New Jersey Courts

Independence • Integrity • Fairness • Quality Service

REPORT OF THE

SUPREME COURT COMMITTEE

ON

Municipal Court Operations, Fines, and Fees

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I. EXECUTIVE SUMMARY

New Jersey's Municipal Courts handle approximately six million cases each year. Municipal Courts are often referred to as the face of the Judiciary. For most citizens, it is their only exposure to the courts and judges of this State. Municipal Courts across the country have been subjected to scrutiny as a result of court practices highlighted in the Department of Justice's 2015 investigation of the Ferguson Police Department in Missouri. The Department of Justice identified a number of basic constitutional principles required of courts, all related to the enforcement and imposition of fines and fees, and all grounded in the rights to due process and equal protection.

> *Most interactions between the public and the Judiciary take place in the municipal court system. Millions of people who come into contact with the municipal courts each year form their impressions of the justice system based primarily on those interactions.*
> *– Chief Justice Stuart Rabner*

New Jersey Municipal Courts have faced similar criticism. The 2017 report issued by New Jersey State Bar Association's Subcommittee on Judicial Independence in the Municipal Courts pointed out significant concerns about the independence of Municipal Courts. A series of newspaper articles beginning in late 2016 articulate a public perception that municipalities are increasingly relying on fines from tickets as a source of significant revenue, calling into question the overall fairness of such practices. These concerns were also exposed in two recent cases involving municipal court judges.

Chief Justice Stuart Rabner constituted the Supreme Court Committee on Municipal Court Operations, Fines, and Fees in March 2017 to address these concerns. **The Committee was charged with conducting a reform-minded review of Municipal Court practices**. This review emphasized several important concepts that affect all defendants in municipal court—particularly those of lesser economic means—including, but not limited to, the adequacy of notice provided to defendants before a driver's license suspension, the sufficiency of procedural safeguards for defendants who may be unable to pay a fine, whether an acquitted defendant can be assessed court costs, the use of excessive contempt sanctions, whether sufficient technology is available to the Municipal Courts and their users, and the independence of our Municipal Courts.

In accordance with the charge of the Chief Justice, the Committee conducted a detailed examination of New Jersey Municipal Court operations, considered national standards for municipal courts, and carefully reviewed various reports and recommendations made by the National Center for State Courts and the National Task Force on Fines, Fees and Bail Practices created by the Conference of Chief Justices and Conferences of State Court Administrators.

Despite the many significant concerns outlined in this report, the Committee concluded that New Jersey Municipal Courts compared very positively with similar courts around the country. This is due in large part to the significant reform efforts of the last 25 years, the increased oversight by the Judiciary both at the State and vicinage level, the mandatory training required of judges and staff, and the many excellent Municipal Court judges.

Nonetheless, **the Committee's review revealed a number of significant concerns where aggressive reform is needed**. Many of those issues identified by the Committee undermine both the administration of justice and the independence of the Municipal Courts. What follows is a summary of the main findings and conclusions of the report.

SIGNIFICANT CONCERNS IDENTIFIED BY THE COMMITTEE

- The excessive imposition of financial obligations on certain defendants;
- The excessive use of bench warrants and license suspensions as collection mechanisms; and
- The excessive use of discretionary contempt assessments.

The Committee is profoundly concerned with **the excessive imposition of financial obligations on certain defendants**, and what can be the never-ending imposition of mandatory financial obligations upon defendants that extend beyond the fine that is associated with the violation. While many of these fees and surcharges, and the funds that they support, are well intended, they ultimately have little to do with the fair administration of justice. They can be financially overwhelming to defendants, have a disproportionately negative impact on the poor, and often become the starting point for an ongoing cycle of court involvement for defendants with limited resources.

The Committee is equally concerned about **the excessive use of bench warrants and license suspensions as collection mechanisms**. There are 2.5 million outstanding municipal court bench warrants for failure to appear and failure to pay. These warrants often involve minor offenses and minimal amounts. The cost and collateral consequences in the enforcement of these warrants can also be devastating to individuals and families.

The Committee is particularly alarmed by **the excessive use of discretionary contempt assessments**, which are imposed by Municipal Court judges with all collected amounts going to the municipalities. Between calendar year 2015 and calendar year 2017 a total of $22 million in these contempt amounts were assessed. In the report, the Committee identifies that these practices at times have more to do with generating revenue than the fair administration of justice.

The Committee **strongly recommends statutorily mandating consolidation of smaller courts**, which often only meet once or twice a month, taking into account factors such as total annual filings, frequency of court sessions, and geography. Consolidated and streamlined courts not only enhance efficiencies, but can also protect the independence of the Municipal Courts. The Committee found that of the 515 courts, 225 had less than 3,000 filings in the 2017 court year, 166 had less than 2,000 filings, and 105 had less than 1,000 filings.

To address the Chief Justice's charge and the concerns expressed above, the Committee's report includes 49 separate recommendations and eight principles for Municipal Courts that capture the driving tenets of an independent judiciary. Those principles serve as guideposts in the honing and finalization of current and future reform, and emphasize the maxim that above all, Municipal Courts must be a forum for the fair and just resolution of disputes in order to preserve the rule of law. Central to this is the preservation of the independence of the Municipal Courts and ensuring that the Municipal Courts and Municipal Court judges are not affected by the generation of revenue, a concern repeatedly highlighted by the Committee.

A number of the Committee's guiding principles directly address the concerns regarding revenue generation:

- The Municipal Courts, as part of the Judiciary, are separate from the Legislative and Executive branches and are not a revenue-generating arm of the government;
- The imposition of fines, fees, and other financial obligations shall only be based on the fair administration of justice, and not the generation of revenue for a municipality;
- The appointment and reappointment of Municipal Court judges shall never be based on the revenue a Municipal Court judge generates for a municipality; and
- Municipal Court judges shall be selected and reappointed in an objective and transparent manner using methods that are consistent with an independent Judiciary.

> *It is the court's responsibility, in every case, to ensure that justice is carried out without regard to any outside pressures. The imposition of punishment should in no way be linked to a town's need for revenue.*
> *– Chief Justice Stuart Rabner*

Significant Committee recommendations are summarized below:

FAIR SENTENCING AND THE USE OF SENTENCING ALTERNATIVES:

- Develop policies and procedures that would monitor the imposition of contempt sanction amounts;
- Develop sentencing guidelines for discretionary, ranged financial penalties;
- Develop policies for the widespread review and dismissal of old complaints;
- The continued encouragement of the use of authorized post-disposition sentencing alternatives through additional policies and procedures;
- The development of policies and tools that would assist Municipal Courts in imposing such sentencing alternatives; and
- The legislative creation of additional sentencing alternatives.

PROCEDURAL SAFEGUARDS FOR DEFENDANTS UNABLE TO PAY A FINE:

- Significant changes to the Municipal Court's response to a defendant's post-disposition failure to pay, including the mandatory scheduling of an ability-to-pay hearing upon a failure to pay;
- Limiting the issuance of bench warrants to certain serious offenses or when outstanding fines and fees are substantial; and
- The development of a formalized policy for recalling existing bench warrants for failure to appear and failure to pay.

VOLUNTARY COMPLIANCE WITH COURT-ORDERED APPEARANCES AND LEGAL FINANCIAL OBLIGATIONS:

- The provision of automated text, email, and/or telephonic reminders of upcoming court dates and payment due dates;

- Modifying court notices to fully advise defendants in plain language of the consequences of a failure to appear or failure to pay;
- Advising defendants in plain language of the availability of sentencing alternatives; and
- Expanding the use of video and telephonic appearances.

INDEPENDENCE OF THE MUNICIPAL COURTS:

- A voluntary, transparent, and impartial appointment and reappointment process for Municipal Court judges;
- The establishment of a Municipal Court judge evaluation process that resembles that used for Superior Court judges, and would be based on both quantitative and qualitative data collected during the course of a judge's term;
- Legislatively increasing the term of service for Municipal Court judges from three to five years;
- Legislatively mandating the consolidation of small courts; and
- Legislatively adopting a transparent, impartial appointment and reappointment process for Municipal Court judges.

IMPROVE ACCESS TO THE MUNICIPAL COURTS THROUGH TECHNOLOGY:

- Offering NJMCdirect.com (an online payment center) at every Municipal Court's payment window, giving defendants the ability to pay all Municipal Court fines with a credit or debit card;
- Expanding remote appearances and actions that defendants can take on their case;
- Increasing the types of offenses that can be resolved online without a court appearance;
- Allowing the online rescheduling of an initial court date; and
- Allowing for the online completion of various Municipal Court forms in the NJMCdirect.com portal.

To capitalize on the momentum of this report**, the Committee recommends the establishment of a working group comprised of all three branches of government to implement the recommendations made by the Committee to achieve necessary reforms, and to create a forum for the discussion of additional relevant issues**.

The Committee anticipates that this report will provide a road map to improve Municipal Courts. Its proffer of principles and recommendations is made in an earnest attempt to enhance access and fairness to all litigants and court users, to increase the independence of the Municipal Courts, and to enhance public confidence in those courts, all as a means to further the State of New Jersey's ongoing commitment to equal justice for all.

II. INTRODUCTION

Municipal Courts across the country have been subjected to scrutiny as a result of court practices highlighted in the Department of Justice's 2015 investigation of the Ferguson Police Department in Missouri, and directly addressed in the subsequent Department of Justice "Dear Colleagues" letter[1] to state Supreme Court Justices and state Court Administrators in the United States. (Appendix A). In that letter, the Department of Justice identified a number of basic constitutional principles required of courts, all related to the enforcement of fines and fees, and all grounded in the rights to due process and equal protection. New Jersey Municipal Courts have faced similar criticism. A November 27, 2016 article, and a follow-up article published on November 30, 2016, both from the Asbury Park Press, articulate a public perception that municipalities are increasingly relying on fines from tickets as a source of significant revenue, calling into question the overall fairness of such practices. (Appendix B).

The principles expressed in that letter–equal access to the courts and fair justice for all–mirror the core values of the New Jersey Judiciary. Those values have been the driving force of every Judiciary initiative in recent history. They are the bedrock of the Judiciary's tireless commitment to ensuring that the avenues of justice remain open and fair to all members of society, including the most vulnerable, and have provided the inspiration for the New Jersey Judiciary to remain on the forefront of equal justice initiatives. New Jersey's 2017 implementation of criminal justice reform[2], the effective elimination of cash-based bail, is the most recent example of those efforts.

Building on ongoing court improvement efforts, significant concerns regarding New Jersey Municipal Courts, and motivated by the urgency suggested in the "Dear Colleagues" letter to examine the courts most frequently accessed by members of the public, Chief Justice Stuart Rabner constituted the Supreme Court Committee on Municipal Court Operations, Fines, and Fees in March of 2017. The Committee was charged with conducting a holistic review of Municipal Court practice, with an eye towards reform. The review required an examination of current laws and policies, including, but not limited to, the adequacy of notice provided to defendants before a driver's license suspension, the sufficiency of procedural safeguards for defendants who may be unable to pay a fine, whether an

[1] On December 21, 2017, the Department of Justice rescinded this letter and 24 other documents as "unnecessary, inconsistent with existing law, or otherwise improper." Press Release, Dep't of Justice, Office of Public Affairs, Attorney General Jeff Sessions Rescinds 25 Guidance Documents (December 21, 2017), available at https://www.justice.gov/opa/pr/attorney-general-jeff-sessions-rescinds-25-guidance-documents. (Appendix A-3).

[2] This monumental change in New Jersey's justice system was authorized by Constitutional amendment, N.J. Const., art. I, ¶ 11, and by statute, N.J.S.A. 2A:162-15 to 2A:162-26, and is referred to as "criminal justice reform."

acquitted defendant can be assessed court costs, the use of excessive contempt sanctions, whether sufficient technology is available to the Municipal Courts and their users, and the independence of our Municipal Courts. (Appendix C).

Committee membership was comprised of Superior Court judges, Presiding Municipal Court judges, Municipal Court judges, court executives from both the Administrative Office of the Courts (AOC)[3] and vicinages, Certified Municipal Court Administrators, members of the executive branch, representatives of the New Jersey State Bar Association and New Jersey League of Municipalities, and esteemed legal practitioners familiar with Municipal Court practice.

This report and the recommendations that it contains are the result of the Committee's diligent efforts to develop proposals that will further the Judiciary's goal of providing equal justice for all court users, including the most impoverished. The approach is multi-faceted, emphasizing all components of a fair justice system: judicial independence; notice and access to court; the review and modification of the tools used by Municipal Courts to both bring defendants into court and to collect financial obligations; appropriately limiting the use of warrants and license suspensions to enforce financial obligations; and the exploration of all available sentencing alternatives. The Committee has carefully balanced this noble objective with the need to maintain an appropriate level of defendant accountability, equally integral to the justice system. To that end, the Committee has developed both principles to guide Municipal Courts through this and future reform, as well as recommendations in furtherance of each maxim.

A. METHODOLOGY

After convening in March of 2017, the Committee split into four subcommittees to address subject matter areas consistent with its charge:

INDEPENDENCE OF MUNICIPAL COURTS

Charge: Review and make recommendations to change the appointment and reappointment process for Municipal Court judges, to enhance the independence of the Municipal Courts, and to recommend procedural and statutory changes in conformance with the above.

[3] The Administrative Office of the Courts is tasked with fulfilling the court management duties constitutionally assigned to the Chief Justice. N.J. Const., art. VI, § VII, ¶ 1 ("The Chief Justice of the Supreme Court shall be the administrative head of all the courts in the State. He shall appoint an Administrative Director to serve at his pleasure.").

DRIVER'S LICENSE SUSPENSION[4]

Charge: Review and make recommendations to enhance fairness in the process of license suspension surcharges and fees, to explore alternatives to license suspensions, to review the adequacy of notices provided to defendants before a driver's license suspension, to explore the use of excessive and automatic surcharges and fines, and to recommend procedural and statutory changes in conformance with the above.

INDIGENT DEFENDANTS, ABILITY TO PAY, AND CONTEMPT

Charge: Review and make recommendations for sentencing alternatives to fines, to limit the use of contempt, to require consideration of the economic hardship a fine may have on a defendant, to reduce fines and fees for less serious offenses, to establish a uniform statewide guideline for fines and fees, and to recommend procedural and statutory changes in conformance with the above. This subcommittee will also be tasked with determining whether an acquitted defendant can be assessed court costs.

TECHNOLOGY IN THE MUNICIPAL COURTS

Charge: Determine whether sufficient technology is available to the Municipal Courts, identify technological improvements that can be made to better assist court users both in and outside of the courtroom, and to make recommendations for technological enhancements to improve processes in all Municipal Courts.

Subcommittee membership was structured to include a balance of Judges, non-judge court officials, legal practitioners, and other experts.

Both the larger Committee and each subcommittee met multiple times over the remainder of 2017 and into 2018. Committee meetings were used to discuss major themes of the charge. Subcommittee meetings were used to review significant policy papers, discuss the assigned subject area, review research, and propose and develop recommendations. Both Committee and subcommittee meetings included presentations from persons involved or familiar with various aspects of Municipal Court reform, including Assignment Judge Linda R. Feinberg (ret.); Assignment Judge Lawrence M. Lawson (ret.); Presiding Municipal Court Judge Frank J. Zinna (ret.); Laurie Dudgeon, Esq., Administrative Director of the Courts of Kentucky; and Daniel Phillips, then Legislative Liaison, AOC.

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[4] A Municipal Court can order or initiate the suspension of a driver's license or vehicle registration as part of a defendant's sentence or due to a failure to appear or failure to pay a fine, fee, or surcharge. N.J.S.A. 2C:46-2, consequences of nonpayment, summary collection; N.J.S.A. 39:4-139.10, failure to respond, pay parking judgment, penalties; R. 7:8-9, procedures on failure to appear. For the sake of brevity, references to license suspensions throughout this report should be read as encompassing both license suspensions and vehicle registration suspensions.

The Committee also looked to the work, guidance, and expertise demonstrated by other pre-existing groups:

- The National Task Force on Fines, Fees and Bail Practices (National Center for State Courts), of which Chief Justice Stuart Rabner is a member;
- The Subcommittee on Judicial Independence in the Municipal Courts (New Jersey State Bar Association), of which Assignment Judges Feinberg and Lawson were members;
- The Equal Justice Working Group of the Municipal Conferences[5], chaired by Judge Louis J. Belasco, Jr., P.J.M.C., member to the Committee; and
- The Contempt Working Group of the Municipal Conferences, which was also chaired by Judge Belasco, Jr., P.J.M.C.

At later meetings of the Committee, the chair of each subcommittee made an oral presentation of the proposed recommendations to the full Committee. Discussions and comments were solicited from members, both verbally and in writing. Those recommendations were incorporated into this report, which was reviewed, revised, and approved by the full Committee.

Throughout this process, great care has been taken to obtain a cross-section of all pertinent points of view in addressing each subject area, with an emphasis on achieving a consensus amongst members on all recommendations.

B. Overview of Municipal Courts in New Jersey

An examination of Municipal Court operations, fines, and fees requires first an understanding of current practices. What follows is a primer on the structure of the Municipal Court system, current enforcement and collection practices, the effects of these practices on indigent defendants, and a discussion of prior reform efforts.

1. Structure of the Municipal Court

New Jersey Municipal Courts are courts of limited jurisdiction, constitutionally authorized by N.J. Const., art. VI, § I, ¶ 1. Their creation and operation is governed by statutes primarily found in N.J.S.A. 2B:12-1 et seq. The organizational structure, financial funding, and collection processes of the Municipal Courts are discussed below.

[5] The Conference of Presiding Municipal Court Judges meets on a monthly basis to discuss ongoing, new, and upcoming issues relating to the municipal courts. The Conference of Municipal Division Managers holds similar meetings in schedule and substance. The two conferences are collectively referred to as the "Municipal Conferences."

i. ORGANIZATIONAL STRUCTURE

By statute, every municipality in New Jersey must establish a Municipal Court to adjudicate traffic and petty criminal offenses that occur within its borders. N.J.S.A. 2B:12-1a. Although a Municipal Court is required, municipalities may choose from three types of Municipal Courts that can meet the particular needs of a municipality: a single municipal court; a joint court; or a shared municipal court.[6]

Single Municipal Courts serve a single municipality. Joint courts or shared service courts are created through an agreement between municipalities. A joint Municipal Court is one in which two or more municipalities agree to form a single court. N.J.S.A. 2B:12-1b. Their caseloads and bank accounts are commingled to form one unified court. Therefore, four municipalities that agree to form a joint Municipal Court will be counted as having only one Municipal Court. Conversely, municipalities participating in a shared services agreement simply share resources as a way to hold down costs. This may include sharing courtrooms, chambers, equipment, supplies, employees, judges, and/or the court administrator. N.J.S.A. 2B:12-1c. Importantly, though, neither the cases nor the bank accounts are commingled, and the courts retain their individual identities. Thus, if four municipalities agree to only share services, they are treated as four individual Municipal Courts.

The majority of Municipal Courts do not meet daily, with most having court sessions on a part-time basis. This could mean meeting two to three times a week, once a week, or even once a month. In light of this, many municipalities in New Jersey take advantage of the cost-saving measures presented by a shared services or joint agreement. As of the writing of this report, New Jersey has 565 municipalities and 515 Municipal Courts.[7] Of those 565 municipalities, 316 have individual, stand alone courts, 173 municipalities share services, while the remaining 76 municipalities have agreed to form 24 separate joint Municipal Courts. This is an area that the Committee found ripe for reform. Consolidated and streamlined courts not only enhance efficiencies, but can protect the independence of the Municipal Courts. As will be discussed later in this report, the Committee strongly recommends statutorily mandating consolidation in furtherance of both of these endeavors.

