

A SAMPLE ACT FOR RECONSIDERATION OF EXCESSIVE SENTENCES

***The following sample legislation is based on District of Columbia Code Section 24-403.03 and California Assembly Bill 2942.**

Be it enacted by the [NAME OF THE STATE LEGISLATIVE BODY]:

Section 1.

- a) Notwithstanding any other provision of law, the court shall reduce a person's term of incarceration if, after considering the factors set forth in subsection (c), the court finds that the person is not a danger to the safety of any person or the community and that the interests of justice warrant a sentence modification.
- b)
 - 1) A motion under this section may be raised at any time by the sentencing court or district attorney of the jurisdiction where the person was sentenced. A motion made by the sentencing court or the district attorney shall be provided to the imprisoned person and their counsel of notice.
 - 2) An imprisoned person may make a motion under this section after they have served at least 15 years in prison. A convicted person's motion may include affidavits or other written materials, shall be filed with the sentencing court, and shall be provided to the district attorney's office of the jurisdiction where the convicted person was sentenced.
- c)
 - 1) The court may direct the parties to expand the record by submitting additional testimony, examinations, or written materials related to the motion. The court shall hold a hearing on the motion at which the imprisoned person and their counsel shall be given an opportunity to speak. The court may permit the parties to introduce evidence.
 - 2) The imprisoned person shall be present at any hearing conducted under this section unless they waive the right to be present.
 - 3) The court shall issue an opinion in writing stating the reasons for granting or denying the application under this section, but the court may proceed to sentencing immediately after granting the application.
- d) The court, in determining whether to reduce a term of incarceration pursuant to subsection (a), shall consider:
 - 1) The imprisoned person's age at the time of the offense;
 - 2) The history and characteristics of the imprisoned person;

- 3) Whether the imprisoned person has substantially complied with the rules of the institution to which he or she has been confined and whether they have completed any educational, vocational, or other program, where available;
 - 4) Any report or recommendation received from the district attorney;
 - 5) Whether the imprisoned person has demonstrated maturity, rehabilitation, and a fitness to reenter society sufficient to justify a sentence reduction;
 - 6) Any statement, provided orally or in writing, by a survivor of the offense for which the person is imprisoned, or by a family member of the victim if the victim is deceased;
 - 7) Any reports of physical, mental, or psychiatric examinations of the imprisoned person conducted by licensed health care professionals;
 - 8) The imprisoned person's family and community circumstances at the time of the offense, including any history of abuse, trauma, or involvement in the child welfare system;
 - 9) The diminished culpability of young people as compared to that of adults, and the hallmark features of youth, including immaturity, impetuosity, and failure to appreciate risks and consequences, which counsel against sentencing them to lengthy terms in prison, despite the brutality or cold-blooded nature of any particular crime; and
 - 10) Any other information the court deems relevant to its decision.
- e) If the court denies or grants only in part a motion under this section, the court shall entertain a subsequent motion three years from the date of its decision. There shall be no limit on the number of motions that can be made under this section.
- f) Notwithstanding any other provision of law, when resentencing a person under this section, the court:
- 1) May issue a sentence less than the mandatory minimum term of incarceration otherwise required by law; and
 - 2) Shall not impose a sentence of life imprisonment without the possibility of parole or release.

A SAMPLE ACT TO MINIMIZE THE IMMIGRATION CONSEQUENCES OF A MISDEMEANOR CONVICTION

***The following sample legislation is based on California Penal Code Section 18.5.**

Be it enacted by the [NAME OF THE STATE LEGISLATIVE BODY]:

Section 1.

- a) Every offense which is prescribed by any law of the state to be punishable by incarceration up to or not exceeding one year shall instead be punishable by incarceration for a period not to exceed 364 days. This section shall apply retroactively, whether or not the case was final as of [INSERT DATE OF ENACTMENT].

- b) A person who was sentenced to an incarceration term of one year prior to [INSERT DATE OF ENACTMENT] may submit an application before the sentencing court to have the term of the sentence modified to the maximum term specified in subsection (a).

A SAMPLE ACT TO REQUIRE PROSECUTORS TO CONSIDER ADVERSE IMMIGRATION CONSEQUENCES IN PLEA NEGOTIATIONS

***The following sample legislation is based on California Penal Code Sections 1016.2 and 1016.3.**

Be it enacted by the [NAME OF THE STATE LEGISLATIVE BODY]:

Section 1.

a) The legislature finds the following:

- 1) In *Padilla v. Kentucky*, 559 U.S. 356 (2010), the United States Supreme Court held that the Sixth Amendment requires defense counsel to provide affirmative and competent advice to noncitizens regarding the potential immigration consequences of their criminal cases.
- 2) In *Padilla v. Kentucky*, the United States Supreme Court found that for noncitizens, deportation is an integral part of the penalty imposed for criminal convictions. Deportation may result from serious offenses or a single minor offense. It may be by far the most serious penalty flowing from the conviction.
- 3) With an accurate understanding of immigration consequences, many noncitizens are able to plead to a conviction and sentence that satisfy the prosecution and court, but that have no, or fewer, adverse immigration consequences than the original charge.
- 4) People who are misadvised or not advised at all of the immigration consequences of criminal charges often suffer irreparable damage to their current or potential lawful immigration status, resulting in penalties such as mandatory detention, deportation, and permanent separation from close family. In some cases, these consequences could have been avoided had counsel provided informed advice and attempted to defend against such consequences.
- 5) Once in removal proceedings, a noncitizen may be transferred to any of over 200 immigration detention facilities across the country. Many criminal offenses trigger mandatory detention, so that the person may not request bond. In immigration proceedings, there is no court-appointed right to counsel and as a result, the majority of detained immigrants go unrepresented. Immigration judges often lack the power to consider whether the person should remain in the United States in light of equitable factors such as serious hardship to United States citizen family members, length of time living in the United States, or rehabilitation.
- 6) It is the intent of the legislature to codify *Padilla v. Kentucky* and to encourage the growth of case law in furtherance of justice and the findings of this section.

- b) Defense counsel shall provide accurate and affirmative advice about the immigration consequences of a proposed disposition, and when consistent with the goals of and with the informed consent of the person accused, and consistent with professional standards, defend against those consequences.
- c) The prosecution, in the interests of justice and consistent with subsection (a), shall consider the avoidance of adverse immigration consequences in the plea negotiation process as one factor in an effort to reach a just resolution.
- d) This section shall not be interpreted to require any person to disclose his or her immigration status to the court or prosecutor.