

# STATE OF NEW YORK

321

2023-2024 Regular Sessions

## IN SENATE

(Prefiled)

January 4, 2023

Introduced by Sens. SALAZAR, BRISPORT, BROUK, CLEARE, COMRIE, COONEY, GIANARIS, HOYLMAN, JACKSON, MAY, MYRIE, PERSAUD, RAMOS, RIVERA, SEPULVEDA -- 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 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:

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

§ 440.45 Application for sentence reduction.

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

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

(c) Notwithstanding paragraph (a) of this subdivision, the prosecutor in the underlying criminal action in which a sentence was imposed may initiate an application for resentencing on behalf of the incarcerated

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

LBD00647-02-3

1 individual and upon such application an attorney shall be assigned to  
2 represent the incarcerated individual in proceedings pursuant to this  
3 section.

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

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

13 (i) the defendant;

14 (ii) the attorney of record;

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

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

20 (v) the sentencing court; and

21 (vi) the prosecutor in the underlying criminal action in which the  
22 sentence was imposed.

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

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

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

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

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

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

53 (f) (i) The court shall, upon request of the applicant or the prose-  
54 cuting office, conduct a hearing on the application, at which the appli-  
55 cant and counsel for the applicant shall be given the opportunity to be  
56 heard. Such hearing shall be recorded or transcribed. The applicant has

1 the right to be present at any such hearing unless the applicant waives  
2 the right to be present in writing.

3 (ii) In a hearing pursuant to subparagraph (i) of this paragraph, the  
4 court shall allow parties to present any evidence pertinent to the issue  
5 of a sentence reduction and the factors outlined in paragraph (b) of  
6 subdivision four of this section. Such evidence may include documents,  
7 live testimony, tangible objects, or any other class of evidence or  
8 information pertinent to sentencing. At such hearing, the applicant  
9 shall have the right to make a statement personally, on their own  
10 behalf, in the same manner as provided in subdivision one of section  
11 380.50 of this part.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3     (3) rehabilitation demonstrated by the applicant;

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

5     (5) the applicant's efforts to participate in educational, therapeu-  
6 tic, and vocational opportunities while incarcerated to the extent such  
7 programs were available; provided however that the fact that the appli-  
8 cant may have been unable to participate in treatment or other program-  
9 ming while incarcerated despite such applicant's willingness to do so  
10 shall not be considered a negative factor in determining an application  
11 pursuant to this section;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 10. In three years, the comptroller shall conduct an analysis of  
2 savings found from decarceration and shall make recommendations to the  
3 legislature regarding diverting such savings to fund prison-based and  
4 community-based programs designed to counter recidivism through educa-  
5 tion, therapeutic intervention, maintenance of familial and social  
6 networks, restorative justice practices for survivors of crimes, and  
7 successful post-custodial re-entry to society.

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

11 (i) the name, department identification number, and race of each  
12 incarcerated individual who has been denied or granted resentencing;

13 (ii) how many years of imprisonment each incarcerated individual  
14 served at the time of the application;

15 (iii) any new sentence if applicable;

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

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

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

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

25 § 2. Any applicant who is immediately eligible to apply for a sentence  
26 reduction pursuant to section 440.45 of the criminal procedure law shall  
27 be provided the notice required pursuant to paragraph (d) of subdivision  
28 1 of such section within sixty days of the effective date of this act.

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