

NEW JERSEY ASSOCIATION OF COUNTIES

County Government with a Unified Voice!

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STATE HOUSE NEWS

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911 FEE MISAPPROPRIATION

Last week, NJAC testified before the Assembly Budget Committee and submitted written testimony to the Senate Budget and Appropriations Committee urging Governor Phil Murphy and the New Jersey State Legislature to properly allocate 911 System and Emergency Trust Fund (Fund) monies to county and municipal 911 centers as recommended by the Federal Communications Commission (FCC).

Unfortunately, the Governor's proposed \$38.6 billion spending plan for State Fiscal Year 2020 will once again divert an estimated 89.0% of the \$120.0 million in surcharges it expects to collect as 911 System and Emergency Response Fees as a .90 cent surcharge on all telephone lines. As has been well documented, the State of New Jersey is the worst offender of diverting 911 fees in the nation and has collected an estimated \$1.4 billion since 2006 with only 11% of Fund monies being spent on eligible expenses for the 3 State operated 911 centers. Moreover, the State has failed to provide any funding to local 911 centers operated by counties and municipalities; and, has instead diverted the balance of Fund dollars to cover general operating expenses in the Department of Law and Public Safety. As a direct result of the State's decade long practice, and the similar diversion of 911 funds by several other states, the FCC recently adopted rules that now prohibits New Jersey, and its local governing bodies, from applying for up to \$115.0 million in grant program funding to upgrade 911 centers with Next Generation 911 (NG911) capabilities.

Not only does the misappropriation of vital 911 system funding jeopardize the public safety of residents across the State, it also amounts to double taxation as counties and municipalities have been forced to rely on the collection of local property taxpayer dollars to improve, operate, and maintain local 911 centers. Moreover, counties and municipalities are also being penalized by the federal government for the State's misuse of critical 911 funds. For these reasons, NJAC is urging State leaders to restore critical Fund dollars and comply with federal guidelines for grant funding and best practices. NJAC also recommends constitutionally dedicating any existing or new 911 fees or surcharges imposed by the Legislature and collected by the State to county and municipal 911 centers; and, adopting 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.

CODE BLUE FUND

On March 18th, Governor Murphy signed into law A-4177 (*Pintor Marin D-29/Mukherji D-33*)(*Singleton D-7/Ruiz D-29*), which would authorize county governments to increase the homelessness housing fund surcharge from \$3.00 to \$5.00 and would dedicate the \$2.00 increase to support emergency shelter for homeless services provided during Code blue alerts.

NJAC supported this important and timely initiative as one of our top legislative priorities as it will now help freeholder boards provide adequate shelter for homeless individuals during inclement weather without affecting existing programs that support permanent housing and self-sufficiency. Changes to the law in 2017 require county governments, 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. Since that time, county governments across the State have been struggling to fund and implement the new law. Special thanks to Passaic County Deputy County Administrator Matthew Jordan for coming up with the idea; and, to Assemblywoman Eliana Pintor-Marin and Senator Troy Singleton for their leadership and support.

COUNTY BOARD OF ELECTIONS

Thank you to the sponsors of **ASSEMBLY, No. 5162** (*Speight D-29*) and **SENATE, No. 3554** (*Beach D-6*) for amending the legislation to permit county boards of chosen freeholders to increase the membership of the county board of elections from four to six members.

More specifically, S-3554 as amended would require that if a county board of chosen freeholders opts to increase the membership of the county board of elections, the two new members would be legal voters of the counties for which they are appointed, and the board of elections would consist of an equal representation between the political parties which at the last preceding general election, held for the election of all of the members of the General Assembly, cast the largest and next largest number of votes in the State for members of the General Assembly. On March 25th, the Senate passed S-3554 by a vote of 22-15.

The General Assembly also passed its amended version of the bill on March 25th by a vote of 71-4-3. However, the two versions are not identical as A-5162 would allow county board of chosen freeholders, by a majority vote of its full membership, to increase the membership of a county board of elections from four members to six members. The bill would require that three members of the county board of elections be members of the political party which at the last preceding general election, held for the election of all of the members of the General Assembly, cast the largest number of votes in this State for members of the General Assembly, and the remaining three members of the county board of elections would be members of the political party

which at such election cast the next largest number of votes in the State for members of the General Assembly. The bill would also provide that within 10 days following the effective date of this bill, a one-time, mid-year appointment to increase membership of county board of elections before the 2019 primary or general election. Thereafter, persons would be nominated and appointed in accordance with the current timeframe specified under law. In general, all legislation must pass both houses in identical form before heading to the Governor's Desk, so stay tuned for additional details.

