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Assembly Committee on Judiciary
Public Hearing, AB 608, AB 609, AB 610
December 5, 2019

Thank you Chairman and members of the Committee for this opportunity to testify on AB 608 - relating to modification of bail in a criminal action, AB 609 – relating to pretrial detention, and AB 610 – relating to the use of pretrial risk assessments.

For me, the issue of bail and pre-trial release began last session when a constituent brought information to my attention regarding a sexual predator who molested his grandchildren. Though the individual admitted he committed the crime, he was allowed bail at $75,000 while he awaited his hearing, which he was able to post. With a school bus stop in close proximity to his home, this appalled many of the neighbors. I personally spoke to the ADA of Waukesha County, asking him how a person, who could be a danger to the community, could be allowed out on bail. Currently, this is a legislative issue which judges and court commissioners struggle with daily and one that I became passionate about.

The bills brought before you today help to address some of the problems judges and court commissioners face. They are the Assembly companions to the bi-partisan legislation that came out of the summer Study Committee on Bail and Conditions of Pretrial Release of which I had the privilege to be a part of. We heard from judges, court commissioners, public defenders, national experts, district attorneys, and members of the public about the problems they have faced in regards to bail and pre-trial release. From there, the study committee was able to generate four pieces of legislation, three of which are the bills before you today, and the other in the form of Assembly Joint Resolution 107. While AJR 107 is not a bill in this committee, please know the Resolution amends our state Constitution in order for changes to bail and pre-trial release to become a reality.

Each of these bills plays a pivotal role in reforming our bail and pre-trial detention system. While AB 608 and AB 609 will not take effect until an Amendment is passed, the study committee found it important to have legislation in place prior to the passage of an Amendment for a smooth transition and a clear understanding of what those changes would be.

Assembly Bill 608 relates to modification of bail in a criminal action. Currently, some individuals are stuck in jail even when bail is set low because he or she simply does not have the financial means to make bail. This bill would require a court to review the bail of a defendant if, after 72 hours, the defendant remains in custody due to his or her inability to meet the bail. The court must then review the bail every 7 days and give the reasoning requiring the continuation of bail unless the bail is adjusted and the defendant released. This bill would take effect only if an amendment to Article I, Section 8 (3), of the Wisconsin Constitution is ratified.

Assembly Bill 609 relates to pretrial detention and would have the biggest impact on giving the tools judges, court commissioners, and district attorneys need to keep violent offenders off the streets. The current pretrial detention procedure limits the ability of courts to detain individuals who may be a danger to the community. You may not be aware that Wisconsin already has a pretrial detention statute and that's because it is rarely used. Under current law, among the many other requirements for pretrial detention, a mini-trial must occur prior to detaining a person without bail, within 10 days of the initial appearance. Simply put, the current system doesn't work. Instead of using the existing statute, a judge resorts to setting bail at a limit that would assure appearance in court. This bill would give more flexibility to court commissioners to hold pretrial detention hearings and keep the community safe from those who may pose a danger by doing the following:

1) Specifies that court commissioners can conduct pretrial detention hearings;
2) Adds eligibility for pretrial detention to a person who is accused of committing any offense and if there is a serious risk that the person poses a danger of inflicting serious bodily harm to a member of the community, the person will intimidate a witness, or the person will not appear in court;
3) Allows a district attorney to request a pretrial detention hearing;
4) Provides the defendant the right to be represented by counsel at the pretrial detention hearing while also allowing evidence that would be admissible to be considered and presented when determining if the individual should be allowed release;
5) Gives greater flexibility to hold individuals if there is probable cause to believe that release would not adequately protect members of the community from serious bodily harm, prevent the intimidation of witnesses or assure appearance in court; and
6) Allows a defendant accused of a felony to be held for an additional period of time after a pretrial detention hearing not to exceed 90 days.

Commissioners and judges say over and over they are not to consider the dangerousness or violence of a defendant when deciding how much cash bail to set. Their hands are tied when it comes to holding individuals during pretrial detention. An update is needed to provide additional flexibility to hold individuals that does not rely on how much money someone has, but instead if the person poses a danger to the community. AB 609 does this.

