

# Fiscal Year 2021 Revised Budget Proposal

## Questions for the Judiciary

1. Effective as of March 9, 2020, Executive Order No. 103 of 2020 proclaimed a public health emergency and a state of emergency in response to the outbreak of the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), which causes coronavirus disease (COVID-19). The Executive Order empowered the Superintendent of State Police, in conjunction with the Commissioner of Health, to take any emergency measures deemed necessary to protect the health, safety, and welfare of State residents after the arrival of SARS-CoV-2 in New Jersey. The Executive Order further directed all departments to take appropriate actions to address the public health hazard caused by the virus and empowered each department to promulgate temporary rules to waive, suspend, or modify during the emergency any existing rules whose enforcement would be detrimental to the public welfare.

- **Questions:** What actions has the Judiciary taken to respond to the SARS-CoV-2 public health threat? What was the cost of each action in FY 2020 and what would be its cost if the action were to be maintained in all of FY 2021?

**Response:** Starting in February 2020, the Judiciary began preparing for the potential arrival of SARS-CoV-2 in New Jersey, including by communicating regularly with the New Jersey Department of Health. Early public notices issued by the Chief Justice and Administrative Director suspended large gatherings, including jury selection and high-volume court calendars.

The Supreme Court's March 27, 2020 first omnibus order provided detailed guidance on court operations and legal practice during the COVID-19 emergency. That order suspended certain proceedings, extended deadlines, tolled time periods, and allowed for remote depositions and electronic signatures. The Court also authorized new options for electronic filing through the Judiciary Electronic Document Submission (JEDS) system, which enables attorneys and self-represented litigants to e-file documents and pay court fees.

The Supreme Court affirmed its commitment to remote operations in its April 20, 2020 order, which permitted remote proceedings by video and phone in most cases. The Judiciary provided further guidance in Directive #12-20, which also addressed public access to court events, including the option of free electronic recordings of remote proceedings. The Court, on May 14, 2020, authorized a pilot program for remote grand juries, which began operations in Bergen and Mercer Counties and expanded to grand jury.

Although the courts continue to follow a "remote first" approach to operations, the Judiciary has implemented substantial modifications and enhancements to support the health and safety of court users who appear for in-person matters. The Judiciary procured plexiglass barriers at a total cost \$754,874.52. CDC-compliant face masks and clear plastic face shields also have been distributed. In addition, vicinages have purchased hand sanitizer, gloves, and disposable masks.

As of mid-September 2020, the New Jersey Courts have conducted more than 75,000 virtual courtroom sessions involving more than 750,000 participants across multiple platforms. At

the same time, the courts have consistently remained open and available to hear emergent matters, and are supporting necessary non-emergent in-person court events.

2. The COVID-19 pandemic resulted in the closure of all New Jersey courts. Most cases were placed on hold and deadlines for making various court filings were extended. Only a small number of in-person proceedings are being held and some cases are conducted remotely. On July 22, the Judiciary announced plans to incrementally resume jury trials in September. The Judiciary further announced that it plans to conduct jury selection through a hybrid process done both virtually and in-person.

- **Questions: What is the plan for gradually reopening courts? Please detail the plans for conducting jury selection through a hybrid process done both virtually and in-person.**

**Response:** The courts were never closed during the COVID-19 pandemic. While some court buildings were closed at the start of the COVID-19 pandemic, courts continued to operate and provide critical services. New jury trials, however, were suspended by the Supreme Court in mid-March 2020. The Supreme Court's July 22, 2020 order announced a plan for the incremental resumption of a limited number of jury trials. The Judiciary will prioritize criminal trials involving detained defendants while also expanding to support civil jury trials.

Trials will be conducted in a hybrid format, beginning with a primarily virtual jury selection process followed by limited in-person jury selection and socially distanced in-person jury trials. After qualifying, jurors answer preliminary questions about their capacity to participate in virtual sessions. The Judiciary provides devices with broadband capacity to any jurors that need them as well as technical support. The first jurors will report for virtual selection in Bergen County on September 21, 2020, Atlantic County on September 28, 2020, and Cumberland County on October 5, 2020.

The Judiciary has established a Working Group on COVID-19 Jury Operations, which includes representatives of stakeholder organizations, including the Office of the Attorney General, the Office of the Public Defender, the New Jersey State Bar Association, the County Prosecutors Association of New Jersey, the Association of Criminal Defense Lawyers of New Jersey, the New Jersey Association for Justice, the Garden State Bar Association, the Hispanic Bar Association, the American Civil Liberties Union, and private attorneys.