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[6] Additionally, if a county meets certain population and density requirements, that county may establish a central Municipal Court that has county-wide jurisdiction. N.J.S.A. 2B:12-1e.

[7] Two of the 515 Municipal Courts are unique and warrant further explanation. First is the Bergen Central Municipal Court, a Municipal Court with vicinage-wide jurisdiction. Bergen County is the only county to meet the statutory population and population density requirements. N.J.S.A. 2B:12-1e. Second is the Court of Palisades Interstate Park, which has the same powers and jurisdiction of a municipal court with respect to offenses that occur in the portion of the Palisades Interstate Park that is within the State of New Jersey. This court was also created by statute. N.J.S.A. 32:14-22, 32:14-23.

Leadership at Municipal Courts is helmed by that court's Municipal Court judge or chief judge, in instances where a court has multiple municipal judges. N.J.S.A. 2B:12-8. Municipal Court judges are appointed to serve for three-year terms, and although eligible for repeated reappointment, are not eligible for tenure. N.J.S.A. 2B:12-4a. The appointment process is governed by statute and in most instances rests with the governing body of the municipality. N.J.S.A. 2B:12-4b. The exception is for judges of joint Municipal Courts and a central Municipal Court, who must be nominated and appointed by the Governor with the advice and consent of the Senate. N.J.S.A. 2B:12-4b, c.

Notably, there is no uniform appointment or reappointment process or procedure utilized in the State of New Jersey, and, similarly, there is no uniform salary requirement, as most positions are part-time. Municipal judges are thus paid annual salaries set by ordinance or resolution of the establishing county or municipality, N.J.S.A. 2B:12-7b, with many Municipal Court judges sitting as judge in multiple Municipal Courts. Indeed, as of the publication of this report, there are approximately 314 Municipal Court judges sitting in the 515 Municipal Courts that serve New Jersey's 565 municipalities.

Although appointment and compensation for a Municipal Court judgeship is reliant on the other two branches of government, either locally or statewide, significant oversight remains with the Supreme Court and the vicinage Assignment Judge. The Chief Justice has the authority to designate a judge of the Superior Court or one of the Municipal Courts to serve as the Presiding Judge of the Municipal Courts for a vicinage, who may exercise powers delegated to him or her by the Chief Justice, or as established by the Rules of Court. N.J.S.A. 2B:12-9. Presently, all Presiding Municipal Court Judges also sit as Municipal Court judges. Presiding Judges that are Municipal Court judges are to be paid by the State for the time related to assigned duties, N.J.S.A. 2B:12-9, and Presiding Judges who are Superior Court judges are fully funded by the State. Further, deviations from the above appointment procedures, such as the authority for a municipality to appoint one or more additional or temporary municipal court judges, and the cross-assignment responsibilities of each municipal court judge fall under the authority of the vicinage Assignment Judge. N.J.S.A. 2B:12-6.

The approximately 2,800 remaining Municipal Court employees across the state are hired by the municipality where the court is located. Those employees include, amongst others, Municipal Court Directors, violations clerks, and other clerical staff. Although all are critical to the operation of the Municipal Courts, there are two that are significant because their scope of responsibilities can include quasi-judicial determinations. They are Municipal Court Administrators and Deputy Municipal Court Administrators (hereinafter referred to jointly as "Court Administrators").

Court Administrators are statutorily mandated Municipal Court employees who are compensated by the municipality/county and who, pursuant to statute, can be authorized by a Municipal Court Judge to "administer oaths for complaints filed with the Municipal

Court and to issue warrants and summonses." N.J.S.A. 2B:12-10, -21a. In light of this potential for great responsibility, all administrators are either credentialed by way of certification, accreditation, or conditional accreditation, or in the process of obtaining one of those credentials.

The credentials are administered by the Municipal Court Administrator Certification Board (Certification Board), an entity created and overseen by the New Jersey Supreme Court. N.J.S.A. 2B:12-11; R. 1:41-4(f); M.C.A.C.B.Reg. 2.2. All include completion of some or all of the Principles of Municipal Court Administration (POMCA) training, a four-part, 25 day training implemented by the Municipal Court Services Division.[8] Certification candidates are also required to pass a written and oral examination, as administered by the Certification Board, and complete a court improvement project that is reviewed and approved by the Certification Board. Once a certification candidate completes POMCA, passes the oral and written examinations, and completes a court improvement project, they are recommended by the Certification Board to the Supreme Court for certification. Only the Supreme Court can designate a candidate as a certified Municipal Court Administrator. R. 1:41.

ii. FINANCIAL STRUCTURE – FUNDING AND COLLECTION

The funding structure for Municipal Courts is straightforward—each court is funded by the municipality, or municipalities, in the case of joint or shared courts. This funding includes salaries for judges and staff, facilities, and all other expenses, and is established as part of the governing body's annual budget. It is important to note that prior to the Municipal Court budget being established, it must first be reviewed and approved by the vicinage Assignment Judge to ensure that the proposed budget sufficiently captures the resources that the court will need to operate.

The financial collection structure for Municipal Courts is much broader, and what follows is a non-exhaustive glimpse of the collection complexities faced by the courts. The Municipal Courts collect a number of legal financial obligations, including fines for offenses, court costs, and surcharges, not all of which are retained by the municipality. Penalties for state offenses are generally governed by state statutes, with state law setting an exact amount or range for a fine. N.J.S.A. 2C:43-3(c); N.J.S.A. 40:49-5; N.J.S.A. 40:69A-29. For disorderly persons offenses, petty disorderly persons offenses, and local ordinances (including most parking offenses), all fines go to the municipality. N.J.S.A. 2C:46-4(c). For traffic offenses, in most instances in which a local police officer wrote the ticket, one-half of the fine money goes to the municipality, with the other half going to the

[8] The Municipal Court Services Division is a division in the Office of Trial Court Services of the Administrative Office of the Courts. The Municipal Court Services Division develops and coordinates implementation of high-level policy for the municipal courts; provides technical and legal support as needed; and gathers statistics regarding municipal courts.

county. N.J.S.A. 39:5-40 to –41. Otherwise, the collected money is forwarded to the state. N.J.S.A. 39:5-40. For local ordinance violations, municipalities may set their own fine amounts or ranges within the statutory maximum, as established by N.J.S.A. 40:49-5, and collected fines go to the municipality. Finally, approximately 60 funds linked to individual statutes have been created, and where appropriate, collected amounts are sent to those funds. The processes described above are the norm, and are followed unless otherwise required by statute.

Taken together, the Municipal Courts can be a considerable source of revenue—during calendar year 2017, more than $400 million was collected, with more than half of that total being turned over to municipalities. While a significant portion of the collected monies goes to the state and counties, the vast majority of monies turned over to municipalities from the courts go to the respective municipality general fund and can be used for any purpose. This includes salaries of elected officials, judges, and municipal employees, roads, and other public works projects. The costs for operating the municipal court in a municipality is just one of those costs to which court funding is allocated.

Beyond the assessment and collection of penalties, the Municipal Courts collect court costs intended to fund their operation, as well as other important state initiatives. A Municipal Court can assess court costs up to $33, with all but $5.50 going to the municipality to fund municipal court operations. That remaining $5.50 is used to fund the statewide municipal computer systems and training for emergency medical technicians (EMT). N.J.S.A. 22A:3-4. A similar funding structure is found in N.J.S.A. 2B:24-17, which allows municipalities to pass an ordinance requiring a defendant to pay up to $200 when applying for a municipal public defender. The fee may be waived in whole or in part if the defendant demonstrates an inability to pay.

Additionally, there are other mandatory penalties and costs that the Municipal Court must collect. These are generally referred to as surcharges. They must be imposed as part of sentencing, and are governed by state statute. Collected surcharges are then electronically conveyed to the appropriate specific funds established by the state. The surcharges mandated are dependent on the type of offense for which a defendant has been convicted.

For all Title 39 motor vehicle offenses, as set forth in N.J.S.A. 39:5-41, the below surcharges are universal, and must be assessed and transferred to the appropriate fund:

- $1 for the Body Armor Replacement Fund, as created by N.J.S.A. 52:17B-4.4;
- $1 for the New Jersey Spinal Cord Research Fund, as created by N.J.S.A. 52:9E-9;
- $1 for the Autism Medical Research and Treatment Fund, as created by N.J.S.A. 30:6D-62.2;
- $2 for the New Jersey Forensic DNA Laboratory Fund, as created by N.J.S.A. 53:1-20.28a; and
- $1 for the New Jersey Brain Injury Research Fund, as created by N.J.S.A. 52:9E-9.

The above list is not exhaustive, and defendants may be subject to other individual statutory surcharges that are associated with certain offenses.

The below list includes some statute-specific surcharges. In these instances, some of the amounts indicated are both assessed and collected by the Motor Vehicle Commission (MVC):

- For the Unsafe Driving Surcharge Revenue Fund, as created by N.J.S.A. 17:29A-35b(2), $250 is assessed for violations of N.J.S.A. 39:4-97.2, unsafe driving. This surcharge is assessed and collected by the court.
- For the New Jersey Automobile Insurance Guaranty Fund, as created by N.J.S.A. 17:29A-35b(2), the following fees are assessed and collected by MVC:
  - $3,000 assessed for first and second convictions under N.J.S.A. 39:4-50, driving while intoxicated;
  - $3,000 assessed for violations of N.J.S.A. 39:4-50.a4, refusal; and
  - $4,500 assessed for third conviction of N.J.S.A. 39:4-50, driving while intoxicated.
- The following fees are also assessed and collected by MVC, pursuant to N.J.A.C. 13:19-13.1:
  - $300 assessed for violations of N.J.S.A. 39:3-10, unlicensed driver or driving with an expired license;
  - $300 assessed for violations of N.J.S.A. 39:4-14.3e, failure to insure a motorized bicycle;
  - $750 assessed for violations of N.J.S.A. 39:3-40, driving with a suspended license; and
  - $750 assessed for violations of N.J.S.A. 39:6B-2, operating an uninsured vehicle.

SCENARIO 1: JULIE'S SPEEDING TICKET

Julie received a speeding ticket for traveling 65 in a 55 mph zone. The ticket was payable, and could be paid online on NJMCdirect.com for a penalty of $95.00. That amount included the fine, court costs, and surcharges. Because a guilty finding results in 2 motor vehicle points being assessed by MVC, Julie appeared for her court date to seek a different result. After discussion with the prosecutor, the charge was amended to unsafe driving, N.J.S.A. 39:4-97.2, a violation that carries no motor vehicle points but a $250 surcharge. Julie's total penalties went from $95 to $389.

$100	FINE
$33	COURT COSTS
$1	BODY ARMOR FUND
$1	SPINAL CORD FUND
$1	AUTISM FUND
$2	DNA LAB FUND
$1	BRAIN INJURY FUND
$250	UNSAFE DRIVING FUND
$389	TOTAL

The landscape is even more complex for disorderly persons offenses and petty disorderly persons offenses, as the assessment of a particular surcharge is dependent on convictions in specific chapters of the criminal code. As there are many individual statutes with unique

surcharges, what follows is a small sample of the surcharges assessed and imposed by the Municipal Court at the time of sentencing:

- $100 assessed on domestic violence offenders to fund grants for domestic violence prevention, training, and assessment, as created by N.J.S.A. 2C:25-29.4;
- $250 for the Computer Crime Prevention Fund for disorderly persons/petty disorderly persons violations under Title 2C, Chapter 20, as created by N.J.S.A. 2C:43-3.8;
- $500 for the Drug Enforcement and Demand Reduction Fund for disorderly persons/petty disorderly persons violations under Title 2C Chapter 35, controlled dangerous substances, or Chapter 36, drug paraphernalia, as created by N.J.S.A. 2C:35-15;
- $50 criminal laboratory fee for each conviction under Title 2C, pursuant to N.J.S.A. 2C:35-20a;
- $50 for the Victims of Crime Compensation Office for disorderly persons/petty disorderly persons violations under Title 2C, and certain Title 39 violations, as created by N.J.S.A. 2C:43-3.1a(2)(a), (c); and
- $75 for the Safe Neighborhoods Services Fund for disorderly persons/petty disorderly persons violations under Title 2C, and N.J.S.A. 39:4-50, driving under the influence, as created by N.J.S.A. 2C:43-3.2.

SCENARIO 2:
STEVE'S DRUG CHARGE

Steve received a summons for possession of a small amount of marijuana. He applied for a Municipal Public Defender (a $200 fee) and was assessed a $100 fine by the court. However, the $675 in related surcharges, as well as the public defender fee, ballooned Steve's total costs for resolving the charge from $100 to $1,008.

$200	APPLICATION FEE FOR PUBLIC DEFENDER
$100	FINE
$33	COURT COSTS
$500	DRUG ENFORCEMENT AND DEMAND REDUCTION
$50	LAB FEE
$50	VICTIMS OF CRIME COMPENSATION
$75	SAFE NEIGHBORHOOD SERVICES FUND
$1,008	TOTAL

Finally, there are application fees that are assessed by the Municipal Court for participation in diversionary programs. They include the following:

- $75 application fee for participation in conditional discharge, N.J.S.A. 2C:36A-1, pursuant to N.J.S.A. 2C:43-3.1(2)(d);
- $75 application fee for participation in conditional dismissal, N.J.S.A. 2C:43-13.1, et seq., pursuant to N.J.S.A. 2C:43-13.8;

The Committee is deeply concerned about what can be a never-ending imposition of mandatory financial obligations upon defendants that extend beyond the fine that is associated with the violation. While many of these fees and surcharges, and the funds that they support, are well intended, they ultimately have little to do with the fair administration

of justice. They can be financially devastating on defendants, have a disproportionately negative impact on the poor, and often become the starting point for a perpetual cycle of court involvement for defendants with limited resources. Because most of these fees are statutorily mandated, giving no option to the courts in terms of their being ordered, this is an issue that can only be addressed by the legislature.

As indicated above, while the collection responsibilities of a municipal court are complex, these responsibilities are seamlessly executed by the technology that has been developed by the AOC. The scope of that technology, and its complete integration into case processing, will be discussed below.

iii. TECHNOLOGY IN THE MUNICIPAL COURTS

Over the last 30 years there has been a tremendous evolution in New Jersey's Municipal Court system, one driven by technical innovation and aspirations of excellence in the service of justice and the face of an ever-increasing case load. In 1985, the New Jersey Supreme Court approved the first Improvement Plan for the Municipal Courts. Prior to and at that time, the Municipal Court system was made up of 540 local courts that operated largely independently and without integrated and uniform statewide technology. That plan outlined several major initiatives and established a vision of a court system in which its citizens would be treated consistently and with the highest level of efficiency.

Today, New Jersey's 515 Municipal Courts utilize the same, unified computer system. As a result, court processes are standardized statewide, fiscal operations are computerized, police enter tickets electronically, information flows automatically to numerous other agencies, defendants pay financial penalties online, and more than a million matters are resolved without a single court employee ever touching a paper document. The Municipal Courts process approximately six million cases annually, and these technological enhancements have been crucial to ensuring that the courts meet their goal of resolving cases that come before them within 60 days. (Appendix D). Further, currently over half of all tickets in Municipal Courts are filed electronically, ensuring accuracy, data integrity, and speeding processing exponentially. The Automated Traffic System/Automated Complaint System (ATS/ACS) and NJMCdirect.com are the central elements of this unified system. These components together form the core of the technology in our Municipal Courts and are central to our efficient administration of justice.

AUTOMATED TRAFFIC SYSTEM/AUTOMATED COMPLAINT SYSTEM

The Automated Traffic System (ATS), initially piloted in 1986, allows traffic tickets from anywhere in the state to be entered into a centralized computer system and then tracked and processed automatically. The Automated Complaint System (ACS) followed via a 1993 pilot, provides for the automated court processing of all disorderly persons/petty

disorderly persons and other non-motor vehicle municipal offenses, such as local municipal ordinances and Administrative Code violations. The ACS system is the technical starting point for almost all indictable charges. The indictable complaint is accepted for filing by the Municipal Court, then transferred to Superior Court. Referred to jointly as ATS/ACS, both systems have been in place statewide in every municipal court since January 1, 1997.

Together, ATS/ACS provides for an electronic case management procedure that offers consistent, uniform court processes and operations guided by both law and court administration protocol. This ensures the efficient management of resources and flow of data between the courts and other agencies, including issuance of bench warrants and license suspensions. Crucially, the ATS/ACS system also automates the handling of financial matters relating to Municipal Court cases. Fines, surcharges, court costs, and other monies collected by each Municipal Court are disbursed electronically to state government executive branch entities and agencies, and to the numerous special funds discussed above. The system thus handles everything from initial processing or issuance of a traffic ticket to final disposition and payment, and all aspects of case management in-between. Processing more than one million computer transactions daily, ATS/ACS has been crucial to enhanced and standardized customer service in the Municipal Courts.

NJMCDIRECT.COM

In 2002 the Judiciary premiered an online ticket payment service, NJMCdirect.com. This is a website with a portal that allows the public to access court information and satisfy certain moving and parking tickets quickly and conveniently, providing court users with services that previously would require them to appear in court. These include the ability for members of the public to conduct a statewide search for all outstanding tickets; providing drivers with the opportunity to view and pay fines without the need to come to court; granting access to an electronic record of court ordered time payments; the ability to make required installment payments on-line; payment of tickets where the defendant's license has been suspended; a direct link to the Motor Vehicle Commission's website for license restoration; and driving directions to each Municipal Court.

NJMCdirect.com is fully integrated with ATS/ACS, which means that following a payment, court records and motor vehicle records are updated immediately, and, where appropriate, matters will be adjudicated and the funds distributed. The success and utilization of NJMCdirect.com cannot be understated. Nearly half of all eligible tickets are resolved remotely through NJMCdirect.com, demonstrating its central role in enhanced customer service and court efficiency.

FUTURE ENHANCEMENTS

As a result of the prior technological enhancements, Municipal Courts have been better able to handle the increase in caseload. Approximately six million cases are processed by

the Municipal Courts annually, each of which the courts strive to resolve within 60 days. While prior technological enhancements have made this goal attainable, all future enhancements must be made with an eye toward further efficiency. Fully converting ATS/ACS into a more comprehensive web-based system called the Municipal Automated Complaint System (MACS). This new system will allow uninterrupted and seamless operation by the Municipal Courts and increased access to the Internet. Additionally, expanded website functions are also being explored, to ensure that the interactive Municipal Court webpage is continually upgraded for better customer service.

Technology improvements in the Municipal Courts have come a long way over the last 20 years, but as in other areas, more must be done. The Committee is recommending additional enhancements that will improve efficiencies for both court users and Municipal Court staff, such as significantly expanding remote actions that defendants can take on their case, including rescheduling an initial court date and the availability of partial payment options. The Committee is also recommending enhancements that will provide for better accountability to ensure fairness in the administration of justice, such as in the tracking of the imposition of contempt sanctions by judges and the establishment of objective, measurable criteria by which sitting Municipal Court judges can be evaluated. The Committee is confident that the benefits to these improvements will impact all Municipal Court stakeholders and court users, regardless of economic status.

2. Life of a Municipal Matter

A municipal matter begins with the service of a charging document—a complaint-warrant or summons. Depending on the type of matter, the defendant may plead guilty and pay the fine or be required to appear in court to enter a plea. Of the approximately six million matters processed through the Municipal Courts on an annual basis, over five million are nearly evenly split between traffic and parking matters, and approximately 3.1 million are resolved without a defendant coming to court. Those matters are instead resolved by the court user pleading guilty and paying his or her penalties online through NJMCdirect.com, via check sent to the municipal court, or cash or credit card processed at (where accepted) a municipal court. Resolution via these methods is swift, the majority of which occur within two weeks of the charging document being issued.

