

**Statement of the New York Civil Liberties Union**

**presented to**

**The New York City Council Committee on Mental Health, Mental Retardation,  
Alcoholism, Drug Abuse and Disability Services**

**regarding**

**The State of Drug Policy and Addiction in New York City, and Reform of the  
Rockefeller Drug Laws**

My name is Socheatta Meng. I am legislative counsel for the New York Civil Liberties Union (NYCLU). The NYCLU, a state affiliate of the American Civil Liberties Union, has approximately 50,000 members. The NYCLU is devoted to the protection and enhancement of those fundamental rights and constitutional principles embodied in the Bill of Rights of the United States Constitution and the Constitution of the State of New York. Central to this mission is our advocacy regarding fairness and equality in the state's criminal justice system.

I would like to start by thanking the Committee for calling this hearing to address the Rockefeller Drug Laws. For the past three and a half decades, the Rockefeller Drug Laws have utterly failed to serve their purpose – by mandating harsh prison sentences based primarily upon the amount of drugs involved, this state's drug-sentencing scheme has proven itself to be draconian, irrational, unfair, and racially discriminatory. The Rockefeller Drug Laws have remained virtually unchanged since their adoption. But this is a new political moment: Governor Paterson, as well as key legislative leaders in Albany, have publicly pledged their commitment to reform. A fiscal crisis requires strict cost-cutting. The time is ripe for us to demand real changes to our state's drug sentencing laws. At this pivotal moment, we at the NYCLU strongly urge the City Council to call on our state's leaders for action.

Since the enactment of the Drug Laws in 1973, New York State has sent to prison nearly a quarter of a million persons for drug offenses. The drug laws' primary feature – its mandatory sentencing policy – has subverted the integrity of our criminal justice system by relegating the judge to the role of bystander in the courtroom and by giving undue power to the prosecutor. As

a result, New York State incarcerates many non-violent defendants, including first time offenders, those suffering from addiction, and people who play extremely peripheral roles in drug transactions. The majority of those incarcerated under our drug laws are low-level, non-violent offenders.

These failings of New York's drug-sentencing policies are far from obscure; in fact, they are so well-documented and widely recognized that many prominent New Yorkers who previously supported the harsh penalties have since renounced their support for these laws. John Dunne, a former Republican senator and the original sponsor of the Rockefeller Drug Laws at one point stated, "The Rockefeller Drug Laws have failed to achieve their goals. Instead, they have handcuffed our judges, filled our prisons to dangerously overcrowded conditions, and denied sufficient drug treatment alternatives to nonviolent addicted offenders who need help."<sup>1</sup>

In addition, there is no strong evidence to suggest that the drug laws have been effective in reducing crime or enhancing public safety. Despite contrary claims by some prosecutors, statistics and studies indicate that there is actually "little if any relationship between fluctuations in crime rates and incarceration rates."<sup>2</sup> Data from the New York Crime Index Rates bears this out: in 1973, there were 11 homicides per 100,000 inhabitants of New York State. By 1990, the homicide rate had risen to 14.5 per every 100,000 New Yorkers. Robbery rates from the same period reveal the same trend – in 1973, there were 442 robberies per 100,000 inhabitants; in 1990, after 17 years of vigorous Rockefeller Drug Law enforcement, this rate increased to a record number of 625 per 100,000 inhabitants. In a recent study, the Sentencing Project also concluded that "there was no discernible pattern of states" that experienced increased numbers of incarceration in conjunction with significant declines in crime.<sup>3</sup> What's more, some studies have suggested that more punitive drug-sentencing schemes are correlated with more frequent drug use.<sup>4</sup>

In what is perhaps the most disturbing aspect of this issue, the enforcement of the Rockefeller Drug Laws disproportionately affects African American and Latino persons at every stage of the criminal justice process. Of those persons who are incarcerated for drug offenses in New York State, more than 90 percent are African American or Latino.<sup>5</sup> This number, however, does not necessarily reflect higher rates of offending among African Americans and Latinos – in fact, research indicates that the population that uses and/or sells drugs mirrors the demographics of the general population.

