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Supreme Court of New Jersey

DOCKET NO. 084509

CRIMINAL ACTION

STATE OF NEW JERSEY, Plaintiff-Respondent,	:	On Certification Granted to the Superior Court of New Jersey, Appellate Division.
v.	:	Sat Below: Hon. Jack M. Sabatino, J.A.D.
JAMES COMER, Defendant-Appellant.	:	Hon. Thomas W. Sumners, Jr., J.A.D. Hon. Richard J. Geiger, J.A.D.

BRIEF AND APPENDIX ON BEHALF OF THE ATTORNEY GENERAL
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PRELIMINARY STATEMENT

The Legislature's decision to mandate a minimum sentence of thirty years without parole for a juvenile waived up to adult court and convicted of murder is presumed constitutional. And as the Appellate Division here correctly concluded, defendant fails to meet his heavy burden of overcoming that strong presumption of constitutionality. Under these circumstances, this Court's precedent mandates that its "sole function" and "clear obligation" is to "give full effect to the legislative intent." Simply put, it is up to the Legislature to determine whether any changes to the thirty-year minimum sentence for murder are warranted for juveniles waived up to adult court. Indeed, the Legislature is actively considering a bill that would allow a juvenile sentenced to thirty years or more to petition for resentencing after having served at least twenty years of that sentence. This proposed legislation is in line with a recommendation of the Criminal Sentencing and Disposition Commission, which the Attorney General has endorsed. Unless and until the Legislature makes a policy determination that such a change in the law is appropriate, the law as currently written is undoubtedly constitutional and thus must govern.

At seventeen years and three months old, defendant and two accomplices committed a string of armed robberies, the second of which ended in a senseless murder because the victim did not have any money on him. The violent crime spree only came to a halt when the stolen car defendant and his cohorts were using

ran out of gas. For his role in these crimes, defendant was originally sentenced in 2004 to an aggregate term of seventy-five years in prison, with a parole ineligibility period of sixty-eight years and three months. As a result, defendant would not have been eligible for parole until he was eighty-five years old. That sentence was upheld by the Appellate Division and this Court.

In 2012, the United States Supreme Court decided Miller v. Alabama, which holds that "mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on 'cruel and unusual punishments.'" In 2015, the trial court ruled that defendant was entitled to resentencing in accordance with Miller. In State v. Zuber, this Court agreed and remanded for resentencing.

On remand, defendant received exactly what he was entitled to under Zuber: individualized consideration of his sentence in light of the Miller factors relating to juvenile offenders. Based on the resentencing judge's detailed fact-findings on the Miller factors, defendant was resentenced to thirty years in prison without parole on his felony-murder conviction. The judge also ordered that defendant's sentences on the additional robbery and weapons offenses be served concurrently.

Although defendant received the lowest possible sentence permitted under the law, he now contends that the thirty-year mandatory-minimum sentence for murder is unconstitutional as applied to juveniles. But a thirty-year mandatory-minimum

sentence for a seventeen-year-old murderer is a far cry from the "harshest possible penalty" of mandatory life without parole, as contemplated by Miller and its progeny. After all, Miller does not even foreclose a sentence of life without parole for a juvenile offender, but rather precludes it from being a mandatory sentencing disposition. Indeed, the United States Supreme Court's recent opinion in Jones v. Mississippi confirms that the Eighth Amendment only forbids mandatory life-without-parole sentences for juveniles convicted of murder. If the Eighth Amendment does not demand anything more than that a life-without-parole sentence for a juvenile murderer cannot be mandatory, then it certainly does not demand that a thirty-year mandatory-minimum sentence must be struck down.

Nor is a thirty-year mandatory-minimum sentence the "practical equivalent" of life without parole, as contemplated by this Court's opinion in Zuber. Under his new thirty-year sentence, defendant will be released when he is only forty-seven years old. Defendant can thus reasonably look forward to a long life ahead of him outside of prison. And nothing else in the state constitution suggests that the Legislature's imposition of a thirty-year mandatory sentence for murder is unconstitutional. Although reasonable minds can differ as to the proper policy for juvenile sentencing, the only question presented is whether the constitution takes that choice away from the Legislature. Since it does not, defendant's sentence — the minimum allowable by our Legislature — should be affirmed.

STATEMENT OF PROCEDURAL HISTORY

Defendant, James Comer, was waived as a juvenile from the Family Part to the Superior Court, Law Division, to be tried as an adult for his participation in a string of armed robberies, one of which ended in a murder. (Da25).

On January 17, 2003, an Essex County Grand Jury returned Indictment No. 2003-1-231 charging defendant with second-degree conspiracy to commit robbery, contrary to N.J.S.A. 2C:5-2 (count one); first-degree felony murder, contrary to N.J.S.A. 2C:11-3(a)(3) (count three); four counts of first-degree armed robbery, contrary to N.J.S.A. 2C:15-1 (counts four, seven, ten, and thirteen); six counts of third-degree unlawful possession of a handgun, contrary to N.J.S.A. 2C:39-5(b) (counts five, eight, eleven, fourteen, seventeen, and eighteen); four counts of second-degree possession of a weapon for an unlawful purpose, contrary to N.J.S.A. 2C:39-4(a) (counts six, nine, twelve, and fifteen); and third-degree theft by unlawful taking, contrary to N.J.S.A. 2C:20-3(a) (count sixteen). (Da1 to 19).[1]

On December 9, 2003, after a seventeen-day trial before the Honorable Thomas R. Vena, J.S.C., and a jury, defendant was convicted of conspiracy to commit robbery (count one), felony murder (count three), three counts of first-degree robbery (counts seven, ten, and thirteen), one count of second-degree

[1] Co-defendant Ibn Adams was charged in the same indictment. A third co-defendant, Dexter Harrison, was charged in a separate indictment. See State v. Adams, 194 N.J. 186, 190 (2008).

robbery (count four), theft (count sixteen), and nine weapons offenses (counts five, six, eight, nine, eleven, twelve, fourteen, fifteen, and seventeen). He was acquitted of one additional weapons offense (count eighteen). (4T64-14 to 65-9; Da20 to 23).

On March 5, 2004, following appropriate merger of offenses, Judge Vena sentenced defendant as follows: to thirty years in prison, all without eligibility for parole, for his felony-murder conviction; to three consecutive fifteen-year terms of imprisonment, with eighty-five percent parole ineligibility under the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2, for his armed-robbery convictions; and to concurrent four-year prison terms for the weapons offenses. Therefore, the aggregate sentence imposed was seventy-five years in prison, with a parole ineligibility period of sixty-eight years and three months – at which time defendant would be eighty-five years old. (1T32-20 to 41-7; Da20 to 23).

Defendant appealed. The Appellate Division affirmed defendant's convictions and sentence. State v. Adams and Comer, No. A-4915-03T4, A-6307-03T4, 2006 N.J. Super. Unpub. LEXIS 2233 (App. Div. Dec. 28, 2006). This Court granted certification and on March 26, 2008, affirmed defendant's convictions and sentence. Adams, 194 N.J. 186.

On June 13, 2014, defendant filed a motion in the Law Division "to correct an illegal sentence." (Da24 to 26). On May 11, 2015, Judge Vena granted defendant's motion in part,

ruling that defendant was entitled to resentencing in accordance with Miller v. Alabama, 567 U.S. 460 (2012). (Da24 to 39).

This Court granted defendant's motion for direct certification and consolidated the appeal with another juvenile-sentencing case raising related issues. State v. Zuber, 227 N.J. 422, cert. denied, 138 S. Ct. 152 (2017). In its January 11, 2017 opinion, this Court remanded the matter for resentencing, directing the trial court to "consider the Miller factors when it determines the length of [defendant's] sentence and when it decides whether the counts of conviction should run consecutively." Id. at 453.

On August 2, 2018, Judge Vena held an evidentiary hearing. (2T; 3T). At the hearing, defendant presented testimony from two witnesses. First, Dr. Richard Dudley, who was qualified to testify as an expert in psychiatry, testified regarding the Miller factors as applied to defendant. (2T7-3 to 3T64-15; Dca44 to 76). Second, James McGreevey, Chairman of the New Jersey Reentry Corporation, testified regarding the development of a case-management plan for defendant's reentry into the community. (3T68-8 to 97-17; Da77 to 83).

On October 5, 2018, defendant appeared before Judge Vena for resentencing. After hearing arguments from the parties, Judge Vena placed his detailed findings on the record regarding the Miller factors. (4T64-14 to 80-25). Based on his findings, the judge "declined the defense's invitation to find the sentencing structure of N.J.S.A. 2C:11-3(b)(1) unconstitutional

as applied to [defendant]." (4T81-1 to 3). In any event, the judge found that a thirty-year period of parole ineligibility "was appropriate in this case." (4T81-1 to 82-4). He then ruled that, in light of the Miller factors, consecutive sentences would not be imposed. (4T82-5 to 16).

Following appropriate merger of offenses, Judge Vena resentenced defendant as follows: to thirty years in prison, all without eligibility for parole, for his felony-murder conviction; to concurrent fifteen-year terms of imprisonment, with eighty-five percent parole ineligibility under NERA, for his three armed-robbery convictions; and to concurrent four-year prison terms for the weapons offenses. Therefore, the aggregate sentence imposed was thirty years in prison without eligibility for parole. (4T82-18 to 86-11; Da40 to 43).

Defendant appealed from the resentencing. In an unpublished opinion dated May 6, 2020, the Appellate Division affirmed defendant's sentence. (Dpa3 to 32). The panel ruled that "the defense has failed to establish that the thirty-year parole bar as applied to juvenile murderers fails to conform with current standards of decency or 'is such as to shock the general conscience and to violate principles of fundamental fairness.'" (Dpa30).

On March 26, 2021, this Court granted defendant's Petition for Certification. State v. Comer, 245 N.J. 484 (2021).

STATEMENT OF FACTS

When he was seventeen years and three months old, defendant and two accomplices, Ibn Adams and Dexter Harrison, committed a string of armed robberies, the second of which ended in a senseless murder because the victim did not have any money on him. The violent crime spree only came to a halt when the stolen car defendant and his cohorts were using ran out of gas. (Da25; Adams, 194 N.J. at 191-97).

