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**IN THE MATTER OF A COMPLAINT  
FILED BY THE NEW JERSEY  
ASSOCIATION OF COUNTIES  
CHALLENGING PROVISIONS OF THE  
CRIMINAL JUSTICE REFORM ACT AS  
AN UNFUNDED MANDATE**

**COUNCIL ON LOCAL MANDATES  
COMPLAINT**

The New Jersey Association of Counties (“NJAC”), by way of a Complaint filed with the Council of Local Mandates (“the Council”) pursuant to N.J.S.A. 52:13H-12 and Council Rule 5, says:

**CONCISE STATEMENT OF THE CASE**

As set forth below, NJAC submits that certain sections of the Criminal Justice Reform Act, N.J.S.A. 2A:162-15 et seq., (the “Act” or “Criminal Justice Reform”) constitute an unfunded mandate, and are therefore unconstitutional. Specifically, N.J.S.A. 2A:162-16(b)(1), the forty-eight (48) hour risk assessment period, and N.J.S.A. 2A:162-22, the mandatory trial requirements, are unfunded mandates as they will force counties to expend monies in which a reciprocal funding source is not provided for in the Act. These provisions do not authorize resources, other than the property tax, to offset the additional direct expenditures required for their implementation.

**JURISDICTION**

1. The New Jersey Constitution forbids State government from requiring units of local government to implement additional or expanded activities without providing funding for

those activities. See N.J.S.A. 52:13H-1(1)(b).

2. Specifically, Article VIII, Section II, paragraph 5 of the New Jersey Constitution prohibits laws that serve as an “unfunded mandate” to New Jersey’s counties. As stated in subsection (a) of that paragraph:

With respect to any provision of a law enacted on and after January 17, 1996, and with respect to any rule or regulation issued pursuant to a law originally adopted after July 1, 1996, and except as otherwise provided herein, any provision of such law, or of such rule or regulation issued pursuant to a law, which is determined in accordance with this paragraph to be an unfunded mandate upon . . . counties . . . because it does not authorize resources, other than the property tax, to offset the additional direct expenditures required for the implementation of the law or rule or regulation, shall, upon such determination cease to be mandatory in its effect and expire.

N.J. Const., Art. VIII, § 2, ¶ 5(a); see, also, N.J.S.A. 52:13H-2.

3. The Council is empowered to resolve any dispute regarding whether a law or rule or regulation issued pursuant to a law constitutes an unfunded mandate. N.J. Const., Art. VIII, § 2, ¶ 5(b).

4. To that end, the Council must “review, and issue rulings upon, complaints filed with the council by or on behalf of a county . . . that any provision of a statute enacted on or after January 17, 1996 and any part of a rule or regulation originally adopted after July 1, 1996 pursuant to a law regardless of when that law was enacted constitutes an unfunded mandate upon the county . . . because it does not authorize resources to offset the additional direct expenditures required for the implementation of the statute or the rule or regulation.” N.J.S.A. 52:13H-12(a).

5. The Council also has the authority to enjoin enforcement of a law, rule or regulation pending consideration of whether it constitutes an unfunded mandate whenever a

complaint “demonstrates, to the satisfaction of the council, that significant financial hardship . . . would result from compliance and there is a substantial likelihood that the statute or the rule or regulation is, in fact, an impermissible, unfunded State mandate.” N.J.S.A. 52:13H-16.

6. A complaint filed with the Council by NJAC “shall be on behalf of at least two constituent members of the organization, which constituent members shall be identified in the complaint.” N.J.S.A. 52:13H-12

7. NJAC files this complaint pursuant to N.J.S.A. 52:13H-12 and 52:13H-16 on behalf of its constituent members. Specifically, resolutions have been adopted by Cape May, Monmouth, Morris, Union and Warren Counties and are attached hereto.

### **FACTUAL BACKGROUND**

#### **A. The Constitutional Amendment Addressing Pre-Trial Detention**

8. An Amendment to Article I, paragraph 11 of the New Jersey Constitution (“the Amendment”), changing a criminal defendant’s right to bail, was proposed to voters in the November 2014 general election.