- **What was the total backlog of cases in early March and what is it now? What is the plan to work through the extra COVID-19 case backlog? What increased costs does the Judiciary anticipate with the clearing of this extra backlog?**

**Response:** On February 29, 2020, 31,562 trial court cases and 285,432 municipal court cases were in backlog. On August 31, 2020, 74,034 trial court cases and 741,071 municipal court cases were in backlog. The number of trial court cases in backlog grew by 42,472, which was an increase of 135 percent during the six-month period. The number of municipal court cases in backlog grew by 455,639, which was an increase of 160 percent during the six-month period.

The Judiciary is developing a three-year plan for backlog reduction. Because backlog continues to grow each month that the COVID-19 pandemic continues, the extent of the backlog reduction needed is not clear yet. However, an essential solution for the backlog reduction is filling judge vacancies. On September 1, 2020, the number of vacancies grew

to 66 judge positions. New judges are critical to stem the continued growth of backlog and drive the backlog reduction process.

- **How many defendants are currently in jail pretrial? Of that number, how many have been indicted? How many civil litigants are currently awaiting trial?**

**Response:** On September 8, 2020, 5,316 criminal defendants were being held pretrial. More than 53 percent (2,839 inmates) had been indicted.

On September 5, 2020, 93,903 civil cases were pending. Almost 10 percent (9,082 cases) had received their first trial notices and are awaiting trial.

- **How has the multi-month closure of courts affected the amount of court filings fees collected by the Judiciary? Is there a measurable increase in filings fees that can be associated with the gradual resuming of proceedings, both in-person and remotely? How does any decrease in court filing fees affect the operations of the courts?**

**Response:** The New Jersey Courts never closed. The courts have continued to accept filings during the entirety of the pandemic. The Judiciary's technology and infrastructure upgrades permitted attorneys and other court users to file documents and pay court fees without interruption. In addition to eCourts, in April 2020, the Judiciary implemented an electronic document submission application (JEDS) that has allowed all users to file with the courts and pay filing fees. As of September 14, 2020, JEDS has processed more than 122,750 court transactions and collected more than \$5 million in revenue.

Court filing fee revenue has declined by approximately 5 percent each year since 2014. For FY 2020, the Judiciary collected \$124.3 million in court filing fees, representing a 17.9 percent decrease from FY 2019, during which the Judiciary collected \$151.3 million in court filing fees. Overall, court filing fee revenue for FY 2021 continues to decline. Filing fee collection is \$8.5 million for FY 2021 to date. This represents a 26 percent decrease in filing fee revenue as compared to the \$11.5 million collected in FY 2020 during the same time period.

All court filing fee revenue is allocated to the General Treasury. The Judiciary's operational costs are funded through annual budgetary appropriations. The reduction in filing fees, thus, is not expected to affect court operations.

3. In response to the COVID-19 pandemic, the New Jersey Supreme Court relaxed certain court rules on March 16, 2020 until further notice to permit persons to plead guilty by mail to certain offenses. On April 27, 2020, approximately 400 minor offenses were added to the Statewide Violations Bureau Schedule — including traffic, parking and other violations, such as Fish and Game matters — for which defendants can plead guilty and pay fines online without having to go to court.

- **Questions: How have these new options affected the number of municipal matters being resolved by mail and what cost savings have been realized as a result? Has the collection of municipal fines improved because of these new procedures? If yes, please provide a breakdown of fines by offenses. Does the Judiciary intend to retain the expanded use of guilty pleas by mail after the COVID-19 pandemic?**

**Response:** The Statewide Violations Bureau Schedule lists offenses where a defendant can elect to plead guilty and not appear in court. Matters on the schedule are not serious, the statutory penalty is typically a fine, and the statute does not create a graduated penalty for first versus second-or-third time offenders. No data is presently available to determine the number of defendants who have taken advantage of these new additions to the schedule or the financial impact.

By order dated March 16, the Supreme Court relaxed the Court Rules to remove the “undue hardship” provisions in Rules 7:6-3 and 7:12-3. The provision required a defendant to prove that personally appearing in court posed a significant hardship. By removing the provision, the Court made it easier for defendants to resolve their matter by allowing them to plead guilty or not guilty on a form promulgated by the Administrative Director of the Courts without having to appear in court. At present, there is no data available to determine the number of defendants who have used the plea by mail form during the pandemic or the financial impact. The rule relaxation will remain in effect until further order of the Supreme Court.