The crime spree began around 11:30 p.m. on April 17, 2000, in East Orange. Adams, 194 N.J. at 194. The first robbery victim, Deru Abernathy, was sitting in his car talking to a friend on a cell phone when he saw a blue Nissan pass by, stop, and then reverse until the cars were beside each other. Ibid. Abernathy looked into the car and saw the occupants pointing guns at him. Ibid. Defendant and Adams got out of the Nissan, approached Abernathy, forced him from his car, and yelled "stickup." Ibid. The assailants took Abernathy's phone, jewelry, and some articles of clothing. Ibid. Abernathy believed that one of the assailants held a nine-millimeter weapon and the other a .380 caliber handgun. Ibid. At trial, Abernathy identified defendant as the front-seat passenger with a handgun, and Adams as the back-seat passenger who approached him with a gun. Id. at 194-95.

After robbing Abernathy, the trio went looking for their next victim. Id. at 195, 197. They came across George Paul, a thirty-five-year-old father of four sons. (Da25; 1T21-2 to 25).

Upon discovering that Paul did not have any money on him, Adams shot and killed him. (Da25; Adams, 194 N.J. at 197).

Harrison then decided that he did not want to use his Nissan car anymore, so they decided to steal a car. The trio drove to Newark, where Adams stole a white Honda Civic to continue their crime spree. Adams, 194 N.J. at 197.

Around 2:00 a.m., the third victim, Allyson Attabola, was walking to her East Orange home with a bookbag and some groceries when a white car stopped alongside her. Two people, later identified as Adams and defendant, jumped out of the car. Id. at 195. Adams pointed a black handgun at her, repeatedly asked her "where it was at," searched her pockets, and took her bookbag. Ibid.

The fourth victim that night was Tassandra Wright. Ibid. Around 3:00 a.m., Wright was driving home on Route 1 & 9 in Kearny when a white Honda Civic cut her off. Ibid. The same car stopped beside her at three consecutive red lights. Ibid. Later, while she was parking her car on the street near her Jersey City home, the white Honda crashed into the front of her car. Ibid. Wright turned to see defendant tap on her window with a handgun and demand money. Ibid. Adams then entered her front passenger door and removed her paycheck and employee identification. Ibid.

After the stolen Honda Civic ran out of gas, the trio pushed it to a truck stop where they eventually were apprehended. Id. at 191, 196. A search of the three suspects

and the stolen car revealed incriminating evidence of the robberies. Ibid.

The jury found defendant guilty of conspiracy, felony murder, three counts of first-degree robbery, one count of second-degree robbery, theft, and nine weapons offenses. Id. at 198.

LEGAL ARGUMENT

POINT I

DEFENDANT'S THIRTY-YEAR SENTENCE FOR FELONY MURDER AND FOUR ARMED ROBBERIES, WHICH WILL RESULT IN HIS RELEASE FROM PRISON AT ONLY FORTY-SEVEN YEARS OLD, IS CONSTITUTIONAL.

There is no basis to disturb defendant's thirty-year sentence. On the remand ordered by this Court, defendant received exactly what he was entitled to: individualized consideration of his sentence in light of the factors set forth by the United States Supreme Court in Miller v. Alabama, 567 U.S. 460 (2012). Based on the judge's detailed fact-findings on the Miller factors, defendant received the minimum allowable sentence of thirty years without parole on his felony-murder conviction, with the sentences on the additional robbery and weapons offenses to be served concurrently. Although defendant received the lowest possible sentence permitted under the law, he now asks this Court to hold that the thirty-year mandatory-minimum sentence for murder set by the Legislature — and explicitly applied to juveniles waived up to adult court — is unconstitutional as applied to juveniles.

The Appellate Division correctly rejected this argument and this Court should do the same. The Legislature has clearly spoken that the thirty-year mandatory-minimum sentence for murder applies equally to juvenile murderers tried and convicted in adult court. See N.J.S.A. 2C:11-3(b)(1) ("a person convicted

of murder shall be sentenced . . . by the court to a term of 30 years, during which the person shall not be eligible for parole, or be sentenced to a specific term of years which shall be between 30 years and life imprisonment of which the person shall serve 30 years before being eligible for parole); N.J.S.A. 2C:11-3(b)(5) (providing that a juvenile who has been tried and convicted of murder as an adult shall be sentenced under subsection (b)(1)).

This legislative mandate is presumed constitutional. See Whirlpool Properties v. Dir., Div. of Taxation, 208 N.J. 141, 175 (2011). Indeed, "[o]ur courts have demonstrated a steadfast adherence to the principle 'that every possible presumption favors the validity of an act of the Legislature.'" State v. Trump Hotels & Casino Resorts, 160 N.J. 505, 527 (1999) (quoting N.J. Sports & Exposition Auth. v. McCrane, 61 N.J. 1, 8 (1972), appeal dismissed, 409 U.S. 943 (1972)). The judiciary's power to invalidate a legislative act thus "has always been exercised with extreme self restraint, and with a deep awareness that the challenged enactment represents the considered action of a body composed of popularly elected representatives." Ibid. Consistent with this policy of restraint, "a legislative act will not be declared void unless its repugnancy to the Constitution is clear beyond a reasonable doubt." Harvey v. Bd. of Chosen Freeholders, 30 N.J. 381, 388 (1959); Gangemi v. Berry, 25 N.J. 1, 10 (1957). The party challenging the statute bears the "heavy burden" of demonstrating its invalidity. Trump

Hotels, 106 N.J. at 526.

Here, the Appellate Division correctly held that defendant failed to meet his heavy burden to overcome the presumed constitutionality of N.J.S.A. 2C:11-3(b)(5). (Dpa29 to 31). The Legislature did not violate the Eighth Amendment or Article 1, Paragraph 12 of the New Jersey Constitution when it imposed a mandatory-minimum sentence of thirty years for a juvenile waived up to adult court and convicted of murder.

A. A thirty-year mandatory-minimum sentence for a juvenile murderer does not violate the Eighth Amendment.

As a threshold matter, it is clear that imposing a thirty-year sentence for murder, even as a mandatory sentence, does not violate the federal Constitution. In Miller v. Alabama, the United States Supreme Court considered the constitutionality of mandatory life-without-parole sentences imposed on two fourteen-year-old juvenile offenders convicted of murder. 567 U.S. at 465. In both cases, state law mandated that the juvenile "would die in prison even if a judge or jury would have thought that his youth or other attendant characteristics, along with the nature of his crime, made a lesser sentence (for example, life *with* the possibility of parole) more appropriate." Ibid.

The Court found that "[s]uch a scheme prevents those meting out punishment from considering a juvenile's 'lessened culpability' and greater 'capacity for change' and runs afoul of our cases' requirement of individualized sentencing for defendants facing the most serious penalties." Ibid. (citing

Graham v. Florida, 560 U.S. 48, 68 (2010)). Under these circumstances, the Court held that "mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on 'cruel and unusual punishments.'" Ibid.

The Court explained that mandatory life without parole for a juvenile "precludes consideration of his chronological age and its hallmark features - - among them, immaturity, impetuosity, and failure to appreciate risks and consequences." Id. at 477. In addition, a mandatory-life-without-parole sentence "prevents taking into account the family and home environment that surrounds [the juvenile] - - and from which he cannot extricate himself - - no matter how brutal or dysfunctional." Ibid. Such a sentence also "neglects the circumstances of the homicide offense, including the extent of [the juvenile's] participation in the conduct and the way familial and peer pressures may have affected him." Ibid. "Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth - - for example, his inability to deal with police and prosecutors (including a plea agreement) or his incapacity to assist his own attorneys." Id. at 477-78. Finally, the Court found that "this mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it." Id. at 478.

The Court thus concluded that "the Eighth Amendment forbids a sentencing scheme that mandates life in prison without

possibility of parole for juvenile offenders." Id. at 479. And it added that "appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon," given the "great difficulty . . . of distinguishing at this early age between 'the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.'" Id. at 479-80 (quoting Roper v. Simmons, 543 U.S. 551, 573 (2005), and Graham, 560 U.S. at 68). But the Court did not "foreclose a sentencer's ability to make that judgment in homicide cases"; it simply "require[d] [the sentencer] to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." Id. at 480.

In Montgomery v. Louisiana, 136 S. Ct. 718, 732-37 (2016), the United States Supreme Court held Miller "announced a substantive rule of law" that applies retroactively. There, the defendant, Henry Montgomery, was sentenced to mandatory life without parole for a murder he committed when he was seventeen years old. Id. at 725-26. In applying Miller retroactively, the United States Supreme Court reiterated that the mandatory imposition of life without parole sentences would be inappropriate because "prisoners like Montgomery must be given the opportunity to show their crime did not reflect irreparable corruption; and, if it did not, their hope for some years of life outside prison walls must be restored." Id. at 736-37.

In upholding the constitutionality of the thirty-year

mandatory-minimum sentence, the Appellate Division correctly recognized that Miller does not apply to a thirty-year parole bar. (Dpa25). By its own terms, Miller invalidates "mandatory life without parole for those under the age of 18 at the time of their crimes[.]" 567 U.S. at 465 (emphasis added). But a thirty-year mandatory-minimum sentence for a seventeen-year-old murderer is a far cry from the "harshest possible penalty" of mandatory life without parole — as contemplated by the United States Supreme Court in Miller and its progeny.

Indeed, the United States Supreme Court's recent opinion in Jones v. Mississippi, 141 S. Ct. 1307 (2021), confirms that the Eighth Amendment only forbids mandatory life-without-parole sentences for juveniles convicted of murder. In Jones, the Court explained that under Miller, "an individual who commits a homicide when he or she is under 18 may be sentenced to life without parole, but only if the sentence is not mandatory and the sentencer therefore has discretion to impose a lesser punishment." Id. at 1311. The issue before the Court was whether, as Jones argued, "a sentencer who imposes a life-without-parole sentence must also make a separate factual finding that the defendant is permanently incorrigible, or at least provide an on-the-record sentencing explanation with an implicit finding that the defendant is permanently incorrigible." Ibid.

