

[First Reprint]

**SENATE, No. 2591**

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**STATE OF NEW JERSEY**  
**219th LEGISLATURE**

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INTRODUCED JUNE 22, 2020

**Sponsored by:**

**Senator NELLIE POU**

**District 35 (Bergen and Passaic)**

**Co-Sponsored by:**

**Senators Gill and Scutari**

**SYNOPSIS**

Provides for resentencing of certain inmates.

**CURRENT VERSION OF TEXT**

As reported by the Senate Judiciary Committee on August 25, 2020, with amendments.



**(Sponsorship Updated As Of: 8/25/2020)**

1 AN ACT concerning certain inmates and supplementing Title 2C of  
 2 the New Jersey Statutes.

3  
 4 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
 5 *of New Jersey:*

6  
 7 1. a. The Commissioner of Corrections shall issue a Certificate  
 8 of Eligibility for Resentencing to any inmate <sup>1</sup>, upon request by the  
 9 inmate,<sup>1</sup> who:

10 (1) committed a crime as a juvenile and was tried as an adult;

11 (2) received an aggregate sentence of incarceration of 30 years  
 12 or more; <sup>1</sup>and<sup>1</sup>

13 (3) has served at least 20 years of that sentence <sup>1</sup>**];** and

14 (4) has not been resentenced or previously sought relief under  
 15 this section<sup>1</sup>**].**

16 b. (1) Notwithstanding any provision of law to the contrary, an  
 17 inmate who receives a Certificate of Eligibility for Resentencing  
 18 issued pursuant to subsection a. of this section and received an  
 19 aggregate sentence of incarceration with a period of parole  
 20 ineligibility of 20 years or more <sup>1</sup>and who has not been resentenced  
 21 or previously sought relief under this section<sup>1</sup> may petition the court  
 22 for resentencing pursuant to the provisions of this section.

23 (2) Notwithstanding any court rule or any other provision of law  
 24 to the contrary, the court, upon consideration of a petition filed  
 25 pursuant to paragraph (1) of this subsection, may, in its discretion,  
 26 modify, reduce, or suspend the sentence, including any minimum or  
 27 mandatory sentence or a portion of the sentence imposed upon the  
 28 inmate.

29 If the court determines that a change in the inmate's original  
 30 sentence is not warranted, the court shall issue a written order  
 31 stating the reasons for denying modification. The provisions of this  
 32 section shall not require the court to grant a sentence modification.

33 c. An inmate who has been issued a Certificate of Eligibility  
 34 for Resentencing shall be represented by the Office of the Public  
 35 Defender for the purpose of filing a motion under this section,  
 36 unless the inmate <sup>1</sup>**[**chooses to be represented by pro bono counsel  
 37 or<sup>1</sup>**]** retains <sup>1</sup>**[**private<sup>1</sup> other<sup>1</sup> counsel <sup>1</sup>**[**at the inmate's expense<sup>1</sup>**]**.

38 d. <sup>1</sup>**[**Upon receipt of notification by the Department of  
 39 Corrections that an inmate has been issued a Certificate of  
 40 Eligibility for Resentencing pursuant to subsection a. of this  
 41 section, the sentencing court shall order a resentencing report which  
 42 shall assess the following factors:

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

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
 not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Senate SJU committee amendments adopted August 25, 2020.

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

16 e. The resentencing report shall also include the victim's  
17 position as to resentencing. In accordance with N.J.S.2C:44-6, the  
18 probation department shall notify the **The**<sup>1</sup> victim or the nearest  
19 relative of a homicide victim <sup>1</sup>shall be notified, as part of the  
20 notification provided under paragraph (2) of subsection e. of this  
21 section,<sup>1</sup> of the right to make **<sup>1</sup>[a] an updated<sup>1</sup>** statement **<sup>1</sup>[for**  
22 **inclusion in]** to supplement<sup>1</sup> the **<sup>1</sup>[resentencing] presentence<sup>1</sup>**  
23 report <sup>1</sup>prepared pursuant to subsection b. of N.J.S.2C:44-6,<sup>1</sup> if the  
24 victim or relative so desires. Any statement shall be made within  
25 20 days of notification **<sup>1</sup>[by] to<sup>1</sup>** the **<sup>1</sup>[probation department]**  
26 victim<sup>1</sup>.

