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## Chief Justice Addresses Criminal Justice Reform, Attorney-Related Issues at Bar Convention

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Criminal justice reform, a new bar examination for attorneys and the risks posed by metadata were the highlights of Chief Justice Stuart Rabner's speech to the New Jersey Bar Association in May.

By Jan. 1, 2017, the state will shift from a system that relies principally on setting monetary bail as a condition of release to a risk-based system that is more objective and fairer to defendants. At the same time, deadlines for the timely filing of an indictment and the disposition of criminal charges for incarcerated defendants will become effective.

The move to reform the state's criminal justice system grew from the work of the Joint Committee on Criminal Justice, a special committee of the Supreme Court established and chaired by Chief Justice Rabner to examine the issues of bail and speedy trial reform. The committee included the attorney general, public defender, judges and representatives of the executive and legislative branches, county prosecutors, defense counsel, court administration and the American Civil Liberties Union.

The committee drafted a series of recommendations that were incorporated into landmark legislation that enabled the changes coming at the beginning of next year. In addition, voters approved a constitutional change to permit judges to keep high-risk defendants detained without bail.

Pilot programs in three vicinages, Camden, Morris/Sussex and Passaic, are underway, and planning for implementation throughout the remainder of the state is proceeding. During his remarks, the chief justice emphasized the reasoning behind and importance of changing New Jersey's criminal justice system. He noted that the current practice relies heavily on defendants posting money or a bond to be released, disadvantaging poor defendants who cannot afford to make bail and who sit in jail even if they pose a minimal risk of flight or danger to the community.

Meanwhile, under the current system, high-risk defendants who pose a great risk of danger to the community or are a serious risk of flight can be freed on bail. Under criminal justice reform, those defendants can and will be detained, pretrial, without bail. The speedy trial law, which also goes into effect on Jan. 1, 2017, will attempt to ensure that criminal cases are resolved quickly. It will require that defendants be indicted within 90 days of arrest and tried within six months of indictment, with possible extensions of time for motions and plea negotiations.

"Those changes result from the cooperative efforts of all three branches of government," the chief justice said. "They comprise the most substantial changes to the criminal justice system that the state has seen in decades. And I believe they will make for a better and a fairer system of criminal justice in our state."

The chief justice also discussed several administrative determinations on important areas of legal practice in New Jersey: the Uniform Bar Examination (UBE), admission by motion and metadata in electronic documents. Associate Justice Jaynee LaVecchia chaired the committee that studied the UBE and reported those findings to the Supreme Court.

In February 2017, New Jersey will join 21 states that have already adopted the UBE, a standardized test drafted by the National Conference of Bar Examiners that is uniformly administered, graded, and scored in participating jurisdictions. The UBE consists of three components: the Multistate Bar Examination, a multiple choice exam; the Multistate Essay Examination, comprised of six essay questions that test laws of general application; and the Multistate Performance Test, comprised of two writing tasks designed to test practical lawyering skills.

The chief justice said implementation of the UBE allows young lawyers the benefit of portable exams they can transfer among a number of states. It also reduces the financial strain on applicants who seek to sit for multiple exams in different states, which test similar materials, he said.

"We live in a world today that is quite different from decades past," he said. "Millennials who pass the bar in 2016 are likely to change jobs more frequently, move about the country at a greater rate as they begin their careers, and, unfortunately, graduate with increasingly higher levels of debt." Under the practice of admission by motion, an out-of-state lawyer must have passed the bar exam in another state and have practiced in another jurisdiction for five of the last seven years. They must be admitted in a state that allows for reciprocity with New Jersey lawyers and they must demonstrate fitness and character to practice law here. They also must complete a course on New Jersey ethics and professionalism. The committee that studied these issues was chaired by retired Chief Justice James R. Zazzali.

"Once again, those changes do not cede control of the admissions or disciplinary process," the chief justice said. "Instead, they reflect the realities of the practice of law today in our state and nation." The chief justice also discussed the implications of

metadata, embedded information in electronic documents that is generally hidden from view in a printed document and could include privileged information or other potentially objectionable, private or proprietary information. A committee chaired by Associate Justice Anne M. Patterson carefully studied the issues that have arisen as the electronic sharing of information has become commonplace.

The information metadata can reveal includes the author of a document, dates on which the document was revised, tracked revisions, and comments inserted in margins. The Supreme Court has amended the court rules to protect sensitive client data, clarify attorneys' professional obligations, and foster education programs so that the legal community can be better equipped to meet the unique challenges inherent in exchanging documents electronically, the chief justice said.

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