



REENTRY COALITION OF NEW JERSEY

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July 27, 2018

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Comments on Municipal Court Operations, Fines, and Fees Report
Hughes Justice Complex; PO Box 037
Trenton, NJ 08625-0037

Dear Judge Grant-

It is with great pleasure that the Reentry Coalition of New Jersey commends the New Jersey Supreme Court Committee on their report on Municipal Court Operations, Fines, and Fees. The Reentry Coalition of New Jersey is a 28 year old organization comprised of agencies that contract with the State of New Jersey to operate more than 25 community-based programs serving approximately 12,000 ex-offenders annually. Our members have pioneered evidence-based reentry practices and programs that have made a significant impact in our state. Over the last 20 years, New Jersey has reduced its prison population, crime, and recidivism rates and has become a national leader in criminal justice reform. Despite this success the Coalition believes that there is more work to be done.

The Reentry Coalition believes our recommendations in this correspondence are in line with the agenda that New Jersey has for criminal justice reform and are in concert with the reforms and recommendations made in the report on Municipal Court practices.

Many individuals returning from state prison face outstanding municipal court warrants upon release. Unsurprisingly, unresolved warrants and the financial costs associated with them often pose a significant challenge to successful reentry. Currently, most outstanding municipal arrest warrants are typically handled once someone is released. Disappointingly, the resolution has often been the imposition of a payment plan which unduly strains the returning citizen with additional debts. Adding financial burdens to the formerly incarcerated is a significant impediment to community reintegration and rehabilitation and can lead to re-incarceration.

While the recommendations of the Supreme Court Committee address efficiency of court practices at the municipal level and acknowledge the need to reduce the imposition of legal

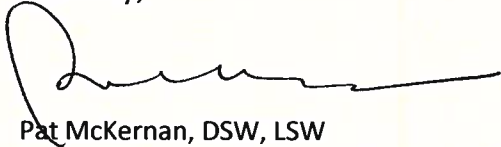
financial obligations to individuals without resources, **the Reentry Coalition of New Jersey is advocating for legislation that would require all municipal court matters be revealed and resolved at or before the time of sentencing in Superior Court.** When someone is sent to state prison, they should not have to come home and face outstanding municipal court matters such as fines, fees, and warrants after they have served their term of incarceration.

For most individuals returning from prison, the debt accumulated as a result of their criminal justice involvement can be staggering. Legal financial obligations including fines, fees, restitution, and child support compounded by penalties and arrears amassed over a period of incarceration. When taken together, these financial obligations saddle individuals returning home with overwhelming debt that impedes their ability to contribute to their families and their communities. Criminal justice debt significantly inhibits a person's chances to reenter society successfully after a conviction¹ and the facts supporting this contention are compelling.

The expertise of community corrections providers in New Jersey and the infrastructure built through our public/private partnerships with the NJ Department of Corrections and the NJ State Parole Board have significant and positive implications that would further the goals of the municipal court report. The detailed recommendations and supporting factual information are attached for your review.

I can be reached at pmckernan@voadv.org or at 609-315-0971 with any questions related to this proposal. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Pat McKernan', with a long horizontal flourish extending to the right.

Pat McKernan, DSW, LSW
President

THE INTERSECTION OF PRISONER REENTRY AND MUNICIPAL COURT REFORM:

Most individuals returning from prison were low wage earners prior to incarcerationⁱⁱ. Unemployment rates *prior* to incarceration have been reported to be 40% for sentenced individualsⁱⁱⁱ and only 55% of incarcerated individuals reported having full-time employment at the time of their arrest^{iv}. Post incarceration, sustainable employment can be difficult to find and maintain. More than half of individuals returning home experience financial insecurity, unemployment, and reliance on public assistance in the critical months post-release^v.

Losing one's driver's license complicates employment prospects post incarceration. The New Jersey Motor Vehicle Affordability and Fairness Task Force reported in 2006 that more than 20,000 people lose their driver's license due to a drug conviction on an annual basis. Moreover, most drivers' license suspensions have nothing to do with poor driving. The suspension of driver's licenses is common place in municipal court practices across New Jersey and was mandatory under the Comprehensive Drug Reform Act of 1987. The law was amended in 2007 but driver's license suspension remains an expensive and difficult barrier to repair for ex-offenders. The loss of a driver's license limits one's employability as well as mobility. Further, the practice is counterintuitive to the payment of fines related to driver's license suspension and other legal financial obligations. Each driver's license restoration fee is \$100 and many of our clients have their driver's license suspended in more than one municipality.