For the remaining matters, the time between complaint initiation and disposition of a municipal matter can be quick. Oftentimes a mandatory court appearance will result in the first appearance, arraignment, plea agreement, plea colloquy, and sentencing all occurring during one court appearance. In some instances disposition is delayed by a defendant's failure to appear or because of delays in obtaining discovery. Other times, although a matter is regarded as disposed upon a finding or admission of guilt and sentencing, defendants remain engaged with the Municipal Court until their sentence is satisfied and their legal financial obligations are paid in full.

Because this report contains recommendations addressing enforcement mechanisms utilized in Municipal Courts to gain compliance, the below section will explain the current processes used to both bring a defendant to court and to ensure the complete payment of court-assessed fines and fees, as divided into pre- and post-disposition processes.

i. PRE-DISPOSITION ENFORCEMENT: BRINGING A DEFENDANT TO COURT

Regardless of the charging document used, a defendant charged in Municipal Court must either respond by or appear in court on a date certain. A failure to do so is referred to as a failure to appear (FTA), and triggers a sequence of escalating court responses that are governed by statute and R. 7:8-9, and have been programmed into ATS/ACS. The first step in this sequence is always the issuance of a notice informing the defendant of the failure to appear, instructing the defendant to appear in court on a date certain or to contact the court, and advising of the potential consequences of a continued failure: issuance of a bench warrant or a license suspension. A defendant receiving this notice is also assessed a $10 surcharge for the notice, N.J.S.A. 2B:12-31e(2)(b), and for each supplemental failure to appear notice. N.J.S.A. 22A:3-4.

If a defendant fails to respond to the notice, the court may issue a bench warrant for the defendant's arrest. R. 7:8-9. Simultaneous to the issuance of a warrant or after, a Municipal Court may also seek to have a defendant's license suspended. N.J.S.A. 2B:12-31; N.J.S.A. 39:4-139.10. There are two paths to license suspension, each dependent on the type of offense for which a defendant has been charged. For unanswered moving violations, the court may issue an order sending a matter to "close out". This does not result in an immediate suspension, but rather, the Municipal Court "closes" the matter in its records and notifies the Motor Vehicle Commission of the

SCENARIO 3:
TINA'S PARKING TICKET

Tina received a parking ticket after parking in front of her driveway. The ticket could be paid online for $54 through NJMCdirect.com. Tina misplaced the ticket and missed the due date. Although still able to pay online, a late fee was assessed and a notice was issued.

$54	PAYABLE AMOUNT
$10	FIRST LATE FEE FOR FAILURE TO PAY
$64	NEW PAYABLE AMOUNT

Tina once again misplaced the notice and did not pay the new payable amount by the new due date. A second late fee was assessed, and Tina was advised that if she did not pay by a date certain, her driver's license would be suspended.

$64	PRIOR PAYABLE AMOUNT
$10	SECOND LATE FEE
$74	NEW PAYABLE AMOUNT

Tina does not pay despite the notice. Her license is suspended and another fee is assessed for the order of suspension. Once she resolves her ticket, she will then need to pay a $100 license restoration fee to MVC to reinstate her license.

$74	PRIOR PAYABLE AMOUNT
$15	THIRD LATE FEE AND NOTICE OF LICENSE SUSPENSION
$3	MVC FEE ADDED UPON THE ISSUANCE OF AN ORDER OF LICENSE SUSPENSION
$100	MVC LICENSE RESTORATION FEE – TO BE PAID TO REINSTATE LICENSE
$192	TOTAL

unanswered charge. The MVC will then initiate its own procedures to suspend the license or driving privileges should the defendant remain unresponsive. For all other violations, the court may simply issue an order suspending the driver's license. A recent modification to this practice, provided pursuant to P.L. 2017, c.75, effective December 1, 2017, provides that for court-ordered suspensions for failures to appear for parking violations, MVC must delay the effective date of any suspension until 30 days after a supplemental notice is sent to the defendant advising of the reason for the suspension. Further, when a license suspension is ordered by the court, the defendant is assessed a $15 penalty and a $3 fee, the latter of which is transferred to MVC. N.J.S.A. 2B:12-31e(2)(a), (c).

These processes, guided by law and implemented through technology, are seamless. The New Jersey Municipal Court System benefits from a single, unified network system that allows for the efficient, uniform implementation of policies and practices. The enforcement process, implemented through ATS/ACS, places warrant and, where discretionary, license suspension eligible defendants on a list indicating their status that is available to the Municipal Court. The Municipal Court judge then makes a determination as to whether a bench warrant is issued or a license suspension is initiated.

ii. POST-DISPOSITION: COLLECTING FINES, FEES, AND SURCHARGES

A defendant who appears or responds to the municipal matter by the date certain can dispose of the charge through a guilty plea and payment of fine (either in court or, for traffic offenses only, online via www.NJMCdirect.com); guilty plea by way of a plea agreement and satisfaction of the penalty; or plead not guilty and try the matter to disposition.[9] In the event of a guilty plea or verdict, legal financial obligations—fines, fees, and surcharges—are expected due in full at the time of sentencing. However, there are a variety of sentencing alternatives available to defendants that are unable to pay their court-imposed legal financial obligations.

Alternatives are split into two general categories: those available at the time of sentencing, and those available after default. Eligibility for either is determined by statute. Defendants unable to pay a penalty in full at sentencing may be entitled to a time payment order; short-term payment order; or community service as a waiver of the financial component of the sentence. N.J.S.A. 2B:12-23.1a; N.J.S.A. 39:4-203.1. Time payment orders allow a defendant to pay a fine in monthly installments over a period of time. Short-term payment orders are utilized where a defendant is logistically unable to access funds to pay a legal financial obligation at the time of sentencing. As many Municipal Courts do not accept credit cards, short-term payment orders provide a defendant a brief opportunity, generally a few days or weeks, to secure the funds needed to pay a fine.

[9] Eligible defendants may also participate in diversionary programs available in municipal court, such as conditional dismissal, N.J.S.A 2C:43-13.1, and conditional discharge, N.J.S.A. 2C:36A-1.

There are a myriad of sentencing options available after a defendant defaults[10] on a time payment plan, including the following:

- Reduction or suspension of the penalty, or modification of the installment plan. N.J.S.A. 2B:12-23.1a(1); N.J.S.A. 39:4-203.1[11];
- Give credit against the amount owed for each day of confinement, if the court finds that the person has served jail time for the default. N.J.S.A. 2B:12-23.1a(2);
- Revocation of any unpaid portion of the penalty, if the court finds that the circumstances that warranted the imposition have changed or that it would be unjust to require payment. N.J.S.A. 2B:12-23.1a(3);
- Community service in lieu of payment of the penalty. N.J.S.A. 2B:12-23.1a(4);
- Imposition of any other alternative permitted by law in lieu of payment of the penalty. N.J.S.A. 2B:12-23.1a(5);
- Community service in lieu of incarceration related to nonpayment of the fine. N.J.S.A. 2B:12-23a; or
- Modification of the sentence with the person's consent. N.J.S.A. 2B:12-23a.

However, just as with a defendant who misses a court appearance, a failure to make a time payment triggers a sequence of notices and escalating court responses that, in the absence of a response from the defendant, can result in a bench warrant being issued and/or a license suspension. N.J.S.A. 2C:46-2; N.J.S.A. 2B:12-31; N.J.S.A. 39:4-203.2.

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[10] A default occurs when a defendant has failed to comply with the court-ordered payment plan; note that most defaults result in a driver's license suspension and/or the issuance of a warrant. N.J.S.A. 2B:12-31(a)(2), R. 7:8-9.

[11] Additionally, Title 39 defendants that the court has found to be indigent or participating in a government-based income maintenance program that demonstrate an inability to comply with a time payment order are eligible for waiver of any unpaid portion of that order up to $200, except for sentences for N.J.S.A. 39:4-50 or N.J.S.A. 39:4-50a. Defendants that receive this waiver are required to "perform community service for a period of time to be determined by the court, or participate in any program authorized by law, or satisfy any other aspect of a sentence imposed." N.J.S.A. 39:4-203.1.

3. Impact of These Processes on Indigent Defendants

The pre- and post-disposition processes detailed above are legislatively created, authorized, and at times, mandated. These tools are regularly and lawfully used by the Municipal Court system to encourage compliance with court notices to appear and court orders to pay legal financial obligations. Many of the protocols are programmed into the Municipal Court computer system, ATS/ACS. However, these tools have very real, sometimes unintended consequences that can be economically overwhelming to an individual, quickly pushing a person living on the margins of low income into poverty or continuing the vicious cycle of impoverished defendants perpetually beholden to court fines and fees.

A defendant arrested on a bench warrant who is unable to satisfy bail often remains incarcerated until either his or her next scheduled court appearance or their bail is reduced. This scenario highlights the very purpose of criminal justice reform—to end pre-disposition incarceration due to an inability to pay money bail. Further, in the majority of instances, this consequence is in all likelihood disproportionately harsh compared to the ultimate penalty for the offense charged—a monetary fine. The detrimental effects cannot be overstated. Even a brief period of incarceration may cause a person to lose his or her job and their dependents, their home, and may ultimately be more costly to taxpayers than the total fines due. The Committee is profoundly concerned about the excessive imposition of financial obligations and the equally excessive use of warrants as a collection mechanism. As a result, the Committee makes several recommendations in this report to put limits on the excessive enforcement and issuance of bench warrants to collect financial obligations that have little or no connection to the fair administration of justice.

Scenario 4:
Dan's Ticket for Failure to Have his Car Inspected

Dan received a ticket for failing to have his car inspected. He had the option of paying the ticket online via NJMCdirect.com. The $130 payable amount includes the fines, court costs, and surcharges. Dan did not have the resources to pay the ticket by the due date and he did not contact the court.

As a result of the failure, a failure to appear notice was sent and a $10 late fee imposed. If Dan wishes to pay off the ticket without going to court he now must pay $140 by the date provided on the notice.

$130	Original Payable Amount
$10	Late fee for failure to pay
$140	New payable amount

Dan remains unable to pay the amount assessed by the court. The Municipal Court has the discretion to issue a warrant for Dan's arrest. Instead, the Municipal Court opts to "close out" his case to MVC, who will initiate the suspension process. Once Dan is able to satisfy his $140 ticket, he will then need to pay a $100 license restoration fee to MVC to reinstate his license.

$140	New payable amount due after license suspension
$100	MVC License Restoration Fee – to be paid once license is reinstated
$240	TOTAL

License suspensions also have far-reaching effects, as highlighted by the 2006 Motor Vehicles Affordability and Fairness Task Force Report. (Appendix E). In a survey conducted of individuals that had at that time or previously had their license suspended, 42% lost their jobs as a result of the suspension; 45% who lost their job as a result of the suspension could not find another job; and 88% of those that were unable to find another job reported a decrease in income. (Appendix E). Economically destabilized families and dependents of those defendants also suffer the aftermath of these effects.

Other jurisdictions have been receptive to this reality, and a trend has emerged to cease the practice of suspending a driver's license unless the court first determines that a defendant has the ability to pay but is willfully refusing to do so. (Appendix F). Prior to a license suspension occurring, New Jersey provides multiple court notices to defendants who fail to pay their court-imposed financial obligations, with direction that the defendant can come to court to address the matter. The Committee proposes, in Recommendation 20, pp. 52-53, that such notices be made even more user-friendly and informative. The Committee strongly urges that New Jersey explore ways to alleviate the impact of license suspensions with the goal of reducing the number of license suspensions, particularly for minor offenses and for minimal outstanding financial obligations.

SCENARIO 4 (CONT'D):
DAN'S TICKET FOR FAILURE TO HAVE HIS CAR INSPECTED

Dan was not able to pay the $140 ticket or the anticipated restoration fee. He continued to drive to and from his place of employment on his now suspended license. He was pulled over, charged, and found guilty of the new offense of driving with a suspended license. He was ordered to pay the following:

$500	FINE TOTAL
$33	COURT COSTS TOTAL
$1	BODY ARMOR FUND
$1	SPINAL CORD FUND
$1	AUTISM FUND
$2	DNA LAB FUND
$1	BRAIN INJURY FUND
$750	MVC SURCHARGE (ASSESSED AND COLLECTED BY MVC OVER THE COURSE OF 3 YEARS)
$1,289	TOTAL FOR DRIVING WHILE SUSPENDED

At that same court appearance, Dan was also found guilty and ordered to pay the following on his outstanding ticket for the failure to have his car inspected:

$140	FINE, COURT COSTS, SURCHARGES, AND LATE FEE
$100	MVC LICENSE RESTORATION FEE
$249	TOTAL FOR SPEEDING
$1538	GRAND TOTAL

As a result of his inability to pay his original $130 penalty and contact the court, Dan's penalties have gone from $130 to $1,538.

Regardless of whether a bench warrant and/or license suspension has been issued, additional fees related to delinquency and unrelated to other surcharges can be assessed on the delinquent defendant. For each supplemental notice related to a failure to appear, a defendant is assessed an additional $10. N.J.S.A. 22A:3-4; N.J.S.A. 2B:12-31e(2)(b). If the

Municipal Court determines that a license suspension is required, a $15 penalty is assessed for an order of suspension, N.J.S.A. 2B:12-31e(2)(c), as well as an additional $3 fee that is ultimately transferred to the Motor Vehicle Commission. N.J.S.A. 2B:12-31e(2)(a). When a defendant is able to seek license reinstatement, generally after disposition or efforts are made to dispose of the Municipal Court matter, a $100 restoration fee must first be paid to the Motor Vehicle Commission. N.J.S.A. 39:3-10a.

The Committee fully recognizes the negative impact current statutorily authorized Municipal Court enforcement practices have on certain defendants, particularly those of lesser means. The Committee, however, is also cognizant of the goals behind the legislation authorizing or requiring such practices, which generally aim to promote public safety and uphold the authority and integrity of the judicial process. Balancing these oftentimes competing principles is the specific responsibility and challenge accepted by this Committee, and by other committees and judicial systems across the country. The recommendations later specified in this report are the by-product of this balancing.

4. Prior Reform Efforts

Prior to the formation of this Committee, perhaps the most extensive committee-led examination of the Municipal Courts was undertaken in 1983 by the Supreme Court's Task Force on the Improvement of the Municipal Courts (hereinafter referred to as the "1983 Task Force"). The 1983 Task Force was charged with the goal of upgrading the status and improving the operation of New Jersey's Municipal Courts. To that end, the 1983 Task Force conducted an exhaustive study of the operation and administration of the Municipal Courts; statewide management structure; calendar management; Municipal Court personnel; budget and finances; trial and case processing; accountability and issues of public interest; and court facilities and operations. In 1985, a 200 page report was issued containing a number of significant recommendations. (Appendix G).

Over the course of the following decades, many recommendations contained within that report have been adopted, including a suite of 1993 legislative changes that have formed the Municipal Court system as we know it today. N.J.S.A. 2B:12-1 to -31. Significant recommendations from that report that have been adopted are identified below.

- The creation of a Municipal Presiding Judge position within each vicinage to assist the Assignment Judge in overseeing the operation of the Municipal Courts. This was codified by legislation in 1993, N.J.S.A. 2B:12-9;
- Requiring that a candidate for a Municipal Court judgeship be an attorney admitted to the practice of law for a minimum of five years. This was codified by legislation in 1993, N.J.S.A. 2B:12-7;
- The creation of a certification process for Municipal Court Administrators, as overseen by the Supreme Court and the AOC, N.J.S.A. 2B:12-11. The Supreme Court established the Municipal Court Administrator Certification Board in 1994;

- The creation of the Administrative Office of the Court's Municipal Court Services Division. The Municipal Court Services Division was formally established as a division within the Administrative Office of the Courts in 1986;
- The establishment of a uniform budget format to be promulgated by the Administrative Office of the Courts to aid the Presiding Municipal Court Judge and Municipal Court judge in ensuring that sufficient resources are allocated to operate the courts. A statewide budget package was officially promulgated in 2002; and
- The creation of a statewide computer system (ATS/ACS) for the issuance of traffic tickets and complaints by the local or state police or through citizen complaints. ATS was initially piloted in 1986, while ACS was piloted in 1993. The ATS/ACS system was fully functioning in every municipal court by January 1, 1997.

Notably, 1983 Task Force recommendations that were not adopted related to changing the appointment process, establishing the provision of tenure, and requiring uniform, capped salaries for Municipal Court Judges. Efforts to institute structural changes to the municipal system, be it through the creation of regional courts or the urging of consolidation of courts, have similarly been unsuccessful.

Those efforts preceded the 1983 Task Force, beginning in 1958 when then Chief Justice Joseph Weintraub called for the institution of a system of regional courts with judges appointed by the governor. These sentiments were again proffered in 1969 by then Administrative Director of the Courts Edward McConnell, in 1971 via an outside consultant who urged a similar restructuring, and, finally, in 1979 by then Chief Justice Richard J. Hughes, who further proffered that if the Legislature refuses to take initiative, the Court could do so as a "last resort." (Appendix G, pp. 241-242; Appendix H).

These and other recommendations for change, however, never gained the necessary public support needed for implementation. Former Chief Justice Robert N. Wilentz analyzed these early attempts and noted that the failure to restructure the municipal system was due in part to "a strong tradition of local self-government … the people who have the power to make the appointment want to keep the power to make the appointment." (Appendix I). The Judiciary has instead been left to repeatedly urge and recommend that municipalities consider consolidation as it is authorized within the current legislative framework. Most recently, in 2010, Chief Justice Stuart Rabner distributed a report to the Governor and legislative leaders in the Senate and the Assembly. That report, titled the Municipal Court Consolidation Plan, provided a recommended blueprint to be followed by municipalities considering the establishment of either a joint court or shared court. (Appendix J).

Despite these obstacles, in the years since the 1983 Task Force, the Municipal Courts have continuously made statewide improvements to the operation of New Jersey's Municipal Courts. New Jersey remains on the forefront in regard to technological advancements, utilizing one of the United State's few unified systems based on a physically connected network. This has been accomplished through a number of statewide initiatives to support

the Municipal Courts, including upgraded networks and support systems; continuous enhancements to ATS/ACS; the roll-out of the Judiciary's online payment system, NJMCdirect.com; email; the provision of and continuous upgrade to computers for all users; printers; and the presence of internet access in all Municipal Courts.

Additionally, the AOC, through its Municipal Court Services Division, now provides oversight and assistance to the operation and administration of all local Municipal Courts. This ensures consistent statewide policy development and includes centralized training for both Court Administrators and Municipal Court judges. Further local oversight is provided by the vicinage Presiding Municipal Court Judge and Municipal Division Manager. Specifically, the Presiding Municipal Court Judge and Municipal Division Manager work together to provide crucial training, mentoring, oversight and support to the Municipal Court judges and staff in the vicinage, on behalf of the vicinage Assignment Judge.

There have likewise been significant reforms led by the Legislature. In 1997, the Legislature passed a law requiring each municipality to appoint at least one public defender, N.J.S.A. 2B:24-1 to -17, and in 1999, passed legislation requiring municipal prosecutors in every municipal court. N.J.S.A. 2B:25-1 to -12. To ensure the professionalism of Municipal Court staff, in 2006 a law was passed requiring the mandatory certification of Municipal Court Administrators. N.J.S.A. 2B:12-11. In 2011 this was complemented by a court rule requiring Deputy Court Administrators and Court Directors to hold the credential of accreditation. R. 1:41-3.