In a relatively recent government study, a total of 1.8 million adults in New York (about 13 percent of the total adult population) reported using illegal drugs in the preceding year. Of

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<sup>1</sup> Press Release, Campaign for Effective Criminal Justice, May 6, 1998.

<sup>2</sup> James Austin, Todd Clear, Troy Duster, David F. Greenberg, John Irwin, Candace McCoy, Alan Mobley, Barbara Owen, Joshua Page, *Unlocking America, Why and How to Reduce America's Prison Population* (JFA Institute, Washington, D.C.), Nov. 2007.

<sup>3</sup> Marc Mauer, *Incarceration and Crime: A Complex Relationship*, (The Sentencing Project, 2005), p. 3.

<sup>4</sup> Phillip Beatty, Amanda Petteruti, Jason Ziedenberg, "The Vortex: The Concentrated Racial Impact of Drug Imprisonment and the Characteristics of Punitive Counties," Justice Policy Institute, Dec. 2007, p. 2.

<sup>5</sup> Department of Correctional Services data cited in the New York State Commission on Sentencing Reform, "The Future of Sentencing in New York State: Recommendations for Reform," Jan. 30, 2009, p. X.

those reported users of illicit drugs, 1.3 million – or 72 percent – were white.<sup>6</sup> Moreover, research indicates that whites are the principal purveyors of drugs in the state. When the National Institute of Justice surveyed a sample of more than 2,000 recently arrested drug users from several large cities, including New York City, the researchers learned that “respondents were most likely to report [purchasing or receiving drugs from someone] of their own racial or ethnic background regardless of the drug considered.”<sup>7</sup> Upon closer analysis these findings reveal that there are, indeed, many more drug sales in white communities than there are in communities of color, but the transactions that occur in white communities tend to escape detection because they take place behind closed doors in homes and offices.<sup>8</sup>

Criminologist Alfred Blumstein, the nation’s leading expert on racial disparities in criminal sentencing practices, has concluded that with respect to drug offenses, the much higher arrest and conviction rates for blacks are not related to higher levels of criminal offending, but can only be explained by other factors, including racial bias.<sup>9</sup>

In coordination with the Justice Mapping Center, the NYCLU analyzed prison admissions for drug offenses in a number of urban centers in New York State. As discussed above, many empirical studies demonstrate that the demographics of the population that uses and/or sells drugs reflects the demographics of the general population. However, there are stark racial and ethnic disparities in the rate of incarceration for drug offenses. The following is a demographic snap shot of the New York City communities from which most persons are sent to prison for drug offenses. (See attached: *Prison Admissions Per 1000 Adults, New York City, 2006.*)

- 25 percent of adults sent to prison from New York City come from areas with just 4 percent of the city’s adult population. More than half are admitted for drug offenses and 97 percent are black or Hispanic.
- We specifically focused on two Brooklyn communities: Community District 12, which includes the neighborhoods of Kensington and Borough Park; and Community District 5, which includes East New York.
- In Community District 5, which is predominantly inhabited by persons of color (only 5 percent of the population is non-Hispanic white), at least 400 of those residents were incarcerated in 2006. Of these 400, 40 percent were sent to prison for drug offenses.
- In contrast, Community District 12 has a non-Hispanic white population of 63 percent. In 2006, only 39 residents were sent to prison, and of those 39, only 25 percent were imprisoned for drug offenses.

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<sup>6</sup> Carol L. Council, Weihua Shi, Laurel L. Hourani, “Substance Abuse and Mental Health in New York, 2001,” Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Office of Applied Studies, May 2005, p. 5. “Illegal drugs” include, in order of popularity, marijuana, hashish, non-medical use of prescription drugs, cocaine, heroin, hallucinogens, and inhalants.

<sup>7</sup> K. Jack Riley, “Crack, Powder Cocaine, and Heroin: Drug Purchase and Use Patterns in Six U.S. Cities,” National Institute of Justice and the Office of National Drug Control Policy, Dec. 1997.

<sup>8</sup> The Riley study found that powder cocaine users, who tend to be more affluent than heroin or crack users, “reported that they typically made indoor purchases in places of business more frequently than did other users.”