Please note that NJAC opposed the measure as introduced as it would have mandated an increase in the membership of county boards of elections in violation of the State's prohibition against unfunded mandates on school districts, municipalities, and counties. The New Jersey Constitution prohibits State government from requiring units of local government to implement additional or expanded activities without providing funding for those activities pursuant Article VIII, Section II, Paragraph 5 and N.J.S.A. 52:13H-1(1)(b). Additionally, the New Jersey Council on Local Mandates is responsible for resolving disputes on whether a law, rule or regulation adopted after 1996 constitutes an unfunded mandate, which NJAC's submitted would have imposed on county governments by this legislation as set forth below.

Although the Governor of the State of New Jersey is responsible for appointing members to county boards of elections with the advice and consent off the Senate, county governments are responsible for paying for their salaries, wages, and other expenses under N.J.S.A. 19:45-4. Additionally, N.J.S.A.19:45-7 requires that the *"compensation of the members of the several county boards shall be no less than the minimum salary and no more than the maximum salary..."* ranging from \$3,200.00 - \$10,500.00 in counties with populations less than 120,000 and from \$8,700.00 - \$17,600.00 in counties with populations over 550,000. As such, NJAC respectfully submitted that the legislation as introduced would have imposed an unfunded State mandate on county governments as the measure would have required freeholder boards to pay for the salaries, wages, and other expenses of new board of election members without providing any requisite State funding other than the property tax.

BED BUGS

On March 4th, the Senate Community and Urban Affairs Committee favorably reported **SENATE, No. 1295** (*Bucco R-25*), which would establish procedures to prevent and eradicate bedbug infestations in certain residential properties.

NJAC testified before the Committee that although we commend the sponsors for their intent to require owners of multiple dwellings to maintain a safe and clean living environment free from the presence of bedbugs, we're concerned that S-1295 would create a statutory framework in which county health departments would become the lead government agencies responsible for the remediation of bedbugs when landlords are unresponsive for the clean-up and maintenance of infested properties. In general, we're concerned with the increased workload and expense this legislation would impose

on county health departments, most of which provide local public health services on behalf of constituent municipalities.

County health departments are charged with protecting and enhancing the general health and welfare of county residents throughout the State. However, county health departments typically inspect and fine violators under certain circumstances, but do not engage in remediation or mitigation as it is often costly and timely consuming. Although this would authorize local boards of health to impose fines or place liens on the properties of unresponsive landlords, we're concerned that these mechanisms would not adequately compensate county health departments for the significant amount of work and substantial expense necessary to remediate properties infested with bedbugs. The Committee second referenced S-1295 to the Senate Budget and Appropriations Committee for consideration, so the Committee may conduct a comprehensive review of the legislation's fiscal impact on county health departments. The companion version **ASSEMBLY, No. 1271** (*Tucker D-28/Sumter D-35*) is current in the Assembly Housing and Community Development Committee awaiting consideration.

CNA STAFFING LEVELS

On March 15th, the Assembly Appropriations Committee was set to consider, but held **SENATE, No. 1612/ASSEMBLY, No. 382** (*Stack D-33/Gopal D-11*)(*Jiminez D-32*), which would establish minimum ratios for the number of certified nurse aides (CNAs) to the number of residents in nursing homes.

Atlantic, Bergen, Cape May, Gloucester, Middlesex, and Passaic counties still operate nursing homes and have long-struggled with CNA staffing shortages. Although these facilities certainly appreciate the intent of the legislation and have adopted innovative strategies to deal with the shortages such as using volunteers, changing shifts, and negotiating with LPN unions to conduct certain CNA activities, this legislation would require hiring a minimum of 9-11 new CNAs per facility at an estimated cost of \$400,000.00 - \$500,000.00 per year (*\$28,000.00 per year for the average CNA salary + \$14,000 per year for health, pension, and other fringe benefits*). County nursing homes have also struggled to find the resources necessary to maintain a consistent level of quality care residents deserve and this legislation may force these counties to sell their nursing homes as boards of chosen freeholders continue to struggle with finding a balance between what is fair to taxpayers and what is right for the senior and disabled population. Importantly note that because of Managed Long-Term Care and devastating cuts to Medicaid funding, 8 counties have sold their nursing homes since 2012, while the remaining have been forced to reduce, privatize, or eliminate critical housekeeping, food, social, and other necessary services simply to make ends meet.

