

SHOULD WE BE “SENTENCING FOR DOLLARS?”: RETHINKING THE PROPOSED DRUG TAX

In 2004, the Center for Community Alternatives (CCA) produced *Sentencing for Dollars* which summarized the many financial consequences of a New York criminal conviction. Two years later, in response to the Governor’s 2006 Budget Bill, which proposed adding new financial burdens and increasing old ones, CCA issued a policy statement identifying the problem of continuing to increase and impose new financial penalties upon people convicted of a crime.

We continue to have concerns about the creation of new fees, fines, penalties, surcharges, and assessments and the increases to existing financial penalties that are imposed upon people convicted of a criminal offense. Our initial *Sentencing for Dollars* report was a call to strike the proper balance between shifting costs along to “offenders” and the need to avoid counterproductive, harmful, and unintended collateral consequences that such financial penalties may have on reentry and reintegration, and thus, public safety. We continue to raise these concerns as new and enhanced financial penalties are proposed and/or enacted.

Unfortunately, the 2008-2009 New York State Executive Budget contains yet another proposal for financial penalties. The Governor’s budget proposes a tax on illegal drug activity that will be imposed on people convicted of drug-related crimes. The Governor estimates that this “Drug Tax” will add \$13-\$17 million per year to New York’s general fund.

While the Governor’s desire to close New York’s budget deficit is understandable, the proposed Drug Tax will not help to achieve this goal. Instead, it will adversely affect reintegration and public safety, producing financial and human costs that will dwarf any revenues the tax generates.

What is the “Drug Tax?”

The proposed Drug Tax requires all “dealers” of marijuana and controlled substances to purchase tax stamps at a rate of \$3.50 per gram of marijuana and \$200 per gram for controlled substances. The dealer would then have to affix the stamp to any drugs the dealer possesses to show that the tax has been fully paid.

The tax is intended as a revenue generating measure, not a crime fighting measure. Indeed, the proposed legislation contains strict secrecy requirements designed to preserve the confidentiality of any information obtained from a dealer who purchases the drug tax stamps.

However, if a person is arrested on a drug-related charge, and it is discovered that the requisite tax stamp is not affixed to the drugs, law enforcement officials would be required to promptly report the person to the Commissioner of Taxation and Finance who, in turn, would impose a tax penalty equal to 100% of the tax that should have been paid, plus interest. To collect this tax, the Commissioner would be authorized to issue levies and liens and seize the person's property. The Drug Tax also provides for additional criminal penalties for those who attempt to evade or defeat the tax, who willfully fail to pay it, or who use fraudulent or counterfeit stamps. Such individuals can be charged with a misdemeanor or, in some repeat cases, a class E felony.

The proposed legislation broadly defines "dealer" as any person who "manufactures, produces, purchases, acquires, possesses, ships, sells, distributes, transfers, or transports" drugs, within or into New York State. By defining "dealer" so broadly, the Drug Tax falls not only upon the few drug "kingpins" who are arrested and who financially profit from illegal drug sales, but also upon any person who possesses drugs. This will include people who are addicted to drugs and whose lives are already shattered by their addictions.

The Drug Tax Will Actually Increase Costs to the State By Diminishing Public Safety.

New Yorkers spend billions of dollars per year on incarcerating individuals, many of whom have been in prison more than once.¹ The Governor has recognized the fiscal and public safety implications of successfully reintegrating those who have been released from prison back into our communities and in his proposed budget, has allocated additional funding for reentry efforts.

But the Drug Tax proposal would run counter to reentry efforts and initiatives. The Drug Tax fails to recognize the various barriers that those with a criminal record face in successfully transforming themselves from prisoners to contributing members of our communities, including the barriers created by financial penalties.² When the financial penalty is as significant as the proposed drug tax, the barrier to reentry can be insurmountable. An example best illustrates the Drug Tax's full magnitude:

¹ The annual budget for the Department of Correctional Services, for example, is in excess of 2.2 billion per year. To ascertain the full amount New Yorkers spend, one would have to also include the money 62 counties spend each year to incarcerate those accused of crimes and those convicted and serving definite sentences.

