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CRIMINAL SENTENCING AND DISPOSITION
COMMISSION

STATE HOUSE ANNEX • P.O. BOX 068 •
TRENTON, NJ 08625-0068

November 13, 2024

Governor Philip D. Murphy
Office of the Governor
PO Box 001
Trenton, NJ 08625
609-292-6000

Senator Nicholas P. Scutari
Senate President
67 Walnut Ave.
Clark, NJ 07066

Senator Anthony M. Bucco
Senate Minority Leader
75 Bloomfield Ave., Suite 302, 3rd Floor
Denville, NJ 07834

Assemblyman Craig J. Coughlin
Assembly Speaker
569 Rahway Ave.
Woodbridge, NJ 07095

Assemblyman John DiMaio
Assembly Minority Leader
208 Mountain Ave., Suite 3
Hackettstown, NJ 07840

Re: Report of the New Jersey Criminal Sentencing and Disposition Commission

Dear Governor Murphy, Senate President Scutari, Senate Minority Leader Bucco, Speaker Coughlin, and Assembly Minority Leader DiMaio,

As you know, I serve as the Chair of the New Jersey Criminal Sentencing and Disposition Commission ("Commission"). Pursuant to N.J.S.A. 2C:48A-4, I am writing on behalf of the Commission to report on the Commission's findings and recommendations since my appointment to the Commission this year.

Before discussing its findings and recommendations, the Commission expresses its deep gratitude to Chief Justice Deborah Poritz (Ret.), the immediate past Chair of the Commission. Chief Justice Poritz's countless contributions to the Commission have paved the path for the way forward. Thanks to her tireless efforts and leadership, the Commission issued its first report in 2019 along with two subsequent reports that were foundational to several legislative changes that have made

New Jersey’s criminal justice system fairer and more equitable. The Commission and the citizens of the State of New Jersey owe Chief Justice Poritz a debt of gratitude.

Turning to the Commission’s findings and recommendations, the Commission reconvened earlier this year and has had two meetings since then. Based on those deliberations, the Commission unanimously makes the following recommendations:

A. Enact A4464 to Implement the Commission’s Prior Recommendation 1.

The Commission’s first recommendation in its 2019 Report called for the elimination of mandatory minimum sentences for non-violent drug crimes. That recommendation identified seven drug-related offenses—codified at N.J.S.A. 2C:35-3, 2C:35-4, 2C:35-5, 2C:35-6, 2C:35-7, 2C:35-8, and 2C:43-6(f)—that contain mandatory minimum sentencing requirements. The Commission recommended removing the mandatory minimum sentencing language for each of those offenses. To date, no legislation has been enacted implementing the Commission’s first recommendation.

On June 3, 2024, A4464 sponsored by Assemblywoman Shavonda Sumter and Assemblyman Reginald W. Atkins was introduced in the Assembly (on October 7, identical bill S3722 sponsored by Senators Raj Mukherji and Patrick J. Diegnan, Jr., was introduced in the Senate). This bill proposes to amend each of the offenses identified in the Commission’s first recommendation by removing all language in those code provisions requiring the imposition of mandatory minimum sentences. Sentences imposed pursuant to the above seven listed statutes will instead be left to the discretion of the sentencing judge, consistent with the other requirements of the Criminal Code. The Commission has determined that A4464 is fully consistent with the Commission’s first recommendation. The Commission therefore unanimously recommends the enactment of A4464.

B. Enact A4740, with Changes, to Implement the Commission’s Prior Recommendation “B” in its Third Report (2023).

In its 2023 Report, the Commission made its tenth overall recommendation—Recommendation “B.” That recommendation called for the adoption of a new mitigating factor for sentencing purposes that allows judges to consider that the defendant suffered prior abuse inflicted by the victim of the crime. In unanimously making this recommendation, the Commission recognized the connection between abuse and the manifestation of violent behavior in the abused person. To date, no legislation has been enacted implementing the Commission’s tenth recommendation.

On September 12, 2024, A4740 sponsored by Assemblywomen Jessica Ramirez, Heather Simmons, Aura Dunn, and Garnet Hall was introduced in the Assembly. That bill proposes to amend N.J.S.A. 2C:44-1(b) (listing mitigating factors to be considered at sentencing) with the following language: “(15) The defendant suffered physical, sexual, or emotional abuse and such abuse was a contributing factor to the defendant’s criminal behavior.” The Commission unanimously recommends the adoption of A4740, with the following change reflected in underline for added language and [brackets] for deleted language: “(15) The defendant suffered physical, sexual, or emotional abuse [and such abuse was a contributing factor to the defendant’s criminal behavior] which was inflicted by the victim of the crime.”

