



Report of the
Law and Justice
Transition Advisory Committee

Submitted to Governor-elect Phil Murphy and Lieutenant
Governor-elect Sheila Oliver

January 1, 2018

EXECUTIVE SUMMARY

The Law and Justice Policy Group recommends that the Governor-elect consider the following recommendations to accomplish the following eight key priorities:

I. Priority: Protect public safety while enhancing fairness in the criminal justice system

- i. Appoint members to the Criminal Sentencing and Disposition Commission (CSDC) and direct them to comprehensively review criminal sentencing and related issues
- ii. Establish a commission to study and make recommendations regarding how to legalize, tax, and regulate marijuana usage for adults
- iii. Foster improved relationships between police and the communities they serve
- iv. Create an inter-agency Reentry Council to reduce recidivism and give a meaningful second chance to those who are released from prison
- v. Expand the use of drug courts to address the opioid epidemic
- vi. Improve reporting of and response to hate crimes
- vii. Further transform the juvenile justice system

II. Priority: Protect New Jersey immigrants

- i. Make state driver's licenses available to residents who meet age, residency and public safety requirements, regardless of their immigration status
- ii. Consider revising AG Directive 2007-3 to enhance public safety and issue an executive order to protect the privacy of immigrants
- iii. Create an Office of Immigrant Protection to provide free legal representation to indigent immigrants detained and facing deportation

III. Priority: Expand access to democracy in New Jersey

- i. Endorse legislation to implement Automatic Voter Registration (AVR) at Motor Vehicle Commission (MVC) offices
- ii. Endorse legislation to restore voting rights to people on probation, parole, or other community supervision
- iii. Endorse legislation to create online voter registration (OVR)

IV. Priority: Restore the relationship of respect between the Governor and an independent judiciary

- i. Consider renominating for tenure judges and justices appointed by predecessor governors as long as they are objectively deemed qualified
- ii. Assess reaffirming the judicial compact procedures for the relationship between the Governor and the New Jersey State Bar Association (commonly known as the "Hughes Compact")
- iii. Solicit judicial candidates whose background and experience reflect the diversity of the communities that they will serve

V. Priority: Endorse legislation to prevent gun violence

- i. Endorse legislation to ban the possession of bump stocks
- ii. Endorse legislation to create gun violence restraining orders

VI. Priority: Protect the rights of women

- i. Promote equal pay for women
- ii. Promote policies to address sexual harassment

VII. Priority: Protect the rights of LGBTQ New Jerseyans

- i. Endorse legislation to permit transgender individuals to amend their birth certificates without undergoing sex reassignment surgery
- ii. Seek to participate as an amicus in lawsuits against the transgender military ban and other actions that seek to harm the LGBTQ community

VIII. Priority: Participate in litigation to protect New Jersey's residents from harmful national policies.

REPORT

I. PRIORITY: PROTECT PUBLIC SAFETY WHILE ENHANCING FAIRNESS IN THE CRIMINAL JUSTICE SYSTEM

New Jersey leads the nation in prison population reduction. Between 1999 and 2017, New Jersey lowered its rate of incarceration by more than one-third through the administration of parole, sentencing flexibility, drug courts for low-level drug offenders (between 2013 and 2017, there was a 38.2% reduction in the number of prisoners incarcerated on drug charges), and, most recently, bail reform. Yet the number of people incarcerated in New Jersey is still four times higher than the prison population in 1978. The New Jersey Department of Corrections spent more than \$1.07 billion in 2015, up from \$241.4 million in 1985. The state has the most significant racial disparity in incarceration the country. Black adults are more than 12 times as likely to be incarcerated as white adults, and Black children are 30.6 times more likely to be incarcerated than white children. The Governor-elect has vowed to legalize, regulate and tax marijuana, which will help decrease mass incarceration and racial disparities in incarceration. This is just one of many changes that must be made in order to ensure that our criminal justice system is fair and effective for all New Jerseyans.

i. **Recommendation: Appoint members to the Criminal Sentencing and Disposition Commission (CSDC) and direct them to comprehensively review criminal sentencing and related issues**

In 2004, the legislature created the Commission to Review Criminal Sentencing, which operated until 2009, when it was replaced by statute by the CSDC. *See* N.J.S.A. 2C:48A-1. The purpose of the CSDC was to thoroughly review criminal sentencing and the issue of racial disparities in criminal justice. The commission's primary goal was to create "a rational, just and proportionate sentencing scheme that achieves to the greatest extent possible public safety, offender accountability, crime reduction and prevention, and offender rehabilitation while promoting the efficient use of the State's resources."