The Court rejected Jones's argument, holding that it was inconsistent with the Court's rulings in Miller and Montgomery.

Ibid. "In short, Miller . . . required that a sentencer consider youth as a mitigating factor when deciding whether to impose a life-without-parole sentence. Miller did not require the sentencer to make a separate finding of permanent incorrigibility before imposing such a sentence." Id. at 1316. "And Montgomery did not purport to add to Miller's requirements." Ibid. "The key assumption of both Miller and Montgomery was that discretionary sentencing allows the sentencer to consider the defendant's youth, and thereby helps ensure that life-without-parole sentences are imposed only in cases where that sentence is appropriate in light of the defendant's age." Id. at 1318.

Jones also recognizes that determining the proper sentence for a juvenile convicted of homicide "raises profound questions of morality and social policy. The States, not the federal courts, make those broad moral and policy judgments in the first instance, when enacting their sentencing laws." Id. at 1322. Here, our Legislature has made such a moral and policy judgment that juveniles convicted of murder in adult court must serve thirty years in prison before eligibility for parole.

This legislative judgment does not violate the Eighth Amendment. In fact, as the Jones Court explained, states may choose to "impos[e] additional sentencing limits in cases involving defendants under 18 convicted of murder," such as categorically prohibiting life without parole or requiring sentencers to make extra fact-findings before imposing life

without parole. Id. at 1323. "But the U.S. Constitution, as this Court's precedents have interpreted it, does not demand those particular policy approaches." Ibid. If the Eighth Amendment does not demand anything more than that a life-without-parole sentence for a juvenile murderer cannot be mandatory, then it certainly does not demand that a thirty-year minimum sentence must be struck down.

B. A thirty-year mandatory-minimum sentence for a juvenile murderer does not violate Article 1, Paragraph 12 of the New Jersey Constitution.

Defendant's claim that his sentence violates the New Jersey Constitution fares no better for two reasons. First, although Zuber forbids the imposition of a mandatory sentence that is the practical equivalent of life without parole, the Legislature's chosen thirty-year minimum sentence is not the practical equivalent of life. Second, a thirty-year minimum sentence for murder does not otherwise violate New Jersey's test for determining whether a sentence is cruel and unusual.

First, Zuber's prohibition on the mandatory imposition of a sentence that is the practical equivalent to life without parole does not apply to this case. In State v. Zuber, this Court considered whether the principles underlying the Miller rule (foreclosing mandatory life without parole for juvenile offenders) should apply to sentences that are the "practical equivalent of life without parole." 227 N.J. at 428-29. Specifically, the Court considered the constitutionality of the

sentences imposed on Comer and another juvenile, Zuber. Ibid. Comer was serving an aggregate sentence of seventy-five years in prison, with sixty-eight years and three months of parole ineligibility. Id. at 433. Under that sentence, he would not be eligible for parole until 2068, when he would be eighty-five years old. Zuber was serving an aggregate sentence of 110 years in prison with 55 years of parole ineligibility for crimes stemming from two rapes. Id. at 430-31. Under that sentence, he would not be eligible for parole until about 2034, when he would be about seventy-two years old. Id. at 432.

In considering the constitutional issue, this Court framed the question as follows: "Will a juvenile be imprisoned for life, or will he have a chance at release?" Id. at 446. The Court reasoned that "[i]t does not matter to the juvenile whether he faces formal 'life without parole' or multiple term-of-years sentences that, in all likelihood, will keep him in jail for the rest of his life." Ibid. Similarly, this Court found, "it does not matter for purposes of the Federal or State Constitution either." Ibid. This Court thus ruled that Miller's rationale foreclosing mandatory life-without-parole sentences for juveniles "applies with equal strength to a sentence that is the practical equivalent of life without parole." Ibid. Accordingly, this Court held that "when a juvenile facing a very lengthy term of imprisonment is first sentenced," sentencing judges should evaluate the Miller factors at that time "to take into account how children are different,

and how those differences counsel against irrevocably sentencing them to a lifetime in prison." Id. at 451 (quoting Miller, 567 U.S. at 480).

But this Court recognized that, even when judges begin to consider the Miller factors at sentencing, "a small number of juveniles will receive lengthy sentences with substantial periods of parole ineligibility, particularly in cases that involve multiple offenses on different occasions or multiple victims." Ibid. Decades from now, a defendant serving fifty years without parole might return to court to challenge the constitutionality of his sentence, asking the court "to review factors that could not be fully assessed when he was originally sentenced — like whether he still fails to appreciate risks and consequences, or whether he may be, or has been, rehabilitated." Id. at 451-52 (citing Miller, 567 U.S. at 477-78). This Court found it "cannot address such a claim now" but "simply recognize[d] that it would raise serious constitutional issues about whether sentences for crimes committed by juveniles, which carry substantial periods of parole ineligibility, must be reviewed at a later date." Id. at 452.

"To avoid a potential constitutional challenge in the future[,]" this Court "encourage[d] the Legislature to examine this issue." Ibid. As this Court noted, the United States Supreme Court left it to the states "to explore the means and mechanisms" to give juvenile-defendants "some meaningful opportunity to obtain release based on demonstrated maturity and

rehabilitation." Ibid. (quoting Graham, 560 U.S. at 75). This Court thus "ask[ed] the Legislature to consider enacting a scheme that provides for later review of juvenile sentences with lengthy periods of parole ineligibility, and to consider whether defendants should be entitled to appointed counsel at that hearing." Id. at 453. This Court declined to adopt a maximum limit on parole ineligibility for juveniles of thirty years and instead deferred to the Legislature on that question. Ibid.

This Court ruled that the especially "lengthy term-of-years sentences" imposed on Zuber and Comer — "a minimum of 55 years' imprisonment for Zuber and 68 years and 3 months for Comer" — were "sufficient to trigger the protections of Miller under the Federal and State Constitutions." Id. at 448. This Court thus held, "[d]efendants' potential release after five or six decades of incarceration, when they would be in their seventies and eighties, implicates the principles of Graham and Miller." Ibid. This Court remanded both matters for resentencing, directing the trial courts to consider the Miller factors when determining the length of the sentences and whether the counts of conviction should run consecutively. Id. at 453.

On remand, defendant received exactly what he was entitled to under Zuber: individualized consideration of his sentence in light of the Miller factors. Based on the Miller findings, Judge Vena resentenced defendant to the lowest possible sentence that could be imposed for felony murder: thirty years in prison, all without eligibility for parole. See N.J.S.A. 2C:11-3(b)(1)

and N.J.S.A. 2C:11-3(b)(5). Defendant was also sentenced to concurrent fifteen-year terms of imprisonment, with eighty-five percent parole ineligibility under NERA, for his three additional armed-robbery convictions; and to concurrent four-year prison terms for the weapons offenses. Therefore, the aggregate sentence imposed was thirty years in prison without eligibility for parole. (4T82-18 to 86-11; Da40 to 43).

As a result, the sentence defendant received is unlawful under Zuber only if a thirty-year sentence amounts to life without parole or its "functional equivalent." The Appellate Division correctly expressed "serious doubts" that this period could qualify as the functional equivalent of life: where the juvenile commits the murder at age seventeen like defendant here, "he will be eligible for parole at approximately the age of forty-seven, assuming no other prior sentences need to be completed first." (Dpa31).[2] The panel was thus "unpersuaded that a prospect of release before the age of fifty is tantamount to a life sentence." (Dpa31). Accord State v. Tormasi, 466 N.J. Super. 51, 65-66 (App. Div. 2021) (holding that Tormasi's sentence of life with thirty-year parole bar for murder committed at age sixteen was not "functional equivalent of life without parole" warranting resentencing under Zuber); State v. Bass, 457 N.J. Super. 1 (App. Div. 2018) (finding "no similarities" between Bass's life sentence with thirty-five-year

[2] In this case, defendant will be released at the age of forty-seven because his sentence was thirty years without parole.

parole disqualifier and the sentences reviewed by this Court in Zuber), certif. denied, 238 N.J. 364 (2019).

The Appellate Division's ruling is in line with decisions of state appellate courts across the country. "Many decisions that attempt to identify when a specific term of years without eligibility for parole crosses the line into a life sentence for purposes of the Eighth Amendment appear to cluster under the 50-year mark." Carter v. State, 192 A.3d 695, 728-29 (Md. 2018)[3]; see also id. at n.40 (collecting cases). The Carter court found that equating fifty years without parole to life without parole "seems consistent with the observation of the Graham Court that the defendant in that case would not be released 'even if he spends the next half century attempting to atone for his crimes and learn from his mistakes.'" Id. at 728-29 (quoting Graham, 560 U.S. at 79).

This is also consistent with this Court's opinion in Zuber, noting that "[d]efendants' potential release after five or six decades of incarceration, when they would be in their seventies

[3] In 2019, the South Carolina Supreme Court observed that its "research indicates that jurisdictions across the country are approximately evenly split as to whether Graham's and Miller's holdings apply to de facto life sentences, with some denying relief and some granting relief." See State v. Slocumb, 827 S.E.2d 148, 157 n.17 (S.C. 2019). The Attorney General acknowledges that the New Jersey Constitution requires a "functional equivalent of life" analysis. But these states that do not engage in a functional-equivalent analysis are added to those states whose state constitutions would not be offended by the thirty-year sentence here.

and eighties, implicates the principles of Graham and Miller." Zuber, 227 N.J. at 448. But a thirty-year mandatory-minimum sentence is far less than "five or six decades of incarceration" without eligibility for parole and thus should not be considered the functional equivalent of a life sentence.

In that vein, the Attorney General's research revealed that at least three state supreme courts have rejected constitutional challenges to state statutes that, like New Jersey, require juvenile homicide offenders to serve thirty years without parole. See State v. Vang, 847 N.W.2d 248, 262-64 (Minn. 2014) (concluding that "appellant's mandatory sentence of life imprisonment for a minimum of 30 years is not cruel or unusual punishment" under the Eighth Amendment or the Minnesota Constitution); State v. Link, 482 P.3d 28, 50-51 (Ore. 2021) ("[W]e are not persuaded that Oregon's sentencing scheme, which affords juvenile offenders who have served a term of 30 years the opportunity to convert their sentence to one with the possibility of parole, deprives juvenile offenders of a meaningful opportunity for release and, therefore, we are not persuaded that defendant's sentence should be considered an unconstitutional true-life sentence."); State v. Smith, 836 S.E.2d 348 (S.C. 2019) (rejecting Eighth Amendment challenge to South Carolina statute which "imposes a mandatory minimum sentence of thirty years' imprisonment on those convicted of murder, whether the offender is a juvenile or an adult").