4. The COVID-19 pandemic and its economic consequences have increased the demand for legal assistance in areas such as evictions, unemployment insurance claims, and domestic violence.

- **Question: Has the Judiciary considered working with the New Jersey State Bar Association to encourage law firms and licensed attorneys to assist in pro bono representation in these matters, or other ways to meet the increased demand for representation in legal aid matters?**

**Response:** Yes. The Judiciary is currently exploring options with the New Jersey State Bar Association and other members of the bar to assist in pro bono representation of tenants in residential landlord/tenant matters. The Judiciary has unsuccessfully explored options with the New Jersey State Bar Association regarding pro bono representation of domestic violence litigants and child support obligors incarcerated for non-payment of child support. Various domestic violence advocates as well as Rutgers University School of Law provide pro bono legal services to domestic violence victims.

5. P.L.2019, c.269 expands criminal record expungement eligibility and simplifies related procedures effective in June 2020. Some reforms focus on the treatment of various marijuana or hashish possession, distribution, and drug paraphernalia crimes and offenses, while others apply more generally to any expungement. Notably, the law establishes a new “clean slate” process to clear a person’s entire criminal history, initially by expungement petition and later replaced by an automated “clean slate” process. A task force is to examine, evaluate, and make recommendations regarding the development and implementation of the automated process.

The law further requires the Administrative Office of the Courts (AOC) to develop an expungement e-filing system that also provides for electronic process and document management. The AOC had responded to an FY 2020 OLS Discussion Point that it was already developing an expungement e-filing solution, which would simplify the expungement process and enable the AOC to handle high volumes of expungement petition filings.

According to the AOC’s reply to an FY 2020 OLS Discussion Point, some 9,222 expungement petitions were filed in FY 2017 and 11,707 such petitions were filed in FY 2018. The AOC expected a further increase in the number of petitions for FY 2019 because, effective on October 1, 2018,

P.L.2017, c.244 expanded the categories of convictions that qualify individuals for the expungement of their criminal records and facilitated the expungement of criminal records.

- **Questions:** Please provide the number of expungement petitions filed in each of FY 2019 and FY 2020 as well as the number of petitions anticipated to be filed in FY 2021. How many additional petitions does the AOC project receiving in FY 2021 because of each of P.L.2017, c.244 and P.L.2019, c.269? Will the number decline in subsequent years? How does the Judiciary plan to deal with the increased caseload before the expungement e-filing solution will be placed in service and what will be the associated expenditures?

**Response:** In FY 2019, 16,007 expungement petitions were filed. In FY 2020, 13,351 expungement petitions were filed. The Judiciary believes the current decrease in FY 2020 is due to the COVID-19 pandemic. The Judiciary anticipates the number of expungement filings will increase in the coming years due, in part, to the legislative changes. E-filing will be available in December 2020, as required by P.L.2019, c.269, and should assist in managing the increased caseload.

- **Please provide a status update on the work of the task force that is charged with making recommendations regarding the development and implementation of the “clean slate” process”. Will the “clean slate” process be in place by the statutory effective date?**

**Response:** P.L.2019, c.269 established a task force and provides that the Department of Law and Public Safety in the Attorney General’s Office shall provide the stenographic, clerical, administrative assistants, and professional staff that the task force requires. To date, the Judiciary has not been made aware of any appointments to the task force or meetings of the task force.

P.L.2019, c.269 provides that “clean slate” expungement provision took effect on June 15, 2020. The Judiciary continues to accept filings for all expungement types.

On August 14, 2020, the Governor signed Executive Order 178. Paragraph one of EO 178 provides that “[t]he statutory deadlines, including statutory effective dates, identified in the Appendix to this Order are hereby extended by the amount of time identified in the Appendix.” The Appendix to EO 178 provides, in part, that “[t]he affected statutory provision, with an effective date of June 15, 2020, amends the State’s laws concerning expungement eligibility and procedures. This extension will extend the effective date until February 15, 2021,” and refers to section 2 (amending N.J.S.A. 2C:52-2 expungement of indictable offenses), section 3 (amending N.J.S.A. 2C:52-3 expungement of disorderly persons and petty disorderly persons offenses), section 5 (creating a new expungement law regarding marijuana offenses), and section 7 (creating a new “clean slate” expungement law) of P.L.2019, c.269.

P.L.2019, c.269 also requires the Administrative Office of the Courts (AOC) to develop and maintain a system for petitioners to electronically file expungement applications no later than December 1, 2020. The AOC is on target to meet this deadline.