9. The ballot question for the proposed Amendment provided, as follows:

#### **CONSTITUTIONAL AMENDMENT TO ALLOW A COURT TO ORDER PRETRIAL DETENTION OF A PERSON IN A CRIMINAL CASE**

1. Do you approve amending the Constitution to allow a court to order pretrial detention of a person in a criminal case? This would change the current constitutional right to bail.

2. The change to the Constitution would mean that a court could order that a person remain in jail prior to trial, even without a chance for the person to post bail, in some situations.

3. The amendment also removes language in the Constitution about bail eligibility for death penalty cases. The death penalty no longer exists in New Jersey.

## INTERPRETIVE STATEMENT

4. The Constitution currently requires a court to grant bail to a jailed person in a criminal case before trial. If the person posts bail, the person is released from jail pending trial.

5. The amendment would give a court the option of ordering a person to remain in jail in some situations. The court could order such detention based upon concerns that the person, if released: will not return to court; is a threat to the safety of another person or the community; or will obstruct or attempt to obstruct the criminal justice process.

6. The amendment authorizes the Legislature to pass laws concerning pretrial release and pretrial detention. The amendment would take effect on January 1, 2017 to allow any new laws to be enacted and their requirements to be established.

7. The amendment would also remove language in the Constitution about bail eligibility for death penalty cases. The death penalty no longer exists in New Jersey

10. The ballot question was approved in the November 2014 general election. The Amendment, which takes effect on January 1, 2017, provides, in relevant part:

11. . . . All persons shall, before conviction be [bailable by sufficient sureties, except for capital offenses when the proof is evident or presumption great] eligible for pretrial release. Pretrial release may be denied to a person if the court finds that no amount of monetary bail, non-monetary conditions of pretrial release, or combination of monetary bail and non-monetary conditions would reasonably assure the person's appearance in court when required, or protect the safety of any other person or the community, or prevent the person from obstructing or attempting to obstruct the criminal justice process. It shall be lawful for the Legislature to establish by law procedure, terms, and conditions applicable to pretrial release and the denial thereof authorized under this provision.

(bracketed text deleted and underlined text added)

## **B. The Criminal Justice Reform Act**

11. On August 11, 2014, the Governor signed the Act into law on the condition that it would take effect on January 1, 2017.

12. The primary purpose of the Act is to rely upon non-monetary factors to govern pretrial release of criminal defendants unless those factors will not ensure the appearance of the defendant, protect the safety of the public, or preserve the integrity of the judicial process. N.J.S.A. 2A:162-15. If non-monetary factors cannot meet these goals, then pretrial detention or the imposition of monetary conditions on release are permitted. Ibid.

13. To that end, the Act requires the courts to establish and maintain a statewide Pretrial Services Program (“PSP”). N.J.S.A. 2A:162-25. The PSP will conduct a risk assessment on each defendant and make recommendations to the courts regarding pretrial release. Under the Act, a defendant is temporarily detained in jail while the PSP conducts a risk assessment and prepares recommendations for the court. N.J.S.A. 2A:162-16.

14. Unless a prosecutor files a motion for pretrial detention, the Act requires the courts to consider the PSP’s risk assessment and recommendations and any other relevant information, and then, make a pretrial release decision without unnecessary delay, but no later than forty-eight (48) hours after a defendant is committed to jail. See N.J.S.A. 2A:162-16(b)(1); see, also, N.J.S.A. 2A:162-23. The 48-hour timeframe to complete this risk assessment is referred to herein as the “risk assessment timeframe”.

15. The Act also establishes limits on the amount of time a criminal defendant subject to pretrial detention must remain in jail. These limits are referred to herein as the “speedy trial” requirements of the Act.

16. In this regard, the Act generally provides that a defendant must not remain in jail

for more than ninety (90) days, not counting excludable time for reasonable delays, prior to the return of an indictment. N.J.S.A. 2A:162-22(a).

17. The Act further provides that a defendant who has been indicted must not remain in jail for more than one-hundred and eighty (180) days following the return or unsealing of the indictment, whichever is later, not counting excludable time for reasonable delays, before commencement of the trial. N.J.S.A. 2A:162-22(b).

