

The logo for the New York City Bar Association, featuring the text "NEW YORK CITY BAR" in a serif font, centered between two horizontal bars with a textured, stippled appearance.

NEW YORK
CITY BAR

February 22, 2006

Mr. David Nocenti
Counsel to the Governor
Office of Governor Spitzer
Executive Chamber
State Capitol
Albany, NY 12224

Dear Mr. Nocenti:

On behalf of the New York City Bar Association, I am writing to seek your assistance in remedying a troubling court of Appeals Decision regarding Rockefeller drug law reform. (*People v. Bautista*) This Court decision combined with faulty drafting in the 2004 drug reform legislation has drastically reduced the law's effectiveness in achieving its intended goal of reforming New York's drug laws.

On September 21st 2006, the New York Court of Appeals decided in *People v. Bautista* that due to the manner in which the re-sentencing laws are worded, the Court of Appeals has no statutory authority to review decisions by the Appellate Divisions on Rockefeller resentencing motions. There are numerous questions percolating throughout the Appellate Divisions involving the interpretation of the reform legislation, and the lack of review authority will add confusion to the already flawed legislation. For the sake of clarity and consistency, the City Bar has proposed language to provide review authority to the New York Court of Appeals. I have attached the proposed language for your review.

The questions regarding eligibility of certain AII level drug law offenders for resentencing are an example of the lack of clarity in the law that is causing confusion among prosecutors, defense attorneys and the courts. While AI level offenders can be resentenced at any point in their prison term, there is disagreement as to whether AII level offenders must be one or three years away from parole eligibility. As the Parole Board is not known for allowing the release of offenders early in their term, an irrational disparity arises, where an AII offender four years away from parole eligibility can be resentenced, while one who is three years away might linger in jail for quite some time.

The lack of Court of Appeals review presents a problem not just because of this one issue, but because of the host of questions and potential conflicting opinions that will stand in the way of reform. I am hopeful that if the proposed language is enacted, confusion can be mitigated and reform expedited.

I can be reached at (212) 382-6655 if you have any questions, or if I can be of any further assistance. I look forward to speaking with you or your staff on this and other legislative matters.

Best regards,

Jayne Bigelsen
Director of Communications and Public Affairs
The New York City Bar Association
jbigelsen@nycbar.org

Proposed language from the New York City Bar Association to Address Lack of Court of Appeals Review Authority as Decided in *People v. Bautista*

An appeal may be taken as of right in accordance with applicable provisions of the criminal procedure law, (a) from an order denying resentencing; or (b) from a new sentence imposed under this provision and may be based on the grounds that (i) the term of the new sentence is harsh or excessive; or (ii) that the term of the new sentence is unauthorized as a matter of law. An appeal in accordance with the applicable provisions of the criminal procedure law may also be taken as of right by the defendant from an order specifying and informing such person of the term of the determinate sentence the court would impose upon resentencing on the ground that the term of the proposed sentence is harsh or excessive; upon remand to the sentencing court following such appeal the defendant shall be given an opportunity to withdraw an application for resentencing before any resentence is imposed. Provided that a certificate granting leave to appeal is issued pursuant to section 460.20 of the criminal procedure law, an appeal may be taken from an order of the intermediate appellate court (a) affirming or reversing an order denying resentencing; or (b) affirming, modifying, or reversing a new or amended judgment imposed upon resentencing.