# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page Nos.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>1</td>
</tr>
<tr>
<td>Composition of the Commission</td>
<td>1</td>
</tr>
<tr>
<td>Criminal Justice Reform is Working as Intended</td>
<td>2</td>
</tr>
<tr>
<td>The Pretrial Services Program</td>
<td>3</td>
</tr>
<tr>
<td>Criminal Justice Reform Reduces the Collateral Consequences of Pretrial Detention Without Increasing Crime Rates</td>
<td>4</td>
</tr>
<tr>
<td>Summary of Final Recommendations of the Commission</td>
<td>6</td>
</tr>
</tbody>
</table>
Introduction

The Pretrial Services Program Review Commission ("the Commission") was created by New Jersey's Criminal Justice Reform Act ("CJRA"). The Commission’s duties, as set forth in the CJRA, are to:

1. Review the annual report of the Administrative Director of the Courts concerning the development and administration of the Statewide Pretrial Services Program;
2. Examine the existing law concerning pretrial release and detention established by the legislation;
3. Research criminal justice pretrial release and detention programs from other states and jurisdictions; and

The Commission also has the duty to prepare an annual report to be submitted to the Governor, the Legislature and the Supreme Court. This annual report details the Commission's activities as well as its findings and recommendations, if any, for legislation.

Composition of the Commission

The Commission consists of 17 members designated in the statute and includes criminal justice system stakeholders as well as representatives of the Legislature and the Judiciary. Currently, there are four vacancies on the Commission, making it difficult to have a quorum at meetings or obtain a majority to make critical decisions. The vacancies include a member from the General Assembly appointed by the Speaker of the General Assembly, two members recommended by the Senate President and appointed by the Governor, and a county or municipal law enforcement officer appointed by the Governor.

➢ The Commission recommends filling these vacancies as soon as possible so that the Commission can be fully operational.

The Commission is currently comprised of the following members:

Joseph E. Krakoff, Public Defender, Chair of the Commission
Michael Robertson, Somerset County Prosecutor, Vice-chair of the Commission
Veronica Allende, Director of the Division of Criminal Justice (Attorney General designee)
Hon. Glenn A. Grant, Acting Administrative Director of the Courts
Alexander Shalom, Designee of the Executive Director of the ACLU
Ryan Haygood, New Jersey Institute for Social Justice
Carlos Hendricks, Latino Action Network
Richard T. Smith, NAACP NJ State Conference
Senator Samuel Thompson
Senator Sandra Cunningham
Assemblywoman BettyLou DeCroce
Note: Roseanne Scotti from the Drug Policy Alliance served on the Commission until that organization discontinued its New Jersey operation.

**Criminal Justice Reform is Working as Intended**

The CJRA fundamentally changed New Jersey’s system of pretrial release from a monetary-based system to a risk-based system. The CJRA requires that judges review an eligible defendant’s suitability to be released pretrial, subject to certain non-monetary conditions delineated by the statute. Trial courts now assess whether a defendant may be released pretrial by non-monetary means that reasonably assure the goals of the CJRA: the defendant’s appearance in court when required, the protection of the safety of any other person or the community, and the prevention of obstruction of the criminal justice process. Upon a motion by the prosecutor, a trial court may detain an eligible defendant when it finds clear and convincing evidence that no condition or combination of conditions can reasonably assure the effectuation of these goals. Monetary bail may now only be set for an eligible defendant when it is determined that no other conditions of release will reasonably assure the defendant’s appearance in court when required.

Prior to criminal justice reform, nearly 40 percent of the New Jersey jail population was incarcerated because those individuals could not post bail, including 12 percent who were held due to their inability to pay $2,500 or less. In 2017, the first year after criminal justice reform was enacted in New Jersey, 142,663 defendants were arrested and issued either a complaint-summons or complaint-warrant. Those issued a complaint-summons are automatically released while those arrested on a complaint-warrant are subject to detention. Of the 44,319 defendants arrested on a complaint-warrant, prosecutors filed motions for detention in 19,366 of those cases resulting in 8,043 defendants detained pretrial. Thus, 18.1 percent of those issued complaint-warrants, and just 5.6 percent of all defendants arrested, were detained pretrial in 2017. Correspondingly, pretrial jail populations have fallen by 35 percent from January 1, 2015, when preparation for criminal justice reform and related activities began, to January 1, 2018, and 20 percent from January 1, 2017, to January 1, 2018, the first full year that criminal justice reform was in effect.

