

4314--A

2013-2014 Regular Sessions

I N A S S E M B L Y

February 4, 2013

Introduced by M. of A. AUBRY, CLARK, PERRY, LIFTON, PEOPLES-STOKES, BOYLAND, TITONE, PAULIN, BRONSON, STEVENSON, CASTRO, ZEBROWSKI, O'DONNELL, PRETLOW, JAFFEE, CRESPO, SCHIMEL, MAGNARELLI -- Multi-Sponsored by -- M. of A. ARROYO, BRENNAN, GLICK, GOODELL, HOOPER, LENTOL, MARKEY, ORTIZ, RAIA, ROSENTHAL, SCARBOROUGH, TITUS, WALTER, WEISENBERG, WRIGHT -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law and the criminal procedure law, in relation to sentencing and resentencing in domestic violence cases

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 60.12 of the penal law, as added by chapter 1 of  
2 the laws of 1998, is amended to read as follows:  
3 S 60.12 Authorized disposition; alternative [indeterminate] sentence [of  
4 imprisonment]; domestic violence cases.  
5 1. Notwithstanding any other provision of law, where a court is impos-  
6 ing sentence UPON A PERSON pursuant to section 70.00, 70.02 [upon a  
7 conviction for an offense enumerated in subdivision one of such section]  
8 OR 70.06 OF THIS TITLE, other than FOR an offense defined in [article  
9 one hundred thirty of this chapter] SECTION 125.26, 125.27, SUBDIVISION  
10 FIVE OF SECTION 125.25, OR ARTICLE 490 OF THIS CHAPTER, OR FOR AN  
11 OFFENSE WHICH WOULD REQUIRE SUCH PERSON TO REGISTER AS A SEX OFFENDER  
12 PURSUANT TO ARTICLE 6-C OF THE CORRECTION LAW, AN ATTEMPT OR CONSPIRACY  
13 TO COMMIT ANY SUCH OFFENSE and is authorized or required pursuant to  
14 [such section] SECTIONS 70.00, 70.02 OR 70.06 to impose a [determinate]  
15 sentence of imprisonment [for such offense], the court, upon a determi-  
16 nation following a hearing that (a) AT THE TIME OF THE INSTANT OFFENSE,  
17 the defendant was [the] A victim of DOMESTIC VIOLENCE SUBJECTED TO  
18 SUBSTANTIAL physical, sexual or psychological abuse [by the victim or  
19 intended victim of such offense,] INFLICTED BY A MEMBER OF THE SAME

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

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1 FAMILY OR HOUSEHOLD AS THE DEFENDANT AS SUCH TERM IS DEFINED IN SUBDIVI-  
2 SION ONE OF SECTION 530.11 OF THE CRIMINAL PROCEDURE LAW; (b) such abuse  
3 was a SIGNIFICANT CONTRIBUTING factor [in causing the defendant to  
4 commit such offense and] TO THE DEFENDANT'S CRIMINAL BEHAVIOR; (c) [the  
5 victim or intended victim of such offense was a member of the same fami-  
6 ly or household as the defendant as such term is defined in subdivision  
7 one of section 530.11 of the criminal procedure law, may, in lieu of  
8 imposing such determinate sentence of imprisonment, impose an indetermi-  
9 nate sentence of imprisonment in accordance with subdivisions two and  
10 three of this section.] HAVING REGARD TO THE NATURE AND CIRCUMSTANCES OF  
11 THE CRIME AND TO THE HISTORY, CHARACTER AND CONDITION OF THE DEFENDANT,  
12 THAT A SENTENCE OF IMPRISONMENT PURSUANT TO SECTION 70.00, 70.02 OR  
13 70.06 OF THIS TITLE WOULD BE UNDULY HARSH MAY INSTEAD IMPOSE A SENTENCE  
14 IN ACCORDANCE WITH SUBDIVISION TWO, THREE, FOUR, FIVE, SIX OR SEVEN OF  
15 THIS SECTION.

