

# STATE OF NEW YORK

5964

2019-2020 Regular Sessions

## IN ASSEMBLY

February 20, 2019

Introduced by M. of A. CRESPO -- read once and referred to the Committee on Codes

AN ACT to amend the penal law and the criminal procedure 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:

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

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

23 3. Unclassified misdemeanor. A sentence of imprisonment for an unclas-  
24 sified misdemeanor shall be a definite sentence. When such a sentence is

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

LBD05291-07-9

1 imposed the term shall be fixed by the court, and shall be in accordance  
2 with the sentence specified in the law or ordinance that defines the  
3 crime but, in any event, it shall not exceed three hundred sixty-four  
4 days.

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

7 1-a. (a) Notwithstanding the provisions of any other law, whenever the  
8 phrase "one year" or "three hundred sixty-five days" or "365 days" or  
9 any similar phrase appears in any provision of this chapter or any other  
10 law in reference to the definite sentence or maximum definite sentence  
11 of imprisonment that is imposed, or has been imposed, or may be imposed  
12 after enactment of this subdivision, for a misdemeanor conviction in  
13 this state, such phrase shall mean, be interpreted and be applied as  
14 three hundred sixty-four days.

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

19 (c) Any sentence for a misdemeanor conviction imposed prior to the  
20 effective date of this subdivision that is a definite sentence of impri-  
21 sonment of one year, or three hundred sixty-five days, shall, by opera-  
22 tion of law, be changed to, mean and be interpreted and applied as a  
23 sentence of three hundred sixty-four days. In addition to any other  
24 right of a person to obtain a record of a proceeding against him or her,  
25 a person so sentenced prior to the effective date of this subdivision  
26 shall be entitled to obtain, from the criminal court or the clerk there-  
27 of, a certificate of conviction, as described in subdivision one of  
28 section 60.60 of the criminal procedure law, setting forth such sentence  
29 as the sentence specified in this paragraph.

30 (d) Any sentence for a misdemeanor conviction imposed prior to the  
31 effective date of this subdivision that is other than a definite  
32 sentence of imprisonment of one year may be set aside, upon motion of  
33 the defendant under section 440.20 of the criminal procedure law based  
34 on a showing that the judgment and sentence under the law in effect at  
35 the time of conviction imposed prior to the effective date of this  
36 subdivision is likely to result in severe collateral consequences, in  
37 order to permit the court to resentence the defendant in accordance with  
38 the amendatory provisions of this subdivision.

39 (e) Resentence by operation of law is without prejudice to an individ-  
40 ual seeking further relief pursuant to paragraph (i) of subdivision one  
41 of section 440.10 of the criminal procedure law. Nothing in this section  
42 is intended to diminish or abrogate any rights or remedies otherwise  
43 available to the individual.

44 § 3. Paragraph (i) of subdivision 1 of section 440.10 of the criminal  
45 procedure law, as amended by chapter 368 of the laws of 2015, the open-  
46 ing paragraph as amended by chapter 189 of the laws of 2018, is amended  
47 and a new paragraph (j) is added to read as follows:

48 (i) The judgment is a conviction where the arresting charge was under  
49 section 240.37 (loitering for the purpose of engaging in a prostitution  
50 offense, provided that the defendant was not alleged to be loitering for  
51 the purpose of patronizing a person for prostitution or promoting pros-  
52 titution) or 230.00 (prostitution) or 230.03 (prostitution in a school  
53 zone) of the penal law, and the defendant's participation in the offense  
54 was a result of having been a victim of sex trafficking under section  
55 230.34 of the penal law, sex trafficking of a child under section  
56 230.34-a of the penal law, labor trafficking under section 135.35 of the

1 penal law, aggravated labor trafficking under section 135.37 of the  
2 penal law, compelling prostitution under section 230.33 of the penal  
3 law, or trafficking in persons under the Trafficking Victims Protection  
4 Act (United States Code, title 22, chapter 78); provided that

5 (i) a motion under this paragraph shall be made with due diligence,  
6 after the defendant has ceased to be a victim of such trafficking or  
7 compelling prostitution crime or has sought services for victims of such  
8 trafficking or compelling prostitution crime, subject to reasonable  
9 concerns for the safety of the defendant, family members of the defend-  
10 ant, or other victims of such trafficking or compelling prostitution  
11 crime that may be jeopardized by the bringing of such motion, or for  
12 other reasons consistent with the purpose of this paragraph; and

13 (ii) official documentation of the defendant's status as a victim of  
14 trafficking, compelling prostitution or trafficking in persons at the  
15 time of the offense from a federal, state or local government agency  
16 shall create a presumption that the defendant's participation in the  
17 offense was a result of having been a victim of sex trafficking, compel-  
18 ling prostitution or trafficking in persons, but shall not be required  
19 for granting a motion under this paragraph[-]; or

20 (j) The judgment is a conviction for a class A or unclassified misde-  
21 meanor entered prior to the effective date of this paragraph and satis-  
22 fies the ground prescribed in paragraph (h) of this subdivision. There  
23 shall be a rebuttable presumption that a conviction by plea to such an  
24 offense was not knowing and voluntary, based on severe or ongoing colla-  
25 teral consequences, including potential or actual immigration conse-  
26 quences, and there shall be a rebuttable presumption that a conviction  
27 by verdict constitutes cruel and unusual punishment under section five  
28 of article one of the state constitution based on such consequences.

29 § 4. Section 440.10 of the criminal procedure law is amended by adding  
30 a new subdivision 9 to read as follows:

31 9. Upon granting of such a motion, the court may either:

32 (a) With the consent of the people, vacate the judgment or modify the  
33 judgment by reducing it to one of conviction for a lesser offense; or

34 (b) Vacate the judgment and order a new trial wherein the defendant  
35 enters a plea to the same offense in order to permit the court to resen-  
36 tence the defendant in accordance with the amendatory provisions of  
37 subdivision one-a of section 70.15 of the penal law.

38 § 5. This act shall take effect immediately.