

# NEW JERSEY ASSOCIATION OF COUNTIES

*County Government with a Unified Voice!*

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## STATE HOUSE NEWS

*August 9, 2018*

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### **911 FUNDING**

Special thanks to Camden County Freeholder Jonathan Young and Salem County Freeholder Melissa DeCastro for taking the time out of their busy schedules last week to meet with legislative leadership concerning the fact that the federal government is moving forward with plans to make New Jersey ineligible for \$115.0 million in 911 grant funding to upgrade public safety answering points (PSAPs) with Next Generation (NG911) capabilities.

In fact, on August 3<sup>rd</sup> the Federal Registry contained new regulations that will *“require all applications for grant funding to: “certify that the State has not diverted any portion of designated 911 charges imposed by the State for any purposes other than the purposes for which such charges are designated or presented,” and “that no taxing jurisdiction in the State will be a recipient of 911 grant funds if it has diverted any portion of designated 911 surcharges imposed by the taxing jurisdiction for any purpose for which such charges are designated or presented.”* In other words, and as a direct result of the State’s decade long diversion of 911 fees, county and municipal governments across the State will be ineligible to receive critical 911 monies from the federal government.

Moreover, Congressman Leonard Lance (NJ-7) is the co-sponsor of recently introduced federal legislation that would prevent states from diverting fees collected from consumers on their cell phone bills. In summary, H.R. 6424 would direct the Federal Communications Commission (FCC), in consultation with public safety organizations, and state and local governments, to determine the appropriate use of the 911 fees collected from consumers. Current federal law authorizes states to establish their own definitions of eligible 911 expenses, which has led to the wide spread diversion of fees across the nation with New Jersey as the number one offender.

As has been well documented, the State diverts an estimated 89.0% of the \$120.0 million in surcharges it collects each year as 911 System and Emergency Response Fees (Fees) and of which it deposits into the 911 System and Emergency Trust Fund Account (Fund). In fact, the State has collected approximately \$1.3 billion in fees since 2006 with only 11% of Fund monies being spent on eligible expenses as recently reported by the

FCC. Moreover, the State has failed to provide any funding for eligible expenses to local 911 centers operated by counties and municipalities; and, has instead diverted Fund dollars to cover general operating expenses in the Department of Law and Public Safety.

Importantly, counties and municipalities as first responders handle the vast majority of the State's public safety service requests through local PSAPs and have come to inequitably rely on the collection of local property taxpayer dollars to improve, operate, and maintain 911 systems. County governments alone spent approximately \$300.0 million over the last five years in capital improvements for facility upgrades, telephone systems, computer aided dispatch, location mapping technology, voice recording technology, data analytics, and NG911 upgrades. Counties also spent an estimated \$100.0 million in 2016 on operating expenses for salaries, staff training, system maintenance, network security, and IT consulting services. On the average, county governments provide some level of 911 dispatch services for approximately of 73% of the municipalities located within their borders.

For these reasons, NJAC will continue to urge State leaders to restore critical Fund dollars, comply with federal guidelines for grant funding, and adopt the best practices outlined in the "New Jersey 911 Consolidation Study" published in 2006, which in part, calls for reducing the number of local 911 centers to streamline operations and save taxpayer dollars.

#### **JANUS QUESTION AND ANSWERS**

*By Joseph M. Hannon, Esq. with Genova Burns and NJAC Labor Counsel*

1. *What did the Court rule in Janus?* The Supreme Court, in a 5-4 ruling, determined that the involuntary payment of an "agency shop fee" by nonmembers of a union is unconstitutional as a violation of the free speech rights of those employees.
2. *What are agency shop fees?* In New Jersey, if a majority of employees in a negotiations unit vote to be represented by a union, then that union is the exclusive representative of all employees covered by the collective negotiations agreement. This includes employees who choose to be members of the union and those employees who are part of the collective negotiations unit due to their titles, but who choose not to be union members. Those individuals who choose not to be union members pay a fee known as an "agency shop fee" that is deducted from their pay, which is paid to the union.
3. *Did the Supreme Court decision in Janus affect those individuals who are members of the union?* No, individuals who choose to be members of the union and have the full union dues deducted from their paychecks are not affected by the Supreme Court's ruling in *Janus*. The Supreme Court's decision only affected those individuals who are not union members, but are covered by a collective negotiations agreement and therefore had "agency shop fees" deducted from each paycheck.

