

**REMARKS BEFORE THE ASSEMBLY BUDGET COMMITTEE
BY JUDGE GLENN A. GRANT, ACTING
ADMINISTRATIVE DIRECTOR OF THE COURTS**

[Remarks as delivered]

Hearing Date: April 24, 2017

Good afternoon Chairman Schaer and other members of the Assembly Budget Committee.

With me today are Assignment Judges Yolanda Ciccone, Ronald Bookbinder, Peter Bariso Jr., Karen Cassidy, and Stuart Minkowitz, as well as the director of our Office of Management and Administrative Services, Shelley Webster, and the director of our Information Technology Office, Jack McCarthy.

We welcome this opportunity to appear before you today and update the Assembly on the continuing efforts of the state's judicial branch of government.

As always, on behalf of Chief Justice Stuart Rabner and the Justices of the Supreme Court, I want to publicly acknowledge the outstanding work of the judges in all of our courts – the Appellate Division, Superior Court, the Tax Court, and the Municipal Courts – and all of our Judiciary employees who make sure our court system operates efficiently, effectively, and independently. Their collective efforts reflect our strong commitment to the core values and principles that guide the New Jersey Judiciary. On a daily basis, they act as wise and prudent stewards of the public resources allocated to the operation of the courts.

Before I get too far into my remarks, I would like to thank the Legislature and the Governor for approving the legislation that soon will provide 20 additional judgeships to help handle the anticipated judicial needs resulting from the speedy trial aspect of Criminal Justice Reform. Even with the recent significant reduction in the number of judicial

vacancies, those 20 additional judgeships are essential to meeting the time frames set forth in the Criminal Justice Reform statute.

While Criminal Justice Reform has been a primary focus for the courts for much of the past year, I first would like to mention the major strides that the Judiciary continues to make in building on our eCourts framework. During the past year, we have expanded eCourts availability in the Criminal, Civil and Family Divisions, in the Tax Court, in the Appellate Division, and in the Supreme Court. In Civil, we have replaced the Judiciary Electronic Filing and Imaging System (“JEFIS”) that was used for Special Civil Part cases and Foreclosure cases. The Civil Law project will be operational within the next couple of months. There now is mandatory efilings in the Tax Court, and non-attorneys, such as Municipal Assessors, Municipal Clerks and County Boards of Taxation, can access the Tax Court electronic case jacket and receive notifications electronically when a new case or a judgment is created.

Additionally, work is underway for the various Family court dockets to convert to electronic case files, and the Appellate Division has expanded its eCourts application. We have continued with these improvements while at the same time devoting essentially our full attention to the most significant changes to the criminal justice system in generations.

Criminal Justice Reform. As you know, Criminal Justice Reform became a reality on January 1, 2017. This was an historic change built on the partnership of all three branches of government, law enforcement and the public. Together, we created a fairer justice system that includes comprehensive bail reform, preventive detention, a new pretrial services program to monitor defendants on pretrial release, and new speedy trial requirements. So far, the transition has been effective in reaching the Reform’s initial goals.

As should be expected, we have experienced some challenges during the first few months of implementation. However, when you consider that we have replaced a system that stood for more than 70 years, the transition has been remarkably smooth.

I would like to address the issues that some have raised in the first four months of Criminal Justice Reform.

Criminal Justice Reform represents a strong partnership among all three branches of government – with the foundation for this initiative established by the Joint Committee on Criminal Justice chaired by Chief Justice Rabner. Building on that foundation, legislation adopted by the Legislature and the Governor, and a constitutional amendment overwhelmingly approved by the voters have provided the framework for this reform. The shared goal of this set of reforms is a system in which decisions regarding pretrial detention and pretrial release are based on the risk that a defendant poses to the community and the likelihood that the defendant will or will not show up for court.

Before January 1, we had a pretrial release system predicated on access to money. Defendants were detained or released based upon their ability to make cash bail. Today, under Criminal Justice Reform, we have a pretrial release system that relies substantially on a scientifically validated objective risk assessment tool – the Public Safety Assessment or PSA. That tool that looks at the defendant's criminal history, along with current and pending charges, to determine the likelihood that a defendant will commit a new crime while out on release or will fail to appear in court on the scheduled date.

It is important to remember that no criminal justice release system can absolutely guarantee that every defendant released pretrial will obey the law or and will show up for court. The former system of cash bail certainly offered no such guarantee. Under that approach, virtually all defendants were entitled to bail, and defendants who were able to post bail, regardless of their risk either to reoffend or to fail to appear in court, were released back into the community with no monitoring whatsoever.

Under Criminal Justice Reform, we can remove money from the equation and instead have an honest and direct conversation about whether a defendant is a risk to the community. For the first time, prosecutors can now file motions seeking to have high-risk defendants held until trial. For the first time, judges can decide to release defendants for monitoring by a newly created pretrial services unit until trial. And, for the first time, low-risk defendants no longer have to linger in jail for months at a time because they cannot afford to post even modest amounts of bail.