Finally, Assembly Bill 610 allows for the use of a pretrial risk assessment when setting conditions for pretrial release. A pre-trial risk assessment is a tool courts use across the country to assess a person's likelihood of pretrial success or failure. Most assessments measure a person's likelihood of making their court appearance, as well as their likelihood of being arrested for new criminal activity. Risk factors included in most assessments are age, criminal history, past failures to appear in court, pending cases and current offense. Current state statute does not address the use of such an assessment. While many counties currently utilize pre-trial risk assessment tools, their use is not specifically authorized under statute. This bill would allow a court to utilize a risk assessment as an additional tool when considering bail or pretrial release conditions.

Thank you again for the opportunity to testify. It is my hope you will join me in supporting this legislation to give our court system the tools they need to keep our communities safe.

Representative Cindi Duchow

Van H. Wanggaard
Wisconsin State Senator

TESTIMONY ON ASSEMBLY BILLS 608, 609 AND 610

Thank you Chairman Ott for this hearing today on Assembly Bills 608, 609, and 610. These bills are important for the safety of Wisconsin citizens and are the product of the Joint Legislative Council Study Committee on Bail and Conditions of Pre-Trial Release.

One of the first things we learned in the Legislative Council Committee was that bail is the subject of great debate nationally right now. Balancing the need for the public's safety from dangerous criminals, making sure that people are not in jail needlessly for lack of paying bail, and using best practices to determine who should be released awaiting trial, has caused many states to evaluate at the pre-trial process. We also learned that Wisconsin's pre-trial detention system doesn't work. In fact, since it was put into place almost 40 years ago, the pre-trial detention statute hasn't been used to anyone's knowledge.

It is important for the committee to realize that although they are often used and viewed together, pretrial detention and bail are two different things. Pretrial detention is a procedure for detaining an accused person before trial, but is different than money bail set by a court. If a court sets money bail for a defendant, there's always a chance that the defendant can raise the money and be released – even if bail is set at $1 million. With pretrial detention, a defendant is locked up prior to trial with no chance for release.

This is why for example, you see a $5 million bail in the Jayme Closs case. The defendant in that case is potentially very dangerous, and charged with horrific violent crimes. There is virtually no chance that the defendant could come up with $5 million for bail. But rather than use Wisconsin's pretrial detention procedure, prosecutors and the judge determined a high bail would be more effective at keeping the defendant in custody prior to trial.

Assembly Bill 609 creates a workable pre-trial detention statute. Instead of a quick "mini-trial" as required by current law, AB 609 creates a workable process in which both the prosecutor and defendant can make their arguments for or against pre-trial detention, and court procedures are similar to that of a preliminary hearing. Just as importantly, AB 609 also "expands the net" of crimes which are eligible for pre-trial detention. Under current law, pre-trial detention is only available for First Degree Intentional Homicide, First Degree Sexual Assault, and Sexual Assault of a Child. This bill eliminates the crime-based standard, and allows for pre-trial detention if

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there is a serious risk that: (1) the person poses a danger of inflicting serious bodily harm on a member of the community; (2) the person will intimidate a witness; or (3) the person will not appear in court as required.

Because Wisconsin's pre-trial detention statute is largely dictated by provisions of Wisconsin's constitution, this bill only takes effect upon adoption of a constitutional amendment changing those provisions. Assembly Joint Resolution 107 is the Study Committee's proposed amendment, and is currently in the Committee on Constitution and Ethics.

Assembly Bill 608 is also dependent on the passage of a constitutional amendment modifying Wisconsin's pre-trial detention and bail procedures. One of the things the committee learned was that individuals can have a hard time coming up with even small bail amounts. If a person poses a minimal threat to the public, their bail may be set at $100. However, circumstances may prevent that person from having $100 available for their release. Therefore, this bill requires a judge to review bail if a person it still in jail 72 hours after bail is set to determine if it is a proper amount, and every week thereafter. We shouldn't have people sitting in jail for simply not being able to meet their bail requirements if they are not a danger to society.

Finally, Assembly Bill 610 authorizes the use and consideration of pre-trial risk assessments in setting bail. A risk assessment predicts how likely it is that a particular defendant will show up for court dates or will commit a new crime while awaiting trial. In several Wisconsin counties, this is current practice, however the statutes are silent on whether or not this is allowed. This bill specifically allows for the use of risk assessments, but does not require their use. Because there are many different risk assessment tools, the bill also does not require the use of any particular assessment tool. Unlike the previous bills, this bill is not contingent on the passage of a constitutional amendment.

