

# Early report on criminal justice reforms: Concerns raised; tweaks made

The state's new criminal justice reforms are a month old. And the verdict? The system is up and running, as intended, but some issues still are being worked out, such as detention hearings, warrants and discovery.

Adding to the unsettled nature of the rollout, a complaint filed by New Jersey's counties contending that the reforms are an unfunded mandate is slated to be argued this week, and the state Appellate Division is set to consider another case dealing with how the reforms are being enacted.

On Jan. 1, the state moved away from monetary bail to a risk-based system — in which people charged are detained if they're deemed to be a risk to the public or to not appear for their court dates — and called for setting speedy trial deadlines.

As part of the changes, when someone is arrested and charged under a warrant, he is sent to jail and scheduled for a first appearance usually within 24 hours. Anyone charged under summons is not sent to jail. A public safety assessment is done — using a computer scoring system that takes into account such factors as seriousness of the charges, criminal history, and past failures to appear in court — to determine if the person is a risk to commit new crimes or to not show in court.

Defendants are scored from 1 to 6 regarding their risk for new criminal activity and their likelihood to not appear in court, with 6 being the most serious. A recommendation about whether the person should be detained pending trial or released with certain conditions is given by a pretrial services team.

At a first appearance, prosecutors can make a motion to detain an individual without bail pending resolution of the case. A hearing then is scheduled for a judge to determine whether the person will remain in jail or be released.

From Jan. 1 to Jan. 28, the state made successful motions for detention in 283 of 506 (56 percent) cases, according to the state Administrative Office of the Courts. In the other 223 cases, defendants were released under the supervision of the pretrial services program with conditions, such as electronic monitoring and reporting requirements, imposed based on their level of risk.

There was a wide range of motions for detention from county to county, with a low of two in Sussex County (both were granted) and a high of 75 in Camden County (26, or just 34.7 percent, were granted).

As of Jan. 28, Burlington County was second in the state for the number of people detained with 36, behind Middlesex County's 39, according to the state. In Burlington, 56 requests for detention were made by the Burlington County Prosecutor's Office, fourth most in the state.

As of Friday, there were 115 appeals statewide relating to people being detained or released — 93 from the defense and 22 from the state, according to numbers released by the Administrative Office of the Courts.

## **Warrants**

The number of warrants issued in the state was down significantly in January 2017 versus January 2016, from 8,189 to 4,940, a decrease of 39.7 percent, according to figures released by the state. In Burlington, warrants issued were down from 444 in January 2016 to 366 in January 2017, a decrease of 17.6 percent.

The number of warrants issued in Burlington is likely to drop even further as police departments have been directed not to issue them in cases involving disorderly-person offenses.

The high number of those offenses dealt with in Superior Court of Burlington County in January was an area officials identified as needing to be addressed.

"That was clogging us up," Burlington County Prosecutor Robert D. Bernardi said.

Bernardi said he was directed by the state to deny warrants issued on disorderly-person cases "unless they can truly demonstrate a safety factor" or if the case involves domestic violence.

In January, there were 29 motions for detention made in disorderly-person cases — offenses handled at the municipal court level — and two people were detained, according to Trial Administrator Jude Del Preore. One has been released, and both cases involved domestic violence allegations, Del Preore said.

At numerous court proceedings in January, public defenders complained about motions for detention being made in disorderly-person cases and about defendants facing less serious charges sitting in jail for a few days awaiting hearings.

The judiciary addressed how those cases are to be handled.

"Both the criminal justice reform statute and the attorney general's guidelines explicitly prohibit pretrial detention for disorderly-persons cases when it is not accompanied by a domestic violence charge," said Judge Glenn A. Grant, acting director of the Administrative Office of the Courts. "To eliminate any confusion on this point, we have clarified our recommendation language regarding pretrial detention motions."

Bernardi said during the first couple of weeks of the rollout police were told to "err on the side of seeking warrants."

"We're figuring it out and not moving to detain on cases we were before," he said. "We're only five weeks into this; there are going to be tweaks."

Before Jan. 1, it was estimated that there would be 10 to 15 detention hearings every week, to be held on Tuesdays and Fridays. However, some weeks the number of hearings has been as high as 25, and a Wednesday session was added to handle the volume.