16 A COURT MAY DETERMINE THAT SUCH ABUSE CONSTITUTES A SIGNIFICANT  
17 CONTRIBUTING FACTOR PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVISION  
18 REGARDLESS OF WHETHER THE DEFENDANT RAISED A DEFENSE PURSUANT TO ARTICLE  
19 THIRTY-FIVE, ARTICLE FORTY, OR SUBDIVISION ONE OF SECTION 125.25 OF THIS  
20 CHAPTER.

21 AT THE HEARING TO DETERMINE WHETHER THE DEFENDANT SHOULD BE SENTENCED  
22 PURSUANT TO THIS SECTION, THE COURT SHALL CONSIDER ORAL AND WRITTEN  
23 ARGUMENTS, TAKE TESTIMONY FROM WITNESSES OFFERED BY EITHER PARTY, AND  
24 CONSIDER RELEVANT EVIDENCE TO ASSIST IN MAKING ITS DETERMINATION. RELI-  
25 ABLE HEARSAY SHALL BE ADMISSIBLE AT SUCH HEARINGS.

26 2. [The maximum term of an indeterminate sentence imposed pursuant to  
27 subdivision one of this section must be fixed by the court as follows:]  
28 WHERE A COURT WOULD OTHERWISE BE REQUIRED TO IMPOSE A SENTENCE PURSUANT  
29 TO SECTION 70.02 OF THIS TITLE, THE COURT MAY IMPOSE A DEFINITE SENTENCE  
30 OF IMPRISONMENT OF ONE YEAR OR LESS, OR PROBATION IN ACCORDANCE WITH THE  
31 PROVISIONS OF SECTION 65.00 OF THIS TITLE, OR MAY FIX A TERM OF IMPRI-  
32 SONMENT AS FOLLOWS:

33 (a) For a class B felony, the term must be at least [six years] ONE  
34 YEAR and must not exceed [twenty-five] FIVE years;

35 (b) For a class C felony, the term must be at least [four and one-half  
36 years] ONE YEAR and must not exceed [fifteen] THREE AND ONE-HALF years;

37 (c) For a class D felony, the term must be at least [three years] ONE  
38 YEAR and must not exceed [seven] TWO years; and

39 (d) For a class E felony, the term must be [at least three years] ONE  
40 YEAR and must not exceed [four] ONE AND ONE-HALF years.

41 3. [The minimum period of imprisonment under an indeterminate sentence  
42 imposed pursuant to subdivision one of this section must be fixed by the  
43 court at one-half of the maximum term imposed and must be specified in  
44 the sentence] WHERE A COURT WOULD OTHERWISE BE REQUIRED TO IMPOSE A  
45 SENTENCE FOR A CLASS A FELONY OFFENSE PURSUANT TO SECTION 70.00 OF THIS  
46 TITLE OR TO SUBDIVISION TWO OR THREE OF SECTION 70.71 OF THIS TITLE, THE  
47 COURT MAY FIX A TERM OF IMPRISONMENT OF AT LEAST FIVE YEARS AND NOT TO  
48 EXCEED FIFTEEN YEARS.

49 4. WHERE A COURT WOULD OTHERWISE BE REQUIRED TO IMPOSE A SENTENCE  
50 PURSUANT TO SUBDIVISION SIX OF SECTION 70.06 OF THIS TITLE, THE COURT  
51 MAY FIX A TERM OF IMPRISONMENT AS FOLLOWS:

52 (A) FOR A CLASS B FELONY, THE TERM MUST BE AT LEAST THREE YEARS AND  
53 MUST NOT EXCEED EIGHT YEARS;

54 (B) FOR A CLASS C FELONY, THE TERM MUST BE AT LEAST TWO AND ONE-HALF  
55 YEARS AND MUST NOT EXCEED FIVE YEARS;

1 (C) FOR A CLASS D FELONY, THE TERM MUST BE AT LEAST TWO YEARS AND MUST  
2 NOT EXCEED THREE YEARS;

3 (D) FOR A CLASS E FELONY, THE TERM MUST BE AT LEAST ONE AND ONE-HALF  
4 YEARS AND MUST NOT EXCEED TWO YEARS.