4. *How were agency shop fees covered in New Jersey prior to the Janus ruling?* N.J.S.A. 34:13A:5-5 to 5.8 of the Employer-Employee Relations Act governed the payment of “agency shop fees”, or representation fee in lieu of dues in New Jersey. The fee included the regular membership dues, initiation fees and assessment charged by the majority representative to its own members less the cost of benefits financed through the dues, fees and assessments and available to or benefitting only its members, but in no event could the fee exceed 85% of the regular membership dues, fees and assessments. The fee could not include costs of support of lobbying activities to foster policy goals in collective negotiations and contract administration, i.e. it could not include monies spent to further political activities.
5. *Is any fee structure permissible for nonmembers of unions after Janus?* Yes. The Supreme Court invalidated any involuntary fee collected by unions from nonmembers covered by a collective negotiations agreement. However, the Court stated that an “agency shop fee” may be deducted if the nonmember affirmatively consents to pay. In order to satisfy this criterion, the nonmember must “clearly and affirmatively” consent before any money is taken from them. We recommend a written consent form.
6. *How should public employers handle the “agency shop fees” deductions that are currently being made to employees’ paychecks?* In light of the Supreme Court’s ruling in *Janus*, public employers should immediately cease the payroll deductions of “agency shop fees” or representation fee in lieu of dues from all its employees who choose not to be members of a union, yet are covered by a collective negotiations agreement and notify the union of same in advance.
7. *How should such notice be provided?* In light of the recent provisions of the Workplace Democracy Enhancement Act, the most advisable course of action for public employers would be to notify union leadership that the fee deductions will cease immediately.
8. *What if the union or employee advises that they would like the agency shop fee to continue to be deducted? Is that appropriate?* A fee in lieu of dues for nonmembers prohibited by the Supreme Court’s ruling in *Janus* if it is involuntary. No fees should be deducted for nonmembers unless the nonmembers show by “clear and compelling” evidence that the nonmember is consenting to the fee deduction.
9. *What is the appropriate amount for a voluntary “agency shop fee” after the Janus ruling?* The decision is not clear as to what an appropriate amount would be if the employee provides a clear and compelling consent to the deduction. As any fee that is deducted must be though “clear and compelling” evidence that the employee has consented to fees being deducted, then any amount agreed upon would potentially

be permissible. The provision of the Employer-Employee Relations Act should be used as a guidepost for such an arrangement.

10. *If an employee chooses not to pay any agency shop fee are they still covered by the collective negotiations agreement?* Yes, nonmembers who are covered by the Recognition Clause of a collective negotiations agreement are still entitled to the benefits of that collective negotiations agreement, including wages, benefits and other negotiated terms and conditions of employment. Public employers must continue to treat these employees as covered by the contract and provide them the same rights as all other members of their union. In fact, unions could directly charge nonmembers who do not pay a fee for representation services in a grievance or disciplinary hearing as provided in the Supreme Court's decision.
11. *How should a public employer handle a situation in which union members seek to withdraw from the union?* Withdrawal from a union by a union member is not affected by the *Janus* decision. Any withdrawals shall be handled in accordance with current law including, but not limited to, the Workplace Democracy Enhancement Act, Employer-Employee Relations Act and rules and regulations of the Public Employment Relations Commission.

## **NJAC INITIATIVES**

In addition to actively advocating for permanently extending the 2% cap on binding interest arbitration awards and restoring 911 funding as noted above, NJAC is also taking the initiative on several fronts, which include promoting the regionalization of services, streamlining the costs associated with the operation and maintenance of the county court facilities, modernizing the bond ordinance notification process, and funding code blue alert plans.

