

ASSEMBLY, No. 1233

STATE OF NEW JERSEY 218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

Sponsored by:

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District 27 (Essex and Morris)

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SYNOPSIS

Concerns resentencing and parole for certain juvenile defendants.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning certain juvenile defendants and supplementing
2 Title 2C of the New Jersey Statutes and Title 30 of the Revised
3 Statutes.

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

7
8 1. The Legislature finds and declares that:

9 a. The United States Supreme Court has recognized that
10 juveniles are biologically and psychologically unlike adults in ways
11 that render them “constitutionally different . . . for purposes of
12 sentencing.” Miller v. Alabama, 132 S.Ct. 2455, 2464 (2012).

13 b. Drawing on developments in neuroscience and
14 developmental psychology, the United States Supreme Court has
15 recognized that juveniles are impulsive, lacking in foresight, and
16 acutely susceptible to peer pressure.

17 c. As a result, when juveniles offend, they do so with
18 diminished culpability.

19 d. An equally notable feature of youth is that these
20 shortcomings are transient. Countless studies show that a vast
21 majority of juvenile offenders, even those who commit egregious
22 crimes, will mature into law-abiding citizens.

23 e. Recognizing these twin facets of youth, i.e., diminished
24 blameworthiness and enhanced capacity for rehabilitation, the
25 United States Supreme Court has invalidated a series of laws that
26 exposed juveniles to the harshest sanctions.

27 f. The United States Supreme Court has made clear that
28 children under the age of 18 can only be sentenced to life without
29 parole in rare cases where the juvenile displays “irreparable
30 corruption.” Montgomery v. Louisiana, 136 S.Ct. 718, 726 (2016).

31 g. The New Jersey Supreme Court recently declared that the
32 same concerns that animated the United States Supreme Court’s
33 decisions “apply to sentences that are the practical equivalent of life
34 without parole,” such as sentences of 55 and 68 years of parole
35 ineligibility. State v. Zuber ___ N.J. ___ (2017).

36 h. The New Jersey Supreme Court recommended in State v.
37 Zuber that the Legislature act “to stave off possible future
38 constitutional challenges to the current sentencing scheme” by
39 “enacting a scheme that provides for later review of juvenile
40 sentences with lengthy periods of parole ineligibility, and to
41 consider whether defendants should be entitled to appointed counsel
42 at that hearing.”

43
44 2. In sentencing a juvenile offender, in addition to any other
45 factors the court is required to consider, the court also shall
46 consider the following mitigating factors:

47 a. the defendant’s age at the time of the offense;

- 1 b. the role of the attendant characteristics of youth in the
2 offense, including:
- 3 (1) impulsivity;
 - 4 (2) risk-taking behavior;
 - 5 (3) immaturity; and
 - 6 (4) susceptibility to peer pressure; and
- 7 c. any obstacle the defendant may have faced as a child
8 including:
- 9 (1) parental abuse or neglect;
 - 10 (2) developmental disorders;
 - 11 (3) substance abuse;
 - 12 (4) addiction;
 - 13 (5) trauma;
 - 14 (6) poverty; and
 - 15 (7) lack of education.
- 16

17 3. Notwithstanding any provision of law to the contrary, any
18 juvenile defendant who is tried as an adult and receives an
19 aggregate sentence of incarceration with a period of parole
20 ineligibility of 20 years or more may petition the court for
21 resentencing pursuant to the provisions of this section.

22 a. A motion for resentencing pursuant to this section may be
23 filed any time after 10 years following the date of conviction.

24 b. A defendant shall be prohibited from making more than one
25 motion pursuant to this section. Nothing in this act shall prohibit a
26 defendant from pursuing resentencing under any other provision of
27 Title 2C of the New Jersey Statutes or the Rules of Court.

28 c. Upon the filing of a motion for resentencing under this
29 section, the court shall conduct a hearing unless it is convinced that
30 the defendant:

- 31 (1) was not a juvenile who was tried as an adult;
- 32 (2) did not receive an aggregate sentence of incarceration with a
33 period of parole ineligibility of 20 years or more;
- 34 (3) received an aggregate sentence of incarceration with a
35 period of parole ineligibility of 20 years or more within the last 10
36 years; or
- 37 (4) has previously sought relief under this act.

38 d. A defendant shall be represented by the Office of the Public
39 Defender, unless the defendant chooses to be represented by pro
40 bono counsel or retains private counsel at the defendant's expense.

41 e. At the hearing, the court shall determine whether the offense
42 for which the defendant was convicted while a juvenile was the
43 result of mitigating qualities of youth or whether the offense
44 reflects irreparable corruption by consideration of the following
45 factors:

- 46 (1) the defendant's age at the time of the offense;
- 47 (2) the role of the attendant characteristics of youth in the
48 offense, including:

