

Governor Phil Murphy and the Legislature ended the month of August advancing the excellence and independence of the New Jersey judiciary. The General Assembly and the Senate also passed several social justice bills; some signed by the Governor and others now awaiting the Governor's action.

Murphy's nomination of Fabiana Pierre-Louis to the New Jersey Supreme Court is historic. The unanimous vote of consent by the Senate followed bi-partisan accolades of her stellar qualifications — second to none — making her the first woman of color to serve on the Supreme Court.

Governor Phil Murphy signed into law two bills promoting social justice advanced by members of the New Jersey Legislative Black Caucus and the Latino Legislative Caucus that were supported in the General Assembly and the Senate with unanimous support. Signed into law on August 27, 2020, P.L. 2020, c. 68 requires that all law enforcement officers receive mandatory cultural diversity and implicit bias training.

With the signing on August 31, 2020, of P.L. 2020, c. 73, amending the bias intimidation statute, New Jersey joins New York and is now among the few states making it a criminal offense to make false police and 9-1-1 reports based on race and other protected status. This legislation came in the wake of renewed dialogue across the country of improper use of law enforcement resources by private citizens to harass, threaten and intimidate people of color, thereby undermining principles of non-discrimination while potentially eroding personal and public safety.

The Senate and the General Assembly approved numerous additional bills in July and August advancing law enforcement reform, criminal justice and sentencing reform, juvenile justice and voting, which are on the Governor's desk. However, efforts to advance decriminalization for possession of certain amounts of marijuana have passed in the General Assembly (A1897), but stalled in the Senate (S2535, S2101) with no Senate Judiciary Committee hearing scheduled. Senator Ronald Rice (D28), sponsor of S2535 and Chair of the Legislative Black Caucus expressed concern with the long-standing inaction on the decriminalization bill, which the Senator views as an alternative to legalization of marijuana for personal use while also addressing the social justice/racial disparity aspects of marijuana laws.

Many of the bills awaiting consideration by Governor Murphy would implement recommendations in the November 12, 2019 Report of the New Jersey Criminal Sentencing & Disposition Commission (Commission) chaired by former Attorney General and Chief Justice Deborah Poritz (Ret.). Established by law in 2009 by Governor Corzine, the Commission members were not chosen until 2018, incident to action by Governor Murphy. The Commission's Report urges, on a retroactive basis, the elimination of mandatory minimum sentences for non-violent drug and property crimes and reducing the mandatory minimum sentences for second degree robbery and burglary to 50% , thus affording the opportunity for current inmates to seek early release. (A4369/S2586). Under current law a prison sentence typically includes a mandatory minimum term of from one-third to one-half of the sentence imposed, barring parole eligibility during that period. The mandatory minimum for second degree robbery and second burglary is currently 85% of the sentence imposed.

The Commission also recommended a new mitigating factor for youth as well as creating an opportunity for re-sentencing or release for youthful offenders who were juveniles tried as adults and given long prison terms. The General Assembly and Senate approved A4373/S 2592, which would create as a mitigating factor in sentencing that the defendant was under the age of 26 when the offense was committed.

Additional Commission recommendations, reflected in A2370/S2594, include creating a “compassionate release” program that replaces the current medical parole law for end of life inmates, with terminal conditions, permanent physical incapacity and other reasons defined in the identical bills. The Commission urged that the savings in reduction of the prison population be used for crime prevention and recidivism programs along with funding for the Department of Corrections to improve infrastructure for tracking inmate trends, data collection and analysis in partnership with academic institutions.

Thus, in A4371/S2595 the Legislature would require the Commissioner of Corrections, in consultation with the Chair of the State Parole Board and the State Treasurer, to conduct a study to determine the fiscal impact of cost savings resulting from a reduction of the overall prison population due to any compassionate release program, as well as the elimination of mandatory minimum terms of parole ineligibility. A special fund would also be created; the “Corrections Rehabilitation and Crime Prevention Fund.” Monies in the fund must be dedicated to support recidivism reduction programs, including community-based and prison-based programs, such as educational and vocational training, and for other services to facilitate inmates’ successful reentry. The bills also require that the Commissioner of Corrections summarize the study results in an annual report to the Governor and Legislature.

