

ASSEMBLY, No. 4372

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED JUNE 29, 2020

Sponsored by:

Assemblywoman BRITNEE N. TIMBERLAKE

District 34 (Essex and Passaic)

Assemblywoman ANNETTE QUIJANO

District 20 (Union)

Assemblywoman VERLINA REYNOLDS-JACKSON

District 15 (Hunterdon and Mercer)

SYNOPSIS

Provides for resentencing of certain inmates.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning certain inmates and supplementing Title 2C of
2 the New Jersey Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. a. The Commissioner of Corrections shall issue a Certificate
8 of Eligibility for Resentencing to any inmate who:

9 (1) committed a crime as a juvenile and was tried as an adult;

10 (2) received an aggregate sentence of incarceration of 30 years
11 or more;

12 (3) has served at least 20 years of that sentence; and

13 (4) has not been resentenced or previously sought relief under
14 this section.

15 b. (1) Notwithstanding any provision of law to the contrary, an
16 inmate who receives a Certificate of Eligibility for Resentencing
17 issued pursuant to subsection a. of this section and received an
18 aggregate sentence of incarceration with a period of parole
19 ineligibility of 20 years or more may petition the court for
20 resentencing pursuant to the provisions of this section.

21 (2) Notwithstanding any court rule or any other provision of law
22 to the contrary, the court, upon consideration of a petition filed
23 pursuant to paragraph (1) of this subsection, may, in its discretion,
24 modify, reduce, or suspend the sentence, including any minimum or
25 mandatory sentence or a portion of the sentence imposed upon the
26 inmate.

27 If the court determines that a change in the inmate's original
28 sentence is not warranted, the court shall issue a written order
29 stating the reasons for denying modification. The provisions of this
30 section shall not require the court to grant a sentence modification.

31 c. An inmate who has been issued a Certificate of Eligibility for
32 Resentencing shall be represented by the Office of the Public
33 Defender for the purpose of filing a motion under this section,
34 unless the inmate chooses to be represented by pro bono counsel or
35 retains private counsel at the inmate's expense.

36 d. Upon receipt of notification by the Department of Corrections
37 that an inmate has been issued a Certificate of Eligibility for
38 Resentencing pursuant to subsection a. of this section, the
39 sentencing court shall order a resentencing report which shall assess
40 the following factors:

41 (1) the defendant's age at the time of the offense;

42 (2) the role of the attendant characteristics of youth in the
43 offense, including:

44 (a) impulsivity;

45 (b) risk-taking behavior;

46 (c) immaturity; and

47 (d) susceptibility to peer pressure; and

1 (3) any obstacle the defendant may have faced as a child
2 including:

- 3 (a) parental abuse or neglect or abuse by any other person;
- 4 (b) developmental disorders;
- 5 (c) substance abuse;
- 6 (d) addiction;
- 7 (e) trauma;
- 8 (f) poverty; and
- 9 (g) lack of education.

10 e. The resentencing report shall also include the victim's
11 position as to resentencing. In accordance with N.J.S.2C:44-6, the
12 probation department shall notify the victim or the nearest relative
13 of a homicide victim of the right to make a statement for inclusion
14 in the resentencing report if the victim or relative so desires. Any
15 statement shall be made within 20 days of notification by the
16 probation department.

17 f. (1) A motion pursuant to this section shall be filed with the
18 sentencing court, or the Presiding Criminal Judge if the sentencing
19 court is not still sitting. A copy of the motion shall be served on the
20 agency that prosecuted the case.

21 (2) The prosecuting agency shall notify any victim of the
22 offense committed by the inmate, or the nearest relative of a
23 homicide victim, in accordance with section 3 of P.L.1985, c.249
24 (C.52:4B-36) of the filing of a motion for resentencing pursuant to
25 this section. The court shall afford any victim the opportunity to
26 present a written or videotaped statement at the hearing on the
27 petition or to testify at the hearing concerning the harm suffered by
28 the victim or family member.

29 (3) The prosecutor shall file any response within 60 days. The
30 court may grant an extension of time for good cause.

31 g. Upon the filing of a motion for resentencing under this
32 section, the court shall conduct a hearing, unless the court finds that
33 the Certificate of Eligibility for Resentencing issued to the inmate is
34 not valid or its issuance was improper. A resentencing hearing on a
35 motion filed pursuant to this section shall be held in the Superior
36 Court in accordance with the Rules of Court.

37 h. At the hearing for resentencing, the court shall determine
38 whether the offense for which the inmate was convicted was the
39 result of mitigating qualities of youth or whether the offense
40 reflects irreparable corruption by consideration of the following
41 non-exhaustive list of factors:

- 42 (1) the inmate's age at the time of the offense;
- 43 (2) the role of the attendant characteristics of youth in the
44 offense, including:
 - 45 (a) impulsivity;
 - 46 (b) risk-taking behavior;
 - 47 (c) immaturity; and
 - 48 (d) susceptibility to peer pressure;