² The barriers to employment, educational, housing, public benefits, family unity, and civic participation are discussed in: New York State Bar Association, "Re-Entry and Reintegration: The Road to Public Safety," Report and Recommendation of the Special Committee on Collateral Consequences of Criminal Proceedings, available on-line at www.nysba.org/AM/Template.cfm?Section=Substantive_Reports&CONTENTID=11415&TEMPLATE=/CM/ContentDisplay.cfm. See also *Sentencing for Dollars: The Financial Consequences of a Criminal Conviction*, available on-line at www.communityalternatives.org/pdfs/fiancnial%20consequenes.pfd, a working paper by Center for Community Alternatives.

Jane is a 26 year old single mother of two children, convicted of a class C drug possession felony for possessing just under 4 ounces of cocaine (equivalent to about 111 grams). She was sentenced to a 3 year determinate sentence with 2 years post-release supervision. Jane's two children have been in her mother's custody since her arrest. Jane's mother was on TANF (Public Assistance) and was required to petition for child support. The financial consequences for Jane will be:

Mandatory Surcharge	\$250.00
Crime Victim Assistance Fee	\$20.00
DNA Bank Fee	\$50.00
Incarceration Fee	\$156.00
Parole Supervision Fee	\$720.00
Fee for termination of driver's license suspension	\$50.00
Child support (assuming a Court Order of \$100.00/week) (3 years)	\$15,600.00
<i>Proposed Drug Tax</i>	<i>\$22,200.00</i>
Total	\$39,046.00

This \$39,046.00 financial debt will render Jane's efforts to transform herself into a productive member of her community nearly impossible. Jane's credit history will be marred, her wages garnished, her car impounded, and her savings taken. She will not have a car to drive to job interviews or take her children to doctors' appointments; her credit history and criminal record will make it difficult for her to find employment or obtain loans; and she will not be able to save money for a college degree or vocational training. The Drug Tax will significantly increase the chances the Jane will re-offend, thereby diminishing public safety.

The Drug Tax: Creating State Addiction to Illegal Drugs

The proposed tax will undermine public safety in yet another – and perhaps more insidious – manner. As noted, the tax is intended as a revenue generating measure, not a crime fighting measure. As a revenue generator, the State actually stands to benefit from an increase in the illegal drug trade. The more illegal drugs there are on the street to tax, the more revenue is added to State coffers. As the State becomes dependent on this new, short-term revenue stream, there could be less incentive to address the problem of drug addiction. More illegal drugs on our streets means, in the short run, more money for the State. In the long run, it means more costly public health and safety problems.

The Drug Tax: No Real Revenue, but Real Impact on Reentry

The profile of those who will be required to pay this tax clearly shows that the Drug Tax will not generate significant revenues. It is doubtful that dealers will pay the tax in advance; rather, the tax will be imposed on those arrested for drug-related charges.³ Thus, any payment of this tax

³ See *i.e.*, Kenneth Lovett, *New York Post*, Jan. 24, 2008 (noting that "Spitzer aides said they realized it's highly unlikely any drug dealers would come forward to purchase tax stamps").

must be viewed through the lens of the prevailing social and economic conditions of people returning from prison, most of whom are black and Hispanic, largely poor, undereducated, unskilled, often suffering mental health and medical problems, and with minimal prospects for employment. Indeed, about 80% of those who work their way through our criminal justice system are indigent.⁴ People leave prison typically with no savings or assets and limited job training and work experience only to find themselves discriminated against in their search for employment because of their criminal history, race, and ethnicity.

Given this profile – Can we really expect the Drug Tax to generate significant revenue, even in the short term and without considering the public health and safety costs that will accompany the tax?

Using Reentry Impact Statements to Ensure Sensible Financial Penalties

The legislature should engage in careful study and analysis before imposing new penalties on those convicted of crimes. It appears that the Drug Tax is another financial penalty that has been proposed in a vacuum. The proposal shows little or no consideration of the revenues it will generate versus the enormous financial and human costs that will arise from the increased public safety problems implicated by the tax. Before considering enactment of the Drug Tax, the legislature should – at the very least – require a reentry impact statement. This impact statement should examine how the tax will impact reintegration and public safety. It should do so by assessing the financial burden the Drug Tax will impose on people convicted of drug related offenses in conjunction with the financial burden these individuals already face because of their convictions.

Public safety and sound fiscal management are both enhanced by well-considered policies that ease the transition from prison back to our communities and diminish the amount of illegal drugs in our communities. The Drug Tax does neither. Instead, it constructs impossibly high barriers to successful reentry and creates a financial incentive for allowing more illegal drugs on our streets. In the long run, the Drug Tax will prove to be extremely costly to New York State.

⁴ NYSBA Report, at 198-200.