Voting bills passed by Legislature were also approved. The Governor signed into law on August 28, 2020, three bills amending the voting statute to accommodate the coronavirus pandemic and changes impacting voting beyond the next general election. Governor Murphy signed P.L. 2020, c. 70 implementing A4276/S2598/2699, which is called “The Ballot Cure Act.” It modifies and establishes notice and various voting procedures for provisional and mail-in ballots. It includes additions to the substance of the “Voter Bill of Rights” and content of the information notices posted by county boards of elections in each polling place. These voter rights now include, for example, an explanation of the right to confidentially discover the status of their vote using the “Track My Ballot” portal, notice of a rejected ballot within 24 hours of the decision and providing the voter options on how to cure the defect. The voter must do so by 48 hours prior to the final date to certify election votes. The amendments also address notice of rights against voter intimidation and political insignia and polling within 100 feet of the voting place and inside the voting room, for example, but not limitation.

Assembly 4320/S2633 was signed into law as P.L. 2020, c. 71 on August 28, 2020. It requires the Secretary of State to promote voting by mail awareness through posters and mail-in ballot application forms provided to the county boards of election and municipal clerks and educational materials for county boards of election employees handling ballots. The bill also authorizes messengers and bearers of ballots for qualified voters to bring up to five, an increase from three ballots, when acting for a member of their immediate family residing with them in the same household. The bill also provides a process for requesters whose applications for mail in ballots are denied, requiring notice to the applicant, with reasons for disapproval, by county boards of election within twenty-four hours. Ballots cannot be rejected for defects reasonably unrelated to the voter such as torn envelopes. Purported signature defeats may be cured on affidavit and the voter presenting a valid photo identification.

After a conditional veto of A4475/S2580, the Governor signed P.L. 2020, c. 72, requiring each county board of election to establish ballot drop boxes in each county at least 45 days before the election. Certain procedures for mail-in ballots for the 2020 election were also revised. The ballot drop boxes must be in locations, a minimum of 10 in each county, equipped with security cameras that permit surveillance of the ballot drop box. Moreover, at least one drop box must be located in the county building housing the main office of the county clerk and in a municipal government building housing the main office of the municipal clerk in municipalities of over 5,000 residents. Ballot drop boxes must also be located on the main campus of each county community college, state college/university main campus and the main campus of independent four-year colleges/universities with an enrollment of over 5,000. The amendments in P.L. 2020, c. 72 provide that the upcoming November 3, 2020 general election must be conducted

primarily via vote-by-mail ballots, which will be sent to all active registered voters without the need for an application requesting a vote-by-mail ballot.

Certain law enforcement reform bills on the Governor desk require certain initiatives by the Civil Service Commission (CSC). The bills impacting the CSC call for a state-wide diversity data base and analysis to aid law enforcement hiring (Rice, Sweeney S2767/A4598), would require CSC to establish certain mentoring programs and services for minority law enforcement candidates (Rice, Sweeney S2766/A4517), to undertake law enforcement diversity and inclusion initiatives (Rice, Sweeney 2765/A4517) and establish law enforcement minority recruitment and selection programs and reporting. (Wimberly, Gordon A2394/S401).

There are also bills requiring law enforcement use of body worn cameras (A4312/S101; A4271/S1163) and mandating the Attorney General to establish use of force data collection and reporting system (A4515/S2808). Senate Law and Safety Committee Chair Linda Greenstein, is the sponsor of a bill to impanel a task force to study the body-worn camera issue. (S2805/A4469). Some, but not all, jurisdictions have them according to testimony at Greenstein's recent Police Reform Hearing in July, 2020. The cost of maintaining the data systems, as opposed to upfront cost to purchase, was cited as a concern for some local police departments.

With additional social justice bills pending the Governor's action, take notice that budget hearings are scheduled September 8-15, 2020. The General Assembly and the Senate sessions are scheduled for September 17 and 21. Information on the schedule for Committee meetings is available on <https://www.njleg.state.nj.us/legislativepub/calendar/090420.pdf>.