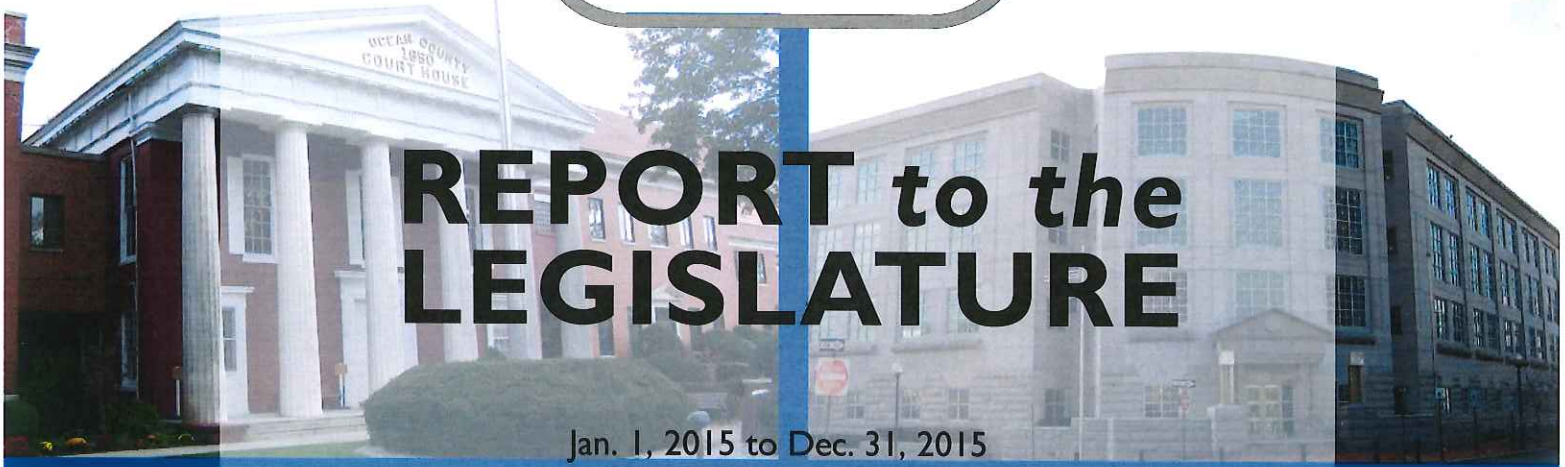
CRIMINAL JUSTICE REFORM

REPORT *to the* LEGISLATURE

Jan. 1, 2015 to Dec. 31, 2015



NEW JERSEY JUDICIARY

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Criminal Justice Reform Annual Report to the Legislature

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Introduction

In the summer of 2013, Chief Justice Stuart Rabner established and chaired a special committee of the Supreme Court, the Joint Committee on Criminal Justice (JCCJ) Reform, comprised of members from the three branches of state government including, the Attorney General, Public Defender, private attorneys, judges, court administrators, and representatives of the Legislature and the Governor's Office, to undertake an examination of the New Jersey Criminal Justice system. The committee examined, among other things, the issues of bail and speedy trial in New Jersey and recommended significant changes to the system. Such recommendations included the need for New Jersey to shift from monetary bail to a risk-based, supervised pretrial release program, to permit preventive detention in situations where no level of supervision could ensure either the safety of the community or the defendant's appearance in court, and to enact speedy trial legislation mandating time frames within which defendants must be indicted and brought to trial. The results of this cross branch collaboration, set forth in the committee's March 2014 report, represented the most comprehensive set of proposed reforms to the state's criminal justice system since the adoption of the 1947 constitution.

One of the impetuses for the committee included a March 2013, survey and analysis of New Jersey's jail population which revealed significant disparities regarding the State's county jail population on October 3, 2012[1]. Those details include the following: (1) 13,003 inmates were housed in county jails; (2) 73% of the inmates (9,492) were awaiting trial; (3) 39% (5,006) of inmates were eligible to be released on bail but remained in jail because they lacked the financial resources to post bail; and, (4) 12% (1,547) remained in jail due to their inability to post a bail of $2,500 or less.

