

# STATE OF NEW YORK

8894

## IN ASSEMBLY

January 19, 2022

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

AN ACT to amend the criminal procedure law, in relation to authorizing certain persons confined in institutions operated by the department of corrections and community supervision to apply for a sentence reduction

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

1 Section 1. The criminal procedure law is amended by adding a new  
2 section 440.45 to read as follows:

3 § 440.45 Application for sentence reduction.

4 1. (a) Notwithstanding any other provision of law, including any mini-  
5 imum sentence requirement, any person confined in an institution operated  
6 by the department of corrections and community supervision who has  
7 served ten years of their sentence, or one-half of the minimum term of  
8 an indeterminate sentence where the minimum term equals or exceeds ten  
9 years, or one-half of a determinate sentence where the sentence equals  
10 or exceeds ten years, whichever is less, may apply for a reduction of  
11 their sentence pursuant to the provisions of this statute. For the  
12 purposes of this subdivision, the term "sentence" shall include any  
13 aggregate sentence where consecutive sentences are imposed.

14 (b) Notwithstanding paragraph (a) of this subdivision, an otherwise  
15 ineligible person shall be deemed eligible to apply for a reduction in  
16 sentence upon consent of the prosecutor in the underlying criminal  
17 action in which the sentence was imposed.

18 (c) Notwithstanding paragraph (a) of this subdivision, the prosecutor  
19 in the underlying criminal action in which a sentence was imposed may  
20 initiate an application for resentencing on behalf of the incarcerated  
21 person and upon such application an attorney shall be assigned to repre-  
22 sent the incarcerated person in proceedings pursuant to this section.

23 (d) No waiver of the right to make an application for a sentence  
24 reduction under this section shall be permitted or honored by the  
25 sentencing court. Any such waiver shall be deemed void and unenforcea-  
26 ble.

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

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1 (e) No less than thirty days before the date on which the person  
2 becomes eligible pursuant to paragraph (a) of this subdivision to apply  
3 for a sentence reduction, the department of corrections and community  
4 supervision shall provide written notice of this section and its  
5 provisions to:

6 (i) the defendant;

7 (ii) the attorney of record;

8 (iii) the administrator of the county panel established for purposes  
9 of the administration of article eighteen-B of the county law and all  
10 institutional offices that provide criminal defense services within the  
11 county in which the sentence was imposed;

12 (iv) Prisoners' Legal Services of New York;

13 (v) the sentencing court;

14 (vi) the prosecutor in the underlying criminal action in which the  
15 sentence was imposed; and

16 (vii) the district attorney in the county in which the sentence was  
17 imposed.

18 (f) A person who is eligible for a sentence reduction pursuant to this  
19 subdivision may request that the court assign him or her an attorney for  
20 the preparation of and proceedings on the application for resentencing  
21 pursuant to this section. The attorney shall be assigned in accordance  
22 with the provisions of subdivision one of section seven hundred seven-  
23 teen and subdivision four of section seven hundred twenty-two of the  
24 county law and the related provisions of article eighteen-A of such law  
25 for the application and any proceedings under this section, including  
26 any appeal and successive application. The court shall notify the appli-  
27 cant about the appointment of counsel.

28 2. (a) An application for a sentence reduction under this section  
29 shall be filed in the county in which the sentence was imposed to reduce  
30 the sentence of the applicant pursuant to this section and may include  
31 affidavits, letters, declarations, records from the department of  
32 corrections and community supervision, video submissions, or any other  
33 written or electronic material.

34 (b) Upon the court's receipt of an application for a sentence  
35 reduction, the court shall promptly notify the appropriate prosecutor  
36 and provide such prosecutor with a copy of the application.

37 (c) An application filed pursuant to this section shall be randomly  
38 assigned by the administrative judge designated by the office of court  
39 administration with jurisdiction over the county where the application  
40 is filed to any superior court judge with criminal jurisdiction other  
41 than the judge who first sentenced the applicant unless the judge who  
42 first sentenced the applicant is the only judge in that county.

43 (d) An application filed under this section may be amended or supple-  
44 mented as necessary.

45 (e) After the filing of an application to reduce a sentence under this  
46 section, the court may direct the parties to expand the record by  
47 submitting additional written materials relating to the application.

48 (f) (i) The court shall, upon request of the applicant or the prose-  
49 cuting office, conduct a hearing on the application, at which the appli-  
50 cant and counsel for the applicant shall be given the opportunity to be  
51 heard. Such hearing shall be recorded or transcribed. The applicant has  
52 the right to be present at any such hearing unless the applicant waives  
53 the right to be present in writing.

54 (ii) In a hearing pursuant to subparagraph (i) of this paragraph, the  
55 court shall allow parties to present any evidence pertinent to the issue  
56 of a sentence reduction and the factors outlined in paragraph (b) of

1 subdivision four of this section. Such evidence may include documents,  
2 live testimony, tangible objects, or any other class of evidence or  
3 information pertinent to sentencing. At such hearing, the applicant  
4 shall have the right to make a statement personally, on their own  
5 behalf, in the same manner as provided in subdivision one of section  
6 380.50 of this part.

7 3. (a) Notwithstanding any other provision of law, a court shall  
8 reduce a term of imprisonment imposed upon a defendant if:

9 (i) the applicant is eligible pursuant to subdivision one of this  
10 section; and

11 (ii) the court finds, after considering the factors set forth in  
12 subdivision four of this section, that the interests of justice warrant  
13 a sentence modification.

14 (b) (i) Notwithstanding any other provision of law, when reducing an  
15 applicant's sentence under this section, the court may issue a sentence  
16 less than the minimum term otherwise required by article seventy of the  
17 penal law. Otherwise, the applicable provisions in article seventy of  
18 the penal law in effect at the time of the sentence reduction shall  
19 apply.