In 2017 and 2018, the detention rates were similar. In 2018, 135,009 defendants were arrested and issued either a complaint-summons or complaint-warrant. Of the 44,383 defendants charged by a complaint-warrant, prosecutors filed motions for detention 49 percent of the time. Specifically, 21,749 motions were filed, but 4,819 were ultimately withdrawn. The courts granted detention in only 51.2 percent of the 16,930 remaining motions, resulting in 8,669 defendants detained pretrial. “Out of the universe of 135,009 defendants charged by complaint-summons 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.”

In determining who should be detained, New Jersey judges are now empowered to empirically assess a defendant’s risk to the community. Judges and Pretrial Services staff utilize “an
evidence based risk assessment … called the Public Safety Assessment (PSA), and its accompanying Decision Making Framework (DMF). The PSA, a risk measurement tool, and the DMF, a risk management tool, work in unison to measure and manage a defendant’s risk of non-appearance in court or danger to the public.”19 “Through these combined measures, Pretrial Services staff provide judges with informative and consistent recommendations of release that are aligned with a defendant’s risk level.”20 Informed by the PSA and DMF, prosecutors may file detention motions to trigger a detention hearing at which defendants have a plethora of rights including the right to counsel.21 A person can then be detained only after a judge finds that no set of conditions can reasonably assure the defendant’s appearance, protect the public, and prevent obstruction.22

Analysis of the jail population in 2018 suggests that criminal justice reform has continued to reduce jail population rates while changing the overall composition of that population to include predominantly those defendants charged with or sentenced to the most serious crimes. In 2018, only 4.6 percent of individuals were held on a bail of $2,500 or less, compared to 12 percent in 2012. In addition, 47 percent of the jail population consisted of people charged with or sentenced for at least one violent offense, compared to 35 percent in 2012.23 Nearly 75 percent of the 2018 jail population consisted of defendants charged with or sentenced for the most serious offenses.24

Criminal justice reform also ensures fairness among defendants who are not high risk by removing the potential economic disparities introduced by cash bail. “On the other end of the spectrum, higher-risk individuals who pose a danger to the community or have substantial risk of flight are no longer able to secure their release simply because they have access to funds.”25

New Jersey’s criminal justice reform has been widely viewed as a success and received the only “A” grade in the Pretrial Justice Institute’s survey of the state of pretrial justice in the United States.26 In light of this success, other states are looking to New Jersey as a model.27

The Pretrial Services Program

In order to effectuate the risk-based system created by the CJRA, the statute established a Pretrial Services Program that includes 297 managers, supervisors, and staff located in 22 offices. Pretrial Services has offices in all 21 counties as well as an additional office located within the Administrative Office of the Courts’ Central Office. Pretrial Services operates 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.

The duties of the Pretrial Services Program include:

- Preparing Public Safety Assessments that are used by courts in assessing whether a defendant should be released pretrial and the applicable conditions of that release;
- Providing support at first appearance, detention, violation, and revocation of release hearings;
- Monitoring defendants who have been released pretrial; and
- Providing referrals for services to released defendants.
Pretrial Services’ staff monitor released defendants through several different methods, including sending text reminders, requiring defendants to report by phone or in-person, and in some circumstances through 24-hour electronic monitoring.

➢ While the Pretrial Services Program is able to carry out its statutory duties with current staffing, the Commission acknowledges that increased staffing would allow the Pretrial Services Program to provide greater services to released defendants.

An important issue to New Jersey criminal justice reform is the current lack of social services available for pretrial clients who request or need referrals. Just as is the case with the general public, social services such as mental health services, drug treatment, housing, and medical care are too often impossible to access. This is not a failing of the pretrial system in New Jersey, but rather a broader system failing that impacts pretrial clients just as it impacts the broader public.

➢ The Commission strongly recommends that the Legislature and Governor find ways to increase the availability of services, specifically in the areas of mental health and addiction treatment. As a result of the implementation of criminal justice reform, the overall jail population for defendants held pre-disposition has decreased. Some of these individuals would benefit from referrals to these services.

➢ The Commission further recommends that a comprehensive list of all existing programs be assembled, and, where necessary, that there be an increase in the number of programs available. In addition, pretrial personnel should be given the resources to monitor the participation of the individuals in the program.

