overhaul, if not total repeal of the laws.

These advocates have powerful allies. Gov. David Paterson took up the issue in his State of the State message, and Assembly Speaker Sheldon Silver has issued a position paper calling for a major overhaul.

"We are feeling extremely confident" about the prospect of enacting Rockefeller reform this year, said Gabriel Sayegh of the [Drug Policy Alliance](#). Then he hedged, "Well, cautiously optimistic."

Senate Democrats, the people who are supposed to make major changes possible this year, have yet to take a firm stand on the issue, and a recent report by the State Commission on Sentencing Reform does not endorse a full overhaul but instead calls for smaller changes to the drug laws.

### Where They Stand

Since their enactment in 1973, the Rockefeller drug laws have mandated minimum sentences for drug offenses based strictly on the amount of narcotics involved in the case. They do not take into consideration circumstances such as whether this is the offender's first arrest, and they do not consider the defendant's standing in their community. Before the 2004 Drug Law Reform Act, convictions for carrying four ounces -- or selling two -- of cocaine or heroin could require the same sentence as a murder conviction. The laws were designed to punish "king pin" drug dealers but tend to punish addicts and users.

"Few initiatives have failed as badly and for as long as the Rockefeller Drug Laws," Paterson said in his State of the State address.

The laws have been tweaked, but according to Paterson and others still do not give judges enough discretion when it comes to sentencing. This year the push is to completely restore judges' discretion. Silver's position paper for example, effectively agreed with critics who say the laws are oppressive, judges should be allowed to sentence at their discretion, and drug addiction should be treated not as a crime but as a public health issue.

The Senate, though, remains the obstacle to adopting such changes. The Republicans, who blocked such initiatives in the past, are gone, and the newly empowered Democrats are dragging their feet. Depending on whom you listen to, that could be because they are still

finding their bearings and getting organized, or because, faced with an extremely narrow majority and some conservative Democrats whose support he needs, [Senate Majority Leader Malcolm Smith](#) will not take a hard stand on the issue.

According to [Assemblymember Jeffrion Aubry](#), who has been a staunch supporter of Rockefeller reform for over a decade, "The Senate is still finding its way. They have had no lead time to take over the majority, and with such a thin majority they are going to take it issue by issue."

The Rockefeller drug laws and mandatory minimum sentencing do have some adamant -- and influential -- supporters, including the states' district attorneys. A number of district attorneys and "tough on crime" legislators feel that the laws give them more tools to ensure that offenders are equally punished. Some believe harsh penalties will discourage dealers or users.

Lately the [York State District Attorney's Association](#) has supported revamping the laws to some extent. Instead of full repeal, representatives of the association have advocated reviewing each sentencing guideline to determine if it is fair. This could reduce harsh sentences in some cases but would not allow judges to consider special or extenuating circumstances. And it would not move drug treatment out of the hands of the criminal justice system.

Ironically one of the harshest critics of the Rockefeller drug laws is a district attorney -- Albany D.A. [David Soares](#), who was elected on an anti-Rockefeller platform in 2004. Soares [defeated](#) incumbent Paul Clyne who supported mandatory minimum sentences.

Soares has come under [criticism](#) from the local law enforcement community for his stance. Since taking office, Sayegh said, Soares has been "stymied because of lack of support." For example, Sayegh said, Soares has found it difficult to increase treatment programs in Albany County because he cannot secure the funding he needs from the County Legislature.

## **In the Legislature**

As with most issues, the key to changing the Rockefeller drug laws rests in working out details of a new law and getting enough people in both houses to support it.

Sen. [Eric Schneiderman](#), a strong critic of the Rockefeller drug laws, said he is "quite optimistic" that reform legislation will pass both houses this year, but he offered some caveats. "The dilemma with this issue is people claim they are for it, but when you get specific, that's when the trouble starts," he said. "The Senate needs 32 votes and we only have 32 Democratic votes. There may be some Republicans who would vote for this, but not a lot."