Not only that, but several appellate courts have also found

that sentences greater than thirty years without parole for juveniles convicted of murder were not the functional equivalent of life without parole under Miller. For example, the South Dakota Supreme Court held that a sentence for a seventeen-year-old convicted of murder, under which the defendant could be released on parole after forty years, "is not a de facto life sentence." State v. Diaz, 887 N.W.2d 751, 768 (S.D. 2016). As that court noted, Diaz "directs us to no law supporting that release at 55 years old or after 40 years in prison means Diaz is without a meaningful opportunity to obtain release." Ibid. In two later cases, that same court ruled that the sentences for two juvenile murderers were not de facto life sentences because the defendants would be eligible for parole at age sixty and age sixty-two. See State v. Charles, 892 N.W.2d 915 (S.D. 2017); State v. Quevedo, 947 N.W.2d 402 (S.D. 2020).

In the same vein, just last year, the Florida Supreme Court found no Miller violation where the defendant was sentenced to forty years in prison for a second-degree murder she committed when she was seventeen. See Pedroza v. State, 291 So. 3d 541, 542 (Fla. 2020). Under that sentence, Pedroza would be released from prison at age fifty-five. Id. at 544. The court held that "Pedroza has not shown that her sentence is so long as to be the functional equivalent of life." Id. at 545. See also People v. Buffer, 137 N.E.3d 763, 771-74 (Ill. 2019) (concluding "that a prison sentence of 40 years or less imposed on a juvenile offender does not constitute a de facto life sentence in

violation of the [E]ighth [A]mendment" and explaining that "this number finds its origin in the entity best suited to make such a determination – the legislature").[4]

Similarly, the Wyoming Supreme Court rejected a defendant's claim that his aggregate sentence for felony murder, aggravated burglary, and conspiracy, of life with thirty-five years before eligibility for parole, was the "functional equivalent" of life without parole. Sen v. State, 390 P.3d 769, 770-77 (Wyo. 2017). The court noted that Sen had not "provide[d] us with any precedent from any jurisdiction supporting his assertion" that a sentence resulting in thirty-five years of parole ineligibility was functionally equivalent to life without parole. Id. at 776. And given that Sen "will be eligible for parole when he is approximately 50 years old," the court found he had "failed to establish that this sentence does not provide him a meaningful opportunity for release." Id. at 777.

Other courts have also ruled that a sentence of thirty-five years without parole is not functionally equivalent to life without parole. See State v. Shanahan, 445 P.3d 152, 158-61 (Idaho 2019) (ruling that indeterminate life sentence, with the first thirty-five years fixed, was not equivalent to life

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[4] As the Court explained in Buffer, the Illinois General Assembly "determined that the specified first degree murders that would justify natural life imprisonment for adult offenders would warrant a mandatory minimum sentence of 40 years for juvenile offenders." Id. at 773-74. In Buffer, the Illinois Supreme Court relied on this legislative determination in choosing "to draw a line at 40 years." Ibid.

without parole where defendant will be eligible for parole at age fifty for murder committed at age fifteen), cert. denied, 140 S. Ct. 545 (2019); State v. Lopez, 2021 N.H. LEXIS 65 (N.H. 2021) ("The Supreme Court has not recognized, as a matter of constitutional law, that a term of years sentence of thirty-five years is the de facto equivalent of life without parole, and we decline to create such a rule"); Commonwealth v. Lawrence, 99 A.3d 116, 118-122 (Pa. Super. 2014) (upholding constitutionality of mandatory-minimum sentence of thirty-five years in prison for defendants fifteen years or older convicted of first-degree murder), app. denied, 114 A.3d 416 (Pa. 2015).

Significantly, courts have found that sentences of greater than thirty years without parole for non-homicide offenses were not the functional equivalent of life without parole. See, e.g., State v. Smith, 892 N.W.2d 52, 63-66 (Neb. 2017) (holding that sentence of "90 years' to life imprisonment" for kidnapping committed when Smith was seventeen years old did not violate Graham, given that Smith "will be parole eligible at age 62," and noting that "it is not unusual for people to work well into their seventies and have a meaningful life well beyond age 62 or even at age 77"); Ira v. Janecka, 419 P.3d 161 (N.M. 2018) (ruling that aggregate sentence for "several counts of criminal sexual penetration and intimidation of a witness" committed when Janecka was fourteen and fifteen years old, under which he would be eligible for parole after approximately forty-six years (age sixty-two) if he maintained good behavior in prison, was "outer

limit of what is constitutionally acceptable" under Graham).

If sentences of more than thirty years without parole for non-homicide offenses are not cruel and unusual, then certainly a mandatory-minimum sentence of thirty years for murder is even less so and thus constitutional. As the United States Supreme Court recognized in Graham, "[s]erious nonhomicide crimes may be devastating in their harm . . . but in terms of moral depravity and of the injury to the person and to the public, . . . they cannot be compared to murder in their severity and irrevocability." 560 U.S. at 69 (internal quotations and citations omitted). Similarly, this Court has noted that "[m]urder is the most heinous and vile offense proscribed by our criminal laws" and "in dealing with this particularly egregious offense, great deference must be given to the legislative intent governing sentencing." State v. Serrone, 95 N.J. 23, 27 (1983).

In short, wherever the particular line for the "practical equivalent" to life, the Legislature was free to conclude that thirty years is less. The Appellate Division rightly held that the "prospect of release before the age of fifty" (here, at age forty-seven) is not "tantamount to a life sentence." (Dpa31). And the above-discussed body of precedent is in accord. While defendant asks this Court to declare a legislatively mandated thirty-year period of parole ineligibility can only be imposed on a juvenile convicted of murder in adult court "pursuant to an individualized, discretionary sentence, and not as a matter of mandate under N.J.S.A. 2C:11-3b(1)," (Dsb41 to 42), Zuber does

not provide any basis to overrule the Legislature's choice.

Because Zuber does not apply to this thirty-year sentence, there is no other basis under the New Jersey constitution to set aside the Legislature's explicit choice to mandate that minimum sentence for murder. The Appellate Division's prior decision in Pratt is compelling on this point. See State v. Pratt, 226 N.J. Super. 307 (App. Div.), certif. denied, 114 N.J. 314 (1988).

Pratt, who was fifteen years old, shot and killed his next-door neighbor. He was waived up to adult court, convicted of murder, and ultimately sentenced to thirty years in prison without eligibility for parole. Id. at 308-09. On appeal, Pratt argued that his sentence constituted cruel and unusual punishment. Id. at 324.

In rejecting that argument, the Pratt court recognized that the "broad power to determine punishment for the commission of crimes is committed to the legislative and not the judicial branch of government." Id. at 324-25. "As a general rule, the courts are obliged to follow and apply the legislative command." Id. at 325. The judiciary will thus "not interfere with the prescribed form of penalty unless it is so clearly arbitrary and without rational relation to the offense or so disproportionate to the offense as to transgress . . . constitutional boundaries." Ibid. (quoting State v. Smith, 58 N.J. 202, 211 (1971)). Accord State v. Des Marets, 92 N.J. 62, 65-66 (1983) (recognizing that wisdom of criminal sentencing legislation "is a matter solely for the Legislature to decide" as long as the

Legislature acted "within constitutional bounds").

In determining whether the Legislature has acted constitutionally in setting a criminal penalty, the court must consider "whether the nature of the criticized punishment is such as to shock the general conscience and to violate principles of fundamental fairness; whether comparison shows the punishment to be grossly disproportionate to the offense; and whether the punishment goes beyond what is necessary to accomplish any legitimate penal aim." Pratt, 226 N.J. Super. at 325 (quoting State v. Hampton, 61 N.J. 250, 273-74 (1971)). "Absent such a showing the judiciary must respect the legislative will." Ibid. Accord Zuber, 227 N.J. at 438 (setting forth three-part test under Federal and State Constitutions for determining whether a punishment is cruel and unusual: "First, does the punishment for the crime conform with contemporary standards of decency? Second, is the punishment grossly disproportionate to the offense? Third, does the punishment go beyond what is necessary to accomplish any penological objective?") (citations omitted).

Applying these principles, Pratt found "no constitutional impediment barring imposition of the mandatory 30-year sentence on juveniles whose cases have been waived to the adult court and who have been found guilty of murder." Id. at 326. Given that "[m]urder is the most heinous and vile offense proscribed by our criminal laws," ibid. (quoting Serrone, 95 N.J. at 27), the court explained that "it cannot fairly be said that the

punishment 'violates principles of fundamental fairness, is 'grossly disproportionate' to the seriousness of the offense or 'goes beyond what is necessary to accomplish any legitimate penal aim.'" Id. at 326-27 (citing Des Marets, 92 N.J. at 82). Especially given the strong deference owed to legislative determinations, this Court should not overturn Pratt.

None of defendant's remaining arguments carry the day. For one, although defendant attacks the Legislature's decision to treat felony murder the same as knowing or purposeful murder by mandating the same thirty-year period of parole ineligibility (see Db24, fn. 12), defendant again fails to overcome the same "great deference" owed to the Legislature. See State v. Johnson, 206 N.J. Super. 341 (App. Div. 1985) (upholding thirty-year mandatory-minimum sentence for adult convicted of felony murder), certif. denied, 104 N.J. 382 (1986). After all, the felony-murder statute provides that it is an affirmative defense that the defendant:

> (a) did not commit the homicidal act or in any way solicit, request, command, importune, cause or aid the commission thereof; and
>
> (b) Was not armed with a deadly weapon, or any instrument, article or substance readily capable of causing death or serious physical injury and of a sort not ordinarily carried in public places by law-abiding persons; and
>
> (c) Had no reasonable ground to believe that any other participant was armed with such a weapon, instrument, article or substance; and
>
> (d) Had no reasonable ground to believe that any other participant intended to engage in

> conduct likely to result in death or serious physical injury.
>
> [N.J.S.A. 2C:11-3(a)(3).]