A lot of thought, discussion and hard work went into this package of bills, and they are the product of a truly nonpartisan process. I hope they earn your support. Thank you.

WISCONSIN COUNTIES ASSOCIATION

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MEMORANDUM

TO: Honorable Members of the Assembly Committee on Judiciary

FROM: Sarah Diedrick-Kasdorf, Deputy Director of Government Affairs

DATE: December 5, 2019

SUBJECT: Assembly Bills 608-610

The Wisconsin Counties Association (WCA) appreciates the opportunity to make a few comments regarding Assembly Bills 608-610. The bills were recommended for introduction by the Joint Legislative Council's Study Committee on Bail and Conditions of Pretrial Release.

Bail reform and pretrial release are complicated issues that many states are currently struggling with. Modifications to the state's pretrial release system should be made utilizing evidence-based, data informed approaches. There are currently eight counties in Wisconsin working to implement changes to the pretrial detention system. These counties have invested many hours sharing evidence-based approaches, implementing the use of a pretrial risk assessment tool, and creating a pretrial services system all with the goal of ensuring only those individuals who truly need to be detained to ensure community safety are detained on a pretrial basis.

That being said, there is still much work to be done. While WCA has positions to support bail reform, including the elimination of cash bail as a condition of release, modifications to the system should occur as part of a comprehensive overhaul of the pretrial system. That includes the provision of resources by the state to counties for the creation and implementation of pretrial services. As a result, WCA asks that the bills be placed on hold, allowing the state Criminal Justice Coordinating Council, its Evidence-Based Decision-Making Subcommittee, and counties to continue their work in developing a comprehensive pretrial reform package.

Thank you for your consideration. Please do not hesitate to contact me at the WCA office if you have any questions.

EVAN GOYKE

STATE REPRESENTATIVE
18th ASSEMBLY DISTRICT

December 5, 2019
Written Testimony of State Representative Evan Goyke
Re: Assembly Bills 608, 609, and 610

Mr. Chairman and Members of the Assembly Committee on Judiciary,

Thank you for the opportunity to testify today regarding Assembly Bills 608, 609, and 610.

Last session, Representative Duchow, Representative Tusler, Senator Risser, Senator Wanggaard, and I served together on a Legislative Council Study Committee on Bail and Conditions of Pretrial Release. The committee met six times and recommended to the Joint Legislative Council four bill drafts for consideration and introduction. These bills were introduced in the Senate as **Joint Legislative Council** bills on March 15, 2019 and referred to the Senate Committee on Insurance, Financial Services, Government Oversight and Courts. To date, they have not received a hearing.

On September 27, 2019, without outreach or advanced knowledge, I was surprised to see these study committee bills recirculated by Rep. Duchow and Sen. Wanggaard as standalone bills. Repackaged under a "Protecting Citizens: Strengthening the Judicial Process" banner, the bills were re-drafted and re-branded as a new GOP initiative. This was a surprise to stakeholders, fellow study committee members, Legislative Council staff, and others. This break from the traditional legislative study committee process weakens the institution, diminishes the work of the non-partisan and non-elected members of the committee, and weakens the bills.

Despite the flawed process, the content of these bills is deserving of our time and debate. The issue of bail and pretrial detention has been an area of reform that has swept across the country. Here in Wisconsin, a number of counties have engaged in local efforts to reform and inform the process of setting bail and pretrial release. There are state level limits to what our local communities can do and these three bills begin the debate about what our state policy should be.

Working in reverse order, Assembly Bill 610 is a positive change to codify what is happening in a growing number of Wisconsin counties. Risk assessments do exactly what they say they do and help inform a court setting bail. The bill does not reduce judicial discretion, but rather codifies the use of risk assessments in setting bail or conditions of release.

Assembly Bill 609 is more complicated. Wisconsin has had a pretrial detention system in state statute and our Constitution for decades. The procedure, however, is unworkable in the criminal justice system, largely due to the required timelines and thus it is never used. Among the changes included in AB 609 is the expansion of the categories of defendants who may be detained under the statute and the ability for an individual to be detained longer pretrial.

Assembly Bill 608 imposes requirements on a court to review an individual's bail while they are detained pretrial. This review is required to be done in different time increments based on the length of their pretrial detention. The crux of this bill is derived from legislation I had drafted and presented to the study committee at our January 29, 2019 meeting. I have attached to this testimony a copy of a letter I submitted to committee members, as well as a copy of the legislation I had drafted for consideration.