*Regionalization of Services:* Governor Phil Murphy recently appointed a shared services czar, and Senate President Steve Sweeney is preparing to unveil the findings of his Economic and Fiscal Policy Working Group, to in part make recommendations concerning shared services and consolidation. As such, NJAC is taking this opportunity to further educate legislators on the growing role of county government as the only true regional form of government in the State. NJAC is in the process of collecting and summarizing data to quantify the value of county government and present viable solutions for eliminating restrictive barriers to regionalization, consolidation, and shared services. NJAC has asked our county administrators to list the traditional municipal functions that their county is now providing at a cost savings in the aggregate to the taxpayers. Some of our initial findings and examples demonstrate the vital role county government must play in relieving residents and businesses of the highest property taxes in the nation, and of which include: Burlington County saving its towns \$8.5 million by providing public health services; Cape May County saving its towns \$500,000 by cooperatively purchasing gas and electric; Gloucester County saving its towns \$4.5

million by providing countywide tax assessor services; Morris County saving its towns \$9.0 million by providing recycling services; and, much more.

*County Court Facilities:* As county governments continue to struggle a restrictive property tax cap levy and mounting unfunded State mandates such as criminal justice reform and providing enhanced security at court houses, NJAC plans to identify realistic and achievable solutions for streamlining the operation and maintenance of the county court facilities. In addition to identifying innovative cost saving initiatives, our first step is to quantify the substantial costs, which include an estimated \$300.0 million 2018 to operate and maintain the county court facilities. This figure includes salaries and wages, fringe benefits, general operation and maintenance expenses, and debt service. Counties are also set to spend an additional \$300.0 million on capital improvements for court facilities for a staggering total \$600.0 million.

We're in the process of drafting a more detailed explanation of these items, which will also include an overview of the court structure, the relationship between boards of chosen freeholders and the Judiciary, the Judicial Unification Act, and more. Most importantly, the position statement will include realistic and achievable solutions for streamlining the operation and maintenance of the court facilities, some of which include: requiring the Judiciary to share in the costs of capital improvements to the court facilities on a 50% basis if both the Judiciary and respective freeholder board agree on the improvements, 25% if the county initiates the project, and 75% if the Judiciary initiates the project; permitting the limited use of Class Two special law enforcement officers to provide security at county court facilities; authorizes county governing bodies to share or regionalize court facilities similar to how several counties have begun sharing county jails; and, constitutionally dedicating a modest increase in court filing fees for court facility improvements.

*Code Blue Alerts:* In 2017, Governor Christie signed into law legislation that requires county governing bodies, through their offices of emergency management or other appropriate offices, agencies or departments, to establish plans for issuing Code Blue alerts to municipalities, social service agencies, and non-profit organizations that provide services to at-risk individuals and are located within the county's borders. In summary, the new law requires emergency management coordinators to declare a Code Blue alert after evaluating weather forecasts and advisories produced by the National Weather Service that predict the following weather conditions in the county within 24 to 48 hours: temperatures will reach 25 degrees Fahrenheit or lower without precipitation; or 32 degrees Fahrenheit or lower with precipitation; or, the National Weather Service wind chill temperature will be zero degrees Fahrenheit or less for a period of two hours or more. In an effort to address the costs associated with implementing the new law, NJAC would like to thank Senator Troy Singleton (D-7), Assemblywoman Eliana Pintor Marin (D-29), and Assembly Raj Mukherji (D33) for their leadership in introducing legislation S-2737/A-4177, which would allow county homelessness trust funds to be used for code blue emergency shelter services.

This important and timely legislation would provide counties with the flexibility to use Trust Fund dollars to provide adequate shelter for homeless individuals during inclement weather without affecting existing programs that support permanent housing and self-sufficiency. S-2737 and A-4177 are respectively in the Senate Community and Urban Affairs and Assembly Human Services committees awaiting consideration.

*Electronic Bond Notices:* Along the lines of similar NJAC legislative initiatives that were signed into law such as authorizing local governing bodies to pay employees by direct deposit and to pay bills by electronic fund transfer technologies, NJAC believes it has secured sponsors to introduce legislation that would allow county boards of chosen freeholders to provide municipalities with notice of bond ordinances by electronic mail. Under current law, a county must provide, by regular mail within one week prior to the date of a hearing on a proposed bond ordinance, a copy of the proposed ordinance to the clerk of each municipality within the county. As such ordinances typically range from 10 to 25 pages with anywhere from 12 to 70 municipalities in each county, authorizing a board of chosen freeholders to notify municipalities by email of a proposed bond ordinance, would save valuable time, resources, and taxpayer dollars.