Over the past several years, there has been an increasing public focus on the impact of monetary court penalties on individuals, particularly those of limited income. (Appendix K). This focus culminated with the Department of Justice's 2015 investigation of the Ferguson, Missouri Police Department and Municipal Court, and was later addressed in the subsequent, since-retracted, Department of Justice "Dear Colleagues" letter to state Supreme Court Justices and state Court Administrators in the United States. (Appendix A-1, A-2). This scrutiny has included local media coverage of Municipal Court practices in New Jersey, with a concern regarding the high levels of fines and fees, and the court practices and use of enforcement tools to collect them. (Appendix L). This led to a legislative call for investigation into the Municipal Courts and reform, (Appendix B-2), but also inspired Judiciary-led efforts to document and address these concerns, both before and after distribution of the "Dear Colleagues" letter.

Preceding the Department of Justice's investigation and "Dear Colleagues" letter, the Municipal Conferences of the Judiciary created the Contempt of Court Working Group, which consisted of Municipal Presiding Judges, Municipal Division Managers, and AOC staff. That group reviewed the long-standing Municipal Court practice of imposing monetary sanctions on defendants who fail to appear or fail to pay penalties imposed after conviction. Such amounts—colloquially referred to as "contempt of court" amounts—are distributed to the municipality, entered into ATS/ACS with that notation, and have at times

called into question the independence of the Municipal Courts. Moreoever, the Contempt Working Group determined that the procedures required by R. 1:10-1, Contempt in Presence of Court; R. 1:10-2, Summary Contempt Proceedings on Order to Show Cause or Order for Arrest, and R. 1:2-4, Sanctions; Failure to Appear; Motions and Briefs, the only legal mechanisms for the imposition of contempt sanctions, are by all accounts not fully followed.

The Working Group completed a report capturing these findings, which was ultimately submitted to the Municipal Court Practice Committee during the 2015-2017 rule cycle. The Committee recommended that the Supreme Court adopt rule changes that would place financial caps on court sanctions for failure to appear, failure to pay, and contempt. (Appendix M). Further, upon issuance of those conclusions and notification to Municipal Court judges of the contempt amounts collected, significant internal effort has been made to decrease the oftentime unnecessary assessment of contempt amounts. (A more detailed discussion appears at pages 31-33). Assignment Judges and Municipal Presiding Judges have become increasingly involved in these efforts, monitoring and shepherding their Municipal Courts through the process. As a result of those efforts, between calendar year 2015 and 2017, the Judiciary reduced its total contempt assessments by 27%:

Total Municipal Court Filings	Cases with Contempt Assessments	Total Contempt Assessed	Per Case Average
2015			
5,719,650	**125,105**	**$8,433,180.61**	**$67.41**
2016			
5,907,289	**112,672**	**$7,727,945.94**	**$68.59**
2017			
6,141,628	**99,173**	**$6,161,177.16**	**$62.13**

[(Appendix N.)]

Following receipt of the "Dear Colleagues" letter, in May of 2016 the Municipal Conferences established the Equal Justice Working Group. The Equal Justice Working Group generated materials that together comprised an educational campaign for court users and Municipal Courts regarding the availability of sentencing alternatives. Prepared materials that have either been implemented or are still being finalized include a revised opening statement; an informational poster intended to be displayed in municipal court; a

bench card for judge use; and suggested court notice language changes that include an expansion of response dates.

More recently, Chief Justice Stuart Rabner issued an April 17, 2018 memorandum to all judges of the Municipal and Superior Courts regarding fines and penalties in Municipal Court. (Appendix O). In that memo, Chief Justice Rabner highlighted two recent events that demonstrate the precise conduct this Committee was convened to address. The first was a Municipal Court judge who "diverted fines against defendants in a way that generated more revenue for municipalities and less for the county." (Appendix O, p. 948). That Municipal Court judge pled guilty to a fourth-degree crime of falsifying records, and is barred from ever holding public office. (Appendix O, p. 948; Appendix P). The second relates to a Municipal Court judge who opened a 2014 court session "by announcing that any fines imposed were due that day, and that any defendants who refused to pay would be sentenced to county jail." (Appendix O, p. 948). The judge later fined a defendant $239, including court costs, and when that defendant was unable to make a payment, the judge sentenced him to five days in jail and had him arrested. (Appendix O, p. 948; Appendix Q; Appendix R).

In his memorandum, the Chief Justice issued a reminder to all judges of "certain basic principles and features of our justice system." (Appendix O, p. 948). They include the unique position of authority held by a judge, a judge's responsibility to ensure that justice is provided in each case based on the merits as opposed to any "outside pressures," and that any punishment imposed relate to the defendant's conduct and history. (Appendix O, p. 949). Chief Justice Rabner went on to highlight the "equally straightforward" principle that "defendants may not be jailed because they are too poor to pay court-ordered financial obligations." (Appendix O, p. 949). Summarizing relevant case law, the Chief Justice concluded: "[I]n a modern system of justice, people should not be sent to jail because they are too poor to pay a fine and do not have access to other resources." (Appendix O, p. 949). Although these sage words were issued near the completion of the Committee's work, they capture the goal of many of the Committee's efforts.

The Committee has carefully considered the charge from the Chief Justice, Municipal Court reform efforts, both successful and unsuccessful, that have preceded it, as well as recent efforts to address the administration of justice concerns in crafting this report and its recommendations.

III. GUIDING PRINCIPLES FOR THE MUNICIPAL COURTS

During the course of its work, in addition to an analysis of current practices in Municipal Courts, the Committee reviewed a number of reform-minded policy papers and reports from other similarly-charged committees. (Appendix K, S, T, U). From that review, the Committee developed core principles that captured the driving ethos of prior Municipal Court improvement efforts, guided the refinement of current practices, and would be crucial to the development of recommendations in line with the forward-looking charge of Municipal Court reform. Those principles, presented below, were used as guideposts in the honing and finalization of the recommendations that follow them.

PRINCIPLE 1 – PURPOSE OF COURTS: New Jersey Municipal Courts are a forum for the fair, just, and independent resolution of disputes in order to preserve the rule of law and protect the individual rights and liberties of all that come before them.

The judicial system is the branch of government that upholds the rule of law and is central to the doctrine of separation of powers. Our courts provide the forum in which disputes are resolved, laws are both tested and enforced, and justice is provided. All of this must be accomplished in a fair and rational manner, independent from the other branches of government, and through means that are transparent, readily accessible, and understood by the public. Each principle below addresses a crucial piece of what makes New Jersey courts able to perform their true purpose, and it is for this reason that this principle is listed first.

PRINCIPLE 2 – OVERSIGHT OF COURTS: Municipal Courts must operate under the authority and supervision of the judicial branch in a manner that ensures an independent Judiciary and enhances the public trust, and all operations and facilities must continue to be separate from law enforcement and prosecution activities.

An independent Judiciary is central to the Judiciary's duty to the public. It ensures that decisions made are solely in the pursuit of justice, and that every actor within the court operates without outside influence. Maintaining systematic integrity through independent judges ensures that decisions are made without regard for their effects beyond justice in

the individual case. Critical to accomplishing this is ensuring that Municipal Courts are managed in the same way as other courts in New Jersey—by the judicial branch.

This is not a new endeavor for the Judiciary. The AOC and vicinages currently provide significant oversight to the Municipal Courts. Much of this is accomplished by the direct support and oversight provided by the vicinage Municipal Presiding Judge and Municipal Division Manager, who report directly to the vicinage Assignment Judge. In addition to this local oversight and support, there is a formalized training process for all new Municipal Court judges comprised of five days of classroom instruction, as well as direct one-on-one training provided by the Municipal Presiding Judge; structured court session visits and mentoring for all new judges by the Presiding Municipal Court Judge; and an annual Municipal Court Judges' training conference.

For court staff, there is a 25-day training program (referred to as the Principles of Municipal Court Administration or POMCA required of all Municipal Court Directors, Court Administrators and Deputy Court Administrators, and which is made available to all other municipal court staff. Further, there are numerous other AOC and vicinage sponsored training events; a formal in-session visitation program that focuses on the activities of the judge and court staff at the municipal court session; and a formal visitation program that focuses on the overall health of the municipal court and whether the court is complying with state and Judiciary requirements.

Recommendations made in pursuit of this principle, including Recommendations 34 and 35, pp. 61-62, seek only to enhance AOC and vicinage involvement with Municipal Courts, and provide further assurances that the court remains both independent and separate from police and prosecution.

PRINCIPLE 3 – JUDICIAL SELECTION AND RETENTION: Municipal Court judges shall be selected and reappointed in an objective and transparent manner using methods that are consistent with an independent Judiciary. Appointment and reappointment shall never be based on the revenue a Municipal Court judge generates for a municipality.

New Jersey's Municipal Courts handle six million cases each year. In light of this significant volume and use, they are often referred to as the face of the Judiciary, and "are critical to our judicial system. [Indeed, m]ore cases are processed annually through those courts than any other brand of the judicial system." In re Samay, 166 N.J. 25, 43 (2001). "For many citizens, it is their only exposure to the courts and judges of this State. Accordingly, the entire system is measured by their experience in the municipal court." In re Horan, 85 N.J. 535, 538 (1981). "[M]unicipal courts, from the standpoint of contact,

observation and acceptance by the public, are in a preeminent position for the sustaining of universal respect for the administration of justice." In re Yengo, 72 N.J. 425, 434 (1977).

Municipal Court judges, in turn, are the face of the Municipal Courts. State v. McCabe, 201 N.J. 34, 42 (2010)("[M]unicipal court judges are the face of the Judiciary."). They are the first point of contact for many court users, and set the tone for the courtroom experience. Recent and prior news reports, as well as the 2017 report of the New Jersey State Bar Association's Subcommittee on Judicial Independence in the Municipal Courts, have suggested waning public confidence in the integrity and impartiality of Municipal Courts. (Appendix V). This perception—that Municipal Courts operate with a goal to fill the town's coffers—is contrary to the purpose of the courts. Indeed, under no circumstances should judicial performance be measured by, or judicial or court staff compensation tied to, revenue generation. A judge's decision to impose a court-ordered financial obligation must be detached from, and unrelated to, any decision concerning the use to which revenues from such obligations should be attributed. This disconnect between the articulated public perception and the driving forces of the courts must be addressed, and improving confidence in those judicial officers ultimately held accountable by the public is thus crucial.

To that end, the Committee's review of various policy papers revealed a number of best practices that foster judicial independence, many of which emphasize an objective appointment process. (Appendix K-1, K-4, K-10; Appendix T). The Committee recommends the development of a similarly impartial and transparent process for the appointment and reappointment of Municipal Court judges. (Recommendations 24 through 30, pp. 56-59). Crucially, the proposed evaluations will be free of inappropriate considerations such as revenue generation—a factor that has at times infiltrated the calculus in some Municipal Judge reappointments due to a years-long culture of imposing excessive financial penalties that are oftentimes not related to the fair administration of justice.

While the Committee highlights that there are many exceptional Municipal Court judges who serve with great distinction and independence, the perception and reality is that some judges are evaluated based on inappropriate considerations, which in turn impacts the independence of those judges. The proposed protocol intends to relieve judges of those pressures, improve public confidence in the impartiality of the Municipal Courts by ensuring that appropriately qualified judges are both appointed and retained, and, in the process, enhance judicial independence.

PRINCIPLE 4 – COURT-IMPOSED FINANCIAL OBLIGATIONS: The imposition of fines, fees, and other financial obligations shall only be based on the fair administration of justice, and not the generation of revenue for a municipality. The Municipal Courts, as part of the Judiciary, are separate from the Legislative and Executive branches and are not a revenue-generating arm of the government.

As a general principle, courts should be entirely funded from general governmental revenue sources to enable them to fulfill their mandates. Additionally, no court function should be directly tied to revenues generated by the imposition of court-imposed fines, fees, and other financial obligations. In New Jersey, this is structurally the case, as the Municipal Court budget is part of the larger municipal budget and funded by the general revenue of a municipality. The Municipal Courts must be a forum for the fair and just resolution of disputes in order to preserve the rule of law. The imposition of fines, fees, and other financial obligations should be made only in the pursuit of the administration of justice, and never with an intention to generate revenue. However, there are discretionary monetary penalties that judges may impose that create the potential for departure from this principle.

An example of one such penalty that has resulted in concern in New Jersey is the excessive use of discretionary contempt assessments in Municipal Courts. Those contempt assessments are imposed by Municipal Court judges, with all collected amounts going to the municipalities. As outlined in the charts below, between calendar year 2015 and calendar year 2017, a total of $22 million in these contempt amounts were assessed.

2015 CONTEMPT OF COURT ASSESSMENTS

COUNTY	TOTAL FILINGS	CONTEMPT CASES	TOTAL CONTEMPT	PER CASE AVERAGE
ATLANTIC	138,159	5,239	$338,791.07	$64.67
BERGEN	595,387	13,866	$412,038.00	$29.72
BURLINGTON	199,375	10,179	$1,127,556.01	$110.77
CAMDEN	345,738	7,297	$1,092,475.30	$149.72
CAPE MAY	78,719	1,301	$33,251.00	$25.56
CUMBERLAND	69,467	1,135	$86,570.70	$76.27
ESSEX	910,474	10,626	$475,589.88	$44.76
GLOUCESTER	125,051	4,880	$351,803.14	$72.09
HUDSON	986,992	11,544	$290,342.04	$25.15
HUNTERDON	56,409	533	$40,393.00	$75.78
MERCER	195,093	6,604	$580,642.07	$87.92
MIDDLESEX	393,685	12,011	$863,022.00	$71.85
MONMOUTH	330,268	11,894	$1,112,822.07	$93.56
MORRIS	205,172	5,181	$468,067.61	$90.34

OCEAN	183,849	2,686	$269,312.60	$100.27
PASSAIC	315,055	8,124	$251,577.50	$30.97
SALEM	26,054	574	$31,650.50	$55.14
SOMERSET	117,423	1,346	$72,834.95	$54.11
SUSSEX	32,072	976	$66,642.23	$68.28
UNION	369,910	7,596	$395,242.48	$52.03
WARREN	45,298	1,513	$72,556.46	$47.96
TOTAL	**5,719,650**	**125,105**	**$8,433,180.61**	**$67.41**

2016 Contempt of Court Assessments

COUNTY	TOTAL FILINGS	CONTEMPT CASES	TOTAL CONTEMPT	PER CASE AVERAGE
ATLANTIC	144,534	4,671	$264,112.30	$56.54
BERGEN	618,076	12,099	$380,714.50	$31.47
BURLINGTON	215,894	9,842	$1,075,836.92	$109.31
CAMDEN	341,480	4,945	$752,056.26	$152.08
CAPE MAY	74,607	1,242	$29,119.50	$23.45
CUMBERLAND	75,199	1,356	$112,632.42	$83.06
ESSEX	915,506	10,579	$857,000.51	$81.01
GLOUCESTER	133,283	4,551	$317,849.50	$69.84
HUDSON	1,067,443	11,609	$288,074.50	$24.81
HUNTERDON	55,309	396	$38,358.00	$96.86
MERCER	202,603	6,123	$583,842.75	$95.35
MIDDLESEX	417,893	10,222	$754,529.77	$73.81
MONMOUTH	344,023	11,029	$865,798.14	$78.50
MORRIS	209,561	4,373	$389,822.50	$89.14
OCEAN	178,259	2,239	$214,134.82	$95.64
PASSAIC	327,257	8,387	$265,402.50	$31.64
SALEM	25,209	607	$37,786.00	$62.25
SOMERSET	109,010	874	$64,259.50	$73.52
SUSSEX	30,801	798	$54,254.00	$67.99
UNION	379,451	5,855	$341,973.50	$58.41
WARREN	41,891	875	$40,388.05	$46.16
TOTAL	**5,907,289**	**112,672**	**$7,727,945.94**	**$68.59**

2017 Contempt of Court Assessments

COUNTY	TOTAL FILINGS	CONTEMPT CASES	TOTAL CONTEMPT	PER CASE AVERAGE
ATLANTIC	149,211	3,966	$217,225.05	$54.77
BERGEN	631,410	11,947	$402,310.00	$33.67
BURLINGTON	200,253	7,974	$880,957.93	$110.48
CAMDEN	338,368	3,933	$525,749.50	$133.68
CAPE MAY	75,530	860	$21,605.78	$25.12
CUMBERLAND	74,166	1,314	$105,699.60	$80.44
ESSEX	989,746	9,674	$449,528.80	$46.47
GLOUCESTER	130,046	4,132	$297,772.12	$72.06
HUDSON	1,138,304	11,908	$284,032.76	$23.85
HUNTERDON	59,986	382	$49,274.00	$128.99

MERCER	219,310	4,808	$484,284.45	$100.72
MIDDLESEX	425,335	8,926	$613,435.99	$68.72
MONMOUTH	351,125	9,574	$662,182.52	$69.16
MORRIS	207,738	4,004	$345,429.50	$86.27
OCEAN	175,644	1,253	$106,899.60	$85.31
PASSAIC	352,778	6,612	$254,813.50	$38.54
SALEM	26,787	417	$23,828.00	$57.14
SOMERSET	114,274	821	$62,367.00	$75.96
SUSSEX	31,541	510	$39,560.00	$77.57
UNION	401,941	5,377	$307,234.00	$57.14
WARREN	48,135	781	$26,987.06	$34.55
TOTAL	**6,141,628**	**99,173**	**$6,161,177.16**	**$62.13**

[(Appendix N.]

As discussed above, the Contempt of Court Working Group of the Municipal Conferences reviewed the Municipal Court's history of routinely imposing "contempt" amounts on defendants, pp. 25-26, and determined that the appropriate procedures required by R. 1:10-1, Contempt in Presence of Court; R. 1:10-2, Summary Contempt Proceedings on Order to Show Cause or Order for Arrest, and R. 1:2-4, Sanctions; Failure to Appear; Motions and Briefs, have not been fully followed. The Contempt Working Group's conclusions have resulted in a Judiciary-led movement to decrease or prohibit the collecting of both appropriate and inappropriate contempt monies. This effort continued with the creation of this Committee, and has come into even sharper focus. Assignment Judges and Municipal Presiding Judges have become increasingly involved in these pursuits, monitoring and shepherding their Municipal Courts through the process of decreasing the oftentime unnecessary assessment of contempt amounts. As shown in the chart above, these local efforts have resulted in a reduction in contempt assessments in nearly every vicinage for each of the past three years.

Although the Committee saw no need to disturb the careful procedural protections provided by R. 1:10-1 and R. 1:10-2, or to amend R. 1:2-4, more work needs to be done in this area. The Committee recommends that this ongoing process continue and makes proposals to limit the historical use of "contempt" by emphasizing monitoring, education, and establishing procedures that avoid the inappropriate use of contempt, as furthered by the use of technology. (Recommendations 1 and 46, pp. 39, 71-72.

PRINCIPLE 5 – SENTENCING: Judges shall set fair and reasonable penalties, including in the imposition of discretionary financial penalties. Judges shall consider all legally available sentencing alternatives where permitted. Driver's license suspensions shall be used as a last resort or when legally required.

Underpinning this principle, and its call for fair and reasonable penalties, are the core concepts that were outlined by the Chief Justice in his April 17, 2018 memorandum:

> It is the court's responsibility, in every case, to ensure that justice is carried out without regard to any outside pressures. That means that each defendant is entitled to have his or her case decided on the merits; that any punishment imposed should reflect the defendant's conduct and history; and that incarceration should only be ordered if the circumstances of the case require it.
>
> Certain related principles are equally straightforward. The imposition of punishment should in no way be linked to a town's need for revenue. And defendants may not be jailed because they are too poor to pay court-ordered financial obligations.
>
> [(Appendix O, p. 949).]