Incarceration, even for a brief period of time, can have massive, lifelong impacts. I have enclosed information presented to the study committee at our October 2018 meeting by the Wisconsin Department of Justice under former Attorney General Brad Schimel. Evidence shows that incarcerating low risk individuals can actually lead to worse outcomes, meaning higher rates of reoffending, than non-incarceration. Additionally, individuals

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that are incarcerated pretrial have a reduced position in their criminal case and can have harsher outcomes when compared to individuals that are not in custody. Incarcerated individuals have less access to treatment, employment, and pro-social behaviors that often mitigate a court's sentence. Lastly, incarcerated individuals are often less likely to challenge or litigate the criminal case against them and resolve the case through a plea bargain in an effort to be released from custody.

In response to this evidence and data, the federal court system has long operated with a pretrial detention system and no cash bail. In addition, states across the country have eliminated cash bail or made reforms to their current laws. These states include: Washington DC, New Jersey, California, Illinois, New York, Nebraska, New Mexico, Kentucky, Colorado, Maryland and Indiana. In addition, the study committee discussed the need for more resources, particularly at the County level. States that have eliminated cash bail have increased resources for pretrial services. We must also consider this in Wisconsin.

Throughout the study committee process I repeatedly argued that our policy discussions include two sides of a grand bargain. One is to modify pretrial detention so that the highest risk individuals can be held without bail. The other side of that bargain is the elimination of or the substantial reduction of the use of cash bail. I again make this argument today and will continue to do so in the future.

Thank you for your consideration. Please feel free to contact my office with any questions related to my testimony.

EVAN GOYKE
STATE REPRESENTATIVE
18th ASSEMBLY DISTRICT

January 17, 2019

Dear Committee Members,

I am introducing an amendment for consideration at our January 29th Bail and Conditions of Pretrial Release Study Committee meeting. The core function of this amendment is to substantially reduce Wisconsin's use of cash bail, a change to accompany the proposed changes to the pretrial detention system included in our scheduled debate.

This concept is not new to our committee. We spent the majority of our November meeting debating two different proposals to change the pretrial detention system. Also on the agenda that day was LRB-0507/2, a draft proposal to mirror the cash bail system of Washington D.C. A link to that proposal is here:

https://docs.legis.wisconsin.gov/misc/lc/study/2018/1783/040_november_13_2018_meeting_10_00_a_m_lc_large_conference_room/lrb0507_p2

This system was presented to our committee by Mr. Spurgeon Kennedy on October 16th. The proposal does not entirely eliminate the cash bail system, but puts in place a timely review process that requires courts to re-examine the imposition of cash bail when the defendant remains incarcerated due to his or her inability to pay.

I have repeatedly argued that our policy discussions include two sides of a grand bargain. One is to modify pretrial detention so that the highest risk individuals can be held without bail. The other side of that bargain is the elimination of or the substantial reduction of the use of cash bail. This amendment seeks to add that to our pretrial detention bill draft.

I hope we can have a spirited debate on January 29th. I will advocate for my amendment and in full transparency, I will not support (in committee nor in my legislative capacity) a bill draft that only addresses pretrial detention. That change alone is only half of the bargain and a policy I cannot support.

I believe that our in-depth debates on pretrial detention in November and again in December prevented the necessary debate over cash bail. I hope we can address this in-depth and ask that you consider this amendment to make our efforts on pretrial system reform more complete.

Thank you for your time and consideration.

Sincerely,

State Representative Evan Goyke
18th Assembly District

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State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-1225/P1
MLJ:cdc

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

AN ACT ***to create*** 969.095 of the statutes; **relating to:** modification of bail in a criminal action.

Analysis by the Legislative Reference Bureau

This bill requires the judge in a criminal action to review the bail of a defendant who remains detained after 24 hours because he or she cannot post a bail amount that has been set. The judge must review the bail every 24 hours, and must state on the record reasons for continuing bail, unless bail is adjusted and the defendant is released.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 969.095 of the statutes is created to read:

969.095 Review and adjustment of bail. (1) The judge of the court before whom an action against a defendant is pending shall review the bail of a defendant for whom bail is imposed and who after 24 hours from the time of initial appearance before the judge or a review under this subsection continues to be detained in custody as a result of the defendant's inability to meet the bail. Unless the bail is adjusted

and the defendant is thereupon released, the judge shall set forth on the record the reasons for requiring the continuation of the bail imposed. If the judge before whom the action is pending is not available, any other circuit judge of the county may act under this subsection.