5 5. WHERE A COURT WOULD OTHERWISE BE REQUIRED TO IMPOSE A SENTENCE FOR  
6 A CLASS B, C, D OR E FELONY OFFENSE PURSUANT TO SECTION 70.00 OF THIS  
7 TITLE, THE COURT MAY IMPOSE A SENTENCE IN ACCORDANCE WITH THE PROVISIONS  
8 OF SUBDIVISION TWO OF SECTION 70.70 OF THIS TITLE.

9 6. EXCEPT AS PROVIDED IN SUBDIVISION SEVEN OF THIS SECTION, WHERE A  
10 COURT WOULD OTHERWISE BE REQUIRED TO IMPOSE A SENTENCE PURSUANT TO  
11 SUBDIVISION THREE OF SECTION 70.06 OF THIS TITLE, THE COURT MAY IMPOSE A  
12 SENTENCE IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVISION THREE OF  
13 SECTION 70.70 OF THIS TITLE.

14 7. WHERE A COURT WOULD OTHERWISE BE REQUIRED TO IMPOSE A SENTENCE  
15 PURSUANT TO SUBDIVISION THREE OF SECTION 70.06 OF THIS TITLE, WHERE THE  
16 PRIOR FELONY CONVICTION WAS FOR A FELONY OFFENSE DEFINED IN SECTION  
17 70.02 OF THIS TITLE, THE COURT MAY IMPOSE A SENTENCE IN ACCORDANCE WITH  
18 THE PROVISIONS OF SUBDIVISION FOUR OF SECTION 70.70 OF THIS TITLE.

19 S 2. Paragraphs (a), (b), (c), (d), (e) and (f) of subdivision 2 of  
20 section 70.45 of the penal law, as amended by chapter 7 of the laws of  
21 2007, are amended to read as follows:

22 (a) such period shall be one year whenever a determinate sentence of  
23 imprisonment is imposed pursuant to subdivision two of section 70.70 of  
24 this article OR SUBDIVISION FIVE OF SECTION 60.12 OF THIS TITLE upon a  
25 conviction of a class D or class E felony offense;

26 (b) such period shall be not less than one year nor more than two  
27 years whenever a determinate sentence of imprisonment is imposed pursu-  
28 ant to subdivision two of section 70.70 of this article OR SUBDIVISION  
29 FIVE OF SECTION 60.12 OF THIS TITLE upon a conviction of a class B or  
30 class C felony offense;

31 (c) such period shall be not less than one year nor more than two  
32 years whenever a determinate sentence of imprisonment is imposed pursu-  
33 ant to subdivision three or four of section 70.70 of this article OR  
34 SUBDIVISION SIX OR SEVEN OF SECTION 60.12 OF THIS TITLE upon conviction  
35 of a class D or class E felony offense;

36 (d) such period shall be not less than one and one-half years nor more  
37 than three years whenever a determinate sentence of imprisonment is  
38 imposed pursuant to subdivision three or four of section 70.70 of this  
39 article OR SUBDIVISION SIX OR SEVEN OF SECTION 60.12 OF THIS TITLE upon  
40 conviction of a class B felony or class C felony offense;

41 (e) such period shall be not less than one and one-half years nor more  
42 than three years whenever a determinate sentence of imprisonment is  
43 imposed pursuant to subdivision three of section 70.02 of this article  
44 OR SUBDIVISION TWO OF SECTION 60.12 OF THIS TITLE upon a conviction of a  
45 class D or class E violent felony offense;

46 (f) such period shall be not less than two and one-half years nor more  
47 than five years whenever a determinate sentence of imprisonment is  
48 imposed pursuant to subdivision three of section 70.02 of this article  
49 OR SUBDIVISION TWO OF SECTION 60.12 OF THIS TITLE upon a conviction of a  
50 class B or class C violent felony offense.

