This workshop was held at the 2019 Equal Justice Conference in Louisville, Kentucky.

Title:
How We Eliminated a Cash Bail System: Lessons Learned from New Jersey

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This session will provide an overview of New Jersey's successful transformation of an antiquated money bail system into a modern, risk-based system that relies on empirical evidence to better identify the risk a defendant poses. We will discuss the challenges faced in passing and implementing the law, and how it can be a model for other states.
2018

Report to the Governor and the Legislature

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I. EXECUTIVE SUMMARY

Overview

Created through the cooperation and commitment of all three branches of state government, Criminal Justice Reform (CJR) embodies principles of fairness in our American justice system that entitle all defendants to a presumption of innocence and a speedy trial. The new system in place balances an individual’s right to liberty with the State’s responsibility of assuring community safety.

As this 2018 Annual Report details, CJR is working as intended.

New Jersey has moved away from a system that relied heavily on monetary bail. Two years into its existence, CJR has begun to remove many of the inequities created by the prior approach to pretrial release. At the same time, court appearance rates for CJR defendants remain high while the rate of alleged new criminal activity for CJR defendants remains low. CJR defendants are no more likely to be charged with a new crime or fail to appear in court than defendants released on bail under the old system.

Under the risk-based system of CJR, monetary bail is rarely used. Lower-risk individuals no longer spend weeks and months in jail because they lack the financial resources to post relatively small amounts of bail. More than 70 percent of CJR defendants are released on a summons pending the disposition of their cases -- without first being sent to jail. And a majority of defendants arrested on complaint-warrants are released on conditions that Pretrial Services officers monitor.

On the other end of the spectrum, higher-risk individuals who pose a danger to the community or a substantial risk of flight are no longer able to secure their release simply because they have access to funds.

New Jersey’s jail population looks very different today than it did when the idea of reforming the state’s criminal justice system began to take hold in 2013. On any given day, there are thousands fewer defendants in jail, with only the highest-risk defendants and those charged with the most serious offenses detained.

In all, CJR has reduced the unnecessary detention of low-risk defendants, assured community safety, upheld constitutional principles, and preserved the integrity of the criminal justice process.
Research Studies

During 2018, with an understanding of the importance of our state’s CJR model in the nationwide discussion of pretrial reform efforts, the Judiciary engaged in two comprehensive research projects to review the impact and gauge the success of reforms to the pretrial criminal justice process in New Jersey. The research was conducted by members of a research collaborative, including social science researchers and data scientists from the Judiciary’s Quantitative Research Unit and two independent organizations (University of Chicago – Crime Lab New York and Luminosity, Inc.).

- The first study compared data from 2017, under the current reformed system, to data from 2014, under the longstanding system of monetary bail.

- The second study updated a Jail Population Study published in 2013 and compared the jail populations on October 3, 2012 to the same day in 2018.

Together, these two endeavors inform the main sections of this year’s Annual Report.

Comparing Criminal Justice Reform with Money Bail

The first study -- the 2014/2017 Research Project -- compared outcomes and performance measures in 2014 and 2017 for defendants issued a complaint-summons or complaint-warrant in those years. The project tracked cases until final disposition or October 31 of the following year, whichever came first.

The study shed new light on factors that contributed to the decline in New Jersey’s pretrial jail population. It revealed that the jail population decreased substantially because CJR defendants were released much sooner than pre-CJR defendants had been.

The Research Project also revalidated and analyzed the performance of the Public Safety Assessment (PSA), a risk assessment tool that aids judges as they craft conditions of pretrial release for individual defendants.

An extensive review of the actual rates of alleged new criminal activity, court appearance, and alleged new violent criminal activity for CJR defendants in 2017 confirms that the PSA has been remarkably accurate in classifying a defendant’s risk. It found that as risk scores increase, actual failure rates of compliance increase in step.

As part of the project, researchers analyzed defendants who were released pretrial and confirmed that a large majority were not accused of committing a new crime and
appeared in court when required. Notably, in 2014, 12.7 percent of defendants were charged with a new indictable crime while on pretrial release, a number that remained consistently low, 13.7 percent, in 2017. Because of certain challenges in compiling data from 2014, small changes in outcome measures should be interpreted with caution and likely do not represent meaningful differences.

Moreover, the rate at which defendants appeared in court remained high after CJR, with an average appearance rate of 92.7 percent in 2014 and 89.4 percent in 2017. Concerns about a possible spike in crime and failures to appear did not materialize.

Research has demonstrated that incarceration before trial can have significant unintended consequences, such as the loss of employment, housing, and custody of children. Defendants detained in jail while awaiting trial also plead guilty more often, are convicted more often, are sentenced to prison more often, and receive harsher sentences than similarly situated defendants who are released during the pretrial period. For those and other reasons, it is critical for a system of criminal justice to limit pretrial incarceration to defendants who pose a substantial risk of flight or danger. Researchers accordingly examined factors that affect the size and makeup of New Jersey’s daily jail population.

Under CJR, a substantially larger proportion of lower-risk defendants are released on complaint-summons, rather than complaint-warrants, without first going to jail. Greater prosecutorial oversight and screening as well as changes in court rules have contributed to that trend. In 2014, 54 percent of defendants were issued a complaint-summons. In 2017, that percentage increased to 71 percent. For the remaining defendants, judges or judicial officers issued complaint-warrants.1 Viewed otherwise, the number of complaint-summons went from 69,469 in 2014 to 98,473 in 2017. That shift demonstrates that substantially fewer lower-risk defendants are going to jail.

For defendants who are arrested under a complaint-warrant, the CJR law requires that Pretrial Services complete a risk assessment and a judge make a release decision within 48 hours of an arrest. A defendant must be released unless the prosecutor files a motion for detention. In 2017, when no detention motion was filed by a prosecutor, the vast majority of defendants, 81.3 percent, were released within 24 hours; 99.5 were released within 48 hours.

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1 In New Jersey, a defendant can be charged with a crime or offense in two ways. Law enforcement officers have discretion to issue a complaint-summons that lists a date to appear in court. Alternatively, officers can apply to a judicial officer for a complaint-warrant, which directs that the defendant be sent to jail. Only defendants issued a complaint-warrant are “eligible defendants” subject to the provisions of the CJR law.
In addition, the study confirmed that courts are completing cases in roughly the same amount of time under both systems. In 2014, 80.4 percent of cases were completed within the 22-month period; in 2017, 78.2 percent of cases were completed within the same time frame.

**Jail Population Analysis**

The second study undertaken for this report -- a 2018 Jail Population Study -- analyzed the jail population on October 3, 2018. The new study updates a 2013 New Jersey Jail Population Study by Luminosity Inc., conducted in partnership with the Drug Policy Alliance, which analyzed the jail population on October 3, 2012. The 2013 study found that nearly 40 percent of New Jersey’s jail population was incarcerated because of an inability to post bail; 12 percent remained in jail on bails of $2,500 or less.

A comparison of the jail population six years apart revealed the following:

- There were 6,000 fewer people incarcerated on October 3, 2018 than on the same day in 2012.

- Only 4.6 percent of individuals in jail on October 3, 2018 were held on bail of $2,500 or less, compared to 12 percent on the same day in 2012;

- On October 3, 2018, 47 percent of the jail population consisted of people charged with or sentenced for at least one violent offense, compared to 35 percent on the same day in 2012.

- Nearly 75 percent of the 2018 jail population consisted of defendants charged with or sentenced for the most serious offenses.

The jail population study in 2013 revealed that more than two-thirds of defendants held in jail were members of racial and ethnic minority groups. A fundamental mission of CJR is to ensure that all defendants are treated equally under the criminal justice system, regardless of race, ethnicity, or gender. The 2018 Jail Population Study shows that approximately 3,000 fewer black, 1,500 fewer white, and 1,300 fewer Hispanic individuals were incarcerated under CJR.
Results from the 2014/2017 research study align with the findings from both jail population studies. Criminal Justice Reform in 2017 reduced the disparity between black and white defendants in terms of the amount of time spent in jail from arrest until initial pretrial release as well as the average number of days spent in jail awaiting trial.

For defendants who secured pretrial release, the time from either complaint issuance or arrest until initial pretrial release for black defendants decreased by 5.7 days from 2014 to 2017, while the time for white defendants decreased by 2.4 days. The time in jail awaiting trial for black defendants decreased by 10 days from 2014 to 2017, and the time for white defendants decreased by 5 days.

Despite those significant improvements, the jail population studies found that on October 3, 2012 and 2018, the racial makeup of defendants in New Jersey’s jails remained similar in some areas. Although the percentage of black women in jail decreased from 44 percent to 34 percent, black men continued to make up more than 50 percent of the male jail population. The overrepresentation of black males in the pretrial jail population remains an area in need of further examination by New Jersey’s criminal justice system as a whole.

Together, the findings detailed in the 2014/2017 Research Project and the comparisons of the 2013 and 2018 Jail Population Studies reflect a criminal justice system that prioritizes both fairness and public safety.

2018 Performance

This report closes with an update on CJR’s performance in 2018. Among the highlights:

- When no detention motions were filed, courts met the 48-hour deadline for making a release decision 99.6 percent of the time. In 81.9 percent of cases, a release decision was made within 24 hours.

- Only 102 defendants were ordered by courts to post monetary bail, out of a total of 44,383 CJR-eligible defendants. Bail was ordered in 90 of those cases for violations of pretrial monitoring, for example, when a defendant failed to appear in court as required.
• Prosecutors filed detention motions in 49 percent of cases in which a complaint-warrant was issued. Prosecutors withdrew or the court dismissed 4,819 motions. Judges granted 51.2 percent of the remaining 16,930 motions.

• 8,669 defendants were ordered detained in 2018. Out of the universe of 135,009 defendants charged by complaint-summonses or complaint-warrants in 2018, the rate of pretrial detention was 6.4 percent, and 93.5 percent of defendants were released pretrial. Out of 44,383 defendants charged by complaint-warrants, the rate of pretrial detention was 19.5 percent, and 80.2 percent of defendants were released pretrial.

The Annual Report highlights a continuing critical need to identify and implement a sustainable way to fund CJR’s Pretrial Services Program. As the Judiciary has stressed from the outset of CJR, paying for the Pretrial Services Program through an increase in court filing fees in 2014 has created a structural deficit and is not a permanent workable solution. The resulting funding imbalance has increased each year. Even with careful limits on staffing levels, which are at the bare minimum to meet the program’s needs, and aggressive cost-control measures for electronic monitoring and drug testing, annual expenses for the program exceeded revenues from filing fees in fiscal year 2018 for the first time -- as expected. Projected annual deficits are expected to fully deplete what remains of the modest reserves that accumulated during the start-up period before January 1, 2017. Those reserves have been drawn on each year since. We estimate that the program will face an overall negative funding balance in late fiscal year 2020 and early fiscal year 2021.

The legislative and executive branches have been fully supportive of CJR throughout its development. We respectfully urge them to address the approaching funding crisis.

Finally, the Annual Report provides an update on technology and an addendum on the Judiciary’s eCourts electronic filing initiative.
II.

2014 pre-CJR / 2017 CJR

RESEARCH PROJECT
COMPARING CRIMINAL JUSTICE REFORM TO MONEY BAIL SYSTEM

The overarching goal of Criminal Justice Reform to create a fairer system includes several components. The system is equitably designed to release lower-risk individuals into the community subject to appropriate pretrial monitoring conditions. Higher-risk individuals are detained to ensure community safety. Assessments of those risk levels are guided by objective and evidence-based criteria.

To assess the impact of CJR on New Jersey’s criminal justice system, it is worthwhile to compare it to the system of money bail that came before. Thus, members of the Research Collaborative, including social science researchers and data scientists from the Judiciary’s Quantitative Research Unit and two independent organizations (University of Chicago – Crime Lab New York and Luminosity), conducted a one-time comprehensive 2014/2017 Research Project to compare outcomes under the two systems.

The Research Project compared outcomes and performance measurements for two groups -- defendants issued either a complaint-summons or a complaint-warrant in 2014 and in 2017. Researchers generated Public Safety Assessment (PSA) risk results for each defendant and collected data from the first 22 months of CJR as well as comparable data from a 22-month period in 2014 and 2015. They tracked both groups of defendants until final disposition of a case or October 31 of the following year, whichever came first. This ensured identical follow-up periods for both the 2014 pre-CJR and 2017 CJR groups.

For several reasons, pre-CJR data from 2014 proved far more challenging to compile than 2017 data. New Jersey did not introduce a master statute table until March 2016, which made the comparison of certain charges a challenge. Fingerprint records, where available, are a unique verifiable identifier for an individual across data systems. Fingerprinting rates were dramatically lower pre-CJR; only 24 percent of defendants were fingerprinted in 2016, as compared to 88 percent in 2017. With the development of eCourts, the Judiciary improved processes for case transfer and tracking, which made it easier to track criminal cases remanded to Municipal Court or downgraded to lesser charges. Finally, as a result of changes in court rules, case-related policies and practices were more consistent in 2017 than in 2014. Those issues made it more difficult to identify and track people using the 2014 data. As such, small changes in performance and outcome measures should be interpreted with caution.
It should be noted that the Research Project includes all defendants charged with disorderly persons and indictable offenses issued by both complaint-summons and complaint-warrant, without separating these groups. This is an important distinction from the 2018 performance update starting on page 29. There are several reasons why all defendants charged with disorderly persons and indictable offenses were examined in the comparison study regardless of the type of complaint issued.

First, the population of defendants issued a complaint-summons or a complaint-warrant varied dramatically before and since the start of CJR, with more lower-risk defendants now being issued a summons. Notably, in 2014, 54 percent of defendants were issued a complaint-summons compared to substantially more, 71 percent, in 2017. Limiting the research to only defendants issued a complaint warrant would result in biased samples and an inequitable comparison. Finally, as mentioned above, CJR resulted in changes in court rules and case-related policies and practices, as well as more consistent practices in 2017. For all of those reasons, it was necessary to include in the study all defendants charged with disorderly persons and indictable offenses on both complaint-summons and complaint-warrants to provide the most equitable comparison.

The key performance measures for the two groups focused on outcomes related to community safety -- new criminal activity and court appearance rates -- as well as performance measures related to the amount of time defendants spent in jail pretrial. Again, for purposes of the study, pretrial release included situations when a summons was issued, when a warrant was issued and the defendant was released ROR or on pretrial monitoring or posted bail, and when a defendant was released from jail.

**MEASURING RISK -- PERFORMANCE AND OUTCOMES**

A cornerstone of CJR is a system of pretrial release that reasonably assures a defendant’s appearance in court when required and protects the community. Overall, the new system is working as intended through the use of the Public Safety Assessment (PSA) to guide pretrial release determinations, pretrial monitoring of release conditions, and detention of the highest-risk defendants.

**Public Safety Assessment Performance**

The Research Project compared outcomes for defendants in 2014 (pre-CJR) and 2017 (CJR). To understand those outcomes, we first consider the performance of the PSA --
the risk-assessment tool. (For more specific details about the PSA, see the *Measuring and Managing Risk* section on page 30.)