#### **CIVIL RIGHTS COALITION CALLS FOR END TO CORE ELEMENT OF NJ BAIL REFORM**

*Colleen O'Dea, NJ Spotlight, July 31, 2018*

A coalition of civil rights groups is calling for an end to the use of computer risk-assessment tools such as the one New Jersey uses in pretrial release decisions, saying these can worsen racial disparities in the criminal justice system and lead to greater incarceration.

At the same time, though, New Jersey's recent move away from a system that depends on monetary bail has led to a drop in the number of people detained while awaiting trial. The state's new bail reform also allows for a hearing where those who are ordered held can argue for their release, one coalition member noted. In the first six months of this year, nearly two-thirds of those defendants initially ordered detained wound up being released pending trial, according to data from the state Administrative Office of the Courts. The number of people held pretrial dropped by almost 30 percent from the start of criminal justice reform through June 30.

Still, that does not mean civil rights activists support New Jersey's use of an algorithmic-based risk assessment. The state's courts still have not released data on the number of people detained according to race and ethnicity over the last several years, in order to compare the pre-reform and post-reform periods. Without that data, it is impossible to see whether there has been a change in the racial disparity of those being held for what could be a significant amount of time while awaiting trial, which could take up to two years under the law. "We need good data, so we can measure what the system has done for the racial disparities," said Alexander Shalom, senior supervising attorney at the American Civil Liberties Union of New Jersey. "If it's done nothing, that's

unacceptable. If it's made the disparity worse, that's even more unacceptable. Or it may have improved matters."

*The wait for good data has been too long:* "It's been too long a wait," continued Shalom, a supporter of the reform who has also represented defendants in pretrial detention-related cases that have helped refine the system. "We are ready to hear what the AOC has to say. If it's working, we need to know. We know a lot of other states looking to New Jersey want to know." Peter McAleer, a state judiciary spokesman, said the office is continuing to work on putting the data together, adding that gathering comparable data for years prior to 2017 has been a major challenge. New Jersey has the greatest black-white racial disparity among its prison population in the nation, according to the Sentencing Project. The coalition of more than 100 civil rights, digital justice and community organizations operating under the Leadership Conference Education Fund supports an end to monetary bail, which winds up keeping many people in jail not because they pose a danger, but because they cannot afford to post bail. But they released a shared statement of civil rights concerns over the growing use of risk assessments to determine pretrial detention.

Vanita Gupta, president and CEO of The Leadership Conference Education Fund, urged that courts forgo the use of assessments and instead focus on removing other racial biases in policing and the criminal justice system. "Pretrial assessments must not be seen as a panacea for criminal justice reform," she said. "The algorithms are only as good as their data inputs. Biases in the data sets may not only be replicated, but they may be exacerbated." The group supports due process to make decisions about release and not the use of algorithms, but urges courts using these tools to follow six principles to ensure their proper use. Two of those hold that if these tools are to be used, they should be designed and implemented in ways that reduce and ultimately eliminate racial disparities and should not automatically allow pretrial detention without a full hearing. New Jersey's tool does not explicitly reduce racial disparities, although that may have been its result, but the state does require a full hearing in detention cases.

"Pretrial detention reform that addresses the injustice of people being jailed because of their poverty is urgently needed, but substituting risk assessment instruments for money bail is not the answer," said Monique Dixon, deputy director of policy and senior counsel for the NAACP Legal Defense and Educational Fund. "Biased policing practices in communities of color result in racial disparities in the data risk assessment tools rely on, making black and brown people look riskier than white people. Pretrial detention reform must include solutions that will reduce the disproportionate incarceration of people of color, not worsen it."

*Algorithm calculates danger:* These tools, including the one from the Laura and John Arnold Foundation in use in New Jersey, include multiple pieces of data about a person to forecast an individual's likelihood of appearance at future court dates and his risk of re-offending. McAleer said that the more data points a tool uses, the more likely it could

be racially biased, and New Jersey's Public Safety Assessment uses the smallest number of data points of any state. All but one of the nine data points relate to the defendant's current and prior charges and failures to appear, with the other point the defendant's age. Other tools may use less relevant data, including whether a person has failed a drug test in the past, in recommending whether a person is released or detained.