- **What is the expected development cost of the expungement e-filing solution? How will the cost be paid for? By what date is the solution expected to become operational? Will the AOC own the solution or will it pay a vendor for the use thereof? If applicable, what is the anticipated cost of maintaining and periodically updating the solution? If applicable,**

**what is the amount of the annual fee the AOC will pay the vendor for the use of the solution and what is the term of the contract?**

**Response:** The Judiciary internally developed an electronic expungement filing system to interact with existing case management systems, handle orders, and address removal of court data associated with an expungement order where necessary. The Judiciary will maintain this application using existing funding.

The first phase of the electronic expungement filing system was implemented in the spring of 2020 for Drug Court. The second phase was implemented in September 2020. The final phase will be implemented in December 2020, in accordance with P.L.2019, c.269.

- **How does the Judiciary intend to fund the initiatives required by P.L.2019, c.269? Where are the expenditures budgeted in the Governor's FY 2021 Revised Budget Proposal? Does the AOC anticipate the need for increased appropriations?**

**Response:** The proposed budget for FY 2021 provides the Judiciary with sufficient funding to maintain and make necessary enhancements required by P.L.2019, c.269.

6. During last year's testimony before the Senate Budget and Appropriations Committee and the Assembly Budget Committee, the Acting Administrative Director of the Courts warned that annual Pretrial Services Program expenditures were exceeding dedicated program revenues and that available reserves in the program account would be depleted by the end of FY 2020. Specifically, in its reply to an FY 2020 OLS Discussion Point, the AOC projected a FY 2020 deficit of \$16.7 million and a year-end FY 2020 balance of negative \$1.2 million. To mitigate the financial imbalance, the Judiciary requested that the Pretrial Services Program be funded out of the General Fund rather than the dedicated 21<sup>st</sup> Century Justice Improvement Fund, which receives its balances from increased court filing fees imposed under P.L.2014, c.31. Doing so would effectively transfer the cost of employee fringe benefits (an estimated \$11.1 million in FY 2020) from the dedicated Pretrial Services Program account to Interdepartmental Accounts. In addition, the Judiciary sought an FY 2020 appropriation of \$25.9 million to eliminate the projected deficit in the program account. The FY 2020 Appropriations Act then switched the funding source for the program to the General Fund but retained the funding level at the \$22.0 million stipulated in P.L.2014, c.31. The Governor's FY 2021 Revised Budget Proposal maintains the recommended appropriation at that level. In June 2020, the Office of Management and Budget deappropriated \$22.0 million of the \$22.2 million in previously accrued balances in the program's dedicated account.

- **Questions: Please provide an update on the financial outlook of the Pretrial Services Program. Does the AOC estimate that the program has sufficient resources in FY 2021 to operate without imposing restrictions? If FY 2021 program expenditures are anticipated to exceed \$22.0 million, please detail the additional funding sources that will be used to avert a deficit in the program account.**

**Response:** As a result of legislative action, effective July 1, 2019, the Pretrial Services Program is now funded from the direct state services budget. This removed the program's dependency on variable filing fees and provided an annual \$22 million state funded appropriation. Effective July 2019, revenues collected from filing fees associated with the Pretrial Services Program now go to the State Treasury instead of the former Criminal Justice Reform dedicated account.

The Judiciary does not anticipate any program deficit in FY 2021 and will have sufficient resources to operate. For FY 2021 the Judiciary requested carryforward language from Treasury for the program. In the event that there are surplus balances at the end of a fiscal year, this would permit the use of those balances in the next year to help offset ongoing program costs. The Judiciary has not received a response to this request.

- **For FY 2021, please project for each of the General Fund and the dedicated account of the Pretrial Services Program: the account balance at the beginning of the fiscal year, program expenditures, program revenues, and the year-end closing balance. Please update the projection of the fiscal year in which program expenditures will exceed available resources. Please provide a breakout of budgeted FY 2021 program expenditures and the number, by title, of funded and filled positions**

**Response:** Beginning July 1, 2020, there are no balances in the Pretrial Services Program (PSP) dedicated account because the program was moved from a dedicated fund to a direct state services appropriation at the beginning of FY 2020 and the fund balance of approximately \$22 million was returned to Treasury during FY 2020. Chart 1 below represents the Judiciary’s actuals for FY 2020 and a forecast of the FY 2021 PSP.