18. The Act also provides that if the defendant is not indicted or the trial does not commence within these timeframes, the defendant must be released from jail. However, further detention may still be permissible if, on motion of the prosecutor, the court finds that a substantial and unjustifiable risk to the safety of any other person or the community, or the obstruction of the criminal justice process would result from the defendant's release such that no appropriate conditions for release could reasonably address that risk. N.J.S.A. 2A:162-22(a) and (b).

19. Finally, the Act generally requires that a criminal defendant must be released from jail if two (2) years after the issuance of the pretrial detention order, excluding any delays attributable to the defendant, the prosecutor is not ready to proceed to trial. N.J.S.A. 2A:162-22(c).

20. As a source of funding for the Act's mandates, the Supreme Court is permitted to "revise or supplement filing fees and other statutory fees payable to the court" by Court Rule. N.J.S.A. 2B:1-7. The new law anticipates that this fee increase will generate at least \$42.1 million in revenue. N.J.S.A. 2B:1-10.

21. The Act establishes a new dedicated, non-lapsing fund – known as the "21st Century Justice Improvement Fund" – in the General Fund to be administered by the State Treasurer. N.J.S.A. 2B:1-9. Each year, a sum equal to the revenue from the incremental fee

increase is to be credited to this new fund, and is to be appropriated as follows: \$22 million to the Judiciary for the development, maintenance and administration of the PSP; \$10 million to the Judiciary for a digital e-court information system; and \$10.1 million to the Department of Treasury for distribution to Legal Services of New Jersey. N.J.S.A. 2B:1-9; N.J.S.A. 2B:1-10. Any amount remaining in the fund after the appropriation will be retained by the Judiciary for the PSP and court information technology. N.J.S.A. 2B:1-9.

22. The Act did not appropriate monies to county governing bodies for capital and operating costs necessary to implement the new law.

**C. The Fiscal Impact on New Jersey Counties of the Risk Assessment Timeframe and Speedy Trial Requirements of the Act.**

23. Due to the Act's unfunded mandate, implementing the risk assessment timeframe and speedy trial requirements of the Act will cost county governments across the State an estimated \$1.0 million to \$2.0 million per county for the initial implementation in conforming with the Act's requirements because they must, among other things, hire new staff and make significant improvements to county court facilities. The costs associated with salaries and benefits for new hires will be ongoing.

**1. Risk Assessment Timeframe**

24. As set forth above, the PSP must complete and present the risk assessment to the court within 48 hours after a defendant's commitment to jail. This new procedure will force county court facilities to open on weekends and will generate the following clear, substantial and ongoing costs which are unfunded mandates under the Act:

- To provide security at county court facilities on weekends, county sheriffs must hire new officers and pay overtime to current officers;

- To operate and maintain county court facilities on weekends, counties will incur additional maintenance and utility expenses; and
- To accommodate additional staff for the PSP, county governing bodies must make costly improvements to existing court facilities.
- To effectively process the intake of defendants issued a complaint warrant, county prosecutors and sheriffs must hire additional staff to effectively manage the increased caseload.

25. Although the State is responsible for paying the salaries of the PSP employees with monies deposited in the 21<sup>st</sup> Century Justice Improvement Fund established pursuant to the Act, county freeholder boards must pay for the operation, maintenance and capital improvements of the county court facilities. County governing bodies are also mandated by State law to fund county sheriff and county prosecutor offices. The 21<sup>st</sup> Century Justice Improvement Fund will not allocate monies to county governing bodies for the costs associated with implementing and administering the Act.

## **2. Speedy Trial Requirement**

26. As set forth above, the Act also establishes three (3) separate speedy trial time standards and generally requires county prosecutors to be ready for trial within two (2) years of a defendant's initial commitment to the county jail. This new process will produce the following significant and continuing expenses for which there is no funding provided for under the Act:

- To process defendants pursuant to the newly established timeframes, county prosecutors must hire new assistant prosecutors, investigators and administrative staff; and



- To accommodate additional prosecutorial staff, county governing bodies must make expensive improvements to county buildings and grounds.

### 3. Current and Projected Costs of Compliance

27. As county governments across the State continue to struggle with a restrictive property tax cap, a declining ratable base and mounting unfunded State mandates, the requirements of the Act place a considerable new burden on counties that will stretch their budgets to the limit.