No members have ever been appointed, and the CSDC has never met. The Governor-elect should staff the CSDC and direct its members to review and make recommendations on:

- The continued viability of mandatory minimum sentences. 74% of New Jersey's 20,489 prisoners are currently serving mandatory minimum sentences;
- Base sentences for which early release is prohibited;
- The classification of crimes as first, second, third or fourth degree, including those that trigger collateral consequences (i.e., deportation); and
- Probation and parole.

Cost: The CSDC has no cost. Any resulting decrease in the rate of incarceration would reduce the State's expenditures accordingly.

ii. **Recommendation: Establish a commission to study and make recommendations regarding how to legalize, tax, and regulate marijuana usage for adults**

According to the New Jersey Attorney General's office, there were 24,689 marijuana possession arrests in 2014. Despite similar usage rates, Blacks are almost three times more likely than whites to be arrested for marijuana possession. Such arrests have contributed to the problem of mass incarceration.

Voters in eight States and Washington, D.C. have approved measures to legalize marijuana for individuals over 21. The Governor-elect has pledged to do the same. Recognizing that there are a variety of issues that must be thoughtfully addressed, we recommend that the Governor-elect establish a commission to study and make recommendations regarding how best to legalize, tax and regulate marijuana. Government representatives should include the Attorney General and the Commissioners of Agriculture, Community Affairs, Corrections, Health, Human Services, and Treasury. The commission should consider and make recommendations regarding marijuana production, testing, distribution and sales (including labeling, marketing, advertising, and packaging), home cultivation, taxation, and expungement of criminal records.

Cost: The commission would be cost neutral.

iii. Recommendation: Foster improved relationships between police and the communities they serve

Public safety requires strong relationships of mutual trust between police and the communities they serve. Policing is effective only when community members work with the police to address the problems of crime in their neighborhoods. Police must see themselves as a part of the community they serve, and local government officials and members of the community must recognize their own responsibility to collaborate with police to address crime and its underlying causes.

Across New Jersey, many law enforcement departments and communities have successfully fostered those relationships. The Department of Law and Public Safety has recently instituted a community policing award program to encourage community policing efforts and share best practices. But much more remains to be done, particularly because the U.S. Department of Justice under Attorney General Sessions is walking away from its responsibility in this area.

Accordingly, the new state Attorney General should create an Office of Community Policing or assign a senior member of his staff to:

- Evaluate ways to promote the diversity of law enforcement so that the staffs of police agencies reflect the composition of the communities they protect;
- Assess existing training rules and requirements (including Attorney General Directive 2016-5) and make recommendations to improve and enhance training statewide, including on implicit bias, cultural awareness, mental health, and individuals with autism and disabilities;
- Review existing policies on matters such as body cameras and use of force;
- Examine how actions of police officers are reviewed and evaluate whether there should be statewide consistency regarding fairness and transparency;
- Work with local police departments and other government agencies to recognize that some behavioral problems, such as disorderly conduct and loitering, can better be handled through social services rather than through the criminal justice system;
- Encourage all police departments to embrace the principles of community policing, and serve as a resource for those departments to share best practices.

Cost: The cost of the review will be minimal, but there will be costs associated with any new programs or training that are created and funded by the State.

iv. Recommendation: Create an inter-agency Reentry Council to reduce recidivism and give a meaningful second chance to those who are released from prison

Each year, more than 10,000 people are released from New Jersey's prisons. Nearly 70 percent of those released are rearrested, many within a year, and roughly 40 percent go back to prison. This pattern has terrible consequences for people released from prison and their families. It also has serious implications for public safety and is extremely expensive. The recidivism rate can be reduced dramatically if the challenges formerly incarcerated people face upon reentry into society are addressed. These challenges, which include education and vocational training, employment, transitional housing, healthcare, drug and addiction treatment, and professional and motor vehicle licensing, should be addressed both during and after incarceration.

Currently, many such services are provided during incarceration by the Department of Corrections, and afterwards by various state, county, and local agencies, as well as by non-governmental organizations. The prior Administration made a variety of efforts to improve the reentry process, most recently signing legislation to make it significantly easier for those who have been rehabilitated to expunge their criminal records.

