

**State of New Jersey**

**Council on Local Mandates**

In re Complaint Filed by The New Jersey Association of Counties

Re: N.J.S.A. 2A:162-16(b)(1) and N.J.S.A. 2A:162-22

Sections of The Criminal Justice Reform Act

COLM-0004-15

Decided: April 28, 2017

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**Syllabus**

(This syllabus was prepared for the convenience of the reader and is not part of the opinion of the Council. The Syllabus does not purport to summarize all portions of the opinions.)

Following a ballot question that was approved in the November 2014 general election, the New Jersey Constitution, article I, section 11, was amended (the Amendment) to substantially eliminate bail for defendants awaiting trial; the Amendment instead substituted a risk-based provision. Concomitant with the adoption of the Amendment, the Legislature enacted implementing legislation, the Criminal Justice Reform Act, C. 2A:162-15 to -26 (CJRA). The Claimant, the New Jersey Association of Counties (the NJAC), filed a complaint with the Council on Local Mandates (the Council) seeking a declaration that certain provisions of the CJRA, as codified, N.J.S.A. 2A:162-16(b)(1), the risk assessment timeframe, and N.J.S.A. 2A:162-22, the speedy trial timeframes, should be found to be unfunded mandates and in violation of article VIII, section II, paragraph 5 of the New Jersey Constitution, as implemented by the Local Mandates Act, N.J.S.A. 52:13H-1 to -22 (the LMA). The NJAC claimed that the CJRA is an unfunded mandate as applied to the counties as it will force counties to expend monies for which a reciprocal funding source has not been created. Thus, the NJAC asserts that because neither the CJRA nor any other legislative enactment authorizes resources to offset the additional direct expenses the

counties will incur to implement the CJRA, the expenses must be paid by property taxes; accordingly, the NJAC submits that the CJRA is an unfunded mandate and should cease to be mandatory in its effect.

The NJAC also challenged the CJRA's funding source, C.2B:1-9, captioned, the "21<sup>st</sup> Century Improvement Fund," asserting it provides no funding for the counties' anticipated expenses in implementing the Amendment and the CJRA.

The First Indemnity Insurance Company and various bail bonding agents (the bail bonding amici) support the NJAC's position.

In its complaint, the NJAC also sought preliminary injunctive relief, enjoining the State from enforcing N.J.S.A. 2A:162-16 (b)(1) and N.J.S.A. 2A:162-22 pending disposition of the complaint. By order of December 27, 2016, the Council denied that request.

The State of New Jersey filed a motion to dismiss the complaint. The primary point raised by the State is that the complaint must be dismissed because the CJRA calls into effect article VIII, section 2, paragraph 5(c)(5), a provision of the New Jersey Constitution, and N.J.S.A. 13H-3e, which preclude a law that implements a provision of the New Jersey Constitution from being considered an unfunded mandate. The New Jersey State Bar Association and the American Civil Liberties Union of New Jersey (the ACLU) support the State's position.

**HELD:** Following oral argument on February 15, 2017, the Council voted 4-3 to grant the State's motion to dismiss the complaint.

At issue here is the applicability of the exemption that removes a law that may otherwise qualify as an unfunded mandate from being considered an unfunded mandate if that law implements a provision of the New Jersey Constitution. In pertinent part, the 5(c)(5) exemption, reads as follows: "(c) Notwithstanding anything in this paragraph to the contrary, the following categories of laws . . . shall not be considered unfunded mandates:

(5) those which implement the provisions of this Constitution[.]” N.J. Const. art. VIII, §II, ¶5(c)(5). The LMA contains similar language: “3. Notwithstanding the provisions of any other law to the contrary, the following categories of laws . . . shall not be unfunded mandates: e. those which implement the provisions of the New Jersey Constitution[.]” N.J.S.A. 52:13H-3e.

The Council, having determined that the CJRA does indeed implement the provisions of the New Jersey Constitution, dismissed the complaint. The factors that informed the Council’s decision included the similarity of the language of the Amendment and the CJRA. Further, the Amendment and the CJRA have a significant temporal connection, having been moved through the legislative adoption processes nearly simultaneously. The challenged legislation could not have taken effect without enactment of the Amendment.

The Amendment changed the criteria for a defendant’s pretrial release from a resource-based system – a defendant primarily had to post money to secure his pretrial release – to a risk-based system. To effectuate this new risk-based system, the CJRA established procedures and conditions for pretrial release exclusive of bail. Without the procedures and conditions embedded in the CJRA, no process would exist to effectuate the purpose of the Amendment.

And further, the speedy trial requirements give effect to the speedy trial guarantees found in the New Jersey Constitution, Art. I, §10: “In all criminal prosecutions the accused shall have the right to a speedy . . . trial.” That New Jersey courts have previously applied a judicially fashioned test to determine if a defendant received a speedy trial does not preclude the Legislature from adopting specific time frames within which the State must bring a defendant to trial.

Given these factors, the State has met its burden and has established that the CJRA implements provisions of the New Jersey Constitution. Accordingly, summary judgment is granted dismissing the complaint.

The dissent would deny the motion to dismiss and permit the Claimant to offer proofs at a full fact-finding hearing. The dissenters have not formed a conclusion as to the substantive issues, but believe the motion to dismiss is premature. The dissenters seek additional information. In particular, the dissent questions whether the speedy trial provisions constitute legislative overreach. Without additional information, the dissenters are unable to determine how the risk assessment timeframe, which requires eligible defendants to be detained no longer than 48 hours after the defendant's commitment to jail during preparation of risk assessment prior to trial, implements the Amendment. The same question applies to the speedy trial time frames, which impose limitations on detention for 90 days prior to indictment, 180 days following return or unsealing of the indictment, and two years if the defendant does not go to trial. N.J.S.A. 2A:162-22. Based on the present record, the dissenters question whether the challenged statutes in fact implement the Amendment, as they bear a tenuous connection to conditions that may be necessary for release of a defendant without bail.

A majority of members of the Council joined in an addendum to the decision. In the addendum, the members emphasized the limited scope of the decision to the facts of this application, cautioning that the 5(c)(5) exemption should not be considered an open invitation to the Legislature to impose unfunded mandates upon counties, municipalities or boards of education by enacting amendments or supplements to the "Criminal Justice Reform Act."

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Angelo J. Genova argued the cause for the Claimant, New Jersey Association of Counties (Genova Burns, attorneys; Mr. Genova, Anthony M. Anastasio and Celia S. Bosco on the briefs).

Joseph C. Fanaroff, Assistant Attorney General, argued the cause for the Respondent, State of New Jersey and Administrative Office of the Courts; Mr. Fanaroff on the briefs.

Alexander Shalom argued the cause for amicus curiae, American Civil Liberties Union of New Jersey; (Mr. Shalom, Edward Barocas and Jeanne LoCicero on the brief).

Thomas H. Prol argued the cause for amicus curiae New Jersey State Bar Association; Mr. Prol on the brief.

Douglas E. Motzenbecker argued the cause for amici First Indemnity of America Insurance Company and various bail bonding agents (Gordon & Rees, attorneys; Mr. Motzenbecker and Samuel M. Silver on the briefs).

Council members Michael Kelly, Christopher Pianese, Victor R. McDonald, III, and Robert R. Salman, Esq. join in the opinion; members Robert R. Pacicco, Jack Tarditi and Edward P. Zimmerman dissent; members Michael Kelly, Victor R. McDonald, III, Robert R. Pacicco, Christopher Pianese, Jack Tarditi and Edward P. Zimmerman join in the addendum. Council member John K. Rafferty and Council Chair Hon. John A. Sweeney did not participate in the decision.