

[Elaine Bartlett](#) was a 26-year-old mother of four living in East Harlem when she was sentenced to 20-to-life for selling four ounces of cocaine to an informant. It was her first offense; the same transaction sent the father of her two daughters to prison for 25-to-life. The couple had no previous involvement with the drug trade and had no idea that their crime could result in such severe punishment.

[Jan Warren](#) was single, pregnant and desperate for money when her cousin asked her to carry nearly eight ounces of cocaine from Newark, New Jersey to Rochester. She had no prior arrests. The judge said the fact that New York state law mandated a fifteen-to-life sentence for the offense was "a travesty" of justice and that he didn't want to pronounce the required sentence.

Unlike Bartlett and Warren, [Arthur Beaty](#) was addicted to drugs when he ran afoul of New York's tough drug laws. A married father of two with no prior arrests, he was sentenced to fifteen-to-life for selling 4.5 ounces of cocaine to an undercover police officer.

Though Bartlett has been freed by a rare clemency decision by Governor Pataki, the others remain in prison. Now, however, for the first time in decades, they have hope. This year may offer the best chance to change New York State's draconian drug laws -- but advocates fear that proposals for change that don't go far enough could derail real reform.

LEGACY OF A LOST ELECTION

The drug statutes, known as the Rockefeller laws, were passed in 1973. Then-New York State Governor Nelson Rockefeller was preparing to run for higher office and wanted to burnish his tough-on-crime credentials. He had previously tried addressing New York's heroin problem by expanding treatment, but drug use only continued to increase. And so he proposed life sentences without parole, no plea bargaining and no exceptions for anyone caught dealing drugs.

His aides pleaded that this was unworkable, that it would flood prisons, clog courts and probably wouldn't even solve the problem. He compromised. Instead of life without parole, there would be a 15-to-life mandatory minimum for possession of more than four or sale of more than two ounces of cocaine or heroin. Lesser weights would result in lighter sentences. But second offenses on these crimes would result in sentences of 8 1/3 to 25 years.

TOUGH LAWS FAILED TO PREVENT CRACK EPIDEMIC

The Rockefeller drug laws-- now 28 years old-- are amongst the toughest in the country. They failed to prevent New York City from becoming the epicenter of the [American crack epidemic](#) in the early 90's when drug use, drug trafficking and violent crime rates reached record levels. Twenty-one thousand prisoners are currently incarcerated under Rockefeller law provisions, more than half of them non-violent. A mind-boggling 94 percent are black or Latino according to statistics compiled by the [New York City Legal Aid Society](#), despite the fact that most of New York states drug dealers and users are white.

In fact, the statutes initially included lengthy sentences for possession and sales of marijuana, but these were repealed in 1979 after an outcry from white middle class parents who found that their sons and daughters were facing long stretches of incarceration.

GOVERNOR PUSHES REFORM BUT ADVOCATES WORRY

For the first time, this year [Governor Pataki](#) is proposing significant reforms. He has advocated reducing the mandatory 15-to-life sentence for what are called A1 felonies to 10-to-life, which could be lowered to 8 and 1/3 to life on appeal. He would allow diversion of second felony offenders for lesser drug crimes to treatment with permission from the prosecutor. And, the changes would be retroactive, so people who have already served long sentences could be eligible for early release.

But will these changes actually make it through the legislature-- and do they go far enough?

State Assemblyman [Jeffrion Aubrey](#), who chairs the Assembly's Corrections Committee, has sought to change these laws for years. He sees the governor's plan as a good starting point for negotiations, but adds, "There's still far too little judicial discretion, it doesn't reduce sentences far enough and it hasn't provided a sufficient budget for drug treatment."

'ONE SHOT AT THE APPLE'

Aubrey does believe, however, that the laws will be changed this year and that this is the best opportunity reformers have ever had to make a significant difference. "Logic would seem to indicate that this is a one-shot deal." he says, "No one has a crystal ball to say that, but it is such a politically volatile issue and usually in those cases, you have just one shot at the apple."

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He adds, "Given the momentum of public opinion, we need to maximize this opportunity to ensure that the changes are adequate."

While Democrats have long advocated reform, Assembly Speaker [Sheldon Silver](#) has frequently tabled it, as a way to try to ensure re-election for upstate Democrats whom he believed couldn't afford to be seen as soft on crime. Governor Pataki had advocated a reform plan in 1999, but it was limited to sentence reduction only on appeal and linked to the elimination of parole for all felons, which was something Democrats refused to support.

Current supporters of ending the Rockefeller drug laws include everyone from the Catholic church ([Cardinal O'Connor](#) spoke out against the laws just before he died) to hard-line former drug czar Barry McCaffrey, the Legal Aid Society, the [ACLU](#) , the [NAACP](#) , Al Sharpton, [Human Rights Watch](#) , the [Correctional Association](#) and drug policy reform organizations like the [Lindesmith Center](#) and the [William Moses Kunstler Fund for Racial Justice](#) . New York State's highest court, the Court of Appeals, as well as many other judges have expressed grave reservations about the fairness of the laws. Public opinion polls also show support for reform. According to a Quinnipiac College poll, 69 percent support judicial discretion rather than mandatory sentences for drug offenders.

LIKE NIXON TO CHINA?

But the Rockefeller laws have become one of many "Nixon goes to China" issues in politics where only Republicans have the tough-on-crime credentials to make changes typically favored by liberals. Republican Senate Majority Leader [Joseph Bruno](#) has expressed support for repealing Rockefeller as has John Dunne, a former Republican State Senator who helped write the laws and who also served as Assistant Attorney General for Human Rights under President George Bush.

As a result, Robert Gangi, Executive Director of the Correctional Association of New York and a long-time advocate for change, believes that the chances for significant reform are high. He

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cautions that there is a danger that only "cosmetic" reforms will be passed, and that this could set back real change indefinitely. "That's why we're holding a major rally on March 27th in Albany called "Drop the Rock." he said.

DISTRICT ATTORNEYS FIGHT CHANGE...

The only support for keeping the laws comes from the powerful [District Attorney's Association](#) . "We don't support reduction in sentencing," says Robert Carney, President of the association. "If you take the minimum away, it removes the leverage that prosecutors have to obtain pleas and information about drug trafficking networks. We've solved murder cases using these laws."

Aubrey, for his part, doesn't buy it. "Their opposition to judges having discretion is troubling to the very concept of how justice is supposed to be applied." he says. "We keep moving away from judges as judges"

EVEN TOUGHEST JUDGES WANT DISCRETION

Supreme Court Justice Leslie Crocker Snyder has presided over a special court to prosecute major narcotics cases, and as a former prosecutor and possible candidate to succeed Manhattan DA Robert Morgenthau, she tends to take tough positions on crime. She is known on the street as "the Dragon Lady" because of the lengthy sentences she imposes. But even she supports overturning Rockefeller. "I'm more suspicious of total discretion for judges than most and I still believe strongly in law enforcement," she says, "but more emphasis is needed on treatment."

Though complete elimination of mandatory sentences -- which is what most advocates would like to see -- is unlikely, most Albany observers believe that the governor's proposal leaves room for negotiation and could lead to significant improvements. Assembly Speaker Sheldon Silver will make the next move -- choosing which changes to fight for, and which to concede. Advocates hope that this time, the horror stories of first-time, non-violent offenders spending lifetimes away from their families -- not to mention the huge financial costs and lack of impact on addiction -- will be heard and remedied.