But there is much work to be done. The Governor-elect should therefore, by Executive Order, create a statewide Reentry Council to include, among others, the Attorney General and Commissioners of Corrections, Health, Community Affairs, Children and Families, Human Services, and Labor and Workforce Development. As a report by the National Governor's Association made clear, "Given the cross cutting nature of prisoner reentry, some form of interagency partnership, possibly even a formal governance structure, is necessary to develop and implement improvement strategies." President Obama recognized the same imperative at the federal level when he created a structure of twenty federal agencies.

The Reentry Council should be empowered to take immediate action to remove barriers to successful reentry and ensure that inmates have every opportunity for successful reintegration. Areas for consideration include the provision of services and the collateral consequences of conviction, including driver's license suspensions, employment restrictions, bars to certain professional licenses, and access to government assistance, including housing.

Cost: There would be no cost to the Reentry Council, but there could be costs associated with any new programs created or funded by the State.

v. Recommendation: Continue fighting the opioid epidemic

The opioid epidemic continues to plague New Jersey. In 2016 alone, there were 1,901 deaths linked to opioid overdoses in New Jersey. Law enforcement has made efforts in New Jersey at the federal and state level through aggressive prosecutions and significant civil enforcement actions. But this problem cannot be solved by law enforcement alone, as recognized by the State's interagency Opioid Working Group, and multi-agency Task Force on Drug Abuse Control. We recommend that the Government-Elect fully implement the recommendations of those groups.

In addition, the Governor-Elect and the Attorney General should work with the judiciary to expand the use of drug courts for non-violent offenders. Drug courts are a highly specialized team process within the existing Superior Court structure that addresses nonviolent drug-related cases, building a close collaborative relationship among criminal justice and drug treatment professionals.

Cost: As an alternative to incarceration, drug courts save the State money. They also may lead to additional recoveries of criminal fines and fees.

vi. Recommendation: Improve reporting of and response to hate crimes

FBI statistics show a dramatic spike in hate crimes in the last quarter of 2016 compared to the same period during the prior year. In particular, crimes directed against Muslims and members of the LGBTQ community have increased sharply, with a 43% jump in anti-trans crimes. Aside from the harm to the victim, a hate crime often makes the victim's community feel vulnerable, fearful, isolated, and unprotected.

While New Jersey has enacted strong laws providing for civil and criminal penalties in response to bias-motivated violence, as well as data collection requirements, the State can do more. There is a standard form for police agencies to report hate crimes to the FBI. But far too many police departments in New Jersey either do not report hate crimes data at all or have incorrectly reported that no hate crimes have occurred in their jurisdictions. Accordingly, the Attorney General should direct each County Prosecutor to require all police departments in their respective counties to fully report all hate crimes data. The Attorney General should also evaluate whether there are obstacles to reporting and whether improved training is required.

Cost: Increased training for police, if required, would incur minimal expense.

vii. Recommendation: Further transform the juvenile justice system.

New Jersey has the worst Black/white youth incarceration disparity in the nation. In New Jersey, a Black child is over 30 times more likely to be detained or committed to a youth facility than a white child, even though Black and white children commit most offenses at similar rates. New Jersey's youth incarceration system is also extremely expensive: over \$250,000 is spent each year to incarcerate each child in New Jersey's three secure youth facilities. And of the 450 children released from youth facilities in 2013, almost one-third were recommitted within three years.

Recently, New Jersey has become a model for statewide implementation of the Juvenile Detention Alternatives Initiative, which resulted in drastic reductions in populations at juvenile correctional facilities throughout the State. The State has advanced a plan to close the New Jersey Training School, the State's largest youth prison for boys, and Hayes, the State's secure facility for girls, and replace them with three smaller rehabilitation centers that are close to the communities from which the incarcerated young people come. There now needs to be a detailed plan for what those three centers will look like and how they will operate based on national best practices.

The Governor-elect should therefore appoint a commission to make recommendations on how to close the existing prisons and the structure and operations of the replacement facilities. The commission should meet for six months to create an action plan for transforming New Jersey's youth justice system through child-centered, rehabilitative, and treatment-focused facilities, effective community-based programming, successful alternatives to incarceration, and other rehabilitative measures.

Cost: The commission would have no cost. Replacing New Jersey's secure facilities with three smaller rehabilitative facilities would save an estimated \$20 million annually.