Thus, the initial setting of uniform, reasonable penalties, to the extent discretion is allowed by law, is crucial to ensuring a defendant's ability to satisfy the sentence. Disparate treatment from court to court and from judge to judge is a concern of the Committee. This disparate treatment is reflected in sentencing with respect to fines, periods of incarceration, license suspensions, and other penalties. Guidance for judges regarding sentencing options and alternatives is necessary to ensure the fair administration of justice, as "[r]andom and unpredictable sentencing is anathema to notions of due process. State v. Moran, 202 N.J. 311, 326 (2010) (citing United States v. Batchelder, 442 U.S. 114, 123 (1979) and New Jersey State Parole Bd. v. Byrne, 93 N.J. 192, 210-12 (1983)). "Vague laws violate due process by failing to 'provide adequate notice of their scope and sufficient guidance for their application.'" Moran, 202 N.J. at 311 (quoting State v. Cameron, 100 N.J. 586, 591 (1985)). In this regard, the Committee seeks guidance from the Court in the Municipal Court's setting of discretionary sentences.

The Supreme Court has made clear its position that indigent defendants be provided the opportunity to pay fines in installment payments. State v. De Bonis, 58 N.J. 182, 199 (1971) ("If a defendant is unable to pay a fine at once, he shall, upon a showing of that inability,

be afforded an opportunity to pay the fine in reasonable installments…."); In re Broome, 193 N.J. 36 (2007) (finding that a Municipal Court judge that opened his court sessions by advising court users that fines of less than $100 would have to be paid in full had "disregarded the De Bonis rule of law, which clearly mandates that indigent defendants be provided the opportunity to pay fines in installment payments.") (Appendix R).

Further, for those defendants that are unable to satisfy their sentences or default on their time payments, the Committee acknowledges the robust state of legislatively-available sentencing alternatives. These alternatives, some available at the time of sentencing and some only available following default, include long and short-term time payment plans, modification of a time payment plan, community service, revocation of the unpaid fine, a reduction or suspension of the sentence, consensual modification of the sentence, credit for any jail time served as a result of the default, and "any other alternative permitted by law in lieu of payment of the penalty." N.J.S.A. 2B:12-23; 2B:12-23.1; 39:4-203.1. The AOC has provided guidance as to the application of these sentencing alternatives via Administrative Directive 02-10, "Implementation of L. 2009, c. 317, Authorizing Municipal Courts to Provide Payment Alternatives" (March 2, 2010), and a May 9, 2011 memorandum from Judge Grant. (Appendix W).

The Committee also recognizes that despite the availability of this broad spectrum of alternatives, those most regularly used are for the granting and modification of time payment plans. This almost exclusive reliance on time payments was also identified by the Equal Justice Working Group of the Municipal Conferences, which in response developed materials to initiate an educational campaign regarding the full panoply of sentencing alternatives. Those materials are intended to inform both court users and court personnel of the various sentencing alternatives that are available for request and use. They include additions to the municipal court opening statement, the promulgation of a poster posted prominently in courthouses to advise members of the public of the availability of sentencing alternatives, revisions to existing court notices, as well as a bench card available to judges to easily ascertain whether a sentencing alternative is available for a defendant. The Committee endorses all of these materials, each of which has either been implemented or is in development.

The Committee makes a number of recommendations that intend to build on that educational campaign, including the creation of systematic processes for courts to use to accurately and swiftly assess the appropriateness of sentencing alternatives, and propose additional sentencing alternatives that are either within the authority of the Judiciary to initiate or require legislative change. (Recommendations 3-4, 6-7, 9-11, pp. 41-42, 43-46). All of these recommendations rely on the judgment and discretion of our Municipal Courts in their application and are based on the belief that with knowledge, the appropriate granting of one of a variety of sentencing alternatives is inevitable.

Finally, the Committee acknowledges that for many residents of the State of New Jersey, possession of a driver's license is a geographical necessity. A suspension can quickly place an otherwise secure defendant on a dangerous path of escalating consequences, affecting not only a defendant, but families and dependents as well. (Appendix E, pp. 203-206). The Committee strongly encourages the State of New Jersey to conduct a full review of the use and impact of license suspensions. The Committee also recommends that the Judiciary consider the development of a policy that would reinstate certain licenses that were suspended either for delinquencies related to minor offenses or for failure to pay a nominal financial obligation.

In recognition of the potential impact of this enforcement tool and its widespread, unintended consequences, and in acknowledgement that there are instances when suspension is needed, the Committee strongly cautions against the routine issuance of a discretionary license suspension. The Committee thus recommends that discretionary license suspensions be used both deliberately and sparingly. The avoidance of maxims and absolutes here by the Committee is deliberate. The Committee believes, as with the use of sentencing alternatives, that some amount of judicial discretion, predicated on the particulars of a given case, is fundamental to the fair administration of justice.

PRINCIPLE 6 – ENFORCEMENT OF COURT-IMPOSED FINANCIAL OBLIGATIONS: Courts shall not incarcerate a defendant for nonpayment absent a determination of a willful failure to pay. When a defendant has not paid a penalty, courts shall consider a defendant's ability to pay in setting a payment schedule or looking at sentencing alternatives.

The United States Supreme Court has made clear that courts may not incarcerate a defendant for an inability or failure to pay a court-ordered financial obligation unless the court first holds a hearing and makes a finding that the failure to pay was willful and not due to an inability to pay. Bearden v. Georgia, 461 U.S. 660 (1983). Said another way, a court may not jail a person for failure to pay unless there is a finding that the person is able to pay without manifest hardship and has not made good faith efforts to comply.

In Municipal Court, there are two potential paths to incarceration for nonpayment. The first is via the issuance of a bench warrant for failure to pay, when coupled with an incidental arrest and incarceration upon an inability to make bail. The second is through the contempt mechanisms provided by New Jersey Court Rules 1:10-1 and 1:10-2. Upon careful review, the Committee saw no need to disturb the careful procedural protections provided by R. 1:10-1 and R. 1:10-2. Therefore, the Committee's recommendations in this regard instead rely on a proposed balanced approach to bench warrants for failure to pay that will

incorporate an ability-to-pay hearing as a precursory step. (Recommendation 12, pp. 47-49).

While the Committee notes that the recommendations made do not diminish a Municipal Court's authority to issue a bench warrant for a failure to appear, the Committee takes the position that such a powerful enforcement tool should not be used indiscriminately for a failure to appear for minor offenses or for failures to pay when the amount owed is minimal. These proposed limitations to the use of bench warrants will be discussed further in Recommendations 13 and 14, pp. 49-50.

PRINCIPLE 7 – ENCOURAGE COMPLIANCE: Municipal Courts shall employ practices that provide notices to defendants in plain language that promote voluntary appearances and encourage compliance.

The encouragement of voluntary court appearances by defendants will prevent failures to appear and failures to pay, which would otherwise trigger the escalating court responses that result in, at a minimum, additional fees and, at worst, a driver's license suspension or bench warrant. Such enforcement mechanisms can quickly launch a defendant on a trajectory that may take years to escape. The Committee is confident that the utilization of compliance gaining measures will be crucial to prevent the cycle of poverty that so many indigent defendants who have contact with the court find themselves in, while also benefiting all court users and stakeholders.

To that end, the Committee proposes a number of simple, common sense noncompliance remedies that have been put forth by various policy papers. (Appendix X). They include, but are not limited to, providing technological reminders of upcoming significant dates to court users and revising notices to provide court users with the information they need. (Recommendations 19 and 20, pp. 53-54). These recommendations have a common theme: providing the public ready access to critical information that advises them to either fulfill their obligation to the court, or to contact the court if they are unable to do so.

The Committee also endorses the various materials that have been developed by the Equal Justice Working Group of the Municipal Conferences. Those materials include proposed revisions to current delinquent notices that provide more time to respond; a poster to be prominently posted in Municipal Courts advising defendants of the availability of time payments and time payment alternatives; and a bench card that summarizes the statutes governing time payments and time payment alternatives as sentencing options. Each of these developed materials emphasize a multi-pronged educational campaign regarding the availability of time payments and time payment alternatives in the event of an inability to

pay, as well as suggested modifications to court practices that will encourage court appearances and timely payments.

The recommendations developed by the Committee and the draft materials developed by the Equal Justice Working Group are designed to benefit all defendants equally, regardless of economic status, while encouraging defendants to contact the court if they have issues with making an appearance or payment.

PRINCIPLE 8 – ENHANCE ACCESS TO COURTS: Access to the Municipal Courts should be enhanced through the expansion or adjustment of traditional hours and the use of technology.

Increased access to Municipal Courts is crucial to ensuring that defendants do not become delinquent. (Appendix K). While perhaps the easiest method of enhancing access is via the expansion or adjustment of traditional court hours, in recognition that Municipal Courts may not have the budget to accommodate such a change, the use of technology provides alternatives.

The Committee has developed a number of recommendations that envision these technological enhancements to be based on the significant expansion of cases that can be resolved remotely. The proposals recommend the creation of an online portal that will allow defendants to initiate certain actions related to their cases. (Recommendation 36-39, pp. 63-67). This will provide a means for defendants to comply with their legal obligations while at the same time continue to work or satisfy other family obligations, and increase the likelihood of defendants responding to a complaint or court order, all while reducing the number of defendants who have to come to court.

Those recommendations emphasize improving the quality and amount of relevant case-related data that is made available, while integrating and expanding case management programs to further benefit the courts and the public. They will provide stakeholders in the Municipal Court system the benefit of a vastly improved flow of information through case management programs. It is the belief of the Committee that these recommendations, taken together, will be felt equally by all Municipal Court users, regardless of economic status.

IV. RECOMMENDATIONS

The recommendations of the Committee, based on the preceding principles, follow.

FAIR SENTENCING AND THE USE OF SENTENCING ALTERNATIVES

The concept of fair and equitable sentencing encompasses all aspects of a sentence that is imposed by the Municipal Court—including fines, fees, penalties, and sanctions—as well as the availability of sentencing alternatives in the event a defendant is unable to satisfy a financial penalty. The issue of contempt is one that is ripe for reform, as it remains on the forefront of Judiciary endeavors despite the significant reduction in total contempt assessments.

The recommendations that follow intend to enhance fairness and equity in sentencing in the Municipal Courts in two important regards: 1 further decreasing the unnecessary or improper assessment of contempt amounts; and 2 ensuring the provision of uniform, reasonable penalties, to the extent discretion is allowed by law, including through the provision of a variety of sentencing alternatives.

RECOMMENDATION 1	**Develop a Judiciary policy to monitor the imposition of contempt of court financial assessments by Municipal Court judges to avoid the inappropriate use of contempt of court, to require compliance with court rules, and to require justification on the record and a separate court order.**

Upon its creation, the Committee prepared and provided contempt reports detailing contempt amounts collected in each county and in a county's individual municipalities to Assignment Judges. This information has been utilized by the Assignment Judges to monitor and limit the inappropriate use of contempt in their Municipal Courts. As a result of these efforts and review, as of the writing of this report, all Assignment Judges have issued an order that requires Municipal Court judges in their vicinage who wish to impose a contempt sanction to not only follow the procedural protections outlined in R. 1:10, but to also place "findings of fact and conclusions of law on the record and provide a written copy of those determinations to the Assignment Judge." The Committee approves of this practice and the system of checks that it places on contempt, a judicial tool of last resort.

Additionally, the Committee recommends that the AOC's Municipal Court Services Division continue to provide necessary support to assist in the continued monitoring of the use of contempt, be it in the form of preparing future reports on imposition of contempt or otherwise, to the Assignment Judges.

RECOMMENDATION 2 **Develop a Judiciary policy establishing guidelines that Municipal Court judges are to follow when the corresponding statute or ordinance provides for a range of possible financial penalties, and requiring a Municipal Court judge to state on the record his or her reasons for ordering that amount.**

The Supreme Court has long recognized that "there can be no justice without a predictable degree of uniformity in sentencing." State v. Hodge, 95 N.J. 369, 379 (1984). "Disparate sentencing undermines public confidence in the fairness of our justice system." Moran, 202 N.J. at 326. "The dominant goal of the Code of Criminal Justice was uniformity in sentencing, State v. Kromphold, 162 N.J. 345, 352 (2000), replacing 'the unfettered sentencing discretion of prior law with a structured discretion designed to foster less arbitrary and more equal sentences[.]'" Id. (citing State v. Roth, 95 N.J. 334, 345 (1984); N.J.S.A. 2C:1-2(b) (listing "general purposes of the provisions governing the sentencing of offenders," including "[t]o safeguard offenders against excessive, disproportionate or arbitrary punishment" and "[t]o give fair warning of the nature of the sentences that may be imposed on conviction of an offense")).

The majority of offenses heard in Municipal Court have set statutory fines. To the extent there are sentences that include discretionary ranges, R. 7:9-1(b) mandates that Municipal Court sentences for Title 2C violations include a statement of reasons from the judge for the imposed sentence, including findings under N.J.S.A. 2C:44-1(a) (aggravating factors) and 2C:44-1(b) (mitigating factors). New Jersey Court Rule 7:9-1(c) provides that for non-criminal code cases that involve a consequence of magnitude, the court shall also provide its reasons for imposing sentence at the time of sentencing. However, no such guidance exists for the sentencing of traffic or local ordinance offenses that carry discretionary, ranged sentences.

The Committee recommends the creation of a policy regarding the establishment of discretionary, ranged monetary sentences, including factors that should be considered in the imposition of any such sentence. The Supreme Court has the constitutional authority to address the disparate treatment of defendants in our Municipal Courts. N.J. Const. art. VI, § 2, ¶ 3; Moran, 202 N.J. at 328 ("To ensure uniformity in sentencing, and that defendants similarly situated are-to a reasonable degree-similarly treated, we draw on our constitutional powers, N.J. Const. art. VI, § 2, ¶ 3, to set standards for our municipal court and Law Division judges in exercising their discretion under N.J.S.A. 39:5-31."). The Committee additionally suggests that any developed policy require that the court place on the record the reasons for imposing the sentence selected. The Committee believes that developed guidelines will provide judges with appropriate direction in the setting of fair sentences while furthering the Judiciary's goal of uniformity in sentencing.

The development of such a policy would be consistent with prior actions of the Supreme Court, which has historically taken "affirmative steps to ensure that sentencing and disposition procedures, whether authorized by statute or court rule, will not produce widely disparate results for similarly situated defendants." Moran, 202 N.J. at 326 (citing State v. Brimage, 153 N.J. 1, 22-25 (1998) (ordering Attorney General to promulgate plea offer guidelines to eliminate inter-county disparity in sentencing); State v. Yarbough, 100 N.J. 627, 643-44 (1985) (adopting six criteria as general guidelines for judges in determining whether to impose concurrent or consecutive sentences), cert. denied, 475 U.S. 1014 (1986); State v. Leonardis (Leonardis I), 71 N.J. 85, 97-98, 109 (1976) (requiring pretrial intervention programs be implemented according to formal, uniform guidelines and instituting procedures for judicial review to "alleviate existing suspicions about the arbitrariness of given decisions"), aff'd on reh'g, State v. Leonardis (Leonardis II), 73 N.J. 360, 388 (1977)). In requesting the establishment of guidelines for discretionary sentences, particularly for traffic and local ordinances, the Committee asks the Court to do the same here.

This will also address a particular practice of which the Committee has significant concern. In some Municipal Courts, there is a common practice of amending charges to an offense that carries a discretionary fine, with the understanding that any fine imposed will be on the higher end of the spectrum. Often, the amended charge is a local ordinance, which carries a higher maximum monetary penalty than the original State charge. N.J.S.A. 40:49-5. In such instances, as well as for petty disorderly persons offenses and disorderly persons offenses, the entirety of the collected fine goes to the municipality. N.J.S.A. 2C:46-4(c). The Committee believes that the promulgation of sentencing guidelines will address this practice.

RECOMMENDATION 3	**Develop a Judiciary policy providing Municipal Court judges guidelines for consideration of all available sentencing alternatives both at time of sentencing and as part of post-sentencing enforcement.**

The Committee determined that although there are numerous sentencing alternatives available legislatively, very few are regularly utilized by the courts. To encourage the use of the full panoply of sentencing alternatives, and building on the educational materials developed by the Equal Justice Working Group, the Committee recommends that the AOC develop guidance for Municipal Court judges to assist them in determining when various sentencing alternatives should be considered.

RECOMMENDATION 4	**Develop policy and tools that would assist the Municipal Courts in establishing payment plans, determining defendant eligibility for other post-disposition sentencing alternatives, and making ability-to-pay determinations.**

The Committee is cognizant of the volume of matters Municipal Courts hear, the lengthy nature of many court sessions, and the impact increased consideration of sentencing alternatives may have on those sessions. To balance those legitimate administrative concerns, the Committee recommends that efforts be made to streamline these determinations, including the collection of information for a Municipal Court judge to utilize in making the determination. The Committee recommends that consideration be given to the development of an ability-to-pay tool that may be based in part on the Financial Questionnaire to Establish Indigency, (Appendix Y); a payment plan calculator that establishes a payment plan based on factors such as income, expenses, and outstanding fines and fees; and publicly available forms that would allow a defendant to apply for waiver or a reduction in sentence, mirroring the practice currently used when an incarcerated defendant requests relief, pursuant to R. 7:7-2(d). (Appendix Z). Taken together, these tools will both formalize the largely ad hoc process —the only exception being for applications for time payment plans— and encourage the expeditious review of requests for sentencing alternatives.

RECOMMENDATION 5	**Municipal Court judges and staff should regularly be provided ongoing training in the following areas:** **1) The serious ramification of license suspensions and bench warrants;** **2) The scope of their discretion in the issuance of bench warrants and license suspensions;** **3) The full range of sentencing alternatives available, including the vacating of financial obligations; and** **4) That with just cause, and within the operational needs of the court, courts should be relatively liberal in granting adjournments.**

The Committee recommends regular training for Municipal Court judges and staff that emphasizes both the real-life consequences of the issuance of bench warrants and license suspensions, and the scope of judicial discretion in the use of those enforcement tools. These training modifications should be made available as part of the regular training

offered to Municipal Court judges and staff, as well as in training for newly-appointed judges.

RECOMMENDATION 6	**Encourage the creation and expansion of diversionary programs wherein participating defendants who perform volunteer services or complete appropriate treatment services have matters against them dismissed.**

The Committee acknowledges the informal practice in a number of municipalities wherein the municipal prosecutor will refer a defendant to perform volunteer services or complete a treatment program as a condition of the prosecutor making a motion to the court for dismissal. Such services fall outside the purview of probation and are oftentimes not conducted at official Judiciary community service sites. The Committee seeks to formalize and expand this process to provide similar opportunities to eligible defendants.

The Committee thus recommends the creation and expansion of programs that would have participating defendants perform volunteer services at local service providers or receive appropriate treatment for mental health issues, addiction, or other counseling needs at program providers. When satisfactorily performed, the prosecutor would then initiate the dismissal of the charges against that defendant. The Committee envisions that the referral process will be similar to that done in the Veteran's Diversion Program, N.J.S.A. 2C:43-23 et seq. The Committee notes that such efforts would benefit from communication with the New Jersey Department of Health, the county Mental Health Board, and the Addiction Services Board, all of which may be useful in identifying appropriate service providers.

RECOMMENDATION 7	**Develop a vicinage-wide, community-led program similar to the model used in Atlantic/Cape May Vicinage that would seek to encourage the voluntary appearance and safe surrender of defendants with outstanding bench warrants.**

Currently, there are nearly 2,500,000 outstanding bench warrants for failure to appear and failure to pay. (Appendix AA). This number is cumulative, increasing since the inception of both database systems, 1986 for ATS and 1993 for ACS, and must be regarded in the context of the six million matters the Municipal Courts handle annually. Nonetheless, the Committee is united in the position that there must be both a review process for existing warrants, and the establishment of mechanisms that allow for the review and cancellation of existing warrants where appropriate.

