

## NACDL Model “Second Look” Legislation

### SECOND LOOK SENTENCING ACT

#### SUMMARY

This act provides incarcerated individuals serving long sentences an opportunity to petition their sentencing judge for a reduction of their sentence after they have served at least ten years in custody.

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “Second Look Sentencing Act.”

#### SECTION 2. FINDINGS.

The state finds the following:

- A. The number of incarcerated individuals in the State of [insert name of state] has increased by [insert correct percentage] percent from 1980 to 2020.
- B. [Insert correct percentage] percent of incarcerated individuals in the State of [insert] are serving sentences of ten years or more, and [insert correct percentage] percent are serving sentences of twenty years or more.
- C. Long-term incarceration disproportionately impacts poor communities and communities of color.
- D. The costs of long-term incarceration – social, cultural and economic, including, an average of [dollar amount] to incarcerate an individual annually – cause additional harm to society above the crime committed.
- E. Research indicates that long prison sentences can increase, rather than reduce, recidivism. In addition, the potential for a later reduction in sentence encourages incarcerated individuals to engage in good behavior and to take advantage of rehabilitative programming.
- F. Sentences are not just served by the incarcerated individual; they are served by their families too. Research indicates that the children of incarcerated parents are six to seven times more likely to end up incarcerated themselves.
- G. As the criminal legal system gains insight into the devastating impact of mass incarceration, it has also modified its charging, plea bargaining and sentencing practices, policies and laws – changes that reflect developments in scientific research about the youth brain; the impact of childhood, domestic and sexual abuse; the treatment of

addiction and mental illness; and the penalty necessary to achieve the purposes of sentencing.

- H. It is time as a society for us to take a bold step to redress the moral stain of people serving long sentences in prison that would not be imposed today, either because the sentence itself is subject to changed rules and procedures, or because the incarcerated individual has exhibited significant rehabilitation warranting of a second chance.

### **SECTION 3. SECOND LOOK FOR LONGTERM INCARCERATED INDIVIDUALS**

- A. Notwithstanding any other provision of law, including any applicable mandatory minimum sentence, an incarcerated individual who has served at least ten years of their sentence may petition their sentencing judge for a reduction of their sentence.
- B. Where a petition for a reduction in sentence under this Act that has been denied, the incarcerated individual may not file a successive petition until at least two years have elapsed after the date the petition was denied; the court may require a longer waiting period, but no more than five years after the date the petition was denied.
- C. Where a petition for a reduction in sentence under this Act has been granted, the incarcerated individual may not file a petition for a second sentencing reduction until at least five years have elapsed after the date the petition was granted.
- D. Notwithstanding this subsection, an otherwise ineligible incarcerated individual shall be deemed eligible to petition for a reduction in sentence upon consent of the prosecuting attorney.

### **SECTION 4. PROCEDURE**

- A. No more than 30 days after the date on which the tenth year of imprisonment begins for an incarcerated individual sentenced to more than ten years of imprisonment for an offense, the [Corrections Authority] shall provide written notice of this section to (a) the incarcerated individual; and (b) the sentencing court, the prosecuting attorney, and the [Public Defense Authority] for the judicial district in which the sentence described in this paragraph was imposed.
- B. A petition for a sentence reduction under this section may be filed six months after the date on which the tenth year of imprisonment begins for an incarcerated individual sentenced to more than ten years of imprisonment for an offense.
- C. The petition must be filed in writing in the judicial district in which the sentence was imposed and may include affidavits, declarations, letters, prison records, or other written and electronic material.

- D. Upon the court's receipt of a petition under this section, the court shall promptly notify the appropriate prosecuting attorney and provide such prosecuting attorney with a copy of the application, including any attached written or electronic material.
- E. A petition under this subsection shall be referred for determination to the judge or justice who imposed the original sentence upon such individual. If, at the time of the application, the original sentencing judge or justice is no longer available, then the petition shall be assigned to another judge or justice of the court by the Administrative Judge of the applicable court.
- F. After the filing of a petition for a sentencing reduction under this section, the court may direct the parties to expand the record by submitting additional materials relating to the motion. A petition filed under this section may be amended with leave of court, which the court should grant when justice so requires.
- G. No waiver of the right to make an application for a resentencing under this Act shall be permitted or honored by the sentencing court.

## **SECTION 5. HEARING**

- A. The court shall, upon request of the petitioner or the state, conduct a hearing on the motion, at which the petitioner and counsel for the petitioner shall be given the opportunity to be heard. Such hearing shall be recorded or transcribed.
- B. In a hearing under this section, the court may, but is not required to, allow parties to present any evidence that the court deems relevant to the issue of the propriety of a reduction in sentencing. Such evidence may include documents, live testimony, tangible objects, or any other class of evidence or information pertinent to sentencing. The court has exclusive discretion to determine the relevance of any proposed evidence. At such hearing, the defendant shall have the right to testify or to remain silent at the defendant's sole discretion.
- C. At a hearing under this section, the defendant shall be present unless the defendant waives the right to be present. The requirement under this clause may be satisfied by the defendant appearing by video teleconference.
- D. The court shall set forth, either in open court or in writing the reasons for granting or denying a petition under this section.