Developed from national research data and initially validated in 2015 for use in New Jersey, the PSA relies on objective, race- and gender-neutral risk factors to assess the likelihood that a defendant will be charged with a new crime or fail to show up for court while on pretrial release. The PSA provides judges with objective analysis to assist in making informed decisions about pretrial release and crafting conditions of release.

As part of the PSA, a defendant receives a risk score ranging from 1 to 6 on two separate scales -- new criminal activity (NCA) and failure to appear in court (FTA); 1 signifies the lowest risk level and 6 the highest. The PSA also includes a flag to indicate whether the defendant presents an elevated risk of being charged with committing a new violent crime\(^2\) while on pretrial release.

For purposes of the study, researchers generated PSA results for all defendants issued complaint-summonses and complaint-warrants in 2014 and 2017, and then compared the predicted risk scores to actual rates of failure to appear and alleged new criminal activity. The review found that the PSA is operating as designed and classifies defendants’ risk levels with remarkable accuracy. As PSA risk scores increased, the defendants’ actual failure rates (i.e., new criminal activity and failure to appear) increased. For example, only 9.7 percent of defendants who received an NCA score of “1” were charged with a new indictable crime or disorderly persons offense while on pretrial release; 61.6 percent of defendants with NCA scores of “6” were charged with new criminal offenses while on pretrial release. Failure to appear rates were categorized with similar accuracy with respect to court appearances.

The PSA’s New Violent Criminal Activity flag also proved to be an accurate predictor of future risk of new violent crime. Defendants marked with a new violent criminal activity flag were three times more likely to be charged with committing a new violent crime while on release (14.4 percent) than defendants who did not receive a flag (4.8 percent).

\(^2\) Examples of violent offenses include murder, homicide, manslaughter, assault involving physical injury (including domestic assault), kidnapping, abduction, human trafficking, person-to-person sex offenses (such as rape and sexual assault), robbery, carjacking, and terrorism. A charge of attempt, solicitation, or conspiracy to commit any of those offenses is considered a violent offense.
**New Criminal Activity**

No criminal justice system can ensure that all defendants will strictly adhere to the conditions of their pretrial release while they await trial. But statistics show that predictions of an increase in crime under CJR did not materialize.

Crime rates for the State reported to date, particularly for violent crimes, have decreased since the start of CJR, according to the New Jersey State Police Uniform Crime Report.

A comparison of defendants from 2014 and 2017 showed that the rate of alleged new criminal activity for individuals released pretrial under CJR was virtually the same as the rate for defendants under the cash bail system.

As shown in Fig. 1:

- The percentage of defendants charged with a new indictable crime while awaiting trial was 12.7 percent in 2014 and 13.7 percent in 2017.

- The percentage of defendants charged with new disorderly persons offenses increased less than 2 percent, from 11.5 percent in 2014 to 13.2 percent in 2017.

Measuring new indictable crimes and new disorderly persons offenses together, the rate of defendants charged with new criminal activity increased slightly from 24.2 percent in 2014 to 26.9 percent in 2017.

Again, small changes in outcome measures should be interpreted with caution and likely do not represent meaningful differences.
Looking solely at defendants released pretrial in 2017, less than 3 percent were accused of committing a No Early Release Act (NERA) or Graves Act offense. More specifically, in 2017:

- 1.6 percent of defendants on pretrial release were charged with a serious offense mandating no early release (NERA) from prison upon conviction; and

- 0.7 percent of defendants were charged with a non-NERA Graves Act gun offense as their primary offense while on pretrial release.

**Court Appearances**

In addition to community safety, court appearance is a critical component of pretrial justice. The average court appearance rate was more than 89 percent in both 2014 and 2017. Defendants showed up on average for 92.7 percent of pretrial court appearances in 2014 and 89.4 percent of court appearances in 2017. (Fig. 2). That includes court appearances for municipal disorderly persons events, criminal post-indictment events,
and family court events\(^3\) for defendants issued either a complaint-summons or a complaint-warrant.

Despite the slight decrease in court appearance rates, cases were still being completed in roughly the same amount of time under CJR as in 2014. As shown in Fig. 3, for cases that began in 2014, 80.4 percent were completed within a 22-month period; in 2017, the percentage was 78.2.

The similar rates of cases disposed (Fig. 3), as well as the similar rates for new criminal activity (Fig. 1), suggest that defendants are returning for trial after missing an appearance and not fleeing.

\(^3\) When a prosecutor downgrades criminal charges related to a violation of a domestic violence restraining order, defendants are required to appear in family rather than criminal court.
FAIRNESS AND EQUITY

CJR balances an individual’s constitutional rights with the need for community safety -- to create a fairer system of pretrial justice. Today’s CJR process relies primarily on pretrial release by non-monetary means, based on a determination of a defendant’s likelihood to appear in court or pose a danger to the community. In 2014, the criminal justice process relied, for the most part, on the imposition of money bail as a means to secure release into the community.

The negative effects of pretrial incarceration are well documented. Pretrial incarceration can lead to devastating and spiraling consequences for the accused and their families, from loss of housing, employment, and custody of children to interruptions of education and health care.4

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Moreover, pretrial incarceration impairs a defendant’s ability to prepare a defense and increases the likelihood of conviction and other negative legal outcomes. The potential for negative consequences increases with each day a defendant spends in jail pretrial while presumed innocent.

A comparison of the two systems shows that, under CJR, defendants spend less time in jail pretrial than under a monetary bail system.

- Under the CJR system in 2017, low-risk defendants were more likely to be issued a summons and thereby avoid being sent to jail altogether.

- Under the bail system in 2014, defendants issued a warrant too often waited in jail for months or years, while presumed innocent, to have their day in court, because they could not post bail.

- Under CJR, defendants issued a warrant were released quickly because initial hearings for pretrial release were held within 24 to 48 hours of commitment to jail and defendants were no longer required to post bail to secure their pretrial freedom.

**Summons/Warrant Decision**

With the advent of CJR on January 1, 2017, the Judiciary made changes to court rules, and the Attorney General issued directives to law enforcement officers statewide. Both developments brought greater consistency and fairness to the charging process and the issuance of complaints.

As required by the CJR law, defendants charged with a crime or offense on a complaint-warrant issued by a judicial officer are considered “eligible defendants” and are sent to jail. Soon after, a hearing is held, and a judge considers information presented by the parties and Pretrial Services, including the risk assessment, to make an informed release decision. Defendants charged with a crime or an offense on a complaint-summons do not face pretrial commitment to jail and instead receive a date to appear in court.

The warrant-summons decision is informed by a number of factors: the results of a preliminary PSA, which law enforcement can run; revised court rules, and directives the Attorney General issued to guide law enforcement officials. Because of added objective information early in the process -- about a defendant’s criminal past, history of court appearances, and risk results -- as well as early screening by prosecutors, far more defendants have been properly categorized as lower risk and released on a complaint-
summons without first going to jail. In turn, defendants categorized as higher risk are arrested on complaint-warrants. They are thus eligible for CJR, and Pretrial Services prepares a risk assessment, consistent with the CJR law.

In 2014, under the monetary bail system, 69,469 of defendants (54 percent) received a complaint-summons and 60,266 (46 percent) received a complaint-warrant. Three years later, under the CJR system, the percentage of complaint-summonses issued increased sharply. In 2017, law enforcement and judicial officers issued 98,473 summonses to 138,763 defendants (71 percent) and released them. The remaining 40,290 defendants (29 percent) went to jail initially on a warrant. (Fig. 4).

The increase in the number of complaint-summonses is significant. Had law enforcement officers sought complaint-warrants in 2017 at the same rate they did in 2014, more than 24,000 additional lower-risk defendants would have gone to jail before they could be released pretrial.
**Time to Pretrial Release for Summons and Warrants**

The Research Project examined pretrial release timeframes for defendants issued either a complaint-summons or a complaint-warrant in calendar year 2014 and 2017. Pretrial release in this context included situations where defendants did not go to jail, went to jail and were released ROR or on conditions, and posted bail.

The study revealed that the percentage of defendants released pretrial stayed virtually the same. In 2014, 94 percent of defendants were released while their cases were pending; in 2017, 95.6 percent were released while their cases were pending.

The chart below (Fig. 5) shows that, in 2014, defendants issued a complaint-summons or complaint-warrant spent an average of 7.4 days in custody until their initial pretrial release. In 2017, they spent an average of 3.7 days in custody. As noted earlier, to ensure an equitable comparison, all defendants charged with disorderly persons and indictable offenses issued by both complaint-summons and complaint-warrant are included. Judges released nearly all defendants charged with warrants in 2017 within 24 to 48 hours when prosecutors did not file a motion for pretrial detention.

Viewed from another perspective, defendants issued a complaint-warrant were committed to jail at virtually the same rate under both systems. In 2014, 32.1 percent of defendants were issued a complaint-warrant and went to jail following arrest. In 2017, the percentage of defendants committed to the jail decreased slightly, to 31.8 percent.

The key difference -- and one of the driving factors in the decline in New Jersey’s pretrial jail population -- is that, under CJR, defendants spent half as much time in jail from the time of commitment to when they are initially released pretrial.
Note: This chart includes complaint-summons and complaint-warrants. For purposes of this comparison, defendants released on the same day (including on a complaint-summons) were counted as one day until pretrial release.

Fig. 5

CJR defendants overall benefitted from quicker release. As the chart below (Fig. 6) shows, the average time to initial release dropped most significantly for black defendants, from 10.7 days to 5.0 days. For white defendants, the number of days to initial release dropped from 5.3 days to 2.9 days.
The Research Project also analyzed the total amount of time defendants issued a complaint-warrant spent in jail -- including those released pretrial, those detained, and those who failed to post bail. The average time defendants spent in jail pretrial for the 22 months studied in 2014 was 62.4 days. The average time dropped to 37.2 days in 2017 -- a decrease of 40 percent. (Fig. 7).
The time in jail for black defendants was reduced by 10.3 days, and time in jail for white defendants was reduced by 5.2 days. (Fig. 8).
The shorter length of commitments to jail under CJR has resulted in a significant decline in the daily jail population. On average, the population of New Jersey’s jails declined by a few thousand defendants per day in 2017. That translates to more than 750,000 fewer jail beds over the course of a year.
III.

JAIL POPULATION STUDIES
2012 vs. 2018
Impact on County Jail Population

One of the prime catalysts that led to the adoption of CJR was a study Dr. Marie VanNostrand of Luminosity, Inc. conducted in 2013. It found that, on October 3, 2012, nearly 40 percent of New Jersey’s jail population was incarcerated because of an inability to post bail, including 12 percent who remained jailed on bails of $2,500 or less. The study also found that more than two-thirds of jailed inmates were members of racial and ethnic minority groups.

Six years later, in 2018, the Administrative Office of the Courts, with the assistance of Luminosity, conducted an update to the Jail Population Study. The new analysis found that, on October 3, 2018, the number of inmates in custody declined dramatically, with 6,000 fewer people incarcerated in 2018 compared to 2012.

The percentage of defendants held in jail on bails of $2,500 or less dropped from 12 percent (1,547 of 12,003 defendants) in 2012 to 4.6 percent (390 of 8,482 defendants) in 2018. Most of those 390 defendants (60.5 percent) were ordered to post bail in Municipal Court and were not eligible for CJR. Of the 154 Superior Court defendants held on $2,500 bail or less, 137 defendants had initially been released on a summons or on their own recognizance but were ordered to post bail after failing to appear for a scheduled court appearance. The significant decline in defendants held on low amounts of bail is expected to continue, particularly as Municipal Court reforms are implemented.

Moreover, on October 3, 2018, the make-up of defendants held in jail, as it relates to the severity of the alleged or sentenced offense, had changed as follows:

- On October 3, 2012, 35 percent of the jail population included inmates charged with or sentenced for one or more violent offense; and

- On October 3, 2018, the number of inmates charged with or sentenced for one or more violent offense rose to 47 percent.
Further analysis of the charge distribution for those in jail on October 3, 2018 revealed that nearly 75 percent of the population had been charged with or sentenced for an offense of a serious nature.\(^5\) (Fig. 9).

![Serious Offenses for Jail Population Statewide](image)

**Fig. 9**

**Jail Population by Race/Ethnicity/Gender**

A comparison of the October 3, 2012 and October 3, 2018 jail population studies shows that almost all demographic groups benefitted from CJR.

- Viewed by gender, the studies show 5,600 fewer men and 600 fewer women incarcerated pretrial in 2018, as compared to 2012.

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\(^5\) Serious offenses include either a violent offense, a NERA violation, or an offense of the first- or second-degree. A similar comparison for 2012 is not available because New Jersey did not introduce a master statute table to categorize criminal charges and include degrees until 2016.
• Viewed by race and ethnicity, approximately 3,000 fewer black defendants, more than 1,500 fewer white defendants, and 1,300 fewer Hispanic individuals were incarcerated under CJR.\(^6\)

Although the total jail population has decreased, with reductions in all demographic categories, the racial and ethnic makeup within New Jersey’s jail population has remained largely the same. As shown in Fig. 10:

• Black defendants made up 54 percent of the jail population in 2012 and 54 percent of the population in 2018.

• The white jail population rose slightly, from 28 percent in 2012 to 30 percent in 2018.

• The Hispanic population declined slightly from 18 to 16 percent.

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\(^6\) Other racial groups and individuals whose race is unknown account for the difference in numbers by gender and race.
Distribution by race among the male jail population remained consistent as well. One notable change was among females: the percentage of black females in the jail population decreased from 44 to 34 percent in 2018, and the percentage of white females in the jail population rose from 44 to 54 percent.
IV.

CRIMINAL JUSTICE REFORM
2018 PERFORMANCE
The comparison of data from 2014 and 2017 highlights trends in pretrial outcomes across the criminal justice system. The following analysis provides an update to the CJR data presented in our 2017 Annual Report.

PRETRIAL DECISION-MAKING PROCESS

Measuring and Managing Risk

The PSA, an objective risk assessment developed by the Laura and John Arnold Foundation, works to measure risk through an analysis of the defendant’s criminal record and court history. The Decision Making Framework (DMF), which the Supreme Court has approved, works to manage risk by setting forth policies that ensure consistent pretrial release recommendations throughout the state.

Together, the PSA and DMF measure the risk defendants pose and recommend the least restrictive means to manage that risk. The PSA and DMF help Pretrial Services staff offer recommendations for release and assist judges who make actual pretrial release decisions. Together, the tools help guide judges in their decision-making; they do not replace judicial discretion. When determining the appropriate conditions of release tailored to a particular defendant, judges also take into account specific facts presented by the prosecution and defense. Although no pretrial release system can ensure that a defendant will not commit an offense after release, or will show up for all court hearings, judges in New Jersey now have the benefit of an informed, objective analysis to assess pretrial release.

Pretrial Release Decisions

Under the CJR law, courts must hold a first appearance hearing and make a pretrial release decision within 48 hours of an eligible defendant’s commitment to jail, unless the prosecutor makes a motion for pretrial detention.