Building upon the Joint Committee's report, in the summer of 2014, the Legislature passed and the Governor signed pioneering legislation, set to take effect on January 1, 2017, to implement a majority of the recommendations from the report, and enacted related procedural and operational changes to the criminal justice system in our state. In addition, in November 2014, New Jersey voters approved a constitutional amendment to permit the detention of high-risk defendants in jail before trial. That amendment will also take effect on January 1, 2017.

This report details the Judiciary's multi-pronged approach to effectuate the changes contemplated by the constitutional amendment and new statute. There are five key components to implementing these reforms in New Jersey: (1) the financial and operational challenges created by this transformative change will, by necessity, require the development of a comprehensive technological application to address both case processing and other system revisions established by the new law; (2) the creation and staffing of a pre-trial services function

[1] Marie VanNostrand, Ph.D., New Jersey Jail Population Analysis (March 2013).

within the Judiciary in order to provide supervision of those individuals released pending trial; (3) the formation of a dedicated funding source, through increases in court filing fees, to support the implementation of both the technological and operational enhancements to make this project a reality; (4) the successful transition to this new operational structure includes developing the institutional support among both internal and external constituencies of our criminal justice system; and (5) the development of a comprehensive outreach effort to inform and advise judges, Judiciary staff, prosecutors, public defenders, the state bar, wardens, sheriffs, counties, municipalities, our other criminal justice partners, the other branches of government, and the public about this initiative. This initiative will require not only the commitment of the Judiciary's workforce but must include the collaboration and partnership from all of the actors in the criminal justice system.

The State of New Jersey has been a national leader in developing collaborative partnerships among its branches of government. Our court system's long standing technological partnership with executive branch agencies for data system exchanges is one of the reasons why this initiative is possible. Yet, the collaboration extends to more than information exchanges. Even prior to this change as evidenced by the Chief Justice's Joint Committee on Criminal Justice, we have continually engaged in ongoing dialogues and conversations with all segments of the criminal justice system to improve upon operations and efficiencies. This extraordinary undertaking would not be possible without the ongoing collaboration of the three branches of New Jersey government and other criminal justice partners and stakeholders.

The New Law and Constitutional Amendment

On August 11, 2014, Governor Christie signed S-946 into law as L. 2014, c. 31. Sections 1 through 11 and section 20 of the new law contain provisions regarding pretrial release and pretrial detention. Sections 12 through 19 of the law authorized the Supreme Court to increase court fees to assist in the funding of a Pretrial Services Program, the development and maintenance of a digital e-Court system, and Legal Services of New Jersey.

Sections 1 through 11 address the new authority of a judge to order the pretrial release of an eligible defendant subject to defined conditions with the use of an objective, standardized risk assessment instrument designed to measure a defendant's likely risk of failure to appear in court and danger to the community while on pretrial release. Such release, where appropriate, will be ordered in lieu of monetary bail.

L. 2014, c. 31 specifies that defendants released pretrial will be monitored and supervised by pretrial services staff, which is the process followed in the federal system and a number of other jurisdictions. The Judiciary anticipates that the staff, who will be employed in a Pretrial Services Program within the Judiciary, will conduct at least fifty to sixty thousand risk assessments per year. Risk assessments and a decision regarding possible pretrial release will need to be completed within 48 hours of arrest. If released with conditions under the Pretrial Services Program, pretrial service staff will monitor defendants based on the level of monitoring that each

defendant requires, i.e., high, medium or low. As the risk level increases, the nature of the monitoring will be enhanced.