51 S 3. The criminal procedure law is amended by adding a new section  
52 440.47 to read as follows:

53 S 440.47 MOTION FOR RESENTENCE; DOMESTIC VIOLENCE CASES.

54 1. (A) NOTWITHSTANDING ANY CONTRARY PROVISION OF LAW, ANY PERSON  
55 CONFINED IN AN INSTITUTION OPERATED BY THE DEPARTMENT OF CORRECTION AND  
56 COMMUNITY SUPERVISION SERVING A SENTENCE WITH A MINIMUM OR DETERMINATE

1 TERM OF EIGHT YEARS OR MORE FOR AN OFFENSE COMMITTED PRIOR TO SUCH  
2 EFFECTIVE DATE AND ELIGIBLE FOR AN ALTERNATIVE SENTENCE PURSUANT TO  
3 SECTION 60.12 OF THE PENAL LAW MAY, ON OR AFTER THE EFFECTIVE DATE OF  
4 THIS SECTION, SUBMIT TO THE JUDGE OR JUSTICE WHO IMPOSED THE ORIGINAL  
5 SENTENCE UPON SUCH PERSON A REQUEST TO APPLY FOR RESENTENCING IN ACCORD-  
6 ANCE WITH SECTION 60.12 OF THE PENAL LAW. SUCH PERSON MUST INCLUDE IN  
7 HIS OR HER REQUEST DOCUMENTATION PROVING THAT SHE OR HE IS CONFINED IN  
8 AN INSTITUTION OPERATED BY THE DEPARTMENT OF CORRECTIONS AND COMMUNITY  
9 SUPERVISION SERVING A SENTENCE WITH A MINIMUM OR DETERMINATE TERM OF  
10 EIGHT YEARS OR MORE FOR AN OFFENSE COMMITTED PRIOR TO THE EFFECTIVE DATE  
11 OF THIS SECTION AND THAT SHE OR HE IS SERVING SUCH SENTENCE FOR ANY  
12 OFFENSE ELIGIBLE FOR AN ALTERNATIVE SENTENCE UNDER SECTION 60.12 OF THE  
13 PENAL LAW.

14 (B) IF, AT THE TIME OF SUCH PERSON'S REQUEST TO APPLY FOR RESENTENCING  
15 PURSUANT TO THIS SECTION, THE ORIGINAL SENTENCING JUDGE OR JUSTICE IS A  
16 JUDGE OR JUSTICE OF A COURT OF COMPETENT JURISDICTION, BUT SUCH COURT IS  
17 NOT THE COURT IN WHICH THE ORIGINAL SENTENCE WAS IMPOSED, THEN THE  
18 REQUEST SHALL BE RANDOMLY ASSIGNED TO ANOTHER JUDGE OR JUSTICE OF THE  
19 COURT IN WHICH THE ORIGINAL SENTENCE WAS IMPOSED. IF THE ORIGINAL  
20 SENTENCING JUDGE IS NO LONGER A JUDGE OR JUSTICE OF A COURT OF COMPETENT  
21 JURISDICTION, THEN THE REQUEST SHALL BE RANDOMLY ASSIGNED TO ANOTHER  
22 JUDGE OR JUSTICE OF THE COURT.

23 (C) IF THE COURT FINDS THAT SUCH PERSON HAS MET THE REQUIREMENTS TO  
24 APPLY FOR RESENTENCING IN PARAGRAPH A OF SUBDIVISION ONE OF THIS  
25 SECTION, THE COURT SHALL NOTIFY SUCH PERSON THAT HE OR SHE MAY SUBMIT AN  
26 APPLICATION FOR RESENTENCING. UPON SUCH NOTIFICATION, THE PERSON MAY  
27 REQUEST THAT THE COURT ASSIGN HIM OR HER AN ATTORNEY FOR THE PREPARATION  
28 OF AND PROCEEDINGS ON THE APPLICATION FOR RESENTENCING PURSUANT TO THIS  
29 SECTION. THE ATTORNEY SHALL BE ASSIGNED IN ACCORDANCE WITH THE  
30 PROVISIONS OF SUBDIVISION ONE OF SECTION SEVEN HUNDRED SEVENTEEN AND  
31 SUBDIVISION FOUR OF SECTION SEVEN HUNDRED TWENTY-TWO OF THE COUNTY LAW  
32 AND THE RELATED PROVISIONS OF ARTICLE EIGHTEEN-A OF SUCH LAW.

