

**Testimony of  
The Legal Aid Society**

**at a public hearing on**

**The Future of Sentencing in New York State**

**Presented to:**

**New York State Commission  
on Sentencing Reform**

**Presented by:**

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Good morning. My name is Shreya Mandal. I am employed as an in-house sentence mitigation specialist for The Legal Aid Society, Criminal Appeal Bureau. I hold a Juris Doctorate in Law and am a Licensed Master of Social Work in New York State. In addition, I have had extensive training in the field of psychotherapy for the past ten years.

The Legal Aid Society welcomes the opportunity to testify before the New York State Commission on Sentencing Reform. Since 1876, The Legal Aid Society has provided free legal services to New York City clients who are unable to afford private counsel. Annually, through our criminal, civil and juvenile offices in all five boroughs, our staff handles more than 275,000 cases for poor families and individuals. The services we provide reflect the entire gamut of the needs of our clients, from immigration representation for the newest arrivals, to health care benefits for the oldest New Yorkers.

As you know, by contract with the City, the Society serves as the primary defender of poor people prosecuted in the State court system. In the last fiscal year we handled some 225,000 criminal cases in the trial courts. In this capacity, the Society is in a unique position to testify about sentencing reform in New York State.

Following the passage of the Drug Law Reform Act of 2004 and continuing with the 2005 amendment allowing the re-sentencing of A-II drug offenders, The Legal Aid Society recognized that it was important to identify and address the needs of clients who had the opportunity for re-sentencing. In spite of the fact that no resources were legislatively allocated, the Society asked me to create a re-sentencing project centered on developing sentence mitigation and clinical assessments, which could bring client stories to the courts through both written and oral advocacy. During the course of this project I have used the mitigation process

as a path to identify the need for critical mental health, substance abuse, housing, employment and immigration re-entry services for A-I and A-II drug offenders. The social work perspective allowed me to bring the voices of our clients directly to the sentencing court. This practice has proved critical in informing the courts about our clients' humanity and individual traumas that lead them to their situations. Let it be clear that my job is never to make excuses for anyone's actions, but to merely shed light on a person's individual struggle in a broader social context. The power of the narrative has been central to effective advocacy of these clients. Most of these now ex-prisoners were courageous in voicing their intimate stories to me. Some of my clients have never had an outside visit in over 15 years of incarceration, and they have been overwhelmed by the chance to tell their life history to me; to explain the personal details that often do not get voiced during legal proceedings. I am profoundly humbled as I bear witness.

The Legal Aid Society has supported my two and a half-year effort in advocating for approximately 100 drug offenders thus far, clearly understanding that the only viable way to address drug law reform is through holistic advocacy— having micro-level legal and social work practices inform the broader policy considerations. Although we were not funded to take on this ambitious support system, it was vitally important to us that the re-sentencing law succeed. The project assisted almost 20% of the population most affected by the Rockefeller Drug Laws. Re-sentencing relief from the courts was never an automatic guarantee. I am thoroughly familiar with places like Green Haven, Eastern, Auburn, Great Meadow, Clinton and Attica— to name a few. Face to face interviewing was the only way to ensure that many of these ex-prisoners would be humanized and not just discounted as another drug felony statistic. I spent considerable amount of time assessing and collecting data on the life histories of those most affected by our drug laws.

This re-sentencing project allowed me to expand the range of our post-conviction services that are desperately needed by long-term drug offenders. Most of my clients have had long battles with substance abuse—and have taken on the challenge of recovery and healing their addictions while in prison. The problem of substance abuse is rarely an isolated experience and is often preceded with significant mental health issues. But treatment of such mental health illness is hardly ever effective in prisons. My clients have been largely misdiagnosed, misunderstood, and often times mistreated as a result. In my experience, most drug offenders have also been profoundly isolated from their loved ones as a result of their prison terms and they have been in desperate need of family reunification. Most of this population almost always needed some form of transitional housing assistance, food, clothing, and public assistance that gave them a solid start to a second chance in life. And for those who have been successfully re-sentenced and released, most of them wanted to pursue a higher education to ensure that they would meet their personal goals and rebuild healthy lives.

After the passage of the Drug Law Reform Act, many community based organizations providing housing, employment, mental health, and substance abuse treatment voluntarily grouped together in an informal coalition to fill the critical need to build linkages between re-entry providers. I am certain that these supportive re-entry networks will be available to support additional community-based drug treatment.

Based on my experience, it is in everyone's interest that we develop new ways to place additional drug offenders into community based programs. If it is done correctly, sentencing reform can make all of our communities safer and more productive places in which to live.

