

# Give New Yorkers in the Criminal Justice System a Second Chance

A.8588 (AM Quart) / S.7681 (Sen. Benjamin)

Mass incarceration is one of this country's most significant social, economic, and political issues. New York currently houses about 48,000 prisoners, with the annual cost per inmate over \$69,000, saying nothing of the societal cost. Communities of color are disproportionately impacted, with African-Americans and Latinos accounting for 73% of New York's prison population. Mass incarceration causes, and perpetuates, problems like poverty, unemployment, and the break-up of families.

**The Second Chance Amendment will parallel other innovative and impactful legislative initiatives already underway in New York to improve the justice system while reducing the state's prison population.**

## What is the Second Chance Amendment?

The **Second Chance Amendment** is designed to give individuals the chance to prove, part way through their sentences, that they deserve a reduction in sentence. Currently, a motion to set aside a sentence can only be made on the grounds that it was unauthorized, illegally imposed or otherwise invalid as a matter of law, not if the sentence is valid but nonetheless excessive in light of the crime and defendant's individual circumstances. The Amendment would allow for a motion for reduction or modification of a sentence after an individual has served a portion of that sentence on the grounds that the sentence was excessive (i.e. greater than necessary to achieve the purposes of sentencing). It will allow the presentation of evidence regarding the individual's age, personal circumstances, and medical condition, as well as confinement record, including indicators of rehabilitation.

## Who would be eligible?

Individuals serving 10 years or more, who have served at least 1/3 of their sentence and are more than 2 years away from scheduled Conditional Release, excluding those serving sentences for homicide, sex offenses, and any crime that involved the infliction of serious physical injury (unless culpability is solely accessorial).

## How would the Second Chance Amendment help?

The Amendment would allow judges to revisit sentences and reduce them for those who demonstrate during their incarceration that they deserve the chance to return to their families and communities early and rebuild their lives. Not only will this save taxpayer money by reducing the prison population, it will encourage prisoners to exhibit good behavior, work for job and educational advancement, and incentivize participation in rehabilitative actions like substance abuse programs.

## When Might Second Chance Motions Be Appropriate?



R.H., at age 20, was convicted of 1st degree robbery, despite a plausible claim of innocence. He had no criminal record, a stable home life, steady work history, and was about to enter the U.S. Army. He was active in his church and veterans support organizations. Despite the joint request by the prosecution and the defense for the 5-year minimum, and numerous letters of support from family and friends attesting to R.H.'s good character, the judge sentenced him to 15 years.



L.R. was convicted of first-degree drug possession, conspiracy, and several third-degree sale charges. She had dropped out of school at age 15 to care for her mother, who was dying of AIDS. After her mother's death, L.R. turned to drugs to support herself and her brother. The minimum for first-degree drug possession is 8 years. The minimum for second-degree conspiracy with no prior felony convictions is 5 years. Third-degree sale carries no mandatory minimum jail time. Despite numerous letters submitted on her behalf, and no prior felony convictions, L.R. was sentenced to an aggregate term of 25 years.



K.A., at age 32, was convicted of first-degree robbery after he and a friend robbed a stranger, taking a necklace and phone. Although they showed a gun during the robbery, no one was harmed. K.A. had four prior misdemeanors but no prior felony convictions. He also held a steady job and was a father of four. The minimum sentence for first-degree robbery is 5 years. The judge sentenced K.A. to 15 years.

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