II. PRIORITY: PROTECT NEW JERSEY IMMIGRANTS

Under the Trump Administration, Immigration and Customs Enforcement (ICE) arrests during 2017 increased by 43%. In the first week of December alone, ICE arrested 101 immigrants in New Jersey. In

New Jersey, the third most immigrant-populous State, immigrants have been subject to increased detention and deportation and fear attending school and court due to expanded ICE presence. Earlier this year, in a letter to the federal Department of Homeland Security, New Jersey Supreme Court Chief Justice Stuart Rabner urged ICE to stop arresting people making routine appearances in state courts, and warned that the practice could undermine New Jersey's justice system.

The Trump Administration has launched other unprecedented attacks on immigrants and refugees, including: (1) issuing an executive order banning refugees and travelers from Iran, Libya, Yemen, Somalia, Chad, Syria, North Korea and Venezuela; (2) rescinding the Deferred Action for Childhood Arrivals (DACA) program; (3) issuing an executive order threatening to withhold all federal funding from safe and welcoming jurisdictions; (4) ending work permits for spouses of high-skilled visa holders; (5) scaling back the Temporary Protected Status (TPS) program; and (6) threatening cuts to family-based immigration (which the President calls "chain migration") and the diversity visa program.

States have been at the forefront of challenging many of the Administration's unconstitutional and illegal actions, and have obtained injunctions against the order threatening to withhold federal funds from safe and welcoming jurisdictions and the third iteration of the Travel Ban (although that injunction was lifted by the Supreme Court in December). States are also litigating to stop the rescission of DACA and to protect jurisdictions, including Middlesex County and Newark, that have been contacted by the Department of Justice about a possible loss of Byrne/JAG funds. The new Attorney General should consider participating in these lawsuits, either as a party or amicus, where possible.

As the Governor-elect takes office, New Jersey has a unique opportunity to protect its sizeable immigrant and refugee population and to fight back against federal attacks that undermine both our public safety and our Constitution. By taking the following steps, the Governor-elect can protect the rights of immigrants and refugees in New Jersey, strengthen our economy, and enhance public safety.

i. Recommendation: Make state driver's licenses available to residents who meet age, residency and public safety requirements, regardless of their immigration status

The Governor-elect should endorse legislation to extend a state-purpose-only driver's license to immigrants and other populations that cannot meet federal REAL ID license requirements, and work with the Motor Vehicle Commission to create privacy policies to ensure compliance with the REAL ID Act while ensuring that driver's license holders' information is adequately protected.

Twelve States and the District of Columbia already allow immigrants without legal status to obtain state driver's licenses. About half a million people in New Jersey would benefit from this law. Allowing immigrants without legal status to obtain state driver's licenses will improve safety on state roads by ensuring that drivers are knowledgeable of traffic laws, have been tested for driving ability, and are registered and insured. (A Stanford University study also found that after California began providing driver's licenses to immigrants without authorized status, the rate of hit-and-run accidents decreased.) It also may lead to a decrease in insurance premiums as more drivers become insured.

Cost: There will be an initial budget outlay to set up the program, but the revenue generated from new license holders should offset the cost within several years.

ii. Recommendation: Consider revising AG Directive 2007-3 to enhance public safety and issue an executive order to protect the privacy of immigrants

The Major Cities Police Chiefs Association has made clear: entanglement of local law enforcement in federal immigration enforcement undermines immigrant communities' trust, discourages crime victims and witnesses from coming forward, and damages public safety.

Current Attorney General Directive 2007-3 requires police to inquire about the immigration status of anyone arrested and charged with an indictable offense or driving while intoxicated. The new Attorney General should consider revising this directive to enhance trust between law enforcement and immigrant communities. The directive should:

- Prohibit state and local law enforcement officials from detaining people in response to non-binding ICE detainer requests unless accompanied by a valid judicial warrant.
- Limit state and local law enforcement officials from engaging in immigration enforcement activities except where required by federal or state law or judicial order.

The Governor-elect should also issue an executive order to prohibit non-law-enforcement state agencies from collecting immigration status information, except where required by federal or state law or a valid judicial warrant.