27 **<sup>1</sup>[f.] e.<sup>1</sup>** (1) A motion pursuant to this section shall be filed  
28 with the **<sup>1</sup>[sentencing court, or the Presiding Criminal Judge if the**  
29 **sentencing court is not still sitting]** Superior Court in the county  
30 where the conviction occurred<sup>1</sup>. A copy of the motion shall be  
31 served on the agency that prosecuted the case.

32 (2) The prosecuting agency shall notify any victim of the  
33 offense committed by the inmate, or the nearest relative of a  
34 homicide victim, in accordance with section 3 of P.L.1985, c.249  
35 (C.52:4B-36) of the filing of a motion for resentencing pursuant to  
36 this section. The court shall afford any victim the opportunity to  
37 present a **<sup>1</sup>[written or videotaped]**<sup>1</sup> statement at the hearing on the  
38 petition or to testify at the hearing concerning the harm suffered by  
39 the victim or family member.

40 (3) The prosecutor shall file any response within 60 days. The  
41 court may grant an extension of time for good cause.

42 **<sup>1</sup>[g.] f.<sup>1</sup>** Upon the filing of a motion for resentencing under  
43 this section, the court shall conduct a hearing, unless the court finds  
44 that the Certificate of Eligibility for Resentencing issued to the  
45 inmate is not valid or its issuance was improper. A resentencing  
46 hearing on a motion filed pursuant to this section shall be held in  
47 the Superior Court in accordance with the Rules of Court.

1       <sup>1</sup>[h.] g.<sup>1</sup> At the hearing for resentencing, the court shall  
2 determine whether the offense for which the inmate was convicted  
3 was the result of mitigating qualities of youth <sup>1</sup>[or whether the  
4 offense reflects irreparable corruption]<sup>1</sup> by consideration of the  
5 following non-exhaustive list of factors:

- 6       (1) the inmate's age at the time of the offense;  
7       (2) the role of the attendant characteristics of youth in the  
8 offense, including:  
9       (a) impulsivity;  
10       (b) risk-taking behavior;  
11       (c) immaturity; and  
12       (d) susceptibility to peer pressure;  
13       (3) any obstacle the inmate may have faced as a child including:  
14       (a) parental abuse or neglect or abuse or neglect by any other  
15 person;  
16       (b) developmental disorders;  
17       (c) substance abuse;  
18       (d) addiction;  
19       (e) trauma;  
20       (f) poverty; and  
21       (g) lack of education;  
22       (4) any effort the inmate has made prior to and while  
23 incarcerated to overcome the obstacles set forth in paragraph (3) of  
24 this subsection;  
25       (5) the inmate's attempt at rehabilitation since incarceration,  
26 including but not limited to participation in available rehabilitative,  
27 educational, or other programs;  
28       (6) whether the inmate poses the same risk to society that the  
29 inmate posed at the time of the initial sentence; and  
30       (7) any additional evidence of maturity, growth, self-  
31 improvement, and consideration of the welfare of others.

32       <sup>1</sup>[i.] h.<sup>1</sup> If the court finds by a preponderance of the evidence  
33 that the offense for which the inmate was convicted and sentenced  
34 <sup>1</sup>[did not reflect irreparable corruption, but]<sup>1</sup> was the result of the  
35 mitigating qualities of youth, the court shall resentence the inmate  
36 to a term that allows the inmate a meaningful opportunity for  
37 release <sup>1</sup>[. However, if] , unless the court finds by clear and  
38 convincing evidence that the offense for which the inmate was  
39 convicted and sentenced reflects irreparable corruption. <sup>1</sup>If the  
40 court finds that the offense reflects irreparable corruption, the court  
41 shall not resentence the inmate regardless of the findings of the  
42 mitigating qualities of youth. If the sentencing court reduces the  
43 sentence pursuant to this section, the sentence shall not become  
44 final for 10 days in order to permit the prosecutor to appeal the  
45 sentence.

46       <sup>1</sup>[j.] i.<sup>1</sup> An inmate may file only one motion pursuant to this  
47 section. Nothing in this section shall prohibit an inmate from

1 pursuing resentencing under any other provision of Title 2C of the  
2 New Jersey Statutes or the Rules of Court.

3

4 2. This act shall take effect immediately and shall apply  
5 retroactively to any 'eligible' inmate who was sentenced '**as a**  
6 juvenile**]**' prior to the effective date of this act.