

# SENATE, No. 763

## STATE OF NEW JERSEY 220th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2022 SESSION

**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**

Introduced Pending Technical Review by Legislative Counsel.



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:

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7 1. a. The Commissioner of Corrections shall issue a Certificate  
8 of Eligibility for Resentencing to any inmate who:

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

10 (2) received an aggregate sentence of incarceration of 30 years  
11 or more;

12 (3) has served at least 20 years of that sentence.

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

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

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

30 c. An inmate who has been issued a Certificate of Eligibility  
31 for Resentencing shall be represented by the Office of the Public  
32 Defender for the purpose of filing a motion under this section,  
33 unless the inmate retains other counsel.

34 d. The victim or the nearest relative of a homicide victim shall  
35 be notified, as part of the notification provided under paragraph (2)  
36 of subsection e. of this section, of the right to make an updated  
37 statement to supplement the presentence report prepared pursuant to  
38 subsection b. of N.J.S.2C:44-6, if the victim or relative so desires.  
39 Any statement shall be made within 20 days of notification to the  
40 victim.

41 e. (1) A motion pursuant to this section shall be filed with the  
42 Superior Court in the county where the conviction occurred. A  
43 copy of the motion shall be served on the agency that prosecuted  
44 the case.

45 (2) The prosecuting agency shall notify any victim of the  
46 offense committed by the inmate, or the nearest relative of a  
47 homicide victim, in accordance with section 3 of P.L.1985, c.249  
48 (C.52:4B-36) of the filing of a motion for resentencing pursuant to

1 this section. The court shall afford any victim the opportunity to  
2 present a statement at the hearing on the petition or to testify at the  
3 hearing concerning the harm suffered by the victim or family  
4 member.

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

7 f. Upon the filing of a motion for resentencing under this  
8 section, the court shall conduct a hearing, unless the court finds that  
9 the Certificate of Eligibility for Resentencing issued to the inmate is  
10 not valid or its issuance was improper. A resentencing hearing on a  
11 motion filed pursuant to this section shall be held in the Superior  
12 Court in accordance with the Rules of Court.

13 g. At the hearing for resentencing, the court shall determine  
14 whether the offense for which the inmate was convicted was the  
15 result of mitigating qualities of youth by consideration of the  
16 following non-exhaustive list of factors:

17 (1) the inmate's age at the time of the offense;

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

20 (a) impulsivity;

21 (b) risk-taking behavior;

22 (c) immaturity; and

23 (d) susceptibility to peer pressure;

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

25 (a) parental abuse or neglect or abuse or neglect by any other  
26 person;

27 (b) developmental disorders;

28 (c) substance abuse;

29 (d) addiction;

30 (e) trauma;

31 (f) poverty; and

32 (g) lack of education;

33 (4) any effort the inmate has made prior to and while  
34 incarcerated to overcome the obstacles set forth in paragraph (3) of  
35 this subsection;

36 (5) the inmate's attempt at rehabilitation since incarceration,  
37 including but not limited to participation in available rehabilitative,  
38 educational, or other programs;

39 (6) whether the inmate poses the same risk to society that the  
40 inmate posed at the time of the initial sentence; and

41 (7) any additional evidence of maturity, growth, self-  
42 improvement, and consideration of the welfare of others.

43 h. If the court finds by a preponderance of the evidence that the  
44 offense for which the inmate was convicted and sentenced was the  
45 result of the mitigating qualities of youth, the court shall resentence  
46 the inmate to a term that allows the inmate a meaningful  
47 opportunity for release, unless the court finds by clear and  
48 convincing evidence that the offense for which the inmate was

1 convicted and sentenced reflects irreparable corruption. If the court  
2 finds that the offense reflects irreparable corruption, the court shall  
3 not resentence the inmate regardless of the findings of the  
4 mitigating qualities of youth. If the sentencing court reduces the  
5 sentence pursuant to this section, the sentence shall not become  
6 final for 10 days in order to permit the prosecutor to appeal the  
7 sentence.

8 i. An inmate may file only one motion pursuant to this section.  
9 Nothing in this section shall prohibit an inmate from pursuing  
10 resentencing under any other provision of Title 2C of the New  
11 Jersey Statutes or the Rules of Court.

12 j. An inmate who has been resentenced under the provisions of  
13 this section also shall be sentenced to a five-year term of parole  
14 supervision.

15  
16 2. This act shall take effect immediately and shall apply  
17 retroactively to any eligible inmate who was sentenced prior to the  
18 effective date of this act.

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#### STATEMENT

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

30 Specifically, the bill would provide a process for the resentencing  
31 of any inmate who, either prior to or subsequent to the bill's  
32 immediate effective date (1) committed a crime as a juvenile and was  
33 tried as an adult, (2) received an aggregate sentence of incarceration of  
34 30 years or more, and (3) has served at least 20 years of that sentence.  
35 The Commissioner of Corrections would be required to issue a  
36 Certificate of Eligibility for Resentencing to any such inmate who  
37 requested one, and if that inmate received an aggregate sentence with a  
38 period of parole ineligibility of 20 years or more, and had not been  
39 previously resentenced or sought relief under the bill's process, the  
40 inmate could file a petition for resentencing in the Superior Court in  
41 the county where the conviction occurred. The Public Defender would  
42 represent an eligible inmate, unless that inmate retained other counsel.

43 A copy of a filed petition would be served on the original  
44 prosecuting agency, which would have to file a response within 60  
45 days of being notified, although the court could grant an extension for  
46 filing based upon good cause shown. The prosecuting agency would  
47 notify any victim of the offense for which resentencing is sought or the  
48 nearest relative in cases involving a homicide, informing the person of

1 the right to make an updated statement, within 20 days of being  
2 notified, to supplement the presentence report prepared pursuant to  
3 subsection b. of N.J.S.2C:44-6. The court would also afford any  
4 victim an opportunity to present a statement at the hearing on the  
5 petition, or to testify about the harm suffered by the victim or victim's  
6 family member.

7 At the resentencing hearing, the court would determine whether  
8 the offense for which the inmate was convicted was the result of  
9 mitigating qualities of youth by consideration of several factors,  
10 presented in the bill as a non-exhaustive list for helping guide the  
11 court's decision. Such factors include:

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

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

31 Additionally, the bill provides that any inmate who has been  
32 sentenced under the bill's provisions also is required to be sentenced to  
33 a five-year term of parole supervision.