28. The tables below summarize the projected costs to implement Criminal Justice Reform in January of 2017 in certain counties. The tables include data submitted by county prosecutors, sheriff officers, jail wardens, and assignment judges to their respective county administrators pursuant to a request from NJAC. The tables do not include information where county prosecutors, sheriff officers, jail wardens, and assignment judges responded to the question presented with a “To be Determined” for an entire row. Moreover, the tables do not include other counties who also will be severely impacted by the effects of the act, and for whom specific data has yet to be reported

**TABLE 1: COUNTY PROSECUTORS**

| COUNTY     | NEW STAFF | NEW STAFF COSTS | CAPITAL PROJECTS | CAPITAL COSTS |
|------------|-----------|-----------------|------------------|---------------|
| Atlantic   | 10        | \$1,050,000.00  | No               | 0             |
| Burlington | 6         | \$548,170.00    | Yes              | \$350,000.00  |
| Camden     | 14        | \$680,000.00    | 0                | 0             |
| Cape May   | 6         | \$464,000.00    | Yes              | \$100,000.00  |
| Cumberland | 6         | \$408,000.00    | No               | 0             |
| Essex      | 10        | \$1,166,110.00  | No               | 0             |
| Gloucester | 6         | \$548,000.00    | No               | 0             |
| Hudson     | 12        | \$1,421,415.00  | Yes              | \$110,000.00  |
| Middlesex  | 10        | \$1,143,151.00  | Yes              | \$180,000.00  |
| Morris     | 6         | \$396,327.00    | No               | 0             |
| Ocean      | 10        | \$726,937.00    | Yes              | \$54,876.00   |

|          |     |                 |     |                |
|----------|-----|-----------------|-----|----------------|
| Somerset | 7   | \$1,089,213.00  | No  | 0              |
| Sussex   | 5   | \$457,379.00    | TBD | TBD            |
| Union    | 11  | \$1,122,475.00  | Yes | \$350,000.00   |
| Warren   | 4   | \$400,000.00    | Yes | \$135,000.00   |
| TOTALS   | 123 | \$11,301,941.00 | 7   | \$1,279,876.00 |
|          |     | 0               |     |                |

29. Column 1 of Table 1 summarizes whether a county prosecutor has requested additional staff to implement Criminal Justice Reform. Additional staff may include assistant prosecutors, investigators, support staff, and fringe benefits.

30. Column 2 of Table 1 summarizes the approximate costs to a county to hire new staff as requested by its prosecutor.

31. Column 3 of Table 1 summarizes whether a county prosecutor has requested renovating, refurbishing, reconstructing, or constructing prosecutorial or ancillary prosecutorial facilities to implement Criminal Justice Reform, and may also include the purchase of video conferencing equipment, live fingerprint scanning equipment, or other equipment necessary implement the new law.

32. Column 4 of Table 1 summarizes the approximate costs to a county to implement the capital improvements as requested by its prosecutor.

33. The data provided by Cumberland County indicates that it will cost the County approximately \$100,000.00 in utility and maintenance expenses to keep its judicial and prosecutorial facilities open on weekends to comply with new law's requirement that arrestees must be processed within 48 hours after commitment to jail.

34. Hudson County reported that the implementation of Criminal Justice Reform will require the County to reconfigure its current office space to accommodate new staff. The County

noted that it must also modernize and redesign its existing courtroom to comply with the monitoring and reporting requirements under the new law.