In other words, the felony-murder statute itself provides an affirmative defense that would cover those defendants "who did not kill, intend to kill, or foresee that life will be taken[.]" See Graham, 560 U.S. at 69 (emphasis added). But for defendants who cannot meet the elements of the affirmative defense, meaning they could foresee that life would be taken, the Legislature acted well within its authority in mandating the same thirty-year period of parole ineligibility that applies to knowing or purposeful murder. And here, defendant was not only armed himself but continued on to participate in two more armed robberies after George Paul was shot and killed.

For another, and contrary to defendant's suggestion, the Legislature's decision to continue to mandate a thirty-year parole bar for juveniles waived up to adult court and convicted of murder does not run afoul of this Court's decision in State in the Interest of C.K., 233 N.J. 44 (2018). In C.K., this Court considered whether N.J.S.A. 2C:7-2(g) of Megan's Law — which precludes anyone convicted or adjudicated delinquent of certain enumerated sex offenses from ever being able to petition for termination from their registration and community notification requirements — was unconstitutional as applied to juveniles. 233 N.J. at 47-48.

In finding subsection (g) unconstitutional as applied to

juvenile sex offenders, this Court noted that subsection (g) "imposes an irrebuttable presumption that juveniles, such as [C.K.], are irredeemable, even when they no longer pose a public safety risk and are fully rehabilitated." Id. at 48. This Court found that such an "irrebutable presumption" was "not supported by scientific or sociological studies, [its] jurisprudence, or the record in [C.K.'s] case." Id. at 77. Under these circumstances, subsection (g) "does not further a legitimate state interest when applied to juveniles." Ibid.

Defendant's reliance on C.K. is misplaced. To begin with, C.K. was decided in the context of a juvenile adjudication for a qualifying sex offense, not a conviction in adult court. In fact, the State initially moved to waive C.K. to the Criminal Part, Law Division, for trial as an adult, but withdrew its motion after C.K. agreed to plead guilty to aggravated sexual assault in juvenile court. Id. at 49.

While this Court referred generally to "juveniles" in C.K., it also noted that "[i]n this case, our focus is only on those juveniles between the ages of fourteen and seventeen adjudicated delinquent in family court for sex offenses falling within the ambit of subsection (g)." Id. at 66. And C.K. held that "N.J.S.A. 2C:7-2(g) is unconstitutional as applied to juveniles adjudicated delinquent as sex offenders. Under subsection (f) of N.J.S.A. 2C:7-2, fifteen years from the date of his juvenile adjudication, C.K. will be eligible to seek the lifting of his sex-offender registration requirements." Id. at 77.

And as the appellate panel found here, C.K. "does not compel a ruling . . . that the thirty-year mandatory minimum term for murder is unconstitutional." (Dpa29). The statute at issue in C.K. was a regulatory statute challenged on substantive due process grounds. By contrast, the statute at issue here is a criminal punishment statute challenged as cruel and unusual. (Dpa29). "While the Court relied in C.K., in part, on the principles set forth in Miller and Zuber regarding the differences between juveniles and adults, the Court's decision fundamentally was based on the lack of a rational basis for the presumption that all juvenile sex-offenders will forever be a danger to society." (Dpa29). But a thirty-year mandatory minimum sentence for murder, "the most heinous and vile offense proscribed by our criminal laws," does not violate principles of fundamental fairness, is not grossly disproportionate to the seriousness of the offense, and does not go beyond what is necessary to accomplish any legitimate penal aim. See Pratt, 226 N.J. Super. at 326-27 (citing Des Marets, 92 N.J. at 82).

Finally, this Court should decline defendant's invitation to follow the two jurisdictions that have found all mandatory penalties to be unconstitutional as applied to juveniles, which is inconsistent with the determination of our Legislature. See State v. Lyle, 854 N.W.2d 378 (Iowa 2014); State v. Houston-Sconiers, 391 P.3d 409 (Wash. 2017). In fact, the Lyle court recognized that at the time of its decision, "no other court in the nation ha[d] held that its constitution or the Federal

Constitution prohibits a statutory scheme that prescribes a mandatory minimum sentence for a juvenile offender." 854 N.W.2d at 386. See also Burrell v. State, 207 A.3d 137, 144-45 (Del. 2019) (finding there is "ample" and "more persuasive authority" from other states that rejects the Lyle approach); State v. Anderson, 87 N.E.3d 1203, 1211 (Ohio 2017) ("We agree there is no evidence of a national consensus against the imposition of mandatory sentences on juvenile offenders tried as adults.").

It also bears noting that while the Lyle and Houston-Sconiers courts struck down all mandatory penalties for juveniles, neither case involved a homicide offense. In Lyle, the defendant, a high school student, was convicted of armed robbery after a "brief altercation outside the high school with another student that ended when [Lyle] took a small plastic bag containing marijuana from the student." 854 N.W.2d at 380. And in Houston-Sconiers, the two juvenile defendants were convicted of robbery, assault, and firearm enhancements after they "robbed mainly other groups of children, and they netted mainly candy" on Halloween night. 391 P.3d at 413-16.

Rather than follow these two outlier decisions, which were not even decided in the context of a murder conviction like we have here, this Court should instead follow its long-standing precedent of deferring to the Legislature's judgment. As this Court said in Des Marets, the wisdom of setting a criminal penalty "is a matter solely for the Legislature to decide. Once the Legislature has made that decision, and has made it within

constitutional bounds, our sole function is to carry it out." 92 N.J. at 65-66. "Judges have no business imposing their views of 'enlightened' sentencing on society, including notions of discretionary, individualized treatment, when the Legislature has so clearly opted for mandatory prison terms for all offenders. It may be that the Legislature is more enlightened than the judges." Id. at 66. This Court thus held that its "clear obligation is to give full effect to the legislative intent, whether we agree or not." Ibid.

At the end of the day, the Legislature decided to impose a thirty-year mandatory-minimum sentence for all those convicted of murder, including the juveniles waived up to adult court, and future amendments to that law should come from the Legislature rather than this Court. While defendant contends that the Legislature has "failed to act" (see Dsb53), there is currently a bill pending before the Legislature that would allow juveniles who received an aggregate sentence of thirty years or more to petition for resentencing after having served at least twenty years of that sentence. See A. 4372 (2020). (AGa1 to 36). While previous juvenile-sentencing bills stalled after introduction, see A. 3091 (2020), A. 1233 (2018), A. 4678 (2017), and S. 428 (2018), Assembly Bill 4372 passed the Assembly on July 30, 2020, and is currently pending before the Senate.

Under that proposed legislation, a juvenile tried as an adult and sentenced to an aggregate term of thirty years or more

could petition for resentencing after having served at least twenty years of that sentence. (AGa26). The defendant would be entitled to representation by the Office of the Public Defender. (AGa26). 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" in line with the Miller factors. (AGa27 to 28). And any inmate who is resentenced would also be sentenced to a five-year term of parole supervision. (AGa24; AGa29). This proposed legislation is in line with a recommendation of the Criminal Sentencing and Disposition Commission (AGa30 to 36), which the Attorney General has endorsed. Simply put, it is up to the Legislature — which is actively considering this issue — to determine whether any changes to the mandatory-minimum sentence of thirty years for murder are warranted for juveniles waived up to adult court. Unless and until the Legislature makes that policy determination, the law as currently written is undoubtedly constitutional and thus must govern.

In sum, the Legislature has clearly spoken that juveniles waived up to adult court and convicted of murder, including felony murder, must serve thirty years before eligibility for parole. This legislative enactment is presumed constitutional and defendant has failed to meet his heavy burden to prove otherwise. As the appellate panel below correctly ruled, a thirty-year parole bar is not mandatory life without parole under Miller and its progeny, nor is it the "functional

equivalent" of life without parole under this Court's opinion in Zuber. Under these circumstances, this Court's "sole function" and "clear obligation" is to "give full effect to the legislative intent." Des Marets, 92 N.J. at 65-66. This Court should thus affirm defendant's lawful and fair thirty-year mandatory-minimum sentence for felony murder.

CONCLUSION

For the foregoing reasons, the Attorney General urges this Court to hold that the Legislature's decision to mandate a minimum sentence of thirty years without parole for a juvenile convicted of murder in adult court is constitutional, and to thus affirm defendant's sentence.

Respectfully submitted,

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LAUREN BONFIGLIO – ATTY NO. 203372016
DEPUTY ATTORNEY GENERAL

ON THE BRIEF

DATED: JULY 14, 2021

ASSEMBLY, No. 4372

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED JUNE 29, 2020

Sponsored by:
Assemblywoman BRITNEE N. TIMBERLAKE
District 34 (Essex and Passaic)
Assemblywoman ANNETTE QUIJANO
District 20 (Union)
Assemblywoman VERLINA REYNOLDS-JACKSON
District 15 (Hunterdon and Mercer)

SYNOPSIS

Provides for resentencing of certain inmates.

CURRENT VERSION OF TEXT

As introduced.

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

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

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

(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;

(3) has served at least 20 years of that sentence; and

(4) has not been resentenced or previously sought relief under this section.

b. (1) Notwithstanding any provision of law to the contrary, an inmate who receives a Certificate of Eligibility for Resentencing issued pursuant to subsection a. of this section and received an aggregate sentence of incarceration with a period of parole ineligibility of 20 years or more may petition the court for resentencing pursuant to the provisions of this section.