Cost: This proposal should be cost neutral.

iii. Recommendation: Create an Office of Immigrant Protection to provide free legal representation to indigent immigrants detained and facing deportation

Deportation tears apart families, costs New Jersey taxpayers millions of dollars, and devastates our communities. In 2015, 7,260 individuals were detained in New Jersey for civil immigration violations. The majority did not have attorneys. Only 14% of those who were unrepresented were successful in their petitions. The New York Immigrant Family Unity Project ("NYIFUP"), a state-funded pilot to extend pro bono representation to detained immigrants in New York, began in 2014. A recent report estimates that 48% of NYIFUP-represented cases will result in an outcome that avoids deportation, a 1,100% increase from before the program was implemented.

The Governor-elect proposed an Office of Immigrant Protection during the campaign to achieve this purpose. New Jersey should create this public defender system for indigent immigrants who are detained in New Jersey, facing deportation, and cannot afford an attorney.

Cost: The cost for such a program, which should be included in the Governor-elect's budget, would be \$14-19 million dollars. However, there will also be mitigating savings. For example, by reuniting 750 families in the past two years, the New York program added a projected \$2.7 million in annual tax revenue.

III. PRIORITY: EXPAND ACCESS TO DEMOCRACY IN NEW JERSEY

Central to a functioning democracy is the principle that all of its members have a fair and equal voice in its governing, and the right to vote is a fundamental right that undergirds all of our other constitutional rights. We are also a better, stronger, more representative democracy when more people participate. New Jersey, however, ranked just 29th in turnout in the 2016 presidential election, the second-lowest turnout ever recorded in this State for a presidential year. As a State, we must advance voting rights reforms that will empower more people to participate in the political process.

i. Recommendation: Endorse legislation to implement Automatic Voter Registration (AVR) at Motor Vehicle Commission (MVC) Offices

New Jersey should join nine other States and the District of Columbia that have adopted “automatic voter registration,” a reform that registers eligible people when they interact with government agencies like the MVC unless the person opts out.

AVR increases registration and voting, reduces errors and costs in the registration process, and helps maintain more accurate voter rolls. It was included in the Democracy Act of 2015, which Governor Christie vetoed, and was again passed as standalone legislation (A1944) in August 2016, when it was again vetoed.

To ensure that all eligible New Jersey residents can benefit from AVR, the Governor-elect should also examine the possibility of establishing AVR at government agencies beyond the MVC, such as agencies that provide public assistance.

Cost: The fiscal note to the 2015 Democracy Act noted that AVR in Oregon was estimated to cost \$753,445 during 2015-2017 and \$42,616 during 2017-2019. However, Oregon was also estimated to save \$110,707 during 2015-2017 and \$147,610 during 2017-2019, resulting in an overall net savings.

ii. Recommendation: Endorse legislation to restore voting rights to people on probation, parole, or other community supervision

New Jersey currently denies the right to vote to more than 94,000 people because of a criminal conviction. Of those, three-quarters are living in the community while on parole or probation. About half of those denied the right to vote are Black, and more than 5% of the Black voting age population is barred from voting under this law—a result of New Jersey’s extreme racial disparity in incarceration rates.

Research shows that voting helps to facilitate rehabilitation and reduce recidivism. One study, for example, showed that people with criminal convictions who voted were only half as likely to be rearrested in the three years after they voted as compared to those who did not vote. Restoring the right to vote also helps to promote broader community engagement and civic participation.

Cost: There will be no cost to the State.

iii. Recommendation: Endorse legislation to create online voter registration (OVR)

Across the country, online registration is a popular and common method of registering voters that allows citizen to securely register from any computer that is connected to the internet. Removing the need for voters to print and mail forms reduces errors on the rolls, improves efficiency, eliminates unnecessary paperwork, and increases registration rates.

More than half the States already have online registration, and the time has come for New Jersey to join them, as the Governor-elect acknowledged during the campaign.

Online registration was included in the Democracy Act of 2015, which Governor Christie vetoed.

Cost: The fiscal note to the 2015 Democracy Act says OVR will cost \$379,000 in the first year, and \$190,000 annually to implement. However, there are also likely to be significant cost savings. For example, Maricopa County, Arizona saved \$1.4 million over four years, or \$350,000 per year, by implementing OVR.

