STATE OF NEW YORK

5571

2021-2022 Regular Sessions

IN SENATE

March 11, 2021

Introduced by Sen. LANZA -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to establish a temporary blue ribbon commission to study bail and the bail industry; and providing for the repeal of such provisions upon expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. 1. Establishment. There is hereby established the blue ribbon commission on bail to examine, evaluate, and make recommendations on the application of bail in the criminal justice system of the state.

2. Powers and duties. Such commission shall examine issues relating to bail including, but not limited to:

a. Administration. (1) Determining the viability of allowing private citizens and bail agents to post bail bonds for any case in a county or borough while the arraignment parts are open, including the ability to post a bail bond at night and on the weekends in the arraignment parts;

(2) Allowing bail bond agents to post bail bonds at correctional facilities twenty-four hours a day in all counties;

(3) Allowing electronic transmittal of release orders to jails;

(4) Allowing court issued release orders to be listed by docket number only; and

(5) Issuing state identification to qualified bail bond agents and staff.

b. Arraignments. (1) Examining data regarding the number of individuals arraigned on violations, misdemeanors and felonies, broken down by county or borough on a monthly basis over the latest two-year period for which the data is available. Such data shall include a breakdown of the statistics described in subdivision a of this section, regarding the number of cases:

(a) dismissed at arraignment;

(b) pled at arraignment;

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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(c) released without bail, including but not limited to individuals released on their own recognizance, supervised releases, conditional releases to probation or other conditional releases;

(d) in which bail was set, including the bail amounts and the types of crimes charged;

(e) whether defendants had holds; and

(f) whether bail was paid at arraignment;

(2) The number of cases in subparagraph one of this paragraph that were disposed of on the next court appearance and the type of disposition;

(3) A breakdown by ethnicity of the individuals in cases listed in subparagraphs one and two of this paragraph;

(4) A breakdown by economic status of the individuals in the cases listed in subparagraphs one and two of this paragraph and how such arrestee's economic status was determined based on an interview performed by a criminal justice agency;

(5) The number of cases in subparagraphs one and two of this paragraph in which bail was set using a form of bail other than cash and surety bond;

(6) Warrant and return on warrant rates for individual arrestees listed in subparagraphs one and two of this paragraph, broken down by the type of securing order and level of crime; and

(7) Re-arrest rates for individual arrestees listed in subparagraphs one and two of this paragraph, broken down by type of securing order, amount of securing order and level of crime.

c. Charitable bail. Determining and examining data regarding how an arrestee's indigence is determined when being considered for charitable bail, including:

(1) How charitable bail organizations obtain clients;

(2) How resources are used to obtain background information on potential clients to make a proper determination about whether to use charitable bail;

(3) Failure to appear rates for individuals released on charitable bail guarantees and, if applicable, number of returns on failure to appear warrants; and

(4) Charitable bail organizations, including such information relating to:

(a) funding sources;

(b) expenditures for administration;

(c) expenditures for actual bail;

(d) expenditures for lobbying;

(e) expenditures for forfeitures;

(f) expenditures for staff salaries; and

(g) how charitable bail organizations adhere to section 6805 of the insurance law by which they are provided licensure.

d. Failure to appear. (1) Determining and examining data regarding the number of failures to appear reconciled against the number of individuals arraigned during a specific, defined period; and

(2) The attending costs of failure to appear, including but not limited to:

(a) expenditures related to the re-arrest of absconders; and

(b) municipalities' costs to replace police personnel in court.

e. Jail populations. Determining and examining data regarding methodologies used to determine the population of inmates and economic status of a defendant held on bail. Such methodologies shall include:

(1) The ethnic breakdown of individuals held in jail on bail and of those claiming to be indigent;

(2) A statistical breakdown of the number of defendants in jail broken down by the type of securing order on which they are held, including remands and sentenced prisoners;

(3) The number of defendants who have release holds other than bail and the type of restriction; and

(4) The amount of time defendants spent in jail from arraignment to release from custody, for the following reasons:

(a) bail posted;

(b) case dismissed;

(c) guilty plea;

(d) release without bail;

(e) remand or transport to other entity; and

(f) sentence imposed.

f. Pretrial release programs. (1) Examining data on current statewide pretrial release numbers broken down by type of crime charged, including, violations, misdemeanors, and violent and non-violent felonies. Such pretrial release information shall include:

(a) securing order status;

(b) failure to appear rates;

(c) re-arrests and type of arrest; and

(d) disposition of the case, including the original charge;

(2) For each pretrial services program, an annual report describing the rates of failures to appear, new crimes being committed while released under pretrial supervision, and the total annual cost of the pretrial services program within the jurisdiction;

(3) Statistics describing pretrial services programs' policies, including:

(a) the methodology to determine indigence;

(b) listing of all fees charged for services provided to defendants; and

(c) detailed listings of the total fees collected, by fee category;

(4) Effect on pretrial remand rates in states or jurisdictions that have enacted bail reforms, implemented pretrial supervision programs, or employed release algorithms;