33 (D) IF THE COURT FINDS THAT SUCH PERSON HAS NOT MET THE REQUIREMENTS  
34 TO APPLY FOR RESENTENCING IN PARAGRAPH A OF SUBDIVISION ONE OF THIS  
35 SECTION, THE COURT SHALL NOTIFY SUCH PERSON AND DISMISS HIS OR HER  
36 REQUEST WITHOUT PREJUDICE.

37 2. (A) UPON THE COURT'S RECEIPT OF AN APPLICATION FOR RESENTENCING,  
38 THE COURT SHALL PROMPTLY NOTIFY THE APPROPRIATE DISTRICT ATTORNEY AND  
39 PROVIDE SUCH DISTRICT ATTORNEY WITH A COPY OF THE APPLICATION.

40 (B) IF THE JUDGE OR JUSTICE THAT RECEIVED THE APPLICATION IS NOT THE  
41 ORIGINAL SENTENCING JUDGE OR JUSTICE, THE APPLICATION MAY BE REFERRED TO  
42 THE ORIGINAL SENTENCING JUDGE OR JUSTICE PROVIDED THAT HE OR SHE IS A  
43 JUDGE OR JUSTICE OF A COURT OF COMPETENT JURISDICTION AND THAT THE  
44 APPLICANT AND THE DISTRICT ATTORNEY AGREE THAT THE APPLICATION SHOULD BE  
45 REFERRED.

46 (C) AN APPLICATION FOR RESENTENCING PURSUANT TO THIS SECTION MUST  
47 INCLUDE AT LEAST TWO PIECES OF EVIDENCE CORROBORATING THE APPLICANT'S  
48 CLAIM THAT HE OR SHE WAS, AT THE TIME OF THE OFFENSE, A VICTIM OF DOMES-  
49 TIC VIOLENCE SUBJECTED TO SUBSTANTIAL PHYSICAL, SEXUAL OR PSYCHOLOGICAL  
50 ABUSE INFLICTED BY A MEMBER OF THE SAME FAMILY OR HOUSEHOLD AS THE  
51 APPLICANT AS SUCH TERM IS DEFINED IN SUBDIVISION ONE OF SECTION 530.11  
52 OF THIS CHAPTER.

53 AT LEAST ONE PIECE OF EVIDENCE MUST BE EITHER A COURT RECORD, PRE-SEN-  
54 TENCE REPORT, SOCIAL SERVICES RECORD, HOSPITAL RECORD, SWORN STATEMENT  
55 FROM A WITNESS TO THE DOMESTIC VIOLENCE, LAW ENFORCEMENT RECORD, DOMES-  
56 TIC INCIDENT REPORT, OR ORDER OF PROTECTION. OTHER EVIDENCE MAY

1 INCLUDE, BUT SHALL NOT BE LIMITED TO, LOCAL AND STATE DEPARTMENT OF  
2 CORRECTIONS RECORDS, A SHOWING BASED IN PART ON DOCUMENTATION PREPARED  
3 AT OR NEAR THE TIME OF THE COMMISSION OF THE OFFENSE OR THE PROSECUTION  
4 THEREOF TENDING TO SUPPORT THE PERSON'S CLAIM, OR WHEN THERE IS VERIFI-  
5 CATION OF CONSULTATION WITH A LICENSED MEDICAL OR MENTAL HEALTH CARE  
6 PROVIDER, EMPLOYEE OF A COURT ACTING WITHIN THE SCOPE OF HIS OR HER  
7 EMPLOYMENT, MEMBER OF THE CLERGY, ATTORNEY, SOCIAL WORKER, OR RAPE  
8 CRISIS COUNSELOR AS DEFINED IN SECTION FORTY-FIVE HUNDRED TEN OF THE  
9 CIVIL PRACTICE LAW AND RULES, OR OTHER ADVOCATE ACTING ON BEHALF OF AN  
10 AGENCY THAT ASSISTS VICTIMS OF DOMESTIC VIOLENCE FOR THE PURPOSE OF  
11 ASSISTING SUCH PERSON WITH DOMESTIC VIOLENCE VICTIM COUNSELING OR  
12 SUPPORT.