(2) Subsection (1) applies only if, on or after the effective date of this subsection .... [LRB inserts date], an amendment to article I, section 8 (3) of the constitution is ratified. The elections commission shall notify the legislature of the effective date of the amendment under s. 7.70 (3) (h).

(END)

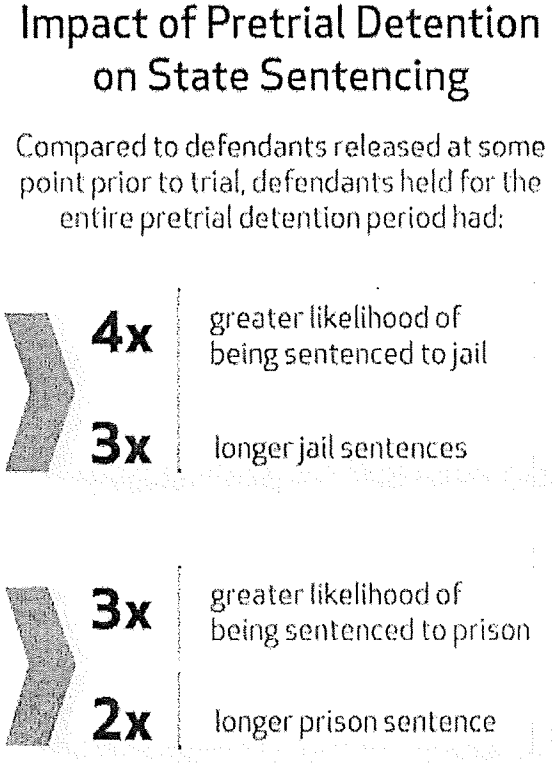
Using Data, Research, and Information for Informed Pretrial Decision Making

Constance Kostelac, PhD
Director
Bureau of Justice Information and Analysis
Wisconsin Department of Justice

Research Background: Impact of Detention

Defendants detained pretrial are more likely to be sentenced to jail/prison, and to receive longer sentences than defendants who are not detained

- Lowenkamp, VanNostrand, & Holsinger, 2013a



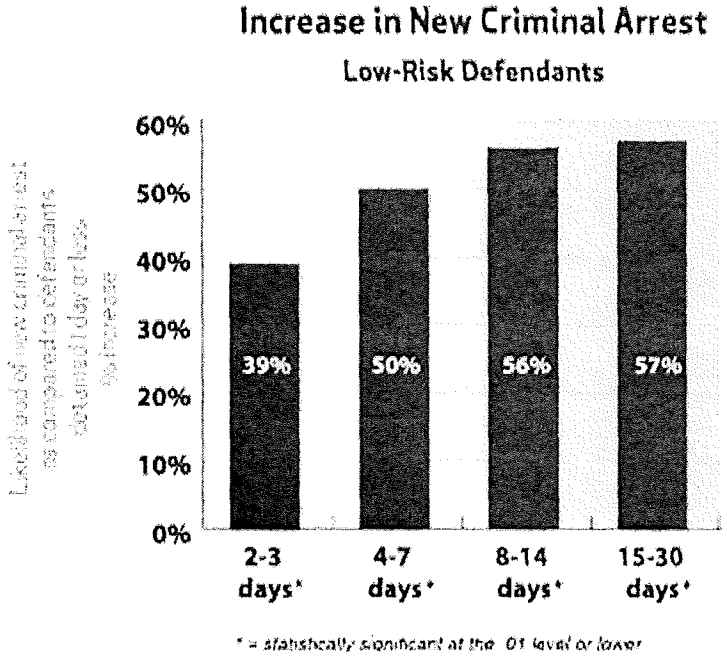
The likelihood of being sentenced to jail/prison and for longer periods is more pronounced for low-risk defendants detained pretrial.