I described the PSA as a proven risk assessment tool, one that examines objective factors and makes scientific recommendations regarding a defendant's risk level. However, even with the PSA recommendation in hand, our judges are still the ones that make the final decision about pretrial release. The difference is that now the judges have more objective data to consider when making their release decisions.

Data collection and analysis is critically important to this program. The development of enhanced data collection and reporting necessary to support and assess the program has been complicated by several factors. First, it was necessary to give first priority to the development of the interface between the PSA application and the new eCourts system. Second, we were unable to collect real data on the various aspects on the program until January 1 when the law came into effect. And, third, our method of counting criminal matters prior to January 1 was to count cases, not defendants, which is new to the system. However, at this point we have captured all of the various data points and are now engaged in a rigorous effort to clearly define the elements and ensure the accuracy and reliability of the information. We anticipate having some of this information in the next two weeks for this Committee's review.

While I am hesitant to draw definitive conclusions based on early statistics, on the one hand we have already seen a reduction in the State's overall jail population, while on the other, preventive detention

has been ordered for 1150 defendants, or about 50-55% of the pretrial detention motions that have been filed by prosecutors.

We are also now seeing the development of Criminal Justice Reform case law by both the Appellate Division and the Supreme Court. For example, a recent Appellate Division decision clarified that a judge in making the release or detain decision must consider not only the PSA recommendation, but also other relevant factors, such as a defendant's juvenile history. We expect the legal challenges will continue.

There are of course some valid and understandable concerns raised with respect to how the program operates in certain situations. We are still in the embryonic stages of the program and need to be careful in making any changes before the program has been fully implemented. We think that the hallmark of the program has to be that it is based on objective data. New Jersey's PSA is based on a national model and every jurisdiction that uses the model has some slight differences in how they categorize crimes. But the PSA is not a static instrument and we are already working with the Arnold Foundation to examine a number of categories that could result in refinements to the PSA, including: juvenile history, domestic violence, gun charges and re-arrest while on pretrial release. On Wednesday of this week, we will meeting with representatives of the Arnold Foundation, the Attorney General's Office, the Public Defender, and ACLU-NJ to examine these very issues.

There also are operational challenges ahead in the near future as well, with the time limits for the new Speedy Trial law just now kicking in for defendants detained pretrial under the new law. Under speedy trial, grand jury indictments must be returned or unsealed within 90 days of arrest and trials must start within 180 days after the return or unsealing of indictment. The speedy trial portion of the statute also sets out 13 categories of excludable time that do not count against the time limits.

Technology is playing a crucial role in this effort. We have developed a state of the art application to assist prosecutor, law enforcement, and the

judges in meeting the statutorily mandated timeframes for Criminal Justice Reform.

Sufficient funding, of course, remains an overriding concern. Right now, the Criminal Justice Reform funding stream relies entirely on the increases in filing fees that the Legislature authorized. Last year, though, filings were down and therefore, as might be expected, revenue from those fees dropped as well.

If these filing trends continue, we project that starting with FY 2019, the Pretrial Services Program will begin to experience an actual deficit, not just the structural deficit that we already are facing. In other words, we project that we will have exhausted all of the program's carryover balances from prior fiscal years and that the fee revenue will fall short, thereby leaving an unfunded negative balance.

In that regard, we continue to urge the Legislature to consider switching from the current fee-based funding structure and instead fund Criminal Justice Reform from regular state appropriations. Fees collected for the program would then be deposited directly into the State Treasury and the program would be funded through a budget appropriation.

Aside from our efforts involving Criminal Justice Reform and technology, the Judiciary has continued its decades-old collaboration and partnership with the other two branches of government in tackling some of the most intractable problems confronting our communities in New Jersey.

In the interest of time, I will highlight just one.

The Drug Court program continues to serve as a notable example of how partnership among the three branches of government can improve lives, can save lives. Mandatory drug court, created by the Legislature and the Governor, is now active in all but three vicinages, with those last three vicinages scheduled to start in July. The number of offenders mandated

to participate in the program has increased by 30 percent over the last year. Just as in years past, we continue to see much smaller re-arrest rates, reconviction rates and re-incarceration rates for adult drug court graduates as compared to adult offenders released from state prison.

We would like to express our appreciation to the Governor and the members of the Legislature for their continued support of New Jersey's courts. The New Jersey Judiciary is an extraordinary organization that performs an important role in helping to maintain an orderly and vibrant society. We do that by being a court system focused on the just resolution of disputes filed in our courts. Our ability to perform this important task is made possible through collaboration and partnership with the other two branches of government. This committee's assistance and support highlight that long history of collaboration and partnership.

With that, I thank you for your time today and I would be happy to answer any questions you may have.