"Our staff and judges have been outstanding," said Ronald E. Bookbinder, Superior Court of Burlington County's assignment judge. "They have worked on holidays and weekends."

First appearances are being held online via virtual courtroom on the weekends, with municipal judges even being called on to preside.

"We have been shifting full-time, recall and municipal judges to address these additional duties," Bookbinder said, adding that the vicinage is still three judges short of the 20 that are needed to handle its caseload. It doesn't help that Judge John L. Call is set to retire in April.

"The governor and the Legislature authorized more judges on July 1," Bookbinder said. "We're hoping to have one or two (assigned) here" in addition to having vacancies filled.

### **Discovery**

Another issue relates to what evidence, information and witnesses must be made available at detention hearings. In a 27-page opinion Wednesday, the Appellate Division ruled that discovery related to facts on which the state bases its motion for pretrial detention, including any "assertions" made in probable-cause affidavits, must be made available to defendants.

It was the first appeals decision relating to bail reform. Another case, also dealing with what prosecutors' offices are required to make available at detention hearings, is expected to be argued this week.

Bernardi called Wednesday's decision "disastrous," arguing that it is often not possible for the state to turn over all discovery by the detention hearing, which usually takes place within a few days of a person's arrest.

In some instances, the state may not have completed police reports or other evidence such as surveillance tapes, which were among the discovery being sought in the appellate case, Bernardi said.

"They're going way beyond what we thought the parameters of this were," he said. "It would be nice if the court gave us some latitude."

Peter Aseltine, spokesman for the New Jersey Attorney General's Office, said the state was granted its request to appeal the case to the state Supreme Court on an emergent basis. Briefs will be filed this week, and the court will decide whether to hear the case.

Aseltine said the office also is asking the appellate court to stay its decision; briefs were to be filed Friday.

"We're hopeful the Supreme Court will reverse the decision," Bernardi said.

Bernardi said that his office is scrambling to meet the reforms, including the speedy trial requirements, and that the county has not provided additional funding for new staff. The office requested about \$332,000 in annual funding to hire three more entry-level assistant prosecutors, two investigators and a legal assistant.

County spokesman Eric Arpert said officials continue to contend that the reforms are an unfunded mandate and that taxpayers should not foot the bill for more staff. He also said the Attorney General's Office indicated that reforms should be doable using existing resources and staff.

The county's jail population is down compared with the same time last year. According to numbers released by the county, the population on Feb. 8, 2016, was 646 and down to 463 inmates on Feb. 8 this year. The impact on the jail continues to be analyzed, Arpert said.

### **Pushback**

Burlington was among the counties statewide that joined in a complaint filed in December by the New Jersey Association of Counties with the Council on Local Mandates arguing that the state has not properly funded the rollout.

The association is asking the council, which has the authority to determine whether legislation constitutes an unfunded mandate, to rule in the matter. The council previously denied the association's attempt to delay some of the reforms pending a decision.

The matter will be argued Wednesday. Former Superior Court Assignment Judge John A. Sweeney, acting chairman of the council, said it may take 30 to 60 days to reach a decision.

A proposal by state Sen. Robert Singer, R-30th of Lakewood, to assist counties in implementing the reforms by permitting a one-year property tax levy cap exclusion for related costs, has been withdrawn because the association opposed it.

John Donnadio, executive director of the association, said it has been arguing against property taxes being raised to cover the costs of the reforms.

Some concern also was raised in January involving the scoring system, specifically in cases in which those charged with a serious crime score low on the risk scale and those charged with lesser crimes score high.

"Those are the outliers," said Public Defender Joseph E. Krakora, adding that the score is not the only determining factor. "It's not the end-all-be-all."

Judges have the discretion to make the final decision on who is detained, Krakora said.

Bernardi said the next big test will be when speedy trial deadlines kick in. Under the reforms, detainees must be indicted within 90 days and then a trial held within 180 days.

"As those cases are being resolved, we will start seeing how this is," Bernardi said. "Will we have lab reports in time? DNA reports?"

To move cases along, the office has instituted an "escalating plea" policy, Bernardi said. Each court date, a plea offer will get lesser and lesser.

"We are playing for real here," he said.