

NEW YORK STATE DISTRICT ATTORNEYS ASSOCIATION



PRESIDENT
JAMES B. VARGASON
CAYUGA COUNTY

October 17, 2002

Mr. Thomas Golisano
1 Fishers Road
Pittsford, New York 14534

Dear Mr. Golisano:

New York State's 62 elected District Attorneys are the local officials charged with protecting the safety of our communities as well as the rights of each citizen. Our collective experience teaches that enforcement of our drug laws is critical to curbing violent crime and compelling addicts to obtain the treatment they need.

Unfortunately, concerns over isolated and rare lengthy prison sentences resulting from mandatory minimum sentences for AI drug offenses have fueled the distorted, across-the-board campaign of advocates, some of whose true agenda appears to be decriminalization of drug dealing. These special interest groups have promoted the dangerous myths that our prisons are filled with non-violent drug possessors, that most drug sellers are addicts who sell to finance their habits, and that judges currently lack discretion to differentiate between drug addicts and predatory dealers. These myths have taken root in much of the media coverage of these issues and have generated some well-meaning proposals for "reform" that, if adopted, will not only release predatory and violent drug dealers into our communities, but in the bargain will undermine the successful treatment of truly addicted offenders.

We have witnessed first hand the devastation wrought by drug crime to the communities we live in. In response, we have utilized responsibly the tools provided by our existing drug laws to restore safety to these communities. At the same time, we have initiated and supported drug treatment programs diverting truly non-violent drug addicted offenders into treatment and away from incarceration. We recognize, however, that in our commitment to rehabilitate addicts, we must not lose sight of our primary duty to protect the public. In this regard, legislation that diverts a criminal defendant from incarceration to treatment carries a risk that the defendant will abuse this second chance by committing new crimes. Worse, legislation that opens prison doors and releases thousands of convicted predatory violent felons back into the community they terrorized in the name of "drug reform", is short sighted at best, and reckless at worst.

Because of the foregoing, the District Attorneys of this State through this Association scrutinizes with utmost care any proposal suggesting sweeping changes to the very laws that have worked to protect the communities we serve from predatory

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violent drug dealers. We are rural and urban, upstate and downstate, Democrat and Republican, and unified in the opinions expressed here. We have opposed New York State Assembly Bill No. 8888, and have never endorsed Senate Bill No. 7588. We are on record saying: "While the Governor's bill goes farther toward softening our drug laws than this Association believes is necessary or prudent, its provisions were at least thoughtfully drafted in a conscientious attempt to expand on the success of current treatment programs while preserving public safety."

In fairness to other proposals advanced to "reform" the Rockefeller drug laws, which were scrutinized by this Association, we have reviewed the proposal on your web site entitled "Rockefeller Drug Laws: *Repeal and Reform*," and believe it to be fraught with problems that would undermine ongoing successful efforts to protect all New Yorkers while diverting to treatment only truly non-violent drug addicted offenders.

By providing the same minimum sentencing options for drug dealers as well as possessors, habitual drug felons as well as first-time offenders, and profiteering criminals as well as addicts, your proposal obliterates entirely any differentiation between serious and minor offenses. It also suggests that it should be the official policy of this State that a non-addicted, oft-convicted, predatory drug dealer is less a danger to the community than someone who twice possessed a stolen credit card. We believe that to be misguided.

Your call for unguided, unfettered and standard-less judicial discretion also seeks a return to the sentencing morass that existed in New York prior to 1973, when drug sentences were entirely a function of the predilection of the particular judge assigned to the particular case, with vast discrepancies emerging between judge and judge, county and county. Rather than eliminating disparities based on race, socio-economic circumstances and the like, a scheme such as this one allows such considerations to seep into the void left by the elimination of appropriate statutory sentencing criteria. [Of course, your proposal's simplistic reference to the "terrible and disproportionate impact the Rockefeller drug laws had on the minority community" ignores the terrible and disproportionate impact *drug crime* has had on the fabric of these very communities, and the disproportionate number of minority *victims* drug crime has left behind.]

Your proposal also sounds the death knell for effective drug treatment programs, such as those into which District Attorneys have diverted deserving addicts for years. No drug criminal will opt into a lengthy, arduous and invasive program (as all effective treatment must be) – and certainly not immediately (an unequivocal key to treatment success) – when the law also allows a sentence of probation, without a

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treatment component, to be imposed for the same charged crime. At the very least, this unregulated scheme encourages even appropriate candidates for treatment to delay and delay their day of reckoning, bringing wasteful litigation aimed at shifting the onus of responsibility from their own habits and actions to that of police, prosecutors and society as a whole, an attitude of denial which, if allowed to become sufficiently entrenched, dooms any treatment opportunity to failure.

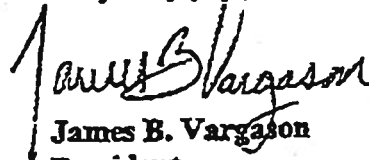
In summary, this Association believes that your proposal, if ever enacted into law, would severely undermine our ability to protect our citizens from predatory violent drug dealers. It would also jeopardize the progress District Attorneys have made in compelling offenders into treatment programs, like DTAP.

Finally, what is glaringly absent from your proposal is balance. It appears you have accepted one side's view of this critically important criminal justice issue without seeking input from others best situated to explain the link between violence and drug dealing, and the dangerous consequences of ignoring it. We believe sensible drug law "reform" begins when the right questions are asked; when those interested in "reform" cut through the disinformation and myths; when proposals put the safety of the law-abiding public over the pleas of convicted criminals and their supporters; and when there is genuine dialogue which works toward a consensus. Your proposal does none of these.

If you have any questions about the foregoing, please do not hesitate to contact me.

Thank you for your attention to this matter.

Very truly yours,


James B. Vargason
President

JBV/jmm

Cc: Officers & Executive Committee Members

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