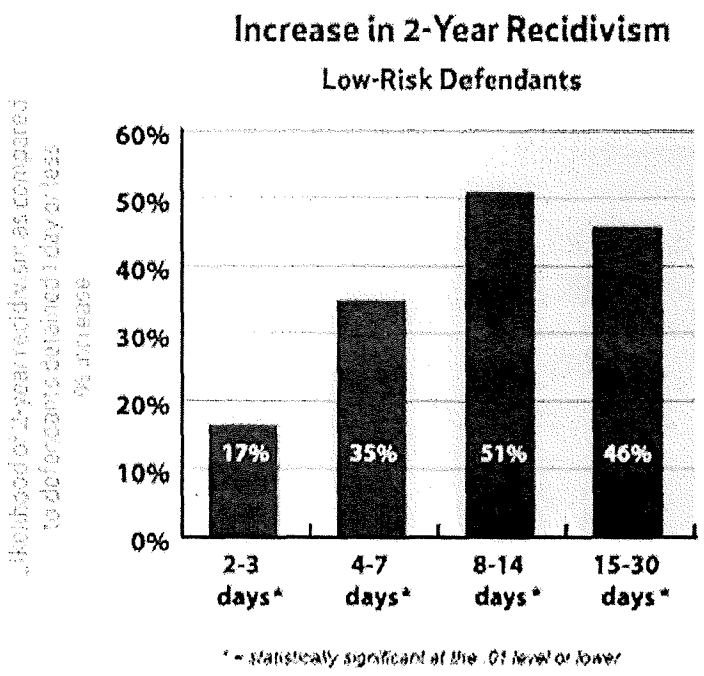
https://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF-Pretrial-CJ-Research-brief_FNL.pdf
https://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF_Report_state-sentencing_FNL.pdf

Research Background: Impact of Detention

Research has demonstrated that detaining low and moderate risk defendants in jail for even short periods of time (i.e., 2–3 days) is related to increased risk for misconduct both short- and long-term

- Lowenkamp, VanNostrand, & Holsinger, 2013b





https://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF-Pretrial-CJ-Research-brief_FNL.pdf
https://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF_Report_hidden-costs_FNL.pdf

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Protecting Justice for all Since 1977

Kelli S. Thompson
State Public Defender

Jon Padgham
Deputy State Public Defender

Assembly Committee on Judiciary
Thursday, December 5, 2019
Assembly Bill 609

Chairman Ott and members,

Thank you for the opportunity to speak on Assembly Bill (AB) 609 related to pretrial detention. This bill, as well as Assembly Bills 608 and 610 and Assembly Joint Resolution 107 came from the Legislative Council Study Committee on Bail and Conditions of Pretrial Release. State Public Defender Kelli Thompson served as a member of that study committee. The reason that we have registered as opposed to AB 609 is that Public Defender Thompson voted against recommendation of the AB 609. Our comments today however, are focused more generally on the three bills before the committee today as well as the joint resolution that has been referred to the Assembly Committee on Constitution and Ethics.

The goal of the study committee was to review Wisconsin's pretrial release system, including considerations for courts in imposing monetary bail and for denying pretrial release. Those parameters are as broad as they sound covering many potential policy areas in the criminal justice system. The United States is in the relatively early stages of a wave of bail reform efforts with a few states, most notably New Jersey and New Mexico, leading the way in comprehensive reform.

The overarching goal of these reforms is to decrease or eliminate the role of monetary conditions or cash bail, and to decrease the number of people held in custody pre-trial through the use of validated risk assessment tools and pre-trial services. I am attaching an overview of the changes that are currently in practice in New Jersey and some of the significant results they've already been able to demonstrate.

The SPD is a member of the Statewide Criminal Justice Coordinating Council (CJCC). One of the most significant initiatives of the CJCC has been to work on the implementation of Evidence-Based Decision Making in the criminal justice system; the role of monetary bail versus a "preventive detention" model has been given high priority. At a joint meeting of the Assembly Corrections and Senate Judiciary committees in October 2017, the CJCC provided background on its work in this area. In addition, earlier this year the EBDM subcommittee hosted a briefing for legislators and staff with a national expert on bail reform to review the pretrial process and the key factors in the role of money in setting bail.

