STATE OF NEW YORK

2722

2023-2024 Regular Sessions

IN ASSEMBLY

January 26, 2023

Introduced by M. of A. WALKER, VANEL -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to motions for resentencing by the people

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The Legislature finds and declares the following:

1. People who commit crimes grow and change over time. The commission of a crime--no matter the offense--need not define a person forever. Continued incarceration of people who no longer pose a risk to community safety is not in the public interest and only makes our State and society less humane.

2. Yet after a person is sentenced, we provide few meaningful mechanisms to review the length of that sentence based on how a person responds to incarceration. We limit these opportunities even though at the time of sentencing, all involved--including prosecutors, judges, defense attorneys, and even the person sentenced--are not positioned to determine with any precision how long a sentence needs to be in order to fulfill the purpose of incarceration. It is impossible to predict how individuals will develop during incarceration.

3. The result of this system is thousands of people still serving prison terms despite having long-since been rehabilitated. Our system traps tens of thousands of people in New York's prisons who are not a safety risk, many for life or de facto life sentences.

4. Our failure to provide a meaningful opportunity for release also traps a large number of people in prison who are serving sentences imposed during the tough-on-crime era that we would not impose today.

5. Our overreliance on lengthy sentences helped explode New York's prison population.

a. In 1980, New York incarcerated just over 20,000 people. Despite recent efforts to reduce the state's prison population, there remain

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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over 45,000 people in our State's prisons, and over 70,000 people when jail and prison populations are combined. Even with recent reductions, New York's incarceration rate remains nearly 2.5-times what it was in 1980, as the State incarcerates 249 people per 100,000.

b. Currently, more than 9,000 people in New York prisons are serving a life or virtual life sentence. This is the ninth highest percentage of people in prison serving such sentences in the country.

c. Too many people are serving life sentences for crimes committed before they even turned twenty years old.

d. Over a third of people in New York's prisons are serving sentences of 10 years or more; more than 8,500 people have been in prison for at least 20 years.

e. Over 90% of people in prison in New York are incarcerated for either a first or second felony offense and more than 40% had never previously served a jail or prison sentence.

6. New York's reliance on determinate sentences has particularly contributed to the increased number of people serving sentences who no longer pose a risk to public safety. A person serving a determinate sentence in New York must serve at least 6/7 of the sentence before release is possible.

a. The total number of people serving a determinate sentence has tripled since 2001.

b. Currently 60% of people in prison are serving a determinate sentence.

c. 98% of all people convicted of a drug crime in New York are serving determinate sentences.

7. Though there have been incremental improvements in recent years, New York's current system of parole provides little relief for those facing lengthy sentences who have been rehabilitated. Of the over 12,000 people who sought release through parole in 2017, more than 7,500 people were denied (63%).

8. Incarcerating people for long periods of time--long after a person presents a risk of danger--takes away tax dollars that could be used for health care, housing, education, and infrastructure.

a. The current average cost of imprisoning a person in New York is $69,000 per year. In contrast, New York spends less than $20,000 a year per student it educates.

b. The Fiscal Year 2020 executive budget recommended $3.38 billion for the Department of Corrections and Community Supervision, an $84.2 million increase from the previous fiscal year. New York State prisons spend $380.6 million alone on health care costs, a 20% increase from three years earlier.

c. The increasing health care costs are largely due to New York's aging prison population. It costs more to incarcerate a person as that person ages because of increased health costs, and there are more than 10,000 people in our prisons over the age of 50. And since 1992, the number of people age 50 and older incarcerated in New York State prisons has steadily increased, while the population of every other age group has declined dramatically.

9. Lengthy incarceration separates families and communities and has decimated communities of color.

a. 61% of all people in prison in New York have at least one child, including more than 70% of all women in prison.

b. People of color are incarcerated at disproportionate rates. A Latinx person is three times more likely than a white person to be in a New York prison and an African American person is eight times more like-

ly than a white person to be there. Though African Americans make up 18% of the state's population, they represent 48.2% of those the state incarcerates.

10. New York's sentencing laws stand out when compared to the rest of the world in terms of their unique cruelty and punitiveness.

a. It is rare for a European country to have a sentence longer than 20 years, and many do not have life sentences.

b. In Latin America, only 6 out of 19 countries allow life sentences.

c. Many countries allow for parole release, like Belgium, which requires parole review after ten years and Germany after 15.

d. If New York state were a country, it would have the fifth highest incarceration rate in the world.

11. The actions of District Attorneys have had an oversized impact on the growth of prison populations since the 1980s.

12. The goal of prison is to protect public safety and promote rehabilitation. The continued incarceration of those who no longer present a serious risk to the public's safety meets neither of those goals. District Attorneys currently have no mechanism to revisit cases from the past in which their office recommended sentences that today would be viewed as excessive, or which no longer meet the goals of incarceration. District Attorneys should be able to move for a modified sentence when an incarcerated person has served a substantial amount of time in prison on the original sentence, specifically: at least 20 years in prison for an A felony or at least 15 years in prison for any other felony.