In 2018, the courts met the 48-hour deadline 99.6 percent of the time (22,552 out of 22,634 defendants). In the vast majority of cases, 81.9 percent, judges made initial pretrial release decisions within 24 hours. (Fig. 11).

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The CJR law outlines the conditions of release that a court may impose. Taking into consideration the recommendation from Pretrial Services staff as well as information provided by the prosecution and defense, the judge decides the appropriate release conditions based on a defendant’s risk, the severity of his or her charges, and other legally relevant factors.

Typically, courts release the lowest-risk defendants on their own recognizance (ROR) without any need for monitoring. Defendants who pose greater risks may be released subject to conditions, like more frequent contacts with Pretrial Services staff. Courts may place defendants who pose a more elevated risk on home detention or electronic monitoring.

Trial judges do not have independent authority to detain defendants pretrial. Only prosecutors are authorized to file applications for pretrial detention in appropriate cases. Absent a detention motion by the prosecutor, a defendant must be released.
The following chart (Fig. 12) provides a breakdown of initial release decisions in 2018:

![Initial Release Decisions for Criminal Justice Reform Eligible Defendants 2018](chart)

**Initial Release Decisions for Criminal Justice Reform Eligible Defendants**

**2018**

*(Total of 42,410 defendants)*

- **Pretrial Monitoring - ROR**: 3,861
- **Pretrial Monitoring - PML1**: 7,539
- **Pretrial Monitoring - PML2**: 7,577
- **Pretrial Monitoring - PML3**: 12,150
- **Pretrial Monitoring - PML3+**: 2,614
- **Detention**: 8,669

Note: These graphs plot initial release decisions for criminal justice reform eligible defendants who were arrested on or after January 1, 2018 on a warrant. Defendants who only received a summons are not included in these graphs. The graphs also do not include defendants whose cases were addressed prior to release decisions (1,861) or cases still pending (112).

As noted earlier, in calendar year 2018, out of 44,383 CJR-eligible defendants, the court ordered 102 defendants to post monetary bail. Of those matters, the vast majority (90) of bails were ordered for violations of pretrial release conditions, such as failure to appear at a required court event, and not as part of the initial release determination.

**Pretrial Monitoring**

If a defendant is released on monitoring, Pretrial Services works with the defendant to ensure compliance with any conditions the court imposes. Monitoring may include requiring defendants to report to Pretrial Services by phone or in person, and, in some cases, electronic monitoring. To promptly assess and respond to emergent monitoring alerts, certain aspects of the program function on a 24-hour-per-day schedule.
Violations of Monitoring and Revocation of Pretrial Release

Pretrial Services staff use an automated system to record a defendant’s compliance with conditions of pretrial release. When court intervention is required, staff file a violation of monitoring notice and schedule the defendant to appear at a review hearing. The court also may issue a bench warrant for a defendant’s arrest.

If a defendant violates a condition of release -- for example, by allegedly committing a new offense or by failing to appear for a court date -- the prosecutor can file a motion to revoke the defendant’s pretrial release. When such a motion is filed, the court schedules the matter for a hearing at which the prosecution and defense have the opportunity to present evidence and arguments. The court may then continue, modify, or revoke the defendant’s conditions of release.

Prosecutors filed a total of 3,052 motions to revoke release in 2018. Of those, 1,943 required a judicial decision. The court granted 1,094 motions, or 56.3 percent, and denied 849 motions, or 43.7 percent. The prosecution withdrew or the court dismissed the remaining 1,109 motions.

Fig. 13

Motions to Revoke Filed
2018
(Total of 3,052 motions)

<table>
<thead>
<tr>
<th>Motions to Revoke: Granted, Denied, Withdrawn or Dismissed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Granted</td>
</tr>
<tr>
<td>Denied</td>
</tr>
<tr>
<td>Withdrawn or Dismissed</td>
</tr>
<tr>
<td>1,094</td>
</tr>
<tr>
<td>849</td>
</tr>
<tr>
<td>1,109</td>
</tr>
</tbody>
</table>

Motions to Revoke: Granted or Denied

- Granted: 1,094
- Denied: 849

Denied 43.7%
Granted 56.3%
Pretrial Detention Decisions

Under CJR, prosecutors may seek to detain defendants charged on a complaint-warrant without the opportunity for release. Pretrial detention motions are limited to indictable charges and domestic violence related disorderly persons charges. The prosecution has the burden to demonstrate that no combination of conditions or level of monitoring is sufficient to reasonably assure the safety of the community.

If the prosecutor files a detention motion, a Superior Court judge holds a pretrial detention hearing -- usually within three to five days of the filing -- so that both the prosecution and defense can present evidence. If the court orders a defendant detained, CJR’s speedy trial law sets specific timeframes that require the case to proceed to indictment and trial. If those timeframes are not met, the defendant can be released from jail.

Statistics from the first two years of CJR reveal that prosecutors filed pretrial detention motions in 2018 at a slightly higher rate than the year before. Specifically, in 2018, prosecutors filed pretrial detention motions in 49 percent of cases in which a warrant was issued. In 2017, prosecutors filed detention motions in 43.7 percent of warrant cases.

Of the 21,749 pretrial detention motions filed in 2018, prosecutors withdrew or the court dismissed 4,819 motions. For the remaining 16,930 motions, judges granted 8,669 detention motions (51.2 percent) and denied 8,261 (48.8 percent). (Fig. 14). By way of comparison, of the 19,366 motions filed in 2017, prosecutors withdrew or the court dismissed 5,350. Of the remaining 14,016 detention motions, judges granted 8,043 (57.4 percent) and denied 5,973 (42.6 percent).
The following chart (Fig. 15) depicts the different outcomes in 2018 for defendants charged on a warrant:
To place the detention statistics in a broader context, the rate of pretrial detention for all defendants, including those released on a summons, was 6.4 percent in 2018 and 5.6 percent in 2017. The following chart (Fig. 16) depicts the different outcomes for all defendants charged, both on a complaint-summons or a complaint-warrant:
If the court orders an eligible defendant detained pretrial, the defendant is subject to the speedy trial provisions of the CJR law. The timeframes recognize a fundamental tenet of the criminal justice system: that defendants held in jail before trial are entitled to have their cases heard expeditiously. The new law contains the following time limits:
• Pre-indictment, a defendant cannot remain in jail for more than 90 days.

• Post-indictment, a defendant cannot remain in jail for more than 180 days before the start of his or her trial.

• Overall, a defendant cannot be held in jail for more than two years before the start of a trial.

The timeframes can be extended under the statute for events such as competency hearings, drug or alcohol treatment, and pretrial motions. The Judiciary’s automated system tracks the statutorily required speedy trial timeframes along with any excludable time and provides alerts to court staff when defendants approach any time limits. The information is easily accessible to the parties and the court.

**Decline in Jail Population**

New Jersey’s pretrial jail population continued to decline in 2018. As the following chart (Fig. 17) shows, the decline began in 2015 when Superior and Municipal Courts across the state, along with prosecutors and defense counsel, reviewed their local pretrial jail populations in preparation for CJR. In 2017, the first year of CJR, the pretrial jail population decreased another 19 percent, from 7,058 to 5,718 defendants. In 2018, the pretrial jail population declined an additional 13 percent to 4,995 defendants. In total, New Jersey’s pretrial jail population has declined 43.9 percent since December 31, 2015.
Revenue and Expenses

Annual expenses for the Pretrial Services Program in calendar year 2018 exceeded revenues from annual filing fees for the first time since the implementation of CJR. Even with close monitoring of staffing levels and cost-control measures in the areas of electronic monitoring and drug testing, the structural funding deficit is projected to continue unless funding changes are made. Projected annual deficits will leave the Pretrial Services Program with a negative balance by late fiscal year 2020-early fiscal year 2021.

The solution to this impending program funding crisis is straightforward. Like other state-run programs, the Pretrial Services Program should be funded from the state budget rather than from filing fees. To accomplish that, revenues collected from filing fees should go to the State Treasury. Pretrial Services Program staff positions, in turn, should be removed from the current Dedicated Fund positions to Direct State Service positions, thereby moving staff salary costs to the regular state budget and fringe benefit costs to the Interdepartmental Account. Those changes require legislative action and the support of the Governor.
Since November 17, 2014, the Judiciary has collected a total of $171.2 million from the authorized increase in court fees. That continues to be the main funding source for CJR. That approach, however, is not sustainable.

As of December 31, 2018, in accordance with the statutory requirements, the Judiciary allocated funds collected from increased court filing fees as follows:

(1) $88.4 million to the Pretrial Services Program;
(2) $40.6 million to Legal Services of New Jersey;
(3) $40.2 million for eCourts; and
(4) $2 million to the discretionary account.

To date, the Judiciary has expended or encumbered a total of $61.8 million for Pretrial Services, leaving a balance of $26.6 million. That surplus is largely due to the program’s relatively modest start-up costs. Prior to January 1, 2017, we did not need full staffing to carry out the responsibilities the new law imposed. Thanks to prudent hiring, we were able to save some revenue from filing fees before the program’s official start date. That is no longer possible. A full complement of Pretrial Services staff is needed to prepare more than 40,000 PSAs annually and monitor tens of thousands of defendants placed on pretrial release, among other tasks.

For eCourts, the Judiciary has expended or encumbered $22.7 million to date, leaving a balance of $17.5 million.

The Judiciary also has expended or encumbered $7 million for software for Pretrial Services and for eCourts, with $3.8 million coming out of Pretrial Services funding.

Electronic monitoring cost $565,163 in calendar year 2018. Per diem payments to authorized Municipal Court judges for handling Centralized Judicial Processing hearings totaled $778,000 for the year. Staff salaries for the calendar year totaled $22.5 million.

In the first three full fiscal years of collections, fiscal years 2016, 2017, and 2018, the Judiciary collected $44.1 million, $41 million, and $40.5 million, respectively. As of the date of this report, fiscal year 2019 collections are tracking at about 1 percent below fiscal year 2018 for the same timeframe.

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9 See Addendum – Development, Maintenance and Administration of eCourts.
Pretrial Services Unit Staffing

In 2018, the Judiciary’s Pretrial Services Program continued to operate six days per week, including holidays and weekends, to meet the statutory requirement that all pretrial release decisions occur within 48 hours of a defendant’s commitment to jail.

To limit the expenditure of county resources, the Judiciary conducts holiday and weekend hearings through virtual courtrooms that offer the same protection and functions as in-person hearings without the need to open courthouses. The public can view the sessions on the Judiciary’s website, www.njcourts.gov, via LiveStream technology.

If a defendant is released on monitoring, Pretrial Services works with the defendant to ensure compliance with any conditions the court imposes. Monitoring may include requiring defendants to report to Pretrial Services by phone or in person, and in some cases electronic monitoring. To promptly assess and respond to emergent monitoring alerts, certain aspects of the program function on a 24-hour-per-day schedule.

Statewide, in addition to the judges assigned to hear these matters, a total of 297 staff positions are dedicated to the Pretrial Services Program. That represents an increase of 30 positions from 2017. Based on current needs, we do not anticipate significant further growth in staff size.

Pretrial Services Monitoring

Pretrial Services staff monitor eligible defendants from the time of release until final disposition. Defendants may elect to receive text messages, emails, or phone call reminders of their court events. The frequency of staff contact with a defendant on court-ordered pretrial monitoring is based on the level of risk the defendant poses. Monitoring can range from monthly phone calls to weekly visits and, in some circumstances, home detention and electronic monitoring. When court intervention is required because of noncompliance, staff will file a violation of monitoring notice and schedule the defendant to appear before a judge at a review hearing.

Pretrial Services staff review and respond to monitoring alerts and, depending on the circumstances, contact law enforcement or the defendant. Emergent alerts occur 24 hours per day for a variety of reasons, including a defendant’s entry into a prohibited zone, leaving home when ordered to home detention, or tampering with an electronic monitoring device. In fewer than one-third of counties across the state, county jails have assumed responsibility for receiving and responding to emergent electronic monitoring alerts. In the remaining counties, Pretrial Services staff perform those functions.
The cost to monitor defendants subject to electronic monitoring is $4.19 per defendant per day. During 2017 and 2018, the Judiciary undertook a review of the electronic monitoring process to better manage resources while still ensuring public safety. Expenditures on electronic monitoring dropped significantly in the second year of CJR, from $784,017 in 2017 to $565,163 in 2018.

Access to Services

To help ensure an eligible defendant’s pretrial success, it is imperative that adequate services be made available to those on release. The CJR law sets forth conditions of pretrial release that a court may order when releasing a defendant on pretrial monitoring. The lack of available and affordable community-based substance abuse treatment, mental health treatment, and housing assistance programs continues to present a significant challenge for defendants on pretrial release who are in need of these services.

Prior to the implementation of CJR, each county compiled a list of available community resources. Pretrial Services uses the lists to refer defendants in need to local services. However, those services are in short supply and often not affordable. Where a free program exist, it can take months for space to become available.

The Judiciary continues to partner with county officials and officials from the state Department of Human Services to find solutions for defendants in need.

Technology

The continued digital transformation of the CJR process is a collaborative effort among criminal justice partners. It is fueled by the shift from a paper-driven process to a fully electronic one. To keep pace and extend the system’s maturity, enhancements and new application modules designed to assist in analytics and data sharing continue to evolve.

The Judiciary enhanced the eCDR application throughout 2018 to make electronic monitoring orders and mug shot images immediately available to law enforcement. That enables officials to respond quickly to violations. The Judiciary also created a Law Enforcement Dashboard to allow law enforcement officers to access real-time data on defendants subject to electronic monitoring. Additionally, the Judiciary enhanced its speedy trial application, which calculates potential release dates for pretrial defendants and provides immediate notification to interested parties when courts remand, downgrade, or dismiss a case.
Before CJR, law enforcement fingerprinted only 30 percent of defendants. In 2018, law enforcement officers fingerprinted more than 94 percent of defendants using LiveScan before the issuance of a complaint, making it easier to identify people across systems and save time.

**COURT DECISIONS AND RULE CHANGES**

In 2018, the Supreme Court continued to develop a robust body of case law applicable in CJR matters:

In *State v. S.N.*, 231 N.J. 497 (2018), the Court held that the proper standard of appellate review of pretrial detention decisions is whether the trial court abused its discretion by relying on an impermissible basis, by relying on irrelevant or inappropriate factors, by failing to consider all relevant factors, or by making a clear error in judgment.

In *State v. Dickerson*, 232 N.J. 2 (2018), the Court concluded that the affidavit supporting a search warrant disclosed in discovery need not be disclosed as a matter of course. The Court also held that, to the extent that the trial court’s order of release served as a “sanction” for the State’s perceived failure to meet its discovery obligation, the release order was improper.
In the consolidated appeals in State v. Mercedes and State v. Travis, 233 N.J. 152 (2018), the Court revised Rule 3:4A(b)(5) to make clear that a recommendation against a defendant’s pretrial release that is based only on the type of offense charged cannot justify detention by itself -- unless the charge is encompassed by N.J.S.A. 2A:162-19(b).

