

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 2591

with committee amendments

STATE OF NEW JERSEY

DATED: AUGUST 24, 2020

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 2591.

This bill, as amended, would implement Recommendation 6 from the first annual report of the New Jersey Criminal Sentencing and Disposition Commission (the CSDC), issued November 2019, to provide for the resentencing of certain inmates who committed offenses while juveniles but were sentenced as adults. The CSDC was created by P.L.2009, c.81 (C.2C:48A-1 et seq.) but delayed in being constituted and actively reviewing the State's sentencing laws.

Specifically, the bill would provide a process for the resentencing of any inmate who, either prior to or subsequent to the bill's immediate effective date (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. The Commissioner of Corrections would be required to issue a Certificate of Eligibility for Resentencing to any such inmate who requested one, and if that inmate received an aggregate sentence with a period of parole ineligibility of 20 years or more, and had not been previously resentenced or sought relief under the bill's process, the inmate could file a petition for resentencing in the Superior Court in the county where the conviction occurred. The Public Defender would represent an eligible inmate, unless that inmate retained other counsel.

A copy of a filed petition would be served on the original prosecuting agency, which would have to file a response within 60 days of being notified, although the court could grant an extension for filing based upon good cause shown. The prosecuting agency would notify any victim of the offense for which resentencing is sought or the nearest relative in cases involving a homicide, informing the person of the right to make an updated statement, within 20 days of being notified, to supplement the presentence report prepared pursuant to subsection b. of N.J.S.2C:44-6. The court would also afford any victim an opportunity to present a statement at the hearing on the petition, or to testify about the harm suffered by the victim or victim's family member.

At the resentencing hearing, the court would determine whether the offense for which the inmate was convicted was the result of

mitigating qualities of youth by consideration of several factors, presented in the bill as a non-exhaustive list for helping guide the court's decision. Such factors include:

- the inmate's age at the time of the offense;
- the role of attendant characteristics of youth in the offense, like impulsivity, immaturity, and susceptibility to peer pressure;
- possible obstacles faced by the inmate as a child, such as parental abuse or neglect, developmental disorders, and addiction, and efforts prior to and while incarcerated to overcome these obstacles; and
- additional evidence of maturity, growth, self-improvement, and consideration of the welfare of others.

If the court finds, by a preponderance of the evidence, that the inmate's offense was the result of the mitigating qualities of youth, it would resentence the inmate to a term that allows for a meaningful opportunity for release. However, the court would not resentence the inmate, even after finding the offense to be the result of the mitigating qualities of youth, if the court additionally finds, by clear and convincing evidence, that the inmate's offense reflects irreparable corruption. Any court order reducing a sentence would not become final for 10 days in order to permit an opposing prosecuting agency to appeal the sentencing decision.

This bill, as amended and reported by the committee is identical to the First Reprint of Assembly Bill No. 4372, as amended and also reported by the committee today.

The committee amendments to the bill:

- require an inmate eligible for resentencing to request a Certificate of Eligibility for Resentencing, which is necessary in order to petition the Superior Court for a resentencing hearing;
- clarifies that unless an inmate retains other counsel, the Public Defender would represent any inmate issued a certificate for resentencing;
- remove the provisions constituting subsection d. and part of subsection e. of section 1 of the bill as introduced, which would have required the sentencing court from an inmate's original sentence to order a resentencing report containing the same factors used by the court in the bill as amended to determine whether an inmate's offense was the result of the mitigating qualities of youth and warranted resentencing, and which resentencing report also would have included the victim's position as to resentencing;
- require a resentencing petition be filed in the Superior Court in the county where the conviction occurred, and not the original sentencing court, or alternatively, a Presiding Criminal Judge;
- provide that the prosecuting agency notified of an inmate's petition, and not the probation department, be responsible for notifying the victim of the offense for which resentencing is sought or the

nearest relative in cases involving a homicide, and as part of this notice inform the person of the right to make an updated statement to supplement the presentence report prepared pursuant to subsection b. of N.J.S.2C:44-6;

- eliminate the restriction that only permitted victim statements to be written or videotaped for a resentencing hearing, so that a person could be provided an opportunity to address the court in person;

- establish that resentencing would be denied if a court finds, by clear and convincing evidence, that the offense for which resentencing is sought reflects irreparable corruption; and

- clarify that the bill would apply retroactively to any eligible inmate who was sentenced prior to the effective date.