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

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

c. An inmate who has been issued a Certificate of Eligibility for Resentencing shall be represented by the Office of the Public Defender for the purpose of filing a motion under this section, unless the inmate chooses to be represented by pro bono counsel or retains private counsel at the inmate's expense.

d. Upon receipt of notification by the Department of Corrections that an inmate has been issued a Certificate of Eligibility for Resentencing pursuant to subsection a. of this section, the sentencing court shall order a resentencing report which shall assess the following factors:

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

(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 victim or the nearest relative of a homicide victim of the right to make a statement for inclusion in the resentencing report if the victim or relative so desires. Any statement shall be made within 20 days of notification by the probation department.

f. (1) A motion pursuant to this section shall be filed with the sentencing court, or the Presiding Criminal Judge if the sentencing court is not still sitting. 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 written or videotaped 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.

g. 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.

h. At the hearing for resentencing, the court shall determine whether the offense for which the inmate was convicted was the result of mitigating qualities of youth or whether the offense reflects irreparable corruption by consideration of the following non-exhaustive list of factors:

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

(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;

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

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

(b) developmental disorders;

(c) substance abuse;

(d) addiction;

(e) trauma;

(f) poverty; and

(g) lack of education;

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

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

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

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

i. If the court finds by a preponderance of the evidence that the offense for which the inmate was convicted and sentenced did not reflect irreparable corruption, but was the result of the mitigating qualities of youth, the court shall resentence the inmate to a term that allows the inmate a meaningful opportunity for release. However, if the court finds that the offense reflects irreparable corruption, the court shall not resentence the inmate regardless of the findings of the mitigating qualities of youth. If the sentencing court reduces the sentence pursuant to this section, the sentence shall not become final for 10 days in order to permit the prosecutor to appeal the sentence.

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

2. This act shall take effect immediately and shall apply retroactively to any inmate who was sentenced as a juvenile prior to the effective date of this act.

STATEMENT

This bill provides for the resentencing of certain inmates. Under the provisions of this bill, the Commissioner of Corrections is required to issue a Certificate of Eligibility for Resentencing to any inmate who: 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; 3) has served at least 20 years of that sentence; and

4) has not been resentenced or previously sought relief under the bill.

Under the bill, an inmate who receives a Certificate of Eligibility for Resentencing and received an aggregate sentence of incarceration with a period of parole ineligibility of 20 years or more may petition the court for resentencing. The bill provides that the court, upon consideration of a petition filed by an inmate, may, in its discretion, modify, reduce, or suspend the sentence, including any minimum or mandatory sentence or a portion of the sentence imposed upon the inmate.

The bill further provides that upon receipt of notification by the Department of Corrections that an inmate has been issued a Certificate of Eligibility for Resentencing, the sentencing court is required to order a resentencing report which is to assess the following factors: 1) the defendant's age at the time of the offense; 2) the role of the attendant characteristics of youth in the offense, including: impulsivity, risk-taking behavior, immaturity, and susceptibility to peer pressure; and 3) any obstacle the defendant may have faced as a child including: parental abuse or neglect or abuse by any other person, developmental disorders, substance abuse, addiction, trauma, poverty, and lack of education. The resentencing report is also to include the victim's position as to resentencing.

Under the bill, the prosecuting agency is required to notify any victim of the offense committed by the inmate or the nearest relative of a homicide victim of the filing of a motion for resentencing by the inmate. The court is required to give the victim the opportunity to present a written or videotaped statement at the hearing on the petition or to testify at the hearing concerning the harm suffered by the victim or family member.

Upon the filing of a motion for resentencing, the bill requires the court to 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. At the hearing for resentencing, the court is required to determine whether the offense for which the inmate was convicted was the result of mitigating qualities of youth or whether the offense reflects irreparable corruption by consideration of the same factors used for the resentencing report and the following additional factors: 1) any effort the inmate has made prior to and while incarcerated to overcome any of the enumerated obstacles; 2) the inmate's attempt at rehabilitation since incarceration, including but not limited to participation in available rehabilitative, educational, or other programs; 3) whether the inmate poses the same risk to society that the inmate posed at the time of the initial sentence; and 4) any additional evidence of maturity, growth, self-improvement, and consideration of the welfare of others.

Under the bill, if the court finds by a preponderance of the evidence that the offense for which the inmate was convicted and sentenced did not reflect irreparable corruption, but was the result of mitigating qualities of youth, the court is required to resentence the inmate to a term that allows the inmate a meaningful opportunity for release. If the court finds that the offense reflects irreparable corruption, the court is not to resentence the inmate regardless of the findings of the mitigating qualities of youth. If the sentencing court reduces the sentence pursuant to the provisions of this bill, the sentence is not to become final for 10 days to allow the prosecutor to appeal the sentence.

The bill allows an inmate to make one motion pursuant to the bill's provisions.

Finally, the bill applies retroactively to any inmate who was sentenced as a juvenile prior to the bill's effective date.

ASSEMBLY LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4372

STATE OF NEW JERSEY

DATED: JULY 20, 2020

The Assembly Law and Public Safety Committee reports favorably Assembly Bill No. 4372.

As reported by the committee, Assembly Bill No. 4372 provides for the resentencing of certain inmates. Under the provisions of this bill, the Commissioner of Corrections is required to issue a Certificate of Eligibility for Resentencing to any inmate who: 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; 3) has served at least 20 years of that sentence; and 4) has not been resentenced or previously sought relief under the bill.

Under the bill, an inmate who receives a Certificate of Eligibility for Resentencing and received an aggregate sentence of incarceration with a period of parole ineligibility of 20 years or more may petition the court for resentencing. The bill provides that the court, upon consideration of a petition filed by an inmate, may, in its discretion, modify, reduce, or suspend the sentence, including any minimum or mandatory sentence or a portion of the sentence imposed upon the inmate.

The bill further provides that, upon receipt of notification by the Department of Corrections that an inmate has been issued a Certificate of Eligibility for Resentencing, the sentencing court is required to order a resentencing report which is to assess the following factors: 1) the defendant's age at the time of the offense; 2) the role of the attendant characteristics of youth in the offense, including: impulsivity, risk-taking behavior, immaturity, and susceptibility to peer pressure; and 3) any obstacle the defendant may have faced as a child including: parental abuse or neglect or abuse by any other person, developmental disorders, substance abuse, addiction, trauma, poverty, and lack of education. The resentencing report is also to include the victim's position as to resentencing.

Under the bill, the prosecuting agency is required to notify any victim of the offense committed by the inmate or the nearest relative of a homicide victim of the filing of a motion for resentencing by the inmate. The court is required to give the victim the opportunity to present a written or videotaped statement at the hearing on the petition or to testify at the hearing concerning the harm suffered by the victim or family member.

Upon the filing of a motion for resentencing, the bill requires the court to 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. At the hearing for resentencing, the court is required to determine whether the offense for which the inmate was convicted was the result of mitigating qualities of youth or whether the offense reflects irreparable corruption by consideration of the same factors used for the resentencing report and the following additional factors: 1) any effort the inmate has made prior to and while incarcerated to overcome any of the enumerated obstacles; 2) the inmate's attempt at rehabilitation since incarceration, including but not limited to participation in available rehabilitative, educational, or other programs; 3) whether the inmate poses the same risk to society that the inmate posed at the time of the initial sentence; and 4) any additional evidence of maturity, growth, self-improvement, and consideration of the welfare of others.

Under the bill, if the court finds by a preponderance of the evidence that the offense for which the inmate was convicted and sentenced did not reflect irreparable corruption, but was the result of mitigating qualities of youth, the court is required to resentence the inmate to a term that allows the inmate a meaningful opportunity for release. If the court finds that the offense reflects irreparable corruption, the court is not to resentence the inmate regardless of the findings of the mitigating qualities of youth. If the sentencing court reduces the sentence pursuant to the provisions of this bill, the sentence is not to become final for 10 days to allow the prosecutor to appeal the sentence.

The bill allows an inmate to make one motion pursuant to the bill's provisions.

Finally, the bill applies retroactively to any inmate who was sentenced as a juvenile prior to the bill's effective date.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4372

with committee amendments

STATE OF NEW JERSEY

DATED: JULY 27, 2020

The Assembly Appropriations Committee reports favorably Assembly Bill No. 4372 with committee amendments.

As amended and reported by the committee, Assembly Bill No. 4372 provides for the resentencing of certain inmates. Under the provisions of the amended bill, the Commissioner of Corrections is required to issue a Certificate of Eligibility for Resentencing to any inmate who: 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.

Under the amended bill, an inmate who receives a Certificate of Eligibility for Resentencing and received an aggregate sentence of incarceration with a period of parole ineligibility of 20 years or more, and who has not been resentenced or previously sought relief under the bill, may petition the court for resentencing. The bill provides that the court, upon consideration of a petition filed by an inmate, may, in its discretion, modify, reduce, or suspend the sentence, including any minimum or mandatory sentence or a portion of the sentence imposed upon the inmate.

Under the amended bill, the prosecuting agency is required to notify any victim of the offense committed by the inmate or the nearest relative of a homicide victim of the filing of a motion for resentencing by the inmate. The prosecuting agency also is to provide notice to the victim or relative of the right to make an updated statement to supplement the presentence report required pursuant to N.J.S.2C:44-6. The court is required to give the victim or family member the opportunity to present a statement at the hearing on the petition or to testify at the hearing concerning the harm suffered.

Upon the filing of a motion for resentencing, the bill requires the court to 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. At the hearing for resentencing, the court is required to determine whether the offense for which the inmate was convicted was the result of mitigating qualities of youth by consideration of the following additional factors: (1) the inmate's age at the time of the offense; (2) the role of the attendant characteristics of youth in the offense, including impulsivity, risk-taking behavior,

immaturity, and susceptibility to peer pressure; (3) any obstacle the inmate may have faced as a child including abuse or neglect by a parent or other person, developmental disorders, substance abuse, addiction, trauma, poverty, and lack of education; (4) any effort the inmate has made to overcome the obstacles the inmate has faced; 5) the inmate's attempt at rehabilitation since incarceration, including but not limited to participation in available rehabilitative, educational, or other programs; (6) whether the inmate poses the same risk to society posed at the time of the initial sentence; and (7) any additional evidence of maturity, growth, self-improvement, and consideration of the welfare of others.

Under the amended bill, if the court finds by a preponderance of the evidence that the offense for which the inmate was convicted and sentenced was the result of mitigating qualities of youth, the court is required to resentence the inmate to a term that allows the inmate a meaningful opportunity for release, unless the court finds by clear and convincing evidence that the offense for which the inmate was convicted and sentenced reflects irreparable corruption. If the court finds that the offense reflects irreparable corruption, the court is not to resentence the inmate regardless of the findings of the mitigating qualities of youth. If the sentencing court reduces the sentence pursuant to the provisions of this bill, the sentence is not to become final for 10 days to allow the prosecutor to appeal the sentence.