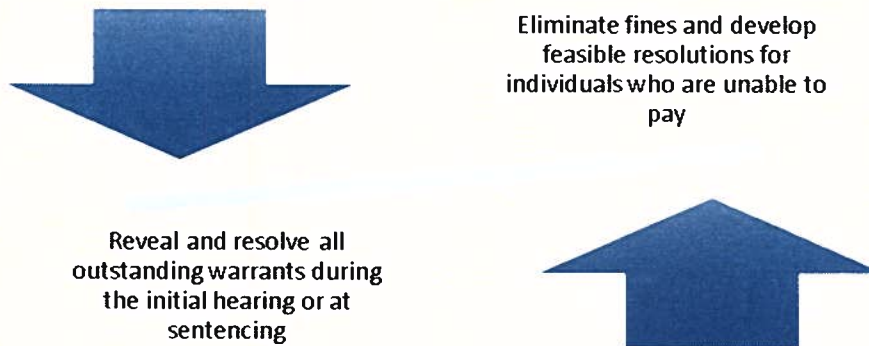
Nearly two-thirds of prisoners reported having been assessed monetary sanctions by the court^{vi}. For 20 percent, the average monthly debt exceeded their monthly income^{vii}. Debt assessed for individuals returning from prison was found to range from \$500 to \$80,000 with a median legal financial obligation of \$9,091^{viii}. For some individuals, debt payments could be as high as \$600 a month^{ix}. Exacerbated by low-wage jobs and limited employment prospects post incarceration, the ability to manage financial insecurity often involves dependence on family members post incarceration^x.

The combination of low wages and high debt may discourage people from taking and keeping jobs in the formal economy^{xi}. Employment is a significant protective factor in reducing the likelihood for returning to criminal behavior and a significant opportunity within a residential community release program. Strategies to improve outcomes for individuals leaving prison must include promoting gainful employment and reducing unmanageable legal financial obligations.

In 2012, Rutgers University School of Criminal Justice facilitated a working group on warrants and detainers to address this significant obstacle in prisoner reentry. Representatives from the New Jersey Department of Corrections, Administrative Offices of the Courts, the Juvenile Justice Commission, Probation, Parole, the Prosecutor's Office, local and state law

enforcement, county jail administrators, and community based organizations met to develop a sustainable model to resolve outstanding arrest warrants for individuals leaving State prison. Recommendations from law enforcement, the judiciary, and corrections were outlined. Unfortunately, the lack of coordinated leadership on this issue prevented the recommendations from being implemented.

Key Recommendations:



Some municipal courts have permitted the use of existing statutes which include monetizing days of incarceration for individuals returning from state prison, up to \$50 a day per day served, as payment against municipal court fines. However, the municipal court judge has complete discretion whether to exercise this option. Indigent defendants are in a disadvantaged position when this option is left to the discretion of local municipal court judges in towns and cities dependent on court fines for revenue. Protections need to be in place for indigent defendants and proactive steps can be taken prior to state incarceration to resolve municipal court matters. **Consistent with Recommendation #11 of the Supreme Court report, the Coalition supports updating the incarceration conversion rate that reflects the actual costs of incarceration. The Coalition would recommend that jail or prison time be converted to a minimum of \$100 per day incarcerated.**

The Reentry Coalition implores the NJ Courts to consider leveraging the infrastructure built by the NJ Department of Corrections and NJ State Parole Boards as alternatives to incarceration. **Recommendations #3, #5 #9 speak to alternative sentencing and the importance of treatment services if the defendant's need for services is a contributing factor to his/her criminal involvement. Programs such as the Community Resource Centers funded by the NJ State Parole Board could serve as an important vehicle to provide services, coordinate community service, and/or monitor drug testing.** In fact, the inception of the day reporting center model was to serve as an alternative to incarceration to depopulate the state prison system of technical parole violators. The NJ Department of Corrections currently has 2,642 of residential

community release beds and the NJ State Parole Board has 819 residential beds and 525 community resource beds. **The NJ Courts should consider a collaborative relationship with these entities to maximize usage of these resources that all further the goal of public safety while reducing incarceration.**

Additionally, most of the residential community release programs are outfitted with video-teleconferencing equipment. **Recommendation #22 supports expanding the use of video and telephonic appearances in municipal courts.** Many community programs attempt to maximize this resource with municipal courts with mixed results. Formalizing this relationship would further this goal and more efficiently resolve outstanding warrants for our mutual clients.