<b>The Judiciary</b>			<b>CHART 1</b>
<b>Criminal Justice Reform : Pretrial Services Program (PSP)</b>			
	<b>Actual</b>	<b>Estimated</b>	
	<b>FY20</b>	<b>FY21</b>	
<b>Resources:</b>			
Direct State Funded Appropriation - permanent (begin FY20)	22,000,000	22,000,000	
<b>Total Resources</b>	<b>22,000,000</b>	<b>22,000,000</b>	
<b>Expenses:</b>			
Salaries	16,809,161	18,475,749	
Total OE	1,164,500	1,649,500	
<b>Total Expenses</b>	<b>17,973,661</b>	<b>20,125,249</b>	
<b>Budget Reserve</b>	<b>(4,853,300)</b>	<b>-</b>	
<b>New Fiscal Year Activity</b>	<b>(826,961)</b>	<b>1,874,751</b>	
( ) = deficit			
<b><i>The PSP program was moved to a permanent sustainable Direct State Service Appropriation for FY 2020.</i></b>			

The Administrative Director of the Courts has authorized up to 323 positions statewide for the program as of September 2020, including managers, court officers, investigators, and clerical personnel. Currently, 297 PSP positions are filled (see chart below).

PRETRIAL SERVICES – AS OF PP# 17/20

	<u>TARGET</u>	<u>FILLED</u>	<u>VARIANCE</u>
VICINAGES	308	282	(26)
AOC	15	15	0
<b>TOTAL</b>	<b>323</b>	<b>297</b>	<b>(26)</b>

- **Did the Judiciary implement cost-saving measures in the Pretrial Services Program in FY 2020 to reduce the imbalance between annual program revenues and expenditures? Does the Judiciary intend to implement cost-saving measures in FY 2021? Generally, please explain how the Judiciary plans to align program expenditures with program revenues once account reserves will be exhausted**

**Response:** With the implementation of a hiring freeze, the close monitoring of staffing levels, and cost-cutting measures in the areas of contractors, drug testing, and electronic monitoring, the Judiciary does not anticipate any imbalance between the direct state appropriation and expenditures for FY 2021.

- **Has the Judiciary identified additional resources it could deploy to provide greater access to services for those on pretrial release?**

**Response:** The Criminal Justice Reform legislation set forth conditions of pretrial release that a court can order when placing a defendant on pretrial monitoring. These conditions may include requiring a defendant to undergo medical, psychological, or drug and alcohol treatment; obtain and/or maintain employment; and obtain or maintain attendance in an educational program. Pretrial Services Program (PSP) staff have found that even when pretrial defendants are not ordered by the court to submit to treatment or other services as a condition of their pretrial release, defendants request voluntary placement assistance.

To address these needs, PSP staff in each county maintain lists of local community resources. However, the needs of pretrial defendants are not being met due to a lack of available services. PSP staff also have difficulty locating programs or services that are affordable to pretrial defendants, as many programs charge for their services and rarely waive fees. When a county or state funded program does exist, it often takes months for space to become available. Lack of available and affordable services is a significant, ongoing challenge that will continue unless and until additional funding and resources are provided.

7. The Judiciary’s 2018 Annual Report on Criminal Justice Reform identified the assessment of the risks posed by defendants charged with domestic violence offenses as an area for improvement within the context of pretrial detention decisions.

- **Question: Please provide an update as to the steps the Judiciary has taken to improve the assessment of the risks posed by defendants charged with domestic violence offenses within the context of pretrial detention decisions**

**Response:** The Judiciary entered a research partnership with Crime Lab New York, of the University of Chicago. Crime Lab researchers were provided with the Judiciary’s domestic



violence (DV) data to analyze how we can more accurately capture the risks posed by defendants charged with DV offenses.

In parallel with Crime Lab's research and analysis, the Administrative Director of the Courts established the DV Risk Assessment Working Group. The Working Group includes members from all three branches of government and relevant stakeholders, including the Attorney General's Office, the Public Defender's Office, County Prosecutors, Chiefs of Police, the Coalition to End Domestic Violence, and the Partners for Women and Justice.

In addition, the Judiciary identified internal processes for immediate improvement based on stakeholder feedback. The Administrative Director of the Courts issued two Judiciary policies to enhance communication between (1) the Criminal and Family Divisions, and (2) the Criminal Division and law enforcement. The first policy enhancement requires that prior to altering a condition to avoid contact with a victim, the court must run a report to identify any other pending DV litigation and notify the courts of the intent to alter the "no contact" condition. To facilitate this, the Judiciary has leveraged its unified information system to create new automated reports capable of instantly returning all relevant ongoing cases and criminal history. The second policy enhancement updates the Judiciary's electronic pretrial release order system to allow staff to confidentially enter victim information and automatically transmit the release order with confidential victim information to the DV Central Registry. This provides law enforcement with quick access to any pretrial release orders containing a no contact condition.

