

# STATE OF NEW YORK

1825--A

2019-2020 Regular Sessions

## IN SENATE

January 16, 2019

Introduced by Sens. RAMOS, BENJAMIN, BIAGGI, COMRIE, LIU, MYRIE, SALAZAR, SEPULVEDA -- read twice and ordered printed, and when printed to be committed 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 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 guilty~~  
11 ~~entered in satisfaction of an indictment or any count thereof charging~~  
12 ~~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~~

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

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1 ~~sentence would be consistent with public safety and does not deprecate~~  
2 ~~the seriousness of the crime]~~ three hundred sixty-four days.

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

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

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

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

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

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

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

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

52 (i) The judgment is a conviction where the arresting charge was under  
53 section 240.37 (loitering for the purpose of engaging in a prostitution  
54 offense, provided that the defendant was not alleged to be loitering for  
55 the purpose of patronizing a person for prostitution or promoting pros-  
56 titution) or 230.00 (prostitution) or 230.03 (prostitution in a school

1 zone) of the penal law, and the defendant's participation in the offense  
2 was a result of having been a victim of sex trafficking under section  
3 230.34 of the penal law, sex trafficking of a child under section  
4 230.34-a of the penal law, labor trafficking under section 135.35 of the  
5 penal law, aggravated labor trafficking under section 135.37 of the  
6 penal law, compelling prostitution under section 230.33 of the penal  
7 law, or trafficking in persons under the Trafficking Victims Protection  
8 Act (United States Code, title 22, chapter 78); provided that

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

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

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

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

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

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

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

42 § 5. This act shall take effect immediately.