

4314--B

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, ZEBROWSKI, O'DONNELL, PRETLOW, JAFFEE, CRESPO, SCHIMEL, MAGNARELLI, MOSLEY -- Multi-Sponsored by -- M. of A. ARROYO, BRENNAN, FAHY, 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 -- again reported from said committee with amendments, 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 7. WHERE A COURT WOULD OTHERWISE BE REQUIRED TO IMPOSE A SENTENCE
17 PURSUANT TO SUBDIVISION THREE OF SECTION 70.06 OF THIS TITLE, WHERE THE
18 PRIOR FELONY CONVICTION WAS FOR A FELONY OFFENSE DEFINED IN SECTION
19 70.02 OF THIS TITLE, THE COURT MAY IMPOSE A SENTENCE IN ACCORDANCE WITH
20 THE PROVISIONS OF SUBDIVISION FOUR OF SECTION 70.70 OF THIS TITLE.

21 S 2. Paragraphs (a), (b), (c), (d), (e) and (f) of subdivision 2 of
22 section 70.45 of the penal law, as amended by chapter 7 of the laws of
23 2007, are amended to read as follows:

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

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

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

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

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

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

53 S 3. The criminal procedure law is amended by adding a new section
54 440.47 to read as follows:

55 S 440.47 MOTION FOR RESENTENCE; DOMESTIC VIOLENCE CASES.

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

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

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

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

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

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

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

1 AT LEAST ONE PIECE OF EVIDENCE MUST BE EITHER A COURT RECORD, PRE-SEN-
2 TENCE REPORT, SOCIAL SERVICES RECORD, HOSPITAL RECORD, SWORN STATEMENT
3 FROM A WITNESS TO THE DOMESTIC VIOLENCE, LAW ENFORCEMENT RECORD, DOMES-
4 TIC INCIDENT REPORT, OR ORDER OF PROTECTION. OTHER EVIDENCE MAY
5 INCLUDE, BUT SHALL NOT BE LIMITED TO, LOCAL AND STATE DEPARTMENT OF
6 CORRECTIONS RECORDS, A SHOWING BASED IN PART ON DOCUMENTATION PREPARED
7 AT OR NEAR THE TIME OF THE COMMISSION OF THE OFFENSE OR THE PROSECUTION
8 THEREOF TENDING TO SUPPORT THE PERSON'S CLAIM, OR WHEN THERE IS VERIFI-
9 CATION OF CONSULTATION WITH A LICENSED MEDICAL OR MENTAL HEALTH CARE
10 PROVIDER, EMPLOYEE OF A COURT ACTING WITHIN THE SCOPE OF HIS OR HER
11 EMPLOYMENT, MEMBER OF THE CLERGY, ATTORNEY, SOCIAL WORKER, OR RAPE
12 CRISIS COUNSELOR AS DEFINED IN SECTION FORTY-FIVE HUNDRED TEN OF THE
13 CIVIL PRACTICE LAW AND RULES, OR OTHER ADVOCATE ACTING ON BEHALF OF AN
14 AGENCY THAT ASSISTS VICTIMS OF DOMESTIC VIOLENCE FOR THE PURPOSE OF
15 ASSISTING SUCH PERSON WITH DOMESTIC VIOLENCE VICTIM COUNSELING OR
16 SUPPORT.

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

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

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

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

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

55 3. AN APPEAL MAY BE TAKEN AS OF RIGHT IN ACCORDANCE WITH APPLICABLE
56 PROVISIONS OF THIS CHAPTER: (A) FROM AN ORDER DENYING RESENTENCING; OR

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

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

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

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

44 S 5. Paragraph (a) of subdivision 2 of section 390.50 of the criminal
45 procedure law, as amended by section 5 of part 00 of chapter 56 of the
46 laws of 2010, is amended to read as follows:

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

1 justice. In all cases where a part or parts of the report or memoranda
2 are not disclosed, the court shall state for the record that a part or
3 parts of the report or memoranda have been excepted and the reasons for
4 its action. The action of the court excepting information from disclo-
5 sure shall be subject to appellate review. The pre-sentence report shall
6 be made available by the court for examination and copying in connection
7 with any appeal in the case, including an appeal under this subdivision.
8 Upon written request, the court shall make a copy of the presentence
9 report, other than a part or parts of the report redacted by the court
10 pursuant to this paragraph, available to the defendant for use before
11 the parole board for release consideration or an appeal of a parole
12 board determination OR AN APPLICATION FOR RESENTENCING PURSUANT TO
13 SECTION 440.46 OR 440.47 OF THIS CHAPTER. In his or her written request
14 to the court the defendant shall affirm that he or she anticipates an
15 appearance before the parole board or intends to file an administrative
16 appeal of a parole board determination OR MEETS THE ELIGIBILITY CRITERIA
17 FOR AND INTENDS TO FILE A MOTION FOR RESENTENCING PURSUANT TO 440.46 OF
18 THIS CHAPTER OR HAS RECEIVED NOTIFICATION FROM THE COURT WHICH RECEIVED
19 HIS OR HER REQUEST TO APPLY FOR RESENTENCING PURSUANT TO SECTION 440.47
20 OF THIS CHAPTER CONFIRMING THAT HE OR SHE IS ELIGIBLE TO SUBMIT AN
21 APPLICATION FOR RESENTENCING PURSUANT TO SECTION 440.47 OF THIS CHAPTER.
22 The court shall respond to the defendant's written request within twenty
23 days from receipt of the defendant's written request.
24 S 6. This act shall take effect on the one hundred eightieth day after
25 it shall have become a law.