

THE LAW OF UNINTENDED CONSEQUENCES:

The Special Narcotics Prosecutor's Experience Under the Drug Law Reform Acts

In December of 2004 and August of 2005, sweeping revisions to New York State's narcotics laws were enacted by the legislature. The new laws, the Drug Law Reform Acts of 2004 and 2005, were intended to mitigate what was perceived as the harsh effects of the narcotics laws then in effect, commonly referred to as the "Rockefeller Drug Laws." For crimes committed after they passed, the Drug Law Reform Acts eliminated lifetime sentences for even the worst offenders, reduced penalties for all levels of felonies, created a distinction for sentencing purposes between recidivists who had violent and non-violent felony convictions, and relaxed some plea-bargaining restrictions. For those already incarcerated, they empowered judges with sole discretion to eliminate lifetime supervision and reduce sentences for convicted A-I and A-II level felony offenders (the highest category crimes in New York), in a "resentencing" procedure.

This report examines the experience of the Office of the Special Narcotics Prosecutor for the City of New York under the new laws. The Special Narcotics Prosecutor's Office, created in response to the heroin crisis of the 1970s, has jurisdiction over felony narcotics crimes committed anywhere in New York City, and has sent to prison more high level drug traffickers than any prosecutor's office in the state. As such, this office has a unique vantage point from which to assess the impact of the new laws.

That experience reveals that the Drug Law Reform Acts might well be titled the Law of Unintended Consequences. When the Drug Law Reform Acts were passed, law makers uniformly hailed them as a way to reduce prison time for low level couriers doing the bidding of major traffickers. In fact, of the 65 A-I felons who obtained the benefit of the new laws in Special Narcotics cases, only one fit that profile. In drafting the Reform Acts, lawmakers apparently failed to recognize that for years prosecutors had mitigated A-I sentences by reducing charges against first-time, non-violent, low-level offenders. And so, under resentencing provisions of the Drug Law Reform Acts, the greatest sentencing relief was granted to high-level drug traffickers, or those with significant felony records. The following highlights the experience of Special Narcotics:

- One third of all A-I prisoners who had life terms eliminated were kingpins or violent drug traffickers.
- Of those who were relieved of lifetime supervision, half (48%) had a previous felony conviction; 45% were convicted of selling cocaine or heroin in an amount large enough to supply several hundred individual users.
- Drug kingpins saw the largest reductions in their sentences – up to 11 years off and elimination of lifetime supervision.
- A-II resentencing benefits were reserved for defendants serving the longest sentences. Nearly all were originally charged with more serious crimes and had already received substantial sentence reductions.
- The results were inconsistent. Some judges viewed resentencing as applying only to low level, first time offenders; other judges believed it applied even to leaders of large scale violent organizations that destroyed neighborhoods.

Finally, provisions of the Reform Acts lowering penalties for lesser felony narcotic offenses appear to have additional unintended consequences. Lower level felony offenders are typically those guilty of street-level sales of narcotics. In Special Narcotics cases, one thing has remained unchanged: under the new laws, as well as under the old law, the vast majority of first-time felony offenders do not go to prison. Since the Reform Acts, roughly 90% of B level felony defendants sent to state prison have at least one prior conviction. The average prison sentence for a B level Special Narcotics offender is now two and a half years, although most prisoners will actually serve between eighteen and twenty-five months. But for most second-felony offenders (those who have, for instance, been convicted of selling drugs, put on probation, and then sell drugs again), the new laws have reduced prison sentences.

The Alternative Sentencing Bureau of the Office of the Special Narcotics Prosecutor has reported that, since the enactment of the Reform Acts, fewer defendants are electing to enter drug treatment programs. Where prison terms are relatively short, the incentive to enter a rigorous, long term, residential drug treatment program is diminished. Discouraging addicted defendants from going into treatment programs would perhaps be the most ironic unintended consequence of drug law reform.

In the report that follows, we analyze the provisions of the Drug Law Reform Acts, review the experience of the Office of the Special Narcotics Prosecutor under the new laws, and propose a Drug Kingpin Statute to single out for the harshest sanctions those offenders who most deserve long sentences.