13 (D) IF THE COURT FINDS THAT THE APPLICANT HAS NOT COMPLIED WITH THE  
14 PROVISIONS OF PARAGRAPH (C) OF THIS SUBDIVISION, THE COURT SHALL DISMISS  
15 THE APPLICATION WITHOUT PREJUDICE.

16 (E) IF THE COURT FINDS THAT THE APPLICANT HAS COMPLIED WITH THE  
17 PROVISIONS OF PARAGRAPH (C) OF THIS SUBDIVISION, THE COURT SHALL CONDUCT  
18 A HEARING TO AID IN MAKING ITS DETERMINATION OF WHETHER THE APPLICANT  
19 SHOULD BE RESENTENCED IN ACCORDANCE WITH SECTION 60.12 OF THE PENAL LAW.  
20 AT SUCH HEARING THE COURT SHALL DETERMINE ANY CONTROVERTED ISSUE OF FACT  
21 RELEVANT TO THE ISSUE OF SENTENCING. RELIABLE HEARSAY SHALL BE ADMISSI-  
22 BLE AT SUCH HEARINGS.

23 THE COURT MAY CONSIDER ANY FACT OR CIRCUMSTANCES RELEVANT TO THE IMPO-  
24 SITION OF A NEW SENTENCE WHICH ARE SUBMITTED BY THE APPLICANT OR THE  
25 DISTRICT ATTORNEY AND MAY, IN ADDITION, CONSIDER THE INSTITUTIONAL  
26 RECORD OF CONFINEMENT OF SUCH PERSON, BUT SHALL NOT ORDER A NEW PRE-SEN-  
27 TENCE INVESTIGATION AND REPORT OR ENTERTAIN ANY MATTER CHALLENGING THE  
28 UNDERLYING BASIS OF THE SUBJECT CONVICTION. THE COURT'S CONSIDERATION OF  
29 THE INSTITUTIONAL RECORD OF CONFINEMENT OF SUCH APPLICANT SHALL INCLUDE,  
30 BUT NOT BE LIMITED TO, SUCH APPLICANT'S PARTICIPATION IN OR WILLINGNESS  
31 TO PARTICIPATE IN PROGRAMMING SUCH AS DOMESTIC VIOLENCE, PARENTING AND  
32 SUBSTANCE ABUSE TREATMENT WHILE INCARCERATED AND SUCH APPLICANT'S DISCI-  
33 PLINARY HISTORY. THE FACT THAT THE APPLICANT MAY HAVE BEEN UNABLE TO  
34 PARTICIPATE IN TREATMENT OR OTHER PROGRAMMING WHILE INCARCERATED DESPITE  
35 SUCH APPLICANT'S WILLINGNESS TO DO SO SHALL NOT BE CONSIDERED A NEGATIVE  
36 FACTOR IN DETERMINING A MOTION PURSUANT TO THIS SECTION.

37 (F) IF THE COURT DETERMINES THAT THE APPLICANT IS NOT ELIGIBLE FOR  
38 RESENTENCING IN ACCORDANCE WITH SECTION 60.12 OF THE PENAL LAW, THE  
39 COURT SHALL INFORM SUCH APPLICANT OF ITS DECISION AND SHALL ENTER AN  
40 ORDER TO THAT EFFECT. ANY ORDER ISSUED BY A COURT PURSUANT TO THIS  
41 SECTION MUST INCLUDE WRITTEN FINDINGS OF FACT AND THE REASONS FOR SUCH  
42 ORDER.