8. The Governor recommends maintaining the FY 2021 appropriation for the drug court program at \$64.1 million. Specialized drug courts target nonviolent criminal defendants and offenders who have alcohol and other drug dependency problems. The drug court judge heads a team of court staff, attorneys, probation officers, substance abuse evaluators and treatment professionals who work together to support and monitor a participant's recovery.

- **Questions: How has the COVID-19 pandemic affected the operations of drug courts? Have there been any new admissions to the program since the outbreak of the COVID-19 pandemic in March? How does the number of admissions since March of this year compare to the number of admissions during the same period in calendar year 2019? What is the program's current enrollment? How has the monitoring of drug court participants' adherence to the conditions of the program changed during the COVID-19 pandemic? What has been the impact of the COVID-19 pandemic on the expenditures of the drug court program?**

**Response:** Drug Court has continued to operate during the pandemic. Across the state, Drug Court sessions have been regularly held remotely using various video meeting technology platforms. Probation officers have continued testing clients. Clients have continued to advance through the phases of the program, graduate, and receive expungements upon successful completion of the program.

Admissions to Drug Court have continued during the pandemic. Between March and August 2019 Drug Court admitted 1,027 new participants. Between March and August 2020, Drug Court admitted 420 new participants.

As of August 7, 2020, Drug Court has 6,154 active participants.

Drug Court participants continue to be monitored for compliance through virtual office visits. Probation officers continue to conduct field visits with clients in the community and report on compliance, while adhering to social distancing protocols. All treatment programs continue to operate and drug court clients continue to receive referrals to services.

Due to the pandemic, Drug Court has reduced drug testing, modified the type of drug testing performed to eliminate potential COVID-19 exposure, and temporarily postponed education for staff. The reduced drug testing has focused on participants who are in the earlier phases in the program and, thus, at the greatest risk of relapse. These changes did not have a notable impact on statewide FY2020 Drug Court expenditures.

9. P.L.2019, c.120 extended the statute of limitations in civil actions for sexual abuse claims and created a two-year window for parties to bring previously time-barred actions based on sexual abuse. The bill also expanded the categories of potential defendants in civil actions, and for some actions permitted retroactive application of standards of liability to past acts of abuse for which liability did not previously exist. The provisions of this act took effect on December 1, 2019.

- **Questions:** Please provide the number of civil actions for sexual abuse that has been filed under P.L.2019, c.120. How does the number compare to the typical number of such filings before P.L.2019, c.120 took effect? How many civil actions have been filed against the State, municipal government entities, and school districts? To date, how many civil actions have been filed under the two-year window for parties to bring previously time-barred actions based on sexual abuse? Please detail any increase in operating expenditures the Judiciary has incurred, or anticipates incurring in FY 2021, as a result of P.L.2019, c.120. If the enactment resulted in additional civil actions being filed, has there been an associated increase in court filing fees?

**Response:** The Judiciary did not specifically track these filings before P.L.2019, c.120 took effect; thus, comparison data regarding this cause of action and filing fees collected is not available.

Thus far, 4 actions have been filed against the State, 2 have been filed against municipal government entities, and 26 have been filed against school districts. There were 285 actions filed from December 1, 2019 (the effective date of P.L.2019, c.120) through August 31, 2020.

The Judiciary has not incurred and does not anticipate incurring increased operating expenditures in FY 2021 as a result of P.L.2019, c.120.

10. A number of bills based on recommendations made by the New Jersey Criminal Sentencing and Disposition Commission are currently moving through the Legislature. Several of the bills would call for modification of sentences (Senate Bills Nos. 2591, 2593, and S.2594).

- **Questions:** What anticipatory steps has the Judiciary taken to prepare for the implementation of these bills? What is the Judiciary's plan for handling the additional caseload that these bills will cause?

**Response:**

S2591 - Provides for resentencing of certain inmates.