In addition to the other recommendations contained in this report that call for the review of existing warrants, limiting the issuance of warrants, and the anticipated statewide plan

for the cancellation of pending bench warrants, the Committee recommends that each vicinage develop and implement an ongoing vicinage-led program that would seek to encourage the voluntary appearance of defendants who have outstanding, unpaid time payment orders. This would provide Municipal Courts with the opportunity to resolve open detainers, rescind warrants, and to set new payment plans where appropriate, for these defendants. This is consistent with other Judiciary-led incentive programs, including those used in Atlantic/Cape May Vicinage, that encourage persons wanted for non-violent, less serious offenses to voluntarily surrender to law enforcement in neutral settings. However, this differs from fugitive safe surrender programs, as those initiatives are based on statewide jurisdiction. The proposal here is to be led by the local vicinage, and limited to the vicinage's jurisdiction. Finally, this recommendation is meant to only supplement local efforts approved by the Assignment Judge.

RECOMMENDATION 8	**Develop procedures consistent with N.J.S.A. 2B:12-26 and N.J.S.A. 39:8-73a to automate the collection of significant Municipal Court debt in the Superior Court.**

The Committee determined that in an effort to move away from the routine issuance of bench warrants for failures to pay, alternative collection methods should be pursued. The Committee recommends that in instances where appropriate, reducing an outstanding fine to a judgment and pursuing enforcement in the Superior Court should be considered. Members suggested that appropriate automation and protocols for this process be developed and piloted, with consideration being given to the potential assessment and exploration of the waiver of Superior Court docketing fees. Currently, by statute, outstanding Title 39 sentences can be docketed in Superior Court without the assessment of any fee. N.J.S.A. 39:8-73a. This would address concerns regarding a cost-benefit analysis for a municipality to seek civil relief, as well as the Committees concerns about habitual warrant issuance.

LEGISLATIVE PROPOSALS

The below recommendations consist of recommendations developed by the Committee linked to fairness in sentencing by way of sentencing alternatives that would require legislation to implement.

RECOMMENDATION 9	**Allow defendants to receive credit towards a legal financial obligation for hours spent in clinical treatment, including participation in recovery Drug Court, N.J.S.A. 2C:35-14, that is related to the underlying offense(s).**

Literature has shown that in some instances an underlying cause for criminal behavior can be identified, including, but not limited to, a mental health concern, substance abuse issue, or combination of both. The Committee recommends that in those instances, and where the offense is non-violent and otherwise lesser/petty, the legislature should permit that defendants to receive credit towards their fines and fees for hours spent in treatment in a substance abuse/mental health program/individual or group therapy, including Drug Court, so long as the treatment is related to the commission of the underlying offense. Such defendants should be rewarded for successful completion of treatment or Drug Court by being provided a mechanism to eliminate or substantially reduce any related outstanding financial obligations. This will further create an incentive for their participation in appropriate treatment programs. The Committee believes that this sentencing alternative could be captured in amendments to N.J.S.A. 2B:12-23, N.J.S.A. 39:4-203.1, and N.J.S.A. 2C:46-2(a)(2). As part of this recommendation, and Recommendation 6, the Committee urges the legislature to review and consider the availability of appropriate clinical programs, particularly for people of lesser means.

RECOMMENDATION 10	**The enactment of legislative alternatives to license suspension, such as the denial of renewal of a driver's license or vehicle registration, or the creation of a restricted use driver's license.**

In recognition of the potentially catastrophic outcome that may result from a license suspension, as tempered by the fact that the threat of a license suspension is a municipal court's strongest tool for enforcement, the Committee determined that an alternative should be considered to provide Municipal Courts with a full panoply of sentencing options. The Committee recommends that the legislature consider an alternative penalty that would prevent a defendant from renewing a driver's license or a restricted use driver's license for drivers, while providing defendants notice prior to renewal. Either would give defendants the ability to continue to work as they strive to satisfy their financial obligations, and would complement the municipal collection of enforcement mechanisms. Additionally, it should be noted that a high percentage of license suspensions are not court ordered, but rather are the result of defendants not paying MVC surcharges or otherwise not complying with certain MVC administrative requirements. The Committee believes that these areas are also worthy of review by the legislature.

RECOMMENDATION 11	**Legislatively establish and update an incarceration conversion rate to reflect the actual costs of incarceration.**

The current minimum incarceration conversion rate is $50 a day. N.J.S.A. 2C:46-2(a)(2); N.J.S.A. 39:5-36. Defendants that are incarcerated, or opt to convert their fine to a jail term, are eligible to receive a credit of $50 a day towards their outstanding financial obligations.

Committee members determined that this is unfair to both defendants and the State of New Jersey in that it is not reflective of the true cost of incarceration. To address this deficiency, the Committee recommends that consideration be given to support legislation setting the incarceration conversion rate more in line with the actual cost of incarceration, and that this number should either be reviewed periodically or contingent on an evolving threshold, similar to the way the Federal Poverty Guidelines are used to determine indigency. N.J.S.A. 39:4-203.1, Indigents; Fine for Traffic Offense; Payment in Installments.

PROCEDURAL SAFEGUARDS FOR DEFENDANTS UNABLE TO PAY A FINE

The recommendations that follow are intended to both satisfy and expand upon the United States Supreme Court's maxim in Bearden—that courts may not incarcerate a defendant due to an inability to pay a court-ordered financial obligation. 461 U.S. 660. To satisfy Bearden, the Committee recommends that a defendant who is delinquent in paying a financial penalty be automatically scheduled for an ability-to-pay hearing. To expand upon Bearden, the Committee proposes severely limiting the use of bench warrants in instances of both failure to pay and failure to appear. Recommendations in alignment with these intentions follow.

RECOMMENDATION 12	**No bench warrant or license suspension shall be issued against a defendant who becomes delinquent on time payments unless an ability-to-pay hearing is scheduled on proper notice to the defendant.**

Currently, a Municipal Court may issue a bench warrant following a court user's failure to pay a legal financial obligation and the issuance of a single notice. To ensure that any incarceration resulting from a failure to pay bench warrant is not due to a court user's lack of financial resources, as prohibited by Bearden, 461 U.S. at 667-69, the Committee recommends the discontinuation of the practice of issuing such bench warrants for defaulting defendants without first scheduling an ability-to-pay hearing. The delinquent court user should instead be scheduled to appear before the court to answer for the nonpayment, and given until that date to satisfy the arrears. This would provide defendants who fail to pay an opportunity to explain the reason to the court, to seek a sentence alternative, if applicable, and for the Municipal Court to conduct an ability-to-pay hearing, if necessary.

In those instances when a defendant is incarcerated due to an executed municipal bench warrant, the Committee recommends the prompt review of the matter before a court, but in no case later than 48 hours after arrest. The Committee recommends that, absent a statewide protocol, each Vicinage develop a local protocol to ensure that defendants unable to post bail are not spending an undue amount of time waiting for a court event. The Committee highlights current ongoing practices in some Vicinages that will allow for this review period to be met, including the use of video appearances, the practice of requiring the immediate release of defendants whose bail is set below $500, and allowing the warrant review process to be handled by a cross-assigned central judicial processing municipal court judge.

In the event a defendant is brought before a court due to an inability to satisfy bail, at the time of his or her court appearance, the court user can articulate the reason(s for the failure to pay, seek a sentencing alternative, or articulate an inability to pay. This will allow the court to make an ability-to-pay determination if need be, and closely mirror the current practice captured in Administrative Directive 15-08, "Use of Warrants and Incarceration in the Enforcement of Child Support Orders" (November 17, 2008), which requires an ability-to-pay hearing prior to the use of incarceration for the enforcement of child support orders. (Appendix BB).

Additionally, license suspensions are a legislatively-authorized Municipal Court response to a defendant's failure to pay that requires in some instances notice of the intention to suspend, and in others no such notice.[12] To ensure that delinquent defendants do not suffer the consequences of a license suspension during the pendency of their ability-to-pay hearing, the Committee recommends that any license suspension related to a failure to pay occur only after an ability-to-pay hearing has been scheduled. If a defendant fails to appear at that ability-to-pay hearing, the Municipal Court retains the authority to utilize the enforcement tool of a license suspension, as referenced in Recommendation 13, p. 49.

The practices proposed above would be in addition to current procedural protections provided to delinquent defendants, as well as the proposed revisions to notice language proposed by the Committee in Recommendation 20. Such revisions include the advisement that a defendant will not be incarcerated for an inability to pay. Taken together, these measures will ensure that any incarceration resulting from a failure to pay will only occur when that failure is willful, and that a defendant will not be subjected to a license suspension while awaiting an ability-to-pay hearing.

As noted earlier, the United States Supreme Court has made clear that courts may not incarcerate a defendant for an inability or failure to pay a court-ordered financial obligation unless the court first holds a hearing and makes a finding that the failure to pay was willful and not due to an inability to pay. Bearden, 461 U.S. 660. Said another way, a court may not jail a person for failure to pay unless there is a finding that the person is able to pay without manifest hardship and has not made good faith efforts to comply.

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[12] N.J.S.A. 2C:46-2 (providing that a defaulting defendant may be subjected to a license suspension following "notice and an opportunity to be heard on the issue of default."); N.J.S.A. 2B:12-31 (if a defendant fails to pay a court-ordered financial obligation, the court may order the suspension of a defendant's driver's license with notice of the intention to suspend and the provision to the defendant of the opportunity to contest the validity of the suspension); N.J.S.A. 39:4-203.2 (for Title 39 offenses, the court may order the suspension of a defendant's driver's license upon a failure to comply with any term of an time payment order).

In Municipal Court, there are two potential paths to incarceration for nonpayment. The first is via the issuance of a bench warrant for failure to pay, when coupled with incidental arrest and incarceration upon an inability to make bail. The second is through the contempt mechanisms provided by New Jersey Court Rules 1:10-1 and 1:10-2. Upon careful review, the Committee saw no need to disturb the careful procedural protections provided by R. 1:10-1 and R. 1:10-2. Therefore, the recommendations that follow demonstrate the Committee's balanced approach to bench warrants for failure to pay that will incorporate an ability-to-pay hearing as a precursory step to issuance.

While the Committee notes that the recommendations made do not diminish a Municipal Court's authority to issue a bench warrant for a failure to appear, the Committee takes the position that such a powerful enforcement tool should not be used indiscriminately for a failure to appear for minor offenses or for failures to pay when the amount owed is minimal. These proposed limitations to the use of bench warrants will be discussed below.

RECOMMENDATION 13	**Bench warrants should only be authorized for defendants who fail to appear for an ability-to-pay hearing where the outstanding fines and fees owed by that defendant equal or exceed $250.**

The Committee recommends that in the event a noticed defendant fails to appear, and the outstanding monies owed is less than $250, the Municipal Court should only issue a bench warrant if required in the interest of justice. Vicinage management should establish protocols for monitoring compliance with such an established policy. The Committee cautions that this authority should not be read as mandating issuance when the amount exceeds $250. This threshold is consistent with the Committee's proposal in Recommendation 14, pp. 49-50, to limit the use of failure to appear bench warrants to certain, serious offenses. For those defendants with outstanding fines that do not meet the proposed threshold, Municipal Courts retain the authority to utilize other enforcement tools.

RECOMMENDATION 14	**Develop a policy limiting the issuance of failure to appear bench warrants to certain, serious offenses, taking into account the following: the seriousness of the offense charged; the age of the case; and other relevant factors.**

The Committee acknowledges that the concerns regarding incidental incarceration from failure to pay bench warrants remain for failure to appear bench warrants. To balance the use of this powerful enforcement tool with the potential for incarceration, the Committee recommends the development of a policy limiting the use of failure to appear bench warrants to certain, serious offenses. The Committee acknowledges that, as of the drafting

of this report, all vicinages have issued a local court order limiting the use of bench warrants for failures to appear in traffic cases to enumerated, serious offenses. In the pursuit of parity in the treatment of defendants across the State of New Jersey, the Committee recommends that a universal policy (i.e. Administrative Directive or Court Rule) be promulgated.

RECOMMENDATION 15	**Develop a policy formalizing the process for the recalling of existing bench warrants for failure to pay for complaints that have been disposed, taking into account the following: the age of the bench warrant; the seriousness of the conviction; the amount owed; and any other relevant factors.**

Building on the issues identified in Recommendations 13 and 14, pp. 49-50, the Committee recommends the development of a statewide policy that would provide a systematic way for courts to review the approximately 300,000 outstanding bench warrants that have been issued by municipal courts for failure to pay. This total includes all outstanding failure to pay bench warrants that have been issued from 1986 until the end of the 2017 calendar year. It is worth noting that 42,000 of those 300,000 outstanding bench warrants were issued during calendar year 2017. It is also worth noting that these totals need to be considered in the context that the Municipal Courts handle approximately 6 million cases annually. (Appendix AA). Any developed protocol should consider critical factors, such as the age of the case, the seriousness of the original charge(s), the remaining balance, and other relevant factors. As part of that protocol, strong consideration should also be given to identifying situations where the remaining balances should be vacated in the interest of justice, consistent with R. 7:9-4 and N.J.S.A. 2B:12-23.1.

The Committee recommends that the process to review and recall existing failure to appear warrants begin promptly, with an emphasis on rescinding warrants for defendants convicted of minor offenses or who have minimal outstanding legal financial obligations. As an intermediary option pending review of outstanding warrants, vicinages may issue standing orders providing for the immediate release of defendants arrested on municipal failure to pay bench warrants when the bail amount owed is under a certain threshold, generally $250 to $500 dollars. In those instances, the defendant is released and provided a date to appear before the court.

Finally, the Committee recommends that in instances where a bench warrant is recalled, the matter be scheduled for court to determine whether a defendant needs to make new arrangements or avail himself/herself of sentencing alternatives. The Committee urges the consideration of revocation of the fine in full or in part, if appropriate, and strongly

encourages municipalities to develop or avail themselves of existing collection programs or processes, such as private collections, to avoid reliance on bench warrants and license suspensions as the primary means of collection.

RECOMMENDATION 16	**Develop a policy formalizing the process for dismissal of old complaints that have not been disposed, taking into account the following: the seriousness of the offense charged; the age of the case; and other relevant factors.**

Municipal Court judges may dismiss open cases in instances governed by R. 7:8-9(f), Dismissal of Parking Tickets. The Committee is also aware of current discussions within the Judiciary regarding the statewide dismissal of certain less serious, outstanding municipal court matters that have an open, active failure to appear bench warrant. The Committee thus recommends that additional court rules or policy be developed to further encourage or mandate the dismissal of old, open cases based on the following principles: the age of the case; the seriousness of the charge; the current status of the matter; and other relevant factors.[13] In many instances, these outstanding matters may have active warrants and license suspensions attached to them, but have little likelihood of resulting in a guilty finding if the matter was brought to trial. The ongoing utilization of these enforcement methods in the face of an unlikely prosecution must be addressed.

For that reason, the Committee suggests that a court rule or policy be developed to provide for the dismissal of certain complaints by the municipal court that are over ten years old, with notice given to the prosecutor. The Committee hopes that creating a clear process for final resolution will remove the risk of potential unintended consequences caused by these open matters, while giving the prosecutor an opportunity to object. This process will also clear court backlog and provide some finality to these old, open cases. The Committee envisions that matters falling outside of any newly-established threshold will remain subject to the procedures captured in R. 7:8-5, which authorize dismissal of a Municipal Court complaint "by the court for good cause at any time on its own motion, on the motion of the State, county or municipality or on defendant's motion." Id.

[13] The ATS/ACS system was implemented statewide as of January 1, 1997. Although many open municipal court complaints that pre-date statewide implementation were entered into the ATS/ACS system, many outstanding complaints were not. The Committee recommends that any policy that is developed encompass these unlogged complaints.

RECOMMENDATION 17	**The AOC should develop additional tools and procedures for Municipal Court judges and staff to determine whether a defendant who has failed to appear or pay is incarcerated before a bench warrant or license suspension is issued.**

Currently, to determine whether a defendant is incarcerated in county jail, court staff must do a state-wide search through the County Corrections Information System (CCIS). To determine whether a defendant is incarcerated in state prison, court staff can search for the defendant on the Department of Correction's online Offender Search Form.[14] To minimize the risk that defendants are issued warrants or license suspensions for failure to appear or pay when they are incarcerated and physically unable to do so, particularly for larger Municipal Courts that do not have resources to allocate towards individual looks-ups for each delinquency, the Committee recommends that Municipal Courts be provided the appropriate technological tools to more easily and swiftly determine whether a defendant is incarcerated.

The Committee acknowledges that implementation of this recommendation would require significant updating of the County Corrections Information System database, and to the databases used by the New Jersey Department of Corrections. It would also require reconciliation of the complaint-driven nature of the Municipal Court computer system to better capture the State Bureau Identification (SBI) number that is used for defendants who are incarcerated.

RECOMMENDATION 18	**Municipal Courts should recall bench warrants or rescind driver's license and vehicle registration suspensions when a defendant makes a subsequent good faith effort to report to court or to satisfy a legal financial obligation.**

The Committee determined that a common practice across Municipal Courts is to allow a judicial officer (Municipal Court judge or authorized Court Administrator or Deputy Court Administrator) to recall a bench warrant when the defendant contacts the court. Similarly, many courts will rescind a driver's license suspension when a defendant makes a good faith effort to either report to court or to pay a portion of the outstanding payment balance. The Committee approves of this practice and recommends that courts apply it liberally, where appropriate. Additionally, the Committee recommends that this practice be highlighted and encouraged via training and however else deemed appropriate by the AOC. This will ensure that this approach to delinquency shifts from being commonplace in various Municipal Courts to being universally and consistently practiced.

[14] The URL for that portal is https://www20.state.nj.us/DOC_Inmate/inmatefinder?i=I.

VOLUNTARY COMPLIANCE WITH COURT-ORDERED APPEARANCES AND LEGAL FINANCIAL OBLIGATIONS

The following recommendations emphasize encouraging court user compliance with Municipal Court obligations. The recommendations share the objective of providing court users with access to critical information that will both advise of an obligation to the court and encourage court contact if that obligation cannot be met.

RECOMMENDATION 19	**Establish a system for automated text, email, and/or telephonic reminders to defendants of upcoming or missed court dates and upcoming or missed legal financial obligation due dates.**

Several studies reviewed by the Committee concluded that reminder notifications are a significant factor in reducing failures to appear and failures to pay. (Appendix X). For that reason, the Committee recommends implementation of text, email, and/or telephonic notifications to municipal defendants regarding upcoming or missed court appearances and payment due dates. The Committee also recommends that information regarding possible sentencing alternatives and links to online case management or resolution options be incorporated into any developed reminders. The Committee envisions this recommendation will build on the auto-notifications developed for defendants participating in criminal justice reform's pretrial monitoring.

For implementation, the Committee proposes that consideration be given to establishing procedures to ensure the voluntary collection of cell phone, email, and/or phone information from defendants to facilitate automated reminders through: 1) the modification of Judiciary-issued charging documents and forms; 2) the creation of an online portal for self-registration; and 3) direct court contact to opt in to receive reminders.

RECOMMENDATION 20	**Modify court notices to advise defendants in plain language that: 1) inability to pay will not result in incarceration; 2) defendants can contact the court to seek alternative ways to meet their financial obligations; and 3) the failure to appear or respond to notices may result in additional monetary penalties, license suspension, and/or issuance of a warrant for arrest that may lead to incarceration.**

Although current notices encourage defendants to contact the court, their formality and brevity fail to properly advise defendants of the availability of sentencing alternatives, in

part because of the current outdated dot matrix printing process, as well as space and character limitations of the notices. This is to the detriment of both the defendant and the court, as members of the Committee agreed that in many instances of a failure to appear or failure to pay, defendants were unable to satisfy a fine or time payment, but were fearful of contacting the court due to that inability.

