

STATE OF NEW YORK

1283

2025-2026 Regular Sessions

IN ASSEMBLY

January 9, 2025

Introduced by M. of A. WALKER, RIVERA, ANDERSON, BURDICK, R. CARROLL, CLARK, COOK, CRUZ, CUNNINGHAM, EPSTEIN, FORREST, GALLAGHER, GIBBS, GONZALEZ-ROJAS, HEVESI, JACKSON, KELLES, LUCAS, MAMDANI, MEEKS, MITAYNES, REYES, ROSENTHAL, SEPTIMO, SIMON, TAPIA, TAYLOR, WEPRIN, SHRESTHA, KIM, SIMONE, ALVAREZ, ZINERMAN, DAVILA, SHIMSKY, CHANDLER-WATERMAN, RAGA, LEVENBERG, BICHOTTE HERMELYN, HUNTER, BORES, SEAWRIGHT, ZACCARO, LEE, DAIS -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to authorizing certain persons confined in institutions operated by the department of corrections and community supervision to apply for a sentence reduction

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

Section 1. The criminal procedure law is amended by adding a new section 440.45 to read as follows:

§ 440.45 Application for sentence reduction.

1. (a) Notwithstanding any other provision of law, including any minimum sentence requirement, any person confined in an institution operated by the department of corrections and community supervision who has served ten years of their sentence, or one-half of the minimum term of an indeterminate sentence where the minimum term equals or exceeds ten years, or one-half of a determinate sentence where the sentence equals or exceeds ten years, whichever is less, may apply for a reduction of their sentence pursuant to the provisions of this statute. For the purposes of this subdivision, the term "sentence" shall include any aggregate sentence where consecutive sentences are imposed.

(b) Notwithstanding paragraph (a) of this subdivision, an otherwise ineligible person shall be deemed eligible to apply for a reduction in sentence upon consent of the prosecutor in the underlying criminal action in which the sentence was imposed.

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

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1 (c) Notwithstanding paragraph (a) of this subdivision, the prosecutor
2 in the underlying criminal action in which a sentence was imposed may
3 initiate an application for resentencing on behalf of the incarcerated
4 individual and upon such application an attorney shall be assigned to
5 represent the incarcerated individual in proceedings pursuant to this
6 section.

7 (d) No waiver of the right to make an application for a sentence
8 reduction under this section shall be permitted or honored by the
9 sentencing court. Any such waiver shall be deemed void and unenforcea-
10 ble.

11 (e) No less than thirty days before the date on which the person
12 becomes eligible pursuant to paragraph (a) of this subdivision to apply
13 for a sentence reduction, the department of corrections and community
14 supervision shall provide written notice of this section and its
15 provisions to:

16 (i) the defendant;

17 (ii) the attorney of record;

18 (iii) the administrator of the county panel established for purposes
19 of the administration of article eighteen-B of the county law and all
20 institutional offices that provide criminal defense services within the
21 county in which the sentence was imposed;

22 (iv) Prisoners' Legal Services of New York;

23 (v) the sentencing court; and

24 (vi) the prosecutor in the underlying criminal action in which the
25 sentence was imposed.

26 (f) A person who is eligible for a sentence reduction pursuant to this
27 subdivision may request that the court assign such person an attorney
28 for the preparation of and proceedings on the application for resentenc-
29 ing pursuant to this section. The attorney shall be assigned in accord-
30 ance with the provisions of subdivision one of section seven hundred
31 seventeen and subdivision four of section seven hundred twenty-two of
32 the county law and the related provisions of article eighteen-A of such
33 law for the application and any proceedings under this section, includ-
34 ing any appeal and successive application. The court shall notify the
35 applicant about the appointment of counsel.

36 2. (a) An application for a sentence reduction under this section
37 shall be filed in the county in which the sentence was imposed to reduce
38 the sentence of the applicant pursuant to this section and may include
39 affidavits, letters, declarations, records from the department of
40 corrections and community supervision, video submissions, or any other
41 written or electronic material.

42 (b) Upon the court's receipt of an application for a sentence
43 reduction, the court shall promptly notify the appropriate prosecutor
44 and provide such prosecutor with a copy of the application.

