On bail reform, even lawmakers agree: Rabner knows best | Editorial

By <u>Star-Ledger Editorial Board</u>
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There is a growing movement to dial back New Jersey's groundbreaking bail reform system, and leading this parade is a straw man.

It is a movement largely based on assumption and fear-mongering. It is promoted by those who assert that the local and national rise in some crimes – along with New York's botched attempt at reform – justify a reassessment of the debtor's prison model we had used for centuries, when the freedom of an accused man or woman was predicated on the size of their purse.

New Jersey rejected that horrid policy in 2017, through an extraordinary fellowship that included a Republican governor, a Democratic legislature, the state judiciary, stakeholders such as the ACLU, and overwhelming public support. It has been one of our proudest boasts -- one imitated from Illinois to California – and it should be left up to our greatest legal minds to preserve it and improve it whenever the tough-on-crime narrative distorts the facts.
Right on cue, Chief Justice Stuart Rabner convened a committee in Trenton Tuesday to discuss the strengths and weaknesses of our bail reform law, and hopefully this bipartisan body of 25 people – representing the three branches of state government, law enforcement, and social justice organizations – will produce a report that encourages thoughtful restraint, before the Legislature takes a meat axe to one of the most important social justice measures in state history.

And this effort must begin with an agreement on some immutable truths.

The first truth is that by almost any metric, the Criminal Justice Reform Act has been a rousing success. It ended a racist cash bail system that disproportionately detained low-income people accused of minor crimes – people locked in jail for months or years as they awaited trial – because they couldn't afford to get out. Meanwhile, hardened criminals such as drug kingpins could buy their way out of jail and intimidate witnesses before their trial.

Now suspects can be held only if their release endangers the community or if they pose a flight risk. Hardly anyone flees: Defendants released without bail showed up in court 97% of the time last year, the highest rate in state history.

"We have five years of data, and overwhelmingly, it's telling us that bail reform is working really well," said Alex Shalom of the ACLU, who sits on the Rabner Committee. "We've been able to drive down the jail population by more than 20 percent, without increasing crime. That is the essence of what we want -- keeping people in their communities, working, supporting their families. All of those things are positives for society.
"And if we can do that without negatively impacting public safety, we're actually improving public safety."

Fact 2: There isn't a shred of evidence that suggests the crime rate is being fueled by people who are on release as they await their day in court.

The last report from the Administrative Office of the Courts showed that there were 1,112 people released after being issued a warrant in the first six months of 2021. Out of this group, 990 were not rearrested in that time period.
That doesn't mean the system is perfect -- given that 122 were in fact rearrested in the pretrial period -- but as former Attorney General Chris Porrino pointed out in these pages last Sunday, there are no metrics that show a connection between pretrial release and higher crime rates.

New Jersey has not only emptied out our jails (the pretrial incarceration dropped 29%), most violent crimes are down, recidivism has been flat, and the state saved hundreds of millions of dollars by not detaining low-risk, non-violent offenders. Yet there is still a bizarre assumption -- shared by some lawmakers -- that people are prone to walk out of jail and immediately jack an Audi.

Much of the lingering fear has wafted in from New York, where, as Porrino reminded us, they loused up their chance at reform.
In New Jersey, a judge has the authority to assess the danger to the community when considering someone's release, aided by a sophisticated algorithm that weighs nine risk factors known as the Public Safety Assessment Tool.

New York allows no such discretion, and the list of offenses that permits automatic release is far too broad and permissive -- it includes second-degree manslaughter, assault as a hate crime, and grand larceny. That is a critical difference between New Jersey and New York: Their judges can't assess the risk to public safety. Ours can, and by law, they must.

Yet political pressures and fear of violent crime have led some New Jersey lawmakers to propose changes in our law, which should get the attention of the Rabner Committee. Advocates point out that a new bill proposed by Sen. Paul Sarlo (D-Bergen) would essentially eliminate the Public Safety Assessment Tool, which even Sarlo now agrees is overreach.

That bill (S-3347), he concedes, is merely a "placeholder" to get the conversation started, affirming that "data should drive this, not innuendo," he said. "I agree that the judiciary should have to deal with this. They are best suited to make the recommendations on closing any loopholes."
No bail system is perfect, and New Jersey's five-year-old model should adapt and absorb the growing pains. But these improvements can only be made by experts in social justice and jurisprudence, undaunted by fear and politics. It's only right that Rabner's group gets the first crack at this.