Under the 19-month old criminal justice reform, which New Jersey voters passed as a constitutional amendment overwhelmingly in 2014, the algorithm calculates what kind of a danger a defendant would be to others and the likelihood of his appearing for trial. Depending on the PSA score, a person may be released with no conditions, with the need to check in by phone or in person with a pretrial services officer, or with an ankle bracelet and a limit on his ability to leave the home. Alternatively, the defendant may be held until trial. Jeffery Robinson, deputy legal director for the American Civil Liberties Union, noted that New Jersey's tool is used as part of a broader process that includes one or more hearings during which a judge has the discretion to accept the PSA's recommendation for release or detention or make his own decision.

*Troubling imposition of monitoring conditions:* "I'm hesitant to say New Jersey should not be looking at its tool, but other tools are worse," said Andrea Woods, an ACLU staff attorney. "New Jersey's reforms provide a robust due process, including a right to discovery in pretrial detention hearings. Care is taken to vindicate people's constitutional rights." But Logan Koepke, a policy analyst with Upturn, an organization focused on equity and justice in the design, governance, and use of digital technology, said it is "very unclear to say the pretrial population went down because of criminal justice reform," given that the decline in New Jersey's pretrial jail population predated the implementation of bail reform. McAleer said the earlier decline in the jail population was due to the implementation by the courts of some of the principles of the reform prior to its full implementation on January 1, 2017.

Koepke also called "troubling" the imposition of strict monitoring conditions on a significant number of those who are released. The latest AOC statistics show that about 43 percent of those released in the first six months of 2018 had to make a weekly phone or in-person contact with pretrial services personnel and 1,375 of those also were subject to some electronic monitoring. This is "causing the state to spend a lot of money." Shalom said New Jersey's reform program, while imperfect, is an improvement over the "deep racial bias built into the bail system." There was no way to effectively address that bias without systemic reform. "No matter what the PSA tool does, there will be ways to improve the system," he said. "Now we have a system that relies on robust due process and a broad presumption of release."

*Can tools really determine risk:* The data used in these algorithms can be wrong or prejudiced, said Rachel Foran, managing director of the Brooklyn Community Bail Fund. She said the New York City courts' risk-assessment system judged 88 percent of her fund's more than 3,000 clients a flight risk and recommended their detention. But on



their release — the fund paid their bail — 95 percent made all their court dates. “Our results ... strongly call into question the ability of any such assessment tool to determine risk; the one used in New York City couldn’t have gotten it more wrong,” Foran said. “Presumptively innocent people should be free to return to their communities and fight their cases from a position of freedom, not held in a cage whether because of the inability to afford bail or because of a biased risk assessment instrument.”

The Laura and John Arnold Foundation issued a statement in which it supports at least some of the principles, particularly transparency of use and public accountability, as well as the desire to reduce racial disparities in the criminal justice system and reduce unnecessary pretrial detention. But the foundation said its assessment is useful in helping judges make their decisions. The coalition's “description of risk assessments as tools that ‘can defer the responsibility of determining who to detain pretrial and who to release’ misconstrues the role of risk assessments,” the statement reads. “Risk assessments, such as the Public Safety Assessment (PSA) developed by LJAF, do not make pretrial release decisions or replace a judge’s discretion. They provide judges and other court officers with information they can choose to consider — or not — when making release decisions. We believe — and early research shows — that this type of data-informed approach can help reduce pretrial detention, address racial disparities and increase public safety.”

#### **HIGHER ED SECRETARY 'EXCITED' ABOUT TUITION-FREE INITIATIVE DESPITE LESS FUNDING**

*Linh Tat, POLITICO, August 1, 2018*

It's only half the amount Gov. Phil Murphy had sought, but New Jersey's top higher education official says she's still "excited" about the \$25 million the state is making available for a pilot program to help more students attend community college tuition-free. "It's obviously less than what the governor wanted, but it is more than what the Legislature initially seemed willing to do," Zakiya Smith Ellis, the state's higher education secretary, said during a recent sit-down interview with POLITICO. "So I'm excited that there is an opportunity to do something this year for students."

