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## Litmus Test in Primary: Overhauled Drug Laws

By [NICHOLAS CONFESSORE](#)

For many Democrats in Albany, it was a landmark achievement: the long-sought [overhaul](#) of New York's strict Rockefeller-era drug laws, repealing mandatory minimum sentences for drug offenders that critics said disproportionately and unfairly fell on blacks and Latinos.

But that legislative victory last year has emerged as a litmus test in the increasingly bitter five-way Democratic primary battle for attorney general.

One candidate, [Kathleen M. Rice](#), the Nassau County district attorney, who many believe is the favored candidate of Attorney General Andrew M. Cuomo, the Democratic candidate for governor, says she has always supported the drug law overhaul. Two other candidates, Assemblyman [Richard L. Brodsky](#) of Westchester County and State Senator [Eric T. Schneiderman](#), who represents parts of Manhattan and the Bronx, have assailed her in recent weeks, saying that Ms. Rice had opposed the overhaul last year and had changed her views only recently, after she decided to run for higher office.

Two weeks ago, Mr. Schneiderman, who sponsored the Senate version of the legislation, even challenged Ms. Rice to debate the issue with him, one on one. Ms. Rice has not yet agreed.

“Given that we have an honest difference of opinion,” Mr. Schneiderman said in an interview, “on our state's most defining criminal justice issue, I believe the public would be well served by an honest and respectful debate on our divergent positions and records.”

The five candidates will meet on Monday for a moderated forum in Manhattan.

The attacks against Ms. Rice may be calculated to fuel perceptions that she is too conservative to be the Democratic nominee; she did not register as a Democrat until 2005, shortly before her first run for district attorney, while other candidates have been at pains to describe themselves as lifelong Democrats.

But underscoring the debate over changing the drug laws is a battle by the Democratic candidates — all five of whom are white — for the allegiance of black voters in what is expected to be a low-turnout primary.

“The reforms resonate powerfully in the African-American community,” said David S. Birdsell, dean of the School of Public Affairs at Baruch College. “It is also a signature piece of progressive legislation for an increasingly large part of the Democratic primary base. It’s a litmus test for progressive voters and an appeal to a group that was disproportionately harmed by the old laws.”

In candidate forums and interviews, on her campaign Web site and through a campaign spokesman, Ms. Rice has described herself as a strong supporter of changing the Rockefeller-era laws, which bound judges to sentence even nonviolent, first-time drug offenders to prison.

“Had I been in the Legislature, I would have absolutely voted for the reforms,” Ms. Rice said in an interview. “There was no distinction under the [Rockefeller laws](#) for those who were for-profit drug dealers and those who were just addicted.”

Yet there is little evidence that Ms. Rice voiced support for the revision at the time it was being debated in Albany last year. Instead, like nearly every other district attorney in the state, she expressed concerns about one of its most significant provisions: giving judges the authority to send many of those charged with drug crimes to treatment programs instead of prison.

That change deprived district attorneys of the enormous — and, critics argued, unfair — leverage they exerted in drug cases. Under the old law, district attorneys decided who would have access to treatment programs. Defendants who contested the charges against them at trial risked significant jail time with no hope that a judge could order treatment as an alternative.

Mr. Brodsky said, “She was O.K. on diversion, but she’s been bad on judicial discretion from the get-go.”

“The problem here,” he added, “is that she’s not willing to speak candidly about it.”

In a March 2009 letter to a Republican state senator from Long Island, Ms. Rice said she believed that the state’s drug laws needed changing but found “deeply concerning” the legislation’s provisions to restore judicial discretion to sentencing.

“There is nobody more familiar with a defendant’s background and the details of their current case than the district attorney’s office,” Ms. Rice wrote. “Exclusion of the most informed party from such an important process is ill-conceived and will result in fewer drug treatment success stories and more nonaddicted criminals on our streets.”

The senator, Charles J. Fuschillo Jr., read the letter during a Senate debate over the bill, and cited it as a reason he voted against the legislation.

Ms. Rice’s critics also point to a statement issued in April 2009, after the law was passed, by the state association of district attorneys. Ms. Rice was on the association’s board.

The statement, made on behalf of the group by its president, Daniel M. Donovan Jr., the Staten Island district attorney, criticized the overhaul as “a serious threat to public safety in our state.”

A spokesman for Mr. Donovan, now a Republican candidate for attorney general, said that his office had circulated the letter to individual district attorneys before it was released, the association's usual practice, and that Ms. Rice's office had voiced no objection to the language.

And as recently as November, in an interview with The Westbury Times, a local newspaper in Nassau County, Ms. Rice said she would "reserve judgment" on the new law to see how it worked in practice and said she remained concerned that the law gave too much discretion to judges.

In an interview, Ms. Rice said that she had been worried about district attorneys' losing their voice in sentencing decisions. She also said she had supported giving judges sentencing discretion, despite the concerns she had raised at the time.

"I understand that that's a cornerstone of the reform," Ms. Rice said. "But I think it would be inappropriate for me not to at least express my concern that I have. I agree that judges should have discretion. I also feel that D.A.'s should have a voice, because they represent the communities."

But some advocates for the overhaul said they believed Ms. Rice was being disingenuous.

"To me, her statement is ridiculous," said Gabriel Sayegh, state director of the [Drug Policy Alliance](#), a national group that urges relaxation of certain drug sentencing laws. "To say that the prosecutors were being cut out of the process is a specious claim, and it has everything to do with who will be the ultimate decision maker in the courtroom — the judge or the prosecutor."

Ms. Rice also cited a program she instituted early in her tenure to divert nonviolent drug offenders into treatment programs. That program, like similar ones in Brooklyn and elsewhere, won praise from some advocates for drug law reform, including Robert Gangi, the executive director of the [Correctional Association of New York](#).

But in an interview, Mr. Gangi said Ms. Rice's position on judicial discretion was inconsistent.

"If you support the discretion, then you support reform without the conditions or caveats that she seems to be applying," he said. "The central principle was to return discretion to judges in drug cases. If you're hedging your bets on that, you're trying to talk the talk but not walk the walk."

*This article has been revised to reflect the following correction:*

***Correction: June 22, 2010***

*An article on Monday about the five-way Democratic primary battle in New York for attorney general misstated the middle initial of one candidate. She is Kathleen M. Rice, not Kathleen A.*