In State v. Pinkston, 233 N.J. 495 (2018), the Court held that the CJR Act provides defendants a qualified right to summon adverse witnesses. The Court held that, when seeking to call an adverse witness, a defendant must present a proffer about the anticipated testimony of the witness and its relevance to the issue of probable cause, and show how the anticipated testimony would rebut or diminish the State’s evidence in support of detention in a material way.

Finally, in State v. Hyppolite, 236 N.J. 154 (2018), the Court considered the appropriate remedy when the State fails to disclose exculpatory evidence before a detention hearing. The Court held that when exculpatory evidence is disclosed after a detention hearing, judges should use a modified materiality standard to decide whether to reopen the hearing. If there is a reasonable possibility that the result of the detention hearing would have been different had the evidence been disclosed, the hearing should be reopened.
VI. CONCLUSION AND NEXT STEPS

Criminal Justice Reform in New Jersey replaced a cash bail system that had roots in the State’s 1776 Constitution.

The first two years of CJR demonstrate that commitment and cooperation among all branches of government -- executive, legislative, and judicial -- and all levels of government -- state, county, and municipal -- can bring about not just legislative change, but a fundamental change in the culture of our criminal justice system. The systemwide collaborative effort in support of CJR also included the defense bar, both public and private; prosecutors at the state and county levels; all levels of law enforcement, including Sheriffs and Wardens; various community groups; and the public.

The Research Project produced for this report demonstrates that CJR is operating as intended and has resulted in a fairer criminal justice system that respects and balances constitutional rights, the presumption of innocence, and community safety.

New Jersey’s jail population is no longer comprised of large numbers of lower-risk defendants, charged with less serious offenses, who cannot afford to post bail. The pretrial jail population has declined consistently, and defendants now held in jail pretrial because of CJR are more likely to present a significant risk of flight or danger to the community.

Defendants charged with low-level offenses spend less time in jail pretrial under CJR. As a result, they avoid the spiraling, life-changing consequences of being detained for weeks and months while presumed innocent. The use of bail has largely been relegated to defendants who fail to appear in court.

The research conducted for this report also shows that the risk assessment tool used for CJR is an accurate and effective tool that is working as expected. New Jersey judges now have the benefit of an informed and objective analysis when making pretrial release decisions. Unlike in the past, judges today can also consider a defendant’s risk to the community in deciding whether to detain the individual pretrial.

Defendants released pretrial under CJR are not ignoring reporting or court dates at a substantially higher rate than under the bail system; nor are they creating a greater risk to the community. CJR defendants appear, on average, at nearly 90 percent of their court hearings, and their cases are disposed of in roughly the same amount of time as defendants under the cash bail system.
Even with these successes, the Judiciary remains committed to a continuous review of CJR’s performance and already has engaged researchers to study key areas that need further improvements. For example, the Judiciary plans to bolster its efforts to notify defendants charged with disorderly persons offenses about upcoming court appearances to further improve court appearance rates.

The Judiciary’s ongoing review will also examine areas for improvement in the PSA, such as quantifying and incorporating in the risk-assessment process particular risks posed by defendants charged with domestic violence offenses.

In addition, the Judiciary recognizes the need to continue to examine the effect of CJR on racial disparity in the criminal justice system and to ensure that all defendants are treated equally by the courts. There are several thousand fewer black defendants in jail overall under CJR, and black females now make up a lower percentage of the female jail population. However, black defendants continue to represent a disproportionate percentage of the male jail population.

Insufficient resources to provide community-based substance abuse treatment, mental health treatment, and housing assistance to those on pretrial release remains a substantial concern. Adequate services must be made available if more defendants are to succeed in complying with conditions of pretrial release.

The Pretrial Services Program also faces an impending funding crisis. There is a continuing critical need to identify and implement a sustainable means to fund the program. The current method -- which relies on annual court filing fees -- is not a workable approach. As predicted at the outset of CJR, the model in place has a built-in structural deficit, and within the next year, will result in an actual funding deficit.

The Judiciary remains committed to working with all stakeholders and partners in the criminal justice system to address these and other issues and properly balance constitutional rights and public safety. We will continue to strive to create and maintain the best possible criminal justice system for New Jersey and try to serve as a model for others.
ADDENDUM

DEVELOPMENT, MAINTENANCE and ADMINISTRATION of eCOURTS

The Judiciary is engaged in a multifaceted initiative to convert its legacy information technology systems, based on mainframe databases, into a modern integrated eCourts electronic filing, electronic storage, and electronic case management application. Over the years, the Judiciary has collected millions of party and case records, currently maintained in numerous decades-old databases, which require rebuilding from the ground up. Four essential functionalities support this concerted effort to transform the Judiciary into the digital age:

(1) Electronic filing and information exchange between the court and attorneys;

(2) The establishment of electronic case files;

(3) The maintenance of electronic records management systems that provide attorneys and the public with appropriate access to case information; and

(4) Modern case management systems that will enable the Judiciary to track, dispose of, report on, and share data with our government partners.

The various systems described below represent a significant undertaking and a bold push toward the Chief Justice’s vision of total modernization. Despite the progress that has been made in the areas of efiling, several more years of work are required to complete our goals of replacing all systems from both front-end efiling to back-end case management.

eCourts Supreme Court: Implemented in 2017

The Offices of the Attorney General, Public Defender, and County Prosecutors are all filing electronically in the Supreme Court. The Judiciary presently is expanding electronic filing to include private attorneys in criminal matters, and the next expansion will include private attorneys in civil matters. The application provides for electronic access by counsel, Justices, and Supreme Court staff to all electronically filed documents.

eCourts Appellate Division: Implemented June 2013

eCourts Appellate was initially available in criminal cases in which the Public Defender filed the motion and the Attorney General or County Prosecutor was the responding party. The system has progressively added new case types or case filers over the last several years, including Children in Court, Family, Pretrial Detention (CJR) appeals, and as of January 1, 2018, civil cases under mandatory efiling. System use of both Judiciary Account Charge System (JACS) and credit cards has enabled access to the entire bar for filing. With the advent of efiling, data and documents are transmitted to the appellate case management system, which has ensured access to these data and documents by the bar, the court, and staff. In addition, efiling will assist with instant notifications of submissions, document review at the touch of a button, and record retention.
eCourts Criminal: Implemented July 2014

The Judiciary in 2014 implemented eCourts Criminal, the first eCourts application. At the outset, it provided the attorneys the ability to efile motions, responses, and briefs. The Judiciary has since expanded the application to include almost all other documents filed in the Criminal Division. The Superior Court Clerk’s Office has converted thousands of archived paper records to digital images and added them to the eCourts system.

eCourts Tax: Implemented February 2015

The introduction of electronic filing in the Tax Court was instrumental in reducing significant data entry and processing backlogs. This project automated case initiation and complaint docketing. Added functionality allows non-attorneys, such as municipal assessors, municipal clerks, and county boards of taxation, the ability to receive electronic notification of a new case or judgment and to access the Electronic Case Jackets. Attorneys will be able to file with a credit card by the summer of 2019. Pro Se eFiling is also currently being developed with a pilot expected by the end of 2019.

eCourts Probation Electronic Case Jacket: Implemented June 2016

An eCourts electronic case jacket was implemented for the Probation Division in June 2016, eliminating most paper files and allowing simultaneous access to probation information by judges and staff. The Probation case jackets also include embedded hyperlinks to other eCourts electronic files in the Criminal, Family, and Municipal Divisions, eliminating delays and gaps between divisions. eCourts Probation will be expanded to include a mobile application for ISP in July 2019 and case management functions by December 2019.

eCourts Foreclosure: Implemented September 2016

eCourts Foreclosure, in September 2016, replaced the Judiciary Electronic Filing and Imaging System (JEFIS), implemented in 1995. In eCourts Foreclosure, attorneys can electronically file documents from complaint through judgment processing. Attorneys can also access electronic case files and automated notifications between attorneys of record and the court. County clerks and sheriffs can access eCourts Foreclosure Electronic Case Jackets to verify judgments of foreclosure.

eCourts Special Civil DC: Implemented September 2016

eCourts Special Civil DC pertains to cases with a demand amount of less than $15,000, and focuses on the replacement of an older electronic filing system, the Judiciary Electronic Filing and Imaging System (JEFIS). In eCourts Special Civil DC, attorneys can electronically file documents from complaint through post judgment. Attorneys of record and the court can access Electronic Case Jackets and receive automated notifications.

eCourts Family FM (Dissolution/Divorce) case jacket archived cases: Implemented November 2016

This eCourts project provides judges and court staff with easy access to archived files. Thousands of paper records converted to digital images are now easily accessible for court proceedings or to fulfill
records requests from the public. This application has eliminated significant delays in accessing older records from the Superior Court Clerk’s Office records warehouse in Trenton. eCourts FM will be expanded to include efiling, automatic notification, and case management. Pilot expected in April 2020.

eCourts Criminal – Criminal Justice Reform: Implemented January 2017

eCourts Criminal required enhancement to accommodate the many tasks involved in Criminal Justice Reform (CJR), including automation of the Public Safety Assessment (PSA) risk assessment tool utilized by judges to inform their release decisions. Such automation helps Pretrial Services Program staff manage cases and prepare orders. Additional applications include a pretrial monitoring system, detailed tracking mechanism for speedy trial dates and electronic bench warrants processing for defendants on electronic monitoring. Planned enhancements in March 2019 include automation of detention, release, and revoke release orders that will result in improved data collection.

eCourts Municipal: Implemented January 2017

This broad initiative, integral to CJR, provides an enhanced and improved complaint system for law enforcement statewide. It includes a Live Scan fingerprint interface, developed in partnership with the New Jersey State Police, which connects a defendant’s complaint, arrest record, fingerprint record, and criminal history. The system utilizes the data from the LiveScan fingerprint interface to populate the criminal complaint and calculate the PSA risk score.

The system gives prosecutors the ability to review and modify charges on a complaint before a finding of probable cause. After a finding of probable cause and issuance of a summons or warrant, the complaint is stored in the eCourts Municipal Electronic Case Jacket, and is accessible by the court, prosecutors, attorneys, law enforcement, and the county jails. Plans for enhancements to eCourts Municipal include allowing attorneys to file motions and cross reference other municipal cases, including disorderly persons and traffic offenses.

eCourts Special Civil Small Claims (SC) case jacket: Implemented September 2017

eCourts Special Civil SC pertains to cases with a demand amount of less than $3,000. This ongoing project provides an electronic case jacket, enabling simultaneous access by judges, court staff, and attorneys. It also provides for centralized processing of court-generated notices. Implementation began with the placement of select notices in the case jacket and it was expanded to include additional notices and documents.

eCourts Special Civil Landlord Tenant (LT) case jacket: Implemented September 2017

eCourts Special Civil LT pertains to cases with a dispute between the landlord and a tenant. This ongoing project provides an electronic case jacket, enabling simultaneous access by judges, court staff, and attorneys. Implementation began with the placement of all notices in the case jacket and will be expanded to include eCourts efiling, auto docketing, case management, and centralized printing functionality. Pilot expected by the end of 2019.
**eCourts Civil Law: Implemented December 2017**

The end result of this project will be the electronic filing of all documents from complaint through final judgment. It includes access to electronic case files and automated notifications between attorneys of record and the court. Rollout for pilot counties began in March 2017; all counties were operational by the end of 2017. Enhancements are being planned to include an arbitration program module, which will allow for electronic notification to parties and arbitrators. Pilot expected in early 2020.

**eCourts Family Children in Court (CIC) Dockets: Implemented September 2017 & June 2018**

This eCourts project focuses on electronic filing in child neglect cases initiated by the Attorney General’s Office on behalf of the New Jersey Division of Child Protection and Permanency, the Office of Parental Representation, and the Office of the Law Guardian. Four different docket / case types -- FN, FC, FG, FL -- have been implemented in 2017 and 2018. Enhancements are being made to include motion filing and order processing. This will result in reduction in data entry tasks and more efficient case management.

**eCourts Family (FD) Case Jacket: To be implemented May 2019**

This eCourts project focuses on a case jacket for non-dissolution matters. The FD Case Jacket has been developed (Dec 2016), however, the judiciary is working with Division of Family Development on an interface to provide the Uniform Summary Support Order into the FD case jacket. Additional documents are being reviewed for future uploading.

**eCourts Family (FJ): To be implemented December 2019**

This eCourts project focuses on automating the process of filing juvenile delinquency complaints. Building on enhancements made to eCDR for Criminal Justice Reform, this will enable the timely entry of juvenile matters as well as improved data collection on juvenile complaints.
These numbers provide a preliminary summary of Criminal Justice Reform data. Statistics continue to be reviewed, revised, and validated.

**Chart A**

**Initial Release Decisions for Criminal Justice Reform Eligible Defendants**

*January 1, 2018 - December 31, 2018*

<table>
<thead>
<tr>
<th>Defendants</th>
<th>Addressed Prior to Initial Release Decision (i.e., Remand or Dismissal)</th>
<th>ROR</th>
<th>Defenders Ordered to Pretrial Monitoring System</th>
<th>Other Matters Pending Resolution</th>
<th>Detention</th>
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<th>Other Pending</th>
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<tr>
<td></td>
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<td>Cape May</td>
<td>575</td>
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<td>2.8%</td>
<td>61</td>
<td>10.6%</td>
<td>94</td>
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<tr>
<td>Cumberland</td>
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<td>32</td>
<td>2.4%</td>
<td>104</td>
<td>7.8%</td>
<td>215</td>
<td>16.1%</td>
</tr>
<tr>
<td>Essex</td>
<td>6,988</td>
<td>239</td>
<td>3.4%</td>
<td>57</td>
<td>0.8%</td>
<td>889</td>
<td>12.7%</td>
</tr>
<tr>
<td>Gloucester</td>
<td>1,496</td>
<td>22</td>
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<td>7.8%</td>
<td>284</td>
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</tr>
<tr>
<td>Hudson</td>
<td>4,919</td>
<td>487</td>
<td>9.9%</td>
<td>655</td>
<td>13.3%</td>
<td>720</td>
<td>14.6%</td>
</tr>
<tr>
<td>Hunterdon</td>
<td>318</td>
<td>6</td>
<td>1.9%</td>
<td>27</td>
<td>8.5%</td>
<td>117</td>
<td>36.8%</td>
</tr>
<tr>
<td>Mercer</td>
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<td>2.8%</td>
<td>471</td>
<td>13.1%</td>
<td>715</td>
<td>19.9%</td>
</tr>
<tr>
<td>Middlesex</td>
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<td>535</td>
<td>22.6%</td>
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<tr>
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<td>543</td>
<td>23.1%</td>
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<tr>
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<td>9.9%</td>
<td>208</td>
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<tr>
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<td>353</td>
<td>14.4%</td>
</tr>
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<td>376</td>
<td>9.9%</td>
<td>720</td>
<td>19.0%</td>
</tr>
<tr>
<td>Salem</td>
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<td>14</td>
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<td>20</td>
<td>6.7%</td>
<td>33</td>
<td>11.1%</td>
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<td>1.0%</td>
<td>96</td>
<td>11.9%</td>
<td>181</td>
<td>22.5%</td>
</tr>
<tr>
<td>Sussex</td>
<td>309</td>
<td>5</td>
<td>1.6%</td>
<td>17</td>
<td>5.5%</td>
<td>36</td>
<td>11.7%</td>
</tr>
<tr>
<td>Union</td>
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<td>1.5%</td>
<td>245</td>
<td>14.3%</td>
<td>350</td>
<td>20.5%</td>
</tr>
<tr>
<td>Warren</td>
<td>411</td>
<td>14</td>
<td>3.4%</td>
<td>37</td>
<td>9.0%</td>
<td>74</td>
<td>18.0%</td>
</tr>
<tr>
<td>State</td>
<td>44,383</td>
<td>1,861</td>
<td>4.2%</td>
<td>3,861</td>
<td>8.7%</td>
<td>7,539</td>
<td>17.0%</td>
</tr>
</tbody>
</table>

Note: This report is based on defendant which is defined as a Criminal Justice Reform eligible defendant with CDR2 warrants filed within three days of each other for the defendant.
These numbers provide a preliminary summary of Criminal Justice Reform data. Statistics continue to be reviewed, revised, and validated.