As a result of the constitutional amendment that was passed by New Jersey voters last November, judges in New Jersey will also have the authority to order defendants to be detained before trial. It is anticipated that detention will apply in a small number of cases when the prosecutor files a motion to detain certain defendants who pose a serious risk of flight or a serious risk of danger to the community or to witnesses. Those defendants will no longer have a constitutional right to be released on bail pretrial.

For those defendants who are detained in jail, L. 2014, c. 31 sets limits on the amount of time that the defendant can remain detained, from arrest to indictment and from indictment to trial, with appropriate extensions of time for pretrial motions, competency hearings, plea negotiations, the consent of the parties, and other valid reasons.

To assist in developing policies and procedures before a more comprehensive rollout to the entire state, pilot programs testing certain aspects of the foregoing changes to New Jersey's criminal justice system are scheduled to begin in the Camden, Passaic and Morris/Sussex vicinages in early 2016.

Pretrial Supervision Program Development and Implementation

Learning What Other States Do

Judge Glenn A. Grant, Administrative Director of the New Jersey Courts, led a delegation of Judiciary employees to Phoenix, Arizona, in April 2015 and to Louisville, Kentucky, in June 2015 to learn from the experiences of those jurisdictions when implementing their pretrial services programs. The delegation received an overview of Kentucky's statewide pretrial services program, reviewed screenshots of the computer applications that Kentucky and Maricopa County, Arizona, used for their respective programs, and spent time visiting Maricopa and Pinal counties to observe their pretrial services programs at work. They learned about different supervision strategies, appropriate conditions to be placed on defendants released pretrial, and techniques for collecting data for the risk assessment tool. The delegation also attended the National Association of Pretrial Services Agencies Conference in Indianapolis in August 2015. The knowledge gleaned from these visits is helping to inform decisions about New Jersey's Pretrial Services Program.

Developing the Risk Assessment Instrument

As required under the law, the Judiciary is implementing a comprehensive, evidence-based electronic risk assessment instrument (also referred to as the risk assessment tool) to scientifically and efficiently assess the risk that a defendant will engage in violence, commit a new crime, or fail to appear for future court events. The risk assessment tool will utilize the databases of the statewide Judiciary case management systems, the New Jersey State Police and national criminal history systems to "score" a defendant based on a validated algorithm.

To this end, the Judiciary has partnered with the Laura and John Arnold Foundation ("LJAF") to adapt a risk assessment instrument, known as the Public Safety Assessment-Court or PSA-Court, for use in New Jersey. The risk assessment instrument has been tested and validated with New Jersey-specific data from hundreds of thousands of actual cases. The tool will contemplate multiple common sense factors, including the following: (1) the defendant's age at the time of arrest; (2) whether the defendant has pending charges; (3) any prior convictions; (4) whether any prior convictions involved violence; (5) any prior failures to appear in court; (6) any prior jail sentences; and (7) the current offense. Once the assessment is complete, each defendant will be classified according to the degree of risk he/she poses and, depending on the outcome of the analysis, the defendant could be released on a series of conditions without having to post monetary bail.

The LJAF has retained Luminosity, Inc. to assist the Judiciary further. Luminosity is a criminal justice consulting firm that specializes in data-driven justice solutions with a particular focus on the pretrial stage of the criminal justice system. It works with many local, state, and federal agencies and systems across the United States to identify opportunities to improve efficiency and effectiveness and to implement practical data-driven solutions. The firm's areas of expertise include justice system assessment, system re-engineering, responsible jail crowding reduction, and pretrial research.

Building the Pretrial Services Program

The Judiciary is in the process of establishing a Pretrial Services Program in each of the New Jersey's 15 vicinages. The program will be coordinated centrally at the Administrative Office of the Courts. Staff in each program will be trained to administer the risk assessment tool, inform judges of the results, and monitor defendants who are released pending trial. The Judiciary anticipates hiring new employees to staff its Pretrial Services Program after careful study and analysis.

