

Correcting New York State’s Rockefeller-Era Drug Laws Basing Sentencing on the Current Offense and Expanding Judicial Diversion Eligibility Support S.5681/A.6429 (Salazar/Romero)

Despite major reforms in recent decades to NYS’ draconian Rockefeller Drug Laws (RDL) enacted in 1973 at the height of the so-called “War on Drugs,” a critical injustice remains. Individuals charged with non-violent drug offenses who have a prior violent felony conviction are still automatically subject to enhanced prison sentences and are categorically excluded from judicial diversion programs—even when treatment would better serve both the individual’s recovery and public safety at large. These sentencing enhancements are not evidence-based; they were adopted in 2009 as a political concession during the RDL reform process. As a result, individuals in this category are the only group of non-violent defendants in NYS subject to dual penalties based solely on prior convictions. The impact is disproportionately racialized with 90% of those sentenced under this provision being Black or Latino.¹

Sponsored by Salazar / Romero, S.5681 / A.6429 would repeal NYS Penal Law § 70.70(4) to eliminate enhanced sentencing for these individuals, and amend NYS Criminal Procedure Law § 216.00 to restore judicial discretion and allow for individualized, treatment-based sentencing decisions when individuals are charged with a qualifying offense.

Data shows that diversion programs are more effective than incarceration at supporting recovery, improving stability, and reducing future involvement with the criminal legal system.² Further, research on desistance shows that most people naturally stop engaging in criminalized behavior over time—especially when their housing, health, and treatment needs are met.³ Expanding access to treatment-based alternatives and reducing unnecessary incarceration helps stabilize families, improves community health, and addresses racial inequities by shifting away from overly punitive policies that disproportionately harm Black and Latino individuals.⁴

Placement in diversion programs across New York State grew by 35% following the 2009 reforms.⁵ New York must finish what it started. Community-based treatment remains more cost-effective than incarceration,⁶ yet current law blocks access to these alternatives for individuals who may benefit most. Passage of S.5681 / A.6429 will importantly eliminate one of the last remnants of RDL by ensuring proportional sentencing, restoring judicial discretion, and expanding treatment access.

¹ NYS DOCCS, Under Custody Report (2023); NYCLU, Rockefeller Drug Laws Cause Racial Disparities, 2009.

² Pew Charitable Trusts, Breaking the Cycle, 2022; Freeman et al., Journal of Substance Abuse Treatment, 2017.

³ Laub & Sampson, Shared Beginnings, 2006; NIJ, Recidivism and Desistance: New Directions in Research, 2021.

⁴ See New York Civil Liberties Union, supra note 1.

⁵ Vera Institute of Justice, End of an Era?, 2015.

⁶ Urban Institute, Drug Court Evaluation, 2011; Aos et al., Journal of Experimental Criminology, 2006.