20 (ii) Notwithstanding any other provision of law, when reducing an  
21 applicant's sentence under this section, the court may issue a sentence  
22 to be served concurrently to any other sentence of imprisonment, being  
23 served by the applicant.

24 (iii) Notwithstanding any other provision of law, when reducing an  
25 applicant's sentence under this section, the court may sentence the  
26 applicant to a less than minimum term of supervised release otherwise  
27 required by law.

28 (c) In ordering a sentence reduction, the court shall, unless counter-  
29 vailing considerations require, reduce the applicant's sentence so that  
30 the applicant will be eligible for immediate release from prison after  
31 the necessary calculations.

32 (d) The court may not increase any applicant's sentence, and if the  
33 original judgment was the result of a plea agreement, resentencing  
34 pursuant to this section shall not constitute grounds for a prosecutor  
35 or the court to withdraw their agreement to the original plea agreement.

36 4. (a) There shall be a rebuttable presumption that the applicant's  
37 sentence shall be reduced in the case of:

38 (i) an applicant who is fifty-five years of age or older on the date  
39 on which the applicant files an application for a sentence reduction  
40 pursuant to subdivision one of this section; or

41 (ii) an applicant who was twenty-five years old or younger on the date  
42 on which the applicant committed the offense or offenses for which the  
43 applicant is imprisoned.

44 (b) The court, in determining whether to reduce a term of imprisonment  
45 pursuant to subdivision three of this section, shall consider the  
46 following factors:

47 (i) the history and characteristics of the applicant at the time of  
48 the application for a reduction in sentence, including but not limited  
49 to:

50 (1) any history of abuse, trauma, or involvement in the child welfare  
51 system;

52 (2) the potential benefits to children and family members of reunifi-  
53 cation with the applicant;

54 (3) rehabilitation demonstrated by the applicant;

55 (4) the applicant's records while incarcerated; and

(5) the applicant's efforts to participate in educational, therapeutic, and vocational opportunities while incarcerated to the extent such programs were available; provided however that the fact that the applicant may have been unable to participate in treatment or other programming while incarcerated despite such applicant's willingness to do so shall not be considered a negative factor in determining an application pursuant to this section;

(ii) the circumstances of the offense, including the applicant's role in its commission, whether the applicant was under the influence of another, and whether there is any other factor that would tend to diminish the applicant's culpability;

(iii) any report from a physical, mental, or psychiatric examination of the applicant conducted by a licensed healthcare professional;

(iv) any statement offered in response to this application by any victim of an offense for which the applicant is imprisoned or by a family member of the victim if the victim is deceased;

(v) any evidence concerning whether the applicant's sentence was enhanced because the applicant exercised their constitutional right to a trial, including but not limited to, evidence concerning the plea offers made prior to the trial;

(vi) any presentation of argument and evidence by counsel for the applicant or by the applicant;

(vii) any presentation of argument and evidence by the prosecutor; and

(viii) the financial cost of continued incarceration to the state and/or localities.

5. A written order determining an application for reduction of sentence shall issue forthwith and in no event later than thirty days after any hearing or after all submissions have been filed if no hearing is held. Such an order shall include detailed written findings of fact and the reasons for granting or denying the application.

6. In calculating any new sentence to be served by the applicant, such applicant shall be credited for any jail time credited towards the subject convictions as well as any period of incarceration credited toward the sentence or sentences originally imposed.

7. An appeal may be taken as of right in accordance with applicable provisions of this chapter:

(a) from an order denying the application for a sentence reduction; or

(b) from a new sentence imposed under this section and may be based on the grounds that:

(i) the term of the new sentence is harsh or excessive; or

(ii) the term of the new sentence is unauthorized as a matter of law.

8. The applicant shall be permitted to file successive applications and such applications shall not be considered more than once every three years.

9. (a) This section shall not be construed to abridge or modify any existing remedy an incarcerated individual may have under habeas corpus, statutory or judicial postconviction relief, or any other legal framework.

(b) An application under this section shall not impact in any way or be impacted in any way by any pending habeas or other postconviction proceeding, nor shall the denial of an application under this section preclude such remedies from being granted.

10. In three years, the comptroller shall conduct an analysis of savings found from decarceration and shall make recommendations to the legislature regarding diverting such savings to fund prison-based and community-based programs designed to counter recidivism through educa-

1 tion, therapeutic intervention, maintenance of familial and social  
2 networks, restorative justice practices for survivors of crimes, and  
3 successful post-custodial re-entry to society.

4 11. (a) The clerk of the court upon determination of an application  
5 filed pursuant to this section shall report the following information to  
6 the office of court administration:

7 (i) the name, department identification number, and race of each  
8 incarcerated person who has been denied or granted resentencing;

9 (ii) how many years of imprisonment each incarcerated person served at  
10 the time of the application;

11 (iii) any new sentence if applicable;

12 (iv) the county and the name of the judge deciding the application;

13 (v) whether the prosecutor consented, opposed or took no position on  
14 the application; and

15 (vi) if any prior applications had been submitted and the date such  
16 applications were decided.

17 (b) The office of court administration shall provide an annual collec-  
18 tive report containing the information received from the clerks of the  
19 court pursuant to paragraph (a) of this subdivision to the governor and  
20 legislature.

21 § 2. Any applicant who is immediately eligible to apply for a sentence  
22 reduction pursuant to section 440.45 of the criminal procedure law shall  
23 be provided the notice required pursuant to paragraph (d) of subdivision  
24 one of such section within sixty days of the effective date of this act.

25 § 3. This act shall take effect immediately and shall apply to  
26 offenses committed prior to, on or after the effective date of this act.