County operated nursing homes provide a safety net of care for low income patients with medical conditions that typically prevent their admission to privately owned nursing homes. In fact, approximately 80% of patients that currently reside in county

operated nursing are classified as Medicaid patients without the necessary resources to afford health insurance on their own. Unlike most privately-owned nursing homes that carry a much higher percentage of private pay patients, county operated nursing homes maintain an average of 10% of its population in this capacity. Importantly, the core mission of county operated nursing homes is to provide a high standard of nursing care to residents and their families. To achieve this objective and make readily available an essential community service, county operated nursing homes retain qualified staff that offer a continuity of care as dedicated public servants. Moreover, county operating nursing homes maintain a higher than average rate of nursing hours per patient; offer comprehensive rehabilitation programs; and, provide progressive treatment initiatives with new technologies. Most notably, county operated nursing homes are committed to providing a valuable and much needed public service. The Senate passed S-1612/A-382 by a vote of 22-15 on July 1st.

LAW ENFORCEMENT TESTING REFORMS

Thank you to the Civil Service Commission (CSC) for taking the time to hear the concerns of county government and for making the following positive changes to the law enforcement testing process.

- Beginning in 2019, the CSC will conduct an Entry Level Law Enforcement Exam (LEE) every other year as opposed to one every three years.
- Beginning in 2020, the CSC will conduct an Entry Level Law Enforcement Exam specifically for county correction officers every year.

These changes should help alleviate long-term vacancies for county correction officers as counties may select qualified candidates to fill vacancies from both lists. For immediate vacancies, county governments may hire county correction officers from the upcoming Entry Level Law Enforcement Exam list for State correction officers by seeking approval from the Civil Service Commission to hire candidates from this list. Special thanks to Camden County Freeholder Jon Young, Camden County Counsel Chris Orlando, and Camden County Jail Warden Karen Taylor for working on this issue for several years and joining NJAC in Trenton on March 13th for a meeting with the Commission

AMID LINGERING CONCERNS, STATE REPORT ON BAIL REFORM NOTES SUCCESSES

Colleen O'Dea, NJ Spotlight, April 3, 2019

A report by the state judiciary shows that fears of 'chaos' and 'mayhem' have failed to come to fruition. Still, there are some concerns and outstanding questions in the judiciary's 2018 report to Gov. Phil Murphy and the Legislature. The number of defendants being held pending trial rose by 7.8 percent from 2017, the first full year of the reform, to 2018. Black males continue to make up the majority of the overall jail population and the question of whether black defendants are detained pending trial at a higher rate than whites remains unanswered.

And the courts expect to not have enough money to fully pay for the system as soon as next year. “New Jersey’s criminal justice system has begun to remove inequities created by the heavy reliance on monetary bail,” said state Supreme Court Chief Justice Stuart Rabner in a statement Tuesday. “Criminal Justice Reform has reduced the unnecessary detention of low-risk defendants, ensured community safety, upheld constitutional principles, and preserved the integrity of the criminal justice system.” The report found a slight increase in the percent of defendants released pending trial charged with an indictable crime in 2017, compared to 2014, when money bail was the primary mechanism for release from jail before a trial — 13.7 percent in 2017 versus 12.7 percent in 2014. There was also a rise in the percent of those charged with a disorderly persons offense after release — 13.2 percent in 2017 versus 11.5 percent three years earlier. In addition, the percentage of defendants released pending trial who showed up for pretrial court appearances declined last year to 89.4 percent, from 92.7 percent in 2014.

Sen. Declan O’Scanlon (R-Monmouth), who was among the sponsors of the reform legislation, said those patterns are not necessarily troubling and could indicate a natural fluctuation in offender actions, but they are something the state needs to keep monitoring. “If re-offenses and failure to show had gone down, that would be a pretty definitive indication of success,” he said. “The fact they went up marginally is something we have to continue to pay attention to ... The bail industry had predicted chaos and mayhem and that is not the case.”

Meanwhile, reform advocates point to the successes of the program. For instance, the overall jail population has declined by 6,000 from October 2012 to October 2018. The number of days a defendant was held before initial pretrial release dropped by half from 7.4 in 2014 to 3.7 in 2017 and the time all defendants were held in jail prior to trial declined by 40 percent, from 62.4 days to 37.2 days. “This report shows that New Jersey’s historic bail reform law has been a resounding success,” said Roseanne Scotti, New Jersey State Director of the Drug Policy Alliance. “We have seen a 44 percent decrease in the pretrial jail population and, at the same time, no meaningful increases in failures to appear in court or new offenses committed by people who are released pretrial ... The end of money bail in New Jersey has increased both social justice and public safety in our state.”