The Committee thus proposes building on the notice revisions recommended by the Equal Justice Working Group of the Municipal Conferences, and significantly revising the scheduling and delinquent notices. Those revisions should include an advisement to court users that an inability to pay will not result in incarceration and instructions that a court appearance is required to determine the availability of sentencing alternatives.

Such revisions will reinforce to defendants the need to contact the court to schedule an appearance in the event of any inability to pay, and give defendants information regarding the availability of sentencing options. Taken together, the proposed revisions should assist defendants that are otherwise fearful of contacting the court by providing them with information on their options. The Committee additionally recommends that consideration be given to translation of the revised notices into other commonly-used languages where practicable.

A failure to satisfy the installment payments would result in a court date being scheduled, Recommendation 12, pp. 47-49. At the time of that court appearance, the judge – as currently is the case – can assess the defendant's ability-to-pay and potentially modify the sentence.

RECOMMENDATION 21	**Centralize and modernize Municipal Court notice generation and printing to improve the quality and functionality of notice processing and to take advantage of high volume printing and postage discounts for courts across the state.**

New Jersey Municipal Courts generate in excess of 10 million official court notices through the existing automated case management systems annually. In addition, Municipal Courts manually generate tens of thousands of non-automated notifications to defendants. This high volume of notifications is currently handled locally, requiring each court to manage its notice and printing supplies and its postage budget based on its volume and usage. The Committee recommends consolidating and centralizing this process, significantly reducing expense, overhead, staffing, and postage costs to each court. This centralization will also facilitate the updating of the physical notice to a new, more dynamic form which will significantly improve its appearance and clarity, benefiting the defendant receiving the notice.

RECOMMENDATION 22 **The AOC shall develop policies expanding the use of video and telephonic appearances in appropriate instances in Municipal Courts.**

The availability of video and telephonic appearances encourage court appearances when such appearance would be a hardship, inconvenient, or impractical. This can facilitate the continuous and swift resolution of municipal matters by avoiding adjournments. Currently, Municipal Courts have varying policies on the use of video and telephonic appearances. This variation can be explained by a number of factors, including local budgetary limitations or the preferences of the Municipal Court judge. The Committee recommends that the AOC develop policies and procedures to encourage the greater use of technologies allowing for remote appearances, including for those defendants that are incarcerated. This would involve collaboration on technical issues with the Department of Corrections and county jails. Any procedures developed should be cognizant of the budgetary issues that may otherwise discourage a Municipal Court from allowing the use of these technologically-enhanced appearances.

RECOMMENDATION 23 **The AOC should explore the establishment of a uniform online adjournment request process.**

Currently, there is no uniform adjournment request protocol for Municipal Court matters. Consequently, the requirements for a defendant to request an adjournment vary amongst the vicinages and Municipal Courts. To address this, and simultaneously enhance court access, the Committee recommends that the AOC explore the establishment of a uniform online adjournment request process that would be implemented through a customer service portal added onto NJMCdirect.com – the existing page where defendants can pay traffic tickets online. This would allow court users, on their own behalf or through counsel, to request adjournments online, to more easily access the court, and to avoid possible failure to appear penalties.

The Committee further recommends that any portal which is developed indicate to the requestor that the submission of the request for an adjournment does not guarantee its approval by the court, and that proof of the court's receipt of the request be provided to the requestor. The Committee also suggests that the AOC require that requests be submitted on a timely basis, to ensure there is sufficient time to give the prosecutor an opportunity to review and object, and to allow for court review.

INDEPENDENCE OF THE MUNICIPAL COURTS

An independent Municipal Court is central to the Judiciary's ability to serve the public. To enhance the independence of the Municipal Courts, the Committee makes a collection of recommendations that together create two new processes: 1) a voluntary qualification process for the appointment and reappointment of Municipal Court judges; and 2) an evaluation process for sitting Municipal Court judges. The former will provide an impartial and transparent process for the appointment and reappointment of qualified judges, free from inappropriate considerations such as revenue generation. The latter will enhance the already-present AOC and vicinage involvement and oversight of the Municipal Courts, and provide further assurances that the Municipal Court remains both independent and separate from police and prosecution. Recommendations describing both processes follow.

VOLUNTARY QUALIFICATION PROCESS FOR THE APPOINTMENT AND REAPPOINTMENT OF MUNICIPAL COURT JUDGES

The recommendations below put forth the proposed qualification process for the appointment and reappointment of Municipal Court judges. Statutorily, the local or state executive branch appoints Municipal Court judges. N.J.S.A. 2B:12-4. Therefore, although the qualification process will be led by the Judiciary, because it is the municipality that retains the final authority to appointment, the municipality must choose to voluntarily participate in the qualification process. These recommendations are proposed as a group, and for that reason should be read together.

RECOMMENDATION 24	**Establish a statewide uniform and transparent process to assess the qualifications for the appointments and reappointments of all Municipal Court judges.**

RECOMMENDATION 25	**All appointing authorities and municipalities shall be encouraged to participate in an appointment and reappointment qualifications process. Participating municipalities retain the authority to appoint Municipal Court judges.**

RECOMMENDATION 26	**Utilizing guidelines of the Administrative Office of the Courts, establish a Municipal Judge Qualifications Committee (Qualifications Committee) to evaluate and assess the qualifications of attorneys being considered for appointment or reappointment to Municipal Court judgeships.**

RECOMMENDATION 27	**The composition of the Qualifications Committee shall include: 1) the Presiding Judge of the Municipal Courts of the Vicinage wherein the municipality sits, or a designee selected by the Assignment Judge, who will serve as chair of the committee; 2) a member of the appointing municipality or municipalities, or their designee; 3) two members of the county bar association who have extensive municipal court practice, one with defense and one with prosecuting, as appointed by the Assignment Judge of the Vicinage; and 4) a non-attorney citizen from the county.**

RECOMMENDATION 28	**All participating municipalities shall submit their candidates for appointment or reappointment as a Municipal Court judge to the Qualifications Committee for evaluation. After carefully reviewing the background and qualifications of the Municipal Court judicial candidate, the Qualifications Committee shall promptly issue a report to the Assignment Judge. It is further recommended that a sitting Municipal Court judge who is up for reappointment may, with the permission of the Assignment Judge, submit his or her name to the Qualifications Committee for review. All materials created by the Qualifications Committee during the course of their review of a candidate are confidential.**

RECOMMENDATION 29	**When a Municipal Court judge candidate is deemed not qualified by the Qualifications Committee, the Assignment Judge will first notify the candidate and then the town solicitor. If appropriate, the Assignment Judge will request that another candidate be submitted for consideration by the Qualifications Committee.**

RECOMMENDATION 30	**When a Municipal Court judge candidate is deemed qualified, the Assignment Judge will notify the governing body, town solicitor, and the President of the County Bar Association. The notice will trigger the municipal governing body to vote or promptly take action on the candidate.**

The Committee proposes the creation of a qualification process for the appointment and reappointment of Municipal Court judges. The process will be based on an objective analysis of a candidate's qualifications, as assessed by a committee representing stakeholders in the municipal court—the local Qualifications Committee. Because municipalities retain the ultimate appointing authority, participating in the qualifications evaluation process will be voluntary, although strongly encouraged. Thus, the processes articulated in the above recommendations are made with full acknowledgement that they do not disturb the inherent authority of the governing body or Assignment Judge.

To conduct the qualification evaluation, the Committee proposes the establishment of a local Qualifications Committee. Each local committee would be established by the Assignment Judge, and will be comprised of the following:

1) The Presiding Judge of the Municipal Courts of the Vicinage wherein the municipality sits, or a designee selected by the Assignment Judge, to serve as chair of the committee;
2) A member of the appointing municipality or municipalities, or their designee;
3) Two members of the county bar association that have extensive Municipal Court practice, one with defense and one with prosecution, as appointed by the Assignment Judge of the Vicinage; and
4) A non-attorney citizen from the county.

As part of the qualifications review process, participating municipalities shall submit their candidates for appointment or reappointment as a Municipal Court judge to the Qualifications Committee for evaluation. Additionally, a sitting Municipal Court judge, with the prior approval of the Assignment Judge, may be allowed to submit his or her own name to the Qualifications Committee of a participating municipality, in the event that it was not submitted by the municipality. This proposed procedure will enhance the independence of sitting Municipal Court judges who are qualified, and address concerns raised by testimony provided during the public hearings held by the New Jersey State Bar Association Subcommittee on Judicial Independence in the Municipal Court. (Appendix V-1, p. 1106)("The testimony was that towns rely on the revenues that Municipal Courts generate to assist with their budgets, allowing them to not raise taxes on their citizens. Towns often will review the revenues generated by a Municipal Court judge prior to deciding whether a judge will be reappointed.").

The Qualifications Committee will examine the background and qualifications of a candidate, as well as quantitative and qualitative data from sources such as the evaluation report discussed in Recommendation 34, p. 61, prior to preparing a report for the Assignment Judge. Although the proposal allows for the Qualifications Committee to rely on confidential and non-confidential materials in preparing its report, any materials created by the Committee during the course of its review of a candidate will be regarded as confidential. The recommended qualification process will simply be a determination of whether a candidate is qualified or not qualified to sit as a Municipal Court judge, and will not include a comparison of potential candidates. That ultimate determination is left to the appointing authority.

In the event the Committee determines that the candidate is qualified, the Assignment Judge shall notify the appropriate stakeholders: the governing body, the town solicitor, and the President of the County Bar Association. In the event a candidate is found to not be qualified, the Committee recommends that the Assignment Judge first notify the candidate and then the town solicitor. The Assignment Judge will then, if no other candidates were submitted and deemed qualified or if otherwise appropriate, request that another candidate be submitted. The Committee is hopeful that participating municipalities, through membership on the Qualifications Committee, will be engaged with the process, and find it to be useful in evaluating a candidate for a Municipal Court judgeship.

The qualifications procedure will ensure that only qualified candidates are appointed to serve while also protecting qualified sitting Municipal Court judges. Candidates found to not be qualified will simply not gain the support of the Qualifications Committee. This procedure will enhance credibility to the appointment process, protect towns from criticism, assist towns in vetting candidates, and, ultimately, enhance the public trust in the courts. At the same time, it will bring to the forefront the need for statutory changes to insulate judges from local pressure and politics and increase the independence of those courts. A statewide improvement to the current selection and retention of all Municipal Court judges, as opposed simply for those judges in voluntarily participating municipalities, may be inevitable.

LEGISLATIVE PROPOSALS

As discussed previously, the basic structure of our municipal court system has been established by statute. In developing our recommendations, the Committee fully acknowledges that certain fundamental changes being suggested fall outside the scope of the current statutory structure. For that reason, the below series of recommendations, which fall generally within the purview of the other two branches of government, would best be implemented through legislative change.

RECOMMENDATION 31 **The legislature should consider modifying the current legislative scheme to mandate municipalities to participate in the proposed qualifications process for appointment and reappointment of Municipal Court judges.**

The Committee recommends that the legislature mandate municipal participation in the proposed voluntary qualification evaluation process for appointment and reappointment.[15] This will ensure statewide uniformity in the municipal bench while enhancing independence and trust in the municipal court system.

RECOMMENDATION 32 **The legislature should modify the current legislative scheme to increase the term of service for Municipal Court judges from three to five years.**

Municipal Court judge appointments are limited to three-year terms. N.J.S.A. 2B:12-4. Tenure is not available, and reappointment is at the discretion of the municipality. The Committee recommends a longer term of appointment, with membership agreeing that it will result in a more experienced bench and provide further stability to the leadership of a municipal court. It will also represent a shared commitment from all branches of government to provide additional protection to judicial integrity and independence. This commitment has preliminarily been demonstrated by its unanimous support from Committee members. This change in the term of service legislation will be even more meaningful if the qualifications process outlined in Recommendations 24 through 30, pp. 56-59, are also mandated by legislation, as is proposed in Recommendation 31, p. 60.

RECOMMENDATION 33 **The legislature should mandate the consolidation of small courts, taking into account factors such as total annual filings, frequency of court sessions, and geography.**

The Committee reviewed data relating to total court filings for municipal courts for the 2017 court year (July 1, 2016 to June 30, 2017). Of 515 municipal courts, 225 had less than 3,000 filings in the 2017 court year, 166 had less than 2,000 filings, and 105 had less than 1,000 filings. (Appendix U). Based on this data, and the benefits associated with consolidated municipal courts, the Committee recommends that consideration be given to legislatively-mandated consolidation. The Committee suggests that any mandate for

[15] Although the Committee acknowledges that the Court has the obligation and authority to ensure the integrity of the Judiciary and to preserve judicial independence, N.J. Const. art. VI, § II ¶ 3, alterations to the appointment and reappointment process for Municipal Court judges are best done through the legislature.

consolidation consider not only the annual filings, but also the number of court sessions and the geography of various municipal courts, which will ensure that there is no decrease in court access as a result of consolidation.

EVALUATION PROCESS FOR SITTING MUNICIPAL COURT JUDGES

The recommendations below put forth a proposed evaluation process for sitting Municipal Court judges that utilizes and builds on current evaluation methods used in the Municipal Court and Superior Court. These recommendations are proposed as a group and for that reason should be read together.

RECOMMENDATION 34	**Establish a Municipal Court judge evaluation process, similar to the evaluation process utilized for Superior Court judges. The Judicial Education and Performance Unit of the Administrative Office of the Courts will administer the aforementioned evaluation process.**

Superior Court judges are evaluated via the New Jersey Judicial Performance Program, adopted in 1986 and implemented the following year. That program provides anonymous questionnaires to attorneys who participate in cases before judges in the program. Attorneys are asked to evaluate judges on over 30 performance standards in areas such as legal ability, judicial management skills, and comportment. Appellate judges are also sent anonymous questionnaires, and asked to evaluate trial judges when their rulings are appealed. With a goal to improve judicial performance, education, and enhance the reappointment process, the results of the evaluations are shared with the individual judge, assignment judge, Supreme Court, Governor, Senate Judiciary Committee, and Judicial Evaluation Commission.

The Committee recommends that a process similar to the New Jersey Judicial Performance Program for Superior Court judges be developed to include Municipal Court judges, and to maintain and expand the current evaluation process of Municipal Court judges to include in-court observations by the Municipal Presiding Judge or an independent review of court session recordings, attendance at all required training sessions offered, compliance with guidelines, and an objective review of the imposition of penalties, including discretionary fines, contempt assessments, jail terms, and license suspensions assessed by the Municipal Court judge. Altogether, this will ensure the uniform and fair application of law and provide an objective measure by which the Judiciary can evaluate a sitting Municipal Court judge. This evaluation process will also serve to increase the independence of sitting Municipal Court judges. Any report generated as part of this evaluation process will be regarded as confidential.

RECOMMENDATION 35	**Any confidential evaluation report produced pursuant to Recommendation 34 shall be shared with the evaluated judge, the Assignment Judge, the Presiding Municipal Court Judge, and the county Municipal Judge Qualifications Committee as part of the qualifications process for appointment and reappointments.**

In acknowledgment of the benefit of an objective evaluation process, the Committee recommends that any evaluation report produced pursuant to the processes proposed in Recommendation 34 be shared with the individual judge, Assignment Judge, and Presiding Municipal Court Judge. A similar process is followed for evaluated Superior Court judges, with appropriate mentoring following distribution.

Additionally, the Committee recommends that when available, the evaluation report should be shared with the Qualifications Committee (as referenced in Recommendations 24 through 30, pp. 56-59) to be utilized in their determination as to whether a candidate is qualified or not qualified. Likewise, because the Qualifications Committee will have data that will include a sitting Municipal Court judge's use of contempt and the imposition of financial obligations, the Committee recommends that this data related to a judge's performance on the bench be included in the evaluation process.

IMPROVE ACCESS TO THE MUNICIPAL COURTS THROUGH TECHNOLOGY

The future of enhanced access to the Municipal Courts will be dependent on technology. Building further on current endeavors and improvements sought by the Municipal Courts, the Committee recommends a number of key enhancements that rely on the significant expansion of the use of NJMCdirect.com for both court users and court staff. This includes options for remote resolution of municipal matters and remote access to Municipal Courts. The recommendations that follow also include technological enhancements that will assist in the execution of other recommendations made by the Committee.

RECOMMENDATION 36	**Expand the opportunity for defendants to resolve Municipal Court matters remotely without court appearance via NJMCdirect.com or through plea by mail by:** **1) Expanding the scope of "payable offenses" that can be resolved on NJMCdirect.com;** **2) Expanding NJMCdirect.com to accept payments on all matters where a court appearance is not required, all time payments, and bail where permitted;** **3) Allowing for the online submission of an application for plea by mail, pursuant to R. 7:6-3 and R. 7:12-3; and** **4) Removing the requirement of hardship for plea by mail.**

Remote resolution of Municipal Court matters is available in two instances: 1) a guilty plea and concomitant payment of the fine that is established in the Statewide Violations Bureau Schedule, Administrative Office of the Courts, New Jersey Judiciary, available at https://www.njcourts.gov/attorneys/violations.html [16] pursuant to R. 7:12-4; or 2) resolution through the plea by mail protocols established in R. 7:6-3, Guilty Plea by Mail in Non-Traffic Offenses, and R. 7:12-3, Pleas of Not Guilty and Pleas of Guilty by Mail in Certain Traffic or Parking Offenses.

The Statewide Violations Bureau Schedule identifies statutes and administrative code violations that the Court has approved for resolution through the payment of an established

[16] Municipalities can also establish a Local Supplemental Violations Bureau Schedule. R. 7:12-4. Prior to promulgation, the schedule, and any additions after its creation, must first be approved by the vicinage Assignment Judge. Traffic ordinances on the local schedule can be paid through NJMCdirect.com as long as no court appearance is required and there is no open warrant.

fine that includes court costs and fees. These offenses are colloquially referred to as "payable offenses" in that they can be paid without a court appearance, unless required by law enforcement. For those defendants that wish to resolve payable traffic and parking tickets, the AOC offers the convenient alternative of using the NJMCdirect.com website instead of personally going to court to pay or mailing a payment. This option may also be used to satisfy time payment plans for traffic or parking matters.

Court rules also encourage remote resolution for matters where a court appearance is required by providing defendants with the opportunity to plea by mail in order to plead not guilty or guilty in traffic or parking cases, R. 7:12-3, or guilty in non-traffic cases, R. 7:6-3, if appearing in court would cause an undue hardship. Generally, defendants wishing to avail themselves of these procedures must make a written or telephonic request for the Plea by Mail (Statement in Mitigation or Defense by Certification (R. 7:12-3 and R. 7:6-3)) form. It is then sent to the defendant by the municipal court, and it must be completed and returned to the municipality by a date specified on the form. If the defendant fails to return the form by the date listed, or the court determines that an appearance is required, the defendant will be so notified.

To expand the availability of remote resolution, the Committee recommends that the Statewide Violations Bureau Schedule be reviewed and expanded to include additional appropriate offenses, including petty disorderly persons offenses, disorderly persons offenses, and other quasi-criminal matters. The Committee also recommends that the NJMCdirect.com website be enhanced to accept payments via credit card, debit card, and if possible, through bank account deductions. The availability of these payment methods should be expanded to the following (in addition to payable and ATS time payments as they are currently): 1) payable criminal complaint summons; 2) disposed criminal complaints where a Time Payment Order has been issued by the court; and 3) the posting of bail on traffic or criminal matters and application of bail waiver, where permitted. Further, for all time payments, the Committee recommends that NJMCdirect.com give defendants the option of establishing a monthly automatic charging or installment deduction process. As an example, a defendant that owes $250 dollars would establish a one-time agreement to have automatic monthly credit card charges of $25 for 10 months. This will allow defendants to pay their obligations on a regularized and efficient basis without the need for continual court reminders, and will likely reduce delinquent or missed payments.