**Criminal Justice Reform Reduces the Collateral Consequences of Pretrial Detention Without Increasing Crime Rates**

The decrease in the jail population for defendants held pre-disposition means that fewer individuals bear the burden of the numerous and devastating collateral consequences of pretrial incarceration. This impacts not only those charged with a crime, but their families and communities.

Consequences for individuals detained pretrial include loss of housing,\(^28\) employment,\(^29\) and custody of children,\(^30\) negative legal outcomes,\(^31\) and interruptions to education and healthcare.\(^32\) Those consequences also impact the family of the accused, often resulting in loss of income and housing to family members, disruption of children’s education, and sometimes placement of children in foster care.\(^33\) In turn, there is an increased demand for social services. Together with “direct economic costs, detention imposes significant yet difficult-to-quantify costs on individuals, including the loss of liberty, dignity, damaged reputation, standing in the community.”\(^34\) These costs “are disproportionately borne by black defendants.”\(^35\)

The collateral consequences of incarceration have a snowballing effect on communities and contribute to cycles of poverty: “In areas where a sizable portion of residents are behind bars, the
effect is cumulative: The sheer number of absent people depletes available workers and providers, while constraining the entire community’s access to opportunity — including individuals who have never been incarcerated.36 Linking incarceration rates and poverty, one study confirmed that the poverty rate would have fallen by 20 percent in a 24-year period if incarceration rates remained the same rather than increase.37

Under criminal justice reform, however, fewer people are incarcerated pretrial and those who are, are released more quickly. Judges make pretrial release decisions within 48 hours of commitment to jail unless a detention motion has been filed.38 In 2018, judges made those decisions within 24 hours 81.9 percent of the time, and within 48 hours 99.6 percent of the time when no detention motions were filed.39

This expedited review and decision making without reliance on money bail helps level the playing field and reduces the collateral consequences of incarceration for thousands of people. The total time spent in jail, among those committed to jail, was reduced by 40 percent, from an average of 62.4 days in 2014 to 37.2 days in 2017.40 Additionally, time from arrest or issuance of a complaint to initial release was reduced by 50 percent, from an average of 7.4 days in 2014 to 3.7 days in 2017.41

The shorter length of commitments to jail under criminal justice reform 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 2017.42 That has translated into more than 750,000 fewer jail beds over the course of a year.43

While opponents of criminal justice reform argued that criminal justice reform would result in a significant spike in crime, this has not happened. New criminal activity for defendants while on pretrial release remains low. In fact, defendants released pretrial “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.”44 The percentage of defendants arrested in 2014 and charged with a new indictable crime while awaiting trial was 12.7 percent, and 13.7 percent for those arrested in 2017, the first effective year of the CJRA.45 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 2017.46 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 2017.47 “[S]mall changes in outcome measures should be interpreted with caution and likely do not represent meaningful differences.”48

Of these new offenses, only a small percentage are classified as violent crimes. Violent crime fell over the almost three years since criminal justice reform was implemented.49 “Looking solely at defendants released pretrial in 2017, less than 3 percent were accused of committing a No Early Release Act (“NERA”) or Grave Act offense.”50 The average court appearance rate was more than 89 percent in both 2014 and 2017.51

That fewer people are incarcerated pretrial may have a positive impact on future recidivism rates because studies have shown that “similarly situated, low-risk individuals who are detained pretrial, even for short periods, are actually more likely to commit new crimes following
One 2013 study found that “[c]ompared to individuals released within 24 hours of arrest, low-risk defendants held 2-3 days were 17 percent more likely to commit another crime within two years. Detention periods of 4-7 days yielded a 35 percent increase in re-offense rates. And defendants held for 8-14 days were 51 percent more likely to recidivate than defendants who were detained less than 24 hours.” By allowing the release of low-risk defendants pretrial, criminal justice reform may also lead to a decrease in recidivism.

To conclude, criminal justice reform decreases the collateral consequences of pretrial incarceration not only for individuals in the criminal justice system, but for their families and communities. The increased release of people from jail pretrial, in turn, has not led to a significant increase in crime. Continued success of criminal justice reform thus benefits thousands of New Jersey residents without risking public safety.

**Summary of Final Recommendations of the Commission**

While criminal justice reform in New Jersey has been successful, there is always room for improvement.