Until January 1, 2017, when someone was arraigned on a significant crime in New Jersey, a judge determined whether to release the accused or set a bail amount. In 2014, voters overwhelmingly passed a constitutional amendment to end the guarantee of money bail and change how the courts decide where the accused awaits trial. Now, money bail typically is imposed only when a defendant fails to appear in court or otherwise violates the conditions of his pretrial release.

The Drug Policy Alliance was key to reforming the bail system, releasing a report in 2013 that found almost 40 percent of the state’s jail population in October 2012 was incarcerated because of an inability to post bail, with 12 percent of those in jail unable to pay a bail of \$2,500 or less. Last October, just 4.6 percent of defendants, 390, were in jail on a bail of \$2,500 or less and most of those — 61 percent — were in jail on

municipal-court warrants and were therefore ineligible for release under criminal justice reform. Another aspect of the reform is the greater use of complaint summonses, rather than arrest warrants, for low-risk defendants. A person issued a summons to appear in court by law enforcement is not processed through a jail, while those arrested are placed in jail until a judge determines whether to release or detain them pending trial. In 2014, 54 percent of defendants received a summons. In 2017, the first full year of reform, that had increased to 71 percent of defendants not having to be processed through jail.

“Two years of comprehensive data leaves little debate that criminal justice reform is greatly improving the lives and rights of New Jerseyans,” said Alexander Shalom, the ACLU-NJ’s senior supervising attorney. “What’s more, thousands of low-risk defendants are now being diverted from the jail intake process altogether, instead receiving summonses that minimally disrupt their lives while the accusations against them are adjudicated. That’s a clear victory for civil rights, and a benefit of reform that hasn’t been talked about enough.” Jeff Clayton, executive director of the American Bail Coalition, said the increased use of summonses is the real reason for a drop in the number of people in jail and the state could have instituted that change without upending the system. “That’s 29,000 fewer people they are arresting, that’s what’s driving the reduction in the jail population,” said Clayton, whose organization opposed the ending of bail as a requirement for release from jail. “They’re just not arresting as many people ... I would not consider that great a victory.”

Regardless of how it was achieved, advocates who had pushed for the reform as a social-justice issue cheered the reduction in the jail population, particularly as it has meant that 3,000 fewer blacks and 1,300 fewer Hispanics, as well as 1,500 whites, were held last October than six years earlier. “Thousands of individuals, mostly people of color, have been able to remain free pending trial,” Scotti said. “They have been able to stay with their families and communities. They have been able to keep their jobs and their housing.” On the other hand, a section of the report that looked at the overall jail population and not just those awaiting trial shows that the racial and ethnic makeup of the overall jail population remained disproportionately black, with no change from 2012 to 2018: 54 percent of all those in prison were African-Americans. Blacks make up about 15 percent of the state population.

The court’s report notes this, stating, “the Judiciary recognizes the need to continue to examine the effect of CJR on racial disparity in the criminal justice system and to ensure that all defendants are treated equally by the courts.” “It is certainly problematic,” Shalom said. “It is not good enough that things have not gotten worse. There exist many drivers of disparities; our system of pretrial justice should look to address and eliminate them wherever it can.” One question not answered by the report is whether blacks and Hispanics accused of a crime are detained pending trial at a greater rate than whites. That could contribute to the continuing large proportion of people of color in jail and it is something about which advocates have been concerned. Shalom praised the state for including data about race and ethnicity in its report, but added, “More data would be useful on this point.”

Another report finding of potential concern is the increase from 2017 to 2018 in the percentage of arrested defendants who are detained in jail while awaiting court proceedings. Jails held more than 600 additional defendants last year than in the first year of bail reform. (There is essentially no more cash bail so these are people denied release because the algorithm determined they were either a risk to public safety or a flight risk.) The detention rate for those charged on a warrant rose from 18.1 percent in 2017 to 19.5 percent last year. It's unclear whether that may have been because of changes in guidance from the courts or the attorney general about when to seek or approve detention or for other reasons. Prosecutors also filed more requests to detain defendants — from 43.7 percent of cases in 2017 to 49 percent last year.

“Any increase in detention rates raises red flags,” Shalom said. “Our system succeeds when it prioritizes liberty; we’ve made tremendous strides in changing the culture of pretrial justice to one that has release as a default, but there is more work to be done. The pretrial services program added 30 employees last year and has a total staff of 297, in addition to the judges who hear cases. It costs \$4.19 per defendant per day for electronic monitoring. “There is a continuing critical need to identify and implement a sustainable means to fund the program,” the report states. “The current method — which relies on annual court filing fees — is not a workable approach. As predicted at the outset of CJR, the model in place has a built-in structural deficit, and within the next year, will result in an actual funding deficit.”