<sup>9</sup> Alfred Blumstein, “Racial Disproportionality of U.S. Prison Populations Revisited,” University of Colorado Law Review, Vol. 64, No. 3 (1993).

It is instructive to examine the financial burdens of incarcerating individuals for drug offenses in light of these data.

- New York taxpayers will spend approximately \$50 million to incarcerate the 400 persons sent to prison from Community District 5 (for the minimum term of their sentence), \$14 million of which will be spent on incarcerating drug offenders. It will cost taxpayers about \$3.7 million to incarcerate the 39 residents sent to prison from Community District 12, \$600,000 of which will be spent on incarcerating drug offenders.
- The total cost of incarcerating New York City residents sent to prison in 2006 for drug offenses will be \$1.1 billion, representing more than 40 percent of the cost of incarcerating all city residents sent to prison that year.

The Rockefeller Drug Laws have also caused grave collateral damages to New York's most vulnerable communities. They have diminished the opportunity for economic and life success for many thousands of formerly incarcerated persons who suffer from extremely high unemployment rates. In New York, up to 60 percent of ex-offenders are unemployed one year after release.<sup>10</sup> The drug laws have contributed to the disintegration of already vulnerable families: with an estimated 11,000 incarcerated drug offenders who are parents to young children, close to 25,000 children in New York State have parents in prison convicted of non-violent drug charges.<sup>11</sup> As a consequence of losing a parent to prison, these children experience psychological trauma, financial deprivation, and physical dislocation.

The constant removal and return of prisoners also contributes to making neighborhoods less safe, thereby leading to the further destabilization of communities. According to a study on the "spatial effects" of high incarceration rates by Jeffrey Fagan, a Columbia University sociologist, and his colleagues, "[i]ncarceration begets more incarceration, and incarceration also begets more crime, which in turn invites more aggressive enforcement, which then re-supplies incarceration."<sup>12</sup>

The Rockefeller Drug Laws also contribute to loss of political representation. Most incarcerated drug offenders hail from inner-city communities of color, but for purposes of the census, they are counted as residents of the upstate, overwhelmingly white counties where they are incarcerated. In the most recent legislative redistricting, New York City lost nearly 44,000 residents to these upstate districts.<sup>13</sup> This inequity is exacerbated by the state's disfranchisement laws, which mandate that prisoners and parolees lose their right to vote in all elections. As a consequence, in any given election, more than 100,000 voters concentrated in the state's poorest neighborhoods are barred from the voting booth.<sup>14</sup>

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<sup>10</sup> Glenn C. Loury, "Why Are So Many Americans in Prison? Race and the Transformation of Criminal Justice," *The Boston Review*, July-Aug. 2007.

<sup>11</sup> Human Rights Watch, *Collateral Casualties: Children of Incarcerated Drug Offenders in New York*, June 2002, p. 2.

<sup>12</sup> Jeffrey Fagan, Valerie West, Jan Holland, "Reciprocal Effects of Crime and Incarceration in New York City Neighborhoods," 30 *Fordham Urb. L.J.* 1551, July 2002, at p. 1554.

<sup>13</sup> Peter Wagner, "Diluting Democracy: Census Quirk Fuels Prison Expansion," April 2004.

<sup>14</sup> A lawsuit challenging New York's felon disenfranchisement law, brought by the NAACP Legal Defense and Education Fund, was not successful. See *Hayden v. Pataki*.

It is beyond dispute that the imposition of harsh criminal penalties is the wrong paradigm for addressing the problems related to drug use – a new and more effective model based on a public health framework is a better course of action. As developed in Canada, this public health model “focuses on health promotion, prevention of disease or injury, and reducing disability and premature mortality. It also incorporates individual and societal health protection measures through protecting and promoting physical environments and social policy frameworks that maximize health and minimize individual and community harms. [This approach is also] attentive to the unintended effect of control policies, to ensure that other harms are not created out of proportion to those harms from the substance use itself.”<sup>15</sup>

At a recent conference in January 2009, the New York Academy of Medicine, which co-sponsored the conference with the Drug Policy Alliance, issued a statement endorsing the public health approach:

A public health approach to drug policy...emphasizes the need for a coordinated strategy involving multiple sectors. One successful strategy for engaging multiple sectors in transforming drug policies and improving public health is the Four Pillars Model (Prevention, Treatment, Public Safety and Harm Reduction).