Chart A - Supplemental Graphs
Initial Release Decisions for Criminal Justice Reform Eligible Defendants
January 1, 2018 - December 31, 2018

<table>
<thead>
<tr>
<th>Initial Release Decisions by Type of Decision (number of defendants)</th>
<th>Initial Release Decisions by Type of Decision (percentage of defendants)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Addressed Prior to Release</td>
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<tr>
<td>Ordered to Pretrial Monitoring - ROR</td>
<td>3,861</td>
</tr>
<tr>
<td>Ordered to Pretrial Monitoring - PML1</td>
<td>7,539</td>
</tr>
<tr>
<td>Ordered to Pretrial Monitoring - PML2</td>
<td>7,577</td>
</tr>
<tr>
<td>Ordered to Pretrial Monitoring - PML3</td>
<td>12,150</td>
</tr>
<tr>
<td>Ordered to Pretrial Monitoring - PML3+</td>
<td>2,614</td>
</tr>
<tr>
<td>Detention</td>
<td>8,669</td>
</tr>
<tr>
<td>Other Matters Pending Resolution</td>
<td>112</td>
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</tbody>
</table>
These numbers provide a preliminary summary of Criminal Justice Reform data. Statistics continue to be reviewed, revised, and validated.

Chart B
Detention Motions for Criminal Justice Reform Eligible Defendants
Granted, Denied, and Withdrawn
January 1, 2018 - December 31, 2018

<table>
<thead>
<tr>
<th></th>
<th>Granted Motions for Defendants</th>
<th>Denied Motions for Defendants</th>
<th>Total Decisions for Defendants</th>
<th>Motions Withdrawn or Dismissed for Defendants</th>
<th>Total of Decisions and Motions Withdrawn or Dismissed for Defendants</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Percent of Decisions number</td>
<td>Percent of Decisions number</td>
<td>Percent of Total number</td>
<td>Percent of Total number</td>
<td></td>
</tr>
<tr>
<td>Atlantic</td>
<td>444          53.4%         387         46.6%      831         93.8%</td>
<td>55         6.2%</td>
<td>886</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bergen</td>
<td>216          56.0%         170         44.0%      386         70.7%</td>
<td>160        29.3%</td>
<td>546</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Burlington</td>
<td>385          72.9%         143         27.1%      528         59.1%</td>
<td>365        40.9%</td>
<td>893</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Camden</td>
<td>658          59.4%         450         40.6%      1108        55.1%</td>
<td>904        44.9%</td>
<td>2,012</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cape May</td>
<td>160          44.7%         198         55.3%      358         91.6%</td>
<td>33         8.4%</td>
<td>391</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cumberland</td>
<td>300          34.1%         580         65.9%      880         87.1%</td>
<td>130        12.9%</td>
<td>1,010</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Essex</td>
<td>1644         54.0%         1401        46.0%      3045        82.4%</td>
<td>652        17.6%</td>
<td>3,697</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gloucester</td>
<td>213          60.2%         141         39.8%      354         60.5%</td>
<td>231        39.5%</td>
<td>585</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hudson</td>
<td>423          26.5%         1171        73.5%      1594        77.5%</td>
<td>462        22.5%</td>
<td>2,056</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hunterdon</td>
<td>57           80.3%         14          19.7%      71          59.7%</td>
<td>48         40.3%</td>
<td>119</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mercer</td>
<td>426          71.7%         168         28.3%      594         69.1%</td>
<td>266        30.9%</td>
<td>860</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Middlesex</td>
<td>450          58.1%         324         41.9%      774         71.4%</td>
<td>310        28.6%</td>
<td>1,084</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Monmouth</td>
<td>413          56.3%         320         43.7%      733         84.9%</td>
<td>130        15.1%</td>
<td>863</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Morris</td>
<td>252          60.4%         165         39.6%      417         76.8%</td>
<td>126        23.2%</td>
<td>543</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ocean</td>
<td>567          37.3%         952         62.7%      1519        91.0%</td>
<td>150        9.0%</td>
<td>1,669</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Passaic</td>
<td>1115         59.4%         761         40.6%      1876        79.2%</td>
<td>493        20.8%</td>
<td>2,369</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Salem</td>
<td>97           40.6%         142         59.4%      239         86.6%</td>
<td>37         13.4%</td>
<td>276</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Somerset</td>
<td>220          51.0%         211         49.0%      431         95.8%</td>
<td>19         4.2%</td>
<td>450</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sussex</td>
<td>84           69.4%         37          30.6%      121         67.2%</td>
<td>59         32.8%</td>
<td>180</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Union</td>
<td>451          47.2%         505         52.8%      956         90.8%</td>
<td>97         9.2%</td>
<td>1,053</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Warren</td>
<td>94           81.7%         21          18.3%      115         55.6%</td>
<td>92         44.4%</td>
<td>207</td>
<td></td>
<td></td>
</tr>
<tr>
<td>State</td>
<td>8,669        51.2%         8,261        48.8%     16,930       77.8%</td>
<td>4,819      22.2%</td>
<td>21,749</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The number of granted motions shown on this chart represents all detention motions filed during the process. There may be multiple detention motions filed for a single defendant, i.e., a motion to revoke release or reopen a hearing on a defendant previously released.

Table includes complete motions that were granted, denied, withdrawn or dismissed.
These numbers provide a preliminary summary of Criminal Justice Reform data. Statistics continue to be reviewed, revised, and validated.

---

Chart B - Supplemental Graph
Detention Motions for Criminal Justice Reform Eligible Defendants
Defendants Arrested in January 1, 2018 - December 31, 2018

Detention Motions Granted, Denied, Withdrawn or Dismissed

- Granted: 8,669 (40%)
- Denied: 8,261 (38%)
- Withdrawn or Dismissed: 4,819 (22%)

Total 21,749
These numbers provide a preliminary summary of Criminal Justice Reform data. Statistics continue to be reviewed, revised, and validated.

### Chart C

**Nonsentenced Pretrial Jail Population**  
**December 31, 2018**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Atlantic</td>
<td>384</td>
<td>348</td>
<td>325</td>
<td>292</td>
<td>-24.0%</td>
<td>-10.2%</td>
<td>348</td>
<td>292</td>
<td>-16.1%</td>
<td>-56</td>
<td>-16.1%</td>
</tr>
<tr>
<td>Bergen</td>
<td>476</td>
<td>341</td>
<td>226</td>
<td>224</td>
<td>-52.9%</td>
<td>-0.9%</td>
<td>347</td>
<td>224</td>
<td>-35.4%</td>
<td>-123</td>
<td>-35.4%</td>
</tr>
<tr>
<td>Burlington</td>
<td>380</td>
<td>319</td>
<td>299</td>
<td>221</td>
<td>-41.8%</td>
<td>-26.1%</td>
<td>321</td>
<td>221</td>
<td>-31.2%</td>
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</tr>
<tr>
<td>Camden</td>
<td>838</td>
<td>628</td>
<td>438</td>
<td>396</td>
<td>-52.7%</td>
<td>-9.6%</td>
<td>637</td>
<td>396</td>
<td>-37.8%</td>
<td>-241</td>
<td>-37.8%</td>
</tr>
<tr>
<td>Cape May</td>
<td>171</td>
<td>164</td>
<td>136</td>
<td>111</td>
<td>-35.1%</td>
<td>-18.4%</td>
<td>166</td>
<td>111</td>
<td>-33.1%</td>
<td>-55</td>
<td>-33.1%</td>
</tr>
<tr>
<td>Cumberland</td>
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<td>262</td>
<td>251</td>
<td>222</td>
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<td>-11.6%</td>
<td>266</td>
<td>222</td>
<td>-16.5%</td>
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<td>-16.5%</td>
</tr>
<tr>
<td>Essex</td>
<td>1543</td>
<td>1,179</td>
<td>889</td>
<td>857</td>
<td>-44.5%</td>
<td>-3.6%</td>
<td>1,192</td>
<td>857</td>
<td>-28.1%</td>
<td>-335</td>
<td>-28.1%</td>
</tr>
<tr>
<td>Gloucester</td>
<td>238</td>
<td>159</td>
<td>187</td>
<td>129</td>
<td>-45.8%</td>
<td>-31.0%</td>
<td>164</td>
<td>129</td>
<td>-21.3%</td>
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<tr>
<td>Hudson</td>
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<td>463</td>
<td>348</td>
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<td>-24.8%</td>
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<td>348</td>
<td>-35.7%</td>
<td>-193</td>
<td>-35.7%</td>
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<td>23.1%</td>
<td>43</td>
<td>32</td>
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<td>-11</td>
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<td>Mercer</td>
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<td>433</td>
<td>302</td>
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<td>-30.3%</td>
</tr>
<tr>
<td>Middlesex</td>
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<td>446</td>
<td>379</td>
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<td>-15.0%</td>
<td>617</td>
<td>379</td>
<td>-38.6%</td>
<td>-238</td>
<td>-38.6%</td>
</tr>
<tr>
<td>Monmouth</td>
<td>675</td>
<td>533</td>
<td>425</td>
<td>360</td>
<td>-46.7%</td>
<td>-15.3%</td>
<td>542</td>
<td>360</td>
<td>-33.6%</td>
<td>-182</td>
<td>-33.6%</td>
</tr>
<tr>
<td>Morris</td>
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<td>124</td>
<td>110</td>
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<td>-11.3%</td>
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<td>110</td>
<td>12.2%</td>
<td>12</td>
<td>12.2%</td>
</tr>
<tr>
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<td>205</td>
<td>170</td>
<td>-44.8%</td>
<td>-17.1%</td>
<td>266</td>
<td>170</td>
<td>-36.1%</td>
<td>-96</td>
<td>-36.1%</td>
</tr>
<tr>
<td>Passaic</td>
<td>731</td>
<td>593</td>
<td>557</td>
<td>455</td>
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<td>-18.3%</td>
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<td>455</td>
<td>-23.1%</td>
<td>-137</td>
<td>-23.1%</td>
</tr>
<tr>
<td>Salem</td>
<td>73</td>
<td>58</td>
<td>59</td>
<td>50</td>
<td>-31.5%</td>
<td>-15.3%</td>
<td>63</td>
<td>50</td>
<td>-20.6%</td>
<td>-13</td>
<td>-20.6%</td>
</tr>
<tr>
<td>Somerset</td>
<td>126</td>
<td>80</td>
<td>79</td>
<td>83</td>
<td>-34.1%</td>
<td>5.1%</td>
<td>81</td>
<td>83</td>
<td>2.5%</td>
<td>2</td>
<td>2.5%</td>
</tr>
<tr>
<td>Sussex</td>
<td>90</td>
<td>48</td>
<td>68</td>
<td>39</td>
<td>-56.7%</td>
<td>-42.6%</td>
<td>48</td>
<td>39</td>
<td>-18.8%</td>
<td>-9</td>
<td>-18.8%</td>
</tr>
<tr>
<td>Union</td>
<td>566</td>
<td>456</td>
<td>356</td>
<td>289</td>
<td>-48.9%</td>
<td>-18.8%</td>
<td>516</td>
<td>289</td>
<td>-44.0%</td>
<td>-227</td>
<td>-44.0%</td>
</tr>
<tr>
<td>Warren</td>
<td>79</td>
<td>56</td>
<td>44</td>
<td>55</td>
<td>-30.4%</td>
<td>25.0%</td>
<td>56</td>
<td>55</td>
<td>-1.8%</td>
<td>-1</td>
<td>-1.8%</td>
</tr>
<tr>
<td>State Total</td>
<td>9,137</td>
<td>7,217</td>
<td>5,905</td>
<td>5,124</td>
<td>-43.9%</td>
<td>-13.2%</td>
<td>7,337</td>
<td>5,124</td>
<td>-30.2%</td>
<td>-2,213</td>
<td>-30.2%</td>
</tr>
</tbody>
</table>

*Adjusted State Total  |
| 8,899          | 7,058            | 5,718            | 4,995           | -43.9%                  | -12.0%                  | 7,173          | 4,995           | -30.4%                  | -2,178        | -30.4%         |

*Note: The Gloucester County Jail was closed and the inmates were moved to the Salem County Jail on May 3, 2013. Depending on various factors, the inmates could then stay in the Salem County Jail or go to one of 4 counties: Cumberland, Camden, Essex or Burlington. The Adjusted State Total removes Gloucester from the State Total after May 3, 2013 so that the inmates are not counted twice in the total.

The Hunterdon County Jail was closed and the inmates were moved to Somerset on September 8, 2015. This table removes the Hunterdon inmates from Somerset and only counts them in Hunterdon after September 8, 2015.

The Burlington County Jail female inmates were moved to Atlantic. This table does not show the Burlington females in Atlantic but shows them in Burlington.

In April and May 2017 nonsentenced pretrial jail population data was reviewed by the county jails and feedback was given. We will continue to use the nonsentenced pretrial jail population numbers in reports.
These numbers provide a preliminary summary of Criminal Justice Reform data. Statistics continue to be reviewed, revised, and validated.