The amount collected in court filing fees has been dropping since the 2016 fiscal year. In the last fiscal year, the judiciary collected \$40.5 million and collections for FY2019 are so far 1 percent below where they were at the same time last year. Shalom said the state needs to come up with a stable source of adequate funding to keep the program going. “The time has come to fund the program from the state budget rather than from filing fees,” he said. “The opportunity for long-term financial savings due to a sharply diminished New Jersey jail population is real; regardless, the gains — a fairer system, families that aren’t disrupted, and stronger communities — are worth every penny of our investment in this system.”

John Donnadio, executive director of the New Jersey Association of Counties, said the counties need more time to determine how much they might be able to save in jail costs. “With respect to operating county jails, we will need another year or so to determine if the reduction in the overall jail population will result in any cost savings,” he said, adding that the jails are continuing to process defendants. “Over time, county jails should realize cost savings through attrition and the retirement of correction officers, but it’s still too early to make that determination. “However, he added, county governments spent between \$45 million and \$50 million hiring additional prosecutors to implement another component of the reform — setting time limits for court proceedings to ensure that a defendant who is kept in custody does not have to wait overly long for his case to be decided. For instance, a person cannot be held more than 90 days before an indictment, or more than 180 days after an indictment, with some exceptions.

While the report does not go into detail about the state's performance on keeping to those deadlines, courts spokesman Peter McAleer said that trials have been proceeding according to those timeframes. "We only know of a very small number of instances, like one or two, where we missed the deadline," he said.

MURPHY TO MEET WITH TOP DEMS ABOUT LEGALIZING WEED IN NJ AS HIS DEADLINE LOOMS

Brent Johnson, NJ Advance Media for NJ.com, April 11, 2019

EDITOR'S NOTE: Entrepreneurs everywhere are eyeing the billion-dollar legal weed industry, an economic opportunity unrivaled in modern N.J. history. NJ Cannabis Insider features exclusive weekly content geared toward those interested in the marijuana industry. View a sample issue.

Thursday could be an important day in the seemingly never-ending saga to legalize marijuana in New Jersey. Eyeing a possible vote by the end of next month, the Garden State's top three elected state officials are scheduled to strategize about their latest push to gather enough support in the state Legislature to pass a bill that would legalize weed here. Gov. Phil Murphy confirmed Wednesday night during his radio show that he will meet and talk pot with his fellow Democrats who lead the Legislature — state Senate President Stephen Sweeney and state Assembly Speaker Craig Coughlin.

The sit-down comes a few weeks after Sweeney, D-Gloucester, and Coughlin, D-Middlesex, canceled a planned vote on the bill when it became clear it would not have enough votes to pass the Senate. Leaders have now been considering holding the vote in May — that is, if they can muster the 21 votes that are needed for the Senate to approve the measure, which would legalize recreational weed for people 21 and older in New Jersey. Murphy was asked Wednesday during his regular call-in radio show what the chances were of the bill passing by the end of May. He declined to put odds on it. But Murphy said he's "cautiously optimistic."

"We came very close," he said during "Ask Governor Murphy," which was broadcast on public radio stations. "We came within a vote or two. I hope we can print this sooner than later." A legislative source confirmed Wednesday's meeting to NJ Advance Media but said a time was not certain. Depending on whom you talk to, leaders have secured anywhere from 18 to 20 votes in the Senate, according to sources. One issue casting a cloud over the gathering: The Legislature has packaged the bill with two other measures — one that would greatly expand the state's medical marijuana program and another that would expunge the records of thousands of people with pot convictions in the state. The hope is to garner more support for the legalization bill if all three are put up for a vote at the same time.

But Murphy has said if lawmakers don't pass the measures by the end of May, he will use his executive authority to expand the medical weed program because patients have waited too long. Sources have told NJ Advance Media that lawmakers are

worried that gives some legislators reason not to vote for legal pot because medical marijuana will be expanded either way. But Murphy defended his plans Wednesday, saying he'd have "no choice" because the "demand to open (the program) up further is overwhelming." "Next month is a reasonable amount of time," the governor said. "There's too much at stake here," he added. "We must continue to open it up."

UPCOMING NJAC EVENTS: We hope to see you at NJAC's Annual Celebration of County Government from May 8th through May 10th at Caesar's in Atlantic City.

STATE HOUSE TRIVIA: Did you know that the honorary flowers for April are the Daisies and Sweet Peas?

"When I do good, I feel good, when I do bad, I feel bad, and that's my religion." - Abraham Lincoln