ASSEMBLY RESOLUTION No. 91

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 13, 2020

Sponsored by:
Assemblyman DANIEL R. BENSON
District 14 (Mercer and Middlesex)

SYNOPSIS

Urges New Jersey Supreme Court to expand the pretrial risk assessment process to include certain relevant factors.

CURRENT VERSION OF TEXT

As introduced.

AN ASSEMBLY RESOLUTION respectfully urging the New Jersey Supreme Court to expand the pretrial risk assessment process to include certain relevant factors.

WHEREAS, P.L.2014, c.31 (C.2A:162-15 et al.) , commonly referred to as the Bail Reform Act, reformed the manner in which determinations for bail and other forms of pretrial release are made by providing the courts with authority to deny pretrial release and instead order pretrial detention for certain criminal defendants; and

WHEREAS, The voters approved a constitutional amendment to paragraph 11, of Article I of the New Jersey Constitution to eliminate the absolute right to bail, and to implement the provisions of P.L.2014, c.31 (C.2A:162-15 et al.) and provide for pretrial detention under certain circumstances; and

WHEREAS, Once this constitutional amendment took effect on January 1, 2017 the courts began to exercise their authority to order pretrial detention of eligible defendants charged with certain crimes; and

WHEREAS, An essential part of the effective implementation of P.L.2014, c.31 (C.2A:162-15 et al.) requires the Statewide Pretrial Services Program in the Administrative Office of the Courts to develop a "Public Safety Assessment" (PSA) or risk assessment which is designed to make recommendations to the court of the likelihood that the defendant if released before trial would engage in new criminal activity or fail to appear at future court dates; and

WHEREAS, Pursuant to section 11 of P.L.2014, c.31 (C.2A:162-25) the risk assessment process is required to be objective, standardized, and based on relevant risk factors concerning the court's pretrial release determination; and

WHEREAS, As noted in Attorney General Law Enforcement Directive No. 2016-6, *Establishing Interim Policies, Practices, and Procedures to Implement Criminal Justice Reform Pursuant to P.L.2014,c.31* and in the recent Appellate Division case of State v. C.W., 449 N.J. Super. 231 (App. Div. March 21, 2017) the current pretrial risk assessment process does not take account of such relevant factors as a defendant's juvenile history record, expunged records, domestic violence history, and a defendant's classification under Megan's Law; and

WHEREAS, There are additional relevant factors that may be essential to calculations of public safety that should be considered in evaluating a defendant's criminal history such as any history of sexual offenses or any history of firearms possession or other weapons offenses; and

WHEREAS, It is imperative for the "Public Safety Assessment" (PSA) to take into account a defendant's entire criminal history background since such factors are necessary in order for the court to make a decision on the risks posed by a defendant's release pending trial; and

WHEREAS, It must be acknowledged that no "Public Safety Assessment" (PSA) or calculation of risk or any mathematical formula can substitute for the wisdom, experience, instinct and discretion of the judge considering a particular defendant's potential to reoffend or fail to appear; now, therefore,

BE IT RESOLVED *by the General Assembly of the State of New Jersey:*

1. The New Jersey Supreme Court is respectfully requested to revise the "Public Safety Assessment" (PSA), which is designed to make recommendations to the court concerning a defendant's release pending trial, to take into account a defendant's entire criminal history background including but not limited to a defendant's juvenile history record, expunged records, domestic violence history, a defendant's classification under Megan's Law, any sexual offenses and any firearms or weapons offenses. The New Jersey Supreme Court also is respectfully requested to remind all the judges involved in the Statewide Pretrial Services Program that the "Public Safety Assessment" (PSA) should not preclude the application of the judges' good judgment if they believe that the assessment fails to capture an accurate and complete analysis.

2. Copies of this resolution, as filed with the Secretary of State, shall be transmitted by the Clerk of the General Assembly to the Chief Justice and the Associate Justices of the Supreme Court of New Jersey and to the Administrative Director of the Courts.

STATEMENT

This resolution respectfully requests the New Jersey Supreme Court to expand the pretrial risk assessment process to take into account the defendant's entire criminal history background including but not limited to his juvenile history record, expunged records, domestic violence history, and his classification under Megan's Law.

The pretrial risk assessment or "Public Safety Assessment" (PSA) is an essential part of the effective implementation of P.L.2014, c.31 (C.2A:162-15 et al.), commonly referred to as the Bail Reform Act. In 2014 the voters approved a constitutional amendment to paragraph 11, of Article I of the New Jersey Constitution to eliminate the absolute right to bail, and to implement the provisions of P.L.2014, c.31 (C.2A:162-15 et al.) and provide for pretrial detention under certain circumstances beginning on January 1, 2017. Once this constitutional amendment took effect the courts began to exercise their authority to order pretrial detention of eligible defendants charged with certain

crimes. This enactment and constitutional amendment reformed the manner in which determinations for bail and other forms of pretrial release are made by providing the courts with authority to deny pretrial release and instead order pretrial detention for certain criminal defendants.

Under the provisions of the law a risk assessment is developed by the Statewide Pretrial Services Program in the Administrative Office of the Courts which is designed to make recommendations to the court of the likelihood that the defendant if released before trial would engage in new criminal activity or fail to appear at a future court date. The risk assessment process is required to be objective, standardized, and based on relevant risk factors concerning the court's pretrial release determination. However, this method does not take account such relevant factors as a defendant's juvenile history record, expunged records, domestic violence history, and a defendant's classification under Megan's Law as noted in Attorney General Law Enforcement Directive No.2016-6, *Establishing Interim Policies, Practices, and Procedures to Implement Criminal Justice Reform Pursuant to P.L.2014,c.31* and in the recent Appellate Division case of State v. C.W., 449 N.J. Super. 231 (App. Div. March 21, 2017) discussing the current pretrial risk assessment process. The resolution also urges consideration of any history of sexual offenses or firearms or weapons offenses.

This resolution respectfully requests the New Jersey Supreme Court to revise the "Public Safety Assessment" (PSA) to take into account such factors**.** It further requests the New Jersey Supreme Court to remind all the judges involved in the Statewide Pretrial Services Program that the "Public Safety Assessment" (PSA) should not preclude the application of the judges' good judgment if they believe that the assessment fails to capture an accurate and complete analysis.