

STATUS:

S5880 RULES

Penal Statutes

TITLE....Authorizes the resentencing of certain class A-II felony controlled substance offenders

06/20/05 REFERRED TO RULES
06/23/05 ORDERED TO THIRD READING CAL.1903
06/23/05 PASSED SENATE
06/23/05 DELIVERED TO ASSEMBLY
06/23/05 referred to codes
06/24/05 substituted for a8980
06/24/05 ordered to third reading rules cal.891
06/24/05 passed assembly
06/24/05 returned to senate
08/18/05 DELIVERED TO GOVERNOR
08/30/05 SIGNED CHAP.643

SUMMARY:

RULES COM

Authorizes the resentencing of certain class A-II felony controlled substance offenders. BILL
TEXT:

STATE OF NEW YORK

5880

2005-2006 Regular Sessions

IN SENATE

June 20, 2005

Introduced by COMMITTEE ON RULES -- read twice and ordered printed, and
when printed to be committed to the Committee on Rules

AN ACT to authorize the resentencing of certain class A-II felony
controlled substance offenders

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

1 Section 1. Notwithstanding any contrary provision of law, any person
2 in the custody of the department of correctional services convicted of a

3 class A-II felony offense defined in article 220 of the penal law which
4 was committed prior to the effective date of this section, and who was
5 sentenced thereon to an indeterminate term of imprisonment with a mini-
6 mum period not less than three years pursuant to provisions of the law
7 in effect prior to the effective date of this section, and who is more
8 than twelve months from being an eligible inmate as that term is defined
9 in subdivision 2 of section 851 of the correction law, and who meets the
10 eligibility requirements of paragraph (d) of subdivision 1 of section
11 803 of the correction law may, upon notice to the appropriate district
12 attorney, apply to be resentenced in accordance with section 70.71 of
13 the penal law in the court which imposed the original sentence. Such
14 application shall be referred for determination to the judge or justice
15 who imposed the original sentence upon such person. If at the time of
16 the application the original sentencing judge or justice is a judge or
17 justice of a court of competent jurisdiction, but such court is not the
18 court in which the original sentence was imposed, then the application
19 shall be randomly assigned to another judge or justice of the court in
20 which the original sentence was imposed, provided that the district
21 attorney and applicant may agree that the application be referred to the
22 original sentencing judge. If the original sentencing judge is no longer
23 a judge or justice of a court of competent jurisdiction, then the appli-
24 cation shall be randomly assigned to another judge or justice of the
25 court. If the court determines that such person does not stand

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

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S. 5880 2 1 convicted of such a class A-II felony offense, it shall issue an order 2 denying the
application. If the court determines that such person does 3 stand convicted of such a class A-II
felony offense, it may consider any 4 facts or circumstances relevant to the imposition of a new
sentence 5 which are submitted by such person or the people and may, in addition, 6 consider the
institutional record of confinement of such person, but 7 shall not order a new pre-sentence
investigation and report or entertain 8 any matter challenging the underlying basis of the subject
conviction. 9 The court shall offer an opportunity for a hearing and bring the appli- 10 cant
before it. The court may also conduct a hearing, if necessary, to 11 determine whether such
person qualifies to be resentenced or to deter- 12 mine any controverted issue of fact relevant to
the issue of sentencing. 13 Upon its review of the submissions and the findings of fact made in
14 connection with the application, the court shall, unless substantial 15 justice dictates that the
application should be denied, in which event 16 the court shall issue an order denying the
application, specify and 17 inform such person of the term of a determinate sentence of
imprisonment 18 it would impose upon such conviction, as authorized for a class A-II 19 felony
by and in accordance with section 70.71 of the penal law, in the 20 event of a resentence and
shall enter an order to that effect. The 21 court shall notify the person that, unless he or she
withdraws the 22 application or appeals from such order, the court will enter an order 23
vacating the sentence originally imposed and imposing a determinate 24 sentence of