35. Ocean County reported that it will spend \$54,876.00 per year in rent to house new prosecutorial staff.

**TABLE 2: COUNTY SHERIFFS**

| COUNTY        | NEW STAFF    | NEW STAFF COSTS       | CAPITAL PROJECTS | CAPITAL COSTS       |
|---------------|--------------|-----------------------|------------------|---------------------|
| Atlantic      | 7            | \$456,699.00          | No               | 0                   |
| Burlington    | 4            | \$380,274.00          | TBD              | TBD                 |
| Cape May      | 6            | \$534,087.00          | Yes              | \$448,392.00        |
| Cumberland    | 3-4          | \$210,000.00          | Yes              | \$60,000.00         |
| Gloucester    | 5            | \$225,000.00          | TBD              | TBD                 |
| Hudson        | 8            | \$843,725.00          | Yes              | \$50,000.00         |
| Hunterdon     | 6            | \$311,611.00          | Yes              | \$75,155.00         |
| Middlesex     | 10           | \$856,000.00          | Yes              | \$200,000.00        |
| Morris        | 0            | 0                     | No               | 0                   |
| Ocean         | 3            | \$198,014.00          | No               | 0                   |
| Passaic       | 14           | \$700,000.00          | Yes              | TBD                 |
| Somerset      | 6            | \$454,534.00          | TBD              | TBD                 |
| Union         | 18           | \$1,225,013.00        | Yes              | \$40,000.00         |
| Warren        | 0            | 0                     | No               | 0                   |
| <b>TOTALS</b> | <b>90-91</b> | <b>\$6,394,957.00</b> | <b>7</b>         | <b>\$873,547.00</b> |

36. Column 1 of Table 2 summarizes whether a county sheriff has requested additional staff for court house security to implement Criminal Justice Reform. Additional staff may include sheriff officers and clerical staff.

37. Column 2 of Table 2 summarizes the approximate costs to a county to hire new staff as requested by its sheriff.

38. Column 3 of Table 2 summarizes whether a county sheriff has requested renovating, refurbishing, reconstructing, or constructing court or ancillary court facilities to implement Criminal Justice Reform. Column 3 of Table 2 also summarizes whether a county's sheriff has requested new security equipment such as video conferencing equipment, live

fingerprint scanning equipment, or other new equipment necessary to implement the new law.

39. Column 4 of Table 2 summarizes the approximate costs to a county to implement the capital improvements as requested by its sheriff.

40. Passaic County projects that the Sheriff will require a new video conferencing equipment at a cost to be determined.

**TABLE 3: COUNTY JAILS**

| COUNTY        | NEW STAFF | NEW STAFF COSTS       | CAPITAL PROJECTS | CAPITAL COSTS       |
|---------------|-----------|-----------------------|------------------|---------------------|
| Atlantic      | TBD       | TBD                   | Yes              | \$21,000.00         |
| Burlington    | 8         | \$765,186.00          | TBD              | TBD                 |
| Cape May      | 0         | \$18,000.00           | No               | \$150,000.00        |
| Cumberland    | TBD       | TBD                   | TBD              | \$130,000.00        |
| Hudson        | 7         | \$783,495.00          | Yes              | \$177,160.00        |
| Hunterdon     | 0         | 0                     | No               | 0                   |
| Middlesex     | 2         | \$203,578.00          | TBD              | TBD                 |
| Monmouth      | 7         | \$397,676.00          | No               | 0                   |
| Morris        | 0         | 0                     | Yes              | \$100,000.00        |
| Ocean         | 2         | \$117,747.00          | Yes              | \$200,000.00        |
| Somerset      | TBD       | TBD                   | Yes              | See Table 4         |
| Union         | 2         | \$27,346.00           | Yes              | \$66,000.00         |
| Warren        | 3         | \$220,000.00          | Yes              | \$75,000.00         |
| <b>TOTALS</b> | <b>31</b> | <b>\$2,533,028.00</b> | <b>7</b>         | <b>\$919,160.00</b> |

41. Column 1 of Table 3 summarizes whether a county jail warden or sheriff has requested additional jail staff to implement Criminal Justice Reform. Additional staff may include correction officers, sheriff officers, or clerical staff.

42. Column 2 of Table 3 summarizes the approximate costs to a county to hire new jail staff as requested by its jail warden or sheriff.

43. Column 3 of Table 3 summarizes whether a county jail warden or sheriff has requested renovating, refurbishing, reconstructing, or constructing the county jail to implement Criminal Justice Reform. Column 3 of Table 3 also summarizes whether a county jail warden

or sheriff has requested new security equipment such as video conferencing equipment, live fingerprint scanning equipment, or other new equipment necessary to implement the new law.

44. Column 4 of Table 3 summarizes the approximate costs to a county to implement the capital and operational improvements as requested by its jail warden.

45. Morris County reported that the County plans to rehabilitate existing space to accommodate video conferencing equipment.