This bill, as amended, would implement Recommendation 6 from the first annual report of the New Jersey Criminal Sentencing and Disposition Commission to provide a process for

the resentencing of any inmate who, either prior to or subsequent to the bill's immediate effective date, (1) committed a crime as a juvenile and was tried as an adult, (2) received an aggregate sentence of incarceration of 30 years or more, and (3) has served at least 20 years of that sentence. The Commissioner of Corrections would be required to issue a Certificate of Eligibility for Resentencing. The Public Defender would represent an eligible inmate. At the resentencing hearing, the court would determine whether the offense for which the inmate was convicted was the result of mitigating qualities of youth by consideration of several factors in the bill as a non-exhaustive list to guide the court's decision.

It is not possible to determine the impact of S2591 on the Judiciary until the Department of Corrections (DOC) provides a list of inmates that are potentially eligible. In addition, only minimal anticipatory action can be taken by the Judiciary because there is no way of determining when the prosecutor will object; thus, impacting the Judiciary's resources and caseload.

S2593 - Permits retroactive modification of judgements of conviction, including rescinding mandatory minimum periods of parole ineligibility and reducing fixed minimum terms of imprisonment for certain offenses.

This bill, among other things, authorizes the Supreme Court to issue an order to retroactively rescind the mandatory minimum period of parole ineligibility of inmates who committed certain offenses prior to, and who are in the custody of the Department of Corrections on, the effective date of the bill. The bill authorizes the courts to retroactively modify the judgments of convictions made prior to the bill's enactment to resentence an inmate.

Under S2593, the Judiciary and DOC will work together to identify the potential universe of eligible inmates in order to determine the extent of the retroactive impact. However, prosecutors are authorized to object, which then requires a hearing. As such, the court cannot take any action until the time period to file an objection has expired.

S2594 - Establishes compassionate release program for certain inmates; repeals law that establishes medical parole.

Under the bill, a court may release an inmate who qualifies for compassionate release at any time if the inmate is found to be suffering from: 1) a grave medical condition; 2) a terminal condition, disease or syndrome; or 3) a permanent physical incapacity. The bill provides that the DOC is to establish a process for an inmate to obtain a diagnosis from two licensed physicians to determine whether he or she is eligible for compassionate release. If the inmate is diagnosed with a grave medical condition, the inmate's attorney or public defender may initiate the process of petitioning for compassionate release. If the inmate is diagnosed with a terminal condition, disease or syndrome, or permanent physical incapacity, the DOC must provide the inmate and the inmate's attorney or public defender with a certificate of eligibility for compassionate release. The inmate may then petition the Superior Court for compassionate release based on the certificate of eligibility.

It is not possible to determine the impact of the S2594 on the Judiciary until DOC provides a list of inmates that are eligible. The Judiciary cannot take any anticipatory action because prosecutors have time to object and victims can also request to testify, which requires a hearing to be held. As such, the court cannot take any action on the petition until the time period to file an objection has expired.

11. P.L.2018, c.35, known as the Extreme Risk Protective Order Act of 2018 that came into effect in September of 2019, authorizes New Jersey courts to issue gun violence protective orders against individuals who pose a significant risk of personal injury to themselves or others by possessing or owning a firearm. The protective orders prohibit the person whom the order is filed against from securing or possessing any permit or license allowing firearm possession during the protective-order period. It is a fourth-degree crime for a person to purposely or knowingly violate any provision of an extreme risk protective order. The law also requires the Judiciary to create and maintain an electronic central registry of all persons who have had an extreme risk protective order entered against them, and all persons who have been charged with a violation of a temporary or final extreme risk protective order.

- **Questions:** Please provide a status update on the electronic central registry that the Extreme Risk Protective Order Act of 2018 requires the Judiciary to create. What costs has the Judiciary incurred to date to create and maintain the electronic central registry? To date, how many persons have had an extreme risk protective order entered against them? To date, how many persons have been charged with, and convicted of, a violation of a temporary or final extreme risk protective order?

**Response:** The Judiciary implemented an electronic central registry in September 2019, as required by the Extreme Risk Protective Order (ERPO) Act of 2018. The Judiciary built the system within existing platforms and licenses, funded within existing dedicated allotments. Enhancements, maintenance, and future modifications will also be internally funded.

Over the past year, 432 ERPO petitions have been processed. Since September 1, 2019, 168 final ERPOs have been granted. To date, law enforcement has not charged anyone with a violation; therefore, there have been no convictions.

12. The “New Jersey Foreclosure Mediation Act,” P.L.2019, c.64, went into effect Nov. 1, 2019. The enactment created two new State revenue streams to support the Foreclosure Mediation Program: a \$155 fee that a plaintiff must pay when filing a foreclosure complaint and civil penalties of up to \$1,000 for the failure to attend a foreclosure mediation session.