Some pundits have argued that Silver's very public push for Rockefeller drug-law reform is intended to goad the Senate into action. But Aubry said he thinks Silver's fervor is giving the Senate Democrats some "cover" to get their positions in order while the Assembly crafts the legislation. Aubry also noted that the state's dire budget will likely take precedence over other issues for some time.

## **The Sales Pitch**

In their very public statements about Rockefeller reform both Paterson and Silver have indicated they believe the laws should be changed that so that drug offenders can be treated for their

addictions rather than put in jail. Whatever the other merits of this argument, it now has a financial dimension: Sentence fewer drug offenders and the state will save money and perhaps even be able to close some prisons.

Caitlin Dunklee of the [Drop the Rock Campaign](#) pointed to a [study](#) by the [Legal Action Center](#) that indicated that wide-ranging reform -- fully restoring judges' discretion in all drug cases and greatly expanding alternative sentencing programs to provide treatment rather than prison -- would save the state almost \$268 million a year. The study took into account the effect of sending addicted individuals to community treatment programs rather than prison and maintained that would drastically reduce repeat offenses.

However, legislators and advocates note that this savings could be slow to materialize since money would have to be spent to create the alternative treatment programs. "You have to invest to save money," said Aubry. "We have to have the treatment slots for these people, and the budget is going the wrong way on treatment."

Last year, the state cut \$8.6 million in contracts for groups that provide drug counseling and treatment to former convicts. Aubry said that pro-reform legislators and advocates need to demonstrate that a modest investment in treatment services will provide a major return in savings on prison cells down the road.

Harry K. Wexler of the [National Development and Research Institutes](#) said drug treatment reduces recidivism rates by actually helping addicts address their addiction. "A lot of these people don't belong in prison," said Wexler. "In some cases prison just makes their case worse."

### **A Commission Weighs In**

Paterson, in his State of the State address, said he would [review](#) recommendations from the New York State Commission on Sentencing Reform in considering how to change the Rockefeller drug laws. That sent chills down advocates' spines. Those supporting changes in the laws sharply criticized the commission's preliminary report. "The ways it took up Rockefeller were really awful," Sayegh said. "It is almost as if they gave the prosecutors' association the pen."

The commission's [final report](#) was released this week and immediately derided by advocates across the state for not recommending drastic revisions to the drug law.

[Terry O'Neill](#), an Albany based public relations consultant known for his poetic commentary about goings on at the Capitol put it this way:

"Spitzer did what pols will do -- empanelled a commission,  
Hired Denise O'Donnell and handed her the mission.  
Two years went by of hearings, colloquies and chats  
Where all the experts hobbled and nobbed with all the bureaucrats.  
After all this effort, the report is out at last.  
Sorry that reform is going nowhere soon or fast.  
Denise and friends for all they met and saw and heard and talked  
Decided in the end to leave the boat as is -- unrocked."

While the report discusses the need for more alternative treatment, Sayegh said that it sets up too many "hoops" for defendants to jump through to get that treatment and leaves most of the discretion in the hands of prosecutors, not judges.

Silver's office released a [scathing letter](#) calling the report a "missed opportunity." Smith's office however released a statement describing the report as, "an important first step."

### **The Next Step**

For the next few months, advocates will spend time courting senators. Dunklee said that Drop the Rock hopes to deliver a petition to the Capitol on March 10. The group needs 13,000 more signatures to reach its goal of 35,000.

Dunklee said that Drop the Rock plans to lobby "tough on crime" Democrats in the Senate, as well as some Senate Republicans they feel might support the bill: "We are going to tell them, 'Rockefeller reform is going to pass. You can be on board or not.'"

One legislator who preferred to remain anonymous said that, as usual, advocates will push for complete repeal of the drug laws and the Democrats will come up with something less than that, a compromise they feel is politically feasible.

Sayegh, though, thinks a complete overhaul of the laws is inevitable. "New York has led the country with the most oppressive sentencing standards on drugs for years," said Sayegh. "Now if we take this turn and approach drug addiction as a public health problem and end the war on drugs, New York can set a new example for the nation to follow."