Finally, the Committee recommends that R. 7:6-3 and R. 7:12-3 be amended to allow defendants charged with certain offenses to enter a plea through completion of an online form and without a showing of hardship. Expanding this process to allow for remote resolution will benefit both court users and the courts by allowing for resolution without the need for a potentially costly and time-consuming court appearance, thereby encouraging responsiveness from defendants.

RECOMMENDATION 37 **All Municipal Courts shall offer defendants the ability to pay fines with a credit card or debit card using NJMCdirect.com at the payment window.**

Currently, online payment through NJMCdirect.com is available only to defendants for payable offenses and for time payments. Although approximately half of the Municipal Courts in New Jersey accept credit and debit card payments, that arrangement is entirely dependent on an individual municipality's desire to engage in a contract with a vendor for credit card processing.

Consistent with recommendations regarding the significant expansion of NJMCdirect.com, the Committee thus proposes that the online portal be incorporated into front-end court processing to give defendants the ability to immediately, after a guilty finding, pay their fines, fees, and penalties at the court window using NJMCdirect.com. The widespread availability of NJMCdirect.com would allow court users to more easily and efficiently resolve their court obligations, thus avoiding time payment plans and possible failure to pay and/or failure to appear penalties. This process would also allow municipalities to avoid the costly necessity of contracting independently with credit card companies to offer credit card payment options to court users, as the contract would be negotiated by the state. The Committee notes that this initiative will likely require review and modifications to Administrative Directive 8-98, "Procedures for Credit Card and Electronic Payments of Municipal Court Fees and Financial Obligations" (November 17, 1998). (Appendix CC).

RECOMMENDATION 38 **Defendants shall be permitted to make partial payments on "payable offenses" without a court appearance.**

As discussed previously, the Supreme Court has approved a list of "payable" offenses which do not require a court appearance (unless required by the law enforcement officer) by the defendant in order to plead guilty and pay/resolve the matter without coming in to court. Each offense has been assigned a "payable amount" which falls within the statutorily-authorized range. These offenses are included on a statewide payable list referred to as the Statewide Violations Bureau Schedule. Additionally, each municipal court has created a list of "payable" local ordinances to which defendants may plead guilty and pay without coming to court. Presently, defendants are not permitted to make partial payments on these state or local payable offenses without first coming to court and then demonstrating an inability to pay a fine in full, and otherwise qualifying for a time payment order.

The Committee recognizes that many defendants may seek to plead guilty and take advantage of the remote resolution option made available for payable offenses, but have

limited available funds to satisfy the full payable amount. The Committee believes that many of these individuals would comply with their financial obligations if they were permitted to pay in partial payments without the need for a court appearance. The Committee thus recommends that defendants be given the opportunity to satisfy payable offenses in installments without a court appearance or determination of eligibility. These installment plans would be offered though NJMCdirect.com, by mail, and in person at the violations window, based on guidance promulgated by the Administrative Office of the Courts as to the specific parameters of installment schedules.

A failure to satisfy the installment payments would result in a court date being scheduled, Recommendation 12, pp. 47-49. At the time of that court appearance, the judge – as currently is the case – can assess the defendant's ability to pay and potentially modify the sentence.

RECOMMENDATION 39	**Enhancing customer service by allowing defendants to: 1) reschedule an initial court date, pursuant to policy promulgated by the AOC; and 2) apply online for a public defender.**

The date of a defendant's initial appearance in Municipal Court is established in one of two ways, depending on whether the defendant is charged on a summons or a warrant. A defendant in New Jersey who is charged on a warrant for committing a crime or disorderly persons offense is eligible for criminal justice reform. Those defendants will have their first appearance and determination of pretrial release conditions set in a vicinage's central judicial processing (CJP) court. The Committee believes that the current CJP procedures in place for scheduling the next court appearance for these defendants should continue without change.

The Committee, however, recommends some flexibility in the scheduling of the first appearance for defendants who are charged on a summons. Specifically, each of the summons charging documents generally includes the date by which the defendant is to come to court for his or her first appearance. To provide defendants with greater scheduling flexibility, and to encourage compliance with the initial court date, the Committee recommends giving defendants charged on a summons the limited flexibility to reschedule that initial first appearance date (e.g., move from Monday to Wednesday of the same week). This will likely reduce failures to appear due to personal/professional conflicts, and give defendants more control and ownership of the scheduled court date. Because of the limited frequency with which some municipal courts schedule their court sessions, it is recommended that the AOC develop strong guiding criteria and parameters for how this rescheduling would function to ensure that any new court date is timely. Moreover, the Committee recommends that consideration be given as to whether defendants charged with certain serious offenses, such as driving while intoxicated, should be excluded from this process to ensure that those defendants are promptly advised of the enhanced penalties.

To further expedite proceedings during the initial court date, the Committee recommends that defendants be given the ability to apply for a public defender online. Currently, defendants that seek to apply for a public defender must report to court, make their request, fill out a Financial Questionnaire to Establish Indigency, and pay an application fee of up to $200. An online application process would expedite not only the potential appointment of a public defender, but also the resolution of the Municipal Court matter. It would also allow the Judiciary to require that the form be completed in full, and would encourage accuracy on the part of the defendant, who could complete the form using appropriate documentation.

RECOMMENDATION 40	**Enhance the ability of all court users to easily access their outstanding Municipal Court obligations and pending matters across the state, and give Municipal Court judges and staff the ability to consolidate payments within the municipality through automation.**

Defendants will often owe fines and fees in numerous courts, which can translate to multiple time payment plans in various Municipal Courts. This can easily lead to confusion on the part of a defendant, ultimately contributing to failures to pay where a defendant puts money towards some, but not all, outstanding time payment plans due to lack of knowledge of all obligations.

In an effort to facilitate a defendant's ability to assess his or her outstanding fines, fees, and penalties, the Committee recommends that technology be developed to enable a defendant to effectively search for all of his or her matters, including pending and disposed charges, the status of each matter, total penalties assessed in each matter, and total amount owed for each charge. This information will facilitate a defendant's understanding of all municipal financial obligations, and allow a defendant to prioritize which matter to address.

The Committee additionally proposes that this information be made available to Municipal Court staff, as oftentimes the administrative burden of identifying for defendants these overlapping but jurisdictionally-distinct time payment plans is carried out by staff. The Committee realizes that Municipal Court Administrators spend significant amounts of time collecting payments from defendants, including determining the precise scope of a defendant's time payment plans. Finally, the Committee recommends that Municipal Court judges be provided access to this information following disposition only. An overall view of a defendant's outstanding time payments will greatly assist Municipal Court judges in developing appropriate and realistic time payments.

Further, in those instances where a defendant has multiple time payment orders within a municipality, the Committee recommends that technological enhancement be provided to allow the Municipal Court to easily identify, consolidate, and recalculate those payments. Multiple time payments within a court prove to be as difficult as multi-jurisdictional time payments for defendants to monitor and for court staff to identify. Allowing for the easy consolidation of multiple time payment orders will ensure that a defendant does not miss a payment and inadvertently become delinquent.

RECOMMENDATION 41	**Expand eCourts technology in the Municipal Courts to include all case-related documents and court filings, such as motions and orders, and to explore the availability of discovery through electronic means.**

eCourts is a web-based application that is designed to allow attorneys, in good standing, to electronically file documents with the courts. The Judiciary intends to implement eCourts in all trial court divisions, building on four essential functionalities:

- Electronic filing and information exchange between the court and attorneys;
- The creation of an electronic filing system;
- The establishment of an electronic case jacket;
- The maintenance of an electronic records management system that provides both attorneys and the public with access to case information.

Currently, municipal integration into eCourts is related exclusively to criminal justice reform and the electronic storage and transfer of criminal justice reform documents in the eCourts application.

To improve the efficiency and accuracy of case management and reduce the physical space demands of the local courts, the Committee endorses the expansion of eCourts functionality to capture all case-related documents within an electronic case file specific to each complaint or ticket. This will improve case lookups and save staff time, as well as reduce the overwhelming demand for file storage. This effort will require coordination with the Superior Court Clerk's Office who oversees court records retention and management. The Committee further recommends that the AOC be tasked with exploring the availability of exchanging discovery through eCourts, as well as any other expansion beyond that identified in this recommendation.

RECOMMENDATION 42	**To continue current efforts to modernize and integrate MACS and PromisGavel to improve case management coordination between the municipal and criminal courts.**

The Municipal Automated Complaint System (MACS was introduced in 2009 to replace the outdated mainframe ATS/ACS application. Whereas ATS/ACS utilized a series of key-prompt commands to navigate, MACS is a Windows-based system that is far more intuitive to the user. This change provided a major shift in the look, feel and capability of the system. Currently, MACS allows for inquiries into cases, complaint entry, ticket entry, and scheduling.

PromisGavel is the corresponding mainframe system used for criminal case management. It has been around in varying formats since 1973, but was fully rolled-out statewide in its present form in 1994. It utilizes a series of key-prompt commands to navigate and enter data, make inquiries into cases, and update information. It has yet to be updated to a Windows-based system, and it has not been integrated into MACS. There have been longstanding data quality and missing data issues related to municipal traffic and criminal cases transferred to the Superior Court for handling and disposition. These gaps have been further emphasized now that criminal justice reform technological system enhancements have been implemented. There is a heightened need to ensure that all case dispositions are correctly entered into the case management systems and reported nightly to the Computerized Criminal History system at State Police, as those offenses can have an immediate impact on a defendant's participation in criminal justice reform and the level of pretrial release that defendant receives.

To accomplish this, the municipal case processing functionality must be integrated with the PromisGavel functionality. A joint effort initiated by the Municipal and Criminal Divisions of the AOC has the immediate goal of bringing common case management functions together under a common system, taking advantage of the current MACS system as the host platform; and a long-term goal of ultimately replacing PromisGavel with MACS, much in the same way that MACS has replaced ATS/ACS.

The Committee fully endorses the work of this project to ensure that the computer systems of criminal and municipal communicate effectively and efficiently.

RECOMMENDATION 43	**The AOC shall continue to encourage the expansion of the eTicketing model to New Jersey municipalities. The AOC shall also develop eSummons technology to enable quick entry of Special Form of Complaint/Summons cases.**

eTicketing web services were introduced in 2009, and have been utilized by the State Police and local municipalities with increasing regularity since that time. eTicketing allows local municipality law enforcement to budget and contract with third party vendors to utilize vendor systems to connect with the AOC's computer systems. The vendor systems offer a modern, efficient and streamlined process for entry of traffic tickets into ATS. That process allows police officers in the field to scan an individual's driver's license, print the ticket, and automatically interface with the ATS case management system directly from their police cars. This eliminates the cumbersome paper-driven protocol, and ensures greater accuracy in the absence of handwriting deciphering issues, translating issues, and the system allowing for real-time editing. The reduction of errors increases efficiency for both law enforcement and the courts. Currently, as of the drafting of this report, just over 330 local police departments utilize eTicketing, and all New Jersey State Police vehicles are similarly equipped.

The Committee proposes that the AOC continue its endorsement of eTicketing and encourage municipalities to upgrade to the eTicketing system for a new, safer and more efficient option to the paper ticket books.

Building on the eTicketing model, the AOC is currently developing eSummons web services for the direct entry of Special Form of Complaint and Summons complaints. The Special Form of Complaint is a form regularly used by law enforcement and municipal courts to file disorderly persons and petty disorderly persons offenses, local ordinance violations, code enforcement actions, penalty enforcement proceedings, boating offenses, and select parking and traffic offenses. Vendors would develop a complementary software program for complaint entry. Much like eTicketing, this process would reduce paper complaints and improve accuracy and efficiency.

The Committee recommends that the AOC expedite the completion of this project, and develop the technical process to allow third party vendors to connect to the AOC Automated Complaint System database for the entry, docketing, and scheduling of the Special Form of Complaint and Summons matters by law enforcement and the entry of the summons for the various local code enforcement agencies within a municipality.

RECOMMENDATION 44 **Implement the WebFOCUS Reporting Software Upgrade for Municipal Courts for improved reporting and analytics.**

Reports on Demand is a computer function that provides statistics for all New Jersey Municipal Courts to use in managing their caseloads and tracking the progress of cases. At present, Municipal Courts use an outdated version of WebFOCUS software for their Reports on Demand functions.

However, other areas of the New Jersey Judiciary currently use a newer version of WebFOCUS that provides far greater reporting functionality and data analysis. Collection of accurate, useful analytical data is crucial to analyzing the success of current processes, and to encourage the refinement and development of existing and new policies. Upgrading the WebFOCUS software is crucial to ensuring that certain Municipal Court processes and policies can be more easily evaluated and will lead to greater efficiency and effectiveness. The Committee recommends that this pending upgrade be given a high priority for implementation.

RECOMMENDATION 45 **Establish minimum uniform requirements for all Municipal Court websites.**

As part of enhancing access to the courts, the Committee recommends that uniform standards be developed to ensure that important information is accurately packaged and presented on various local Municipal Court websites, should that municipality choose to have a webpage for their municipal court. This can include establishing web links on the municipality website to the State Judiciary website. This will ensure that key information is being disseminated in a consistent, uniform fashion to the public through Judiciary portals at both the state and local level. The Committee recommends that the AOC be tasked with identifying information that should be uniformly available on all Municipal Court websites, as well as information that is prohibited.

RECOMMENDATION 46 **Program ATS/ACS to technologically require compliance with R. 1:2-4.**

New Jersey Court Rule 1:2-4 currently permits a court to impose a monetary sanction on an attorney or party who, without just excuse, fails to appear for a court proceeding. The rule currently states that the amount should be paid to the "Treasurer, State of New Jersey." In light of this prohibition from municipal collection, the Committee recommends that ATS/ACS be hardcoded to ensure that the sanction amounts collected be distributed pursuant to the Rules of Court.

Additionally, the Committee notes that the Supreme Court Committee on Municipal Court Practice has recommended a court rule modification that would limit failure to appear sanctions to $25 for parking matters and $50 for all other matters, except for consequence of magnitude cases, Guidelines for Determining a Consequence of Magnitude, Pressler & Verniero, Current N.J. Court Rules, Appendix to Part VII (2018), where the aggregate sanction could not exceed $100. (Appendix M). The Committee supports the pending amendment as another step in imposing limitations on the excessive use of inappropriately imposed contempt amounts by Municipal Court judges, and recommends that in the event the Court adopts this proposed rule modification, the automated systems should be updated accordingly.

RECOMMENDATION 47	**Program ATS/ACS to allow court costs to be assessed only in statutorily-authorized instances.**

The bulk of assessed court costs are retained by the Municipal Court, and are intended to be used to fund its operation. The Judiciary has promulgated the policy that defendants who are acquitted or who have their matter dismissed cannot be assessed court costs unless such action is explicitly permitted by statute. (Appendix DD). The Committee recommends that the ATS/ACS system be hardcoded to allow court costs to only be assessed in permitted instances.

RECOMMENDATION 48	**Reaffirm the Judiciary's commitment to encouraging diversity in the judges and staff of the Municipal Courts and in the development of court policy and procedures to address the changing needs of the diverse population of New Jersey's court users.**

The Committee acknowledges the extensive diversity of the population of the State of New Jersey. The millions of litigants who come to the courts each year for a just resolution of their cases must believe they are being treated fairly, regardless of income, language barriers, disability, cultural diversity, or educational level. To address the shifting needs of various Municipal Courts in how services are provided to an ever-changing local population, the Committee reaffirms the Judiciary's commitment to respond to the needs of such populations in all aspects of court business. Such efforts include supporting recruitment of a more diverse bench and workforce, providing training on cultural competency, offering enhanced language access services, and the like.

RECOMMENDATION 49 **Establish a working group comprised of all three branches of government and key stakeholders to implement needed reform and statutory changes to the structure of the Municipal Courts and to create a forum for the discussion of additional relevant issues.**

To maintain the momentum of reform, the Committee recommends the creation of a working group composed of the three branches of government and key stakeholders to implement the recommendations made by the Committee. Many of the recommendations contained in the report are within the control of the Judiciary, and can be implemented through training, policy, administrative directive, or court rule. For those recommendations that fall outside the scope of the Judiciary's authority, the other branches of government should consider legislative changes.

The Committee engaged in exhaustive discussions regarding changing the structural foundation of the Municipal Courts as a means of ensuring judicial independence and improving their operation. Such changes to the statutory framework of the Municipal Court are an important and necessary step to achieve and implement reform, and have been the subject of prior unsuccessful reform efforts. Former Chief Justice Robert N. Wilentz analyzed these early attempts and succinctly framed the issue that the failure to restructure the municipal system was due in part to "a strong tradition of local self-government…the people who have the power to make the appointment want to keep the power to make the appointment." (Appendix I).

The Committee recommends, in addition to implementation of the other recommendations proffered in the report, that the working group address the following:

1. The creation of regional and/or county Municipal Courts;
2. The funding and efficiencies of consolidating Municipal Courts;
3. The shift from part-time Municipal Court judgeships[17] to full-time, tenured judgeships funded by the State of New Jersey's general fund;
4. Modifying the current legislative scheme for the appointment and reappointment process of Municipal Judges to enhance judicial independence;
5. Extending the term of municipal prosecutors and municipal public defenders from one to three years;
6. Discussing the expansion of subject matter jurisdiction for Municipal Courts;
7. Exploring the greater use of sentences that emphasize public safety and deterrence, as opposed to the current reliance on fines, surcharges, incarceration, and license suspensions;

[17] "Judgeship" refers to a judicial position available in a municipal court. Many Municipal Court judges have multiple judgeships in various municipal courts. Currently, the approximately 650 Municipal Court judgeships are satisfied by 314 Municipal Court judges.

8. The examination of the use of Motor Vehicle Commission surcharges, which are not subject to forgiveness or reduction, and their impact on indigent defendants;
9. The review of the excessive use of license suspensions;
10. Examining ways to further remove incentives for municipalities to turn to Municipal Courts to generate local revenue; and
11. Any other reforms identified by the working group that will lead to improving the Municipal Courts in New Jersey.

V. CONCLUSION

The prior accomplishments and reform efforts that have occurred within the New Jersey Municipal Courts are not to be understated. The committees, organizations, and institutions that have come before ours have done much to elevate the stature of our Municipal Courts. The Committee commends those efforts, and acknowledges the ongoing work of those close to municipal matters, including the Assignment Judges; AOC's Municipal Court Services Division; Presiding Municipal Court Judges; Municipal Division Managers; Municipal Court Judges; Municipal Court Administrators and Deputy Municipal Court Administrators; and all Municipal Court staff. The professionalism displayed by these key personnel on a daily basis, and particularly the expertise that was brought to Committee discussions, provided significant assistance in the findings and recommendations. They also know, as we do now, that despite all that has been done, there is still much more to do.

This need is evidenced not only by the Department of Justice's since rescinded "Dear Colleagues" letter, or even from persistent criticism from then-sitting Chief Justices of the very structure of the municipal court system as insufficient to protect the independence of Municipal Court judges. Articles from local press, (Appendix B, L), instances of judicial misconduct, (Appendix O, P, Q), and public hearings held by the New Jersey State Bar Association, (Appendix V-1), have all together laid out both the public perception and at times the unfortunate reality of the Municipal Courts as revenue-generators for the municipality, and reaffirmed the need for independence-enhancing reform. Committee members, cognizant of the above, were engaged in finding solutions to these issues, and at the same time the report challenges all stakeholders to engage in the important conversation required to achieve the necessary change.

The Committee anticipates that this report will provide a road map to improve Municipal Courts. Its proffer of principles and recommendations is made in an earnest attempt to enhance access and fairness to all litigants and court users, to increase the independence of the Municipal Courts, and to enhance public confidence in those courts, all done as a means of furthering the State of New Jersey's ongoing commitment to equal justice for all.

Respectfully Submitted,

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