



THE ROCKEFELLER DRUG LAWS ARE A QUEER ISSUE

A Position Statement by Queers for Economic Justice

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OVERVIEW OF THE ROCKEFELLER DRUG LAWS

The Rockefeller Drug Laws, passed in New York State in 1973 at the beginning of the national War on Drugs, imposed mandatory minimum sentencing for anyone convicted of drug-related incidents. In the 33 years since their passing, the Rockefeller Drug Laws (RDL) have remained largely intact.

Thousands of New Yorkers have organized to overturn these laws and resist their harmful impact on our communities, with some significant successes. Recent victories include the A-1 Rockefeller reform bill, passed in December 2004, which reduced the sentences of 446 people convicted of A-1 felonies under the RDL, and allowed for merit time for those in prison under the RDL, and other minor reliefs. The A-2 Rockefeller reform bill, signed by Governor Pataki in 2005, will allow nearly 550 people sentenced under the RDLs for nonviolent drug offenses to apply for re-sentencing.

(source: Real Reform: www.realreformny.org/pr120704.html)

Despite the passing of the A-1 and A-2 reform bills, the laws remain some of the harshest in the United States. **Currently, judges are required to sentence those convicted under the Rockefeller Drug Laws (depending on the offense) to 8-21 years in prison, regardless of the role that the convicted person played in the crime.** Minimum sentencing allows for no judge discretion or case-specific changes – which means that prosecutors, who set the charge, are also determining sentences. The majority of drug offenses in New York State are largely non-violent crimes, including possession and selling, yet RDL can result in sentencing that is harsher than that given to someone convicted of rape and robbery. *(source: Drug Policy Alliance)*

THE CONTEXT FOR THESE LAWS

In the United States, we see law after law passed that increase the number of people of color, poor people, women, youth, and LGBT people who are in jails or prisons. These laws are passed under the guise of the War on Drugs, which claim to “fight crime,” but instead wage war on people and communities by expanding the punishment for crimes that should instead receive treatment; by taking

people and resources out of the communities who need them most; and by supporting corporations that profit from rising incarceration rates. The Rockefeller Drug Laws, and others such as California's Three Strikes laws, which impose mandatory minimum sentencing, effectively authorize increased policing of already highly policed, profiled and imprisoned communities.

The Rockefeller Drug Laws have only led to imprisonment numbers climbing at extremely high rates, increasing the demand for jails, prisons and correctional officers – yet there has been no evidence to show that the laws have actually reduced drug use or sales. The sharp rise in the number of people in prisons means that the corporations that are building prisons, selling food to prisons, and employing prison officers are gaining a huge profit. These corporations therefore have an investment in any laws which increase the number of prisons being built and guarantee that more people will be in prison for longer. A check of their campaign contributions will show that many politicians who campaign with a “touch on crime” platform receive contributions from businesses that build or operate prisons.

The modern prison industrial complex began in 1984, when the first government contract was given to the Correctional Corporation of America, in the state of Tennessee. Today, CCA, the international corporation GEO Group, Inc. (formerly Wackenhut Corrections Corporation), and Cornell Companies, Inc., are the top private correctional corporations in the US. Both CCA & GEO are large contributors to American Legislative Exchange Council (ALEC), a Washington, D.C. based public policy organization that supports conservative legislators. ALEC's members include over 40% of all state legislators, and its legislative successes include California's “Three Strike” laws. The Rockefeller Drug laws were passed the same year that ALEC was formed. Though community organizing has led to a severe drop in state contracts, the federal government has continued to increase its contracts to these corporations. As of December 2000, there were 153 private correctional facilities (prisons, jails and detention centers) operating in the United States with an imprisonment capacity of over 119,000 people. (Source: AFSC's *Corrupting Justice & The Sentencing Project*, www.sentencingproject.org)

THE IMPACT OF THE ROCKEFELLER DRUG LAWS ON COMMUNITIES OF COLOR

In 2004, nearly 16,000 people were in New York State prisons for drug offense. This represents nearly 38% of the state's prison population, and costs New Yorkers over \$500,000,000, each year. (Source: *Drug Policy Alliance*: www.drugpolicy.org)

The Rockefeller Drug Laws directly contribute to the destabilization of our communities. When a person is imprisoned, they lose their job, which means that their family loses that income to pay for housing, food, and childcare. They are torn from their community, which can include religious affiliations, school, family, and friends. Neighborhoods in which residents are largely people of color are heavily policed, and high imprisonment rates take away renters, home-owners, restaurant patrons, and shoppers. This destabilization contributes to the gentrification process, as white, middle-class people subsequently move in, raising real estate prices, attracting expensive boutiques and food markets, and pushing out the long-term residents who remain.

Further, most New York State prisons are upstate, in mostly-white Republic districts, where an increase in population, especially a disenfranchised population, will give Republican politicians increased power and require no accountability. In the US, an estimated 4.7 million Americans, or one in forty-three adults, have currently or permanently lost their voting rights as a result of a felony conviction, including 1.4 million African American men. This means that many of those people most affected by the RDLs, similar laws, and prisons, are unable to vote for government officials who will make necessary changes. (Source: *The Sentencing Project*, www.sentencingproject.org)

Racial and gender profiling result in the high incarceration rates of people of color by directing police and legal resources towards arresting and convicting people of color – including LGBT people of color.

