

Trust judges in drug reform

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Albany is abuzz with proposals and counter-proposals to reform New York's drug sentencing laws, commonly known as the Rockefeller Drug Laws. Among the issues being debated are which drug offenders should be prosecuted and incarcerated, which offenders should be diverted to drug treatment and whether these determinations should be made by judges or by prosecutors.

How these issues are resolved will have important consequences for enhancing public safety, reducing prison expenditures and ensuring fairness in drug sentencing. In crafting a solution, it is imperative that policymakers be mindful of the critical role that judges perform in the successful outcome of these cases.

No matter the final form of legislation negotiated by the Legislature and the governor, it must affirm one key value: Judges matter.

Starting in the mid-1990s, well before reform of the Rockefeller Drug Laws was a politically viable possibility, the New York State Court System began experimenting with judicially monitored treatment as an alternative to incarceration. Specific practices in our "drug courts" vary from jurisdiction to jurisdiction, but in every model addicted offenders submit to substance abuse treatment monitored by the judge. If the offenders successfully complete treatment, the charges against them are dismissed or reduced. Those who fail are sent to jail or prison.

Unlike other efforts to link offenders to treatment, the New York model emphasizes rigorous accountability. Judges closely monitor each offender's compliance through regular drug testing and ongoing court appearances. The judge encourages progress by administering rewards and sanctions.

There is ample evidence that this carrot-and-stick approach makes a difference. The average one-year retention rate in treatment for drug court participants in New York is 66 percent. By contrast, only 10 to 30 percent of addicts who enroll in treatment voluntarily are still active in treatment one year later. More important, a statewide evaluation completed by the Center for Court Innovation documented a 32 percent reduction in recidivism among those who participated in judicially mandated treatment. Another study documented \$9,488 in government savings — mostly in reduced incarceration costs — per drug court participant.

Two factors have been crucial to our success with addicted offenders. The first is motivational. There must be clear legal incentives for addicts to complete treatment. The knowledge that failure in treatment can lead to incarceration is a powerful inducement to stick with the program, even in the face of the inevitable obstacles and relapses. In fact, felony offenders tend to do better than misdemeanor offenders in treatment, in part because the consequences of failure are greater.

The second key element is judicial supervision. Outcomes are consistently better when addicted offenders are required to appear biweekly before a judge, which underscores a message of accountability.

The impact of appearing regularly before a judge is especially pronounced for high-risk offenders who have previously failed treatment.

Judges can ensure that treatment is a real sentence for them, not just a get out of jail free card.

New York's court system has shown that treatment, when combined with clear legal incentives and active judicial involvement, can be successful. We know what works.

And that's where reform of the Rockefeller Drug Laws comes in. New York's drug courts now admit 2,600 new felony offenders each year, a small fraction of the 43,000 new felony drug arrests that come through the system. While not every case is appropriate for diversion to treatment, many more offenders could benefit from the opportunities that judicially monitored alternatives to incarceration provide them.

So the bottom line of Rockefeller Drug Law reform is crystal clear. Above all else, legislative reform must recognize and bolster the critical role that judges perform in these cases. By expanding judges' discretion to divert more offenders to treatment, the legislation that emerges can serve the public interest by enabling the courts to do more of what we have been doing for years — using the authority wielded by judges to help addicted offenders turn their lives around, making New York a safer place for all of us.

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