IV. PRIORITY: RESTORE THE RELATIONSHIP OF RESPECT BETWEEN THE GOVERNOR AND AN INDEPENDENT JUDICIARY

For over sixty years after the current New Jersey Constitution was adopted in 1947, twelve New Jersey governors from both major political parties developed an admirable tradition of respect for the role of an independent judiciary. Through a number of unwritten but assiduously observed practices, prior governors refused to use their constitutional authority to nominate judges in order to gain immediate partisan political advantage. The State Senate, in turn, routinely confirmed the nominations of the Governor, even if the Governor was of the opposing political party, in what was a non-partisan and non-politicized process. These practices contributed to the reputation of the New Jersey Judiciary as among the finest—if not the finest—in the nation.

Governor Christie’s refusal to re-nominate two qualified members of the Supreme Court—Associate Justice John E. Wallace, Jr. (a Democrat) and Associate Justice Helen Hoens (a Republican)—triggered a lengthy dispute with the State Senate, which then, for the first time under our current Constitution, rejected the Governor’s nominations to the Court. The resulting standoff left the Court without a full complement of permanent members for years.

We therefore recommend that the Governor-elect examine the following proposals:

- Reaffirm the long-standing historical practices of prior New Jersey governors of re-nominating for tenure judges and justices appointed by predecessor governors as long as they are objectively deemed qualified.
- Reaffirm the long-standing historical practices of ensuring that no more than 4 members of the Supreme Court are of the same political party, and nominating judges to the Superior Court and other courts equally from the two major political parties.
- Reaffirm the Judicial Compact Procedures for the Relationship between the Governor and the New Jersey State Bar Association (commonly known as the “Hughes Compact”), under which the Bar Association has a nonpartisan role in reviewing judicial and prosecutorial candidates.
- Immediately upon taking office, develop a process for soliciting judicial candidates whose background and experience reflect the diversity of the communities that they will serve.
- Examine judicial salaries, which are necessary to attract qualified candidates.

Cost: These recommendations would incur no costs. Increasing judicial salaries could incur significant cost, especially considering the effect on other salaries (county prosecutors, clerks, sheriffs, surrogates) that are currently pegged by statute to a Superior Court judge’s salary.

V. PRIORITY: ENDORSE LEGISLATION TO PREVENT GUN VIOLENCE

As the Governor-elect recognized during the campaign, the gun violence epidemic is a public health crisis. As of December 18, 2017, 14,904 people had been killed by guns in 2017, including 704 children under the age of 11. There have been 333 separate mass shooting incidents so far this year. Yet Governor Christie has repeatedly vetoed sensible reforms that were supported by a majority of New Jersey residents. And Congress is bent on making it worse: On December 6, the House passed the Concealed Carry Reciprocity Act, which would require New Jersey to honor concealed-carry permits from other States. The effect of the bill would be to create what amounts to a national gun permit that must be

recognized even by States, like New Jersey, with stronger permitting standards. The Governor-elect should work with the legislature to enact sensible gun safety regulations.

i. Recommendation: Endorse legislation to ban the possession of bump stocks

Nearly three months after the deadliest mass shooting in modern American history, proposed federal legislation banning bump stocks, the device used by the Las Vegas shooter to kill 58 people and injure over 500 others, stalled. Bump stocks are equipment that replaces the stock of a rifle and adds a small “support step” in front of the trigger, turning a semi-automatic rifle into a weapon that can fire approximately 400 to 800 rounds per minute. Bump stocks are explicitly banned in California and Massachusetts, and several other States are considering similar laws. There is simply no “safe” use for bump stocks. The Governor-elect should therefore endorse legislation to ban the possession of bump stocks and like devices entirely. Such a bill passed the Assembly in December (A5200) and was reported from the Senate Committee on December 18, 2017. The Governor-elect has publicly stated he would sign the legislation if passed.

Cost: There would be no cost to the State.

ii. Recommendation: Endorse legislation to create Gun Violence Restraining Orders

Gun violence protective order laws, also known as gun violence restraining orders (GVROs) and extreme risk protection orders, allow immediate family members and law enforcement officers to petition a court to temporarily remove a person’s access to a gun if he or she poses an imminent danger to self or others. In situations where there is sufficient evidence for a judge to find that an individual poses a danger to self or others, a GVRO temporarily prohibits the individual from purchasing or possessing firearms or ammunition and allows law enforcement to remove any firearms or ammunition already in the individual’s possession. Similar laws have been enacted in California and Washington. Like the domestic violence restraining orders in place in all fifty States, the GVRO has the potential to prevent harm in a crisis.