- **Questions:** How many foreclosure complaints have been filed since Nov. 1, 2019? What fee revenues were collected in FY 2020 and are estimated to be collected in FY 2021? What increases is the Judiciary expecting in the number of foreclosure filings and requests for foreclosure mediation as a result of the COVID-19 pandemic?

**Response:** Between November 1, 2019 and September 13, 2020, 13,277 new foreclosure complaints were filed.

The Judiciary anticipates that new foreclosure complaints for calendar year 2020 will be 50 percent less than calendar year 2019, due to the federal and state COVID-19 moratoriums.

The foreclosure complaint filing fee was increased in 2019 to provide revenue to fund foreclosure mediation. In FY 2020, \$1,629,360 in filing fees were collected and allocated to the Foreclosure Mediation Fund. It is anticipated that filings and the associated revenue for mediation will continue to decline in FY 2021. The Judiciary has continued to accept foreclosure filings during the entirety of the pandemic. However, it is unlikely that foreclosure complaint filings will return to normal levels until FY 2022.

Mediation is available to residential homeowners where a foreclosure complaint has been filed and the homeowner has not filed for bankruptcy. Approximately 2,200 matters participated in mediation for calendar year 2019; to date in calendar year 2020, 1,027 matters have participated in mediation. This is consistent with the decrease in the number of complaints filed. The availability of mediation services has remained unchanged during the pandemic. The Judiciary continues to leverage technology to conduct foreclosure court events, including mediation, and is prepared to respond to the expected increased number of requests for mediation.

### **General Questions**

13. How much federal COVID-19 relief funding has the Judiciary received since March 2020? Of those new funds, how much has been expended? Please provide a breakdown of Judiciary accounts that have received the federal funding and the amount each account received.

**Response:** To date, the Judiciary has submitted \$1.989 million to the New Jersey Office of Emergency Management (NJOEM) for reimbursement. Additional expenses are being incurred and will be submitted in the near future. FEMA has not yet made a determination on the Judiciary's initial request; therefore, the Judiciary has not received any federal funding.

14. Please identify any new Judiciary program, service and activity funded by non-recurring federal coronavirus pandemic assistance.

**Response:** There are no new Judiciary programs that are currently being funded by federal pandemic assistance.

15. Please identify and quantify all shifts of costs of existing Judiciary programs, services and activities to non-recurring federal coronavirus pandemic assistance.

**Response:** There has been no shifting of costs from existing Judiciary programs to non-recurring federal accounts.

16. How is the Judiciary adjusting its operations, training, and programming to eliminate racial disparities and biases in its operations and outcomes?

**Response:** The New Jersey Judiciary's guiding mission and vision has always been and remains rooted in fairness for all. The Judiciary regularly reviews, retools, and expands its operations, training, and programming to improve outcomes for court users and address institutional inequities. Confronting institutional racism and identifying bias has been chief among the areas of focus.

The Supreme Court reiterated this institutional commitment on June 5, 2020, by issuing a public [statement](#) on the elimination of barriers to equal justice. The Court then issued an [Action Plan](#) for Equal Justice. The Plan outlines a series of initiatives that the Judiciary will seek to accomplish within a year. These initiatives include, but are not limited to:

- Addressing pervasive disparities by supporting juror impartiality;
- Supporting juvenile rehabilitation;
- Requiring anti-bias continuing legal education (CLE);

- Improving opportunities for all persons to access expungement resources;
- Broadening language access resources; and
- Reexamining access to misused court records.

The Judiciary has begun implementation on many of these critical initiatives, despite the challenges presented by the pandemic.

In addition, the Supreme Court, through its Committee on Judicial Education and its Judicial Education Unit, continues its long history of reviewing and adjusting its core judicial education curriculum to meet the needs of the judges and the communities they serve. Every component of judicial training includes content on implicit bias, racism, and how these issues impact judicial decision making and case outcomes. Last fall, the Judiciary greatly expanded its training by including new mandatory statewide training on gender violence and bias for every judge at every level. Now, Judicial Education is engaged in deepening judicial understanding of the endemic nature of racism and the generational trauma it creates in the justice system.

The Judiciary's staff training efforts in 2020 will similarly focus on the elimination of bias and discrimination. The Judiciary's hiring process is guided by recruitment protocols that ensure fair and equal treatment of all applicants with a focus on developing diverse applicant pools. The Equal Employment Opportunity Office works closely with recruitment units to review vacancy notices, interview questions, and applicant pool and interview lists to root out bias in all forms.