Updating the Court Rules

Revised and new Court Rules will be necessary to implement bail reform and speedy trial. In connection with the establishment of these new rules, the Judiciary has met with the Attorney General's Office, the Office of the Public Defender, the county prosecutors, and the private bar. All parties have been working closely together to discuss and draft necessary changes to the New Jersey Court Rules. The final proposed rules will be released for public comment. Court orders for the bail reform and speedy trial processes are also being developed and automated.

Critical Information Technology Improvements

The successful implementation of bail reform and speedy trial hinges in no small part on automating the criminal justice process in New Jersey. Automation will involve a complicated system redesign to allow the necessary new applications to connect with the Judiciary's older

legacy systems as well as federal and state executive branch systems. There are four related information technology projects already underway related to bail reform and speedy trial.

Enhancements to the eCDR System and Live Scan Interface

eCDR is a web-based application built and maintained by the Judiciary and used by law enforcement. The application allows a police officer to create a printable warrant/summons, record the probable cause determination, and send data to the case management system from the police station. Today, law enforcement officers use the Judiciary eCDR system to complete 99% of all summonses and warrants.

As part of the Criminal Justice Reform Project, the Judiciary must rewrite the eCDR application. The new application, Unified Complaint Entry ("UCE"), will include a new enhancement that will interface with the New Jersey State Police computerized criminal history system. The UCE will pre-fill fifty-one (51) data fields from the fingerprint arrest record with pertinent criminal record data.

Currently, New Jersey law enforcement agencies use LiveScan, a process of capturing fingerprints electronically, to identify defendants. LiveScan eliminates some of the data entry burden on police and improves the linking of defendants and arrest records. Such automated linking, however, currently occurs in only 2% of cases. The Judiciary believes that this linking must increase to 95% to ensure the effectiveness of the Criminal Justice Reform Project. The Judiciary is working closely with the Executive Branch Office of Information Technology and the New Jersey State Police to complete development of the UCE and to ensure use of LiveScan throughout the State.

A second key enhancement to the UCE will save an image of each filed criminal complaint in New Jersey in an electronic case jacket. This image will be available to appropriate criminal justice partners, eliminating the need for the transfer and storage of paper copies. The Judiciary anticipates that having the image available immediately at a case's inception will streamline the release/detention decision.

Risk Assessment Automation

The Judiciary is working to ensure that the process of matching defendants with the data needed for the risk assessment tool is seamless. To this end, we are working on building interfaces with the U.S. National Crime Information Center, Interstate Identification Index, and International Justice and Public Safety Network. The Judiciary is also working with the New Jersey State Police to ingest criminal history data at the state level. We are also matching multiple internal case management systems for historical analysis of FTA and dispositional data.

The risk assessment tool itself will be a stand-alone electronic application. The tool will provide a scoring mechanism based on the factors considered during a risk assessment. The data will be provided as a report and saved in the electronic case jacket. The Judiciary is also creating an

electronic notification mechanism that will alert court staff that a defendant has been accepted into a county jail, provide a countdown timer to ensure all parties are notified that the 48-hour window for pretrial release decision has begun, and capture the release recommendation from pretrial services staff and the judge's order.

Pretrial Monitoring and Speedy Trial Applications

Once a judge decides to release or detain a defendant, the case management system will transport relevant data from the risk assessment to a pretrial services application. This application is in the process of being developed and will be capable of case management functions including intake, contact information, notification, conditions of release, status for compliance, and eventual discharge from monitoring. The Judiciary is also developing a module to allow prosecutors to file a pretrial detention motion electronically.

If a defendant is detained, the speedy trial module, also in development, will track the detention decision date and excludable time granted through statutory and judicial decisions. The module will also provide reporting capabilities to assist Pretrial Services Program staff in monitoring active detention caseloads.

eCourts Implementation

L. 2014, c. 31 will enable the Judiciary to continue the process of implementing one of its biggest operational changes in decades – the creation of eCourts, a web-based application that will allow attorneys to file pleadings electronically, the public to access public records and documents electronically, and the Judiciary to computerize its case management and document storage systems. This ongoing transformation from a paper-driven system to an electronic system is not an option, but a requirement in today's society. Electronic filing dramatically reduces the time and costs associated with filing paper documents, sending court notices through the mail, and storing paper files.

