

# STATE OF NEW YORK

5091

2023-2024 Regular Sessions

## IN SENATE

February 22, 2023

Introduced by Sen. CLEARE -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to authorizing courts to reduce or modify sentences for certain individuals when such sentence is deemed to be greater than necessary to achieve the purposes of sentencing

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

1 Section 1. Section 440.20 of the criminal procedure law is amended by  
2 adding a new subdivision 5 to read as follows:

3 5. (a) Upon motion of an eligible individual, the court in which judg-  
4 ment was entered may reduce or modify the sentence on the ground that  
5 such sentence is greater than necessary to achieve the purposes of  
6 sentencing. Subdivision two of this section shall not apply to a motion  
7 brought under this subdivision.

8 (b) An individual is eligible for relief under this subdivision when  
9 he or she:

10 (i) has been convicted, either by plea or verdict, of a felony offense  
11 and is in the custody of the department of corrections and community  
12 supervision;

13 (ii) is more than two years away from conditional release at time of  
14 filing the motion;

15 (iii) was sentenced to an indeterminate term with an aggregate minimum  
16 term of ten years or more or an aggregate determinate term of ten years  
17 or more;

18 (iv) has served (1) at least one-third of the aggregate minimum term  
19 of an indeterminate sentence or at least one-third of an aggregate  
20 determinate sentence, or (2) where the individual is serving two or more  
21 sentences that run consecutively, the time required to be served for  
22 eligibility under subparagraph (i) of this paragraph or eight and one-  
23 third years, whichever is less;

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

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1 (v) is not currently serving a sentence for: an offense defined in  
2 article one hundred twenty-five, one hundred thirty or two hundred  
3 sixty-three of the penal law; or money laundering in support of terror-  
4 ism in the first degree as defined in section 470.24 of the penal law;  
5 or money laundering in support of terrorism in the second degree as  
6 defined in section 470.23 of the penal law; or a felony crime of terror-  
7 ism as defined in article four hundred ninety of the penal law, other  
8 than the crime defined in section 490.20 of such law;

9 (vi) is not currently serving a sentence for an offense that included  
10 as an element the infliction of serious physical injury; except that  
11 this subparagraph shall not apply when the individual's criminal liabil-  
12 ity for the offense was based solely on the physical actions or conduct  
13 of another pursuant to section 20.00 of the penal law; or

14 (vii) if defendant has appealed from a judgment or sentence that is  
15 the subject of relief pursuant to this section, such appeal has been  
16 finally determined. Nothing in this subparagraph shall be construed to  
17 require that the defendant has taken a direct appeal in order to be  
18 eligible for relief pursuant to this section.

19 (c) Notwithstanding the provisions of paragraph (b) of this subdivi-  
20 sion, an otherwise ineligible individual shall be deemed eligible upon  
21 consent of the district attorney.

22 (d) An individual who is serving the minimum sentence permitted under  
23 the penal law shall not be eligible under this subdivision.

24 (e) A motion brought pursuant to this subdivision shall be referred  
25 for determination to the judge or justice who imposed the original  
26 sentence upon such individual. If, at the time of the application, the  
27 original sentencing judge or justice is no longer a judge or justice of  
28 a court of competent jurisdiction, then the application shall be  
29 assigned to another judge or justice of the court by the administrative  
30 judge of the applicable court.

31 (f) In deciding the motion, the court shall consider the principles of  
32 rehabilitation, punishment and deterrence, the rehabilitation demon-  
33 strated by the defendant, and the promotion of the individual's success-  
34 ful reentry and reintegration into society, as well as public safety.  
35 The court may consider any facts or circumstances relevant to the impo-  
36 sition of a new sentence that are submitted by such individual or the  
37 district attorney, including, but not limited to:

38 (i) age, personal circumstances, and medical condition, including  
39 conditions that existed at the time of the original sentencing;

40 (ii) the defendant's institutional record of confinement; and

41 (iii) whether the individual has availed himself or herself of educa-  
42 tional, therapeutic, and vocational opportunities while imprisoned.

43 (g) The court shall not order a new pre-sentence investigation and  
44 report. The court shall offer the defendant an opportunity for a hear-  
45 ing. If the court finds that the sentence is greater than necessary to  
46 achieve the purposes of sentencing, the court shall grant the motion and  
47 enter an order modifying the sentence to any lesser authorized term of  
48 imprisonment. The order may also direct that the new sentence run  
49 concurrently with any other term of imprisonment being served by the  
50 individual. The court shall place its reasons on the record for modifi-  
51 cation of the sentence, or denial of modification.

52 (h) In the event that an individual is denied relief under this subdivi-  
53 sion, or in the event that the individual is denied the full reduction  
54 sought, he or she may bring a new motion at any time after three years  
55 from the date of denial of the previous motion.

1 (i) An appeal to an intermediate appellate court may be taken as of  
2 right from an order denying a motion made pursuant to this subdivision.

3 (j) No defendant shall be required or permitted to waive eligibility  
4 for relief pursuant to this section as part of a plea of guilty,  
5 sentence or any agreement related to a conviction for a felony offense,  
6 and any such waiver shall be deemed void and wholly unenforceable.

7 (k) An order modifying the sentence pursuant to this section shall not  
8 affect the validity or status of the underlying conviction.

9 (l) Subdivision one of section seven hundred seventeen and subdivision  
10 four of section seven hundred twenty-two of the county law, and the  
11 related provisions of article eighteen-A of such law, shall apply to the  
12 preparation of and proceedings on motions pursuant to this section, as  
13 well as to any appeals taken pursuant to this subdivision.

14 § 2. This act shall take effect immediately and shall apply to  
15 offenses committed before, on or after the date this act shall have  
16 become a law.