Cost: There would be no cost to the State.

VI. PRIORITY: PROTECT THE RIGHTS OF WOMEN

Protecting the rights of women is more critical today in light of the Trump Administration’s war on women, specifically regarding equal pay, sexual harassment and the right to contraception. Women comprise approximately half of the American workforce, and are the primary or sole breadwinners in nearly 40 percent of families. Yet women who work full time in New Jersey are paid 80 cents for every dollar paid to men. The gap is worse for mothers: According to 2013 data, mothers who work full time are paid 71 cents for every dollar paid to fathers. And it is even worse for women of color: Hispanic women earn just 43 cents and Black women earn just 58 cents for every dollar paid to white, non-Hispanic men. In August, the Trump administration suspended new pay-data collection provisions that were designed to help bring transparency to employers’ pay practices, which are often secret. And Governor Christie has repeatedly vetoed legislation aimed at narrowing the gender wage gap.

Additionally, the #metoo movement may be ushering in a cultural turning point on sexual harassment and sexual assault, and the Governor-elect should take this opportunity to review whether New Jersey can do more to stop this epidemic. Studies show that approximately 30% of women have experienced some form of unwanted sexual conduct at work. And according to a report by the New Jersey Task Force on Campus Sexual Assault, approximately 20% of undergraduate women experience sexual violence while in college.

Finally, in October the Trump Administration issued regulations allowing employers with any “moral” or “religious” objection to opt out of the Affordable Care Act’s requirement that they provide contraceptive coverage for their employees, while simultaneously removing the previous guarantee that women who do not share their employer’s views on contraception can still get access to coverage. This could lead many New Jersey women to lose coverage and seek state-funded sources of contraceptive care. Several States challenged the regulations, and federal courts in Pennsylvania and California have issued nationwide injunctions. The U.S. Department of Justice will almost certainly appeal, and New Jersey should seek to participate as an amicus in those appeals.

i. Recommendation: Promote equal pay for women.

The Governor-elect should endorse legislation to narrow the gender pay gap. Governor Christie vetoed legislation (S992/A2750) in 2016 which would have made it unlawful for an employer to pay men and women differently “for substantially similar work”; allowed employees to recover back pay for the entire period in which they suffered pay discrimination; provided treble damages for back pay; and required employers who contract with the State to keep records of employees’ gender, race, job title and compensation and turn them over to the Department of Labor upon request. Similar laws have recently been enacted in six other States. Governor Christie then agreed to a compromise measure that would have been substantially similar to S992 except for providing double instead of triple damages and defining pay discrimination as paying men and women differently for “substantially *equal* work . . . performed under reasonably similar working conditions,” rather than “substantially *similar* work.” California, Massachusetts and Oregon require equal pay for “substantially similar work,” “comparable work,” and “work of a comparable character.” The Governor-elect should support the “substantially similar” language, but should also consider adding an affirmative defense, modeled after the Massachusetts law, for employers who conduct their own compensation audits and take steps to eliminate gender pay discrepancies. Cost: There would be no cost to the State.

The Government-elect should endorse legislation to prohibit employers from asking questions about pay history during the hiring process, which perpetuates the effects of pay discrimination on women. Although similar legislation was vetoed by Governor Christie in 2017, it has been passed in Massachusetts, Delaware, Oregon, New York City, San Francisco and Philadelphia.

At the very least, the Governor-elect should issue an Executive Order (1) prohibiting public contractors from asking questions about pay history during the hiring process; and (2) requiring public contractors to provide the Department of Labor with records of employees’ gender, race, job title and compensation. The latter is especially important given the Trump Administration’s suspension of EEOC pay-data collection provisions that were designed to help bring transparency to employers’ pay practices.

Cost: The above measures would incur no costs to the State.

ii. Recommendation: Promote policies to address sexual harassment.

In the first 100 days, the Governor-elect should ensure that the State’s sexual harassment training program is current, comprehensive, and mandatory for state employees at all levels. The training should focus not only on the letter of the law but also on fostering a respectful workplace and encouraging witnesses to report inappropriate or illegal behavior.

The Governor-elect should endorse legislation to create a Campus Sexual Assault Commission whose membership includes at least one campus sexual assault survivor. The Commission would be required to study and evaluate emerging issues, policies, and practices concerning campus sexual assault and to develop an action plan. This is especially important because the Trump Administration recently rescinded Obama-era guidance that required schools to do more under Title IX to protect victims of sexual assault on campus.