## **SECTION 6: FACTORS TO BE CONSIDERED**

- A. In exercising its discretion under this subsection, the sentencing court must consider the following factors:
  - I. The age of the petitioner at the time of the offense and relevant research regarding development of the youth brain.

- II. The age of the petitioner at the time of the sentence modification petition and relevant research regarding the decline in criminal behavior as individuals grow older.
  - III. The nature of the offense, including changing societal attitudes regarding the propriety of criminalizing the offense and the appropriate sentence for the offense.
  - IV. The history and characteristics of the petitioner at the time of the petition for a reduction in sentence, including rehabilitation demonstrated by the petitioner, the petitioner's disciplinary record while incarcerated, and the petitioner's efforts to participate in educational, therapeutic, and vocational opportunities while imprisoned.
  - V. The circumstances of the offense, including the petitioner's role in its commission, whether the petitioner was under the influence of another, or whether the petitioner was the victim of domestic or sexual abuse at the time of the offense and whether such abuse was related to the petitioner's commission of the offense.
  - VI. Any report from a physical, mental, or psychiatric examination of the defendant conducted by a licensed health care professional.
  - VII. Any statement pursuant to Section 8.C *infra* by any victim of an offense for which the defendant is imprisoned or by a family member of the victim if the victim is deceased.
  - VIII. Any evidence concerning whether the petitioner's sentence was enhanced because the petitioner exercised their constitutional right to a trial.
  - IX. Any evidence that the petitioner was denied effective assistance of counsel at any stage in the case leading to the original sentence, including ineffective assistance of counsel at the plea-bargaining stage.
  - X. Any evidence that the petitioner is innocent of the offense.
  - XI. Any other information the court determines relevant to the decision of the court.
- B. In the case of a defendant who is 50 years of age or older on the date on which the petitioner files an application for a sentence reduction, there shall be a rebuttable presumption that the petitioner shall be released.
- C. In calculating the new term to be served by the petitioner, such petitioner shall be credited for any jail time credited towards the subject conviction as well as any period of incarceration credited toward the sentence originally imposed.

## **SECTION 7: RIGHT TO COUNSEL**

- A. A defendant who is unable to afford counsel is entitled to have counsel appointed, at no cost to the defendant, to represent the defendant for the application and proceedings under this section, including any appeal, unless the defendant expressly waives the right to counsel after being fully advised of this right by the court.
- B. A defendant who files a *pro se* petition and subsequently retains or is appointed counsel shall be entitled to amend such petition at least once as of right with the assistance of counsel. Subsequent amendments may be permitted by leave of court, as authorized by section 4.

## **SECTION 8: VICTIM'S RIGHTS**

- A. Upon receipt of an application for resentencing, a prosecuting attorney shall provide any notification to the victim otherwise required by statute.
- B. The prosecuting attorney shall, if practicable, consult with victims in a homicide case prior to making any filing in relation to an application under this section or consenting to the application of an otherwise-ineligible defendant.
- C. The victim shall not be excluded from a hearing granted under this section and may be allowed to provide a statement, oral or written, regarding the impact of the offense conduct on the victim.
- D. The court shall not, in modifying a sentence, disturb any restitution awarded at the original sentencing.

## **SECTION 9: RIGHT TO APPEAL**

- A. An appeal from a resentencing proceeding under this Act may be taken by the defendant or the prosecuting authority on the grounds that the resentence is unlawful, was imposed in an unlawful manner, or is too lenient, or is otherwise inappropriate in light of the purposes of sentencing as enunciated in the state's statutes.
- B. The right to appeal from a sentence modification under this provision shall be as of right on the same terms as a first appeal from an initial sentence at the time of conviction.

## **SECTION 10: REINVESTMENT**

- A. Twenty-five percent of the savings realized as a result of this act shall be designated to fund prison-based and community-based programs designed to counter recidivism through education, therapeutic intervention, maintenance of familial and social networks, restorative justice and successful post-custodial re-entry to society.

- B. Ten-percent of the savings realized as a result of this act shall be designated to fund dedicated personnel in the offices of prosecutors and public defenders to represent, respectively, the State and the incarcerated individual in all proceedings under this Chapter.

**SECTION 11: CONSTRUCTION WITH HABEAS AND OTHER REMEDIES**

- A. This Act 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. A petition under this Act 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 a petition under this Act preclude such remedies from being granted.