## **Consideration of Further Drug Sentencing Reform**

There are many praiseworthy policy recommendations in the Commission's Preliminary Proposal. Many of them would be a real step forward for New York practice. Re-entry courts for high risk offenders, restricting confinement for those parole violators who commit a new felony or rule violation that threaten public safety, greater use of graduated sanctions for parole violators, aligning community supervision with the offender's risk level, expanding YO eligibility, expanding merit time, enhancing transitional employment opportunities, offering assistance with essential identification are but a few. Many of these sound policy proposals are within the discretion of the Executive Branch and can be implemented quickly, as early as the next budget cycle, without the need of additional legislation.

For our community, the recommendations regarding further drug law reform are vitally important. To a significant degree, the work of the Commission will be judged by the quality of its drug law reform proposal. In our view meaningful drug law reform is an essential part of the Commission's mandate to "ensure the imposition of appropriate and just criminal sanctions, and to make the most efficient use of the correctional system and community resources." Executive Order No. 10, March 5, 2007.

The Commission is aware of the research which shows that there is a nationwide trend among the states toward greater use of diversion away from prison and into community-based treatment, greater use of community corrections for nonviolent drug offenders, even repeat offenders, and a trend toward procedures that allow judges to depart from mandatory minimum sentences. (See "Draft Working Paper #1: Overview of Sentencing Structures and Trends Nationwide") The trend is motivated by the fact that community-based treatment has been

shown to be far less expensive and at least, if not more, effective than prison. The obvious policy choice for the Commission is to follow this trend and expand the available procedures for more effective and less costly community treatment.

If New York is to join the trend, the Sentencing Commission has to create additional ways to place offenders into diversionary programs, increase the number of the programs, and create a way to assess the quality of the program performance. Until now the District Attorneys, through their control of the indictment and plea process, have had almost exclusive control over admission to alternatives to prison. This near control over the use of alternatives is a product of the discredited Rockefeller Drug Laws. While some District Attorneys created high quality alternative to prison DTAP programs to alleviate the harshness of those laws - the Commission report cites the success of the Brooklyn DTAP program - many did not. Many of those programs that were established have very restrictive eligibility criteria. This has to change. Because it is a recipe for continued inaction, the Commission proposal to allow judges to impose alternative sentences – but only with the consent of the District Attorney - is inadequate.

We should have more uniform policies statewide and judges, as the sole neutral party in the case, should have the authority to place offenders into treatment. Our judges have proven to be very good at responding to community needs. The District Attorneys insist, however, that they should retain the role of the judge and determine who enters a treatment program. This role is a distortion of our justice system. One party to the criminal case should not be in a position to determine the outcome.

The District Attorneys assert that mandatory minimum sentences played a role in crime reduction. We think this is an over-simplification of the facts. The key mandatory minimum laws were passed in the early 1970's, well before crime rates began to drop. In any event,

research now tells us that there are more effective ways to deal with drug abuse. It would be foolish to remain mired in the ways of the past when today there are more effective options available.

The District Attorneys also assert that the mandatory minimum laws encourage cooperation and encourage people to participate in DOCS treatment programs. They have presented similar arguments to oppose each phase of drug law reform. Just a few years ago they told us that the life sentences of the Rockefeller Laws were necessary to encourage pleas and to get people into treatment. Yet we see no fundamental change in the practice after the 2004 sentence reductions. In fact, more drug offenders are going to prison now than several years ago. The argument ignores all of the research evidence and the experience from an increasing number of states that community-based treatment is more effective and less costly in terms of future crime prevention. When properly operated, the cost effective community-based treatment alternatives can give us even safer communities than mandatory minimum sentences. Those people who do not successfully complete community based treatment will still face the threat of a prison sentence.

The social and economic cost of a mandatory minimum prison policy is enormous. The costs go beyond the cost of imprisonment. Such a policy removes potential sources of support and income from our communities and thereby increases the cost of our social support network. It also carries a high humanitarian cost as it separates families and increases the burden on our foster care system. Community-based treatment can reduce the impact of these unintended consequences.

In light of the compelling public safety, fiscal, and humanitarian reasons to expand the use of treatment alternatives, it would be a great mistake to allow opposition to prevent the

Commission from completing its mandate to explore the just and efficient use of correctional system and community resources. It will take executive leadership to fulfill the mandate, but it can and should be accomplished. Judges should be empowered to sentence first time “B” felony offenders, as well as those predicate felony drug offenders whose addiction is a primary cause of the crime, into a treatment program. Allowing a prosecutorial veto over this necessary power would render the reform illusory.

As we did with the Drug Law Reform Acts, The Legal Aid Society is fully prepared to devote its time, energy and resources to work with the executive, the judiciary, the District Attorneys, and other members of the criminal justice system to make the expansion of community-based treatment alternatives a success. We have valuable experience and a proven track record of success. It can be done. We ask that you demonstrate the courage and the wisdom to work with us to ensure that it is done well.