43 (G) IF THE COURT DETERMINES THAT THE APPLICANT SHOULD BE RESENTENCED  
44 IN ACCORDANCE WITH SECTION 60.12 OF THE PENAL LAW, THE COURT SHALL NOTI-  
45 FY THE APPLICANT THAT, UNLESS HE OR SHE WITHDRAWS THE APPLICATION OR  
46 APPEALS FROM SUCH ORDER, THE COURT WILL ENTER AN ORDER VACATING THE  
47 SENTENCE ORIGINALLY IMPOSED AND IMPOSING THE NEW SENTENCE TO BE IMPOSED  
48 AS AUTHORIZED BY SECTION 60.12 OF THE PENAL LAW. ANY ORDER ISSUED BY A  
49 COURT PURSUANT TO THIS SECTION MUST INCLUDE WRITTEN FINDINGS OF FACT AND  
50 THE REASONS FOR SUCH ORDER.

51 3. AN APPEAL MAY BE TAKEN AS OF RIGHT IN ACCORDANCE WITH APPLICABLE  
52 PROVISIONS OF THIS CHAPTER: (A) FROM AN ORDER DENYING RESENTENCING; OR  
53 (B) FROM A NEW SENTENCE IMPOSED UNDER THIS PROVISION AND MAY BE BASED ON  
54 THE GROUNDS THAT (I) THE TERM OF THE NEW SENTENCE IS HARSH OR EXCESSIVE;  
55 OR (II) THAT THE TERM OF THE NEW SENTENCE IS UNAUTHORIZED AS A MATTER OF  
56 LAW. AN APPEAL IN ACCORDANCE WITH THE APPLICABLE PROVISIONS OF THIS

1 CHAPTER MAY ALSO BE TAKEN AS OF RIGHT BY THE APPLICANT FROM AN ORDER  
2 SPECIFYING AND INFORMING SUCH APPLICANT OF THE TERM OF THE DETERMINATE  
3 SENTENCE THE COURT WOULD IMPOSE UPON RESENTENCING ON THE GROUND THAT THE  
4 TERM OF THE PROPOSED SENTENCE IS HARSH OR EXCESSIVE; UPON REMAND TO THE  
5 SENTENCING COURT FOLLOWING SUCH APPEAL THE APPLICANT SHALL BE GIVEN AN  
6 OPPORTUNITY TO WITHDRAW AN APPLICATION FOR RESENTENCING BEFORE ANY  
7 RESENTENCE IS IMPOSED. THE APPLICANT MAY REQUEST THAT THE COURT ASSIGN  
8 HIM OR HER AN ATTORNEY FOR THE PREPARATION OF AND PROCEEDINGS ON ANY  
9 APPEALS REGARDING HIS OR HER APPLICATION FOR RESENTENCING PURSUANT TO  
10 THIS SECTION. THE ATTORNEY SHALL BE ASSIGNED IN ACCORDANCE WITH THE  
11 PROVISIONS OF SUBDIVISION ONE OF SECTION SEVEN HUNDRED SEVENTEEN AND  
12 SUBDIVISION FOUR OF SECTION SEVEN HUNDRED TWENTY-TWO OF THE COUNTY LAW  
13 AND THE RELATED PROVISIONS OF ARTICLE EIGHTEEN-A OF SUCH LAW.

14 4. IN CALCULATING THE NEW TERM TO BE SERVED BY THE APPLICANT PURSUANT  
15 TO SECTION 60.12 OF THE PENAL LAW, SUCH APPLICANT SHALL BE CREDITED FOR  
16 ANY JAIL TIME CREDITED TOWARDS THE SUBJECT CONVICTION AS WELL AS ANY  
17 PERIOD OF INCARCERATION CREDITED TOWARD THE SENTENCE ORIGINALLY IMPOSED.

