

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4372

with committee amendments

STATE OF NEW JERSEY

DATED: JULY 27, 2020

The Assembly Appropriations Committee reports favorably Assembly Bill No. 4372 with committee amendments.

As amended and reported by the committee, Assembly Bill No. 4372 provides for the resentencing of certain inmates. Under the provisions of the amended bill, the Commissioner of Corrections is required to issue a Certificate of Eligibility for Resentencing to any inmate who: 1) committed a crime as a juvenile and was tried as an adult; 2) received an aggregate sentence of incarceration of 30 years or more; and 3) has served at least 20 years of that sentence.

Under the amended bill, an inmate who receives a Certificate of Eligibility for Resentencing and received an aggregate sentence of incarceration with a period of parole ineligibility of 20 years or more, and who has not been resentenced or previously sought relief under the bill, may petition the court for resentencing. The bill provides that the court, upon consideration of a petition filed by an inmate, may, in its discretion, modify, reduce, or suspend the sentence, including any minimum or mandatory sentence or a portion of the sentence imposed upon the inmate.

Under the amended bill, the prosecuting agency is required to notify any victim of the offense committed by the inmate or the nearest relative of a homicide victim of the filing of a motion for resentencing by the inmate. The prosecuting agency also is to provide notice to the victim or relative of the right to make an updated statement to supplement the presentence report required pursuant to N.J.S.2C:44-6. The court is required to give the victim or family member the opportunity to present a statement at the hearing on the petition or to testify at the hearing concerning the harm suffered.

Upon the filing of a motion for resentencing, the bill requires the court to conduct a hearing, unless the court finds that the Certificate of Eligibility for Resentencing issued to the inmate is not valid or its issuance was improper. At the hearing for resentencing, the court is required to determine whether the offense for which the inmate was convicted was the result of mitigating qualities of youth by consideration of the following additional factors: (1) the inmate's age at the time of the offense; (2) the role of the attendant characteristics of youth in the offense, including impulsivity, risk-taking behavior,

immaturity, and susceptibility to peer pressure; (3) any obstacle the inmate may have faced as a child including abuse or neglect by a parent or other person, developmental disorders, substance abuse, addiction, trauma, poverty, and lack of education; (4) any effort the inmate has made to overcome the obstacles the inmate has faced; (5) the inmate's attempt at rehabilitation since incarceration, including but not limited to participation in available rehabilitative, educational, or other programs; (6) whether the inmate poses the same risk to society posed at the time of the initial sentence; and (7) any additional evidence of maturity, growth, self-improvement, and consideration of the welfare of others.

Under the amended bill, if the court finds by a preponderance of the evidence that the offense for which the inmate was convicted and sentenced was the result of mitigating qualities of youth, the court is required to resentence the inmate to a term that allows the inmate a meaningful opportunity for release, unless the court finds by clear and convincing evidence that the offense for which the inmate was convicted and sentenced reflects irreparable corruption. If the court finds that the offense reflects irreparable corruption, the court is not to resentence the inmate regardless of the findings of the mitigating qualities of youth. If the sentencing court reduces the sentence pursuant to the provisions of this bill, the sentence is not to become final for 10 days to allow the prosecutor to appeal the sentence.

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

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

COMMITTEE AMENDMENTS

The committee amended the bill to:

(1) Clarify that an inmate who has been issued a Certificate of Eligibility for Resentencing is to be represented by the Office of the Public Defender, unless the inmate retains other counsel;

(2) Eliminate the requirement that the court is to order a resentencing report;

(3) Provide that the prosecuting agency, rather than the probation department, is required to notify the victim or nearest relative of a homicide victim of the right to make an updated statement;

(4) Provide that if the victim or relative chooses to make an updated statement, the statement is to be included in the presentence report required pursuant to N.J.S.2C:44-6;

(5) Provide that the motion for resentencing is to be filed with the Superior Court in the county where the conviction occurred; as introduced, the motion for resentencing was to be filed with the sentencing court or the Presiding Criminal Judge if the sentencing court is not still sitting;

(6) Provide that the court is required to give the victim or family member the opportunity to present a statement at the hearing on the petition or to testify at the hearing concerning the harm suffered; as introduced, the court was required to give the victim or family member the opportunity to present a written or videotaped statement;

(7) Provide that at the hearing for resentencing, the court is required to determine whether the offense for which the inmate was convicted was the result of mitigating qualities of youth, by consideration of certain factors enumerated in the bill;

(8) Provide that if the court finds by a preponderance of the evidence that the offense for which the inmate was convicted was the result of mitigating qualities of youth, the court is required to resentence the inmate to a term that allows the inmate a meaningful opportunity for release, unless the court finds that by clear and convincing evidence that the offense reflects irreparable corruption; and

(9) Clarify that the bill applies retroactively to any eligible inmate who was sentenced as a juvenile prior to the bill's effective date.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that this bill may result in an indeterminate expenditure decrease resulting from the release of certain inmates and an increase in certain administrative costs incurred by the Department of Corrections, the State Parole Board, the Administrative Office of the Courts, and county prosecutors to process inmate petitions for release. The OLS cannot determine the net effect to the State. The bill may result in an indeterminate expenditure increase to the Department of Corrections associated with assessing inmates for the "Certificate of Eligibility for Resentencing" as well as the notification process. The Administrative Office of the Courts and county prosecutors may experience increased administrative costs to process inmate petitions for release. The bill may result in decreased expenditures by the Department of Corrections for the incarceration and medical costs of individuals currently incarcerated in State and county prisons once those inmates are released.