In New York, 94% of people in prison who are convicted of drug offenses are African-American or Latino. (Source: *Drop the Rock*) Nationally, approximately 66% of women in prison are women of color. More than one in ten Black men aged 25-29, and one in 27 Latino men, were in jail or prison in 2003. However, though white men make up the majority of drug users and dealers, only one in 63 white men (just 1.6%) were in prison or jail at the same time. Although African Americans comprise only 12.2% of the US population, and 13% of drug users, they comprise 38% of people arrested for drug offenses, and 59% of those convicted for drug offenses. (Source: *American Friends Service Committee's "Corrupting Justice"; and Drug Policy Alliance*)

Like our state laws, federal drug laws are targeted at people of color and poor people. Crack cocaine laws, passed in 1986 and 1988, and still in effect, created a 100-to-1 ratio of possession of powder cocaine to crack cocaine required to prompt mandatory minimum sentencing. Therefore, the possession or sale of crack cocaine, which is much cheaper than powder cocaine, is much more likely to lead to imprisonment. In 2003, federal courts sentenced 5,462 people for crack cocaine offenses. Seventy-five percent of this group was sentenced to mandatory prison terms of either five years (28.9%) or ten years (47.5%). These laws effectively target poor people, rather than wealthy people who can afford powder cocaine. (Source: *The Sentencing Project, www.sentencingproject.org*)

In the United States, these policies are reflected in a popular dialogue about drug use that is equally classist and racist. Elected officials at the top of even federal government are widely known to be previous drug users, but have never been expected to serve jail time as a result. This includes President George W. Bush and former President Bill Clinton – who announced his drug use on national television, and was applauded for his connection to today's youth. Popular media images – including "Sex and the City" and "Weeds" – portray white middle-class people who use and sell drugs, but are too smart, witty, and cute to go to jail. At the same time, police profiling and incarceration rates of people of color continue to soar, and TV shows such as "Cops" – in which poor people of color are harassed, assaulted, and arrested – remain popular.

FUNDING PRISONS INSTEAD OF SCHOOLS

Federal education mandates, such as "No Child Left Behind", are being passed without adequate funding for states to comply, while state spending on federal and state prisons rises with the increased incarceration rates. In the 10 years from 1988 to 1998, New York State reduced spending to state and city universities by \$615 million, but increased funding to prisons by \$761 million. (Source: *The Correctional Association of New York, www.droptherock.org*)

This stark funding contrast from the government sends a clear message to youth that the state prefers to send them to prison, rather than to college. In that context, as lesbian, gay, bisexual and transgender (LGBT) youth (especially LGBT youth of color), are still forced out of their homes and into homelessness, are still harassed in school, and are targeted and harassed by the police, the odds of them ending up in prison, rather than college, continue to increase. The federal and state legislature – largely wealthy straight white men over 50 years old – seems to have determined that the worth of LGBT youth is higher in prison than in school – because more people in prison, doing low-wage work, adds up to greater profits for corporations. In fact, the majority of women in prison have not completed high school. In the past two decades, more and more youth are being tried as adults, and being sent to adult prisons. [Source: *American Friends Service Committee's "Corrupting Justice"*]

Instead, funding should go directly to schools and programs that mentor and support youth. In New York City, these programs already exist, and they include: community-organizing centers which provide trainings (such as the Audre Lorde Project and FIERCE!); agencies which provide emergency or transitional shelter (such as the Ali Forney Center or Green Chimneys); agencies that provide mentoring, direct services or activities for youth (such as the Door and the YES program at the LGBT

Center); and projects such as the Peter Ciccino Youth Project, of the Urban Justice Center, which provides legal services for queer youth.

DRUG USE AND THE QUEER COMMUNITY

Studies have repeatedly shown that LGBT people, often facing stigma from families and society at large, and experiencing depression as a result, have higher rates of drug addiction than heterosexual communities or the US population overall. Therefore, laws that aim to imprison drug users can have a disproportionate affect on LGBT people.

According to the Midwest AIDS Prevention Project, alcohol and drug abuse affects an estimated 20-30% of the gay and lesbian population – a rate that is two to three times higher than the general population. A 1998 study by the San Francisco Department of Public Health AIDS Office found that 34% of transgender women, and 18% of trans men, had a lifetime rate of intravenous drug use. One study in Massachusetts found that 80% of transgender people had problems with drugs or alcohol. (Source: *The Gay, Lesbian, Bisexual, and Transgender (GLBT) Health Access Project*)