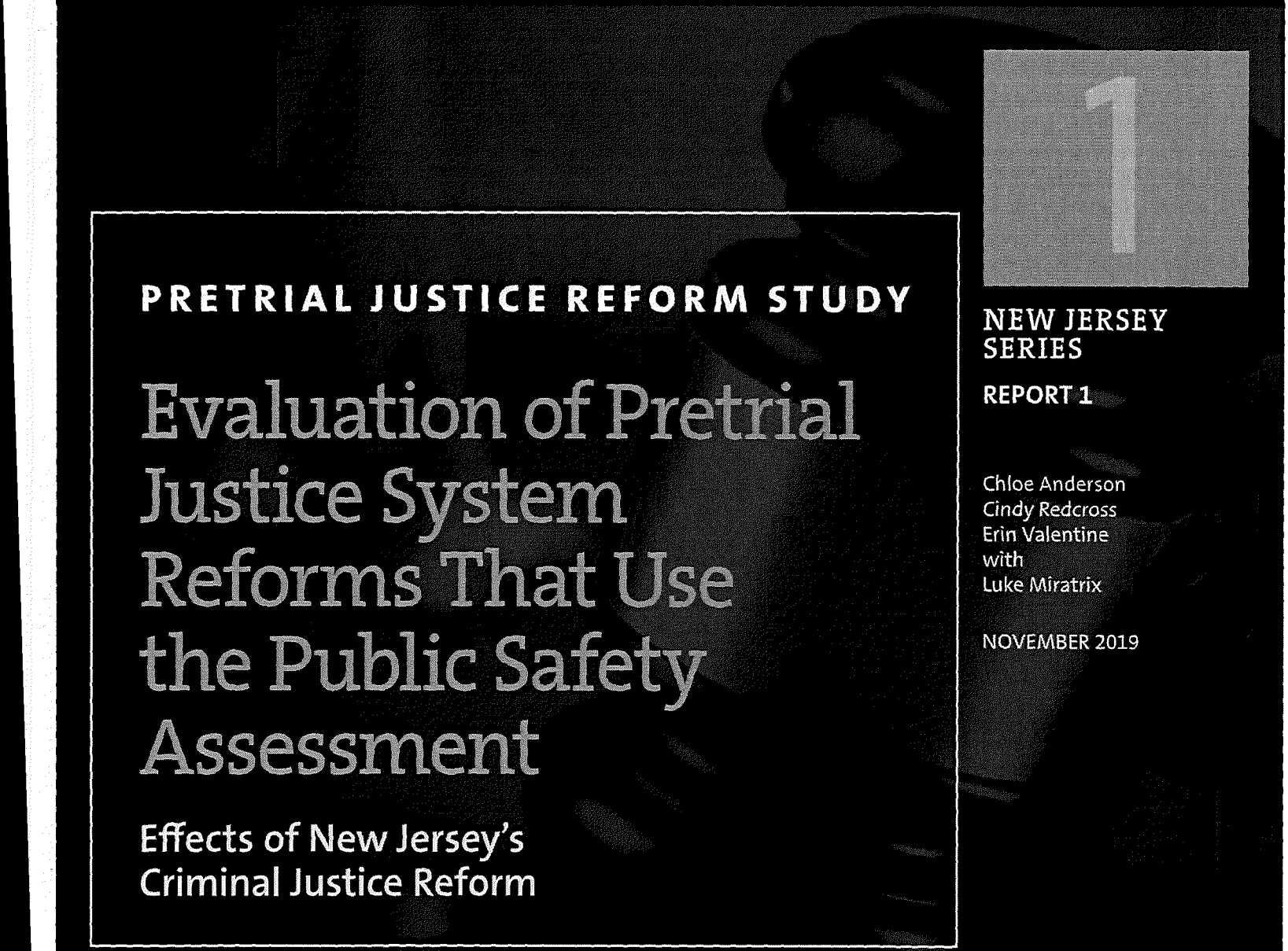
A preventive detention model removes the role that money plays in this system by instead determining pretrial release, on a case-by-case basis, through the use of a validated risk assessment tool combined with judicial discretion. Persons are either determined to be of sufficient risk to be held in custody pretrial or are released with non-monetary conditions pending future court proceedings. This is a significant improvement over the current process, which allows people with access to money, though potentially high-risk, to be released before trial, while people who are low-risk, but who are unable to post even modest amounts of cash bail, often remain in custody.

Specifically on AB 609, in general the reason Public Defender Thompson voted against this proposal in the Study Committee is that in summary the bill creates a more functional preventive detention system than current law but does not limit the role of monetary conditions of release or state that detaining someone pretrial under a preventive detention system should be limited. As noted in case law, pretrial detention should be the exception, not the norm.