- 1 (a) impulsivity;
2 (b) risk-taking behavior;
3 (c) immaturity; and
4 (d) susceptibility to peer pressure;
5 (3) any obstacle the defendant may have faced as a child
6 including:
7 (a) parental abuse or neglect;
8 (b) developmental disorders;
9 (c) substance abuse;
10 (d) addiction;
11 (e) trauma;
12 (f) poverty; and
13 (g) lack of education;
14 (4) any effort the defendant has made prior to and while
15 incarcerated to overcome the obstacles set forth in paragraph (3) of
16 this subsection;
17 (5) the defendant's attempt at rehabilitation since incarceration,
18 including but not limited to, participation in available rehabilitative,
19 educational, or other programs;
20 (6) whether the defendant poses the same risk to society that the
21 defendant posed at the time of the initial sentence; and
22 (7) any additional evidence of maturity, growth, self-
23 improvement, and consideration of the welfare of others.
24 f. If the court finds that the offense for which the defendant
25 was convicted while a juvenile was the result of the mitigating
26 qualities of youth, the defendant shall be resentenced to a term that
27 allows the defendant a meaningful opportunity for release. If the
28 court finds the offense reflects irreparable corruption, the defendant
29 shall not be resentenced.
30
31 4. Notwithstanding any provision of law to the contrary, any
32 juvenile defendant who is tried as an adult and receives an
33 aggregate sentence of incarceration with a period of parole
34 ineligibility of 20 years or more shall be eligible for parole
35 according to the "Parole Act of 1979," P.L.1979, c.441 (C.30:4-
36 123.45 et seq.) and the provisions of this section.
37 a. Any juvenile defendant tried as an adult shall be eligible for
38 a parole hearing no later than 20 years after being incarcerated.
39 b. At the parole hearing, the State Parole Board shall consider
40 the age of the juvenile when the offense was committed, the
41 mitigating qualities of youth, and enhanced potential for
42 rehabilitation of juveniles.
43 c. The State Parole Board shall allow the defendant to testify
44 and call witnesses, including expert witnesses.
45 d. Any testimony shall be recorded or transcribed.
46 e. Any determination by the State Parole Board under this act
47 shall include a written record explaining the board's decision and its

1 reasoning, giving specific consideration to subsection b. of this
2 section.

3 f. If the State Parole Board denies parole under this act, any
4 future eligibility term shall not exceed 48 months.

5 g. A defendant proceeding under this section shall be
6 represented by the Office of the Public Defender, unless the
7 defendant chooses to be represented by pro bono counsel or retains
8 private counsel at the defendant's expense.

9
10 5. This act shall take effect immediately and shall apply
11 retroactively to a juvenile defendant sentenced prior to the effective
12 date of this act.

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STATEMENT

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17 This bill requires the court to consider mitigating factors related
18 to youth when sentencing juveniles as adults. The bill also provides
19 an opportunity for resentencing for juveniles whose sentence
20 amounts to life without parole eligibility and establishes parole
21 eligibility for these juveniles.

22 Specifically under the bill, the court is required to consider the
23 following mitigating factors when sentencing a juvenile offender:

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

25 (2) the role of the attendant characteristics of youth in the
26 offense, including impulsivity, risk-taking behavior, immaturity,
27 and susceptibility to peer pressure; and

28 (3) obstacles the defendant may have faced as a child, such as
29 parental abuse or neglect, developmental disorders, substance
30 abuse, addiction, trauma, poverty, and lack of education.

31 Also under the bill, a juvenile defendant who is tried as an adult
32 and receives an aggregate sentence of incarceration with a period of
33 parole ineligibility of 20 years or more is eligible to petition the
34 court for a resentencing hearing any time after 10 years following
35 the date of conviction. The defendant has the right to counsel at the
36 hearing. At the resentencing hearing, the court is to determine
37 whether the offense for which the defendant was convicted while a
38 juvenile was the result of mitigating qualities of youth or whether
39 the offense reflects irreparable corruption. This determination is to
40 be made by consideration of 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 impulsivity, risk-taking behavior, immaturity,
44 and susceptibility to peer pressure;

45 (3) obstacles the defendant may have faced as a child, such as
46 parental abuse or neglect, developmental disorders, substance
47 abuse, addiction, trauma, poverty, and lack of education;

1 (4) any effort the defendant has made prior to and while
2 incarcerated to overcome these obstacles;

3 (5) the defendant's attempt at rehabilitation since incarceration,
4 including but not limited to, participation in available rehabilitative,
5 educational, or other programs;

6 (6) whether the defendant poses the same risk to society that the
7 defendant posed at the time of the initial sentence; and

8 (7) evidence of maturity, growth, self-improvement and
9 consideration of the welfare of others.

10 A juvenile who has been sentenced to incarceration for 20 years
11 or more within the last 10 years is not eligible for a resentencing
12 hearing. Defendants are eligible for only one resentencing hearing.

13 If the court finds that the offense for which the defendant was
14 convicted while a juvenile was the result of the mitigating qualities
15 of youth, the defendant is to be resentenced to a term that allows the
16 defendant a meaningful opportunity for release. If the court finds
17 the offense reflects irreparable corruption, the defendant is not to be
18 resentenced.

19 The bill also specifies that a juvenile defendant who is tried as an
20 adult and receives an aggregate sentence of incarceration with a
21 period of parole ineligibility of 20 years or more is to be eligible for
22 parole no later than 20 years after being incarcerated. At the parole
23 hearing, the State Parole Board is to consider the age of the
24 juvenile, the mitigating qualities of youth, and enhanced potential
25 for rehabilitation of juveniles. The defendant is entitled to counsel
26 and may testify and call witnesses, including expert witnesses. The
27 testimony is to be recorded or transcribed. A determination by the
28 State Parole Board is required to be in writing. If parole is denied,
29 any future eligibility term is not to exceed 48 months.