

# Committee on Criminal Justice Reform



February 13, 2020

**Patrick J. Ryder**  
Nassau County  
Police Commissioner

## **The Committee on Criminal Justice Reform:**

- Patrick J. Ryder, Nassau County Police Commissioner
- Errol D. Toulon Jr., Suffolk County Sheriff
- John Arersta, Chief of Police, Malverne Police Department
- Captain Michael Golio, Nassau County Corrections
- Kevin Black, President, Nassau County Police Superior Officers Association
- John Wighaus, President, Nassau County Police Detective Association Inc.
- James McDermott, President, Nassau County Police Benevolent
- Brian Sullivan, President, Nassau County Correction Officer's Benevolent Association

## *Introduction*

---

This Committee has drawn upon our varied experience as members of law enforcement to review the new NYS Criminal Justice Reform legislation and its impact. Although we work in different capacities and hold different roles, we share a common goal of keeping our communities safe.

We recognize this is new legislation, effective January 1, 2020. However, we have already been able to identify issues arising from the implementation of this new law and can, based on our experience, make suggestions as to which portions of the new legislation should be considered for amendments.

The members of the Committee also recognize that the criminal justice system should not lead to situations where individuals are being held on low bail for low level crimes simply because those individuals lack the financial resources of others. In other words, we would all agree that a first-time offender charged with a low-level crime should not be sitting in jail because they cannot post \$500.00 bail due to their economic situation. However, the sweeping reforms as enacted have created a situation where judges are unable to exercise discretion on a case by case basis. The reforms passed in Albany last year rightly aimed to bring fairness to a system that needed change. However, since January 1st, we've seen that the criminal justice reforms which were passed need to be amended.

The new legislation has limited judicial discretion. The State removed bail for far too many crimes that the average person would deem "violent." Individuals in need of services may not be receiving the benefit of evaluations and the opportunity to have a case progress through a diversion court. New discovery requirements pose a threat to the victims and witness of crimes and have made the job of those in law enforcement even more difficult. It is also important to note that the lack of any funding for the implementation of these reforms have placed a significant financial burden on local governments across the State.

Now is the time to amend the law. We can work together towards a smarter and fairer justice system without compromising the safety of our communities.

## *Report*

---

As outlined below, the Committee has identified areas of the new legislation that we recommend should be amended. This report will indicate the section of the legislation that is of concern and also offer suggestions for possible amendments to remedy the issues presented.

## *Bail Reform*

---

### **ISSUE PRESENTED:**

- *The new legislation limits the cases (qualifying offenses) for which a judge has the option to set cash bail.*

**SUGGESTED AMENDMENT: Do not limit the types of crimes for which a judge can set cash bail.** Our legal system constantly calls upon judges to exercise discretion when making decisions in cases before them. The issue of bail status should be no different. There may be cases where cash bail is not appropriate or necessary for a defendant who is charged with an “A-1” felony drug possession crime; but there will be cases where bail is appropriate for a different defendant facing the same charge. The Judge presiding over that case should be able to exercise discretion and at least have the option of cash bail available.

### **ISSUE PRESENTED:**

- *The new legislation has limited the factors which the Court can consider in determining the defendant’s custody status pending trial.*

**SUGGESTED AMENDMENT: Do not limit the factors the Court can consider when evaluating bail applications.** The new legislation eliminated certain factors that were to be considered, such as the defendant’s family and community ties. In addition to those factors, this Committee submits that the Court should also be permitted to consider factors such as:

1. if the defendant poses a risk to himself or others
2. the defendant’s character
3. the defendant’s physical and mental condition
4. the defendant’s employment history
5. evidence of the defendant’s recent or ongoing abuse of controlled substances or alcohol
6. the nature and strength of the proof as bearing on the probability of conviction
7. the possible sentence if the defendant were to be convicted of the pending charges

8. the defendant's ties to criminal organizations
9. any threat or act of violence by the defendant or use of physical force by the defendant directed toward himself or others

All of these factors are necessary in the court's deliberative process concerning the release of a defendant or the imposition of post-arraignment restrictions.

**ISSUE PRESENTED:**

- *The ramifications for violating non-monetary bail conditions, such as electronic monitoring, are not significant enough to deter a defendant from violating these terms.*

**SUGGESTED AMENDMENT: Any alternative to the imposition of bail or incarceration must be meaningful and effective.** In cases where the Court imposes non-monetary conditions of release, there must be ramifications for non-adherence to those conditions. For instance, electronic monitoring should be utilized only with time and place restrictions that can be summarily enforced by law enforcement.