The first improvement starts with the Commission itself. As noted, there are four vacancies on the Commission, which has made it difficult for members to have a quorum at meetings or obtain a majority to make critical decisions. The Commission recommends that these vacancies – one member from the General Assembly appointed by the Speaker of the General Assembly, two members recommended by the Senate President and appointed by the Governor, and one county or municipal law enforcement officer appointed by the Governor – be filled so that the Commission’s work to improve criminal justice reform continue unhindered.

Additionally, the Commission recommends that the Legislature and Governor find ways to increase the availability of services that can be referred by Pretrial Services to released individuals, specifically in the areas of mental health and addiction treatment. Many of these individuals would benefit from referrals to these services, particularly where it is alleged that mental health or addiction issues contributed to the offenses lodged against those individuals. Given the Executive, Legislative, and Judiciary branches’ commitment to providing resources for addiction and mental health issues through the creation of the drug court program, mental health diversion program, and other similar resources, it follows that similar services should be provided to released individuals at the inception of their cases.

In this vein, the Commission further recommends that a comprehensive list of all existing programs be assembled, and, where necessary, that there be an increase in the number of programs available. Pretrial personnel should be given the resources to monitor the participation of the individuals in these programs.

Finally, the New Jersey State Budget for 2020 includes a devoted special purpose appropriation for the Pretrial Services Program. The Commission recommends that future budgets continue to fully fund the Program.


3 N.J.S.A. 2A:162-26(g).


5 N.J.S.A. 2A:162-16(b).

6 Ibid.


13 Id. at 15.

14 Id. at 19.


16 Ibid.

17 Ibid.

18 Ibid.

20 Id. at 2.


23 2018 Annual Report, supra, at 6

24 Ibid.

25 Id. at 3.


29 “A detainee’s inability to work causes the loss of income and, potentially, the loss of employment and property.” Ibid. When a detainee is released, if they find new work, they are often paid less than their previous job. “[S]erving time reduces hourly wages for men by approximately 11%, annual employment by nine weeks, and annual earnings by 40%.” Ibid.

30 A recent study by George Mason University found that of the defendants in jail who were detained because they did not pay money bail, 56% were parents or guardians. Of those, 40.5% said pretrial detention would or already had changed their child’s living situation. Catherine S. Kimbrell and David B. Wilson, Money Bond Process Experiences and Perceptions, George Mason University, Department of Criminology, Law and Society (September 9, 2016), https://university.pretrial.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=4ce69b9e-36d1-328f-30e3-416ee82abdbf&forceDialog=0.

31 “[I]f a defendant is locked up, he is hindered in his ability to gather evidence, contact witnesses, or otherwise prepare his defense.” Barker v. Wingo, 407 U.S. 514, 532-33 (1972). Pretrial detention “leads to a 13% increase in the likelihood of being convicted, an effect largely explained by an increase in guilty pleas among defendants who otherwise would have been acquitted or had their charges dropped. Pretrial detention also leads to ... a 42% increase in the length of the incarceration sentence.” Megan T. Stevenson, Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes, 34 The Journal of Law, Economics, and Organization 511, 511 (Nov. 2018).
32 Because jails are traditionally planned for short-term detention, they frequently offer only basic healthcare services. Criminal Justice Policy Program, Moving Beyond Money: A Primer on Bail Reform, Harvard Law School (October 2016), http://cjpp.law.harvard.edu/assets/FINAL-Primer-on-Bail-Reform.pdf. Pretrial detainees who suffer from mental illness are especially vulnerable to lapsed medical care, with one study showing that “83% of jail inmates with mental illness did not receive mental health care after admission.” Ram Subramanian et al., Incarceration’s Front Door: The Misuse of Jails in America, Vera Inst. of Justice (February 2015) http://www.safetyandjusticechallenge.org/wp-content/uploads/2015/01/incarcerations-front-door-report.pdf.


34 Baughman, supra, at 5.


36 Annie E. Casey Foundation, supra, at 4.


38 N.J.S.A. 2A:162-16(b).


40 Id. at 21.

41 Id. at 19-20.

42 Id. at 23.

43 Ibid.

44 Id. at 3.

45 Id. at 13.
46 Ibid.
47 Ibid.
48 Ibid.


50 2018 Annual Report, supra, at 14

51 Id. at 14.

52 Criminal Justice Policy Program, supra. See also Arpit Gupta, et al., The Heavy Costs of High Bail: Evidence from Judge Randomization 45 J. of Legal Stud. 471, 473 (2016) (finding that the imposition of money bail in Philadelphia and Pittsburgh led to a 6-9% yearly increase in recidivism).