The Commission applauds Assemblywomen Ramirez, Simmons, and Dunn’s efforts to implement the Commission’s tenth recommendation. However, A4740, as drafted, is broader than the

language the Commission proposed in its 2023 Report. The Commission is concerned that the expansive language of A4740 could potentially dilute the effect of the mitigating factor and render it less impactful for those defendants the Commission intended to benefit. Therefore, the Commission unanimously recommends the enactment of A4740 with the changes above. Further, to avoid protracted litigation regarding retroactivity, see State v. Lane, 251 N.J. 84, 87 (2022) (finding no legislative intent of retroactivity for mitigating factor 14), the Commission recommends that the Legislature specifically note its intention that the new mitigating factor be applied prospectively only.

C. Enact S2338 to Implement the Commission’s Prior Recommendation “C” in its Third Report (2023).

The Commission’s eleventh overall recommendation—Recommendation “C”—called for the establishment of a rehabilitative release program. The program proposed in that recommendation would permit those incarcerated persons who reach the age of 60 (or 62 in the case of murder) and who have served 20 years in prison (or 30 years in the case of murder) to apply to a court for resentencing. To date, no legislation has been enacted implementing the Commission’s eleventh recommendation.

On January 29, 2024, S2338 sponsored by Senators Raj Mukherji and Angela McKnight was introduced in the Senate (on June 3, identical bill A4463 sponsored by Assembly members Verlina Reynolds-Jackson, Jessica Ramierz, and William B. Sampson, IV, was introduced in the Assembly). The bill would permit the Commissioner of the Department of Corrections to issue a certificate to those incarcerated persons who reach the age of 60 (or 62 in the case of murder) and who have served 20 years in prison (or 30 years in the case of murder). Those incarcerated persons who receive the certificate would be given one chance to petition for resentencing at a hearing before the Superior Court. Victims or their family members would have an opportunity to be heard at such resentencing hearings or through a written statement. If the Superior Court finds by clear and convincing evidence that (1) the incarcerated person is not a danger to the safety of any person or the community, (2) the incarcerated person demonstrates a readiness for reentry, and (3) the interests of justice warrant a sentence modification, the Superior Court may modify, reduce, or suspend the incarcerated person’s sentence.

The Commission has determined that S2338 is consistent with the Commission’s eleventh overall recommendation. However, the Commission recommends replacing the word “may” in subsection j. of S2338, which appears on page 3, line 30, of the current draft of the bill, with “shall.” The Commission believes that inclusion of the word “may,” as in the current draft of S2338, implies that the Superior Court has discretion to deny an application for resentencing even where the incarcerated person proves all the relevant factors—including that “the interests of justice warrant a sentence modification”—by clear and convincing evidence. If the relevant factors are proven by clear and convincing evidence, it is unclear what remaining basis the Superior Court would have to deny a motion for resentencing. The Commission therefore recommends the above change to avoid litigation over the scope of the Superior Court’s discretion in resentencing matters. See, e.g., State v. A.M., 252 N.J. 432, 456 (2023) (discussing meaning of the word may versus the word shall in interpreting legislation enacted following Commission’s seventh recommendation). The Commission unanimously recommends the enactment of S2338 with the change described above.

D. Enact Legislation to Implement the Commission’s Prior Recommendation “D” in its Third Report (2023).

The Commission’s twelfth overall recommendation—Recommendation “D”—requested reforms to the fines, fees, penalties, and assessments imposed on criminal defendants in New Jersey. The Commission recognized that these burdensome legal financial obligations had adverse effects on those unable to pay them. However, no statute has been enacted implementing the Commission’s twelfth recommendation.

The Commission has not identified any proposed legislation that would implement the Commission’s twelfth overall recommendation. The Commission therefore developed its own proposed statutory language to implement recommendation twelve. The Commission recommends the introduction and enactment of legislation with the following language:

Notwithstanding any other statute or provision of law to the contrary, the trial court may exercise its discretion to adjust, reduce, or waive any mandatory statutory fines, fees, penalties, assessments, or other legal financial obligations imposed on a defendant in a criminal proceeding, including a non-indictable proceeding, based on the defendant’s inability to pay, the interests of justice, or if the fine, fee, penalty, assessment, or other legal financial obligation would be contrary to the purposes of rehabilitation.

In sum, the Commission recommends the enactment of A4464 as introduced. The Commission also recommends the enactment of A4740 and S2338 with the changes described under headings “B” and “C” above, respectively. Finally, the Commission proposes, for enactment, legislative language designed to implement its twelfth overall recommendation. We appreciate your consideration of these recommendations, and we look forward to discussing them with your respective offices. In the meantime, the Commission will continue to identify ways to improve the laws governing New Jersey’s criminal justice system, consistent with its statutory mandate.

Very truly yours,



Christopher Porrino

cc: New Jersey State Legislature
Office of Legislative Services
State House Annex
Trenton, NJ 08625-0068