- 1 (3) any obstacle the inmate may have faced as a child including:
2 (a) parental abuse or neglect or abuse or neglect by any other
3 person;
4 (b) developmental disorders;
5 (c) substance abuse;
6 (d) addiction;
7 (e) trauma;
8 (f) poverty; and
9 (g) lack of education;
10 (4) any effort the inmate has made prior to and while
11 incarcerated to overcome the obstacles set forth in paragraph (3) of
12 this subsection;
13 (5) the inmate's attempt at rehabilitation since incarceration,
14 including but not limited to participation in available rehabilitative,
15 educational, or other programs;
16 (6) whether the inmate poses the same risk to society that the
17 inmate posed at the time of the initial sentence; and
18 (7) any additional evidence of maturity, growth, self-
19 improvement, and consideration of the welfare of others.
20 i. If the court finds by a preponderance of the evidence that the
21 offense for which the inmate was convicted and sentenced did not
22 reflect irreparable corruption, but was the result of the mitigating
23 qualities of youth, the court shall resentence the inmate to a term
24 that allows the inmate a meaningful opportunity for release.
25 However, if the court finds that the offense reflects irreparable
26 corruption, the court shall not resentence the inmate regardless of
27 the findings of the mitigating qualities of youth. If the sentencing
28 court reduces the sentence pursuant to this section, the sentence
29 shall not become final for 10 days in order to permit the prosecutor
30 to appeal the sentence.
31 j. An inmate may file only one motion pursuant to this section.
32 Nothing in this section shall prohibit an inmate from pursuing
33 resentencing under any other provision of Title 2C of the New
34 Jersey Statutes or the Rules of Court.

35
36 2. This act shall take effect immediately and shall apply
37 retroactively to any inmate who was sentenced as a juvenile prior to
38 the effective date of this act.
39
40

41 STATEMENT
42

43 This bill provides for the resentencing of certain inmates. Under
44 the provisions of this bill, the Commissioner of Corrections is
45 required to issue a Certificate of Eligibility for Resentencing to any
46 inmate who: 1) committed a crime as a juvenile and was tried as an
47 adult; 2) received an aggregate sentence of incarceration of 30
48 years or more; 3) has served at least 20 years of that sentence; and

1 4) has not been resentenced or previously sought relief under the
2 bill.

3 Under the bill, an inmate who receives a Certificate of Eligibility
4 for Resentencing and received an aggregate sentence of
5 incarceration with a period of parole ineligibility of 20 years or
6 more may petition the court for resentencing. The bill provides that
7 the court, upon consideration of a petition filed by an inmate, may,
8 in its discretion, modify, reduce, or suspend the sentence, including
9 any minimum or mandatory sentence or a portion of the sentence
10 imposed upon the inmate.

11 The bill further provides that upon receipt of notification by the
12 Department of Corrections that an inmate has been issued a
13 Certificate of Eligibility for Resentencing, the sentencing court is
14 required to order a resentencing report which is to assess the
15 following factors: 1) the defendant's age at the time of the offense;
16 2) the role of the attendant characteristics of youth in the offense,
17 including: impulsivity, risk-taking behavior, immaturity, and
18 susceptibility to peer pressure; and 3) any obstacle the defendant
19 may have faced as a child including: parental abuse or neglect or
20 abuse by any other person, developmental disorders, substance
21 abuse, addiction, trauma, poverty, and lack of education. The
22 resentencing report is also to include the victim's position as to
23 resentencing.

24 Under the bill, the prosecuting agency is required to notify any
25 victim of the offense committed by the inmate or the nearest
26 relative of a homicide victim of the filing of a motion for
27 resentencing by the inmate. The court is required to give the victim
28 the opportunity to present a written or videotaped statement at the
29 hearing on the petition or to testify at the hearing concerning the
30 harm suffered by the victim or family member.

31 Upon the filing of a motion for resentencing, the bill requires the
32 court to conduct a hearing, unless the court finds that the Certificate
33 of Eligibility for Resentencing issued to the inmate is not valid or
34 its issuance was improper. At the hearing for resentencing, the
35 court is required to determine whether the offense for which the
36 inmate was convicted was the result of mitigating qualities of youth
37 or whether the offense reflects irreparable corruption by
38 consideration of the same factors used for the resentencing report
39 and the following additional factors: 1) any effort the inmate has
40 made prior to and while incarcerated to overcome any of the
41 enumerated obstacles; 2) the inmate's attempt at rehabilitation since
42 incarceration, including but not limited to participation in available
43 rehabilitative, educational, or other programs; 3) whether the inmate
44 poses the same risk to society that the inmate posed at the time of
45 the initial sentence; and 4) any additional evidence of maturity,
46 growth, self-improvement, and consideration of the welfare of
47 others.

A4372 TIMBERLAKE, QUIJANO

6

1 Under the bill, if the court finds by a preponderance of the
2 evidence that the offense for which the inmate was convicted and
3 sentenced did not reflect irreparable corruption, but was the result
4 of mitigating qualities of youth, the court is required to resentence
5 the inmate to a term that allows the inmate a meaningful
6 opportunity for release. If the court finds that the offense reflects
7 irreparable corruption, the court is not to resentence the inmate
8 regardless of the findings of the mitigating qualities of youth. If the
9 sentencing court reduces the sentence pursuant to the provisions of
10 this bill, the sentence is not to become final for 10 days to allow the
11 prosecutor to appeal the sentence.

12 The bill allows an inmate to make one motion pursuant to the
13 bill's provisions.

14 Finally, the bill applies retroactively to any inmate who was
15 sentenced as a juvenile prior to the bill's effective date.