imprisonment authorized to be imposed upon such conviction 25 by section 70.71 of the penal law; provided that the term thereof shall 26 be the same as the court previously specified. Any order issued by a 27 court pursuant to this section must include written findings of fact and 28 the reasons for such order. An appeal may be taken as of right in 29 accordance with applicable provisions of the criminal procedure law: (a) 30 from an order denying resentencing; or (b) from a new sentence imposed 31 under this provision and may be based on the grounds that (i) the term 32 of the new sentence is harsh or excessive; or (ii) that the term of the 33 new sentence is unauthorized as a matter of law. An appeal in accord- 34 ance with the applicable provisions of the criminal procedure law may 35 also be taken as of right by the defendant from an order specifying and 36 informing such person of the term of the determinate sentence the court 37 would impose upon resentencing on the ground that the term of the 38 proposed sentence is harsh or excessive; upon remand to the sentencing 39 court following such appeal the defendant shall be given an opportunity 40 to withdraw an application for resentencing before any resentence is 41 imposed. Subdivision 1 of section 717 and subdivision 4 of section 722 42 of the county law and the related provisions of article 18-A of such law 43 shall apply to the preparation of and proceedings on applications pursu- 44 ant to this section. In calculating the term of imprisonment to be 45 served by the person pursuant to the determinate sentence imposed, such 46 person shall be credited for any jail time credited towards the subject 47 conviction as well as any period of incarceration credited toward the 48 sentence originally imposed. 49 § 2. This act shall take effect on the sixtieth day after it shall 50 have become a law.

SPONSORS MEMO:
NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1

BILL NUMBER: S5880

SPONSOR: RULES

TITLE OF BILL: An act to authorize the resentencing of certain class A-II felony controlled substance offenders

PURPOSE:

To allow certain class A-II felony drug offenders sentenced to an indeterminate sentence of imprisonment to petition for resentencing pursuant to provisions enacted by chapter 738 of the laws of 2004.

SUMMARY OF PROVISIONS:

On January 13, 2005 revisions were made to the sentencing laws for

controlled substance and marijuana offenses. Persons sentenced for class A-II controlled substance offenses prior to that date are not permitted to petition for resentencing under the new law. This bill would permit certain class A-II controlled substance offenders to petition for resentencing under the new law.

EXISTING LAW:

In 2004 drug reform act enacted a new sentencing structure of determinate sentences for controlled substance and marijuana offenders. At that time, class A-I felony controlled substance offenders were authorized to petition the court for resentencing under the new law.

JUSTIFICATION:

In 2004 the legislature enacted broad changes to the controlled substance and marijuana laws which lowered possible sentences and changed the sentencing structure from indeterminate sentences to determinate sentences. The changes in the sentencing laws apply to persons who are convicted of controlled substance and marijuana offenses which occurred on and after January 13, 2005. However, the 2004 chapter allowed class A-I felony controlled substance offenders who were convicted for offenses prior to January 13, 2005 and sentenced under the old law to petition the sentencing court for resentencing under the new law.

This bill will now extend to certain class A-II felony controlled substance offenders the same opportunity to petition the sentencing court for resentencing under the new sentencing law which became effective January 13, 2005. Those class A-II felony controlled substance offenders who would be permitted to petition are those who at the time of the petition are:

1. more than 12 months from being eligible for the temporary release program established pursuant to section 851 of the correction law; and
2. eligible under provisions of section 803 of the correction law to earn merit time credit against their sentence.

The law is intended to apply to those class A-II felony controlled substance offenders who are eligible to earn merit time, but is not intended to require that they have earned the merit time allowance before they may apply for resentencing pursuant to the provisions of this bill. Thus, anyone who is statutorily eligible to earn merit time

and who is more than 12 months from being eligible pursuant to statutory eligibility criteria for temporary release may apply for resentencing of their class A-II felony controlled substance offense.

LEGISLATIVE HISTORY:

None.

FISCAL IMPLICATIONS:

To be determined.

LOCAL FISCAL IMPLICATIONS:

None.

EFFECTIVE DATE:

Sixty days after the bill becomes law.