**TABLE 4: ASSIGNMENT JUDGES**

| COUNTY        | CAPITAL PROJECTS | CAPITAL COSTS         |
|---------------|------------------|-----------------------|
| Atlantic      | No               | 0                     |
| Bergen        | Yes              | \$900,000.00          |
| Burlington    | No               | 0                     |
| Cape May      | Yes              | \$322,728.00          |
| Cumberland    | Yes              | \$1,275,000.00        |
| Hudson        | Yes              | \$134,379.00          |
| Monmouth      | No               | 0                     |
| Morris        | Yes              | \$900,000.00          |
| Ocean         | Yes              | \$500,000.00          |
| Somerset      | Yes              | \$480,000.00          |
| Union         | No               | 0                     |
| <b>TOTALS</b> | <b>7</b>         | <b>\$4,512,107.00</b> |

46. Pursuant to “the Judicial Employees Unification Act” of 1994 N.J.S.A. 2B:11-1 et seq., the State of New Jersey is generally responsible for paying the salaries of all judicial staff, and holds county governing bodies responsible for all operation, maintenance, and capital improvement costs of the county court facilities. Generally, assignment judges and their staff are considered State employees, while prosecutor, sheriff, and jail warden staff are considered county employees.

47. Column 2 of Table 4 summarizes whether a county assignment judge has requested renovating, refurbishing, reconstructing, or constructing court or ancillary court facilities to implement Criminal Justice Reform, and may also include the purchase of video

conferencing equipment, live fingerprint scanning equipment, or other equipment necessary implement the new law.

48. Column 3 of Table 4 summarizes the approximate costs to a county to implement the capital improvements as requested by its assignment judge.

49. It is projected by Cumberland County reported that it will need to hire 6-9 new judicial staff to implement Criminal Justice Reform. As the county facilities are currently at full capacity, the County's only option is to relocate the County Clerk to a new facility at a total cost of \$1,275,000.00.

**TABLE 5: TOTAL COSTS FOR COUNTIES INCLUDED IN TABLES 1-4**

|                     |                 |
|---------------------|-----------------|
| Total Staff Costs   | \$20,549,162.00 |
| Total Capital Costs | \$7,584,690.00  |
| Total Costs         | \$28,133,852.00 |

50. Table 5 does not include certain ancillary costs such as purchasing new video conferencing equipment, hiring building and grounds staff, utilities, etc., at approximately \$80,000.00 in Atlantic, \$600,000.00 in Cumberland, \$267,138.00 in Sussex, and \$322,324.00 in Union for a total of \$1,269,462.00 and a grand total of \$28,723,314.00 for reporting counties.

**D. The Act Contains An Unfunded Mandate**

51. The Council has found that a law constitutes an unconstitutional "unfunded mandate" when: (1) the law imposes a "mandate" on a unit of local government; (2) direct expenditures are required for the implementation of the law's requirements; and (3) the law fails to authorize resources, other than the property tax, to offset the additional direct expenditures on the unit of local government. See Monmouth-Ocean Educational Services Comm'n, et al., Council on Local Mandates (August 20, 2004); see, also, Mayors of Shiloh Borough, et al., Council on Local Mandates (December 12, 2008).

52. Statutes and regulations that “implement the provisions of [the New Jersey] Constitution” are generally exempt from the definition of an unfunded mandate, and thus, immune from consideration by the Council. See N.J. Const., Art. VIII, § 2, ¶ 5(c)(5) and N.J.S.A. 52:13H-3(e).

53. As set forth above, the risk assessment timeframe and speedy trial requirements of the Act impose a mandate on counties because county employees and facilities must shoulder increased responsibilities to support New Jersey’s criminal justice system.

54. Moreover, direct expenditures are required for the implementation of the Act’s requirements because counties must now pay overtime to existing staff, hire new staff, and provide, furnish and maintain new facilities for this new staff.

55. For the risk assessment timeframe, these expenditures include, but are not limited to, upgrading court facilities, staffing courts on weekends, hiring more sheriff’s officers and court personnel, and increased maintenance and utility costs for keeping buildings open.

56. For the speedy trial requirements, these expenditures include, but are not limited to, hiring and training new assistant prosecutors, investigators, and administrative personnel, along with providing facilities for this new staff.