This model seeks to ensure coordination among various agencies, communities, levels of government, and stakeholders to achieve healthier, safer communities. First implemented in Switzerland and Germany in the 1990s, the Four Pillars Model is now employed in many cities and countries in Europe, North America, Australia and Asia, including Vancouver and Toronto. [This approach] has resulted in a dramatic reduction in the number of drug users consuming drugs on the street, a significant drop in overdose deaths, reduction in crime, and a reduction in the infection rates for HIV and hepatitis.<sup>16</sup>

Diverting offenders who are more appropriately served by community-based treatment and rehabilitation programs – a core component of the public health model – costs far less than imprisonment at no risk to public safety. Well-designed alternative to incarceration programs have the potential to reduce recidivism and effectively treat substance abuse, and therefore enhance public safety. New York State’s residents are overwhelmingly in favor of this approach – approximately 75 percent of voters in this state agree that the best approach to preventing future drug-related crime is to provide non-violent addicted offenders with drug treatment rather than sending them to prison.<sup>17</sup>

As a pioneer in the use of alternative to incarceration (ATI) programs, New York City is particularly suited to impress upon our state’s leaders the need to expand and strengthen alternatives to incarceration. New York City created the nation’s first pre-trial diversion project

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<sup>15</sup> Health Officers Council of British Columbia, A Public Health Approach to Drug Control in Canada 14 (Discussion Paper Oct. 2005).

<sup>16</sup> New York Academy of Medicine, Drug Policy Alliance, “New Direction for New York: A Public Health and Safety Approach to Drug Policy: What is a Public Health Approach to Drug Policy?” News Release, January 23, 2009.

<sup>17</sup> Legal Action Center survey, June 2002.

in 1967,<sup>18</sup> and the largest ATI programs in the state are located in the city. Currently, ATI programs in New York City serve more than 3,000 people each year at a cost of \$12.5 million – a fraction of the over \$75 million it would have cost to incarcerate just those who were charged with felony offenses (1,500 people at \$50,000 per year).

We have truly come to a crossroads in our approach to the adjudication and sentencing of drug offenses. We can persist in the “locking up the wrong people for the wrong reasons” (in the words of Thomas A. Coughlin, the former New York State Corrections Commissioner), or we can muster the courage to create a sentencing structure that restores judicial discretion; reinvests in our most vulnerable neighborhoods the enormous savings that will be realized from cutting the costs of incarceration; and employs a public-health approach by expanding eligibility for alternatives-to-incarceration and by establishing a comprehensive ATI model.

The NYCLU urges you to reach out to our state’s leaders to call for comprehensive changes to our drug sentencing policies that will not only be cost effective and fair, but will also effectively address the underlying causes of substance abuse. In doing so, we respectfully request that Council Member Koppell, as the Chair of the Mental Health, Mental Retardation, Alcoholism, Drug Abuse and Disability Services Committee, and Council Member Palma, as the Chair of the Subcommittee on Drug Abuse, co-author a letter to our state’s leaders, and especially the relevant Legislative Committees<sup>19</sup> calling on them to enact meaningful reform of the Rockefeller Drug Laws this year, reform that embraces the fundamental tenets of the public health model. We offer our assistance to you in drafting this letter, and look forward to sharing the work that we have done on the toll that the Rockefeller Drug Laws have taken on New York City residents.

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<sup>18</sup> Rachel Porter, Sophia Lee, and Mary Lutz, *Balancing Punishment and Treatment: Alternatives to Incarceration in New York City 5* (Vera Institute of Justice) 2002.

<sup>19</sup> The Senate Committee on Health; the Senate Committee on Mental Health and Developmental Disabilities; the Senate Committee on Codes; the Senate Committee on Crime Victims, Crime and Correction; the Assembly Committee on Health; the Assembly Committee on Mental Health; the Assembly Committee on Codes; and the Assembly Committee on Correction