

## Major Provisions of An Act relative to criminal justice reform (as submitted for polling on September 27, 2017)

### **DECRIMINALIZATION**

1. Allow municipalities to decriminalize certain misdemeanors and enforce civil violations
2. Make restitution orders enforceable civil judgments
3. Decriminalize for juveniles certain motor vehicle first offenses not criminal for adults
4. Decriminalize for juveniles first offense disorderly person not criminal for adults
5. Exclude student behavior in school from offense of disturbing an assembly and from disorderly
6. Repeal offense of being in the presence of heroin
7. Repeal offense of intercourse with person under 18 "of chaste life"
8. Expand scope of good samaritan protections to probation violations
9. Specify that use of prescribed drugs, including marijuana, shall not constitute probation violations

### **DIVERSION**

1. Create legal/administrative framework to expand use of restorative justice diversion
2. Require judges to make written findings before imposing a sentence of incarceration on primary caretakers of children
3. Improve workability of judicial diversion under c. 276A
  - a. Eliminate defunct requirement for probation certification of diversion programs
  - b. Expand age window for first offense diversion from 22 to 26
  - c. Exclude serious offenses from eligibility for diversion
  - d. Assure that victims are heard in diversion decisions
4. Make diversion available for juveniles on similar terms
5. Strengthen drug diversion under c. 111E by
  - a. Allowing evaluation by wider range of addiction professionals;
  - b. Eliminating limitation to first time offenders;
  - c. Allowing diversion for dependent persons who distribute

### **BAIL REFORM**

1. Rewrite bail statute in light of SJC opinion on bail
2. Clarify considerations and available conditions on release on recognizance
3. Clarify considerations and available conditions on release on affordable bail
4. Clarify hearing requirements for detention
5. Expand availability of detention hearings
  - a. To assure reappearance in court
  - b. In a broader set of dangerousness cases
6. Improve pre-trial services to assist defendants with complying with conditions of release and with returning to court
7. Introduce more systematic risk-assessment into bail process

## **MANDATORY MINIMUMS**

1. Repeal non-weight mandatories
  - a. School zone
  - b. Second offense distribution (A, B, C)
  - c. Cocaine distribution
2. Repeal low weight mandatories for cocaine, but not for heroin
3. Preserve higher weight trafficking mandatories both cocaine and heroin
4. Fold mixtures containing fentanyl and related substances into heroin mandatory structure

## **SOLITARY CONFINEMENT**

1. Mandate review cycles for possible release from restricted housing
2. Training for correctional officers in restricted housing
3. Improve programming availability for prisoners in restricted housing
4. Protect LGBTQ prisoners from arbitrary use of restricted housing
5. Assure that prisoners segregated for their own safety are not punished
6. Repeal defunct laws on isolation and related reporting
7. Strengthen reporting related to persons in restrictive housing

## **EXTRAORDINARY MEDICAL PLACEMENT**

1. Allow medical release of prisoners who are incapacitated and pose no public safety risk
2. In DOC, recommendation by Superintendent with appeal to the Commissioner
3. In HOC, review by the Sheriff, but petition shall be transmitted to parole regardless of the recommendation by the Sheriff
4. Final approval by the parole board
5. Judicial appeal only by certiorari

## **COLLATERAL CONSEQUENCES**

1. Reduce RMV license suspensions for non-driving events
  - a. Raise minimum past-due for child support enforcement through RMV
  - b. Eliminate license suspension for court default or for tagging
  - c. Create payment plan mechanism to reduce suspensions for late payment of fines
2. Reduce or eliminate fees imposed on indigent criminal defendants
  - a. Counsel fees
  - b. Parole fees
  - c. Clarify standards of decision in remaining fees
  - d. Strengthen procedural protections in fine time cases
  - e. Increase rate that fines are worked off by serving time
3. Increase opportunities for housing and employment by limiting CORI Access
  - a. Strengthen CORI by requiring fingerprint identification info to travel with criminal complaints which will allow us to . . .
  - b. . . . transmit case disposition and sealing orders to NCIC
  - c. Make resisting arrest sealable
  - d. Treat youthful offender cases as juvenile for CORI
  - e. Seal police arrest logs when seal court records

- f. Raise felony larceny threshold to \$1500
- g. Assure that cases are not recorded as CORI before arraignment
- h. Exclude juvenile arrests from public arrest log
- i. Make record access thresholds 7 years for felonies/3 for misdemeanors instead of 10 for felonies/5 for misdemeanors
- j. Allow expungement in cases where complaint was issued in error
- k. Allow expungement of misdemeanor and non-conviction juvenile records
- l. Allow sealing of juvenile records within one year
- m. Confirm that sealed records need not be mentioned in housing and professional licensure applications

## **JUVENILE JUSTICE**

1. Raise age of adulthood to 19 (consider increases to 20 and 21 later)
2. Raise minimum age of juvenile court jurisdiction to 12
3. Appoint counsel at parole hearings for juveniles serving life sentences
4. Create parent-child testimonial privilege
5. Create close age exceptions to statutory rape and indecent assault and battery offenses
6. See decriminalization section above for additional measures affecting juveniles
7. See sealing/expungement measures for juvenile cases above
8. Strengthen data collection regarding juvenile cases
9. Codify and strengthen restrictions on shackling of juveniles in court and room confinement in DYS

## **CRIMINAL PENALTIES & PROCEDURES**

1. Make Fentanyl and Carfentanyl and similar chemicals Class A drugs and shift them into the mandatory structure for trafficking (see above)
2. Strengthen penalties for intimidation
3. Strengthen penalties for solicitation of murder and other felonies
4. Strengthen definition of the crime of attempt
5. Strengthen penalties for corporate manslaughter