57. The State has not authorized resources, other than the property tax, to offset these additional direct expenditures. The only funding provided by the Act is the 21st Century Justice Improvement Fund. That fund, however, will not offset the counties’ costs in any way. For these reasons, the risk assessment timeframe and speedy trial requirements of the Act meet the definition of an unfunded mandate.

58. The ballot question and interpretive statement provided to voters during the November 2014 general election stated that through the Amendment, dangerous criminals would

lose the right to bail and be subject to pretrial detention.

59. However, the Amendment eliminates bail, and in its place, creates an express presumption that all criminal defendants are eligible for pretrial release.

60. This presumption can only be overcome if imposition of non-monetary conditions for pretrial release cannot ensure a defendant's appearance, protect the public, and/or preserve the integrity of the judicial process. Under those circumstances, the courts can order pretrial detention of a defendant or impose monetary conditions for pretrial release.

61. Under the current constitutional right to bail, monetary bail is required to be set within twelve (12) hours after an arrest (R. 3:4-1(b)). Any person unable to post bail is required to have his or her bail reviewed by a Superior Court judge no later than the next day, that is not a Saturday, Sunday or legal holiday. R. 3:26-2(c). In addition, a first appearance before a judge for those in custody must occur within 72 hours, excluding holidays. R. 3:4-2(a). All of these requirements maintain a 72-hour window and exceptions for weekends and/or holidays, thus not requiring courts to be open on weekends.

62. The Amendment eliminates the right to bail, and creates a presumption of eligibility for pretrial release. However, the ballot question and interpretive statement do not support the creation of this presumption or the Act's risk assessment timeframe.

63. A change from bail to the imposition of non-monetary conditions to ensure that a defendant appears in court does not address the creation of an accelerated procedure that places a costly burden on the court system and counties above and beyond the current bail procedures, described above.

64. For these reasons, the Act's risk assessment timeframe does not implement the New Jersey Constitution.



65. The Amendment did not call for an acceleration of the criminal justice process for detained defendants that places a costly burden on the court system and counties above and beyond the current procedures. Additionally, the ballot question and interpretive statement only addressed the right to bail, not this accelerated process. Finally, the speedy trial right set forth in Article I, Paragraph 10 of the New Jersey Constitution does not require a specific timeframe for completion of a criminal trial.

66. For these reasons, the Act's speedy trial requirements do not implement the New Jersey Constitution.

### **REQUEST FOR RELIEF**

As set forth above, if New Jersey counties are required to implement the Act's risk assessment timeline and speedy trial requirements, then they will suffer significant financial hardship. Indeed, on January 1, 2017, NJAC's members will be forced to spend tens of millions of dollars to comply with the Act's mandate. The foregoing paragraphs also establish that there is a substantial likelihood that the risk assessment timeline and speedy trial requirements are, in fact, impermissible, unfunded mandates. Furthermore, as of January 1, 2017, counties will be forced to cut services and/or raise property taxes in order to implement the Act, thus providing irreparable harm to the residents whose services will be cut and/or the employees who may lose their jobs in order to fund for the costs of implementing the Act. Accordingly, injunctive relief is appropriate in this matter.

**WHEREFORE**, the New Jersey Association of Counties respectfully requests that the Council issue a ruling:

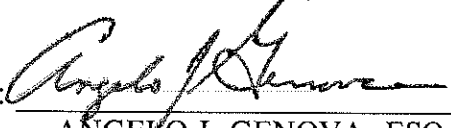
1. Enjoining the State of New Jersey from enforcing the risk assessment timeframe of N.J.S.A. 2A:162-16(b)(1) and speedy trial requirements of 2A:162-22 pending the

disposition of this matter;

2. Finding that the risk assessment timeframe of N.J.S.A. 2A:162-16(b)(1) and speedy trial requirements of 2A:162-22 constitute an unfunded mandate pursuant to the New Jersey Constitution, Art. VIII, §2, ¶5 and N.J.S.A. 52:13H-2, and it shall cease to be mandatory in effect and expire; and
3. Granting such other and further legal or equitable relief that the Council deems just and proper.

**GENOVA BURNS LLC**

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\_\_\_\_\_  
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Dated: December 6, 2016

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