45 (c) An application filed pursuant to this section shall be randomly
46 assigned by the administrative judge designated by the office of court
47 administration with jurisdiction over the county where the application
48 is filed to any superior court judge with criminal jurisdiction other
49 than the judge who first sentenced the applicant unless the judge who
50 first sentenced the applicant is the only judge in that county.

51 (d) An application filed under this section may be amended or supple-
52 mented as necessary.

53 (e) After the filing of an application to reduce a sentence under this
54 section, the court may direct the parties to expand the record by
55 submitting additional written materials relating to the application.

1 (f) (i) The court shall, upon request of the applicant or the prose-
2 cuting office, conduct a hearing on the application, at which the appli-
3 cant and counsel for the applicant shall be given the opportunity to be
4 heard. Such hearing shall be recorded or transcribed. The applicant has
5 the right to be present at any such hearing unless the applicant waives
6 the right to be present in writing.

7 (ii) In a hearing pursuant to subparagraph (i) of this paragraph, the
8 court shall allow parties to present any evidence pertinent to the issue
9 of a sentence reduction and the factors outlined in paragraph (b) of
10 subdivision four of this section. Such evidence may include documents,
11 live testimony, tangible objects, or any other class of evidence or
12 information pertinent to sentencing. At such hearing, the applicant
13 shall have the right to make a statement personally, on their own
14 behalf, in the same manner as provided in subdivision one of section
15 380.50 of this part.

16 3. (a) Notwithstanding any other provision of law, a court shall
17 reduce a term of imprisonment imposed upon a defendant if:

18 (i) the applicant is eligible pursuant to subdivision one of this
19 section; and

20 (ii) the court finds, after considering the factors set forth in
21 subdivision four of this section, that the interests of justice warrant
22 a sentence modification.

23 (b) (i) Notwithstanding any other provision of law, when reducing an
24 applicant's sentence under this section, the court may issue a sentence
25 less than the minimum term otherwise required by article seventy of the
26 penal law. Otherwise, the applicable provisions in article seventy of
27 the penal law in effect at the time of the sentence reduction shall
28 apply.

29 (ii) Notwithstanding any other provision of law, when reducing an
30 applicant's sentence under this section, the court may issue a sentence
31 to be served concurrently to any other sentence of imprisonment, being
32 served by the applicant.

33 (iii) Notwithstanding any other provision of law, when reducing an
34 applicant's sentence under this section, the court may sentence the
35 applicant to a less than minimum term of supervised release otherwise
36 required by law.

37 (c) In ordering a sentence reduction, the court shall, unless counter-
38 vailing considerations require, reduce the applicant's sentence so that
39 the applicant will be eligible for immediate release from prison after
40 the necessary calculations.

41 (d) The court may not increase any applicant's sentence, and if the
42 original judgment was the result of a plea agreement, resentencing
43 pursuant to this section shall not constitute grounds for a prosecutor
44 or the court to withdraw their agreement to the original plea agreement.

45 4. (a) There shall be a rebuttable presumption that the applicant's
46 sentence shall be reduced in the case of:

47 (i) an applicant who is fifty-five years of age or older on the date
48 on which the applicant files an application for a sentence reduction
49 pursuant to subdivision one of this section; or

50 (ii) an applicant who was twenty-five years old or younger on the date
51 on which the applicant committed the offense or offenses for which the
52 applicant is imprisoned.

53 (b) The court, in determining whether to reduce a term of imprisonment
54 pursuant to subdivision three of this section, shall consider the
55 following factors:

1 (i) the history and characteristics of the applicant at the time of
2 the application for a reduction in sentence, including but not limited
3 to:

4 (1) any history of abuse, trauma, or involvement in the child welfare
5 system;

6 (2) the potential benefits to children and family members of reunifi-
7 cation with the applicant;

8 (3) rehabilitation demonstrated by the applicant;

