

# STATE OF NEW YORK

1825

2019-2020 Regular Sessions

## IN SENATE

January 16, 2019

Introduced by Sen. RAMOS -- read twice and ordered printed, and when printed to be committed 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.

3. Unclassified misdemeanor. A sentence of imprisonment for an unclassified 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.

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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 § 3. This act shall take effect immediately.