Drug addiction can lead to unemployment and homelessness, all of which are **better solved** through well-funded rehabilitation programs and shelters, not imprisonment. Drug treatment programs are 15 times more effective than mandatory minimum sentences in reducing the rate of violent felonies. Drug treatment programs have also been shown to be significantly more effective than prisons in increasing a person's ability to maintain employment. The cost of imprisoning one person for one year, in New York State, is about \$32,000. Yet, residential drug treatment costs about \$17,000-\$21,000 per participant per year, and most drug treatment for outpatients care runs between \$2,700-\$4,500, per person per year. (Source: *The Correctional Association of New York*, www.droptherock.org)

However, as federal, state and city resources are increasingly cut, and welfare and Medicaid are almost completely dismantled, homeless people have few options for drug rehabilitation. Resources that should be going to low-income housing, job training programs, and affordable healthcare – all of which would put resources directly into our communities – are instead being directed to increased policing and building more prisons. The recent federal budget reconciliation bill (S. 1932), passed February 1, 2006, only made deeper cuts into these social programs.

HOW LGBT PEOPLE ARE AFFECTED BY DRUG LAWS

The Rockefeller Drug Laws compound the already high levels of policing and profiling experienced by transgender people. Transgender people, facing extreme job discrimination in the formal economy, may be forced to survive by engaging in underground economy. As welfare funding is increasingly cut, and legislation that restricts access to these benefits (such as the REAL ID Act), is enacted, underground economy in fact becomes the only option for many trans people. Rather than increasing funding to social programs, the state increases funding to the police department. Transgender people are frequently targeted by police in many ways, and are therefore often arrested and detained based on their gender variance. This includes being profiled as sex workers and harassed through policing of public bathrooms. The RDLs increase the likelihood that transgender people will be arrested and imprisoned, if searched and found to be in possession of drugs. Once arrested, transgender people experience human rights abuses in jails and prisons due to their gender variance and expression – abuses which are often perpetrated by the correctional officers, not other prisoners. Further, transgender people who were taking hormones before being imprisoned now no longer have access to the hormones or other medical care that is appropriate for their needs. (Source: *TGI Justice Project*, tgijp.org)

LGBT homeless people, who are often unsafe at shelters (where reports of homophobic and transphobic harassment and violence are common) frequently end up on the streets, where they are targeted by police. Once detained by the police, they are often prosecuted under the RDL.

LGBT immigrants of color, already labeled as illegal bodies by the US government's harsh immigration laws, and already subject to sudden and indefinite detentions, are also a part of the many communities targeted for police profiling. Again, the Rockefeller Drug Laws only intensify this targeting. If arrested, immigrants are likely to be detained with no end date in sight and without cause. Because immigrants who are HIV+ will be immediately deported if their HIV+ status is learned, and therefore have significant reason not to reveal their status to prison doctors, they are not able to receive the medical treatment they need. Currently, as many as 200,000, immigrants may be detained each year. The Intelligence Reform and Terrorism Prevention Act, passed in 2004, authorized 40,000 new beds for detained immigrants, which will triple the current detention system by 2010. [Source: AFSC's "Corrupting Justice"]

When LGBT people should be building our communities through mass community education and community solutions to violence and other forms of oppression, members of our families and larger communities are increasingly incarcerated for non-violent criminalized behavior. With this community destabilization, our focus stays close on immediate community survival, and there is often little energy left to focus on expanding our struggles for justice. However, through effective community organizing, we are building a resistance to these inhumane policies.

RECOMMENDATIONS

Rather than provide funding for drug rehabilitation programs, the Rockefeller drug laws put LGBT people into prisons, where they face harassment from guards and other prisoners, and do not receive quality health care. While state-funded rehabilitation programs would be part of a more humane and just society, jails and prisons are dehumanizing for people on both sides of the bars. In cold terms, prison is an ineffective and inefficient solution. Prison is far more costly for the state than are rehabilitation programs, and prisons prevent people from re-entering and actively participating in society.

The US legal system is currently unjust in both its laws and its practices. Simultaneously, the US correctional system – jails, prisons, detention centers – are inhumane. In working towards a more just system, in which community members have larger part in holding each other and their government officials accountable for their actions, we must also advocate for changes that would decrease severe prisoner abuses, as well as decrease the number of people currently being imprisoned. Queers for Economic Justice recommends

- The Rockefeller Drug Laws must be repealed. This would give sentencing discretion back to judges, allowing them to consider the severity of the offense and any past criminal records when giving sentences.
- People convicted under the Rockefeller Drug Laws should immediately receive retroactively reduced sentences.
- People convicted of non-violent drug offenses should go to community-based drug treatment programs, not prison.
- All people disenfranchised due to a felony conviction or current incarceration must receive full voting rights.
- Any drug laws enacted in the future must not include discrepancies according to drug type that are based on class and race usage trends.

- The money saved through a decrease in the prison population should be redirected towards prevention and rehabilitation – as well as putting more funding into classrooms, and high quality job training and placement, transitional and low-income housing, childcare and affordable health care.
- This does not include funding to faith-based agencies for services to formerly incarcerated people who are transitioning back into society, because these agencies are often hostile to LGBT people.
- There must be an end to the targeting of our communities, which is currently enacted through heavy policing, racist and classist laws and policies, and de-funding of social services.