

NEW JERSEY OPINION

Chief justice: Bail reform puts N.J. at the forefront of fairness | Opinion

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Star-Ledger Guest Columnist

By Stuart Rabner

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

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

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

There is a better way.

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

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

In his speech in 1966, the president cited examples of how the bail system punished people simply for being poor. Johnson recalled a defendant who spent two months in jail and lost his

job, his car and his family, only to later win an acquittal. Another defendant spent 54 days in jail because he could not post \$300 bail for a traffic offense that carried a maximum sentence of five days.

Time spent in jail can also become an incentive for a defendant to plead guilty and receive a sentence for time served. Studies show that defendants held pretrial plead guilty more often, are convicted more often, are sentenced to prison more often and receive harsher prison sentences than those who are released pretrial.

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

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

Criminal justice reform in our state has had broad-based support. In 2012, Gov. Chris Christie publicly called for an amendment to the state constitution to allow for pretrial detention. In 2013, the Judiciary formed the Joint Committee on Criminal Justice, comprising representatives from all three branches of government. The committee's 33 members included the attorney general and county prosecutors, the public defender and private defense attorneys, counsel for the ACLU, judges and staff. A year later, many of the committee's recommendations were adopted by the Legislature, with the strong backing of Senate President Stephen Sweeney (D-Gloucester) and Assembly Speaker Vincent Prieto (D-Hudson), and signed into law by the governor.

The public took the next major step. In November 2014, more than 60 percent of New Jersey voters approved a constitutional amendment that gave judges, for the first time, the ability to detain defendants to ensure their appearance in court and protect the safety of the community.

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

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

Here's how it will all work.

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

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

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

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

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

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

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

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