The Judiciary has already begun its work on the eCourts system. The most recent eCourts additions include implementing a statewide module for the electronic filing of Criminal motions and all Tax Court filings. Additional eCourts modules for the Civil and Family Divisions are being developed, and a module for the Probation Division was just completed. In addition, both the Supreme Court and the Appellate Division can now accept filings electronically.

Fee Increase Implementation and Funding

Sections 12 through 19 of the new law authorized the Supreme Court to "revise or supplement filing fees and other statutory fees payable to the court" by Court Rule, and specifically provided that monies raised by the filing fee increases must be used to fund a statewide Pretrial Services Program, develop and maintain a digital e-Court system, and assist Legal Services of New Jersey (hereinafter LSNJ) financially. The authority to increase court fees took effect on August 11, 2014, and expired on March 1, 2015.

In accordance with the statutory time frames, the Supreme Court publicly announced proposed new and increased filing fees, accepted written public comment on the proposed fees, and held a public hearing on the topic. On October 31, 2014, the Supreme Court adopted new Rule 1:43 and amended Rule 8:12 (Tax Court fees), which created several new court fees and revised certain existing fees. In accordance with the new law, no single fee was increased by more than $50. The new Court Rules took effect on November 17, 2014.

L. 2014, c. 31 anticipated that the fee increases would generate at least $42.1 million: $22 million to the Judiciary for the development, maintenance and administration of a Pretrial Services Program; $10 million to the Judiciary for the digital e-Courts system; and $10.1 million to the Department of Treasury for distribution to LSNJ.

Since November 17, 2014, the Judiciary has collected $40,786,117 from the fee increases. As of October 31, 2015, $21,314,825 was credited to the establishment of a statewide Pretrial Services Program, $9,686,703 for eCourts, and $9,784,590 was credited to LSNJ. To date, it appears that in the first full twelve months, the fee increases will generate the anticipated $42.1 million.

Thus far, establishing the technological framework to support the Criminal Justice Reform initiative and related application development account for the use of the funding collected under the law. A total of $3.7 million has been expended for this purpose: $1.1 million for e-Courts and $2.6 million for pretrial services.

Communication and Outreach

A comprehensive outreach plan to inform and advise judges, Judiciary staff, prosecutors, public defenders, the state bar, wardens, sheriffs, counties, municipalities, our other criminal justice partners, the other branches of government, and the public is underway. This plan includes training classes, webinars, videos, and the distribution of published materials.

To date, Chief Justice Rabner, Administrative Director Grant, along with other members of the Judiciary have met with and provided information and education on the Criminal Justice Reform efforts to many groups, including the Attorney General's Office, the County and Statewide Jail Wardens Associations, various Municipal Court Administrators Associations, the County Prosecutors Association, the Association of Criminal Defense Attorneys, the New Jersey Association of Counties, and the League of Municipalities. Judges and staff have received numerous presentations and literature, and these educational opportunities will continue.

Conclusion

Bail reform and speedy trial reform collectively represent a historic shift in the way New Jersey will administer criminal justice. This shift is the culmination of the extensive efforts of the three branches of government in collaboration with many other partners. Though much work has been accomplished, there is much more to be done prior to January 1, 2017. There are significant

operational and staffing challenges that must be addressed in order to bring this project to fruition. For example, the timely nomination and appointment of judges is absolutely essential to the success of this initiative. The Judiciary remains confident in the State's ability to implement these statutorily-mandated reforms based upon the collaboration and partnership with the Legislative and Executive branches and all of the other involved parties in the criminal justice system.

Administrative Office of the Courts

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