STATE OF NEW YORK

4881

2017-2018 Regular Sessions

IN ASSEMBLY

February 3, 2017

Introduced by M. of A. CRESPO, NOLAN, GLICK, DINOWITZ, KAVANAGH, ROSENTHAL, ABINANTI, MOYA, SIMOTAS, QUART, SEAWRIGHT, SIMON -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to reducing certain sentences of imprisonment for misdemeanors to three hundred sixty-four days

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

Section 1. Subdivisions 1 and 3 of section 70.15 of the penal law, subdivision 1 as amended by chapter 291 of the laws of 1993, are amended to read as follows:

1. Class A misdemeanor. A sentence of imprisonment for a class A misdemeanor shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and shall not exceed [~~one year~~] **three hundred sixty-four days**; provided, however, that a sentence of imprisonment imposed upon a conviction of criminal possession of a weapon in the fourth degree as defined in subdivision one of section 265.01 must be for a period of no less than [~~one year~~] **three hundred sixty-four days** when the conviction was the result of a plea of guilty entered in satisfaction of an indictment or any count thereof charging the defendant with the class D violent felony offense of criminal possession of a weapon in the third degree as defined in subdivision four of section 265.02, except that the court may impose any other sentence authorized by law upon a person who has not been previously convicted in the five years immediately preceding the commission of the offense for a felony or a class A misdemeanor defined in this chapter, if the court having regard to the nature and circumstances of the crime and to the history and character of the defendant, finds on the record that such sentence would be unduly harsh and that the alternative sentence would be consistent with public safety and does not deprecate the seriousness of the crime.

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

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3. Unclassified misdemeanor. A sentence of imprisonment for an unclassified misdemeanor shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and shall be in accordance with the sentence specified in the law or ordinance that defines the crime **but, in any event, it shall not exceed three hundred sixty-four days**.

§ 2. Section 70.15 of the penal law is amended by adding a new subdivision 1-a to read as follows:

1-a. (a) Notwithstanding the provisions of any other law, whenever the phrase "one year" or "three hundred sixty-five days" or "365 days" or any similar phrase appears in any provision of this chapter or any other law in reference to the definite sentence or maximum definite sentence of imprisonment that is imposed, or has been imposed, or may be imposed after enactment of this subdivision, for a misdemeanor conviction in this state, such phrase shall mean, be interpreted and be applied as three hundred sixty-four days.

(b) The amendatory provisions of this subdivision are ameliorative and shall apply to all persons who are sentenced before, on or after the effective date of this subdivision, for a crime committed before, on or after the effective date of this subdivision.

(c) Any sentence for a misdemeanor conviction imposed prior to the effective date of this subdivision that is a definite sentence of imprisonment of one year, or three hundred sixty-five days, shall, by operation of law, be changed to, mean and be interpreted and applied as a sentence of three hundred sixty-four days. In addition to any other right of a person to obtain a record of a proceeding against him or her, a person so sentenced prior to the effective date of this subdivision shall be entitled to obtain, from the criminal court or the clerk thereof, a certificate of conviction, as described in subdivision one of section 60.60 of the criminal procedure law, setting forth such sentence as the sentence specified in this paragraph.

§ 3. This act shall take effect immediately.