Chart C - Supplemental Graphs
Nonsentenced Pretrial Jail Population
December 31, 2018

43.9% decrease since December 31, 2015

45.0% decrease from January 1, 2015 to December 31, 2018
Chart D (Warrant)
Pretrial Detention Decisions
January 1, 2018 - December 31, 2018

- Defendants charged on a warrant
  January 1, 2018 to December 31, 2018
  44,383 charged on a warrant

- Prosecutors filed detention motions in 49.0% of cases
  21,749 detention motions filed by a prosecutor
  22,522 resolved or released after first court appearance*
  112 pending matters on Dec. 31, 2018

- Of motions that were not withdrawn or dismissed, judges granted detention motions in 51.2% of cases. In all, 19.5% of defendants who received a warrant were detained.
  8,669 detention motions granted
  8,261 detention motions denied
  4,819 detention motions withdrawn or dismissed

Summary Statistics
(Warrant Cases)

<table>
<thead>
<tr>
<th>Detention</th>
<th>Pretrial Release*</th>
<th>Pending</th>
</tr>
</thead>
<tbody>
<tr>
<td>19.5%</td>
<td>80.2%</td>
<td>0.3%</td>
</tr>
</tbody>
</table>

* this includes cases that were addressed prior to release decisions (1,861)
Chart D (Summons or Warrant)
Pretrial Detention Decisions
January 1, 2018 - December 31, 2018

Total number of defendants charged January 1, 2018 to December 31, 2018

135,009 charged with summons or warrant

A total of 67.1% of defendants were issued a summons and released until court date

44,383 charged on a warrant
90,626 released on summons

Of those receiving a warrant, 50.7% were resolved or released after first court appearance

21,749 detention motions filed by a prosecutor
22,522 resolved or released after first court appearance
112 matters pending on Dec. 31, 2018

In all, 19.5% of defendants who received a warrant were detained and 6.4% who received a warrant or summons were detained

8,669 detention motions granted
8,261 detention motions were denied
4,819 detention motions withdrawn or dismissed

<table>
<thead>
<tr>
<th>Summary Statistics (Warrant and Summons Cases)</th>
<th>Detention</th>
<th>Pretrial Release*</th>
<th>Pending</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>6.4%</td>
<td>93.5%</td>
<td>0.1%</td>
</tr>
</tbody>
</table>

* this includes cases that were addressed prior to release decisions (1,861)
These numbers provide a preliminary summary of Criminal Justice Reform data. Statistics continue to be reviewed, revised, and validated.

Chart E
Comparison of Initial Release Decisions for Criminal Justice Reform Eligible Defendants and Detention Motions Granted, Denied, Withdrawn or Dismissed
January 1 - December 31, 2017 and January 1 - December 31, 2018

<table>
<thead>
<tr>
<th>Defendants</th>
<th>Detention Motions Granted</th>
<th>% of Decisions</th>
<th>Detention Motions Denied</th>
<th>% of Decisions</th>
<th>Detention Motions Withdrawn/Dismissed</th>
<th>% of Motions</th>
<th>Total Detention Motions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>number</td>
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<td>number</td>
<td></td>
<td>number</td>
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</tr>
<tr>
<td></td>
<td>Jan-17 to Jan-18 Dec-17-Dec-18</td>
<td></td>
<td>Jan-17 to Jan-18 Dec-17-Dec-18</td>
<td></td>
<td>Jan-17 to Jan-18 Dec-17-Dec-18</td>
<td></td>
<td>Jan-17 to Jan-18 Dec-17-Dec-18</td>
</tr>
<tr>
<td>Atlantic</td>
<td>423</td>
<td>444</td>
<td>320</td>
<td>387</td>
<td>42.1%</td>
<td>46.6%</td>
<td>70</td>
</tr>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>8.6%</td>
<td>6.2%</td>
<td>813</td>
</tr>
<tr>
<td>Bergen</td>
<td>160</td>
<td>216</td>
<td>114</td>
<td>170</td>
<td>41.6%</td>
<td>44.0%</td>
<td>121</td>
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<td></td>
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<td></td>
<td></td>
<td></td>
<td>30.6%</td>
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<td>Burlington</td>
<td>461</td>
<td>385</td>
<td>238</td>
<td>141</td>
<td>34.0%</td>
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<tr>
<td></td>
<td></td>
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<td></td>
<td></td>
<td>29.8%</td>
<td>20.9%</td>
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<tr>
<td>Camden</td>
<td>685</td>
<td>658</td>
<td>505</td>
<td>450</td>
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<td></td>
<td></td>
<td>36.6%</td>
<td>44.9%</td>
<td>1,876</td>
</tr>
<tr>
<td>Cape May</td>
<td>186</td>
<td>160</td>
<td>244</td>
<td>198</td>
<td>56.7%</td>
<td>55.3%</td>
<td>53</td>
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<td>483</td>
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<tr>
<td>Cumberland</td>
<td>352</td>
<td>300</td>
<td>291</td>
<td>580</td>
<td>45.3%</td>
<td>65.9%</td>
<td>233</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>26.6%</td>
<td>12.9%</td>
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<tr>
<td>Essex</td>
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<td>1,644</td>
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<td>46.0%</td>
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<tr>
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<td>21.1%</td>
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<td>313</td>
<td>248</td>
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<td>39.8%</td>
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<tr>
<td></td>
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<td></td>
<td></td>
<td>38.5%</td>
<td>39.5%</td>
<td>879</td>
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<tr>
<td>Hudson</td>
<td>569</td>
<td>423</td>
<td>349</td>
<td>1,171</td>
<td>38.0%</td>
<td>73.5%</td>
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<td></td>
<td>45.0%</td>
<td>22.5%</td>
<td>1,670</td>
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<td>Jersey</td>
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<td>57</td>
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<td>4</td>
<td>7.8%</td>
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<td></td>
<td>31.9%</td>
<td>40.3%</td>
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<tr>
<td>Mercer</td>
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<td>139</td>
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<td>440</td>
<td>450</td>
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<td>Monmouth</td>
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<td>413</td>
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<td>Ocean</td>
<td>505</td>
<td>567</td>
<td>457</td>
<td>952</td>
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<td></td>
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<td>9.0%</td>
<td>1,285</td>
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<tr>
<td>Passaic</td>
<td>1,076</td>
<td>1,215</td>
<td>537</td>
<td>761</td>
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<tr>
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<td>20.2%</td>
<td>20.8%</td>
<td>2,046</td>
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<tr>
<td>Salem</td>
<td>125</td>
<td>97</td>
<td>149</td>
<td>142</td>
<td>45.6%</td>
<td>40.6%</td>
<td>44</td>
</tr>
<tr>
<td></td>
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<td></td>
<td></td>
<td></td>
<td>13.8%</td>
<td>13.4%</td>
<td>318</td>
</tr>
<tr>
<td>Somerset</td>
<td>190</td>
<td>220</td>
<td>110</td>
<td>231</td>
<td>36.7%</td>
<td>49.0%</td>
<td>39</td>
</tr>
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<td></td>
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<td></td>
<td></td>
<td>11.5%</td>
<td>4.2%</td>
<td>339</td>
</tr>
<tr>
<td>Sussex</td>
<td>88</td>
<td>84</td>
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<td>37</td>
<td>30.2%</td>
<td>30.6%</td>
<td>52</td>
</tr>
<tr>
<td></td>
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<td></td>
<td></td>
<td>29.2%</td>
<td>32.8%</td>
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<tr>
<td>Union</td>
<td>454</td>
<td>451</td>
<td>240</td>
<td>305</td>
<td>35.6%</td>
<td>52.8%</td>
<td>219</td>
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<tr>
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<td></td>
<td></td>
<td></td>
<td>24.5%</td>
<td>9.2%</td>
<td>893</td>
</tr>
<tr>
<td>Warren</td>
<td>86</td>
<td>94</td>
<td>33</td>
<td>21</td>
<td>27.7%</td>
<td>18.3%</td>
<td>83</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
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<td>41.1%</td>
<td>44.4%</td>
<td>202</td>
</tr>
<tr>
<td>State</td>
<td>8,662</td>
<td>8,669</td>
<td>5,734</td>
<td>8,261</td>
<td>38.9%</td>
<td>48.8%</td>
<td>5,149</td>
</tr>
</tbody>
</table>

The number of granted motions shown on this chart represents all detention motions filed during the process. There may be multiple detention motions filed for a single defendant, i.e., a motion to revoke release or reopen a hearing on a defendant previously released. Table includes complete motions that were granted, denied, withdrawn or dismissed.

Note: This report is based on defendant which is defined as a Criminal Justice Reform eligible defendant with CDR2 warrants filed within three days of each other for the defendant.
Bail Reform Litigation: Past, Present and Future

A Free American Bar Association Webinar

Jan. 31, 2019, 3:30pm-5pm EST

Faculty:
Alec Karakatsanis, Civil Rights Corps
Alexander Shalom, ACLU of New Jersey
Alexander Shalom
Senior Supervising Attorney
American Civil Liberties Union of New Jersey
ashalom@aclu-nj.org
@ARShalomACLU
New Jersey Bail Reform: A Brief History

• 2013 – DPA Jail Population Analysis
• 2014 – Joint Committee on Criminal Justice Report, statute passes, law signed by Governor Christie, voters approve constitutional amendment
• December 6, 2016 – first challenge to the statute filed
• January 1, 2017 – statute goes into effect
Two types of litigation

1) Protecting the framework of the legislation

2) Giving meaning to protections created by the legislation/rules
Protecting the framework

• Complaint by NJ Association of Counties challenging law as unfunded mandate.
  ▪ https://www.state.nj.us/localmandates/pending/njac.html

• Challenge by bail industry
    • Aff’d, 895 F.3d 272 (3d Cir. 2018)
    • Cert. denied
  ▪ Other, less serious challenges
Giving meaning to protections

• Discovery
• Witnesses
• Presumptions
• Burdens
• Appeals

• Note: robust right to counsel was never a contested issue
Discovery

• *State v. Robinson*, 229 N.J. 44 (2017)
• *State v. Hyppolite*, 2018 N.J. LEXIS 1566 (Dec 11, 2018)
Witnesses

• *State v. Ingram*, 230 N.J. 190 (2017)
Presumptions

• *State v. S.N.*, 231 N.J. 497 (2018)
• *State v. Travis*, 218 N.J. 152 (2018)
Burdens

• *State v. Mercedes*, 233 N.J 152 (2018)
Appeals

Future challenges

• Failure to release on least restrictive conditions
• Racial bias in RAI
• Speedy trial
  ▪ Abuse of excludable time
Not a webinar on the successes and failures

• But, check out NJ’s non-sentenced jail population:

![Graph showing jail population decrease from 2015 to 2018](chart.png)
Chief justice: Bail reform puts N.J. at the forefront of fairness | Opinion

Posted on January 9, 2017 at 9:33 AM

Star-Ledger Guest Columnist

By Stuart Rabner

Before signing the Bail Reform Act of 1966, President Lyndon B. Johnson spoke of the need to reform a justice system in which some criminal defendants could post bail and buy their freedom while others would languish in jail before trial -- not because they were guilty or likely to flee, but because they were poor. The scales of justice, Johnson observed, were weighted "not with fact, nor law, nor mercy," but with money.

A half-century later, that problem is still with us. As recently as 2012, a study of New Jersey's county jail population revealed that 1 in 8 inmates were in jail because they couldn't make bail of $2,500 or less. They didn't pose a risk of danger or flight but sat in jail because they didn't have enough money to post even a modest amount of bail. Meanwhile, defendants who posed serious risks to public safety could be released if they had access to money.

In 2016 -- as in 1966 -- money typically decided who was released before trial and who sat in jail until trial began.

There is a better way.

On Jan. 1, New Jersey's criminal justice system started to adapt to its most significant transformation in decades. We shifted from a system that relied heavily on monetary bail to one that objectively measures the risk defendants pose on two levels: Will they show up for trial? Will they commit a crime while on release? Under the new risk-based system, those who present a substantial risk of danger or flight can be detained pending trial. Those who don't will be released on conditions that pretrial services officers will monitor.

Why does this matter? Because whether a defendant is released pretrial is one of the most significant decisions in the criminal justice system. There are real consequences for poor defendants -- often members of minority groups -- who pose little risk but sit in jail for weeks and months while they are presumed innocent. During that time, they may lose jobs when they fail to show up for work. They may lose contact with family members. They may lose custody of children. And the cost to taxpayers to house a low-risk defendant can amount to $100 or more per day.

In his speech in 1966, the president cited examples of how the bail system punished people simply for being poor. Johnson recalled a defendant who spent two months in jail and lost his...
job, his car and his family, only to later win an acquittal. Another defendant spent 54 days in jail because he could not post $300 bail for a traffic offense that carried a maximum sentence of five days.

Time spent in jail can also 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.

The consequences are equally grave at the other end of the spectrum. Some defendants charged with serious offenses pose a great risk that they will commit new crimes or try to intimidate or retaliate against witnesses. Their pretrial release raises a genuine concern about public safety.

For those and other reasons, a national movement is underway to reform the criminal justice system. For several years, New Jersey has been at the forefront of that change.

Criminal justice reform in our state has had broad-based support. In 2012, Gov. Chris Christie publicly called for an amendment to the state constitution to allow for pretrial detention. In 2013, the Judiciary formed the Joint Committee on Criminal Justice, comprising representatives from all three branches of government. The committee's 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 committee's recommendations were adopted by the Legislature, with the strong backing of Senate President Stephen Sweeney (D-Gloucester) and Assembly Speaker Vincent Prieto (D-Hudson), and signed into law by the governor.

The public took the next major 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 to ensure their appearance in court and protect the safety of the community.

New Jersey Criminal Justice Reform Overview [link to posted video https://www.youtube.com/watch?v=pKkquuM3-Ig]

Since then, all parts of the criminal justice system have been hard at work to make reform a reality. A risk-assessment tool has been developed in partnership with the Laura and John Arnold Foundation; that tool has been validated with data from thousands of actual New Jersey cases. Pilot programs in three vicinages trained staff and tested new technology. The Supreme Court adopted court rules to implement the law. The attorney general issued guidelines to law enforcement statewide. And the administrative director of the courts, public defender, director of the Division of Criminal Justice and others led 15 seminars for a total of more than 3,000 county officials throughout the state to train stakeholders about the new law and foster coordination across the justice system.

Here's how it will all work.
On Jan. 1, the court system began using the risk-assessment tool to help judges make more informed decisions about pretrial release. To predict whether a defendant poses a low, moderate or high level of risk, pretrial services officers now review each defendant's criminal history, record of prior court appearances and other objective information -- as they will in an estimated 70,000 cases per year. Officers then make a recommendation to the judge.

Most defendants will be released pretrial on a range of conditions that will not include money bail. For low-risk defendants, the court may simply direct an officer to send a text message or place a phone call to remind defendants when they must appear in court. Defendants who pose greater risks may be placed on electronic monitoring. Those considered a serious threat to public safety or risk of flight will be detained. Judges can also modify conditions of release based on new circumstances.

Defendants who are detained will be subject to the new law's speedy trial provisions, which impose time limits for when a defendant must be indicted and when a trial must begin.

In recent years, some jurisdictions have successfully implemented a risk-based approach. In Lucas County, Ohio, for example, nearly twice the number of defendants are being released pretrial on conditions without bail. During that time, the percentage of defendants who skipped a court date has been dramatically reduced, and the number of defendants arrested while on release has been cut in half. The rate of violent crimes committed by defendants on pretrial release has also gone down.

Like all changes, the reforms underway will be hard to achieve. They will succeed only with the continued cooperation among partners throughout the criminal justice system and the continued support of all branches of government. We have made great strides -- collectively - - so far, and there is more work ahead of us.

