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Changes to The Rockefeller Drug Laws

And what they mean for you...



How the 2004, 2005 & 2009 amendments affect:

- Sentencing options
- People in prison
- Those who have been released

The 1973 Rockefeller Drug Laws required most people convicted of drug felonies to be sent to prison, some for very long sentences. As a result of these laws, tens of thousands of individuals were incarcerated. In 2004, 2005, and 2009, the New York State Legislature made major changes to these laws. This publication explains these changes and what they may mean for you.

****THIS PUBLICATION IS NOT LEGAL ADVICE AND IS NOT MEANT AS A SUBSTITUTE FOR THE ADVICE OF AN ATTORNEY****

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What Were the Rockefeller Drug Laws?

The Rockefeller Drug Laws ("RDLs") were two sets of laws that were passed on May 8, 1973.

Under one law, people convicted of a "Class A-I" drug felony — selling two ounces of certain drugs, such as cocaine or heroin, or possessing four ounces of the same drugs — had to receive a sentence of at least 15 years to life, and people convicted of "Class A-II" drug felonies had to receive at least 3 years to life.

Under the second law, a person convicted for the first time of a "Class B" felony drug offense — the sale or attempted sale of any amount of certain drugs — or for the second time of any drug felony, had to be sent to prison.

A judge could not, under these laws, divert a person from prison to a community-based drug treatment program, even if the person was addicted and the judge felt that was the best sentence. Under the RDLs, the person had to go to prison.

New York State began changing these laws in 2004. The State Legislature passed the first "Drug Law Reform Act" ("DLRA") in 2004, a second DLRA in 2005, and a third in 2009. This publication highlights some of the changes. The appendixes in the back contain more detailed information.

The 2004 DLRA

The First Rockefeller Amendment

As we just explained, under the RDLs, people convicted of most drug felonies had to receive prison sentences, sometimes as harsh as 15 years or more to life. The 2004 DLRA changed this. People can now receive a minimum of 8 years if convicted of "Class A-1" drug felony. Life sentences were eliminated.

Here are some other highlights of the 2004 DLRA:

- 1) **Sentences are now "determinate."** Before the law changed, sentences for felony drug convictions were "indeterminate." This means that people did not receive a specific sentence, such as 15 years, but a sentence with a range, such as 15 years to life. The 2004 law changed this and people with drug convictions now receive a "determinate" or fixed sentence, such as 8 years.
- 2) **Determinate sentences must include a period of post-release supervision.** People in prison serving a determinate sentence for a drug felony will serve, after getting "good time" and "merit time" credit, 5/7 of their determinate sentence, but they must also serve a period of post-release supervision, which is similar to parole.
- 3) **Some people in prison can apply for resentencing.** This means that people in prison serving the long "Class A-I" sentence can apply to the court to be resentenced to a shorter term. A lawyer should be appointed by the court to help file this application. **See Appendix A for more details.**

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- 4) **Parole terms were terminated early.** People on parole for felony drug convictions who did not have their parole revoked and were serving indeterminate sentences had their parole term shortened to 2 or 3 years.

The 2005 DLRA

The Second Rockefeller Amendment

The 2005 DLRA affected a much smaller number of individuals. The amended law allowed people who were in prison on "Class A-II" drug felonies to apply to court to be resentenced to shorter terms. **See Appendix A for more details.**

The 2009 DLRA

The Third Rockefeller Amendment

The 2009 DLRA made the most significant changes in New York's drug laws. It affects many more people than the other two changes. This is a brief description of those changes, followed by a series of frequently asked questions.

Please note: This is still a relatively new law. At the time this brochure was written, the meaning of some parts of the law was still being decided by the courts. If you have questions about how the law affects your particular situation, please make sure you check with a lawyer who has experience with this area of the law.

Here are some highlights of the 2009 DLRA Act:

- 1) **Judges have more non-jail/prison sentencing options.** People convicted for the first time of "Class B" felony drug offenses, or for the second time of "Class C, D or E" felony drug offenses, may be sentenced to probation. These people can also be sentenced to local jail, or be given "split" sentences — which combine some time in jail and probation.
- 2) **Judges can divert people convicted of certain felony offenses from prison into community-based treatment.** For this "judicial diversion" to occur:

⇒ The person facing charges must be "eligible" for judicial diversion. This means the person must be indicted on a felony drug offense (except a "Class A-I or A-II drug offense) or a "specified" low-level offense. **See Appendix C for a list of offenses that make a person eligible for judicial diversion.**

People NOT eligible for judicial diversion: A person is not eligible for judicial diversion if, within the past 10 years excluding incarceration time, he/she has been convicted of a violent or other excluded offense or is presently charged with any of these offenses, or has been found to be a "second or persistent violent felony offender."

⇒ The person facing charges must request an alcohol and substance abuse evaluation;

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The 2009 DLRA Continued...

Judicial Diversion, continued...

- ⇒ The court must find that: the person is eligible for diversion and has a history of alcohol or substance abuse or dependence that contributed to the charge, that diversion could effectively address such abuse or dependence, and that prison or jail is not necessary for the protection of the public.
- ⇒ The person will usually have to plead guilty unless it is "likely to result in severe collateral consequences."

After successful completion of treatment, the judge might order a dismissal of the indictment or an entry of a plea to a lesser charge, or interim probation followed by one of the other two options.

- 3) **Some people in prison convicted of "Class B" drug felonies are eligible for resentencing.** See Appendix A for details about resentencing.
- 4) **Some offenses can be "conditionally sealed."** Under the 2009 DLRA, for the first time in New York, some non-violent felonies and up to three drug or marijuana misdemeanors can be "conditionally" sealed. If a case is conditionally sealed, it will not appear on rap sheets. Employers are not allowed to ask about conditionally sealed convictions.