Cost: Updating the State's sexual harassment training could cost money. The Commission would impose no cost on the State.

VII. PRIORITY: PROTECT THE RIGHTS OF LGBTQ NEW JERSEYANS

LGBTQ rights are under assault across the country. The Department of Justice recently contradicted the Equal Employment Opportunity Commission in denying that federal nondiscrimination laws apply to LGBTQ people; LGBTQ residents in 30 States still lack the most basic protections in employment, housing, and public accommodations; and 45 bills were introduced in 22 States to allow organizations and corporations religious exemptions to serving LGBTQ clients. And on August 25, 2017, President Trump directed the Secretary of Defense and Secretary of Homeland Security, effective January 1, 2018, to ban transgender individuals from joining the military. He also made current transgender service members possibly subject to discharge effective March 2018. New Jersey has taken the opposite approach, recently enacting legislation to prohibit state-regulated insurers from discriminating on the basis of gender identity and requiring schools not to compel transgender students to use bathrooms or locker rooms that conflict with their gender identities. But New Jersey law still requires transgender people to prove they have undergone sexual reassignment surgery before the State Registrar will change gender on a birth certificate. This is not only unfair; it is also misguided. The law should not penalize transgender individuals for making the medical decisions that are right for them.

i. Recommendation: Endorse legislation to permit transgender individuals to amend their birth certificates without undergoing sex reassignment surgery

The Governor-elect should endorse legislation which would require the State Registrar to change sex (and name) on a birth certificate if the person provides a form from a "licensed health care provider which indicates that the person has undergone clinically appropriate treatment for the purpose of gender transition, based on contemporary medical standards, or that the person has an intersex condition." Gov. Christie has twice vetoed such legislation, citing concerns with fraud, deception and abuse, but the standard required by the bill is materially identical to the standard used in seven other States and the standard used by the United States to change gender on a passport. Signing this legislation would fulfill the Governor-elect's campaign promise to "allow transgender people to select their gender on birth and death certificates."

Cost: There should be no cost to the State.

ii. Recommendation: Seek to participate as an amicus in lawsuits against the transgender military ban and other actions that seek to harm the LGBTQ community

VIII. PRIORITY: PARTICIPATE IN LITIGATION TO PROTECT NEW JERSEY'S RESIDENTS FROM HARMFUL NATIONAL POLICIES.

As noted throughout this memo, States have been at the forefront of litigating against illegal and unconstitutional federal policies that threaten harm to New Jersey citizens and to the State itself. In additions to the lawsuits already mentioned concerning the Travel Ban, the rescission of DACA, the

transgender military ban, and the new exemptions to the contraceptive requirement, States are also challenging a variety of illegal actions the Administration has taken regarding: (1) the environment, including the EPA's administrative stay of methane standards for the oil and gas sector; (2) consumer protection, including the Department of Education's decision to indefinitely delay the implementation of borrower-defense regulations, which protect students at for-profit colleges; and (3) health-care, including Administration's decision to terminate cost-sharing reduction subsidies under the Affordable Care Act. States also have publicly stated that they will sue now that Congress has largely eliminated the deduction for state and local taxes (SALT) because by attempting to tax taxes paid to state governments, the federal government denies the co-equal sovereignty of the States. The Attorney General should consider joining these suits, either as a party or an amicus. The new Attorney General should also consider creating a Solicitor General position within the Department of Law and Public Safety to oversee the State's litigation in federal and state courts of appeal and the U.S. Supreme Court and possibly to oversee affirmative litigation against the federal government.

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The Governor, Lieutenant Governor, and the entire senior transition team staff greatly appreciate the immense amount of work, participation and expertise that all our co-chairs, committee members and deputy directors who staffed each committee provided since the transition began in November. This hard work and positive energy about how New Jersey can once again become a national leader has resulted in a robust set of recommended priorities and actions for the incoming administration to consider. As with any collaborative endeavor, many recommendations and opinions were expressed and debated during the committee meetings and the drafting of the reports by co-chairs, committee members, and Deputy Directors. The final reports may contain recommendations that do not reflect the concurrence of all co-chairs or committee members, nor of the organizations they represent. These reports are purely advisory and do not reflect the positions of the Governor-elect or any other elected official.