9 (4) the applicant's records while incarcerated; and

10 (5) the applicant's efforts to participate in educational, therapeu-
11 tic, and vocational opportunities while incarcerated to the extent such
12 programs were available; provided however that the fact that the appli-
13 cant may have been unable to participate in treatment or other program-
14 ming while incarcerated despite such applicant's willingness to do so
15 shall not be considered a negative factor in determining an application
16 pursuant to this section;

17 (ii) the circumstances of the offense, including the applicant's role
18 in its commission, whether the applicant was under the influence of
19 another, and whether there is any other factor that would tend to dimin-
20 ish the applicant's culpability;

21 (iii) any report from a physical, mental, or psychiatric examination
22 of the applicant conducted by a licensed healthcare professional;

23 (iv) any statement offered in response to this application by any
24 victim of an offense for which the applicant is imprisoned or by a fami-
25 ly member of the victim if the victim is deceased;

26 (v) any evidence concerning whether the applicant's sentence was
27 enhanced because the applicant exercised their constitutional right to a
28 trial, including but not limited to, evidence concerning the plea offers
29 made prior to the trial;

30 (vi) any presentation of argument and evidence by counsel for the
31 applicant or by the applicant;

32 (vii) any presentation of argument and evidence by the prosecutor; and

33 (viii) the financial cost of continued incarceration to the state
34 and/or localities.

35 5. A written order determining an application for reduction of
36 sentence shall issue forthwith and in no event later than thirty days
37 after any hearing or after all submissions have been filed if no hearing
38 is held. Such an order shall include detailed written findings of fact
39 and the reasons for granting or denying the application.

40 6. In calculating any new sentence to be served by the applicant, such
41 applicant shall be credited for any jail time credited towards the
42 subject convictions as well as any period of incarceration credited
43 toward the sentence or sentences originally imposed.

44 7. An appeal may be taken as of right in accordance with applicable
45 provisions of this chapter:

46 (a) from an order denying the application for a sentence reduction; or

47 (b) from a new sentence imposed under this section and may be based on
48 the grounds that:

49 (i) the term of the new sentence is harsh or excessive; or

50 (ii) the term of the new sentence is unauthorized as a matter of law.

51 8. The applicant shall be permitted to file successive applications
52 and such applications shall not be considered more than once every three
53 years.

54 9. (a) This section shall not be construed to abridge or modify any
55 existing remedy an incarcerated individual may have under habeas corpus,

1 statutory or judicial postconviction relief, or any other legal frame-
2 work.

3 (b) An application under this section shall not impact in any way or
4 be impacted in any way by any pending habeas or other postconviction
5 proceeding, nor shall the denial of an application under this section
6 preclude such remedies from being granted.

7 10. In three years, the comptroller shall conduct an analysis of
8 savings found from decarceration and shall make recommendations to the
9 legislature regarding diverting such savings to fund prison-based and
10 community-based programs designed to counter recidivism through educa-
11 tion, therapeutic intervention, maintenance of familial and social
12 networks, restorative justice practices for survivors of crimes, and
13 successful post-custodial re-entry to society.

14 11. (a) The clerk of the court upon determination of an application
15 filed pursuant to this section shall report the following information to
16 the office of court administration:

17 (i) the name, department identification number, and race of each
18 incarcerated individual who has been denied or granted resentencing;

19 (ii) how many years of imprisonment each incarcerated individual
20 served at the time of the application;

21 (iii) any new sentence if applicable;

22 (iv) the county and the name of the judge deciding the application;

23 (v) whether the prosecutor consented, opposed or took no position on
24 the application; and

25 (vi) if any prior applications had been submitted and the date such
26 applications were decided.

27 (b) The office of court administration shall provide an annual collec-
28 tive report containing the information received from the clerks of the
29 court pursuant to paragraph (a) of this subdivision to the governor and
30 legislature.

31 § 2. Any applicant who is immediately eligible to apply for a sentence
32 reduction pursuant to section 440.45 of the criminal procedure law shall
33 be provided the notice required pursuant to paragraph (d) of subdivision
34 1 of such section within sixty days of the effective date of this act.

35 § 3. This act shall take effect immediately and shall apply to
36 offenses committed prior to, on or after the effective date of this act.