The bill allows an inmate to make one motion pursuant to the bill's provisions.

Finally, the bill applies retroactively to any eligible inmate who was sentenced as a juvenile prior to the bill's effective date.

COMMITTEE AMENDMENTS

The committee amended the bill to:

(1) Clarify that an inmate who has been issued a Certificate of Eligibility for Resentencing is to be represented by the Office of the Public Defender, unless the inmate retains other counsel;

(2) Eliminate the requirement that the court is to order a resentencing report;

(3) Provide that the prosecuting agency, rather than the probation department, is required to notify the victim or nearest relative of a homicide victim of the right to make an updated statement;

(4) Provide that if the victim or relative chooses to make an updated statement, the statement is to be included in the presentence report required pursuant to N.J.S.2C:44-6;

(5) Provide that the motion for resentencing is to be filed with the Superior Court in the county where the conviction occurred; as introduced, the motion for resentencing was to be filed with the sentencing court or the Presiding Criminal Judge if the sentencing court is not still sitting;

(6) Provide that the court is required to give the victim or family member the opportunity to present a statement at the hearing on the petition or to testify at the hearing concerning the harm suffered; as introduced, the court was required to give the victim or family member the opportunity to present a written or videotaped statement;

(7) Provide that at the hearing for resentencing, the court is required to determine whether the offense for which the inmate was convicted was the result of mitigating qualities of youth, by consideration of certain factors enumerated in the bill;

(8) Provide that if the court finds by a preponderance of the evidence that the offense for which the inmate was convicted was the result of mitigating qualities of youth, the court is required to resentence the inmate to a term that allows the inmate a meaningful opportunity for release, unless the court finds that by clear and convincing evidence that the offense reflects irreparable corruption; and

(9) Clarify that the bill applies retroactively to any eligible inmate who was sentenced as a juvenile prior to the bill's effective date.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that this bill may result in an indeterminate expenditure decrease resulting from the release of certain inmates and an increase in certain administrative costs incurred by the Department of Corrections, the State Parole Board, the Administrative Office of the Courts, and county prosecutors to process inmate petitions for release. The OLS cannot determine the net effect to the State. The bill may result in an indeterminate expenditure increase to the Department of Corrections associated with assessing inmates for the "Certificate of Eligibility for Resentencing" as well as the notification process. The Administrative Office of the Courts and county prosecutors may experience increased administrative costs to process inmate petitions for release. The bill may result in decreased expenditures by the Department of Corrections for the incarceration and medical costs of individuals currently incarcerated in State and county prisons once those inmates are released.

[First Reprint]

ASSEMBLY, No. 4372

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED JUNE 29, 2020

Sponsored by:
Assemblywoman BRITNEE N. TIMBERLAKE
District 34 (Essex and Passaic)
Assemblywoman ANNETTE QUIJANO
District 20 (Union)
Assemblywoman VERLINA REYNOLDS-JACKSON
District 15 (Hunterdon and Mercer)

Co-Sponsored by:
Assemblywoman Jasey, Assemblyman Holley and Assemblywoman Carter

SYNOPSIS

Provides for resentencing of certain inmates.

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on July 27, 2020, with amendments.

(Sponsorship Updated As Of: 7/30/2020)

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

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

1. a. The Commissioner of Corrections shall issue a Certificate of Eligibility for Resentencing to any inmate[1], upon request by the inmate,[1] who:

(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; [1]and[1]

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

(4) has not been resentenced or previously sought relief under this section][1].

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

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

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

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

d. [1][Upon receipt of notification by the Department of Corrections that an inmate has been issued a Certificate of Eligibility for Resentencing pursuant to subsection a. of this section, the sentencing court shall order a resentencing report which shall assess the following factors:

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

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

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:
[1]Assembly AAP committee amendments adopted July 27, 2020.

(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 [1]shall be notified, as part of the notification provided under paragraph (2) of subsection f. of this section,[1] of the right to make [1]**[**a**]** an updated[1] statement [1]**[**for inclusion in**]** to supplement[1] the [1]**[**resentencing**]** presentence[1] report [1]prepared 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**]** to[1] the [1]**[**probation department**]** victim[1].

f. (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 occurred[1] . 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.

g. 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.

h. At the hearing for resentencing, the court shall determine whether the offense for which the inmate was convicted was the

result of mitigating qualities of youth [1][or whether the offense reflects irreparable corruption][1] by consideration of the following non-exhaustive list of factors:

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

(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;

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

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

(b) developmental disorders;

(c) substance abuse;

(d) addiction;

(e) trauma;

(f) poverty; and

(g) lack of education;

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

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

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

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

i. If the court finds by a preponderance of the evidence that the offense for which the inmate was convicted and sentenced [1][did not reflect irreparable corruption, but][1] was the result of the mitigating qualities of youth, the court shall resentence the inmate to a term that allows the inmate a meaningful opportunity for release [1][. However, if] , unless the court finds by clear and convincing evidence that the offense for which the inmate was convicted and sentenced reflects irreparable corruption. If[1] the court finds that the offense reflects irreparable corruption, the court shall not resentence the inmate regardless of the findings of the mitigating qualities of youth. If the sentencing court reduces the sentence pursuant to this section, the sentence shall not become final for 10 days in order to permit the prosecutor to appeal the sentence.

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

2. This act shall take effect immediately and shall apply retroactively to any [1]eligible[1] inmate who was sentenced as a juvenile prior to the effective date of this act.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 4372

with committee amendments

STATE OF NEW JERSEY

DATED: AUGUST 24, 2020

The Senate Judiciary Committee reports favorably and with committee amendments the First Reprint of Assembly Bill No. 4372.

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 Senate Bill No. 2591, as amended and also reported by the committee today.

The committee amendments to the bill:

-correct the sequence of subsections in section 1 of the bill (subsection e. was skipped); and

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

[Second Reprint]

ASSEMBLY, No. 4372

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED JUNE 29, 2020

Sponsored by:
Assemblywoman BRITNEE N. TIMBERLAKE
District 34 (Essex and Passaic)
Assemblywoman ANNETTE QUIJANO
District 20 (Union)
Assemblywoman VERLINA REYNOLDS-JACKSON
District 15 (Hunterdon and Mercer)

Co-Sponsored by:
Assemblywoman Jasey, Assemblyman Holley and Assemblywoman Carter

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: 7/30/2020)

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

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

1. a. The Commissioner of Corrections shall issue a Certificate of Eligibility for Resentencing to any inmate[1], upon request by the inmate,[1] who:

(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; [1]and[1]

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

(4) has not been resentenced or previously sought relief under this section][1].

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

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

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

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

d. [1][Upon receipt of notification by the Department of Corrections that an inmate has been issued a Certificate of Eligibility for Resentencing pursuant to subsection a. of this section, the sentencing court shall order a resentencing report which shall assess the following factors:

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

(2) the role of the attendant characteristics of youth in the

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:
[1]Assembly AAP committee amendments adopted July 27, 2020.
[2]Senate SJU committee amendments adopted August 25, 2020.

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 [1]shall be notified, as part of the notification provided under paragraph (2) of subsection [2]**[**f.**]**[2] of this section,[1] of the right to make [1]**[**a**]** an updated[1] statement [1]**[**for inclusion in**]** to supplement[1] the [1]**[**resentencing**]** presentence[1] report [1]prepared 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**]** to[1] the [1]**[**probation department**]** victim[1].

[2]**[**f.**]** e.[2] (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 occurred[1] . 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.

[2]**[**g.**]** f.[2] 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.

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

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

(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;

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

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

(b) developmental disorders;

(c) substance abuse;

(d) addiction;

(e) trauma;

(f) poverty; and

(g) lack of education;

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

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

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

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

[2][i.]** h.[2]** If the court finds by a preponderance of the evidence that the offense for which the inmate was convicted and sentenced **[1]**[did not reflect irreparable corruption, but]**[1]** was the result of the mitigating qualities of youth, the court shall resentence the inmate to a term that allows the inmate a meaningful opportunity for release **[1]**[. However, if]** , unless the court finds by clear and convincing evidence that the offense for which the inmate was convicted and sentenced reflects irreparable corruption. If[1]** the court finds that the offense reflects irreparable corruption, the court shall not resentence the inmate regardless of the findings of the mitigating qualities of youth. If the sentencing court reduces the sentence pursuant to this section, the sentence shall not become final for 10 days in order to permit the prosecutor to appeal the sentence.

[2][j.]** i.[2]** An inmate may file only one motion pursuant to this section. Nothing in this section shall prohibit an inmate from

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

2. This act shall take effect immediately and shall apply retroactively to any [1]eligible[1] inmate who was sentenced [2][as a juvenile][2] prior to the effective date of this act.

STATEMENT TO

[Second Reprint]
ASSEMBLY, No. 4372

with Senate Floor Amendments
(Proposed by Senator POU)

ADOPTED: OCTOBER 29, 2020

Assembly Bill No. 4372 (2R) provides for resentencing of certain inmates who committed offenses as juveniles, but were sentenced as adults. The bill provides a process for the resentencing of certain inmates who (1) committed a crime as a juvenile and were tried as an adult, (2) received an aggregate sentence of incarceration of 30 years or more, and (3) have served at least 20 years of that sentence.

These Senate amendments provide that any inmate who has been resentenced under the bill's provisions also is required to be sentenced to a five-year term of parole supervision.

[Third Reprint]

ASSEMBLY, No. 4372

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED JUNE 29, 2020

Sponsored by:
Assemblywoman BRITNEE N. TIMBERLAKE
District 34 (Essex and Passaic)
Assemblywoman ANNETTE QUIJANO
District 20 (Union)
Assemblywoman VERLINA REYNOLDS-JACKSON
District 15 (Hunterdon and Mercer)
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)

Co-Sponsored by:
Assemblywoman Jasey, Assemblyman Holley and Assemblywoman Carter

SYNOPSIS

Provides for resentencing of certain inmates.

CURRENT VERSION OF TEXT

As amended by the Senate on October 29, 2020.

