

Proposed Statute: Second Look for People with Disabilities

- (1) A court shall reduce a term of imprisonment imposed upon a petitioner with a disability for an offense if:
 - a. The petitioner has one or more disabilities that contributed to or resulted in:
 - (1) their commission of the underlying offense(s),
 - (2) their conduct and/or misperceptions of their conduct following the offense(s) prior to sentencing,
 - (3) a reduction in their ability to participate in their defense,
 - (4) their experience of incarceration, including but not limited to access to rehabilitative programming and medical care and their disciplinary history, *or*
 - (5) obstacles to their developing reentry plans.
 - b. The petitioner has served at least 50% of their originally imposed sentence or 10 years in prison, whichever is less, *and*
 - c. The court finds, after considering the factors set forth in subsection (3) of this section, that the petitioner is not a danger to the safety of any person or the community and that the interests of justice warrant a sentence modification.
- (2) An incarcerated petitioner (or his or her proper representative) may file in the sentencing court a petition for sentence modification.
 - a. Upon a petitioner's request for appointment of counsel, and demonstration of indigency, the court shall appoint counsel to represent the petitioner at no cost to the petitioner.
 - b. The petition may be supported by affidavits, expert reports, videos, and other documentary evidence.
 - c. The court may direct the parties to expand the record by submitting additional testimony, examinations, or written materials related to the petition.
 - d. The court shall hold a hearing on the petition at which the petitioner and witnesses as designated by the petitioner and the prosecutor shall be permitted to testify.
 - e. The petitioner shall be present at any hearing conducted under this section unless the petitioner waives the right to be present. The court shall consider and accommodate the petitioner's needs related to the disability(ies) to maximize the petitioner's participation in and understanding of the proceedings. At the request of the petitioner and/or counsel, the court shall appoint a medical, mental health, or occupational expert to evaluate the petitioner's needs and present a report of necessary accommodations for court proceedings.
 - f. The court shall issue an opinion in writing stating the reasons for granting or denying the petition filed under this section, and may proceed to resentencing immediately upon granting the petition.
- (3) The court, in determining whether to reduce a term of imprisonment pursuant to subsection (1) of this section, shall consider:
 - a. The history and characteristics of the petitioner;
 - b. Evidence about the petitioner's disability(ies), including but not limited to the petitioner's physical, cognitive, and/or psychiatric symptoms, the date of onset of the disability(ies), and any treatment or supports the petitioner requires. The court shall consider reports prepared by medical, mental health, or occupational experts;

- c. The vocational, educational, recreational, and other programming offered and available to the petitioner during the course of the petitioner's incarceration. "Available" is defined as accessible to the petitioner with or without accommodations for the petitioner's disability(ies);
 - d. Whether the petitioner has substantially complied with the rules of the institution(s) to which the petitioner has been confined, including participation in programming that has been made available to the petitioner. The court shall consider the impact of the petitioner's disability(ies) on petitioner's compliance with rules and participation in programming;
 - e. Whether the defendant has demonstrated maturity, rehabilitation, and a fitness to reenter society with or without accommodations and modifications;
 - f. Any report or recommendation by the prosecutor.
 - g. Any statement, provided orally or in writing, by a victim of the offense for which the petitioner is imprisoned, or by a family member of the victim if the victim is deceased;
 - h. The petitioner's family and community circumstances at the time of the offense, including any history of abuse, trauma, involvement in the child welfare system, and supports available to the petitioner to accommodate the petitioner's disability(ies);
 - i. The extent of the petitioner's role in the offense, whether and to what extent other persons were involved in the offense, and any contribution of the petitioner's disability(ies) to the commission of the offense;
and
 - j. Any other information the court deems relevant to its decision.
- (4) If the court denies or grants only in part the petition, the court shall entertain a subsequent petition filed not less than three years after the denial or partial grant.
- (5) Any petitioner whose sentence is reduced under this section shall be resentenced. The court:
- a. May issue a sentence less than the minimum term otherwise required by law; and
 - b. Shall not impose a sentence longer than the sentence originally imposed.
- (6) If the court grants the petition and reduces the petitioner's sentence, the court shall order that a reentry plan be prepared with involvement by the petitioner and his or her counsel, and medical, cognitive, or psychiatric professionals that accounts for the petitioner's needs deriving from the petitioner's disability(ies). The court shall further order that the services delivered under the approved reentry plan comply with the Americans with Disabilities Act by avoiding discrimination that would exclude the petitioner from the programs and by providing necessary accommodations to the petitioner.
- (7) The right to resentencing under this section cannot be waived.