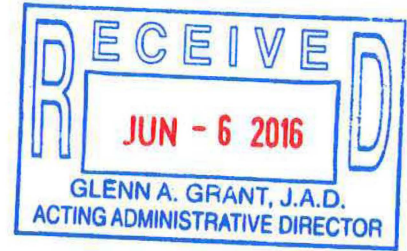


# 004

May 28, 2016

The Honorable Glenn A. Grant, J.A.D.  
Acting Administrative Director of the Courts  
Hughes Justice Complex  
P.O. Box 037  
Trenton, New Jersey 08625-0037



Re: Comments Regarding Pretrial Release/Pretrial Detention/Speedy Trial Rules

Dear Judge Grant,

With regard to the implementation of The Bail Reform Law, I respectfully submit the following comments in response to the Supreme Court's Committee on Criminal Practice Report Part 1 and Part 2. I also join in concurrence with the more detailed comments submitted by the named organizational members of the Pretrial Services Program Review Commission established by The Bail Reform Law.

I begin by commending the Committee for recognizing the inconsistencies between the use of bail schedules and the intent of The Bail Reform Law. I join the Committee in urging the Administrative Office of the Courts to reconsider the continued viability of bail schedules within New Jersey. I go further than the Committee however, in arguing that the complete and immediate elimination of bail schedules is appropriate, even in those cases that arise prior to January 1, 2017, because the use of bail schedules violates the Equal Protection Clause of the United States Constitution.

I also commend the Committee for addressing the issue of affordable bail in its non-rule recommendation. I share the concern that there is no explicit language in The Bail Reform Law that restricts the court from imposing a monetary bail that results in pretrial detention. Nevertheless, I am confident that the intent and

totality of The Bail Reform Law to favor release, while providing a mechanism for the State to detain truly dangerous individuals, supports the interpretation that individuals shall not be detained in New Jersey solely because of their inability to pay monetary bail. Further, these factors support an interpretation that any such detention could only be the result of intentional action by the courts to detain a person and that such intent is strictly forbidden by the law. Additionally, the United States Constitution explicitly protects individuals from being detained solely because of their inability to pay for their release. For these reasons, we do not see a need for the legislature to revisit this issue.

I, along with many other advocates, faith leaders and community members supported the historic and comprehensive bail reform legislation enacted in 2014. However, I am concerned that some of the proposed rules, discussed below, will not only undermine the intent of the law, but will also make some of the protections afforded to individuals under the law meaningless.

Of particular concern is the Committee's recommendation to the legislature to expand the number of offenses for which a presumption of detention should apply. This recommendation is not only beyond the scope of the Committee, but is also bad public policy. As the United States Supreme Court wrote in *United States v. Salerno*, "In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." The intent of The Bail Reform Law is to limit pretrial detention, not to expand it. The Bail Reform Law provides a mechanism for the State to seek preventative detention in the interest of public safety, and there is no reason to include additional presumptions to facilitate this process.

Additionally, we have significant concerns with many of the proposed speedy trial rules. When passed, The Bail Reform Law included speedy trial safeguards to address the substantial criminal case processing issues in New Jersey. While The Bail Reform Law provided some absolute time frames, the court rules are supposed to work within those time frames to further define certain processes. We are concerned that these proposed rules not only fail to impose



limits on the amount of time that can be excluded, but also allow excessive and unreasonable time periods in some instances. These proposals undermine the intent of The Bail Reform Law and fail to protect defendants' rights to a speedy trial.

New Jersey became a national leader when it passed comprehensive bail reform. I supported the reform because it was grounded in fairness and equity. Some of the rules proposed by this Committee threaten the principles of the law, and I respectfully request that you consider our comments when finalizing the rules.

Sincerely,



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