(5) Statistics providing the total population of jails in this state for the last five years, including:

(a) the total percentage of the jail population that is in pretrial status;

(b) the percentage of those in pretrial status that are not bailable and breakdown of the reasons such persons are not bailable; and

(c) the percentage of those who could post bail by posting a bond which have not posted a bond, with a listing of the amounts of the bonds pursuant to which such persons are being held;

(6) Effect on pretrial crime rates in states or jurisdictions that have enacted bail reforms, implemented pretrial supervision programs, or employed release algorithms;

(7) Drug overdose rates before and after implementation of reforms in states or jurisdictions that have enacted automatic non-monetary release for non-violent misdemeanor crimes; and

(8) Cost analysis to determine:

(a) startup and annual operating costs of pretrial supervision programs;

(b) implementation and annual operating costs of pre-arraignment screening programs;

(c) increase in funding to law enforcement to counter increased warrants and crime rates;

(d) cost to court system for extra staff and hours required for new programs and related hearings;

(e) loss of tax revenue and licensing fees from bail bond industry;

(f) indirect costs of reforms, pension costs for supervision programs, court officers and police, costs resulting from increased failure to appear rates and recidivism; and

(g) determination of whether the state or local municipalities will bear the total cost of reforms, and the cost to the taxpayer.

3. Membership. a. Such commission shall consist of thirteen members who shall serve a term of two years and shall be appointed as follows: five members to be appointed by the governor, of which one member shall serve as chair of the commission, one member shall be a representative of the charitable bail organizations chartered in this state, and one member shall be a representative of the commercial bail industry licensed in this state; three members to be appointed by the temporary president of the senate, of which one member shall be a representative of the charitable bail organizations chartered in this state and one member shall be a representative of the commercial bail industry licensed in this state; three members shall be appointed by the speaker of the assembly, of which one member shall be a representative of the charitable bail organizations chartered in this state and one member shall be a representative of the commercial bail industry licensed in this state; one member shall be appointed by the minority leader of the senate; and one member shall be appointed by the minority leader of the assembly.

b. In addition to these voting members, the commission shall have six non-voting, ex officio members. The following government agencies or officials shall appoint one ex officio member each: the attorney general, the chief judge of the state, the executive director of the division of criminal justice services, the commissioner of corrections and community supervision, the state comptroller, and the superintendent of the state police.

4. Meetings. The commission shall meet at least six times. The meetings of the commission shall be held at the call of the chair or whenever five or more members so request. The locations of the meetings shall provide for representation of different geographic areas of the state. The first meeting shall be within ninety days of the effective date of this act. A majority of the members of the commission shall constitute a quorum. Approval of any matter shall require the affirmative vote of a majority of the members voting thereon. Members may designate and authorize another person to act for him or her by proxy. Proxies shall be revocable at the discretion of the member executing it.

5. Proceedings. The deliberations, meetings and other proceedings of the commission and any committee thereof shall be governed by article 7 of the public officers law. Any one or more members may participate in a meeting by means of a conference telephone call, conference video call or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting. At any meetings of the commission conducted by means of a conference telephone call, conference video call or similar communications equipment, other than executive sessions, the public shall be given an opportunity to listen. If a meeting other than an executive session is to be conducted by means of a conference telephone call, conference video call or simi-

lar communications equipment, the public notice for the meeting shall inform the public that such equipment will be used, and identify the means by which the public may listen to such meeting.

6. Advisory committees. The commission may form such advisory committees as it deems necessary, convenient, or desirable to advise and assist in performing the duties conferred by this act.

7. Hearings. The commission shall hold at least four public hearings where members of the public shall be provided an opportunity to present oral and/or written testimony relevant to the commission's study. Prior to the public hearings, the commission shall request from, review, and consider written input with respect to its mission from relevant stakeholder organizations, including, but not limited to: Brooklyn Community Bail Fund, Conference of Mayors, Correction Officers' Benevolent Association, District Attorneys Association of the State of New York, New York State Association of Counties, New York State Association of PBAs, New York State Bail Bondsman Association, New York State Correction Officers and Police Benevolent Association, New York State Court Clerks Association, New York State Magistrates Association, Patrolmen's Benevolent Association of the city of New York, Police Conference of New York, The Association of Towns of the State of New York, and The Bronx Freedom Fund.

8. Reimbursement. The members of the commission shall receive no compensation for their services, but shall be allowed the actual and necessary expenses incurred in the performance of their duties pursuant to this act. Such reimbursements shall be disbursed from the general fund.

9. Report. The commission shall issue an interim report to the governor and the legislature of its findings, conclusions and recommendations one year after the effective date of this act. A final report shall be issued to the governor and legislature two years after the effective date of this act including further findings, conclusions, and recommendations by the commission and legislative proposals as it deems necessary to implement such recommendations.

§ 2. This act shall take effect January 1, 2022, and shall expire and be deemed repealed two years after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.