Together, we can build a better, fairer and safer system of criminal justice in New Jersey.

*Stuart Rabner is chief justice of the New Jersey Supreme Court. He chaired the Joint Committee on Criminal Justice.*

*Bookmark NJ.com/Opinion. Follow on Twitter @NJ_Opinion and find NJ.com Opinion on Facebook.*
Criminal Justice Reform: A Step-by-Step Guide

**Complaint**
The defendant is fingerprinted by law enforcement and a criminal history is collected from various statewide databases. The information allows prosecutors and law enforcement to make a quick and informed decision about whether to authorize a summons or request a warrant from the court.

---

**Summons Issued**
The defendant is not subject to Criminal Justice Reform.

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**Warrant Issued**
The individual is arrested and transported to county jail. The defendant is subject to Criminal Justice Reform.

---

**Public Safety Assessment**
Pretrial services staff prepare a release recommendation to the court based on a Public Safety Assessment (PSA) and other factors. The PSA uses the defendant’s prior criminal and court history to assess the likelihood that the defendant will fail to appear in court or commit another crime. There is a recommendation of no release for certain crimes such as murder, and some crimes involving guns or weapons.

---

**First Appearance Hearing**
A first appearance hearing is held within 24 to 48 hours of a defendant being taken to a county jail. At the hearing, the prosecutor’s office must make a motion to have the defendant detained. Otherwise, the judge will set conditions of release, considering the pretrial services recommendation along with arguments from the prosecutor and the defense attorney.

---

**No Motion for Detention Made**
After listening to the prosecution and the defense, the judge can either agree with the pretrial services recommendation or issue a statement of reasons for deviating from the recommendation.

---

**Motion for Detention Made**
If a detention motion is filed, a pretrial detention hearing is held within three to five business days. The prosecutor must demonstrate that no condition of release can reasonably assure the public’s safety or that the defendant will return to court.

---

**Defendant Released**
The defendant is released without conditions.

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**Defendant Released with Conditions**
Defendants released with conditions are monitored by the court’s pretrial services unit. Conditions of release range from phone calls and visits with a pretrial services officer to electronic monitoring and house arrest.

---

**Defendant Detained**
Defendants who are detained pretrial are subject to speedy trial guidelines and must be indicted within 90 days. There are also limits for the overall time a defendant can be kept in jail while the case is resolved.
New Jersey’s former top prosecutors: Bail reform isn’t easy, but it works

By Christopher Porrino, Esq., and Elie Honig, Esq., Lowenstein Sandler LLP

NOVEMBER 21, 2018

Too many people across the United States spend too long in jail before they’ve ever been convicted of a crime, simply because they are too poor to post cash bail. At the same time, some dangerous offenders are able to buy their way out of jail by posting cash bail, regardless of the risk they pose to the community.

For far too long, the criminal justice system in New Jersey — and many other states — suffered from these dual fundamental failures. Recently, however, New Jersey instituted sweeping reforms to its bail system. The lesson we offer from the front lines of the New Jersey bail reform effort is this: It is not easy, but it works.

Despite heated opposition from the bail bonds industry, New Jersey has successfully enacted and implemented a reformed system that is more just because it does not discriminate against arrestees based on wealth.

At the same time, the new system better protects the public by enabling judges to consider an arrestee’s potential dangerousness and to detain without bail the highest-risk defendants. The objective data, and our own experiences working in the criminal justice system, support this conclusion.

The bail reform effort in New Jersey happened only because diverse stakeholders put aside narrow self-interests and focused on the greater public good. In 2013, the Drug Policy Alliance shined a spotlight on the urgent need for bail reform when it issued a groundbreaking study finding that over 73 percent of New Jersey’s incarcerated population were awaiting trial. Stunningly, the study also found that 12 percent of the state’s incarcerated population were pretrial detainees who could not afford to post bail of $2,500 or less. That report underscored the urgent need to fix our broken cash bail system.

Working together over several months, committee members put aside their conventional talking points, formed novel partnerships, and arrived at broad consensus on two very important issues.

First, they agreed that our cash bail system discriminated based on wealth because some offenders could afford to pay their way out of jail while indigent offenders could not, even if they posed little or no risk.

Even the prosecutors on the committee agreed that too many low-risk, poor arrestees were behind bars simply because they could not pay for their freedom pending trial.

On the flip side, a broad consensus emerged on the committee — joined even by the state’s top public defender — that at least some of the highest-risk offenders should be detained pending trial without any bail.

Incredibly, before bail reform, New Jersey law prohibited prosecutors from arguing, and judges from considering, the danger posed by an arrestee in setting bail conditions. The committee members agreed that risk must be not only a relevant factor but a primary focus in an effective bail system.

The committee ultimately submitted a report that became the framework for bail reform legislation. The proposed legislation abolished cash bail in all but a very narrow set of circumstances.

The bill also required implementation of a data-driven risk assessment tool to provide an objective measure of the risk posed by each individual arrestee.
The proposed constitutional amendment permitted judges to detain without bail some arrestees deemed high-risk by the court if necessary to ensure the arrestee’s future appearance in court or to protect the public.

At first, the legislation and accompanying constitutional amendment appeared to be headed toward quick and decisive enactment. The measures enjoyed broad bipartisan support from then-Gov. Chris Christie, a Republican, and from the Democratic-controlled state Senate and Assembly.

Liberal-leaning interest groups like the ACLU supported the reform measures, as did many criminal law practitioners, including the attorney general’s office and the public defender. A broad alliance coalesced in favor of bail reform, transcending traditional fault lines of politics and ideology.

Passage of the new law seemed all but assured — until the bail bonds industry intervened. Sensing an existential threat, the multibillion-dollar industry took the clever tack of enlisting the Southern Christian Leadership Conference — the legendary civil rights organization co-founded by Dr. Martin Luther King Jr. — to advocate on its behalf.

The SCLC dispatched representatives to New Jersey to argue that bail reform would discriminate against minorities. That argument so plainly lacked merit — the vast majority of the pretrial incarcerated population who stood to benefit from abolition of cash bail were minorities — that the bail bonds industry’s strategic lobbying effort failed.

The bill passed with overwhelming majorities of the Assembly and the Senate. Christie signed the bill into law, and voters overwhelmingly approved a ballot referendum to amend the state constitution by a 62 percent to 38 percent margin.

New Jersey’s new system went into effect Jan. 1, 2017. Under the new law, arrestees charged by warrant are held in county jail for a maximum of 48 hours before their first court appearance (though the average stay in county jail before first appearance is closer to 24 hours).

The arrestee is fingerprinted through the automated Livescan system. The risk assessment tool then automatically evaluates various factors, including the nature and seriousness of the new charges, the arrestee’s criminal history, and the arrestee’s history of appearance or non-appearance in court.

The risk assessment tool automatically scores each arrestee on risk of new criminal activity and risk of non-appearance in court (each on a 1 to 6 scale, with 6 being highest) and risk of new violent criminal activity (a yes/no determination).

Importantly, these risk assessment scores are not binding on the judge or the parties. Rather, they provide an objective and standardized measure of the risk posed by each individual alleged offender.

It remains up to the prosecutor and defense attorney to make appropriate arguments, and for the judge to apply discretion in deciding whether to detain the arrestee without bail or to release the arrestee on appropriate nonmonetary conditions (such as home confinement, electronic monitoring, curfew and stay-away orders).

Since implementation of the new system, approximately 18 percent of arrestees charged by warrant have been detained without bail, while the remaining 82 percent either have been released on their own recognizance or on nonmonetary conditions. Fewer than 0.1 percent of all arrestees have been released on cash bail.

The new legislation also contains speedy-trial rules requiring prosecutors to indict any detained defendant within 90 days after arrest and then to try the case within 180 days after indictment. Violation of the deadlines results in release of the defendant from prison, but not dismissal of charges.

Under the old system, arrestees spent an average of 314 days in jail awaiting trial, and delays sometimes lasted as long as two years or more. Under the new system, all defendants held without bail are assured of a trial within 270 days after arrest.

To be sure, bail reform in New Jersey required hard work, innovation and creativity by prosecutors, defense lawyers and the courts alike. All the relevant players in the criminal justice system had to learn to prioritize potential jail cases; to understand and make proper use of the new risk assessment tool; to conduct detention hearings promptly and fairly; to meet earlier discovery requirements necessary for detention hearings; and to comply with speedy trial deadlines.

While prosecutors, defense attorneys and judges faced challenges during the first months under the new bail reform, the new procedures now are well ingrained in the everyday course of work. What once felt cataclysmic now seems routine.

Now that the new system has been in place for nearly two years, the objective data proves decisively that bail reform in New Jersey has been a sweeping success.

In 2017 — the first year when judges could consider danger in denying cash bail to arrestees — over 8,000 of the state’s highest-risk arrestees were detained pending trial, with no opportunity to buy their freedom by posting a bail bond.

During that time, New Jersey’s violent crime index fell by 5.7 percent, including a 14.3 percent drop in murders and significant decreases in robbery, assault and burglary rates. Preliminary data indicates that violent crime rates have fallen again in 2018. At the same time — with indigent,
low-risk arrestees eligible for release without having to post cash bail — New Jersey’s pretrial county jail population fell by a staggering 20.3 percent in 2017 alone. As of Aug. 31, 2018, that reduction stands at 26.3 percent compared to the jail population on Jan. 1, 2017.

Even using a conservative estimate that incarceration of pretrial inmates costs $100 per person, per day, that reduction equates to over $68 million per year in taxpayer savings. Further, low-risk defendants who stay out of jail avoid socially costly collateral consequences such as loss of a job or driving privileges.

Also, statistics show those low-risk defendants who spend less time in jail are less likely to commit future crimes.

Notwithstanding the undeniable success of the new system, the bail bonds industry has challenged reform efforts at every turn.

In addition to launching sensationalistic internet campaigns depicting the Grim Reaper and predicting that New Jersey would devolve into lawless chaos, the bail bonds industry took their fight to the courts. To date, the courts have rejected every lawsuit filed by the bail bonds industry.

Most recently, in July the 3rd U.S. Circuit Court of Appeals, in Holland v. Rosen, 895 F.3d 272 (3d Cir. 2018), firmly denied bail was outdated, unsafe and unfair. The bail bonds industry’s challenge to the constitutionality of the new system, finding that “New Jersey’s interests in ensuring defendants appear in court, do not endanger the safety of any person or the community, or obstruct their criminal process, are no doubt legitimate.”

Now that the battle largely has been fought in New Jersey, the question becomes: Which states will follow? In August California passed sweeping legislation that closely mirrors New Jersey’s system. The California legislation eliminates cash bail and requires adoption of a data-driven risk assessment tool.

Upon passage of the legislation, the chief justice of California’s courts stated that “[o]ur old system of money bail was outdated, unsafe and unfair.” The New York Times noted that “[t]he California law is part of a wave of criminal justice reforms taking place across the country.”

Other states should follow California in enacting bail reform legislation built on the New Jersey model. New York should step up next.

In his 2018 State of the State address, Gov. Andrew Cuomo declared that “[t]he blunt ugly reality is that too often, if you can make bail you are set free and if you are too poor to make bail you are punished. We must reform our bail system so a person is only held if a judge finds either a significant flight risk or a real threat to public safety.”

Many other states seem poised to follow suit. In fact, at least 20 have formed task forces to study bail reform, and many others are considering the issue. To all of those states, we say this: If you want to see what meaningful and successful bail reform looks like, not only in theory but also in practice, then look no further than New Jersey.

In 1964 Attorney General Robert Kennedy testified before Congress that the “problem, simply stated, is: The rich man and the poor man do not receive equal justice in our courts. And in no area is this more evident than in the matter of bail. ... Bail has become a vehicle for systematic injustice.”

We as a country have known this truth for over five decades. Now, New Jersey has shown that bail reform truly does work. The road map is available for everyone else to follow. We call on all other states to join us in creating the fairer and more just bail system that Kennedy envisioned so many years ago.

NOTES
1 Thomas Fuller, California Is the First State to Scrap Cash Bail, N.Y. TIMES (Aug. 28, 2018), https://nyti.ms/2T6WN2v.

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SUMMARY

Preliminary Notes:

- The statute must be liberally construed to effectuate its main purpose of relying on non-monetary pretrial release to reasonably assure (1) the defendant’s appearance in court when required, (2) the protection of the safety of any other person or the community, and (3) that the defendant will not obstruct or attempt to obstruct the criminal justice process (the “Three Goals”).

- A reasonable assurance that a defendant will not obstruct may be found to exist if the prosecutor fails to provide the court with any information relevant to the likelihood of that risk.

- The court may, upon motion of a prosecutor, order pretrial detention when it finds clear and convincing evidence that no condition(s) can reasonably assure the satisfaction of the Three Goals.

- Monetary bail may only be set when it is determined that no other condition(s) of release will reasonably assure the defendant’s appearance in court.

- The statute only applies to defendants charged in a complaint-warrant with indictable or disorderly persons offenses.

PRETRIAL RELEASE

Risk Assessment and Timing:

- The defendant must be temporarily detained to allow the Prettrial Services Program (PSP) to prepare a risk assessment with recommendations on release conditions and for the court to issue a pretrial release decision.

- Unless a pretrial detention motion has been filed by the prosecutor, the court must make a pretrial release decision “without unnecessary delay” or within 48 hours after the defendant has been jailed.

- The court must consider the PSP’s risk assessment before making any release decision.

Types of Pretrial Release That a Court May Impose:

- After considering the circumstances, the PSP’s risk assessment, and any information that may be provided by a prosecutor or the defendant, the court must order that the defendant be:
  - (a) released on recognizance (ROR) or on execution of an unsecured appearance bond;
  - (b) released on the least restrictive non-monetary condition(s) that the court determines will reasonably assure that the Three Goals are met;
  - (c) released on monetary bail (only to reasonably assure the defendant’s appearance in court), or a combination of monetary bail and non-monetary condition(s) (to reasonably assure that the Three Goals are met); or
  - (d) detained in jail, upon motion of the prosecutor, pending a pretrial detention hearing.
Determining Which Type of Release is Appropriate:

- **ROR/Unsecured Appearance Bond:** The court must ROR or release the defendant upon the execution of an unsecured appearance bond when the court finds that this type of pretrial release would reasonably assure that the Three Goals are met.