13. Providing District Attorneys with an opportunity to move to reduce a sentence will not risk public safety. Research has consistently shown that:

a. Individuals age out of committing crimes, even those convicted of the most serious offenses.

(A) By the time individuals reach their thirties, their odds of committing future crimes drop dramatically. While crime starts to peak when a person is in his or her late teenage years to mid-20s, crime drops "sharply" as adults reach their 30s.

(B) Much of this is due to neurological changes, which take place in profound ways up until an individual turns 26. The prefrontal cortex, which is highly involved in executive functioning and behavior control, continues to develop until age 26, making it harder for young people to make what adults consider logical and appropriate decisions.

b. Similarly, the odds of recidivism decrease significantly with age, and a person's age--not whether they commit a prior violent crime--is the number one predictor of whether a person will commit a new crime once released from prison.

(A) Released individuals over the age of 50 have a very low recidivism rate; in New York state, just 5 percent of people released from prison aged 50 to 64 return to prison for new offenses; among those aged 65 or higher, the rate of new offending is just six-tenths of 1 percent.

(B) The Office of Inspector General of the US Department of Justice has found that older people in prison commit less misconduct while incarcerated and have a lower rate of re-arrest once released, and has recommended the early release of older people in prison to help manage the inmate population and reduce costs at the Bureau of Prisons.

(C) Several studies, state policies and programs, and the National Institute of Corrections of the Bureau of Prisons, consider incarcerated individuals aged 50 and above to be elderly because incarcerated people age at an accelerated rate. They are more likely than the general public to experience stresses like long histories of alcohol and drug misuse,

insufficient diet, lack of medical care, financial struggles, and stress of maintaining safety while behind bars.

c. Decreasing sentences does not increase crime.

(A) Between 1996 and 2016, New York city reduced its jail and prison population by 55% while also reducing its violent crime by 58%.

(B) A recent Brennan Center for Justice report documented 34 states, including New York, that reduced both their prison population and their crime rates.

(C) The Sentencing Project concluded that lengthy prison terms are counterproductive for public safety.

(D) The Justice Policy Institute found little to no correlation between time spent in prison and recidivism rates.

14. A District Attorney's ethical obligation is not just to secure convictions and sentences, but to do justice. This act will allow DAs to fulfill this ethical obligation by moving to reduce sentences where the interest of justice demands it.

15. This act does not relieve people of the consequences of criminal conduct; rather, it provides a District Attorney with the opportunity to seek a reduced sentence and allows a judge to make the decision after reviewing all current and relevant information. This act will help make our policies consistent with the reality that many--though certainly not all--people that we incarcerate have since grown, changed, and been rehabilitated to the point where continued incarceration no longer is required to protect the public.

§ 2. The criminal procedure law is amended by adding a new section 440.48 to read as follows:

§ 440.48 Motion for resentence; by the people.

1. Where a defendant is serving a sentence of incarceration for a determinate or indeterminate sentence, the court in which the judgment was entered, upon motion of the people, may set aside the sentence and resentence the defendant if such resentencing is in the interest of justice.

2. The people may make a motion for resentence after a defendant has served at least twenty years of a sentence for a class A felony, or at least fifteen years of any other sentence, including a sentence received following a guilty plea. The motion shall be made upon reasonable notice to the defendant and to the attorney if any who appeared for him or her in the last proceeding which occurred in connection with the judgment or sentence.

3. The modified sentence imposed by the court shall not require the defendant to serve more than the remainder of the original sentence and may be below the statutory mandatory minimum term of imprisonment for the offense. In calculating the modified sentence to be served by the defendant, such defendant may be credited for any jail time credited towards the subject conviction as well as any period of incarceration credited toward the sentence originally imposed.

4. The court shall give notice of any sentence-modification proceedings to victims or the family of the victims, if they can be located with reasonable efforts. Victims and victims' families shall be afforded an opportunity to be heard.

5. In considering an application made pursuant to this section, the court shall consider any facts or circumstances relevant to whether resentencing the defendant would be in the interest of justice, including but not limited to:

(a) whether the defendant can be returned safely to the community, including but not limited to:

(i) whether there is a reasonable probability that if released, the defendant will live and remain at liberty without violating the law; or

(ii) evidence that reflects whether age, amount of time served, or diminished physical condition or health, if any, have reduced the defendant's risk for future violence;

(b) the defendant's disciplinary record while incarcerated;

(c) any measures the defendant has taken toward rehabilitation, such as the defendant's record of participation or willingness to participate in programming and treatment while incarcerated;

(d) the age of the defendant and the number of years he or she has already served of the original sentence;

(e) any victim impact statement from the original sentencing and any supplemental statement made to the court by the victim or the victim's family pursuant to this section;

(f) the recommendation of the department of correction and community supervision; and

(g) evidence that reflects that circumstances have changed since the defendant's original sentencing so that the defendant's continued incarceration is no longer in the interest of justice.

§ 3. This act shall take effect immediately.