

PROPOSED LEGISLATION
“SECOND CHANCE AMENDMENT”

STATE OF NEW YORK

2023-2024 Regular Sessions

AN ACT 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 adding a new
2 subdivision 5 to read as follows:

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

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

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

10 (ii) is more than one year away from conditional release or an initial parole
11 release eligibility date at time of filing the motion;

12 (iii) has not been sentenced to life imprisonment without parole;

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1 (iv) has not been sentenced to the minimum available term or terms for the crime
2 or crimes of conviction pursuant to article 70 of the Penal Law; a defendant sentenced to
3 a consecutive term of imprisonment when such consecutive term is not mandatory
4 pursuant to section 70.25 of the penal law shall not be deemed to be serving the minimum
5 available term;

6 (v) was sentenced to an indeterminate term or terms with a term or aggregate
7 minimum term of ten years or more or a determinate term or terms with a term or
8 aggregate term of ten years or more and has served (i) at least one-half of the minimum
9 term or aggregate minimum term of an indeterminate sentence or at least one-half of a
10 determinate term or aggregate determinate term, or 10 years, whichever is less; (ii)
11 provided however that an individual who is serving a sentence or sentences that include
12 conviction of a Class A-I felony, except a Class A-I felony defined in article 220 of the
13 penal law, shall not become eligible until he or she has served 15 years; and (iii) provided
14 further that when an individual is serving a sentence or sentences that include conviction
15 of a Class A-I felony, except a Class A-I felony defined in article 220 of the penal law,
16 and the aggregate minimum term of the indeterminate sentences or aggregate term of the
17 determinate sentences is 50 or more years, he or she shall not become eligible until
18 having served 20 years.

19 (c) If the defendant has appealed from a judgment or sentence that is the subject of
20 relief pursuant to this section, such appeal must have been finally determined. Nothing in
21 this subparagraph shall be construed to require that the defendant have taken a direct
22 appeal in order to be eligible for relief pursuant to this section.

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1 (d) Notwithstanding the provisions of paragraph (b) of this subdivision, an otherwise
2 ineligible individual shall be deemed eligible upon consent of the district attorney.

3 (e) A motion brought pursuant to this subdivision shall be referred for determination
4 to the judge or justice who imposed the original sentence upon such individual. If, at the
5 time of the application, the original sentencing judge or justice is no longer a judge or
6 justice of a court of competent jurisdiction, then the application shall be randomly
7 assigned to another judge or justice of the court by the administrative judge of the
8 applicable court.

9 (f) In deciding the motion, the court shall consider the principles of rehabilitation,
10 punishment and deterrence, the rehabilitation demonstrated by the defendant, and the
11 promotion of the individual's successful reentry and reintegration into society, as well as
12 public safety. The court may consider any facts or circumstances relevant to the
13 imposition of a new sentence that are submitted by such individual or the district
14 attorney, including, but not limited to:

15 (i) the individual's age, including as a mitigating factor whether the defendant
16 was age 25 or under at the time of the commission of the crime or, regardless of the
17 defendant's age at the time of commission of the crime, whether the defendant is
18 presently age 50 or over, the personal circumstances of the defendant, and medical
19 condition, including conditions that existed at the time of the original sentencing;

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

21 (iii) whether the defendant has availed himself or herself of educational,
22 therapeutic, and vocational opportunities while imprisoned; and

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1 (iv) any statement by a victim of the crime as defined in subparagraph a of
2 subdivision 2 of section 380.50 of the criminal procedure law.

3 (g) The court shall not order a new pre-sentence investigation and report. The court
4 shall offer the defendant an opportunity for a hearing. If the court finds that the sentence
5 is greater than necessary to achieve the purposes of sentencing, the court shall grant the
6 motion and enter an order modifying the sentence to any lesser authorized term of
7 imprisonment. The order may also direct that the new sentence run concurrently with any
8 other term of imprisonment being served by the individual. The court shall place its
9 reasons on the record for modification of the sentence, or denial of modification.

10 (h) In the event that an individual is denied relief under this subdivision, or in the
11 event that the individual is denied the full reduction sought, he or she may bring a new
12 motion at any time after two years from the date of denial of the previous motion.

13 (i) An appeal to an intermediate appellate court may be taken as of right from an
14 order denying a motion, or an order granting a sentence modification but denying the full
15 sentence reduction sought by the defendant, made pursuant to this subdivision.

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

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

22 (l) Subdivision one of section seven hundred seventeen and subdivision four of
23 section seven hundred twenty-two of the county law, and the related provisions of article

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1 eighteen-A of such law, shall apply to the preparation of and proceedings on motions
2 pursuant to this section, as well as to any appeals taken pursuant to this subdivision.

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