Criminal Justice Reform Is About Fairness
THE NEW JERSEY APPROACH

By Justice Stuart Rabner

Craig Mallon's decision to plead guilty to fourth-degree joyriding in 2016 made sense from a practical standpoint. The New Jersey resident originally denied that he had taken his fiancée's car without permission. Unable to post 10 percent of a $2,500 bail, Mallon served 124 days in a county jail—maintaining his innocence and waiting for his case to be heard.

Then, on day 125, Mallon was offered a plea agreement that allowed him to become a free man right away. He recanted his denial and pleaded guilty in exchange for a sentence that amounted to time served and no probation. In the end, Mallon's inability to post a modest amount of bail likely affected the outcome of his case as much as the weight of the evidence against him did. Had he had access to money, the criminal justice system would have treated him differently.

This system is changing. Across the nation, legislators and court officials recognize that the criminal justice system cannot be truly just if individuals who have access to money are treated more favorably than people who do not. The State of New Jersey has been at the forefront of this reform movement for several years now. In 2017, New Jersey implemented broad changes statewide. Rather than require criminal defendants to post bail, New Jersey overhauled its criminal justice system and began to employ a risk assessment tool to help judges make objective and informed decisions about pretrial release.

The tool measures the risk defendants pose on two levels: Will they show up for trial? Will they commit a crime while on release? A recommendation about pretrial release then is made to the judge based on commonsense, objective factors tied to the current charge and the defendant's history. If a defendant poses a significant risk to public safety or flight, prosecutors can seek to have the defendant detained until trial. All other defendants are released pretrial on a range of conditions and are monitored by a newly created pretrial services unit.

Throughout 2017, more than 8,000 defendants—those found to pose the greatest risk to public safety—were ordered detained pretrial. Their cases are subject to
a new speedy trial law. At the same time, New Jersey's pretrial jail population dropped 20 percent. More than 31,000 defendants—
who posed less of a risk of danger or flight—were released under various levels of
monitoring. Another 3,000 low-risk defendants were released with no conditions. Out
of 44,000 cases overall, only 44 defendants were ordered to post bail as a condition of
release. And crime, including violent crime, decreased in 2017, as State Police Uniform
Crime Report statistics show. Beyond the numbers, there are elements to criminal jus-
tice reform that cannot be so easily measured. They help show why the issue of
pretrial release is so critical.

Under the old system, poor defend-
ants—often members of minority
groups—sat in jail for weeks or months
while presumed innocent, despite posing
little risk to the public. During that time,
they could lose their jobs, contact with
family members, and even custody of their
children. Meanwhile, the cost to taxpay-
ers to house a low-risk defendant can
amount to $100 or more per day. Time
spent in jail also can become an incentive
for a defendant to plead guilty and receive
a sentence for time served. Studies show
that defendants held pretrial plead guilty
more often, are convicted more often, are
sentenced to prison more often, and
receive harsher prison sentences than
those who are released pretrial. At the
other end of the spectrum, dangerous
defendants had the opportunity to post
bail, despite the risk they might commit
new crimes or try to intimidate witnesses.
Their release before trial raised a genuine
public safety concern.

These concepts aren't new or surprising;
yet change is hard to achieve. Several cata-
lysts pushed New Jersey toward reform. A
2013 study of the state's county jail pop-
ulation revealed that 12 percent of the state's
inmates were in jail not because they posed
a risk of danger or flight, but because they
couldn't make bail of $2,500 or less.
Around the same time, the governor called
for an amendment to the state constitution
to allow for pretrial detention. In response,
the state judiciary formed the Joint Com-
mittee on Criminal Justice, with
representatives from all three branches of
government. Its 33 members included the
attorney general and county prosecutors,
the public defender and private defense
attorneys, counsel for the ACLU, judges,
and staff. A year later, many of the com-
mittee's recommendations on pretrial
reform and the need for a speedy trial act
were adopted by the legislature and signed
into law by the governor.

The public took the next step. In
November 2014, more than 60 percent of
New Jersey voters approved a constitutional
amendment that gave judges, for the first
time, the ability to detain defendants with-
out bail to ensure their appearance in court
and protect the safety of the community.
In 2016, the judiciary began to review cases
of low-risk defendants held in jail on low
amounts of bail. The pretrial jail popula-
tion dropped by more than a third over the
following two years as low-risk defendants
were no longer held solely because they
could not afford bail.

During this time, the judiciary, in part-
nership with the Laura and John Arnold
Foundation, planned to implement a risk
assessment tool, validated with data from
thousands of actual New Jersey cases. The
New Jersey Supreme Court adopted court
rules to implement the new law, and the
attorney general issued guidelines to law
enforcement statewide. The judiciary also
worked closely with the public defender and
county officials to roll out this initiative.
In addition, the judiciary created pretrial
services units in courthouses throughout
the state to prepare recommendations for
judges based on the risk assessment and to
monitor defendants on pretrial release.
Low-risk defendants simply may receive a
text message or phone call to remind them
of future court appearances. Defendants
who pose greater risks meet regularly with
pretrial services officers and can be placed
on electronic monitoring.

Criminal justice reform in New Jersey
is still a work in progress. And it is not
infallible. No system that tries to assess
future behavior can make that claim. As
in the past, when defendants were routinely
released on bail, some will commit serious
crimes or flee before trial. That is one rea-
son why stakeholders meet regularly and
continue to refine our approach based on
empirical data and practical developments.
Still, a year into this monumental reform,
the improvements are evident. Mr. Mallon
would face a very different criminal justice
system today.

As many other jurisdictions consider
these issues, they will develop different
approaches that best fit their states and
court systems. New Jersey's experience
reveals that with the right cooperation and
coordination, we can help create a better
and fairer system of criminal justice.

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Gannett newspapers.

Endnote
1. Craig Mallon is a pseudonym to protect the
privacy of an actual defendant.

Justice Stuart Rabiner is chief
justice of the New Jersey Supreme
Court and chaired the Joint
Committee on
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