

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.



1 **AN ASSEMBLY RESOLUTION** respectfully urging the New Jersey
2 Supreme Court to expand the pretrial risk assessment process to
3 include certain relevant factors.
4
5 **WHEREAS**, P.L.2014, c.31 (C.2A:162-15 et al.) , commonly referred to
6 as the Bail Reform Act, reformed the manner in which
7 determinations for bail and other forms of pretrial release are made
8 by providing the courts with authority to deny pretrial release and
9 instead order pretrial detention for certain criminal defendants; and
10 **WHEREAS**, The voters approved a constitutional amendment to
11 paragraph 11, of Article I of the New Jersey Constitution to
12 eliminate the absolute right to bail, and to implement the provisions
13 of P.L.2014, c.31 (C.2A:162-15 et al.) and provide for pretrial
14 detention under certain circumstances; and
15 **WHEREAS**, Once this constitutional amendment took effect on January
16 1, 2017 the courts began to exercise their authority to order pretrial
17 detention of eligible defendants charged with certain crimes; and
18 **WHEREAS**, An essential part of the effective implementation of
19 P.L.2014, c.31 (C.2A:162-15 et al.) requires the Statewide Pretrial
20 Services Program in the Administrative Office of the Courts to
21 develop a “Public Safety Assessment” (PSA) or risk assessment
22 which is designed to make recommendations to the court of the
23 likelihood that the defendant if released before trial would engage
24 in new criminal activity or fail to appear at future court dates; and
25 **WHEREAS**, Pursuant to section 11 of P.L.2014, c.31 (C.2A:162-25) the
26 risk assessment process is required to be objective, standardized,
27 and based on relevant risk factors concerning the court’s pretrial
28 release determination; and
29 **WHEREAS**, As noted in Attorney General Law Enforcement Directive
30 No. 2016-6, *Establishing Interim Policies, Practices, and*
31 *Procedures to Implement Criminal Justice Reform Pursuant to*
32 *P.L.2014,c.31* and in the recent Appellate Division case of State v.
33 C.W., 449 N.J. Super. 231 (App. Div. March 21, 2017) the current
34 pretrial risk assessment process does not take account of such
35 relevant factors as a defendant’s juvenile history record, expunged
36 records, domestic violence history, and a defendant’s classification
37 under Megan’s Law; and
38 **WHEREAS**, There are additional relevant factors that may be essential
39 to calculations of public safety that should be considered in
40 evaluating a defendant’s criminal history such as any history of
41 sexual offenses or any history of firearms possession or other
42 weapons offenses; and
43 **WHEREAS**, It is imperative for the “Public Safety Assessment” (PSA)
44 to take into account a defendant’s entire criminal history
45 background since such factors are necessary in order for the court to
46 make a decision on the risks posed by a defendant’s release pending
47 trial; and

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

6
7 **BE IT RESOLVED** by the General Assembly of the State of New
8 Jersey:

9
10 1. The New Jersey Supreme Court is respectfully requested to
11 revise the “Public Safety Assessment” (PSA), which is designed to
12 make recommendations to the court concerning a defendant’s
13 release pending trial, to take into account a defendant’s entire
14 criminal history background including but not limited to a
15 defendant’s juvenile history record, expunged records, domestic
16 violence history, a defendant’s classification under Megan’s Law,
17 any sexual offenses and any firearms or weapons offenses. The
18 New Jersey Supreme Court also is respectfully requested to remind
19 all the judges involved in the Statewide Pretrial Services Program
20 that the “Public Safety Assessment” (PSA) should not preclude the
21 application of the judges’ good judgment if they believe that the
22 assessment fails to capture an accurate and complete analysis.

23
24 2. Copies of this resolution, as filed with the Secretary of State,
25 shall be transmitted by the Clerk of the General Assembly to the
26 Chief Justice and the Associate Justices of the Supreme Court of
27 New Jersey and to the Administrative Director of the Courts.

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30 **STATEMENT**

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

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

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

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

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