

[Second Reprint]

SENATE, No. 2591

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED JUNE 22, 2020

Sponsored by:

Senator NELLIE POU

District 35 (Bergen and Passaic)

Senator NIA H. GILL

District 34 (Essex and Passaic)

Senator NICHOLAS P. SCUTARI

District 22 (Middlesex, Somerset and Union)

SYNOPSIS

Provides for resentencing of certain inmates.

CURRENT VERSION OF TEXT

As amended by the Senate on October 29, 2020.



(Sponsorship Updated As Of: 11/16/2020)

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 ¹, upon request by the
9 inmate,¹ 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; ¹and¹

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

14 (4) has not been resentenced or previously sought relief under
15 this section¹**].**

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 ¹and who has not been resentenced
21 or previously sought relief under this section¹ 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 ¹**[**chooses to be represented by pro bono counsel
37 or¹**]** retains ¹**[**private¹ other¹ counsel ¹**[**at the inmate's expense¹**]**¹.

38 d. ¹**[**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:

¹Senate SJU committee amendments adopted August 25, 2020.

²Senate floor amendments adopted October 29, 2020.

(2) the role of the attendant characteristics of youth in the offense, including:

- (a) impulsivity;
- (b) risk-taking behavior;
- (c) immaturity; and
- (d) susceptibility to peer pressure; and

(3) any obstacle the defendant may have faced as a child including:

- (a) parental abuse or neglect or abuse by any other person;
- (b) developmental disorders;
- (c) substance abuse;
- (d) addiction;
- (e) trauma;
- (f) poverty; and
- (g) lack of education.

e. The resentencing report shall also include the victim's position as to resentencing. In accordance with N.J.S.2C:44-6, the probation department shall notify the **The**¹ victim or the nearest relative of a homicide victim ¹shall be notified, as part of the notification provided under paragraph (2) of subsection e. of this section,¹ of the right to make **¹[a] an updated¹** statement **¹[for inclusion in] to supplement¹** the **¹[resentencing] presentence¹** report ¹prepared pursuant to subsection b. of N.J.S.2C:44-6,¹ if the victim or relative so desires. Any statement shall be made within 20 days of notification **¹[by] to¹** the **¹[probation department] victim¹**.

¹[f.] e.¹ (1) A motion pursuant to this section shall be filed with the **¹[sentencing court, or the Presiding Criminal Judge if the sentencing court is not still sitting] Superior Court in the county where the conviction occurred¹**. A copy of the motion shall be served on the agency that prosecuted the case.

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

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

¹[g.] f.¹ Upon the filing of a motion for resentencing under this section, the court shall 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. A resentencing hearing on a motion filed pursuant to this section shall be held in the Superior Court in accordance with the Rules of Court.

1 **¹[h.] g.**¹ 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 **¹[or whether the**
4 **offense reflects irreparable corruption]**¹ 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 **¹[i.] h.**¹ If the court finds by a preponderance of the evidence
33 that the offense for which the inmate was convicted and sentenced
34 **¹[did not reflect irreparable corruption, but]**¹ 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 **¹[. However, if]** **¹[. 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. If**¹ 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 **¹[j.] i.**¹ 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 ²j. An inmate who has been resentenced under the provisions of
4 this section also shall be sentenced to a five-year term of parole
5 supervision.²

6
7 2. This act shall take effect immediately and shall apply
8 retroactively to any ¹eligible¹ inmate who was sentenced ¹**【**as a
9 juvenile**】**¹ prior to the effective date of this act.