SENATE JUDICIARY COMMITTEE

STATEMENT TO

[Second Reprint]

ASSEMBLY, No. 4370

with committee amendments

STATE OF NEW JERSEY

DATED: AUGUST 24, 2020

The Senate Judiciary Committee reports favorably and with committee amendments the Second Reprint of Assembly Bill No. 4370.

This bill, as amended, concerns criminal justice, with an emphasis on the retroactive modification of inmates' existing sentences with mandatory minimum terms of imprisonment, which under current law are typically fixed at, or between, one-third and one-half of the sentence imposed, by:

(1) permitting the retroactive modification of judgments of conviction to rescind mandatory minimum periods of parole ineligibility for any inmates who were State or local officers or employees convicted of official misconduct, N.J.S.2C:30-2, pursuant to section 6 of P.L.2007, c.49 (C.2C:43-6.5), due to the offense involving or touching the office or employment they once held; and

(2) implementing several of the recommendations contained in the first annual report of the New Jersey Criminal Sentencing and Disposition Commission (the CSDC), created by P.L.2009, c.81 (C.2C:48A-1 et seq.) but delayed in being constituted and actively reviewing the State's sentencing laws, which recommendations mostly deal with the retroactive modification of judgments of conviction that would rescind mandatory minimum periods of parole ineligibility for inmates convicted of various nonviolent drug-related and property crimes, or reducing such mandatory periods for inmates convicted of second degree robbery and second degree burglary. For category (2), the bill represents the retroactive application of Recommendations 1 through 3 of the commission's report (presented as Recommendation 4), issued in November 2019.

Additionally, the bill would require the Commissioner of Corrections to conduct a study of the Department of Correction's anticipated expenses to upgrade the department's data infrastructure in order to improve the collection, tracking, and analysis of data related to the criminal justice system, which is based on the commission's Recommendation 9, calling for funding for this purpose.

With respect to the retroactive modification of judgments to rescind mandatory minimum periods of parole ineligibility, the commissioner would identify inmates who were sentenced for any of the following offenses prior to the bill's effective date (the first day of the sixth month following enactment), and who are in the custody of the Department of Corrections, as eligible for resentencing in accordance with the bill's procedures:

-a mandatory term for official misconduct, N.J.S.2C:30-2, pursuant to section 6 of P.L.2007, c.49 (C.2C:43-6.5), due to the offense involving or touching the public office or employment they once held;

-maintaining or operating a controlled dangerous substance production facility used to manufacture methamphetamine, lysergic acid diethylamide (LSD), phencyclidine (PCP or "angel dust"), gamma hydroxybutyrate (e.g, one form of "date rape" drug), flunitrazepam (e.g., "Rohypnol" or "roofies," another "date rape" drug), marijuana in an amount greater than five pounds or ten plants or any substance listed in Schedule I or II, see N.J.S.2C:35-4;

-manufacturing, distributing, or dispensing heroin or coca leaves in a quantity of five ounces or more, lysergic acid diethylamide (LSD) in a quantity of 100 milligrams or more, or phencyclidine (PCP or "angel dust") in a quantity of 10 grams or more, see paragraphs (1) and (6) of subsection b. of N.J.S.2C:35-5;

-employing a juvenile in a drug distribution scheme, see N.J.S.2C:35-6;

-distribution of a controlled dangerous substance on or within 1,000 feet of school property, see subsection a. of section 1 of P.L.1987, c.101 (C.2C:35-7);

-distribution of a controlled dangerous substance to persons under the age of 18 years or pregnant females, see N.J.S.2C:35-8;

-a repeat drug offender, with a conviction for any of the above listed crimes other than N.J.S.2C:35-8, distribution to persons under the age of 18 years or pregnant females, plus a previous conviction under N.J.S.2C:35-5 for manufacturing, distributing, dispensing, or possessing with intent to manufacture, dispense, or distribute a controlled dangerous substance, unless that repeat offender is serving a mandatory term for being a leader of a narcotics trafficking network, N.J.S.2C:35-3, which term could not be modified;

-a second or subsequent offense as leader of a cargo theft network, see subsection e. of section 4 of P.L.2013, c.58 (C.2C:20-2.4);

-a second or subsequent offense involving theft from a cargo carrier, see subsection c. of section 6 of P.L.2013, c.58 (C.2C:20-2.6);

-a third or subsequent offense for shoplifting, see paragraph (4) of subsection c. of N.J.S.2C:20-11; and

-wrongful electronic access and disclosure of information, see subsection b. of section 10 of P.L.1984, c.184 (C.2C:20-31).