Recommendation #10 speaks to the enactment of legislative alternative to license suspension. For many individuals leaving prison, driver's license suspension is a significant problem.

It is time to repeal the automatic suspension of drivers' licenses under the Comprehensive Drug Reform Act of 1987. Additionally, it is time to review commonsense recommendations that have been made regarding drivers license suspensions.

The New Jersey Institute of Social Justice, a non-partisan urban research and advocacy organization, released landmark recommendations related to drivers' license suspension in 2001. Their publication entitled *Roadblock on the Way to Work: Driver's License Suspension in New Jersey* made recommendations related to this important issue. Several of the recommendations appear pertinent to your interest in drafting legislation to make improvements in this system. They include:

- Provide for conditional or job-related licenses. This would permit individuals to hold a limited license permitting them to drive for work, job training, or health reasons while paying off outstanding fees.
- Set up license reinstatement programs. Reinstatement programs through the courts and the MVC would work with individuals to set up realistic payment plans, scaled to income, for outstanding fines, insurance surcharges, and other penalties owed to the state or municipalities. Driving under a regular or job related license would be allowed during the payment period.
- Reform the insurance surcharge system. Realistic payment plans must be adopted and the statutory requiring payment plans be limited to one year must be revised.
- Permit full or partial waiver of fines or surcharges as an incentive. Fines and surcharges could be reduced or waived for individuals based on income or effort to improve their financial status.

- Reduce discretionary suspensions. Suspensions for certain traffic violations are not mandatory but are imposed at the discretion of the MVC. Other suspensions are imposed at the discretion of the municipal courts. Using alternatives to achieve enforcement goals could reduce overall suspension rates.
- Provide legal or lay assistance for low-income individuals facing suspension.

In 2006, the **Motor Vehicles Affordability and Fairness Task Force** released its final report to then Governor Corzine and the NJ State Legislature. The Task Force Recommendations included:

- Provide judges with more discretion when establishing time payment orders.
- Make payment of court-administered fines and time payment orders easier for drivers.
- Amend the parking Offenses Adjudication Act to permit suspension of vehicle registration as an alternative to license suspension.
- Provide courts with greater discretion to provide payment plans in excess of 12 months for those failing to pay child support arrears and support initiatives to increase compliance with child support payments using driver's license suspension as a remedy of last resort.
- Amend N.J.S.A. 39:3-40 to provide courts with greater discretion regarding the imposition of additional mandatory suspension time when drivers are convicted of driving while suspended for non-driving reasons. Consider whether the current fine amounts defined in the statute are appropriate given the nature for each offense.
- Make payment of outstanding MVC insurance surcharges and restoration fees easier and more affordable for low income drivers.
- Conduct a revenue impact study to determine if lowering current surcharge amounts would increase overall collection rates and maintain or increase overall revenue from the insurance surcharge program.
- Rename the insurance surcharge program to reflect its current purpose as a driver responsibility assessment.
- Increase public awareness and understanding of the insurance surcharge program and the potential consequences of not paying the surcharges.
- Develop informational materials to increase public awareness and understanding of the potential consequences of motor vehicle violations, including: fine amounts (for frequent violations), point accumulation, insurance surcharges and potential license suspension.

- Conduct a comprehensive review of New Jersey's current point system and driver improvement programs to determine the effectiveness of the programs relative to ensuring highway safety.
- Address issues that contribute to license suspensions for failing to maintain insurance.
- Regulate and/or limit insurance premium increases that are based on license suspensions for non-driving reasons.
- Consider creating a restricted-use license program for drivers suspended for financial reasons.
- Change license suspension notification documents to make them easier to understand and include supplemental education materials to communicate the seriousness of license suspension and its potential consequences.
- Improve communication with the public and increase awareness among drivers facing license suspension that MVC has an administrative hearing process available to address the individual circumstances of their suspensions.
- Undertake a sustained and systemized effort to provide social service agencies, employment counseling agencies, One-Stop Career Centers, Department of Corrections personnel, parole officers and support staff at transitional facilities with the information, training and tools they need to more effectively assist clients to address license suspension and restoration issues.
- Elevate the importance of dealing with license restoration issues as part of the Department of Corrections discharge planning process.
- Increase awareness among social service agencies that public assistance funds (e.g., TANF and other federal programs permitting the use of funds for transportation purposes) can be used to pay for such surcharges, fees and fines associated with license suspension as a means to promote employment opportunities among eligible recipients and increase collections.
- Amend existing laws, policies, and procedures governing address change notification to increase the accuracy of MVC mailing address data.