A person may be eligible to have a criminal conviction sealed if he/she has completed a "court sanctioned" substance abuse treatment program** as an alternative to prison and completed the full sentence imposed for the offense. **See Appendix B for a list of offenses that can be "conditionally sealed."**

****IMPORTANT NOTE: The law does not precisely define "court sanctioned treatment program." The courts are deciding which programs are "court sanctioned treatment programs" on a case-by-case basis. It is therefore extremely important that if you are seeking to have your record sealed, you consult an attorney who has special expertise in this law or you may have your request denied when it could otherwise have been granted.**

Before a case is conditionally sealed, the court might hold a hearing to consider evidence that will help the court decide whether or not to conditionally seal the case. The court will look at factors such as:

- the circumstances and seriousness of the offense,
- the character of the person seeking to have his or her case conditionally sealed,
- the person's criminal history, and
- the impact of the conditional sealing on his/her rehabilitation and successful reentry into society and public safety.

Cases are unsealed if a person is later arrested for a misdemeanor or felony and resealed again if the charges are dismissed, the person is acquitted, or the DA declines to prosecute.

The 2009 DLRA contained other changes, including:

- The court can order that a person convicted of a drug offense be enrolled in the 6-month prison Shock Incarceration program when the person is within 3 years of his/her conditional release.
- The creation of two new crimes: operating as a major trafficker and criminal sale of a controlled substance to a child.

Appendix A: Resentencing

- ♦ The 2004 and 2005 DLRA permitted retroactive resentencing for those convicted of the most serious drug felony offenses, known as "Class A-I" and "Class A-II" felony drug offenses.
- **Class A-I resentencing** — To be eligible, a person has to be in prison serving an indeterminate sentence for a crime that occurred prior to January 2005.
- **Class A-II resentencing** — To be eligible, a person has to be in prison serving an indeterminate sentence for a crime that occurred prior to January 2005 *and* cannot be less than 3 years from parole eligibility.
- ♦ The 2009 DLRA permitted a person convicted of a "Class B" drug felony to be re-sentenced if:
 - Serving a sentence with no fixed minimum ("indeterminate sentence"); AND
 - Serving a maximum sentence of longer than 3 years; AND
 - Currently in the custody of the Department of Corrections and Community Supervision.

-Counsel is appointed for these motions.

-EXCLUDED: If a person has committed a violent felony, or other serious ("merit-ineligible") offense within the past 10 years.

-EXCLUDED: If a person has been sentenced as a second violent felony offender or persistent violent felony offender.

-EXCLUDED: If a person is already serving a determinate sentence for a "B" felony drug offense .

Appendix B: Felonies that Can be Conditionally Sealed

One felony may be conditionally sealed a person has completed all the requirements listed on page 8 and the conviction is for one of the following offenses:

Any class B, C, D or E controlled substance or marijuana felony offenses

- Burglary in the 3rd degree (committed after 4/7/09)
- Criminal Mischief in the 3rd degree
- Criminal Mischief in the 2nd degree
- Grand Larceny in the 4th degree
- Grand Larceny in the 3rd degree (NOT theft of firearms, rifles or shotguns)
- Unauthorized use of a vehicle in the 2nd degree
- Criminal possession of stolen property in the 4th degree
- Criminal possession of stolen property in the 3rd degree (NOT theft of firearms, rifles or shotguns)
- Forgery in the 2nd degree
- Criminal possession of a forged instrument in the 2nd degree
- Unlawfully using slugs in the 1st degree
- An attempt to commit any of the above, if the attempt constitutes a felony

Judges may also seal up to 3 prior drug or marijuana misdemeanor convictions.

Appendix C: Charges that Render People Eligible for Judicial Diversion

- Any class B, C, D or E controlled substance or marijuana felony offenses
- Burglary in the 3rd degree
- Criminal Mischief in the 3rd degree
- Criminal Mischief in the 2nd degree
- Grand Larceny in the 4th degree
- Grand Larceny in the 3rd degree (NOT theft of firearms, rifles or shotguns)
- Unauthorized use of a vehicle in the 2nd degree
- Criminal possession of stolen property in the 4th degree
- Criminal possession of stolen property in the 3rd degree (NOT firearms, rifles or shotguns)
- Forgery in the 2nd degree
- Criminal possession of a forged instrument in the 2nd degree
- Unlawfully using slugs in the 1st degree
- An attempt to commit any of the above, if the attempt constitutes a felony

FREQUENTLY ASKED QUESTIONS

I have recently been charged with a felony drug offense. Can I be sent to treatment in the community?

Speak to your lawyer about whether you are eligible for a diversion program instead of incarceration. You may be eligible if you meet the criteria listed on page 7.

I am incarcerated on a "B" felony drug offense. Can I be resentenced?

You may be eligible to apply for resentencing if you were sentenced before 2005, you are serving an "indeterminate sentence" with a maximum of more than 3 years, and you are currently in prison. As of the writing of this pamphlet, courts are still deciding who is eligible to be resentenced, so you should try to check with a lawyer about your particular situation. A lawyer should be appointed to file your motion for resentencing.

I have finished serving my sentence on a drug conviction that included a judicial diversion treatment program. Can my case be conditionally sealed?

You may be eligible to have that felony, along with up to three drug or marijuana misdemeanors, sealed. Speak to a lawyer with special expertise in the new drug laws about preparing a motion to seal your record.