The \$25 million — \$5 million in planning grants for colleges to roll out the program and \$20 million in Community College Opportunity Grants for students — will enable thousands more individuals whose adjusted gross income is \$45,000 or less to attend community college without paying tuition or mandatory student fees. Students must also enroll in at least six course credits to qualify. Grants will become available for the spring 2019 semester. Convincing lawmakers to approve funding to expand the program will be part of the Murphy administration's task moving forward, as some have questioned the notion of "free" college.

Assemblyman John McKeon (D-Essex), who supports the initiative, has said the phrase has given some taxpayers the wrong impression that grant recipients will not pay for anything when, in reality, they'll still have expenses like textbooks and transportation.

"The folks out in the rest of our state are saying, 'My God, I'm killing myself to pay for college. Why should anybody get it for free?'" McKeon told POLITICO in May. "I think it's just been marketed the wrong way. It's about people who otherwise won't have the opportunity to go" to college. Murphy, who made tuition-free community college a cornerstone of his campaign, also has said he regrets using the word "free."

"I'm mad at myself for calling it 'free community college' because that implies that no matter who you are, you're going to get a handout that you may not deserve," the governor told reporters in June. Murphy said the truth is that many young adults coming out of high school or older adults seeking to brush up their skill sets can't attend college unless it's more affordable. For their part, state higher education officials say the notion of "free college" has a psychological effect that encourages people to not only pursue a post-secondary education, but to complete their federal financial aid application — a document that must be filled out to determine if they're eligible for the tuition-free program. That, in turn, could qualify them for federal aid they would not otherwise be aware of.

While New Jersey isn't the first state to offer a tuition-free college program, its initiative — which was officially launched on Tuesday — could serve as a national model, said Smith Ellis, who said she has spoken to higher education leaders in other states about the lessons they learned while launching their programs. "New Jersey has the potential to be a leader in a best-in-nation program," she said, even as administration officials work on developing the program. "We have the benefit of seeing what people did well and what people didn't do well." Calling its initiative the Community College Innovation Challenge, the state is accepting applications through August from New Jersey's 19 county colleges to participate in the first year of the program.

Murphy initially proposed \$50 million in this year's state budget as a "down payment" on a plan to ultimately provide tuition-free community college to all New Jersey residents — a scenario that could cost the state \$200 million a year. But some lawmakers questioned the soundness of moving toward a tuition-free initiative, asking whether it would make more sense to increase funding for existing programs for low-income students. In the end, the Legislature appropriated half of what Murphy asked for. The grant program is considered "last dollar," meaning students would be eligible only after exhausting all other financial aid options, such as the federal Pell Grant and other state aid programs.

Most community college students whose family incomes are below \$45,000 already have their tuition and fees covered by existing federal and state aid programs. But about one-third of these students in New Jersey aren't fully covered, said David Socolow, executive director of the Higher Education Student Assistance Authority, which oversees the state's financial aid program. State officials have not said how many people will benefit from the first round of grants, though at one point, the administration estimated

some 15,000 additional students would be able to attend community college tuition-free if \$45 million were set aside for the program.

Smith Ellis — who has worked as a policy adviser in former President Barack Obama's administration and at the Lumina Foundation, which focuses on increasing access to higher education — concedes that while some policy wonks are critical of the notion of "free," the word polls well with the general public. "There's a different message maybe for lawmakers and the policy folks who are trying to evaluate [a program] and the general public," she said. "Because one thing that I have certainly seen is that the general public understands 'free' in a way that they don't understand other things."

#### **UPCOMING NJAC EVENTS AND THE ANNUAL CELEBRATION OF COUNTY GOVERNMENT**

Enjoy the rest of the summer and we look forward to seeing you at NJAC's next Board of Directors Meeting on September 14<sup>th</sup>.

**STATE HOUSE TRIVIA:** *Did you know that August is National Goat Cheese month?*

*"Be the person your dog thinks you are." George Elliot*