The Supreme Court's report clearly outlines its intention to reduce the reliance on legal penalties especially for indigent defendants. **However, the report fails to address the prohibitive cost of a public defender application. The Coalition recommends that when indigency has been determined, public defender application fees should be waived.**

Consistent with recommendations from the Brennan Center's *Criminal Justice Tool Kit*, New Jersey should consider creating and enforcing exemptions for indigence, eliminating collateral consequences related to criminal justice debt, and ending incarceration and the use of arrest warrants for non-willful failure to pay^{xii}. However, most important for New Jersey's released prisoners would be to resolve matters before their prison term.

Lastly, the success of the reforms recommended by the Supreme Court Committee will only be realized if law enforcement and municipalities work collaboratively. **Failing to address unfair police practices that disproportionately affect the poor or people of color will inhibit the impact on these reforms.** As evidenced by Recommendation #7 for vicinage-wide community-led programs that encourage voluntary appearance and safe surrender of defendants with outstanding bench warrants, law enforcement is a crucial partner in achieving reforms in municipal court practices. As community corrections providers, we work collaboratively with law enforcement on public safety goals. Law enforcement assisted diversion programs are only successful with community partnerships. Whereas the NJ Courts states that the municipal court is the face of justice for many citizens, the first interaction with justice is with the police.

Conclusion:

New Jersey has made significant strides in ending mass incarceration and reforming bail practices. To promote effective prisoner reentry, attention must be paid to outstanding arrest warrants and the criminalization of poverty. The evaluation of municipal court practices that disproportionately penalize the poor and incarcerate individuals without financial means is to be lauded.

An immediate step that would impact more than 10,000 individuals leaving State prison each year would be to require all municipal court matters be revealed and resolved at or before sentencing in superior court. The meaningful impact on men and women who have served their sentence and are attempting to move their lives forward in a productive way would be immeasurable. Additionally, leveraging the infrastructure built by the NJ Department of Corrections and the NJ State Parole Board to create meaningful alternatives to incarceration has significant potential. The Reentry Coalition commends the NJ Courts for acknowledging the roles that structural racism and poverty play in our justice system and for making recommendations for reforms to improve our faith in the criminal justice system.

ⁱ Bannon, A., Nagrecha, M., & Diller, R. (2010). Criminal justice debt: A barrier to reentry. *New York University School of Law Brennan Center for Justice*, 1-34.

ⁱⁱ Harris, A. (2016). *A Pound of Flesh: Monetary Sanctions as Punishment for the Poor*. New York, New York: Russell Sage Foundation; Roman, C. G., & Link, N. (2015). Child support, debt, and prisoner reentry: Examining the influences of prisoners' legal and financial obligations on reentry. *Final Report to the National Institute of Justice*, 1-88; Bannon (2010).

ⁱⁱⁱ Western, B., Braga, A.A., Davis, J. & Siriois, C. (2015). Stress and Hardship after Prison. *American Journal of Sociology*, 120 (5), 1512-47.

^{iv} *Prisoner Reentry and Crime in America* (2005). In Travis J., Visher C. A. (Eds.). Cambridge ; New York: Cambridge University Press.

^v Visher, C., Courtney, S. & Travis, J. 2004. *Returning Home: Understanding the Challenges of Prisoner Reentry, Maryland Pilot Study; Findings from Baltimore*. Washington, D.C.: Urban Institute.; Western (2015)

^{vi} Harris (2016); Visher (2004)

^{vii} Visher (2004)

^{viii} Harris (2016)

^{ix} Visher (2004)

^x Western (2015)

^{xi} Levingston, K. D., & Turetsky, V. (2007). Debtors' Prison—Prisoners' accumulation of debt as a barrier to reentry. *Clearinghouse Review Journal of Poverty and Law Policy*, 41(3), 187-197.7

^{xii} Patel, R., & Philip, M. (2012). Criminal justice debt: A toolkit for action. New York University School of Law: Brennan Center for Justice, 1.38.