**ISSUE PRESENTED:**

- *Pursuant to the new legislation, the Court cannot immediately issue a bench warrant when a defendant fails to appear and must provide 48 hours' notice to the defendant and defense counsel.*

**SUGGESTED AMENDMENT: Judges should be given the discretion to issue a warrant immediately when a defendant fails to appear.** The "48 hour" rule, allowing notice to a defendant that missed court and giving him or her an opportunity to appear again prior to having a warrant issued, is diametrically opposed to the intention of bail – to ensure an individual's return to court. Such a failure to appear on the required date is indicative of an individual's unwillingness to accept the court's jurisdiction and therefore requires his or her detention. Judges should be given the discretion to issue a warrant immediately when a defendant fails to appear.

**ISSUE PRESENTED:**

- *The new legislation limits judicial discretion when considering applications before the Court.*

**Suggested Amendment: Allow Judges presiding over criminal matters the same level of discretion given to the Court in other matters.** The limitations on judicial discretion imposed by the NYS Criminal Justice Reforms is inconsistent with the manner by which other applications are heard and decided. For instance, under the newly enacted Article 63-A of the Civil Practice Laws and Rules (CPLR), prior to issuing a final Extreme Risk Protection Order (ERPO) against an individual, the court has the ability to review a background investigation to determine whether the individual has any prior criminal conviction for an offense involving domestic violence, use of a weapon, or other violence; has any criminal charge or violation currently pending against him; is currently on parole or probation; is in possession of any registered firearms, rifles or shotguns; and has been, or, is subject to any order of protection or has violated or allegedly violated any order of protection. Similar options should be available to the court in determining whether to release an individual or restrict a person's liberty interests.

# Discovery

---

## ISSUE PRESENTED:

- *The new legislation significantly expedites the time the in which discovery is to be provided to the defense by the District Attorney.*

SUGGESTED AMENDMENT: **The initial 15-day requirement must be increased to at least 90 days.** Pursuant to the new legislation, the newly created category of automatic discovery must be provided to the defense within 15 days of arraignment. As a result, the Police Department must provide all records to the DA's office in a significantly shorter time period than what was required prior to the new legislation. The new legislation does not contemplate that the police are often investigating complex cases involving serious crimes, sometimes with multi-jurisdictional components. The sheer volume of discovery that needs to be provided in those cases is a logistical impossibility in this 15-day period.

## ISSUE PRESENTED:

- *Pursuant to the new legislation, the District Attorney cannot enter into a plea bargain until discovery has been produced.*

SUGGESTED AMENDMENT: **Permit the District Attorney to resolve cases by way of plea bargaining as had been the case before the reforms.** The limitation on plea bargaining, coupled with the list of items included in "automatic discovery" is placing a strain on all the law enforcement entities being called upon to adhere to these new discovery demands. Additionally, the legislation has imposed a significant burden on crime laboratories that operate in New York State which must adhere to protocols, and a methodical approach in the handling, processing, analyzing and reporting on evidentiary matters.

## ISSUE PRESENTED:

- *The discovery reform also includes provisions that sensitive information, such as witness names and addresses (or other method of contact) and witness statements, are provided to the defendant as part of automatic discovery.*

SUGGESTED AMENDMENT: **Identifying information regarding witnesses and victims should not be included in the category of automatic discovery.** Including this type of information in the category of automatic discovery which must be produced in the expedited time frame discussed above may lead to members of the public being fearful of reporting criminal activity or cooperating in criminal investigations/proceedings out of fear of retribution or intimidation. This private information should only be disclosed immediately prior to an individual testifying.

## Conclusion

As outlined above, the new Criminal Justice Reforms as implemented present issues for both law enforcement and the members of our community. In addition to those outlined above, the Committee also finds that a major issue with the entirety of the Criminal Justice Reform is that the State Legislature instituted these mandates without providing for funding or a method to secure funding to enable the agencies to change their own internal procedures to comply with the new law. The implementation of new infrastructure, new software, new portals, etc. is a time-intensive, costly endeavor.

Nassau County will begin collecting data on crime statistics for quarterly reports which will allow us to have a better understanding of the impact of the reforms on our communities.

The dedicated men and women of law enforcement will continue to do everything necessary to maintain the safety and security of our citizens. We respectfully submit the information contained in this report, including our recommendations for amendments to the new Criminal Justice Reforms. We hope and trust that the State Legislature will hear and address our concerns.