(Sponsorship Updated As Of: 6/21/2021)

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

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

1. a. The Commissioner of Corrections shall issue a Certificate of Eligibility for Resentencing to any inmate[1], upon request by the inmate,[1] who:

(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; [1]and[1]

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

(4) has not been resentenced or previously sought relief under this section][1].

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

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

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

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

d. [1][Upon receipt of notification by the Department of Corrections that an inmate has been issued a Certificate of Eligibility for Resentencing pursuant to subsection a. of this section, the sentencing court shall order a resentencing report which shall assess the following factors:

(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:
[1]Assembly AAP committee amendments adopted July 27, 2020.
[2]Senate SJU committee amendments adopted August 25, 2020.
[3]Senate 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 [1]shall be notified, as part of the notification provided under paragraph (2) of subsection [2]**[**f.**]**[2] [3]e.[3] of this section,[1] of the right to make [1]**[**a**]** an updated[1] statement [1]**[**for inclusion in**]** to supplement[1] the [1]**[**resentencing**]** presentence[1] report [1]prepared 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**]** to[1] the [1]**[**probation department**]** victim[1].

[2]**[**f.**]** e.[2] (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 occurred[1] . 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.

[2]**[**g.**]** f.[2] 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.

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

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

(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;

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

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

(b) developmental disorders;

(c) substance abuse;

(d) addiction;

(e) trauma;

(f) poverty; and

(g) lack of education;

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

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

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

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

[2][i.] h.[2] If the court finds by a preponderance of the evidence that the offense for which the inmate was convicted and sentenced [1][did not reflect irreparable corruption, but][1] was the result of the mitigating qualities of youth, the court shall resentence the inmate to a term that allows the inmate a meaningful opportunity for release [1][. However, if] , unless the court finds by clear and convincing evidence that the offense for which the inmate was convicted and sentenced reflects irreparable corruption. If[1] the court finds that the offense reflects irreparable corruption, the court shall not resentence the inmate regardless of the findings of the mitigating qualities of youth. If the sentencing court reduces the sentence pursuant to this section, the sentence shall not become final for 10 days in order to permit the prosecutor to appeal the sentence.

[2][j.] i.[2] An inmate may file only one motion pursuant to this section. Nothing in this section shall prohibit an inmate from

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

[3]j. An inmate who has been resentenced under the provisions of this section also shall be sentenced to a five-year term of parole supervision.[3]

2. This act shall take effect immediately and shall apply retroactively to any [1]eligible[1] inmate who was sentenced [2][as a juvenile][2] prior to the effective date of this act.

New Jersey Criminal Sentencing & Disposition Commission

Annual Report

November 2019

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> subject to mandatory minimum term of 50 percent at the time of their conviction. Once they had served 50 percent of their sentence (assuming no other parole disqualifiers), they would proceed through the parole process, where the State and any victims would have the opportunity to object to the inmate's release before the Parole Board.

Recommendation #5: Create a New Mitigating Sentencing factor for youth.

When determining a defendant's sentence, the judge must consider a number of statutorily-defined aggravating and mitigating factors. The CSDC recommends that the Legislature create a new mitigating factor that allows judges to consider a defendant's youthfulness at the time of the offense. The members of the Commission recommend that the mitigating factor read as follows:

> The defendant was under 26 years of age at the time of the commission of the offense.

It would be within the court's discretion to determine the weight to be given to the factor in any given case. If a juvenile prosecuted as an adult, after consideration of this mitigating factor, is nevertheless sentenced to a term of 30 years or greater, he or she would have the same right to apply for resentencing after 20 years with the required consideration of the factors established by the U.S. Supreme Court in Miller v. Alabama, 567 U.S. 460 (2012), in light of the inmate's record while incarcerated (e.g., evidence of rehabilitation, greater maturity, etc.)

Recommendation #6: Create an Opportunity for Resentencing or Release for Offenders Who Were Juveniles at the Time of Their Offense and Were Sentenced as Adults to Long Prison Terms.

In four cases decided over the past decade the U.S. Supreme Court, relying on developmental psychological and neuroscience research, has dramatically reshaped the juvenile justice system by concluding that "children

are constitutionally different from adults for purposes of sentencing."[50] Substantially limiting the severity of the sentence that may be imposed on a juvenile offender, the Court ruled that an offender who was under eighteen at the time of the offense may not receive the death penalty (Roper v. Simmons, 543 U.S. 551 (2005)); may not receive life without parole for a non-homicide offense (Graham v. Florida, 560 U.S. 48 (2010)); and may not even receive life without parole for a homicide -- except in the very unusual circumstance that the juvenile offender is found to be incorrigible (Miller, 567 U.S. at 471). This last decision was made retroactive, requiring a resentencing for any prisoner serving a mandatory life-without-parole sentence for homicide (Montgomery v. Louisiana, ___ U.S. ___, 136 S.Ct. 718 (2016)).

These decisions reflect a consensus that, as a group, juvenile offenders are less culpable and more amenable to rehabilitation than adults, and therefore require special consideration by the courts. Indeed, with the advancement of modern brain science has come the recognition that juveniles possess certain traits that differentiate them from their adult counterparts.[51] First, juveniles tend to be immature, irresponsible, and impulsive – characteristics which cause youth to be overrepresented statistically in virtually every category of reckless behavior.[52] Second, juveniles tend to have less control over their own environment and often cannot remove themselves from dangerous settings; consequently, juveniles are especially "vulnerable or susceptible to negative influences and outside pressures."[53] Third, "the character of a juvenile is not as well formed as that of an adult because the personality traits of juveniles are more transitory and less fixed."[54]

Although these differences do not altogether absolve juveniles of responsibility for their crimes, it is widely accepted that they may reduce their culpability. While many juveniles engage in risky conduct, for the majority, such behaviors are fleeting and cease with maturity as individual identity becomes settled. Only a relatively small number will "develop entrenched patterns of problem behavior that persist into adulthood."[55] Additionally, juveniles are more

capable of change than adults, and thus, their actions are less likely to be evidence of "irretrievably depraved character," even in the case of very serious crimes.[56]

In light of these advancements in the understanding of adolescent brain development, there has been sweeping change in the sentencing of juvenile offenders. Under the federal Constitution, a court, prior to imposing a mandatory life sentence on a juvenile homicide offender must consider how children are different by evaluating the so-called "Miller factors," which include the defendant's immaturity, impetuosity, and failure to appreciate risks and consequences; family and home environment; family and peer pressures; inability to deal with police officers or prosecutors or his own attorney; and the possibility of rehabilitation. Indeed, the Supreme Court of New Jersey has ruled that under the State Constitution a lengthy juvenile sentence that is the functional equivalent of life without parole also requires consideration of the Miller factors. A sentence that is the functional equivalent of a life sentence and is imposed without consideration of these factors is constitutionally infirm, requiring a resentencing.[57]

The teaching of Roper and its progeny is the concept that juveniles, regardless of the severity of their crime, must have the opportunity to demonstrate growth and earn a chance for release. Yet, in New Jersey there is no opportunity for an offender who was a juvenile at the time of sentencing to later obtain a judicial review of his sentence. As the New Jersey Supreme Court has pointed out, even in cases where a judge properly applies the Miller factors at the sentencing, there are "serious constitutional issues" about the juvenile's right, after serving a portion of his or her sentence, to judicial review of factors that could not be fully assessed at the time of original sentencing, such as "whether he still fails to appreciate risks and consequences, or whether he may be, or has been, rehabilitated."[58] Expressing concern over the lack of a statutory mechanism for this judicial review, our Supreme Court encouraged the New Jersey Legislature to take action:

> We ask the Legislature to consider enacting a scheme that provides for later review of juvenile sentences with lengthy periods of parole ineligibility, and to consider whether defendants should be entitled to appointed counsel at that hearing. To the extent the parties and amici urge this Court to impose a maximum limit on parole ineligibility for juveniles of thirty years, we defer to the Legislature on that question.[59]

The CSDC recommends following the examples of other states, such as California, Connecticut and Florida,[60] in ensuring that those serving lengthy sentences for crimes committed as a juvenile have a realistic and meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. Under this recommendation, an offender sentenced as an adult for a crime committed as a juvenile to a term of 30 years or greater would be entitled to apply to the court for resentencing after serving 20 years. At the resentencing, the court would consider the diminished culpability of youth as compared to adult offenders, such as chronological age and immaturity, impetuosity, and the failure to appreciate risks and consequences. To guide the court's consideration, the Commission recommends that the Legislature enact a non-exhaustive list of factors as follows:

> (a) Whether the offender demonstrates evidence of rehabilitation;
>
> (b) Whether the offender would pose a significant risk to society if released;
>
> (c) The circumstances of the offense, including whether the offender was a relatively minor participant in the criminal offense or acted under extreme duress or the domination of another person and whether the juvenile's behavior was impacted by familial or peer pressures;
>
> (d) Whether the offender's age, maturity, and psychological development at the time of the offense affected his behavior;

(e) The offender's family and home environment at the time of the offense;

(f) The offender's history of abuse, trauma, poverty, and involvement in the child welfare system prior to committing the offense;

(g) The effect of the incompetencies associated with youth on the criminal justice process, including inability to deal with police officers, prosecutors, or defense counsel;

(h) Accomplishments while incarcerated, including the availability and completion of prison programming, academic or vocational achievements, a positive prison record, and positive relationships with correctional staff and other inmates;

(i) The results of any mental health assessment, risk assessment, or evaluation of the youthful offender as to rehabilitation.

On consideration of these factors, the court would have the option to modify or reduce the base term of the sentence to any term that could have been imposed at the time of the original sentence, the period of parole ineligibility or both. The Commission recommends that if the court grants release, the inmate be subject to parole supervision for the remainder of the sentence imposed.

Recommendation #7: Create a Program, Called "Compassionate Release," that Replaces the Existing Medical Parole Statute for End-Of-Life Inmates.

The CSDC recommends the creation of a third release mechanism, called "Compassionate Release," that is based on the state's "medical parole" statute but includes a number of new provisions that would allow inmates to obtain prompt release if they are suffering from a terminal medical condition or permanent physical incapacity.