18 S 4. Subdivision 1 of section 450.90 of the criminal procedure law, as  
19 amended by section 10 of part AAA of chapter 56 of the laws of 2009, is  
20 amended to read as follows:

21 1. Provided that a certificate granting leave to appeal is issued  
22 pursuant to section 460.20, an appeal may, except as provided in subdi-  
23 vision two, be taken to the court of appeals by either the defendant or  
24 the people from any adverse or partially adverse order of an intermedi-  
25 ate appellate court entered upon an appeal taken to such intermediate  
26 appellate court pursuant to section 450.10, 450.15, or 450.20, or from  
27 an order granting or denying a motion to set aside an order of an inter-  
28 mediate appellate court on the ground of ineffective assistance or  
29 wrongful deprivation of appellate counsel, or by either the defendant or  
30 the people from any adverse or partially adverse order of an intermedi-  
31 ate appellate court entered upon an appeal taken to such intermediate  
32 appellate court from an order entered pursuant to section 440.46 OR  
33 SECTION 440.47 of this chapter. An order of an intermediate appellate  
34 court is adverse to the party who was the appellant in such court when  
35 it affirms the judgment, sentence or order appealed from, and is adverse  
36 to the party who was the respondent in such court when it reverses the  
37 judgment, sentence or order appealed from. An appellate court order  
38 which modifies a judgment or order appealed from is partially adverse to  
39 each party.

40 S 5. Paragraph (a) of subdivision 2 of section 390.50 of the criminal  
41 procedure law, as amended by section 5 of part OO of chapter 56 of the  
42 laws of 2010, is amended to read as follows:

43 (a) Not less than one court day prior to sentencing, unless such time  
44 requirement is waived by the parties, the pre-sentence report or memo-  
45 randum shall be made available by the court for examination and for  
46 copying by the defendant's attorney, the defendant himself, if he has no  
47 attorney, and the prosecutor. In its discretion, the court may except  
48 from disclosure a part or parts of the report or memoranda which are not  
49 relevant to a proper sentence, or a diagnostic opinion which might seri-  
50 ously disrupt a program of rehabilitation, or sources of information  
51 which have been obtained on a promise of confidentiality, or any other  
52 portion thereof, disclosure of which would not be in the interest of  
53 justice. In all cases where a part or parts of the report or memoranda  
54 are not disclosed, the court shall state for the record that a part or  
55 parts of the report or memoranda have been excepted and the reasons for  
56 its action. The action of the court excepting information from disclo-

1 sure shall be subject to appellate review. The pre-sentence report shall  
2 be made available by the court for examination and copying in connection  
3 with any appeal in the case, including an appeal under this subdivision.  
4 Upon written request, the court shall make a copy of the presentence  
5 report, other than a part or parts of the report redacted by the court  
6 pursuant to this paragraph, available to the defendant for use before  
7 the parole board for release consideration or an appeal of a parole  
8 board determination OR AN APPLICATION FOR RESENTENCING PURSUANT TO  
9 SECTION 440.46 OR 440.47 OF THIS CHAPTER. In his or her written request  
10 to the court the defendant shall affirm that he or she anticipates an  
11 appearance before the parole board or intends to file an administrative  
12 appeal of a parole board determination OR MEETS THE ELIGIBILITY CRITERIA  
13 FOR AND INTENDS TO FILE A MOTION FOR RESENTENCING PURSUANT TO 440.46 OF  
14 THIS CHAPTER OR HAS RECEIVED NOTIFICATION FROM THE COURT WHICH RECEIVED  
15 HIS OR HER REQUEST TO APPLY FOR RESENTENCING PURSUANT TO SECTION 440.47  
16 OF THIS CHAPTER CONFIRMING THAT HE OR SHE IS ELIGIBLE TO SUBMIT AN  
17 APPLICATION FOR RESENTENCING PURSUANT TO SECTION 440.47 OF THIS CHAPTER.  
18 The court shall respond to the defendant's written request within twenty  
19 days from receipt of the defendant's written request.

20 S 6. This act shall take effect on the one hundred twentieth day after  
21 it shall have become a law.