Both AB 608 and 610 are proposals supported by the SPD. But in general, as noted in the study committee process, this is a complex area of law with significant consequences and interrelated concepts. The stakeholders in the criminal justice system have been and will continue to work on putting together a comprehensive package of suggestions for legislative consideration. While the totality of the package from the Study Committee addresses several important parts of the pretrial system, because of the expansive possibilities for positive improvement to the pretrial system more work remains to be done.

Thank you for the opportunity to speak today. I'm happy to answer any questions you might have.

MDRC CENTER FOR CRIMINAL JUSTICE RESEARCH



PRETRIAL JUSTICE REFORM STUDY

Evaluation of Pretrial Justice System Reforms That Use the Public Safety Assessment

Effects of New Jersey's Criminal Justice Reform

NEW JERSEY SERIES

REPORT 1

Chloe Anderson
Cindy Redcross
Erin Valentine
with
Luke Miratrix

NOVEMBER 2019

mdrc
BUILDING KNOWLEDGE TO IMPROVE SOCIAL POLICY

On January 1, 2017, the State of New Jersey implemented Criminal Justice Reform (CJR), a sweeping set of changes to its pretrial justice system. With CJR, the state shifted from a system that relied heavily on monetary bail to a system based on defendants' risks of failing to appear for court dates and of being charged with new crimes before their cases were resolved. These risks are assessed using the Public Safety Assessment (PSA), a pretrial risk-assessment tool developed by Arnold Ventures with a team of experts. The PSA uses nine factors from an individual's criminal history to produce two risk scores: one representing the likelihood of a new crime being committed, and another representing the likelihood of a failure to appear for future court hearings. The PSA also notes whether there is an elevated risk of a violent crime. The PSA is used in conjunction with a New Jersey-specific decision-making framework (DMF) that uses an individual's PSA risk score in combination with state statutes and statewide policies to produce a recommendation for release conditions.

The PSA is used at two points in New Jersey's pretrial process: (1) at the time of arrest, when a police officer must decide whether to seek a complaint-warrant (which will mean booking the person into jail) or issue a complaint-summons (in which case the defendant is given a date to appear in court and released); and (2) at the time of the first court appearance, when judges set release conditions for defendants who were booked into jail on complaint-warrants. (The DMF is also used at this second point.) CJR includes a number of other important components: It all but eliminated the use of monetary bail as a release condition, established the possibility of pretrial detention without bail, established a pretrial monitoring program, and instituted speedy-trial laws that impose time limits for case processing.

This report is one of a planned series on the impacts of New Jersey's CJR. It describes the effects of the reforms on short-term outcomes, including the number of arrest events (where an "arrest event" is defined as all complaints and charges associated with a person on a given arrest date), complaint charging decisions, release conditions, and initial jail bookings. Additional reports in this series will examine CJR's effects on outcomes such as court appearance rates, new arrests, the amount of time defendants are in jail while waiting for their cases to be resolved, and case dispositions (that is, whether defendants were found guilty or not guilty or had their cases dismissed). The effects of the reforms for different subgroups of the pretrial population (for example, those defined by risk levels and race) will also be examined in a subsequent report.

OVERVIEW

Findings in this report include:

- Fewer arrest events took place following CJR's implementation. There was a reduction in the number of arrest events for the least serious types of charges — namely, nonindictable (misdemeanor) public-order offenses.
- Police officers appear to be issuing complaint-summonses more often and seeking complaint-warrants less often since CJR was implemented.
- Pretrial release conditions imposed on defendants changed dramatically as a result of CJR. A larger proportion of defendants were released without conditions, and rates of initial booking into jail were lower than predicted given pre-CJR trends.
- CJR significantly reduced the length of time defendants spend in jail in the month following arrest.
- CJR had the largest effects on jail bookings in counties that had the highest rates of jail bookings before CJR. ■

Jan 1. - Dec. 31

2018

Report to the Governor and the Legislature

CRIMINAL JUSTICE REFORM

New Jersey Courts

Independence • Integrity • Fairness • Quality Service

NEW JERSEY JUDICIARY

Submitted by:

GLENN A. GRANT, J.A.D.
Acting Administrative Director of the Courts

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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-summonses, 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-summonses 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.

[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.