- **Release on Non-Monetary Conditions:** If the court does not find that ROR or an unsecured appearance bond will reasonably assure satisfaction of the Three Goals, the court may order pretrial release of the defendant subject to the following conditions:
  - (a) defendant must not commit any offense(s) during release;
  - (b) defendant must avoid all contact with an alleged victim;
  - (c) defendant must avoid all contact with witnesses who may testify that are named in the document authorizing release or in a subsequent order; and
  - (d) any one or more of the following non-monetary condition(s), so long as they are the least restrictive that will reasonably assure that the Three Goals are met:
    - (1) remain in the custody of a designated person, who agrees to supervise and to report any violation of a release condition, so long as the person is able to reasonably assure that the Three Goals are met;
    - (2) maintain/actively seek employment;
    - (3) maintain/begin an educational program;
    - (4) abide by specified restrictions on personal associations/place of abode/travel;
    - (5) report on a regular basis to PSP/designated law enforcement agency/other agency;
    - (6) comply with a specified curfew;
    - (7) refrain from possessing a firearm/destructive device/other dangerous weapon;
    - (8) refrain from excessive use of alcohol/use of a narcotic drug or other controlled substance without a prescription;
    - (9) undergo available medical/psychological/psychiatric treatment, including treatment for drug/alcohol dependency, and remain in a specified institution if required for that purpose;
    - (10) return to custody for specified hours following release for employment/schooling/other limited purposes;
    - (11) be placed in pretrial home supervision with/without the use of an electronic monitoring device. (Note: The defendant may be ordered to pay all or some of the costs of electronic monitoring. May be waived for indigent defendant who has demonstrated inability to pay); or
    - (12) satisfy any other condition necessary to reasonably assure that the Three Goals are met.

- **Monetary Bail:** If the court does not find that ROR, execution of an unsecured appearance bond or release on non-monetary conditions will reasonably assure the defendant’s appearance in court, the court may impose monetary bail.
  - The court cannot impose monetary bail to reasonably assure the protection of any person or the community or ensure that the defendant will not obstruct (or attempt to obstruct). The court may not impose monetary bail for the purpose of preventing the release of the defendant.
  - Pretrial release using both monetary bail and non-monetary conditions may be ordered if the court finds that monetary bail alone is not enough to reasonably assure that the Three Goals are met.
  - If the defendant cannot post bail and remains detained, speedy trial provisions of the statute apply.
PRETRIAL DETENTION

The Prosecutor May File a Motion for Pretrial Detention only if:

- the defendant has been accused or charged with committing certain crimes or offenses (see list).
- the prosecutor believes there is a serious risk that: (a) the defendant will not appear in court; (b) the defendant will pose a danger to any other person or the community; or (c) the defendant will obstruct/attempt to obstruct justice, or threaten, injure, or intimidate a witness or juror.

The Hearing

- A court shall hold a hearing to determine whether any amount of monetary bail or non-monetary conditions or combination of monetary bail and conditions will reasonably assure (1) the defendant’s appearance in court when required, (2) the protection of the safety of any other person or the community, and (3) that the defendant will not obstruct or attempt to obstruct the criminal justice process (the “Three Goals”).
- The court may consider the amount of monetary bail only with respect to whether it will, by itself or in combination with non-monetary conditions, reasonably assure the defendant’s appearance.
- The defendant has the right to counsel and must be afforded an opportunity to testify, present witnesses, cross-examine witnesses, and present information by proffer or otherwise.
- The rules concerning admissibility of evidence in criminal trials do not apply.

Timing of the Pretrial Detention Hearing

- The hearing must be held no later than the defendant’s first appearance unless the defendant, or the prosecutor, seeks a continuance.
- If a prosecutor files its motion after the defendant’s first appearance or if no first appearance is required, the court must schedule the hearing to take place within three working days of the date the motion was filed, unless the prosecutor or the defendant seeks a continuance.
- A continuance on motion of the defendant may not exceed five days, and a continuance on motion of the prosecutor may not exceed three days (not including any intermediate Saturday, Sunday, or legal holiday), except for good cause.
- While the motion is pending, the defendant must be detained unless the defendant was previously released before trial, in which case the court must issue a notice to appear.
  - The court, on motion of the prosecutor or sua sponte, may order that a defendant in custody who appears to be drug dependent receive a drug dependency assessment.
- The hearing may be reopened, before or after a determination by the court, at any time before trial, if the court finds that information exists that was not known to the prosecutor or the defendant at the time of the hearing and that has a material bearing on the issue of whether there are conditions of release that will satisfy the Three Goals.
Burden of Proof and Grounds to Order Pretrial Detention

- Where there is no indictment, the prosecutor must establish by probable cause that the defendant committed the predicate offense.

- In determining whether conditions of release will satisfy the Three Goals, the court may consider:
  - The nature and circumstances of the offense charged;
  - The weight of the evidence against the defendant, including otherwise excludable evidence;
  - The history and characteristics of the defendant, including:
    - the defendant's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and
    - whether, at the time of the current offense or arrest, the defendant was on probation, parole, or on other release;
  - The nature and seriousness of 1) the danger to any other person or the community, and 2) the risk of obstructing or attempting to obstruct the criminal justice process posed by the defendant's release; and
  - The release recommendation of the PSP obtained using a risk assessment instrument.

- Except as described below, there is a rebuttable presumption that some amount of monetary bail, non-monetary conditions or combination would meet the Three Goals. The court's finding to support an order of pretrial detention must be supported by clear and convincing evidence.

- But, if the defendant is charged with murder pursuant to N.J.S.A. 2C:11-3 or any crime for which the defendant would be subject to an ordinary or extended term of life imprisonment, there is a rebuttable presumption that the defendant must be detained pending trial so long as the court finds probable cause that the defendant committed murder or any crime punishable by an ordinary or extended term.
  - A presumption of pretrial detention may be rebutted by proof provided by the defendant, the prosecutor, or from other materials submitted to the court.
  - The standard of proof for rebuttal is a preponderance of the evidence.
  - If the presumption is rebutted by sufficient proof, the prosecutor shall have the opportunity to establish the grounds for pretrial detention described above.

- A defendant may appeal a pretrial detention. The appeal must be expedited, and the defendant must remain detained under the appeal's disposition.

- If the court does not order the pretrial detention at the conclusion of a hearing, the court must order the release of the defendant pursuant to the rules governing pretrial release.

The Pretrial Detention Order

- In the order, the court must include written findings of fact and a written statement of the reasons for detention and direct that the defendant be afforded opportunity for consultation with counsel.

- The court may, by subsequent order, permit the temporary release of the defendant subject to appropriate restrictive conditions, to the extent that the court determines the release to be necessary for preparation of the defendant's defense or for another compelling reason.
SPEEDY TRIAL

If Pretrial Detention is Ordered or the Defendant is Detained due to Inability to Post Monetary Bail, Speedy Trial Provisions Attach

Pre-Indictment

• Before the return of an indictment, the defendant cannot remain detained for more than 90 days, not counting excludable time.

• If the defendant is not indicted within 90 days, he/she must be released pursuant to the rules governing pretrial release.
  o Except, on motion of the prosecutor, if the court finds that a substantial and unjustifiable risk to the safety of any other person/the community or the obstruction of the criminal justice process would result from the defendant’s release, so that no appropriate conditions for the defendant’s release could reasonably address that risk, and also finds that the failure to indict the defendant within 90 days was not due to unreasonable delay by the prosecutor, it may grant an additional period of time (not to exceed 45 days) in which the return of an indictment must occur.

• If the defendant is charged or indicted on another matter resulting in the defendant’s pretrial detention, the time calculations for each matter must run independently.

Post-Indictment

• An indicted defendant cannot remain detained for more than 180 days on that charge following the return or unsealing of the indictment, whichever is later, not counting excludable time before commencement of the trial.

• If the trial does not commence within 180 days, the defendant must be released pursuant to the rules governing pretrial release.
  o Except, on motion of the prosecutor, if the court finds that a substantial and unjustifiable risk to the safety of any other person/the community or the obstruction of the criminal justice process would result from the defendant’s release, so that no appropriate conditions for the defendant’s release could reasonably address that risk, and also finds that the failure to commence trial in accordance with the time requirement set forth in this subparagraph was not due to unreasonable delay by the prosecutor, the court may allocate an additional period of time in which the defendant’s trial must commence.

• A defendant must be released pursuant to the rules governing pretrial release, and after a release hearing if, two years after the court’s pretrial detention order, excluding any delays attributable to the defendant, the prosecutor is not ready to commence trial.

• Trial is considered to have commenced when the court determines that the parties are present and directs them to proceed to voir dire or to opening argument, or to the hearing of any motions that had been reserved for the time of trial.

• The return of a superseding indictment extends the time for the trial to commence.
• If an indictment is dismissed without prejudice upon motion of the defendant, and a subsequent indictment is returned, the time for trial begins running from the date of the return of the subsequent indictment.

• A trial ordered after a mistrial or upon a motion for a new trial must commence within 120 days of the entry of the court order. A trial ordered upon the reversal of a judgment by any appellate court must commence within 120 days of the service of that court’s trial mandate.

• If the defendant is indicted on another matter resulting in the defendant’s pretrial detention, the time calculations for each matter shall run independently.

Statutorily defined excludable time

• Time resulting from an examination and hearing on competency and the period during which the defendant is incompetent to stand trial or incapacitated;
• Time from the filing to the disposition of a defendant’s application for supervisory treatment, special probation, drug or alcohol treatment as a condition of probation, or other pretrial treatment or supervisory program;
• Time from the filing to the final disposition of a motion made before trial by the prosecutor or the defendant;
• Time resulting from a continuance granted, in the court’s discretion, at the defendant’s request or at the request of both the defendant and the prosecutor;
• Time resulting from the detention of a defendant in another jurisdiction provided the prosecutor has been diligent and has made reasonable efforts to obtain the defendant’s presence;
• Time resulting from exceptional circumstances including, but not limited to, a natural disaster, the unavoidable unavailability of a defendant, material witness or other evidence, when there is a reasonable expectation that the defendant, witness or evidence will become available in the near future;
• On motion of the prosecutor, the delay resulting when the court finds that the case is complex due to the number of defendants or the nature of the prosecution;
• Time resulting from a severance of codefendants when that severance permits only one trial to commence within the time period for trial set forth in this section;
• Time resulting from a defendant’s failure to appear for a court proceeding;
• Time resulting from a disqualification or recusal of a judge;
• Time resulting from a failure by the defendant to provide timely and complete discovery;
  o The failure by the prosecutor to provide timely and complete discovery is not to be considered excludable time unless the discovery only became available after the time set for discovery.
• Time for other periods of delay not specifically enumerated if the court finds good cause for the delay; and
• Any other time otherwise required by statute.
List of Crimes for which the Prosecutor May File a Motion for Pretrial Detention

Rebuttable Presumption of Detention:

- Murder, N.J.S.A. 2C:11-3

- Offenses punishable by an ordinary term of life imprisonment:
  - Aggravated kidnapping of a child, N.J.S.A. 2C:13-1c(2)
  - Human trafficking where the victim is a minor or the actor receives anything of value, N.J.S.A. 2C:13-8a(2) or (3)
  - Aggravated sexual assault of a child aged 13 or younger, N.J.S.A. 2C:14-2a(1)
  - Leader of a narcotics trafficking network, N.J.S.A. 2C:35-3
  - Terrorism, N.J.S.A. 2C:38-2
  - Producing or possessing chemical weapons, biological agents or nuclear or radiological devices, N.J.S.A. 2C:38-3a
  - Three strikes law, N.J.S.A. 2C:43-7.1a

- Any crime for which the defendant would be subject to an extended term of life imprisonment:
  - Extended term on any first-degree offense, N.J.S.A. 2C:44-1f(1)

Rebuttable Presumption of Release (on Conditions):

- Any crime of the first or second degree enumerated under N.J.S.A. 2C:43-7.2d (NERA):
  - N.J.S.A. 2C:11-4, aggravated manslaughter or manslaughter
  - N.J.S.A. 2C:11-5, vehicular homicide
  - N.J.S.A. 2C:12-1b, aggravated assault
  - N.J.S.A. 2C:12-11b, disarming a law enforcement officer
  - N.J.S.A. 2C:13-2, kidnapping
  - N.J.S.A. 2C:14-2a, aggravated sexual assault
  - N.J.S.A. 2C:14-2b and N.J.S.A. 2C:14-2c(1), sexual assault
  - N.J.S.A. 2C:15-1, robbery
  - N.J.S.A. 2C:15-2, carjacking
  - N.J.S.A. 2C:17-1a(1), aggravated arson
  - N.J.S.A. 2C:18-2, burglary
  - N.J.S.A. 2C:20-5a, extortion
  - N.J.S.A. 2C:35-4.1b, booby traps in manufacturing or distribution facilities
  - N.J.S.A. 2C:35-9, strict liability for drug induced deaths
  - N.J.S.A. 2C:38-3, producing or possessing chemical weapons, biological agents or nuclear or radiological devices
  - N.J.S.A. 2C:41-2, racketeering, when it is a crime of the first degree
  - N.J.S.A. 2C:39-9i, firearms trafficking
  - N.J.S.A. 2C:24-4b(3), causing or permitting a child to engage in a prohibited sexual act, knowing that the act may be reproduced or reconstructed in any manner, or be part of an exhibition or performance

- Any crime if the defendant has been previously convicted of two or more offenses subject to NERA or for which the defendant would be subject to an ordinary of extended term of life imprisonment.
- Any crime defined as a sex offense under N.J.S.A. 2C:7-2b(2) when the victim is a minor.

- Any crime involving human trafficking pursuant to N.J.S.A. 2C:13-8 or N.J.S.A. 52:17B-237 et al. when the victim is a minor.

- The crime of endangering the welfare of a child under N.J.S.A. 2C:24-4.

- Any crime enumerated under N.J.S.A. 2C:43-6c - use or possession of a firearm during the commission of or flight while committing or attempting to commit:
  - A crime under subsection b. or d. of N.J.S.A. 2C:39-3, subsection a. of N.J.S.A. 2C:39-4, subsection a. of N.J.S.A. 2C:39-4.1, subsection a., b., c., or f. of N.J.S.A. 2C:39-5, subsection a. or paragraph (2) or (3) of subsection b. of N.J.S.A. 2C:39-7, or subsection a., b., e. or g. of N.J.S.A. 2C:39-9, or of a crime under any of the following sections: N.J.S.A. 2C:11-3, 2C:11-4, 2C:12-1b, 2C:13-1, 2C:14-2a., 2C:14-3a., 2C:15-1, 2C:18-2, 2C:29-5

- Any crime or offense involving domestic violence defined in N.J.S.A. 2C:25-19(a) - the occurrence of one or more of the following acts inflicted on a spouse, former spouse, or any other person who is a present or former household member, or on a victim with whom the actor has a child or expectant child in common, or on a victim with whom the actor has had a dating relationship:
  - Assault, N.J.S.A. 2C:12-1
  - Terroristic threats, N.J.S.A. 2C:12-3
  - Kidnapping, N.J.S.A. 2C:13-1
  - Criminal restraint, N.J.S.A. 2C:13-2
  - False imprisonment, N.J.S.A. 2C:13-3
  - Sexual assault, N.J.S.A. 2C:14-2
  - Criminal sexual contact, N.J.S.A. 2C:14-3
  - Lewdness, N.J.S.A. 2C:14-4
  - Criminal mischief, N.J.S.A. 2C:17-3
  - Burglary, N.J.S.A. 2C:18-2
  - Criminal trespass, N.J.S.A. 2C:18-3
  - Harassment, N.J.S.A. 2C:33-4
  - Stalking, N.J.S.A. 2C:12-10