The bill would also permit the reduction of inmates' current mandatory terms of imprisonment for second degree robbery,

N.J.S.2C:15-1, and second degree burglary, N.J.S.2C:18-2, from 85 percent of the sentence imposed, as required under current law pursuant to section 2 of P.L.1997, c.117 (C.2C:43-7.2), known as the No Early Release Act (NERA), to 50 percent of the sentence imposed.

The list of eligible inmates would be provided to the Supreme Court, the Attorney General, and county prosecutors by the Commissioner of Corrections. The Supreme Court could order an issue affecting inmates appearing on the commissioner's list, either rescinding or reducing mandatory minimum periods of parole ineligibility, as applicable per the above described offenses, unless there is an objection made against an inmate.

The Attorney General and county prosecutors, with the prior approval of the Attorney General, could file objections against the potential resentencing of any inmate appearing on the list. Any such objection would have to be filed in Superior Court in the county in which the conviction occurred, no later than 60 days following receipt of the list from the commissioner, or within 30 days of providing notice to the Administrative Office of the Courts and Department of Corrections of an initial determination to file an objection, whichever date was later.

Anytime the department was notified of a determination to file an objection against an inmate's resentencing, the department would be required to promptly notify the inmate and the inmate's attorney, or the Public Defender if an inmate did not have an attorney. The Public Defender would be required to represent any inmate concerning an objection to resentencing if that inmate was not represented by an attorney. If, after making an initial determination to file an objection, no such objection is filed against an inmate, a court could proceed with resentencing that inmate without conducting a hearing.

The bill provides that resentencing should be ordered, even when objected to, unless the court finds by clear and convincing evidence after holding a hearing that *rescinding* a term of parole eligibility previously imposed would likely pose a substantial risk to public safety, or that the aggravating factors associated with *rescinding or reducing*, as the case may be, a term of parole ineligibility substantially outweigh the mitigating factors of doing so.

For inmates whose mandatory period of parole ineligibility is rescinded, the court would modify the original sentence to impose a period of discretionary parole ineligibility. For inmates whose fixed minimum terms of imprisonment were reduced from 85 percent of the sentence imposed to 50 percent of that sentence, the court would add an additional period of discretionary parole ineligibility. Any such period of parole ineligibility imposed pursuant to the bill's resentencing procedures could not result in a period of parole ineligibility in excess of the period that otherwise would have been imposed under an inmate's original sentence.

Regarding the aforementioned study of anticipated expenses for upgrading the Department of Correction's data infrastructure, the bill would require the Commissioner of Corrections to submit a report on this study to the Governor and Legislature within six months of the bill's effective date. This report would include recommendations for additional funding found necessary for the department to invest in upgrades to its data infrastructure to improve the collection, tracking, and analysis of data related to the criminal justice system.

This bill, as amended and reported by the committee, is identical to Senate Bill No. 2593, also amended and reported by the committee today.

The committee amendments to the bill:

-add to the list of eligible inmates for which retroactive modification of judgments can be done to rescind mandatory minimum periods of parole ineligibility, any inmates sentenced with a mandatory minimum period for committing official misconduct, N.J.S.2C:30-2, pursuant to section 6 of P.L.2007, c.49 (C.2C:43-6.5), due to the offense involving or touching the public office or employment they once held;

-authorize only the Supreme Court, and not the Administrative Director of the Courts, to issue orders pertaining to retroactively modifying judgments of conviction, as described in the statement above;

-incorporate changes to section 7 of P.L.1979, c.441 (C.30:4-123.51) (section 2 of the bill), concerning the incarceration and parole of juveniles, to account for the enactment of P.L.2019, c.363 on January 20, 2020, which will take effect November 1, 2020; the bill as introduced on June 29, 2020 included the previous version of that statutory section from when it was last revised by P.L.2007, c.204; and

-update the bill's title and synopsis to more accurately reflect the provisions of the amended version of the bill.